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**LEGISLATIVE ASSEMBLY OF THE AUSTRALIAN CAPITAL
TERRITORY**

PERIODIC DETENTION BILL 1995

EXPLANATORY MEMORANDUM

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Outline

The Periodic Detention Bill ('the Bill') is part of a package of legislation being prepared in response to the 1992 'Paying the Price' report of the Corrections Review Committee. The Bill provides for periodic detention as an alternative to existing sentencing options. The main features of the new periodic detention scheme will be.

- a court may sentence an offender to periodic detention as an alternative to full time imprisonment, but only where the offender would otherwise have been sentenced to between 3 months and 24 months imprisonment;

periodic detainees will be sentenced, by order, to serve a number of detention periods at a periodic detention centre. The number of detention periods to be served will be calculated at the rate of 1 period for 1 week of the sentence the person would otherwise have been ordered to serve,

a detention period will generally run over a weekend, commencing at 7.00 pm on a Friday and finishing at 4:30 pm on the Sunday afternoon. A detainee will be required to reside at the periodic detention centre for that period. While at the periodic detention centre the person will be subject to the orders of the Director of Corrective Services;

subject to a detainee being granted a leave of absence in respect of a particular periodic detention period, a failure by a detainee to attend for periodic detention in accordance with the periodic detention order will, generally, result in the order being breached with the consequence that the detainee must serve the balance of his or her sentence by way of full time imprisonment;

- the Minister may declare a particular place to be a periodic detention centre;

various officers, including the Director of Corrective Services, managers of periodic detention centres and custodial officers will be appointed and have functions, duties and responsibilities, in respect of periodic detainees, under the Act.

Financial Impact Statement

The proposed Symnston Periodic Detention Centre has been established at a cost of \$200,000. The Centre will cost \$285,000 per annum to administer

If the Centre is fully utilised [based on 30 beds] the cost per detainee per year will be \$9,500 which compares with the approximately \$50,000 cost per year of having an ACT prisoner in a New South Wales goal

Details of the Bill are as follows.

PART ONE - PRELIMINARY

This part provides for the formal matters for the Act.

Clause 1 - Short title

Clause 1 provides for the citation of the Bill once enacted as the *Periodic Detention Act 1995*.

Clause 2 - Commencement

Clause 2 provides for the commencement of the Act. The delayed commencement will allow time for necessary facilities and procedures to be put in place.

Clause 3 - Interpretation

Clause 3 is interpretation section for the Act. An important definition is that for the term "detention period" which is defined as a two day period commencing at 7 pm on a particular day and ending at 4.30 pm on the second day after the day on which it commences.

PART II - PERIODIC DETENTION

Part II deals with who may be sentenced to periodic detention and the manner in which an order for periodic detention is to be complied with. Division 1 of this Part sets out the pre-conditions for a court to make an order for periodic detention and the procedures to be followed by a court in making an order for periodic detention. Division 2 provides for commencement of periodic detention and the manner in which periodic detention is to be served. Division 3 provides for cancellation of an order for periodic detention and the consequences of cancellation. Where an order for periodic detention is cancelled under Division 3 the order will be converted back to full-time imprisonment. Division 4 establishes offences relating to periodic detention.

Division 1 - Orders and committal

Clause 4 - Power to order periodic detention

Clause 4 is the provision under which a court may sentence a person to periodic detention for a specified number of detention periods. The number of detention periods to which a person may be sentenced is to be calculated having regard to the term of imprisonment [1 detention period for 1 week of imprisonment] to which the person would otherwise be sentenced if the option of periodic detention was not available.

The minimum term of imprisonment for which a court may make an order for periodic detention is 3 months. The maximum term of imprisonment in respect of which an order for periodic detention may be substituted is 2 years. It is intended that the term of imprisonment referred to in *paragraph 4(1)(b)* is the term of imprisonment to which the person would have been sentenced, as opposed to the period the person would have served in prison. It is not intended to have regard to any period during which the offender may have been eligible for release on parole, had the offender been sentenced to imprisonment.

