

1995
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Periodic Detention Bill 1995

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Periodic Detention Bill 1995

A BILL

FOR

An Act to provide for the periodic detention of certain offenders and for related matters

The Legislative Assembly for the Australian Capital Territory enacts as follows:

PART I—PRELIMINARY

Short title

- 5 1. This Act may be cited as the *Periodic Detention Act 1995*.

Commencement

- 10 2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.
- (2) The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.
- (3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which

this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

Interpretation

3. (1) In this Act, unless the contrary intention appears—

- 5 “court” means the Supreme Court or the Magistrates Court;
- “custodial officer” means a custodial officer as provided for by section 36;
- “dentist” means a registered dentist within the meaning of the *Dentists Registration Act 1931*;
- 10 “detainee” means an offender in respect of whom an order for periodic detention is in force;
- “detention centre” means a place declared to be a detention centre under section 41;
- 15 “detention period”, in relation to a detainee, means a period that, subject to any order of the Director under section 16—
- (a) commences at 7.00 p.m. on the same day of the week as the date specified in the order of the court imposing the sentence as the day on which the sentence commences; and
- (b) ends at 4.30 p.m. on the second day after the day on which
- 20 the period commences;
- but does not include any such period which includes the whole or any part of Christmas Day, Good Friday or Easter Sunday;
- “Director” means the Director of Corrective Services provided for by section 35;
- 25 “manager” means a manager of a detention centre as provided for by section 36;
- “medical practitioner” means a registered medical practitioner within the meaning of the *Medical Practitioners Act 1930*;
- 30 “nurse” means a registered nurse within the meaning of the *Nurses Act 1988*;
- “officer” means a custodial officer or manager;
- “Official Visitor” means a person appointed under section 6A of the *Remand Centres Act 1976*;
- 35 “periodic detention” means periodic detention the subject of an order under section 4.

(2) A reference in this Act to an order for periodic detention shall, if the order has been varied, be read as a reference to the order as varied, unless the contrary intention appears.

PART II—PERIODIC DETENTION

5

Division 1—Orders and committal

Power to order periodic detention

4. (1) A court—

- (a) which convicts a person of an offence against a law of the Territory; and
- 10 (b) which, but for the option of making an order under this section, would otherwise sentence the person to a term of imprisonment of not less than 3 months but not more than 24 months;

may, instead of sentencing the person to imprisonment, by order—

- 15 (c) sentence the person to complete such number of detention periods at a detention centre, as the court specifies; and
- (d) direct that the person be released from custody subject to any order that may be made under subsection 10 (2).

20 (2) The number of detention periods that a person may be required to serve under an order shall be calculated at the rate of 1 detention period for each week of the term of imprisonment to which the person would otherwise have been sentenced.

(3) An order for periodic detention remains in force until—

- 25 (a) the relevant detention periods required to be served under the order, or any detention periods by which the order has been extended under section 25, have been served; or
- (b) the order has been cancelled.

Core conditions

5. The following core conditions shall be included in an order for periodic detention:

- 30 (a) that the offender report to an officer at the relevant detention centre on the date and at the time specified in the order;
- (b) that the offender notify an officer at the detention centre within 48 hours of being charged with an offence in the Territory or elsewhere, while the order is in force;

- (c) that the offender not commit an offence punishable by imprisonment, while the order is in force;
- (d) that the offender notify an officer at the detention centre of any change in his or her address, while the order is in force, within 48 hours after the change;
- (e) that, while the order is in force, the offender obey all lawful instructions and directions of the Director or an officer.

Circumstances in which periodic detention order may be made

6. (1) A court shall not make an order under section 4 unless—
- (a) the court is satisfied that it is appropriate for the offender to undertake such an order;
 - (b) the court is satisfied that there are appropriate facilities available at the relevant detention centre for the offender to undertake such an order;
 - (c) the offender submits himself or herself to a medical examination by a medical practitioner, if so required by the court;
 - (d) the court has received a pre-sentence report in respect of the offender pursuant to Division 2 of Part XII of the *Crimes Act 1900*;
 - (e) the court has explained to the offender—
 - (i) the effect the proposed order would have;
 - (ii) the consequences of non-compliance with the order and the circumstances in which the offender would be taken to have breached the order; and
 - (iii) that the court has the power under this Act to review the order on the application of the Director or the offender; and
 - (f) the court is satisfied that the offender consents to undertaking such an order.
- (2) For the purpose of paragraphs (1) (a) and (b), the court may have regard to such matters as it considers appropriate, including—
- (a) the pre-sentence report referred to in paragraph (1) (d);
 - (b) where a person has submitted to a medical examination by a medical practitioner, as required by the court—the report of that medical practitioner in respect of that examination; and
 - (c) a report by an officer, as required by the court.

Detainee taken to be in lawful custody

7. A detainee shall, for the purposes of Part V of the *Crimes Act 1900*—

- (a) while undertaking periodic detention at a detention centre; or
- 5 (b) while working or travelling outside a detention centre pursuant to an order under this Act;

be taken to be in lawful custody.

