

1995—No. 509

**PERIODIC DETENTION OF PRISONERS ACT 1981—
REGULATION**

(Periodic Detention of Prisoners Regulation 1995)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Periodic Detention of Prisoners Act 1981, has been pleased to make the Regulation set forth hereunder.

R. J. Debus
Minister for Corrective Services.

PART 1—PRELIMINARY

Citation

1. This Regulation may be cited as the Periodic Detention of Prisoners Regulation 1995.

Commencement

2. This Regulation commences on 1 September 1995.

Definitions

3. (1) In this Regulation:

“**breath test**” means a test for the purpose of indicating the concentration of alcohol present in a person’s blood carried out on the person’s breath by means of a device known by the name “Alcotest” or “Alcometer” manufactured by or on behalf of Lion Laboratories Limited;

“**clerk of the court**”:

(a) in relation to the Court of Criminal Appeal—means the Registrar of that Court; and

- (b) in relation to the Criminal Division of the Supreme Court—means the Registrar of that Division; and
- (c) in relation to the District Court—means the Clerk of the Peace; and
- (d) in relation to a Local Court—means the Clerk of that Local Court;

“Commissioner” means the Commissioner of Corrective Services;

“Deputy Commissioner” means a Deputy Commissioner of Corrective Services;

“drug” means:

- (a) a prohibited drug, or prohibited plant, within the meaning of the Drug Misuse and Trafficking Act 1985; or
- (b) any of the following:
 - (i) phenothiazines;
 - (ii) tricyclic antidepressants;
 - (iii) codeine;
 - (iv) pseudoephedrine;
 - (v) carbamazepine;
 - (vi) benzodiazepines;
 - (vii) antihistamines; or
- (c) any salt, isomer, ester or ether of a prohibited drug referred to in paragraph (a) or of anything referred to in paragraph (b); or
- (d) any salt of such an isomer, ester or ether;

“relevant prison”, in relation to a periodic detainee, means:

- (a) the prison at which the detainee is required to serve the detainee’s sentence of imprisonment; or
- (b) if an order is in force under section 11 of the Act in respect of the detainee—the prison at which the detainee would, but for that order, be required to serve the detainee’s sentence of imprisonment;

“supervisor”, in relation to a periodic detainee at a work site, means the person supervising the detainee in accordance with clause 24;

“the Act” means the Periodic Detention of Prisoners Act 1981;

“work site”, in relation to a periodic detainee, means a place at which the detainee is, by an order under section 10 (1) (b) of the Act, directed to perform work.

(2) In this Regulation, a reference to a form is a reference to a Form set out in Schedule 1.

Application of Regulation

4. This Regulation applies to and in respect of a periodic detainee while:

- (a) detained in prison for the purpose of serving the detainee's sentence of imprisonment; or
- (b) working (as required by an order under the Act) at a place outside a prison; or
- (c) travelling between a prison and a work site outside a prison.

PART 2—ORDERS FOR PERIODIC DETENTION

Availability of accommodation

5. (1) For the purpose of satisfying itself that accommodation is available at a prison for a person to serve a sentence by way of periodic detention, a court must address its inquiries to the officer in charge of the Administration Office, Periodic Detention Centres, Long Bay Correctional Centre.

(2) As soon as practicable after a court has made an order for periodic detention, the clerk of the court must (by telephone or otherwise) inform the officer in charge.

Warrants of commitment to prison

6. For the purposes of section 6 of the Act, the prescribed form of warrant of commitment to prison is Form 1.

Notices of commitment to prison

7. (1) For the purposes of section 7 (1) of the Act, the prescribed form of notice of commitment of a periodic detainee to prison is Form 2.

(2) The detainee must sign 3 copies of the notice in the presence of the person serving it.

(3) Of the 3 copies:

- (a) one must be kept by the detainee; and
- (b) one must be sent to the governor of the relevant prison; and
- (c) one must be kept by the justice who issued the warrant of commitment.

PART 3—RECEPTION INTO PRISON**Manner of reporting to prison**

- 8. (1)** When a periodic detainee reports at a prison:
- (a) the detainee must not be under the influence of drugs, alcohol or any other intoxicating substance; and
 - (b) the detainee must bring:
 - (i) clothing and footwear suitable for outdoor work; and
 - (ii) a change of clothing; and
 - (iii) personal toiletries.
- (2)** The governor of a prison:
- (a) may refuse to admit to the prison; and
 - (b) may remove, or cause to be removed, from the prison,

a periodic detainee who reports at the prison under the influence of drugs, alcohol or any other intoxicating substance.

