

**PERIODIC DETENTION OF PRISONERS (AMENDMENT) ACT
1989 No. 186**

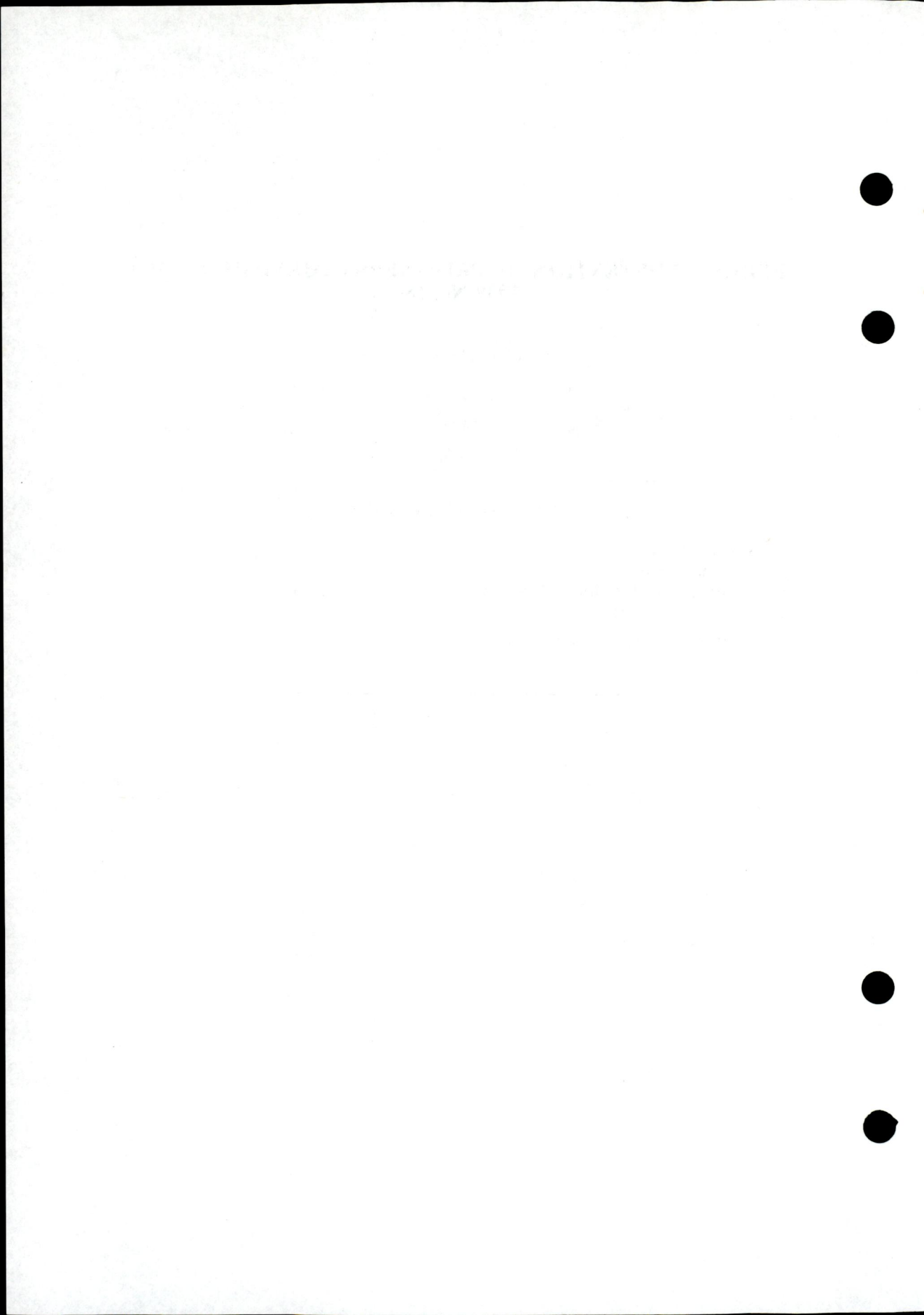
NEW SOUTH WALES



TABLE OF PROVISIONS

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4. Operation of amendments

SCHEDULE 1 - AMENDMENTS



**PERIODIC DETENTION OF PRISONERS (AMENDMENT) ACT
1989 No. 186**

NEW SOUTH WALES



Act No. 186, 1989

An Act to amend the Periodic Detention of Prisoners Act 1981 to allow longer sentences to be served by way of periodic detention, to provide that cumulative sentences may be served by way of periodic detention and to specify circumstances in which an order for periodic detention may be cancelled. [Assented to 19 December 1989]

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Periodic Detention of Prisoners (Amendment) Act 1989.

