

OFFENDERS PROBATION AND PAROLE.

12° Elizabeth II., No. XXIII.

No. 23 of 1963.

AN ACT relating to the Release of Offenders on Probation or Parole.

[Assented to 13th November, 1963.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I.—PRELIMINARY.

1. This Act may be cited as the *Offenders Probation and Parole Act, 1963.* Short title.

2. (1) This Act shall come into operation on a day to be fixed by proclamation. Commencement.

(2) It shall not be necessary to proclaim that the whole Act shall come into operation on one day, but the several Parts of this Act and sections may be proclaimed to come into operation on such days as are respectively fixed by proclamation.

Arrange-
ment.

3. This Act is divided into Parts, as follows—

PART I.—PRELIMINARY, ss. 1-5.

PART II.—PROBATION OF OFFENDERS, ss. 6-20.

PART III.—PAROLE OF OFFENDERS, ss. 21-50.

PART IV.—MISCELLANEOUS, ss. 51-53.

Interpreta-
tion.

4. In this Act unless the contrary intention appears—

“Comptroller General” means the Comptroller General of Prisons appointed under the Prisons Act, 1903, and includes his duly appointed deputy when acting for the time being in his stead;

“member” means member of the Board, and includes the Chairman of the Board;

“minimum term” in relation to a sentence of imprisonment means that part of the sentence, fixed in accordance with this Act, during which the offender is not eligible to be released on parole;

“offence” means an offence that is triable—

(a) on indictment; or

(b) summarily and which is punishable in the first instance by a term of imprisonment;

“parole officer” means a parole officer appointed under this Act and includes the Chief Parole Officer and an honorary parole officer;

“parole order” means an order made under this Act directing that a prisoner be released from prison on parole;

“prison” has the same meaning as that expression has in section four of the Prisons Act, 1903;

“probationer” means a person in respect of whom a probation order is made;

“probation officer” means a probation officer or honorary probation officer appointed under this Act and includes the Chief Probation Officer;

“probation order” means an order made under section nine of this Act;

“remission regulations” means the regulations made under the Prisons Act, 1903, relating to the remission of portions of sentences of imprisonment on account of good conduct and industry;

“term” in relation to imprisonment, includes the aggregate of two or more terms, whether cumulative or concurrent;

“the Board” means the Parole Board established under this Act;

“the parole period” means the period during which a prisoner is released from a prison on parole under the supervision of a parole officer pursuant to a parole order;

“the probation period” means the period specified in a probation order during which the probationer to whom the order relates is required to be under the supervision of a probation officer.

5. (1) This Act—

Application
and
construction
of Act.

- (a) does not apply to or with respect to a child as defined by the Child Welfare Act, 1947, who is convicted of an offence by a children’s court established under that Act; and

(b) shall be read and construed so as not to limit or otherwise affect the provisions of that Act as respects the release on probation of a child convicted of an offence by a children's court.

(2) Except where expressly provided, nothing in this Act shall be construed as taking away or in any way derogating from or diminishing any power or jurisdiction conferred by any Act or otherwise by law upon any court or person acting judicially.

(3) Nothing in this Act in any way affects Her Majesty's royal prerogative of mercy.

(4) This Act shall be construed so as not to prejudice or affect any civil liability incurred by any probationer in respect of an act or omission that constitutes an offence.

PART II.—PROBATION OF OFFENDERS.

Appointment
of Probation
Officers.

6. (1) Under and subject to the Public Service Act, 1904, the Governor may appoint, for the purposes of this Act,

- (a) a person to be Chief Probation Officer;
- (b) a person to be the Deputy Chief Probation Officer, who, during the absence from duty of the Chief Probation Officer on account of illness, leave of absence or other cause, or during any vacancy in the office of Chief Probation Officer, has the duties, powers and authorities of the Chief Probation Officer;
- (c) such number of persons of either sex, as he thinks necessary for the purpose of giving effect to this Act, to be probation officers; and
- (d) such other officers as he thinks necessary for that purpose.

(2) A person may be appointed under this Act to hold one or more offices under this Act.

(3) Subject to subsection (4) of this section, the Governor may, on such terms and conditions as may be prescribed, appoint any person, not being a member of the police force, who is a Clerk of Petty Sessions, or an officer appointed under the Child Welfare Act, 1947, to be an honorary probation officer for the purposes of this Act, and may at any time remove any person so appointed.

(4) Any appointment made under subsection (3) of this section shall be made only in respect of a locality or district specified in the appointment and which is located more than fifty miles from the Town Hall in Perth in the State, but, unless the Governor otherwise directs by the appointment, any honorary probation officer so appointed may exercise and discharge his duties, powers and authorities under this Act in any part of the State notwithstanding that he has been appointed in respect of a specified locality or district.

(5) Any appointment of an honorary probation officer under subsection (3) of this section may be made by the appointment of the holder for the time being of an office, specifying the office but without naming the holder, and in any such case each successive holder of that office and each person who, for the time being, occupies or performs the duties of that office shall, without further appointment or other authority, and while he holds or occupies or performs the duties of that office, be an honorary probation officer under this Act in terms of such appointment.

(6) The functions, powers and duties of the Chief Probation Officer and a probation officer shall be as prescribed by or under this Act and by rules made in that behalf by the judges.

(7) A probation officer is not liable in an action or in proceedings in respect of anything done or omitted in good faith in the exercise or purported exercise of any power or duty conferred or imposed on the probation officer by or under this or any other Act.

Exemption
from
liability.

Direction
and control
of Probation
Officers.

7. Each probation officer is, in relation to a probation order, subject to direction by the court that made the order, but otherwise the Chief Probation Officer is under the control of the Minister or such other person as the Minister shall from time to time in writing determine and all other probation officers are under the immediate control of the Chief Probation Officer.

Reports to
courts.

