

Commonwealth Prisoners

No. 58 of 1967

An Act relating to Sentences of Imprisonment imposed on,
and the Release on Parole of, certain persons
convicted of Offences against Laws of the
Commonwealth.

[Assented to 11 September 1967]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and
the House of Representatives of the Commonwealth of Australia,
as follows:—

1. This Act may be cited as the *Commonwealth Prisoners Act 1967*. Short title.
2. This Act shall come into operation on a date to be fixed by Commence-
Proclamation. ment.
- 3.—(1.) In this Act, unless the contrary intention appears— Interpretation.
 - “ constable ” means a Commonwealth Police Officer or a member of
the police force of a State or Territory;
 - “ federal court ” means the High Court or a court created by the
Parliament, other than a court of a Territory;
 - “ federal offender ” means a person convicted of an offence against a
law of the Commonwealth;
 - “ minimum term of imprisonment ” means that part of a term of
imprisonment to which a person has been sentenced by a court
that is fixed by the court as the period during which the person
is not eligible to be released on parole;

“offence” includes an offence—

- (a) at common law;
- (b) against a law of the Commonwealth or of a State or Territory; and
- (c) against an Imperial Act or order;

“parole officer” means—

- (a) an officer of a State in respect of whom an arrangement in force under paragraph (b) of sub-section (1.) of section 21 of this Act is applicable; or
- (b) an officer of the Public Service of the Commonwealth, or an officer of a Territory, in respect of whom an appointment in force under sub-section (2.) of section 21 of this Act is applicable;

“parole order” means an order made under sub-section (1.) of section 5 of this Act and, if such an order has been amended, means the order as amended;

“prescribed authority” means—

- (a) a person who holds office as a Chief, Police, Stipendiary, Resident or Special Magistrate of a State and in respect of whom an arrangement in force under paragraph (a) of sub-section (1.) of section 21 of this Act is applicable; or
- (b) a person who holds office as a Chief, Police, Stipendiary, Resident or Special Magistrate of a Territory;

“prison” includes any place where a person who has been sentenced to a term of imprisonment may be detained to undergo that imprisonment and includes in relation to detention in prison in accordance with paragraph (b) of sub-section (2.) of section 8 of this Act a lock-up or other place of custody;

“State offender” means a person convicted of an offence against a law (not being a law of the Commonwealth) in force in a State;

“Territory” means a Territory of the Commonwealth forming part of the Commonwealth;

“Territory offender” means a person convicted of an offence against a law (not being a law of the Commonwealth) in force in a Territory;

“the parole period”, in relation to a person who has been released from prison on parole in pursuance of section 5 of this Act, means the period that—

- (a) commences on the day on which the person is released from prison; and

(b) ends—

(i) in the case of a person imprisoned for life—on the day fixed by the parole order as the day on which the parole expires; or

(ii) in any other case—on the day on which the term of imprisonment to which that person was sentenced expires,

or, if the parole order in relation to the person is revoked or cancelled, on the date of the revocation or cancellation.

(2.) A reference in this Act, other than section 21, to the Governor-General shall be read as a reference to the Governor-General acting with the advice of the Attorney-General.

(3.) For the purposes of this Act, a person shall be deemed to have served a term of imprisonment—

(a) when he is discharged from imprisonment; or

(b) when he would, but for the fact that he is serving another term of imprisonment, have been discharged from imprisonment.

4.—(1.) Where a federal court or a court of a State or Territory sentences a federal offender to a term of imprisonment—

Fixing of
minimum
term of
imprisonment.

