



PROBATION OF OFFENDERS.

No. 2 of 1973.

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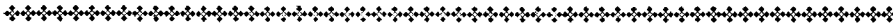
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AN ACT to consolidate and amend the law on probation of offenders and related matters. [3 May 1973.]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

PART I. PRELIMINARY.

1—(1) This Act may be cited as the *Probation of Offenders Act* 1973. Short title and commencement.

(2) This Act shall commence on a date to be fixed by proclamation.

Repeals and
amendment.

2—(1) The Acts specified in the schedule are repealed.

(2) The *Child Welfare Act* 1960 is amended by omitting from the schedule thereto the paragraph relating to the *Probation of Offenders Act* 1934.

Interpretation.
25 Geo. V
No. 74, s. 2A.

3 In this Act, unless the contrary intention appears—

“employee” means a person subject to a work order;

“police officer” has the same meaning as in the *Police Regulation Act* 1898;

“supervisor” means a person appointed under section seventeen as a supervisor for the purposes of section twelve;

“work order” means an order made under subsection (1) of section eleven;

“work order committee” means a committee appointed under section sixteen.

PART II.

ADMINISTRATION.

Probation
officers.
25 Geo. V
No. 74, s. 2B.

4—(1) The Governor may appoint such and so many probation officers of either sex as he may think necessary or desirable for the purposes of this Act.

(2) It is the duty of a probation officer—

(a) to visit or receive reports from the persons under his supervision as the probation officer may think fit;

(b) to endeavour to ensure that such persons observe the conditions of their probation orders;

(c) to advise, assist, and befriend such persons and, when necessary, to endeavour to find suitable employment; and

(d) to carry out such other duties as may be prescribed or as the court in any case may direct.

Probation
officers’
reports.

5—(1) A court may, when informing itself on matters relevant to its decision—

(a) whether or not to make use of subsection (1) of section seven; or

(b) as to the sentence proper to be passed on a convicted person, receive as evidence a written report or oral statement of a probation officer, giving it such weight as to the court appears proper.

(2) Where a written report is made as mentioned in subsection (1) of this section, the proper officer of the court shall give the defendant or his attorney a copy of the report, unless the court orders that the report, or part of the report, be—

(a) not so given; or

(b) shown only to the defendant's counsel.

(3) Where a court receives evidence under subsection (1) of this section, it shall give the defendant such an opportunity as it thinks reasonable to controvert that evidence or any part of it.

(4) No objection may be taken or allowed to evidence so received on the ground that it is hearsay.

(5) This section has effect notwithstanding anything contained in subsection (8) of section three hundred and eighty-six of the *Criminal Code* or any other enactment or rule of law to the contrary.

PART III.

PROBATION.

6—(1) For the purposes of this Act a probation order is an order of a court that the person against whom it is made be of good behaviour during the period of the order and do or refrain from doing such other things as are specified in the order in accordance with subsection (2) of this section. ^{Probation orders.}

(2) A probation order may, subject to this Part, contain—

(a) a provision that the person against whom it is made shall, when called on at any time during the period of the order, appear for conviction and sentence, or for sentence only;

(b) a provision that the person against whom it is made shall during the period of the order submit to the supervision of a probation officer or such other person as is named in the order;

(c) such provisions relating to the supervision, conduct, or welfare of the person against whom it is made as the court may consider desirable; and

- (d) such provisions with respect to residence, abstention from intoxicating liquor or drugs, and other matters as the court may consider necessary for preventing a repetition of the same offence or the commission of other offences.

(3) The period of a probation order may be such period not exceeding three years as the court thinks proper to specify in the order.

(4) Where a probation order contains a provision as provided in paragraph (b) of subsection (2) of this section it is sufficient to provide for submission to the supervision of a probation officer without naming one.

Conditional
release
of
offenders.
25 Geo. V
No. 74, s. 3.

