

Second print



New South Wales

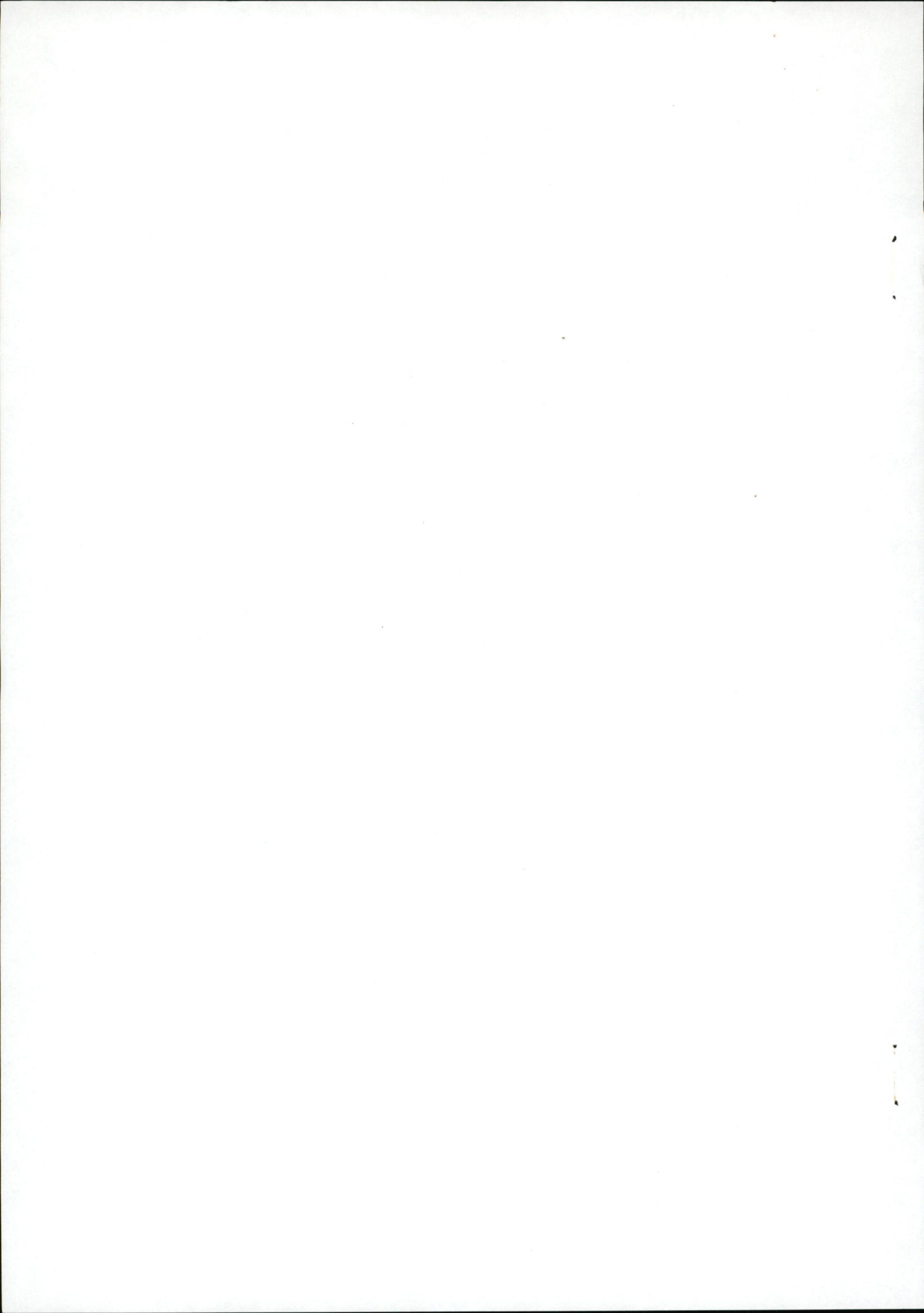
# Periodic Detention of Prisoners Amendment Bill 1995

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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

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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.

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**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 5

- (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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(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

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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).

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**[12] Section 21 (3)**

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

**[13] Section 21 (7)**

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. 5  
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**[14] Section 21AA**

Insert after section 21:

**21AA Reporting late**

- (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).



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**[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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**[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.