Identification of detainees

10 8. (1) Where a court orders that an offender serve a sentence of periodic detention, the Director may, as soon as practicable after the court so orders—

- (a) take a photograph of the detainee's face; and
- (b) take imprints of the fingers and palms of both hands of the detainee.

15 (2) The failure of a detainee to comply with a reasonable request of the Director for the purposes of subsection (1) shall be taken to be a failure to serve his or her sentence in accordance with the relevant order for periodic detention.

20 (3) A photograph or imprints taken under subsection (1) may only be used for the purpose of identifying the detainee during the continuation of the periodic detention order and the Director shall destroy that photograph or imprints upon completion of that order.

Periodic detention—concurrent and cumulative sentences

25 9. (1) An order for periodic detention may require that a sentence be served by way of periodic detention wholly or partly concurrently with, or cumulatively on, another sentence or other sentences required by the same or a different order to be served by way of periodic detention.

(2) A court shall not make such an order unless, at all times, the sum of—

- 30 (a) the number of detention periods remaining to be served concurrently under the order or orders; and
- (b) the number of detention periods remaining to be served, otherwise than concurrently, under the order or orders;

does not exceed 104.

Notice to detainee

10. (1) Where a periodic detention order has been made, an officer of the court shall forthwith serve, or cause to be served, on the detainee a copy of the order together with a notice specifying—

- 5 (a) the date on which the detainee is first to report to the detention centre;
- (b) the day of the week on which the detainee is thereafter to report, during his or her sentence; and
- 10 (c) the time and the place at which the detainee is to report on that date and on each such day.

(2) The court may order that a detainee who is in custody shall not be released until after he or she has been given a notice under subsection (1).

Service of documents

11. The documents referred to in subsection 10 (1) may be served on or given to a person—

- (a) by delivering a copy of the document to the person; or
- (b) by leaving a copy of the document at the last-known place of residence or business of the person with a person apparently resident or employed at that place and apparently over the age of 16 years.

Division 2—Performing periodic detention**Interpretation**

12. In this Division—

“drug” means—

- 25 (a) a substance specified in Schedule 1 to the *Motor Traffic (Alcohol and Drugs) Act 1977*; or
- (b) a substance that is specified in Schedule 1 or 2 to the *Drugs of Dependence Regulations*.

Commencement of sentence

30 13. A sentence of periodic detention commences on the date specified in the order of the court under section 4.

Service of sentence

14. (1) A detainee shall serve his or her sentence by way of periodic detention in accordance with this Act.

5 (2) A detainee shall first report on the date and at the time and place specified in the notice to the detainee under subsection 10 (1) and thereafter during the term of the detainee's sentence on the day of the week specified in the notice as the day on which he or she is so to report and at the same time and place unless otherwise ordered under this Act by the Director, and if so ordered, then in accordance with the order made by the Director.

(3) Subsection (2) ceases to apply in respect of a detainee if the order for periodic detention that was made in respect of the detainee is cancelled.

(4) Where—

10 (a) a detainee is required, by or under this Act, to report at a detention centre; and

(b) the regulations prescribe the manner in which a detainee is to report;

15 the detainee complies with the requirement only if he or she reports in the manner so prescribed.

Work etc.

15. (1) The Director may, by order, direct a detainee—

20 (a) to participate in any activity, attend any class or group or undergo any instruction that the Director considers conducive to the detainee's welfare or training;

(b) to perform, between such hours as are specified in the order, any work in a detention centre specified in the order that the Director considers suitable to the detainee's physical capacity; or

25 (c) to report to an officer specified in the order at a specified place other than a detention centre and to perform work that the Director considers suitable to the detainee's physical capacity;

during any detention period.

(2) For the purposes of paragraph (1) (c), the Director may direct a detainee to perform work at—

30 (a) a hospital or a charitable or educational institution;

(b) the home of an elderly person, an infirm person or a person with a disability;

(c) an institution for the elderly, the infirm or persons with disabilities; or

35 (d) any place of which the Territory or a Territory authority is the owner or occupier or which is administered by the Territory or the Territory authority.

(3) The Director shall not direct a detainee to perform any work referred to in subsection (2) if, in performing the work, the detainee would take the place of any person who would otherwise be employed on that work as a regular employee.

- 5 (4) Where the Director makes an order under paragraph (1) (c) and for any reason work is not available at the place specified in that order or it is impracticable for the detainee to perform work at that place, the detainee shall report at such other place nominated, and in accordance with such instructions as may be given to him or her, by an officer specified in the order.
- 10

Variation of days of attendance

16. (1) A detainee may make application in writing to the Director requesting the Director to make an order varying the day on which the detainee's detention period during the whole or part of the detainee's sentence is to commence.
- 15

(2) Where a detainee makes application under subsection (1), the Director may—

- (a) grant the application and order that the day in respect of which the application is made be varied as requested in the application; or
- 20 (b) refuse to grant the application.

Variation of times of attendance

17. (1) A detainee may make application in writing to the Director requesting the Director to make an order varying—

- 25 (a) the time at which he or she is required to report at a detention centre or place of work during the whole or part of the detainee's sentence; and
- (b) the time at which he or she may leave a detention centre or place of work during the whole or part of the detainee's sentence.

