

Periodic Detention of Prisoners Act 1981 No 18

[1981-18]



New South Wales

Status Information

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Repeal**

The Act was repealed by Sch 1 to the [Crimes Legislation Amendment \(Sentencing\) Act 1999 No 94](#) with effect from 3.4.2000.

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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Periodic Detention of Prisoners Act 1981 No 18



New South Wales

An Act to make provision for and with respect to the periodic detention of certain persons sentenced to imprisonment.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Periodic Detention of Prisoners Act 1981*.

2 Commencement

- (1) This section and section 1 shall commence on the date of assent to this Act.
- (2) Except as provided in subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

3 (Repealed)

4 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

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

Commissioner means the Commissioner of Corrective Services.

court includes a judge, Magistrate or a justice or justices sitting as a Local Court.

detention period, in relation to a person in respect of whom an order for periodic detention is made, means a period that:

- (a) occurs during the term of the sentence of imprisonment to which the order applies, and
- (b) subject to any order of the Commissioner under section 11A or 12:
 - (i) commences at 7.00 pm on the same date of the week as the date specified in

the order of the court imposing the sentence as the date on which the sentence commences, and

- (ii) ends at 4.30 pm on the second day after the day on which the period commences,

but does not include any such period which includes the whole or any part of Christmas Day, Good Friday or Easter Sunday.

fixed term has the same meaning as it has in the [Sentencing Act 1989](#).

governor, in relation to a prison, means the superintendent, governor, gaoler or other officer for the time being in charge of the prison.

justice means justice of the peace.

minimum term has the same meaning as it has in the [Sentencing Act 1989](#).

order for periodic detention means an order under section 5 (1) or an order under section 89 of the [Fines Act 1996](#).

Parole Board means the Parole Board constituted by the [Sentencing Act 1989](#).

periodic detainee means a person in respect of whom an order for periodic detention is in force.

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.

prison means a correctional centre within the meaning of the [Correctional Centres Act 1952](#).

regulation means a regulation under this Act.

rule means a rule in force under section 23.

section 5B order means an order for periodic detention that, under section 5B, requires a person's sentence to be served by way of periodic detention wholly or partly concurrently with, or cumulatively on, some other sentence that is being or is to be served by the person by way of periodic detention.

- (2) A reference in this Act to an order made under section 10, 11, 11A, 12 or 13 includes a reference to the order as amended, varied or altered under section 16.

Part 2 Orders for periodic detention

5 Power to order periodic detention

- (1) This section applies to a person on whom a court has imposed a sentence of imprisonment comprising:
- (a) a fixed term of imprisonment not exceeding 3 years, or
 - (b) a minimum and an additional term that do not in the aggregate exceed 3 years.
- (1A) A court that has sentenced a person to whom this section applies 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 periodic detention.
- (1B) Such an order may not be made unless the court is satisfied:
- (a) that it is appropriate in the circumstances of the case that the person serve the sentence by way of periodic detention, and
 - (b) that there is accommodation available at a prison for the person to serve the sentence by way of periodic detention, and
 - (c) that transport arrangements are available for travel by the person, to and from the prison, for the purpose of serving the sentence by way of periodic detention, being arrangements that will not impose undue inconvenience, strain or hardship on the person, and
 - (d) that the person is a suitable person to serve the term of imprisonment by way of periodic detention, having regard to:
 - (i) a report on the person (a suitability report) prepared by a probation and parole officer employed in the Department of Corrective Services or by a person authorised in accordance with the regulations to prepare such a report, and
 - (ii) such evidence from a probation and parole officer or person so authorised as the court considers necessary for the purpose of deciding whether to make such an order, and
 - (e) that the person has signed an undertaking, in the form prescribed by the regulations, to comply with the requirements of this Act and the regulations with respect to service of a term of imprisonment by way of periodic detention.
- (2) A court shall not make an order for periodic detention in respect of:
- (a) a person who is under the age of 18 years.
 - (b) (Repealed)

(3)-(5) (Repealed)

(6) Where a court makes an order for periodic detention in respect of a person, it may also order the person to pay any fine, penalty, sum of money, costs or expenses authorised by law.

(7) A person's suitability report:

(a) must assess the person's suitability to serve a term of imprisonment by way of periodic detention by reference to such factors as may be prescribed by the regulations, and

(b) must indicate that the person preparing the report:

(i) has explained to the person (in language that the person can readily understand) the requirements of this Act and the regulations with respect to service of terms of imprisonment by way of periodic detention, and

(ii) has asked the person to sign an undertaking, in the form prescribed by the regulations, to comply with those requirements.

5AA Power to order taking of photographs and fingerprints

(1) A court that makes an order for periodic detention in respect of a person must also order that, before being committed to prison under section 6, the person submit to the taking of identifying particulars concerning the person.

(2) Identifying particulars may be taken by a police officer or a correctional officer, or by any other person specified by the court in the order.

(3) The court may cancel the order for periodic detention if the person fails to comply with the order to submit to the taking of identifying particulars.

(4) An order for periodic detention is not invalidated merely because an order is not also made to submit to the taking of identifying particulars.

(5) Nothing in this section prevents a court making an order under section 353A of the [Crimes Act 1900](#) in respect of a person convicted of an offence.

(6) In this section:

correctional officer means:

(a) a correctional officer, within the meaning of the [Correctional Centres Act 1952](#), engaged in court security or escort duties, or

(b) a person employed on a temporary basis within the Department of Corrective Services to perform court security or escort duties.

identifying particulars concerning a person means particulars (including photographs and fingerprints) necessary to identify the person.

5A (Repealed)

5B Application of section 5 to concurrent and cumulative sentences

- (1) An order for periodic detention may require that a sentence be served by way of periodic detention wholly or partly concurrently with, or cumulatively on, another or other sentences required by the same or a different order to be served by way of periodic detention.
- (2) A court may not make such an order unless, at all times, the sum of:
 - (a) the length of time remaining to be served concurrently under the order or orders, and
 - (b) the length of time remaining to be served, otherwise than concurrently, under the order or orders,does not exceed 3 years.
- (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).
- (3) For the purpose of determining whether such an order may be made, it does not matter whether any other order required to be considered was made before or after the commencement of this section.
- (4) This section does not affect the operation of section 444 of the *Crimes Act 1900*.

