



ANNO QUINTO
ELIZABETHÆ SECUNDÆ REGINÆ.

No. 5961.

An Act to effect certain Reforms in the Penal System
of Victoria.

[29th May, 1956.]

BE it enacted by the Queen's Most Excellent Majesty by
and with the advice and consent of the Legislative
Council and the Legislative Assembly of Victoria in this
present Parliament assembled and by the authority of the
same as follows (that is to say):—

1. (1) This Act may be cited as the *Penal Reform Act* 1956 and shall be read and construed as one with the *Crimes Act* 1928 (hereinafter called the Principal Act) and the Acts and the enactment amending the same all of which Acts and which enactment and this Act may be cited together as the Crimes Acts.

Short title
construction
and citation.
Nos. 3064, 5379,
5617 Pt. I., 5783,
5917, 5936.

(2) Except as is otherwise provided, this Act shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the *Government Gazette*.

Commencement.

(3) This Act is divided into Parts and Divisions as follows:—

Division into
Parts, &c.

Part I.—Probation.

Division 1.—Probation Officers.

Division 2.—Probation Orders.

Division 3.—Discharge and Amendment of
Orders.

Division 4.—Breach of Orders.

Division 5.—Effect of Probation.

Part

Part II.—Sentences and Parole.

Division 1.—Parole Board.

Division 2.—Sentences of Imprisonment.

Division 3.—Release on Parole and Cancellation of Parole.

Part III.—General.

Division 1.—Amendment of Principal Act and other Acts.

Division 2.—Transitory Provisions.

Division 3.—Regulations.

Interpretation.

2. In this Act unless inconsistent with the context or subject-matter—

“ Board.”

“ Board ” means the Parole Board under this Act.

“ Director.”

“ Director ” means the Director of Penal Services under the *Gaols Act* 1928 as amended by this Act, or the person for the time being acting in his stead.

“ Division.”

“ Division ” means Division of a Part.

“ Part.”

“ Part ” means Part of this Act.

“ Prescribed.”

“ Prescribed ” means prescribed by this Act or the regulations thereunder.

“ Term.”

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

PART I.—PROBATION.

DIVISION 1.—PROBATION OFFICERS.

Stipendiary
probation
officers.

No. 5124.

3. (1) Subject to the *Public Service Act* 1946 there may from time to time be appointed a chief probation officer and such other stipendiary probation officers as the Governor in Council thinks necessary for the purposes of the Crimes Acts.

Honorary
probation
officers.

(2) The Governor in Council may from time to time appoint fit persons to be honorary probation officers for the purposes of the Crimes Acts and may at any time remove any person so appointed.

Existing
probation
officers.

(3) All persons who immediately before the commencement of this Act were probation officers by virtue of appointment pursuant to section five hundred and thirty-six of the Principal Act shall as on and from the said commencement be honorary probation officers as if appointed under the last preceding sub-section.

(4) The

(4) The chief probation officer and all stipendiary and honorary probation officers shall in relation to any probation order be subject to direction by the court by which the probation order was made, but shall otherwise be under the control of the Director, and all stipendiary and honorary probation officers shall be under the immediate control of the chief probation officer.

Direction and control of probation officers.

(5) The functions powers and duties of the chief probation officer and of stipendiary and honorary probation officers shall be as prescribed by this Act and the regulations thereunder and by rules made in that behalf by the judges of the Supreme Court.

Functions powers and duties.

(6) The chief probation officer shall when so required by any court cause to be prepared and submitted to that court such reports upon and information with respect to any convicted person as the court requires.

Reports for courts.

(7) The Director shall once in every year within such period as is prescribed make to the Minister a report as to—

Annual report on probation, &c.

(a) the number of persons placed on probation during the prescribed period of twelve months, the number of probation orders discharged during the said period and the number of persons sentenced during the said period by reason of breaches of probation orders (including convictions for offences committed during the probation period); and

(b) the operation of this Part and the activities of probation officers generally during the said period.

(8) So far as relates to the appointment of the chief probation officer and other honorary and stipendiary probation officers and to their functions powers and duties and to the making of regulations and rules in relation thereto, this section and the other relevant provisions of this Act shall come into operation upon the passing of this Act.

As to commencement of provisions relating to appointment, &c., of probation officers.

DIVISION 2.—PROBATION ORDERS.

4. (1) Where any person is convicted by the Supreme Court or any court of general sessions or any court of petty sessions of any offence for which a term of imprisonment may be imposed otherwise than in default of payment of a fine and the court is of opinion that having regard to the circumstances including the nature of the offence and the

Power to make probation orders.

Comp. 11 and 12 Geo. VI. c. 58 s. 3.

the character and antecedents of the offender it is expedient to do so, the court may instead of sentencing him make a probation order, that is to say, an order requiring him to be under the supervision of a probation officer for such period (hereinafter called the "probation period"), being not less than one year and not more than five years, as is specified in the order.

Appointment of
supervising
court.

(2) Every probation order shall appoint 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 which 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 hereinafter provided shall for all the purposes of this Part be the supervising court in respect of that order.

Additional
requirements.

(3) A probation order may in addition require the offender to comply during the whole or any part of the probation period with such requirements (including without prejudice to the generality of the expression, a requirement that the offender submit himself to medical, psychiatric or psychological treatment) as the court considers necessary for securing the good conduct of the offender or for preventing a repetition by him of the same offence or the commission of other offences.

Requirements
as to residence.

(4) Without prejudice to the generality of the last preceding sub-section a probation order may include requirements relating to the residence of the offender:

Provided that—

- (a) before making an order containing any such requirements the court shall consider the home surroundings of the offender; and
- (b) where the order requires the offender to reside in an institution the name of the institution and the period for which he is so required to reside shall be specified in the order.

