

Queensland



ANNO VICESIMO NONO

ELIZABETHAE SECUNDAE REGINAE

No. 17 of 1980

**An Act to consolidate and amend the laws relating to the
probation and parole of offenders and to provide for
their release under Community Service Orders and
for matters incidental thereto**

[ASSENTED TO 12TH MAY, 1980]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY

1. **Short title.** This Act may be cited as the *Offenders Probation and Parole Act 1980*.

2. **Commencement of Act.** The Governor may by Proclamation—

(a) appoint a date on which this Act shall come into operation;
or

(b) appoint dates on which the provisions of this Act specified in the Proclamation shall come into operation.

Such dates may be appointed in one or in different Proclamations.

This Act or a provision thereof specified in the Proclamation, shall come into operation on the date appointed by Proclamation made under this section for the coming into operation of this Act or, as the case may be, that provision.

3. **Arrangement.** This Act is arranged as follows:—

PART I—PRELIMINARY (ss. 1–7);

PART II—ADMINISTRATION (ss. 8–16);

PART III—PROBATION ORDERS (ss. 17–35);

PART IV—PAROLE BOARD AND PAROLE ORDERS (ss. 36–68);

PART V—COMMUNITY SERVICE ORDERS (ss. 69–89);

PART VI—MISCELLANEOUS (ss. 90–96);

SCHEDULE.

4. **Repeals and savings.** (1) The Acts set forth in the schedule (in this section referred to as the “repealed Acts”) are repealed to the extent therein specified.

(2) (a) Every probation order, parole order, parole certificate, order, warrant, direction, permit, certificate, approval, cancellation, suspension, determination, or other act or authority made, issued, given, granted, continued in force or done under the repealed Acts and in force immediately prior to the commencement of Parts I, II, III, IV and VI of this Act shall continue in force as if it were made, issued, given, granted or done under this Act until it expires by effluxion of time or is revoked, cancelled, or suspended under this Act.

(b) The Board shall continue to be constituted by all the members by whom it is constituted immediately prior to the commencement of Part IV of this Act and they shall continue in office as members of the Board in terms of their nomination or, as the case may be, appointment:

Provided that on and from the commencement of Part IV of this Act the Under Secretary of the Department of Welfare Services shall be a member of the Board.

(c) Every person who at the commencement of Part II of this Act holds an office or position to which he was appointed under or for the purposes of the repealed Acts shall continue to hold that office or position or the corresponding office or position under and for the purposes of this Act until he vacates or is lawfully removed from that office or position and when such office or position has been held immediately prior to the commencement of Part II of this Act under, subject to and in accordance with the *Public Service Act 1922-1978*, the same or corresponding office or position shall be and continue to be held under, subject to and in accordance with such lastmentioned Act.

(d) Without prejudice to the generality of paragraph (c) whereas the same person was appointed under the repealed Acts to the office of Chief Probation Officer and the office of Chief Parole Officer and those offices have now been merged under this Act then that person shall without further appointment, on and from the commencement of Part II of this Act be the Chief Probation and Parole Officer for the purposes of this Act.

5. Application of Act. (1) This Act shall not apply to or with respect to any child who is convicted of an offence and this Act shall be read and construed so as not to limit or otherwise affect the provisions of the *Children's Services Act 1965-1979*.

(2) This Act applies so as not to prejudice or affect in any way any civil liability incurred by any person in respect of any act or omission which constitutes an offence.

6. Construction of references to court by which probation order or community service order made. In Part III or V of this Act a reference to the court by which a probation order or community service order was made shall be deemed to include a reference—

- (a) where the order was made by the Supreme Court—to any sittings of the Supreme Court in its criminal jurisdiction at any place in Queensland;
- (b) where the order was made by a District Court—to any sittings of a District Court in its criminal jurisdiction at any place in Queensland;
- (c) where the order was made by a Magistrates Court—to any Magistrates Court sitting at the place at which the order was made,

notwithstanding that the Judge or justices constituting the court may not be the same as made the order originally.

7. Interpretation. In this Act, unless the contrary intention appears—
 "Board" means the Parole Board constituted under this Act;

- “ Chief Probation and Parole Officer ” means the Chief Probation and Parole Officer appointed under this Act: the term includes any person who for the time being occupies the office or performs the duties of the Chief Probation and Parole Officer;
- “ child ” means a boy or girl under the age or apparent age of 17 years;
- “ Deputy Chief Probation and Parole Officer ” means the Deputy Chief Probation and Parole Officer appointed under this Act: the term includes any person who for the time being occupies the office or performs the duties of the Deputy Chief Probation and Parole Officer;
- “ Minister ” means the Minister for Welfare or other Minister of the Crown who at the material time is charged with the administration of this Act: the term includes a Minister of the Crown who is temporarily performing the duties of the Minister;
- “ offence ” includes—
- (a) an indictable offence;
 - (b) an offence punishable on summary conviction;
- “ parole officer ” means a parole officer appointed under this Act: the term includes the Chief Probation and Parole Officer, an honorary parole officer and any person appointed for the time being to perform the whole or any part of the duties of a parole officer;
- “ parole period ” means the period during which a prisoner is released on parole pursuant to a parole order;
- “ prison ” means a prison within the meaning of the *Prisons Act* 1958–1974;
- “ probation officer ” means a probation officer appointed under this Act: the term includes the Chief Probation and Parole Officer, an honorary probation officer and any person appointed for the time being to perform the whole or any part of the duties of a probation officer;
- “ probation order ” means an order made under section 17 (1);
- “ probation period ” means the period specified in a probation order during which the probationer is required to be under the supervision of a probation officer;
- “ probationer ” means a person in respect of whom a probation order is made;
- “ secretary ” means the secretary to the Board and includes a person who is temporarily performing the duties of the secretary;

- “ State ” means a State of the Commonwealth;
- “ Territory ” means a Territory of the Commonwealth;
- “ Under Secretary ” means the person who at the material time is the permanent head of the Department of Government responsible, subject to the Minister for the administration of this Act.

PART II—ADMINISTRATION

8. Administration of Act. This Act shall be administered by the Minister and, subject to his control and direction, by the Under Secretary and other officers appointed pursuant to this Act.

9. Appointment of Officers. (1) The Governor in Council may appoint—

- (a) a Chief Probation and Parole Officer;
- (b) a Deputy Chief Probation and Parole Officer;
- (c) a secretary to the Board;
- (d) such and so many probation officers, parole officers and other officers as he considers necessary for the effectual administration of this Act.

(2) A person appointed under subsection (1) shall hold office under, subject to and in accordance with the *Public Service Act 1922–1978*.

(3) The Governor in Council by notification published in the Gazette may appoint suitable persons to be honorary probation officers and honorary parole officers for the purposes of this Act and may at any time remove a person so appointed.

(4) An officer of the Public Service of Queensland may be appointed to an office under this Act or to perform such duties under this Act as are prescribed or so far as are not prescribed as the Governor in Council directs and may hold such appointment and perform such duties in conjunction with his office as an officer in that Service.

(5) The Governor in Council may by Order in Council appoint a person as holding any office for the time being to be a probation officer or a parole officer and such person shall by virtue of that office and without further or other appointment be a probation officer or, as the case may be, a parole officer; and in every such case each successive holder of the office in question and each person who for the time being occupies or performs the duties of that office shall without further appointment or other authority and while he holds or occupies or performs the duties of that office, be a probation officer or as the case may be a parole officer.

(6) During any absence from duty of the Chief Probation and Parole Officer, or during any vacancy occurring in the office of the Chief Probation and Parole Officer, the Deputy Chief Probation and Parole

Officer shall act as Chief Probation and Parole Officer and while he so acts shall have and may exercise and perform all the powers, authorities, functions and duties of the Chief Probation and Parole Officer.

10. Power to delegate. (1) The Chief Probation and Parole Officer may either generally or otherwise as provided by the instrument of delegation, by writing signed by him, delegate to any person all or any of his powers, authorities, functions and duties except this power of delegation.

(2) A power, authority, function or duty so delegated, if exercised or performed by the delegate, shall be exercised or performed in accordance with the instrument of delegation.

(3) A delegation may be limited to any part or parts of the State and may be made subject to such terms as the Chief Probation and Parole Officer thinks fit including a requirement that the delegate shall report to the Chief Probation and Parole Officer upon his exercise or performance of the delegated power, authority, function or duty.

(4) Where the exercise or performance of any power, authority, function or duty, the subject of a delegation, is made to depend upon the opinion or belief of the Chief Probation and Parole Officer in relation to any matter, that power, authority, function or duty may be exercised or performed upon the opinion or belief of the delegate who is considering the exercise or performance of that power, authority, function or duty.

