

**2005**

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

**PERIODIC DETENTION AMENDMENT REGULATION 2005 (No 1)**

**SUBORDINATE LAW SL2005-15**

**EXPLANATORY STATEMENT**

**Circulated by the authority of  
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## PERIODIC DETENTION AMENDMENT REGULATION 2005 (No 1)

### SUBORDINATE LAW SL2005-15

#### Outline

The *Periodic Detention Act 1995* (the Act) provides courts with an alternative to full-time custody where the court may have otherwise been minded to sentence a person to a term of imprisonment of not less than three months but not more than 24 months. The court may sentence the person to complete a number of detention periods equalling one detention period for each week of the term of imprisonment to which the person would otherwise have been sentenced. Sentences of periodic detention are carried out at the Periodic Detention Centre at Symonston in the ACT and the Act provides direction on the powers of Corrective Services and parameters within which an order for periodic detention may be carried out.

Section 22(2)(a) of the Act allows the manager of the detention centre to refuse to admit a detainee to the centre to serve a period of detention if the detainee has a concentration of alcohol in their blood equal to or more than 0.02mg of alcohol per 100ml of blood, or a drug is present in their body.

Section 23 of the Act gives the manager of the detention centre the power to require detainees to submit to a blood alcohol test or a drug test and states that the tests may be prescribed.

Section 7(1) of the *Periodic Detention Regulation 1995* (the Regulation) currently states that a breath test to detect whether alcohol is present in the detainee's blood and the concentration of that alcohol must be conducted using a Dual Screener Alcomaster Model DS-190 manufactured by, or on behalf of, Aust. Dynamic Technologies Company Pty Limited.

The apparatus being used to conduct blood alcohol tests has changed. The tests will now be conducted using the Lion Alcolmeter SD-400.

Section 7 of the Regulation will be amended to enable the Chief Executive to approve a change of apparatus in a notifiable instrument rather than prescriptively naming the apparatus in the Regulation.

Schedule 1 to the Regulation currently contains the procedures to be followed when conducting an alcohol test. Due to the change in apparatus used to conduct the test the procedures also require amendment. Section 7 will enable the Chief Executive to approve the applicable procedures in a notifiable instrument.

Schedule 2 to the Regulation currently contains the procedures to be followed when obtaining a sample of urine for drug testing. Due to changes in the company contracted to analyse urine samples, and changes in the courses of instruction and work practices associated with drug testing, the procedures require amendment. Section 7 will enable the Chief Executive to approve the procedures in a notifiable instrument.

The Regulation also contains harmonisation provisions to ensure the it is compliant with the Criminal Code. Section 1B is to be inserted to specifically apply the Criminal Code to the Regulation and the offence of threatening behaviour will be amended to incorporate the Criminal Code.

## **Clauses**

### **Clause 1: Name of regulation**

This is a technical clause that names the short title of the Act.

### **Clause 2: Commencement**

This clause enables the Regulation to commence on a day fixed by the Minister in a written notice.

### **Clause 3: Legislation amended**

This clause enables amendment to the *Periodic Detention Regulation 1995*.

### **Clause 4: New sections 1A and 1B**

This is a technical clause explaining the status of notes to the Act and makes it clear that the *Criminal Code 2002* applies to the Act.

### **Clause 5: Section 7**

This clause prescribes breath tests to establish the concentration of alcohol in a detainee's blood and urine tests to establish whether a drug is present in a detainee's body to be lawful pursuant to section 23 of the Act. Section 23 of the Act gives the manager of the detention centre the power to require a detainee to undergo alcohol and drug testing.

This clause also allows the Chief Executive to approve the following in a notifiable instrument:

- the procedures to be followed in relation to the test;
- the instrument required for the test;
- the procedures to be followed in relation to the analysis of a sample or specimen tested; and
- anything else that relates to the test.

This clause allows for the legislation to remain abreast of changes to instruments and operational procedures without requiring constant amendment.

### **Clause 6: Authorisation of analysts Section 7A**

This clause deletes the reference to schedule 2. Schedule 2 outlines the outdated procedure for obtaining a sample of urine for the purposes of drug testing. These procedures will now be contained in a notifiable instrument.

**Clause 7:      Written statement relating to alcohol and drug tests**  
**Section 8(2)(a)**

Section 23(4) of the Act requires the detainee to be provided with a written statement as soon as practicable after a drug or alcohol test is conducted. Section 8(2)(a) of the Regulation requires the written statement to be accompanied by a print-out of the test results.

This clause deletes the reference to schedule 1, section 1.3 in section 8(2)(a). Schedule 1, section 1.3 outlines the outdated procedure to be followed after an alcohol test has been conducted. These procedures will now be contained in a notifiable instrument, and section 8(2)(a) will require the written statement relating to an alcohol test to be accompanied by a copy of the print-out of the result of the analysis.

**Clause 8:      Section 20**

This clause applies the Criminal Code to the offence of threatening behaviour contained in section 20 of the Regulation.

**Clause 9:      Schedules 1 and 2**

This clause deletes schedules 1 and 2 from the Regulation. Schedule 1 details the outdated procedures to be followed in carrying out an alcohol test at the detention centre. Schedule 2 details the outdated procedures to be followed in obtaining a sample of urine. The updated procedures will now be contained in a notifiable instrument pursuant to section 7 of the Regulation.