(3) Without affecting the generality of subclause (1), a periodic detainee will be regarded as being under the influence of alcohol if a breath test indicates that the concentration of alcohol present in the detainee's blood is .02 grams or more per 100 millilitres.

(4) A periodic detainee will not be regarded as contravening subclause (1) (a) if the detainee has consumed or administered the drug, alcohol or other intoxicating substance concerned:

- (a) on the advice of a registered medical practitioner, registered dentist or registered nurse given for medical, dental or nursing reasons; and
- (b) in accordance with such directions (if any) as were given by the medical practitioner, dentist or nurse.

Recording of particulars of prisoners

9. (1) Any provisions of the Prisons (General) Regulation 1995 made for the purposes of section 19 of the Prisons Act 1952 (record of personal description of prisoners) or otherwise relating to the recording of particulars of prisoners apply to periodic detainees.

(2) A periodic detainee must notify the governor of the relevant prison in writing of any change of the detainee's residential address as soon as practicable after it occurs.

Confidentiality of records

10. The provisions of clause 22 of the Prisons (General) Regulation 1995 relating to the confidentiality of records apply to periodic detainees in the same way as they apply to other prisoners.

Personal searches

11. (1) A prison officer may search a periodic detainee each time the detainee reports at a prison.

(2) A prison officer may search a periodic detainee at such subsequent times as may be directed by the governor of the prison or considered desirable by the prison officer.

(3) A periodic detainee must not be searched by or in the presence of a person of the opposite sex.

(4) The searching of a periodic detainee is to be conducted with due regard to dignity and self-respect and in as seemly a manner as practicable without impeding the effectiveness of the search.

Periodic detainees to be notified of rights and obligations

12. (1) As soon as practicable after a periodic detainee first reports at a prison for periodic detention, the governor of the prison is to cause the detainee to be informed of:

- (a) the rules; and
- (b) the detainee's obligations as to discipline and conduct; and
- (c) the detainee's rights as to legal representation and appeal; and
- (d) the authorised methods of seeking information and making requests, complaints and applications; and
- (e) any other matter necessary to enable the detainee to understand the detainee's rights and obligations and adapt to living in the prison.

(2) If practicable, the detainee is to be informed of the matters by being handed a document in which information relating to each of them is written in a language which the detainee can read and understand.

(3) If it is impracticable to hand to the detainee such a document, the detainee is to be considered as having been informed of the matters:

- (a) if the detainee, being able to read and understand the English language, is permitted to have access to a copy of the Act, this Regulation, the Prisons Act 1952, the regulations under that Act, the rules and any other relevant material; or

- (b) if the detainee, not being able to read or understand the English language is given information relating to each of those matters:
- (i) orally in the English language or, if not able to understand that language, in a language which the detainee can understand; or
 - (ii) if not able to understand any language communicated orally, in any other manner that enables the detainee to understand the information.

Personal property

13. (1) A periodic detainee may bring to a prison such items of personal property as are approved by the governor of the prison.

(2) Each time a periodic detainee reports at a prison, the governor of the prison may cause the detainee's personal property to be inspected by a prison officer.

(3) A prison officer may inspect a periodic detainee's personal property at any time.

(4) On leaving a prison at the end of a detention period, a periodic detainee must take all personal property brought to the prison.

Medication

14. (1) A periodic detainee who brings to a prison medication prescribed or lawfully supplied for the detainee's use by a registered medical practitioner, registered dentist or registered nurse (being medication required to be taken during a detention period) must:

- (a) so inform the governor of the prison; and
- (b) if the governor so requires, surrender the medication to the governor.

(2) The governor must ensure that any surrendered medication is made available to the detainee in accordance with the relevant prescription.

(3) At the end of a detention period, the governor must cause any unused surrendered medication to be returned to the detainee.

PART 4—PRISON ROUTINE AND ORDER

Application of Part

15. This Part does not apply to a periodic detainee while the detainee is exempt from serving a detention period in prison.

Accommodation

16. (1) The governor of a prison must ensure that each periodic detainee at the prison is housed at night in accommodation that is adequate for the purpose.

(2) The governor must ensure that each periodic detainee is provided with a separate bed and sufficient clean bedding to suit the climatic conditions.

Separation of sexes

17. The governor of a prison must ensure that female periodic detainees are kept separate from male detainees except in such circumstances and under such supervision as the Commissioner may determine.

Personal cleanliness

18. A periodic detainee must, as far as circumstances permit, keep personally clean and well groomed at all times.

Care of property

19. A periodic detainee must keep the detainee's accommodation, clothing and other personal property and any bedding or other issued article clean, tidy and in good order.