(5) The Chief Probation and Parole Officer may make such and so many delegations of the same power, authority, function or duty and to such number of persons as he considers necessary or desirable.

(6) A delegation is revocable at the will of the Chief Probation and Parole Officer and does not prevent the exercise of a power or authority, or the performance of a function or duty by him.

11. Presumption of authority. Until the contrary is proved every exercise or performance of any power, authority, function or duty by the Chief Probation and Parole Officer or the Deputy Chief Probation and Parole Officer or, where it is alleged that such exercise or performance has occurred by virtue of a delegation pursuant to section 10, any probation officer or parole officer shall be presumed to be a lawful exercise or, as the case may be, performance.

12. Probation officer subject to direction of court. (1) The Chief Probation and Parole Officer and all other probation officers shall, in relation to a probation order be subject to the direction of the court by which the order was made but otherwise shall be subject to the control of the Under Secretary.

(2) Subject to subsection (1) probation officers other than the Chief Probation and Parole Officer shall be subject to the immediate control of the Chief Probation and Parole Officer.

13. Powers, authorities, functions and duties of probation officers.

(1) Probation officers shall have and may exercise such powers and authorities and shall perform such functions and duties as are prescribed.

(2) The Chief Probation and Parole Officer shall when so required by the court for the purposes of this Act cause to be prepared and submitted to that court such reports on and information with respect to a specified person as the court requires.

14. Parole officer subject to direction of Board. (1) The Chief Probation and Parole Officer and all other parole officers shall, in relation to a parole order, be subject to the direction of the Board, but otherwise shall be subject to the control of the Under Secretary.

(2) Subject to subsection (1) parole officers other than the Chief Probation and Parole Officer shall be subject to the immediate control of the Chief Probation and Parole Officer.

15. Powers, authorities, functions and duties of parole officers. (1) Parole officers shall have and may exercise such powers and authorities and shall perform such functions and duties as are prescribed.

(2) The Chief Probation and Parole Officer shall when so required by the Board cause to be prepared and submitted to the Board such reports on and information with respect to a specified prisoner as the Board requires.

16. Annual Report. The Chief Probation and Parole Officer shall, on or before the 30th September, in each year furnish to the Minister in relation to the year that ended on the 30th June last preceding, a report on the operation of this Act and the activities of probation officers and parole officers generally and setting forth the number of—

- (a) persons placed on probation during that year;
- (b) persons sentenced during that year as a result of breaches of probation orders (including convictions for offences committed during the probation period);
- (c) probation orders discharged during that year;
- (d) persons assigned to parole supervision during that year;
- (e) parole suspensions and cancellations during that year;
- (f) persons successfully completing parole periods during that year;
- (g) persons admitted to community service orders during that year;
- (h) persons sentenced during that year as a result of breaches of community service orders (including convictions for offences committed during the community service order period);
- (i) community service orders discharged during that year.

PART III—PROBATION ORDERS

17. Probation order on conviction. (1) Where a person is convicted by a court of an offence punishable by a term of imprisonment otherwise than in default of payment of a fine and the court is of the opinion that having regard to the circumstances including the nature of the offence and the character and antecedents of the offender it is expedient to do so, the court may—

- (a) instead of sentencing him, make a probation order releasing him and requiring him to be under the supervision of a probation officer for such period, being not less than 6 months nor more than 3 years, as is specified in the order; or
- (b) sentence him to such term of imprisonment as is provided for but in no case exceeding 6 months and in addition, make a probation order requiring him to be under the supervision of a probation officer for such period being not less than 9 months nor more than 3 years, as is specified in the order.

The period of a probation order made under paragraph (b) shall commence on the date on which the order was made but the requirements of such an order shall become operative only after that person's release from prison.

This section does not apply to an offence that is a crime the punishment of which cannot be mitigated or varied under section 19 of *The Criminal Code*.

(2) Before making a probation order under subsection (1) the court shall explain or cause to be explained to the offender in language likely to be readily understood by him the effect of the order (including any additional requirements proposed to be inserted therein) and that if he fails to comply with the requirements of the order or commits another offence during the probation period he may be sentenced or, as the case may be, further 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.

18. Appointment of supervising court. (1) Every probation order shall appoint a Magistrates Court being the Magistrates Court—

- (a) nearest to the place where the probationer intends to reside; or
- (b) at any other place that the court making the order thinks most convenient in the circumstances,

to be the supervising court for the purposes of the order and the Magistrates Court so appointed shall be, for the purposes of this Act, the supervising court in respect of that order.

(2) Where, upon application by the probation officer or a probationer himself, the supervising court is satisfied that a probationer has changed or proposes to change his place of residence so that a Magistrates Court other than the supervising court is or will be the Magistrates Court nearest to the probationer's place of residence or the most convenient in the circumstances, the supervising court may by order amend the

probation order that relates to the probationer by substituting such other Magistrates Court as the supervising court instead of the court previously so appointed.

Where a probation order is amended in accordance with this subsection, the clerk of the court that made the amending order shall forward to the clerk of the court substituted as the supervising court a copy of the probation order as amended together with all other relevant documents and information.

19. Notifications following making of order. (1) The court by which a probation order is made shall cause a copy of the order to be given to the probationer and further copies to be forthwith forwarded to the Chief Probation and Parole Officer and the person in charge of any institution in which the probationer is required by the order to reside.

Save where the court that makes a probation order is the supervising court, that court shall also cause to be forwarded to the clerk of the supervising court a copy of the order together with all relevant documents and information.

(2) Where a probationer is required or permitted by a probation order to reside in another State or a Territory, the Chief Probation and Parole Officer shall cause to be forwarded forthwith to the proper officer of that State or Territory a copy of the order certified by him as a true copy together with all other relevant documents and information.

20. Assignment of probation officer. The Chief Probation and Parole Officer—

(a) shall assign a probation officer in respect of every probation order;

(b) may from time to time assign another probation officer in the stead of a probation officer assigned under paragraph (a).

A probation officer assigned pursuant to this section shall be the probation officer for the purposes of the order and shall supervise the probationer during the probation period.

21. Requirements of probation order. (1) A probation order—

(a) shall contain requirements—

(i) that the probationer abstain from violation of the law;

(ii) that the probationer report in person within 24 hours after his release on probation or, as the case may be, his release from prison at the place specified in the order;

(iii) that the probationer carry out the lawful instructions of the probation officer;

(iv) that the probationer report and receive visits as directed by the probation officer;

(v) that the probationer notify the probation officer within 48 hours of any change of address or change of employment during the probation period;

- (vi) that the probationer, save in a case where the probation order permits the probationer to reside in another State or a Territory, shall not leave or remain out of Queensland during the probation period;
- (b) may contain requirements—
 - (i) that in a case where the probation order is made in respect of an offence in relation to property or against the person of another, the probationer—
 - (A) make restitution of the property in relation to which the offence was committed or pay compensation for injury to or loss or destruction of that property;
 - (B) pay reasonable compensation for injury occasioned to any person by the commission of the offence,
 in either case in the manner and at the time and place ordered by the court;
 - (ii) that the probationer comply during the whole or a part of the probation period with such conditions (including but without limiting the generality of the expression a condition that the probationer submit himself to medical, psychiatric or psychological treatment) as the court considers necessary for securing the good conduct of the probationer or for preventing a repetition by him of the offence in relation to which the order was made or the commission by him of other offences.

(2) Notwithstanding that a probation order contains a requirement that the probationer shall not leave or remain out of Queensland, the Chief Probation and Parole Officer, upon application made by a probation officer or the probationer himself, may grant to the probationer a permit to leave and remain out of Queensland upon such terms and conditions and for such time as is specified in the permit as he thinks fit.

A permit under this subsection shall be in writing and signed by the Chief Probation and Parole Officer.

To the extent necessary to give effect to a permit under this subsection the probation order in question shall be deemed to be amended and shall apply accordingly.

22. Non-application of s. 19 (9) or s. 656 (2) of The Criminal Code where probation appropriate. Where a person convicted of an offence may be dealt with pursuant to section 19 (9) or 656 (2) of *The Criminal Code* the Court that convicts him shall not release him in accordance with those provisions if in its opinion he may properly and conveniently be released on probation in accordance with this Act.

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

(2) A probation order shall be discharged without an order or other action by the court upon the expiration of the probation period:

Provided that a probation order shall not be deemed to be discharged in accordance with this subsection if during the probation period the probationer has failed to comply with a requirement of the order or has committed an offence whether in Queensland or elsewhere.

