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**LEGISLATIVE ASSEMBLY OF THE AUSTRALIAN CAPITAL  
TERRITORY**

**PERIODIC DETENTION BILL 1994**

**EXPLANATORY MEMORANDUM**

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Housing and Community Services**

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### **EXPLANATORY MEMORANDUM**

#### **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;
- 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, custodial officers and corrections officers

will be appointed and have functions, duties and responsibilities, in respect of periodic detainees, under the Act.

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 1994*.

#### ***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.

***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 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 - Circumstances in which a periodic detention order may be made***

*Clause 5* 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 6 - Detainee taken to be in lawful custody***

*Clause 6* is a deeming provision to the effect that a person is taken to be in lawful custody for certain purposes under the Act. This provision is designed to ensure that while a person may not necessarily be in a detention centre that the person is still regarded as complying with the terms of the periodic detention order.

***Clause 7 - Identification of detainees***

*Clause 7* 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 8 - Periodic detention - concurrent and cumulative sentences***

*Clause 8* 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. Where a person who is subject to periodic detention order re-offends the court may, where it imposes an additional term of periodic detention, order that the periodic detention be served cumulatively on the first sentence. The court may not make such an order if it would result in the total number of detention periods remaining to be served exceeding 104.

***Clause 9 - Notice to detainee***

*Clause 9* 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 10 - Service of documents***

*Clause 10* is an interpretation provision which specifies the manner in which documents that are required to be served under the Act may be served.

***Clause 11 - Commencement of sentence***

*Clause 11* specifies that a sentence commences on the day specified in the order of the court.

***Clause 12 - Service of sentence***

*Clause 12* 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.

This clause also provides that a detainee is deemed not to have reported in accordance with the Act if he or she doesn't comply with *clause 22*. *Clause 22* provides that a detainee who reports for periodic detention and is unfit to comply with the Director's order is to be refused admittance to the centre. Where this occurs *clause 12* will have the effect of deeming the detainee not to have reported for periodic detention.

***Clause 13 - Work etc.***

*Clause 13* 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 14 - Variation of days of attendance***

*Clause 14* 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 12* 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 15 - Variation of times of attendance***

*Clause 15* is similar to *clause 14* 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 16 - Variation of place at which sentence is to be served***

*Clause 16* provides for the variation of the place at which a person is required to report for periodic detention.

***Clause 17 - Director to give notice***

*Clause 17* provides that where the Director makes an order under any of the preceding four clauses, then the Director must give written notice of the order to the detainee whom it concerns.

***Clause 18 - Commencement of certain orders***

*Clause 18* 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 19 - Effect of complying with certain orders***

*Clause 19* 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 20 - Complaints by detainees***

*Clause 20* 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 50*.

***Clause 21 - Transfer of unruly detainees***

*Clause 21* provides for the transfer of a detainee from one detention centre to another in certain circumstances. Where a detainee is transferred to another detention centre pursuant to this provision the detainee is still taken to be in compliance with the sentence for periodic detention notwithstanding that he or she is at a different detention centre from that specified in the original order imposing a sentence of periodic detention.

***Detainee unfit for detention***

*Clause 22* provides that the manager of the detention centre may refuse admission to a person where the person is under the influence of alcohol or a drug or is otherwise unfit to comply with an order of the Director to perform work. Where a person is refused admission under this provision then he or she is deemed to have failed to report as required by the order of periodic detention.

***Clause 23 - Leave of absence***

*Clause 23* 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 24 - Extension of detention***

*Clause 24* 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 25 - Variation of sentence on compassionate grounds***

*Clause 25* 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. If the court is satisfied, having regard to various matters set out in this clause, that it is unlikely that the detainee would be able to serve the remainder of his or her sentence within a reasonable time, the Court may cancel the remaining periods of detention to be served.

***Clause 26 - Directions***

*Clause 26* 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 27 - Compensation***

*Clause 27* 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 27(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.

***Clause 28 - Cancellation on subsequent conviction***

*Clause 28* provides that where a detainee is convicted of an offence and sentenced to imprisonment, the Court may cancel the periodic detention order.

***Clause 29 - Cancellation otherwise than on subsequent conviction***

*Clause 29* provides for cancellation of a periodic detention order otherwise than on subsequent conviction and imprisonment for an offence. This may be done on the application of the detainee or the Director or of a court's own motion. However, the effect of *sub-clause 29(8)* is that a court cannot cancel a periodic detention order under this section if the court considers that grounds on which cancellation is sought by the Director or the detainee would warrant cancellation of the order under *clause 25*, were an application to be made under that provision.

The court may also cancel an order if the detainee has not complied, or is not complying, with their periodic detention order. Where an order is cancelled under this provision, *clauses 30 and 31* apply to the person whose order is cancelled.