5C Periodic detention orders for fine defaulters

- (1) This section applies to an order for periodic detention made under section 89 of the *Fines Act 1996*.
- (2) In the application of this Act to such an order:
 - (a) a reference to a court having made an order is to be read as a reference to the Commissioner,
 - (b) a reference to a sentence of imprisonment to be served by way of periodic detention or to which an order for periodic detention relates is to be read as a reference to the committal of the person to prison as referred to in section 87 of the *Fines Act 1996*, and a reference to the court that imposed the sentence is to be read as a reference to the Commissioner,
 - (c) the powers of a court under section 25 or 27 may be exercised by the Commissioner.

5D (Repealed)

6 Warrant of commitment to prison

As soon as practicable after a court has made an order for periodic detention in respect of a person, the person shall be committed to prison by warrant, in or to the effect of the prescribed form and under the hand of a justice.

7 Notice to be served

- (1) Where a person is committed to prison under section 6, the justice who commits the person to prison shall forthwith serve, or cause to be served, on the person a notice, in or to the effect of the prescribed form, specifying:
 - (a) the date on which the person is first to report to prison,
 - (b) the day of the week on which the person is thereafter to report, during the term of the person's sentence, to prison, and
 - (c) the time and prison at which the person is to report on that date and on each such day.
- (2) A person in respect of whom an order for periodic detention has been made shall be deemed to be in lawful custody from the time at which the order is made until the time at which the notice required by subsection (1) is served on the person.

8 Commencement of sentence

- (1) A sentence of imprisonment to be served by way of periodic detention shall commence on the date specified in the order of the court imposing the sentence as the date on which the sentence shall commence, which date shall be not earlier than 7 days and not later than 21 days after the date on which the sentence is imposed.
- (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.
- (3) An order for periodic detention is not invalidated merely because the order specifies a date for commencement of the sentence of imprisonment that does not comply with the requirements of this section.
- (4) The court that made such an order may, on application by the Commissioner, correct the order.
- (5) In correcting the order the court is to take into account any detention period served by the periodic detainee in compliance with the order.
- (6) It does not matter whether the court correcting the order is constituted by the same member or members who constituted it at the time the order was made, or whether it

is sitting at the same place.

Part 3 Provisions relating to periodic detention

9 Service of sentence

- (1) A periodic detainee shall serve his or her sentence by way of periodic detention in accordance with this Act.
- (2) A periodic detainee shall first report at the prison and at 8.30 am (or at such other time as may be prescribed by the regulations in relation to a particular prison) on the day following the date specified in the notice served on the periodic detainee under section 7 (1) and thereafter during the term of the periodic detainee's sentence on the day of the week specified in that notice as the day on which he or she is so to report and at the same time and place unless otherwise ordered under this Act by the Commissioner, and if otherwise so ordered, then in accordance with the order made by the Commissioner.
- (2A) The detention period in which a periodic detainee first reports for periodic detention ends at 4.30 pm on the day after the day on which the periodic detainee first reports.
- (3) Subsection (2) ceases to apply to or in respect of a periodic detainee if the order for periodic detention that was made in respect of the periodic detainee is cancelled.
- (4) Where:
 - (a) a periodic detainee is required, by or under this Act, to report at a prison, and
 - (b) the regulations prescribe the manner in which any such periodic detainee is so to report,the periodic detainee complies with the requirement only if he or she reports in the manner so prescribed.

10 Order to participate in activity or work

- (1) The Commissioner may, by order, direct a periodic detainee:
 - (a) to participate in any activity, attend any class or group or undergo any instruction that the Commissioner considers conducive to the periodic detainee's welfare or training, or
 - (b) to perform any work, whether in a prison or at a place or places outside a prison approved by the Commissioner and notified to the periodic detainee from time to time, that the Commissioner considers suitable to the periodic detainee's physical capacity,during any one or more detention periods.

- (2) However, the Commissioner must not direct a periodic detainee to perform work if, in performing the work, the person would take the place of any other person who would otherwise be employed in that work as a regular employee.
- (3) (Repealed)
- (4) Where the Commissioner makes an order under subsection (1) (b) directing a periodic detainee to perform work at a place outside a prison (whether or not the Commissioner makes an order in respect of the periodic detainee under section 11) and for any reason work is not available at the place or it is impracticable for the periodic detainee to perform work at the place, the periodic detainee shall report at such other place, and in accordance with such instructions as may be given to the periodic detainee, by such person, or a person holding such office, as may be specified in the order.

11 Exemption from serving detention periods in prison

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.

11A Variation of days of attendance

- (1) A periodic detainee may make application in writing to the Commissioner requesting the Commissioner to make an order varying the days that are to comprise the periodic detainee's detention period during the whole or part of the periodic detainee's sentence.
- (2) Where a periodic detainee makes application under subsection (1), the Commissioner may:
 - (a) grant the application and order that the days in respect of which the application is made be varied as requested in the application, or
 - (b) refuse to grant the application.
- (3) An application must not be granted if it would cause the detention period to commence otherwise than at 7.00 pm on one day and end otherwise than at 4.30 pm on the second day after the day on which the period commences.
- (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.

12 Variation of times of attendance

- (1) A periodic detainee may make application in writing to the Commissioner requesting the Commissioner to make an order varying:

- (a) the time at which the periodic detainee is required to report at a prison or place of work each detention period during the whole or part of the periodic detainee's sentence, and
 - (b) the time at which the periodic detainee may leave a prison or place of work each detention period during the whole or part of the periodic detainee's sentence.
- (2) Subject to subsection (3), where a periodic detainee makes application under subsection (1), the Commissioner may:
- (a) grant the application and order that the times in respect of which the application is made be varied as requested in the application, or
 - (b) refuse to grant the application.
- (3) Where a periodic detainee makes application under subsection (1) requesting the Commissioner to make an order that would, if the Commissioner were to make the order, have the effect of:
- (a) (Repealed)
 - (b) increasing or reducing the number of consecutive hours that the periodic detainee is required to serve in prison each detention period during the whole or part of the periodic detainee's sentence,
- the Commissioner shall refuse to grant the application.

13 Variation of prison at which sentence is to be served

- (1) Subject to subsection (2), the Commissioner may, by order, direct a periodic detainee to serve the whole or part of the periodic detainee's sentence at a prison other than the prison specified in the notice served on the periodic detainee under section 7 (1).
- (2) The Commissioner shall not make an order under subsection (1) in respect of a periodic detainee that could reasonably be expected to have the effect of imposing undue inconvenience, strain or hardship on the periodic detainee.

