

# Crimes Legislation Amendment (Periodic and Home Detention) Act 2002 No 74

[2002-74]



New South Wales

## Status Information

### Currency of version

Repealed version for 2 October 2002 to 21 July 2003 (accessed 22 November 2024 at 10:23)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

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

### Notes—

- **Repeal**

The Act was repealed by the [Statute Law \(Miscellaneous Provisions\) Act 2003 No 40](#), Sch 3 with effect from 22.7.2003.

### 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](#).

File last modified 22 July 2003

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# Crimes Legislation Amendment (Periodic and Home Detention) Act 2002 No 74



New South Wales

An Act to amend the *Crimes (Administration of Sentences) Act 1999* and the *Crimes (Sentencing Procedure) Act 1999* with respect to periodic detention and home detention; and for other purposes.

## 1 Name of Act

This Act is the *Crimes Legislation Amendment (Periodic and Home Detention) Act 2002*.

## 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

## 3 Amendment of *Crimes (Administration of Sentences) Act 1999* No 93

The *Crimes (Administration of Sentences) Act 1999* is amended as set out in Schedule 1.

## 4 Amendment of *Crimes (Sentencing Procedure) Act 1999* No 92

The *Crimes (Sentencing Procedure) Act 1999* is amended as set out in Schedule 2.

## Schedule 1 Amendment of *Crimes (Administration of Sentences) Act 1999*

(Section 3)

### [1] Section 3 Interpretation

Insert "or under section 165 of this Act" at the end of the definition of **home detention order** in section 3 (1).

### [2] Section 87 Leave of absence for failing to report

Omit section 87 (3). Insert instead:

- (3) Subject to subsections (4), (5) and (6), an application for leave of absence in respect of a detention period must be made before the time the offender is due to

report for that period.

(4) An offender who is unable to report for a detention period:

- (a) must cause a telephone call advising of the offender's inability to report to be made, to such telephone number as the Commissioner may from time to time determine, before the time at which the offender is due to report, and
- (b) must cause a document setting out the reasons for the offender's inability to report to be given to the governor responsible for the relevant periodic detention centre within 7 days after the date on which the offender is due to report.

(5) If the reasons for the offender's inability to report include illness or injury, a certificate from a medical practitioner:

- (a) indicating the nature of the illness or injury, and
- (b) stating that the nature or extent of the illness or injury is such as to justify the offender's inability to report,

is to be given to the Commissioner in addition to or instead of the document referred to in subsection (4) (b).

(6) Subject to subsection (5), an offender who complies with subsection (4) (a) and (b) is taken to have applied for leave of absence under subsection (3).

**[3] Part 7, heading**

Insert "and reinstatement" after "Revocation".

**[4] Section 163 Revocation of periodic detention order**

Omit "make such other orders" from section 163 (1B).

Insert instead "make such of the orders sought by the Commissioner".

**[5] Section 163 (1C)**

Insert after section 163 (1B):

- (1C) The Parole Board must revoke a periodic detention order that it has reinstated under section 168A (1A) if, at any time during the remainder of the term of the sentence to which the order relates (including any period during which the offender is released on parole under a parole order), the offender is sentenced to a term of imprisonment by way of full-time detention that is to be served consecutively (or partly consecutively) with the sentence to which the order relates.

**[6] Section 163 (2) (a)**

Omit the paragraph. Insert instead:

- (a) that the offender has failed to report for 3 or more detention periods, whether during the same sentence of imprisonment or during different sentences of imprisonment being served consecutively (or partly consecutively), and

**[7] Section 163 (2A)**

Insert after section 163 (2):

- (2A) Such an application must be made if the Commissioner is satisfied that the offender:

- (a) has failed to report for 3 or more consecutive detention periods, and
  - (b) has failed to apply for, or been refused, leave of absence with respect to each of those detention periods.

- (2B) For the purposes of subsection (2A) (a), one detention period is taken to be consecutive with another:

- (a) even if they each relate to different sentences of imprisonment being served by way of periodic detention, and
  - (b) even if there is a period between them that is not a detention period because it includes the whole or any part of Christmas Day, Good Friday or Easter Sunday.