8. The Chief Probation Officer shall—

- (a) when and as often as he is required by any court to do so, cause to be prepared and submitted to that court such reports and information with respect to any convicted person as the court requires, including notwithstanding the provisions of section one hundred and twenty-six of the Child Welfare Act, 1947, the fact that the convicted person has been committed to the care of the State or to an institution, or convicted under that Act, as the case may be; and
- (b) in each year, before the first day of October in that year, prepare and submit to the Minister an annual written report as to—
 - (i) the number of persons placed on probation under this Part of this Act during the year ending on the thirtieth day of June last preceding, the number of probation orders discharged during that year and the number of persons sentenced during that year on account of breaches of probation orders, including convictions for offences committed during the probation period; and
 - (ii) the operation of this Act in relation to probation and the proceedings of probation officers generally during that year.

9. (1) Subject to section five of this Act, when a person is convicted by a court of any offence punishable by a term of imprisonment otherwise than in default of payment of a fine, if the court is of opinion that, having regard to the circumstances, including the nature of the offence, the character and personal history of the offender, his home surroundings and other environment, it is expedient to do so, the court may, instead of sentencing him, make an order requiring him to be under the supervision of a probation officer for such period, being not less than one year and not more than five years, as is specified in the order.

Power of Courts to make probation orders.

(2) Subsection (1) of this section applies to a person who, having been so convicted of such an offence before the date of the coming into operation of this Part of this Act, has not been sentenced for that offence before that date.

(3) The court that makes an order pursuant to subsection (1) of this section shall specify therein a court of petty sessions, being the court of petty sessions nearest to the place where the probationer intends to reside, or being the court of petty sessions that the court making the order deems most convenient in the circumstances, to be the supervising court in respect of the order, and the court of petty sessions so appointed, or such other court of petty sessions as is substituted therefor as provided in this Act, shall for the purposes of this Act be the supervising court in respect of that order.

Appointment of supervising court.

(4) A court of petty sessions when acting as a supervising court shall be constituted by a stipendiary magistrate.

(5) A probation order shall require the probationer to report himself in person where directed in the order within twenty-four hours after his release pursuant to the order.

Obligation to report on release.

(6) (a) A probation order may, in addition to the requirement referred to in subsection (5) of this section, require the probationer named therein to comply during the whole or any part of the probation period with such requirements

including, without limiting the generality of the expression, a requirement that the probationer submit himself to medical, psychiatric or psychological treatment, and for the purpose of receiving the treatment, if the Court is satisfied that arrangements have been made or can be made for his reception, that he reside for such period, not exceeding twelve months as may be specified in the order, in an institution or place so specified,

as the court making the order considers necessary for securing the good conduct of the probationer or for preventing a repetition by him of the same offence in respect of which he was placed on probation or the commission by him of other offences.

(b) A probation order may in addition to any other requirement permitted by this Act to be included therein, require the probationer to pay, on such terms and conditions as the Court thinks fit, such damages for injury or compensation for loss, caused by or arising out of the act or omission that constitutes the offence in respect of which the order is made, as the Court thinks reasonable.

Requirement
as to
residence.

(7) Without prejudice to the generality of subsection (6) of this section, a court may include in a probation order requirements relating to the residence of the probationer named therein but, before making an order containing any such requirement, the court shall consider the home surroundings of the probationer and, if the order requires the probationer to reside in an institution, and arrangements have been made or can be made for his reception therein, the name of the institution and the period for which he is so required to reside shall be specified in the order.

(8) Where a court proposes to make a probation order it shall, before making the order, explain or cause to be explained to the offender in respect of whom it is proposed to make the order, in language likely to be readily understood by him—

Nature of probation order to be explained by court to offender to whom it relates.

- (a) the effect of the order, including any additional requirement proposed to be inserted in the order pursuant to subsection (6) or (7) of this section; and
- (b) that if he fails to comply with the requirements of the order or commits another offence during the probation period, he will, in addition to being liable to be dealt with for that offence, be liable to be sentenced for the offence for which he is then before the court;

and the court shall not make the order unless the offender expresses his willingness to comply with the requirements of the order.

(9) The Court by which a probation order is made shall forthwith after the order is made cause a copy of it to be given to the probationer named therein and to be sent to the Chief Probation Officer and to the person in charge of any institution in which the probationer is required by the order to reside; and the court shall, except where the court is itself the supervising court, also cause to be sent to the clerk of the supervising court a copy of the probation order and such documents and information relating to the probationer and the offence with which he was charged before the court as it considers likely to be of assistance to the supervising court.

Notice of Probation Order to be given to Chief Probation Officer.

(10) The Chief Probation Officer shall assign a probation officer to be the probation officer in respect of the probation order and to supervise the probationer during the period the order is operative and the Chief Probation Officer may from time to time so assign another probation officer in respect of the order in place of the probation officer previously so assigned.

Assignment of probation officer to particular case.

Recognis-
ances under
Ss. 19, 656
and 669 of
Criminal
Code not to
be used
when
probation
appropriate.

10. A person convicted of an offence shall not be released upon his entering into a recognisance pursuant to the provisions of subsection (8) of section nineteen, section six hundred and fifty-six or paragraph (b) of subsection (1) of section six hundred and sixty-nine of The Criminal Code, if, in the opinion of the court, he could properly and conveniently be released on probation pursuant to this Act.

Construction
of references
to court by
which
probation
order made.

11. In the following provisions of this Part a reference to the court by which a probation order was made shall be deemed to include a reference—

- (a) where the order was made by the Supreme Court—to any sitting of the Supreme Court in its criminal jurisdiction at any place in the State;
- (b) where the order was made by a court of session—to a court of session sitting within or for the Sessions Division in which the order was made;
- (c) where the order was made by a court of petty sessions—to any court of petty sessions sitting at the place at which the order was made,

notwithstanding that the Judge, Chairman, Chairman and Justice or Justices, as the case may be, constituting the court may not be the same as made the order originally.

Discharge of
probation
order.

12. (1) The court by which a probation order was made may, upon application made by a probation officer or by the probationer, discharge the order.

Discharge by
compliance.

(2) If during the probation period the probationer complies with the requirements of the probation order and during that period does not commit any offence, whether in or outside the State, the order on the expiration of the probation period is by force of this section discharged, without further action by any court.