A periodic detention order remains in force, pursuant to this clause, until the offender has served the number of periodic detention periods required to be served under the order, including any additional periods which may be imposed pursuant to the Act. Normally, a detention period will be served once a week, in consecutive weeks, until such time as the number of detention periods required to be served under the order are served. However, it is possible for the service of detention periods to be deferred, for example, where illness, compassionate or other grounds exist for giving a detainee a leave of absence in respect of a particular detention period.

Clause 5 - Core conditions

Clause 5 lists a number of matters that are to be included in an order.

Clause 6 - Circumstances in which a periodic detention order may be made

Clause 6 restricts the circumstances in which a court may make an order for periodic detention. This clause is intended to ensure that all relevant matters are taken into account before a periodic detention order is made. In particular, the offender must agree to the making of the order.

Clause 7 - Detainee taken to be in lawful custody

Clause 7 is a deeming provision to the effect that a person is taken to be in lawful custody for the purposes of Part V of the *Crimes Act 1900* while serving a detention period. Part V creates offences relating to escape from lawful custody.

Clause 8 - Identification of detainees

Clause 8 provides that the Director may, in respect of an offender sentenced to periodic detention, take steps to identify the person for the purposes of the Act. This provision is intended to ensure that the correct person attends at the detention centre for the purposes of serving their sentence of periodic detention. Any photographs or finger prints taken pursuant to this power of the Director are required to be destroyed when the person completes his or her sentence.

Clause 9 - Periodic detention - concurrent and cumulative sentences

Clause 9 sets out the rules that are to apply in regard to concurrent and cumulative sentences where an offender is already serving a term of periodic detention. The number of detention periods a person may be required to serve cannot at any time exceed 104

Clause 10 - Notice to detainee

Clause 10 provides that where a periodic detention order has been made a copy of that order must be served upon the person in respect of whom the order was made. The notice that is served under this clause will contain notification to the offender of the day on which he or she is to report to periodic detention and the place to which they are to report.

Clause 11 - Service of documents

Clause 11 is an interpretation provision which specifies the manner in which documents that are required to be served under clause 9 of Act may be served. The manner of serving other documents that are required to be served under the Act is specified in section 17A of the *Interpretation Act 1967*. *Clause 11* is more restrictive than the Interpretation Act provision which allows for service by post.

Division 2 - Performing periodic detention

Clause 12 - Interpretation

Clause 12 defines "drug" for the purposes of the Division. The Division makes provision for drug testing, amongst other things.

Clause 13 - Commencement of sentence

Clause 13 specifies that a sentence commences on the day specified in the order of the court.

Clause 14 - Service of sentence

Clause 14 provides that the sentence of periodic detention must be served in accordance with the provisions of the Act. The effect of this provision is that where a person complies with the Act they also comply with the order of the court. This provision is necessary because the Act provides for, in effect, the variation of an order of a court by the Director of Corrective Services. This variation may take the form of a variation of the days on which a person is required to report for periodic detention, or the variation may take the form of a variation of the times at which the person is required to report for periodic detention.

Clause 15 - Work etc.

Clause 15 provides that the Director may order a detainee to participate in certain activities, including the performance of appropriate work, during any

detention period. The specific requirements in this section as to the type of work that the Director may direct a person to perform are intended to ensure that the work does not cut across the employment opportunities that would otherwise be available to persons who are not periodic detainees.

Clause 16 - Variation of days of attendance

Clause 16 provides the mechanism by which the Director may vary the days on which a detainee is required to report to a detention centre. This clause should be read in conjunction with *clause 14* which provides that where the days are varied under this clause then the person is still complying with the requirements for the periodic detention order made by the court.

Clause 17 - Variation of times of attendance

Clause 17 is similar to *clause 16* in that it provides for a variation by the Director of the times at which a detainee is required to attend at a detention centre. The only proviso on this clause is that any variation must not have the effect of either increasing or reducing the number of consecutive hours that the detainee is required to attend at a detention centre.