Visitors

20. A periodic detainee must not receive visitors at a prison except with the approval of the governor of the prison.

Telephone calls

21. (1) A periodic detainee must not make a telephone call from a prison without the approval of the governor of the prison.

(2) A periodic detainee must pay for any call made unless the governor otherwise approves.

Adoption of certain regulations made under Prisons Act 1952

22. In accordance with section 34 (1) (c) of the Act, the following provisions of the Prisons (General) Regulation 1995 are adopted for the purposes of the Act:

Clause 43 (Diet)

Clause 44 (Purchase of food by prisoners)

Clause 46 (Complaints about prison food)

The definitions of “force” and “instruments of restraint” in clause 144

Clause 147 (Maintenance of order and discipline: generally)

Clause 149 (Use of force)

Clause 150 (Use of instruments of restraint)

Clause 151 (Report on use of force)

PART 5—WORK SITE ROUTINE

Working hours

23. (1) The maximum number of hours of work that a periodic detainee may be directed, by an order under section 10 (1) (b) of the Act, to perform in any one day is 8 hours (inclusive of any tea break or meal break to which the detainee is entitled).

(2) A periodic detainee is entitled to one tea break of 10 minutes in each period of 3 hours work.

(3) A periodic detainee who has worked continuously for 4 hours (tea breaks not counted) is entitled to a meal break of 45 minutes.

Conduct at work sites

24. While at a work site, a periodic detainee:

(a) is under the supervision of:

(i) if the order under section 10 (1) (b) of the Act specifies a person under whose supervision the detainee is to be—that person; or

(ii) in any other case—a prison officer; and

(b) must conform to the standards of dress, cleanliness and conduct required of the detainee by the detainee’s supervisor; and

(c) must keep in good order and condition any working clothes or tools issued to the detainee; and

(d) must not damage or deface any property otherwise than in the course of performing work in accordance with the directions of the detainee’s supervisor; and

(e) must not receive visitors except with the approval of the governor of the relevant prison or the detainee’s supervisor; and

- (f) must not make telephone calls except:
 - (i) with the approval of the governor of the relevant prison or the detainee's supervisor; and
 - (ii) at the detainee's own expense.

Prohibited work

25. (1) A periodic detainee must not be employed in a disciplinary capacity.

(2) A periodic detainee must not be employed to perform work for the benefit of the Commissioner, a Deputy Commissioner or any person employed in the Department of Corrective Services.

Service of orders and notices

26. (1) The Commissioner must cause written notice of the terms of an order under section 10 (1) (b) of the Act to be served on the periodic detainee to whom it relates immediately after it is made.

(2) The periodic detainee must sign 2 copies of the notice in the presence of the person serving it.

(3) A periodic detainee on whom a notice under section 14 of the Act (in relation to an order under section 11 or 11A of the Act) is served must sign 2 copies of the notice in the presence of the person serving it.

(4) Of the 2 copies of a notice referred to in subclause (2) or (3):

- (a) one must be kept by the periodic detainee; and
- (b) one must be sent to the governor of the relevant prison.

Production of notices for inspection

27. A periodic detainee in respect of whom an order under section 10 (1) (b), 11, 11A, 12 or 13 of the Act is in force must, on demand, produce for inspection by the detainee's supervisor the notice given in relation to the order.

PART 6—LEAVE OF ABSENCE

Applications for leave of absence

28. (1) An application by a periodic detainee for leave of absence under section 20 of the Act must be:

- (a) made in writing by the detainee (or by some other person for or on behalf of the detainee); and

- (b) accompanied by written particulars of the facts on which the application is based; and
- (c) lodged with the governor of the relevant prison:
 - (i) before the commencement of the detention period or periods in respect of which the application is made; or
 - (ii) if circumstances prevent compliance with subparagraph (i)—as soon as practicable after the commencement of that detention period or the first of those detention periods, as the case may be.

(2) A governor of a prison must send to the Commissioner an application for leave of absence as soon as practicable after it is lodged.

Unavoidable absence

29. (1) A periodic detainee who is prevented by circumstances:

- (a) from reporting at a prison in accordance with section 9 (2) of the Act; or
- (b) in the case of a detainee in respect of whom an order under section 11 of the Act is in force—from attending at a work site in accordance with an order under section 10 (1) (b) of the Act,

must, as soon as practicable after the circumstances occur, notify the governor of the relevant prison, by telephone or otherwise, of the detainee's location, the fact that the detainee is prevented from so reporting or attending and the reasons.

(2) The detainee must, as soon as practicable after so notifying the governor of the prison, lodge with the governor a notice in writing confirming the fact and reasons notified.