(3) Subject to subsection (4) of section five of this Act, where a probation order is discharged either by the order of a court or by the operation of subsection (2) of this section, the probationer is released from any further obligation or liability in respect of the order and of the offence in respect of which the order was made.

Effect of discharge.

(4) Where under the provisions of section sixteen or seventeen of this Act a probationer is sentenced for the offence in respect of which he was placed on probation under a probation order, that order is of no further force or effect.

Discharge of order by sentence.

13. (1) Where the supervising court is satisfied that a probationer has changed or proposes to change his place of residence, so that some other court of petty sessions is or will be the nearest court of petty sessions to the new place of residence of the probationer, or the most convenient in the circumstances of the case, the supervising court may, by order, amend the probation order that relates to the probationer by substituting that other court of petty sessions as the supervising court in place of the court originally appointed as such.

Substitution of new supervising court.

(2) Where a probation order is amended as provided in subsection (1) of this section the court making the amending order shall send to the new supervising court referred to in the amending order a copy of the order together with such documents and information relating to the probationer and the offence in respect of which he was released on probation, as it considers likely to be of assistance to that court.

14. (1) Subject to subsection (2) of this section, the supervising court may at any time upon the application of—

Amendment of probation order.

- (a) a probation officer under whose supervision a probationer has been placed pursuant to a probation order; or
- (b) the probationer.

by order amend the probation order by cancelling any of the requirements thereof, or by inserting therein, either by way of addition or substitution, any requirement that the court could have included in that probation order, if it were then being made by the court in accordance with the provisions of this Act.

- (2) The supervising court shall not—
- (a) amend a probation order by reducing the probation period or by extending that period beyond the end of five years from the date of the original order; and
 - (b) except with the consent of the probationer to whom the probation order relates, so amend the probation order that the probationer is thereby required to reside in an institution.

Copies of order.

(3) Where the supervising court makes an amending order pursuant to this section, the clerk of the court shall, as soon as practicable thereafter, give copies of that order to the probation officer under whose supervision the probationer has been placed, and the probation officer shall give one copy to the probationer and a copy to the person in charge of the institution in which the probationer is or was required by the order to reside, if such is the case.

Probationer's consent to amendment of order.

15. (1) Subject to subsection (2) of this section, where the supervising court proposes to amend a probation order otherwise than on the application of the probationer to whom it relates, the court shall summon the probationer to appear before the court and the court shall not amend the probation order unless the probationer expresses his willingness to comply with the requirements of the order amended as proposed.

(2) Subsection (1) of this section does not apply to an order cancelling any requirement of the probation order or reducing the period of any such requirement or substituting one supervising court for another.

16. (1) If at any time during the probation period it is made to appear on complaint to a justice that a probationer has failed to comply with all or any of the requirements of the probation order made in respect of him, the justice may issue a summons requiring the probationer to appear at a court of petty sessions, being either—

Breach of probation order otherwise than by conviction.

- (a) the supervising court; or
- (b) where the order was made by a court of petty sessions, that court,

at the time specified in the summons, or may, if the complaint is in writing and on oath, issue a warrant for his arrest directing that he be brought before a court of petty sessions, being one of the courts mentioned in paragraph (a) or (b) of this subsection, as soon as practicable after his arrest.

See Ss. 49 and 50, Act No. 11 of 1902.

(2) If it is proved to the satisfaction of the court of petty sessions before which a probationer appears or is brought pursuant to subsection (1) of this section, that the probationer has failed to comply with all or any of the requirements of the probation order that relates to him, that Court may—

Powers of certain courts of petty sessions.

- (a) without prejudice to the continuation of the probation order, impose on the probationer a fine of not more than ten pounds;
- (b) if the probation order was made by a court of petty sessions, deal with the probationer for the offence in respect of which the probation order was made in any manner in which the court could deal with him if it had just convicted him of that offence; or
- (c) in any other case, commit him to custody or release him on bail, with or without sureties, to be brought or to appear before the court by which the probation order was made.

(3) (a) Where a court of petty sessions exercises the power referred to in paragraph (c) of subsection (2) of this section, that court shall, as soon as

Probationer committed or bailed to appear at Supreme Court or court of session.

practicable, send to the Crown Solicitor a certificate signed by a justice certifying that the probationer has failed to comply with all or such of the requirements of the probation order made with respect to him, as are specified in the certificate, together with such other particulars of the case as the court thinks desirable.

(b) A certificate given pursuant to paragraph (a) of this subsection is admissible as evidence before any court of such failure and of the other particulars to which it relates.

Powers of
Supreme
Court and
court of
session.

(4) Where the probationer is brought or appears before the Supreme Court or a court of session and it is proved to the satisfaction of the court before which he is brought or appears that the probationer has failed to comply with all or any of the requirements of the probation order that court may deal with him for the offence in respect of which the probation order was made in any manner in which that court could deal with him if he had just been convicted before that court of that offence.

Fines.

(5) A fine imposed under this section in respect of failure to comply with the requirements of a probation order shall be deemed for all purposes to be a fine adjudged to be paid upon a conviction for an offence.

Saving.

(6) Without prejudice to the provisions of section seventeen of this Act, a probationer who is convicted of an offence committed during the probation period is not on that account liable to be dealt with under this section for failing to comply with any requirement of a probation order.

Breach of
probation
order by
conviction.

17. (1) If it is made to appear on complaint to a justice that a probationer has been convicted in the State or elsewhere of an offence committed during the probation period and has been dealt with in respect of that offence, the justice may issue a summons requiring that person to appear at the time and place specified in the summons or, where the complaint is in writing and on oath, may issue a warrant for his arrest.

See Ss. 49
and 50,
Act No. 11
of 1902.

(2) A summons or warrant issued under this section shall direct the person so convicted to appear or to be brought before the court by which the probation order was made but—

Power to issue summons or warrant in respect of convicted person.