Nature of
order to be
explained to
offender.

(5) Before making a probation order the court shall explain or cause to be explained to the offender in ordinary language the effect of the order (including any additional requirements proposed to be inserted therein under sub-section (3) or sub-section (4) of this section) and that if he fails to comply with the requirements of the order

or

or commits another offence during the probation period he will be liable to be sentenced for the original offence; and the court shall not make the order unless the offender expresses his willingness to comply with the requirements thereof.

(6) The court by which a probation order is made shall forthwith cause copies of the order to be given to the offender and to be sent to the chief probation officer and to the person in charge of any institution in which the probationer is required by the order to reside; and the court shall, except where the court is itself the supervising court, also cause to be sent to the clerk of the supervising court a copy of the order and such documents and information relating to the case as it considers likely to be of assistance to the supervising court.

Notification of making of order.

(7) The chief probation officer shall assign a probation officer to be the probation officer in respect of the order and to supervise the probationer during the operation of the order, and the chief probation officer may from time to time so assign another probation officer in respect of the order in lieu of the probation officer previously assigned.

Assignment of probation officers.

5. After the commencement of this Act a person convicted of any indictable offence shall not be released upon his entering into a recognizance to receive and undergo sentence when called upon if in the opinion of the court he could properly and conveniently be released on probation pursuant to this Part.

Receive and undergo bonds not to be used where probation appropriate.

DIVISION 3.—DISCHARGE AND AMENDMENT OF ORDERS.

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

Construction of references to court by which probation order made.

- (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 Victoria;
- (b) where the order was made by a court of general sessions—to any court of general sessions sitting within or for the bailiwick in which the order was made;

(c) where

(c) where the order was made by a court of petty sessions—to any court of petty sessions sitting at the place at which the order was made—
notwithstanding that the judge chairman or justices constituting the court may not be the same as made the order originally.

Discharge of
probation
order.

Comp. 11 and
12 Geo. VI.
c. 58. First
Schedule cl. 1.
Discharge by
expiration of
probation
period.

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

(2) Upon the expiration of the probation period without failure by the probationer to comply with the requirements of the order and without the commission by him of any offence, whether in Victoria or elsewhere, the order shall *ipso facto* be discharged without further action by any court.

(3) Where a probation order is discharged, whether by the court or by the operation of the last preceding sub-section, the probationer shall be thereby released from any further obligation or liability in respect of the order and of the offence in respect of which it was made.

Discharge
of order by
sentence.

Comp. 1b.
s. 5 (4).

(4) Where under the following provisions of this Part a probationer is sentenced for the offence for which he was placed on probation the probation order shall be of no further effect.

Substitution of
new supervising
court.

8. (1) If 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 probationer's place of residence or the most convenient in the circumstances, the supervising court may by order amend the probation order by substituting such other court of petty sessions as the supervising court in lieu of the court originally appointed.

Amendment of
probation
order.

Comp. 1b.
First Sch.
cl. 3.

(2) Where a probation order is so amended the court making the amending order shall send to the clerk of the new supervising court a copy of the order together with such documents and information relating to the case as it considers likely to be of assistance to that court.

9. The supervising court may at any time, upon application made by the probation officer or by the probationer himself, by order amend the probation order

by

by cancelling any of the requirements thereof or by inserting therein (either in addition to or in substitution for any such requirement) any requirement which could be included in the order if it were then being made by the court in accordance with the provisions of this Part:

Provided that—

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

10. Where the supervising court proposes to amend a probation order otherwise than on the application of the probationer it shall summon him to appear before the court, and the court shall not amend a probation order unless the probationer expresses his willingness to comply with the requirements of the order as amended: Provided that this section shall not apply to an order cancelling any requirement of the probation order or reducing the period of any requirement or substituting another supervising court.

Probationer's
assent to
amendment.

Comp. 11 and 12
Geo. VI. c. 58
First Sch.
cl. 5.

11. On the making by the supervising court of an order amending a probation order the clerk of the supervising court shall forthwith give copies of the amending order to the probation officer and the probation officer shall give a copy to the probationer and a copy to the person in charge of any institution in which a probationer is or was required by the order to reside.

Copies of
order.

Comp. 1b. First
Sch. cl. 6.

DIVISION 4.—BREACH OF ORDERS.

12. (1) If at any time during the probation period it is made to appear on information to a justice of the peace that the probationer has failed to comply with any of the requirements of a probation order the justice may issue a summons requiring the probationer to appear at a court of petty sessions, being either the supervising court or, where the order was made by a court of petty sessions, that court of petty sessions, at the time specified therein, or may, if the information is in writing and on oath, issue

Breach of
probation
order
otherwise than
by conviction.
Comp. 1b. s. 6.

a warrant

a warrant for his arrest directing that he be brought before a court of petty sessions, being one of the said courts, as soon as practicable after his arrest.

Powers of
certain courts
of petty
sessions.

(2) If it is proved to the satisfaction of the court of petty sessions before which a probationer appears or is brought under this section that the probationer has failed to comply with any of the requirements of the probation order that court may—

(a) without prejudice to the continuation of the probation order, impose on him a fine of not more than Ten pounds ; or

(b) if the probation order was made by a court of petty sessions—deal with the probationer for the offence in respect of which the probation order was made in any manner in which the court could deal with him if it had just convicted him of that offence ; or

(c) in any other case—commit him to custody or release him on bail (with or without sureties) to be brought or to appear before the court by which the order was made.

As to procedure
when committed
or bailed to
appear at
Supreme Court
or general
sessions.

