

WESTERN AUSTRALIA

OFFENDERS PROBATION  
AND PAROLE ACT 1963

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NOTES

WESTERN AUSTRALIA

# OFFENDERS PROBATION AND PAROLE ACT 1963

AN ACT relating to the Release of Offenders on Probation or Parole or under Community Service Orders.

[*Long title amended by No. 57 of 1976 s. 3.*]

## PART I — PRELIMINARY

### Short title

1. This Act may be cited as the *Offenders Probation and Parole Act 1963*<sup>1</sup>.

### Commencement

2. (1) This Act shall come into operation on a day to be fixed by proclamation<sup>1</sup>.

(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<sup>1</sup>.

[3. *Section 3 repealed by No. 89 of 1982 s. 3.*]

**Interpretation**

4. In this Act unless the contrary intention appears—
- “another State” means any State of the Commonwealth other than this State;
- “authority”, in relation to a probation order made in another State or a Territory, means the Governor, Governor in Council, Court, committee, person or other authority duly authorized to make the order in question;
- “chief executive officer” means chief executive officer of the department principally assisting the Minister to whom the administration of the *Prisons Act 1981* is for the time being committed by the Governor with that administration;
- “children’s court” means a children’s court established under the *Child Welfare Act 1947*;
- “community service order” means an order made under section 20B;
- “District Court” means The District Court of Western Australia;
- “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, referred to in section 37 (a) or fixed under an enactment continued by section 37 (b), during which the offender is not eligible to be released on parole;
- “non-parole period”, in relation to a term of imprisonment in respect of which an order is made under section 37A, means the period that the prisoner is required to serve before becoming eligible under section 37A (2) to be released from prison on parole in respect of that term;
- “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 the chief executive officer and a parole officer or honorary parole officer appointed in accordance with section 35 and a person deemed to be a parole officer under section 35 (5a);
- “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 3 of the *Prisons Act 1981*;
- “probationer” means a person in respect of whom a probation order is made;
- “probation officer” means the chief executive officer and a probation officer or honorary probation officer appointed in accordance with section 6 and a person deemed to be a probation officer under section 6 (5a);

“probation order” means an order made under section 9;

“term in relation to imprisonment, includes the aggregate of 2 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;

“Territory” means a Territory of the Commonwealth.

[Section 4 amended by No. 3 of 1969 s. 4; No. 57 of 1976 s. 5; No. 116 of 1981 s. 11; No. 89 of 1982 s. 3; No. 47 of 1987 s. 13; No. 113 of 1987 Schedule 2; No. 129 of 1987 s. 4.]

### **Application and construction of Act**

5. (1) Part II of this Act—

(a) does not apply to or with respect to a person under the age of 17 years who is convicted of an offence by a children’s court unless that person is committed to the Supreme Court or the District Court for sentence pursuant to section 20 of the *Child Welfare Act 1947*; 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.

(5) In Part II or IIA a reference to the court by which a probation order or community service 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 the District Court—to any sitting of the District Court in its criminal jurisdiction at any place in the State;
- (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, stipendiary magistrate or justices, as the case may be, constituting the court may not be the same as made the order originally.

[Section 5 amended by No. 34 of 1964 s. 2; No. 40 of 1970 s. 2; No. 57 of 1976 s. 6.]

#### **Delegation by chief executive officer**

**5A.** (1) The chief executive officer may, by writing signed by him, delegate to his deputy or some other officer any of his powers or duties under this Act, other than this power of delegation.

(2) For the purposes of this Act, the exercise of a power or the performance of a duty by a delegate under this section shall be deemed to be the exercise of the power or the performance of the duty by the chief executive officer.

[Section 5A substituted by No. 47 of 1987 s. 14; amended by No. 113 of 1987 Schedule 2.]

## PART II—PROBATION OF OFFENDERS

#### **Appointment of probation officers**

**6.** (1) There may be appointed under and subject to the *Public Service Act 1978* such probation officers and other officers as are required for the purposes of this Act.

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

(3) The Governor may, on such terms and conditions as may be prescribed, appoint any person, not being a member of the Police Force to be an honorary probation officer for the purposes of this Act, and may at any time remove any person so appointed.

[(4) repealed]

(5) Any appointment of an honorary probation officer under subsection (3) 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.

(5a) A person who holds or occupies—

(a) the office of probation officer; or

(b) any office that is prescribed for the purposes of this Act, to be an office similar to that of probation officer,

in another State or a Territory shall, by virtue of his office and without further appointment or other authority than this subsection, be deemed to be a probation officer for the purposes of a probation order that permits or requires a probationer to reside in that State or Territory.

(6) The functions, powers and duties of 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.

[Section 6 amended by No. 73 of 1965 s. 3; No. 3 of 1969 s. 5; No. 89 of 1982 s. 6; No. 47 of 1987 s. 15.]

#### **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 executive 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 executive officer.

[Section 7 amended by No. 89 of 1982 s. 26; No. 47 of 1987 s. 21; No. 113 of 1987 Schedule 2.]

#### **Reports to courts**

8. The chief executive 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 126 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 1 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 during the year ending on 30 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.

[Section 8 amended by No. 89 of 1982 s. 26; No. 47 of 1987 s. 21; No. 113 of 1987 Schedule 2.]

### **Power of courts to make probation orders**

9. (1) Subject to section 5, 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 6 months and not more than 5 years, as is specified in the order.

(1a) Where a court has convicted a person of an offence and requires a report from the chief executive officer under section 8 (a), before sentencing the person for the offence or making a probation order with respect to him, the court may, without prejudice to any other powers that the court may exercise, adjourn the hearing of the proceedings with respect to the offence and release the person on bail, with or without sureties to appear on the adjourned hearing.

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

(3) The court that makes an order pursuant to subsection (1) 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.

(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 24 hours after his release pursuant to the order or as otherwise so directed.

(6) (a) A probation order may, in addition to the requirement referred to in subsection (5), 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 12 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.

(7) Without prejudice to the generality of subsection (6), a court may include in a probation order requirements relating to the residence, whether in this State or another State or a Territory 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.

(7a) Unless the probation order, whether as initially made or as amended, permits or requires the probationer to reside in another State or Territory, it is a requirement of the probation order that the probationer shall not leave or remain out of this State except in compliance in every respect with the terms and conditions of a permit issued pursuant to subsection (7b).

(7b) Where a probation order requires that the probationer shall not leave or remain out of this State, the supervising court, or the chief executive officer, may permit the probationer to leave and remain out of the State for such time and upon such terms and conditions, as it or he thinks fit.

(7c) A permit under subsection (7b) shall be in writing under the hand of the clerk of the supervising court or the chief executive officer as the case requires, and to the extent necessary to give effect to the permit, the probation order to which the permit relates shall be deemed to be amended and shall apply accordingly.

(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—

- (a) the effect of the order, including any additional requirement proposed to be inserted in the order pursuant to subsection (6) or (7); 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 executive 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.

(9a) Where a probationer is permitted or required to reside in another State or Territory, the chief executive officer shall forthwith cause to be sent to the Chief or Principal Probation Officer, or other prescribed officer, of that State or Territory, on being requested by that officer so to do, a copy of the probation order certified under the hand of the chief executive officer as a true copy thereof together with such other documents and information relating to the case as the chief executive officer considers likely to be of assistance to any court, authority or person in the State or Territory with respect to the order.

(10) The chief executive 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 executive 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.

(11) Nothing in this section shall be construed as preventing a court that makes a probation order in respect of any offence from also making a community service order in respect of that offence.

[Section 9<sup>2</sup> amended by No. 73 of 1965 s. 4; No. 3 of 1969 s. 6; No. 57 of 1976 s. 7; No. 89 of 1982 ss. 7 and 26; No. 47 of 1987 s. 21; No. 113 of 1987 Schedule 2.]

**Recognizances under ss. 19, 656 and 669 of *The 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 recognizance pursuant to the provisions of section 19 (8), section 656 or section 669 (1) (b) of *The Criminal Code*, if, in the opinion of the court, he could properly and conveniently be released on probation pursuant to this Act.

[11. Section 11 repealed by No. 57 of 1976 s. 8.]

**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.

(1a) Where pursuant to a probation order, a probationer is residing in another State or a Territory and a court of that State or Territory having jurisdiction similar to that of the court by which the probation order was made upon application made by a probation officer, or a person holding an office similar to that of probation officer, of that State or Territory, or by the probationer makes an order for the discharge of the order, the probation order shall be deemed to be discharged accordingly.

(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 section 5(4), where a probation order is discharged or is deemed to be discharged either by the order of a court or by the operation of subsection (2), 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.

(4) Where under the provisions of section 16 or 17 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.

[Section 12 amended by No. 3 of 1969 s. 7.]

**Substitution of new supervising court**

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.

(2) Where a probation order is amended as provided in subsection (1) 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.

**Amendment of probation order**

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

- (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 5 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.

(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.

(4) Where pursuant to the provisions of a law of another State or a Territory corresponding to section 50F, an order amending a probation order is made, the probation order shall be deemed to be amended as specified in the amending order and as so amended the probation order shall apply accordingly.

*[Section 14 amended by No. 3 of 1969 s. 8.]*

**Probationer's consent to amendment of order**

15. (1) Subject to subsection (2), 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) 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.

**Breach of requirements of probation order otherwise than by conviction**

16. (1) A probationer who at any time during the probation period fails to comply, whether in this State or elsewhere, with any express or implied requirement of a probation order made with respect to him, is guilty of an offence against this section.

(2) If at any time during the probation period it appears on complaint in writing to a justice that a probationer has failed to comply with an express or implied requirement of a probation order, the justice may issue a summons requiring the probationer to appear at a court of petty sessions at the time and place 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 at the place specified as soon as practicable after his arrest.

(2a) The court of petty sessions before which the probationer is required to appear or is directed to be brought pursuant to subsection (2) may exercise the jurisdiction and powers conferred on it by this section notwithstanding any provision of any other Act.

(3) If the court of petty sessions before which a probationer appears or is brought pursuant to subsection (2), convicts the probationer of an offence against subsection (1), that court may—

- (a) without prejudice to the continuation of the probation order, impose on him a fine not exceeding \$100; or
- (b) if the probation order was made by a court of summary jurisdiction—deal with the probationer for the offence in respect

of which the probation order was made in any manner in which the court by which the order was made 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.

(4) (a) Where a court of petty sessions exercises the power referred to in subsection (3) (c), that court shall as soon as practicable thereafter send to the Crown Solicitor, a certificate signed by a justice certifying that the probationer has failed to comply with the requirement of the probation order specified in the certificate, together with such other particulars of the case as the court thinks desirable.

(b) A certificate given pursuant to and in accordance with paragraph (a) is admissible as evidence before any court of the failure of the probationer to comply with the requirement of the probation order and of the other particulars specified in the certificate.

(5) A certificate purporting to be signed by the proper officer of a court of another State or a Territory before which a probationer is brought pursuant to a law of that State or Territory corresponding to Division 1 of Part IIIA certifying that the probationer has failed to comply with the requirement of the probation order specified in the certificate and any other particulars of the case as that officer thinks desirable is admissible as evidence before any court of such failure and of the other particulars so specified.

(6) Where a probationer is brought or appears before the Supreme Court or the District Court 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 a requirement 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 of that offence and was before the court for sentencing.

(7) Without prejudice to the provisions of section 17, a probationer who is convicted of an offence, other than an offence against subsection (1), committed during the probation period is not on that account liable to be dealt with under this section for failing to comply with a requirement of the probation order.

(8) A probationer who has been dealt with under the provisions of a law of another State or a Territory corresponding to sections 50G and 50H for failing to comply with a requirement of the probation order is not liable to be dealt with under this section for the act or omission that constituted the failure to comply for which he was so dealt with.

[Section 16 substituted by No. 3 of 1969 s. 9; amended by No. 57 of 1976 s. 9; No. 89 of 1982 s. 8.]



**Breach of probation order by conviction**

17. (1) If it appears on complaint in writing to a justice that a person in whose case a probation order has been made has been convicted in this State or elsewhere of an offence, other than an offence against section 16 or against a law of another State or a Territory corresponding to section 50G, 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.

(2) A summons or warrant issued under this section shall require or direct the person so convicted to appear or to be brought before—

- (a) a court of petty sessions, if the probation order was made by a children's court or a court of petty sessions; or
- (b) the court by which the probation order was made, if the order was made by the Supreme Court or the District Court.

(2a) Where a warrant issued under this section directs a person to be brought before the Supreme Court or the District Court and he cannot forthwith be brought before that court because it is not then in session, 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 District Court, as the case requires.

(3) If a person in whose case a probation order has been made by any court is convicted and dealt with by another court in respect of an offence, other than an offence against section 16 or against a law of another State or a Territory corresponding to section 50G, committed during the probation period, that other court may commit him to custody or release him on bail, with or without sureties, to appear or be brought before—

- (a) a court of petty sessions, if the probation order was made by a children's court or a court of petty sessions; or
- (b) the court by which the probation order was made, if the order was made by the Supreme Court or the District Court,

and if it does so that other court shall send to the Crown Solicitor or the appropriate clerk of the court, as the case may require, a certificate of the conviction signed by the proper officer of that court.

(4) A certificate given under and in accordance with subsection (3) is admissible as evidence before any court that the probationer has been convicted and dealt with in respect of the offence therein specified committed in this State during the probation period.

(5) A certificate purporting to be signed by the proper officer of a court of another State or a Territory before which a probationer appears or is brought pursuant to a law of that State or Territory certifying that the probationer has been convicted and dealt with in respect of an offence, other than an offence against a law of that State or Territory corresponding to section 50G, committed during the probation period, is admissible as evidence before any court that the probationer has been convicted and dealt with in respect of the offence therein specified committed in the other State or the Territory during the probation period.

(6) Where—

(a) a probationer is convicted of and dealt with in respect of an offence, other than an offence against section 16 or against a law of another State or Territory corresponding to section 50G, committed during the probation period, by a court of the same jurisdiction as the court by which the probation order was made; or

(b) it is proved to the satisfaction of—

(i) a court of petty sessions, if the probation order was made by a children's court or a court of petty sessions; or

(ii) the court by which the probation order was made, if the order was made by the Supreme Court or the District Court,

that the probationer has been convicted of and dealt with in respect of an offence, other than an offence against section 16 or against a law of another State or Territory corresponding to section 50G, committed in this State or elsewhere during the probation period,

such court may deal with a probationer for the offence for which the order was made in any manner in which the court by which the order was made could deal with him if he had just been convicted by or before that court of that offence.

(7) If a probationer in whose case the probation order was made by a court of summary jurisdiction is convicted before the Supreme Court or the District Court of an offence committed during the probation period, the Supreme Court or District Court may deal with him for the offence for which the order was made in any manner in which the court of summary jurisdiction could deal with him if it had just convicted him of that offence, and any sentence imposed shall be regarded as the sentence of the court of summary jurisdiction 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) If a probationer in whose case the probation order was made by the District Court 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 the District Court could deal with him if he had just been convicted of that offence and was before that court for sentencing, and any sentence imposed by the Supreme Court shall, for all purposes, be regarded as the sentence of the District Court.

(8a) A court may exercise the powers conferred on it by this section notwithstanding any provision of any other Act.