14 Commissioner to give notice to periodic detainees of certain orders

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.

15 Commencement of certain orders

An order under section 10, 11, 11A, 12 or 13 shall take effect on and from the day on which the order is made or on and from such later day as may be specified in the order.

16 Revocation or amendment of certain orders

An order made under section 10, 11, 11A, 12 or 13 or deemed by clause 5 of Schedule 2 to be made under this Act may:

- (a) at any time, be revoked or rescinded, or
 - (b) from time to time, be amended, varied or altered,
- by further order made by the Commissioner.

17 Effect of complying with certain orders

- (1) Where the Commissioner makes an order under section 10, 11, 11A, 12 or 13 in respect of a periodic detainee, any provision of the order for periodic detention made in respect of the periodic detainee, the warrant issued in respect of the periodic detainee under section 6 or the notice served on the periodic detainee under section 7 (1) or any stipulation of this Act, which is inconsistent with a provision of the order made by the Commissioner, is, while the periodic detainee complies with the order made by the Commissioner, of no force or effect to the extent of the inconsistency.
- (2) While a periodic detainee is complying with an order under section 10, 11, 11A, 12 or 13 made in respect of the periodic detainee, the periodic detainee shall be deemed to be serving, by way of periodic detention, the periodic detainee's sentence of imprisonment.

18 Transfer of unruly periodic detainees

Where a periodic detainee, while in custody under this Act in a prison, behaves in such a manner as to disturb the peace and good conduct of the prison, the governor of the prison may, subject to and in accordance with such provisions of the regulations as are made for the purposes of this section, order that the periodic detainee be transferred to another prison for the unexpired portion of the detention period.

19 (Repealed)

20 Leave of absence at request of periodic detainee

- (1) The Commissioner may, at the request of a periodic detainee and in accordance with the regulations, grant leave of absence to the 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 is participating in a program under the [Drug Court Act 1998](#), 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.
- (2A) An application for leave of absence must be made before the expiry of 7 days after the beginning of the detention period in respect of which the leave is sought unless, in the particular circumstances of the case, the Commissioner allows further time for the application.
- (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.

20A Leave of absence at direction of Commissioner

- (1) Without limiting the directions that may be given under section 22, the Commissioner may direct a periodic detainee to take leave of absence for one or more detention periods if the Commissioner is of the opinion that the presence of the periodic detainee in a prison during those periods would constitute a threat to the personal safety or health of the detainee or any other person.
- (2) Without limiting the circumstances in which a direction may be given under this section, a direction may be given if the periodic detainee or some other detainee is suffering from a contagious or infectious disease.
- (3) Leave of absence is taken to have been granted for each detention period for which a direction under this section has been given.
- (4) (Repealed)

21 Failure to report as required extends term of sentence

- (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

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

- (1A) Subsection (1) does not apply in the case of a failure to report that is the subject of a direction referred to in section 21AA (3).
- (1B) If under section 21AA (3) an equivalent period of time to that for which leave is granted under section 21AA (2) is directed to be served as part of an additional detention period, the term of the sentence of the periodic detainee in respect of whom the direction is given 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 under section 21AA (3).
- (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, 20A or 21AA) 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 6 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) or (1B) 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.
- (7) If any sentence is, by an order under section 5B, required to be served cumulatively on a sentence the term of which is extended under this section, the date of commencement of the sentence to be served cumulatively as specified in the order is taken to be extended by the length of time by which the term of sentence is so extended.

- (8) In this section, references to the term of a sentence are taken to be references to:
- (a) the minimum term of the sentence, in the case of a sentence in respect of which a minimum term has been set, or
 - (b) the fixed term of the sentence, in the case of a sentence in respect of which a fixed term has been set.
- (9) The extension by this section of the minimum term of a sentence by one or more weeks does not affect the length of the additional term of the sentence.

21AA Reporting late

- (1) A periodic detainee who, without reasonable excuse, reports late for a detention period (otherwise than on leave of absence under this section or under section 20 or 20A) is taken for the purposes of section 21 (1) to have failed to report for that detention period.
- (2) The Commissioner may, in accordance with the regulations, grant leave of absence for part or all of a detention period to a periodic detainee who, with reasonable excuse, reports late for the detention period.
- (2A) An application for leave of absence must be made before the expiry of 7 days after the beginning of the detention period in respect of which the leave is sought unless, in the particular circumstances of the case, the Commissioner allows further time for the application.
- (3) When leave of absence is granted for part of a detention period, the Commissioner may direct the periodic detainee to serve an equivalent period of time to that for which leave is granted immediately before the commencement, or at the end, of a detention period specified by the Commissioner or as part of an additional detention period to be served by the periodic detainee.
- (4) A Local Court may, on the application of a periodic detainee whose request for leave of absence for part or all of a detention period has been refused, direct that leave of absence be granted in respect of part or all of the detention period.
- (5) 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.
- (6) 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.
- (7) An application is not to be considered by the Local Court unless it is satisfied that the application is not an abuse of process.
- (8) Leave of absence is taken to have been granted for each detention period (or part of a

detention period) for which a direction under this section is made.

21A Commissioner may grant exemptions from extension of sentence

(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,

exempt a periodic detainee from the operation of section 21 (1) or (2) 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.

21B Periodic detention taken to have been served in certain circumstances

- (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.
- (4) Any detention period during which a periodic detainee is in custody as an inmate within the meaning of the *Correctional Centres Act 1952*, is taken to have been served by the periodic detainee in accordance with this Act.

22 Directions

- (1) The Commissioner, the governor of each prison and any prison officer may, subject to and in accordance with such provisions of the regulations as are made for the purposes of this subsection, each give directions (not inconsistent with a provision of this Act or a regulation, rule or order made under this Act) to any periodic detainee for

the purpose of securing the enforcement or observance of the provisions of this Act, a regulation or rule or an order made under this Act.

- (2) Notwithstanding anything in subsection (1), the Commissioner may, subject to and in accordance with such provisions of the regulations as are made for the purposes of this subsection, give directions in an emergency or in any other prescribed circumstances to any periodic detainee.

23 Rules

The Commissioner may, with the approval of the Minister, make rules (not inconsistent with this Act or the regulations) for the control, management and supervision of periodic detainees who are deemed by section 28 to be prisoners.