- (a) if that court is a court of petty sessions the summons or warrant may direct him to appear or to be brought before the supervising court; and
- (b) if the warrant is issued requiring him to be brought before the Supreme Court or a court of session and he cannot forthwith be brought before that court because it is not then being held, the warrant has effect as if it directed him to be brought before a court of petty sessions and that court shall commit him to custody or release him on bail, with or without sureties, to be brought or to appear before the Supreme Court or the Court of Session, as the case requires.

(3) Where a probationer is convicted and dealt with by a court other than the court that made the probation order relating to him, in respect of an offence committed during the probation period, that other court may commit him to custody or release him on bail, with or without sureties, to be brought or to appear before—

- (a) the court by which the probation order was made; or
- (b) where the probation order was made by a court of petty sessions, before the supervising court.

(4) Where a court commits a person to custody or releases him on bail pursuant to subsection (3) of this section, that court shall, as soon as practicable thereafter, send to the Crown Solicitor or the appropriate Clerk of the Court of Session or clerk of petty sessions, as the case may require, a certificate of the conviction for the offence referred to in subsection (3) of this section, signed by the proper officer of that court.

Power of court on conviction of probationer during probation period.

(5) A certificate given pursuant to subsection (4) of this section is admissible as evidence before any court that the probationer therein named has been convicted and dealt with in respect of the offence therein specified committed in the State during the probation period.

Powers of court by which probation order made and supervising court.

(6) Where—

- (a) a probationer is convicted of and dealt with in respect of an offence committed during the probation period either by the court by which the probation order was made or if the probation order was made by a court of petty sessions, by the supervising court; or
- (b) it is proved to the satisfaction of the court by which the probation order was made, or, if the probation order was made by a court of petty sessions, to the satisfaction of the supervising court, that the probationer has been convicted of and dealt with in respect of an offence committed in the State or elsewhere during the probation period,

the court or supervising court, as the case may be, may deal with the probationer for the offence for which the order was made in any manner in which it could deal with him if he had just been convicted by or before that court of that offence.

Powers of Supreme Court and courts of session.

(7) Where a probationer in respect of whom the probation order was made by a court of petty sessions is convicted before the Supreme Court or a court of session of an offence committed during the probation period, the Supreme Court or court of session may deal with him for the offence for which the probation order was made in any manner in which the court of petty sessions could deal with him if it had just convicted him of that offence, and any sentence imposed in respect thereof shall be regarded as the sentence of the court of petty sessions, except that for the purposes of any appeal against that sentence it shall be regarded as a sentence imposed on a conviction on indictment and the provisions of Chapter LXIX of The Criminal Code, so far as applicable, apply accordingly.

(8) Where a probationer in respect of whom the probation order was made by a court of session is convicted before the Supreme Court of an offence committed during the probation period, the Supreme Court may deal with him for the offence for which the probation order was made in any manner in which that Court could deal with him if he had just been convicted before that Court of that offence and sentence imposed by the Supreme Court shall, for all purposes, be regarded as the sentence of the court of sessions.

18. In proceedings before the Supreme Court or a court of session under the foregoing provisions of this Act, any question whether a probationer has failed to comply with the requirements of the probation order or whether a probationer has been convicted of an offence committed during the probation period shall be determined by the judge or chairman and not by the verdict of a jury.

Judge or
Chairman to
decide
questions
as to breach
of probation.

19. (1) The provisions of the Justices Act, 1902, so far as applicable, and subject to such adaptations as are necessary, extend and apply to and with respect to all complaints, summonses and warrants referred to in the foregoing provisions of this Act and for the purposes of such application each of those complaints shall be regarded as a complaint for an offence and each of those summonses shall be regarded as a summons to answer a complaint.

Application
of Justices
Act, 1902, to
complaints,
summonses
and
warrants
under this
Act.

(2) The provisions of sections one hundred and fifteen to one hundred and twenty-three, both inclusive, of the Justices Act, 1902, so far as they are applicable, with such adaptations as are necessary, extend to and apply to and with respect to the admission of probationers to bail pursuant to the foregoing provisions of this Act, and for the purposes of so applying those provisions every such probationer shall be regarded as a person charged with an indictable offence and directed to be tried therefor.

Application
of bail
provisions.

Application of s. 52 of Prisons Act, 1903, to prisoners in breach of probation.

(3) The provisions of section fifty-two of the Prisons Act, 1903, extend and apply to and with respect to the case of a prisoner who is in custody as mentioned in that section and who is charged with the breach of a probation order.

Conviction on which probation granted to be disregarded for certain purposes.

20. (1) Subject to the following paragraphs of this section, a conviction for an offence in respect of which a probation order is made under this Act shall be deemed not to be a conviction for any purpose, including without limiting the generality of the foregoing, the purposes of any enactment imposing or authorising or requiring the imposition of any disqualification or disability on convicted persons, except in relation to—

- (a) the making of the order;
- (b) any subsequent proceedings that may be taken against the offender under the foregoing provisions of this Act;
- (c) any proceedings against the offender for a subsequent offence.

(2) Where an offender is subsequently dealt with under this Act for the offence in respect of which the probation order was made, the provisions of subsection (1) of this section cease to apply to the conviction.

Saving.

(3) The foregoing provisions of this section do not affect the right of an offender to appeal against his conviction or to rely thereon in bar of any subsequent proceedings for the same offence or the re-vesting or restoration of any property in consequence of the conviction.

(4) A person who feels himself aggrieved by a summary conviction of a court of petty sessions for an offence in respect of which a probation order is made may, pursuant to those provisions of Part VIII of the Justices Act, 1902, that relate to an ordinary appeal under that Act, appeal against that conviction notwithstanding that no imprisonment is adjudged thereby without the option of a fine.

PART III.—PAROLE OF OFFENDERS.

21. (1) For the purposes of this Act, there shall be a Board by the name of the Parole Board.

Establishment of Parole Board.

(2) The Board shall consist of five members, namely—

Membership of the Board.

- (a) a judge nominated with his consent by the Chief Justice of the Supreme Court either generally or for a specified term;
- (b) the Comptroller General; and
- (c) (i) three men appointed by the Governor, where a general matter or a matter affecting a male prisoner is to be dealt with by the Board; and
- (ii) two women appointed by the Governor and one of the members appointed under subparagraph (i) of this paragraph, nominated by the Governor at the time of his appointment as member, where a matter affecting a female prisoner is to be dealt with by the Board.

