



New South Wales

Periodic Detention of Prisoners Amendment Bill 1995

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

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

- (a) to require a court making a periodic detention order to order the person the subject of the order to submit immediately to the taking of particulars (including photographs and fingerprints) sufficient to identify the person, and
 - (b) to increase from 2 to 6 weeks the maximum period by which a term of sentence may be extended to penalise a periodic detainee for a failure to report, and
 - (c) to provide for the postponement of the commencement of a cumulative sentence of periodic detention if the sentence on which it is cumulative is extended under the Act, and
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- (d) to enable the Commissioner of Corrective Services (or the Commissioner's delegate) to direct a periodic detainee to take leave of absence when necessary for the personal safety of the detainee or other detainees, and
- (e) to enable an order directing a periodic detainee to perform work at a place outside a prison to cover more than one detention period and to omit the requirement that such an order specify the place of work and hours of work, and
- (f) to remove certain anomalies concerning the calculation, and commencement, of unexpired portions of periodic detention sentences on cancellation of periodic detention orders, and
- (g) to clarify rights of appeal in respect of cancellation of periodic detention orders by Local Courts and the District Court, and
- (h) to make it clear that a court that cancels a periodic detention order in respect of a sentence may also cancel any other orders under the Act requiring other sentences to be served concurrently or cumulatively with the sentence, and
- (i) to provide that, on cancellation of a periodic detention order and imposition of a minimum and additional term for the unexpired portion of the sentence to which it relates, any cumulative sentence of periodic detention commences at the expiration of the minimum term, and
- (j) to provide that a court may refuse to cancel a periodic detention order for failure of a person to report, on the ground that leave of absence or an exemption ought to have been granted, only if the person actually applied for grant of the leave of absence or exemption concerned, and
- (k) to enable a court, on application by the Commissioner, to make such orders as it considers appropriate on cancellation of a periodic detention order, and
- (l) to provide that a periodic detention order is not invalidated merely because it specifies an incorrect date for commencement of the sentence of imprisonment the subject of the order and to enable the order to be corrected to take into account any detention period served by the periodic detainee in compliance with the order, and
- (m) to specify that a periodic detainee is to report for the detainee's first detention period at 8.30 am (or such other time as may be prescribed by the regulations) on the day following the date specified in the order of the court imposing the sentence to be served by way of periodic detention as the date on which the sentence commences, and

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- (n) to clarify the disciplinary powers that may be exercised in respect of unruly periodic detainees, and
- (o) to provide that service by post to a periodic detainee's last known address or by facsimile to a number nominated by the detainee is sufficient service for the purposes of section 25 of the Act, and
- (p) to make provision with respect to periodic detainees who report late for detention periods, and
- (q) to enable regulations to be made requiring periodic detainees seeking, or directed to take, leave of absence for health reasons to undergo certain medical examinations, and
- (r) to confirm the existing power to make regulations relating to testing for, and evidence of, consumption of alcohol and drugs by periodic detainees by including provisions that parallel regulation making powers for this purpose in the *Prisons Act 1952*, and
- (s) to enact consequential savings and transitional provisions and to enable regulations of a savings and transitional nature to be made.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides that the proposed Act will commence 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* (referred to as the "Principal Act") described in paragraphs (a)–(s) of the overview of this Bill.

Schedule 1 Amendments

Identification of periodic detainee (Schedule 1 [1])

Under section 353A of the *Crimes Act 1900*, a court may order a person convicted of certain prescribed offences to present himself or herself at a police station for the taking of particulars (including photographs and fingerprints) necessary for identification of the person if the court is satisfied the order would assist in resolving doubt about the defendant's identity. The proposed amendment requires a court making a periodic detention order to

make a similar order in respect of a person convicted of an offence who is to serve a sentence by way of periodic detention. Such an order will require the person to submit to the taking of such particulars at the court so as to ensure that the person who presents for periodic detention is the person in respect of whom the order was made.

Correction of orders (Schedule 1 [2])

Section 8 of the Principal Act provides that a sentence of imprisonment to be served by way of periodic detention is to commence on the date specified in the order of the court imposing the sentence. The proposed amendment will ensure that an order containing an error in relation to that date is not invalidated and will enable the order to be corrected to take into account any detention period served by the periodic detainee in compliance with the erroneous order.

Date and time of first reporting for periodic detention (Schedule 1 [3] and [4])

A detention period normally commences at 7.00 pm on the same day of the week as the date specified in the order of the court imposing the sentence as the date on which the sentence commences. The proposed amendments provide for the first detention period to be served under an order to commence at 8.30 am (or at such other time as may be prescribed by the regulations in respect of a particular prison) on the day following the date specified in the order for commencement of the sentence and to end at 4.30 pm the following day. This will ensure that a periodic detainee has an appropriate induction session and health assessment.