(9) A probationer who has been dealt with under the provisions of a law of another State or a Territory corresponding to sections 50J and 50K for that he has been convicted of, and dealt with for, an offence committed during the probation period is not liable to be dealt with under this section for that conviction.

[Section 17 substituted by No. 3 of 1969 s. 10; amended by No. 57 of 1976 s. 10; No. 89 of 1982 s. 9.]

#### **Judge to decide questions as to breach of probation**

18. In proceedings before the Supreme Court or the District Court 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 and not by the verdict of a jury.

[Section 18 amended by No. 57 of 1976 s. 11.]

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

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.

(2) The provisions of sections 115 to 123, 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.

(3) The provisions of section 21 of the *Prisons Act 1981*, 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.

[Section 19 amended by No. 116 of 1981 s. 12.]

**Power to make averments in complaint alleging breach of probation order**

**19A.** (1) A complaint for breach of a probation order made under this Part of this Act may aver—

- (a) that the defendant is the person in respect of whom the probation order was made; and
- (b) that the defendant was convicted by the court specified in the complaint on the day so specified of an offence committed during the probation period.

(2) In any proceedings under this Part upon a complaint averring the facts referred to in subsection 1 (a) and (b), the person charged with breach of probation may be asked by the court before which he appears or is brought whether—

- (a) he was convicted of the offence in respect of which the probation order was made; and
- (b) he was convicted of an offence during the probation period,

and if he admits either or both of those convictions, no further proof of the conviction or convictions so admitted, is necessary.

(3) Where a person charged with breach of probation is asked by the court pursuant to subsection (2) concerning a conviction averred in the complaint and the person does not admit that conviction, the court may, without making any order as to costs,—

- (a) adjourn the hearing of the proceedings for proof of that conviction; and
- (b) commit the person charged to custody or release him on bail, with or without sureties to appear on the adjourned hearing.

[Section 19A inserted by No. 73 of 1965 s. 5.]

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

**20.** (1) Subject to the following paragraphs, 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 authorizing or requiring the imposition of any disqualification or disability on convicted persons, except in relation to—

- (a) the making of the order;
- (aa) the making of a community service order;
- (b) any subsequent proceedings that may be taken against the offender under the 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 or under a law of another State or a Territory corresponding to Division 1 of Part IIIA for the offence in respect of which the probation order was made, the provisions of subsection (1) cease to apply to the conviction.

(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 revesting 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 summary jurisdiction 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.

[Section 20 amended by No. 3 of 1969 s. 11; No. 57 of 1976 s. 12.]

## PART IIA—COMMUNITY SERVICE ORDERS

[Heading inserted by No. 57 of 1976 s. 13.]

### **Interpretation of this Part**

**20A.** (1) In this Part unless the contrary intention appears—

- “advisory committee” means a community service advisory committee appointed under section 20R;
- “approved work” means work that is declared by an advisory committee to be approved work for the purposes of this Part;
- “offender” means a person in respect of whom a community service order is made;
- “prescribed requirement” means a requirement imposed by this Part or the regulations on a person in respect of whom a community service order is made;
- “relevant officer” in relation to a community service order means the probation officer for the time being assigned under section 20B to be the relevant officer in respect of that order;

“supervisor” means a supervisor appointed under and in accordance with the regulations;

“work” includes any form of work, service or activity.

(2) A reference in this Part to the number of hours of work specified in a community service order shall, where that number has been varied pursuant to section 20H or 20K, be construed as a reference to that number as so varied.

[*Section 20A inserted by No. 57 of 1976 s.13.*]

### **Community service orders in respect of convicted persons**

**20B.** (1) Subject to sections 20D and 20E, when a person of or over 17 years of age is before a court for sentencing after being convicted of any offence punishable by a term of imprisonment otherwise than in default of payment of a fine, the court may, instead of sentencing him, make an order requiring him to perform unpaid work in accordance with this Part and the regulations for such number of hours (being in the aggregate not less than 40 nor more than 240) as may be specified in the order.

(2) [*omitted under Reprints Act 1984 section 7 (4) (e)*]

(3) The court that makes a community service order shall specify in the order a court of petty sessions being the court of petty sessions nearest to the place where the offender 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 for that court pursuant to section 20C, shall for the purposes of this Act be the supervising court in respect of that order.

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

(5) A community service order shall require the offender to report himself in person at a place or to a person specified in the order within such time (if any) as is so specified.

(6) A community service order may require the offender to pay, on such terms and conditions as the court making the order 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.

(6a) Subject to section 20D (1a), a community service order may require the offender to attend such educational programme as the chief executive officer directs.

(6b) Where a community service order contains a requirement under subsection (6a)—

- (a) the chief executive officer shall direct the offender to attend such educational programme as the chief executive officer considers suitable for such number of hours (being in the aggregate not more than one-quarter of the number of hours of work that the offender is required to perform under the order) as the chief executive officer thinks fit; and
- (b) hours during which the offender attends an educational programme in accordance with the requirement and section 20F (1) (ca) shall for the purposes of sections 20F and 20G, be regarded as hours for which the offender has performed approved work.

(7) The court by which a community service order is made shall forthwith after the order is made cause the order to be reduced to writing in the prescribed form and—

- (a) cause a copy of it to be given to the offender;
- (b) cause a copy of it to be sent to the chief executive officer; and
- (c) except where the court is itself the supervising court, cause a copy of it to be sent to the clerk of the supervising court together with such documents and information relating to the offender and the offence in respect of which the order was made as it considers likely to be of assistance to the supervising court.

(8) The chief executive officer shall assign a probation officer to be the relevant officer in respect of the community service order and may from time to time so assign another probation officer in place of the officer previously assigned.

(9) Nothing in this section shall be construed as preventing a court that makes a community service order in respect of any offence from also making a probation order in respect of that offence or imposing any disqualification on the offender.

(10) A person who feels himself aggrieved by a summary conviction of a court of summary jurisdiction for an offence in respect of which a community service 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.

[Section 20B inserted by No. 57 of 1976 s.14; amended by No. 89 of 1982 ss. 10 and 26; No. 47 of 1987 s. 21; No. 113 of 1987 Schedule 2.]

**Substitution of new supervising court**

**20C.** (1) Where the supervising court is satisfied that an offender 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 offender or the most convenient in the circumstances of the case, the supervising court may, by order, amend the community service order that relates to the offender by substituting that other court of petty sessions as the supervising court in place of the court originally appointed as such.

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

*[Section 20C inserted by No. 57 of 1976 s. 15.]*

**Circumstances in which a community service order may be made**

**20D.** (1) A court shall not make a community service order in respect of a person unless the person consents and the court—

- (a) has been notified by a probation officer that arrangements exist for persons who reside in the area in which that person intends to reside to perform work under such an order;
- (b) is satisfied, after considering a report from a probation officer about the person and his circumstances, and, if the court thinks necessary, hearing a probation officer,—
  - (i) that the person is a suitable person to perform work under such an order; and
  - (ii) that, if such an order is made, work of a suitable nature can be provided for the person under the arrangements mentioned in paragraph (a).

(1a) A court shall not include a requirement under section 20B (6a) in a community service order made in respect of a person unless the court—

- (a) has been notified by a probation officer that arrangements exist for persons who reside in the area in which that person intends to reside to attend an educational programme of a suitable nature; and
- (b) is satisfied, after considering a report from a probation officer about the person and his circumstances, and, if the court thinks necessary, hearing a probation officer,—
  - (i) that the person is a suitable person to attend an educational programme;
  - and



- (ii) that, if such a requirement is made, an educational programme of a suitable nature can be provided for the person under the arrangements mentioned in paragraph (a).

(2) Without prejudice to any other powers that the court may exercise, where a person is before a court for sentencing the court may, in order to obtain any notification, report or information from a probation officer for the purposes of subsection (1) or (1a), adjourn the hearing of the proceedings and release the person on bail, with or without sureties to appear at the adjourned hearing.

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

- (a) the purpose and effect of the order;
- (b) the consequences that may follow if he fails to comply with the order or with any of the prescribed requirements;
- (c) that the order may be reviewed on his application or on the application of the relevant officer.

*[Section 20D inserted by No. 57 of 1976 s. 16; amended by No. 89 of 1982 s. 11.]*

**Maximum hours of service in case of multiple or subsequent orders**

**20E.** (1) Where a court makes community service orders in respect of 2 or more offences of which a person has been convicted, the court shall not order the person to perform work under those orders for a number of hours that, in the aggregate, exceeds 240.

(2) Where a court makes a community service order in respect of a person and there is or are in force in respect of that person one or more other such orders, the court shall not order the offender to perform work for a number of hours that would require him, after the making of the first-mentioned order, to perform work under that order and the previous order or orders for a number of hours that, in the aggregate, exceeds 240.

*[Section 20E inserted by No. 57 of 1976 s. 17.]*

**Obligations of offender**

**20F.** (1) A person in respect of whom a community service order is in force shall—

- (a) perform for the number of hours specified in the order such approved work as the relevant officer directs at such times as the relevant officer directs;
- (b) perform that work in a satisfactory manner;

- (c) while performing that work comply with any reasonable direction of a supervisor;
- (ca) if the order contains a requirement under section 20B (6a), attend such educational programme for such number of hours as is directed by the chief executive officer at such times as the relevant officer directs;
- and
- (d) inform the relevant officer of any change in his address.

(2) In giving directions to a person under subsection (1) the relevant officer shall, so far as practicable, avoid—

- (a) any conflict with the person's religious beliefs; and
- (b) any interference with the times, if any, at which the person normally works or attends a school or other educational establishment.

(3) Subject to sections 20H and 20J a person in respect of whom a community service order is in force shall perform the number of hours of work specified in the order, and, if the order contains a requirement under section 20B (6a), attend an educational programme for the number of hours directed by the chief executive officer, during the period of 12 months beginning with the date of the order.

*[Section 20F inserted by No. 57 of 1976 s. 18; amended by No. 89 of 1982 s. 12; No. 47 of 1987 s. 21; No. 113 of 1987 Schedule 2.]*

#### **Duration of community service order**

**20G.** A community service order shall remain in force until—

- (a) the offender has—
  - (i) performed approved work in accordance with section 20F for the number of hours specified in the order; and
  - (ii) if the order contains a requirement under section 20B (6a), attended such educational programme as the chief executive officer has directed for the number of hours the chief executive officer has directed;
- (b) the order is discharged pursuant to section 20K; or
- (c) the offender is sentenced for the offence in respect of which the order was made.

*[Section 20G inserted by No. 57 of 1976 s. 19; amended by No. 89 of 1982 s. 13; No. 47 of 1987 s. 21; No. 113 of 1987 Schedule 2.]*

**Breach of requirements of, or relating to  
community service order**

**20H.** (1) If at any time while a community service order is in force the offender fails to comply with any requirement of the order or with any prescribed requirement he is guilty of an offence against this section.

(2) If at any time while a community service order is in force it appears on complaint in writing to a justice that the offender has failed to comply with the order or with any prescribed requirement, the justice may issue a summons requiring the offender to appear at a court of petty sessions at the time and place 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 as soon as practicable after his arrest.

(3) The court of petty sessions before which the offender is required to appear or is directed to be brought pursuant to subsection (2) may exercise the jurisdiction and powers conferred on it by this section notwithstanding any provision of any other Act.

(4) If the court of petty sessions before which an offender appears or is brought pursuant to subsection (2), convicts the offender of an offence against subsection (1), that court may—

- (a) without prejudice to the continuation of the community service order, impose on him a fine not exceeding \$200;
- (b) subject to subsection (5), and with his consent, increase the number of hours for which he is required to perform work under the community service order;
- (c) if the community service order was made by a court of summary jurisdiction deal with the offender for the offence in respect of which the community service order was made in any manner in which the court by which the order was made could deal with him if it had just convicted him of that offence; or
- (d) 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 community service order was made.

(5) Where a court of summary jurisdiction exercises the power referred to in subsection (4) (b), that court—

- (a) may, if it thinks necessary, extend, in relation to the community service order, the period of 12 months specified in section 20F (3);
- (b) shall not increase the number of hours for which the offender is required to perform work under the community service order to such an extent as would require him, after the making of that increase, to perform work under that order and all other such orders in force in respect of him (if any) for a number of hours that, in the aggregate, exceeds 240.

(6) Where a court of summary jurisdiction exercises the power referred to in subsection (4) (d), that court shall as soon as practicable thereafter send to the Crown Solicitor a certificate signed by a justice certifying that the offender has failed to comply with such requirement of the community service order, or prescribed requirement, as is specified in the certificate, together with such other particulars of the case as the court thinks desirable.

(7) A certificate given pursuant to and in accordance with subsection (6) is admissible as evidence before any court of the failure of the offender to comply with the requirement specified in the certificate and of the other particulars (if any) specified in the certificate.

(8) Where an offender is brought or appears before the Supreme Court or the District Court and it is proved to the satisfaction of the court before which he is brought or appears that the offender has failed to comply with a requirement of the community service order, or with a prescribed requirement, that court may deal with him for the offence in respect of which the community service order was made in any manner in which that court could deal with him if he had just been convicted of that offence and was before the court for sentencing.

(9) In proceedings before the Supreme Court or the District Court under this section, any question whether an offender has failed to comply with a requirement of a community service order, or with a prescribed requirement, shall be determined by the judge and not by the verdict of a jury.

(10) A complaint under this section for failure to comply with a requirement of a community service order, or with a prescribed requirement, may aver that the defendant is the person in respect of whom the relevant community service order was made.

(11) In any proceedings under this section upon a complaint averring the fact referred to in subsection (10) the person charged with failure to comply with a requirement of a community service order, or with a prescribed requirement, may be asked by the court before which he appears or is brought whether he was convicted of the offence in respect of which the relevant community service order was made and if he admits that conviction no further proof of the conviction so admitted is necessary.

*[Section 20H inserted by No. 57 of 1976 s. 20; amended by No. 89 of 1982 s. 14.]*

### **Extension of time for performing work**

**20J.** Where a community service order is in force and, on the application of the offender or the relevant officer, it appears to the supervising court that it would be in the interests of justice to do so

having regard to circumstances that have arisen since the order was made, the court may extend, in relation to the order, the period of 12 months specified in section 20F (3).

*[Section 20J inserted by No. 57 of 1976 s. 21.]*

**Discharge and amendment of community service orders and substitution of other penalties**

**20K.** (1) Where a community service order is in force and, on the application of the offender or the relevant officer made—

- (a) in the case of an order made by a court of summary jurisdiction—to the supervising court; or
- (b) in any other case—to the court by which the order was made,

it appears to the court to which the application is made that it would be in the interests of justice to do so having regard to circumstances that have arisen or become known since the order was made, the court may—

- (c) discharge the order; or
- (d) reduce the number of hours for which the offender is required to perform work under the order.

(2) Where a community service order is in force and, on the application of the relevant officer, it appears to the supervising court that it would be in the interests of justice to do so having regard to circumstances that have arisen or become known since the order was made, the court may—

- (a) if the order was made by a court of summary jurisdiction—deal with the offender for the offence in respect of which the order was made in any manner in which the court by which the order was made could deal with him if it had just convicted him of that offence; or
- (b) in any other case—commit the offender to custody or release him on bail, with or without sureties, to be brought or to appear before the court by which the order was made,

and where the court exercises the power referred to in paragraph (b) it shall as soon as practicable thereafter send to the Crown Solicitor such particulars of the case as it thinks desirable.

