



New South Wales

Periodic Detention of Prisoners Amendment Act 1998 No 43

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New South Wales

Periodic Detention of Prisoners Amendment Act 1998 No 43

Act No 43, 1998

An Act to amend the *Periodic Detention of Prisoners Act 1981* with respect to the making, cancellation and administration of periodic detention orders; and for other purposes. [Assented to 26 June 1998]

The Legislature of New South Wales enacts:

1 Name of Act

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

2 Commencement

This Act commences on such day or days as may 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.

4 Amendment of Home Detention Act 1996 No 78

The *Home Detention Act 1996* is amended as set out in Schedule 2.

5 Amendment of Sentencing Act 1989 No 87

The *Sentencing Act 1989* is amended as set out in Schedule 3.

Schedule 1 Amendment of Periodic Detention of Prisoners Act 1981

(Section 3)

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

additional term has the same meaning as it has in the *Sentencing Act 1989*.

fixed term has the same meaning as it has in the *Sentencing Act 1989*.

minimum term has the same meaning as it has in the *Sentencing Act 1989*.

Parole Board means the Parole Board constituted by the *Sentencing Act 1989*.

section 5B order means an order for periodic detention that, under section 5B, requires a person's sentence to be served by way of periodic detention wholly or partly concurrently with, or cumulatively on, some other sentence that is being or is to be served by the person by way of periodic detention.

[2] Section 4 (1)

Omit the definition of *prison* from section 4 (1).

Insert instead:

prison means a correctional centre within the meaning of the *Correctional Centres Act 1952*.

[3] Section 5 Power to order periodic detention

Omit section 5 (1). Insert instead:

- (1) This section applies to a person on whom a court has imposed a sentence of imprisonment comprising:
 - (a) a fixed term of imprisonment not exceeding 3 years, or
 - (b) a minimum and an additional term that do not in the aggregate exceed 3 years.

- (1A) A court that has sentenced a person to whom this section applies may by order direct that the minimum term of the sentence concerned (or, in the case of a fixed term sentence, the whole of the fixed term) be served by way of periodic detention.
- (1B) Such an order may not be made unless the court is satisfied:
- (a) that it is appropriate in the circumstances of the case that the person serve the sentence by way of periodic detention, and
 - (b) that there is accommodation available at a prison for the person to serve the sentence by way of periodic detention, and
 - (c) that transport arrangements are available for travel by the person, to and from the prison, for the purpose of serving the sentence by way of periodic detention, being arrangements that will not impose undue inconvenience, strain or hardship on the person, and
 - (d) that the person is a suitable person to serve the term of imprisonment by way of periodic detention, having regard to:
 - (i) a report on the person (a *suitability report*) prepared by a probation and parole officer employed in the Department of Corrective Services or by a person authorised in accordance with the regulations to prepare such a report, and
 - (ii) such evidence from a probation and parole officer or person so authorised as the court considers necessary for the purpose of deciding whether to make such an order, and
 - (e) that the person has signed an undertaking, in the form prescribed by the regulations, to comply with the requirements of this Act and the regulations with respect to service of a term of imprisonment by way of periodic detention.

[4] Section 5 (7)

Insert after section 5 (6):

- (7) A person's suitability report:
- (a) must assess the person's suitability to serve a term of imprisonment by way of periodic detention by reference to such factors as may be prescribed by the regulations, and
 - (b) must indicate that the person preparing the report:
 - (i) has explained to the person (in language that the person can readily understand) the requirements of this Act and the regulations with respect to service of terms of imprisonment by way of periodic detention, and
 - (ii) has asked the person to sign an undertaking, in the form prescribed by the regulations, to comply with those requirements.

[5] Section 5A Periodic detention may be ordered for less than 3 months for certain offences

Omit the section.

[6] Section 20 Leave of absence at request of periodic detainee

Insert after section 20 (2):

- (2A) An application for leave of absence must be made before the expiry of 7 days after the beginning of the detention period in respect of which the leave is sought unless, in the particular circumstances of the case, the Commissioner allows further time for the application.

