

1995

**THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**PERIODIC DETENTION ACT 1995**

**PERIODIC DETENTION REGULATIONS**

**EXPLANATORY STATEMENT**

Circulated by the authority of  
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## Outline

The *Periodic Detention Act 1995* (the Act) provides courts which are sentencing offenders with the option of imposing a sentence of periodic detention. The Act makes provision for the imposition, performance and cancellation of orders of periodic detention. It also provides for the administration of a detention centre by a Director of Corrective Services, a Manager and custodial officers. Provision is made for the office of Official Visitor to perform a supervisory function in relation to the centre. The centre is to be administered in accordance with the Act, standing orders which are provided for by the Act and regulations made under the Act.

Section 60 of the Act empowers the Executive to make regulations for the purposes of the Act. In particular regulations may be made in relation to the powers and duties of officers, offences by detainees, the health, welfare and living conditions of detainees and the good order and discipline of detention centres.

The Periodic Detention Regulations make provision for various matters the Act requires be prescribed and also matters referred to above.

## Financial Implications

The Regulations have no revenue implications.

## Details

### *Citation, Commencement and Interpretation*

**Regulations 1, 2 and 3** respectively provide that the Regulations be cited as the Periodic Detention Regulations; that they will commence on the same day as section 3 of the Act [it is intended section 3 of the Act, together with the Act's substantive provisions, commence on 1 September 1995]; and for the interpretation of the term "the Act".

### *Paperwork associated with the imposition of a sentence of periodic detention*

**Regulation 4** requires the court that imposes a sentence of periodic detention to provide the manager of the detention centre with a copy of the order.

**Regulation 5** provides there will be 3 copies of a notice under section 10 of the Act. The notice provides the detainee with details of his or her sentence, such as advice on its commencement. The copies will be provided to the detainee, the court and the manager of the centre.

### *Reporting for periodic detention*

**Regulation 6** requires a detainee to take suitable clothing and toiletries when reporting for periodic detention. Under section 15 of the Act the Director

may require a detainee to perform work at, for example, an institution for the elderly. The regulation is intended to ensure detainees bring clothing which is suitable for outdoor work.

**Regulations 7 and 8** make provision with respect to alcohol and drug testing. Although a detainee may be ordered to undertake an alcohol or drug test at any time during a detention period it is intended these tests will usually be required when a detainee reports for a detention period.

Regulation 7 prescribes the instrument, a "Dual Screener Alcomaster" which will be used to detect the presence of alcohol in a detainee's blood. The procedure for an alcohol test is prescribed in Schedule 1. The procedure ensures the instrument is used in accordance with the manufacturer's instructions and so as to provide appropriate documentation regarding each test which is undertaken.

Regulation 7 also prescribes the procedure set out in Schedule 2 as the procedure for a drug test. The procedure ensures the security of samples of urine that are required for drug testing and that appropriate documentation on each test is available. Analysis of urine samples will be conducted at the ACT Government Analytical Laboratory.

Regulation 8 provides for the contents of statements that are to be provided to a detainee who has undertaken an alcohol or drug test.

#### *Applications for leave of absence*

**Regulation 9** provides that an application for leave of absence is to be made by a detainee and is to be given to an officer at the detention centre. Although under section 24 of the Act leave is granted by the Director it is desirable that officers at the centre have the opportunity to provide information to the Director regarding an application. The regulation also provides the Director with the opportunity to seek further information from the detainee.

#### *Court to notify Director and detainee of applications*

**Regulation 10** requires the court to serve copies of applications on the Director and detainee. The applications are:

- by a detainee to the Magistrates Court for a review of the Director's decision under section 24 to refuse an application for leave
- by the detainee or the Director under section 26 for a variation of the sentence of periodic detention on compassionate or other grounds.

### *Certificate evidence*

**Regulation 11** provides that evidence relating to alcohol and drug tests may be given by the manager, an officer who administers a test or the analyst. The certificates may be used in proceedings under section 30 to cancel an order of periodic detention.

### *Body searches*

**Regulation 12** supplements section 50 of the Act and provides that body searches are to be conducted in as seemly a manner as possible and with due regard to the dignity of the detainee. Section 50 lays down various limitations relating to searches, for example, a search is not to involve a search of a person's body cavities.

### *Information relating to detainees*

**Regulation 13** requires information relating to a detainee to be recorded when a detainee first reports for periodic detention. Amongst other things the information is required by the ACT's response to the Royal Commission into Aboriginal Deaths in Custody.

### *Medication*

**Regulation 14** provides the manager of the detention centre with some control over medication that is brought to the centre by a detainee. The detainee is required to advise the manager of the medication and of the dosage details. The manager may require a detainee to surrender the medication, for example, if it appears the medication is open to abuse. If medication is surrendered the manager is required to ensure it is made available to the detainee as required and it is to be returned to the detainee at the end of the detention period.

### *Food and beverages*

**Regulation 15** requires regard to be had to a detainee's religious, medical and reasonable dietary requirements when food and beverages are supplied to a detainee. For example, regard would have to be had to a detainee being a vegetarian.

### *Limitations on work*

**Regulation 16** sets out conditions for and limitations on the work that may be performed by a detainee:

- detainees may not be required to work for more than 8 hours per day
- tea breaks and meal breaks are to be provided

- work cannot be used for disciplinary reasons
- work that would personally benefit officers or other persons employed by the Territory or a Territory authority or an institution a detainee is required to work at is prohibited.

#### *Physical or mental risks to detainees*

**Regulation 17** provides that the Director is to be advised of reports concerning the health of a detainee. The reports are relevant to the Director's duties under the Act. For example, the Director may direct a detainee to perform work only if it is considered suitable to the detainee's physical capacity [section 15].

#### *Notification of appeal*

**Regulation 18** requires the court to advise the manager of any appeal against sentence made by a detainee.

#### *False statements*

**Regulation 19** makes it an offence to make a false statement in any instrument under the regulations or standing orders. The penalty is 5 penalty units.

#### *Threatening behaviour*

**Regulation 20** makes it an offence for a detainee, who is reporting for or serving a detention period, to use threatening or abusive language or to behave in a threatening manner. The penalty is 10 penalty units. Under section 35 of the Act it is an offence for a detainee to contravene an order or direction of the Director or a direction of an officer. It is also an offence for the detainee to contravene the detention centre's standing orders and to have various implements, such as weapons.

**Schedules 1 and 2** relate to alcohol and drug testing, see explanation in regulation 7 above.