(3) Where a court of petty sessions exercises the power referred to in paragraph (c) of the last preceding sub-section then the said court shall send to the Crown Solicitor or to the clerk of the peace (as the case requires) a certificate signed by a justice of the peace certifying that the probationer has failed to comply with such of the requirements of the probation order as are specified in the certificate together with such other particulars of the case as the court thinks desirable ; and a certificate purporting to be so signed shall be admissible as evidence of the failure and of the other particulars to which it relates before the Supreme Court or the court of general sessions (as the case requires).

Powers of
Supreme Court
and general
sessions.

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

(5) A fine

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

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

13. (1) If it is made to appear on information to a justice of the peace that a person in whose case a probation order has been made has been convicted in Victoria or elsewhere of an offence committed during the probation period and has been dealt with in respect of that offence, the justice may issue a summons requiring that person to appear at the time and place specified therein or, where the information is on oath, may issue a warrant for his arrest. Breach of order by conviction. Comp. 11 and 12 Geo. VI. c. 58 s. 8.

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

Provided that—

(a) if that court is a court of petty sessions the summons or warrant may direct him to appear or to be brought before the supervising court; and

(b) if the warrant is issued requiring him to be brought before the Supreme Court or a court of general sessions and he cannot forthwith be brought before that court because it is not then being held, the warrant shall have 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 court of general sessions (as the case requires).

(3) If

Powers of
court of petty
sessions.

(3) If a person in whose case a probation order has been made by the Supreme Court or a court of general sessions is convicted and dealt with by a court of petty sessions in respect of an offence committed during the probation period, the court of petty sessions may 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 order was made; and if it does so the court of petty sessions shall send to the Crown Solicitor or the clerk of the peace (as the case may require) an extract of the entry of the conviction as registered in the petty sessions register, certified by the clerk of petty sessions.

Powers of court
by which order
made and
supervising
court.

(4) Where it is proved either—

(a) to the satisfaction of the court by which the probation order was made; or

(b) (if the probation order was made by a court of petty sessions) to the satisfaction of the supervising court—

that the probationer has been convicted and dealt with in respect of an offence committed in Victoria or elsewhere during the probation period, the court may deal with him for the offence for which the order was made in any manner in which the court could deal with him if he had just been convicted by or before that court of that offence.

Powers of
Supreme Court
and courts of
general sessions.

(5) If a probationer in whose case the probation order was made by a court of petty sessions is convicted before the Supreme Court or a court of general sessions of an offence committed during the probation period the Supreme Court or court of general sessions may deal with him for the offence for which the order was made in any manner in which the court of petty sessions could deal with him if it had just convicted him of that offence, and any sentence imposed shall be regarded as the sentence of the court of petty sessions except that for the purposes of any appeal against that sentence it shall be regarded as a sentence imposed on a conviction on indictment and the provisions of Part V. of the Principal Act, so far as applicable, shall apply accordingly.

(6) If a probationer in whose case the probation order was made by a court of general sessions is convicted before the Supreme Court of an offence committed during the probation period, the court may deal with him for the

offence

offence for which the order was made in any manner in which the court could deal with him if he had just been convicted before the court of that offence and any sentence imposed shall for all purposes be regarded as the sentence of the court of general sessions.

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

Judge or chairman to decide questions as to breach of probation, &c.
Comp. 11 and 12
Geo. VI. c. 58
s. 11 (4).

15. (1) The provisions of Part II. of the *Justices Act* 1928 shall, so far as applicable and with such modifications as are necessary, extend and apply to and with respect to all informations summonses and warrants referred to in the foregoing provisions of this Part, and for the purposes of such application every such information shall be regarded as an information for an offence and every such summons shall be regarded as a summons to answer to an information.

Application of No. 3708 Pt. II. to informations summonses and warrants under this Part.

(2) The provisions of section fifty-eight of the *Justices Act* 1928 shall so far as applicable and with such modifications as are necessary extend and apply to and with respect to the admission of probationers to bail pursuant to the foregoing provisions of this Part, and for the purposes of such application every such probationer shall be regarded as a person charged with an indictable offence and directed to be tried therefor.

Application of No. 3708 s. 58 to bail under this Part.

DIVISION 5.—EFFECT OF PROBATION.

16. (1) Except as hereinafter provided a conviction for an offence in respect of which a probation order is made under this Part 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—

Conviction on which probation granted to be disregarded for certain purposes.
Comp. 11, s. 12.

(a) the making of the order ;

(b) any

- (b) any subsequent proceedings which may be taken against the offender under the foregoing provisions of this Part; and
- (c) any proceedings against the offender for a subsequent offence.

(2) Where an offender is subsequently dealt with under this Part for the offence in respect of which the probation order was made the provisions of the last preceding sub-section shall cease to apply to the conviction.

Saving.

(3) The foregoing provisions of this section shall not affect any right of any 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.

As to appeal in case of conviction in petty session on which probation granted.

(4) Any person who feels himself aggrieved by a summary conviction of a court of petty sessions in respect of which a probation order is made may pursuant to Division one of Part V. of the *Justices Act* 1928 appeal against that conviction notwithstanding that no fine penalty or forfeiture is imposed thereby.

PART II.—SENTENCES AND PAROLE.

DIVISION 1.—PAROLE BOARD AND OFFICERS.

Establishment of Parole Board.

17. (1) There shall be a Parole Board constituted as hereinafter provided.

Constitution of Board.

(2) The Board shall consist of—

- (a) a judge of the Supreme Court nominated with his consent by the Chief Justice of the Supreme Court either generally or for a specified term;
- (b) the Director of Penal Services; and
- (c) (i) (where any general matter or any matter affecting any male prisoner is to be dealt with) three men appointed by the Governor in Council; and
- (ii) (where any matter affecting any female prisoner is to be dealt with) three women appointed by the Governor in Council.

