



New South Wales

# Home Detention Act 1996 No 78

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New South Wales

## Home Detention Act 1996 No 78

Act No 78, 1996

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An Act to provide for home detention as a means of serving a sentence of imprisonment in certain cases. [Assented to 1 November 1996]

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**The Legislature of New South Wales enacts:**

## **Part 1 Preliminary**

### **1 Name of Act**

This Act is the *Home Detention Act 1996*.

### **2 Commencement**

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

### **3 Definitions**

In this Act:

*additional term* has the same meaning as in the *Sentencing Act 1989*.

*assessment report* means a report referred to in section 10.

*Board* means the Parole Board established under the *Sentencing Act 1989*.

*fixed term* has the same meaning as in the *Sentencing Act 1989*.

*home detention order* means an order referred to in section 11.

*minimum term* has the same meaning as in the *Sentencing Act 1989*.

*supervising officer* means a person employed in the Probation and Parole Service who is designated a supervising officer for the purposes of this Act.

### **4 Objects**

- (1) The objects of this Act are to provide for home detention as a means of serving a sentence of full-time imprisonment, and to that end:
  - (a) to define the class of sentences of imprisonment that may be served by way of home detention, and the class of offenders who are eligible to serve a sentence in that way, and

- (b) to provide for due assessment of eligible offenders so as to determine their suitability, and the suitability of their circumstances, to serve a term of imprisonment by way of home detention, and
  - (c) to provide for the making and revocation of home detention orders and for the imposition of conditions applicable to home detention:
    - (i) specifying periods of confinement and the circumstances in which the offender may be absent from home, and
    - (ii) regulating the conduct of the offender while subject to home detention and providing for the monitoring of that conduct, and
    - (iii) generally defining the constraints and privileges pertaining to home detention.
- (2) It is not the object of this Act to divert to home detention offenders who might be appropriately dealt with by way of periodic detention or by a non-custodial form of sentence.

## **Part 2 Home detention orders**

### **5 Sentences that may be served by way of home detention**

- (1) A home detention order may be made in respect of a sentence of imprisonment comprising:
  - (a) a fixed term of imprisonment not exceeding 18 months, or
  - (b) a minimum and an additional term that do not in the aggregate exceed 18 months.
- (2) If a person is sentenced to two or more terms of imprisonment that are to be served concurrently, and if each such sentence is one to which subsection (1) applies, a home detention order may be made in respect of each of the sentences so as to allow them to be served concurrently by way of home detention.
- (3) If a person is sentenced to two or more terms of imprisonment that are cumulative, a home detention order may only be made in respect of the sentences so as to allow them to be served cumulatively by way of home detention if in the aggregate the minimum and additional terms required to be served, calculated in accordance with section 9 of the *Sentencing Act 1989*, do not in the aggregate exceed 18 months.

### **6 Home detention not available for certain offences**

A home detention order cannot be made in respect of a sentence of imprisonment for any of the following offences:

- (a) murder, attempted murder or manslaughter,
- (b) sexual assault of adults or children or sexual offences involving children,
- (c) armed robbery,
- (d) any offence involving the use of a firearm,
- (e) assault occasioning actual bodily harm (or any more serious assault, such as malicious wounding or assault with intent to do grievous bodily harm),
- (f) stalking or intimidation contrary to section 562AB of the *Crimes Act 1900*,

- (g) a domestic violence offence against a person with whom the offender would wish to reside, or continue or resume a relationship, if a home detention order were made,
- (h) any offence under the *Drug Misuse and Trafficking Act 1985* prescribed by the regulations for the purposes of this paragraph, or any other offence so prescribed.

### **7 Home detention not available for offenders with certain history**

- (1) A home detention order cannot be made for an offender:
  - (a) who has at any time been convicted of any offence mentioned in section 6 (a) or (b) or any other offence prescribed by the regulations for the purposes of this paragraph, or
  - (b) who has at any time been convicted of stalking or intimidation contrary to section 562AB of the *Crimes Act 1900*, or
  - (c) who has within the last 5 years been convicted of a domestic violence offence against a person with whom the offender would wish to reside, or continue or resume a relationship, if a home detention order were made, or
  - (d) who is, or has been within the last 5 years, subject to an apprehended violence order made for the protection of a person with whom the offender would wish to reside, or to continue or resume a relationship, if a home detention order were made.
- (2) Offences prescribed by regulations made for the purposes of subsection (1) (a) may include offences under a law of the Commonwealth or of another State or a Territory.

