

No. 3 of 1971

AN ORDINANCE

Relating to Sentences of Imprisonment imposed on, and the Release on Parole of, persons convicted of Offences.

I, THE GOVERNOR-GENERAL in and over the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910-1970*.

Dated this eighteenth day of February, 1971.

PAUL HASLUCK
Governor-General.

By His Excellency's Command,

T. E. F. HUGHES
Attorney-General acting for and on behalf of the
Minister of State for the Interior.

PAROLE OF PRISONERS ORDINANCE 1971

1. This Ordinance may be cited as the *Parole of Prisoners Ordinance 1971*.^{*} Short title.

2. This Ordinance shall come into operation on the first day of March, 1971. Commencement.

3.—(1.) In this Ordinance, unless the contrary intention appears— Interpretation.

- “constable” means a Commonwealth Police Officer or a member of the police force of the Territory;
- “court” means the Supreme Court or the Court of Petty Sessions;
- “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” means an offence against a law (other than an Act or regulations under an Act) in force in the Territory;
- “offender” means a person convicted of an offence against a law (other than an Act or regulations under an Act) in force in the Territory;

^{*} Notified in the *Commonwealth Gazette* on 25 February 1971.

“parole order” means an order made under sub-section (2.) of section 5 of this Ordinance and, if such an order has been amended, means the order as amended;

“prison” includes any place where a person who has been sentenced to a term of imprisonment may be detained to undergo that imprisonment;

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

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

(b) ends 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 Ordinance 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 Ordinance, 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.

Fixing of
minimum
term of
imprisonment.

4.—(1.) Where a court sentences an offender to a term of imprisonment of not less than twelve months, the court shall, subject to the next succeeding sub-section, specify a lesser term of imprisonment during which the person so sentenced is not to be eligible to be released on parole in pursuance of this Ordinance.

(2.) The last preceding sub-section does not apply—

(a) if the court, having regard to the nature of the offence and the antecedents of the convicted person, considers that the specifying of such a lesser period would be inappropriate;

(b) where the offender is sentenced to imprisonment for life;

(c) where the offender is sentenced to imprisonment in default of payment of a fine; or

(d) where the offender is committed to prison in pursuance of the *Maintenance Ordinance* 1968 for having disobeyed or failed to comply with a maintenance order.

(3.) The power conferred by sub-section (1.) of this section may be exercised whether the offence in respect of which the sentence is imposed was committed before or after the commencement of this Ordinance and whether the person is convicted of the offence before or after the commencement of this Ordinance.

(4.) Where a court that sentences an offender to a term of imprisonment fails to fix, or fails properly to fix, as required by sub-section (1.) of this section, a minimum term of imprisonment in relation to the offender, that court may, upon application by the Attorney-General or the informant or complainant, fix a minimum term of imprisonment in relation to the offender.

(5.) Where a court sentences an offender to a term of imprisonment and, at the time of the sentence, the offender is under sentence of imprisonment for 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.) In the last preceding sub-section, a reference to an offence shall be read as including an offence against an Act, regulations under an Act or the law of a State.

(7.) Where an offender is sentenced to a term of imprisonment for an offence 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 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.

(8.) Where an offender has been sentenced 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.

(9.) 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, 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.) The reference in sub-section (4.) of this section to another offence and the reference in sub-section (8.) of this section to an offence shall be read as including a reference to an offence against an Act, regulations under an Act or the law of a State or of the Northern Territory of Australia.

Release of
offenders
on parole.

(2.) 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 in respect of which a minimum term of imprisonment has been fixed in pursuance of this Ordinance, 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.

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

(4.) Where—

- (a) a court has, in pursuance of this Ordinance, fixed a minimum term of imprisonment in respect of an offence committed by a person; 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.

(5.) 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 on parole under a person, for the time being appointed in accordance with the order and shall obey all reasonable directions of the person so appointed; and
- (b) is subject to such other conditions, if any, as are specified in the order.

(6.) 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.

(7.) 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.

(8.) 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.

(9.) 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.

(10.) 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 the Court of Petty Sessions.