(2) Subject to subsection (3), where a detainee makes application under subsection (1), the Director may—

30

- (a) grant the application and order that the times in respect of which the application is made be varied as requested in the application; or
- (b) refuse to grant the application.

35 (3) The Director shall refuse to grant an application which has the effect of increasing or reducing the number of consecutive hours of periodic detention.

Director to give notice

18. Where the Director makes an order under section 15, 16 or 17 he or she shall cause written notice of the order to be given to the detainee to whom the order relates.

5 Commencement of certain orders

19. An order under section 15, 16 or 17 takes effect on the day on which the order is made, or if the order provides for a later date of effect, as so provided.

Effect of complying with certain orders

10 20. For the purposes of this Act, a detainee shall be taken to be complying with an order for periodic detention if he or she serves his or her sentence in accordance with an order of the Director made under section 15, 16 or 17 in respect of the detainee and while the detainee complies with such an order that is inconsistent with a provision of an earlier order of the court
15 or the Director in respect of the detainee, the earlier order shall, to the extent of the inconsistency, cease to have force or effect.

Complaints by detainees

21. A detainee who is aggrieved—

- (a) by an order made by the Director under section 15; or
- 20 (b) by a decision of the Director to refuse to grant an application under paragraph 16 (2) (b) or 17 (2) (b);

may make a complaint to an Official Visitor in relation to the order or decision, as the case may be.

Detainee unfit for detention

25 22. (1) The manager of a detention centre may refuse to admit a detainee to the centre where he or she believes on reasonable grounds that the detainee is unfit to serve a period of detention because the detainee's behaviour is unruly or is otherwise a threat to the good order or security of the centre.

30 (2) Where the results of a test undertaken by a detainee in pursuance of a requirement by the manager of a detention centre under subsection 23 (1) indicate to the manager that—

- (a) the concentration of alcohol in the blood of the detainee is equal to
35 or more than 0.02 grams of alcohol per 100 millilitres of blood or more; or
- (b) a drug is present in the body of the detainee;

the manager of the centre shall—

- (c) where the test results are received by the manager prior to admission of the detainee for a detention period, refuse to admit the detainee to the centre and inform the detainee that he or she is to be taken to have failed to report for that detention period;
- 5 (d) where the test results are received by the manager while a detainee is serving a detention period, direct the detainee to leave the centre and inform the detainee that he or she is to be taken to have failed to report for that detention period; and
- 10 (e) where the test results are received by the manager after the completion of a detention period by the detainee, inform the detainee that he or she is to be taken to have failed to report for that detention period.

15 (3) Subsection (2) does not apply in relation to a detainee where the concentration of alcohol in the detainee's blood or the presence of the drug in the detainee's body is due to the detainee taking medication in accordance with the advice of—

- (a) a medical practitioner, being advice provided for medical reasons;
- (b) a dentist, being advice provided for dental reasons; or
- (c) a nurse, being advice provided for nursing reasons.
- 20 (4) Where—
- (a) under subsection (1) or paragraph (2) (c), a detainee has been refused admission to a detention centre;
- (b) under paragraph (2) (d), a detainee has been directed to leave a detention centre; or
- 25 (c) test results of the kind referred to in paragraph (2) (a) or (b) have been received by a manager after completion of a period of detention by a detainee;

the detainee shall be taken to have failed to report for periodic detention.

30 (5) Where a detainee refuses or fails to submit to a test that he or she is required to undertake under subsection 23 (1)—

- (a) prior to admission to a detention centre for a detention period; or
- (b) while the detainee is serving a detention period;

the manager of the centre shall—

- 35 (c) in the circumstances referred to in paragraph (a), refuse to admit the detainee to the centre and inform the detainee that he or she is to be taken to have failed to report for that detention period; and

(d) in the circumstances referred to in paragraph (b), direct the detainee to leave the centre and inform the detainee that he or she is to be taken to have failed to report for that detention period.

5 (6) A detainee who refuses or fails to submit to a test that he or she is required to undertake under subsection 23 (1) shall be taken to have failed to report for the relevant detention period.

Manager may require alcohol or drug testing

10 23. (1) The manager of a detention centre may require a detainee who is reporting for, or otherwise serving, a detention period to submit to such test as may be prescribed to determine—

(a) whether alcohol is present in the detainee's blood and, if so, the concentration of alcohol in the detainee's blood; or

(b) whether a drug is present in the detainee's body.

15 (2) A test prescribed for the purposes of subsection (1) shall only be carried out by an officer authorised to do so under section 37.

(3) The regulations may make provision for and in relation to—

(a) the procedures to be followed in relation to a test prescribed for the purposes of subsection (1);

(b) an instrument required for the purposes of such a test; and

20 (c) the analysis of a sample or a specimen obtained from a person who has undergone such a test.

25 (4) As soon as practicable after a prescribed test has been carried out, the officer who carried out the test shall give the detainee a written statement, signed by the officer, containing the particulars required by the regulations to be included in such statement.

