

# REMOVAL OF PRISONERS (TERRITORIES).

No. 69 of 1962.

## An Act to amend the *Removal of Prisoners (Territories) Act 1923-1957*.

[Assented to 24th November, 1962.]

[Date of commencement, 22nd December, 1962.]

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

1.—(1.) This Act may be cited as the *Removal of Prisoners (Territories) Act 1962*. Short title and citation.

(2.) The *Removal of Prisoners (Territories) Act 1923-1957\** is in this Act referred to as the Principal Act.

(3.) The Principal Act, as amended by this Act, may be cited as the *Removal of Prisoners (Territories) Act 1923-1962*.

2. Section two of the Principal Act is amended—

(a) by inserting before the definition of "Criminal lunatic" the following definition:—

" 'Constable' means a Commonwealth Police Officer or a member of the police force of a State or Territory; "; and

(b) by

Interpretation.

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\*Act No. 14, 1923, as amended by No. 11, 1936; No. 80, 1950; and No. 2, 1957.

(b) by adding at the end thereof the following sub-sections:—

“(2.) For the purposes of this Act, where the sentence of a person who has been sentenced to death in a Territory has been commuted to a term of imprisonment, that person shall be deemed to have been sentenced to imprisonment in the Territory for that term.

“(3.) In this Act, unless the contrary intention appears, a reference to the sentence of a prisoner shall, in relation to a prisoner who, by reason of his having been declared to be a habitual criminal, may be or is being detained in prison after the expiration of the term of imprisonment imposed upon him, be read as including a reference to any detention that he is liable to undergo by reason of his having been so declared.”.

Removal of  
prisoners from  
Territories in  
certain cases.

3. Section three of the Principal Act is amended by omitting from paragraph (b) of sub-section (1.) the words “ sentence of imprisonment in the Territory for any offence ” and inserting in their stead the words “ his sentence in the Territory ”.

Return of  
removed  
prisoner.

4. Section eight of the Principal Act is amended—

(a) by omitting from sub-section (2.) all the words from and including the words “ ; and in any other case ”; and

(b) by adding at the end thereof the following sub-section:—

“(3.) Where—

(a) a person has been removed to a State or Territory in pursuance of this Act;

(b) he is discharged in that State or Territory at the expiration of his sentence or he is released from custody in that State or Territory in pursuance of a licence granted under section eight A of this Act or an order made under section ten A of this Act;

(c) his return to the Territory from which he was removed would not result, or be likely to result, in a failure by him to comply with a condition applicable to such a licence or to such an order; and

(d) his return to the Territory from which he was removed would not be unlawful,

he is entitled, on making application in such manner and within such time as is prescribed, to be sent free of

cost

cost from the place at which he was discharged or released from custody to the Territory from which he was removed.”.

5. After section eight of the Principal Act the following section is inserted:—

“ 8A.—(1) In this section—

‘ licence ’ means a licence to be at large granted under the next succeeding sub-section;

Licences for prisoners to be at large.

‘ prescribed authority ’ means—

(a) a person who holds office as a Chief, Police, Stipendiary, Resident or Special Magistrate of a State and in respect of whom an arrangement in force under sub-section (15.) of this section is applicable; or

(b) a person who holds office as a Chief, Police, Stipendiary, Resident or Special Magistrate, or a District Officer or Assistant District Officer, of a Territory;

‘ the prescribed period ’, in relation to a licence, means—

(a) if the prisoner to whom the licence was granted was, at the time when the licence was granted, serving a term of imprisonment—the period commencing on the day on which the licence was granted and ending on the day which, if no remissions of his sentence were granted, would be the last day of that term; or

(b) if the prisoner to whom the licence was granted was, at the time when the licence was granted, being detained in prison by reason of his having been declared to be a habitual criminal—the period of three years commencing on the day on which the licence was granted.

“ (2.) Where a prisoner has been removed to a State or Territory in pursuance of this Act (not being a person referred to in paragraph (a) or (b) of sub-section (2.) of section nineteen A of the *Crimes Act 1914–1960*), the Governor-General may, if he thinks it proper so to do in the circumstances, grant to the prisoner by writing under his hand, a licence to be at large.

“ (3.) A licence is sufficient authority for the release from prison of the person to whom it is granted.

“ (4.) A licence is subject to such conditions, if any, as are specified in the licence.

“ (5.) The

“(5.) The Governor-General may, at any time before the expiration of the prescribed period, by writing under his hand—

(a) vary or revoke a condition of a licence or impose additional conditions; or

(b) revoke a licence.

“(6.) The varying of a condition, or the imposing of an additional condition, under the last preceding sub-section does not have effect until notice thereof has been given to the person to whom the licence was granted, being notice given before the expiration of the prescribed period.

“(7.) Where—

(a) a licence granted to a person is revoked; or

(b) the person to whom a licence has been granted has, during the prescribed period, failed to comply with a condition of the licence or there are reasonable grounds for suspecting that he has, during that period, failed to comply with a condition of the licence,

a constable may, without warrant, arrest the person.