(a) if, under the law of the State or Territory where the offender is convicted, a court of the State or Territory is required (or is required except in specified circumstances), when sentencing a State offender or a Territory offender to a like term of imprisonment, to fix a lesser term of imprisonment during which the State offender or Territory offender is not to be eligible to be released on parole—the court shall fix (or shall, unless the like circumstances exist, fix) a lesser term of imprisonment during which the federal offender is not to be eligible to be released on parole; or

(b) if, under the law of the State or Territory where the offender is convicted, a court of the State or Territory is permitted, when sentencing a State offender or a Territory offender to a like term of imprisonment, to fix a lesser term of imprisonment during which the State offender or Territory offender is not to be eligible to be released on parole—the court may fix a lesser term of imprisonment during which the federal offender is not to be eligible to be released on parole.

(2.) In fixing a lesser term of imprisonment in pursuance of the last preceding sub-section, the court shall have regard to the matters to which it would have regard if the law of the State or Territory in which the offender was convicted were applicable.

(3.) Where—

- (a) a court of a State or Territory that sentences a federal offender to a term of imprisonment fails to fix, or fails properly to fix, as required by the last two preceding sub-sections, a minimum term of imprisonment in relation to the offender; and
- (b) if that court had sentenced a State offender or a Territory offender to a like term of imprisonment but had failed to fix, or had failed properly to fix, a minimum term of imprisonment in relation to the offender, that court or another court of the State or Territory would, under the law of the State or Territory, be empowered, upon application in accordance with that law, to fix a minimum term of imprisonment in relation to the offender.

that court or that other court may, upon application by the Attorney-General or the informant or complainant, fix a minimum term of imprisonment in relation to the federal offender.

(4.) For the purposes of the preceding provisions of this section, the law of a State or Territory with respect to the fixing of minimum terms of imprisonment shall be deemed to be the provisions of the law of that State or Territory with respect to the fixing of minimum terms of imprisonment that are applicable in respect of a State offender or a Territory offender who is before a court for sentence for only one offence and is not already serving a term of imprisonment for another offence, but this sub-section does not prevent a court, in fixing a minimum term of imprisonment under this section in respect of one offence, from taking into account any matter that the court thinks relevant, including another offence or a sentence in respect of another offence.

(5.) Notwithstanding sub-section (1.) of section 19 of the *Crimes Act* 1914–1966, where a court sentences a federal offender to a term of imprisonment and, at the time of the sentence, the offender is under sentence of imprisonment for an offence that is not an offence against a law of the Commonwealth but is an offence in respect of which a minimum term of imprisonment was fixed, the court may direct that the sentence imposed by it is to commence to be served at the expiration of service of that minimum term of imprisonment.

(6.) Where an offender is sentenced to a term of imprisonment for an offence against a law of the Commonwealth in respect of which a minimum term of imprisonment is fixed and, at the same time or a later time but before he has served that minimum term of imprisonment, the offender is sentenced to a further term of imprisonment for another offence against a law of the Commonwealth in respect of which a minimum term of imprisonment is fixed, then the minimum term fixed in respect of that other offence is cumulative upon, or concurrent with, that fixed in respect of the first-mentioned offence according as the term of imprisonment imposed is cumulative upon, or concurrent with, the term imposed in respect of the first-mentioned offence.

(7.) Where a person has been sentenced as a federal offender to several terms of imprisonment in respect of any of which a minimum term of imprisonment has been fixed, the sentences of the following categories shall be served in the following order:—

- (a) first, any terms in respect of which no minimum terms of imprisonment were fixed and so much of any minimum term of imprisonment as is to be served concurrently with any of those terms;
- (b) second, any minimum terms of imprisonment, other than any minimum term, or part of a minimum term, referred to in the last preceding paragraph; and
- (c) third, the unserved balances of any terms in respect of which minimum terms of imprisonment were fixed.

(8.) Where, during the service of a sentence referred to in the last preceding sub-section, a further sentence is imposed in respect of an offence against a law of the Commonwealth, service of the first-mentioned sentence shall, if necessary, be suspended in order that the sentences may thereafter be served in accordance with the order referred to in that sub-section.

