



Australian Capital Territory

# **Periodic Detention Regulations 1995 No 34**

made under the

**Periodic Detention Act 1995**

**Republication No 3**

**Effective: 28 March 2003**

Republication date: 28 March 2003

Last amendment made by A2003-14

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Periodic Detention Regulations 1995*, made under the *Periodic Detention Act 1995* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 28 March 2003. It also includes any amendment, repeal or expiry affecting the republished law to 28 March 2003.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

# Periodic Detention Regulations 1995

made under the

## Periodic Detention Act 1995

### Contents

---

	Page	
1	Name of regulations	2
2	Meaning of <i>authorised analyst</i>	2
4	Notice of commitment to detention	2
5	Notice to detainee	2
6	Manner of reporting for detention	2
7	Alcohol and drug testing	3
7A	Authorisation of analysts	3
8	Written statement relating to alcohol and drug tests	3
9	Leave of absence	4
10	Notification of certain applications	4
11	Evidentiary matters	4
12	Body searches	5

---

R3  
28/03/03

Periodic Detention Regulations 1995

contents 1

## Contents

---

	Page	
13	Information relating to detainees	5
14	Medication	5
15	Regard to religious beliefs etc of detainee	6
16	Work etc	6
17	Reports concerning physical or mental risks to detainees	7
18	Notification of appeal against order	7
19	False statements	7
20	Threatening behaviour etc	7
<b>Schedule 1</b>	<b>Alcohol testing</b>	<b>9</b>
1	Procedure before commencing alcohol test	9
2	Procedure during alcohol test	9
3	Procedure after alcohol test	10
<b>Schedule 2</b>	<b>Drug testing</b>	<b>11</b>
1	Procedure for obtaining a sample of urine	11
2	Procedure for analysis of a sample of urine	12
<b>Endnotes</b>		
1	About the endnotes	13
2	Abbreviation key	13
3	Legislation history	14
4	Amendment history	14
5	Earlier republications	15



Australian Capital Territory

# Periodic Detention Regulations 1995

---

made under the

**Periodic Detention Act 1995**

---

## **1 Name of regulations**

These regulations are the *Periodic Detention Regulations 1995*.

## **2 Meaning of *authorised analyst***

In these regulations:

***authorised analyst*** means a person who may analyse urine samples under regulation 7A (Authorisation of analysts).

*Note* A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

## **4 Notice of commitment to detention**

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.

## **5 Notice to detainee**

- (1) A notice under the Act, section 10, shall be in triplicate.
- (2) Where a notice under the Act, section 10, is served on a detainee, the detainee shall sign the notice and, of the copies—
  - (a) 1 copy shall be retained by the detainee; and
  - (b) 1 copy shall be given to the manager by the court; and
  - (c) 1 copy shall be retained by the court.

## **6 Manner of reporting for detention**

For the Act, section 14 (4), a detainee shall report at a detention centre with—

- (a) clothing and footwear suitable for outdoor work; and
- (b) a change of clothing; and

- (c) toiletries for personal use.

## **7 Alcohol and drug testing**

- (1) For the Act, section 23 (1) (a), 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 Act, section 23 (1) (b), the procedure to determine whether a drug is present in a detainee's body is that specified in schedule 2.

## **7A Authorisation of analysts**

A person who is accredited by the National Association of Testing Authorities, Australia to provide toxicological services may analyse urine samples obtained by the procedure described in schedule 2.

## **8 Written statement relating to alcohol and drug tests**

- (1) For the Act, section 23 (4), the particulars required to be included in a statement under that subsection are—
  - (a) the name of the detainee; and
  - (b) the date and time when the test was carried out; and
  - (c) the results of the test; and
  - (d) the name of the officer who carried out the test.
- (2) A statement under the Act, section 23 (4) shall be accompanied—
  - (a) in the case of an alcohol test—by a copy of the form and print-out referred to in schedule 1, clause 3; and
  - (b) in the case of a drug test—by a copy of the analyst's statement.

## **9 Leave of absence**

- (1) For the Act, section 24 (2), an application for leave of absence shall—
  - (a) be in writing signed by the detainee; and
  - (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.

## **10 Notification of certain applications**

- (1) The court shall serve, or caused to be served, on the director a copy of an application made by a detainee under the Act, section 24.
- (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 the Act, section 26.

## **11 Evidentiary matters**

- (1) For the Act, section 30 (9) (a), 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 Act, section 30 (9) (b) and (c)—
  - (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; and
  - (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.