(3) References in this Act to—

- (a) the Board, shall be construed as references to the Board as constituted from time to time in accordance with subsection (2) of this section; and
- (b) to an appointed member, shall be construed as references to a man or a woman appointed by the Governor under paragraph (c) of subsection (2) of this section, as the case requires.

22. (1) The judge who is a member shall be the Chairman of the Board.

Chairman of the Board.

(2) The Chairman shall preside at all meetings of the Board.

Filling of
vacancy on
death or
resignation
of judge.

23. (1) If the judge who has been nominated a member dies, retires, or resigns, his office as member becomes vacant and the Chief Justice of the Supreme Court may nominate as a member, in his stead, another judge who has consented to act as member.

Temporary
nomination
of judge.

(2) If the judge who is a member is incapacitated by illness, absence, or other sufficient cause, from performing the duties of his office of member, or is unwilling to act in a particular case, or if there is a vacancy in that office, the Chief Justice of the Supreme Court may, with the consent of the judge to be nominated, nominate a judge to be an acting member to act for the member during his incapacity, or during the vacancy in the office, or in that particular case, and the judge, when so acting, has all the powers and functions of, and shall be deemed to be, a member.

(3) If the member referred to—

(a) in paragraph (a) of subsection (2) of section twenty-one of this Act, ceases to hold office of judge; or

(b) in paragraph (b) of that subsection, ceases to hold the office of Comptroller General,

that member shall be deemed to have vacated his office as member.

(4) An appointed member holds office as member for such period, not exceeding three years, as the Governor determines when so appointing him, but is eligible for re-appointment.

(5) The appointment of a member is not invalidated and shall not be called in question by reason of a defect or irregularity in or in connection with his appointment.

(6) The Governor may, at any time, remove an appointed member from office and thereupon, or upon the death or resignation of an appointed member, the Governor may appoint, for the remainder of the term of office of the appointed member in whose place he is appointed, a person of the same sex as that appointed member to fill the vacancy arising from such removal, death or resignation.

(7) If an appointed member is incapacitated by illness, absence, or other sufficient cause, from performing the duties of his office of member, or if there is a vacancy in that office of an appointed member, the Governor may appoint a person of the same sex as that member to be an acting member to act for that member during his incapacity or during the vacancy in the office and the person, when so acting, has all the powers and functions of and shall be deemed to be a member.

24. A person shall not be concerned to inquire whether or not any occasion had arisen requiring or authorising a person to act in the place of a member or as to the necessity or propriety of any appointment of an acting member, and all acts or things done or omitted by a person when so acting are as valid and effectual and have the same consequences as if they had been done or omitted by the member in whose place the person is or was acting.

Validity of acts of persons acting as members.

25. The several members and acting members shall be paid such remuneration, travelling and other allowances as the Governor severally determines.

Remuneration and allowances of members and acting members.

26. The Minister may grant leave of absence to a member upon such terms and conditions as to remuneration or otherwise as the Minister determines.

Leave of absence.

27. A member may resign his office by writing under his hand addressed to the Governor.

Resignation of members.

28. (1) The Board shall hold such meetings at such times and places as the Chairman determines.

Meetings of the Board.

Quorum.

(2) At a meeting of the Board—

(a) the Chairman and two other members constitute a quorum;

Determina-
tion of
questions
and ques-
tions of law.

(b) a question arising at the meeting shall be determined by a majority of the members present and voting, but the Chairman alone shall determine any question of law arising before the Board;

Casting vote
of Chairman.

(c) the Chairman, in the event of an equality of votes upon any question arising before the Board, has a second or casting vote; and

(d) the Board may, subject to this Act, regulate its own procedure.

Vacancy or
defect in
appoint-
ment not to
invalidate
functions
of Board.

29. (1) Subject to paragraph (a) of subsection (2) of section twenty-eight of this Act, the performance or exercise of the powers, duties and functions of the Board is not affected by reason only of there being a vacancy in the office of a member.

(2) All acts and proceedings of the Board are, notwithstanding a defect in the appointment of a member, or that a member was disqualified or disentitled to act, as valid as if every member had been duly appointed and was qualified and entitled to act and had acted as a member, and as if the Board had been properly and fully constituted.

Judicial
notice.

30. (1) All courts, judges and persons acting judicially shall—

(a) take judicial notice of the signature of every person who is a member or the secretary to the Board attached or appended to any document by virtue of this or any other Act;

(b) until the contrary is proved, presume that the signature was properly attached or appended thereto.

(2) A certificate signed by the secretary to the Board purporting to record a determination or decision of the Board upon a matter within its competence, is evidence of the making of that determination or decision by the Board.

Certificates of secretary to Board.

31. (1) The powers, duties and functions of the Board are such as are prescribed by or under this or any other Act.

Powers, duties and functions of Board.

(2) The Board may do all things necessary or convenient to be done for or in connection with, or as incidental to, the performance of its powers, duties and functions.

(3) A person who is or has been a member or acting member is not personally liable to any action or suit whatsoever in respect of any act done or omitted to be done in the exercise or performance or purported exercise or purported performance of any power, duty or function conferred or imposed on the Board or on any member or members by or under this or any other Act.

Members not personally liable.

32. The Board is the successor of the Indeterminate Sentences Board constituted under the Prisons Act, 1903, and any act, matter or thing done or commenced by or in relation to the Indeterminate Sentences Board or any member or members thereof before the date of the coming into operation of this Act may be carried on and continued by or in relation to the Board or any member or the corresponding number of members of the Board, as the case may be, so far as may be necessary to give effect to the provisions of this Act.

Powers of Indeterminate Sentences Board exercisable by Parole Board.

