



New South Wales

# Periodic Detention of Prisoners Further Amendment Act 1998 No 165

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New South Wales

# **Periodic Detention of Prisoners Further Amendment Act 1998 No 165**

Act No 165, 1998

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An Act to amend the *Periodic Detention of Prisoners Act 1981* with respect to the procedures to be followed after the Parole Board cancels an order for periodic detention; and for other purposes. [Assented to 14 December 1998]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Periodic Detention of Prisoners Further Amendment Act 1998*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

**3 Amendment of Periodic Detention of Prisoners Act 1981 No 18**

The *Periodic Detention of Prisoners Act 1981* is amended as set out in Schedule 1.

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## Schedule 1 Amendments

(Section 3)

### [1] Sections 25AA–25AC

Insert after section 25:

#### 25AA Notice of cancellation

- (1) As soon as practicable after the Parole Board cancels an order for periodic detention, it must cause a notice under this section to be served on the periodic detainee to whom the order related.
- (2) The notice must:
  - (a) fix a date, occurring not earlier than 14 days nor later than 28 days after the date on which it is served, on which the Parole Board is to meet for the purpose of reconsidering the cancellation of the order for periodic detention, and
  - (b) require the periodic detainee to notify the Secretary of the Parole Board, not later than 7 days before the date so fixed, if the periodic detainee intends to make representations to the Parole Board in relation to the cancellation of the order, and
  - (c) be in the form prescribed by the regulations, and
  - (d) except as provided by subsection (3), be accompanied by:
    - (i) a copy of the order which cancelled the order for periodic detention, and
    - (ii) copies of the reports and other documents used by the Parole Board in making the decision to cancel the order for periodic detention.
- (3) Nothing in this section requires a periodic detainee to be provided with a copy of so much of a report or document as may, in the opinion of a judicial member of the Parole Board, endanger or inappropriately identify any other person.

### **25AB Review of cancellation**

- (1) If a periodic detainee on whom a notice has been served under section 25AA has duly notified the Secretary of the Parole Board that the periodic detainee intends to make representations to the Parole Board, the Chairperson of the Parole Board is required to convene a meeting of the Parole Board, on the date set by the notice, for the purpose of reconsidering the cancellation of the order for periodic detention.
- (2) At the meeting of the Parole Board convened pursuant to the notice, or at a subsequent meeting to which consideration of the matter is adjourned or postponed, the periodic detainee may make submissions to the Parole Board with respect to the cancellation of the order for periodic detention.
- (3) After reviewing all the reports, documents and other information placed before it, the Parole Board is to decide whether or not it should rescind the cancellation of the order for periodic detention concerned.
- (4) A decision under this section has effect according to its terms even if the order for periodic detention concerned has expired.

### **25AC Application to Court of Criminal Appeal**

The provisions of section 41 (1) of the *Sentencing Act 1989* apply to the cancellation by the Parole Board of an order for periodic detention in the same way as to the revocation by the Parole Board of a parole order, and the provisions of section 23 (2)–(4) of that Act apply to an application made under this section.

### **[2] Schedule 2 Savings and transitional provisions**

Insert at the end of clause 1 (1):

*Periodic Detention of Prisoners Further Amendment Act 1998*

**[3] Schedule 2, Part 6, heading**

Insert “**and Periodic Detention of Prisoners Further Amendment Act 1998**” after “**1998**”.

**[4] Schedule 2, clause 20**

Insert at the end of the clause:

*further amending Act* means the *Periodic Detention of Prisoners Further Amendment Act 1998*.

**[5] Schedule 2, clauses 25–25C**

Omit clause 25. Insert instead:

**25 Cancellation of existing orders for periodic detention**

Part 4, as amended by the amending Act and the further amending Act, applies to any order for periodic detention made before the commencement of this clause in the same way as it applies to any order for periodic detention made after that commencement, except as otherwise provided by this Part.

**25A Pending proceedings under section 25**

- (1) Any application for cancellation of an order for periodic detention made to a court under section 25 before the commencement of this clause (being an application in respect of which a hearing had begun before that commencement) is to be heard and determined by the court, in accordance with section 25, as then in force, as if the amending Act had not been enacted.
- (2) Sections 25A, 26 and 27, as in force immediately before the commencement of this clause, apply to and in respect of:
  - (a) an order for periodic detention cancelled by a court before that commencement, and
  - (b) an order for periodic detention cancelled by a court after that commencement, as referred to in subclause (1),as if the amending Act had not been enacted.

**25B Directions with respect to cancelled orders**

- (1) Section 27 (4), as in force immediately before the commencement of this clause, continues to apply to the cancellation by a court under section 24 of an order for periodic detention made before that commencement.
- (2) Any direction, parole order or other order that was in force in respect of the person under section 27 (4), immediately before the commencement of this clause, continues to have effect as if that subsection had not been repealed.

**25C Minimum and additional terms of imprisonment may be set for existing periodic detainees whose orders for periodic detention are cancelled by Parole Board**

- (1) This clause applies to a sentence of imprisonment that is being served by way of periodic detention where the sentence was imposed before the commencement of this clause.
- (2) If the Parole Board cancels an order for periodic detention with respect to a sentence of imprisonment to which this clause applies, the Parole Board, in its discretion, may:
  - (a) direct that any unexpired portion of the sentence to which the order applied (within the meaning of section 27) is taken to consist of a minimum term and an additional term set under Part 2 of the *Sentencing Act 1989*, and
  - (b) make a parole order in accordance with section 24 of the *Sentencing Act 1989*,

or, on the application of the Commissioner, may make such other orders as the Parole Board considers appropriate.

- (3) Any such minimum and additional term and parole order have the same effect as if they had been respectively set and made under the *Sentencing Act 1989*.



- (4) The functions of the Parole Board under this clause are to be exercised:
- (a) at a meeting convened in accordance with section 25AB (1) to reconsider the cancellation of the order, or
  - (b) if the Secretary of the Parole Board is not notified that the periodic detainee intends to make representations to the Parole Board in connection with the cancellation of the order, at a meeting convened on, or as soon as practicable after, the date fixed for the purposes of section 25AA (2) (a).
- (5) On setting a minimum term and an additional term for a sentence of imprisonment, the Parole Board is to issue a new warrant under section 26 (1A), being a warrant that specifies the minimum and additional terms so set, to replace the warrant issued under that subsection when the relevant order for periodic detention was cancelled.

[Minister's second reading speech made in—  
Legislative Assembly on 28 October 1998  
Legislative Council on 1 December 1998]

BY AUTHORITY