Part 4 Cancellation of orders for periodic detention

24 Cancellation of orders for periodic detention on subsequent conviction

- (1) If a periodic detainee is convicted of an offence and sentenced on that conviction to a term of imprisonment of more than one month, the court must cancel the order for periodic detention unless the court makes a section 5B order in relation to the periodic detainee, makes a home detention order under the *Home Detention Act 1996* in relation to the periodic detainee, makes a suspension order under the *Drug Court Act 1998* in relation to the periodic detainee or takes action under this Act or under the *Home Detention Act 1996* or the *Drug Court Act 1998* in connection with the making of such an order in relation to the periodic detainee.
- (2) Except in a case where subsection (1) applies, where a periodic detainee is convicted of an offence and sentenced upon that conviction to a term of imprisonment, the court before which the periodic detainee is convicted may cancel the order for periodic detention that was made in respect of the periodic detainee.
- (3) Where a periodic detainee is convicted of an offence and ordered to pay a fine, penalty, sum of money, costs or expenses authorised by law, the court before which the periodic detainee is convicted may cancel the order for periodic detention that was made in respect of the periodic detainee.
- (4), (5) (Repealed)

25 Cancellation of orders for periodic detention otherwise than on subsequent conviction

- (1) If an order for periodic detention is in force in respect of a person, the Parole Board may cancel the order:
 - (a) on application by the person or the Commissioner, or
 - (b) without application, if it appears to the Parole Board that there is good reason for doing so.

- (2) (Repealed)
- (3) Without limiting the generality of subsection (1), the Parole Board may, on the application of the Commissioner, cancel the order if the Parole Board is satisfied that the person is not serving his or her sentence in accordance with the order.
- (3A) Without limiting the generality of subsection (1), the Parole Board 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
 - (b) that the failures to report occurred otherwise than on leave of absence under section 20, 20A or 21AA and are not the subject of an exemption under section 21A.
- (3B) The Parole Board may refuse to cancel the order if it is satisfied:
- (a) that the person serving the sentence applied for and ought to have been granted leave of absence under section 20 or 21AA, or applied for and ought to have been granted an exemption 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 Parole Board 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.
- (3E) (Repealed)
- (4) In proceedings on an application under this section, a certificate purporting to be signed by the Commissioner and certifying any of the following:
- (a) that a person is a periodic detainee,
 - (b) particulars of the terms of that person's periodic detention order,
 - (c) particulars of any failure by the person to serve his or her sentence in accordance with the order,
- is admissible as prima facie evidence of the matters certified.

- (5) Before such a certificate is admitted in evidence, the Parole Board must be satisfied that a copy of the certificate has been served on the periodic detainee concerned by:
 - (a) delivering it personally to the periodic detainee, or
 - (b) sending it by post to the periodic detainee at the address of the place of residence of the periodic detainee last known to the Commissioner.
- (6) If an order for periodic detention is cancelled under this section, the Parole Board may, subject to Part 2 of the *Home Detention Act 1996*, by order direct that the unexpired portion of the term of imprisonment in respect of which the order for periodic detention was made be served by way of home detention within the meaning of that Act.
- (7) An order made under subsection (6) is taken to be a home detention order within the meaning of the *Home Detention Act 1996*, and that Act (Part 2 excepted) applies to such an order in the same way as it applies to a home detention order.
- (8) If the Parole Board revokes a person's home detention order under the *Home Detention Act 1996*, it must also cancel any order for periodic detention that is then in force in respect of the person.
- (9) Any order for periodic detention cancelled under this section is revived, by operation of this subsection, if the home detention order whose revocation brought about that cancellation is subsequently revived.

25AA Notice of cancellation

- (1) As soon as practicable after the Parole Board cancels an order for periodic detention, it must cause a notice under this section to be served on the periodic detainee 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 Parole Board is to meet for the purpose of reconsidering the cancellation of the order for periodic detention, and
 - (b) require the periodic detainee to notify the Secretary of the Parole Board, not later than 7 days before the date so fixed, if the periodic detainee intends to make representations to the Parole Board in relation to the cancellation of the order, 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 cancelled the order for periodic detention, and
 - (ii) copies of the reports and other documents used by the Parole Board in making

the decision to cancel the order for periodic detention.

- (3) Nothing in this section requires a periodic detainee 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 Parole Board, endanger or inappropriately identify any other person.

25AB Review of cancellation

- (1) If a periodic detainee on whom a notice has been served under section 25AA has duly notified the Secretary of the Parole Board that the periodic detainee intends to make representations to the Parole Board, the Chairperson of the Parole Board is required to convene a meeting of the Parole Board, on the date set by the notice, for the purpose of reconsidering the cancellation of the order for periodic detention.
- (2) At the meeting of the Parole Board convened pursuant to the notice, or at a subsequent meeting to which consideration of the matter is adjourned or postponed, the periodic detainee may make submissions to the Parole Board with respect to the cancellation of the order for periodic detention.
- (3) After reviewing all the reports, documents and other information placed before it, the Parole Board is to decide whether or not it should rescind the cancellation of the order for periodic detention concerned.
- (4) A decision under this section has effect according to its terms even if the order for periodic detention concerned has expired.

25AC Application to Court of Criminal Appeal

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

25A Cancellation of section 5B orders consequent on cancellation of other orders

- (1) If a court or the Parole Board cancels an order for periodic detention under section 24 or 25 (**the first cancelled order**), it may also cancel any related section 5B order.
- (2) A section 5B order may be cancelled:
 - (a) on application by the person to whom the order applies or the Commissioner, or
 - (b) without application, if it appears to the court or Parole Board that there is good reason for doing so.
- (3) A court may cancel a section 5B order under this section whether or not it made the section 5B order.
- (4) If a section 5B order is cancelled under this section, the sentence of imprisonment to

which the order applies is taken to be a separate term of imprisonment imposed at the time of cancellation, which term of imprisonment is to commence at the expiration of the term of the sentence of the first cancelled order or, if the first cancelled order requires more than one sentence to be served, at the expiration of the term of the sentence that last expires.

- (5) If more than one section 5B order is cancelled at the time of cancellation of the same first cancelled order, each sentence of imprisonment imposed by a cancelled section 5B order is to be served cumulatively on the expiration of the term of the sentence imposed by the section 5B order cancelled immediately before it.
- (6) In subsections (4) and (5), references to the term of a sentence are taken to be references to:
 - (a) the minimum term of the sentence, in the case of a sentence in respect of which a minimum term has been set, or
 - (b) the fixed term of the sentence, in the case of a sentence in respect of which a fixed term has been set.