Work orders (Schedule 1 [5]–[7])

Under section 10 of the Principal Act, the Commissioner may make an order directing a periodic detainee to perform work in a prison or at a place outside a prison specified in the order during any detention period. The proposed amendment omits the requirement to specify the hours of work and place of work and will enable one order to be made covering a number of detention periods and work sites. This will avoid the unnecessary multiplicity of orders to cover detainees who work at a series of places.

Directed leave of absence (Schedule 1 [8]–[11] and [15])

Under section 20 of the Principal Act, the Commissioner may grant leave of absence for various reasons at the request of a periodic detainee. Proposed section 20A (Schedule 1 [10]) will enable the Commissioner (or the Commissioner's delegate) to direct a periodic detainee to take leave of absence for one or more detention periods in the interest of the personal safety or well being of the periodic detainee or other detainees. Schedule 1 [8], [9], [11] and [15] contains consequential amendments.

Reporting late (Schedule 1 [11], [14] and [15])

Proposed section 21AA (Schedule 1 [14]) provides for a periodic detainee who, without reasonable excuse, reports late for a detention period to be treated as having failed to report for the detention period. It also enables the Commissioner to grant leave of absence for the whole or part of a detention period if a periodic detainee who reports late has a reasonable excuse for doing so. The Commissioner will be able to order a periodic detainee who reports late for part of a period to make up the time concerned by reporting earlier or staying later at another detention period. Consequential amendments are made by Schedule 1 [11] and [15].

Penalty for failure to report (Schedule 1 [12])

At present, a periodic detainee who fails to report for one or more detention periods may be penalised by an extension of his or her term of sentence by up to 2 weeks. The proposed amendment increases the maximum period by which a term of sentence may be so extended to 6 weeks.

Commencement of cumulative sentences (Schedule 1 [13] and [19])

The proposed amendment to section 21 (Schedule 1 [13]) will ensure that the commencement date of a cumulative sentence is extended appropriately when the sentence on which it is to be served cumulatively is extended under that section.

Currently, when a periodic detention order is cancelled and a minimum and additional term is imposed, the periodic detainee is imprisoned full-time for the minimum term. Proposed section 27 (1) (d) (Schedule 1 [19]) will ensure that if a cumulative sentence of periodic detention has been imposed there will be no gap between the expiration of the minimum term and the commencement of the cumulative period of periodic detention.

Refusal to cancel an order (Schedule 1 [16])

At present, a court may refuse to cancel a periodic detention order in respect of a person who has failed to report for 3 or more detention periods if it is satisfied that the person ought to have been granted leave of absence or an exemption with respect to one or more of the periods. The proposed amendment will provide that the court may do so only if the person has actually applied for the grant of leave or exemption concerned.

Admissibility of evidentiary certificate in proceedings for cancellation of orders (Schedule 1 [17])

Under section 25 of the Principal Act, an order for periodic detention may be cancelled by a court in certain circumstances. At present, a certificate signed by the Commissioner of Corrective Services certifying as to certain matters is admissible as evidence if the court is satisfied that reasonable efforts have been made to serve a copy of the certificate on the periodic detainee concerned. The proposed amendment will require the court to instead simply be satisfied that the copy has been delivered personally to the detainee or sent by post to the last known address of the detainee or by facsimile to a number nominated by the detainee.

Cancellation of orders concerning sentences to be served cumulatively (Schedule 1 [18])

Under section 5B of the Principal Act, an order for periodic detention may require that a sentence be served by way of periodic detention cumulatively on another or other sentences required by the same or a different order to be served by way of periodic detention. Proposed section 25A will ensure that if an order to serve a sentence required to be served cumulatively with another or other sentences by way of periodic detention is cancelled, orders imposing the other sentences may also be cancelled.

Anomalies concerning calculation, and commencement, of unexpired portions of sentences served on cancellation of periodic detention orders (Schedule 1 [19], [20], [22], [25] and [31])

On cancellation of an order for periodic detention under section 24 or 25 of the Principal Act, the unexpired portion of the sentence of imprisonment to which the order applied is deemed to be a separate term of imprisonment. Section 27 (1) (c) specifies the time when that term is to commence.

Proposed section 27 (1) (c) (iii) (Schedule 1 [19]) ensures that when an order is cancelled, and the detainee is not before a court or in prison and before apprehension is convicted of another offence, the unexpired portion will be served concurrently with the sentence for the separate offence under section 444 (2) of the *Crimes Act 1900*. Consequential amendments are made by Schedule 1 [19] and [20].