Leave of absence

24. (1) The Director may grant leave of absence from a detention period to any detainee for health reasons or on compassionate grounds or for such other reason as the Director considers sufficient.

30 (2) Leave of absence may be granted in the prescribed manner either before or after the detention period to which it relates.

(3) The Magistrates Court may, on the application of a detainee whose request for leave of absence for 1 or more detention periods has been refused, direct that leave of absence be granted in respect of all or any of those detention periods.

35 (4) An application under subsection (3) shall be made within 21 days after the date on which the request to which it relates was refused.

(5) Subject to any order of the court to the contrary, the making of an application does not stay the operation of section 25 with respect to any detention period to which the application relates.

5 (6) Leave of absence shall be taken to have been granted for each detention period in respect of which a direction under this section is made.

(7) A detainee who is granted leave of absence from a period of detention shall not be taken to be serving that period of detention for the purposes of his or her sentence.

Extension of detention

10 25. (1) Where a detainee fails to report as required for a detention period and has not been granted leave of absence in respect of that period, the detainee's sentence is extended by 1 detention period for each detention period for which the detainee has failed to report.

15 (2) The term of a sentence may not be extended under subsection (1) by more than 2 detention periods.

(3) Subsection (1) does not have effect until the detainee has been given written notice to the effect that—

- (a) the detainee has failed to report, as required by or under this Act;
- 20 (b) that subsection operates to extend the term of the detainee's sentence as a result of the failure to report; and
- (c) the detainee may apply to the Director for leave of absence under section 24 with respect to any 1 or more of the detention periods concerned.

Variation of sentence on compassionate grounds

25 26. Where, on application by the Director or a detainee, the court that made the order for periodic detention in respect of the detainee is satisfied that the detainee is unlikely to be able to serve the remainder of his or her sentence within a reasonable time having regard to—

- (a) the health of the detainee;
- 30 (b) any other compassionate grounds;
- (c) the number of detention periods remaining to be served by the detainee; or
- (d) the length of time during which it appears that the detainee will be unable to serve periodic detention;

35 the court may vary the sentence by cancelling the remaining detention periods that were to be served by the detainee.

Directions

5 27. (1) The Director or manager of a detention centre may, subject to any regulations made for the purposes of this subsection, give directions (not inconsistent with a provision of this Act or a regulation or an order in force under this Act) to any detainee for the purpose of securing the enforcement or observance of the provisions of this Act, a regulation or rule or an order in force under this Act.

10 (2) Notwithstanding anything in subsection (1), the Director or the manager of a detention centre may, subject to any regulations made for the purposes of this subsection, give directions in an emergency or in any other prescribed circumstances to any detainee.

Compensation

28. (1) In this section—

“Compensation Act” means the *Workers’ Compensation Act 1951*;

15 “overtime” has the same meaning as in the Compensation Act.

(2) While a detainee is working pursuant to an order of the Director under paragraph 15 (1) (b) or (c), the Compensation Act applies in relation to the detainee as if—

20 (a) the detainee were employed by the Territory under a contract of service;

(b) paragraphs (a), (b) and (c) of the definition of “worker” in subsection 6 (1) of the Compensation Act were omitted;

(c) for subparagraph 1 (c) (i) of Schedule 1 to the Compensation Act there were substituted the following subparagraph:

25 “(i) of the amount referred to in subparagraph (b) (i); or”; and

(d) subparagraphs 2 (b) (i) and (ii) of Schedule 1 to the Compensation Act were omitted.

30 (3) Notwithstanding clause 1A of Schedule 1 to the Compensation Act, for the purposes of the application of that Act in accordance with subsection (2), the prescribed amount applicable to a detainee in respect of a week, for the purposes of paragraph 1 (b) of that Schedule, shall be taken to be—

35 (a) in the case of a detainee who, immediately before the day on which the liability of the Territory under the Compensation Act to pay compensation to or in respect of him or her arose—

(i) was carrying on a business or profession on his or her own account; or

- 5 (ii) was unemployed and was not carrying on a business or profession on his or her own account but who, at any time during the period of 12 months ending immediately before the day on which that liability arose, was employed or was carrying on a business or profession on his or her own account;

the amount calculated by dividing by 52 the amount that is equal to the income of the detainee during the period of 12 months ending immediately before the day on which that liability arose;

- 10 (b) in the case of a detainee who was unemployed immediately before the day on which the liability of the Territory under the Compensation Act to pay compensation to or in respect of him or her arose, not being a detainee referred to in paragraph (a)—nil; and

- 15 (c) in any other case—an amount equal to the income of the detainee in respect of the period of 7 days ending immediately before the day on which the liability of the Territory under the Compensation Act to pay compensation to or in respect of him or her arose.

- 20 (4) A reference in paragraph (3) (c) to income, in relation to a detainee shall not be read as including a reference to—

- (a) a payment in respect of overtime;
- (b) an allowance that is intermittent or is payable in respect of special expenses incurred or likely to be incurred by the detainee; or
- 25 (c) where the detainee had more than 1 occupation during the period of 7 days referred to in that paragraph—income derived by him or her from an occupation other than his or her principal occupation.

