



REPUBLIC OF NAURU
GOVERNMENT GAZETTE
PUBLISHED BY AUTHORITY
EXTRAORDINARY

No.5.

28th January 2000

Nauru

G.N.No.22/2000

COURTS (AMENDMENT) ACT 1999

(No.7 of 1999)

ARRANGEMENT OF SECTIONS

1. Short title
2. The Principal Act
3. Amendment of section 10 of the Principal Act.

G.N.No.23/2000

AN ACT

(certified 18th October 1999)

To amend the Courts Act 1972.

Enacted by the Parliament of Nauru as follows:

SHORT TITLE

1. This Act may be cited as the Courts (Amendment) Act 1999.

THE PRINCIPAL ACT

2. In this Act "the Principal Act" means the Courts Act 1972.

AMENDMENT OF SECTION 10 OF THE PRINCIPAL ACT

3. Section 10 of the Principal Act is amended by repealing subsection (7).
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REPUBLIC OF NAURU

ACT 1999

(No. 8 of 1999)

ARRANGEMENT OF SECTIONS

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AN ACT

(certified 18th October 1999)

to provide new methods of dealing with offenders liable to imprisonment by a system of probation, community service, and parole.

Enacted by the Parliament of Nauru as follows:

PART I — PRELIMINARY

SHORT TITLE

1. (1) This Act may be cited as the Criminal Justice Act 1999.

INTERPRETATION

2. (1) In this Act unless the context otherwise requires—
 - "Board" means the Parole Board established under section 32;
 - "Chief Controller" means the Chief Controller of a Community Service Group under section 20;
 - "Chief Probation Officer" means the Chief Probation Officer under section 4(5);
 - "Community Service Group" means a Community Service Group established under section 19;
 - "community service order" means an order to serve in a Community Service Group made under Part III;
 - "Controller" means a Controller of a Community Service Group under section 20;
 - "counsel" includes solicitor, pleader or agent;
 - "Court" means the Supreme Court or the District Court;
 - "fine" includes any sum or money adjudged to be paid by a conviction, whether as a fine or for costs or otherwise;
 - "Group" means a Community Service Group established under section 19;
 - "probationer" means a person —
 - (a) in respect of whom a probation order is in force; or
 - (b) who has been released on probation under Part IV;
 - "probation officer" means a probation officer appointed under section 4(1) or 4(2);
 - "probation order" means an order for probation under Part II;

"Registrar" means the Registrar of the Supreme Court or the Clerk of the District Court;

APPLICATION

3. (1) Nothing in this Act shall be construed to limit or affect in any way —
- (a) the prerogative of mercy; or
 - (b) any pardon, respite, substitution or remission of sentence by the President which may be authorised by law.
- (2) This Act shall apply to offences committed before or after the commencement of this Act.

PART II — PROBATION

PROBATION OFFICERS

4. (1) The Chief Secretary may, by notice in the Gazette, appoint —
- (a) a public officer as Chief Probation Officer; and
 - (b) public officers as probation officers.
- (2) Notwithstanding subsection (1), the Minister may from time to time appoint a person, or the holder for the time being of any office or appointment, as a probation officer in a part-time capacity.
- (3) No person appointed under subsection (2) shall by virtue of that appointment become an officer or employee of the Public Service, and nothing in the Public Service Act 1998 shall apply with respect to that appointment.
- (4) A probation officer appointed under subsection (2) may be paid out of money appropriated by Parliament for the purpose such remuneration by way of salary or fees, and such allowances, as may be determined by the Minister with the concurrence of the Minister for Finance.

POWERS AND DUTIES OF PROBATION OFFICERS

5. (1) A probation officer —
- (a) may, and shall when required by the Court, report to the Court on the character and personal history of any person convicted of an offence punishable by imprisonment, with a view to assisting the Court in determining the most suitable method of dealing with his case; and
 - (b) may in that report advise the Court whether the offender would be likely to respond satisfactorily to probation and whether any condition of probation should be imposed.
- (2) A probation officer shall —
- (a) supervise, advise, assist and where possible, befriend all probationers placed under his supervision, with a view to assisting their social rehabilitation and preventing the commission of further offences by them; and
 - (b) perform such other duties as may be prescribed under this Act or any other law, or as directed by the Chief Probation Officer.
- (3) A probation officer may commence, appear in or continue any proceedings on behalf of any other probation officer.
- (4) In the exercise of his powers and duties, a probation officer shall have the powers, authority, protection, and privileges of a police officer.

