

**PERIODIC DETENTION OF PRISONERS (AMENDMENT) BILL
1989**

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Periodic Detention of Prisoners Act 1981 so as:

- (a) to allow longer sentences to be served by way of periodic detention; and
- (b) to provide that cumulative sentences may be served by way of periodic detention; and
- (c) to specify circumstances in which an order for periodic detention may be cancelled.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the proposed Act to commence on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the Schedule of amendments to the Principal Act.

Clause 4 allows the provisions of section 5 of the Principal Act (as amended by the proposed Act) and of new section 5B (as inserted by the proposed Act) to apply to all persons sentenced after the commencement of the relevant amendments made by the proposed Act, even if those persons committed, or were convicted of, the offence concerned before that commencement.

As a consequence, the amendments will enable a court to make greater use of periodic detention as an alternative to imprisonment in the case of more serious offences.

Periodic Detention of Prisoners (Amendment) 1989

SCHEDULE 1 - AMENDMENTS

Periodic detention for longer periods

Schedule 1 (1) amends section 5 of the Principal Act to increase from 18 months to 3 years the maximum sentence of imprisonment that may be served by way of periodic detention.

Periodic detention for more than one sentence

Schedule 1 (2) inserts a new section 5B into the Principal Act. The new section provides that a sentence ordered to be served by way of periodic detention may be either concurrent with or additional to another sentence that is required to be served by way of periodic detention by another order. (At present, only sentences that are neither concurrent nor cumulative, or that are concurrent sentences imposed at the same time, can be served by way of periodic detention.)

The period of detention remaining to be served concurrently or cumulatively under such an order must not exceed 3 years.

Cancellation of orders for periodic detention

Schedule 1 (4) repeals and substitutes section 25 of the Principal Act. That section enables an order for periodic detention to be cancelled by the court that made the order.

The substituted section is designed to make it clear that it is not necessary for the court to be constituted by the same person(s), or to be sitting at the same place, as it was when it made the order to be cancelled.

The substituted section contains a new evidentiary provision in connection with cases where the Director-General of Corrective Services applies to have an order for periodic detention cancelled because the periodic detainee is not serving his or her sentence in accordance with the order.

In such cases, a certificate given by the Director-General that indicates that a person is a periodic detainee and gives particulars of the terms of the order for the person's periodic detention and of any failure by the person to serve his or her sentence in accordance with the order is admissible as evidence of the matters certified.

Schedule 1 (5) amends section 27 of the Principal Act, which sets out the consequences of the cancellation, under Part 4 of the Act, of an order for periodic detention. A usual consequence is that the offender is obliged to serve, by way of full-time imprisonment, the unexpired portion of the sentence he or she was serving by way of periodic detention. The amendments provide that the court has a discretion to direct that an offender, after serving part of this unexpired portion, is to be eligible for release on parole.

The amendments made by Schedule 1 (3) are consequential.
