

1993—No. 111

**PERIODIC DETENTION OF PRISONERS ACT 1981—
REGULATION**

(Relating to reporting, discipline, leave of absence, penalty notices, offences
against discipline and law revision)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council,
and in pursuance of the Periodic Detention of Prisoners Act 1981, has
been pleased to make the Regulation set forth hereunder.

WAYNE MERTON, M.P.,
Minister for Justice

Commencement

1. This Regulation commences on 22 March 1993.

Amendments

2. The Periodic Detention of Prisoners Regulation 1988 is amended:

- (a) by omitting from clause 4 (1) the definitions of “Deputy Director-General” and “Director-General” and by inserting instead in alphabetical order the following definitions:
 - “**Commissioner**” means the Commissioner of Corrective Services;
 - “**Deputy Commissioner**” means a Deputy Commissioner of Corrective Services;
- (b) by omitting from clause 5 the words “Field Supervisor” wherever occurring and by inserting instead the words “officer in charge of the Administration Office”;
- (c) by omitting from clause 9 (2) (a) the word “shall” and by inserting instead the word “may”;

- (d) by omitting from clauses 12, 19, 27 (2), 29, 33 (2), 47 (f), 52 (1) and 57 the word “Director-General” wherever occurring and by inserting instead the word “Commissioner”;
- (e) by omitting from clauses 12 and 29 the words “Deputy Director-General” wherever occurring and by inserting instead the words “Deputy Commissioner”;
- (f) by inserting in the heading to Part 4 after the word “ROUTINE” the words “AND ORDER”;
- (g) by inserting after clause 24 the following clause:

Adoption of certain regulations made under Prisons Act 1952

24A. The following provisions of the Prisons (General) Regulation 1989 are adopted for the purposes of the Act:

- Definitions of “force” and “instruments of restraint” in clause 146 (1)
- clause 155 (Maintenance of order: generally)
- clause 156 (Use of instruments of restraint).
- clause 157 (Use of force)
- clause 158 (Report on use of force)

- (h) by omitting clauses 30 and 31 and by inserting instead the following clauses:

Service of orders and notices

30. (1) The Commissioner must cause written notice of the terms of an order made under section 10 (1) (b) of the Act to be served on the periodic detainee to whom the order relates forthwith after the order is made.

(2) A periodic detainee on whom a notice under subclause (1) is served must, in the presence of the person by whom the notice is served, sign 2 copies of the notice.

(3) A periodic detainee on whom a notice under section 14 of the Act (in relation to orders made under section 11 and 11A of the Act) is served must, in the presence of the person by whom the notice is served, sign 2 copies of the notice.

(4) Of the copies of the notice referred to in subclauses (2) and (3):

- (a) 1 is to be kept by the periodic detainee to whom the notice relates; and
- (b) 1 is to be forwarded to the governor of the relevant prison.

Production of notices for inspection

31. A periodic detainee in respect of whom an order made under section 10 (1) (b), 11, 11A, 12 or 13 of the Act is in force

must, on demand, produce for inspection by the detainee's supervisor the notice given to the periodic detainee in relation to the order.

- (i) by omitting clause 32;
- (j) by inserting in clause 33 (1) after the word "application" where firstly occurring the words "by a periodic detainee";
- (k) by inserting in clause 33 (1) (a) after the word "writing" the words "by the periodic detainee (or by some other person for or on behalf of the periodic detainee)";
- (l) by omitting from clause 33 (2) the words "2 or more consecutive detention periods" and by inserting instead the words "any detention period";
- (m) by omitting clause 35 (1) and (2) and by inserting instead the following subclauses:
 - (1) Before determining an application made in accordance with clause 33 (1), the Commissioner may:
 - (a) cause such enquiries to be made as the Commissioner thinks fit into the facts on which the application is based; and
 - (b) direct the applicant to furnish a statement of further particulars in support of the application.
 - (2) If the Commissioner grants leave of absence to a periodic detainee, the Commissioner is to cause written notice of that fact to be given to the detainee.
- (n) by omitting clause 35 (4) (b) and by inserting instead the following paragraph:
 - (b) 1 is to be forwarded to the governor of the relevant prison.
- (o) by omitting clause 36 and by inserting instead the following clause:

Transmission of notices of extension, or exemption from extension, of sentence

36. A notice under section 21 (5) or 21A (2) (a) of the Act may be served on a periodic detainee by post or by the Government Mail Service addressed to the detainee at the last address known to the governor of the relevant prison.

