



New South Wales

# Periodic Detention of Prisoners Amendment Regulation 1999

under the

Periodic Detention of Prisoners Act 1981

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Periodic Detention of Prisoners Act 1981*.

BOB DEBUS, M.P.,

Minister for Corrective Services

## Explanatory note

The object of this Regulation is to amend the *Periodic Detention of Prisoners Regulation 1995* in connection with the amendments made to the *Periodic Detention of Prisoners Act 1981* by the *Periodic Detention of Prisoners Amendment Act 1998* and the *Periodic Detention of Prisoners Further Amendment Act 1998*. In particular, the Regulation prescribes the factors by reference to which a person's suitability to serve a term of imprisonment by way of periodic detention is to be assessed (proposed clause 5B).

This Regulation is made under the *Periodic Detention of Prisoners Act 1981*, including section 34 (the general regulation-making power) and sections 5, 25AA and 26.

## **Periodic Detention of Prisoners Amendment Regulation 1999**

### **1 Name of Regulation**

This Regulation is the *Periodic Detention of Prisoners Amendment Regulation 1999*.

### **2 Commencement**

This Regulation commences on 1 February 1999.

### **3 Amendment of Periodic Detention of Prisoners Regulation 1995**

The *Periodic Detention of Prisoners Regulation 1995* is amended as set out in Schedule 1.

### **4 Notes**

The explanatory note does not form part of this Regulation.

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**Schedule 1 Amendments**

(Clause 3)

**[1] Clauses 5A and 5B**

Insert after clause 5:

**5A Periodic detention undertaking**

For the purposes of section 5 (1B) (e) and (7) (b) (ii) of the Act, the prescribed form of undertaking is Form 6.

**5B Suitability reports**

For the purposes of section 5 (7) (a) of the Act, a person's suitability report must assess the person's suitability to serve a term of imprisonment by way of periodic detention by reference to the following factors:

- (a) the degree, if any, to which the person is dependent on alcohol or drugs (a major alcohol or drug problem being an indicator of unsuitability),
- (b) the person's psychiatric or psychological condition (a major psychiatric or psychological disorder being an indicator of unsuitability),
- (c) the person's medical condition (a medical condition that may render the person unfit to report for periodic detention being an indicator of unsuitability),
- (d) the person's criminal record, if any (a serious criminal record being an indicator of unsuitability),
- (e) the person's employment and other personal circumstances (circumstances that may render the person's regular attendance at a periodic detention centre impracticable being an indicator of unsuitability).

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**[2] Clause 28 Applications for leave of absence**

Omit clause 28 (1) (c). Insert instead:

- (c) lodged with the governor of the relevant prison.

**[3] Clause 46**

Omit the clause. Insert instead:

**46 Notice of cancellation of order for periodic detention**

- (1) For the purposes of section 25AA (2) (c) of the Act, the prescribed form for a notice of cancellation of an order for periodic detention is Form 7.
- (2) The notice must be sent to the governor of the prison in which the periodic detainee to whom the order related is kept.
- (3) Notice of the intention of the periodic detainee to whom the order related to make representations to the Board concerning the cancellation of the order for periodic detention:
  - (a) may be given using Form 8, and
  - (b) must be given by the periodic detainee to the governor of the prison in which the periodic detainee is kept, and
  - (c) must be sent by the governor to the Secretary of the Board.

**[4] Clause 47 Warrants for apprehension and detention**

Insert after clause 47 (2):

- (2A) For the purposes of section 26 (1A) of the Act, the prescribed form of a warrant for apprehension and detention is Form 9.

**[5] Clause 47 (3)**

Insert "or (1A)" after "26 (1) (a) or (b)".

**[6] Clause 48 Notices of cancellation of orders for periodic detention**

Omit “or 25”.

**[7] Schedule 1 Forms**

Insert after Form 5:

**Form 6**

(Clause 5A)

**PERIODIC DETENTION UNDERTAKING**

(Section 5 (1B) (e) and (7) (b) (ii) of the *Periodic Detention of Prisoners Act 1981*)

I understand that serving my sentence by way of periodic detention depends on compliance with all conditions of the periodic detention order (if any conditions are made).

