

PERIODIC DETENTION OF PRISONERS ACT.

New South Wales



ANNO UNDEVICESIMO

ELIZABETHÆ II REGINÆ

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Act No. 90, 1970.

An Act to make provision for and} with respect to  
periodic detention of certain persons sentenced  
to imprisonment; and for purposes connected  
therewith. [Assented to, 9th December, 1970.]

**B**E it enacted by the Queen's Most Excellent Majesty, by  
and with the advice and consent of the Legislative  
Council and Legislative Assembly of New South Wales in  
Parliament assembled, and by the authority of the same, as  
follows:—

1. (1) This Act may be cited as the "Periodic Detention  
of Prisoners Act, 1970".
- (2) Short  
title and  
commence-  
ment.

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No. 90, 1970 (2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Interpretation. 2. In this Act except in so far as the context or subject matter otherwise indicates or requires—

“Commissioner” means Commissioner of Corrective Services;

“court” means such court, judge, justice or justices as the Governor by order published in the Gazette declares to be a court for the purposes of this Act;

“governor of a prison” means the superintendent, governor, gaoler or other officer for the time being in charge of the prison;

“periodic detention” in relation to a person upon whom a sentence of periodic detention is imposed means detention in a prison for such number of consecutive week-ends as there may be in the period of imprisonment to which he has been sentenced;

“prison” means prison to which the Prisons Act, 1952, applies;

“week-end” means the number of consecutive hours commencing at seven o'clock in the evening on a Friday and ending at half-past four o'clock in the afternoon on the following Sunday or such other hours on such days as may from time to time be prescribed but does not include a week-end during which Christmas Day or Easter Sunday falls.

Power to impose periodic detention. 3. (1) Where a person is convicted of an offence and is sentenced upon such conviction to imprisonment for a term of not less than three months nor more than twelve months the court by which such person is sentenced may, if it is of

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the opinion that a sentence of periodic detention is an appropriate sentence in the circumstances of the case and is satisfied as to the availability of accommodation for the purpose, order that the term of imprisonment be served by way of periodic detention, and for that purpose impose a sentence of periodic detention. No. 90, 1970

(2) A sentence of periodic detention shall not be imposed upon—

- (a) a woman;
- (b) a male person under the age of eighteen years; or
- (c) a person who has previous to being sentenced under subsection one of this section served a term of imprisonment in a prison for a continuous period pursuant to a sentence of imprisonment for more than one month.

(3) Where the court imposes a sentence of periodic detention it may also order the person upon whom such sentence is imposed to pay any fine or penalty or sum of money or costs or expenses authorised by law.

(4) Periodic detention imposed pursuant to an order for periodic detention under this Act shall not exceed the period of the sentence of imprisonment that the court may otherwise lawfully impose.

(5) Where a person upon whom a sentence of periodic detention is imposed has served any period by way of periodic detention he shall be deemed to have served that proportion of the term of imprisonment to which he has been sentenced under subsection one of this section as the number of week-ends he has served by way of periodic detention bears to the total number of week-ends there is in the period of the term of imprisonment.

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**No. 90, 1970** **4.** (1) The date on which a sentence of periodic detention shall commence shall be such date as may be specified in the order of the court imposing the sentence of periodic detention. Such date shall be a date not later than fourteen days after the date on which the sentence of periodic detention is imposed.

Commence-  
ment of  
periodic  
detention.

(2) A person upon whom a sentence of periodic detention has been imposed shall report at the date and time and to the prison specified in the notice referred to in subsection two of section five of this Act and thereafter during the period of the sentence of periodic detention at the same time and place on each Friday of each week-end unless otherwise directed by the governor of the prison, and if otherwise directed then in accordance with any directions so given.

**Warrant of  
commitment  
to prison.** **5.** (1) A justice may by warrant in or to the effect of the form prescribed commit the person upon whom a sentence of periodic detention has been imposed to prison.

(2) The justice shall serve on the person upon whom a sentence of periodic detention has been imposed a notice in or to the effect of the prescribed form specifying the date and time on which and the prison at which that person is to report.

(3) As from the making of the order imposing the sentence of periodic detention and until the notice referred to in subsection two of this section has been served on the person upon whom such sentence has been imposed such person shall be deemed to be in lawful custody.

(4) A person serving a sentence of periodic detention shall while he is detained in a prison pursuant to a warrant under this section or working outside the prison or travelling between the prison and any place of work outside the prison in accordance with any directions of the Commissioner under this Act be deemed to be a prisoner within the meaning of the Prisons Act, 1952, and to be in the legal custody

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custody of the governor of the prison in which he is detained and the provisions of the Prisons Act, 1952, shall subject to this Act and in so far as provision is not made in respect of any matter by this Act apply to and in respect of such person. No. 90, 1970

6. (1) A person serving a sentence of periodic detention shall while in custody pursuant to this Act— Work to be performed.

- (a) participate in such activities (physical and mental), attend such classes or groups, or undergo such instruction as the Commissioner considers conducive to that person's reformation and training; and
- (b) perform such work considered suitable to his physical capacity whether within the prison or outside it as the Commissioner directs.