Clause 18 - Director to give notice

Clause 18 provides that where the Director makes an order under any of the preceding three clauses, then the Director must give written notice of the order to the detainee whom it concerns.

Clause 19 - Commencement of certain orders

Clause 19 provides that an order of the Director varying the terms of a periodic detention order takes effect on the day on which the order is made or, if the Director has specified another day, that day.

Clause 20 - Effect of complying with certain orders

Clause 20 provides that where a detainee complies with an order of the Director varying the terms of a court order for periodic detention, then to the extent of any inconsistency between a later order of the Director and an

earlier order of either a court or the Director, the earlier order ceases to have force and effect.

Clause 21 - Complaints by detainees

Clause 21 gives a detainee the right to make a complaint to an Official Visitor, in respect of certain orders of the Director, including those directing the detainee to work. An Official Visitor is the person appointed to that position under provisions of the *Remand Centres Act 1976* and is required to investigate a complaint by a periodic detainee in accordance with the provisions of *clause 53*.

Clause 22 - Detainee unfit for detention

Clause 22 makes provision for 2 circumstances in which a detainee will be unfit for detention.

The first circumstance is of a detainee who presents for detention in an unruly state or is otherwise a threat to the good order and security of the detention centre. He or she may be refused admission. *Clause 48* provides for the disciplining of a detainee who has been admitted.

The second is of a detainee who is found to have a concentration of alcohol of more than 0.02 milligrams per 100 millilitres of blood or is found to have a drug in their body. Tests for this purpose are provided for in *clause 23* and may be required of a detainee who is reporting for, or serving, a detention period. If a positive test result is available before the detainee is admitted he or she will be refused admission. If a positive result becomes available during a detention period the period will be terminated. In either of these cases and also if a positive result becomes available after a detention period the detainee will be taken not to have reported for the period.

If the alcohol or drug has been taken by the detainee in accordance with the advice of a doctor, dentist or nurse the test result will be ignored.

A detainee who refuses or fails to submit to a test will incur the same penalty as a detainee who returns a positive result.

Clause 23 - Manager may require alcohol or drug testing

Clause 23 provides for the testing that is required by section 22.

Clause 24 - Leave of absence

Clause 24 provides that the Director may, in certain circumstances, grant a leave of absence in respect of a detention period, to a detainee. This provision does not exempt the detainee from serving that detention period; it merely postpones the service of the detention period. Where an application for a leave of absence is refused then the detainee may apply to the Magistrates Court for a review of the decision of the Director to refuse that leave of absence.

Clause 25 - Extension of detention

Clause 25 provides that where a detainee fails to report as required for a particular detention period, and a leave of absence has not been granted for that detention period, then the detainee's sentence is extended by an additional detention period. This extra detention period is added on to the end of the detainee's sentence. This is different from the situation where a leave of absence is granted in that for each detention period for which the detainee fails to report without a leave of absence an additional period is required to be served as well as the period for which the detainee has failed to report. However, a sentence of periodic detention may only be extended by a maximum of 2 detention periods, pursuant to this clause.

Clause 26 - Variation of sentence on compassionate grounds

Clause 26 provides that a court which orders a person to serve a sentence of periodic detention may, on the application of the detainee or the Director, make an order cancelling the remainder of the sentence of periodic detention. The matters that can be taken into account include compassionate grounds and the health of the detainee.

Clause 27 - Directions

Clause 27 provides that the Director or the manager of a detention centre may give such directions to a detainee as are necessary for the purposes of securing the enforcement of the Act. In the case of an emergency, these directions may be inconsistent with the Act.

Clause 28 - Compensation

Clause 28 applies the *Worker's Compensation Act 1951* to persons who are performing work pursuant to an order of the Director under this Act. This has the effect of deeming a periodic detainee to be an employee of the Territory when performing work under this Act. The modifications in *sub-clause 28(2)* to the interpretative provisions of the *Worker's Compensation Act 1951* are necessary as an employee of the Territory would not normally be regarded as a worker for the purposes of that Act.