(5) Where—

- 30 (a) the Territory would, but for this subsection, be liable under the Compensation Act to pay an amount of compensation to, or in respect of, a detainee in relation to a period, being the whole or a part of a period during which the detainee is totally incapacitated for work; and
- 35 (b) a person who is an employer of the detainee is liable, by reason of the detainee's total incapacity for work, to make a payment to the detainee by way of salary or wages in relation to that first-mentioned period;

40 the Territory shall not be liable to pay that amount under the Compensation Act but shall pay to the employer so much of that amount as does not exceed the amount payable to the detainee by the employer and the balance (if any) of that amount shall be taken to be compensation payable by the Territory

under the Compensation Act to or in respect of the detainee in relation to that first-mentioned period.

Division 3—Cancellation of orders

Cancellation on subsequent conviction

- 5 **29.** Where a detainee is convicted of an offence and sentenced on that conviction to a term of imprisonment, the court before which he or she is convicted may cancel the order for periodic detention that was made in respect of him or her.

Cancellation otherwise than on subsequent conviction

- 10 **30. (1)** Subject to this section, where an order for periodic detention is in force in respect of a detainee, the court that made the order may, on application by the detainee or the Director, cancel the order if it appears to the court that there are good grounds for doing so.

- 15 **(2)** Without limiting the generality of subsection (1), the court may, on the application of the Director, cancel the order if satisfied that the person is not serving his or her sentence in accordance with the order.

(3) Without limiting the generality of subsection (1), the court shall, on the application of the Director, cancel the order if satisfied that—

- 20 (a) the person has, for 3 or more detention periods, whether consecutive or not, failed to report, as required by or under this Act; and
- (b) the failures to report occurred otherwise than on leave of absence under section 24.

- 25 **(4)** Before hearing an application to cancel an order under this section the court shall—

- (a) in the case of an application by the Director—
- (i) cause the detainee to be served with a summons for his or her appearance together with a copy of the application; or
- 30 (ii) where the court considers it necessary to secure the appearance of the detainee other than by way of summons—instead of issuing a summons, issue a warrant for the apprehension of the detainee; and
- (b) in the case of an application by a detainee—cause the Director to be served with a copy of the application.

- 35 **(5)** Notwithstanding the issue of a summons under subparagraph (4) (a) (i), the court may issue a warrant at any time before or after the time mentioned in the summons for the appearance of the detainee.

(6) The court may refuse to cancel the order under subsection (3) if satisfied that—

- (a) leave of absence should have been granted under section 24 with respect to 1 or more detention periods; and
- 5 (b) the total number of detention periods for which the person has failed to report as referred to in subsection (3) would, had the leave of absence been granted with respect to those detention periods, be less than 3;

in which case it shall make a determination to that effect.

- 10 (7) Where the court makes a determination under subsection (6), leave of absence under section 24 shall be taken to have been granted in accordance with the terms of the determination.

(8) In proceedings on an application under this section, a certificate purporting to be signed by the Director and certifying any of the following:

- 15 (a) that a person is a detainee;
- (b) particulars of a periodic detention order;
- (c) particulars of any failure by a detainee to serve his or her sentence in accordance with the order;

is evidence of the matters certified.

- 20 (9) In proceedings on an application under this section, where a detainee is taken to have failed to report for periodic detention by virtue of the operation of subsection 22 (4) or (6), evidence of any matters relevant to—

- 25 (a) a test that a detainee was required to undertake but which the detainee refused or failed to undertake, as required;
- (b) a test undertaken by a detainee, or
- (c) the analysis of the results of a test undertaken by a detainee;

may be provided by way of a certificate as provided for in accordance with the regulations.

- 30 (10) A certificate referred to in subsections (8) and (9) shall not be admitted in evidence, unless the court is satisfied that reasonable efforts have been made to serve a copy of the relevant certificate on the detainee concerned

- 35 (11) The court shall not cancel an order under this section if satisfied that the grounds for cancellation of the order would constitute a sufficient reason for an order for variation of the sentence to be made under section

26, in which case the court shall vary the sentence by cancelling the remaining detention periods that were to be served by the detainee.

Certain effects of cancellation of order for periodic detention

5 **31. (1)** Where an order for periodic detention is cancelled under section 29 or 30—

- (a) any order that was made under section 15, 16 or 17 in respect of the detainee, ceases to have effect; and
- 10 (b) any remaining periods of detention to which the order applied shall be served as a separate term of imprisonment imposed at the time of the cancellation.

(2) The term of imprisonment that a person is liable to serve for the purposes of this section shall be calculated at the rate of 1 week for each detention period that the person would otherwise have been required to serve under an order if it had not been cancelled.

15 **Application of Parole Act**

32. The *Parole Act 1976* applies in relation to a term of imprisonment required to be served by a person as a result of the cancellation of a periodic detention order under section 29 or 30 as if—

- 20 (a) for the purposes of section 7 of that Act, the court had made an order sentencing the person to the relevant term of imprisonment; or
- (b) for the purposes of section 8 of that Act, a reference in that section to a previous sentence included that term of imprisonment.