[7] Section 20A Leave of absence at direction of Commissioner

Omit section 20A (4).

[8] Section 21 Failure to report as required extends term of sentence

Omit "20, 20A or 21AA" from section 21 (1).
Insert instead "20 or 20A".

[9] Section 21 (1A) and (1B)

Insert after section 21 (1):

- (1A) Subsection (1) does not apply in the case of a failure to report that is the subject of a direction referred to in section 21AA (3).
- (1B) If under section 21AA (3) an equivalent period of time to that for which leave is granted under section 21AA (2) is directed to be served as part of an additional detention period, the term of the sentence of the periodic detainee in respect of whom the direction is given is extended by one week for each additional detention period necessary to accommodate the total period of time directed to be served by all such directions under section 21AA (3).

[10] Section 21 (4)

Insert "or (1B)" after "(1)".

[11] Section 21 (8) and (9)

Insert after section 21 (7):

- (8) In this section, references to the term of a sentence are taken to be references to:
 - (a) the minimum term of the sentence, in the case of a sentence in respect of which a minimum term has been set, or
 - (b) the fixed term of the sentence, in the case of a sentence in respect of which a fixed term has been set.
- (9) The extension by this section of the minimum term of a sentence by one or more weeks does not affect the length of the additional term of the sentence.

[12] Section 21AA Reporting late

Insert "under this section or" after "absence" in section 21AA (1).

[13] Section 21AA (2A)

Insert after section 21AA (2):

- (2A) An application for leave of absence must be made before the expiry of 7 days after the beginning of the detention period in respect of which the leave is sought unless, in the particular circumstances of the case, the Commissioner allows further time for the application.

[14] Section 21AA (3)

Insert "or as part of an additional detention period to be served by the periodic detainee" after "Commissioner" where secondly occurring.

[15] Section 21A Commissioner may grant exemptions from extension of sentence

Insert "or (2)" after "section 21 (1)" in section 21A (1).

[16] Section 21B Periodic detention taken to have been served in certain circumstances

Insert after section 21B (3):

- (4) Any detention period during which a periodic detainee is in custody as an inmate within the meaning of the *Correctional Centres Act 1952*, is taken to have been served by the periodic detainee in accordance with this Act.

[17] Section 24 Cancellation of orders for periodic detention on subsequent conviction

Omit "makes a further order for periodic detention contemplated by section 5B" from section 24 (1).

Insert instead "makes a section 5B order in relation to the periodic detainee, makes a home detention order under the *Home Detention Act 1996* in relation to the periodic detainee or takes action under this Act or under the *Home Detention Act 1996* in connection with the making of such an order in relation to the periodic detainee".

[18] Section 25 Cancellation of orders for periodic detention otherwise than on subsequent conviction

Omit "the court that made the order" from section 25 (1).
Insert instead "the Parole Board".

[19] Section 25 (1) (b) and (3), (3A), (3B), (3C) and (5)

Omit "court" wherever occurring.
Insert instead "Parole Board".

[20] Section 25 (2)

Omit the subsection.

[21] Section 25 (6)–(9)

Insert after section 25 (5):

- (6) If an order for periodic detention is cancelled under this section, the Parole Board may, subject to Part 2 of the *Home Detention Act 1996*, by order direct that the unexpired portion of the term of imprisonment in respect of which the order for periodic detention was made be served by way of home detention within the meaning of that Act.
- (7) An order made under subsection (6) is taken to be a home detention order within the meaning of the *Home Detention Act 1996*, and that Act (Part 2 excepted) applies to such an order in the same way as it applies to a home detention order.
- (8) If the Parole Board revokes a person's home detention order under the *Home Detention Act 1996*, it must also cancel any order for periodic detention that is then in force in respect of the person.
- (9) Any order for periodic detention cancelled under this section is revived, by operation of this subsection, if the home detention order whose revocation brought about that cancellation is subsequently revived.