7—(1) Where a person is charged before a court of summary jurisdiction with an offence punishable by such a court, and the court thinks that the charge is proved, but is of the opinion that having regard to—

- (a) the character, antecedents, age, health, or mental condition of the defendant;
- (b) the trivial nature of the offence; or
- (c) the extenuating circumstances under which the offence was committed,

it is inexpedient to inflict any punishment, or that it is expedient to release the offender on probation, the court, without proceeding to conviction may—

- (d) dismiss the complaint; or
- (e) make a probation order against the defendant in which it shall provide that the defendant appear for conviction and sentence as provided in paragraph (a) of subsection (2) of section six.

(2) Where a person has been convicted on indictment or under the provisions of section sixty-three of the *Justices Act 1959* of an offence punishable with imprisonment, and the court is of the opinion that, having regard to—

- (a) the character, antecedents, age, health, or mental condition of the defendant;
- (b) the trivial nature of the offence; or
- (c) the extenuating circumstances under which the offence was committed,

it is inexpedient to inflict any punishment, or that it is expedient to release the offender on probation, the court, in lieu of imposing a sentence of fine or imprisonment, may make a probation order against the defendant in which it shall provide that the defendant appear for sentence as provided in paragraph (a) of subsection (2) of section six.

(3) Where a defendant has been convicted of an offence, the court before which he has been convicted may, whether or not it imposes a fine or a term of imprisonment upon, or makes a work order against, him, make a probation order against him in which it shall include a provision in accordance with paragraph (b) of subsection (2) of section six.

(4) Where a court has imposed a term of imprisonment on a defendant and made a probation order against him as provided in subsection (3) of this section, the probation order shall take effect on the date of the defendant's release from prison.

(5) Where an order (including an order of dismissal) is made under subsection (1) of this section, the order has for the purposes of—

(a) section twenty-nine of the *Sale of Goods Act* 1896; and

(b) sections seventy-two and one hundred and forty of the *Justices Act* 1959,

the effect of a conviction of the offence in respect of which the order was made.

(6) The court by which a probation order is made shall explain to the defendant in simple language what he must do or refrain from doing under the order and what may happen to him if he does not obey the order.

8—(1) Where a court of summary jurisdiction has made a probation order, a justice may on the application of a police officer or a probation officer summon the person against whom it was made to appear before any court of summary jurisdiction on the hearing of an application by that officer for the variation of the order. Power to vary probation order.

(2) Where the Supreme Court has made a probation order, proceedings may be taken as prescribed by rules of court made under section twelve of the *Criminal Code Act* 1924, as if this Part

were contained in the Criminal Code, to bring the person against whom it was made before the Supreme Court on the hearing of an application on behalf of the Crown for the variation of the order.

(3) On the hearing of an application under subsection (1) or subsection (2) of this section, the court may receive evidence on affidavit or otherwise and may—

(a) if it appears to it that the provisions of the probation order should be varied, vary the probation order by—

(i) extending or diminishing the duration thereof;

(ii) altering or omitting a provision thereof; or

(iii) inserting additional provisions therein; or

(b) on being satisfied that the conduct of the person against whom the probation order was made has been such as to make it unnecessary that he should remain longer under supervision, discharge the probation order.

(4) No such variation may extend the duration of a probation order beyond the period of three years from the date of the original order.

Breach of
probation
order.

9—(1) Except as provided in subsection (2) of this section, where a person against whom a probation order has been made has contravened any provision of the order, and the order was made—

(a) by a court of summary jurisdiction, a police officer or a probation officer may proceed against that person in any court of summary jurisdiction upon complaint of the contravention; or

(b) in the Supreme Court, proceedings may be taken as prescribed by rules of court made under section twelve of the *Criminal Code Act 1924*, as if this Part were contained in the Criminal Code, to bring that person before the Supreme Court to answer for the contravention.