(3) References in this Act to the Board shall be construed as references to the Board comprising the men or the women so appointed (as the case requires); and references to the appointed members of the Board shall be construed as references to the men or the women so appointed (as the case requires).

18. (1) If

18. (1) If the judge of the Supreme Court nominated by the Chief Justice as aforesaid dies or resigns, his office as a member of the Board shall become vacant and the Chief Justice may (with the consent of the judge to be nominated) nominate another judge of the Supreme Court as a member of the Board in his stead.

Death or resignation of judge and filling of vacancy.

(2) The Chief Justice may (with the consent of the judge to be nominated) nominate a judge of the Supreme Court to act temporarily as a member of the Board during the absence through illness or other cause of the judge who is a member of the Board or during a vacancy in that office, and the judge so nominated shall whilst so acting have all the powers and functions of and for all purposes be deemed to be a member of the Board.

Temporary nomination of judge.

(3) The persons appointed by the Governor in Council to be members of the Board (hereinafter called "the appointed members") shall hold office as such members for such period not exceeding three years as the Governor in Council determines prior to their appointments, but each such person shall upon the expiration of the period for which he was so appointed be eligible for re-appointment.

Term of office of appointed members.

(4) The Governor in Council may at any time remove any appointed member of the Board from office, and upon any such removal or upon the death or resignation of an appointed member the Governor in Council may appoint a person to fill the vacancy arising from such removal death or resignation.

Removal death or resignation of appointed members and filling of vacancies.

(5) The Governor in Council may appoint any person to act temporarily as a member of the Board during the absence through illness or other cause of any of the appointed members thereof or during a vacancy in the office of an appointed member, and any person so appointed shall while so acting have all the powers and functions of and for all purposes be deemed to be a member of the Board.

Temporary appointments.

(6) The several members of the Board shall receive such remuneration for their services and such travelling expenses as are severally fixed by Order of the Governor in Council.

19. (1) The Judge of the Supreme Court who is a member of the Board shall *ex officio* be chairman of the Board.

Chairman.

(2) A

Quorum.

(2) A quorum of the Board shall consist of the chairman and at least two other members of the Board.

Meetings.

20. (1) Meetings of the Board shall be held at such times and places as are prescribed or, in the absence of any such prescription, as are fixed by the chairman.

Questions of law.

(2) Any question of law arising before the Board shall be decided by the chairman alone.

Majority decisions.

(3) Upon any other matter the decision of a majority of members present at any meeting shall be the decision of the Board upon that matter, and in the event of an equality of votes upon any matter at any meeting the chairman shall have a second or casting vote.

Procedure.

(4) Subject to this Act and the regulations the Board may determine its own procedure.

Judicial notice.

21. All courts and persons having by law or consent of parties authority to hear receive and examine evidence shall—

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

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

Powers duties and functions.

22. The powers duties and functions of the Board shall be such as are prescribed by or under this or any other Act.

Abolition of Indeterminate Sentences Board.

23. (1) The Indeterminate Sentences Board is hereby abolished and its members shall go out of office.

Exercise by Board of powers of Indeterminate Sentences Board.

(2) The Parole Board shall be the successor of the Indeterminate Sentences Board and any function power or duty which before the commencement of this Act was authorized or required to be exercised or carried out by the Indeterminate Sentences Board or the chairman or any member or members thereof shall after the said commencement be authorized or required (as the case may be) to be exercised or carried out by the Board or the chairman or any member or the corresponding number of

members

members of the Board (as the case may be) so far as may be necessary to give effect to the provisions of this Act and the Principal Act as in force after the said commencement.

(3) Any act matter or thing done or commenced by or in relation to the Indeterminate Sentences Board or the chairman or any member or members thereof before the commencement of this Act may be carried on and continued by or in relation to the Board or the chairman 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 and the Principal Act as in force after the said commencement.

Continuance
by Board of
matters
commenced by
Indeterminate
Sentences
Board.

24. (1) The Board shall once in every year within such period as is prescribed make to the Minister a report as to—

Annual
reports.

(a) the number of persons released on parole during the prescribed period of twelve months, the number sentenced to preventive detention during the said period, and the number returned to gaol upon cancellations of parole during the said period ; and

(b) the operation of this Part and the activities of the Board and of parole officers generally during the said period of twelve months.

(2) The Board shall—

(a) once in every year, and also whenever so required in writing, furnish to the Minister a report and recommendation with respect to every person who was ordered pursuant to section four hundred and fifty-one of the Principal Act to be kept in strict custody until the Governor's pleasure is known and who is for the time being in such custody ;

(b) whenever so required in writing furnish to the Minister a report and recommendation with respect to every prisoner for the time being serving a sentence commuted to a life sentence

Reports on
persons found
not guilty of
indictable
offences on
ground of
insanity, and
on prisoners
on sentences
commuted to
life sentences.

whether

whether with or without the benefit of the rules or regulations under the *Gaols Act* 1928 relating to remission of sentences of imprisonment.

Special
reports.

(3) The Board shall whenever so required in writing furnish to the Minister a report upon any special matter relating to the operation of this Part or to the exercise of any power or function of the Board.

Officers of
Board.
No. 5124.

25. (1) Subject to the *Public Service Act* 1946 there may from time to time be appointed a secretary and such other officers as the Governor in Council thinks necessary to assist in the carrying out of the functions of the Board and the provisions of this Act in relation thereto.

Savings.

(2) All persons who immediately before the commencement of this Act held any office or position under or in relation to the Indeterminate Sentences Board (other than the office of chief probation officer or probation officer) shall on and after the said commencement hold the same office or position under or in relation to the Board.

Stipendiary
parole officers.
No. 5124.

(3) Subject to the *Public Service Act* 1946 there may from time to time be appointed a chief parole officer and such other stipendiary parole officers as the Governor in Council thinks necessary for the purposes of the Crimes Acts.

