

**PERIODIC DETENTION OF PRISONERS (AMENDMENT)
ACT 1992 No. 109**

NEW SOUTH WALES



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**PERIODIC DETENTION OF PRISONERS (AMENDMENT)
ACT 1992 No. 109**

NEW SOUTH WALES



Act No. 109, 1992

An Act to amend the Periodic Detention of Prisoners Act 1981 with respect to the failure of periodic detainees to report as required by or under that Act and with respect to the granting of leave of absence to periodic detainees; and for other purposes. [Assented to 8 December 1992]

Periodic Detention of Prisoners (Amendment) Act 1992 No. 109

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Periodic Detention of Prisoners (Amendment) Act 1992.

Commencement

2. The Act commences on a day to be appointed by proclamation.

Amendment of Periodic Detention of Prisoners Act 1981 No. 18

3. The Periodic Detention of Prisoners Act 1981 is amended as set out in Schedule 1.

Amendment of Justices Act 1902 No. 27

4. The Justices Act 1902 is amended by inserting in paragraph (a) of the definition of “penalty notice” in section 1001, in alphabetical order, the following matter:

Periodic Detention of Prisoners Act 1981, section 33B;

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(Sec. 3)

(1) Section 3 (**Arrangement**):

Omit the section.

(2) Section 4 (**Definitions**):

(a) From paragraph (a) of the definition of “detention period” in section 4 (1), omit “imposed on the person or during any term by which the person’s periodic detention has been extended by the operation of section 21 (1) or (2)”, insert instead “to which the order applies”.

(b) From section 4 (1), omit the definition of “Director-General”, insert instead, in alphabetical order:

“**Commissioner**” means the Commissioner of Corrective Services;

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- (c) From section 4 (1), omit the definition of “periodic detention”, insert instead:
- “periodic detention”**, in relation to a person in respect of whom an order for periodic detention is in force, means detention in prison for such number of detention periods as there are in the term of the person’s sentence of imprisonment;
- (d) In section 4 (2), after “ 11,”, insert “1 1A,”.
- (3) Sections 4, 9, 10, 11A, 12, 13, 16, 17, 22, 23, 25, 32, 33, 34: Omit “Director-General” wherever occurring, insert instead “Commissioner”.
- (4) Section 5 (**Power to order periodic detention**):
- (a) From section 5 (1), omit “the term of imprisonment to which it has sentenced him”, insert instead “the person’s sentence”.
- (b) Omit section 5 (7).
- (5) Section 5A:
- Omit the section, insert instead:
- Periodic detention may be ordered for less than 3 months for certain offences**
- 5A. (1) This section applies to:
- (a) an offence against this Act; and
- (b) an offence against the Summary Offences Act 1988; and
- (c) a domestic violence offence within the meaning of the Crimes Act 1900; and
- (d) an offence against section 5621 of the Crimes Act 1900.
- (2) The powers of a court under section 5 may be exercised in respect of a person convicted of an offence to which this section applies and sentenced on conviction to imprisonment for a term of less than 3 months in the same way as if the person had been sentenced to imprisonment for a term of not less than 3 months and not more than 3 years.

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(6) Section 5B (**Application of section 5 to concurrent and cumulative sentences**):

After section 5B (2), insert:

(2A) Any period for which the term of a sentence is extended by section 21 is to be disregarded for the purposes of subsection (2).

(7) Section 7 (**Notice to be served**):

From section 7 (1) (b), omit “and during any term by which the person’s periodic detention may be extended by the operation of section 21 (1) or (2)”.

(8) Section 8 (**Commencement of sentence**):

At the end of section 8, insert:

(2) The date on which a sentence of imprisonment the subject of an order under section 5B commences may, however, commence earlier than 7 days or later than 21 days after the date on which the sentence is imposed.

(9) Section 9 (**Service of sentence**):

From section 9 (2), omit “and during any term by which the periodic detainee’s periodic detention has been extended by the operation of section 21 (1) or (2)”.

(10) Section 10 (**Work etc.**):

From section 10 (1), omit “while the periodic detainee is serving any term of periodic detention”, insert instead “during any detention period”.

(11) Section 11:

Omit the section, insert instead:

Exemption from serving detention periods in prison

11. The Commissioner may, by order, exempt a periodic detainee from serving any detention period in prison if the periodic detainee is, by an order under section 10 (1) (b), directed to perform work outside a prison during that period.

(12) Section 11A (**Variation of days of attendance**):

- (a) From section 11A (1), omit “and during any term by which the periodic detainee’s periodic detention is extended by the operation of section 21 (1) or (2)”.

SCHEDULE 1—AMENDMENTS— *continued*

(b) After section 11A (3), insert:

(4) An order may not be made under this section so as to vary the number of detention periods that would be required to be served by the periodic detainee concerned if the order were not made.

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

Omit “and during any term by which the periodic detainee’s periodic detention has been extended by the operation of section 21 (1) or (2)” wherever occurring.

(14) Section 13 (**Variation of prison at which sentence is to be served**):

From section 13 (1), omit “or any term by which the person’s periodic detention has been extended by the operation of section 21 (1) or (2)”.