(3) Where a probation order is discharged or deemed to be discharged in accordance with this section, the probationer shall be released from any further obligation or liability in respect of the order and of the offence in respect of which the order was made.

(4) (a) A probation order made under paragraph (a) of section 17 (1) shall be of no further force or effect where a probationer, pursuant to this Part, is sentenced for the offence in relation to which the probation order was made.

(b) A probation order made under paragraph (b) of section 17 (1) shall be of no further force or effect where a probationer, pursuant to this Part, is sentenced further for the offence in relation to which the probation order was made.

24. Amendment of probation order. (1) The court by which a probation order was made or the supervising court may, upon application by the probation officer or the probationer, by order amend the probation order by—

- (a) cancelling a requirement thereof;
- (b) inserting therein in addition to existing requirements or in substitution for a requirement that has been cancelled a requirement that could have been included in the order if it were then being made by the court in accordance with this Act.

(2) The power to amend a probation order pursuant to this section does not include a power to amend such order by—

- (a) reducing the probation period;
- (b) extending the probation period beyond the end of 3 years from the date of the original order.

(3) Except where a court by which a probation order was made or a supervising court proposes to amend a probation order—

- (a) on the application of the probationer;
- (b) by cancelling any requirement of the probation order;
- (c) by reducing the period of any requirement of the probation order; or
- (d) by substituting another supervising court,

it shall not amend a probation order unless the probationer expresses his willingness to comply with the proposed amendments.

(4) (a) A court by which a probation order was made or a supervising court that makes an order amending a probation order shall thereupon forward a copy of the amending order to the probation officer and the probationer.

(b) Where the order amending the probation order is made by the court that made the probation order, that court shall in addition to taking the action specified in paragraph (a) thereupon forward to the supervising court a copy of the amending order together with all other relevant documents and information.

25. Breach of probation order otherwise than by conviction. (1) A probationer who, during the probation period and whether in Queensland or elsewhere, contravenes or fails to comply with a requirement contained in a probation order commits an offence against this Act.

(2) A probationer who has been convicted of an offence other than an offence defined in this section committed whether in Queensland or elsewhere during the probation period shall not by reason only of the commission of that offence render himself liable to prosecution as for an offence defined in this section.

26. Procedure upon breach of probation order. (1) A justice to whom it is made to appear upon complaint by a probation officer duly authorized in that behalf by the Chief Probation and Parole Officer that a probationer has, during the probation period, contravened or failed to comply with a requirement of a probation order may issue a summons directed to the probationer requiring him to appear—

(a) in the case of an order made by a Magistrates Court, at that court or the supervising court;

(b) in the case of an order made by a court other than a Magistrates Court at the supervising court,

at the place, date and time specified in the summons to be dealt with according to law.

(2) Where a complaint pursuant to subsection (1) is in writing and on oath the justice may instead of issuing a summons issue a warrant directed to all police officers to arrest the probationer and bring him before the appropriate court specified in that subsection to be dealt with according to law.

27. Powers of Magistrates Courts before which probationer appears or is brought. (1) A Magistrates Court that convicts a probationer who appears before it pursuant to section 26 (1) or is brought before it pursuant to section 26 (2)—

(a) may without prejudice to the continuation of the probation order impose on him a penalty not exceeding \$500;

(b) may in addition to a penalty imposed in accordance with paragraph (a) or without imposing a penalty make an order for the payment of so much of a sum by way of compensation ordered to be paid as a requirement contained in a probation order under subparagraph (i) of paragraph (b) of section 21 (1) as remains unpaid;

(c) may make any order for the enforcement of an order under paragraph (b) that the court could have made if it were then and there making the probation order;

- (d) may, where the probation order was made by a Magistrates Court, 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 he had just been convicted by that court of that offence; or
- (e) may, where the probation order was made by a court other than a Magistrates Court commit him to custody or grant bail to him to be brought or to appear before the court by which the order was made.

(2) A Magistrates Court that makes an order in accordance with paragraph (e) shall furnish to the Crown Solicitor a certificate in the prescribed form signed by a justice certifying that the probationer has contravened or failed to comply with such requirements contained in the probation order as are specified in the certificate together with such other relevant documents and information as the Court thinks fit.

28. Powers of Supreme Court or District Court before which probationer appears. The Supreme Court or a District Court before which a probationer appears or is brought following an order made in accordance with paragraph (e) of section 27 (1) upon proof to its satisfaction that the probationer has contravened or failed to comply with a requirement contained in a probation order, may deal with him for the offence in respect of which the probation order was made in any manner in which that Court could deal with him if it had just convicted him of that offence.

29. Breach of probation order by conviction. (1) A justice to whom it is made to appear upon complaint by a probation officer duly authorized in that behalf by the Chief Probation and Parole Officer that a probationer has been convicted in Queensland or elsewhere of an offence committed during the probation period (other than an offence against section 25) and has been dealt with in relation to that offence may issue his summons directed to the probationer requiring him to appear at the place, date and time specified in the summons before the court by which the probation order was made to be dealt with according to law.

Where a complaint pursuant to this subsection is in writing and on oath the justice may, instead of issuing a summons, issue a warrant directed to all police officers to arrest the probationer and bring him before the court by which the probation order was made to be dealt with according to law.

(2) (a) Where the court by which the probation order was made is a Magistrates Court the summons or warrant issued under subsection (1) may direct the probationer to appear or to be brought before the supervising court.

(b) Where the warrant issued under subsection (1) directs that the probationer be brought before the Supreme Court or a District Court and he cannot be brought before that Court forthwith because

no sittings are then and there being held, the warrant shall have effect as if it directed that he be brought before a Magistrates Court and upon his appearance before it, that Court shall commit him to custody or grant bail to him to be brought or to appear before the Supreme Court or, as the case requires, a District Court.

(3) Where a probationer is convicted and dealt with by a court other than the court by which the probation order was made in respect of an offence committed by the probationer during the probation period (other than an offence against section 25) that other court may commit him to custody or grant bail to him to be brought or to appear before the court by which the probation order was made or, if that order was made by a Magistrates Court, before the supervising court and in that event that other court shall furnish to the Crown Solicitor or, as the case may be, the appropriate clerk of the court a certificate of the conviction in the prescribed form signed by the officer having the custody of the records of that court and shall notify the Chief Probation and Parole Officer of the conviction.

(4) Where—

- (a) a probationer is convicted and dealt with in respect of an offence (other than an offence defined in section 25) committed during the probation period by the court by which the probation order was made or, if that order was made by a Magistrates Court, the supervising court; or
- (b) it is proved to the satisfaction of the court by which the probation order was made or, if that order was made by a Magistrates Court, the supervising court that the probationer has been convicted and dealt with in respect of an offence (other than an offence against section 25) committed in Queensland or elsewhere during the probation period,

the court by which the order was made or, as the case may be, supervising court—

- (c) may without prejudice to the continuation of the probation order impose on him a penalty not exceeding \$500;
- (d) may in addition to a penalty imposed in accordance with paragraph (c) or without imposing a penalty make an order for the payment of so much of a sum by way of compensation ordered to be paid as a requirement contained in a probation order under subparagraph (i) of paragraph (b) of section 21 (1) as remains unpaid;
- (e) may make any order for the enforcement of an order under subparagraph (d) that the Court could have made if it were then and there making the probation order;
- (f) may deal with the probationer for the offence in relation to which the order was made in any manner in which it could deal with him if he had just been convicted by or before that court of the offence.

(5) The Supreme Court or a District Court may deal with a probationer for the offence in respect of which the probation order was made in a case where the probationer, in respect of whom the probation order was made by a Magistrates Court, is convicted before the Supreme Court or a District Court of an offence committed during the probation period in any manner in which the Magistrates Court could deal with him if he had just been convicted by that Court of that offence and a sentence imposed under this subsection shall be deemed to be a sentence of the Magistrates Court save that, for the purposes of an appeal against that sentence, it shall be deemed to be a sentence imposed upon a conviction on indictment and Chapter LXVII of *The Criminal Code* shall with all necessary adaptations apply and extend accordingly.

(6) The Supreme Court may deal with a probationer for the offence in respect of which the probation order was made in a case where the probationer, in respect of whom the probation order was made by a District Court, is convicted before the Supreme Court of an offence committed during the probation period in any manner in which the District Court could deal with him if he had just been convicted before that Court of that offence and a sentence imposed shall be deemed for all purposes to be a sentence of a District Court upon a conviction on indictment.