(2) Where a person is required by a probation order to appear for conviction and sentence or for sentence—

(a) before the Supreme Court, proceedings may be taken, as prescribed by rules of court made under section twelve of the *Criminal Code Act 1924* as if this Part were con-

tained in the *Criminal Code*, to bring that person before the court for the purposes of subsection (4) of this section; or

(b) before a court of summary jurisdiction, proceedings may be taken, as prescribed by rules made under section one hundred and forty-four of the *Justices Act 1959*, to bring the offender before any court of summary jurisdiction for the purposes of subsection (4) of this section.

(3) Rules made for the purposes of either paragraph of subsection (1) or subsection (2) of this section may provide for the arrest of an offender and for proceedings thereon before a justice or court of summary jurisdiction.

(4) A court before which a person is brought under subsection (1) or subsection (2) of this section, on being satisfied that he has contravened a provision of the probation order made against him may forthwith—

(a) in the case of a probation order under subsection (1) of section seven, without further proof of his guilt—

(i) convict and sentence him for the original offence; or

(ii) if the case is one in which the court in the first instance might, under the *Child Welfare Act 1960*, have made a supervision order in respect of him, declared him to be a ward of the State, or committed him to an institution, and he is still apparently under the age of eighteen years, make such an order, declaration, or committal;

(b) in the case of a probation order under subsection (2) of section seven—

(i) sentence him for the original offence; or

(ii) if the case is one in which the court in the first instance might, under the *Child Welfare Act 1960*, have made a supervision order in respect of him, declared him to be a ward of the State, or committed him to an institution, and he is still apparently under the age of eighteen years, make such an order, declaration, or committal; and

(c) in the case of a probation order under subsection (3) of section seven, sentence him to a fine of such amount, not exceeding one hundred dollars, or to such a term of imprisonment, not exceeding six months, or to both, as the court may think desirable in the circumstances.

(5) The powers set forth in paragraphs (a) and (b) of subsection (4) of this section may be exercised during the period of the probation order or within six months thereafter.

(6) The power set forth in paragraph (c) of that subsection may be exercised at any time within twelve months after the contravention of the probation order.

PART IV.

WORK ORDERS.

Expiry of
Part.
25 Geo. V
No. 74, s. 7.

10 This Part shall expire on the first day of March 1974.

Power to
make work
orders.
Ibid., s. 7A.

11—(1) Instead of sentencing a person to undergo a term of imprisonment, the Supreme Court and courts of summary jurisdiction may, with the person's consent, adjudge that he for his offence attend at such places and times as shall be notified to him in writing by a probation officer or a supervisor, on so many Saturdays, not exceeding twenty-five, as the court may order, and thereafter to do such things for such times as may be required of him under section twelve.

(2) A memorandum of an order under this section in the prescribed form and supplemented by the prescribed information shall be drawn up, be sealed or signed as prescribed, and be given to the person against whom the order is made before he is entitled to depart from the court by which the order is made.

(3) A work order shall be made only where it appears to the court that the provision has been or will be made for the doing of work by the person against whom it is made.

(4) A copy of a work order shall be sent forthwith to the Secretary of the Attorney-General's Department.

12—(1) Where a work order has been made against a person, a probation officer or a supervisor shall notify him in writing that on a specified Saturday or Saturdays he is required to report to a supervisor at a specified place and time and of any special provision made for his transportation to that place. Effect of work orders. Ibid., s. 7B.

(2) Subject to subsection (3) of this section, transportation for the purposes of subsection (1) may be by public transport, or by departmental transport, or by one for part of the way and by the other for part of the way.

(3) For the purposes of subsection (1) of this section, an employee shall not be required to travel between his place of abode and the place at which he is required to report, in addition to the distance for which transportation is provided, a distance, measured by the shortest practicable route, of more than seven miles.

(4) In pursuance of subsections (1), (2), and (3) of this section, it is lawful to provide that an employee shall travel by departmental transport leaving a specified place at a specified time for a specified destination and then by public transport similarly, leaving him to use such means as he may have or choose to go to the first-mentioned place and from the specified destination of the public transport to the place at which he is required to report, or to make any similar simpler or more complicated provision.