***Clause 30 - Certain effects of cancellation of order for periodic detention***

*Clause 30* provides that where a periodic detention order is cancelled, pursuant to *clause 28* or *clause 29*, 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 31 - Application of Parole Act***

*Clause 31* 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 32 - Application of Crimes Act***

*Clause 32* 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. This provision is required because of the operation of *clause 58*, which provides that Part V of the *Crimes Act 1900* does not apply to a person who is serving a sentence by way of periodic detention. Part V establishes the offences relating to escape from imprisonment.

***Clause 33 - Offences***

*Clause 33* establishes offences relating to periodic detention. This clause also establishes certain defences to prosecution.

**PART III - CORRECTIVE SERVICES ADMINISTRATION**

This Part provides for the establishment of the office of the Director of Corrective Services and the appointment of custodial officers, corrections 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 34 - Director of Corrective Services***

*Clause 34* provides that there shall be a Director of Corrective Services.

***Clause 35 - Officers***

*Clause 35* similarly provides for a manager for each detention centre, custodial officers and corrections officers.

***Clause 36 - Delegation by Director***

*Clause 36* provides for the delegation by the Director of his or her powers under the Act.

***Clause 37 - Reports etc.***

*Clause 37* provides that an officer shall prepare and give reports, returns and records as required by the Director.

***Clause 38 - Interpretation***

*Clause 38* is an interpretation provision, for the purposes of Division 2.

***Clause 39 - Declaration of centres***

*Clause 39* provides that the Minister may declare a place to be a detention centre.

***Clause 40 - Manager's responsibilities***

*Clause 40* 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 41 - Delegation by manager***

*Clause 41* 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 42 - Absence of manager***

*Clause 42* provides for the performance of the functions of manager where the manager of a detention centre is not on duty at the centre.

***Clause 43 - Officers subject to Director's directions***

*Clause 43* provides that the Director may give directions to the manager of a detention centre regarding the performance of his or her duties.

***Clause 44 - Powers and duties of officers***

*Clause 44* establishes the duties of an officer in relation to the security and good order of a detention centre. In particular, officers may give directions to detainees regarding the manner in which orders under the Act (for example, an order under *clause 13*) are to be complied with.

***Clause 45 - Entitlements of detainees***

*Clause 45* sets out the entitlements of detainees to wear their own clothing and receive necessary health services whilst at a detention centre.

***Clause 46 - Discipline***

*Clause 46* sets the circumstances in which the manager of a detention centre may arrange for a detainee to be confined to sleeping quarters.

***Clause 47 - Use of force***

*Clause 47* establishes the situations in which the manager of detention centre may direct the use of force in respect of a detainee. Where force is used, the manager must report that fact to the Director as soon as possible.

***Clause 48 - Medical treatment***

*Clause 48* gives the manager of a detention centre the authority to arrange a medical examination for a detainee 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 45* of the Bill.

***Clause 49 - Official Visitors - duties***

*Clause 49* sets out the duties of an Official Visitor to inspect periodic detention centres.

***Clause 50 - Complaints by detainees***

*Clause 50* 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 and requires the Official Visitor to investigate such a complaint and, where necessary, report to the Minister. Complaints made under *clause 20* in respect of decisions of the Director are also investigated under this provision.

***Clause 51 - Notification of complaints etc.***

*Clause 51* requires a custodial officer to, as soon as practicable, inform the Director or an Official Visitor of a complaint by a detainee.

***Clause 52 - Inspection of centres***

*Clause 52* provides for the inspection of a detention centre at any time by a Judge, magistrate or nominated member of the Legislative Assembly.

***Clause 53 - Offences by persons other than detainees***

*Clause 53* provides for offences by persons, other than detainees, at a detention centre.

***Clause 54 - Standing orders***

*Clause 54* provides that the Director may issue standing orders for the day-to-day administration of a detention centre. These orders must be made available for inspection.

#### **PART IV - MISCELLANEOUS**

***Clause 55 - Exercise of prerogative of mercy and operation of other laws not affected***

*Clause 55* 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 56 - Regulations***

*Clause 56* is a regulation making power for the Act.

#### **PART V - AMENDMENT OF OTHER LAWS**

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

***Clause 57 - Principal Act***

*Clause 57* is an interpretation provision.

***Clause 58 - Insertion***

*Clause 58* inserts a new section after section 151 of the Principal Act. New section 151A provides that for the purposes of Part V of the *Crimes Act 1900* the person who is serving a sentence by way of periodic detention is not deemed, by reason only of that fact, to be in lawful custody. In effect, if a person absconds from a detention centre during a detention period they are not regarded as having escaped from lawful custody, merely to have not complied with a periodic detention order (which would be a ground on which the order may be cancelled).

***Clause 59 - Principal Act***

*Clause 59* is an interpretation provision.

***Clause 60 - Official Visitors - appointment and remuneration***

*Clause 60* amends section 6A of the *Remand Centres Act 1976*, dealing with the appointment and remuneration of Official Visitors. The amendment is to the effect that Official Visitors shall now be appointed for the purposes of the Bill, once enacted, in addition to the *Remand Centres Act 1976*.