(15) Section 14:

Omit the section, insert instead:

Commissioner to give notice to periodic detainees of certain orders

14. On making an order under section 11, 11A, 12 or 13, the Commissioner must forthwith cause written notice of the terms of the order to be given to the periodic detainee to whom the order relates.

(16) Section 15 (**Commencement of certain orders**):

After “11,”, insert “11A,”.

(17) Section 16 (**Revocation or amendment of certain orders**):

After “11,”, insert “11A,”.

(18) Section 17 (**Effect of complying with certain orders**):

(a) In section 17 (1), after “11,”, insert “11A,”.

(b) In section 17 (2), after “10,”, insert “11, 11A,”.

(c) From section 17 (2), omit “the sentence of imprisonment that was imposed on him”, insert instead “the periodic detainee’s sentence of imprisonment”.

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SCHEDULE 1—AMENDMENTS— *continued*

(19) Sections 20, 21:

Omit the sections, insert instead:

Leave of absence

20. (1) The Commissioner may, in accordance with the regulations, grant leave of absence to a periodic detainee for one or more detention periods:

- (a) for health reasons; or
- (b) on compassionate grounds; or
- (c) on the ground that the periodic detainee is in custody; or
- (d) for any other reason which to the Commissioner seems sufficient.

(2) Leave of absence may, in accordance with the regulations, be granted either before or after the detention period to which it relates.

(3) A Local Court may, on the application of a periodic detainee whose request for leave of absence for one or more detention periods has been refused, direct that leave of absence be granted in respect of all or any of those detention periods.

(4) 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.

(5) 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.

(6) An application is not to be considered by the Local Court unless it is satisfied that the application is not an abuse of process.

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

Failure to report as required extends term of sentence

21. (1) The term of the sentence of a periodic detainee who has failed to report, as required by or under this Act, for one or more detention periods (whether or not on leave of

SCHEDULE 1—AMENDMENTS— *continued*

absence under section 20) is, by this subsection, extended by one week for each detention period for which the periodic detainee has failed to so report.

(2) The term of the sentence of a periodic detainee who has failed to report, as required by or under this Act, for one or more detention periods (otherwise than on leave of absence under section 20) is, by this subsection, further extended by one week for each detention period for which the periodic detainee has failed to so report.

(3) The term of a sentence may not be extended by subsection (2) by more than 2 weeks.

(4) Any extension of the term of a sentence by subsection (2) is in addition to any extension of the term of the sentence by subsection (1) with respect to the same failure to report.

(5) Subsection (2) does not have effect until the periodic detainee has been given written notice to the following effect:

- (a) that the periodic detainee has failed to report, as required by or under this Act;
- (b) that that subsection operates to extend the term of the periodic detainee's sentence as a result of the failure to report;
- (c) that the periodic detainee may apply to the Commissioner for leave of absence under section 20 with respect to any one or more of the detention periods concerned.

(6) The warrant issued under section 6 is sufficient warrant for the detention of the periodic detainee to whom it relates during any detention period occurring while the term of the periodic detainee's sentence is extended by this section.

Commissioner may grant exemptions from extension of sentence

21A. (1) The Commissioner may:

- (a) on the application of the periodic detainee or otherwise; and
- (b) for any reason which to the Commissioner seems sufficient,

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exempt a periodic detainee from the operation of section 21 (1) with respect to any one or more of the detention periods for which the periodic detainee has failed to report as required by or under this Act.

(2) The Commissioner must not refuse an application for an exemption unless:

- (a) the periodic detainee has been given written notice of the Commissioner's proposal to refuse the application; and
- (b) the periodic detainee has been given a reasonable opportunity to make representations, either orally or in writing, as to why the exemption should be granted; and
- (c) the Commissioner has taken any such representations into consideration.

Periodic detention taken to have been served in certain circumstances

21B. (1) The Commissioner may, for health reasons or on compassionate grounds, order that one or more detention periods yet to be served by a periodic detainee be regarded as having been served if satisfied that the periodic detainee is unlikely to be able to serve them within a reasonable time.

(2) In determining what is a reasonable time, the Commissioner must have regard to the number of detention periods yet to be served and the likely duration of the periodic detainee's inability to serve them.

(3) Any detention period to which an order under this section relates is taken to have been served by the periodic detainee in accordance with this Act.

(20) **Section 25 (Cancellation of orders for periodic detention otherwise than on subsequent conviction):**

After section 25 (3), insert:

(3A) Without limiting the generality of subsection (1), the court must, on the application of the Commissioner, cancel the order if it is satisfied:

- (a) that the person has, for 3 or more detention periods, failed to report, as required by or under this Act; and

SCHEDULE 1—AMENDMENTS— *continued*

(b) that the failures to report occurred otherwise than on leave of absence under section 20 and are not the subject of an exemption under section 21A.