26 Issue of warrant on cancellation of an order for periodic detention

- (1) Where an order for periodic detention is cancelled by a court under section 24, or is cancelled under section 25A as a consequence of an order for periodic detention having been cancelled by a court under section 24, a justice may:
 - (a) if the person in respect of whom the order was made is not before the court or in prison at the time at which the order is cancelled, issue a warrant, in or to the effect of the prescribed form, for the apprehension and detention of that person, or
 - (b) in any other case, issue a warrant, in or to the effect of the prescribed form, for the detention of that person,

to serve any unexpired portion of the sentence to which the order applied by way of full-time imprisonment.

- (1A) If an order for periodic detention is cancelled by the Parole Board under section 25, or is cancelled under section 25A as a consequence of an order for periodic detention having been cancelled by the Parole Board under section 25, the Parole Board may issue a warrant for the apprehension and detention of the person in respect of whom the order was in force, in or to the effect of the prescribed form, to serve any unexpired portion of the sentence to which the order applied by way of full-time imprisonment.
- (2) This section does not apply to an order for periodic detention under section 89 of the [Fines Act 1996](#).

27 Effect of cancellation of order for periodic detention

- (1) Where an order for periodic detention is cancelled under this Part (the **first cancelled order**):
- (a) any order that was made under section 10, 11, 11A, 12 or 13, and any order deemed to have been made under this Act, in respect of the person in respect of whom the order for periodic detention was made, shall cease to be of any force or effect, and
 - (b) (Repealed)
 - (c) any unexpired portion of the sentence of imprisonment to which the order applied is taken to be a separate term of imprisonment imposed at the time the order is cancelled, and
 - (d) any sentence of imprisonment the subject of a related section 5B order that has not been cancelled (being a sentence that is required to be served wholly or partly concurrently with the first cancelled order):
 - (i) is taken to be a separate term of imprisonment for the unexpired portion of the sentence of imprisonment to which the order applied, and
 - (ii) commences at the time the first cancelled order is cancelled, and
 - (e) any sentence of imprisonment the subject of a related section 5B order that has not been cancelled (being a sentence that is required to be served cumulatively on the first cancelled order):
 - (i) is taken to be a separate term of imprisonment, and
 - (ii) commences at the expiration of the term of the sentence to which the first cancelled order relates or, if it is one of a number of such sentences, at the expiration of the term of the sentence on which it is expressed to be cumulative.
- (1A) The separate term of imprisonment referred to in subsection (1) (c) is taken to commence:
- (a) in the case of an order with respect to a person who is before the court or in prison when the order is cancelled, at the time the order for periodic detention is cancelled, or
 - (b) in any other case, at the time the warrant for the apprehension and detention of the person (as referred to in section 26 (1) (a) or (1A)) is executed.
- (1B) In subsection (1) (e), the reference to the term of a sentence is taken to be a reference to:

- (a) the minimum term of the sentence, in the case of a sentence in respect of which a minimum term has been set, or
 - (b) the fixed term of the sentence, in the case of a sentence in respect of which a fixed term has been set.
- (2) If an order for periodic detention is cancelled under section 24 (1) or (2) because of a subsequent conviction, the person in respect of whom the order was made must serve any unexpired portion of the sentence to which the order applied:
- (a) by way of full-time imprisonment, and
 - (b) concurrently with the term of imprisonment to which the person is sentenced for that subsequent conviction.
- (3) If an order for periodic detention is cancelled under section 24 (3) or 25, the person in respect of whom the order was made must serve any unexpired portion of the sentence to which the order applied by way of full-time imprisonment.
- (4), (5) (Repealed)
- (6) In this section, ***unexpired portion of the sentence of imprisonment to which the order applied*** means a period of time the length of which corresponds to the sum of:
- (a) the total number of weeks of the term of the sentence of imprisonment required by the order to be served by way of periodic detention, and
 - (b) each week by which the term of sentence has been extended under section 21 (2),
- less the total number of weeks of the sentence of imprisonment served or deemed to be served under this Act and (in the case of a person who is neither before a court nor in prison when the order is cancelled) less the total amount of time for which the person has been in custody as an inmate, within the meaning of the [Correctional Centres Act 1952](#), between the time the order was cancelled and the time the warrant under section 26 for the person's apprehension and detention is executed.
- (7) Any fraction of a week is to be disregarded in calculating a period of time for the purposes of subsection (6).

Part 5 Liability in respect of work incidents

27A Definition

In relation to work performed under an order under section 10 (1) (b), a reference in this Part to a ***person for whom work is performed*** includes any person (including a corporation):

- (a) for whose benefit the work is performed, or
- (b) who directs or supervises the work, specifies its terms or conditions or controls it, or
- (c) who owns or occupies the premises or land on which the work is performed.

27B Act or omission of periodic detainee

- (1) No act or omission of a person that occurs in the course of the person's performance of work under an order under section 10 (1) (b) gives rise to any civil liability on the part of the person for whom the work is performed.
- (2) A civil action that would, but for subsection (1), lie against the person for whom the work is performed lies instead against the Crown.
- (3) Subsections (1) and (2) do not have effect if:
 - (a) the work concerned was not work approved by the Commissioner, or
 - (b) the act or omission concerned was, or was a necessary part of, an act or omission that was expressly required by the person for whom the work was performed but neither approved nor required by the Commissioner.

27C Act or omission of supervisor of periodic detainee

- (1) No act or omission of a person for whom work is performed under an order under section 10 (1) (b) gives rise to any civil liability on the part of the person to the person who performs that work if the act or omission occurs in the course of that work.
- (2) A civil action that would, but for subsection (1), lie against the person for whom the work is performed lies instead against the Crown.
- (3) Subsections (1) and (2) do not have effect if:
 - (a) the work concerned was not work approved by the Commissioner, or
 - (b) the act or omission concerned was, or was a necessary part of, an act or omission intended to cause injury, loss or damage.