[22] Section 25A Cancellation of section 5B orders consequent on cancellation of other orders

Omit section 25A (1) and (2). Insert instead:

- (1) If a court or the Parole Board cancels an order for periodic detention under section 24 or 25 (*the first cancelled order*), it may also cancel any related section 5B order.
- (2) A section 5B order may be cancelled:
 - (a) on application by the person to whom the order applies or the Commissioner, or
 - (b) without application, if it appears to the court or Parole Board that there is good reason for doing so.

[23] Section 25A (3)–(5)

Omit “cumulative order” wherever occurring.
Insert instead “section 5B order”.

[24] Section 25A (6)

Insert after section 25A (5):

- (6) In subsections (4) and (5), references to the term of a sentence are taken to be references to:
 - (a) the minimum term of the sentence, in the case of a sentence in respect of which a minimum term has been set, or
 - (b) the fixed term of the sentence, in the case of a sentence in respect of which a fixed term has been set.

[25] Section 26 Issue of warrant on cancellation of an order for periodic detention

Insert “by a court” after “cancelled” in section 26 (1).

[26] Section 26 (1)

Omit "or 25". Insert instead ", or is cancelled under section 25A as a consequence of an order for periodic detention having been cancelled by a court under section 24".

[27] Section 26 (1A)

Insert after section 26 (1):

(1A) If an order for periodic detention is cancelled by the Parole Board under section 25, or is cancelled under section 25A as a consequence of an order for periodic detention having been cancelled by the Parole Board under section 25, the Parole Board may issue a warrant for the apprehension and detention of the person in respect of whom the order was in force, in or to the effect of the prescribed form, to serve any unexpired portion of the sentence to which the order applied by way of full-time imprisonment.

[28] Section 27 Effect of cancellation of order for periodic detention

Omit "section 24 or 25" from section 27 (1). Insert instead "this Part (the *first cancelled order*)".

[29] Section 27 (1) (a)

Insert "and" after "effect,".

[30] Section 27 (1) (c)

Omit section 27 (1) (c). Insert instead:

(c) any unexpired portion of the sentence of imprisonment to which the order applied is taken to be a separate term of imprisonment imposed at the time the order is cancelled, and

[31] Section 27 (1) (d) and (e)

Omit section 27 (1) (d). Insert instead:

- (d) any sentence of imprisonment the subject of a related section 5B order that has not been cancelled (being a sentence that is required to be served wholly or partly concurrently with the first cancelled order):
 - (i) is taken to be a separate term of imprisonment for the unexpired portion of the sentence of imprisonment to which the order applied, and
 - (ii) commences at the time the first cancelled order is cancelled, and
- (e) any sentence of imprisonment the subject of a related section 5B order that has not been cancelled (being a sentence that is required to be served cumulatively on the first cancelled order):
 - (i) is taken to be a separate term of imprisonment, and
 - (ii) commences at the expiration of the term of the sentence to which the first cancelled order relates or, if it is one of a number of such sentences, at the expiration of the term of the sentence on which it is expressed to be cumulative.

[32] Section 27 (1A) and (1B)

Omit section 27 (1A). Insert instead:

- (1A) The separate term of imprisonment referred to in subsection (1) (c) is taken to commence:
 - (a) in the case of an order with respect to a person who is before the court or in prison when the order is cancelled, at the time the order for periodic detention is cancelled, or
 - (b) in any other case, at the time the warrant for the apprehension and detention of the person (as referred to in section 26 (1) (a) or (1A)) is executed.

(1B) In subsection (1) (e), the reference to the term of a sentence is taken to be a reference to:

- (a) the minimum term of the sentence, in the case of a sentence in respect of which a minimum term has been set, or
- (b) the fixed term of the sentence, in the case of a sentence in respect of which a fixed term has been set.

[33] Section 27 (2) (a) and (3)

Omit “(subject to any parole order made under subsection (4))” wherever occurring.

[34] Section 27 (4) and (5)

Omit the subsections.

[35] Section 27 (6)

Insert “and (in the case of a person who is neither before a court nor in prison when the order is cancelled) less the total amount of time for which the person has been in custody as an inmate, within the meaning of the *Correctional Centres Act 1952*, between the time the order was cancelled and the time the warrant under section 26 for the person’s apprehension and detention is executed” after “under this Act”.