REPORT OF PROBATION OFFICER TO BE SHOWN OR GIVEN TO OFFENDER

6. (1) Where, under any provision of this Act or of any other law, a written report is made to the Court in respect of an offender by a probation officer, a copy of the report shall be shown or, if the Court directs, shall be given to the counsel appearing for the offender or, if the offender is not represented by counsel, to the offender.

(2) An offender or his counsel may tender evidence on any matter referred to in a report, whether written or oral, that is made to the Court in respect of the offender by the probation officer.

(3) Failure to show or give a copy of the report in accordance with this section shall not affect the validity of the proceedings in the Court or of an order made or sentence passed by the Court.

PROBATION ORDERS

7. (1) Where a person is convicted of an offence punishable by imprisonment the Court may, instead of sentencing him to imprisonment, make a probation order releasing the person on probation for a period specified in the order, being a period of not less than one year nor more than three years.

(2) Where the Court sentences a person to imprisonment for less than one year, it may, as part of the sentence, make a probation order ordering that on his release from imprisonment he shall be on probation for a period, not exceeding one year, specified by the Court.

(3) Where the Court makes a probation order under this section, it may also sentence that person to pay a fine authorised by law.

(4) A person released from imprisonment under subsection (2) shall, on his release from imprisonment, be deemed to be an offender released on probation under Part IV and the conditions imposed under this subsection shall be deemed to be special conditions imposed under that Part, and the provisions of that Part shall apply accordingly.

(5) For the purpose of an appeal or application for leave to appeal, a release on probation under this section shall be deemed to be a sentence or, where a fine is imposed, to be part of the sentence.

(6) Where a Court has made a probation order under this section, the Registrar of the Court shall notify the Secretary for Justice.

PROBATION MAY FOLLOW COMMUNITY SERVICE

8. (1) Where a Court makes a community service order under section 22 or section 23, it may also make a probation order for a period ending not later than one year after the expiry of the period of community service.

(2) A Court making a probation order under subsection (1) shall direct whether the period of probation shall commence on the date of commencement or the expiry of the period of community service.

(3) Where a Court has made a probation order under subsection (1), the Registrar of the Court shall notify the Secretary for Justice.

PROBATION UNDER OTHER LAWS

9. (1) Nothing in this Act affects the power conferred on a Court by any other law to release an offender on probation for a period and on conditions specified in that law.

(2) Notwithstanding subsection (1), where a law provides for probation, the making of a probation order or the release of a person on probation, this Act shall apply in the absence of any express provisions to the contrary in that law.

PROBATIONERS TO BE SUPERVISED

10. Every probationer shall, during the period of his probation, be under the supervision of a probation officer.

CONDITIONS OF RELEASE

11. (1) A probation order shall include the following conditions:—

- (a) within 24 hours after his release on probation in the case of a probationer under section 7, or after the commencement of his period of probation in the case of a probationer under section 8, the probationer shall report in person to the probation officer under whose supervision he has been placed, and shall further report as and when he is required to do so by the probation officer;
- (b) the probationer shall give to the probation officer reasonable notice of his intention to move from his address;
- (c) the probationer shall not reside at an address that is not approved by the probation officer;
- (d) the probationer shall not continue in an employment, or continue to engage in an occupation, that is not approved by the probation officer;
- (e) the probationer shall not associate with a specified person, or with persons of a specified class, with whom the probation officer has, in writing, warned him not to associate;
- (f) the probationer shall keep the peace, be of good behaviour and commit no offence against the law.

(2) Where a person is released on probation, the probation officer supervising him shall issue to him a written copy of his probation order showing the conditions of his probation order.