(3) A supervising court may exercise the powers conferred on it by this section notwithstanding any provision of any other Act.

(4) Where an offender is brought or appears before the Supreme Court or the District Court and it appears to that court that it would be in the interests of justice to do so having regard to circumstances that have arisen or become known since the community service order was made, that court may deal with the offender for the offence in respect of which the order was made in any manner in which that court could deal with him if he had just been convicted of that offence and was before the court for sentencing.

*[Section 20K inserted by No. 57 of 1976 s. 22.]*

**Notice of applications, etc.**

**20L.** (1) Where an application is made to a court under section 20J or section 20K (1) or (2) by the relevant officer, the court shall summon the offender to appear before it on the hearing of the application and, if he does not appear in answer to the summons, may issue a warrant for his arrest.

(2) Where an application is made to a court under section 20J or section 20K (1) by the offender, the court shall cause notice of the application and of the time and place fixed for the hearing to be served on the relevant officer.

[Section 20L inserted by No. 57 of 1976 s. 23.]

**Notification of discharge, amendment of orders, etc.**

**20M.** Where, pursuant to section 20H, 20J or 20K, a court—

- (a) discharges a community service order;
- (b) varies the number of hours for which an offender is required to perform work under a community service order; or
- (c) extends the period of 12 months specified in section 20F (3),

the court shall cause notice in writing of the discharge, variation or extension to be given to the offender, the relevant officer and (if that court is not the supervising court) the supervising court.

[Section 20M inserted by No. 57 of 1976 s. 24.]

**Order to be taken into account in sentencing**

**20N.** Where a person in respect of whom a community service order has been made is subsequently sentenced by a court for the offence in respect of which the order was made the court, in sentencing the person, shall take into account—

- (a) that the order was made; and
- (b) anything done under the order.

[Section 20N amended by No. 57 of 1976 s. 25.]

**Application of certain provisions of *Justices Act 1902* and *Prisons Act 1981***

**20P.** (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

this Part 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.

(2) The provisions of sections 115 to 123, 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 offenders to bail pursuant to the foregoing provisions of this Act, and for the purposes of so applying those provisions every such offender shall be regarded as a person charged with an indictable offence and directed to be tried therefor.

(3) The provisions of section 21 of the *Prisons Act 1981* extend and apply to and with respect to the case of a prisoner who is in custody as mentioned in that section and in respect of whom a summons is issued pursuant to section 20H or 20L.

[Section 20P inserted by No. 57 of 1976 s. 26; amended by No. 116 of 1981 s. 13.]

### **Compensation for injury**

**20Q.** An offender shall in respect of—

- (a) work performed by him under a community service order; and
- (b) travelling done by him in order to perform work under a community service order,

be deemed to be a worker employed by the Crown for the purposes of the *Workers' Compensation and Assistance Act 1981*<sup>3</sup> and where, for the purpose of calculating the compensation payable under that Act in respect of a compensable injury suffered by an offender, reference to weekly earnings is necessary, the offender shall be deemed to have had weekly earnings equal to the estimate published by the Commonwealth Statistician of the average weekly earnings per employed male unit (or female unit in the case of a female offender) for the last preceding June quarter in this State.

[Section 20Q inserted by No. 57 of 1976 s. 27.]

### **Advisory committees**

**20R.** (1) The Minister may appoint one or more community service advisory committees for the purposes of this Act.

(2) An advisory committee shall consist of 3, 4 or 5 persons one of whom shall have been nominated for membership of the committee by the body known as the Trades and Labor Council of Western Australia.

(2a) Subject to subsections (2b) and (2c) a member of an advisory committee shall hold office for such period not exceeding 3 years as is specified in the instrument of appointment of that member, or, if no period is so specified, for a period of 3 years, and is eligible for reappointment.

(2b) A member of an advisory committee may resign from office by written notice addressed to the Minister.

(2c) The Minister may, at any time, remove a member of an advisory committee from office.

(3) An advisory committee may declare any form of work it thinks fit to be approved work for the purposes of this Part.

[Section 20R<sup>1</sup> inserted by No. 57 of 1976 s. 28; amended by No. 129 of 1987 s. 5(1).]

### Regulations under this Part

**20S.** Without limiting the generality of section 52 regulations made for the purposes of this Part may—

- (a) provide for the appointment of supervisors to supervise offenders in the performance of work under community service orders;
- (b) regulate the conduct of supervisors and of offenders;
- (c) provide for the health and safety of supervisors and offenders;
- (d) prescribe the maximum number of hours of work that an offender may be required to perform under a community service order on any one day;
- (e) provide for travelling and transport arrangements to be made for offenders performing work or attending educational programmes under community service orders;
- (f) prescribe the effect of injury and sickness in relation to community service orders;
- (g) prescribe periods to be taken into account in computing the number of hours of work performed by an offender under a community service order;
- (h) regulate the holding of meetings of advisory committees and the procedure to be observed at such meetings.

[Section 20S inserted by No. 57 of 1976 s. 29; amended by No. 89 of 1982 s. 15.]



PART III—PAROLE OF OFFENDERS

*Division 1—Preliminary*

[*Division 1 inserted by No. 129 of 1987 s. 6.*]

**Definitions**

**20T** In this Part—

“commencement date” means the day of the commencement of section 6 of the *Acts Amendment (Imprisonment and Parole) Act 1987*;

“prisoner” includes a person who is in an institution under a direction under section 666 of *The Criminal Code* and “prison” and “imprisonment” in relation to such a person shall be construed accordingly.

[*Section 20T: See note under Division Heading.*]

*Division 2—The Parole Board*

[*Heading inserted by No. 129 of 1987 s. 7.*]

**Establishment of Parole Board**

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

(2) The Board shall consist of 7 members, namely—

- (a) a judicial member appointed by the Governor on the recommendation of the Minister;
- (b) the chief executive officer;
- (c) a prescribed officer nominated by the chief executive officer;
- (d) a member of the Police Force nominated by the Commissioner of Police; and
- (e) 3 other persons appointed by the Governor.

(3) References in this Act to an appointed member shall be construed as references to a man or a woman appointed by the Governor under subsection (2) (e), as the case requires.

(4) In this section and in sections 23 and 23A “prescribed officer” means an officer employed in accordance with section 6 (1) or section 35 (1).

[*Section 21<sup>5</sup> amended by No. 57 of 1976 s. 30; No. 89 of 1982 s. 16; No. 68 of 1983 s. 3; No. 118 of 1985 s. 3; No. 47 of 1987 s. 16; No. 113 of 1987 Schedule 2.*]

**Judicial member**

**21A.** A person shall not be recommended for appointment to the Board as judicial member under section 21 (2) (a) unless—

- (a) he holds office as a judge of the Supreme Court or District Court or has retired from such an office;
- (b) if he holds an office specified in paragraph (a), the Chief Justice of the Supreme Court or the Chairman of Judges of the District Court, as the case requires, and the judge concerned have consented to the recommendation; and
- (c) if he does not hold an office specified in paragraph (a), he has not attained the age of 70 years.

[Section 21A inserted by No. 68 of 1983 s. 4.]

**Chairman of the Board**

**22.** (1) The judicial member shall be the Chairman of the Board.

(2) The Chairman, or in his absence the longest-serving appointed member of the Board present, shall preside at all meetings of the Board.

(3) Where more than one member is eligible to preside at a meeting of the Board in the absence of the Chairman, the other members shall appoint one of the eligible members to preside.

[Section 22 amended by No. 89 of 1982 s. 17; No. 68 of 1983 s. 5.]

**Filling of vacancy on death or resignation**

**23.** (1) Subject to subsection (8), if the judicial member of the Board dies, retires or resigns his office as member and the office becomes vacant the Governor may appoint an eligible person to be the judicial member.

(2) Subject to subsection (8), if the person appointed to be judicial 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 temporary vacancy in that office the Minister may appoint an eligible person to act for the member during his incapacity or during such vacancy in the office, or in that particular case, and the person, when so acting, has all the powers and functions of, and shall be deemed to be, the judicial member.

(2aa) The provisions of section 21A apply to and in relation to an appointment under subsection (2) as though the appointment were a recommendation under that section.

(3) If the member referred to—

- (a) in paragraph (a) of subsection (2) of section 21, being a person holding an office as judge of the Supreme Court or District Court at the time of his appointment as member, ceases to hold office of judge; or

- (b) in paragraph (b) of that subsection ceases to hold the office of chief executive officer;
- (c) in paragraph (c) of that subsection, ceases to be a prescribed officer nominated by the chief executive officer; or
- (d) in paragraph (d) of that subsection, ceases to be a member of the Police Force nominated by the Commissioner of Police,

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 3 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.

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

(8) Where the person appointed to be judicial member of the board does not hold office as a judge of the Supreme Court or District Court the provisions of subsections (4), (5), (6) and (7) apply to and in relation to the terms and conditions of his appointment as though he were an appointed member.

[Section 23 amended by No. 57 of 1976 s. 31; No. 89 of 1982 s. 18; No. 68 of 1983 s. 6; No. 118 of 1985 s. 4; No. 47 of 1987 s. 17; No. 113 of 1987 Schedule 2.]

### **Deputy members**

**23A.** The chief executive officer may nominate—

- (a) an officer of the department of the Government of which he is the chief executive officer to be his deputy; and
- (b) a prescribed officer to be the deputy of the officer nominated by the chief executive officer under section 21 (2) (c),

and, at any meeting of the Board when the chief executive officer or the officer nominated by the chief executive officer under section 21 (2) (c) is not present, his deputy, if any, may attend and while so attending may exercise all the powers and perform all the functions of a member.

(2) The member of the Police Force nominated by the Commissioner of Police under section 21 (2) (d) may nominate another member of the Police Force to be the deputy of that member and, at any meeting of the Board when that member is not present, his deputy, if any, may attend and while so attending may exercise all the powers and perform all the functions of a member.

*[Section 23A inserted by No. 118 of 1985 s. 5; amended by No. 47 of 1987 s. 18; No. 113 of 1987 Schedule 2.]*

#### **Validity of acts of persons acting as members**

24. A person shall not be concerned to inquire whether or not any occasion had arisen requiring or authorizing 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.

#### **Remuneration and allowances of members and acting members**

25. (1) The several members and acting members, other than a person holding office as judge of the Supreme Court or District Court, as the case may be, shall be paid such remuneration, travelling and other allowances as the Governor severally determines.

(2) The payment pursuant to subsection (1) of any remuneration, travelling and other allowances to a member who is a retired judge of the Supreme Court or District Court does not affect any entitlement of that person under the *Judges Salaries and Pensions Act 1950*.

*[Section 25 amended by No. 89 of 1982 s. 19; No. 68 of 1983 s. 7.]*

#### **Leave of absence**

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.

#### **Resignation of members**

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

#### **Meetings of the Board**

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

- (2) At a meeting of the Board—
- (a) the Chairman or member presiding and 2 other members constitute a quorum;
  - (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;
  - (c) the Chairman or member presiding, 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.

*[Section 28 amended by No. 89 of 1982 s. 20.]*

**Vacancy or defect in appointment not to invalidate functions of Board**

**29.** (1) Subject to section 28 (2) (a), 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 is evidence of the making of that determination or decision by the Board.

*[Section 30 amended by No. 3 of 1969 s. 12.]*

**Powers, duties and functions of Board**

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

(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.

#### **Powers of Indeterminate Sentences Board exercisable by Parole Board**

32. The Board is the successor of the Indeterminate Sentences Board constituted under the *Prisons Act 1903*<sup>6</sup>, 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 Board as of Royal Commission**

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 Commissions Act 1968*, upon a Royal Commission and upon the chairman and 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 reports and reports with respect to prisoners**

34. (1) Before 1 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 1981*, up to the last preceding 30 June;
- (b) the number of persons released on parole during the year ending on the last preceding 30 June, and the number returned to gaol upon cancellations of parole during that year; and
- (c) the operation of this Act so far as it relates to the parole of offenders and the activities of parole officers generally during that year.

(2) The Board shall—

- (a) furnish a written report to the Minister with respect to—
  - (i) a person who is in strict custody pursuant to an order made under section 652, 653 or 693 (4) of *The Criminal Code*;
  - (ii) a person who is in safe custody during the pleasure of the Governor;

- (iii) a person who is in safe custody pursuant to an order made before 3 October 1984 under section 679 of *The Criminal Code*; or
- (iv) a person who is in strict or safe custody pursuant to an order made under section 37, 78, 79 or 282 of *The Criminal Code*,

whenever so requested in writing by the Minister;

- (b) furnish a written report to the Minister with respect to a prisoner whenever so requested in writing by the Minister;
- (c) whether so requested by the Minister or not, furnish a written report to the Minister with respect to a person referred to in paragraph (a) at least once in every year;
- (d) whether so requested by the Minister or not furnish a written report to the Minister with respect to a prisoner described in column 1 of an item in the Table to this section—
  - (i) on or as soon as practicable after the date specified in column 2 of that item; and
  - (ii) thereafter as soon as practicable after each period specified in column 3 of that item;
- (e) whenever so requested in writing by the Minister, furnish to the the Minister 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 specified in the Minister's request;
- (f) whenever the Board has, pursuant to section 34A, made an order that any person be returned to the custody of the person or authority from which the person was released by the Governor under that section, furnish to the Minister within one month after making the order, a written report setting out the reasons for the order.

(3) The Board may, at any time in circumstances that appear to the Board to be exceptional, furnish to the Minister a written report with respect to a person referred to in subsection (2) (a) or a prisoner.

(4) A report under subsection (2) (a) or (c) shall contain a recommendation as to whether or not the Governor should be advised to exercise any power vested in Her Majesty or the Governor to release the person from custody and, if release is recommended, as to the conditions (if any) upon which the person should be released.

(5) A report under subsection (2) (b) shall contain a recommendation as to whether or not the Governor should be advised to exercise any power vested in Her Majesty or the Governor to release the prisoner from prison and, if release is recommended, as to the conditions (if any) upon which the prisoner should be released.

(6) A report under subsection (2) (d), or a report under subsection (3) with respect to a prisoner, may contain a recommendation of the kind mentioned in subsection (5).

(7) A report under subsection (3) with respect to a person referred to in subsection (2) (a) may contain a recommendation of the kind mentioned in subsection (4).

(8) Where the Board furnishes a report to the Minister under subsection (2) (b) or (d) or (3) in respect of a prisoner who is undergoing a sentence of strict security life imprisonment or a sentence of life imprisonment and that report contains a recommendation that the prisoner be released from prison, the Board shall give express attention in the report to—

- (a) the nature and circumstances of the offence for which the sentence was imposed;
- (b) the degree of risk that the release of the prisoner appears to present to the community or to any individual in the community;
- (c) if release on parole is recommended, the period for which, and the extent to which, the prisoner should be supervised by a parole officer whilst on parole; and
- (d) such other matters as the Board thinks fit.

