

FIRST PRINT

**PERIODIC DETENTION OF PRISONERS (AMENDMENT)
BILL 1991 (No. 2)**

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:

- (a) to provide that a court, in deciding whether a sentence imposed on a convicted person is suitable to be served by way of periodic detention, must take into consideration the assessment of a probation and parole officer; and
- (b) to enable the Director-General of Corrective Services to vary the days of the week that are to comprise the weekly detention period; and
- (c) to enable the regulations under that Act to make provision with respect to the appointment, remuneration and conduct of persons to supervise periodic detainees.

Clause 1 specifies the short title of the proposed Act.

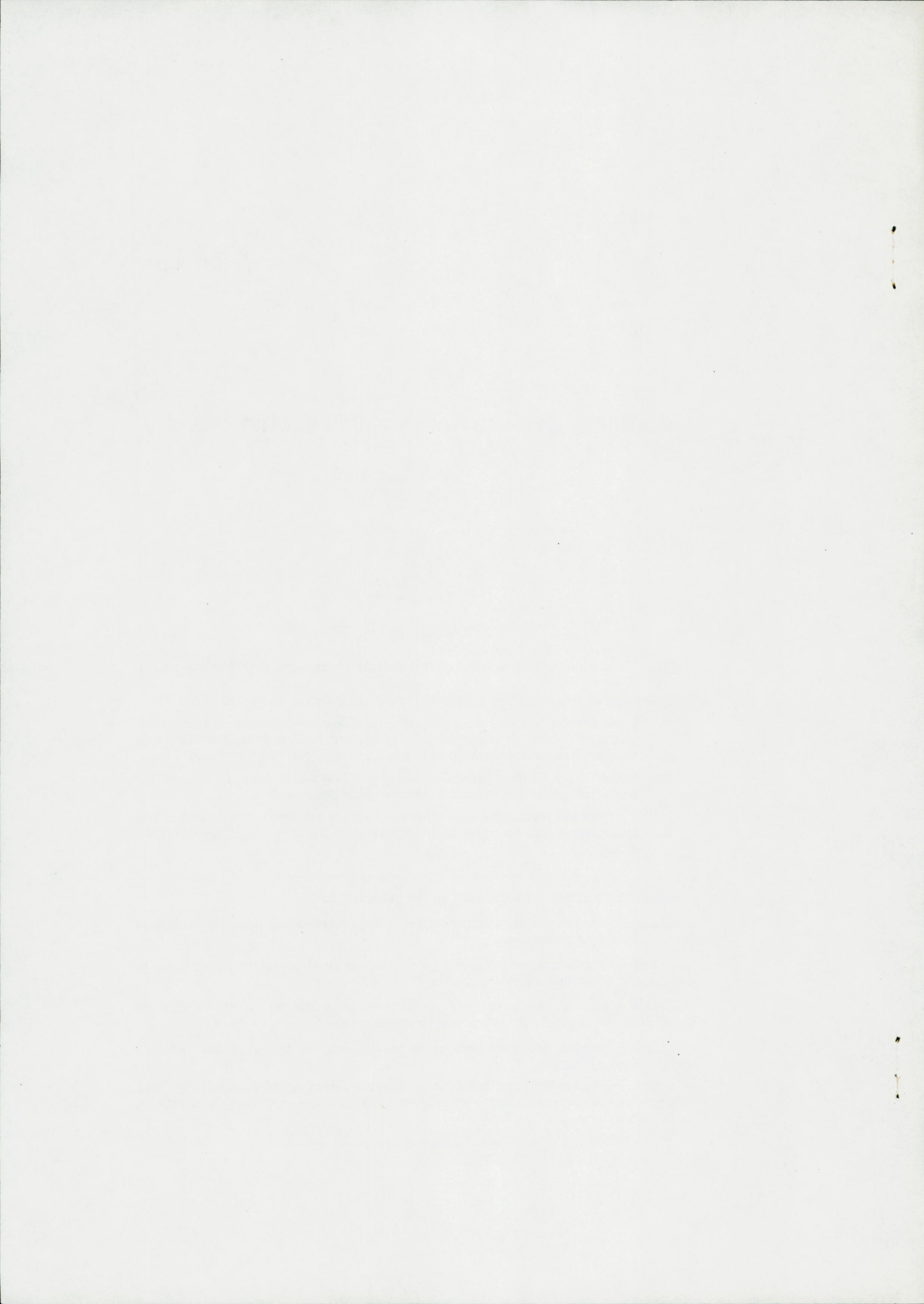
Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the Periodic Detention of Prisoners Act 1981.