ADDITIONAL CONDITIONS

12. (1) In addition to the conditions set out in section 11, an order for probation made under section 7, or under section 8 in respect of a community service order made under section 22, may contain all or any of the following conditions:—

- (a) that the probationer shall, within such period and by such instalments as may from time to time be directed by the probation officer, pay the whole or such portion as the Court may direct of the costs of the prosecution in relation to the offence for which he is released on probation and any other offence of which he may be convicted or for which he may be brought up for sentence at the same time;
- (b) that he shall abstain from the use of intoxicating liquor or drugs;
- (c) that he shall not, either alone or jointly with another person, own or have in his possession a specified article, or articles of a specified class;
- (d) that he shall not associate with a specified person or with persons of a specified class;
- (e) that he shall undergo a specified course of education or training;
- (f) such conditions relating to his place of residence, employment, or earnings, as the Court making the order thinks fit;
- (g) such other conditions as the Court making the order thinks necessary for ensuring his good conduct or for preventing the commission by him of an offence.

(2) In addition to the conditions set out in section 11, an order for probation under section 8 made in respect of a community service order under section 23 may contain all or any of the following conditions:—

- (a) that the probationer shall undergo a specified course of education or training;
- (b) such conditions relating to his place of residence, employment, or earnings, as the Court making the order thinks fit;
- (c) such other conditions as the Court making the order thinks necessary for ensuring his good conduct or for preventing the commission by him of an offence.

(3) Where a direction for the payment of damages or compensation is given under this section and at the expiry of the period of probation a sum remains owing to a person under that direction, the Registrar of the Court shall issue a certificate certifying the direction and the sum still owing.

(4) Where a certificate under subsection (3) is filed in the Court, it may be enforced as if it were a judgment of that Court.

(5) No civil remedy for an act or omission shall be suspended by the imposition of a condition for the payment of damages or compensation.

VARIATION OF CONDITIONS AND DISCHARGE FROM PROBATION

13. (1) A probationer may, in accordance with subsection (6) -

- (a) at any time, apply to the Court for the remission, suspension, or variation of any condition of his probation order; or
- (b) at any time after the expiration of half the period of his probation, apply to the Court for the discharge of his probation order.

(2) Subject to subsection (1), a probation officer may, in relation to a probation order, at any time apply to the Court for —

- (a) remission, suspension, or variation of any condition of the order; or
- (b) the discharge of the order; or
- (c) imposition of an additional condition; or
- (d) extension of the period of probation where that period is less than three years.

(3) On the hearing of an application under this section, the Court, having regard to any change of circumstances of the probationer and any other information before it in relation to the probationer, may —

- (a) remit, suspend or vary any condition of the order; or
- (b) discharge the order; or
- (c) impose an additional condition; or
- (d) subject to subsection (4) — extend the period of probation.

(4) The Court shall not extend the period of probation under subsection (3)(d) —

- (a) in the case of an order made under section 7 — beyond the period of three years from the date on which that period began; or
- (b) in the case of an order made under section 8 — beyond the period of one year after the expiry of the period of community service.

(5) Where the Court discharges a probation order under subsection (3)(b), the order shall expire on the date specified in the order of discharge.

(6) Every application under this section shall be made —

- (a) where the probation order was made by the Supreme Court — to the Supreme Court; or
- (b) where the probation order was made by the District Court, or by the Supreme Court on appeal from the District Court — to the District Court.

(7) A copy of every application under this section shall, either before or immediately after the application is lodged in the office of the Court, be served on the probation officer or, as the case may require, the probationer.

(8) Where an application is made under this section for the remission, suspension or variation of any condition under section 12(1)(c), (d), (e) or (f), the probation officer may in his discretion suspend the condition until the application has been heard and disposed of.

(9) An application under this section may, in the discretion of the Court be heard either in open court or in chambers, and the provisions of section 41 shall apply with all necessary modifications.

(10) Notice of any order made under this section shall be given by the Registrar of the Court to the Secretary for Justice.