Direction and
control of
parole officers.

(4) The chief parole officer and all other stipendiary parole officers shall in relation to any parole order be subject to direction by the Board, but shall otherwise be under the control of the Director, and all stipendiary parole officers shall be under the immediate control of the chief parole officer.

Functions
powers and
duties of
parole officers.

(5) The functions powers and duties of the chief parole officer and of stipendiary parole officers shall be as prescribed by this Act and the regulations thereunder.

(6) So far as relates to the appointment of the chief parole officer and other stipendiary parole officers and to their functions powers and duties and to the making of regulations in relation thereto, the last three preceding sub-sections and the other relevant provisions of this Act shall come into operation upon the passing of this Act.

DIVISION

DIVISION 2.—SENTENCES OF IMPRISONMENT.

Minimum Term.

26. Where any person is convicted by the Supreme Court or any court of general sessions or any court of petty sessions of any offence and sentenced to be imprisoned, or where any person having been convicted by any such court of any offence before the commencement of this Act is after the said commencement sentenced to be imprisoned therefor then, if the term imposed is not less than twelve months the court shall, and if the term imposed is less than twelve months the court may, as part of the sentence fix a lesser term (hereinafter called "the minimum term") during which the offender shall not be eligible to be released on parole: Provided that the court shall not be required to fix a minimum term if the court considers that the nature of the offence and the antecedents of the offender render the fixing of a minimum term inappropriate.

Fixing
minimum term
to be served
before parole
granted.

27. (1) Where any offender is sentenced to a term of imprisonment in respect of which a minimum term is fixed as aforesaid and while undergoing that minimum term is convicted by the Supreme Court or any court of general sessions or any court of petty sessions of any offence and sentenced to a further term of imprisonment, then—

As to
minimum term
where several
successive
sentences of
imprisonment
imposed.

(a) the court in passing the subsequent sentence (whether the term imposed thereby is made cumulative upon or concurrent with that imposed by the prior sentence) may fix a new minimum term in respect of the aggregate term of the sentences in substitution for that fixed in respect of the prior sentence, and the new minimum term shall not be less than that fixed in respect of the prior sentence and shall not exceed it by more than the term of imprisonment imposed by the subsequent sentence; and

(b) if the court fixes the minimum term in respect of the subsequent sentence without reference to that fixed in respect of the prior sentence, the minimum term so fixed shall be cumulative upon or concurrent with that fixed in respect of the prior sentence according as the term of imprisonment imposed is cumulative upon or concurrent with the term imposed by the prior sentence.

(2) Where

As to service of minimum term where later sentence without minimum term imposed.

(2) Where any offender is sentenced to a term of imprisonment in relation to which a minimum term is fixed as aforesaid and while undergoing the minimum term is sentenced, whether by a court as aforesaid or by a justice, to a further term of imprisonment in respect of which no minimum term is fixed, then unless the term imposed by the subsequent sentence is made concurrent with that imposed by the prior sentence the service of the minimum term shall be suspended and the term imposed by the subsequent sentence shall be served before service of the minimum term is resumed.

Regulations for remissions of sentences not to apply where minimum term fixed.

28. (1) The provisions of any rules or regulations under the *Gaols Act* 1928 relating to the remission of sentences of imprisonment as an incentive to or reward for good conduct or industry shall not apply to or with respect to any sentence of a term of imprisonment in respect of which a minimum term is fixed under this Act.

Regulations relating to reduction of minimum terms.

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

Sentences of Preventive Detention.

Power of court to pass special sentence in cases of persistent offenders.

Comp. 11 and 12 Geo. VI. c. 58 s. 21.

29. Where any person apparently of or above the age of twenty-five years—

(a) is convicted by the Supreme Court or any court of general sessions of an offence punishable with imprisonment for a term of two years or more; and

(b) has been convicted on at least two previous occasions since he attained the age of seventeen years by the Supreme Court or a court of general sessions of offences punishable with imprisonment for a term of two years or more—

then if the court is satisfied that it is expedient for the protection of the public or for any other reason that he should be detained in gaol for a substantial time the court may pass, in lieu of any other sentence, a sentence of preventive detention for a term of not more than ten years and, where any such sentence is passed, shall fix a minimum term during which the offender shall not be eligible to be released on parole.

DIVISION 3.—RELEASE ON PAROLE AND
CANCELLATION OF PAROLE.

30. (1) Where a prisoner, who is undergoing a sentence of a term of imprisonment in respect of which a minimum term is fixed under this Act, has served that minimum term, the Board may in its discretion by order in writing (hereinafter called a "parole order") direct that he be released from gaol on parole, and he shall be released accordingly.

Release on parole after service of minimum term.

(2) Any person so released shall during the period from his release until the expiration of his term of imprisonment (hereinafter called the "parole period") be under the supervision of a parole officer and shall comply with such requirements as are specified in the parole order in accordance with the regulations.

Requirements of parole order.

(3) The chief parole officer shall assign a parole officer to supervise the prisoner during the parole period and may from time to time so assign another parole officer in lieu of the parole officer previously assigned.

Assignment of parole officers.

31. If the parole period elapses without the making by the Board of an order cancelling the prisoner's parole or the commission by the prisoner, whether in Victoria or elsewhere, of any offence for which he is sentenced to imprisonment (whether during or after the parole period) the prisoner shall be regarded as having served his term of imprisonment and shall *ipso facto* be wholly discharged therefrom; but until the parole period so elapses or until he is otherwise discharged from his sentence of imprisonment, a person released on parole shall be regarded as being still under sentence and as not having suffered the punishment to which he was sentenced.

Persons on parole deemed still under sentence.