- (p) by inserting after clause 40 (3) the following subclause:
 - (4) A periodic detainee is not to be regarded as contravening this clause if the detainee, on reporting at a prison pursuant to a requirement made by or under the Act, is admitted to the prison

by its governor even though the detainee is, or appears to be, under the influence of a drug, alcohol or other intoxicating substance.

- (q) by omitting from clause 47 (s) the word “or” where lastly occurring;
- (r) by inserting after clause 47 (t) the following paragraphs and subclauses:
 - (u) reports late to serve a detention period; or
 - (v) reports to serve a detention period at a prison or at a place outside a prison other than the prison or place of work outside a prison at which the detainee is required to report.
- (2) The following clauses of the Prisons (General) Regulation 1989 are adopted for the purposes of the Act and a periodic detainee commits an offence against discipline if the detainee contravenes any of those clauses:
 - clause 27 (Possession and confiscation of certain property)
 - clause 43 (Self-inflicted wounds)
 - clause 161 (2), (3) (Behaviour of prisoners)
 - clause 162 (Obstruction of prison officers)
 - clause 164 (Fighting etc.)
 - clause 165 (Assaults)
 - clause 166 (Riots)
 - clause 167 (Injuring animals)
 - clause 169 (Throwing articles)
 - clause 171 (Stealing)
 - clause 172 (Tampering with food or drink)
 - clause 173 (Tattooing prohibited)
 - clause 182 (Bribery prohibited)
- (s) by inserting after clause 47 the following clauses:

Penalty notice offences

47A. (1) The following offences are prescribed for the purposes of section 33B of the Act:

- (a) failure of a periodic detainee to comply with an order under section 10 (1) (b) of the Act directing the detainee to perform work outside a prison;
- (b) failure of a periodic detainee to comply with an order under section 13 of the Act;
- (c) any offence against discipline;
- (d) any contravention by a periodic detainee of a rule made under section 23 of the Act, an instruction given under section 10 (4) of the Act or a direction given under section 22 of the Act that applies to the detainee.

(2) If an offence is dealt with under section 33B of the Act, the penalty prescribed for the offence is 2 penalty units.

Prescribed offences against discipline

47B. Pursuant to section 34 (1B) of the Act, an offence against section 33 of the Act, other than an offence specified in section 33 (1) (c), is declared to be an offence against discipline.

Penalties for offences against discipline

47C. An offence against discipline is punishable:

- (a) by caution or reprimand; or
- (b) by deprivation of any of the following amenities or privileges for a period not exceeding 4 detention periods:
 - access to recreational facilities.
- (t) by omitting from clause 52 the word “given” wherever occurring and by inserting instead the word “transmitted”;
- (u) by inserting in clause 52 (2) after the words “posted” the words “, or transmitted by the Government Mail Service,”;
- (v) by omitting clause 55;
- (w) by omitting Form 6 from Schedule 1.

EXPLANATORY NOTE

The object of this Regulation is to amend the Periodic Detention of Prisoners Regulation 1988 so as:

- (a) to reflect changes relating to leave of absence of periodic detainees, penalty notices and offences against discipline made by the Periodic Detention of Prisoners (Amendment) Act 1992; and
- (b) to provide that periodic detainees reporting to prison under the influence of a drug, alcohol or other intoxicating substance may be admitted by the prison governor and, if so admitted, will not be guilty of an offence; and
- (c) to adopt certain provisions of the Prisons (General) Regulation 1989 made under the Prisons Act 1952 relating to discipline and offences; and
- (d) to make certain changes in terminology and other minor changes by way of law revision.

This Regulation is made under the Periodic Detention of Prisoners Act 1981, including section 34 (the general regulation making power) and the sections referred to in the Regulation.