ARREST OF PROBATIONERS

14. (1) A probationer who contravenes or fails to comply with any condition of his probation order breaches his probation.

(2) Where a probation officer or a police officer believes on reasonable grounds that a probationer has breached his probation, he may arrest the probationer without warrant.

(3) Where, on information, it appears to a Court that a probationer has breached his probation, the Court may —

- (a) issue a summons requiring the probationer to appear before it; or
- (b) where the information is on oath — issue a warrant for his arrest.

BREACH OF PROBATION

15. (1) A probationer who breaches his probation is guilty of an offence and is liable to imprisonment for a term not exceeding three months or to a fine not exceeding one hundred dollars.

(2) Where a probationer is convicted under this section, the Court may, in addition to or instead of sentencing him under subsection (1), do all or any of the following:—

- (a) in respect of a probation order made under section 7 — extend the period of probation by a specified period expiring not later than three years after the date on which that period began;
- (a) in respect of a probation order made under section 8 — extend the period of probation by a specified period expiring not later than one year from the date of expiry of the period of his community service;
- (b) vary any condition of his probation order;
- (c) impose an additional condition;
- (d) where an application has been made under section 16 — sentence the probationer in accordance with that section.

(3) Notice of an order made under this section shall be given by the Registrar of the Court to the Secretary for Justice.

SENTENCE FOR ORIGINAL OFFENCE

16. (1) Where a probationer, including a probationer who in addition to being released on probation has also been sentenced to pay a fine —

- (a) is convicted of another offence committed during the period of probation; or
- (b) is charged with a breach of his probation order,

a probation officer may apply to the Court to sentence him for the offence for which he was released on probation.

(2) Notice of an application under subsection (1) shall be served on the probationer.

(3) A application under this section shall be made —

- (a) where the probation order was made by the Supreme Court — to the Supreme Court; and
- (b) where the probation order was made by the District Court, or by the Supreme Court on appeal from the District Court — to the District Court.

(4) Where the application is dealt with by a judge or magistrate other than the judge or magistrate who released the offender on probation, the Court shall, before sentencing the offender, make such inquiries as to the circumstances of the case as it considers reasonable, and may hear such evidence as it thinks relevant.

(5) The Court hearing an application under this section may deal with the offender for the offence for which he was released on probation in any way in which a Court could have dealt with him if he had just been convicted of that offence —

- (a) other than by again releasing him on probation; and
- (b) in any case where he was also sentenced to pay a fine — other than by sentencing him to pay a further fine.

(6) An offender who is not sentenced or otherwise dealt with under subsection (5) for the offence for which he was released on probation shall continue to be on probation.

EFFECT OF SUBSEQUENT SENTENCE ON PROBATION

17. (1) Where a person released on probation under this Part is sentenced in respect of an offence to imprisonment for life or for a term of one year or more, his probation order shall expire.

(2) Where a person released on probation under this Part is sentenced in respect of an offence to imprisonment for less than one year, the period of his probation shall continue to run while he is detained under the sentence, and on his release from detention he shall continue to be on probation for the unexpired residue of that period, unless he is sooner discharged from probation under this Part.

DISCHARGE ON EXPIRY OF PROBATION

18. (1) Subject to subsection (2), a probation order is discharged on the expiry of the period of probation and the person to whom the order applies is discharged in respect of the offence for which he was originally released on probation, as if he had been sentenced and had served the sentence.

(2) Notwithstanding subsection (1), proceedings under section 15(1) may be instituted against a person referred to in subsection (1) within a period of six months after the expiration of the period of his probation in respect of a breach occurring during the period of probation, for any contravention of or failure to comply with a condition of his order for probation, and the Court on conviction may impose any of the penalties under section 15(2).

PART III — COMMUNITY SERVICE**ESTABLISHMENT OF COMMUNITY SERVICE GROUPS**

19. The Minister may, by notice in the Gazette —
- (a) establish a Community Service Group; or
 - (b) revoke the establishment of a Community Service Group.