When an order for periodic detention is cancelled under section 24 or 25 of the Principal Act, the periodic detainee concerned is required (subject to any parole order) to serve the unexpired portion of the sentence to which the order applies in full-time imprisonment. Section 27 deems the unexpired portion to be a separate term of imprisonment imposed at the time of cancellation. Section 29 provides the method of calculating the unexpired portion. When read with section 21 (as amended by the *Periodic Detention of Prisoners (Amendment) Act 1992*) section 29 may be interpreted so that calculation of the unexpired portion results in the term of full-time imprisonment being substantially in excess of the term originally imposed and ordered to be served by way of periodic detention. To ensure this does not occur, proposed amendments repeal section 29 (Schedule 1 [25]) and provide for a new method of calculation of the unexpired portion of such a sentence (Schedule 1 [22]). Under the new method, the unexpired portion is calculated in whole weeks by taking the original sentence in weeks, adding penalty periods and deducting periods served or taken to be served. A savings provision is included to validate calculations of unexpired portions of sentences under orders for periodic detention cancelled since 22 March 1993 (the commencement of the *Periodic Detention of Prisoners (Amendment) Act 1992*) (Schedule 1 [31]).

Orders on cancellation of periodic detention orders (Schedule 1 [21])

At present, a court that cancels a periodic detention order may make certain directions as to the minimum and additional term of the sentence to which the order related or make a parole order in respect of the person concerned. The proposed amendment will enable the court to make such other orders (for example community service orders) as it considers appropriate in the circumstances.

Appeals against cancellation of order for periodic detention (Schedule 1 [23])

On cancellation of a periodic detention order the unexpired portion of the sentence of imprisonment to which the order applied is deemed to be a separate term of imprisonment imposed at the time of cancellation (section 27 (1) (c)). However, it has been suggested that in cancelling an order a magistrate is not "adjudging" a person "to be imprisoned or otherwise punished" for the purposes of section 122 (1) of the *Justices Act 1902* and that the cancellation is consequently not appealable to the District Court. Proposed section 27A (a) removes any doubt as to whether the cancellation of an order of periodic detention by a Local Court is appealable to the District Court.

Proposed section 27A (b) and (c) makes it clear that cancellation of an order for periodic detention by the District Court under section 24 is (subject to section 5 of the *Criminal Appeal Act 1912*) appealable to the Court of Criminal Appeal and that cancellation by the District Court under section 25 is not appealable.

Transfer of unruly periodic detainees (Schedule 1 [24])

Under section 18 of the Principal Act, an unruly periodic detainee may be transferred from one prison to another prison for the unexpired portion of a detention period. The proposed amendment to section 28 makes it clear that detainees who are transferred under section 18 can be dealt with under the *Prisons Act 1952* in respect of any disciplinary offences committed while in the prison to which the detainees are transferred.

Medical examination before grant of leave of absence for health reasons (Schedule 1 [26] and [29])

Under section 20 of the Principal Act, the Commissioner of Corrective Services may grant leave of absence to a periodic detainee for one or more detention periods for health reasons. The proposed amendments to section 34 will enable regulations to be made to require a periodic detainee requesting leave of absence (or directed to take leave of absence under proposed section 20A (Schedule 1 [10])) to undergo a medical examination outside a detention period at the expense of the Department of Corrective Services.

Alcohol and drug testing (Schedule 1 [27] and [28])

Proposed section 34 (1) (n) and (o) (Schedule 1 [27]) confirms the existing power to make regulations relating to testing for, and evidence of, consumption of alcohol and drugs under section 34 of the Principal Act by conferring express power to make such regulations. The proposed regulation-making powers are based on section 50 (1) (j1) and (j2) of the *Prisons Act 1952*. Schedule 1 [27] contains a consequential amendment and Schedule 1 [31] confirms the effect of the existing regulations (clause 17).

Savings and transitional regulation-making powers (Schedule 1 [30])

The proposed amendment extends the power to make regulations of a savings and transitional nature to amendments made by the proposed Act.

Savings and transitional provisions (Schedule 1 [31])

Proposed Part 4 of Schedule 2 contains savings and transitional provisions that are consequent on the enactment of the proposed Act.

First print



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New South Wales

Periodic Detention of Prisoners Amendment Bill 1995

No , 1995

A Bill for

An Act to amend the *Periodic Detention of Prisoners Act 1981* with respect to identification of persons ordered to serve sentences of imprisonment by way of periodic detention; to make further provision with respect to leave of absence and cancellation of orders for periodic detention; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Periodic Detention of Prisoners Amendment Act 1995*.

2 Commencement

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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] Section 5AA

Insert after section 5:

5AA Power to order taking of photographs and fingerprints

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- (1) A court that makes an order for periodic detention in respect of a person must also order that, before being committed to prison under section 6, the person submit to the taking of identifying particulars concerning the person. 10
- (2) Identifying particulars may be taken by a police officer or by a person specified by the court in the order.
- (3) The court may cancel the order for periodic detention if the person fails to comply with the order to submit to the taking of identifying particulars. 15
- (4) An order for periodic detention is not invalidated merely because an order is not also made to submit to the taking of identifying particulars.
- (5) Nothing in this section prevents a court making an order under section 353A of the *Crimes Act 1900* in respect of a person convicted of an offence. 20
- (6) In this section:
identifying particulars concerning a person means particulars (including photographs and fingerprints) necessary to identify the person. 25

[2] Section 8 Commencement of sentence

Insert after section 8 (2):

- (3) An order for periodic detention is not invalidated merely because the order specifies a date for commencement of the sentence of imprisonment that does not comply with the requirements of this section. 30
- (4) The court that made such an order may, on application by the Commissioner, correct the order.