32. (1) Where a prisoner is released on parole as aforesaid the Board may in its discretion at any time before the expiration of the parole period by order cancel his parole.

Cancellation of parole by order of Board.

(2) Where the prisoner is sentenced to another term of imprisonment in respect of any offence committed during the parole period, whether in Victoria or elsewhere, his parole shall *ipso facto* be cancelled notwithstanding that the parole period may already have elapsed.

Cancellation of parole by conviction.

(3) Where

Warrants for
return of
prisoners
to gaol.

(3) Where a prisoner's parole is cancelled, whether by order of the Board or by the operation of the last preceding sub-section, the Board may, whenever necessary, by warrant signed by any two members of the Board authorize any member of the police force or other officer to apprehend the prisoner and return him to a gaol to serve the unexpired portion of his term of imprisonment, and such warrant shall be sufficient authority for his apprehension and for his return to gaol accordingly.

Where parole
cancelled time
on parole not
to count as
part of
sentence.

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

Authority to
release on
probation more
than once.

33. The Board may again release a prisoner on parole notwithstanding that his parole has been cancelled on any prior occasion or occasions under the foregoing provisions of this Division in respect of the same term of imprisonment :

Provided that where he has been sentenced to another term of imprisonment he shall not in any case be so released until he has served the minimum term or, where no minimum term is fixed, the term thereof.

PART III.—GENERAL.

DIVISION 1.—AMENDMENT OF PRINCIPAL ACT AND OTHER ACTS.

Amendment of
No. 3664.

Consequential
on
establishment
of new
system of
probation and
parole.

S. 1.
Division into
Parts.

34. (1) The Principal Act as amended by any Act is hereby amended as follows :—

(a) In section one, in the portion thereof relating to Division two of Part III., the expression—

“(2) Indeterminate Sentences and Release on Recognizances of First Offenders &c. ss. 514-543”—

is hereby repealed ;

(b) At the end of section two there shall be inserted the following sub-section :—

“(2) Nothing in this Act shall in any manner affect Her Majesty's royal prerogative of mercy.”

(c) For

Saving of royal
prerogative of
mercy.

Comp. s. 543.

- (c) For sub-section (2) of section five hundred and twelve there shall be substituted the following sub-section :—

“(2) Whenever any person is convicted of any indictable misdemeanour punishable under this Act, the court may if it thinks fit, subject to any specific provision relating to such misdemeanour, fine the offender in addition to or in lieu of any of the punishments authorized by this Act”;

Repeal of provision for finding sureties for good conduct.

- (d) Sections five hundred and fourteen to five hundred and forty-three inclusive and the heading preceding section five hundred and fourteen are hereby repealed;

Ss. 514-543, &c.

Repeal of provisions re indeterminate sentences and first offenders' recognizances.

- (e) In section five hundred and sixty after the words “as he thinks fit” there shall be inserted the words “and may also if he thinks fit fix a minimum term during which the offender shall not be eligible to be released on parole”;

S. 560.

Power to fix minimum term on commutation of death sentence.

- (f) For section five hundred and sixty-four there shall be substituted the following section :—

S. 564.

Release on recognizance or parole in exercise of prerogative of mercy.

“564. The Governor in all cases in which he is authorized on behalf of Her Majesty to extend mercy to any person under sentence of imprisonment may do so by directing that the prisoner be released (notwithstanding that his minimum term has not expired)—

(a) on condition of his entering into a recognizance before a justice as hereinafter mentioned; or

(b) on parole pursuant and subject to the provisions of Part II. of the *Penal Reform Act 1956*”;

- (g) In section five hundred and sixty-seven—

S. 567.

Repeal of provision for return to reformatory prison.

- (i) sub-section (3) is hereby repealed; and
(ii) at the end of the section there shall be inserted the following sub-section :—

“(5) Where a court of petty sessions recommit any person to prison pursuant to the foregoing provisions of this section the provisions of Division two of Part II. of the *Penal Reform Act*

Provision for fixing minimum term on return to gaol.

1956 shall apply as if the offender had just been convicted by that court and been sentenced to be imprisoned for a term equal to the unexpired portion of the term for which he is so committed to prison."

Consequential
repeal of Nos.
3957, 5131,
5531.

(2) The *Indeterminate Sentences Act* 1931, the *Crimes (Indeterminate Sentences) Act* 1946, and the *Crimes (Reformatory Prisons) Act* 1951 are hereby repealed.

Amendment of
No. 3690.

S. 3.

Interpretation
of "Director".

35. (1) The *Gaols Act* 1928 is hereby amended as follows:—

(a) For the interpretation of "Inspector-General" in section three there shall be substituted the following interpretation:—

" 'Director' means the Director of Penal Services under this Act ";

S. 11.

Appointment
of Director
of Penal
Services.

(b) For section eleven there shall be substituted the following section:—

" 11. Subject to the *Public Service Act* 1946 there may from time to time be appointed an officer to be called the 'Director of Penal Services' ";

Ss. 7, 12, 14-16,
24, 25, 31-34,
36, 37.

Alteration of
references to
inspector-
general.

(c) In sections seven, twelve, fourteen, fifteen, sixteen, twenty-four, twenty-five, twenty-eight, thirty-one, thirty-two, thirty-three, thirty-four, thirty-six, and thirty-seven for the expression "inspector-general" (wherever occurring) there shall be substituted the word "Director";

S. 18.

As to visiting
justices in
reformatory
prisons.

(d) Sub-section (2) of section eighteen is hereby repealed;

S. 28.

Time of
discharge of
certain
prisoners.

(e) In section twenty-eight after the words "detention of such prisoner" there shall be inserted the expression "or on parole pursuant to Part II. of the *Penal Reform Act* 1956";

S. 37.

As to
postponement
of release for
minor offences.