- (2C) For the purposes of this section:

- (a) an offender is taken to have failed to report for a detention period if, by the time that period ends, the offender has failed to report to the periodic detention centre or other place to which he or she is currently required to report, and
  - (b) an offender is taken to have failed to apply for leave of absence for a detention period if, by the time the offender is due to report for that period, the offender has neither made an application for leave of absence nor, in the case of an inability to report, caused a telephone call to be made as referred to in section 87 (4) (a).

**Note—**

Paragraph (a) makes it clear that an offender is not taken to have failed to report if the offender merely reports late (reporting late is dealt with in section 88, in relation to the granting of leave of absence, and section 89, in relation to extension of the term of the offender's sentence). Paragraph (b) makes it clear that an offender's failure to apply for leave of absence in relation to a failure to report for a detention period is ascertainable as soon as the detention period begins.

**[8] Section 163 (3A) and (3B)**

Insert after section 163 (3):

(3A) A decision as to whether or not an offender's periodic detention order is to be revoked on the grounds referred to in subsection (2) is to be made at the meeting of the Parole Board at which the matter is first raised unless the Parole Board determines that deferral is necessary to allow it to obtain further information.

(3B) A matter may not be deferred under subsection (3A) for more than 2 months from the date of the meeting at which the matter was first raised.

**[9] Section 164A**

Insert after section 164:

**164A Parole Board may reinstate revoked periodic detention order**

(1) If:

- (a) an offender's periodic detention order has been revoked under this Division or under section 179, and
- (b) the offender has, since that revocation, served at least 3 months of the offender's sentence by way of full-time detention,

the Parole Board may, on the application of the offender and subject to Part 5 of the *Crimes (Sentencing Procedure) Act 1999*, make an order reinstating the offender's revoked periodic detention order in respect of the remaining balance of the offender's sentence.

- (2) Before making an order referred to in subsection (1), the Parole Board must refer the offender to the Probation and Parole Service for assessment as to the suitability of the offender for periodic detention.
- (3) Part 5 of the *Crimes (Sentencing Procedure) Act 1999* applies to and in respect of the Parole Board and the offender in relation to the making of a periodic detention order under this section in the same way as it applies to and in respect of a court and an offender in relation to the making of a periodic detention order under that Act.
- (4) The Parole Board may not make an order under subsection (1) if the offender is subject to a sentence of imprisonment by way of full-time detention that is yet to commence.

**[10] Section 165**

Omit the section. Insert instead:

**165 Parole Board may order home detention**

- (1) This section applies if the Parole Board revokes a periodic detention order and, at the time that the revocation order takes effect, the remainder of the term of the sentence to which the periodic detention order relates (including any period during which the offender is eligible to be released on parole) is 18 months or less.
- (2) The Parole Board may make an order directing that the remainder of the term of the sentence (excluding any period during which the offender is released on parole under a parole order) is to be served by way of home detention.
- (3) However, the Parole Board may not make an order under subsection (2) if the offender is subject to a sentence of imprisonment by way of full-time detention that is yet to commence.
- (4) Subject to subsection (5), Part 6 of the *Crimes (Sentencing Procedure) Act 1999* applies to and in respect of the Parole Board and the offender in relation to the making of a home detention order under this section in the same way as it applies to and in respect of a court and an offender in relation to the making of a home detention order under that Act.
- (5) The reference of an offender for assessment in relation to the making of a home detention order under this section is to be made after, and not before, the periodic detention order referred to in subsection (1) is revoked.