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Schedule 1 Amendments

- (5) In correcting the order the court is to take into account any detention period served by the periodic detainee in compliance with the order.
- (6) It does not matter whether the court correcting 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. 5
- [3] Section 9 Service of sentence**
- Omit "on the date and at the time and prison" from section 9 (2). Insert instead "at the prison and at 8.30 am (or at such other time as may be prescribed by the regulations in relation to a particular prison) on the day following the date". 10
- [4] Section 9 (2A)**
- Insert after section 9 (2):
- (2A) The detention period in which a periodic detainee first reports for periodic detention ends at 4.30 pm on the second day after the day on which the periodic detainee first reports. 15
- [5] Section 10 Work etc**
- Omit ", between such hours as are specified in the order," from section 10 (1) (b). 20
- [6] Section 10 (1) (b)**
- Omit "or at a place outside a prison (which place shall be specified in the order)".
- Insert instead "or at a place or places outside a prison approved by the Commissioner and notified to the periodic detainee from time to time". 25
- [7] Section 10 (1)**
- Omit "detention period".
- Insert instead "one or more detention periods". 30

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

Insert "at the request of a periodic detainee and" after "Commissioner may," in section 20 (1).

[9] Section 20 (1)

Omit "a periodic detainee".

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Insert instead "the periodic detainee".

[10] Section 20A

Insert after section 20:

20A Leave of absence at direction of Commissioner or Commissioner's delegate

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(1) Without limiting the directions that may be given under section 22, the Commissioner may direct a periodic detainee to take leave of absence for one or more detention periods if the Commissioner is of the opinion that the presence of the periodic detainee in a prison during those periods would constitute a threat to the personal safety or health of the detainee or any other person.

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(2) Without limiting the circumstances in which a direction may be given under this section, a direction may be given if the periodic detainee or some other detainee is suffering from a contagious or infectious disease.

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(3) Leave of absence is taken to have been granted for each detention period for which a direction under this section has been given.

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(4) The Commissioner may delegate the exercise of the Commissioner's functions (other than this power of delegation) under this section to any officer of the Department of Corrective Services.

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

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Insert ", 20A or 21AA" after "section 20" wherever occurring in section 21 (1) and (2).

Omit “2 weeks”. Insert instead “6 weeks”.

Insert after section 21 (6):

- Insert after section 21:**

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- (5) An application must be made, in accordance with rules of court, within 21 days after the date on which the request to which it relates was refused.
- (6) Subject to any order of the Local Court to the contrary, the making of an application does not stay the operation of section 21 (1) or (2) with respect to any detention period to which the application relates. 5
- (7) An application is not to be considered by the Local Court unless it is satisfied that the application is not an abuse of process. 10
- (8) Leave of absence is taken to have been granted for each detention period (or part of a detention period) for which a direction under this section is made.
- [15] Section 25 Cancellation of orders for periodic detention otherwise than on subsequent conviction 15**
- Insert “, 20A or 21AA” after “section 20” in section 25 (3A).
- [16] Section 25 (3B) (a)**
- Omit the paragraph. Insert instead:
- (a) that the person serving the sentence applied for and ought to have been granted leave of absence under section 20 or 21AA, or applied for and ought to have been granted an exemption under section 21A, with respect to one or more detention periods, and 20
- [17] Section 25 (5) 25**
- Omit the subsection. Insert instead:
- (5) Before such a certificate is admitted in evidence, the court must be satisfied that a copy of the certificate has been served on the periodic detainee concerned by:
- (a) delivering it personally to the periodic detainee, or 30
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Schedule 1 Amendments

- (b) sending it by post to the periodic detainee at the address of the place of residence of the periodic detainee last known to the Commissioner, or
- (c) sending it by facsimile transmission to a number specified by the periodic detainee concerned (in writing to the Commissioner) as a number to which facsimile transmissions to the periodic detainee may be sent. 5

[18] Section 25A

Insert after section 25: 10

25A Cancellation of orders for periodic detention being served cumulatively

- (1) A court that cancels an order for periodic detention (*the first cancelled order*) may also cancel any other order (*a cumulative order*) requiring a sentence of imprisonment to be served by way of periodic detention cumulatively on the sentence being or to be served under the first cancelled order. 15
- (2) The court may cancel the cumulative order:
 - (a) on application by the person to whom the order applies or the Commissioner, or 20
 - (b) without application, if it appears to the court that there is good reason for doing so.
- (3) A court may cancel a cumulative order under this section whether or not it made the cumulative order. 25
- (4) If a cumulative order is cancelled under this section, the sentence of imprisonment to which the order applies is taken to be a separate term of imprisonment imposed at the time of cancellation, which term of imprisonment is to commence at the expiration of the term of the sentence of the first cancelled order or, if the first cancelled order requires more than one sentence to be served, at the expiration of the term of the sentence that last expires. 30

