



New South Wales

Home Detention Regulation 1997

under the

Home Detention Act 1996

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Home Detention Act 1996*.

BOB DEBUS, M.P.,

Minister for Corrective Services

Explanatory note

The object of this Regulation is to prescribe matters necessary or incidental to the operation of the *Home Detention Act 1996*. The Regulation contains provisions prescribing, among other things:

- (a) offences, in addition to those mentioned in the Act, in respect of which home detention is not available, and
- (b) the standard conditions applicable to home detention, and
- (c) forms to be used for the purposes of the Act.

This Regulation is made under section 25 of the Act and under the other provisions of the Act mentioned in the Regulation.

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Home Detention Regulation 1997

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Home Detention Regulation 1997

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Home Detention Regulation 1997*.

2 Commencement

This Regulation commences on 21 February 1997.

3 Definition

In this Regulation:

the Act means the *Home Detention Act 1996*.

4 Forms

The forms set out in Schedule 1 are to be used for the purposes for which they are appropriate.

5 Notes

The explanatory note, table of contents and notes in the text of this Regulation do not form part of this Regulation.

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Part 2 Home detention

Part 2 Home detention

6 Drug offences for which home detention not available

For the purposes of section 6 (h) of the Act, offences under sections 23 (2), 24 (2), 25 (2), 26, 27 and 28 of the *Drug Misuse and Trafficking Act 1985*, where the number or amount of prohibited plant or prohibited drug concerned is a commercial quantity within the meaning of that Act, are prescribed offences.

7 Assessment of effect of order on children

- (1) If a child under the age of 18 years would be living with an offender serving home detention, an assessment is to be carried out under the Act of the effect of the order on the child.
- (2) The assessment is to be carried out jointly by a supervising officer and an officer employed in the Department of Community Services in accordance with child protection risk assessment procedures approved by the Director-General of that Department.

8 Consent of co-residents

- (1) For the purposes of section 8 (2) of the Act, the consent of a child under the age of 18 years or of a mentally incapacitated person may be given by the Commissioner of Corrective Services.
- (2) The Commissioner of Corrective Services must have regard to the assessment referred to in clause 7 when determining whether to give consent.

9 Standard conditions applying to home detention

For the purposes of section 13 (1) (a) of the Act, the following are standard conditions of home detention:

- (a) the offender must be of good behaviour and must not commit any new offence,
- (b) the offender must advise a supervising officer as soon as possible if arrested or detained by a police officer,
- (c) the offender must reside only at premises approved by a supervising officer,

- (d) the offender must remain at the approved residence at all times other than when engaged in specified activities approved of or arranged by a supervising officer or when faced with immediate danger (such as in a fire or medical emergency),
- (e) the offender must adhere to the specified activity plan during approved absences from the approved residence,
- (f) the offender must advise a supervising officer as soon as practicable after departure from the approved residence due to immediate danger,
- (g) the offender must accept any visit to the approved residence by a supervising officer at any time,
- (h) the offender must submit to searches of places or things under the immediate control of the offender, as required by a supervising officer,
- (i) the offender must submit to electronic monitoring (including voice recording) of compliance with the home detention order and comply with all instructions given by a supervising officer in relation to the operation of monitoring systems,
- (j) the offender must not tamper with, damage or disable monitoring equipment,
- (k) the offender must comply with any direction of the supervising officer in relation to association with specified persons,
- (l) the offender must not consume alcohol,
- (m) the offender must not use prohibited drugs, obtain drugs unlawfully or abuse drugs lawfully obtained,
- (n) the offender must submit, as required by a supervising officer, to breath testing, urinalysis or other medically approved test procedures for detecting alcohol or drug use,
- (o) the offender must authorise any medical practitioner, therapist or counsellor to provide information to a supervising officer,
- (p) the offender must accept any direction of a supervising officer in relation to the maintenance of or obtaining of employment,

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Part 2 Home detention

- (q) the offender must inform any employer of the home detention order and, if so directed by a supervising officer, of the nature of the offence that occasioned it,
- (r) the offender must authorise contact between any employer of the offender and a supervising officer,
- (s) the offender must engage in personal development activities or in counselling or treatment programs, as directed by a supervising officer,
- (t) the offender must undertake community service work when not otherwise employed (not exceeding 20 hours per week), as directed by a supervising officer,
- (u) the offender must not possess or have in his or her control any firearm or other offensive weapon,
- (v) the offender must comply with all reasonable directions of a supervising officer.