5.—(1.) Subject to this section, the Governor-General may, in his discretion, by order in writing, direct that a person, being a person who is serving a term of imprisonment for an offence against a law of the Commonwealth in respect of which a minimum term of imprisonment has been fixed, be released from prison on parole at a time specified in the order, being a time that is after the expiration of that minimum term of imprisonment.

Release of
offenders on
parole.

(2.) An order under the last preceding sub-section in relation to a person is sufficient authority for the release of the person from prison.

(3.) Where—

- (a) a court fixes a minimum term of imprisonment in respect of an offence committed by a person against a law of the Commonwealth; and
- (b) at the time when that minimum term of imprisonment expires the person is under sentence for another offence, whether he has commenced to serve that other sentence or not,

a parole order shall not specify a date for his release that is a date before he has served the minimum term of imprisonment fixed in respect of that other offence, or, if no minimum term of imprisonment is fixed in respect of that other offence, that is before he has served the term of imprisonment in respect of that other offence.

(4.) A parole order—

- (a) shall be expressed to be subject to the condition that the person to whom it relates shall, during the parole period, be subject to the supervision of a parole officer appointed in accordance with the order and shall obey all reasonable directions of that officer; and

(b) is subject to such other conditions, if any, as are specified in the order.

(5.) The Governor-General may, at any time before the expiration of the parole period, by order in writing—

(a) amend a parole order by varying or revoking a condition of the order, other than the condition referred to in paragraph (a) of the last preceding sub-section, or by imposing additional conditions; or

(b) revoke the parole order.

(6.) An amendment of a parole order under the last preceding sub-section does not have effect until notice of the amendment is given to the person to whom the parole order relates, being notice given before the expiration of the parole period.

(7.) Where a person to whom a parole order relates is sentenced to a term of imprisonment in respect of an offence committed during the parole period, the parole order shall thereupon be deemed to have been revoked and, if the parole period has already expired, to have been revoked as from the time immediately before the expiration of the parole period.

(8.) Where—

(a) a parole order in relation to a person is revoked; or

(b) the person to whom a parole order relates has, during the parole period, failed to comply with a condition of the parole order or there are reasonable grounds for suspecting that he has, during that period, failed to comply with a condition of that order,

a constable may, without warrant, arrest the person.

(9.) Where a constable arrests a person in pursuance of the last preceding sub-section, the constable shall, as soon as practicable, take the person before a prescribed authority in the State or Territory in which the person is arrested.

Cancellation
of parole by
prescribed
authority.

6. If a constable arrests a person in the circumstances specified in paragraph (b) of sub-section (8.) of the last preceding section, the prescribed authority shall, if he is satisfied that the person has failed, without reasonable excuse, to comply with a condition of the parole order, by writing under his hand, cancel the order.

Issue of
warrant where
person in
State or
Territory in
which
released from
prison.

7.—(1.) This section applies where—

(a) a person has been brought before a prescribed authority in pursuance of sub-section (9.) of section 5 of this Act in the State or Territory in which he was imprisoned immediately before being released from prison in pursuance of a parole order; and

- (b) the prescribed authority is satisfied that the parole order in relation to the person has been revoked or the prescribed authority cancels the parole order in relation to the person.

(2.) Where this section applies, the prescribed authority shall issue a warrant—

- (a) authorizing any constable to convey the person to such prison in the State or Territory as is specified in the warrant; and
- (b) directing that the person, having been conveyed to that prison in that State or Territory in accordance with the warrant, be detained in prison in that State or Territory to undergo imprisonment for the part of the term of imprisonment to which the parole order relates that he has not served.

8.—(1.) This section applies where—

- (a) a person has been brought before a prescribed authority in pursuance of sub-section (9.) of section 5 of this Act in a State or Territory other than the State or Territory in which he was imprisoned immediately before being released from prison in pursuance of a parole order; and
- (b) the prescribed authority is satisfied that the parole order in relation to the person has been revoked or the prescribed authority cancels the parole order in relation to the person.