Application of Crimes Act

25 **33.** Part V of the *Crimes Act 1900* applies in relation to a person serving a term of imprisonment as a result of the cancellation of a periodic detention order under section 29 or 30.

Division 4—Miscellaneous

Offences

30 **34. (1)** A detainee who—

- (a) contravenes—
 - (i) an order or direction given by the Director; or
 - (ii) a direction given by an officer;
- 35 (b) contravenes standing orders concerning the good order, discipline and security of a detention centre; or

- (c) makes, conceals or has in his or her possession, without authority, a tool, weapon, knife, key or other implement or thing capable of being used, to effect the escape of the person;

5 is guilty of an offence, punishable on conviction by a fine not exceeding 50 penalty units or imprisonment for a term not exceeding 6 months.

(2) It is a defence to a prosecution for an offence against paragraph (1) (a) if the detainee establishes that—

- (a) he or she has a reasonable excuse for the contravention; and
- 10 (b) he or she had made known that excuse to the person who gave the order or direction within a reasonable time.

(3) It is a defence to a prosecution for an offence involving an order made under this Act if the detainee establishes that the terms of the order were not communicated to him or her in sufficient time to enable compliance with the order, but the terms of such an order shall be taken to have been 15 communicated to a detainee upon whom a notice of the order was duly served.

(4) It is a defence to a prosecution for an offence involving a direction given under this Act if the detainee establishes that—

- 20 (a) the direction was not communicated to him or her in sufficient time to enable compliance with the direction; or
- (b) the direction was inconsistent with another direction given to him or her under this Act and he or she was obeying that other direction.

(5) It is a defence to a prosecution for an offence against a provision of this Act, a regulation or an order made under this Act or a standing order concerning the good order, discipline and security of a detention centre if he or she was obeying a direction or an instruction given to him or her under this Act and that he or she could not, at the same time that he or she was obeying the direction or the instruction, as the case may be, comply with the 30 provision, regulation, order or standing order.

PART III—CORRECTIVE SERVICES ADMINISTRATION

Division 1—Officers

Director of Corrective Services

35. (1) There shall be a Director of Corrective Services.

35 (2) The Chief Executive shall create and maintain an office in the Government Service the duties of which include performing the functions of Director of Corrective Services.

(3) The Director shall be the public servant for the time being performing the functions of the appropriate Government Service office referred to in subsection (2).

Officers

5 **36. (1)** There shall be—

- (a) a manager of a detention centre who shall have responsibility for the administration of the centre; and
- (b) 1 or more custodial officers who shall have responsibility for assisting the manager.

10 **(2)** The Chief Executive shall create and maintain an office in the Government Service the duties of which include performing the functions of the office referred to in paragraph (1) (a).

15 **(3)** The manager of a detention centre shall be the public servant for the time being performing the functions of the Government Service office referred to in subsection (2).

(4) The Chief Executive shall create and maintain 1 or more offices in the Government Service the duties of which include performing the functions of an office referred to in paragraph (1) (b).

20 **(5)** A custodial officer shall be any public servant for the time being performing the functions of a Government Service office referred to in subsection (4).

Approval to conduct tests

25 **37.** The Director may, by instrument published in the *Gazette*, authorise an officer to carry out a test prescribed under subsection 23 (1), if the officer has—

- (a) undergone a course approved by the Minister as a course for the instruction of officers in the carrying out of such a test; and
- (b) completed the course to the satisfaction of the Director.

Delegation by Director

30 **38.** The Director may delegate in writing any of the Director's powers under this Act to an officer.

Reports etc.

35 **39.** As required by the Director, an officer shall prepare reports and returns and keep records and, as required, provide the Director or a specified person or body with such reports, returns and records.

Division 2—Management**Interpretation**

40. In this Division, unless the contrary intention appears—

“detainee” means a detainee who is serving a detention period;

5 “officer” means—

(a) the manager of a detention centre;

(b) a custodial officer; or

10 (c) a medical practitioner, dentist, nurse, health worker, teacher or public servant who is engaged to work at a detention centre.

Declaration of centres

41. The Minister may, by notice in the *Gazette*, declare a place to be a detention centre.

Manager’s responsibilities

15 42. (1) Subject to this Act, the regulations and standing orders, the manager is responsible for the management, good order, discipline and security of a detention centre and the welfare and conduct of detainees.

20 (2) A manager shall take reasonable steps to ensure that officers have access to information concerning their functions and the rights and obligations of detainees under this Act.

(3) A manager shall give all necessary directions to ensure that officers act lawfully in performing their functions.

Delegation by manager

25 43. A manager may delegate in writing any of his or her powers under this Part to a custodial officer.

Absence of manager

44. Where the manager is not on duty at a detention centre and there is—

(a) no delegation in force under section 43; or

30 (b) no delegate of the manager on duty at the centre;

the functions of the manager shall be performed in accordance with the standing orders.

Manager subject to Director's directions

45. The Director may give directions to a manager in relation to the manner in which the manager discharges his or her responsibilities.