Division 3 - Cancellation of orders***Clause 29 - Cancellation on subsequent conviction***

Clause 29 provides that where a detainee is convicted of an offence and sentenced to imprisonment, the Court may cancel the periodic detention order.

Clause 30 - Cancellation otherwise than on subsequent conviction

Clause 30 provides for cancellation of a periodic detention order otherwise than on subsequent conviction and imprisonment for an offence. This may be done by the court which imposed the sentence of periodic detention on the application of the detainee or the Director. Generally the court exercises its discretion if satisfied there are good grounds for doing so, but in particular if the detainee is not serving his or her sentence in accordance with the original order.

However, if the detainee has failed to report for 3 or more detention periods, which need not be consecutive periods, the court has no discretion and the order must be cancelled.

If the court is satisfied the matter should have been dealt with under section 24 [grant of leave] or section 26 [compassionate grounds for cancellation] it is to deal with the application under those sections.

Clause 31 - Certain effects of cancellation of order for periodic detention

Clause 31 provides that where a periodic detention order is cancelled, pursuant to *clause 29* or *clause 30*, then any variations to that order cease to have effect. The provision has the effect of converting the periodic detention order to full-time imprisonment at the rate of one week for every detention period remaining to be served pursuant to the periodic detention order and the provisions of the Act.

Clause 32 - Application of Parole Act

Clause 32 provides that the *Parole Act 1976* applies to a term of imprisonment required to be served because of the cancellation of a periodic detention order as if the person had been sentenced to imprisonment by a court. This provision is necessary as the *Parole Act 1976* is expressed to apply when a court sentences a person to a term of imprisonment

Clause 33 - Application of Crimes Act

Clause 33 applies Part V of the *Crimes Act 1900* to a person who is serving a term of imprisonment because of the cancellation of a periodic detention order. Part V establishes the offences relating to escape from imprisonment

Division - 4

Clause 34 - Offences

Clause 34 establishes offences relating to periodic detention. This clause also establishes certain defences to prosecution

PART III - CORRECTIVE SERVICES ADMINISTRATION

Division 1 - Officers

This Part provides for the establishment of the office of the Director of Corrective Services and the appointment of custodial officers and managers of detention centres. The Part also provides for the powers and duties of these officers and the management and administration of detention centres.

Clause 35 - Director of Corrective Services

Clause 35 provides that there shall be a Director of Corrective Services who is to be a public servant.

Clause 36 - Officers

Clause 36 similarly provides for a manager of a detention centre and custodial officers.

Clause 37 - Approval to conduct tests

Clause 37 provides for the Director to authorise an officer to conduct tests required by section 23. The officer must have undergone training approved by the Minister.

Clause 38 - Delegation by Director

Clause 38 provides for the delegation by the Director of his or her powers under the Act.

Clause 39 - Reports etc.

Clause 39 provides that an officer shall prepare and give reports, returns and records as required by the Director.

Division 2 - Management

Clause 40 - Interpretation

Clause 40 is an interpretation provision, for the purposes of Division 2. In particular "detainee" is defined for the purposes of the Division as a detainee who is serving a period of detention.

Clause 41 - Declaration of centres

Clause 41 provides that the Minister may declare a place to be a detention centre.

Clause 42 - Manager's responsibilities

Clause 42 sets out the responsibilities of a manager in respect of a detention centre and in respect of detainees in the detention centre. In particular, the manager of a detention centre is responsible for the good order and security of the centre and the welfare of detainees.

Clause 43 - Delegation by manager

Clause 43 provides for delegation by a manager of a detention centre of any of his or her powers under this Part to a custodial officer.

Clause 44 - Absence of manager

Clause 44 provides for the performance of the functions of manager where the manager of a detention centre is not on duty at the centre.

Clause 45 - Officers subject to Director's directions

Clause 45 provides that the Director may give directions to the manager of a detention centre regarding the performance of his or her duties

Clause 46 - Powers and duties of officers

Clause 46 establishes the duties of an officer in relation to the security and good order of a detention centre and the welfare of detainees. In particular, officers may give directions to detainees regarding the manner in which orders under the Act (for example, an order under *clause 15*) are to be complied with.