10 Sanctions for breach of home detention order

- (1) For the purposes of section 14 (1) of the Act, a supervising officer may deal with a breach of the conditions applying to a home detention order.
- (2) The supervising officer may impose any of the following sanctions for such a breach:
 - (a) a formal warning,
 - (b) a more stringent application of the conditions of home detention in accordance with the terms of those conditions, such as:
 - (i) an increase in required hours of community service work,
 - (ii) a reduction in the extent of planned or previously permitted out-of-residence activities,
 - (iii) further restrictions on association.
- (3) For the purposes of section 16 (3) of the Act, the Board may discipline an offender by imposing any of the sanctions referred to in subclause (1) or by imposing additional specific conditions or varying the conditions of home detention.

11 Notice of inquiry into alleged breach of conditions

- (1) A notice under section 15 (1) of the Act must be served on the offender at least 7 days before the date on which the offender is required to appear before the Board.
- (2) The Board must send a copy of each such notice to the Commissioner of Corrective Services.

12 Revocation of home detention order by court

If a court revokes a home detention order under section 23 of the Act, the registrar or clerk of the court must send written notice of that fact to the Commissioner of Corrective Services and to the Board.

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Part 3 Miscellaneous

Part 3 Miscellaneous

13 Service of notices where offender in custody

- (1) As soon as practicable after receiving a notice in accordance with section 24 (2) of the Act, the custodian of an offender must ensure that:
 - (a) the notice is read to the offender, and
 - (b) the effect of the notice is explained to the offender, and
 - (c) the notice is handed to the offender.
- (2) Notice of an offender's intention to make representations to the Board concerning the revocation of a home detention order:
 - (a) must be given by the offender to the custodian, and
 - (b) must be sent by the custodian to the Secretary of the Board.

Schedule 1 Forms

FORM 1

RECORD OF HOME DETENTION ORDER

Home Detention Act 1996

1 Sentencing details

Case No:

Conviction Date:

*Local/*District Court at:

Offender:

Date of birth:

Offence:

Particulars of imprisonment imposed by Court

*Fixed/*Minimum term of

to commence on:

and

**Additional term of

to commence at the expiration of minimum term and to expire on:.....

Earliest day eligible for release to parole is:

*The above term of imprisonment is to be served cumulatively on:.....

*Fixed/*Minimum term of:

that commenced on:

2 Service by way of home detention

Pursuant to the provisions of the *Home Detention Act 1996*, the Court directed that the offender serve the above *fixed/*minimum term by way of home detention.

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Schedule 1 Forms

3 Conditions imposed by the court

In addition to any other conditions to which the home detention order is subject, the following additional conditions were imposed by the court:

.....
.....

.....
Registrar/Clerk of the court

* Delete if not applicable

FORM 2
HOME DETENTION UNDERTAKING
AND
CONSENTS OF OFFENDER AND CO-RESIDENTS
Home Detention Act 1996

1 Home detention undertaking

I understand that serving my sentence by way of home detention depends on my compliance with all conditions of the home detention order. Therefore, I agree that, while the order is in force, I will:

- (a) be of good behaviour and commit no new offence,
- (b) advise a supervising officer as soon as possible if arrested or detained by a police officer,
- (c) reside only at premises approved by a supervising officer,
- (d) remain at the approved residence at all times other than when engaged in specified activities approved of or arranged by a supervising officer or when faced with immediate danger,
- (e) adhere to the specified activity plan during approved absences from the approved residence,

-
- (f) advise a supervising officer as soon as practicable after departure from the approved residence due to immediate danger,
 - (g) accept any visit to the approved residence by a supervising officer at any time,
 - (h) submit to searches of places or things under my immediate control as required by a supervising officer,
 - (i) submit to electronic monitoring (which may include voice recording) of compliance with the home detention order and comply with all instructions regarding the operation of monitoring systems,
 - (j) not tamper with, damage or disable monitoring equipment,
 - (k) comply with any direction of a supervising officer in relation to association with nominated persons,
 - (l) not consume alcohol,
 - (m) not use prohibited drugs, obtain drugs unlawfully or abuse drugs lawfully obtained,
 - (n) submit to breath testing, urinalysis (or other medically approved test procedures) to determine alcohol or drug use as required by a supervising officer,
 - (o) authorise any medical practitioner, therapist or counsellor to provide information to a supervising officer,
 - (p) accept the direction of a supervising officer in relation to the maintenance of or seeking of employment,
 - (q) inform any employer of the home detention order and, if so directed by a supervising officer, the nature of the offence,
 - (r) authorise contact between any employer and a supervising officer,
 - (s) engage in personal development activities, or in counselling or treatment programs as directed by a supervising officer,
 - (t) undertake community service work when not otherwise employed, as directed by a supervising officer,
 - (u) not possess or have in control any firearm or other offensive weapon,
 - (v) comply with reasonable directions of a supervising officer,
 - (w) comply with any additional conditions imposed by the court or the Parole Board.
-