Commencement

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

Amendment of Periodic Detention of Prisoners Act 1981 No. 18

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

Operation of amendments

4. Sections 5 and 5B of the Periodic Detention of Prisoners Act 1981, as amended by this Act, apply in respect of a person who is sentenced after the commencement of Schedule 1 (1) and (2), whether the person committed, or is convicted of, the offence concerned before or after that commencement.

SCHEDULE 1 - AMENDMENTS

(Sec. 3)

(1) Section 5 (**Power to order periodic detention**):

(a) Section 5 (1):

Omit "18 months", insert instead "3 years".

(b) Omit section 5 (3)-(5).

(2) Section 5B:

After section 5A, insert:

Application of section 5 to concurrent and cumulative sentences

5B. (1) An order for periodic detention may require that a sentence be served by way of periodic detention wholly or partly concurrently with, or cumulatively on, another or other sentences required by the same or a different order to be served by way of periodic detention.

SCHEDULE 1 - AMENDMENTS - *continued*

(2) A court may not make such an order unless, at all times, the sum of:

- (a) the length of time remaining to be served concurrently under the order or orders; and
- (b) the length of time remaining to be served, otherwise than concurrently, under the order or orders,

does not exceed 3 years.

(3) For the purpose of determining whether such an order may be made, it does not matter whether any other order required to be considered was made before or after the commencement of this section.

(4) This section does not affect the operation of section 444 of the Crimes Act 1900.

(3) Section 24 (**Cancellation of orders for periodic detention on subsequent conviction**):

(a) Omit section 24 (1), insert instead:

(1) If a periodic detainee is convicted of an offence and sentenced on that conviction to a term of imprisonment of more than one month, the court must cancel the order for periodic detention unless the court makes a further order for periodic detention contemplated by section 5B.

(b) Omit section 24 (4) and (5).

(4) Section 25:

Omit the section, insert instead:

Cancellation of orders for periodic detention otherwise than on subsequent conviction

25. (1) If an order for periodic detention is in force in respect of a person, the court that made the order may cancel the order:

- (a) on application by the person or the Director-General; or

SCHEDULE 1 - AMENDMENTS - *continued*

(b) without application, if it appears to the court that there is good reason for doing so.

(2) It does not matter whether the court cancelling the order is constituted by the same member or members who constituted it at the time the order was made, or whether it is sitting at the same place.

(3) Without limiting the generality of subsection (1), the court may, on the application of the Director-General, cancel the order if the court is satisfied that the person is not serving his or her sentence in accordance with the order.

(4) In proceedings on an application under this section, a certificate purporting to be signed by the Director-General and certifying any of the following:

- (a) that a person is a periodic detainee;
- (b) particulars of the terms of that person's periodic detention order;
- (c) particulars of any failure by the person to serve his or her sentence in accordance with the order,

is admissible as prima facie evidence of the matters certified.

(5) Before such a certificate is admitted in evidence, the court must be satisfied that reasonable efforts have been made to serve a copy of the certificate on the periodic detainee concerned.

(5) Section 27 (**Certain effects of cancellation of order for periodic detention**):

- (a) Omit section 27 (b).
- (b) At the end of section 27, insert:

(2) If an order for periodic detention is cancelled under section 24 (1) or (2) because of a subsequent conviction, the person in respect of whom the order was made must serve the unexpired portion of the sentence to which the order applied:

SCHEDULE 1 - AMENDMENTS - *continued*

- (a) by way of full-time imprisonment (subject to any parole order made under subsection (4)); and
 - (b) concurrently with the term of imprisonment to which the person is sentenced for that subsequent conviction.
- (3) If an order for periodic detention is cancelled under section 24 (3) or 25, the person in respect of whom the order was made must serve the unexpired portion of the sentence to which the order applied by way of full-time imprisonment (subject to any parole order made under subsection (4)).
- (4) If an order for periodic detention is cancelled under this Part, the court, in its discretion, may:
- (a) direct that the unexpired portion of the sentence to which the order relates is to be 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 that Act.
- (5) 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.

[*Minister's second reading speech made in -
Legislative Assembly on 11 October 1989
Legislative Council on 16 November 1989*]

MEMORANDUM FOR THE RECORD

On 10/10/40, the following information was received from the [redacted] regarding the [redacted] of the [redacted] in the [redacted] area.

The [redacted] of the [redacted] in the [redacted] area is [redacted] and is [redacted] by the [redacted] of the [redacted] in the [redacted] area.

The [redacted] of the [redacted] in the [redacted] area is [redacted] and is [redacted] by the [redacted] of the [redacted] in the [redacted] area.

The [redacted] of the [redacted] in the [redacted] area is [redacted] and is [redacted] by the [redacted] of the [redacted] in the [redacted] area.