### **8 Other circumstances precluding order**

- (1) A home detention order cannot be made unless:
  - (a) the offender concerned has consented in writing, in the form prescribed by the regulations, to the making of the order, and
  - (b) the persons, if any, who would be residing with the offender during the period of the offender's home detention have consented in writing, in the form prescribed by the regulations, to the making of the order.

- (2) For the purposes of subsection (1) (b), the consent of children below a prescribed age or of persons suffering a prescribed disability may be given on their behalf by such other persons as the regulations may determine or may, if the regulations so provide (and subject to any prescribed conditions), be dispensed with.
- (3) A home detention order must not be made if the court considers it likely that the offender will commit any sexual offence or any offence involving violence while the order is in force, even though the offender may have no history of committing offences of that nature.
- (4) A home detention order must not be made unless the offender has been assessed under section 10 and the relevant assessment report recommends that the sentence might be appropriately served by way of home detention.
- (5) A court may, for reasons appearing to it to be sufficient, decline to make a home detention order despite the contents of the assessment report.

## **9 Referral for assessment of suitability**

- (1) The court by whom a person is sentenced as referred to in section 5, or any court reviewing such a sentence, may refer the offender for assessment as to the suitability of the offender for home detention as a means of serving the minimum term of the sentence (or, in the case of a fixed term sentence, the whole of the fixed term).
- (2) When a court refers an offender for assessment under this section, the referral stays the execution of the sentence until it is decided whether a home detention order is to be made, and the court may defer compliance with section 8 of the *Sentencing Act 1989* until such a decision is made.
- (3) When execution of a sentence is stayed under this section:
  - (a) the sentence does not commence to run until the stay expires as provided by section 11, and
  - (b) for the term of the stay the offender may be remanded in custody or granted bail in accordance with the provisions of the *Bail Act 1978*.



**10 Assessment of suitability**

- (1) When an offender is referred under section 9 for assessment, the offender's circumstances are to be investigated by the Probation and Parole Service and a report prepared in relation to the suitability of the offender for home detention.
- (2) The following must be taken into account and addressed specifically in the report:
  - (a) any criminal record of the offender, and the likelihood that the offender will re-offend,
  - (b) any dependency of the offender on illegal drugs,
  - (c) the likelihood that the offender will commit a domestic violence offence,
  - (d) whether any circumstances of the offender's residence, employment, study or other prospective activities would not permit effective monitoring of a home detention order,
  - (e) whether persons with whom the offender intends to reside or to continue or resume a relationship understand the requirements of the order and are prepared to live in conformity with them, so far as may be necessary,
  - (f) whether the making of the order would place at risk of harm any person who would be living with or in the vicinity of the offender,
  - (g) any matter prescribed by the regulations.
- (3) The regulations may require an assessment of the effect of the order on any children who would be living with or in the vicinity of the offender to be carried out in a manner and form prescribed by the regulations.
- (4) The officer preparing the assessment report is entitled to take into account any matter that seems to the officer to be relevant to whether a home detention order ought to be made for the offender concerned, whether or not it is a matter mentioned in this section.
- (5) If it appears to the officer preparing the assessment report that the offender is homeless:
  - (a) all reasonable efforts must be made by the Probation and Parole Service, in consultation with the offender, to find suitable accommodation, and

- (b) the report is not to be finalised until those efforts have been made.

## 11 Home detention order

- (1) A court that has sentenced an offender may by order direct that the minimum term of the sentence concerned (or, in the case of a fixed term sentence, the whole of the fixed term) be served by way of home detention.
- (2) A reference in subsection (1) to a court that has sentenced an offender:
  - (a) includes a reference to that court even if constituted by another person or other persons, and
  - (b) in the case of a sentence passed by a Local Court, includes a reference to any Local Court.
- (3) A home detention order must not be made:
  - (a) if the making of the order in the case concerned is prohibited by a provision of this Part, or
  - (b) if the court is not satisfied, having regard to the contents of the relevant assessment report, that the order is appropriate in the circumstances of the case.
- (4) At such time as the court makes or declines to make a home detention order, a stay of execution of sentence under section 9 expires, and in cases where the order is not made, the sentence of imprisonment is to be carried out.
- (5) Section 8 of the *Sentencing Act 1989* applies to the carrying out of a sentence as referred to in subsection (4), and the court may, in fixing a commencement date for the relevant term of imprisonment, take into account time spent by the offender on remand pending assessment under section 10.