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- (5) If more than one cumulative order is cancelled at the time of cancellation of the same first cancelled order, each sentence of imprisonment imposed by a cancelled cumulative order is to be served cumulatively on the expiration of the term of the sentence imposed by the cumulative order cancelled immediately before it. 5

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

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

- (ii) in the case of a person (not being a person referred to in subparagraph (iii)) who is not before a court or in prison when the order made in respect of the person is cancelled, at the time at which the warrant for the apprehension and detention of the person is executed, or 10 15
- (iii) in the case of a person who is not before a court or in prison when the order made in respect of the person is cancelled and who before being apprehended to serve the unexpired portion of the sentence to which the order applied is sentenced to serve a term of imprisonment full-time for any offence, at the time at which that sentence is passed, and 20
- (d) any sentence of imprisonment that, by an order under section 5B, is required to be served cumulatively on the sentence of imprisonment to which the cancelled order applied is (unless the order under section 5B is cancelled) to be deemed to be a separate term of imprisonment imposed at the time of the cancellation that is to commence on completion of service of the minimum term of imprisonment referred to in subsection (4). 25 30

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Schedule 1 Amendments

[20] Section 27 (1A)

Insert after section 27 (1):

- (1A) For the purposes of subsection (1) (c) (iii), the warrant for apprehension and detention is taken to be a warrant for detention from the time at which the sentence referred to in that provision is passed. 5

[21] Section 27 (4)

Omit "Act.". Insert instead:

Act,

or, on application by the Commissioner, may make such other orders as the court considers appropriate. 10

[22] Section 27 (6) and (7)

Insert after section 27 (5):

- (6) In this section, *unexpired portion of the sentence of imprisonment to which the order applied* means a period of time the length of which corresponds to the sum of: 15

- (a) the total number of weeks of the term of the sentence of imprisonment required by the order to be served by way of periodic detention, and 20

- (b) each week by which the term of sentence has been extended under section 21 (2),

less the total number of weeks of the sentence of imprisonment served or deemed to be served under this Act. 25

- (7) Any fraction of a week is to be disregarded in calculating a period of time for the purposes of subsection (6).

[23] Section 27A

Insert after section 27:

27A Appeals against cancellation of orders for periodic detention

To remove doubt it is declared that:

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- (a) an order under section 24 or 25 made by a Local Court is appealable in the same manner as if it were, or were part of, an order for periodic detention made by a Local Court, and
- (b) an order under section 24 made by the District Court is, in accordance with and subject to section 5 of the *Criminal Appeal Act 1912*, appealable to the Court of Criminal Appeal, and
- (c) an order under section 25 made by the District Court is final.

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[24] Section 28 Periodic detainee taken to be a prisoner

Insert after section 28 (a):

- (a1) detained in a prison to which the periodic detainee has been transferred under section 18 to serve the unexpired portion of a detention period,

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[25] Section 29 Calculation of proportion of sentence served

Omit the section.

[26] Section 34 Regulations

Insert at the end of section 34 (1) (e):

- (e1) without limiting paragraph (e), requirements to be observed by periodic detainees requesting, or directed to take, leave of absence for health reasons, including regulations requiring periodic detainees to undergo medical examinations (whether during a detention period or at another time) by a Government Medical Officer,

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Periodic Detention of Prisoners Amendment Bill 1995

Schedule 1 Amendments

[27] Section 34 (1) (l)

Omit "and".

[28] Section 34 (1) (n) and (o)

Insert after section 34 (1) (m):

- (n) requiring periodic detainees to undergo breath tests, to supply specimens of urine and to undergo other tests and provide other specimens in connection with the good order, discipline and health of detainees, and 5
- (o) the analysis of any such test or specimen and the admission as prima facie evidence in any proceedings of certificates relating to the results of any such analysis. 10

[29] Section 34 (1E)

Insert after section 34 (1D): 15

(1E) In this section:

Government Medical Officer means a person (or nominee of the person) who holds an office for the time being determined by the Public Employment Office to be an office of Government Medical Officer for the purposes of the *Public Sector Management Act 1988*. 20

[30] Schedule 2 Savings and transitional provisions

Insert at the end of clause 1 (1):

Periodic Detention of Prisoners Amendment Act 1995.

[31] Schedule 2, Part 4

Insert after clause 11:

**Part 4 Provisions consequent on enactment of
Periodic Detention of Prisoners Amendment
Act 1995**

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12 Definition

In this Part:

the amending Act means the *Periodic Detention of
Prisoners Amendment Act 1995*.