30. Court may impose further sentence. Where, pursuant to the provisions of this Act, it is competent to a court to deal with a 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 he had just been convicted by that court of that offence and the probationer has been admitted to probation pursuant to the provisions of paragraph (b) of section 17 (1) then that court may further sentence him for the offence in relation to which the probation order was made:

Provided that any such further sentence when coupled with the term of imprisonment to which the probationer has previously been sentenced for the offence in relation to which the probation order was made—

- (a) shall not exceed the maximum period of imprisonment provided for in relation to that offence; and
- (b) shall not be such as would in all the circumstances be manifestly excessive.

31. Determination of questions as to breach of probation order or conviction of probationer. In a proceeding before the Supreme Court or a District Court arising out of this Part any question as to whether a probationer—

- (a) has contravened or failed to comply with a requirement contained in a probation order; or
- (b) has been convicted of an offence committed by him during the probation period,

shall be determined by the Judge and not by a jury.

32. Power to take proceedings after expiration of probation period. A proceeding in relation to or arising out of a breach of a probation order may be taken and the person in relation to whom the probation order was made dealt with under this Act in respect of the breach notwithstanding that the probation period has expired.

33. Conviction on which probation granted to be disregarded for certain purposes. (1) A conviction for an offence in relation to which a probation order is made under paragraph (a) of section 17 (1) shall be deemed not to be a conviction for any purpose (including but without limiting the generality of the expression the purpose of any enactment that imposes, authorizes or requires the imposition of a disqualification or disability on a convicted person) except in relation to—

- (a) the making of the probation order;
- (b) the making of a community service order;
- (c) the taking of a subsequent proceeding against the offender in accordance with this Act;
- (d) the remission or mitigation for good conduct of a sentence by or under the *Prisons Act 1958-1974*;
- (e) any proceeding against the offender for a subsequent offence.

(2) Subsection (1) shall cease to apply in a case where an offender is subsequently dealt with under this Act for the offence in relation to which the probation order was made.

(3) This section does not affect the right of an offender to appeal against a conviction in relation to which a probation order is made or to rely on such conviction in bar of a subsequent proceeding for the same offence or the revesting or restoration of property in consequence of the conviction.

34. Appeal in case of conviction in a Magistrates Court on which probation granted. A person aggrieved by a summary conviction of a Magistrates Court for an offence in respect of which a probation order is made may appeal against that conviction pursuant to the *Justices Act 1886-1979* notwithstanding that no fine, penalty or forfeiture is imposed thereby.

35. Form of probation order. (1) Where pursuant to the provisions of this Act a court admits a person to probation in relation to two or more offences committed by him and the requirements of each of the probation orders made are similar then it shall be competent to that court to evidence each of the probation orders in the one form which shall contain a schedule listing the offences in relation to which a probation order has been made.

(2) In any subsequent proceeding in which it is relevant to prove the making of a probation order referred to in subsection (1) it shall be regarded that a separate probation order was duly made in relation to each of the offences set out in the schedule.

PART IV—PAROLE BOARD AND PAROLE ORDERS

36. Constitution of Board. The Parole Board constituted under the repealed Acts and in existence immediately before the commencement of Part IV of this Act is preserved, continued in existence and constituted under this Act.

37. Composition of Board. (1) The Parole Board shall consist of the following members:—

- (a) a Judge of the Supreme Court who shall be chairman of the Board nominated with his consent by the Chief Justice either generally or for a specified term;
- (b) the Under Secretary of the Department of Welfare Services or the person for the time being performing the duties of the Under Secretary;
- (c) the Under Secretary of the Department of Justice or the person for the time being performing the duties of the Under Secretary;
- (d) the Comptroller-General of Prisons or the person for the time being performing the duties of the Comptroller-General; and
- (e) three other persons (one of whom shall be a duly qualified medical practitioner or a psychologist and at least one of whom shall be a woman).

The members of the Board referred to in subparagraph (e) are in this Act referred to as the “appointed members”.

(2) The Chief Justice may nominate a Judge of the Supreme Court (with his consent) to act temporarily as a member of the Board during the absence from any cause of the Judge who is a member thereof or during a vacancy in that office.

The Judge nominated under this subsection shall act as a member of the Board during the term for which he has been nominated and whilst so acting shall be chairman of the Board and shall have and may exercise the powers and authorities and shall perform the functions and duties of a member of the Board.

(3) (a) Each of them, the Under Secretary, Department of Welfare Services, Under Secretary, Department of Justice, and the Comptroller-General of Prisons may appoint a person who is an officer of his department to be his deputy as a member of the Board.

(b) A person appointed as a deputy of a member of the Board under this subsection shall act instead of the member whose deputy he is during the absence of that member from any cause and whilst so acting shall have and may exercise the powers and authorities and shall perform the functions and duties of a member of the Board.

(4) An appointment under subsection (3)—

- (a) shall be in writing;
- (b) may be made generally or subject to such limitations as are specified therein;

(c) may be revoked at any time by notice in writing furnished to the appointee.

(5) (a) The Governor in Council may by notification published in the Gazette at any time appoint a qualified person who is not a member of the Board to be the deputy of an appointed member.

(b) A person appointed as a deputy to a member of the Board under this subsection shall act in the stead of the member whose deputy he is during the absence of that member from any cause and whilst so acting shall have and may exercise the powers and authorities and shall perform the functions and duties of a member of the Board.

38. Powers and duties generally. The Board shall have and may exercise such powers and authorities and shall perform such functions and duties as are conferred or imposed upon it by or under this Act or any other Act.

39. Vacation of office. The office of a member of the Board specified in paragraphs (a), (b), (c) or (d) of section 37 (1) shall become vacant if the member—

(a) dies; or

(b) being a member by virtue of the holding by him of the office specified in one of those paragraphs, ceases to hold that office.

40. Appointment of appointed members. The appointed members shall be appointed by the Governor in Council by notification published in the Gazette.

41. Tenure of office of appointed members. (1) Each appointed member shall be appointed and hold office for such term not exceeding 3 years as the Governor in Council determines but if by the expiration of his term of office his successor has not been duly appointed, he shall, subject to this Act, hold office until his successor is duly appointed.

An appointed member shall, if he is otherwise qualified, be eligible for reappointment as such member.

(2) The Governor in Council, for any reason appearing to him to be sufficient, may by notification published in the Gazette remove from office an appointed member.

(3) The office of an appointed member shall become vacant if the member—

(a) dies or becomes mentally ill;

(b) resigns his office by writing signed by him furnished to the Minister;

(c) ceases to be qualified as such member;

(d) is removed from office as such member by the Governor in Council.

42. Casual vacancies. (1) Where a vacancy occurs in the office of the member of the Board specified in paragraph (a) of section 37 (1), the Chief Justice may nominate another Judge of the Supreme Court (with his consent) to fill that vacancy.

(2) Where a vacancy occurs in the office of an appointed member of the Board during the term of office of that member, the Governor in Council may appoint in accordance with this Act another person as a member to hold office for the balance of his predecessors term of office as a member.

A person appointed under this subsection to fill a casual vacancy as an appointed member shall hold office for the balance of his predecessors term of office as a member or until he sooner vacates that office and shall if otherwise qualified, be eligible for reappointment.

43. Meetings of Board. The Board shall meet as often as is necessary for the exercise and performance of its powers, authorities, functions and duties.

The chairman may at any time convene a meeting of the Board.

44. Procedure at meetings. (1) The chairman of the Board shall preside at all meetings at which he is present.

(2) A quorum shall consist of the chairman and three other members of the Board and business shall not be conducted at a meeting of the Board unless a quorum is present.

(3) Where the chairman is unable from any cause to attend a meeting of the Board and four other members of the Board are of opinion that it is desirable that a meeting of the Board be held to consider the exercise by the Board of its powers under section 64 (1), the secretary to the Board shall be advised accordingly and thereupon he shall convene a meeting of the Board.

The Under Secretary of the Department of Welfare Services shall, if he is present, preside at the meeting so convened and in his absence a member of the Board duly appointed in that behalf by the members present shall preside.

The member who presides at such meeting shall have and may exercise the powers and authorities and shall perform the functions and duties of the chairman of the Board under this Act.

(4) Notwithstanding subsection (2), a quorum at a meeting of the Board convened in accordance with subsection (3) shall be four members of the Board other than the chairman and such meeting shall be deemed to be a duly convened meeting of the Board for the purpose of exercising any power of the Board conferred on it by section 64 (1).

(5) Subsections (3) and (4) shall be read and construed so as not to prejudice in any way the power of the Board to transact at a duly convened meeting of the Board any business of the Board.

45. Conduct of affairs. (1) The chairman of the Board alone shall decide all questions of law arising out of any matter before the Board.