27D Limits to common law damages for injury to offender

- (1) Divisions 1 and 3 of Part 5 of the [Workers Compensation Act 1987](#) apply to any award of damages in respect of an injury to a person (or death of a person resulting from or caused by an injury), being an injury to which this section applies, in the same way as they apply to an award of damages referred to in those Divisions.
- (2) In subsection (1):
award of damages (where firstly occurring) means an award that is made against the person for whom the work is performed, against the Crown, against the

Commissioner or against an officer or other employee concerned in the administration of this Act.

injury to which this section applies:

- (a) means a personal injury arising out of or in the course of a person's performance of work under an order under section 10 (1) (b), and
- (b) includes:
 - (i) a disease that is contracted by the person in the course of the performance of such work and to which the performance of the work was a contributing factor, and
 - (ii) the aggravation, acceleration, exacerbation or deterioration of any disease, where the performance of the work was a contributing factor to the aggravation, acceleration, exacerbation or deterioration.

(3) In the application of Division 3 of Part 5 of the *Workers Compensation Act 1987*:

- (a) a reference to a worker is taken to be a reference to a person who performs work under an order under section 10 (1) (b), and
- (b) a reference to a worker's employer is taken to be a reference to the person for whom the work is performed (except in section 151L where it refers to the Commissioner or the Crown), and
- (c) a reference in section 151N of that Act to a person's contributory negligence, or in section 151O of that Act to a person's negligence in failing to take sufficient care for his or her own safety, is taken to include any failure on the part of the person to make a disclosure in accordance with the person's duty under section 27E of this Act.

(4) In the application of section 151L of that Act, a reference to the employer's workplace rehabilitation program is taken to be a reference to a rehabilitation program (if any) offered by the Commissioner to a person who performs work under an order under section 10 (1) (b).

(5) This section does not apply to an award of damages to which Part 6 of the *Motor Accidents Act 1988* applies.

27E Disclosure of material facts about health

- (1) A person in respect of whom an order under section 10 (1) (b) is in force has, while the order is in force, a duty to disclose as soon as possible to the Commissioner:
 - (a) any condition of the person that is a condition to which this section applies, or
 - (b) any substantial change in that condition.

- (2) A person's **condition to which this section applies** is any medical, physical or mental condition of the person of which the person is aware and that the person is aware substantially increases the risk to the person of injury in performing work of any kind.

27F Settlement of claims

The Commissioner may, on behalf of the Crown, settle any action that lies against the Crown because of this Part. The Commissioner may do so on such terms as he or she thinks fit.

Part 6 Miscellaneous

28 Periodic detainee taken to be a prisoner

Where a periodic detainee is:

- (a) detained in prison for the purpose of serving the periodic detainee's sentence,
- (a1) detained in a prison to which the periodic detainee has been transferred under section 18 to serve the unexpired portion of a detention period,
- (b) working (pursuant to an order under this Act) at a place outside a prison, or
- (c) travelling between a prison and a place of work (at which the periodic detainee is ordered under this Act to work) outside a prison,

the periodic detainee shall be deemed to be a prisoner within the meaning of the [Correctional Centres Act 1952](#) and to be in the legal custody of the governor of the prison in which the periodic detainee is detained or, in a case referred to in paragraph (b) or (c), would, but for an order made under this Act in respect of the periodic detainee, be detained, and the provisions of the [Correctional Centres Act 1952](#) shall (subject to this Act and the regulations and in so far as provision is not made in respect of the same matter by this Act or the regulations) apply to and in respect of the periodic detainee.

29 (Repealed)

30 Detention period deemed to have been served in certain circumstances

Where a periodic detainee serves a detention period in such manner as the periodic detainee may be ordered under section 10 (1) (b) and is exempted under section 11 from serving it in prison, the periodic detainee shall, for the purposes of this Act, be deemed to have served that detention period in prison.

31 Royal prerogative of mercy preserved

Nothing in this Act shall be so construed as to limit or affect in any manner the Royal prerogative of mercy.

32 Community Committees

- (1) The Minister may, by notification published in the Gazette, establish such committees (to be known as “Community Committees”) as the Minister thinks fit.
- (2) A committee established under subsection (1) shall operate in respect of a particular geographical area specified in the notification establishing the committee.
- (3) A committee shall consist of a person nominated by the Commissioner, who shall be chairman of the committee, and such other persons as the Minister may appoint.
- (4) The functions of a committee are to make recommendations to the Commissioner:
 - (a) as to the nature and extent of the work (as referred to in section 10 (2)) that may be performed by periodic detainees, and
 - (b) in respect of any matter referred to it by the Commissioner.

33 Offences

- (1) A periodic detainee who:
 - (a) (Repealed)
 - (b) fails to comply with an order in force:
 - (i) under section 10 (1) (b) directing the person to perform work outside a prison, or
 - (ii) under section 13,
 - (c) escapes or attempts to escape from lawful custody,
 - (d) commits an offence against discipline as specified in the regulations, or
 - (e) disobeys a rule, an instruction given to the periodic detainee under section 10 (4) or a direction given under section 22 that applies to the periodic detainee,is guilty of an offence and liable on conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding 10 penalty units.
- (2) Where a periodic detainee is prosecuted for an offence under subsection (1) (b), it is a sufficient defence if the periodic detainee satisfies the court that:
 - (a) (Repealed)
 - (b) in the case of a prosecution for an offence under subsection (1) (b), the periodic detainee had a reasonable excuse for failing to report in compliance with the order of the Commissioner, and
 - (c) the periodic detainee had made known that excuse:

(i) (Repealed)

(ii) in the case of a prosecution under subsection (1) (b) (i), to the governor of the prison at which the periodic detainee was required to report before the order of the Commissioner was made, or

(iii) in the case of a prosecution under subsection (1) (b) (ii), to the governor of the prison at which the periodic detainee was required to report after the order of the Commissioner was made,

before the time on the day on which the periodic detainee was so required to report or as soon as practicable after that time.

(3) Where a periodic detainee is prosecuted for an offence involving an order made under this Act, it is a sufficient defence if the periodic detainee satisfies the court that the terms of the order were not communicated to the periodic detainee in sufficient time to enable compliance with the order, but the terms of such an order shall be deemed to have been communicated to a periodic detainee upon whom a notice of the order was duly served.

(4) Where a periodic detainee is prosecuted for an offence involving a direction given under this Act, it is a sufficient defence:

(a) if the periodic detainee satisfies the court that the direction was not communicated to the periodic detainee in sufficient time to enable compliance with the direction, or

(b) if the periodic detainee satisfies the court that the direction was inconsistent with another direction given to the periodic detainee under this Act and the periodic detainee was obeying that other direction.