(f) In section thirty-seven after the words "under the regulations" there shall be inserted the words "or the release of such prisoner on parole";

S. 51.

As to habitual
criminals in
gaol.

(g) Section fifty-one is hereby repealed; and

(h) Section

(h) Section fifty-five is hereby amended as follows:—

(i) For paragraph (a) there shall be substituted the following paragraph:—

“(a) The management and good government of gaols and their classification as training prisons, training centres, youth correction centres and other gaols”;

(ii) In paragraph (b) for the words beginning “of each sex” and ending “penal establishments” there shall be substituted the words “in the several kinds of gaols according to sex, age, criminal record, capacity for reform and suitability for training and instruction”; and

(iii) At the end of paragraph (c) there shall be inserted the following proviso:—

“Provided that any rules or regulations made pursuant to this paragraph shall not apply to sentences of imprisonment in respect of which minimum terms are fixed pursuant to Part II. of the *Penal Reform Act 1956*.”

S. 56.

Rules or regulations in relation to classes of gaols and prisoners and to remission of sentences.

(2) In sub-section (1) of section fifty-nine of the *Public Service Act 1946* for the words “Inspector-General of Penal Establishments and Gaols” there shall be substituted the words “Director of Penal Services”.

Consequential Amendment of No. 5124 s. 59.

(3) Any reference in any Act, proclamation, Order or other instrument to the Inspector-General of Penal Establishments shall where the context allows be read and construed as a reference to the Director of Penal Services.

As to references to Inspector-General in other Acts, &c.

36. The *Children's Court Act 1928* is hereby amended as follows:—

Amendment of No. 3053 ss. 25, 27, 28, 31.

(a) In sub-section (1) of section eleven the words “or if a sentence imposed on any child is suspended for any term by the Court” are hereby repealed;

Repeal of power of suspension of sentence.

(b) Section twenty-five is hereby repealed;

(c) Sub-paragraph

- (c) Sub-paragraph (ii) of paragraph (c) of sub-section (1) of section twenty-seven and the word "or" preceding that sub-paragraph are hereby repealed;
- (d) In sub-section (1) of section twenty-eight—
- (i) sub-paragraph (ii) of paragraph (d) and the word "or" preceding that sub-paragraph; and
- (ii) paragraph (g) and the word "or" preceding that paragraph—
- are hereby repealed;
- (e) In sub-section (1) of section thirty-one—
- (i) paragraph (c) and the word "or" preceding that paragraph are hereby repealed; and
- (ii) the words "or of the suspension of the execution of his sentence" are hereby repealed; and
- (f) In sub-section (2) of section thirty-one the words "or as if the execution of his sentence had not been suspended" are hereby repealed.

DIVISION 2.—TRANSITORY PROVISIONS.

Inspector-General.

Inspector-General to be Director of Penal Services.

37. The person immediately before the commencement of this Act holding the office of Inspector-General of Penal Establishments shall on and from the said commencement be the Director of Penal Services as if appointed to that office pursuant to section eleven of the *Gaols Act* 1928 as re-enacted by this Act.

Reformatory Prisons.

Reformatory prisons to be gaols.

38. Every gaol or part of a gaol or other place which immediately before the commencement of this Act is set apart as a reformatory prison shall on and from the said commencement cease to be a reformatory prison and be a gaol within the meaning of the *Gaols Act* 1928.

Persons in Reformatory Prisons.

Habitual criminals to be deemed under preventive detention for terms determined by Board.

39. (1) Where immediately before the commencement of this Act any person is detained as an habitual criminal in a reformatory prison during the Governor's pleasure

that

that person shall as from the said commencement be regarded as undergoing under preventive detention a sentence of imprisonment for such term as the Board determines, and the Board shall fix a minimum term in respect of the term of imprisonment so determined.

(2) Where before the commencement of this Act any person was declared an habitual criminal and sentenced to be imprisoned for a term and thereafter to be detained in a reformatory prison during the Governor's pleasure and immediately before the said commencement that person is undergoing the term of imprisonment so imposed, that person shall as from the said commencement be regarded as undergoing under preventive detention a term of imprisonment aggregating the original term and such additional term as the Board determines, and the Board shall fix a minimum term in respect of that aggregate term of imprisonment.

(3) The provisions of this Act with respect to parole shall apply with respect to persons imprisoned under preventive detention pursuant to this section.

40. (1) Where immediately before the commencement of this Act any person is detained in a reformatory prison during the Governor's pleasure otherwise than as an habitual criminal that person shall as from the said commencement be regarded as undergoing a sentence of imprisonment for such term as the Board determines, and the Board shall fix a minimum term in respect of the term of imprisonment so determined.

Reformatory
prisoners not
habitual
criminals to
be deemed
imprisoned
for terms.

(2) Where before the commencement of this Act any person was sentenced, otherwise than as an habitual criminal, to be imprisoned for a term and thereafter to be detained in a reformatory prison during the Governor's pleasure, and immediately before the said commencement that person is undergoing the term of imprisonment so imposed, that person shall as from the said commencement be regarded as undergoing a term of imprisonment aggregating the original term and such additional term as the Board determines and the Board shall fix a minimum term in respect of that aggregate term of imprisonment.

(3) The

(3) The provisions of this Act with respect to parole shall apply with respect to persons under imprisonment pursuant to this section.

Persons at Large from Reformatory Prisons.

Continuance
of leave of
absence,
probation, &c.,
in existence at
commencement
of this Act.