**[11] Section 165AA**

Insert after section 165:

**165AA Release of offender pending assessment for home detention**

- (1) On referring an offender for assessment in relation to the making of a home detention order under section 165, the Parole Board may make an order (a **temporary release order**) releasing the offender from custody, subject to such supervision as is prescribed by the regulations, pending the Board's decision as to whether or not to make the home detention order.
- (2) An offender's temporary release order:
  - (a) may be revoked by the Parole Board at any time, and

- (b) must be revoked by the Parole Board when it makes its decision as to whether or not to make a home detention order under section 165 in respect of the offender.
- (3) The sentence to be served by the offender in respect of whom a temporary release order is made is, by this section, extended:
  - (a) by the period for which the offender is absent from custody pursuant to the order, and
  - (b) in the case of an offender for whom a warrant is issued under section 181 (1A), by the period between the issue of the warrant and the offender being taken into custody under the warrant.
- (4) In this section, a reference to the extension of an offender's sentence is a reference to:
  - (a) the extension of the term of the sentence, and
  - (b) if the offender was released from custody during a non-parole period of the sentence, the extension of the non-parole period of the sentence.

**[12] Section 167 Revocation of home detention order**

Insert after section 167 (5):

- (6) The Parole Board must revoke a home detention order:
  - (a) that it has made under section 165, or
  - (b) that it has reinstated under section 168A (1),if, at any time during the remainder of the term of the sentence to which the order relates (including any period during which the offender is released on parole under a parole order), the offender is sentenced to a term of imprisonment by way of full-time detention that is to be served consecutively (or partly consecutively) with the sentence to which the order relates.

**[13] Section 168A Parole Board may reinstate revoked home detention order or prior revoked periodic detention order**

Omit "three months" from section 168A (1) (b).

Insert instead "3 months".

**[14] Section 168A (1A)**

Insert after section 168A (1):



- (1A) In the case of an offender whose home detention order was made under section 165 following revocation of a periodic detention order under Division 1, the Parole Board may instead, on the application of the offender and subject to Part 5 of the *Crimes (Sentencing Procedure) Act 1999*, make an order reinstating the revoked periodic detention order in respect of the remaining balance of the offender's sentence.

**[15] Section 168A (2)**

Insert "or (1A)" after "subsection (1)".

**[16] Section 168A (2)**

Insert "or periodic detention, as the case requires" after "home detention".

**[17] Section 168A (3) and (4)**

Insert after section 168A (2):

- (3) Parts 5 and 6 of the *Crimes (Sentencing Procedure) Act 1999* apply to and in respect of the Parole Board and the offender in relation to the making of a periodic detention order or home detention order under this section in the same way as they apply to and in respect of a court and an offender in relation to the making of a periodic detention order or home detention order under that Act.
- (4) The Parole Board may not make an order under subsection (1) or (1A) if the offender is subject to a sentence of imprisonment by way of full-time detention that is yet to commence.

**[18] Section 175 Decision after review**

Insert after section 175 (1):

- (1A) Despite subsection (1) (a) and (b), the Parole Board:
- (a) may not rescind the revocation of a periodic detention order of an offender who has failed to apply for, or been refused, leave of absence with respect to 3 or more detention periods unless it is satisfied that it would be manifestly unjust not to do so, and
  - (b) may not rescind the revocation of:
    - (i) a periodic detention order that it has revoked under section 163 (1C), or
    - (ii) a home detention order that it has revoked under section 167 (6),unless it is satisfied that the order has been revoked on the basis of false,

misleading or irrelevant information.

**[19] Section 181 Warrants committing offenders to correctional centres**

Omit section 181 (1). Insert instead:

(1) If the Parole Board:

(a) revokes a periodic detention order, home detention order or parole order, or

(b) decides not to make a home detention order under section 165 with respect to an offender the subject of a temporary release order under section 165AA,

it may issue a warrant committing the offender to a correctional centre to serve the remainder of the sentence to which the order relates by way of full-time detention.

(1A) If the Parole Board revokes a temporary release order under section 165AA, it may issue a warrant committing the offender to a correctional centre pending the Board's decision as to whether or not to make a home detention order under section 165.

**[20] Section 181 (3) (b)**

Insert “, or pending the Board's decision as to whether or not to make a home detention order under section 165, as the case requires” after “relates”.