(2) Subject to subsection (1), the Board shall exercise a power or authority and perform a function or duty by the vote of its members present at a meeting and voting on the business in question.

(3) The chairman of the Board has a deliberative vote and in the event of an equality of votes on any question, also has a casting vote.

(4) Subject to this Act, the Board shall conduct its business generally and proceedings at meetings in such manner as it determines from time to time.

46. Invalidity of acts. Any act, proceeding, decision or determination of the Board is not invalidated or in any way prejudiced by reason only of any defect in the qualification, membership or appointment of a member thereof or a vacancy in the membership of the Board at the time of that act, proceeding, decision or determination.

47. Judicial notice. (1) All courts and persons acting judicially shall take judicial notice of the signature of every person who is a member of or secretary to the Board affixed to a document or other writing under the authority of this Act or any other Act and shall presume until the contrary is proved that every such signature has been lawfully and properly affixed.

(2) A certificate signed by the secretary to the Board purporting to record any determination or decision of the Board shall be prima facie evidence of the making of that determination or decision by the Board.

48. Authentication of document. Save where it is by this Act otherwise provided, a document or other writing made or issued by the Board for the purposes of this Act shall be sufficiently authenticated if it is made or, as the case may be, signed by the chairman or by the secretary to the Board at the chairman's direction.

49. Board to have powers of Commission of Inquiry. For the purpose of performing its functions and duties under this Act, the Board and the chairman thereof shall have and may exercise the powers, authorities, protection and jurisdiction conferred on a Commission of Inquiry and the chairman thereof by *The Commissions of Inquiry Acts, 1950 to 1954* and those Acts with all necessary adaptations shall apply accordingly to and in relation to the Board and the chairman thereof.

50. Annual report. The Board shall, on or before 30 September in each year furnish to the Minister in respect of the year that ended on 30 June last preceding a report on the operation of this Act with respect to parole and the activities of the Board and setting forth the number of—

(a) persons released on parole during that year;

(b) persons returned to gaol during that year upon cancellation or suspension of parole;

- (c) persons declared to be habitual criminals released on parole during that year.

51. Special reports. The Board shall upon request made in that behalf at any time by the Minister furnish to him a report in writing on any matter relating to the operation of this Act with respect to parole or to the exercise of any power or authority or the performance of a function or duty of the Board.

52. Entitlements of members of the Board. Members of the Board, other than the chairman, shall be entitled to such fees and other remuneration for attendance at meetings of the Board as are prescribed save that a member of the Board who is an officer of the Public Service of Queensland shall not receive fees or remuneration for attendance at a meeting of the Board during his ordinary hours of duty.

Members of the Board shall receive such travelling expenses as may be prescribed.

53. Release on parole. (1) Subject to this section the Board may by order in writing direct that—

- (a) a prisoner who has not been declared to be an habitual criminal, undergoing a sentence or sentences of imprisonment other than a sentence with or without hard labour of imprisonment for life;
- (b) a prisoner who has been declared an habitual criminal and who having completed a sentence of imprisonment is being detained during Her Majesty's pleasure;
- (c) a prisoner who is being detained in an institution for a period fixed by a Judge pursuant to Part IV of *The Criminal Law Amendment Act of 1945*,

be released from prison on parole at the time specified in the order and thereupon he shall be released.

(2) (a) Subject to subsections (3) and (4) a prisoner to whom paragraph (a) of subsection (1) refers is not eligible for release on parole—

- (i) in the case of a prisoner who is liable to undergo one or more terms of imprisonment to commence upon or after the termination of the imprisonment that he is then undergoing, he has undergone half at least of the aggregate of all the terms of imprisonment that he is liable to undergo;
- (ii) in any other case, he has undergone one half at least of the term of imprisonment to which he was sentenced.

(b) Save where the Governor in Council, upon the recommendation of the Board, otherwise determines—

- (i) a prisoner specified in paragraph (b) of subsection (1) is not eligible for release on parole until the prisoner has been so detained during a period of 2 years;

- (ii) a prisoner specified in paragraph (c) of subsection (1) is not eligible for release on parole until the prisoner has been detained during one half of the period for which he was directed to be detained;
- (iii) a prisoner who—
 - (A) is undergoing a sentence of imprisonment not exceeding six months; or
 - (B) is liable to undergo one or more further terms of imprisonment that together with the imprisonment he is then undergoing do not exceed six months,is not eligible for release on parole.
- (3) A Court may—
 - (a) upon sentencing a person convicted of an offence to a term of imprisonment recommend that he be eligible for release on parole after such period of imprisonment under that sentence as is specified in the recommendation;
 - (b) upon sentencing a person to two or more terms of imprisonment of which one or more of such terms is to commence upon or after the expiration of another of such terms, recommend that he be eligible for release on parole after undergoing such period of imprisonment as is specified in the recommendation,

and a person in respect of whom such a recommendation has been made, if he is a prisoner to whom paragraph (a) of subsection (1) refers, is eligible for release on parole at any time after he has undergone the period of imprisonment so specified.

(4) The Board, where it is satisfied that there are special circumstances relating to a prisoner referred to in paragraph (a) of subsection (1) may at any time release that prisoner from prison on parole.

(5) The Board may cancel, amend or vary a parole order made in accordance with this section at any time before the prisoner is released from prison thereunder and a parole order so amended or varied shall apply accordingly.

54. Requirements of parole order. (1) A parole order—

- (a) shall contain requirements that the prisoner released from prison thereunder—
 - (i) be under the supervision of a parole officer for the period—
 - (A) as determined by the Board but in no case extending past the date of the expiration of the term or terms of imprisonment to which he was sentenced;
 - (B) for which he was ordered or directed to be detained; or
 - (C) in the case of an habitual criminal, up to but not exceeding 2 years as determined by the Board;
 - (ii) abstain from violation of the law;
 - (iii) carry out the lawful instructions of the parole officer;

- (iv) report and receive visits as directed by the parole officer;
 - (v) notify the parole officer within 48 hours of any change of address or change of employment during the parole period; and
- (b) may contain such other requirements specified in the parole order as the Board considers necessary with a view to—
- (i) securing the good conduct of the prisoner;
 - (ii) preventing a repetition by the prisoner of the offence in relation to which he was imprisoned or detained or the commission by him of other offences.

(2) A parole order may include requirements relating to the residence of the prisoner in Queensland or if the prisoner consents, in another State or a Territory.

(3) Unless the parole order otherwise permits or requires the prisoner to reside in another State or a Territory, it shall be a requirement of every parole order that the prisoner shall not leave or remain out of the State save in compliance in every respect with the terms and conditions of a permit in writing of the Board or of the Chief Probation and Parole Officer.

(4) A permit referred to in subsection (3) may be granted by the Board or the Chief Probation and Parole Officer upon application made by the prisoner in that behalf and shall be for such period of time and subject to such terms and conditions as the Board or, as the case may be, the Chief Probation and Parole Officer thinks fit.

A permit under this subsection shall be in writing and signed by a member of the Board or, as the case may be, the Chief Probation and Parole Officer.

To the extent necessary to give effect to a permit under this subsection the parole order in question shall be deemed to be amended and shall apply accordingly.

(5) Where pursuant to a parole order, a prisoner is required or permitted to reside in another State or a Territory, the Chief Probation and Parole Officer shall send to the proper officer of that State or Territory, where that officer so requires, a copy of the parole order certified by him as a true copy together with all other relevant documents and information.

55. Assignment of parole officer. (1) The Board or the Chief Probation and Parole Officer shall assign a parole officer in respect of every parole order and the parole officer so assigned shall supervise the prisoner released from prison on parole during the parole period.

(2) The Board or the Chief Probation and Parole Officer may from time to time assign another parole officer in lieu of the parole officer assigned under subsection (1).

56. Breach of parole order otherwise than by conviction. (1) A prisoner who, during the parole period and whether in Queensland or elsewhere, contravenes or fails to comply with a requirement contained in a parole order commits an offence against this Act.

(2) The conviction of a prisoner of an offence defined in subsection (1) shall not prejudice or otherwise effect in any way the power of the Board to cancel, suspend, amend or vary in accordance with section 64 (1) the parole order made in respect of him.

(3) A prisoner who has been convicted and sentenced to another term of imprisonment in respect of an offence committed in Queensland or elsewhere during the parole period shall not by reason only of the commission of that offence render himself liable to prosecution as for an offence against subsection (1).

57. Procedure upon breach of parole order. (1) A justice to whom it is made to appear upon complaint by a parole officer duly authorized in that behalf by the Chief Probation and Parole Officer that a prisoner has, during the parole period, contravened or failed to comply with a requirement of a parole order may issue a summons directed to the prisoner requiring him to appear at a Magistrates Court at the place, date and time specified in the summons to be dealt with according to law.