## **Part 3      Operation of home detention orders**

### **12 Undertakings**

- (1) Each offender for whom a home detention order is made is required to sign a home detention undertaking in connection with the order.
- (2) An undertaking is to set out in general terms the obligations of the offender while undergoing home detention and signify the offender's willingness to meet those obligations and any monitoring requirements in connection with them, including submission to blood and urine testing as required.

### **13 Conditions governing home detention**

- (1) The following conditions apply to home detention:
  - (a) conditions prescribed by the regulations as standard conditions of any such order,
  - (b) additional conditions:
    - (i) specified by the court on the making of the relevant home detention order, or
    - (ii) notified by the Board under subsection (3).
- (2) Conditions applying to home detention may include conditions relating to the offender's employment while the home detention order is in force and may require the offender to perform community service work while not otherwise employed.
- (3) Additional conditions may be revoked or varied, and new conditions may be added, by the Board by notice in writing served on the offender concerned.
- (4) Subsection (3) does not permit revocation of any standard conditions or conditions imposed by the court, or allow the conditions to be varied so as to be inconsistent with standard conditions or conditions imposed by the court.
- (5) A supervising officer must take all reasonable steps to ensure that the offender is aware of the sanctions applicable to a breach of the conditions of the offender's home detention.

#### **14 Breach of conditions of home detention**

- (1) A breach of the conditions applying to home detention may be dealt with in accordance with sanctions prescribed by the regulations.
- (2) If
  - (a) in the opinion of a supervising officer, an offender has committed a serious breach of the conditions applying to the offender's home detention, or
  - (b) an offender repeatedly breaches those conditions,it is the duty of the officer to apply to the Board for revocation of the home detention order.

#### **15 Inquiry into alleged breach of conditions**

- (1) When an application is made under section 14 for revocation of a home detention order the Board may, by notice in writing served on the offender, require the offender to appear before it on a date, and at a time and place, specified in the notice, to show cause why the home detention order should not be revoked.
- (2) An offender is required to comply with a notice under this section served on the offender.
- (3) If an offender on whom a notice under this section has been served appears in answer to the notice, the Board is to consider such evidence and submissions as may be given or made by or on behalf of the supervising officer and the offender in relation to the application.
- (4) If an offender on whom a notice under this section has been served does not appear as required by the notice, or if the offender's whereabouts are unknown or the offender cannot for any other reason be served, the Board may proceed to inquire into the alleged breach of conditions in the absence of the offender.
- (5) The Board may exercise any of its functions under this section even if the home detention order concerned has expired.

- (6) If an offender on whom a notice under this section has been served does not appear as required by the notice, or if the offender could not be served with notice, the Board may, if it thinks fit, issue a warrant for the arrest of the offender, authorising the offender's detention in a prison or other place of confinement specified in the warrant until:
- (a) the expiry of a period of 7 days after the offender's apprehension under the warrant, or
  - (b) the warrant is revoked by the Board,
- whichever first occurs.

#### **16 Decision of Board regarding alleged breach of conditions**

- (1) When the Board is of the opinion that it is proper to do so in the circumstances of the case, the Board may by order revoke the relevant home detention order and by warrant commit the offender to prison to serve a period of imprisonment equal to the period commencing on the effective date of revocation of the order and ending on the date of expiry of the fixed or minimum term of the sentence in respect of which the order was made.
- (2) When making a revocation order under this section the Board may, if it thinks fit, direct that the revocation take effect as from an earlier date, being the date on which the conditions of the relevant home detention order were contravened or a later date, and in such a case the order is taken to have been revoked on that date.
- (3) The Board, if it is satisfied that the offender has committed a breach of the conditions applying to the offender's home detention but is not of the opinion that the order should be revoked, may discipline the offender in such manner as the regulations may prescribe.
- (4) The Board may exercise any of its functions under this section even if the home detention order concerned has expired, and whether or not any notice or warrant has been issued, or any inquiry held, under section 15.

## **17 Notice of revocation**

- (1) As soon as practicable after the Board revokes a home detention order, the Board must cause a notice under this section to be served on the offender to whom the order related.
- (2) The notice must:
  - (a) fix a date, occurring not earlier than 14 days nor later than 28 days after the date on which it is served, on which the Board is to meet for the purpose of
    - (i) reconsidering the revocation of the home detention order, and
    - (ii) if the home detention order is taken to have been revoked on an earlier day than the day on which the Board decided to revoke the home detention order, determining whether the specification of the earlier day should be revoked or varied, and
  - (b) require the offender to notify the Secretary of the Board, not later than 7 days before the date so fixed, if the offender intends to make representations to the Board in relation to the revocation of the order or the specification of the earlier day, or both, and
  - (c) be in the form prescribed by the regulations, and
  - (d) except as provided by subsection (3), be accompanied by:
    - (i) a copy of the order which revoked the home detention order, and
    - (ii) copies of the reports and other documents used by the Board in making the decision to revoke the home detention order and, if appropriate, to specify the earlier day.
- (3) Nothing in this section requires an offender to be provided with a copy of so much of a report or document as may, in the opinion of a judicial member of the Board, endanger or inappropriately identify any other person.