**[21] Schedule 5 Savings, transitional and other provisions**

Insert at the end of clause 1 (1) of Schedule 5:

*Crimes Legislation Amendment (Periodic and Home Detention) Act 2002*

**[22] Schedule 5, Part 5**

Insert after Part 4 of Schedule 5:

**Part 5 Provisions consequent on enactment of Crimes  
Legislation Amendment (Periodic and Home Detention)  
Act 2002**

**64 Definition**

In this Part, the **2002 amending Act** means the *Crimes Legislation Amendment (Periodic and Home Detention) Act 2002*.

## **65 Applications for leave of absence**

Section 87 (3), as in force immediately before its substitution by the 2002 amending Act, continues to apply to any failure to report for a detention period that occurred before the subsection was substituted.

## **66 Revocation of periodic detention orders**

- (1) Section 163 (2) (a), as substituted by the 2002 amending Act, applies to a failure to report for a detention period that occurred before the commencement of that paragraph (being one of a series of detention periods occurring during consecutive, or partly consecutive, sentences of imprisonment) only if it is one of a series of failures to report of which the most recent occurred after that commencement.
- (2) Section 163 (2A), as inserted by the 2002 amending Act, applies to a failure to report for a detention period that occurred before the commencement of that subsection only if it is one of a series of consecutive failures to report of which the most recent occurred after that commencement.

## **67 Reinstatement of revoked periodic detention orders**

- (1) Section 164A, as inserted by the 2002 amending Act, extends to any periodic detention order that was revoked before that section was inserted.
- (2) Section 168A (1A), as inserted by the 2002 amending Act, extends to any periodic detention order that was revoked before that subsection was inserted.

## **68 Home detention orders following revocation of periodic detention orders**

- (1) Section 165, as substituted by the 2002 amending Act, extends to any periodic detention order that was in force immediately before that section was substituted.
- (2) Section 165AA, as inserted by the 2002 amending Act, extends to any periodic detention order that was, or had been, in force before that section was inserted.

## **69 Revocation of home detention order following sentence of imprisonment by way of full-time detention**

Section 167 (6), as inserted by the 2002 amending Act, extends to any home detention order that was in force immediately before that subsection was inserted.

## **Schedule 2 Amendment of Crimes (Sentencing Procedure) Act 1999**

(Section 4)

### **[1] Section 65A**

Insert before section 66:

#### **65A Periodic detention not available for certain offenders**

A periodic detention order may not be made for an offender who has previously served imprisonment for more than 6 months by way of full-time detention in relation to any one sentence of imprisonment, whether in New South Wales or elsewhere.

### **[2] Section 66 (4) and (5)**

Insert after section 66 (3):

(4) If a court:

- (a) makes a periodic detention order with respect to an offender's sentence of imprisonment despite an assessment report that states that the offender is not a suitable person to serve the sentence by way of periodic detention, or
- (b) declines to make a periodic detention order with respect to an offender's sentence of imprisonment despite an assessment report that states that the offender is a suitable person to serve the sentence by way of periodic detention,

the court must indicate to the offender, and make a record of, its reasons for doing so.

- (5) A periodic detention order is not invalidated by a failure to comply with subsection (4).

### **[3] Section 78 Suitability of offender for home detention**

Insert after section 78 (6):

- (7) If a court declines to make a home detention order with respect to an offender's sentence of imprisonment despite an assessment report that states that the offender is a suitable person to serve the sentence by way of home detention, the court must indicate to the offender, and make a record of, its reasons for doing so.

### **[4] Section 80 Referral of offender for assessment**

Insert after section 80 (1):

(1A) Despite subsection (1), an offender who has been referred for assessment under section 68 (for periodic detention) is not to be referred for assessment under this section (for home detention) in relation to the same sentence of imprisonment unless the court has decided not to make a periodic detention order with respect to that sentence.

**[5] Schedule 2 Savings, transitional and other provisions**

Insert at the end of clause 1 (1) of Schedule 2:

*Crimes Legislation Amendment (Periodic and Home Detention) Act 2002*