(2) Where a complaint pursuant to subsection (1) is in writing and on oath, the justice may instead of issuing a summons issue a warrant directed to all police officers to arrest the prisoner and bring him before a Magistrates Court at the place specified to be dealt with according to law.

(3) Notwithstanding any other Act or law, the Magistrates Court before which the prisoner appears pursuant to subsection (1) or is brought pursuant to subsection (2) shall have jurisdiction to hear and determine the complaint.

58. Power of Magistrates Court before whom prisoner appears. A Magistrates Court that convicts a prisoner who appears before it pursuant to section 57 (1) or is brought before it pursuant to section 57 (2) may, without prejudice to the continuation of the parole order, impose on him a penalty not exceeding \$500.

59: Chief Probation and Parole Officer may suspend parole.

(1) Where a breach by a prisoner of a requirement contained in a parole order comes to the notice of the Chief Probation and Parole Officer he may by order under his hand suspend that prisoner's parole for a period of not more than 7 days.

(2) Where the Chief Probation and Parole Officer suspends a prisoner's parole pursuant to this section he shall forthwith give notice in writing of the breach and suspension to the secretary to the Board.

On the request of the Board the Chief Probation and Parole Officer shall furnish to the Board such reports on and information with respect to the breach as it requires.

(3) The Board or the Chief Probation and Parole Officer may at any time cancel an order made pursuant to this section.

(4) Unless a prisoner's parole has been cancelled pursuant to the provisions of this Act during the period of suspension then upon the expiration of that period, or if the order suspending a prisoner's parole is sooner cancelled, then upon such cancellation the parole order shall again apply and the prisoner shall be released on parole under the order.

60. Chief Probation and Parole Officer may issue warrant. (1) Where a prisoner's parole is suspended pursuant to section 59 the Chief Probation and Parole Officer may, as and when the occasion requires it, issue a warrant signed by him directed to all police officers to apprehend the prisoner and convey him to the prison or institution specified in the warrant to be therein kept in custody for so long as the order suspending his parole remains in force.

(2) A warrant issued pursuant to subsection (1) shall be sufficient authority for the apprehension and conveyance of the prisoner to the prison or institution specified in the warrant and for his detention therein for the period during which the order remains in force.

61. Release on parole of prisoner undergoing sentence of imprisonment for life. (1) The Governor in Council upon the recommendation of the Board may release from prison on parole a prisoner undergoing a sentence of imprisonment, with or without hard labour, for life and the provisions of this Act with respect to the release of prisoners on parole shall with all necessary adaptations apply and extend to a prisoner so released.

(2) The parole order in respect of a prisoner specified in subsection (1) shall contain, in addition to the other requirements provided for in this Act, a requirement that the prisoner shall be under the supervision of a parole officer for life but the Governor in Council upon the recommendation of the Board may at any time cancel, vary or amend this requirement.

62. Discharge of persons on parole. Where a parole period has expired and the Board has not made during that period, in relation to the prisoner the subject of the parole order, an order cancelling his parole or the prisoner has not committed during that period an offence in Queensland or elsewhere (other than an offence against section 56) for which he has been sentenced to imprisonment, whether during or after the expiration of the parole period, the prisoner shall be deemed to have served the term of imprisonment or detention with respect to which the parole order was made and shall be discharged therefrom or where he is an habitual criminal he shall cease to be an habitual criminal.

63. Prisoners on parole deemed still under sentence. Until the parole period has expired or a prisoner is otherwise discharged from the sentence of imprisonment, detention for a period or detention during Her Majesty's pleasure imposed upon him, a prisoner released from prison on parole shall be regarded as still being under sentence or detention and as not

having suffered the punishment to which he was sentenced or as not having undergone detention during the period for which he was ordered to be detained or, in the case of an habitual criminal, as being an habitual criminal and liable to be further detained during Her Majesty's pleasure.

64. Cancellation of parole order by Board. (1) Where a prisoner, including a prisoner referred to in section 61, is released on parole the Board may at any time before the expiration of the parole period by order cancel, suspend, amend or vary his parole.

A parole order as amended or varied shall apply and extend accordingly.

A suspension of a prisoner's parole under this section may be for such fixed or indeterminate period as the Board thinks fit.

The Board may at any time cancel an order suspending a prisoner's parole.

(2) Unless a prisoner's parole has been cancelled pursuant to the provisions of this Act during the period of suspension then upon the expiration of that period, or if the order suspending a prisoner's parole is sooner cancelled, then upon such cancellation the parole order shall again apply with such additional or varied requirements, if any, as the Board may impose and the prisoner shall be released on parole under the order.

65. Cancellation of parole by conviction. Where a prisoner who has been released on parole is sentenced to another term of imprisonment upon conviction for an offence (other than an offence against section 56 (1)) committed in Queensland or elsewhere during the parole period, the parole order shall *ipso facto* be cancelled whether or not the parole period has expired.

66. Warrant for the return of prisoner to prison. (1) Where a prisoner's parole is cancelled by order of the Board or the operation of section 65 or is suspended by order of the Board, the Board may, as and when the occasion requires it, issue a warrant signed by any two of its members directed to all police officers to apprehend the prisoner and convey him to the prison or institution specified in the warrant there—

(a) in a case where the prisoner's parole is cancelled, to serve the unexpired portion of the term of imprisonment or detention to which he was sentenced or where the prisoner is an habitual criminal to be further detained during Her Majesty's pleasure;

(b) in a case where the prisoner's parole is suspended, to be kept in custody for so long as the order suspending his parole remains in force.

(2) A warrant issued pursuant to this section shall be sufficient authority for the apprehension and conveyance of the prisoner to the prison or institution specified in the warrant and for his detention therein pursuant to the provisions of this Act.

67. Effect of cancellation of parole on sentence. (1) Upon the cancellation of a prisoner's parole, the original warrant of commitment or other authority for his imprisonment, detention for a period or detention during Her Majesty's pleasure 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 or detention shall be regarded as time served in respect of that term.

(2) The Board may, where a prisoner's parole has been cancelled, by order direct that the prisoner concerned serve such part only of the unexpired portion of the term of imprisonment or detention imposed on him as is specified in the order and where the prisoner has, in accordance with any law applicable to the term of imprisonment or detention imposed on him, served the part so specified, the prisoner shall be deemed to have served that term and shall be wholly discharged therefrom.

68. Authority of Board to release more than once on parole. The Board may again release a prisoner from prison on parole notwithstanding that his parole has been cancelled on any prior occasion or occasions in respect of the same term of imprisonment, detention for a period or detention during Her Majesty's pleasure.

PART V—COMMUNITY SERVICE ORDERS

69. Interpretation of this Part. (1) In this Part unless the contrary intention appears—

“community service” means any activity that is declared by the Minister to be community service for the purposes of this Part;

“offender” means a person in respect of whom a community service order has been made;

“prescribed requirement” means a requirement imposed by this Part or the regulations on a person in respect of whom a community service order is made;

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

(2) A reference in this Part to the number of hours of work specified in a community service order shall, where that number has been varied in accordance with section 79 or 82, be read and construed as a reference to that number as so varied.

70. Community service orders in respect of convicted persons. (1) Subject to sections 72 and 74 where a person is before a court for sentence after being convicted of an offence punishable by a term of imprisonment, otherwise than in default of payment of a fine, the court may, instead of passing sentence on him, make an order requiring him to perform unpaid community service in accordance with this Part and the regulations for such number of hours, in the aggregate not less than 40 nor more than 240, as are specified in the order.

This subsection applies to a person who has been convicted of such an offence before the date of commencement of this Part if he has not been sentenced for that offence or dealt with under paragraph (a) of section 17 (1) before that date.

This subsection does not apply to an offence that is a crime the punishment of which cannot be mitigated or varied under section 19 of *The Criminal Code*.

(2) The court that makes a community service order shall specify therein a Magistrates Court, being the Magistrates Court—

- (a) nearest the place where the offender intends to reside; or
- (b) at any other place that the court making the order thinks most convenient in the circumstances,

to be the supervising court in respect of the order and the Magistrates Court so appointed or such other Magistrates Court as is substituted for that court pursuant to section 71 shall for the purposes of this Act be the supervising court in respect of that order.

(3) A community service order—

- (a) shall contain a requirement that the offender report in person at the place and within the time specified in the order;
- (b) may contain a requirement, in a case where the order is made in respect of an offence in relation to property or against the person of another, that the offender—
 - (i) make restitution of the property in relation to which the offence was committed or pay compensation for injury to or loss or destruction of that property;
 - (ii) pay reasonable compensation for injury occasioned to any person by the commission of the offence,
 in either case in the manner and at the time and place ordered by the court.