6. If a constable arrests a person in the circumstances specified in paragraph (b) of sub-section (9.) of the last preceding section, the Court of Petty Sessions shall, if it is satisfied that the person has failed, without reasonable excuse, to comply with a condition of the parole order, cancel the order.

Cancellation
of parole by
Court of Petty
Sessions.

7. Where—

- (a) a person has been brought before the Court of Petty Sessions in pursuance of sub-section (10.) of section 5 of this Ordinance; and
- (b) the Court is satisfied that the parole order in relation to the person has been revoked or the Court cancels the parole order in relation to the person,

Issue of
warrant
where parole
order revoked
or cancelled.

the Court shall issue a warrant for the commitment of the person to prison to serve the part of the term of imprisonment to which the parole order relates that he has not served.

8.—(1.) Where a person has been brought before the Court of Petty Sessions in pursuance of sub-section (10.) of section 5 of this Ordinance, the Court may defer or adjourn the hearing of the matter and may—

Remand of
person by
Court of Petty
Sessions.

- (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 that the person be released from custody upon his entering into a recognizance, with or without sureties, that—
 - (i) he will appear at the time and place appointed for continuing the hearing; and
 - (ii) he will, until that time, comply with such other conditions as the Court thinks fit to specify in the order.

(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 the Court of Petty Sessions and the Court shall issue a warrant in accordance with paragraph (a) of the last preceding sub-section.

Release of
person on
recognizance.

9.—(1.) Where—

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

a magistrate 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 of this Ordinance shall not, unless the person breaks a condition of the recognizance, be executed or further executed before the appeal is disposed of.

Appeal to the
Supreme Court
from decision
to cancel
parole order.

10.—(1.) Where the Court of Petty Sessions, in pursuance of section 6 of this Ordinance, cancels a parole order, the person to whom the order relates may appeal to the Supreme Court against the cancellation and the Supreme Court shall—

- (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 sub-section (1.) of this section shall be by way of re-hearing, but the Supreme Court may have regard to any evidence given before the magistrate.

Service of
term of
imprisonment.

11. Where a parole order in relation to a person is revoked or cancelled and the person is taken into custody in pursuance of this Ordinance, the person shall, during any period in which he is in custody in pursuance of this Ordinance 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.

12.—(1.) The reference in paragraph (a) of the next succeeding sub-section to an offence shall be read as including a reference to an offence against an Act or regulations under an Act.

(2.) Where—

- (a) a person has been sentenced in the Territory to a term of imprisonment for an offence committed while a parole order is in force in relation to him; and

- (b) that parole order is, by reason of that sentence, to be deemed to have been revoked by virtue of sub-section (8.) of section 5 of this Ordinance,

the court by which the person has been sentenced shall, at the time at which the person is sentenced or on any application made subsequently by the Attorney-General, order the person 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.) Subject to the next succeeding sub-section, a person against whom an order is made under this section, 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 until he has served the minimum term of imprisonment fixed in respect of the offence referred to in paragraph (a) of sub-section (2.) 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.

(4.) Where the offence committed by a person referred to in paragraph (a) of sub-section (2.) of this section is an offence against a law (other than an Act or regulations under an Act) in force in the Territory 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.

13.—(1.) The reference in sub-section (3.) of this section to an offence shall be read as including an offence against an Act or regulations under an Act.

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

(2.) 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.

(3.) Where, after a parole order has been made in relation to a person, the person is sentenced in the Territory 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.

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

Effect of parole order on sentence.

- (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.

(2.) Where a parole order in relation to a person is, under sub-section (8.) of section 5 of this Ordinance, 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.

Parole officers.

15. The Attorney-General may appoint persons to be parole officers for the purposes of this Ordinance.

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

16. This Ordinance does not affect—

- (a) the exercise of the Royal prerogative of mercy;
- (b) the operation of the provisions of section 17 or section 19A of the *Crimes Act* 1914-1966 as applied by section 7 of the *Interpretation Ordinance* 1937-1967; or
- (c) the operation of any Act, or of any other law in force in the Territory, relating to the release of offenders.

Regulations.

17. The Attorney-General may make regulations, not inconsistent with this Ordinance, prescribing all matters necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance.