



Australian Capital Territory

Periodic Detention Regulations

Subordinate Law No. 34 of 1995¹

The Australian Capital Territory Executive makes the following Regulations under the *Periodic Detention Act 1995*.

Dated 29 August 1995.

GARY HUMPHRIES
Minister

BILL STEFANIAK
Minister

Citation

1. These Regulations may be cited as the Periodic Detention Regulations.

Commencement

2. These Regulations commence on the day on which section 3 of the Act commences.

Interpretation

3. In these Regulations, unless the contrary intention appears—
“the Act” means the *Periodic Detention Act 1995*.

Notice of commitment to detention

4. Where a court orders that an offender serve a sentence of periodic detention, the court shall cause a copy of the order to be given to the manager of the detention centre as soon as practicable after the making of the order.

Notice to detainee

5. (1) A notice under section 10 of the Act shall be in triplicate.

(2) Where a notice under section 10 of the Act is served on a detainee, the detainee shall sign the notice and, of the copies—

- (a) 1 copy shall be retained by the detainee;
- (b) 1 copy shall be given to the manager by the court; and
- (c) 1 copy shall be retained by the court.

Manner of reporting for detention

6. For the purposes of subsection 14 (4) of the Act, a detainee shall report at a detention centre with—

- (a) clothing and footwear suitable for outdoor work;
- (b) a change of clothing; and
- (c) toiletries for personal use.

Alcohol and drug testing

7. (1) For the purposes of paragraph 23 (1) (a) of the Act, a detainee may be required to undergo a breath test conducted by means of an instrument known as a “Dual Screener Alcomaster” that bears on any part of the instrument, in addition to other material, the expression “Model DS-190”, being an instrument manufactured by, or on behalf of, Aust. Dynamic Technologies Company Pty Limited.

(2) The procedure to be followed to determine whether alcohol is present in a detainee’s blood is that specified in Schedule 1.

(3) For the purposes of paragraph 23 (1) (b) of the Act, the procedure to determine whether a drug is present in a detainee's body is that specified in Schedule 2.

Written statement relating to alcohol and drug tests

8. (1) For the purposes of subsection 23 (4) of the Act, the particulars required to be included in a statement under that subsection are—

- (a) the name of the detainee;
- (b) the date and time when the test was carried out;
- (c) the results of the test; and
- (d) the name of the officer who carried out the test.

(2) A statement under subsection 23 (4) of the Act shall be accompanied—

- (a) in the case of an alcohol test— by a copy of the form and print-out referred to in item 3.1 of Schedule 1; and
- (b) in the case of a drug test—by a copy of the analyst's statement.

Leave of absence

9. (1) For the purposes of subsection 24 (2) of the Act, an application for leave of absence shall—

- (a) be in writing signed by the detainee;
- (b) be lodged with an officer; and
- (c) set out the reasons for which leave of absence is sought.

(2) The Director may, by notice in writing, require a detainee to furnish to the Director, either orally or in writing, such further information relating to the application as is specified in the notice.

Notification of certain applications

10. (1) The court shall serve, or caused to be served, on the Director a copy of an application made by a detainee under section 24 of the Act.

(2) The court shall serve, or caused to be served, on the Director or detainee, as the case requires, a copy of an application made by the Director or a detainee under section 26 of the Act.

Evidentiary matters

11. (1) For the purposes of paragraph 30 (9) (a) of the Act, a certificate purporting to have been signed by the manager and stating that a

detainee refused or failed to take an alcohol or drug test on a specified day at a specified time is evidence of the matters so stated.

- (2) For the purposes of paragraphs 30 (9) (b) and (c) of the Act—
- (a) in relation to an alcohol test and the analysis of the results of that test—the certificate shall be provided by the officer who carried out the alcohol test or by the manager;
 - (b) in relation to a drug test—the certificate shall be provided by the officer who carried out the drug test or by the manager; and
 - (c) in relation to the analysis of the results of the drug test—the certificate shall be provided by the analyst who carried out the test or the officer in charge of the laboratory at which the analysis was carried out.

Body searches

12. A body search shall be conducted—
- (a) in as seemly a manner as possible; and
 - (b) with due regard to the dignity and self respect of the detainee.

Information relating to detainees

13. The manager of a detention centre shall cause the following particulars to be recorded in respect of a detainee who reports to the detention centre for the first time in compliance with an order for periodic detention:

- (a) name and residential address;
- (b) age, height and weight;
- (c) any distinguishing features;
- (d) whether the person is an Aboriginal or Torres Strait Islander;
- (e) name and residential address of next of kin;
- (f) the offence for which the detainee was convicted and the period of detention ordered to be served;
- (g) such other information as the manager considers appropriate.

Medication

14. (1) A detainee who brings in to a detention centre medication that is required to be administered to the detainee in the course of his or her period of detention shall notify the manager of the particulars of the dosage of the medication and the date and time it is to be administered.

(2) The manager may require a detainee to surrender his or her medication on entering the detention centre for the period of his or her detention.

(3) Where medication is surrendered under subsection (2), the manager shall take reasonable steps to ensure that the medication is administered to the detainee in accordance with the directions on the medication.

(4) The manager shall return any medication surrendered under subsection (2) at the completion of each detention period.

Regard to religious beliefs etc. of detainee

15. In providing food and beverages (other than intoxicating beverages) to a detainee, regard shall be had to the religious beliefs and the reasonable dietary requirements of the detainee and any restrictions specified in relation to the detainee by the medical staff of the centre.