13 Calculation of proportion of sentence served

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Anything done or purporting to be done concerning the calculation of an unexpired portion of a term of imprisonment in relation to an order for periodic detention cancelled on or after 22 March 1993 (the commencement of the *Periodic Detention of Prisoners (Amendment) Act 1992*) and before the commencement of Schedule 1 [22] to the amending Act that would have been validly done if section 27, as amended by the amending Act, were in force, is validated.

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14 Failure to report as required extends term of sentence

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- (1) Section 21 (3), as amended by the amending Act, does not apply in respect of the extension of a term of a sentence for a failure to report for a detention period before the commencement of Schedule 1 [12] to the amending Act.

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- (2) Section 21 (7), as amended by the amending Act, extends to a sentence required to be served cumulatively as referred to in that subsection by an order under section 5B made before the commencement of Schedule 1 [13] to the amending Act.

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15 Reporting late

Section 21AA, as inserted by the amending Act, does not apply in respect of any detention period for which a periodic detainee has reported late before the commencement of Schedule 1 [14] to the amending Act. 5

16 Admissibility of evidentiary certificates

Section 25 (5), as amended by the amending Act, does not apply in proceedings concerning an application under section 25 made before the commencement of Schedule 1 [17] to the amending Act. 10

17 Regulations

Section 34, as amended by the amending Act, extends to a regulation made before the commencement of Schedule 1 [28] to the amending Act.

Second print



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This PUBLIC BILL, originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

*Clerk of the Legislative Assembly.
Legislative Assembly*



New South Wales

Periodic Detention of Prisoners Amendment Bill 1995

Act No , 1995

An Act to amend the *Periodic Detention of Prisoners Act 1981* with respect to identification of persons ordered to serve sentences of imprisonment by way of periodic detention; to make further provision with respect to leave of absence and cancellation of orders for periodic detention; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Periodic Detention of Prisoners Amendment Act 1995*.

2 Commencement

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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] Section 5AA

Insert after section 5:

5AA Power to order taking of photographs and fingerprints

- (1) A court that makes an order for periodic detention in respect of a person must also order that, before being committed to prison under section 6, the person submit to the taking of identifying particulars concerning the person. 5
10
- (2) Identifying particulars may be taken by a police officer or by a person specified by the court in the order.
- (3) The court may cancel the order for periodic detention if the person fails to comply with the order to submit to the taking of identifying particulars. 15
- (4) An order for periodic detention is not invalidated merely because an order is not also made to submit to the taking of identifying particulars.
- (5) Nothing in this section prevents a court making an order under section 353A of the *Crimes Act 1900* in respect of a person convicted of an offence. 20
- (6) In this section:
identifying particulars concerning a person means particulars (including photographs and fingerprints) necessary to identify the person. 25

[2] Section 8 Commencement of sentence

Insert after section 8 (2):

- (3) An order for periodic detention is not invalidated merely because the order specifies a date for commencement of the sentence of imprisonment that does not comply with the requirements of this section. 30
- (4) The court that made such an order may, on application by the Commissioner, correct the order.

Periodic Detention of Prisoners Amendment Bill 1995

Schedule 1 Amendments

(5) In correcting the order the court is to take into account any detention period served by the periodic detainee in compliance with the order.

(6) It does not matter whether the court correcting 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.

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[3] Section 9 Service of sentence

Omit "on the date and at the time and prison" from section 9 (2).
Insert instead "at the prison and at 8.30 am (or at such other time as may be prescribed by the regulations in relation to a particular prison) on the day following the date".

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[4] Section 9 (2A)

Insert after section 9 (2):

(2A) The detention period in which a periodic detainee first reports for periodic detention ends at 4.30 pm on the second day after the day on which the periodic detainee first reports.

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[5] Section 10 Work etc

Omit ", between such hours as are specified in the order," from section 10 (1) (b).

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[6] Section 10 (1) (b)

Omit "or at a place outside a prison (which place shall be specified in the order)".

Insert instead "or at a place or places outside a prison approved by the Commissioner and notified to the periodic detainee from time to time".

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[7] Section 10 (1)

Omit "detention period".

Insert instead "one or more detention periods".

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

Insert “at the request of a periodic detainee and” after “Commissioner may,” in section 20 (1).

[9] Section 20 (1)

Omit “a periodic detainee”.

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Insert instead “the periodic detainee”.

[10] Section 20A

Insert after section 20:

20A Leave of absence at direction of Commissioner or Commissioner's delegate

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(1) Without limiting the directions that may be given under section 22, the Commissioner may direct a periodic detainee to take leave of absence for one or more detention periods if the Commissioner is of the opinion that the presence of the periodic detainee in a prison during those periods would constitute a threat to the personal safety or health of the detainee or any other person.

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(2) Without limiting the circumstances in which a direction may be given under this section, a direction may be given if the periodic detainee or some other detainee is suffering from a contagious or infectious disease.