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

- (a) shall cause one copy thereof to be given to the offender and one copy to be forwarded to the Chief Probation and Parole Officer;
- (b) shall, save where the court is itself the supervising court, cause one copy thereof to be forwarded to the clerk of the supervising court together with all relevant documents and information.

(5) The Chief Probation and Parole Officer—

- (a) shall assign a probation officer in respect of every community service order and an officer so assigned shall be the probation officer for the purposes of the order;
- (b) may from time to time assign another probation officer in the stead of a probation officer assigned under paragraph (a).

(6) It shall be competent to a court before which is a person convicted of an offence referred to in subsection (1)—

- (a) to make a probation order in relation to that person pursuant to paragraph (a) section 17 (1);
- (b) to make a community service order in respect of that offence; and
- (c) to impose on that person any disqualification authorized by law.

(7) A person aggrieved by a summary conviction of a Magistrates Court for an offence in respect of which a community service order is made may appeal against that conviction pursuant to the *Justices Act 1886-1979* notwithstanding that no fine, penalty or forfeiture has been imposed upon that conviction.

71. Substitution of other supervising court. Where it is made to appear to a supervising court that an offender has changed or proposes to change his place of residence so that a Magistrates Court other than the supervising court is or will be the Magistrates Court nearest to the new place of residence of the offender or the most convenient in the circumstances, the supervising court may by order amend the community service order that relates to the offender by substituting such other Magistrates Court as the supervising court in the stead of the existing supervising court.

Where a community service order is amended in accordance with this section, the clerk of the court that made the amending order shall forward to the clerk of the court substituted as the supervising court a copy of the community service order as so amended together with all other relevant documents and information.

72. Circumstances in which a community service order may be made.

(1) A court shall not make a community service order in relation to a person unless—

- (a) the person consents thereto and expresses his willingness to comply with all the requirements contained therein; and
- (b) the court—
 - (i) has been notified by a probation officer that arrangements exist by which persons who reside in the area in which that person intends to reside can perform community service under such an order;
 - (ii) is satisfied after considering a report from a probation officer relating to the person and his circumstances and, if the court thinks fit, after hearing a probation officer that—
 - (A) the person is a suitable person to perform community service under such an order; and
 - (B) if such order is made, community service of a suitable nature can be provided for the person under the arrangements referred to in paragraph (b) (i).

(2) Where a person is before a court for the passing of sentence on him, it may, for the purpose of obtaining a notification, report or information from a probation officer for the purposes of subsection (1), adjourn the proceedings and grant bail to him to appear at the place, time and date to which the proceedings have been adjourned.

73. Explanation of nature and effect of order to offender. Before making a community service order, the court shall explain, or cause to be explained to the person in relation to whom it is proposed to make the order in language likely to be readily understood by him—

- (a) the purpose and effect of the order;
- (b) the consequences that may follow if he fails to comply with the order and any requirement contained therein;
- (c) that the order may be reviewed on application by him or the relevant probation officer.

74. Maximum hours for performance of community service in case of multiple or subsequent orders. (1) A court may make more than one community service orders in relation to a person who is before it convicted of two or more offences referred to in section 70 (1) but, if it does so, such orders shall not require performance of community service by the offender for more than 240 hours in the aggregate.

(2) Where there is before a court an offender subject to an existing community service order who is convicted of one or more offences referred to in section 70 (1) the court may make in relation to him one or more further community service orders but so that the number of hours for which the offender is required to perform community service under the existing order (when it was made) and the further order or orders shall not exceed 240 hours in the aggregate.

75. Obligations of offender under community service order. (1) A person in respect of whom a community service order is in force—

- (a) shall perform in a satisfactory manner for the number of hours specified in the order such community service as the probation officer directs at such times as the probation officer directs;
- (b) shall while performing that service comply with every reasonable direction of a supervisor;
- (c) shall advise the probation officer of every change in his place of residence within 48 hours of that change.

(2) In giving directions to a person in accordance with subsection (1), the probation officer, as far as practicable, shall avoid—

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

(3) Subject to paragraph (c) of section 79 (2) and to section 81 a person in respect of whom a community service order is in force shall perform the number of hours of community service specified in the order within the period of 12 months commencing on the date of the order or within such extended period as a Magistrates Court may duly order pursuant to any provisions of this Part.

76. Duration of community service order. A community service order shall remain in force until—

- (a) the offender has performed community service in accordance with paragraphs (a) and (b) of section 75 (1) for the number of hours specified in the order;
- (b) the order is discharged pursuant to section 82;
- (c) the offender is sentenced for the offence in respect of which the order was made.

77. Breach of requirements contained in or with respect to a community service order. An offender in respect of whom a community service order has been made who, while that order is in force, contravenes or fails to comply with a requirement contained therein or a prescribed requirement with respect thereto, commits an offence against this Act.

78. Procedure upon breach of community service order. (1) A justice to whom it is made to appear upon complaint in writing by a probation officer duly authorized in that behalf by the Chief Probation and Parole Officer that an offender in respect of whom a community service order has been made has, while that order is in force, contravened or failed to comply with a requirement contained therein or a prescribed requirement with respect thereto may issue a summons directed to the offender requiring him to appear—

- (a) in the case of an order made by a Magistrates Court, at that court or the supervising court;
- (b) in the case of an order made by a court other than a Magistrates Court, at the supervising court,

at the place, date and time specified in the summons to be dealt with according to law.

(2) Where a complaint pursuant to subsection (1) is in writing and on oath, the justice may, instead of issuing a summons, issue a warrant directed to all police officers to arrest the offender and bring him before the appropriate court specified in that subsection to be dealt with according to law.

79. Jurisdiction and powers of court before which offender appears or is brought. (1) The Magistrates Court before which an offender appears or is brought in accordance with section 78 (1) or 78 (2) shall have jurisdiction to hear and determine the matter of the complaint

upon which he is before the court and, upon convicting him of the offence with which he is charged before the court, may exercise in relation to him the powers specified in subsection (2).

(2) The Magistrates Court referred to in subsection (1) may, by its order—

- (a) order the offender to pay a penalty not exceeding \$500, whether or not it exercises any other of the powers specified herein;
- (b) with the offender's consent and subject to subsection (3), increase the number of hours for which he is required by the community service order to perform community service;
- (c) extend the period of 12 months within which community service is required to be performed under the community service order in accordance with section 75 (3);
- (d) where the community service order was made by a Magistrates Court, deal with the offender according to law for the offence in respect of which the order was made in any manner in which the court could deal with him if he had just been convicted of that offence by the court;
- (e) where the community service order was made by a court other than a Magistrates Court, commit him to custody or grant bail to him to be brought or to appear before the court by which the order was made.

(3) A court that exercises the power specified in paragraph (b) of subsection (2) shall so exercise that power that the number of hours for which an offender is required to perform community service under the order varied by the court and under any other community service order or orders then in force in relation to the offender shall not exceed 240 hours in the aggregate.

(4) A Magistrates Court that exercises the power conferred by paragraph (e) of subsection (2) shall furnish to the Crown Solicitor a certificate in the prescribed form signed by a justice certifying that the offender has contravened or failed to comply with such requirements contained in the community service order or prescribed with respect thereto as are specified in the certificate together with such other relevant documents and information as the court thinks fit.

80. Powers of Supreme Court or District Court before which offender appears. A court before which an offender appears pursuant to an order made under paragraph (e) of section 79 (2), upon proof to its satisfaction that the offender has contravened or failed to comply with a requirement contained in the community service order or prescribed with respect thereto, may deal with him for the offence in respect of which the community service order was made in any manner in which that court could deal with him if it had just convicted him of that offence.

81. Power to extend time for performance of work. Where a community service order is in force and, on the application of the offender in relation to whom the order was made or the probation officer, it

appears to the supervising court that it would be in the interests of justice to do so having regard to the circumstances that have arisen or have become known since the order was made the court may extend the period of 12 months within which community service is required to be performed under that order in accordance with section 75 (3).

82. Discharge and amendment of community service orders, substitution of other orders or penalties. (1) Where a community service order is in force and it is made to appear—

(a) in the case of an order made by a Magistrates Court, to the supervising court;

(b) in the case of an order made by a court other than a Magistrates Court, to the court by which the order was made, on the application of the offender in relation to whom the order was made or the probation officer, that it would be in the interests of justice to do so having regard to circumstances that have arisen or have become known since the order was made, the court—

(c) may discharge the order;

(d) may reduce the number of hours for which the offender is required under the order to perform community service.