(5) If an employee in attempting to comply with subsection (1) of this section finds, after due inquiry, no means of transportation as mentioned in the notification thereunder or no supervisor to report to, as the case may be, he shall wait for it or him one hour and, if at the end of that hour he still cannot travel or report, he is at liberty for the rest of the relevant Saturday, and shall be deemed to have done all that was required of him under this section on that day.

(6) When an employee has reported to a supervisor in compliance with subsection (1) of this section, he shall do such work or other activity as the latter orders subject to the regulations made under this Act.

(7) That which an employee is required to do under a work order shall—

- (a) be such work or other activity or such kind or class of work or activity as a work order committee has approved;
- and

(b) not be continued for more than eight hours, exclusive of any time allowed for lunch, on any one day.

(8) An employee shall, in respect of his attendance, travelling, and work or activity under a work order, be deemed to be a worker employed by the Crown for the purposes of the *Workers' Compensation Act 1927* and to be a worker within the meaning of that Act, notwithstanding anything to the contrary in subsection (3) of section four of that Act, paid—

(a) at a rate equal to the basic rate as defined in that Act; or

(b) at the rate of his average weekly earnings, if any, within the meaning of that Act,

whichever is the greater rate.

(9) In this section “departmental transport” means transport arranged by the Attorney-General’s Department, a probation officer, or a supervisor.

Variation, &c.,
of work order.
Ibid., s. 7c.

13—(1) On application on behalf of the Crown or by the employee, a work order may at any time during its currency be reviewed by the Supreme Court or a court of summary jurisdiction, according as the order was made by the Supreme Court or a court of summary jurisdiction.

(2) Before a court reviews a work order under this section, it must appear, by affidavit or otherwise, that—

(a) the condition or circumstances of the employee—

(i) has or have changed since the order was made; or

(ii) was or were not such as the court making the order thought it or them to be,

so that the order should not, in consequence, be put into or continued in execution;

(b) the employee is in custody awaiting trial or under a sentence of imprisonment;

(c) the employee is resisting or evading, or attempting to resist or evade, the execution of the order;

(d) the employee’s conduct in respect of any matter required of him by or under this Act in respect of the order is such as to make the execution of the order—

(i) impossible; or

(ii) difficult for any person concerned with or affected by its execution; or

(e) the employee has been convicted of a contravention of subsection (1) of section fourteen.

(3) On review of a work order under this section, the court reviewing it may—

(a) discharge it without more;

(b) revoke it and order and adjudge that the employee for the offence for which it was made be fined or imprisoned; or

(c) reduce the number of Saturdays for which it is to last.

(4) In exercising its power under paragraph (b) of subsection (3) of this section the court shall take into account—

(a) that the work order was made; and

(b) anything done under it.

14—(1) If an employee—

(a) fails to attend as required by a probation officer or supervisor;

(b) fails to carry out in a proper or reasonable manner the work or activity required of him;

(c) disturbs or interferes with any other person working or doing anything under a work order;

(d) assaults, threatens, insults, or uses abusive or unfitting language to a probation officer or a supervisor;

(e) fails to comply with subsection (4) of section fifteen;

(f) changes his place of abode for the purpose of evading the execution of this Act; or

(g) commits a breach of the regulations,

he commits an offence for which a probation officer may proceed against him under the *Justices Act 1959*.

(2) The court before which a complaint under this section is heard may—

(a) impose a penalty of one hundred dollars; or

(b) increase the number of Saturdays specified in the order by not more than twenty-five more.

Operation and
enforcement of
work order.
Ibid., s. 7D.

(3) If it appears to a justice that there is reason to suspect that an employee will—

- (a) leave the State before the expiration of; or
- (b) not comply with,

the work order to which he is subject, he may issue his warrant for the employee's arrest.