Clause 4 provides that section 11A, as proposed to be inserted by this Bill, applies to an order for periodic detention whenever made.

Clause 5 provides that the explanatory notes appearing in the Bill do not form part of the proposed Act.

Schedule 1 makes the amendments to the Periodic Detention of Prisoners Act 1981 described above. Each amendment is explained in detail in the explanatory note relating to the amendment concerned.



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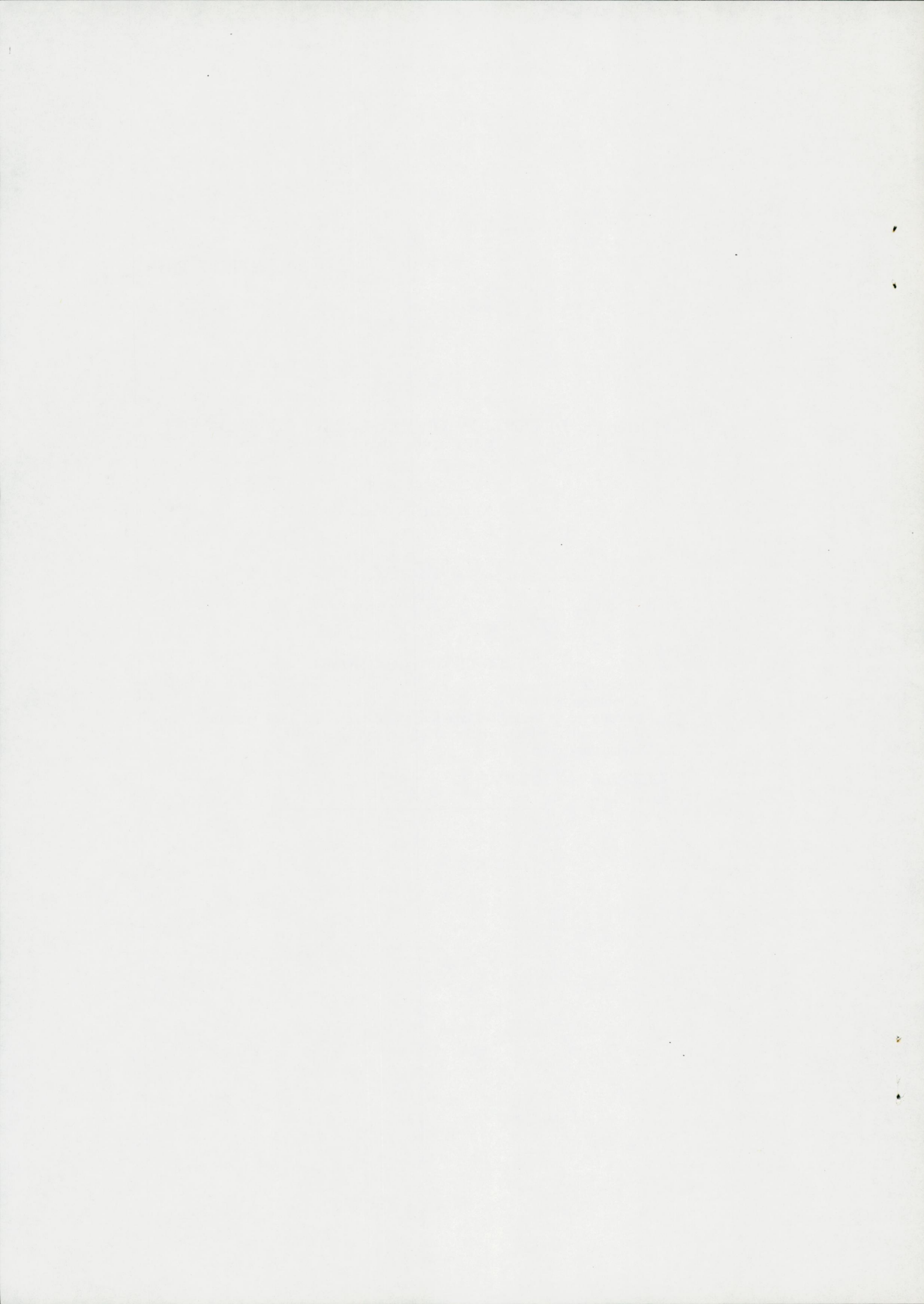
NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Periodic Detention of Prisoners Act 1981 No. 18
4. Transitional provision—variation of days of attendance
5. Explanatory notes