TABLE

Times for reporting on prisoners undergoing life and indeterminate sentences

	Column 1	Column 2	Column 3
Item	Description of prisoner	Date on or after which a report must be furnished under subsection (2) (d) (i)	Intervals after which subsequent reports must be furnished under subsection (2) (d) (ii)
1	A prisoner undergoing a sentence of strict security life imprisonment commuted pursuant to section 679 of <i>The Criminal Code</i> from a sentence of death	The date of the expiration of a period of 20 years after the sentence was so commuted	3 years
2	A prisoner undergoing a sentence of strict security life imprisonment other than a sentence mentioned in item 1	The date of the expiration of a period of 20 years after the prisoner was sentenced	3 years
3	A prisoner undergoing a sentence of life imprisonment commuted pursuant to section 679 of <i>The Criminal Code</i> from a sentence of death	The date of the expiration of a period of 10 years after the sentence was so commuted	3 years
4	A prisoner undergoing a sentence of life imprisonment imposed before the commencement date under section 282 (a) (ii) of <i>The Criminal Code</i>	The date of the expiration of a period of 10 years after the prisoner was sentenced	3 years



	Column 1	Column 2	Column 3
Item	Description of prisoner	Date on or after which a report must be furnished under subsection (2) (d) (i)	Intervals after which subsequent reports must be furnished under subsection (2) (d) (ii)
5	A prisoner undergoing a sentence of life imprisonment imposed on or after the commencement date under section 282 (a) (ii) of <i>The Criminal Code</i>	The date of the expiration of a period of 12 years after the prisoner was sentenced	3 years
6	A prisoner undergoing a sentence of life imprisonment imposed before the commencement date other than a sentence imposed under section 282 (a) (ii) of <i>The Criminal Code</i>	The date of the expiration of a period of 5 years after the prisoner was sentenced	3 years
7	A prisoner undergoing a sentence of life imprisonment imposed on or after the commencement date other than a sentence imposed under section 282 (a) (ii) of <i>The Criminal Code</i>	The date of the expiration of a period of 7 years after the prisoner was sentenced	3 years
8	A prisoner who is being detained during the Governor's pleasure in a prison pursuant to the direction of a court under section 661 of <i>The Criminal Code</i> being a direction given on or after the commencement date	The date of the expiration of a period of 2 years after the detention commenced	One year
9	A prisoner who is being detained during the Governor's pleasure in a prison pursuant to the direction of a court under section 662 (a) of <i>The Criminal Code</i> being a direction given on or after the commencement date	The date of the expiration of a period of one year after the detention commenced	One year

	Column 1	Column 2	Column 3
Item	Description of prisoner	Date on or after which a report must be furnished under subsection (2) (d) (i)	Intervals after which subsequent reports must be furnished under subsection (2) (d) (ii)
10	A prisoner who is being detained during the Governor's pleasure in a prison pursuant to a sentence imposed by a court under section 662 (b) of <i>The Criminal Code</i> being a sentence imposed on or after the commencement date	The date of the expiration of a period of one year after the detention commenced	One year

Note

Notwithstanding section 665 of the *The Criminal Code*, where a prisoner is serving or liable to serve a term of imprisonment in respect of which a minimum term was fixed, or in respect of which an order was made under section 37A, and has also been directed or sentenced to be detained during the Governor's pleasure in a prison under section 661 or 662 of *The Criminal Code*, for the purposes of this Table the detention pursuant to the direction or sentence is deemed to commence at the expiration of the minimum term or non-parole period, as the case may be.

[Section 34 amended by No. 34 of 1964 s. 3; No. 73 of 1965 s. 6; No. 3 of 1969 s. 13; No. 16 of 1971 s. 2; No. 96 of 1980 s. 12; No. 116 of 1981 s. 14; No. 52 of 1984 s. 37; No. 24 of 1985 s. 3; No. 129 of 1987 s. 8.]

*Division 3—Special powers to release certain offenders and prisoners*

[Heading inserted by No. 129 of 1987 s. 7.]

**Power to release certain persons in custody subject to conditions including supervision**

**34A.** (1) Where any person ordered pursuant to section 653 or section 693 (4) of *The Criminal Code* to be kept in safe custody during the pleasure of the Governor is released from custody by order of the Governor, the Governor may in that order specify such conditions as he thinks fit, subject to which the person shall be released, including a condition that during the period specified in the order he be under the supervision of a parole officer.

(2) Where a person is so released subject to a condition that he be under the supervision of a parole officer for a period the Board may in respect of that person—

- (a) direct the chief executive officer to assign a parole officer to supervise that person during that period and from time to time as occasion arises to assign another parole officer instead of the parole officer previously assigned;
- (b) in its discretion at any time during the period of such supervision, order that the person be returned to the custody of the person or authority from which he was released by the Governor; and
- (c) after making any such order by warrant signed by any 2 members, authorize any member of the Police Force or other officer to apprehend the person and deliver him to the custody of the person or authority specified in the warrant at a place so specified.

(3) A warrant issued under this section is sufficient authority to the member of the Police Force or other officer to whom it is directed for the apprehension of the person to whom it relates and for his being delivered into detention at the place specified in the warrant.

(4) Subject to section 26 of the *Prisons Act 1981*, where a person is delivered at a place of detention pursuant to a warrant issued under this section, the order of the Governor for the detention of that person during the pleasure of the Governor that was previously in force shall continue to be in force.

[Section 34A inserted by No. 73 of 1965 s. 7; amended by No. 89 of 1982 s. 26; No. 47 of 1987 s. 21; No. 113 of 1987 Schedule 2; No. 129 of 1987 s. 9.]

[34AA<sup>7</sup>. Section 34AA repealed by No. 129 of 1987 s. 10 (1).]

#### **Power to release on parole certain children and young persons**

**34AB.** (1) The Governor may order that a child or young person to whom this section applies be released from the place in which he is then detained, on parole, for any period not exceeding 5 years and the child or young person shall thereupon be so released under, and be subject to, this Act as if he were released from prison on parole under this Act, and sections 40D and 44 shall apply with such adaptations as may be necessary.

(2) The Board shall, as the Governor may from time to time require, report to him as to the place in which a child or young person to whom this section applies should be detained.

(3) This section applies to a child or young person detained in safe custody—

- (a) pursuant to an order made before 3 October 1984 under section 679 of *The Criminal Code*; or
- (b) pursuant to an order made under section 37, 78, 79, or 282 of *The Criminal Code*.

[Section 34AB inserted by No. 52 of 1984 s. 38; amended by No. 129 of 1987 s. 11.]

**Application of this Act to certain prisoners released pursuant to section 705 of *The Criminal Code***

**34B.** When the Governor extends the Royal mercy to an offender pursuant to section 705 of *The Criminal Code* upon condition of the offender submitting to his release on parole under this Act, for any period not exceeding 5 years, the provisions of this Act relating to the parole of offenders apply, with such modifications as circumstances require, to the offender, as if the Board had by order under this Act directed his release from prison on parole for such period.

[Section 34B inserted by No. 3 of 1969 s. 14.]

**Application of this Act where an order is made under section 48 of the *Mental Health Act 1962***

**34C.** (1) When the Governor makes an order pursuant to section 48 of the *Mental Health Act 1962*, that a person be admitted as a patient to an approved hospital the provisions of this Act cease to apply to that person.

(2) When the Governor makes an order pursuant to section 48 (2) of the *Mental Health Act 1962*, that a person be returned to strict custody the provisions of this Act again apply to that person.

[Section 34C inserted by No. 16 of 1971 s. 4.]

Division 4—Staff

[Heading inserted by No. 129 of 1987 s. 7.]

**Appointment of parole officers and other officers of the Board**

35. (1) There may be appointed under and subject to the *Public Service Act 1978* such parole officers and others officers, including a person to be secretary to the Board, as are required for the purposes of this Act.

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

(3) The Governor may, on such terms and conditions as may be prescribed, appoint any person, not being a member of the Police Force, to be an honorary parole officer for the purposes of this Act and may at any time remove any person so appointed.

[(4) repealed]

(5) Any appointment of an honorary parole officer under subsection (2) 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.

(5a) A person who holds or occupies—

(a) the office of parole officer; or

(b) any office that is prescribed for the purposes of this Act to be an office similar to that of a parole officer,

in another State or Territory shall, by virtue of his office and without further appointment or other authority than this subsection, be deemed to be a parole officer for the purposes of a parole order, that permits or requires a prisoner to reside in that State or Territory.

(6) The functions, powers and duties of 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.

[Section 35 amended by No. 73 of 1965 s. 3; No. 3 of 1969 s. 15; No. 89 of 1982 s. 21; No. 47 of 1987 s. 19.]

**Direction and control of parole officers**

**36.** The chief executive officer and 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 executive officer.

*[Section 36 amended by No. 89 of 1982 s. 22; No. 47 of 1987 ss. 20 and 21; No. 113 of 1987 Schedule 2.]*

*Division 5—Eligibility for parole after  
service of part of term of imprisonment*

*[Division 5 heading: Sections 37, 38, 39 and 40 repealed and Division 5 heading, sections 37, 37A, Division 6 heading, section 38, 39, Division 7 heading, and sections 40, 40A, 40B, 40C and 40D substituted by No. 129 of 1987 s. 12.]*

**Effect of minimum terms previously fixed**

**37.** Notwithstanding section 12 of the *Acts Amendment (Imprisonment and Parole) Act 1987*—

- (a) the repeal of this section as enacted before the commencement date does not affect a minimum term fixed or deemed to have been fixed under or by this Act as enacted before the commencement date;
- (b) section 40 as enacted before the commencement date and any Rules of Court made under section 40 (3) as so enacted, shall continue to have effect in relation to the purported fixation of a minimum term under this Act as enacted before the commencement date; and
- (c) a person who has been sentenced to a term of imprisonment in respect of which a minimum term was fixed is eligible to be released from prison on parole at the expiration of the minimum term.

*[Section 37: See note under Division heading.]*

**Parole eligibility by order of the court**

**37A.** (1) Where a court sentences a person convicted of an offence to a term of imprisonment the court may, if it considers that the making of an order under this subsection is appropriate, order that the convicted person be eligible for parole.

(2) Where an order is made under subsection (1) in respect of a term of imprisonment the convicted person is eligible to be released from prison on parole—

- (a) where the term is not more than 6 years—after having served one-third of the term; or

- (b) where the term is more than 6 years—after having served 2 years less than two-thirds of the term.

(3) In determining whether the making of an order under subsection (1) is appropriate the court may have regard to all or any of the following—

- (a) the nature of the offence;
- (b) the circumstances of the commission of the offence;
- (c) the antecedents of the convicted person;
- (d) circumstances which are relevant to the convicted person or which might, in the opinion of the court, be relevant to the convicted person at the time at which the convicted person would become eligible to be released from prison on parole if an order was made under subsection (1);
- (e) any other matter that the court thinks relevant.

(4) Where a convicted person is before a court for sentencing in respect of more than one offence and the court sentences the convicted person to more than one term of imprisonment, the court may—

- (a) make an order under subsection (1) in respect of one of those terms; or
- (b) make orders under subsection (1) in respect of 2 or more of those terms,

but shall not make an order under subsection (1) in respect of a term of imprisonment comprising the aggregate of 2 or more terms, whether cumulative or concurrent.

(5) The court shall not make an order under subsection (1) in respect of a term of imprisonment of less than one year except where—

- (a) the convicted person is already serving or liable to serve a term of imprisonment in respect of which—
  - (i) a minimum term was fixed; or
  - (ii) an order was made under this section; or
- (b) the order is one of 2 or more orders made pursuant to subsection (4) (b) and the aggregate of the terms in respect of which those orders are made is not less than one year.

(6) The court shall not make an order under subsection (1) in respect of—

- (a) a term of imprisonment imposed in respect of a prison offence within the meaning of the *Prisons Act 1981*;
- (b) a term of imprisonment imposed on a prisoner in respect of the escape of the prisoner from lawful custody;
- (c) a term of imprisonment imposed on a person together with a direction under section 661 or 662 of *The Criminal Code* that the person is to be detained during the Governor's pleasure in a prison;

- (d) a term of imprisonment imposed on a person who is undergoing or liable to undergo detention during the Governor's pleasure in a prison pursuant to a direction or sentence under section 661 or 662 of *The Criminal Code* given or passed before that term of imprisonment was imposed; or
- (e) strict security life imprisonment or life imprisonment.

[Section 37A: See note under Division heading.]

*Division 6—Order of service, and remission, of sentences*

[Division 6 heading: See note under Division 5 heading.]

### **Order of service of finite terms of imprisonment**

38. (1) Where a person has been sentenced to a term of imprisonment in respect of which a minimum term was fixed and, before the expiration of that minimum term, has been sentenced to a further term of imprisonment in respect of which a minimum term was fixed, then the minimum term fixed in respect of the further term is cumulative upon or concurrent with that fixed in respect of the prior term according as the further term is cumulative upon or concurrent with the prior term.

(2) Where a person has been sentenced to a term of imprisonment in respect of which a minimum term was fixed and, before the expiration of that minimum term, is sentenced to a further term of imprisonment in respect of which an order is made under section 37A, then the non-parole period of the further term is cumulative upon or concurrent with the minimum term fixed in respect of the prior term according as the further term is cumulative upon or concurrent with the prior term.

(3) Where a person has been sentenced to a term of imprisonment in respect of which an order was made under section 37A and, before the expiration of the non-parole period of that term, is sentenced to a further term of imprisonment in respect of which an order is made under section 37A, then the non-parole period of the further term is cumulative upon or concurrent with the non-parole period of the prior term according as the further term is cumulative upon or concurrent with the prior term.

(4) Where pursuant to section 37A (4) (b) orders are made under section 37A in respect of 2 or more terms of imprisonment the non-parole periods of those terms are cumulative upon or concurrent with each other according as the terms are cumulative upon or concurrent with each other.

(5) In subsection (6)—

“fixed term” means a term of imprisonment in respect of which—

- (a) no minimum term was fixed; and
- (b) no order was made under section 37A;



“mandatory period” means—

- (a) a minimum term;
- (b) a non-parole period;
- (c) an aggregate of minimum terms in accordance with subsection (1);
- (d) an aggregate, in accordance with subsection (2), of a minimum term or minimum terms and a non-parole period or non-parole periods; or
- (e) an aggregate of non-parole periods in accordance with subsection (3) or (4).

(6) Where an offender has been sentenced to several terms of imprisonment the offender shall serve those terms in the following order—

- (a) firstly, any fixed term or fixed terms;
- (b) secondly, any mandatory period;
- (c) thirdly, unless and until released on parole, the balance of any term or terms after the expiration of any mandatory period.

(7) Where during the service of any term of imprisonment an offender is sentenced to a further term of imprisonment that service shall, if necessary, be suspended in order that the terms may thereafter be served in the order required by subsection (6).

(8) Nothing in subsection (6) or (7) affects the operation of section 20 of *The Criminal Code*.

[Section 38: See note under Division 5 heading.]

### **Remission of sentences**

**39.** (1) Subject to subsection (5), section 29 of the *Prisons Act 1981* does not apply to a term of imprisonment in respect of which—

- (a) a minimum term was fixed; or
- (b) an order is made under section 37A.

(2) Regulations under this Act may provide for the reduction of minimum terms and non-parole periods as an incentive to good conduct or industry and where a prisoner is entitled to such a reduction the term or period as so reduced shall be the minimum term or non-parole period for the purposes of this Act.

(3) Regulations made under this Act may provide, in cases to which section 41 (2c) applies, for the reduction of extended service periods as an incentive to good conduct or industry.