Powers and duties of officers

- 5 46. (1) An officer—
- (a) shall not jeopardise—
- (i) the good order, discipline and security of a detention centre; or
- (ii) the welfare or discipline of detainees;
- 10 (b) shall report immediately to the manager anything which might reasonably be thought to jeopardise such matters.
- (2) An officer (not being a person described in paragraph (c) of the definition of "officer") may give such directions to a detainee as are necessary for—
- 15 (a) the management, good order, discipline or security of a detention centre; or
- (b) the welfare or discipline of detainees.
- (3) An officer may give directions to a detainee concerning the manner in which the detainee is to comply with an order in force under this Act.
- 20 (4) A direction under subsection (2) or (3) shall not unreasonably interfere with work being done by a detainee, education being undertaken by a detainee or the practice by a detainee of a religion.

Entitlements of detainees

47. A detainee is entitled—
- 25 (a) to wear his or her own clothing; and
- (b) to receive necessary health services.

Discipline

48. (1) Where a manager believes on reasonable grounds that it is necessary to do so—
- 30 (a) to maintain the good order, discipline or security of a detention centre; or
- (b) for the welfare or discipline of a detainee;
- he or she may—

- (c) arrange for the detainee to be confined to sleeping quarters; or
- (d) direct the detainee to leave the centre, or other place at which the detainee has been directed to work, and inform the detainee that the detention period that was being served by the detainee is to be taken to be terminated and that the detainee's sentence is to be extended by a further detention period.

(2) Where a detainee has been directed to leave a detention centre, or other place, under paragraph (1) (d), the relevant detention period shall be taken to be terminated and the detainee's sentence is extended by a further detention period.

Clothing and body searches

49. (1) Subject to this section, where a manager believes on reasonable grounds that it is necessary to do so—

- (a) to maintain the good order, discipline or security of a detention centre; or
- (b) for the welfare or discipline of a detainee;

he or she may carry out, or direct another officer to carry out, a search of a detainee, or of the clothing that is being worn by, or property in the apparent control of, the detainee

(2) A body search—

- (a) shall be conducted in a private area;
- (b) subject to subsection (3), shall be conducted, by a manager or custodial officer who is of the same sex as the detainee;
- (c) subject to subsection (4), shall not be conducted, in the presence or view of a person who is of the opposite sex to the detainee;
- (d) shall not be conducted in the presence or view of a person whose presence is not necessary for the purposes of the search; and
- (e) shall not involve a search of a person's body cavities.

(3) A body search may be conducted by a manager or custodial officer of the opposite sex to the detainee if a manager or custodial officer of the same sex as the detainee is not available within a reasonable time.

(4) A body search may be conducted in the presence of a medical practitioner or nurse of the opposite sex to the detainee if a medical practitioner or nurse of the same sex as the detainee is not available within a reasonable time.

(5) If any of the detainee's garments are seized as a result of a body search, the detainee shall be provided with adequate clothing.

(6) The regulations may make provision in relation to the conduct of searches carried out under subsection (1).

(7) In this section—

5 “body search” means a search under subsection (1) that involves a detainee being required to remove—

(a) all of his or her garments; or

(b) some of his or her garments (not being an overcoat, a coat or jacket or any gloves, headwear or footwear);

10 for the purpose of an examination of any part of the detainee’s body (but not of the detainee’s body cavities) and of those garments.

Use of force

50. (1) A manager may use or direct the use of such force as is necessary and reasonable—

15 (a) to maintain good order, discipline and security of a detention centre; or

(b) for the welfare or discipline of detainees.

(2) A custodial officer may use such force as is necessary and reasonable to compel a detainee to obey a lawful direction, if the officer
20 believes on reasonable grounds that it is necessary to do so to prevent—

(a) the detainee or another person being killed or seriously injured; or

(b) serious damage to property.

(3) If a custodial officer uses force to compel a detainee to obey a direction, he or she shall report the fact to the manager as soon as possible.

25 (4) The manager shall report to the Director as soon as possible—

(a) the use of force by the manager to compel a detainee to obey a direction; or

(b) the use of force reported to the manager by another officer.

Medical treatment

30 51. (1) A manager may arrange for a medical practitioner to examine a detainee subject to the detainee consenting to such examination.

(2) Where a medical practitioner considers it necessary that a detainee be removed from a detention centre, or other place at which the detainee has been directed to work, to receive medical treatment in a hospital or from a
35 medical practitioner, he or she shall notify the manager of the centre in

writing of the fact and of the hospital to which, or the medical practitioner to whom, the detainee should, in the opinion of the first-mentioned medical practitioner, be removed.

(3) Where—

- 5 (a) a manager is of the opinion that a detainee is in need of immediate medical treatment in a hospital; and
- (b) no medical practitioner is available to give a notification under subsection (2);

the manager shall cause the detainee to be removed to a hospital.

- 10 (4) Where, during a detention period, a detainee is removed under this section for the purposes of receiving medical treatment, the whole or part of that detention period during which the detainee is away for that purpose shall be taken to be served by the detainee as part of that sentence.