SCHEDULE 1—AMENDMENTS



**PERIODIC DETENTION OF PRISONERS (AMENDMENT)
BILL 1991 (No. 2)**

NEW SOUTH WALES



No. , 1991

A BILL FOR

An Act to amend the Periodic Detention of Prisoners Act 1981 with respect to the suitability of convicted persons to serve periodic detention, the variation of detention periods and the supervision of periodic detainees.

Periodic Detention of Prisoners (Amendment) 1991 (No. 2)

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Periodic Detention of Prisoners (Amendment) Act 1991.

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.

Transitional provision—variation of days of attendance

4. Section 11A of the Periodic Detention of Prisoners Act 1981, as inserted by this Act, applies to an order for periodic detention whether made before or after the commencement of that section.

Explanatory notes

5. Matter appearing under the heading "Explanatory note" in Schedule 1 does not form part of this Act.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

Amendment: report as to suitability of convicted person to serve periodic detention

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

At the end of section 5 (1) (b), insert:

; and

(c) if it is satisfied that the convicted person is a suitable person to serve the term of imprisonment by way of periodic detention, after:

Periodic Detention of Prisoners (Amendment) 1991 (No. 2)

SCHEDULE 1—AMENDMENTS—*continued*

- considering a report about the convicted person from a probation and parole officer employed in the Department of Corrective Services or a person authorised in accordance with the regulations; and
- hearing (if the court thinks necessary) evidence from a probation and parole officer or a person so authorised,

Explanatory note—item (1)

Section 5 (1) of the Periodic Detention of Prisoners Act 1981 provides that an order of periodic detention may be made if the court:

- is of the opinion that it is appropriate in the circumstances of the case; and
- is satisfied that accommodation is available; and
- is satisfied that there will be no undue inconvenience, strain or hardship placed on the offender because of travelling involved in attending a periodic detention centre.

At present, there is no legislative requirement for a court to be provided with a pre-sentence assessment.

With the exception of periodic detention orders, the Probation and Parole Service is responsible for providing an objective assessment regarding the background and circumstances of an offender, together with recommendations in regard to appropriate sentencing options. Assessment and suitability provisions already form part of the legislative base of the community service orders program.

It is proposed that similar assessment and suitability provisions, consistent with the community service order program, be applied to periodic detention. This will assist a court to form an opinion as to the appropriateness of a periodic detention sentence.

Amendment: variation by the Director-General of Corrective Services of the days of attendance at a periodic detention centre

(2) Section 4 (Definitions):

From paragraph (b) of the definition of “detention period” in section 4 (1), omit “any order of the Commission under section 12”, insert instead “any order of the Director-General under section 11A or 12”.