Issue of warrant where person in State or Territory other than that in which released from prison.

(2.) Where this section applies, the prescribed authority shall, subject to the next succeeding sub-section, issue a warrant—

- (a) authorizing any constable to convey the person to such prison, lock-up or other place of custody in the State or Territory in which the person was arrested as is specified in the warrant;
- (b) directing that the person, having been conveyed to that prison, lock-up or other place of custody in that State or Territory in accordance with the warrant, be detained in prison in that State or Territory—
 - (i) for twenty-one days or, if the person institutes an appeal under section 11 of this Act, until the appeal has been disposed of; and
 - (ii) if the person does not institute such an appeal or the appeal is not successful, for such further period as may elapse before the person is taken into the custody of a constable as authorized under the next succeeding paragraph;
- (c) authorizing any constable, after the expiration of the period referred to in paragraph (i) of the last preceding paragraph, unless an appeal referred to in that paragraph has been allowed, to take the person into custody and convey the person to such prison in the State or Territory in which he was imprisoned before being released from prison in pursuance of the parole order as is specified in the warrant; and

- (d) directing that the person, having been conveyed to that prison in that State or Territory in accordance with the warrant, be detained in prison in that State or Territory to undergo imprisonment for the part of the term of imprisonment to which the parole order related that he has not served.

(3.) If there is produced to the prescribed authority before whom the person is brought a document under the hand of the Attorney-General, or a person authorized in writing by the Attorney-General to make requests under this section, requesting that the person be imprisoned in the State or Territory in which the person was arrested, the prescribed authority shall issue a warrant—

- (a) authorizing any constable to convey the person to such prison in that State or Territory as is specified in the warrant; and
- (b) directing that the person, having been conveyed to that prison in that State or Territory in accordance with the warrant, be detained in prison in that State or Territory to undergo imprisonment for the part of the term of imprisonment to which the parole order related that he has not served.

Remand of
person by
prescribed
authority.

9.—(1.) Where a person has been brought before a prescribed authority in pursuance of sub-section (9.) of section 5 of this Act, the prescribed authority may defer or adjourn the hearing of the matter and may—

- (a) by warrant from time to time remand the person to a prison, lock-up or other place of custody there to be kept until the time appointed for continuing the hearing; or
- (b) order the release of the person upon his entering into a recognizance, with or without sureties, conditioned for his appearance at the time and place appointed for continuing the hearing.

(2.) Where a person who has been released on recognizance in pursuance of this section breaks a condition of the recognizance, a constable may without warrant arrest the person and bring him before a prescribed authority and the prescribed authority shall issue a warrant in accordance with paragraph (a) of the last preceding sub-section.

Release of
person on
recognizance.

10.—(1.) Where—

- (a) a warrant has been issued in respect of a person under section 7 or section 8 of this Act; and
- (b) an appeal is instituted by the person in pursuance of the next succeeding section.

a prescribed authority may, on the application of the person, order the release of the person upon his entering into a recognizance, with or without sureties, conditioned for his reporting in person at the time or times and at the place or places specified in the recognizance.

(2.) Where an appeal under the next succeeding section is allowed, a recognizance under the last preceding sub-section shall thereupon cease to have effect.

(3.) Where a recognizance under sub-section (1.) of this section is in force in relation to the person, a warrant issued in respect of the person under section 7 or section 8 of this Act shall not, unless the person breaks a condition of the recognizance, be executed or further executed before the appeal is disposed of.

11.—(1.) Where a prescribed authority, in pursuance of section 6 of this Act, cancels a parole order, the person to whom the order relates may appeal to the Supreme Court of the State or Territory in which he was arrested against the cancellation and the Court shall—

Appeal from decision of prescribed authority to cancel parole order.

- (a) if it is satisfied that the ground on which the parole order was cancelled has been established—confirm the cancellation; or
- (b) if it is not so satisfied—order that the cancellation and any warrant issued as a result of the cancellation cease to have effect.