33. For the purpose of carrying out its powers, duties and functions under this Act, the Board and the Chairman thereof and other members respectively have and may exercise the powers conferred by the Royal Commissioners' Powers Act, 1902, upon a Royal Commission and upon the chairman and

Powers of Board as of Royal Commission

other members of a Royal Commission, and the provisions of that Act have effect as if they were enacted in this Act and in terms made applicable to the Board and the members.

Annual
report
of Board.

34. (1) Before the first day of October in each year, the Board shall make a written report to the Minister as to—

- (a) the operations of the Board under this and the Prisons Act, 1903, up to the last preceding thirtieth day of June;
- (b) the number of persons released on parole during the year ending on the last preceding thirtieth day of June, and the number returned to gaol upon cancellations of parole during that year; and
- (c) the operation of this Act and the activities of parole officers generally during that year.

Reports of
Board on
persons
found not
guilty on
ground of
insanity, on
persons
whose sen-
tences com-
muted to
life sentence
and on
persons
sentenced to
life impris-
onment.

(2) The Board shall—

- (a) once in every year and also whenever requested in writing by the Minister so to do, furnish to him a written report and recommendation with respect to each person who was ordered, pursuant to section six hundred and fifty-two or six hundred and fifty-three or subsection (4) of section six hundred and ninety-three of The Criminal Code to be kept in strict custody until Her Majesty's pleasure is known and who is for the time being in that custody;
- (b) whenever so requested in writing by the Minister, furnish to him a written report and recommendation with respect to—
 - (i) every prisoner for the time being undergoing a sentence of life imprisonment, including a sentence of life imprisonment committed pursuant to section six hundred and seventy-nine of The Criminal Code from a sentence of death;
 - (ii) such prisoner as the Minister may in his request specify; and

- (c) whenever so requested in writing by the Minister, furnish to him a written report upon any special matter relating to the operation of this Act or to the exercise of any power or function of the Board as the Minister may, in his request, specify.

35. (1) Under and subject to the Public Service Act, 1904, the Governor may appoint, for the purposes of this Act,—

Appoint-
ment of
officers of
the Board
and parole
officers.

- (a) a person to be Chief Parole Officer;
- (b) a person, who, during the absence from duty of the Chief Parole Officer on account of illness, leave of absence or other cause or during any vacancy in the office of Chief Parole Officer, has the duties, powers and authorities of the Chief Parole Officer;
- (c) such number of persons of either sex, as he thinks necessary for the purpose of giving effect to this Act, to be parole officers; and
- (d) a person to be secretary to the Board and such other officers as he thinks necessary for the purpose of giving effect to this Act.

(2) A person may be appointed under this Act to hold one or more offices under this Act.

(3) Subject to subsection (4) of this section, the Governor may, on such terms and conditions as may be prescribed, appoint any person, not being a member of the police force, who is—

- (a) A Clerk of a Court of Petty Sessions; or
- (b) an officer appointed under the Child Welfare Act, 1947,

to be an honorary parole officer for the purposes of this Act and may at any time remove any person so appointed.

(4) Any appointment made under subsection (3) of this section shall be made only in respect of a locality or district that is located more than fifty miles from the Town Hall in Perth in the State and specified in the appointment, but, unless the Governor otherwise directs by the appointment, any honorary parole officer so appointed may exercise and discharge his duties, powers and authorities under this Act in any part of the State, notwithstanding that he has been appointed in respect of a specified locality or district.

(5) Any appointment of an honorary parole officer under subsection (2) of this section may be made by the appointment of the holder for the time being of an office, specifying the office but without naming the holder, and in any such case each successive holder of that office and each person who, for the time being, occupies or performs the duties of that office is, without further appointment or other authority, and while he holds or occupies or performs the duties of that office, an honorary parole officer under this Act in terms of the appointment.

(6) The functions, powers and duties of the Chief Parole Officer and a parole officer are as prescribed by or under this Act and by rules made in that behalf by the judges.

(7) A parole officer is not personally liable in any action or suit whatsoever in respect of anything done or omitted in good faith in the exercise or purported exercise of any power or duty conferred or imposed on the parole officer by or under this or any other Act.

Direction
and control
of parole
officers.

36. The Chief Parole Officer and other parole officers are, in relation to any parole order, subject to the direction of the Board, but otherwise parole officers are under the immediate control of the Chief Parole Officer.

37. (1) Subject to subsection (2) of this section—
- (a) where a person is convicted by a court of an offence and sentenced to be imprisoned for the offence; or
 - (b) where a person who has been so convicted before the date of the coming into operation of this Part of this Act is, after that date, sentenced to be imprisoned for the offence,

Fixing minimum term to be served to be eligible for parole.

if the term of imprisonment imposed is not less than twelve months, the Court shall, and if that term is less than twelve months the Court may, as part of the sentence fix a minimum term, being a lesser term than the term of imprisonment imposed, during which minimum term the convicted person is not eligible to be released on parole.

(2) The Court—

- (a) is not required to fix a minimum term if the Court considers that the nature of the offence and the antecedents of the convicted person render the fixing of a minimum term inappropriate; and
- (b) shall not fix a minimum term in respect of a term of imprisonment imposed—
 - (i) on an habitual criminal if, at the expiration of that term of imprisonment, he is to be detained during the Governor's pleasure in a reformatory prison; or
 - (ii) on a person if, on the expiration of that term of imprisonment, he is to be so detained otherwise than as an habitual criminal; or
 - (iii) on a person, for life whether with or without hard labour.

Vide Ss. 661, 662 (a) The Criminal Code.

38. (1) Where a person is sentenced to a term of imprisonment in respect of which a minimum term is fixed and, before the expiration of that minimum term, is sentenced by a court for an offence to a

Service of several sentences with minimum terms.

further term of imprisonment in respect of which a minimum term is fixed, then the minimum term fixed in respect of the subsequent sentence is cumulative upon or concurrent with that fixed in respect of the prior sentence according as the term of imprisonment imposed is cumulative upon or concurrent with the term imposed by the prior sentence.

Order of
service of
sentence.