Periodic Detention of Prisoners (Amendment) 1991 (No. 2)

SCHEDULE 1—AMENDMENTS—*continued*

(3) Section 11A:

After section 11, insert:

Variation of days of attendance

11A. (1) A periodic detainee may make application in writing to the Director-General requesting the Director-General to make an order varying the days that are to comprise the periodic detainee's detention period during the whole or part of the periodic detainee's sentence and during any term by which the periodic detainee's periodic detention is extended by the operation of section 21 (1) or (2).

(2) Where a periodic detainee makes application under subsection (1), the Director-General may:

- (a) grant the application and order that the days in respect of which the application is made be varied as requested in the application; or
- (b) refuse to grant the application.

(3) An application must not be granted if it would cause the detention period to commence otherwise than at 7.00 p.m. on one day and end otherwise than at 4.30 p.m. on the second day after the day on which the period commences.

(4) Section 12 (**Variation of times of attendance**):

Omit section 12 (3) (a).

Explanatory note—items (2)–(4)

Under the Periodic Detention of Prisoners Act 1981, the Director-General of the Department of Corrective Services is able to approve a variation in the time a detainee is required to report (section 12). However, the Director-General is currently unable to alter the actual days of the week that comprise a detention period. These are specified in the order of the court imposing the sentence (section 8). Since 1982, legislation has enabled a detention period order to commence on any day of the week. The amendment made by item (3) will enable the Director-General to vary the days of the week that comprise a detention period.

Items (2) and (4) make consequential amendments.

Periodic Detention of Prisoners (Amendment) 1991 (No. 2)

SCHEDULE 1—AMENDMENTS—*continued*

Amendment: persons who may be engaged in supervision of periodic detainees

(5) Section 34 (**Regulations**):

At the end of section 34 (1) (1), insert:

; and

- (m) the persons who may supervise periodic detainees, including the appointment and remuneration of those persons and the conduct of those persons.

Explanatory note—item (5)

The amendment made by item (5) will enable regulations under the Periodic Detention of Prisoners Act 1981 to provide for the appointment and payment of persons engaged in the supervision of periodic detainees and to regulate the conduct of persons so appointed.

The amendment will enable the skills of non-custodial staff to be utilised to provide instruction and, where appropriate, supervision of periodic detainees who are undertaking community work while completing a term of periodic detention.



**PERIODIC DETENTION OF PRISONERS (AMENDMENT)
ACT 1991 No. 25**

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Periodic Detention of Prisoners Act 1981 No. 18
4. Transitional provision—variation of days of attendance
5. Explanatory notes

SCHEDULE 1—AMENDMENTS

PERIODIC DETENTION OF FISHES AND AMPHIBIANS
AUG 1941 No. 22

NEW SOUTH WALES

STATE OF NEW SOUTH WALES

Department of Fisheries and Game
Fisheries Research Station
New South Wales
Australia

**PERIODIC DETENTION OF PRISONERS (AMENDMENT)
ACT 1991 No. 25**

NEW SOUTH WALES



Act No. 25, 1991

An Act to amend the Periodic Detention of Prisoners Act 1981 with respect to the suitability of convicted persons to serve periodic detention, the variation of detention periods and the supervision of periodic detainees. [Assented to 6 September 1991]

Periodic Detention of Prisoners (Amendment) 1991

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Periodic Detention of Prisoners (Amendment) Act 1991.

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.

Transitional provision—variation of days of attendance

4. Section 11A of the Periodic Detention of Prisoners Act 1981, as inserted by this Act, applies to an order for periodic detention whether made before or after the commencement of that section.