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(3) Leave of absence is taken to have been granted for each detention period for which a direction under this section has been given.

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(4) The Commissioner may delegate the exercise of the Commissioner's functions (other than this power of delegation) under this section to any officer of the Department of Corrective Services.

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

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Insert “, 20A or 21AA” after “section 20” wherever occurring in section 21 (1) and (2).

Omit "2 weeks". Insert instead "6 weeks".

Insert after section 21 (6):

- (7) If any sentence is, by an order under section 5B, required to be served cumulatively on a sentence the term of which is extended under this section, the date of commencement of the sentence to be served cumulatively as specified in the order is taken to be extended by the length of time by which the term of sentence is so extended.

Insert after section 21:

- (1) A periodic detainee who, without reasonable excuse, reports late for a detention period (otherwise than on leave of absence under section 20 or 20A) is taken for the purposes of section 21 (1) to have failed to report for that detention period. 15
- (2) The Commissioner may, in accordance with the regulations, grant leave of absence for part or all of a detention period to a periodic detainee who, with reasonable excuse, reports late for the detention period. 20
- (3) When leave of absence is granted for part of a detention period, the Commissioner may direct the periodic detainee to serve an equivalent period of time to that for which leave is granted immediately before the commencement, or at the end, of a detention period specified by the Commissioner. 25
- (4) A Local Court may, on the application of a periodic detainee whose request for leave of absence for part or all of a detention period has been refused, direct that leave of absence be granted in respect of part or all of the detention period. 30

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- (5) An application must be made, in accordance with rules of court, within 21 days after the date on which the request to which it relates was refused.
- (6) Subject to any order of the Local Court to the contrary, the making of an application does not stay the operation of section 21 (1) or (2) with respect to any detention period to which the application relates. 5
- (7) An application is not to be considered by the Local Court unless it is satisfied that the application is not an abuse of process. 10
- (8) Leave of absence is taken to have been granted for each detention period (or part of a detention period) for which a direction under this section is made.
- [15] Section 25 Cancellation of orders for periodic detention otherwise than on subsequent conviction** 15
- Insert “, 20A or 21AA” after “section 20” in section 25 (3A).
- [16] Section 25 (3B) (a)**
- Omit the paragraph. Insert instead:
- (a) that the person serving the sentence applied for and ought to have been granted leave of absence under section 20 or 21AA, or applied for and ought to have been granted an exemption under section 21A, with respect to one or more detention periods, and 20
- [17] Section 25 (5)** 25
- Omit the subsection. Insert instead:
- (5) Before such a certificate is admitted in evidence, the court must be satisfied that a copy of the certificate has been served on the periodic detainee concerned by:
- (a) delivering it personally to the periodic detainee, or 30

- (b) sending it by post to the periodic detainee at the address of the place of residence of the periodic detainee last known to the Commissioner.

[18] Section 25A

Insert after section 25: 5

25A Cancellation of orders for periodic detention being served cumulatively

- (1) A court that cancels an order for periodic detention (*the first cancelled order*) may also cancel any other order (*a cumulative order*) requiring a sentence of imprisonment to be served by way of periodic detention cumulatively on the sentence being or to be served under the first cancelled order. 10
- (2) The court may cancel the cumulative order:
 - (a) on application by the person to whom the order applies or the Commissioner, or 15
 - (b) without application, if it appears to the court that there is good reason for doing so.
- (3) A court may cancel a cumulative order under this section whether or not it made the cumulative order. 20
- (4) If a cumulative order is cancelled under this section, the sentence of imprisonment to which the order applies is taken to be a separate term of imprisonment imposed at the time of cancellation, which term of imprisonment is to commence at the expiration of the term of the sentence of the first cancelled order or, if the first cancelled order requires more than one sentence to be served, at the expiration of the term of the sentence that last expires. 25

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- (5) If more than one cumulative order is cancelled at the time of cancellation of the same first cancelled order, each sentence of imprisonment imposed by a cancelled cumulative order is to be served cumulatively on the expiration of the term of the sentence imposed by the cumulative order cancelled immediately before it. 5

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

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

- (ii) in the case of a person (not being a person referred to in subparagraph (iii)) who is not before a court or in prison when the order made in respect of the person is cancelled, at the time at which the warrant for the apprehension and detention of the person is executed, or 10
15
- (iii) in the case of a person who is not before a court or in prison when the order made in respect of the person is cancelled and who before being apprehended to serve the unexpired portion of the sentence to which the order applied is sentenced to serve a term of imprisonment full-time for any offence, at the time at which that sentence is passed, and 20
- (d) any sentence of imprisonment that, by an order under section 5B, is required to be served cumulatively on the sentence of imprisonment to which the cancelled order applied is (unless the order under section 5B is cancelled) to be deemed to be a separate term of imprisonment imposed at the time of the cancellation that is to commence on completion of service of the minimum term of imprisonment referred to in subsection (4). 25
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[20] Section 27 (1A)