2 Sanctions

I understand that, as an alternative means of serving a sentence of imprisonment, home detention will be strictly enforced. Failure to comply with any of the conditions of the order will be penalised by the imposition of some sanction and may lead to revocation of the home detention order by the Parole Board. I acknowledge and accept that:

- (1) arrests during the term of home detention will be reported to the Board
- (2) convictions for offences committed during the term of home detention will be referred to the Board for consideration of revocation
- (3) failure to comply with the conditions may be referred to the Board for consideration of revocation or may be referred to a supervising officer or the Board for the imposition of a sanction, such as:
 - (a) a formal warning
 - (b) increased community service work
 - (c) reduction in out of residence activities
 - (d) restrictions on associations
 - (e) imposition by the Board of specific additional conditions
- (4) if my home detention order is revoked, I will be required to serve the balance of my fixed or minimum term in a correctional centre.

3 Offender's consent and acknowledgement

I consent to the making of a home detention order in respect of my sentence and I acknowledge that:

- (1) I have received a copy of this undertaking, I have had it read and explained to me and I understand its contents.
- (2) I have been told who my initial supervising officer will be, when I am required to make initial contact and how I may contact that officer or a substitute at any time.
- (3) I have been informed that there may be additional telephone costs as a consequence of electronic monitoring.

(4) I consent to all the terms of this undertaking.

.....
(Offender) (Witness) (Date)

4 Co-resident consent

The above home detention undertaking and the conditions of the home detention order have been explained to me/us* and I/we* consent to the making of the home detention order.

.....
.....
.....
.....
(co-residents)
.....
(Witness)

* delete if inapplicable.

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Schedule 1 Forms

FORM 3
WARRANT FOR APPREHENSION AND DETENTION
Home Detention Act 1996

To all police officers in the State of New South Wales, and to all keepers of correctional centres in the State.

WHEREAS was sentenced to
by (Court) at on.. for
the offence(s) of

AND by order of the Court dated
was ordered to serve home detention, NOW the Parole Board issues this
warrant authorising any police officer to apprehend the said

- | | |
|--|--|
| * and remove him/her to a
correctional centre | * to serve the portion of his/her
fixed or minimum term of
imprisonment unexpired on..... |
| * and to remove him/her
to | * for the purpose of conducting,
within 7 days, an inquiry as to
whether the order should be
revoked. |

The Parole Board *has revoked/is to consider the revocation of the home
detention order for breach of the following terms and conditions of the order,
namely:

.....

This warrant is sufficient authority for the apprehension of the
said and *his/her removal to and retention at the place required by this
warrant.

.....

Judicial Member of the Parole Board

*Delete if inapplicable.

FORM 4
NOTICE TO OFFENDER OF REVIEW BY THE PAROLE
BOARD
Home Detention Act 1996

TO (Name of offender)

TAKE NOTICE that the Parole Board at its meeting on
made an order for revocation of your home detention order to date from
.....

The Board will reconvene on _____ at _____ (time) in order to
reconsider the revocation of your home detention order.

A copy of the order made that revoked your home detention order is
attached.

* Copies are attached of reports and other documents used by the Board in
reaching its decision to revoke your home detention order.

You may make submissions to the Board with respect to *the revocation of
your home detention order/*the date of revocation of your home detention
order. If you wish to do so, you are required to notify the Secretary of the
Board not later than

.....

Secretary of the Parole Board

*Delete if inapplicable.

FORM 5

**NOTICE RELATING TO REPRESENTATIONS TO BOARD ON
REVIEW OF REVOCATION OF ORDER**

Home Detention Act 1996

To the Secretary of the Parole Board

from (Name of offender)

TAKE NOTICE that I *do not intend/intend to make representations to the Board at the review to be held on to reconsider whether my home detention order should be revoked.

At that time,

I *do not wish/wish to appear before the Board.

I *do not intend/intend to be legally represented.

I wish ~~to~~ be represented at this meeting
by
of
and seek the consent of the Board for this person to attend for this purpose.
My reasons for requesting representation by the named person are:

.....
.....

Signed:

Date:

*Delete if inapplicable.

FORM 6

NOTICE OF REVOCATION OF HOME DETENTION ORDER

Home Detention Act 1996

TAKE NOTICE that on (date) the (Court)
at revoked the home detention order made
by (Court) on (date)
in respect of.. (offender).

*The court directed that the home detention order be taken to have been
revoked on

.....

*Registrar/*Clerk of the Court

TO:

The Commissioner,
Department of Corrective Services

The Parole Board

*Delete if inapplicable.