(4) In subsection (3) “extended service period” means the period for which, under section 41 (2c), a prisoner is required to remain in prison after the completion of the aggregate of the non-parole periods.

(5) Notwithstanding Division 7, where a prisoner who—

- (a) has served the minimum term or non-parole period in respect of a term of imprisonment; and
- (b) has not been previously released on parole in respect of that term of imprisonment,

is not released on parole before the date on which the prisoner would have been released from prison, having regard to the part, if any, of that term of imprisonment that would have been remitted under section 29 of the *Prisons Act 1981* if that section had been duly applied to or with respect to the term, the prisoner shall be released from prison on that date or as soon as is practicable after that date unless the prisoner is then liable to serve or continue serving any other term of imprisonment or to be detained during the Governor's pleasure in a prison.

[Section 39: See note under Division 5 heading.]

*Division 7—Release on parole, breach of parole, cancellation and variation of parole, and transitional provisions*

[Division 7: See note under Division 5 heading.]

**Release on parole after minimum term**

40. (1) The Board may in its discretion by order in writing direct that a prisoner serving a term of imprisonment in respect of which a minimum term was fixed be released from prison on parole at the time determined under the order and the prisoner shall be released accordingly.

(2) The time of release on parole under the order shall be at or after the expiration of the minimum term.

(3) If at the expiration of the minimum term the prisoner is liable to serve or continue serving any other term of imprisonment or to be detained during the Governor's pleasure in a prison, an order shall not be made under subsection (1) unless—

- (a) the prisoner becomes entitled to be released from prison in respect of the other term of imprisonment or the detention; or
- (b) an order is also made for the release of the prisoner on parole in respect of the other term of imprisonment or the detention,

before the prisoner becomes entitled to be released from prison under section 39 (5) in respect of the term of imprisonment in respect of which the minimum term was fixed.

[Section 40: See note under Division 5 heading.]

**Release on parole after non-parole period**

**40A.** (1) The Board shall by order in writing direct that a prisoner serving a term of imprisonment in respect of which an order was made under section 37A be released from prison on parole at the time determined under the order made under this subsection and the prisoner shall be released accordingly.

(2) The time of release on parole under the order made under subsection (1) shall be at the expiration of the non-parole period of the term of imprisonment.

(3) If at the expiration of the non-parole period the prisoner is liable to serve or continue serving any other term of imprisonment or to be detained during the Governor's pleasure in a prison, the prisoner shall not be released under an order made under subsection (1) unless—

- (a) the prisoner becomes entitled to be released from prison in respect of the other term of imprisonment or the detention; or
- (b) an order is also made for the release of the prisoner on parole in respect of the other term of imprisonment or the detention,

before the prisoner becomes entitled to be released from prison under section 39 (5) in respect of the term of imprisonment in respect of which the order was made under section 37A.

(4) Where the release on parole relates to 2 or more terms in respect of which orders were made under section 37A, orders may be made under subsection (1) in respect of each of those terms but an order shall not be made in respect of the aggregate of those terms.

(5) The prisoner, by notice in writing to the Board, may decline to be released on parole under this section and where the Board has received such a notice the prisoner shall not be so released and an order shall not be made under subsection (1) in respect of the prisoner unless that notice is withdrawn by the prisoner by further notice in writing to the Board.

(6) The prisoner shall not be released on parole under an order made under this section unless a declaration in writing that the prisoner understands the requirements specified in the order and undertakes to comply with them has been made by the prisoner.

(7) The powers of the Board under subsection (1) may be exercised by the secretary to the Board, or a member, on behalf of and in the name of the Board.

(8) The secretary or a member—

- (a) shall not make an order under subsection (1) in respect of a special term as defined in section 40B (1);
- (b) shall not make an order under subsection (1) if—
  - (i) a report has been made to the Board under section 40B (2) (b); or

- (ii) the Board has made a determination under section 40B (5) (b); and
- (c) shall not make an order of a kind referred to in section 40B (5) (a).

(9) Unless authorized to do so by the Board, the secretary or a member shall not make an order under subsection (1) imposing any requirement other than—

- (a) a prescribed requirement; or
- (b) a requirement that the prisoner named therein shall not frequently consort with reputed criminals or persons of ill-repute.

(10) The Board may issue guidelines to be observed by the secretary and members in relation to the making of orders under subsection (1).

(11) Nothing in this section limits the powers of the Board under section 44.

[Section 40A: See note under Division 5 heading.]

**Board may postpone or withhold parole after non-parole period**

**40B.** (1) In this section—

“prisoner” means a prisoner serving a term of imprisonment in respect of which an order was made under section 37A;

“special term” means a term of imprisonment of not less than 5 years imposed in respect of an offence under Chapter XXVIII, XXIX, XXX, XXXIA, XXXII, XXXIII or XXXVIII, or section 197, of *The Criminal Code*.

(2) The chief executive officer<sup>8</sup> may make a report in writing to the Board for the purposes of this section—

- (a) concerning the release of a prisoner from prison on parole in respect of a special term;
- (b) concerning the release of a prisoner from prison on parole in respect of a term of imprisonment other than a special term if the chief executive officer<sup>8</sup> considers that there is a special need to make such a report.

(3) The Board may if it thinks fit—

- (a) make an order under section 40A (1) directing that a prisoner be released from prison on parole in respect of a special term at a time that is later than the time at which the prisoner would otherwise be required to be so released under section 40A; or
- (b) determine that an order should not be made under section 40A (1) in respect of a special term or that the making of such an order in respect of a special term should be deferred.

(4) In exercising its discretion under subsection (3) the Board may have regard to all or any of the following—

- (a) the nature and circumstances of the offence in respect of which the special term was imposed;
- (b) the degree of risk that the release of the prisoner appears to present to the community or to any individual in the community;
- (c) the contents of a report made to it under subsection (2) (a) or other information concerning the prisoner that is brought to its attention.

(5) Where the Board, having regard to the contents of a report made to it under subsection (2) (b) or to other information concerning a prisoner that is brought to its attention, considers that there are special circumstances that justify it doing so, it may—

- (a) make an order under section 40A (1) directing that the prisoner be released from prison on parole in respect of a term of imprisonment other than a special term at a time that is later than the time at which the prisoner would otherwise be required to be so released under section 40A;
- or
- (b) determine that an order should not be made under section 40A (1) in respect of a term of imprisonment other a special term or that the making of such an order in respect of such a term should be deferred.

(6) Where the Board has made a determination under subsection (3) (b) or (5) (b) it is not required to make an order under section 40A (1) in respect of the prisoner, but the determination does not prevent the Board from subsequently making such an order.

(7) Where the Board has made an order containing a direction under subsection (3) (a) or (5) (a) or a determination under subsection (3) (b) or (5) (b)—

- (a) the Board shall notify the prisoner; and
- (b) the prisoner may make representations in writing to the Board with respect to the direction or determination.

(8) Subject to section 49A the notification under subsection (7) (a) shall inform the prisoner of the reasons for the direction or determination and of the right to make representations under subsection (7) (b).

[Section 40B: See note under Division 5 heading.]

**Release on parole during indeterminate sentence**

40C. (1) An order in writing under this subsection may direct that—

- (a) a prisoner, being an habitual criminal who is being detained in a prison during the Governor's pleasure pursuant to the direction of a court under section 661 of *The Criminal Code*;
- (b) a prisoner who is being detained otherwise than as an habitual criminal in a prison during the Governor's pleasure pursuant to a direction of a court under section 662 (a) of *The Criminal Code*; or
- (c) a prisoner detained in prison otherwise than as an habitual criminal pursuant to a sentence of a court under section 662 (b) of *The Criminal Code*,

be released from prison on parole at the time determined under the order and the prisoner shall be released accordingly.

(2) An order under subsection (1) may be made—

- (a) by the Board in its discretion, in the case of detention pursuant to a direction or sentence given or imposed before the commencement date; or
- (b) by the Governor following the furnishing of a report by the Board under section 34 (2) (b) or (d) or (3), in the case of detention pursuant to a direction or sentence given or imposed on or after the commencement date.

(3) The time of release on parole under an order under subsection (1) (a) shall be after the prisoner has been detained pursuant to the direction during a period of 2 years or such lesser period as the Governor, having regard to the circumstances of the case, on the recommendation of the Board, thinks fit.

(4) The time of release on parole under an order under subsection (1) (b) or (c) shall be after the prisoner has been detained pursuant to the direction or sentence for any period.

(5) Notwithstanding section 665 of *The Criminal Code* where a prisoner is serving or liable to serve a term of imprisonment in respect of which a minimum term was fixed, or in respect of which an order was made under section 37A, and has also been directed or sentenced to be detained during the Governor's pleasure in a prison under section 661 or 662 of *The Criminal Code*, for the purposes of this section the detention pursuant to the direction or sentence is deemed to commence at the expiration of the minimum term or non-parole period, as the case may be.

[Section 40C: See note under Division 5 heading.]

**Release on parole during life sentence**

**40D.** (1) Subject to subsection (2), following the furnishing of a report by the Board under section 34 (2) (b) or (d) or (3) the Governor may by order in writing direct that a prisoner undergoing a sentence of strict security life imprisonment or a sentence of life imprisonment be released from prison on parole at the time determined under the order and the prisoner shall be released accordingly.

(2) In the case of a prisoner undergoing a sentence of strict security life imprisonment, an order under subsection (1) shall not be made earlier than 20 years after—

- (a) the date when the sentence was commuted from a sentence of death; or
- (b) the date when the prisoner was sentenced to strict security life imprisonment,

as the case may be, except where the Governor is of the opinion that special circumstances exist.

(3) The Minister shall cause every order made under subsection (1) in respect of a prisoner undergoing a sentence of strict security life imprisonment, together with an explanatory note as to the circumstances, to be tabled in each House of Parliament within 15 sitting days of that House after the making of the order.

(4) Notwithstanding section 44 or 45, whenever a prisoner undergoing a sentence of strict security life imprisonment or a sentence of life imprisonment has been released from prison on parole (whether before, on or after the commencement date) and his parole is thereafter cancelled, he shall not be further released on parole otherwise than under this section.

*[Section 40D: See note under Division 5 heading.]*

**Parole orders: cancellation or variation before release; parole period; requirements**

**41.** (1) Before a prisoner has been released from prison under a parole order made by or on behalf of the Board, the order may be cancelled, amended or varied by the Board by order in writing signed by any 2 members, and, if a parole order is so amended or varied, it applies accordingly.

(1a) Where a prisoner's parole is cancelled under subsection (1) the prisoner—

- (a) may make representations in writing to the Board with respect to the cancellation; and
- (b) shall, subject to section 49A, be informed by the Board of the reasons for the cancellation and of the right to make representations under paragraph (a).

(1b) Before a prisoner has been released from prison under a parole order made by the Governor, the order may be cancelled, amended or varied by the Governor by order in writing, and, if a parole order is so amended or varied, it applies accordingly.

(1c) Where a prisoner's parole is cancelled under subsection (1b) the prisoner—

- (a) may make representations in writing to the Minister with respect to the cancellation; and
- (b) shall, subject to section 49A, be informed by the Minister of the reasons for the cancellation and of the right to make representations under paragraph (a).

(2) Subject to subsection (2e), a prisoner released from prison under a parole order described in column 1 of an item in the Table to this subsection shall, after release, be under the supervision of a parole officer for the period determined under column 2 of that item.

TABLE  
Parole Periods

Item	Column 1 Type of parole order	Column 2 Period of supervision after release
1	Order under section 40	Whichever is the lesser of— (a) the period from release until the expiration of the term of imprisonment in respect of which the order is made; or (b) 2 years.
2	Order under section 40A	Whichever is the lesser of— (a) the period from release until the expiration of the term of imprisonment in respect of which the order is made; or (b) the period calculated by deducting from the prescribed period a period equal to the pre-release period.
3	Order under section 40C	Such period not exceeding 2 years as the Board or the Governor, as the case may be, thinks fit and specifies in the order.
4	Order under section 40D	Such period not exceeding 5 years as the Governor thinks fit and specifies in the Order.



Note

In item 2 of this Table—

“prescribed period” means a period calculated by reference to the term of imprisonment in respect of which the parole order was made so that where that term is—

- (a) less than 18 months and section 40A (4) does not apply to the parole order—the prescribed period is 6 months;
- (b) less than 18 months and the parole order is one of 2 or more parole orders to which section 40A (4) applies—the prescribed period is equal to one-third of that term;
- (c) not less than 18 months but less than 6 years—the prescribed period is equal to one-third of that term;
- (d) not less than 6 years—the prescribed period is 2 years;

“pre-release period” in relation to a term of imprisonment means the period (if any) that began at the expiration of the non-parole period, and ended when the prisoner was released on parole but does not include any period during which the prisoner was not serving that term of imprisonment.

(2a) Subject to subsections (2b) and (2f) the parole period shall have effect from the date of release of the prisoner and where the prisoner is released under 2 or more orders the respective parole periods shall have effect concurrently.

(2b) Notwithstanding section 40A (1) or (2), if the prisoner is released under 2 or more parole orders to which section 40A (4) applies the parole periods shall have effect cumulatively or concurrently according as the terms of imprisonment are cumulative upon or concurrent with each other and, where it is necessary in order to resolve any doubt, the relevant parole orders may specify the sequence in which any cumulative parole periods shall have effect.

(2c) Notwithstanding section 40A, if the aggregate parole period that would result from the operation of subsection (2b) would exceed 2 years the prisoner shall not be released on parole until such time as release can be effected under an order or orders in respect of which the parole period does not exceed 2 years.

(2d) If the extended service period as defined by section 39 (4) is reduced under the regulations the aggregate parole period referred to in subsection (2c) shall be reduced by the same amount.

(2e) If the prisoner is released under 2 or more parole orders to which section 40A (4) applies and the aggregate of the terms of imprisonment in respect of which the parole orders were made is less than 18 months the

parole period for each of those terms shall be the period calculated in accordance with the formula—

$$A \times \frac{B}{C}$$

where—

A is the period calculated by deducting from 6 months a period equal to the period (if any) between the completion of the mandatory period under section 38 (6) (b) and release on parole;

B is the length of that term; and

C is the aggregate of those terms.

(2f) Where the prisoner is released under a parole order under section 40 and a parole order or orders under section 40A the parole periods shall have effect cumulatively or concurrently according as the terms of imprisonment are cumulative upon or concurrent with each other.

(2g) If the aggregate parole period that results from the operation of subsection (2f) exceeds 2 years the parole period in respect of each of the parole orders shall be deemed to have been completed for the purposes of this Part if and when the prisoner has been on parole for 2 years.

(2h) Where 2 or more parole orders are made in respect of the prisoner they may be made in the same document.

(2i) During the parole period the prisoner shall comply with the requirements specified in the parole order.

(3) A parole order shall specify prescribed requirements and such other requirements as the Board or the Governor, as the case may be, considers necessary in any particular case, but in every parole order there shall be inserted a requirement that the prisoner shall not frequently consort with reputed criminals or persons of ill-repute.

(3a) Without limiting the generality of subsection (3), the parole order may include requirements relating to the residence of the prisoner in this State or if the prisoner consents, in another State or a Territory.

(3b) Unless the parole order otherwise permits or requires the prisoner to reside in another State or Territory, it is a requirement of every parole order that the prisoner shall not leave or remain out of this State except in compliance in every respect with the terms and conditions of a permit in writing of the Board or of the chief executive officer.