Official Visitors—duties

- 15 52. (1) An Official Visitor—

- (a) shall, as far as practicable, visit each detention centre at least once each week; and
- (b) may visit any other places at which detainees have been directed to work;

- 20 in order to inspect the centre or such other places and to inquire into complaints from detainees.

- (2) Where, after inspecting a detention centre or any other place at which a detainee has been directed to work, an Official Visitor is not satisfied that the centre, or that place, is being conducted in accordance with the provisions of this Act, he or she shall report the matter to the Minister.
- 25

Complaints by detainees

53. (1) Where a detainee is not satisfied with his or her treatment or the manner in which a detention centre, or other place at which he or she has been directed to work, is conducted—

- 30 (a) the detainee; or
- (b) a person acting on behalf of, and at the request of, the detainee;
- may make a complaint to an Official Visitor.

- (2) A complaint under subsection (1) or section 21 may, at the request of the detainee, be made in the absence of any person other than the complainant and the Official Visitor.
- 35

(3) An Official Visitor shall inquire into a complaint made under subsection (1) or section 21 and may—

- (a) make a recommendation concerning the complaint to the Director; and
- 5 (b) make such report (if any) to the Minister concerning the complaint as he or she considers necessary.

Notification of complaints

10 54. An officer shall take all steps necessary to ensure that the Director or the Official Visitor, as the case requires, is informed as soon as practicable of a complaint of a detainee under section 21 or 53, as the case requires.

Inspection of centres

15 55. A Judge, magistrate or a member of the Legislative Assembly nominated by the Assembly may, at any time, inspect a detention centre or other places at which detainees have been directed to work.

Offences by persons other than detainees

20 56. A person shall not—
 (a) enter, or remain in, a detention centre without lawful excuse; or
 (b) unlawfully convey an article into or out of a detention centre or to or from a detainee.

Penalty: 50 penalty units or imprisonment for 6 months, or both.

Standing orders

57. (1) The Director may, from time to time, in writing, issue such orders and instructions as are necessary for—

- 25 (a) the day-to-day administration, including the good order, discipline and security, of a detention centre; and
- (b) the welfare and discipline of detainees.

(2) The Director shall—

- 30 (a) cause orders and instructions issued under subsection (1), other than those dealing with the security of a detention centre, to be available for inspection at a detention centre at all reasonable times; and
- 35 (b) cause all orders and instructions issued under subsection (1) to be available for inspection at any time by a person referred to in section 55.

PART IV—MISCELLANEOUS

Exercise of prerogative of mercy and operation of other laws not affected

58. Nothing in this Act affects—

- 5 (a) the exercise of the Crown prerogative of mercy;
- (b) the operation of section 557 or 558 of the *Crimes Act 1900*; or
- (c) the operation of any Act, or of any other law in force in the Territory, relating to the release of offenders.

Regulations

10 59. The Executive may make regulations for the purposes of this Act and, in particular, may make regulations—

- (a) in relation to—
 - (i) the powers and duties of officers;
 - 15 (ii) offences in relation to misconduct by detainees at detention centres or at other places at which detainees may be directed to perform work;
 - (iii) the health, welfare and living conditions of detainees at detention centres or at other places at which detainees may be directed to perform work; or
 - 20 (iv) the good order, discipline and security of detention centres; and
- (b) prescribing penalties not exceeding 10 penalty units for offences against the regulations.

PART V—AMENDMENT OF OTHER LAWS

25 Division 1—Coroners Act 1956

Principal Act

60. In this Division, “Principal Act” means the *Coroners Act 1956*.

Interpretation

61. Section 2 of the Principal Act is amended—

- 30 (a) by omitting “or” from paragraph (e) of the definition of “custodial officer” in subsection (1);
- (b) by adding at the end of paragraph (f) of the definition of “custodial officer” in subsection (1) “or”;

(c) by adding at the end of the definition of “custodial officer” in subsection (1) the following paragraph:

5 “(g) the manager of a detention centre or a custodial officer as provided for by section 36 of the *Periodic Detention Act 1995*”; and

(d) by inserting after paragraph (2) (b) the following paragraph:

“(ba) while serving a detention period in accordance with the *Periodic Detention Act 1995*”.

Division 2—Crimes Act 1900

10 Principal Act

62. In this Division, “Principal Act” means the *Crimes Act 1900*.

Insertion

63. After section 151 of the Principal Act the following section is inserted in Part V:

15 Interpretation

“151A. For the purposes of this Part, a person who is serving a sentence by way of periodic detention shall not be deemed by reason only of that fact to be in lawful custody.”.

Division 3—Remand Centres Act 1976

20 Principal Act

64. In this Part, “Principal Act” means the *Remand Centres Act 1976*.

Official Visitors—appointment and remuneration

65. Section 6A of the Principal Act is amended by adding at the end of subsection (1) “and the *Periodic Detention Act 1995*”.

NOTE

Penalty units

See section 33AA of the *Interpretation Act 1967*

Printed by Authority of Peter Bell, ACT Government Printer

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