Work etc.

16. (1) A detainee shall not be required to work more than 8 hours per day inclusive of meal and tea breaks.

(2) A tea break of 10 minutes shall be taken by a detainee during any morning or afternoon during which the detainee is required to work for more than 3 hours.

(3) A meal break of 45 minutes shall be taken by a detainee between the hours of 12 noon and 1 p.m. and 5 p.m. and 6 p.m.

(4) An officer shall not direct a detainee to perform work—

- (a) in consequence of a contravention of these regulations or the standing orders; or
- (b) that would personally benefit a person who is an officer of, or otherwise engaged by, the Territory, a Territory authority, an institution, or home, of the kind referred to in subsection 15 (2) of the Act.

Reports concerning physical or mental risks to detainees

17. (1) Where a medical practitioner or nurse gives the manager a report in writing that he or she is of the opinion that the physical or mental health of a detainee may be injuriously affected if the detainee were to comply with an order under Part II of the Act, or by his or her continuing to comply with such an order, the manager shall notify the Director in writing of that fact and give the Director a copy of the report.

(2) If an officer (other than the manager) becomes aware of the illness of a detainee, the officer shall report the matter as soon as possible to the manager.

(3) If the manager becomes aware of the illness of a detainee, the manager shall report the matter as soon as possible to the Director.

Notification of appeal against order

18. If a detainee appeals against an order for periodic detention, the court which made the order shall notify the manager of the detention centre to which the detainee was ordered to attend.

False statements

19. A person shall not, in any instrument under these regulations or the standing orders, make a statement knowing it to be false or misleading in a material particular.

Penalty: 5 penalty units.

Threatening behaviour etc.

20. A detainee who is reporting for, or is otherwise serving, a detention period shall not—

- (a) use threatening or abusive language to, or in the presence of, another person; or
- (b) behave in a threatening manner towards another person.

Penalty: 10 penalty units.

SCHEDULE 1

Subregulation 7 (2)

ALCOHOL TESTING

1.1 Procedure before commencing alcohol test

An officer authorised to carry out the alcohol test shall turn on the prescribed instrument and key in the operator's identification number.

2.1 Procedure during alcohol test

An officer authorised to carry out the test shall—

- (a) direct the detainee to provide a sample of his or her breath by speaking into the receiver section, held by the officer not more than 80 millimetres from the detainee's mouth, until directed to stop by the officer;

SCHEDULE 1—continued

- (b) read the result of the analysis of the breath sample provided as shown on the display panel of the instrument;
- (c) where the readout indicates that alcohol is present in the blood of the detainee, fit an unused spit trap to the mouthpiece of the instrument and direct the detainee to provide a sample of his or her breath for breath analysis by exhaling into the spit trap until the word “STOP” is shown on the display panel of the instrument; and
- (d) if the display panel indicates that the required volume of breath has not been expelled into the instrument, direct the detainee to provide a further sample of his or her breath by exhaling into the spit trap fitted to the mouthpiece of the instrument until the word “STOP” is shown on the display panel of the instrument.

3.1 Procedure after alcohol test

An officer authorised to carry out an alcohol test shall—

- (a) following analysis by the instrument of the sample of breath provided by the detainee, obtain a print-out of the results of the analysis;
- (b) attach the print-out of the results of the analysis to a form setting out—
 - (i) the name of the detainee;
 - (ii) any observations by the officer about the detainee; and
 - (iii) the date and time when the test was carried out;
- (c) direct the detainee to sign an acknowledgment that the print-out attached to the form is the print-out obtained from the instrument following analysis of the sample of breath provided by the detainee; and
- (d) ensure that the instrument is turned off.

SCHEDULE 2

Subregulation 7 (3)

DRUG TESTING

1.1 Procedure for obtaining a sample of urine

An officer authorised to carry out the test and who is of the same sex as the detainee required to undergo the test, shall—

SCHEDULE 2—continued

- (a) write the name of the detainee required to undergo the test on a label adhered to a sealable sterile container, give the container to the detainee, and request the detainee to sign his or her name on the label;
- (b) request the detainee to accompany the officer to a private area and, within the sight of the officer, to pass a sample of his or her urine into the container provided for the purpose;
- (c) view the passing of the sample of urine by the detainee and request the detainee to seal the container and return it to the officer;
- (d) ensure that the container is properly sealed and write on the label on the container the date and time when the sample was passed by the detainee;
- (e) secure the sealed container so that the label on the container can not be tampered with unless the seal is broken and send the container to the ACT Government Analytical Laboratory for analysis of the urine sample.

2.1 Procedure for analysis of a sample of urine

1. On receipt of a sealed container containing a sample of urine, the analyst, or a person acting under his or her supervision, shall sign a receipt for the container and give the receipt to the person handing over the sample.

2. If the analyst receives a container—

- (a) that has been opened; or
- (b) the seal of which has been broken;

the analyst shall notify the manager in writing as soon as possible of that fact.

3. The analyst shall analyse the sample of urine in the container for the presence of a drug.

4. The analyst shall notify the manager in writing of the results of the analysis of the sample of urine specifying—

- (a) whether or not a drug was present in the sample of urine analysed; and
- (b) where a drug was found to be present in the urine sample—the name of the drug.

SCHEDULE 1—continued

NOTES

Notification

1. Notified in the ACT Gazette on 1 September 1995.

Penalty units

See section 33AA of the *Interpretation Act 1967* and section 9 of the *Subordinate Laws Act 1989*.

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