Explanatory notes

5. Matter appearing under the heading "Explanatory note" in Schedule 1 does not form part of this Act.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

Amendment: report as to suitability of convicted person to serve periodic detention

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

At the end of section 5 (1) (b), insert:

; and

(c) if it is satisfied that the convicted person is a suitable person to serve the term of imprisonment by way of periodic detention, after:

Periodic Detention of Prisoners (Amendment) 1991

SCHEDULE 1—AMENDMENTS—*continued*

- considering a report about the convicted person from a probation and parole officer employed in the Department of Corrective Services or a person authorised in accordance with the regulations; and
- hearing (if the court thinks necessary) evidence from a probation and parole officer or a person so authorised,

Explanatory note—item (1)

Section 5 (1) of the Periodic Detention of Prisoners Act 1981 provides that an order of periodic detention may be made if the court:

- is of the opinion that it is appropriate in the circumstances of the case; and
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At present, there is no legislative requirement for a court to be provided with a pre-sentence assessment.

With the exception of periodic detention orders, the Probation and Parole Service is responsible for providing an objective assessment regarding the background and circumstances of an offender, together with recommendations in regard to appropriate sentencing options. Assessment and suitability provisions already form part of the legislative base of the community service orders program.

It is proposed that similar assessment and suitability provisions, consistent with the community service order program, be applied to periodic detention. This will assist a court to form an opinion as to the appropriateness of a periodic detention sentence.

Amendment: variation by the Director-General of Corrective Services of the days of attendance at a periodic detention centre

(2) Section 4 (Definitions):

From paragraph (b) of the definition of “detention period” in section 4 (1), omit “any order of the Commission under section 12”, insert instead “any order of the Director-General under section 11A or 12”.

Periodic Detention of Prisoners (Amendment) 1991

SCHEDULE 1—AMENDMENTS—*continued*

(3) Section 11A:

After section 11, insert:

Variation of days of attendance

11A. (1) A periodic detainee may make application in writing to the Director-General requesting the Director-General to make an order varying the days that are to comprise the periodic detainee's detention period during the whole or part of the periodic detainee's sentence and during any term by which the periodic detainee's periodic detention is extended by the operation of section 21 (1) or (2).

(2) Where a periodic detainee makes application under subsection (1), the Director-General may:

- (a) grant the application and order that the days in respect of which the application is made be varied as requested in the application; or
- (b) refuse to grant the application.

(3) An application must not be granted if it would cause the detention period to commence otherwise than at 7.00 p.m. on one day and end otherwise than at 4.30 p.m. on the second day after the day on which the period commences.

(4) Section 12 (**Variation of times of attendance**):

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Explanatory note—items (2)–(4)

Under the Periodic Detention of Prisoners Act 1981, the Director-General of the Department of Corrective Services is able to approve a variation in the time a detainee is required to report (section 12). However, the Director-General is currently unable to alter the actual days of the week that comprise a detention period. These are specified in the order of the court imposing the sentence (section 8). Since 1982, legislation has enabled a detention period order to commence on any day of the week. The amendment made by item (3) will enable the Director-General to vary the days of the week that comprise a detention period.

Items (2) and (4) make consequential amendments.

Periodic Detention of Prisoners (Amendment) 1991

SCHEDULE 1—AMENDMENTS—*continued*

Amendment: persons who may be engaged in supervision of periodic detainees

(5) Section 34 (**Regulations**):

At the end of section 34 (1) (1), insert:

; and

- (m) the persons who may supervise periodic detainees, including the appointment and remuneration of those persons and the conduct of those persons.

Explanatory note—item (5)

The amendment made by item (5) will enable regulations under the Periodic Detention of Prisoners Act 1981 to provide for the appointment and payment of persons engaged in the supervision of periodic detainees and to regulate the conduct of persons so appointed.

The amendment will enable the skills of non-custodial staff to be utilised to provide instruction and, where appropriate, supervision of periodic detainees who are undertaking community work while completing a term of periodic detention.

[*Minister's second reading speech made in—
Legislative Assembly on 2 July 1991
Legislative Council on 28 August 1991*]

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