41. In the case of any person who before the commencement of this Act has been permitted to leave a reformatory prison temporarily or has been released from a reformatory prison pursuant to section five hundred and twenty-two, section five hundred and twenty-six or section five hundred and twenty-nine of the Principal Act and who at the said commencement is absent from the reformatory prison whether legally or illegally, the provisions of sub-division (2) of Division two of Part III. of the Principal Act and of any regulations thereunder shall, so far as they affect such person, continue to operate, notwithstanding the repeal of those provisions, subject to the modifications that—

(a) any reference therein to the Indeterminate Sentences Board shall be read and construed as a reference to the Board; and

(b) any reference therein to the return or recommitment of a person to a reformatory prison shall be read and construed as a reference to his return or recommitment to a gaol—

and upon the return or recommitment of any such person to a gaol he shall be dealt with pursuant to the foregoing provisions of this Act as if immediately before the commencement of this Act he had been a person detained in a reformatory prison during the Governor's pleasure:

Provided that the judge of the Supreme Court or chairman of general sessions by whom an order for recommitment is made under the said provisions may as part of the order determine the term for which that person is to be imprisoned and may fix a minimum term in respect thereof, and where a minimum term is so fixed the provisions of this Act with respect to parole shall apply thereto accordingly.

As to sums
standing
to credit of
reformatory
prisoners.

42. Any sum standing to the credit of any person who is detained in a reformatory prison immediately before the commencement of this Act or who is absent from any

such

such reformatory prison pursuant to section five hundred and twenty-two, section five hundred and twenty-six or section five hundred and twenty-nine of the Principal Act shall be handed over to the Board and shall be held or expended by the Board in such manner as is prescribed or, in the absence of any prescription, as the Board considers conducive to the welfare of that person.

Persons on First Offenders' Recognizances.

43. (1) Where before the commencement of this Act a person was sentenced to be imprisoned for a term and the execution of the sentence was suspended upon the offender entering into a recognizance pursuant to the provisions of section five hundred and thirty-two or section five hundred and thirty-three of the Principal Act (including any application or extension of those provisions by any provision of the *Childrens Court Act* 1928) and that recognizance is in force immediately before the said commencement, then the provisions of sub-division (2) of Division two of Part III. of the Principal Act and of any regulations made thereunder shall, notwithstanding the repeal of those provisions, continue in operation, so far as they affect that offender and that recognizance, with the modification that any reference in the said provisions or in the said recognizance to a probation officer shall be read and construed as a reference to an honorary or stipendiary probation officer assigned for the purpose by the chief probation officer or to a probation officer under the *Childrens Court Act* 1928 (as the case requires).

Continuance of effect of first offenders' recognizances in force at commencement of Act.

(2) The court of petty sessions by which any person is committed to gaol for failure to observe any of the conditions of any such recognizance shall, if the term of imprisonment to be served is not less than twelve months, fix a minimum term during which the offender shall not be eligible to be released on parole, and the provisions of this Act with respect to parole shall apply thereto accordingly.

Persons in Gaol under Terms of Imprisonment.

44. Where immediately before the commencement of this Act a person is undergoing a sentence of imprisonment commuted pursuant to section five hundred and sixty of the Principal Act from a sentence of death, or a sentence of a term of imprisonment of which less than twelve months remains to be served having regard to the effect of

Fixing minimum term in case of sentence of definite term.

of the rules or regulations under the *Gaols Act* 1928 relating to remission of sentences, that sentence shall continue subject to the said rules and regulations, where they are applicable, until its completion, but in the case of every other person undergoing at the said commencement a sentence of imprisonment the Board shall fix a minimum term in respect of that imprisonment, and the said rules or regulations shall not apply thereto but the provisions of this Act with respect to parole shall apply thereto accordingly.

General.

In fixing minimum term Board to have regard to remissions under regulations formerly applicable.

45. In fixing a minimum term under this Act in respect of any term of imprisonment, the Board shall have regard to the part, if any, of the term of imprisonment which would in the ordinary course of events have been remitted pursuant to the rules or regulations under the *Gaols Act* 1928 relating to the remission of sentences if the application of those rules or regulations to that sentence had not been excluded by this Act and the minimum term shall not be fixed to extend beyond the date at which, subject to good conduct and industry, the prisoner would have been eligible for release under the said rules or regulations.

Provision for resolution of doubtful cases—

46. If any doubt or difficulty arises in the application of this Division to any particular case, or if any case arises—

- (a) in respect of the conviction or sentence of any person before the commencement of this Act ;
or
- (b) in respect of the effect of any conviction or sentence after the said commencement upon a conviction or sentence before the said commencement ; or
- (c) in respect of any prisoner who having escaped from legal custody is unlawfully at large at the commencement of this Act—

for which this Division makes no provision, a judge of the Supreme Court, on application made to him by the Director in a summary way, may by order resolve that difficulty or deal with that case in such manner as he considers just, and for that purpose may determine any term of

imprisonment

imprisonment or minimum term or may direct that any such term or minimum term shall be determined by the Board or in any other specified way, and any order so made shall be given effect to according to its tenor.

47. Where a term of imprisonment or a minimum term in respect thereof is required to be determined under this Division in respect of any person who at the commencement of this Act is imprisoned in any gaol or detained in any reformatory prison, that term or minimum term shall be determined within a reasonable time after the said commencement and that person shall not be entitled to be released or have any cause of action by reason only that that term or minimum term is not determined at any earlier time.

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

DIVISION 3.—REGULATIONS.

48. (1) The Governor in Council may make regulations for or with respect to prescribing any matter or thing by this Act authorized or directed to be prescribed or necessary or expedient to be prescribed for the purposes of this Act.

Regulations.

(2) All such regulations shall be published in the *Government Gazette* and shall be laid before both Houses of Parliament within fourteen days after the making thereof if Parliament is then sitting and if Parliament is not then sitting then within fourteen days after the next meeting of Parliament, and a copy of all such regulations shall be posted to each member of Parliament.

Publication.