(2.) An appeal under the last preceding sub-section shall be instituted by lodging a notice of appeal with the Court within twenty-one days of the day on which the parole order was cancelled.

(3.) An appeal under sub-section (1.) of this section shall be by way of re-hearing, but the Court may have regard to any evidence given before the prescribed authority.

12.—(1.) A prescribed authority exercising any powers under this Act may take evidence on oath or affirmation and for that purpose may administer an oath or affirmation.

Evidence before prescribed authority.

(2.) A prescribed authority exercising any powers under this Act may summon a person to appear before him to give evidence and to produce such documents and articles (if any) as are referred to in the summons.

(3.) A summons under this section shall be served in the same manner as a summons to a witness to appear before a court of summary jurisdiction in the State or Territory where the summons under this section is issued.

13.—(1.) A person who has been duly served with a summons to appear before a prescribed authority shall not, without reasonable excuse, fail to appear in obedience to the summons.

Disobedience to summons &c.

(2.) A person who has been duly served with a summons to produce a document or article to a prescribed authority shall not, without reasonable excuse, fail to produce the document or article.

(3.) A person who appears before a prescribed authority shall not, without reasonable excuse, refuse to be sworn or make an affirmation or refuse to produce documents or articles, or to answer questions, that he is required by the prescribed authority to produce or answer.

Penalty: One hundred dollars.

Service of
term of
imprisonment.

14. Where a parole order in relation to a person is revoked or cancelled and the person is taken into custody in pursuance of this Act, the person shall, during any period in which he is in custody in pursuance of this Act, be deemed to be serving the part of the term of imprisonment that remained to be served at the commencement of the parole period.

Serving of
balance of
term of
imprisonment
when sentenced
to further
imprisonment.

15.—(1.) This section applies to a person—

- (a) who has been sentenced in a State or Territory to a term of imprisonment for an offence committed while a parole order is in force in relation to him; and
- (b) whose parole order is, by reason of that sentence, to be deemed to have been revoked by virtue of sub-section (7.) of section 5 of this Act.

(2.) A person to whom this section applies shall, subject to the next succeeding sub-section, be detained in prison in the State or Territory referred to in the last preceding sub-section to undergo imprisonment for the part of the term of imprisonment that he had not served at the time when he was released from prison in pursuance of the parole order.

(3.) Where a person to whom this section applies has been sentenced to a term of imprisonment in a State or Territory other than the State or Territory in which he was imprisoned immediately before being released from prison in pursuance of the parole order, a prescribed authority in that first-mentioned State or Territory shall, if there is produced to him a document under the hand of the Attorney-General so requesting, issue a warrant—

- (a) authorizing any constable to convey the person to such prison in the State or Territory in which he was imprisoned before being released from prison in pursuance of the parole order as is specified in the warrant; and
- (b) directing that the person, having been conveyed to that prison in that State or Territory in accordance with the warrant, be detained in prison in that State or Territory to undergo imprisonment for the part of the term of imprisonment to which the parole order related that he has not served.

(4.) Subject to the next succeeding sub-section, a person to whom this section applies shall be deemed not to be serving the part of the term of imprisonment that he had not served at the time when he was released from prison in pursuance of the parole order, and a warrant under the last preceding sub-section shall not be executed, until he has served the minimum term of imprisonment fixed in respect of the offence referred to in paragraph (a) of sub-section (1.) of this section or, if no minimum term of imprisonment has been fixed in respect of that offence, until he has served the term of imprisonment to which he has been sentenced for that offence.

(5.) Where the offence committed by a person to whom this section applies that is referred to in paragraph (a) of sub-section (1.) of this section is an offence against a law of the Commonwealth and a minimum term of imprisonment is fixed in respect of that offence, he shall not be deemed to have commenced to serve so much of the term of imprisonment fixed in respect of that offence as exceeds the minimum term of imprisonment until after he has served the part of the term of imprisonment to which the parole order relates that he had not served at the time when he was released from prison in pursuance of the parole order.

