

REMOVAL OF PRISONERS (TERRITORIES).

No. 14 of 1923.

An Act relating to the Removal of Prisoners from Territories under the Authority of the Commonwealth.

[Assented to 1st September, 1923.]

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

1. This Act may be cited as the *Removal of Prisoners (Territories) Act 1923.* Short title.

2. In this Act, unless the contrary intention appears— Definitions.

“Administrator”, in relation to the Territory of Papua, includes the Lieutenant-Governor;

“Criminal lunatic” means a person detained in custody by reason of his having been charged with an offence, and either found to have been insane at the time of the commission of the offence, or found or certified or otherwise lawfully proved to be unfit, on the ground of his insanity, to be tried for the offence, and includes a person convicted of an offence and afterwards certified or otherwise lawfully proved to be insane, but does not include an aboriginal native of a Territory;

“Prisoner” means any person sentenced to imprisonment in a Territory, but does not include an aboriginal native of a Territory;

“Territory” means a Territory under the authority of the Commonwealth and includes any Territory governed by the Commonwealth under a mandate;

“This Act” includes the regulations made thereunder.

3.—(1.) Where it appears to the Administrator of a Territory—

(a) that, by reason of there being no prison in the Territory in which the prisoner can properly undergo his sentence, the removal of the prisoner is expedient for his safer custody or for the more efficient carriage of his sentence into effect; or

Removal of prisoners from Territories in certain cases.
47 & 48 Vict., c. 31, s. 2.

- (b) that it is likely that the life of a prisoner undergoing sentence of imprisonment in the Territory for any offence will be endangered or his health permanently impaired by further imprisonment in the Territory ; or
- (c) that the offence was committed wholly or partly beyond the limits of the Territory ; or
- (d) that the prisoner belongs to a class of persons who under the law of the Territory are subject to removal under this Act,

he may recommend to the Governor-General that the prisoner be removed to a State or another Territory, there to undergo his sentence or the residue thereof.

(2.) Upon the receipt of a recommendation in pursuance of the last preceding sub-section the Governor-General may, with the concurrence of the Government of the State or Territory to which it is proposed to remove the prisoner, order the prisoner to be removed to that State or Territory, there to undergo his sentence or the residue thereof.

4.—(1.) Where the removal of a prisoner from a Territory is ordered in pursuance of this Act, the Governor-General, or the Administrator of the Territory may, by warrant under his hand, direct the prisoner to be removed to the State or Territory mentioned in the order, and for that purpose to be delivered into the custody of the person named or described in the warrant, and to be held in custody and conveyed to that State or Territory, there to undergo his sentence or the residue thereof, until returned in pursuance of this Act or discharged.

(2.) Where a prisoner is ordered or required to be returned to the Territory from which he was removed, the Governor-General or the Governor of the State or the Administrator of the Territory in which he is undergoing his sentence may, by warrant under his hand, direct the prisoner to be returned to the Territory from which he was removed, and for that purpose to be delivered into the custody of the person named or described in the warrant, and to be held in custody and conveyed to the Territory from which he was removed, there to undergo the residue of his sentence, or to be discharged or to be tried for an offence, as the case requires.

(3.) Every warrant issued in pursuance of this section shall be forthwith executed according to the tenor thereof.

(4.) Every warrant purporting to be issued in pursuance of this section, and to be under the hand of the Governor-General or the Governor of a State or the Administrator of a Territory, shall be received in evidence in any Court of a State or Territory without further proof, and shall be evidence of the facts therein stated, and all acts done in pursuance of any such warrant shall be deemed to have been authorized by law.

5.—(1.) Every prisoner removed in pursuance of this Act shall, until he is returned in pursuance of this Act, be dealt with in the State or Territory to which he is removed, in like manner as if his sentence (with such variation of the conditions thereof as is prescribed by regulations made under paragraph (b) of section fourteen of this Act) had been duly awarded in that State or Territory, and shall be subject accordingly to all laws in force in that State or Territory.

Dealing with removed prisoner.
47 & 48 Vict.
c. 31 s. 8.

(2.) Notwithstanding anything contained in the last preceding sub-section, the conviction, judgment, and sentence of a prisoner may be questioned in the Territory from which he has been removed in the same manner as if he had not been removed, and his sentence may be remitted, and his discharge ordered, in the same manner and by the same authority as if he had not been removed.

(3.) The officer in charge of any prison, on request by any person having the custody of a prisoner under a warrant issued in pursuance of this Act, and on payment or tender of such amount for expenses as the Government of the State or Territory in which the prison is situated determines, shall receive the prisoner and detain him for such time as is requested by the person for the purpose of the proper execution of the warrant.

6. Where, in pursuance of this Act, the conditions of a sentence of imprisonment appear to the Governor-General to be more severe in the State or Territory to which a prisoner is removed than in the Territory from which he was removed, the Governor-General may remit a portion of the sentence so that the punishment undergone by the prisoner may not, in the opinion of the Governor-General, be more severe than the punishment to which the prisoner was originally sentenced, and the sentence of imprisonment shall, so long as the prisoner remains in the State or Territory to which he is removed, be carried into effect as if the conditions thereof, as so varied, were the conditions of the original sentence.

Remission of portion of imprisonment.
Ibid. s. 4 (2).