(5) Where a periodic detainee is prosecuted for an offence involving a provision of this Act, a regulation or rule or an order made under this Act, it is a sufficient defence if the periodic detainee satisfies the court that the periodic detainee was obeying a direction or an instruction given to the periodic detainee under this Act and that the periodic detainee could not, at the same time that the periodic detainee was obeying the direction or the instruction, as the case may be, comply with the provision, regulation, rule or order.

(6) (Repealed)

33A Proceedings for offences

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.

33B Penalty notices for certain offences

- (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
 - (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.

34 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, and in particular, may make regulations for or with respect to:
 - (a) the control, management and supervision of periodic detainees who are deemed by section 28 to be prisoners,
 - (b) offences against discipline,
 - (c) the adoption, for the purposes of this Act, of any regulations made under the [Correctional Centres Act 1952](#),

- (d) the suspension of the application of any specified provisions of the *Correctional Centres Act 1952* to periodic detainees,
 - (e) the granting of leave of absence under section 20, including regulations for or with respect to the circumstances in which leave of absence may be granted and the duration of leave of absence,
 - (e1) without limiting paragraph (e), requirements to be observed by periodic detainees requesting, or directed to take, leave of absence for health reasons, including regulations requiring periodic detainees to undergo medical examinations (whether during a detention period or at another time) by a Government Medical Officer,
 - (f) the transmission of warrants, notices or orders under this Act,
 - (g) the giving of notice to the Commissioner when an appeal is lodged against a sentence of imprisonment in respect of which an order for periodic detention has been made or when a periodic detainee is dealt with under section 25, otherwise than on application by the Commissioner,
 - (h) the procedure to be followed in any proceedings under section 25,
 - (i) the manner in which periodic detainees are to report to prison and the admission to prison, identification and searching of periodic detainees,
 - (j) requirements to be observed by periodic detainees who are directed under section 10 (1) (b) to perform work, whether in a prison or at a place outside a prison,
 - (k) the transfer, under section 18, of periodic detainees to whom that section applies and the issue of authorities for the transfer of such periodic detainees,
 - (l) any forms required for the purposes of this Act,
 - (m) the persons who may supervise periodic detainees, including the appointment and remuneration of those persons and the conduct of those persons,
 - (n) requiring periodic detainees to undergo breath tests, to supply specimens of urine and to undergo other tests and provide other specimens in connection with the good order, discipline and health of detainees, and
 - (o) the analysis of any such test or specimen and the admission as prima facie evidence in any proceedings of certificates relating to the results of any such analysis.
- (1A) A regulation may create an offence (not being an offence against discipline) punishable by a penalty not exceeding 5 penalty units.
- (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.

(1E) In this section:

Government Medical Officer means a person (or nominee of the person) who holds an office for the time being determined by the Public Employment Office to be an office of Government Medical Officer for the purposes of the *Public Sector Management Act 1988*.

(2) A provision of a regulation may:

(a) apply generally or be limited in its application by reference to specified exceptions or factors, or

(b) apply differently according to different factors of a specified kind, or may do any combination of those things.

35 Repeals

Each Act specified in Column 1 of Schedule 1 is, to the extent specified in Column 2 of that Schedule, repealed.

36 Savings and transitional provisions

Schedule 2 has effect.

Schedule 1 Repeals

(Section 35)

Column 1	Column 2	
Year and number of Act	Short title of Act	Extent of repeal
1970 No 90	<i>Periodic Detention of Prisoners Act 1970</i>	The whole Act.
1977 No 12	<i>Periodic Detention of Prisoners (Amendment) Act 1977</i>	The whole Act.

Schedule 2 Savings and transitional provisions

(Section 36)

Part 1 Preliminary

1 Regulations

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

Periodic Detention of Prisoners (Amendment) Act 1992

Periodic Detention of Prisoners Amendment Act 1996

Sentencing Legislation Amendment Act 1997

Periodic Detention of Prisoners Amendment Act 1998

Periodic Detention of Prisoners Further Amendment Act 1998

- (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.
- (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.

Part 2 Provisions consequent on the enactment of this Act

2 Definition

In this Schedule, ***appointed day*** means the day appointed and notified under section 2 (2).

3 Persons sentenced before appointed day

- (1) Where a person:
- (a) has been duly sentenced under section 3 (1) of the *Periodic Detention of Prisoners*

Act 1970, and

- (b) as at the appointed day, has not commenced or has commenced but not completed serving the sentence,

an order for periodic detention shall be deemed to have been made in respect of that person at the time at which the person was so sentenced.

(2) Where a person:

- (a) has been duly sentenced under section 3 (1) of the *Periodic Detention of Prisoners Act 1970*, and

- (b) as at the appointed day, has completed serving the sentence,

an order for periodic detention shall, for the purposes of section 5 (2) (b) of this Act, be deemed to have been made in respect of the person at the time at which the person was so sentenced.

4 Warrants and notices continued

Where a warrant or notice was issued, before the appointed day, under section 5 (1) or (2) of the *Periodic Detention of Prisoners Act 1970*, as the case may be, and, as at that day, the person in respect of whom the warrant or notice was issued has not commenced or has commenced but not completed serving the person's sentence:

- (a) the warrant shall continue in force on and after the appointed day and shall, for all purposes, be deemed to be a warrant issued under section 6 of this Act, and
- (b) the notice shall continue in force on and after the appointed day and shall, for all purposes, be deemed to be a notice issued under section 7 (1) of this Act.

5 Directions continued

A direction under section 4 (2) or 6 (1) (b) of the *Periodic Detention of Prisoners Act 1970* that was in force immediately before the appointed day, continues in force on and after the appointed day and shall, for all purposes, be deemed to be an order duly made under this Act by the Director-General.

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

6 Definitions

In this Part:

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

7 Leave of absence

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.

8 Extension of term of sentence

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.

9 Detention periods taken to have been duly served

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.

10 Cancellation of periodic detention otherwise than on subsequent conviction

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

11 Existing sentences

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

Part 4 Provisions consequent on enactment of [Periodic Detention of Prisoners Amendment Act 1996](#)

12 Definition

In this Part:

the amending Act means the [Periodic Detention of Prisoners Amendment Act 1996](#).

