

[Act 1998 No 43]



New South Wales

Periodic Detention of Prisoners Amendment Bill 1998

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are:

- (a) to make miscellaneous amendments to the *Periodic Detention of Prisoners Act 1981* with respect to the making, cancellation and administration of periodic detention orders, and
- (b) to make consequential amendments to the *Home Detention Act 1996* and the *Sentencing Act 1989*.

The Bill also makes provision for savings and transitional matters.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on such day or days as may be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Periodic Detention of Prisoners Act 1981* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendment of the *Home Detention Act 1996* set out in Schedule 2.

Clause 5 is a formal provision giving effect to the amendment of the *Sentencing Act 1989* set out in Schedule 3.

Amendment of Periodic Detention of Prisoners Act 1981

Schedule 1 [1] and **[2]** make consequential amendments to section 4 so as to add certain definitions used in other provisions that are to be inserted into the Act.

Schedule 1 [3] and **[4]** amend section 5 so as to replace existing subsection (1) with new subsections (1), (1A) and (1B) and to add a new subsection (7). The effect of the amendments are:

- (a) to enable an order for periodic detention (a *PDO*) to be made in relation to a term of imprisonment of less than 3 months (which currently can only be done in the circumstances set out in section 5A), and
- to remove any doubt as to the requirement for a court to have sentenced a person before it considers whether or not to make a PDO in respect of the person, and to ensure that such a sentence will be either a fixed term of imprisonment or a minimum and an additional term of imprisonment, and
- to enable the regulations to prescribe the factors by reference to which a person is to be assessed before a PDO is made in respect of the person, and
- to ensure that a PDO is not made in respect of a person unless the person has signed an undertaking to comply with the requirements of the Act and the regulations with respect to the service of terms of imprisonment by way of periodic detention.

Schedule 1 [5] repeals section 5A as a consequence of the amendments referred to in Schedule 1 [3] and [4].

Schedule 1 [6] amends section 20 so as to require an application for leave of absence under that section to be made before the expiry of 7 days after the beginning of the detention period in respect of which the leave is sought unless the Commissioner of Corrective Services otherwise allows (proposed section 20 (2A)).

Schedule 1 [7] repeals section 20A (4). That subsection confers a limited power of delegation on the Commissioner of Corrective Services that is unnecessary in the light of a more general power conferred by section 48D of the *Correctional Centres Act 1952*.

Schedule 1 [8] omits a wrong section reference from section 21 (1).

Schedule 1 [9] amends section 21 so as to exclude from the operation of section 21 (1) (a provision that provides for the extension of a periodic detainee's term of imprisonment for one week for each detention period a person fails to report for periodic detention in accordance with the relevant PDO) those circumstances in which a periodic detainee's lateness gives rise to the extension provided for by proposed section 21 (1B) (proposed section 21 (1A)).

It also amends section 21 so as to provide that where under section 21AA (3) "make-up" time is directed to be served as part of an additional detention period, the periodic detainee's term of imprisonment is extended by one week for each additional detention period necessary to accommodate the total period of time directed to be served by all such directions (proposed section 21 (1B)).

Schedule 1 [10] is consequential on the enactment of proposed section 21 (1B).

Schedule 1 [11] amends section 21 so as to provide that references to the term of a sentence are taken to be references to the minimum or fixed terms of the sentence, as set under the *Sentencing Act 1989*, and so as to ensure that the extension of the minimum term of a sentence does not affect the length of the additional term of the sentence.

Schedule 1 [12] makes a minor law revision amendment to section 21AA (1).

Schedule 1 [13] amends section 21AA so as to require an application for leave of absence under that section to be made before the expiry of 7 days after the beginning of the detention period in respect of which the leave is sought unless the Commissioner of Corrective Services otherwise allows (proposed section 21AA (2A)).

Schedule 1 [14] amends section 21AA (3) so as to enable "make-up" time that is required to be served as a result of a periodic detainee arriving late for a detention period to be served as part of an additional detention period rather than, as is currently the case, as an extension of an existing detention period. This amendment requires the extension of the periodic detainee's sentence, as to be effected by proposed section 21 (1B).