Insert after section 27 (1):

- (1A) For the purposes of subsection (1) (c) (iii), the warrant for apprehension and detention is taken to be a warrant for detention from the time at which the sentence referred to in that provision is passed. 5

[21] Section 27 (4)

Omit "Act.". Insert instead:

Act,

or, on application by the Commissioner, may make such other orders as the court considers appropriate. 10

[22] Section 27 (6) and (7)

Insert after section 27 (5):

- (6) In this section, *unexpired portion of the sentence of imprisonment to which the order applied* means a period of time the length of which corresponds to the sum of: 15
- (a) the total number of weeks of the term of the sentence of imprisonment required by the order to be served by way of periodic detention, and 20
- (b) each week by which the term of sentence has been extended under section 21 (2),
- less the total number of weeks of the sentence of imprisonment served or deemed to be served under this Act. 25
- (7) Any fraction of a week is to be disregarded in calculating a period of time for the purposes of subsection (6).

[23] Section 27A

Insert after section 27:

27A Appeals against cancellation of orders for periodic detention

To remove doubt it is declared that: 5

- (a) an order under section 24 or 25 made by a Local Court is appealable in the same manner as if it were, or were part of, an order for periodic detention made by a Local Court, and
- (b) an order under section 24 made by the District Court is, in accordance with and subject to section 5 of the *Criminal Appeal Act 1912*, appealable to the Court of Criminal Appeal, and 10
- (c) an order under section 25 made by the District Court is final. 15

[24] Section 28 Periodic detainee taken to be a prisoner

Insert after section 28 (a):

- (a1) detained in a prison to which the periodic detainee has been transferred under section 18 to serve the unexpired portion of a detention period, 20

[25] Section 29 Calculation of proportion of sentence served

Omit the section.

[26] Section 34 Regulations

Insert at the end of section 34 (1) (e):

- (e1) without limiting paragraph (e), requirements to be observed by periodic detainees requesting, or directed to take, leave of absence for health reasons, including regulations requiring periodic detainees to undergo medical examinations (whether during a detention period or at another time) by a Government Medical Officer, 25 30

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Schedule 1 Amendments

[27] Section 34 (1) (l)

Omit "and".

[28] Section 34 (1) (n) and (o)

Insert after section 34 (1) (m):

- (n) requiring periodic detainees to undergo breath tests, to supply specimens of urine and to undergo other tests and provide other specimens in connection with the good order, discipline and health of detainees, and 5
- (o) the analysis of any such test or specimen and the admission as prima facie evidence in any proceedings of certificates relating to the results of any such analysis. 10

[29] Section 34 (1E)

Insert after section 34 (1D): 15

(1E) In this section:

Government Medical Officer means a person (or nominee of the person) who holds an office for the time being determined by the Public Employment Office to be an office of Government Medical Officer for the purposes of the *Public Sector Management Act 1988*. 20

[30] Schedule 2 Savings and transitional provisions

Insert at the end of clause 1 (1):

Periodic Detention of Prisoners Amendment Act 1995.

[31] Schedule 2, Part 4

Insert after clause 11:

**Part 4 Provisions consequent on enactment of
Periodic Detention of Prisoners Amendment
Act 1995**

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12 Definition

In this Part:

the amending Act means the *Periodic Detention of
Prisoners Amendment Act 1995*.

13 Calculation of proportion of sentence served

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Anything done or purporting to be done concerning the
calculation of an unexpired portion of a term of
imprisonment in relation to an order for periodic
detention cancelled on or after 22 March 1993 (the
commencement of the *Periodic Detention of Prisoners
(Amendment) Act 1992*) and before the commencement
of Schedule 1 [22] to the amending Act that would have
been validly done if section 27, as amended by the
amending Act, were in force, is validated.

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14 Failure to report as required extends term of sentence

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- (1) Section 21 (3), as amended by the amending Act, does
not apply in respect of the extension of a term of a
sentence for a failure to report for a detention period
before the commencement of Schedule 1 [12] to the
amending Act.

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- (2) Section 21 (7), as amended by the amending Act,
extends to a sentence required to be served cumulatively
as referred to in that subsection by an order under
section 5B made before the commencement of
Schedule 1 [13] to the amending Act.

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15 Reporting late

Section 21AA, as inserted by the amending Act, does not apply in respect of any detention period for which a periodic detainee has reported late before the commencement of Schedule 1 [14] to the amending Act.

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16 Admissibility of evidentiary certificates

Section 25 (5), as amended by the amending Act, does not apply in proceedings concerning an application under section 25 made before the commencement of Schedule 1 [17] to the amending Act.

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17 Regulations

Section 34, as amended by the amending Act, extends to a regulation made before the commencement of Schedule 1 [28] to the amending Act.