Clause 47 - Entitlements of detainees

Clause 47 sets out the entitlements of detainees to wear their own clothing and receive necessary health services whilst at a detention centre

Clause 48 - Discipline

Clause 48 sets the circumstances in which the manager of a detention centre may arrange for a detainee to be confined to sleeping quarters or to terminate the detention period

Clause 49 - Clothing and body searches

Clause 49 sets out that detainees and their personal possessions may be searched if this is considered necessary for the good order, discipline, security or a detention centre or the welfare of detainees. This power of search is very wide and will allow random searches if this is considered necessary. If a search of a detainee involves the removal of more than the detainees outer garments [a body search] the clause sets out that the search is to be conducted in a private area, is generally to be conducted only by and in the view of a person of the same sex as the detainee and is not to involve a search of a person's body cavities

Clause 50 - Use of force

Clause 50 establishes the situations in which the manager of detention centre may direct the use of force in respect of a detainee and the circumstances in which a custodial officer may use force. Where force is used, the manager must report that fact to the Director as soon as possible

Clause 51- Medical treatment

Clause 51 gives the manager of a detention centre the authority to arrange a medical examination for a detainee with the detainee's consent and, where the manager has reasonable grounds to believe a detainee requires hospitalisation, to arrange for hospitalisation of a detainee. A detainee has an entitlement to receive medical treatment under *clause 47* of the Bill.

Clause 52 - Official Visitors - duties

Clause 52 sets out the duties of an Official Visitor to inspect periodic detention centres. The Official Visitor may also inspect work sites. If the Official Visitor is not satisfied a detention centre or place of work is being conducted in accordance with the Act he or she is to report this to the Minister.

Clause 53 - Complaints by detainees

Clause 53 gives a detainee a right to make a complaint to an Official Visitor, concerning the detainee's treatment at, or conditions in, a detention centre or place of work and requires the Official Visitor to investigate such a complaint and, where necessary, report to the Minister. Complaints made under *clause 21* in respect of decisions of the Director are also investigated under this provision.

Clause 54 - Notification of complaints

Clause 54 requires a custodial officer to, as soon as practicable, inform the Director or an Official Visitor of a complaint by a detainee

Clause 55 - Inspection of centres

Clause 55 provides for the inspection of a detention centre or a place of work at any time by a Judge, magistrate or nominated member of the Legislative Assembly

Clause 56 - Offences by persons other than detainees

Clause 56 provides for offences by persons, other than detainees, at a detention centre

Clause 57 - Standing orders

Clause 57 provides that the Director may issue standing orders for the day-to-day administration of a detention centre or a place of work. These orders must be made available for inspection

PART IV - MISCELLANEOUS

Clause 58 - Exercise of prerogative of mercy and operation of other laws not affected

Clause 58 preserves the operation of provisions and conventions, relating to pardons, remissions and the exercise of the Crown prerogative of mercy, in relation to an offender who is sentenced to periodic detention

Clause 59 - Regulations

Clause 59 is a regulation making power for the Act

PART V - AMENDMENT OF OTHER LAWS

Part V sections 60 to 65 comprises amendments to the *Coroners Act 1956*, the *Crimes Act 1900* and the *Remand Centres Act 1976* which complement the periodic detention scheme established under the preceding clauses.

The amendments to the *Coroners Act* [clauses 60 and 61] ensure that an inquest will be held into the death of a person who dies while serving a period of detention

The amendment to the *Crimes Act* [clauses 62 and 63] will insert a new section [section 151A] into the *Crimes Act*. The section provides that merely because a person is under a sentence of periodic detention the person is not to

be taken to be in lawful custody. Clause 7 sets out the circumstances in which a person serving a period of detention will be taken to be in lawful custody.

The amendments to the Remand Centres Act [clauses 64 and 65] provide for the Official Visitor who is appointed for the purposes of that Act to have jurisdiction in relation to the Periodic Detention Act.