“(8.) Where a constable arrests a person in pursuance of the last preceding sub-section on a ground specified in paragraph (b) of that sub-section, the constable shall, as soon as practicable, take that person before a prescribed authority and, if the prescribed authority is satisfied that that person without lawful excuse failed to comply with a condition of the licence granted to him, the prescribed authority shall cancel the licence.

“(9.) A person brought before a prescribed authority under the last preceding sub-section shall, unless the prescribed authority otherwise directs, be kept in custody until the prescribed authority has determined the matter.

“(10.) Subject to sub-section (12.) of this section, where a licence granted to a person who, at the time of the grant, was serving a term of imprisonment is revoked or cancelled, the person may be detained in prison, as if the licence had not been granted, to undergo imprisonment for a period equal to the part of that term that he had not served at the time when he was released from prison in pursuance of the licence and, in the case of a person who has been declared to be a habitual criminal, he may, on the expiration of that term, be further detained in prison as if the licence had not been granted.

“(11.) Subject to the next succeeding sub-section, where a licence granted to a person who, at the time of the grant, was being detained in prison by reason of his having been declared to be a habitual criminal is revoked or cancelled, the person may be detained in prison as if the licence had not been granted.

“(12.) Where

“(12.) Where a prescribed authority cancels a licence under sub-section (8.) of this section, the person to whom the licence was granted may appeal to the Supreme Court of a Territory or to a prescribed Federal Court against the cancellation and the Court shall—

- (a) if it is satisfied that the ground on which the licence was cancelled has been established—confirm the cancellation; or
- (b) if it is not so satisfied—order that the cancellation cease to have effect.

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

“(14.) For the purposes of the preceding provisions of this section, ‘the Governor-General’ means the Governor-General of the Commonwealth, or the person for the time being administering the government of the Commonwealth, acting—

- (a) in the case of a prisoner sentenced in the Australian Capital Territory or in the Northern Territory of Australia—with the advice of the Attorney-General; or
- (b) in any other case—with the advice of the Minister of State for Territories.

“(15.) The Governor-General may arrange with the Governor of a State for the performance by persons who hold office as Chief, Police, Stipendiary, Resident or Special Magistrates in that State of the functions of a prescribed authority under this section.

“(16.) Notice of an arrangement under the last preceding sub-section shall be published in the *Gazette*.”

6. Section nine of the Principal Act is amended by omitting from sub-section (1.) the words “This Act shall, so far as applicable, apply to a person in custody as a criminal lunatic in like manner as it applies” and inserting in their stead the words “The preceding provisions of this Act, other than the last preceding section, shall, so far as applicable, apply to a person in custody as a criminal lunatic in like manner as they apply”.

Application  
of Act to  
criminal  
lunatics.

7. After section ten of the Principal Act the following section is inserted:—

“10A.—(1.) Where a criminal lunatic (being a person who was found to be insane at the time of the commission of the offence with which he was charged but not being a person to whom sub-section (1.) of section twenty B of the *Crimes Act* 1914–1960 applies) has been removed to a State or Territory in pursuance of this Act, the Governor-General may, by writing under his hand, order that he be released from custody either unconditionally or subject to such conditions as are specified in the order.

Release of  
criminal  
lunatics.

“(2.) Where,

“(2.) Where, under the last preceding sub-section, the Governor-General orders that a person be released from custody subject to conditions, the Governor-General may, at any time, by writing under his hand—

- (a) vary or revoke all or any of the conditions or impose additional conditions; or
- (b) except where the Governor-General has revoked all the conditions—revoke the order.

“(3.) Where an order made in respect of a person under sub-section (1.) of this section is revoked or the person fails to comply with a condition of such an order, the person may, without warrant, be arrested by any constable and may be detained in custody as if the order under sub-section (1.) of this section had not been made.

“(4.) Upon the Governor-General making an order under sub-section (1.) of this section that a person be released from custody unconditionally or upon the Governor-General revoking all the conditions applicable to an order under which a person has been released from custody, this Act, and any law of the Territory from which he was removed that authorizes his detention in custody by reason of his having been found to be insane at the time of the commission of the offence with which he was charged, ceases to apply to him in relation to that offence.

“(5.) For the purposes of this section, ‘the Governor-General’ means the Governor-General of the Commonwealth, or the person for the time being administering the government of the Commonwealth, acting—

- (a) in the case of a criminal lunatic removed from the Australian Capital Territory or from the Northern Territory of Australia—with the advice of the Attorney-General; or
- (b) in any other case—with the advice of the Minister of State for Territories.”.

Evidence  
of acts.

8. Section eleven of the Principal Act is amended—

- (a) by inserting in sub-section (4.) after the word “prisoner”, the words “or criminal lunatic”; and
- (b) by omitting from sub-section (4.) the words “in Council”.

Cost of  
removal.

9. Section twelve of the Principal Act is amended—

- (a) by inserting in sub-section (1.), after the word “discharge”, the words “or release from custody”; and
- (b) by inserting in sub-section (1.), after the word “prisoner” (second occurring), the words “or criminal lunatic”.

State or  
Territory laws  
for carrying  
Act into effect.

10. Section thirteen of the Principal Act is amended by inserting in paragraph (d), after the word “prisoners”, the words “or criminal lunatics”.