## **18 Review of revocation**

- (1) If an offender on whom a notice has been served under section 17 has duly notified the Secretary of the Board that the offender intends to make representations to the Board, the Chairperson of the Board is required to convene a meeting of the Board, on the date set by the notice, for the purpose of
  - (a) reconsidering the revocation of the home detention order, or
  - (b) determining whether the specification of the earlier day should be revoked or varied,or both, as the case may require.
- (2) At the meeting of the Board convened pursuant to the notice, or at a subsequent meeting to which consideration of the matter is adjourned or postponed, the offender may make submissions to the Board with respect to the revocation of the home detention order and, if appropriate, the specification of the earlier day.
- (3) After reviewing all the reports, documents and other information placed before it, the Board is to decide whether or not it should:
  - (a) rescind the revocation of the home detention order concerned, or
  - (b) revoke or vary the specification of the earlier day.
- (4) A decision under this section has effect according to its terms even if the home detention order concerned has expired.

## **19 Application to Court of Criminal Appeal**

The provisions of section 41 (1) of the *Sentencing Act 1989* apply to the revocation by the Board of a home detention order in the same way as to the revocation by the Board of a parole order, and the provisions of subsections (2) and (4) of section 23 of that Act apply to an application made under this section.

## **20 Warrants**

- (1) A warrant under this Part is to be signed by the Chairperson, Alternate Chairperson or Deputy Chairperson of the Board.
- (2) An instrument that purports to be a warrant signed in accordance with this section is to be presumed to be such a warrant until the contrary is proved.

## **Part 4 Miscellaneous**

### **21 Expiry of home detention order**

Unless sooner revoked, a home detention order expires when the relevant sentence is served or the offender is released on parole.

### **22 Eligibility for parole**

Nothing in this Act affects the operation of any provision of Part 3 of the *Sentencing Act 1989*, or any other provision of the law relating to parole of prisoners. Any such provision applies, with any necessary modifications, to an offender who served the fixed or minimum term of a sentence of imprisonment by way of home detention in the same way as to an offender who had served it in a prison.

### **23 Revocation of home detention order by court**

In sentencing a person to whom a home detention order relates to imprisonment for another offence, a court may exercise any of the powers of the Board under section 16.

### **24 Service of notices**

- (1) Any notice required by or under this Act to be served on an offender in respect of whom a home detention order is in force may be served by posting it, addressed to the offender, to the address nominated for the purposes of the offender's home detention.
- (2) Such a notice may be served on an offender in custody by service on the offender's custodian, and is to be dealt with in accordance with the regulations.
- (3) The means of service authorised by this section are in addition to any means that would, in the absence of this section, be sufficient for valid service of the notice.

### **25 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.



- (2) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units.

## **26 Proceedings for offences**

Proceedings for an offence against this Act or the regulations may be taken and disposed of in a summary manner before a Local Court constituted by a Magistrate sitting alone.

## **27 Amendment of Bail Act 1978 No 161**

The *Bail Act 1978* is amended as set out in Schedule 1.

## **28 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives and to determine the impact of the Act on families.
- (2) The review is to be undertaken as soon as possible after the period of 18 months from the commencement of section 11.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 6 months after the end of the period of 18 months.
- (4) The Minister is to continue to monitor, and report to both Houses of Parliament on, the impact of this Act on families. Such a report must be tabled at least once in each calendar year after the year in which the report referred to in subsection (3) is tabled.

## **Schedule 1 Amendment of Bail Act 1978**

(Section 27)

**[1] Section 16 Extension of meaning of “adjournment” in section 6**

Omit “and” where lastly occurring in section 16 (f).

**[2] Section 16 (h)**

Insert after section 16 (g):

- (h) the term of a stay of execution of sentence under section 9 of the *Home Detention Act 1996*.

[Minister’s second reading speech made in—  
Legislative Assembly on 20 June 1996  
Legislative Council on 15 October 1996]