(2) The type of work to which any such person may be directed to perform outside the prison shall be work—

- (a) at any hospital or charitable or educational institution;
- (b) at the home of any old, infirm or handicapped person or at any institution for old, infirm or handicapped persons; or
- (c) on any land of which the Crown or any public body is the owner or lessee or occupier or which is administered by the Crown or any public body.

(3) No person shall be directed to perform any work as aforesaid if in performing that work he would take the place of any person who would otherwise be employed on that work as a regular employee of the institution aforesaid or, as the case may be, of the old, infirm or handicapped person, or of the Crown or public body.

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Cancellation of sentence of periodic detention.

7. (1) The court which imposed a sentence of periodic detention, whether or not constituted by the same member or members who constituted it at the time the sentence was imposed may, on the application of the person upon whom the sentence was imposed or on application by the Commissioner or without any application, if it appears to the court there is good reason for so doing, cancel the order imposing the sentence of periodic detention.

(2) Where the court cancels an order imposing a sentence of periodic detention the person upon whom such sentence has been imposed shall serve the unexpired portion of the term of imprisonment to which he has been sentenced otherwise than as periodic detention, such unexpired portion being computed having regard to the provisions of subsection five of section three of this Act.

(3) Where a sentence of periodic detention has been cancelled as aforesaid—

(a) a warrant under the hand of a justice may, if the person who has been sentenced to periodic detention is not before the court or in prison, be issued for the apprehension and detention of that person to serve the unexpired portion of the term of imprisonment as aforesaid; and

(b) in any other case the warrant referred to in subsection one of section five of this Act committing the person upon whom such sentence has been imposed to prison shall be sufficient warrant for the detention of that person to serve the unexpired portion of the term of imprisonment as aforesaid.

(4) Any remission of sentence to which a prisoner would be entitled under the Prisons Act, 1952, shall not apply to any period of periodic detention. Where an order imposing a sentence of periodic detention has been cancelled the unexpired portion of the term of imprisonment served as a

consequence

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consequence of such cancellation shall for the purposes of No. 90, 1970 determining any remission of sentence be deemed to be a separate term of imprisonment.

8. (1) Where a person who is serving a sentence of periodic detention is while so serving convicted of an offence, <sup>Effect of subsequent conviction.</sup> and—

- (a) sentenced to a term of imprisonment for a period of more than one month and such sentence is not a sentence the execution of which has been suspended under section five hundred and fifty-eight of the Crimes Act 1900, the sentence of periodic detention shall be terminated; or
- (b) sentenced to a term of imprisonment otherwise than as referred to in paragraph (a) of this subsection or ordered to pay a fine or penalty or sum of money or costs or expenses authorised by law the court before which he is convicted may order that the sentence of periodic detention be terminated.

(2) Where a sentence of periodic detention is terminated—

- (a) a person who has been sentenced to imprisonment as referred to in subsection one of this section shall serve the unexpired portion of the term of imprisonment to which he was sentenced in respect of the periodic detention otherwise than as periodic detention concurrently with the term of imprisonment to which he has been sentenced as referred to in subsection one of this section; or
- (b) a person who has been ordered to pay a fine or penalty or sum of money or costs or expenses authorised by law shall in default of payment of any such amount serve the unexpired portion of the term of imprisonment to which he was

sentenced

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sentenced in respect of the periodic detention otherwise than as periodic detention concurrently with any term of imprisonment he is serving as a result of default of payment as aforesaid.

The unexpired portion of the term of imprisonment shall be computed having regard to the provisions of subsection five of section three of this Act.

Offences.

9. A person upon whom a sentence of periodic detention has been imposed who—

- (a) without reasonable excuse fails to report upon any day and at the time on that day upon which and to the prison at which he is required pursuant to the provisions of this Act to report;
- (b) escapes from lawful custody; or
- (c) commits an offence against prison discipline as referred to in section twenty-three (paragraph (d) excepted) of the Prisons Act, 1952,

shall be guilty of an offence against this Act and liable on summary conviction to imprisonment for a term not exceeding twelve months or to a fine not exceeding five hundred dollars.

Community  
Committees.

10. (1) The Minister may by notification published in the Gazette establish Community Committees and define therein the areas within which the Committees are to function.

(2) Each Community Committee shall comprise the Commissioner or a person nominated by him and such other persons as the Minister may appoint.

The Commissioner or the person nominated by him shall be the chairman of the Community Committee to which he is appointed.

(3)



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(3) A Community Committee may make recommendations to the Commissioner— No. 90, 1970

- (a) as to the nature and extent of the work (as referred to in section six of this Act) which may be performed by persons serving a sentence of periodic detention; and
- (b) in respect of matters referred to it by the Commissioner.

**11.** The Governor may make regulations prescribing all Regulations. matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act and without limiting the generality of the foregoing for and with respect to the requiring of notices of applications under subsection one of section seven of this Act and the procedure to be followed on any proceedings thereunder.