[36] Sections 28 and 34 (1) (c) and (d)

Omit “*Prisons Act 1952*” wherever occurring.
Insert instead “*Correctional Centres Act 1952*”.

[37] Schedule 2 Savings and transitional provisions

Insert at the end of clause 1 (1):

Periodic Detention of Prisoners Amendment Act 1998

[38] Schedule 2, Part 6

Insert after Part 5:

**Part 6 Provisions consequent on enactment of
Periodic Detention of Prisoners Amendment
Act 1998**

20 Definition

In this Part:

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

21 Application of section 5 to existing convictions and sentences

- (1) Section 5, as amended by the amending Act, applies to persons convicted or sentenced before the commencement of this clause in the same way as it applies to persons convicted or sentenced after that commencement.
- (2) Any report referred to in section 5 (1) (c), as in force immediately before the commencement of this clause, is taken to be a report referred to in section 5 (1B) (d), as inserted by the amending Act.
- (3) Section 5 (7), as inserted by the amending Act, does not apply to a report referred to in subclause (2).
- (4) Any evidence given for the purposes of section 5 (1) (c), as in force immediately before the commencement of this clause, is taken to be evidence given for the purposes of section 5 (1B) (d), as inserted by the amending Act.

22 Applications for leave of absence

The provisions of section 20 (2A) and 21AA (2A), as inserted by the amending Act, do not apply to applications for leave of absence made in relation to absences and latenesses occurring before the commencement of this clause.

23 Exemptions from extensions of sentence

Section 21A (1), as amended by the amending Act, applies to absences occurring before the commencement of this clause in the same way as it applies to absences occurring after that commencement.

24 Detention periods served in custody

Section 21B (4), as inserted by the amending Act, applies to detention periods occurring before the commencement of this clause in the same way as it applies to detention periods occurring after that commencement.

25 Cancellation of existing orders for periodic detention

Part 4, as in force immediately before the commencement of this clause, continues to apply to and in respect of an order for periodic detention made before that commencement as if the amending Act had not been enacted.

26 Conditions of parole order requiring supervision of periodic detainees

Section 27 (5A) of the *Sentencing Act 1989*, as inserted by the amending Act, applies to parole orders made before the commencement of this clause in the same way as it applies to parole orders made after that commencement.

Schedule 2 Amendment of Home Detention Act 1996

(Section 4)

[1] Section 18A

Insert after section 18:

18A Automatic revocation of home detention order where concurrent periodic detention order cancelled

- (1) If the Board cancels a person's order for periodic detention under the *Periodic Detention of Prisoners Act 1981*, it must also revoke any home detention order that is then in force in respect of the person.
- (2) Subsection (1) does not apply if the Board, when cancelling the order for periodic detention, makes an order under section 25 (6) of the *Periodic Detention of Prisoners Act 1981* directing that the unexpired portion of the term of imprisonment in respect of which the order for periodic detention was made be served by way of home detention.
- (3) Any home detention order revoked under this section is revived, by operation of this subsection, if the order for periodic detention whose cancellation brought about that revocation is subsequently revived.

[2] Section 19 Application to Court of Criminal Appeal

Insert at the end of the section:

- (2) This section does not apply if the home detention order was revoked by the Board under section 18A.

Schedule 3 Amendment of Sentencing Act 1989

(Section 5)

[1] Section 13 Exclusions from this Part

Omit section 13 (a).

[2] Section 27 Terms and conditions of parole order

Insert after section 27 (5):

- (5A) In the case of a parole order made by a court under section 24, any requirement made by the terms or conditions of the parole order requiring or relating to the person's being subject to supervision ceases to have effect if the court subsequently makes an order under the *Periodic Detention of Prisoners Act 1981* directing the sentence to be served by way of periodic detention.

[Minister's second reading speech made in—
Legislative Assembly on 26 May 1998
Legislative Council on 3 June 1998]

BY AUTHORITY