(4) On the arrest of an employee under such a warrant he shall be brought before justices forthwith and if it appears to them likely that the employee will so leave or fail to comply they may—

- (a) if the work order was made by the Supreme Court, remand him in custody to be brought before that court, which may revoke that order and adjudge that the employee for the offence for which it was made be fined or imprisoned; or
- (b) if the work order was made by a court of summary jurisdiction—
 - (i) remand him to another court of summary jurisdiction, which may; or
 - (ii) themselves, revoke that order and adjudge that the employee for the offence for which it was made be fined or imprisoned.

Place of
abode.
Ibid., s. 7E.

15—(1) For the purposes of subsection (3) of section twelve an employee's place of abode shall be determined by the person giving the notification referred to in subsection (1) of that section.

- (2) If an employee considers that—
 - (a) his place of abode has been wrongly determined for the purposes of that subsection; and
 - (b) he has, in consequence, been required to travel further than that subsection permits,

he may, after consultation with the person giving the notification, apply forthwith to a justice, who may confirm the notification or refer it to a court of summary jurisdiction, which may on hearing the employee and the person giving the notification or a probation officer confirm or quash the notification.

(3) For the purposes of subsection (2) of this section—

- (a) a justice shall not refer a notification to a court of summary jurisdiction without first consulting the person giving the notification; and
- (b) consultation may be done by telephone, for which purpose a person answering to a name, personal or of office or position, at a number where the person of that name is reasonably expected to be shall be deemed in the absence of evidence to the contrary to be the person of that name.

(4) If an employee changes his place of abode he shall give notice of the change forthwith in writing to the Secretary of the Attorney-General's Department.

16—(1) The Minister may appoint so many committees for the purposes of section twelve as he thinks fit. Committees.
Ibid., s. 7F.

(2) A committee appointed under this section—

- (a) shall consist of three, four, or five persons of whom one shall have been nominated for the purpose by the body of persons known as the Tasmanian Trades and Labour Council; and
- (b) shall not decide upon a form of work or activity for the purposes of section twelve without the concurrence of the member so nominated.

17—(1) The Minister may appoint supervisors for the purposes of this Part, either by name or by reference only to an office or position held by the person to be appointed. Appointment
of officers.
Ibid., s. 7G.

(2) A probation officer or a supervisor appointed under subsection (1) of this section may appoint any person a supervisor to act in his place on a specified day.

(3) Every supervisor shall on his appointment be given a warrant of appointment in the prescribed form, which by its production to an employee shall be conclusive evidence that the person producing it is a supervisor.

18 Nothing in this Part affects the operation of Part III.

Effect of
Part.
Ibid., s. 7H.

PART V.
MISCELLANEOUS.

Regulations.
25 Geo. V
No. 74, s. 8.

19—(1) The Governor may make regulations for the purposes of this Act.

- (2) Regulations for the purposes of Part IV may—
 - (a) regulate the execution of work orders;
 - (b) prescribe the conduct of supervisors and of employees;
 - (c) provide for the health and safety of supervisors and employees;
 - (d) prescribe the effect of injury and sickness in relation to work orders;
 - (e) regulate the conduct of the public at places where employees attend or act; and
 - (f) provide for penalties not exceeding one hundred dollars for contraventions of regulations made pursuant to paragraph (e) of this subsection.

Interim rules.
No. 82 of
1971, s. 12.

20—(1) The Minister may make rules for the purposes of sections eight, nine, and thirteen with all the powers of the judges within the meaning of section twelve of the *Criminal Code Act* 1924 or of the Governor and the rule committee under section one hundred and forty-four of the *Justices Act* 1959, as the case may require.

(2) Rules made under this section shall come into force on their publication in the *Gazette* and continue in force until rescinded by rules made under the relevant section mentioned in subsection (1) of this section.

THE SCHEDULE.
(Section 2.)
ACTS REPEALED.

Year and number of Act.	Short title.
25 Geo. V No. 74	<i>Probation of Offenders Act</i> 1934
No. 31 of 1963	<i>Probation of Offenders Act</i> 1963
No. 82 of 1971	<i>Probation of Offenders Act</i> 1971