(3B) The court may refuse to cancel the order if it is satisfied:

(a) that leave of absence ought to have been granted under section 20, or an exemption ought to have been granted under section 21A, with respect to one or more detention periods; and

(b) that the total number of detention periods for which the person has failed to report as referred to in subsection (3A) would, had the leave or exemption been granted with respect to those detention periods, be less than 3,

in which case it must make a determination to that effect.

(3C) If the court makes a determination under subsection (3B), leave of absence under section 20, or an exemption under section 21A, is taken to have been granted in accordance with the terms of the determination.

(3D) The 3 or more detention periods referred to in subsections (3A) and (3B) need not be consecutive.

(21) Section 26 (**Issue of warrant on cancellation of order for periodic detention**):

Omit “the unexpired”, insert instead “any unexpired”.

(22) Section 27 (**Effect of cancellation of order for periodic detention**):

(a) In section 27 (1) (a), after “11,”, insert “11A,”.

(b) Omit “the unexpired” wherever occurring, insert instead “any unexpired”.

(23) Section 28 (**Periodic detainee taken to be a prisoner**):

From section 28 (a), omit “or any term by which the periodic detainee’s periodic detention has been extended by the operation of section 21 (1) or (2)”.

(24) Section 28 (**Calculation of proportion of sentence served**):

(a) From section 29 (1), omit “imprisonment to which he was sentenced”, insert instead “the periodic detainee’s sentence of imprisonment”.

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- (b) From section 29 (2), omit “the unexpired”, insert instead “any unexpired”.

(25) Section 33 (**Offences**):

- (a) Omit section 33 (1) (a).
 (b) From section 33 (2), omit “subsection (1) (a) or (b)”, insert instead “subsection (1) (b)”.
 (c) Omit section 33 (2) (a).
 (d) Omit section 33 (2) (c) (i).

(26) Sections 33A, 33B:

After section 33, insert:

Proceedings for offences

33A. Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Penalty notices for certain offences

33B. (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations for the purposes of this section.

(2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter dealt with by a court, the person may pay, within the time and to the person specified in the notice, the penalty prescribed by the regulations for the offence if dealt with under this section.

(3) If the penalty prescribed for an alleged offence is paid in accordance with this section, no person is liable to any further proceedings for the alleged offence.

(4) Payment in accordance with this section is not to be regarded as an admission of liability for the purposes of, nor is in any way to affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.

(5) The regulations may:

- (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence; and

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(b) prescribe the penalty payable for the offence if dealt with under this section; and

(c) prescribe different penalties for different offences or classes of offences.

(6) The penalty prescribed for an offence is not to exceed 2 penalty units.

(7) This section does not limit the operation of this or any other Act in relation to proceedings that may be taken in respect of offences.

(8) In this section, “authorised officer” means the Commissioner or any person authorised by the Commissioner for the purposes of this section.

(27) Section 34 (**Regulations**):

(a) After section 34 (1A), insert:

(1B) A regulation may declare that an offence against section 33 is an offence against discipline.

(1C) A regulation may provide that an offence against discipline is punishable:

(a) by caution or reprimand; or

(b) by deprivation of specified amenities or privileges for a period not exceeding 4 detention periods.

(1D) If a person is punished for an offence against discipline in a manner referred to in subsection (1C), the person is not liable to any further proceedings for the alleged offence.

(28) Schedule 2 (**Savings and transitional provisions**):

(a) Before clause 1, insert:

Part 1—Preliminary

Regulations

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following:

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(2) Such a provision may, if the regulations so provide, take effect on the date of assent to the Act concerned or a later date.

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SCHEDULE 1—AMENDMENT— *continued*

(3) To the extent to which such a provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of that publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of that publication.

(b) After clause 1 (as inserted by paragraph (a)), insert:

Part 2—Provisions consequent on the enactment of this Act

- (c) Renumber existing clauses 1 and 2 as clauses 2 and 3, respectively.
- (d) After clause 5, insert:

Part 3—Provisions consequent on the enactment of the Periodic Detention of Prisoners (Amendment) Act 1992

Definitions

6. In this Part:

“**the amending Act**” means the Periodic Detention of Prisoners (Amendment) Act 1992.

Leave of absence

7. Section 20, as substituted by the amending Act, does not extend to a decision made by the Commissioner, before the commencement of the amending Act, to refuse leave of absence under that section.

Extension of term of sentence

8. Any extension of a periodic detainee’s periodic detention under section 21 that occurred before the commencement of the amending Act is taken to be an extension of the term of the periodic detainee’s sentence under section 21, as amended by the amending Act.

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Detention periods taken to have been duly served

9. Any order in force under section 21 (4) immediately before the commencement of the amending Act is taken to be an order under section 21B, as inserted by the amending Act.

Cancellation of periodic detention otherwise than on subsequent conviction

10. Section 25, as amended by the amending Act, does not extend to detention periods occurring before the commencement of the amending Act.

Existing sentences

11. This Act, as amended by the amending Act, extends to sentences of imprisonment imposed before the commencement of the amending Act.

*[Minister's second reading speech made in—
Legislative Assembly on 17 November 1992
Legislative Council on 27 November 1992]*