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

(a) if the order was made by a Magistrates Court, deal with the offender for the offence in respect of which the order was made in any manner in which the court by which the order was made could deal with him if it had just convicted him of that offence;

(b) if the order was made by a court other than a Magistrates Court, commit the offender to custody or grant bail to him to be brought or to appear before the court by which the order was made.

(3) The court shall upon the exercise of the power conferred by paragraph (b) of subsection (2) forward to the Crown Solicitor such documents and information relevant to the case as the court thinks fit.

(4) A supervising court to which application is made under subsection (2) shall have jurisdiction to exercise the powers conferred by this section, any other provision of law notwithstanding.

(5) The Supreme Court or a District Court before which an offender appears pursuant to an order made in accordance with paragraph (b) of subsection (2), if it is made to appear that it would be in the interests

of justice to do so having regard to circumstances that have arisen or become known since the community service order was made, may deal with the offender for the offence in respect of which the community service order was made in any manner in which that court could deal with him if he had just been convicted of that offence by the court.

83. Summons to offender and notice of applications. (1) The court to which an application is made by the probation officer pursuant to section 81 or 82 may order that a summons issue, directed to the offender, requiring him to appear at the place, date and time specified in the summons to be dealt with according to law.

If the offender to whom a summons is directed pursuant to this subsection fails to appear in answer thereto, the court may, upon proof of the due service of the summons, order that a warrant issue, directed to all police officers, to arrest him and bring him before the court to be dealt with according to law.

(2) The court to which an application is made by the offender pursuant to section 81 or 82 (1) shall cause notice of the application and of the place, date and time fixed for the hearing to be served on the probation officer.

84. Notification of discharge, variations or extension of orders. The court that pursuant to section 79, 81 or 82—

- (a) discharges a community service order;
- (b) varies the number of hours for which an offender is required by a community service order to perform community service;
- (c) extends with respect to a community service order the period of 12 months specified in section 75 (3),

shall cause notice in writing of the discharge, variation or extension to be given to the offender in respect of whom the order was made, the probation officer and (if the court is not the supervising court in respect of the order) the supervising court.

85. Regard to be had to order when sentence passed. A court that subsequently sentences an offender for the offence in respect of which the community service order was made in relation to him shall have regard to—

- (a) the making of the order;
- (b) anything done to comply with the order.

86. Compensation for personal injury. An offender in respect of—

- (a) community service performed by him under a community service order;

(b) travelling undertaken by him in order to perform community service under a community service order, shall be deemed to be a worker within the meaning of the *Workers Compensation Act 1916-1979* employed by the Crown and that Act shall apply and extend accordingly.

Where for the purpose of calculating the compensation payable under that Act in respect of an injury suffered by an offender reference to weekly earnings is necessary, the offender shall be deemed to have been in receipt of weekly earnings equal to the estimate published by the Commonwealth Statistician of the average weekly earnings in the State per employed male unit or, as the case requires, female unit for the June quarter last preceding.

87. Advisory committees. (1) The Minister may establish such community service advisory committees as he considers necessary for the purpose of advising him in relation to matters dealt with in this Part.

(2) A community service advisory committee established by the Minister pursuant to subsection (1) shall consist of—

- (a) the Chief Probation and Parole Officer; and
- (b) two other persons appointed by the Minister.

(3) A community service advisory committee may recommend to the Minister that any activity be community service for the purposes of this Part.

88. Community service. The Minister may declare any activity to be community service for the purposes of this Part.

89. Regulations under this Part. The power to make regulations conferred by section 96 includes power to make regulations for or in respect of all or any of the following purposes, matters and things—

- (a) providing for the appointment of supervisors to supervise offenders in the performance of community service under community service orders;
- (b) regulating the conduct of supervisors and of offenders;
- (c) providing for the health and safety of supervisors and offenders;
- (d) prescribing the maximum number of hours of community service that an offender may be required to perform under a community service order on any one day;
- (e) providing for travelling and transport arrangements to be made for offenders performing community service under community service orders;
- (f) prescribing the effect of injury or sickness of offenders on the continuity or operation of community service orders;
- (g) prescribing the manner of computing the number of hours of community service performed by an offender under a community service order;

- (h) prescribing the term of appointment of members of community service advisory committees and the removal of members from such committees;
- (i) regulating the holding of meetings of community service advisory committees and the procedure to be observed at such meetings.

PART VI—MISCELLANEOUS

90. Saving. (1) Nothing in this Act affects—

- (a) Her Majesty's Royal Prerogative of mercy;
- (b) the power of the Governor, upon the recommendation of the Supreme Court or a Judge thereof to direct, under and pursuant to the provisions of *The Criminal Code* the discharge of an habitual criminal.

(2) Subject to the express provisions of this Act, nothing in this Act shall be read so as to annul, abridge or alter any authority or jurisdiction which any Court or any Judge or justice may possess under any other Act or otherwise.

91. Proceedings in respect of offences. Save as otherwise provided by this Act, proceedings in respect of offences against this Act may be prosecuted in a summary way under the *Justices Act 1886–1979*.

92. Indemnities. (1) No liability shall be incurred by a probation officer, parole officer or any other officer appointed under this Act on account of anything done or omitted to be done in good faith and without negligence, in the exercise or purported exercise of any power or duty conferred or imposed on him by or under this Act or any other Act.

(2) No liability shall be incurred by a member of the Board on account of anything done or omitted to be done in good faith and without negligence in the exercise or purported exercise of any power or duty conferred or imposed on the Board or any member or members thereof by or under this Act or any other Act.

93. Facilitation of proof. In any proceedings under or for the purposes of this Act—

- (a) a certificate of conviction referred to in section 29 (3) purporting to be signed by the officer having the custody of the records of the court shall be admissible as evidence that the probationer has been convicted and dealt with in respect of the offence therein specified committed in Queensland during the probation period and in the absence of evidence to the contrary shall be conclusive evidence of such matters;
- (b) it shall not be necessary to prove the appointment of the Chief Probation and Parole Officer, or any other probation officer or parole officer;

- (c) it shall not be necessary to prove the authority of the Chief Probation and Parole Officer or of any other probation officer or parole officer to do any act or take any proceedings but this shall not prejudice the right of any probationer, prisoner or offender to prove the extent of such authority;
- (d) a signature purporting to be that of the Chief Probation and Parole Officer or of any other probation officer or parole officer shall be taken to be the signature it purports to be until the contrary is proved.

94. Secrecy. (1) Except for the purposes of this Act and in the due exercise of his functions under this Act, or except where so ordered by a Court or Judge, a member or the secretary to the Board, a probation officer, parole officer or any other officer appointed under or for the purposes of this Act shall not produce in any Court or to any person any return, declaration, statement, report or other document, or disclose to any Court or person the fact that he has received any information, or the nature thereof, or the name of any person who gave such information or any matter or thing coming under his notice in the performance of his duties under this Act.

(2) Any person who contravenes or fails to comply with subsection (1) shall be guilty of an offence against this Act and be liable to a penalty not exceeding \$500.

95. Application of certain Acts. (1) The *Justices Act 1886-1979* shall with all necessary adaptations apply and extend to and with respect to every complaint, summons, warrant (except a warrant referred to in section 60 or 66) and penalty to which this Act refers and for the purposes of such application—

- (a) a complaint shall be deemed to be a complaint for an offence;
- (b) a summons shall be deemed to be a summons to answer a complaint; and
- (c) a penalty imposed in accordance with a provision of this Act may be enforced by any order under that Act that might be made by the adjudicating justices for the enforcement of the payment of a penalty adjudged to be paid upon a conviction as for an offence under any Act not expressly providing for such enforcement.

(2) Section 31 of the *Prisons Act 1958-1974* shall extend and apply to and with respect to a prisoner detained under that Act who is charged with a breach of a probation order or community service order.

96. Regulations. The Governor in Council may make regulations, not inconsistent with this Act, prescribing all matters which are by this Act required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

SCHEDULE		[s. 4]
Year and Number of Act	Short title	Extent of Repeal
8 Eliz. II No. 22	<i>The Offenders Probation and Parole Act of 1959</i>	The whole
1968 No. 7 ..	<i>The Offenders Probation and Parole Act Amendment Act of 1968</i>	The whole
1971 No. 41 ..	<i>The Criminal Code and the Offenders Probation and Parole Act Amendment Act 1971</i>	Part III comprising the heading and sections 11 to 15 both inclusive
1974 No. 28 ..	<i>Offenders Probation and Parole Act Amendment Act 1974</i>	The whole