(3) The notice is taken to be an application for leave of absence under section 20 of the Act.

Inquiries into applications for leave of absence

30. (1) Before determining an application for leave of absence under section 20 of the Act, the Commissioner may:

- (a) cause such inquiries to be made as the Commissioner thinks fit into the facts on which the application is based; and
- (b) direct the applicant to furnish a statement of further particulars in support of the application.

(2) The Commissioner is to cause written notice of the granting of leave of absence to a periodic detainee to be served on the detainee.

(3) The detainee must sign 2 copies of the notice in the presence of the person serving it.

(4) Of the 2 copies:

- (a) one must be kept by the detainee; and
- (b) one must be sent to the governor of the relevant prison.

Transmission of notices of extension, or exemption from extension, of sentence

31. A notice under section 21 (5) or 21A (2) (a) of the Act may be served on a periodic detainee by post or by the State Mail Service addressed to the detainee at the last address known to the governor of the relevant prison.

PART 7—ALCOHOL AND DRUGS

Detainees to be sober

32. (1) A periodic detainee must not be under the influence of a drug, alcohol or any other intoxicating substance during a detention period.

(2) Without affecting the generality of subclause (1), a periodic detainee is to be regarded as being under the influence of alcohol if a breath test indicates that the concentration of alcohol present in the detainee's blood is .02 grams or more per 100 millilitres.

(3) A periodic detainee is not to be regarded as contravening this clause if the detainee has consumed or administered the drug, alcohol or other intoxicating substance concerned:

- (a) on the advice of a registered medical practitioner, registered dentist or registered nurse given for medical, dental or nursing reasons; and
- (b) in accordance with such directions (if any) as were given by the medical practitioner, dentist or nurse.

(4) A periodic detainee is not to be regarded as contravening this clause if the detainee, on reporting at a prison, is admitted to the prison by its governor even though the detainee is, or appears to be, under the influence of a drug, alcohol or other intoxicating substance.

Possession or consumption of alcohol

33. (1) A periodic detainee must not, during a detention period, possess or consume:

- (a) any alcohol or other intoxicating substance; or
 - (b) any substance reasonably capable of becoming by fermentation an intoxicating substance.
- (2) A periodic detainee is not to be regarded as contravening this clause if the detainee:
- (a) has the alcohol or substance for consumption or use on the advice of a registered medical practitioner, registered dentist or registered nurse given for medical, dental or nursing reasons; and
 - (b) consumes the alcohol or substance only in accordance with such instructions (if any) as are given by the medical practitioner, dentist or nurse.

Possession or use of drugs

34. (1) A periodic detainee must not, during a detention period:
- (a) possess a drug; or
 - (b) administer a drug to himself or herself or to any other person.
- (2) A periodic detainee is not to be regarded as contravening this clause if the detainee:
- (a) has the drug for use on the advice of a registered medical practitioner, registered dentist or registered nurse given for medical, dental or nursing reasons; and
 - (b) administers the drug only in accordance with such instructions (if any) as are given by the medical practitioner, dentist or nurse.

Breath testing

35. (1) If the governor of a prison or a prison officer believes on reasonable grounds that a periodic detainee is under the influence of alcohol or any other intoxicating substance when reporting at a prison or during a detention period, the governor, or a prison officer with the approval of the governor, may:
- (a) require the detainee to undergo a breath test; and
 - (b) give directions as to how the breath test is to be carried out.
- (2) A periodic detainee must not fail to comply with a reasonable requirement or direction made or given under this clause.

Urine sample

36. (1) If the governor of a prison or a prison officer believes on reasonable grounds that a periodic detainee is under the influence of a drug when reporting at a prison or during a detention period, the governor, or a prison officer with the approval of the governor, may:

- (a) require the detainee to supply for testing or analysis a specimen of urine; and
- (b) give directions as to how the specimen is to be supplied.

(2) A periodic detainee must not fail to comply with a reasonable requirement or direction made or given under this clause.

Evidence as to presence of alcohol

37. (1) In proceedings for an offence under section 33 of the Act a certificate purporting to be signed by a prison officer certifying that:

- (a) a person named in the certificate submitted to a breath test; and
- (b) the breath test was given on the day and completed at the time stated in the certificate; and
- (c) there was a measurable quantity, a specified quantity or not less than a specified quantity of alcohol present in the person's blood, as determined by the breath test, on the date and at the time stated in the certificate,

is prima facie evidence of the particulars certified in and by the certificate.

(2) In any such proceedings evidence of the condition of a device by means of which a breath test is carried out, or the manner in which the test was carried out, is not required unless evidence that the device was not in proper working condition or that the test was not properly carried out has been adduced.

Evidence as to use of drugs

38. (1) If it is necessary in proceedings for an offence under section 33 of the Act to prove that a periodic detainee was under the influence of a drug or was in possession of a drug, a certificate purporting to be signed by a prison officer certifying any one or more of the following matters:

- (a) that the prison officer had received a specimen of urine obtained in a specified manner;
- (b) that the prison officer arranged for the specimen to be submitted for analysis by an analyst to determine the presence of drugs in the periodic detainee's body;
- (c) that the container was sealed, and marked or labelled, in a specified manner,

is prima facie evidence of the particulars certified in and by the certificate.

(2) In any such proceedings, a certificate purporting to be signed by an analyst certifying any one or more of the following matters:

- (a) that the analyst received, on a specified day, a specimen of urine obtained from a specified periodic detainee in a container and submitted for analysis;
- (b) that the container, when received, was sealed, and marked or labelled, in a specified manner;
- (c) that, on receipt of the container, the seal was unbroken;
- (d) that the analyst carried out an analysis of the specimen to determine the presence of drugs in the body of the periodic detainee from whom the specimen was obtained;
- (e) that the analyst determined that a specified drug was present or was present to a specified extent or not less than a specified extent in the body of the periodic detainee from whom the specimen was obtained;
- (f) that the analyst was, at the time of the analysis, an analyst within the meaning of this clause,

is prima facie evidence of the particulars certified in and by the certificate.

(3) In any such proceedings, a certificate purporting to be signed by an analyst:

- (a) certifying a matter referred to in subclause (2) (a) is also prima facie evidence that the specimen was a specimen of urine obtained from the specified periodic detainee; or
- (b) certifying the matters referred to in subclause (2) (b) and (c) is also prima facie evidence that the specimen had not been tampered with before it was received by the analyst.

(4) In this clause:

“analyst” means a person employed by the Government of New South Wales to carry out an analysis within the meaning of the Therapeutic Goods and Cosmetics Act 1972.

PART 8—OFFENCES AGAINST DISCIPLINE

Offences against discipline (sec. 33 (1) (d))

39. (1) For the purposes of section 33 (1) (d) of the Act, a periodic detainee commits an offence against discipline if the detainee does any of the following things:

- (a) fails, without reasonable excuse, to notify the governor of the relevant prison of any change of the detainee’s residential address as soon as practicable after it occurs;

- (b) conceals, or attempts to conceal, any personal property brought by the detainee to a prison;
- (c) conceals, or attempts to conceal, any medication brought by the detainee to a prison or fails to surrender any such medication when required to do so by the governor of the prison;
- (d) fails to keep personally clean, as far as circumstances permit;
- (e) fails to keep the detainee's accommodation, clothing and other personal property and bedding or other issued articles clean, tidy and in good order;
- (f) leaves a prison or work site during a detention period without permission of the Commissioner, the governor of the prison concerned or the detainee's supervisor;
- (g) receives visitors at a prison or a work site otherwise than in accordance with this Regulation;
- (h) makes a telephone call from a prison or a work site otherwise than in accordance with this Regulation;
- (i) fails to conform to the standards of dress, cleanliness and conduct required of the detainee by the detainee's supervisor;
- (j) fails to keep in good order and condition any working clothes or tools issued to the detainee;
- (k) damages or defaces any property otherwise than in the course of performing work at a work site in accordance with the directions of the detainee's supervisor;
- (l) fails, without reasonable excuse, to sign any instrument which the detainee is required by or under this Regulation to sign;
- (m) fails to produce for inspection any document which the detainee is required by this Regulation to so produce;
- (n) makes, in any application, notice, statement, request or complaint under this Regulation, any statement that is false or misleading in a material particular;
- (o) takes part in any gambling or betting during a detention period;
- (p) contravenes any provision of clauses 32–36 (alcohol and drugs);
- (q) tampers with any lock, bolt, bar, ventilator, fire extinguisher, fire hose or electrical installation or with any other appliance, equipment or property or any structure or building, or removes any tool from a workshop or place of storage otherwise than in accordance with a direction given by a prison officer or supervisor;

- (r) fails to answer promptly any call to muster;
- (s) uses abusive or threatening language to or in the presence of a prison officer or supervisor or behaves in a threatening manner towards a prison officer or supervisor;
- (t) fails to be careful, or is negligent, in the performance of work or in the use of any tool, equipment or machinery;
- (u) reports late to serve a detention period;
- (v) reports to serve a detention period at a prison or at a place outside a prison other than the prison or place of work outside a prison at which the detainee is required to report;
- (w) contravenes any of the clauses of the Prisons (General) Regulation 1995 referred to in subclause (2).

(2) In accordance with section 34 (1) (c) of the Act, the following clauses of the Prisons (General) Regulation 1995 are adopted for the purposes of the Act:

Clause 35 (Possession and confiscation of unauthorised property)

Clause 42 (Self-inflicted wounds)

Clause 154 (2), (3) (Behaviour of prisoners)

Clause 155 (Obstruction of prison officers)

Clause 156 (Fighting or other physical combat)

Clause 157 (Assaults)

Clause 158 (Riots)

Clause 159 (Injuring animals)

Clause 161 (Throwing articles)

Clause 163 (Stealing)

Clause 164 (Tampering with food or drink)

Clause 165 (Tattooing prohibited)

Clause 169 (Bribery prohibited)

Penalty notice offences

40. (1) The following offences are prescribed for the purposes of section 33B of the Act:

- (a) failure of a periodic detainee to comply with an order under section 10 (1) (b) of the Act directing the detainee to perform work outside a prison;
- (b) failure of a periodic detainee to comply with an order under section 13 of the Act;

- (c) an offence against discipline prescribed for the purposes of section 33 (1) (d) of the Act;
- (d) any contravention by a periodic detainee of a rule made under section 23 of the Act, an instruction given under section 10 (4) of the Act or a direction given under section 22 of the Act that applies to the detainee.

(2) The penalty for an offence dealt with under section 33B of the Act is 2 penalty units.

Offences declared to be offences against discipline (sec. 34 (1B) and (1C))

41. (1) In accordance with section 34 (1B) of the Act, an offence against section 33 of the Act, other than an offence specified in section 33 (1) (c), is declared to be an offence against discipline.

(2) In accordance with section 34 (1C) of the Act, an offence which is declared to be an offence against discipline under section 34 (1B) of the Act is punishable:

- (a) by caution or reprimand; or
- (b) by deprivation of access to recreational facilities for a period not exceeding 4 detention periods.

PART 9—MISCELLANEOUS INSTRUMENTS

Notices of appeal

42. Written notice of the lodgment of an appeal by a periodic detainee against the sentence of imprisonment in respect of which the order for periodic detention is in force must be given to the governor of the relevant prison:

- (a) in the case of an appeal under section 122 of the Justices Act 1902—by the clerk of the court in which the periodic detainee was convicted and the sentence imposed; or
- (b) in any other case—by the clerk of the court in which the appeal is lodged.

Orders varying times of attendance

43. (1) A periodic detainee to whom a notice under section 14 of the Act (in relation to an order made under section 12 of the Act) is given must sign 2 copies of the notice in the presence of the person serving it.

(2) Of the 2 copies:

- (a) one must be kept by the periodic detainee; and
- (b) one must be sent to the governor of the relevant prison.

Orders varying prison at which sentence to be served

44. (1) A periodic detainee to whom a notice under section 14 of the Act (in relation to an order made under section 13 of the Act) is given must sign 3 copies of the notice in the presence of the person serving it.

(2) Of the 3 copies:

- (a) one must be kept by the periodic detainee; and
- (b) one must be sent to the governor of the prison at which the detainee is, by the order to which the notice relates, directed to serve the detainee's sentence; and
- (c) one must be sent to the governor of the prison at which the detainee was, immediately before that order was made, serving the sentence.

Orders transferring unruly periodic detainees

45. (1) The governor of a prison must not make an order under section 18 of the Act that a periodic detainee be transferred to another prison unless the governor is satisfied that accommodation (separate from accommodation for prisoners other than those serving sentences by way of periodic detention) is available at the other prison for the detainee.

(2) An order under section 18 of the Act must be in Form 3.

(3) The governor of a prison who makes an order under section 18 of the Act that a periodic detainee be transferred to another prison must:

- (a) send a copy of the order to the governor of the other prison; and
- (b) arrange for the transfer of the detainee to the other prison.

Notices of hearing—cancellation of orders for periodic detention

46. (1) The clerk of a court which proposes to consider whether an order for periodic detention in respect of a person should be cancelled under section 25 (1) of the Act must cause written notice of the proposed hearing to be sent by post to the person and the Commissioner.

(2) The notice is to be treated as having been given to the person by post if it is posted, or sent by the State Mail Service, addressed to the person's last address known to the clerk of the court.

Warrants for apprehension and detention

47. (1) For the purposes of section 26 (1) (a) of the Act, the prescribed form of warrant for apprehension and detention is Form 4.

(2) For the purposes of section 26 (1) (b) of the Act, the prescribed form of warrant for detention is Form 5.