(3c) Where a parole order requires that the prisoner shall not leave or remain out of this State, the board or the chief executive officer may permit the prisoner to leave and remain out of the State for such time and upon such terms and conditions, as it or he thinks fit.

(3d) A permit under subsection (3c) shall be in writing under the hand of a member of the Board or the chief executive officer as the case requires, and to the extent necessary to give effect to the permit the parole order shall be deemed to be amended and shall apply accordingly.

(3e) Where a permit is issued by the chief executive officer under subsection (3c) that officer shall forthwith cause to be sent to the secretary to the Board a copy of the permit together with a report setting out the facts and circumstances under which the permit was issued.

(3f) Where pursuant to a parole order, a prisoner is required or permitted to reside in another State or a Territory, the chief executive officer shall send to the Chief or Principal Parole Officer, or other prescribed officer, in that State or Territory, on being requested by that officer so to do, a copy of the parole order certified in writing under his hand as a true copy, and such documents and information relating to the case as he considers likely to be of assistance to any authority or officer in the State or Territory with respect to the order.

(4) The chief executive 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.

*[Section 41 amended by No. 73 of 1965 s. 10; No. 3 of 1969 s.20; No. 116 of 1981 s. 17; No. 89 of 1982 s. 26; No. 47 of 1987 s. 21; No. 113 of 1987 Schedule 2; No. 129 of 1987 s. 13.]*

### **Breach of parole order otherwise than by conviction**

**41A.** (1) A prisoner who at any time during the parole period whether in this state or elsewhere fails to comply with a requirement of the parole order is guilty of an offence against this section.

(2) (a) If at any time during the parole period it appears on complaint in writing to a justice that a prisoner has failed to comply with a requirement of a parole order, the justice may issue a summons requiring the prisoner to appear at a court of petty sessions at the time and place 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 at the place specified as soon as practicable after his arrest.

(b) The court of petty sessions before which the prisoner is so required to appear or is directed to be brought, as the case may be, has jurisdiction to hear and determine the complaint.

(3) If the court of petty sessions before which the prisoner appears or is brought pursuant to subsection (2), convicts the prisoner of an offence against this section, the court may, without effecting the continuation of the parole order, impose on him a fine not exceeding \$100.

(4) The conviction of a prisoner of an offence against this section does not limit the power of the Board to cancel, suspend, amend or vary his parole pursuant to section 44.

(5) Without limiting the provisions of section 44 (2), a prisoner who is sentenced to another term of imprisonment in respect of an offence committed during the parole period whether in this State or elsewhere, is not on account of the commission of that offence liable to be dealt with under this section.

*[(6) repealed]*

(7) Where any breach of the requirements of a parole order comes to the knowledge of the chief executive officer, he shall give forthwith notice in writing of the breach to the Board and shall submit such reports upon and information with respect to the breach as the Board requires.

*[Section 41A inserted by No. 3 of 1969 s. 21; amended by No. 89 of 1982 s. 26; No. 47 of 1987 s. 21; No. 113 of 1987 Schedule 2; No. 129 of 1987 s. 14.]*

*[42. Section 42 repealed by No. 129 of 1987 s. 15.]*

#### **Sentence or detention deemed to have been served**

43. (1) If—

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

the prisoner—

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

but until the prisoner is in any way discharged from the sentence of imprisonment or the detention the prisoner, while released on parole, shall be regarded as being still under sentence for the offence to which the parole relates or under detention during the Governor's pleasure, as the case requires and as not having suffered the punishment required under the sentence 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.

(2) In subsection (1) (b) "offence" includes an offence committed elsewhere than in this State but does not include an offence against section 41A.

[Section 43 substituted by No. 129 of 1987 s. 16.]

**Power of Board to cancel, suspend or vary parole order**

44. (1) Where a prisoner is released on parole under this Act, the Board may at any time, before the expiration of the parole period, by order in writing signed by any 2 members cancel, amend, suspend or vary the parole order relating to the prisoner and the parole order as so varied applies to the prisoner accordingly.

(1a) Any suspension of a prisoner's parole under subsection (1) may be for a fixed or an indeterminate period as the Board thinks fit.

(1b) The Board may at any time by order in writing, cancel an order suspending a prisoner's parole.

(1c) Where a prisoner's parole has been suspended and during the period of suspension the prisoner's parole has not been cancelled—

(a) by order of the Board under subsection (1); or

(b) by operation of subsection (2),

then at the expiration of the period of suspension of the prisoner's parole, or if the order suspending the prisoner's parole is sooner cancelled, upon such cancellation the parole order again applies with such additional or varied requirements, if any, as the Board may impose and the prisoner shall be released on parole under the order.

(2) Where a prisoner who has been released on parole is sentenced to another term of imprisonment in respect of any offence other than an offence against section 41A, 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), the Board or a Judge or District Court Judge (including the judicial member of the Board if that member holds office as a Judge or District Court Judge) may, whenever necessary, by warrant authorize 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 or to apprehend him and bring him before the Board as soon as practicable, and the warrant is sufficient authority for the apprehension of the prisoner and for his return to prison or his being apprehended and brought before the Board accordingly.

(3a) A warrant issued by the Board under subsection (3) or (5) may be signed by any 2 members of the Board and it is not necessary for the Board to meet before a warrant is signed and issued.

(3b) Where a prisoner is brought before the Board pursuant to a warrant issued under subsection (3) the Board—

- (a) may again direct the release of the prisoner on parole;
- (aa) may, subject to subsection (3e), restore the previous parole order in which case the previous parole period shall be resumed and the cancellation of the prisoner's parole shall have no further effect; or
- (b) may issue a warrant under that subsection for the return of the prisoner to prison.

(3c) Where the prisoner is again released on parole under subsection (3b) (a) from a term of imprisonment, the parole period for the purposes of this Part is whichever is the lesser of—

- (a) a period equal to the previous parole period; or
- (b) the period from the time the prisoner is so released until the expiration of the term of imprisonment.

(3d) Where the prisoner is again released on parole under subsection (3b) (a) from detention during the Governor's pleasure in a prison, the parole period for the purposes of this Part is such period not exceeding 2 years as the Board thinks fit and specifies when directing the release of the prisoner.

(3e) The power conferred by subsection (3b) (aa), shall not be exercised where the cancellation of the prisoner's parole occurs by operation of subsection (2) and results from a sentence to a term of imprisonment exceeding 3 months.

(3f) Where a prisoner's parole is cancelled or suspended under subsection (1) and the prisoner is returned to prison or another institution—

- (a) the prisoner may make representations in writing to the Board with respect to the cancellation or suspension; and
- (b) on being so returned, the prisoner shall, subject to section 49A, be informed of the reasons for the cancellation or suspension and of the right to make representations under paragraph (a).

(3g) Where representations are made under subsection (3f) (a) by a prisoner whose parole is cancelled and who is returned to prison to continue serving a sentence of strict security life imprisonment or a sentence of life imprisonment, the Board shall furnish to the Minister—

- (a) a copy or summary of the representations; and
- (b) a report containing a recommendation as to whether or not the Governor should be advised to take any further action under section 40D in relation to the prisoner.

(3h) Where a prisoner's parole is cancelled under subsection (1) or by operation of subsection (2) that cancellation or suspension applies to the parole orders in respect of—

- (a) the parole period or periods being served by the prisoner at the time of the cancellation or suspension; and
- (b) any parole period which was to have had effect cumulatively upon the parole period or periods referred to in paragraph (a) and which has not commenced at the time of the cancellation or suspension.

(3i) Where, after the cancellation of a prisoner's parole, a parole order is restored under subsection (3b) (aa) any other parole order to which the cancellation applied is also restored.

(3j) Where, after the suspension of a prisoner's parole, a parole order is revived by subsection (1c) any other parole order to which the suspension applied is also revived.

(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 except as hereinafter provided in this section, 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.

(4a) Where a prisoner is released on parole from a term of imprisonment, other than a sentence of strict security life imprisonment or life imprisonment, and the prisoner's parole is cancelled, one-half of the period completed on parole by the prisoner in respect of the term of imprisonment shall be regarded as time served in respect of the term of imprisonment.

(4b) In subsection (4a) "period completed on parole by the prisoner" means the period beginning when the prisoner was released on parole and ending—

- (a) where the prisoner's parole has been cancelled under subsection (1), on the day on which the cancellation took effect; or
- (b) where the prisoner's parole has been cancelled by operation of subsection (2)—
  - (i) on the day on which the offence that brought about the cancellation occurred; or
  - (ii) where the chief executive officer<sup>s</sup> cannot ascertain the day referred to in subparagraph (i), on the latest day on which the offence that brought about the cancellation could have occurred.

(5) Where a prisoner's parole is suspended by order of the Board, the Board or a Judge or District Court Judge (including the judicial member of the Board if that member holds office as a Judge or District Court Judge) may, whenever necessary, by warrant authorize any member of the Police Force or other officer to apprehend the prisoner and return him to a prison or institution specified in the warrant to be therein kept in custody for so long as the order suspending his parole remains in force and the warrant is sufficient authority for the prisoner's apprehension and for his conveyance to the prison or institution specified in the warrant and for his detention therein during the period during which the order suspending his parole remains in force.

(6) In the case of a sentence of strict security life imprisonment or life imprisonment a reference in this section to serving the unexpired portion of a term of imprisonment shall be construed as a reference to resuming the service of the sentence.

[Section 44 amended by No. 73 of 1965 s. 12; No. 3 of 1969 s. 24; No. 129 of 1987 s. 17.]



**Power of Board to release on parole  
after previous parole has been cancelled**

45. (1) 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 prison.

(2) Where a prisoner is released under subsection (1) from a term of imprisonment, the parole period for the purposes of this Part is whichever is the lesser of—

- (a) a period equal to the previous parole period; or
- (b) the period from the time the prisoner is so released until the expiration of the term of imprisonment.

(3) Where a prisoner is released under subsection (1) from detention during the Governor's pleasure in a prison, the parole period for the purposes of this Part is such period not exceeding 2 years as the Board thinks fit and specifies when ordering the release of the prisoner.

*[Section 45 amended by No. 116 of 1981 s. 19; No. 129 of 1987 s. 18.]*

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

46. *[Section 46 omitted under Reprints Act 1984 s. 7 (4) (e).]*

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

47. *[Section 47 omitted under Reprints Act 1984 s. 7 (4) (e).]*

**Existing and previous parolees**

48. This Part as modified by Schedule 1 shall have effect in relation to a prisoner in respect of whose term of imprisonment a minimum term was fixed and who—

- (a) is on parole immediately before the commencement date;  
or
- (b) is in prison immediately before the commencement date having been returned to prison under section 44 (3).

*[Section 48 substituted by No. 129 of 1987 s. 19.]*

**Resolution of doubtful cases**

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

- (a) the conviction or sentence of a person before the commencement date;

- (b) the effect of any conviction or sentence after that date upon a conviction or sentence before that date or another conviction or sentence after that date;
- (ba) any prisoner whose parole was suspended at 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 chief executive officer, 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, part of a term of imprisonment, date or parole period or may direct that any such term, part of a term, period or date shall be determined by the Board or in any other specified way.

*[Section 49 amended by No. 57 of 1976 s. 33; No. 47 of 1987 s. 21; No. 113 of 1987 Schedule 2; No. 129 of 1987 s. 20.]*

#### **Withholding of reasons for decisions**

**49A.** (1) Where the Board is of the opinion that it would be in the interest of the prisoner or any other person, or of the public, to withhold from the prisoner any or all of the reasons referred to in section 40B (8), 41 (1a) (b) or 44 (3f) (b), the Board may so withhold the reason or reasons.

(2) Where the Minister is of the opinion that it would be in the interest of the prisoner or any other person, or of the public, to withhold from the prisoner any or all of the reasons referred to in section 41 (1c) (b), the Minister may so withhold the reason or reasons.

*[Section 49A inserted by No. 129 of 1987 s. 21.]*

#### **Exclusion of rules of natural justice**

**50.** The rules known as the rules of natural justice (including any duty of procedural fairness) do not apply to or in relation to the doing or omission of any act, matter, or thing under this Part by—

- (a) the Governor;
- (b) the Board, the secretary to the Board, or a member or members;
- (c) the Minister; or
- (d) the chief executive officer<sup>8</sup>.

*[Section 50<sup>9</sup> substituted by No. 129 of 1987 s. 22 (1).]*

PART IIIA—ORDERS RELATING TO PROBATION AND  
PAROLE OF OFFENDERS MADE IN ANOTHER  
STATE OR A TERRITORY

*[Heading inserted by No. 3 of 1969 s. 26.]*

*Division 1—Probation Orders made in another  
State or in a Territory*

*[Heading inserted by No. 3 of 1969 s. 26.]*

**Interpretation**

**50A.** (1) In this Division unless the contrary intention appears—

“probation order” means a probation order, or an order of a class prescribed to be similar to a probation order made under Part II made by a court or other prescribed authority of another State or Territory that requires or permits the probationer to reside in this State.

(2) For the purposes of this Part, a court having jurisdiction similar to the jurisdiction of the court of another State or Territory by which a probation order was made shall be in the case of a probation order made by—

- (a) the Supreme Court of another State or a Territory, the Supreme Court;
- (b) a Court of General Sessions, Court of Sessions or a Court of Quarter Sessions of another State or Territory, the Supreme Court;
- (c) a court of another State or a Territory constituted by a police, stipendiary or special magistrate or by a justice or justices of the peace, a court of petty sessions constituted by a stipendiary magistrate sitting alone.

*[Section 50A inserted by No. 3 of 1969 s. 26.]*

**Probation order to have effect in this State**

**50B.** Subject to the provisions of this Division, a probation order has force and effect and the probationer is bound by the requirements thereof, whether express or implied, in all respects as if it were an order made under the provisions of Part II and those provisions apply, subject to such modifications as circumstances require, to the first-mentioned probation order.

*[Section 50B inserted by No. 3 of 1969 s. 27.]*

### Reports

**50C.** (1) The chief executive officer shall cause to be prepared and submitted to the Chief or Principal Probation Officer, or such other officer or authority as is prescribed, of another State or Territory in which the probation order was made, such reports upon, and information with respect to, the probationer as such court, officer or authority from time to time requires.

(2) A report made under paragraph (b) of section 8 (2) shall include a report with respect to probation orders to which this Division applies in relation to the matters specified in that paragraph.

*[Section 50C inserted by No. 3 of 1969 s. 28; amended by No. 89 of 1982 s. 28; No. 47 of 1987 s. 21; No. 113 of 1987 Schedule 2.]*

### Probationer to report

**50D.** (1) There shall be implied in every probation order a requirement that the probationer—

- (a) report in person, or in writing, to the chief executive officer within 72 hours after he comes into this State; and
- (b) report in person at such place, within such time, and to such person as may, from time to time, be specified by the chief executive officer by instrument in writing given to the probationer.

(2) Where the Chief or Principal Probation Officer of the State or Territory in which the probation order was made is of opinion, in the circumstances of the case, that any requirement specified in subsection (1) should be waived, he may notify the chief executive officer and the probationer in writing to that effect and thereupon the probationer is not required to comply with that requirement unless and until he is directed to the contrary by the Chief or Principal Probation Officer of that State or Territory.