Schedule 1 [15] amends section 21A (1) so as to enable the Commissioner of Corrective Services to exempt a periodic detainee from the operation of section 21 (2) (which provides for the extension of a periodic detainee's sentence of imprisonment by a second additional detention period where the periodic detainee fails to serve a detention period but does not get leave of absence). Currently the Commissioner may only grant such an exemption in relation to section 21 (1) (which provides for the extension of a periodic detainee's sentence of imprisonment by a first additional detention period whether or not the periodic detainee gets leave of absence).

Schedule 1 [16] amends section 21B so as to provide that a periodic detainee is taken to have served a detention period if he or she was an inmate of a correctional centre during that period (proposed section 21B (4)).

Schedule 1 [17] amends section 24 (1) so as to ensure that a PDO is not cancelled if the periodic detainee is subsequently convicted of an offence but the sentence imposed on the detainee consists of a home detention order under the *Home Detention Act 1996*.

Schedule 1 [18]–[21] amend section 25 so as to provide that the Parole Board rather than a court, as is currently the case, has the function of cancelling PDOs for reasons other than the conviction of the periodic detainee of a further offence. The amendments also enable the Parole Board to replace a cancelled PDO with a home detention order under the *Home Detention Act 1996* (proposed section 25 (6) and (7)). Further, the amendments require the Parole Board to cancel a PDO if a concurrently operating home detention order is revoked under the *Home Detention Act 1996* (proposed section 25 (8)). The amendments also provide for the revival of a cancelled PDO where the revoked home detention order is revived as a result of appeal proceedings.

Schedule 1 [22]–[24] amend section 25A so as to provide that if the Parole Board cancels a PDO, it may also cancel all other PDOs that are to be served cumulatively on the sentence the subject of the cancelled order (proposed section 25A (1) and (2)). These provisions parallel similar provisions with respect to PDOs that are cancelled by a court.

Schedule 1 [25] amends section 26 (1) (which provides for the issue of arrest warrants by a justice of the peace on the cancellation of a PDO) so as to restrict the operation of that subsection to orders cancelled by a court.

Schedule 1 [26] amends section 26 (1) as a consequence of the amendment to be effected by Schedule 1 [18]–[21].

Schedule 1 [27] amends section 26 so as to empower the Parole Board to issue arrest warrants for periodic detainees the subject of PDOs that have been cancelled by the Parole Board (proposed section 26 (1A)).

Schedule 1 [28]–[34] amend section 27 as a consequence of the power being given to the Parole Board by Schedule 1 [18]–[21] to cancel PDOs.

Schedule 1 [35] amends section 27 so as to provide that, for the purpose of determining the unexpired portion of a sentence of imprisonment in respect of which a PDO has been cancelled, a periodic detainee is taken to have served a detention period if he or she was an inmate of a correctional centre at any time during the period between the time the order was cancelled and the time the ensuing arrest warrant is executed.

Schedule 1 [36] amends sections 28 and 34 by way of law revision.

Schedule 1 [37] amends Schedule 2 so as to enable savings and transitional regulations to be made in connection with the enactment of the proposed Act.

Schedule 1 [38] amends Schedule 2 so as to include specific savings and transitional provisions consequent on the enactment of the proposed Act.

Amendment of Home Detention Act 1996

Schedule 2 [1] inserts a new section 18A. The new section requires the Parole Board to revoke a home detention order if a concurrently operating PDO is cancelled under the *Periodic Detention of Prisoners Act 1981*, except where an order is made directing the unexpired portion of the sentence of imprisonment to which the cancelled PDO relates to be served by way of home detention. It also provides for the revival of a revoked home detention order where the cancelled PDO is revived as a result of appeal proceedings.

Schedule 2 [2] amends section 19 (which provides a right of appeal to the Court of Criminal Appeal in relation to the revocation of home detention orders) so as to exclude the mandatory revocation under proposed section 18A from the operation of that section.

Amendment of Sentencing Act 1989

Schedule 3 [1] omits section 13 (a) (which excludes Part 2 from operating in relation to sentences of imprisonment the subject of PDOs) as a consequence of the amendments to section 5 of the *Periodic Detention of Prisoners Act 1981* to be effected by Schedule 1 [3] and [4].

Schedule 3 [2] amends section 27 so as to provide that such conditions of a parole order imposed by a court under section 24 as relate to the supervision of a person during the period of parole do not have effect if the sentence of imprisonment to which the parole order relates is subsequently the subject of a PDO under the *Periodic Detention of Prisoners Act 1981*.