*The requirements of the Periodic Detention of Prisoners Act 1981 and the Periodic Detention of Prisoners Regulation 1995* have been explained to me.

I, ..... agree to comply with the requirements of the *Periodic Detention of Prisoners Act 1981* and the *Periodic Detention of Prisoners Regulation 1995*.

Signature: ..... Date: .....

Probation & Parole Officer: ..... Date: .....

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**Form 7**

(Clause 46)

**NOTICE OF CANCELLATION OF ORDER FOR PERIODIC  
DETENTION**

(Section 25AA of the *Periodic Detention of Prisoners Act 1981*)

TO ..... (*Name of offender*)

TAKE NOTICE that the Parole Board at its meeting on .....  
made an order for cancellation of your order for periodic detention to date  
from.....

The Board will reconvene on ..... at ..... (*time*)  
to reconsider the cancellation of your order for periodic detention.

\*A copy of the order that revoked your order for periodic detention is  
attached.

\*Copies are attached of reports and other documents used by the Board in  
reaching its decision to cancel your order for periodic detention.

You may make submissions to the Board with respect to the cancellation of  
your order for periodic detention. If you wish to do so, you are required to  
notify the Secretary of the Board not later than .....

.....

Secretary of the Parole Board

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\* Delete if inapplicable

**Form 8**

(Clause 46)

**NOTICE RELATING TO RECONSIDERATION BY PAROLE BOARD OF  
CANCELLATION OF ORDER FOR PERIODIC DETENTION**

(Section 25AB of the *Periodic Detention of Prisoners Act 1981*)

TO the Parole Board

From ..... (*Name of offender*)

I notify the Secretary of the Parole Board that I \*do not intend/intend to make representations to the Board at the meeting to be held on ..... to reconsider whether my order for periodic detention should be cancelled.

At that time, I \*do not wish/wish to appear before the Board.

I \*do not intend/intend to be legally represented.

\*I wish to be represented at this meeting.

by .....

of .....

and seek the consent of the Board for this person to attend for this purpose. My reasons for requesting representation by the named person are:

.....  
.....  
.....

Signed:

Dated:

To: The Secretary of the Parole Board.

\* Delete if inapplicable

Note: Legal aid is available from a duty solicitor to assist a person in preparing representations to the Board. If aid is required, contact the Prisoner's Legal Service, Legal Aid Commission, without delay.

**Form 9**

(Clause 47)

**WARRANT FOR APPREHENSION AND DETENTION**

(Section 26 (1A) of the *Periodic Detention of Prisoners Act 1981*)

TO the Commissioner of Police for the State of New South Wales, to all police officers and to all keepers of prisons in that State.

WHEREAS —

I ..... of ..... (*the prisoner*) was, on the ..... day of ..... 19 ....., convicted in the ..... Court (*the Court*) at ..... of the following offence: ..... being an offence punishable by imprisonment, and

2. On that conviction the prisoner was sentenced to be imprisoned for a term of ..... and
3. It was ordered by the Court that the term of imprisonment be served by way of periodic detention, and
4. The prisoner commenced to serve that term of imprisonment, in accordance with the order of the Court, on the ..... day of ..... 19 ....., and
5. On the ..... day of ..... 19 ..... the order for periodic detention in respect of the prisoner was cancelled, it appearing to the Parole Board that there was good reason to do so.

THE PAROLE BOARD COMMANDS YOU, the Commissioner of Police, and all other police officers, to immediately apprehend the prisoner and safely convey him or her to a prison and there to deliver him or her, together with this warrant, into the custody of the prison's keeper, and for your doing so this warrant is sufficient authority,

AND

THE PAROLE BOARD COMMANDS YOU, the keeper of the prison to which the prisoner is conveyed, to receive the prisoner into your custody and to imprison him or her in the prison for the duration of the unexpired portion of his or her term of imprisonment, being .... weeks calculated in accordance with section 27 (6) of the *Periodic Detention of Prisoners Act 1981*, and for your doing so this warrant is sufficient authority.



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Amendments

Schedule 1

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Signed this. . . . . day of . . . . . 19 . . . . , at. . . . . in the State of New South Wales.

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(Judicial member of the Parole Board)