(3) Except where the Chief or Principal Probation Officer of the State or Territory in which the probation order was made informs the chief executive officer that the assignment of a probation officer is not required, the chief executive officer shall assign a probation officer to be the probation officer in respect of the probation order and to supervise the probationer in this State during the continuance of the order, and the chief executive officer may from time to time assign another probation officer in respect of the order instead of the probation officer previously assigned.

*[Section 50D inserted by No. 3 of 1969 s. 29; amended by No. 89 of 1982 s. 26; No. 47 of 1987 s. 21; No. 113 of 1987 Schedule 2.]*

**Order of discharge of probation order**

**50E.** (1) A court having jurisdiction similar to the jurisdiction of the court of another State or a Territory by which a probation order was made may, upon application by the probation officer assigned pursuant to section 50D (3) in respect of the order or by the probationer and after due consideration of any report by the Chief or Principal Probation Officer, or other prescribed officer, of that other State or Territory, make an order for the discharge of the probation order and thereupon the order shall for the purposes of this Part be deemed to be discharged accordingly.

(2) Where an order is made pursuant to subsection (1), the court making the order shall cause to be sent to the Chief or Principal Probation Officer, or other prescribed officer, in the State or Territory in which the probation order was made, a copy of the order, together with such documents and information relating to the matter as it considers likely to be of assistance to any authority or person in the State or Territory with respect to the order.

*[Section 50E inserted by No. 3 of 1969 s. 30.]*

**Amendment of probation order**

**50F.** (1) A court having jurisdiction similar to that of—

- (a) the supervising court in the State or Territory in which the probation order was made; or
- (b) the court of that State or Territory by which the order was made,

may at any time, upon application by the probation officer assigned pursuant to section 50D (3) in respect of the order or by the probationer, and after due consideration of any report by the Chief or Principal Probation Officer, or other prescribed officer, of that State or Territory, by order amend the probation order by cancelling any requirement thereof or by inserting therein, either in addition to or in substitution of any requirement thereof, any requirement that could be included in that order if it were then being made by the court in accordance with the provisions of Part II, but the court shall not—

- (c) amend a probation order by reducing the probation period or by extending the probation period beyond the maximum period during which the probationer might have been required by the order to be under the supervision of a probation officer in the State or Territory in which the order was made; and
- (d) except with the consent of the probationer, so amend the probation order that the probationer is thereby required to reside in any institution or in another State or Territory.

(2) Notwithstanding that a probation order of another State or a Territory does not require or permit the probationer to reside in this State, an amending order may be made pursuant to subsection (1), on the

application of the probationer, permitting or requiring the probationer to reside in this State and thereupon the probation order becomes an order to which this Part applies and shall for the purposes thereof be deemed to be amended accordingly.

(3) The court may direct that any order under subsection (2) has effect retrospectively as from a date specified in the order in that regard.

(4) Where, pursuant to this section, an order is made amending a probation order, the probation order shall for the purposes of this Part be deemed to be amended as specified in the amending order and as so amended applies accordingly.

(5) Where an amending order is made pursuant to this section, the Registrar or clerk of the court, as the case may be,—

- (a) shall forthwith cause to be sent to the Chief or Principal Probation Officer or other prescribed officer, of the State or Territory in which the probation order was made, a copy of the order, together with such documents and information relating to the matter as it considers likely to be of assistance to any authority or person in the State or Territory with respect to the order; and
- (b) shall forthwith cause a copy of the order to be given or sent to the probationer and to be sent to the probation officer and to the person in charge of any institution in which a probationer is or was required by the order to reside.

(6) Where pursuant to this section a court proposes to amend a probation order otherwise than on the application of the probationer, the court may summon him to appear before it, and the court shall not amend a probation order unless the probationer expresses his willingness to comply with the requirements of the order when amended but this subsection does not apply to an order cancelling any requirement of the probation order or reducing the period of any requirement.

*[Section 50F inserted by No. 3 of 1969 s. 31.]*

### **Breach of probation order otherwise than by conviction**

**50G.** (1) A probationer who at any time during the probation period fails to comply with an express or implied requirement of a probation order, is guilty of an offence against this section.

(2) If at any time during the probation period it appears on complaint in writing to a justice that a probationer has failed to comply with a requirement of a probation order, the justice may issue a summons requiring the probationer to appear at a court of petty sessions at a time and place specified in the summons or may, if the complaint is in writing and on oath, issue a warrant for the probationer's arrest directing that he be brought before a court of petty sessions at a place specified in the warrant as soon as practicable after his arrest.

(3) The court of petty sessions before which the probationer is so required to appear or is so directed to be brought, as the case may be, has jurisdiction to hear and determine the complaint.

(4) If the court of petty sessions convicts the probationer of an offence against this section, the court may—

- (a) without prejudice to the continuation of the probation order, impose on him a fine not exceeding \$100;
- (b) if the probation order was made by a court having in the State or Territory in which the order was made, a jurisdiction similar to the jurisdiction of a court of petty sessions—make an order pursuant to subsection (1) of section 50H with respect to the probationer or deal with him in accordance with the provisions of subsection (4) of that section; 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 a court having jurisdiction similar to the jurisdiction of the court of the other State or a Territory by which the order was made.

(5) (a) Where a court of petty sessions exercises the power referred to in subsection (4) (c), that court shall send to the Crown Solicitor a certificate signed by a justice certifying that the probationer has failed to comply with such requirement of the probation order as is 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) is admissible as evidence before any court of such failure and of the other particulars to which it relates.

(6) Without prejudice to the provisions of section 50J, a probationer who is convicted of an offence, other than an offence against this section, committed during the probation period, is not on that account liable to be dealt with under this section or section 50H for failing to comply with all or any of the requirements of the probation order.

(7) Where the probationer is brought or appears before the Supreme Court or the District Court, and it is proved to the satisfaction of that court that the probationer has failed to comply with a requirement of the probation order, that court may without prejudice to the continuation of the probation order impose a fine not exceeding \$100, make an order pursuant to subsection (1) of section 50H with respect to the probationer or deal with him in accordance with the provisions of subsection (4) of that section.

(8) The provisions of the *Justices Act 1902*, so far as applicable and subject to such modifications as circumstances require extend and apply to, and with respect to, all complaints, summonses, warrants and admission to bail referred to in this section.

(9) For the purposes of this section and sections 50H, 50J, and 50K, the court may presume that the person before the court—

- (a) is the probationer in respect of whom the probation order was made unless that person adduces evidence that he is not the probationer in respect of whom the probation order was made; and
- (b) is the person who was convicted of the offence in respect of which the probation order was made unless the person before the court adduces evidence that he is not the person who was convicted of the offence in respect of which the probation order was made.

*[Section 50G inserted by No. 3 of 1969 s. 32; amended by No. 57 of 1976 s. 34.]*

**Procedure for dealing with probationer on breach of order**

**50H.** (1) A court duly authorized in that behalf under section 50G (4) (b) or (7)—

- (a) may order that the probationer be returned to the State or Territory in which the probation order was made; and
- (b) may, for that purpose by warrant under hand in the prescribed form, direct that the probationer be kept in custody in a prison, lock-up or other place of detention specified in the warrant, and delivered into the custody of a member of the police force or other person to whom a court, judge, magistrate or justice of the peace of that State or Territory has directed a warrant, in this section referred to as an “interstate warrant”, authorizing the apprehension of the probationer and directing that he be brought before a court of that State or Territory to be dealt with according to law for failing to comply with all or any of the requirements of the probation order.

(2) A warrant issued by a court of this State under subsection (1) may be executed according to its tenor but the warrant does not authorize the detention in custody of a person after the expiration of a period of 14 days commencing on the day on which it is issued.

(3) On production to a justice of an interstate warrant, the justice, may make an endorsement as prescribed on that warrant authorizing the execution thereof in this State, and the interstate warrant so endorsed—

- (a) authorizes the member of the police force of the State or Territory in which it was issued or other person to whom it is directed, to take the probationer into his custody and to return him to the State or Territory in which the interstate warrant was issued; and



(b) authorizes, for that purpose, the detention of the probationer in a prison, lock-up or other place of detention for such period not exceeding 14 days, as may be specified in the endorsement to the interstate warrant pursuant to this subsection.

(4) Subject to subsection (5), a court duly authorized in that behalf under section 50G (4) (b) or (7), where an order under subsection (1) is not made or where made, has been discharged under subsection (7), deal with the probationer for the offence against section 50G in any manner in which the court could deal with him if the act or omission constituting the offence in respect of which the probation order was made had taken place within the jurisdiction of the court and if it had just convicted him of an offence constituted by that act or omission punishable by a penalty not exceeding the maximum penalty prescribed by the law of the State or Territory in which the probation order was made for the offence in respect of which that order was made.

(5) A court shall not deal with a probationer under subsection (4) unless it appears that the appropriate court or authority of the State or Territory in which the probation order was made does not require the return of the probationer to that State or Territory to be dealt with for the offence in respect of which that order was made.

(6) The court before which the probationer is brought may discharge the probationer, admit him to bail on such conditions as it thinks fit, or authorize his detention in a prison, lock-up or other place of detention for a reasonable period not exceeding 14 days, pending receipt of instructions from the appropriate court or authority in the State or Territory in which the probation order was made whether the return of the probationer to that State or Territory is desired or not.

(7) Where an order has been made under subsection (1), the court may at any time before the expiration of a period of 14 days commencing on the day on which the warrant is issued, discharge the order and may thereupon deal with the probationer as provided by subsection (4).

(8) A probationer who has been dealt with under the provisions of a law of another State or a Territory corresponding to the provisions of section 16 for failing to comply with a requirement of the probation order is not liable to be dealt with under this section or under section 50G for the act or omission that constituted the failure to comply for which he was so dealt with.

(9) A sentence imposed by the Court pursuant to subsection (4) shall be regarded as a sentence imposed on a conviction and where the court is the Supreme Court or the District Court the provisions of Chapter LXIX of *The Criminal Code* so far as applicable apply accordingly for the purposes of any appeal against the sentence.

[Section 50H inserted by No. 3 of 1969 s. 33; amended by No. 57 of 1976 s. 35.]

**Breach of order by conviction**

**50J.** (1) A probationer who is convicted of an offence, other than an offence against section 50G, committed during the probation period and is dealt with in respect of that offence, is guilty of an offence against this Act and is liable to be dealt with as provided in this section.

(2) If it appears on complaint in writing to a justice that a person in whose case a probation order has been made, has been convicted of an offence, other than an offence against section 50G, 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.

(3) A summons or warrant issued under subsection (2) shall direct the person so convicted to appear or be brought before a court having jurisdiction similar to the jurisdiction of the court of another State or a Territory by which the probation order was made.

(4) If a person in whose case a probation order has been made is convicted and dealt with in respect of an offence, other than an offence against section 50G, committed during the probation period by a court not having jurisdiction similar to that of the court of another State or a Territory by which the order was made, that court may commit him to custody or release him on bail, with or without sureties, to be brought or to appear before a court having jurisdiction similar to that of the court of another State or a Territory by which the probation order was made; and if it does so that court shall send to the Crown Solicitor a certificate of the conviction signed by the proper officer of that court.

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

(6) Where—

- (a) a probationer is convicted of and dealt with in respect of an offence, other than an offence against section 50G, committed during the probation period by a court having jurisdiction similar to that of the court of another State or a Territory by which the probation order was made; or
- (b) it is proved to the satisfaction of a court having jurisdiction similar to that of the court of another State or a Territory by which the probation order was made that the probationer has been convicted of and dealt with in respect of an offence, other than an offence against section 50G, committed during the probation period,

the court may make an order pursuant to subsection (1) of section 50K with respect to the probationer or deal with him in accordance with the provisions of subsection (4) of that section.

(7) Where a probationer in whose case the probation order was made by a court of another State or a Territory having jurisdiction similar to that of a court of petty sessions is convicted before the Supreme Court or the District Court of an offence committed during the probation period, the Supreme Court or District Court may make an order pursuant to subsection (1) of section 50K with respect to the probationer or deal with him in accordance with the provisions of subsection (4) of that section, and any sentence imposed shall be regarded as the sentence of a court of petty sessions.

(8) Where a probationer in whose case the probation order was made by a court of another State or a Territory having jurisdiction similar to that of the District Court is convicted before the Supreme Court of an offence committed during the probation period, the Supreme Court may make an order pursuant to subsection (1) of section 50K with respect to the probationer or deal with him in accordance with the provisions of subsection (4) of that section, and any sentence imposed shall, for all purposes, be regarded as the sentence of the District Court imposed on a conviction of indictment.

[Section 50J inserted by No. 3 of 1969 s. 34; amended by No. 57 of 1976 s. 36.]

#### **Consequences on conviction**

**50K.** (1) A court duly authorized in that behalf under section 50J (6), (7) or (8)—

- (a) may order that the probationer be returned to the State or Territory in which the probation order was made either forthwith or at the expiration, or at any time before the expiration, of a term of imprisonment or detention which he is serving or to which he has been sentenced; and
- (b) may, for that purpose, by warrant under hand in the prescribed form direct that the probationer be kept in custody in a prison, lock-up or other place of detention specified in the warrant and delivered into the custody of a member of the police force or other person to whom a court, judge, magistrate or justice of the peace of that State or Territory has directed a warrant, in this section referred to as an "interstate warrant", authorizing the apprehension of the probationer and directing that he be brought before a court of that State or Territory to be dealt with according to law for that he has been convicted of and dealt with for an offence committed during the probation period.

(2) A warrant issued by a court of this State under subsection (1) may be executed according to its tenor but the warrant does not authorize the detention in custody of a person after the expiration of a period of 14 days commencing on the day on which that person is taken into custody or commences to be detained under the warrant.

(3) On production to a justice of an interstate warrant, the justice, may make an endorsement as prescribed on that warrant authorizing the execution thereof in this State and the interstate warrant when so endorsed—

- (a) authorizes the member of the police force of the State or Territory in which it was issued or other person to whom it is directed to take the probationer into his custody and to return him to the State or Territory in which the interstate warrant was issued; and
- (b) authorizes, for that purpose, the detention of the probationer in a prison, lock-up or other place of detention for such period not exceeding 14 days as may be specified in the endorsement to the interstate warrant pursuant to this subsection.

(4) Subject to subsection (5), a court duly authorized in that behalf pursuant to section 50J (6), (7) or (8) may, where an order under subsection (1) is not made or, where made, has been discharged under subsection (7), deal with the probationer for the offence against section 50J in any manner in which the court could deal with him if the act or omission constituting the offence in respect of which the probation order was made had taken place within the jurisdiction of the court and if it had just convicted him of an offence constituted by that act or omission and punishable by a penalty not exceeding the maximum penalty prescribed by the law of the State or Territory in which the probation order was made for the offence in respect of which that order was made.

(5) A court shall not deal with a probationer pursuant to subsection (4) unless it appears that the appropriate court or authority of the State or Territory in which the probation order was made does not require the return of the probationer to that State or Territory to be dealt with for the offence in respect of which that order was made.

(6) The court before which the probationer is brought may discharge the probationer, admit him to bail on such conditions as it thinks fit, or authorize his detention in a prison, lock-up or other place of detention for a reasonable period not exceeding 14 days, pending receipt of instructions from the appropriate court or authority in the State or Territory in which the probation order was made whether the return of the probationer to that State or Territory is desired or not.

