



Australian Capital Territory

Periodic Detention Regulation 1995

SL1995-34

made under the

Periodic Detention Act 1995

Republication No 5

Effective: 2 November 2004 – 13 January 2006

Republication date: 2 November 2004

Last amendment made by A2004-15
(republication includes editorial amendments
under Legislation Act)

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Periodic Detention Regulation 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 2 November 2004. It also includes any amendment, repeal or expiry affecting the republished law to 2 November 2004.

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):

- 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 includes 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.



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Periodic Detention Regulation 1995
Effective: 02/11/04-13/01/06

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Australian Capital Territory

Periodic Detention Regulation 1995

made under the

Periodic Detention Act 1995

1 Name of regulation

This regulation is the *Periodic Detention Regulation 1995*.

2 Meaning of *authorised analyst*

In this regulation:

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

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

4 Notice of commitment to detention

If a court orders that an offender serve a sentence of periodic detention, the court must give a copy of the order 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, must be in triplicate.
- (2) If a notice under the Act, section 10, is served on a detainee, the detainee must sign the notice and, of the copies—
 - (a) 1 copy must be kept by the detainee; and
 - (b) 1 copy must be given to the manager by the court; and
 - (c) 1 copy must be kept by the court.

6 Manner of reporting for detention

For the Act, section 14 (4), a detainee must 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) must be accompanied—
 - (a) for an alcohol test—by a copy of the form and print-out referred to in schedule 1, section 1.3; and
 - (b) for 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 must—
 - (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 written notice, require a detainee to give to the director, either orally or in writing, the further information relating to the application that is specified in the notice.

10 Notification of certain applications

- (1) The court must serve on the director a copy of an application made by a detainee under the Act, section 24.
- (2) The court must serve 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) for an alcohol test and the analysis of the results of that test—the certificate must be provided by the officer who carried out the alcohol test or by the manager; and
 - (b) for a drug test—the certificate must be provided by the officer who carried out the drug test or by the manager; and

- (c) for the analysis of the results of the drug test—the certificate must be provided by the analyst who carried out the test or the officer in charge of the laboratory where the analysis was carried out.

12 Body searches

A body search must be conducted—

- (a) in as seemly a way 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 must ensure that the following particulars are recorded for 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) any other information 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 must 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) If medication is surrendered under subsection (2), the manager must take reasonable steps to ensure that the medication is administered to the detainee in accordance with the directions on the medication.
- (4) The manager must 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 must 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 must not be required to work more than 8 hours per day inclusive of meal and tea breaks.
- (2) A tea break of 10 minutes must 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 must be taken by a detainee between the hours of 12 noon and 1 pm and 5 pm and 6 pm.
- (4) An officer must not direct a detainee to perform work—
 - (a) in consequence of a contravention of this regulation 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 mentioned in the Act, section 15 (2).

17 Reports about physical or mental risks to detainees

- (1) If a doctor or nurse gives the manager a written report 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 must 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 must report the matter as soon as possible to the manager.
- (3) If the manager becomes aware of the illness of a detainee, the manager must 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 that made the order must notify the manager of the detention centre to which the detainee was ordered to attend.

20 Threatening behaviour etc

A detainee who is reporting for, or is otherwise serving, a detention period must not—

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

Maximum penalty: 10 penalty units.

Schedule 1 Alcohol testing

(see s 7 (2))

1.1 Procedure before beginning alcohol test

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

1.2 Procedure during alcohol test

An officer authorised to carry out the test must—

- (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) if 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.

1.3 Procedure after alcohol test

An officer authorised to carry out an alcohol test must—

- (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 s 7 (3))

2.1 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, must—
 - (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 the Legislation Act, s 169A.

Note 2 For the meaning of *intersex person*, see the 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 section, 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 section, to be female.

2.2 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, must 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 must notify the manager in writing as soon as possible of that fact.
- (3) The analyst must 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 must 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) if a drug was found to be present in the urine sample—the name of the drug.

Endnotes

1 About the endnotes

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.

2 Abbreviation key

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

3 Legislation history

This regulation was originally the *Periodic Detention Regulations*. It was renamed by the *Periodic Detention Regulations Amendment SL2000-20* (see s 3) and under the *Legislation Act 2001*.

Periodic Detention Regulation 1995 No 34

notified 1 September 1995 (Gaz 1995 No S222)

commenced 1 September 1995 (s 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 (s 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 see 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)

Criminal Code (Theft, Fraud, Bribery and Related Offences) Amendment Act 2004 A2004-15 sch 2 pt 2.64

notified LR 26 March 2004

s 1, s 2 commenced 26 March 2004 (LA s 75 (1))

sch 2 pt 2.64 commenced 9 April 2004 (s 2 (1))

4 Amendment history

Name of regulation

s 1 sub 2000 No 20 s 3
am R5 LA

Meaning of *authorised analyst*

s 2 sub 2001 No 44 amdt 1.3118

Endnotes

5 Earlier republications

Definitions

s 3 hdg sub 2000 No 20 s 3
s 3 am 2000 No 20 s 4
om 2001 No 44 amdt 1.3118

Authorisation of analysts

s 7A ins 2000 No 20 s 5

False statements

s 19 om 2004-15 amdt 2.140

Alcohol testing

sch 1 am R2 LA; ss renum R5 LA

Drug testing

sch 2 am 2000 No 20 s 6; R2 LA; A2003-14 amdt 1.84, amdt 1.85;
ss renum R5 LA

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.

Republication No	Amendments to	Republication date
1	SL 2000 No 20	31 May 2000
2	Act 2001 No 44	13 December 2001
3	A2003-14	28 March 2003
4	A2004-15	9 April 2004

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