7.—(1.) If a prisoner, while in custody in pursuance of this Act or of a warrant issued in pursuance of this Act, escapes from custody, he may be retaken in the same manner as a person convicted of an offence against the laws of the State or Territory in or to which he escapes may be retaken upon an escape.

Escape of prisoner from custody.
Ibid. s. 9.

(2.) A person who so escapes or aids, abets, counsels, or procures, any such escape shall be guilty of an offence.

Penalty: Imprisonment for two years.

8.—(1.) Where a prisoner has been removed in pursuance of this Act, the Governor-General, or the Government of the State or Territory to which the prisoner has been so removed, may order the prisoner, for the purpose of undergoing the residue of his sentence, to be returned to the Territory from which he was removed.

Return of removed prisoner.
Ibid. s. 8.

(2.) If the Governor-General, or the Government of the State or Territory to which a prisoner is removed under this Act, requires the prisoner to be returned for discharge to the Territory from

which he was removed, the prisoner shall, as prescribed, be returned to that Territory for the purpose of being there discharged at the expiration of his sentence; and in any other case a prisoner when discharged at the expiration of his sentence shall, on application made in such manner and within such time as is prescribed, be entitled to be sent free of cost to the Territory from which he was removed.

Application of Act to criminal lunatics.

47 & 48 Vict., c. 31, s. 10.

9.—(1.) This Act shall, so far as applicable, apply to a person in custody as a criminal lunatic in like manner as it applies to a prisoner undergoing sentence of imprisonment, and, subject to this Act, all laws in force in the State or Territory in which a criminal lunatic, who is removed or returned, is for the time being in custody under a warrant issued in pursuance of this Act, shall apply to the criminal lunatic as if he had become a criminal lunatic in that State or Territory.

(2.) Where a person, who is a criminal lunatic and is unfit to be tried for an offence, is removed in pursuance of this Act, and the Governor-General or the Government of the State or Territory to which the person was removed, or the Government of the Territory from which he was removed, considers that the person has become sufficiently sane to be tried for the offence, and requires him to be returned for trial to the Territory from which he was removed, he shall in accordance with this Act be returned as a prisoner to that Territory for the purpose of being there tried for that offence.

Application of Act to existing prisoners and criminal lunatics.

Ibid. s. 17.

10. This Act shall apply to a prisoner who has been convicted, and to a criminal lunatic who has become a criminal lunatic before the commencement of this Act, as if he had been convicted or become a criminal lunatic after the commencement of this Act.

Evidence of act of Government of State or Territory or of Governor-General.

11.—(1.) The concurrence of and any requirement by the Government of a State or Territory may be given or made—

- (a) in the case of a State, by the Governor in Council;
- (b) in the case of a Territory, by the Administrator; or
- (c) in either case, by such other authority as is from time to time provided by the law of the State or Territory.

(2.) The concurrence or requirement shall be signified by writing under the hand of the Governor of a State or the Administrator of a Territory, as the case may be, or any other officer appointed in that behalf by the law of the State or Territory.

(3.) Any writing purporting to signify the concurrence or requirement and to be signed by the Governor or Administrator or other officer for the time being, shall be conclusive evidence that the concurrence or requirement has been duly given or made.

(4.) Any writing purporting to be under the hand of the Governor-General and to order the removal of a prisoner from a Territory shall be conclusive evidence that the order has been duly given by the Governor-General in Council.

(5.) Every writing mentioned in this section shall be admissible in evidence in any Court of a State or Territory.

12.—(1.) The cost of the removal of any prisoner or criminal lunatic under this Act and of his maintenance while in confinement and of his return and of his being sent, after discharge, to any place, shall be borne by the Commonwealth or, where the expenditure of the Territory from which the prisoner is removed is defrayed from the revenues of that Territory, by the Territory from which he is removed, and shall be paid in such manner as is arranged between the Governor-General and the Governments of the States and Territories concerned.

Cost of removal.
47 & 48 Vict.,
c. 31, s. 11.

(2.) Nothing in this Act shall affect any power to recover the whole or any part of the cost from the property of the prisoner or criminal lunatic.

13. If any law is made in any State or Territory—

- (a) for determining the authority by whom and the manner in which any power or concurrence under this Act is to be exercised or given;
- (b) for the payment of the costs incurred in the removal, maintenance, return, or sending back, after discharge, of a prisoner or criminal lunatic;
- (c) for dealing in the State or Territory with prisoners or criminal lunatics removed thereto in pursuance of this Act;
- (d) for making any class of prisoners subject to removal under this Act; or
- (e) otherwise in any manner for the carrying of this Act or any part thereof into effect as regards the State or Territory,

Power of State or Territory to make laws for carrying Act into effect.
Ibid. s. 12.

the Governor-General may, for the purposes of this Act, direct that the law shall with or without modification or alteration be recognised and given effect to throughout the Commonwealth and the Territories as if it were part of this Act.

14. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for giving effect to this Act, and in particular for providing for—

Regulations.
Cf. *ibid.* s. 4.

- (a) the removal, return and discharge of prisoners and criminal lunatics under this Act; and
- (b) varying the conditions of a sentence of imprisonment passed in a Territory, where those conditions differ from the conditions of a sentence of imprisonment in the State or Territory to which the prisoner is removed, with a view to bringing them into conformity with the latter conditions:

Provided that no such variation shall increase the term of the sentence of imprisonment.