16.—(1.) Subject to the next succeeding sub-section, a parole order may be made in relation to a person who is serving a term of imprisonment notwithstanding that a previous parole order made in relation to the person in respect of the same term of imprisonment has been revoked or cancelled.

Release of person on parole after revocation or cancellation of previous parole order.

(2.) Where, after a parole order has been made in relation to a person, the person is sentenced to a term of imprisonment for an offence, another parole order shall not be made in relation to the person until he has served the minimum term of imprisonment fixed in respect of that offence or, if no minimum term of imprisonment has been fixed in respect of that offence, until the person has served the term of imprisonment to which he has been sentenced for that offence.

17.—(1.) Where a parole order is made in relation to a person—

- (a) he shall be deemed to be still under sentence of imprisonment, and not to have served the part of the term of imprisonment that remained to be served at the commencement of the parole period, until the parole period expires without the parole order being revoked or cancelled or until he is otherwise discharged from that imprisonment; and
- (b) if the parole period expires without the parole order being revoked or cancelled, he shall be deemed to have served the part of the term of imprisonment that remained to be served at the commencement of the parole period and to have been discharged from that imprisonment.

Effect of parole order on sentence.

(2.) Where a parole order in relation to a person is, under sub-section (7.) of section 5 of this Act, to be deemed to have been revoked as from the time immediately before the expiration of the parole period, the last preceding sub-section has effect as if the parole period had not expired without the parole order being revoked or cancelled.

18.—(1.) The several courts of the States are invested with federal jurisdiction, and jurisdiction is conferred on the several courts of the Territories, for the purposes of this Act.

Jurisdiction of State and Territory courts.

(2.) The jurisdiction with which courts of a State are invested by the last preceding sub-section is invested subject to the conditions and restrictions specified in paragraphs (a), (b) and (c) of sub-section (2.) of section 39 of the *Judiciary Act* 1903–1966.

Reductions and remissions of sentences of federal offenders.

19. The provisions of a law of a State or Territory relating to the reduction or remission of sentences or minimum terms of imprisonment apply to a federal offender who is serving a sentence of imprisonment in a prison of that State or Territory in like manner as those provisions apply in relation to a State offender or a Territory offender serving a sentence of imprisonment in that prison.

Detention of person in State or Territory prisons.

20. A person who, under a provision of this Act or a warrant issued under this Act, is to be detained in prison in a State or Territory, may be detained in any prison in that State or Territory and may be removed from one prison to another prison in that State or Territory as if he were undergoing imprisonment as a State offender or a Territory offender.

Prescribed authorities and parole officers.

21.—(1.) The Governor-General may arrange with the Governor of a State—

- (a) for the performance by persons who hold office as Chief, Police, Stipendiary, Resident or Special Magistrates in that State of the functions of a prescribed authority under this Act; and
- (b) for the performance by officers of that State of the functions of a parole officer under this Act.

(2.) The Attorney-General may appoint officers of the Public Service of the Commonwealth and officers of a Territory to be parole officers for the purposes of this Act.

(3.) Notice of an arrangement under sub-section (1.) of this section shall be published in the *Gazette*.

Exercise of Royal prerogative of mercy and operation of other Commonwealth laws or Territory laws.

22. This Act does not affect—

- (a) the exercise of the Royal prerogative of mercy;
- (b) the operation of section 17, section 19A or section 20 of the *Crimes Act 1914–1966*; or
- (c) the operation of any other law of the Commonwealth, or of any law in force in a Territory, relating to the release of offenders.

Regulations.

23. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for—

- (a) making provision for, or in relation to, the forfeiture of recognizances; and
- (b) prescribing the form of any warrant or recognizance under this Act.