(2) Where an offender has been sentenced, whether before or after the coming into operation of this Part of this Act, to several terms of imprisonment in respect of any of which a minimum term was fixed, those sentences shall be served in the following order—

- (a) firstly, any term or terms in respect of which no minimum term has been fixed;
- (b) secondly, the minimum term or the aggregate of the several minimum terms in accordance with subsection (1) of this section; and
- (c) thirdly, unless and until released on parole, the balance of any term or terms after the expiration of the minimum term or the aggregate of the minimum terms fixed in respect thereof,

and where during the service of any sentence a further sentence is imposed that service shall, if necessary, be suspended in order that the sentences may thereafter be served in the foregoing order.

Regulations
for remission
of portion of
sentence not
to apply
where
minimum
term fixed.

39. (1) The remission regulations do not apply to or with respect to a term of imprisonment in respect of which a minimum term is fixed under this Part of this Act.

(2) Regulations may be made under this section providing for the reduction of minimum terms fixed in accordance with this Act, as an incentive to or reward for good conduct or industry.

40. (1) A term of imprisonment imposed after the coming into operation of this Part of this Act by any court, is not invalidated by reason only of the failure of the court to fix a minimum term as required by this Part of this Act or by the purported fixation by the court of a minimum term not in accordance with this Part of this Act.

Court failing to fix or incorrectly fixing minimum sentence.

(2) In the case of such a failure or such a purported fixation of a minimum term—

- (a) The Court of Criminal Appeal in respect of a sentence by the Supreme Court or a court of sessions; or
- (b) the Supreme Court in respect of a sentence by a court of petty sessions,

may, on the application of the Comptroller General, fix a minimum term in accordance with this Part in any manner in which that term might have been fixed by the court that imposed the sentence.

(3) Rules of Court may be made for regulating the practice and procedure in respect of applications under this section.

41. (1) The Board may in its discretion by order in writing direct that—

Release on parole.

- (a) a prisoner undergoing a sentence of imprisonment in respect of which a minimum term has been fixed, be released from prison on parole at the time specified in the order, being a time that is after the expiration of the minimum term;
- (b) a prisoner, being an habitual criminal who, having completed a sentence of imprisonment, is being detained in a reformatory prison during the Governor's pleasure pursuant to the direction, whether given before or after the coming into operation of this Part of this Act, of a court under section six hundred and sixty-one of The Criminal Code, be so released on parole

at the time specified in the order, being any time after the prisoner has been so detained during a period of two years;

- (c) a prisoner who, having completed a sentence of imprisonment, is being detained otherwise than as an habitual criminal in a reformatory prison during the Governor's pleasure pursuant to a direction, whether given before or after the coming into operation of this Part of this Act, of a court under paragraph (a) of section six hundred and sixty-two of The Criminal Code, be so released on parole at the time specified in the order, being any time after the prisoner has been so detained for any period; and
- (d) a prisoner detained in a reformatory prison otherwise than as an habitual criminal pursuant to a sentence, whether imposed before or after the coming into operation of this Part of this Act, of a court under paragraph (b) of section six hundred and sixty-two of The Criminal Code, be so released on parole at the time specified in the order, being any time after the prisoner has been so detained for any period,

and the prisoner shall be released accordingly.

Power of Board to revoke or vary parole order.

(2) The Board may cancel or vary any parole order before the prisoner has been released pursuant to the order, and, if a parole order is so varied, it applies accordingly.

Requirements of parole orders.

(3) Where, pursuant to a parole order, a prisoner to whom—

- (a) paragraph (a) of subsection (1) of this section refers, is released on parole, he shall, during the period from his release until the expiration of his term of imprisonment, be under the supervision of a parole officer;

- (b) paragraph (b), (c) or (d) of subsection (1) of this section refers, is released on parole, he shall, during such parole period, not exceeding two years, as may be fixed by the Board, be under the supervision of a parole officer,

and shall comply with such requirements as are specified in the parole order in accordance with the regulations, but in every parole order there shall be inserted a requirement that the prisoner named therein shall not frequently consort with reputed criminals or persons of ill repute.

(4) The Chief Parole Officer shall assign a parole officer to supervise the prisoner to whom a parole order relates during the parole period and may from time to time assign another parole officer in place of the parole officer previously so assigned.

Assignment
of parole
officer.

42. (1) Subject to subsection (2) of this section, the Governor may, on the recommendation of the Board, by order in writing, release from prison on parole at the time specified in the order on such terms and conditions and for such parole period, not exceeding five years, as may be recommended by the Board, a prisoner undergoing a sentence of imprisonment, either with or without hard labour, for life and the provisions of this Act relating to release of prisoners on parole, with such adaptations as are necessary, apply to a prisoner released upon parole under this section.

Release on
parole of
prisoner
serving life
sentence
except sen-
tences
commuted
from death
sentence or
for murder.

(2) This section does not apply to—

- (a) a prisoner undergoing a sentence of imprisonment for life commuted, pursuant to section six hundred and seventy-nine of The Criminal Code, from a sentence of death; or
- (b) a prisoner sentenced to imprisonment with hard labour for life pursuant to section two hundred and eighty-two of The Criminal Code.

Persons on parole deemed still under sentence.

43. If during the parole period—

- (a) the Board does not make an order cancelling the prisoner's parole; or
- (b) the prisoner does not commit, either in this State or elsewhere, an offence for which he is sentenced to imprisonment, whether during or after the parole period,

the prisoner—

- (c) shall be regarded as having served his term of imprisonment or his detention during the Governor's pleasure in a reformatory prison, as the case may be, to which the parole period relates; and
- (d) by force of this section is wholly discharged therefrom and in the case of an habitual criminal ceases to be such,

but until the prisoner is in any way discharged from his sentence of imprisonment or detention the prisoner, while released on parole, shall be regarded as being still under sentence for the offence in respect of which he was so released or under detention during the Governor's pleasure, as the case requires, and as not having suffered the punishment to which he was sentenced or as not having undergone detention during the Governor's pleasure and, in the case of an habitual criminal, as being an habitual criminal and liable to be further detained during the Governor's pleasure.

Power to Board to cancel parole.