(3) A warrant issued under section 26 (1) (a) or (b) of the Act must be sent:

- (a) in the first instance—to the police officer to whom it is directed; and
- (b) on delivery of the person to whom it relates into the custody of the governor of the prison to whom it is directed—to that governor.

(4) A police officer who apprehends a prisoner under a warrant for apprehension and detention must endorse the warrant with particulars of when the prisoner was apprehended.

Notices of cancellation of orders for periodic detention

48. The clerk of a court which cancels an order for periodic detention under section 24 or 25 of the Act must cause written notice of the cancellation to be given to:

- (a) the governor of the prison at which the person to whom the order relates was, immediately before it was cancelled, required to serve the term of imprisonment; or
- (b) if, immediately before the order was cancelled, an order was in force under section 11 of the Act in respect of the person—the governor of the prison at which the person would, but for that order, have been required to serve the term of imprisonment.

PART 10—GENERAL**Requests, complaints or applications**

49. (1) A request, complaint or application by a periodic detainee to the governor of a prison must be made orally or in writing.

(2) A complaint must:

- (a) specify the grounds on which it is made; and
- (b) be made as soon as practicable after the occurrence of the circumstances in respect of which it is made.

- (3) The governor of a prison must:
 - (a) ensure that all periodic detainees at the prison are given an opportunity each day to make requests, complaints and applications to the governor; and
 - (b) consider and determine any such request, complaint or application (if practicable, on the day on which it is made) and inform the detainee of the determination made.

Governor to report certain matters

50. The governor of a prison who is informed by the prison medical officer, or who is otherwise of the opinion, that the physical or mental health of a periodic detainee is or may be injuriously affected by the detainee's continuing:

- (a) to comply with an order under section 10 (1) (b) of the Act; or
 - (b) to serve a sentence by way of periodic detention,
- must furnish a report on the matter to the Commissioner.

Repeal

51. (1) The Periodic Detention of Prisoners Regulation 1988 is repealed.

(2) Any act, matter or thing that, immediately before the repeal of the Periodic Detention of Prisoners Regulation 1988, had effect under that Regulation is taken to have effect under this Regulation.

SCHEDULE 1—FORMS

Form 1

(Cl. 6)

WARRANT OF COMMITMENT TO PRISON

(Section 6, Periodic Detention of Prisoners Act 1981)

TO the governor of the prison at in the State of New South Wales.

WHEREAS—

1.
 of
 ("the periodic detainee") was, on the day of 19.....
 convicted in the Court at

of the following offence:
.....
.....

being an offence punishable by imprisonment; and

2. On that conviction the periodic detainee was sentenced to be imprisoned for a term of ; and

3. It was ordered by the Court that the term of imprisonment be served by way of periodic detention to commence at 7 p.m. on the day of 19.....

I COMMAND YOU to receive the periodic detainee into your custody at the prison and, subject to the Periodic Detention of Prisoners Act 1981, and to any order under it, there to imprison him or her by way of periodic detention for the term of commencing at 7 p.m. on the day of 19, and for your doing so this warrant is sufficient authority.

Signed this day of 19....., at in the State of New South Wales.

.....
Justice of the Peace

Form 2

(Cl. 7 (1))

NOTICE OF COMMITMENT TO PRISON

(Section 7 (1), Periodic Detention of Prisoners Act 1981)

TO
of

WHEREAS—

1. You were, on the day of 19....., convicted in the Court at of the following offence:

.....
.....

being an offence punishable by imprisonment; and

2. On that conviction you were sentenced to be imprisoned for a term of ; and

3. It was ordered by that Court that you serve that term of imprisonment by way of periodic detention.

YOU ARE GIVEN NOTICE that you have been ordered to report in person to the governor of the prison at in the State of New South Wales at 7 p.m. on the day of 19....., and, subject to the Periodic Detention of Prisoners Act 1981, and to any order under it, at the same time, day of the week and place each week after that date during your term of imprisonment.

Signed this day of 19....., at
in the State of New South Wales.

.....
Justice of the Peace

Signature of periodic detainee:

Form 3

(Cl. 45 (2))

ORDER TRANSFERRING UNRULY PERIODIC DETAINEE

(Section 18, Periodic Detention of Prisoners Act 1981)

TO the governor of the prison at in the State of
New South Wales.

WHEREAS—

1.
of ("the periodic detainee")
is in my custody at the prison at
for the purpose of serving a term of imprisonment by way of periodic detention; and

2. The detention period being served by the periodic detainee commenced at
.... a.m./p.m. on the day of 19.....; and

3. The periodic detainee has behaved in such a manner as to disturb the peace and
good conduct of the prison.

I ORDER the periodic detainee to be transferred to the prison at
for the unexpired portion of the detention period.