13 Calculation of proportion of sentence served

Anything done or purporting to be done concerning the calculation of an unexpired portion of a term of imprisonment in relation to an order for periodic detention cancelled on or after 22 March 1993 (the commencement of the [Periodic Detention of Prisoners \(Amendment\) Act 1992](#)) and before the commencement of Schedule 1 [22] to the amending Act that would have been validly done if section 27, as amended by the amending Act, were in force, is validated.

14 Failure to report as required extends term of sentence

(1) Section 21 (3), as amended by the amending Act, does not apply in respect of the extension of a term of a sentence for a failure to report for a detention period before

the commencement of Schedule 1 [12] to the amending Act.

- (2) Section 21 (7), as amended by the amending Act, extends to a sentence required to be served cumulatively as referred to in that subsection by an order under section 5B made before the commencement of Schedule 1 [13] to the amending Act.

15 Reporting late

Section 21AA, as inserted by the amending Act, does not apply in respect of any detention period for which a periodic detainee has reported late before the commencement of Schedule 1 [14] to the amending Act.

16 Admissibility of evidentiary certificates

Section 25 (5), as amended by the amending Act, does not apply in proceedings concerning an application under section 25 made before the commencement of Schedule 1 [17] to the amending Act.

17 Regulations

Section 34, as amended by the amending Act, extends to a regulation made before the commencement of Schedule 1 [27] to the amending Act.

Part 5 Provisions consequent on enactment of Schedule 5 to Sentencing Legislation Amendment Act 1997

18 Restriction on type of work

The amendment of section 10 by the *Sentencing Legislation Amendment Act 1997* does not affect any direction given under section 10 (1) before the amendment takes effect.

19 Application of Part 5

Part 5 (Liability in respect of work incidents) applies only in respect of an act or omission, or an injury caused by an act or omission, that occurs after the commencement of that Part.

Part 6 Provisions consequent on enactment of Periodic Detention of Prisoners Amendment Act 1998 and Periodic Detention of Prisoners Further Amendment Act 1998

20 Definitions

In this Part:

amending Act means the *Periodic Detention of Prisoners Amendment Act 1998*.

further amending Act means the *Periodic Detention of Prisoners Further Amendment Act 1998*.

21 Application of section 5 to existing convictions and sentences

- (1) Section 5, as amended by the amending Act, applies to persons convicted or sentenced before the commencement of this clause in the same way as it applies to persons convicted or sentenced after that commencement.
- (2) Any report referred to in section 5 (1) (c), as in force immediately before the commencement of this clause, is taken to be a report referred to in section 5 (1B) (d), as inserted by the amending Act.
- (3) Section 5 (7), as inserted by the amending Act, does not apply to a report referred to in subclause (2).
- (4) Any evidence given for the purposes of section 5 (1) (c), as in force immediately before the commencement of this clause, is taken to be evidence given for the purposes of section 5 (1B) (d), as inserted by the amending Act.

22 Applications for leave of absence

The provisions of section 20 (2A) and 21AA (2A), as inserted by the amending Act, do not apply to applications for leave of absence made in relation to absences and latenesses occurring before the commencement of this clause.

23 Exemptions from extensions of sentence

Section 21A (1), as amended by the amending Act, applies to absences occurring before the commencement of this clause in the same way as it applies to absences occurring after that commencement.

24 Detention periods served in custody

Section 21B (4), as inserted by the amending Act, applies to detention periods occurring before the commencement of this clause in the same way as it applies to detention periods occurring after that commencement.

25 Cancellation of existing orders for periodic detention

Part 4, as amended by the amending Act and the further amending Act, applies to any order for periodic detention made before the commencement of this clause in the same way as it applies to any order for periodic detention made after that commencement, except as otherwise provided by this Part.

25A Pending proceedings under section 25

- (1) Any application for cancellation of an order for periodic detention made to a court under section 25 before the commencement of this clause (being an application in respect of which a hearing had begun before that commencement) is to be heard and determined by the court, in accordance with section 25, as then in force, as if the

amending Act had not been enacted.

- (2) Sections 25A, 26 and 27, as in force immediately before the commencement of this clause, apply to and in respect of:
- (a) an order for periodic detention cancelled by a court before that commencement, and
 - (b) an order for periodic detention cancelled by a court after that commencement, as referred to in subclause (1),
- as if the amending Act had not been enacted.

25B Directions with respect to cancelled orders

- (1) Section 27 (4), as in force immediately before the commencement of this clause, continues to apply to the cancellation by a court under section 24 of an order for periodic detention made before that commencement.
- (2) Any direction, parole order or other order that was in force in respect of the person under section 27 (4), immediately before the commencement of this clause, continues to have effect as if that subsection had not been repealed.

25C Minimum and additional terms of imprisonment may be set for existing periodic detainees whose orders for periodic detention are cancelled by Parole Board

- (1) This clause applies to a sentence of imprisonment that is being served by way of periodic detention where the sentence was imposed before the commencement of this clause.
- (2) If the Parole Board cancels an order for periodic detention with respect to a sentence of imprisonment to which this clause applies, the Parole Board, in its discretion, may:
- (a) direct that any unexpired portion of the sentence to which the order applied (within the meaning of section 27) is taken to consist of a minimum term and an additional term set under Part 2 of the *Sentencing Act 1989*, and
 - (b) make a parole order in accordance with section 24 of the *Sentencing Act 1989*,
- or, on the application of the Commissioner, may make such other orders as the Parole Board considers appropriate.
- (3) Any such minimum and additional term and parole order have the same effect as if they had been respectively set and made under the *Sentencing Act 1989*.
- (4) The functions of the Parole Board under this clause are to be exercised:
- (a) at a meeting convened in accordance with section 25AB (1) to reconsider the cancellation of the order, or

- (b) if the Secretary of the Parole Board is not notified that the periodic detainee intends to make representations to the Parole Board in connection with the cancellation of the order, at a meeting convened on, or as soon as practicable after, the date fixed for the purposes of section 25AA (2) (a).
- (5) On setting a minimum term and an additional term for a sentence of imprisonment, the Parole Board is to issue a new warrant under section 26 (1A), being a warrant that specifies the minimum and additional terms so set, to replace the warrant issued under that subsection when the relevant order for periodic detention was cancelled.

26 Conditions of parole order requiring supervision of periodic detainees

Section 27 (5A) of the *Sentencing Act 1989*, as inserted by the amending Act, applies to parole orders made before the commencement of this clause in the same way as it applies to parole orders made after that commencement.