44. (1) Where a prisoner, including a prisoner to whom section forty-two of this Act applies, is released on parole under this Act, the Board may at any time, before the expiration of the parole period, by order in writing cancel or vary the parole order relating to the prisoner and the parole order as so varied applies to the prisoner accordingly.

Cancellation of parole by conviction.

(2) Where a prisoner who has been released on parole is sentenced to another term of imprisonment in respect of any offence committed during

the parole period, whether in this State or elsewhere, his parole, by force of this section, is cancelled notwithstanding that the parole period may already have elapsed.

(3) When a prisoner's parole is cancelled, whether by order of the Board or by the operation of subsection (2) of this section, the Board may, whenever necessary, by warrant signed by any two members, authorise any member of the police force or other officer to apprehend the prisoner and return him to a prison to serve the unexpired portion of his term of imprisonment or to be further detained during the Governor's pleasure or, in the case of a prisoner who is an habitual criminal, to be further detained during the Governor's pleasure, and the warrant is sufficient authority for the apprehension of the prisoner and for his return to prison accordingly.

(4) Where a prisoner's parole is so cancelled, the original warrant of commitment or other authority for his imprisonment or detention from which he was released on parole, is again in force and no part of the time between his being so released and his recommencing to serve the unexpired portion of his term of imprisonment or detention shall be regarded as time served in respect of that term or detention.

If parole cancelled time spent on parole not part of sentence.

45. The Board may, from time to time, release a prisoner on parole, notwithstanding that his parole has been cancelled on a prior occasion or occasions under this Act, in respect of the same term of imprisonment or detention during the Governor's pleasure in a reformatory prison.

Power to Board to release on parole more than once.

46. (1) Where, before the date of the coming into operation of this Part, a person—

Continuance of leave of absence or probation existing on coming into operation of this Act.

(a) has been permitted to leave a reformatory prison temporarily pursuant to section sixty-four H or sixty-four K of the Prisons Act, 1903; or

- (b) has been released from a reformatory prison on probation pursuant to section six hundred and sixty-six of The Criminal Code,

if that person on or after that date is absent from the reformatory prison, whether lawfully or unlawfully, the provisions of Part VIA of the Prisons Act, 1903; and of Chapter LXV of The Criminal Code and any regulations made thereunder, as those provisions existed immediately prior to that date, continue to apply to that person so far as they affect him, but any reference therein to the Indeterminate Sentences Board shall be read and construed as a reference to the Board.

(2) Upon the return or recommittal of a person to a reformatory prison by virtue of this section this Act applies to that person as if, on the coming into operation of this Part, he had been a prisoner detained in a reformatory prison during the Governor's pleasure.

Power of Board to fix minimum sentence in relation to prisoners imprisoned when this Act comes into operation.

47. (1) Where, immediately before the date of the coming into operation of this Part of this Act a person is undergoing a sentence—

- (a) of imprisonment for life, including a sentence of imprisonment for life commuted pursuant to section six hundred and seventy-nine of The Criminal Code from a sentence of death;
- (b) of a term of imprisonment of which less than twelve months remain to be served, having regard to the effect of any remission regulations;
- (c) of any term as an habitual criminal and at the expiration of which he is to be detained during the Governor's pleasure in a reformatory prison;
- (d) of any term, and at the expiration of which that person is to be so detained otherwise than as an habitual criminal,

that sentence shall continue, subject to the provisions of this Act and to any remission regulations where they are applicable, until its completion, but with respect to every other person undergoing at that date any other sentence of imprisonment for a term, the Board shall fix a minimum term in respect of that term of imprisonment.

(2) With respect to a minimum term fixed under this section—

- (a) the remission regulations do not apply; and
- (b) the provisions of this Act relating to parole do apply.

48. In fixing a minimum term under this Part in respect of any term of imprisonment, the Board shall have regard to the part, if any, of the term of imprisonment that would, in the ordinary course of events, have been remitted pursuant to the remission regulations, if the application of those regulations to that sentence had not been excluded by this Act and the Board shall not fix the minimum term to extend beyond the date at which, subject to good conduct and industry, the prisoner in respect of whom the minimum term is being fixed, would have been eligible for release under those regulations.

Board to have regard to regulations relating to remissions of sentence when fixing minimum sentence.

49. Where a doubt or difficulty arises in the application of this Part of this Act to any particular case, or if any case arises in respect of—

Resolution or doubtful cases.

- (a) the conviction or sentence of a person before the date of the coming into operation of this Part of this Act;
- (b) the effect of any conviction or sentence after that date upon a conviction or sentence before that date; or
- (c) any prisoner who, having escaped from lawful custody, is unlawfully at large at that date,

for which this Act makes no provision, a judge, on the application in a summary way of the Comptroller General, may by order resolve that doubt or difficulty or deal with that case in such manner as he considers just, and for that purpose may determine any term of imprisonment or minimum term or may direct that any such term or minimum term shall be determined by the Board or in any other specified way.

Terms of imprisonment and minimum terms to be determined within reasonable time.

50. Where a minimum term in respect of a term of imprisonment is required to be determined under this Act in respect of any person who, at the date of the coming into operation of this Part of this Act, is imprisoned in any prison, that minimum term shall be determined within a reasonable time after that date, but that person is not entitled to be released or to have any cause of action by reason only that the minimum term is not determined at any earlier time.

PART IV.—MISCELLANEOUS.

Secrecy.

51. A member or the secretary to the Board, a parole officer, probation officer or any other officer appointed under or for the purposes of this Act shall not, except—

(a) for the purposes of this Act and in the due exercise of his functions thereunder; or

(b) where ordered by a court or judge to do so, produce in any court or to any person any return, declaration, statement, report or other document, or disclose to any court or person the fact that he has received any information, or the nature thereof, or the name of the person who gave that information, or any matter or thing coming under his notice in the performance of his duties under this Act.

Regulations.

52. The Governor may make such regulations as he considers necessary for carrying the purposes and provisions of this Act into effect.

Rules.

53. The judges may make rules with respect to any matter or thing that is by this Act required or permitted to be prescribed by rules.