

1999

**THE LEGISLATIVE ASSEMBLY FOR
THE AUSTRALIAN CAPITAL TERRITORY**

PERIODIC DETENTION AMENDMENT BILL 1999

EXPLANATORY MEMORANDUM

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Periodic Detention Amendment Bill 1999

Explanatory Memorandum

Outline

The Periodic Detention Amendment Bill 1999 (the bill) amends the *Periodic Detention Act 1995* (the Act). The Act sets out a scheme for the periodic detention of certain offenders.

The amendments in the bill:

clarify that when a person who is subject to a periodic detention order is sentenced to a period of imprisonment, of more than one month, the periodic detention order is cancelled; and

provide that where a periodic detainee is in custody and, as a result, unable to serve a detention period, the detainee will be credited with having served the detention period.

Financial implications

There are no financial implications arising from the Bill.

FORMAL PROVISIONS

Clauses 1, 2 and 3 - Formal provisions

Clauses 1, 2 and 3 are formal provisions dealing with the title of the bill once enacted, the commencement arrangements and making clear that the Act being amended is the *Periodic Detention Act 1995*.

KEY AMENDMENTS

Clause 4 - Insertion of new section 28A

Clause 4 inserts ***new section 28A*** in the Act. ***New subsection 28A(1)*** is to the effect that where a person, in respect of whom a periodic detention order is in force, is in custody for the duration of a detention period, the person will be taken to have served that detention period.

New subsection 28A(2) is intended to clarify that ***new subsection 28A(1)*** applies only in respect of the lawful custody of a detainee which occurs after the commencement of the Act. ***New subsection 28A(2)*** will, eventually, be repealed, pursuant to ***new subsection 28A(4)***.

However, its effect will not be lost once repealed. ***New subsection 28A(3)*** confirms the application of section 42 of the *Interpretation Act 1967* to ***new subsection 28A(2)***. Section 42 of the Interpretation Act ensures that when ***new subsection 28A(2)*** ceases to have effect, pursuant to ***new subsection 28A(4)***, there will be no change to the position that ***new subsection 28A(1)*** only applies to the lawful custody of a detainee which occurs after the commencement of this provision.

New subsection 28A(4) is a sunset clause the purpose of which is to remove ***new subsections 28A(2)*** and ***(3)*** from the *Periodic Detention Act 1995* after a

transitional period, during which time a reprint of the Act including those provisions will have been published.

New subsections 28A(3) and (4) reflect new practices in legislative drafting and the style in which ACT laws will be re-published.

New section 28A does not apply where the periodic detainee is in custody for only part of a detention period. In such circumstances a leave of absence, pursuant to section 24 of the Act, would be expected to be granted. The detainee would remain liable to serve a detention period in respect of the detention period for which such leave is granted.

Clause 5 - Substitution of new section 29

Clause 5 replaces the existing section 29 of the Act with a **new section 29**. The section being replaced provides that where a periodic detainee is convicted of an offence and, consequently, is sentenced to imprisonment, the Court imposing that sentence may cancel the periodic detention order in force in respect of the detainee. This is replaced by a **new section 29** which does not allow any discretion to a sentencing court where a detainee is sentenced to a term of imprisonment of more than one month.

New subsection 29(2) is to the effect that where a term of imprisonment of more than a month is imposed on a periodic detainee, the periodic detention order, by force of the new provision, is cancelled. The consequence of this cancellation is that, pursuant to section 31 of the Act, the person upon whom the periodic detention order was imposed becomes liable to serve a week's imprisonment for each unserved detention period. Unless the sentencing court orders otherwise, that imprisonment would be served concurrently with the term of imprisonment which gave rise to the cancellation of the periodic detention.

New subsection 29(3) enables the sentencing court to decide whether or not to cancel a periodic detention order where a detainee is sentenced to less than one

month's imprisonment. Under the provisions of ***new section 28A*** a periodic detainee sentenced to less than one month's imprisonment would be taken to serve any detention period for which the detainee was in custody pursuant to the prison sentence. Once released, the detainee would be liable to serve any outstanding detention periods under the periodic detention order.

This provision acknowledges that there is little point in a periodic detention order remaining in force where a person is sentenced to a substantial imprisonment term. It also ensures that where an offender on a periodic detention order reoffends in a way which warrants more than a very minor prison sentence the offender will not return straight out of prison into periodic detention. There are risks associated with mixing offenders who have been exposed to a prison environment with other offenders who have never been exposed to such an environment, as well as potential management problems in having a person released from imprisonment immediately resume periodic detention.