CONTROLLERS OF COMMUNITY SERVICE GROUPS

20. (1) The Chief Probation Officer is *ex officio* the Chief Controller of Community Services Groups, and probation officers are *ex officio* Controllers of Community Services Groups.

(2) Subject to any directions of the Secretary for Justice, the Chief Controller shall be responsible for the general administration, control and supervision of Community Service Groups.

(3) The Chief Controller may by written instrument of delegation delegate to another Controller any power, duty or function of his office other than this power of delegation.

(4) A delegation under subsection (4) is revocable and does not prevent the exercise of a power, duty or function by the Chief Controller.

CONTROL OF COMMUNITY SERVICE GROUPS

21. (1) A Community Service Group shall be under the control and supervision of a Controller.

(2) A person ordered to serve in a Community Service Group shall be in the legal custody of the Controller of the Group —

- (a) throughout the period he is detained during the performance of his service; and
- (b) while he is travelling after reporting to the Controller to any place where he has been directed by the Controller to work.

(3) A person serving in a Community Service Group shall be subject to the control, directions and supervision of the Controller who, on each occasion on which he is serving, is in control of his Community Service Group.

(4) In the exercise of his powers and duties in relation to a Community Service Group, a Controller shall have all the powers, authority, protection and privileges of a police officer.

OFFENDERS GUILTY OF OFFENCE PUNISHABLE BY IMPRISONMENT

22. (1) Where a person who is not less than 13 years of age is found guilty of an offence punishable by imprisonment, the Court may make a community service order ordering him to serve in a Community Service Group for a period not exceeding 12 months.

(2) A community service order may be made irrespective of whether or not the Court convicts the offender of the offence.

(3) Where the Court makes a community service order in respect of a person, it may also impose upon him a fine or other monetary penalty authorised by law, but shall not impose any other sentence.

OFFENDERS LIABLE TO IMPRISONMENT FOR NON-PAYMENT OF FINE

23. (1) In any case where an order may be made for the imprisonment of any person by reason of non-payment of a fine imposed on him, a Court may, subject to section 16 and after considering the report which it would be required to consider after taking into account any other fine owing by that person, make a community service order in respect of that person for a period not exceeding 12 months.

(2) A community service order may be made under this section notwithstanding that the offence in respect of which the fine was imposed was not punishable by imprisonment.

(3) Where a community service order is made under this section, that part of the offender's original sentence which dealt with the imposition of the fine that has been taken into account under subsection (1) shall be deemed to be cancelled in respect of any part of the fine unpaid when the order was made.

(4) Notwithstanding section 3(2), this section applies only in respect of fines imposed after the commencement of this Act.

(5) A person in respect of whom a community service order under this section is made may, within seven days of the service of the order on him, apply to the Court for the order to be suspended, varied or cancelled.

(6) Where a Court receives an application under subsection (5), the order shall be suspended until final determination of the application has been made by the Court.

COURT TO CONSIDER REPORT OF PROBATION OFFICER

24. (1) A Court shall not make a community service order in respect of any person until a report on his character and personal history and any other relevant circumstance has been made by a probation officer and has been considered by the Court.

(2) A community service order shall not be invalidated on the ground that a report by a probation officer was not made or was not considered by the Court.

(3) If a Court makes a community service order before a report from a probation officer has been made and considered under this section, the defendant, the prosecutor or any counsel appearing on behalf of the Republic may at any time apply to have the sentence reviewed.

PERIODS OF COMMUNITY SERVICE

25. (1) A person who is ordered to serve in a Community Service Group, shall, during the period of community service, be required to report to the Controller of the Group or any other Controller specified by the Chief Controller on a specified number of occasions each week, and on each such occasion to place himself in the custody of that Controller for a specified period.

(2) A community service order shall specify —

(a) the duration of each period of custody; and

(b) the Controller to whom the offender is required to report on the first occasion after the order is made; and

(c) the day and time at which he is required to report under paragraph (b); and

(d) the number of occasions in each week on which he is required to report to a Controller under subsection (1).

(3) Periods of service in any week need not be of the same duration, but no period of service shall exceed 12 hours.