.....
Governor

Dated:

Form 4

(Cl. 47 (1))

WARRANT FOR APPREHENSION AND DETENTION

(Section 26 (1) (a), Periodic Detention of Prisoners Act 1981)

TO the senior officer of police at
in the State of New South Wales and to all other police officers,

AND

TO the governor of the prison at
in the State of New South Wales.

WHEREAS—

1. of
("the prisoner") was, on the day of 19.....,
convicted in the Court
at of the following offence:

.....
.....

being an offence punishable by imprisonment; and

2. On that conviction the prisoner was sentenced to be imprisoned for a term of
.....; and

3. It was ordered by the Court that the term of imprisonment be served by way of
periodic detention; and

4. The prisoner commenced to serve that term of imprisonment, in accordance with
the order of the Court, on the day of 19.....; and

5. On the day of 19.....,
at the Court at
the order for periodic detention in respect of the prisoner was cancelled, it appearing to
the Court that there was good reason to do so.

I COMMAND YOU, the senior officer of police, and all other police officers, to
immediately apprehend the prisoner and safely convey him or her to the prison and there
to deliver him or her, together with this warrant, into the custody of the prison's
governor, and for your doing so this warrant is sufficient authority,

AND

I COMMAND YOU, the governor of the prison, to receive the prisoner into your
custody and to imprison him or her in the prison for the duration of the unexpired
portion of his or her term of imprisonment, that portion to be calculated in accordance
with section 27 (1) (c) (ii) of the Periodic Detention of Prisoners Act 1981, and for your
doing so this warrant is sufficient authority.

Signed this day of 19....., at
in the State of New South Wales.

.....
Justice of the Peace

Form 5

(Cl. 47 (2))

WARRANT FOR DETENTION

(Section 26 (1) (b), Periodic Detention of Prisoners Act 1981)

TO the senior officer of police at
in the State of New South Wales and to all other police officers,

AND

TO the governor of the prison at
in the State of New South Wales.

WHEREAS—

1.
of
("the prisoner") was, on the day of 19.....,
convicted in the Court at
of the following offence:

.....
being an offence punishable by imprisonment; and

2. On that conviction the prisoner was sentenced to be imprisoned for a term of ; and

3. It was ordered by the Court that the term of imprisonment be served by way of periodic detention; and

4. The prisoner commenced to serve that term of imprisonment, in accordance with the order of the Court, on the day of 19.....; and

5. On the day of 19....., at the Court at
the order for periodic detention in respect of the prisoner was cancelled, it appearing to the Court that there was good reason to do so.

I COMMAND YOU, the senior officer of police and all other police officers, to immediately safely convey the prisoner to the prison and there to deliver him or her, together with this warrant, into the custody of the prison's governor, and for your doing so this warrant is sufficient authority,

AND

I COMMAND YOU, the governor of the prison, to receive the prisoner into your custody and to imprison him or her in the prison for the duration of the unexpired portion of his or her term of imprisonment, that portion to be calculated in accordance with section 27 (1) (c) (i) of the Periodic Detention of Prisoners Act 1981, and for your doing so this warrant is sufficient authority.

Signed this day of 19.....
 at in the State of New South Wales.

.....
 Justice of the Peace

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SCHEDULE 1—FORMS

EXPLANATORY NOTE

The object of this Regulation is to repeal the Periodic Detention of Prisoners Regulation 1988 and to remake, without any major changes in substance, the provisions of that Regulation. The new Regulation deals with the following matters:

- (a) the ordering of periodic detention (Part 2);
- (b) the reception of periodic detainees into prison (including the manner of reporting to prison, recording of particulars, searching and personal property) (Part 3);
- (c) prison routine and order (including accommodation, cleanliness, visitors and general order and discipline) (Part 4);

- (d) work site routine (Part 5);
- (e) leave of absence (Part 6);
- (f) possession or consumption of alcohol or drugs (including testing and evidence provisions) (Part 7);
- (g) offences against discipline (Part 8);
- (h) the making of complaints to the prison governor (clause 49, Part 10);
- (i) other minor, consequential or ancillary matters (Parts 1 and 9 and clauses 50 and 51, Part 10).

This Regulation is made under the Periodic Detention of Prisoners Act 1981, including section 20 (leave of absence), section 33 (1) (d) (offences against discipline), section 33B (penalty notice offences) and section 34 (the general regulation making power).

This Regulation is made in connection with the staged repeal of subordinate legislation under the Subordinate Legislation Act 1989.