The [redacted] of the [redacted] in the [redacted] area is [redacted] and is [redacted] by the [redacted] of the [redacted] in the [redacted] area.

The [redacted] of the [redacted] in the [redacted] area is [redacted] and is [redacted] by the [redacted] of the [redacted] in the [redacted] area.

Very truly yours,
[redacted]

FIRST PRINT

**PERIODIC DETENTION OF PRISONERS (AMENDMENT) BILL
1989**

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Periodic Detention of Prisoners Act 1981 so as:

- (a) to allow longer sentences to be served by way of periodic detention; and
- (b) to provide that cumulative sentences may be served by way of periodic detention; and
- (c) to specify circumstances in which an order for periodic detention may be cancelled.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the proposed Act to commence on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the Schedule of amendments to the Principal Act.

Clause 4 allows the provisions of section 5 of the Principal Act (as amended by the proposed Act) and of new section 5B (as inserted by the proposed Act) to apply to all persons sentenced after the commencement of the relevant amendments made by the proposed Act, even if those persons committed, or were convicted of, the offence concerned before that commencement.

As a consequence, the amendments will enable a court to make greater use of periodic detention as an alternative to imprisonment in the case of more serious offences.

Periodic Detention of Prisoners (Amendment) 1989

SCHEDULE 1 - AMENDMENTS

Periodic detention for longer periods

Schedule 1 (1) amends section 5 of the Principal Act to increase from 18 months to 3 years the maximum sentence of imprisonment that may be served by way of periodic detention.

Periodic detention for more than one sentence

Schedule 1 (2) inserts a new section 5B into the Principal Act. The new section provides that a sentence ordered to be served by way of periodic detention may be either concurrent with or additional to another sentence that is required to be served by way of periodic detention by another order. (At present, only sentences that are neither concurrent nor cumulative, or that are concurrent sentences imposed at the same time, can be served by way of periodic detention.)

The period of detention remaining to be served concurrently or cumulatively under such an order must not exceed 3 years.

Cancellation of orders for periodic detention

Schedule 1 (4) repeals and substitutes section 25 of the Principal Act. That section enables an order for periodic detention to be cancelled by the court that made the order.

The substituted section is designed to make it clear that it is not necessary for the court to be constituted by the same person(s), or to be sitting at the same place, as it was when it made the order to be cancelled.

The substituted section contains a new evidentiary provision in connection with cases where the Director-General of Corrective Services applies to have an order for periodic detention cancelled because the periodic detainee is not serving his or her sentence in accordance with the order.

In such cases, a certificate given by the Director-General that indicates that a person is a periodic detainee and gives particulars of the terms of the order for the person's periodic detention and of any failure by the person to serve his or her sentence in accordance with the order is admissible as evidence of the matters certified.

Schedule 1 (5) amends section 27 of the Principal Act, which sets out the consequences of the cancellation, under Part 4 of the Act, of an order for periodic detention. A usual consequence is that the offender is obliged to serve, by way of full-time imprisonment, the unexpired portion of the sentence he or she was serving by way of periodic detention. The amendments provide that the court has a discretion to direct that an offender, after serving part of this unexpired portion, is to be eligible for release on parole.

The amendments made by Schedule 1 (3) are consequential.