(4) The day and time at which a person ordered to serve in a Community Service Group is required to report to a Controller after the first reporting shall be fixed by the Controller, who shall have regard to any general directions given by the Court in making the order.

(5) The Chief Controller may, where he considers that there are special circumstances requiring it, excuse a person from reporting on any one or more occasions in any one week.

(6) The times at which a person ordered to serve in a Community Service Group is required to report for that purpose and the periods during which he is required to remain in custody, shall be arranged so as to avoid interference, so far as is practicable, with his attendance at an educational institution or his work, or his genuine religious observances.

PERFORMANCE OF COMMUNITY SERVICE

26. (1) A period of service under a community service order shall be spent in participating in such activities, attending such classes or groups, or undergoing such instruction as the Controller of the Community Service Group considers appropriate and conducive to the reformation and training of the person performing the community service.

(2) A person may, at any time while performing community service, be directed to engage in such work as the Controller thinks appropriate.

(3) Subject to subsection (4), work under subsection (2) may be —

(a) at a hospital, church, or charitable or educational institution; or

(b) at the home of an old, infirm, or handicapped person or at an institution for old, infirm or handicapped persons; or

(c) on land which is owned, leased, occupied or administered by the Republic or a public body approved by the Minister for the purpose; or

(d) the clearing of litter or debris at any place used by the general public, the prevention of coastal erosion or any other measure for the protection and preservation of the environment.

(4) No person shall be directed to any work if in doing that work he would take the place of a person who would otherwise be employed on that work as a regular employee.

(5) A person directed to work under this section is not entitled to any remuneration in respect of that work.

(6) Where a person is directed to work under this section, then for the purpose of any law —

(a) he shall be deemed to be a worker employed by the Republic; and

(b) his weekly earnings shall be deemed to be an amount equivalent to his weekly earnings in any full-time employment in which he is engaged at that time or, if he has no full-time employment, an amount which the Minister considers in all the circumstances of the case would be a fair amount.

VARIATION OR CANCELLATION OF COMMUNITY SERVICE ORDER

27. (1) A community service order may at any time, on the application of the offender or of the Chief Controller, or of a probation officer in respect of a probation order made in conjunction with the community service order, be varied or cancelled by the Court.

(2) A community service order may be varied or cancelled under this section on the ground that there has been a change of circumstances since the order was made or, if

the Court considers that a continuation of the order is no longer necessary in the interests of the community or the offender, the order may be cancelled on that ground.

REPORT ON CONDUCT OF OFFENDER

28. Where a person has served in a Community Service Group and is later brought before a Court for any other offence —

- (a) a probation officer; or
- (b) the Chief Controller; or
- (c) any other officer of the Department of Justice,

may make a report in writing to the Court on the conduct of that person while he was in legal custody under the community service order, and, where the report is made by a person other than the probation officer, the provisions of section 6 apply with the necessary modifications.

OFFENCES

29. (1) A person ordered to serve in a Community Service Group who —

- (a) fails without reasonable excuse to report to the Controller of his Group as required by the Court making the order or in accordance with instructions given to him under section 25(4); or
- (b) fails without reasonable excuse to report to the place of work as directed by the Chief Controller under section 26(2); or
- (c) fails without reasonable excuse to obey any rules governing the Community Service Group in which he is required to serve or any directions of a Controller regarding the manner in which his time is to be spent while he is in the custody of the Controller; or
- (d) without reasonable excuse, leaves the place where he is directed to perform work when he should be at that place; or
- (e) is idle and careless at work, refuses to work, or neglects or wilfully mismanages his work while he is in the custody of a Controller; or
- (f) uses or writes any abusive, insolent, insulting, threatening, profane, indecent or obscene words while he is in the custody of a Controller; or
- (g) behaves in an offensive, threatening, insolent, insulting, disorderly, or indecent manner while he is in the legal custody of a Controller,

is guilty of an offence and is liable on conviction to imprisonment for a term not exceeding 6 months or to a fine of \$200.00 or both.