(7) Where an order has been made under subsection (1), the court may at any time before the expiration of a period of 14 days commencing on the day on which the warrant issued under that subsection is expressed to take effect discharge the order and may thereupon deal with the probationer as provided by subsection (4).

(8) A probationer who has been dealt with under the provisions of a law of another State or a Territory corresponding to the provisions of section 17 for that he has been convicted of, and dealt with for, an offence committed during the probation period is not liable to be dealt with under this section or under section 50J on account of that conviction.

(9) Any sentence imposed by the court pursuant to subsection (4) shall be regarded as a sentence imposed on a conviction and where the court is the Supreme Court or the District Court the provisions of Chapter LXIX of *The Criminal Code* so far as applicable apply accordingly for the purposes of any appeal against that sentence.

[Section 50K inserted by No. 3 of 1969 s. 35; amended by No. 57 of 1976 s. 37.]

#### **Application of sections 17 and 18**

**50L.** In the application of sections 17 and 18 pursuant to section 50B, for the purposes of this Part the provisions of the first-mentioned sections shall be read as if the reference therein to the foregoing provisions of this Act were a reference to the provisions of Division 1 of Part IIIA.

[Section 50L inserted by No. 3 of 1969 s. 36.]

[Division 2. Division 2 repealed by No. 129 of 1987 s. 23 (1).]

#### *Division 3—General*

[Division 3 inserted by No. 3 of 1969 s. 44.]

#### **Probationers and prisoners in transit**

**50U.** (1) Where an interstate warrant of a kind referred to in section 50H (1) or section 50K (1), in this section referred to as an “interstate warrant”, has been issued under a law of another State or a Territory and the person to whom the warrant relates is brought into this State in the custody of a person who appears to have been entitled under the authority of the warrant to have custody of that person in the State or Territory from which he is so brought that warrant authorizes the member of the police force or other person to whom it is directed, for the purposes of conveying him to the State or Territory in which the warrant was issued, to take or keep the person to whom it relates in custody in this State.

(2) An interstate warrant is sufficient authority for the detention in custody of the person to whom it relates in a prison, lock-up or other place of detention.

(3) A person shall not be detained in custody under an interstate warrant after the expiration of 5 days from the time when the person was brought into the State in custody in pursuance of the warrant.

(4) An interstate warrant authorizes a member of the police force or other person to whom the warrant is directed and all Police Officers of this State to apprehend the person to whom the warrant relates if that person escapes from custody and return him to any custody in which he may be detained under the authority of the warrant.

*[Section 50U inserted by No. 3 of 1969 s. 44; amended by No. 129 of 1987 s. 23 (2).]*

**Proof of orders etc., made in another State or Territory**

**50V.** (1) A certificate under the hand of a member, secretary or other proper officer of a prescribed authority of another State or a Territory purporting to record any order, determination or decision of the other authority is evidence of that order, determination or decision, and of the making of the order, determination or decision.

(2) All courts, and persons having, by law or consent of the parties, authority to hear, receive and examine evidence—

- (a) shall take judicial notice of the signature of every person who is or has been a member, secretary or other proper officer of a prescribed authority of another State or a Territory that is attached or appended to any document that is or relates to a probation order made or having force and effect in that State or Territory; and
- (b) shall unless the contrary is proved, presume that every such signature is properly attached or appended thereto.

(3) In proceedings under this Act relating to a probationer, a document under the hand of the Chief or Principal Probation Officer, or the Chief or Principal Parole Officer of the State or Territory in which the probation order in question was made or where made in this State is in force and effect, setting forth matters relevant to the offence upon conviction for which the probation order was made, the probationer's conduct subsequent to release upon probation order, his antecedents and other matters relevant to his probation shall be received by all courts and the Board as evidence of the matters set forth therein.

(4) All courts and the Board and persons having, by law or consent of the parties, authority to hear, receive and examine evidence—

- (a) shall take judicial notice of the signature of every person who is or has been the Chief or Principal Probation Officer, or the Chief or Principal Parole Officer, or other prescribed officer, of another State or a Territory, that is attached or appended to any document that relates to a probation order made, or having force and effect, in that State or Territory or to a probationer in respect of whom such an order is made; and

- (b) shall unless the contrary is proved, presume that every such signature is properly attached or appended thereto.

[Section 50V inserted by No. 3 of 1969 s. 45; amended by No. 129 of 1987 s. 23 (2).]

**Consultation with respect to breaches of probation orders**

**50W.** (1) Except in special circumstances, before proceedings are taken under this Part with respect to a breach of a probation order to which this Part relates, the chief executive officer—

- (a) shall give notice thereof to the corresponding officer of the other State or Territory in which the probation order was made;
- (b) shall invite that officer of the other State or Territory to make such report and recommendation, as he thinks fit, with respect to the proposed proceedings; and
- (c) shall give due consideration to any report and recommendation made under paragraph (b).

(2) In any proceedings under this Part with respect to breaches of an order referred to in subsection (1), a court may take into consideration any report and recommendation made under paragraph (b) of that subsection.

[Section 50W inserted by No. 3 of 1969 s. 46; amended by No. 89 of 1982 s. 23; No. 47 of 1987 s. 21; No. 113 of 1987 Schedule 2; No. 129 of 1987 s. 23 (2).]

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;
- (b) where ordered by a court or judge to do so; or
- (c) to such persons or bodies or in such circumstances as the Attorney General approves from time to time,

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.

[Section 51 amended by No. 68 of 1983 s. 11.]

**Power to take proceedings**

**51A.** (1) (a) Proceedings in respect of offences arising under Part II, IIA and Division 1 of Part IIIA may be taken by the chief executive officer or by a person authorized in writing in that behalf by that officer.

(b) A certificate under the hand of the chief executive officer of an authorization under this subsection is evidence of that authorization.

(2) (a) Proceedings in respect of offences arising under Part III may be taken by a person authorized in that behalf by the Board either generally or in a particular case.

(b) A certificate under the hand of the secretary to the Board of an authorization under this subsection is evidence of that authorization.

[Section 51A inserted by No. 3 of 1969 s. 47; amended by No. 57 of 1976 s. 38; No. 89 of 1982 s. 26; No. 47 of 1987 s. 21; No. 113 of 1987 Schedule 2; No. 129 of 1987 s. 23 (2).]

**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.

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**SCHEDULE 1**

(Section 48)

*Provisions as to Existing and Former Parolees***Definition**

1. In this Schedule—

“commencement date” means the day of the commencement of section 6 of the *Acts Amendment (Imprisonment and Parole) Act 1987*<sup>1</sup>;

“prescribed prisoner” means a prisoner in respect of whose term of imprisonment a minimum term was fixed.

**Calculation of parole period for existing parolees**

2. (1) Where, immediately before the commencement date, a prescribed prisoner is on parole and has been on that parole for a period of not less than 2 years the parole period is the period expiring on the commencement date.



(2) Where, immediately before the commencement date, a prescribed prisoner is on parole and has been on that parole for a period of less than 2 years the parole period expires—

- (a) at the expiration of the term of imprisonment from which the prisoner was released on parole; or
- (b) when the prisoner has been on parole for 2 years,

whichever occurs first.

**Calculation of further parole periods for existing and former parolees**

3. Where—

- (a) a prescribed prisoner who is on parole and has been on that parole since before the commencement date is again released on parole under section 44 (3b);
- (b) a prescribed prisoner who was on parole immediately before the commencement date and who has been returned to prison under section 44 (3) is again released on parole under section 45; or
- (c) a prescribed prisoner who is in prison having been returned to prison before the commencement date under section 44 (3) is again released on parole under section 45,

the parole period is whichever is the lesser of—

- (d) the period from the time the prisoner is so released until the expiration of the term of imprisonment from which the prisoner is so released; or
- (e) 2 years.

[Schedule 1 added by No. 129 of 1987 s. 24.]

**NOTES**

<sup>1</sup>. This reprint is a compilation as at 24 August 1988 of the *Offenders Probation and Parole Act 1963* and includes all amendments effected by the other Acts referred to in the following Table<sup>10, 11</sup>.

**Table of Acts**

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Offenders Probation and Parole Act 1963</i>	23 of 1963	13 November 1963	Parts I, III and IV: 1 October 1964 (see <i>Gazette</i> 25 September 1964 p. 3325); Part II: 1 January 1965 (see <i>Gazette</i> 11 December 1964 p. 3995)	
<i>Offenders Probation and Parole Act Amendment Act 1964</i>	34 of 1964	3 November 1964	3 November 1964	
<i>Offenders Probation and Parole Act Amendment Act 1965</i>	73 of 1965	25 November 1965	17 December 1965 (see <i>Gazette</i> 17 December 1965 p. 4191)	
<i>Offenders Probation and Parole Act Amendment Act 1969</i>	3 of 1969	21 April 1969	1 July 1969 (see <i>Gazette</i> 27 June 1969 p. 1874)	
<i>Offenders Probation and Parole Act Amendment Act 1970</i>	40 of 1970	23 September 1970	23 September 1970	

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Offenders Probation and Parole Act Amendment Act 1971</i>	16 of 1971	4 October 1971	4 October 1971	
<i>Offenders Probation and Parole Act Amendment Act 1976</i>	57 of 1976	16 September 1976	1 February 1977 (see <i>Gazette</i> 28 January 1977 p. 186)	
<i>Offenders Probation and Parole Act Amendment Act 1977</i>	39 of 1977	7 November 1977	7 November 1977	
<i>Acts Amendment (Strict Security Life Imprisonment) Act 1980, Part III</i>	96 of 1980	9 December 1980	9 December 1980	
<i>Acts Amendment (Prisons) Act 1981, Part II</i>	116 of 1981	14 December 1981	1 August 1982 (see section 2)	
<i>Offenders Probation and Parole Amendment Act 1982</i>	89 of 1982	17 November 1982	10 December 1982 (see <i>Gazette</i> 10 December 1982 p. 4779)	Section 24 transitional, section 25 references in other Acts, etc. <sup>2</sup>
<i>Offenders Probation and Parole Amendment Act 1983 (as amended by Act No. 129 of 1987)</i>	68 of 1983	22 December 1983	6 April 1984 (see <i>Gazette</i> 6 April 1984 p. 925)	Sections 8, 9 and 10 repealed by Act No. 129 of 1987
<i>Acts Amendment (Abolition of Capital Punishment) Act 1984, Part IV</i>	52 of 1984	5 September 1984	3 October 1984	
<i>Offenders Probation and Parole Amendment Act 1985</i>	24 of 1985	24 April 1985	5 September 1984 (see section 2)	
<i>Offenders Probation and Parole Amendment Act (No. 2) 1985</i>	118 of 1985	17 December 1985	17 February 1986 (see <i>Gazette</i> 17 February 1986 p. 423)	Section 8 transitional <sup>5</sup>
<i>Acts Amendment (Corrective Services) Act 1987, Part III</i>	47 of 1987	3 October 1987	11 December 1987 (see <i>Gazette</i> 11 December 1987 p. 4363)	
<i>Acts Amendment (Public Service) Act 1987, Schedule 2, Item 23</i>	113 of 1987	31 December 1987	16 March 1988 (see <i>Gazette</i> 16 March 1988 p. 813)	
<i>Acts Amendment (Imprisonment and Parole) Act 1987, Part II</i>	129 of 1987	21 January 1988	15 June 1988 (see <i>Gazette</i> 20 May 1988 p. 1664)	Section 5 (2) transitional <sup>4</sup> , section 10 (2) saving <sup>7</sup> , section 22 (2) application <sup>9</sup>

2. Sections 24 and 25 of Act No. 89 of 1982 read as follows—

Transitional

“ 24. (1) Section 9 of the principal Act, as amended by section 7 of this Act, applies to a person who, having been convicted of an offence referred to in section 9 (1) before the date of the coming into operation of section 7 of this Act, has not been sentenced for that offence before that date.

(2) Section 20B of the principal Act, as amended by section 10 of this Act, applies to a person who, having been convicted of an offence referred to in section 20B (1) before the date of the coming into operation of section 10 of this Act, has neither been sentenced for that offence nor dealt with under section 9 or section 20B of the principal Act before that date.

(3) The person holding office as Chief Probation Officer immediately before the coming into operation of this Act shall continue in office and be deemed to have been appointed to the office of Director, Probation and Parole Services referred to in section 5A of the principal Act.

(4) The person holding office as Deputy Chief Probation Officer immediately before the coming into operation of this Act shall continue in office and be deemed to have been appointed to the office of Deputy Director, Probation and Parole Services referred to in section 5A of the principal Act.

References in other Acts, etc.

25. (1) A reference in any law of the State to the Chief Probation Officer shall, unless the context otherwise requires, be read and construed as a reference to the Director, Probation and Parole Services and on a reprint of an Act or regulation pursuant to statutory authority the reference may be altered accordingly.

(2) A reference in any law of the State to the Chief Parole Officer shall, unless the context otherwise requires, be read and construed as a reference to the Director, Probation and Parole Services and on a reprint of an Act or regulation pursuant to statutory authority the reference may be altered accordingly.

(3) For the purposes of this section the term “law of the State” means—

- (a) an Act;
- (b) any regulation or rule having effect by virtue of an Act; or
- (c) any instrument having effect by virtue of an Act or of any regulation or rule referred to in paragraph (b). ”.

3. Previously *Workers' Compensation Act 1912*.

4. Section 5 (2) of Act No. 129 of 1987 reads as follows—

“ (2) Where at the commencement of this section a member of a community service advisory committee under section 20R of the principal Act has held office for not less than 3 years since being appointed, the office of that member shall become vacant at the commencement of this section. ”.

5. Section 8 of Act No. 118 of 1985 reads as follows—

“ 8. Notwithstanding the repeal and substitution of section 21 (2) of the principal Act by section 3 of this Act, every person who holds office as an appointed member immediately before this Act comes into operation shall, subject to this Act, continue to hold office as an appointed member for the unexpired portion of the term for which he or she was appointed. ”.

6. Repealed by Act No. 115 of 1981.

7. Section 10 (2) of Act No. 129 of 1987 reads as follows—

“ (2) Notwithstanding subsection (1), section 34AA of the principal Act shall continue to apply to and in relation to a person in respect of whom an order under section 19 (6a) (a) of *The Criminal Code* was made before the commencement of section 31 of this Act. ”.
8. Title changed pursuant to section 7 (3) (h) of the *Reprints Act 1984* and section 31 of the *Acts Amendment (Public Service) Act 1987*.
9. Section 22 (2) of Act No. 129 of 1987 reads as follows—

“ (2) The doing or omission of any act, matter, or thing before the commencement of subsection (1) shall be deemed to have always been as valid and effectual as it would have been if section 50 of the *Offenders Probation and Parole Act 1963* as enacted by subsection (1) had been in operation when the act, matter, or thing was done or omitted. ”.
10. As at the date of this reprint the following Acts were not in operation—
  - (i) Act No. 52 of 1981 (*Acts Amendment (Mental Health) Act 1981*); and
  - (ii) Act No. 87 of 1982 (*Acts Amendment (Bail) Act 1982*).
11. Marginal notes in the *Offenders Probation and Parole Act 1963* referring to legislation of other jurisdictions have been omitted from this reprint.