FIRST PRINT

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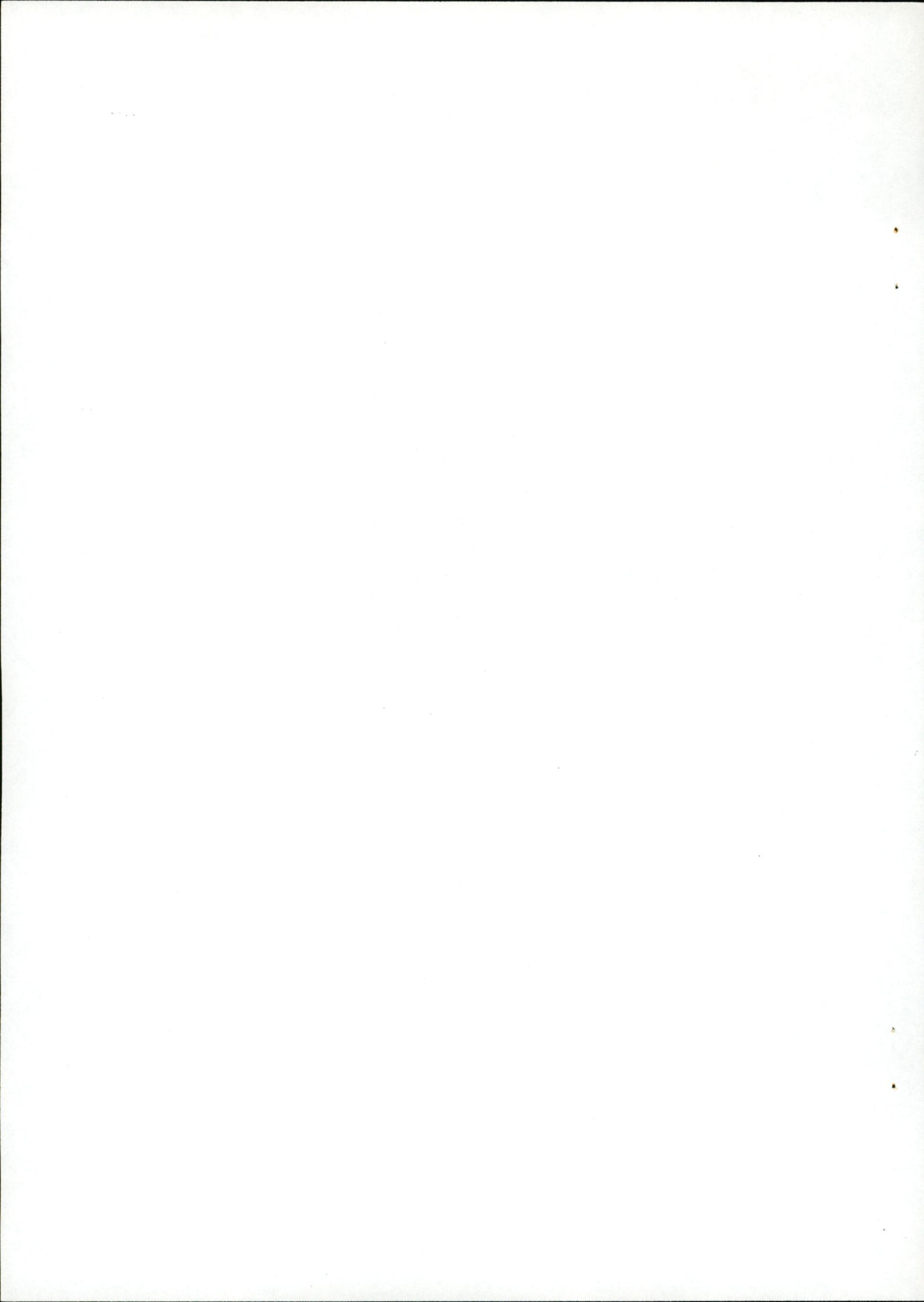
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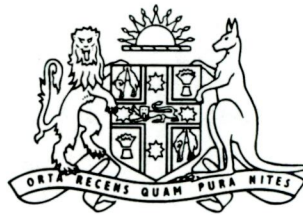
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SCHEDULE 1 - AMENDMENTS



**PERIODIC DETENTION OF PRISONERS (AMENDMENT) BILL
1989**

NEW SOUTH WALES



No. , 1989

A BILL FOR

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SCHEDULE 1 - AMENDMENTS

(Sec. 3)

(1) Section 5 (**Power to order periodic detention**):

- (a) Section 5 (1):
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(2) Section 5B:

After section 5A, insert:

Application of section 5 to concurrent and cumulative sentences

5B. (1) An order for periodic detention may require that a sentence be served by way of periodic detention wholly or partly concurrently with, or cumulatively on, another or other sentences required by the same or a different order to be served by way of periodic detention.

SCHEDULE 1 - AMENDMENTS - *continued*

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- (a) the length of time remaining to be served concurrently under the order or orders; and
- (b) the length of time remaining to be served, otherwise than concurrently, under the order or orders,

does not exceed 3 years.

(3) For the purpose of determining whether such an order may be made, it does not matter whether any other order required to be considered was made before or after the commencement of this section.

(4) This section does not affect the operation of section 444 of the Crimes Act 1900.

(3) Section 24 (**Cancellation of orders for periodic detention on subsequent conviction**):

(a) Omit section 24 (1), insert instead:

(1) If a periodic detainee is convicted of an offence and sentenced on that conviction to a term of imprisonment of more than one month, the court must cancel the order for periodic detention unless the court makes a further order for periodic detention contemplated by section 5B.

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- (a) on application by the person or the Director-General; or

SCHEDULE 1 - AMENDMENTS - *continued*

(b) without application, if it appears to the court that there is good reason for doing so.

(2) It does not matter whether the court cancelling the order is constituted by the same member or members who constituted it at the time the order was made, or whether it is sitting at the same place.

(3) Without limiting the generality of subsection (1), the court may, on the application of the Director-General, cancel the order if the court is satisfied that the person is not serving his or her sentence in accordance with the order.

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SCHEDULE 1 - AMENDMENTS - *continued*

- (a) by way of full-time imprisonment (subject to any parole order made under subsection (4)); and
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