

**PERIODIC DETENTION OF PRISONERS (AMENDMENT)
BILL 1992**

NEW SOUTH WALES



EXPLANATORY NOTE

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

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

- (a) to enable the commissioner of Corrective Services to grant leave of absence for any sufficient reason rather than, as is currently the case, for health reasons or on compassionate grounds only, and to enable a periodic detainee to appeal against the refusal of an application for leave of absence; and
- (b) to provide that a periodic detainee's failure to report to serve one or more detention periods will automatically result in his or her term of imprisonment being extended:
 - by one week for each occasion on which he or she fails to report; and
 - by an additional week (up to a maximum of 2 weeks over the whole of the sentence) if the failure to report occurs otherwise than with leave of absence or other proper reason,and to require a court to cancel an order for periodic detention if the periodic detainee has failed on 3 or more occasions, without leave of absence or other proper reason, to report as required by or under the Act and
- (c) to enable an order for periodic detention to be made in respect of a person who is convicted of an offence against the Act and sentenced to imprisonment for less than 3 months, despite section 5 (1) of the Act that otherwise prevents such an order being made; and
- (d) to enable offences against the Act and the regulations to be dealt with by way of penalty notice; and
- (e) to enable the regulations to declare that an offence against section 33 is an offence against discipline, and to provide that an offence against discipline may be punished by way of caution or reprimand or by way of deprivation of privileges or amenities; and

Periodic Detention of Prisoners (Amendment) 1992 [Act 1992 No. 109]

- (f) to enact savings and transitional provisions consequent on the enactment of the proposed Act; and
- (g) to enact other provisions of a minor, consequential or ancillary nature.

The Bill also makes a consequential amendment to the Justices Act 1902 in connection with the amendment relating to penalty notices.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the Periodic Detention of Prisoners Act 1981.

Clause 4 amends the Justices Act 1902 as a consequence of the amendment to the Periodic Detention of Prisoners Act 1981 relating to penalty notices.

SCHEDULE 1—AMENDMENTS

Leave of absence

Schedule 1 (19) substitutes section 20. The new section provides that the Commissioner may grant leave of absence, for certain specified reasons, in accordance with the regulations. The new section expressly authorises the retrospective granting of leave and enables a periodic detainee whose request for leave of absence is refused to appeal to a Local Court against the refusal.

Schedule 1 (20) amends section 25 so as to allow a court to have regard to whether leave of absence ought to have been granted in exercising its power to cancel an order for periodic detention on the ground that a person has failed to report as required by or under the Act.

Proposed clause 7 of Schedule 2 to the Act (Schedule 1 (28) (d)) provides that a right of appeal against the refusal of an application for leave of absence does not exist with respect to refusals that occurred before the commencement of the proposed Act.

Failure to report as required

Schedule 1 (19) replaces section 21 with 3 new sections, proposed sections 21, 21A and 21B.

The new section 21 provides that a periodic detainee's failure to report to serve one or more detention periods will automatically result in his or her term of imprisonment being extended by one week for each occasion on which he or she fails to report and by an additional week (up to a maximum of 2 weeks over the whole of the sentence) if the failure to report occurs otherwise than with leave of absence or other proper reason.

The new section 21A enables the Commissioner to grant exemptions from the extension of the term of a sentence by proposed section 21 and provides that an application for an exemption is not to be refused unless the applicant has been given an opportunity to make representations to the Commissioner in support of the application and the Commissioner has taken any such representations into consideration,

Periodic Detention of Prisoners (Amendment) 1992 [Act 1992 No. 109]

The new section 21B re-enacts the provisions of existing section 21 (4), (5) and (6). These provisions enable the Commissioner, for health reasons or on compassionate grounds, to order that one or more detention periods yet to be served by a periodic detainee be regarded as having been served.

Schedule 1 (20) amends section 25 so as to require a court, on the application of the Commissioner, to cancel an order for periodic detention if the periodic detainee has failed, without leave of absence or other proper reason, to report as required by or under the Act for 3 or more detention periods.

Schedule 1 (25) (a) amends section 33 so as to repeal the offence that currently exists of failing to report as required by or under the Act.

Proposed clause 10 of Schedule 2 to the Act (Schedule 1 (28) (d)) provides that the requirements of the amended section 25 do not extend to detention periods that occurred before the commencement of the proposed Act.

Further orders for periodic detention

Schedule 1 (5) substitutes section 5A. The new section re-enacts the provisions of existing section 5A (which allow terms of imprisonment of less than 3 months to be served by way of periodic detention in the case of certain offences) and extends the range of offences to include offences against the Act.

Penalty notices

Schedule 1 (26) inserts a proposed section 33B. The proposed section will enable offences against the Act and the regulations to be dealt with by way of penalty notice. A consequential amendment (clause 4) is made to the Justices Act 1902 to complement the proposed section.

Offences against discipline

Schedule 1 (27) amends section 34 so as to enable the regulations to declare that an offence against section 33 is an offence against discipline and to provide that an offence against discipline may be punished by way of caution or reprimand or by way of deprivation of privileges or amenities.

Savings and transitional provisions

Schedule 1 (28) amends Schedule 2 to the Act to add further savings and transitional provisions. In addition to the provisions referred to elsewhere in this explanatory note, there is a provision (proposed clause 1) which allows the regulations to make further provision of a savings or transitional nature consequent on the enactment of the proposed Act.

Other amendments

Schedule 1 effects other amendments, including the following:

- (a) proposed section 33A is inserted so as to provide that offences against the Act or the regulations are to be dealt with summarily by a Local Court constituted by a Magistrate sitting alone; and
- (b) references to the Director-General of Corrective Services are amended so as to refer instead to the Commissioner of Corrective Services; and

Periodic Detention of Prisoners (Amendment) 1992 [Act 1992 No. 109]

- (c) the arrangement provision (section 3) is repealed as a consequence of the current practice of printing Acts together with comprehensive Table of Provisions; and
 - (d) references to periodic detention are amended to refer instead to terms of imprisonment.
-