## **12 Body searches**

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.

## **13 Information relating to detainees**

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.

## **14 Medication**

- (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.

#### **15 Regard to religious beliefs etc of detainee**

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.

#### **16 Work etc**

- (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 pm and 5 pm and 6 pm.
- (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 the Act, section 15 (2).

## **17 Reports concerning physical or mental risks to detainees**

- (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 the Act, part 2, 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.

## **18 Notification of appeal against order**

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.

## **19 False statements**

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.

Maximum penalty: 5 penalty units.

## **20 Threatening behaviour etc**

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.

Maximum penalty: 10 penalty units.

## Schedule 1 Alcohol testing

(see reg 7 (2))

### 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 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 80mm from the detainee's mouth, until directed to stop by the officer; and
- (b) read the result of the analysis of the breath sample provided as shown on the display panel of the instrument; and
- (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 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; and
- (b) attach the print-out of the results of the analysis to a form setting out—
  - (i) the name of the detainee; and
  - (ii) any observations by the officer about the detainee; and
  - (iii) the date and time when the test was carried out; and
- (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 Drug testing

(see reg 7 (3))

### 1 Procedure for obtaining a sample of urine

- (1) An officer authorised to carry out the test and who is of the same sex as the detainee required to undergo the test, shall—
  - (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; and
  - (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; and
  - (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; and
  - (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; and
  - (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 an authorised analyst for analysis of the urine sample.
- (2) However, if a detainee who is a transgender or intersex person is tested, the detainee may require that the test be carried out by either a male or a female.

*Note 1* For the meaning of *transgender person* see Legislation Act, s 169A.

*Note 2* For the meaning of *intersex person*, see Legislation Act, s 169B.

- (3) If the transgender or intersex person requires that the test be carried out by a male, the person is taken, for this clause, to be male.
- (4) If the transgender or intersex person requires that the test be carried out by a female, the person is taken, for this clause, to be female.

## **2 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, as required under Australian Standard AS 4308–1995, 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.



## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
IA = Interpretation Act 1967	renum = renumbered
ins = inserted/added	reloc = relocated
LA = Legislation Act 2001	R[X] = Republication No
LR = legislation register	RI = reissue
LRA = Legislation (Republication) Act 1996	s = section/subsection
mod = modified / modification	sch = schedule
No = number	sdiv = subdivision
num = numbered	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

## Endnotes

3 Legislation history

---

### 3 Legislation history

The *Periodic Detention Regulations 1995* were originally the *Periodic Detention Regulations*. They were renamed by the *Periodic Detention Regulations Amendment 2000 No 20* (see reg 3).

#### **Periodic Detention Regulations 1995 No 34**

notified 1 September 1995 (Gaz 1995 No S222)

commenced 1 September 1995 (reg 2 and Gaz 1995 No S222)

as amended by

#### **Periodic Detention Regulations 2000 No 20**

notified 11 May 2000 (Gaz 2000 No 19)

commenced 11 May 2000 (reg 1)

#### **Legislation (Consequential Amendments) Act 2001 No 44 pt 279**

notified 26 July 2001 (Gaz 2001 No 30)

s 1, s 2 commenced 26 July 2001 (IA s 10B)

pt 279 commenced 12 September 2001 (s 2 and Gaz 2001 No S65)

#### **Legislation (Gay, Lesbian and Transgender) Amendment Act 2003 A2003-14 sch 1 pt 1.26**

notified LR 27 March 2003

s 1, s 2 commenced 27 March 2003 (LA s 75 (1))

sch 1 pt 1.26 commenced 28 March 2003 (s 2)

### 4 Amendment history

#### **Name of regulation**

reg 1 sub 2000 No 20 reg 3

#### **Meaning of *authorised analyst***

reg 2 sub 2001 No 44 amdt 1.3118

#### **Definitions**

reg 3 hdg sub 2000 No 20 reg 3

reg 3 am 2000 No 20 reg 4

reg 3 om 2001 No 44 amdt 1.3118

#### **Authorisation of analysts**

reg 7A ins 2000 No 20 reg 5

#### **Alcohol testing**

sch 1 am R2 LA

**Drug testing**

sch 2

am 2000 No 20 reg 6; R2 LA; A2003-14 amdt 1.84, amdt 1.85

**5 Earlier republications**

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

<b>Republication No</b>	<b>Amendments to</b>	<b>Republication date</b>
1	SL 2000 No 20	31 May 2000
2	Act 2001 No 44	13 December 2001

© Australian Capital Territory 2003