(2) A person who, without lawful justification or excuse, loiters about any place where persons serving in a Community Service Group are working, and refuses or fails to depart after being warned by a police officer or the Controller supervising the work, is guilty of an offence and is liable on conviction to a fine not exceeding \$100.00.

EFFECT OF SUBSEQUENT CONVICTIONS

30. (1) Where a person serving a period of community service is convicted of another offence and is sentenced to imprisonment for life or for a term of one year or more, his community service order shall terminate.

(2) Where a person serving a period of community service is convicted of another offence and a sentence other than a sentence of imprisonment for life or for a term of one year or more is imposed, the Court by which he is sentenced or otherwise dealt with may, unless an application under section 31 has been made to that or any other Court, make an order terminating the community service order.

(3) Where no order is made under subsection (2) and the person subject to the community service order is sentenced to imprisonment for less than one year —

- (a) the period of the order shall continue to run while he is detained under the sentence of imprisonment; and
- (b) upon his release from imprisonment he shall continue to be subject to the order for the unexpired residue of the period of the order.

SUBSTITUTED SENTENCE

31. (1) Where a person performing community service is convicted of an offence other than offence against section 29(1) which is punishable by imprisonment, whether or not a fine was also ordered, a probation officer may, unless his community service order has been terminated under section 30, apply to the Court to substitute another sentence for the community service order.

(2) Notice of an application under subsection (1) shall be served on the person in respect of whom it is made.

(3) Where a person performing community service is charged with an offence under section 29(1), the probation officer may, before the hearing of the charge, give notice to the person charged that if he is convicted of the offence charged, the Court will be asked to substitute another sentence for the community service order.

(4) Where notice has been given under subsection (3) and the person is convicted of the offence charged, the probation officer may, unless the community service order has been terminated under section 30, apply to the Court to substitute another sentence for the community service order.

(5) Where an application is dealt with by a judge or magistrate other than the judge or magistrate who made the community service order in respect of the offender, the Court shall before determining the application make such inquiries as to the circumstances of the case as it considers reasonable, and may hear such evidence as it thinks relevant.

(6) The Court hearing the application may —

(a) if the order was made under section 22 — substitute for it any sentence, other than a community service order, which could have been imposed on the offender at the time his community service order was made; or

(b) if the order was made under section 23 — substitute for it a sentence to a term of imprisonment not exceeding the maximum term for which the offender could have been sentenced if he had been dealt with under another law instead of being ordered to perform community service.

(7) Where a sentence is substituted for a community service order under this section, the order is terminated.

PART IV — PAROLE

PAROLE BOARD

32. (1) A Parole Board is established.

(2) The Board shall consist of —

(a) the Chief Justice, or in his absence any other judge present in Nauru, who shall be the Chairman; and

(b) the Secretary for Justice, *ex officio*, or his nominee; and

(c) not less than one nor more than three other members appointed by the Minister.

(3) A member referred to in subsection (2)(c) —

- (a) shall be appointed for a term of three years; and
- (b) is eligible for reappointment; and
- (c) may at any time be removed from office by the Minister for disability, neglect of duty or misconduct proved to the satisfaction of the Minister; or
- (d) may at any time resign his office by writing addressed to the Minister.

(4) The Minister may from time to time appoint a temporary member of the Board —

- (a) while a member is incapacitated by illness, absence from Nauru, or other sufficient cause from performing the duties of his office; or
- (b) during the absence of a member, other than the member referred to in subsection (2)(b), from the place at which a meeting of the Board is to be held.

(5) No appointment of a temporary member and no acts done by him as such, and no acts done by the Board while a temporary member is acting as such, shall in any proceedings be questioned on the ground that —

- (a) the occasion for a such appointment had not arisen or had ceased; or
- (b) a permanent member of the Board acted as such while a temporary member appointed in his place remained in office.

(6) There shall be paid to the members of the Board, other than the member referred to in subsection (2)(b), out of money appropriated by Parliament for the purpose, fees, allowances and travelling expenses.

MEETINGS AND PROCEDURE OF BOARD

33. (1) The Board shall meet as often as required and at such times and places as it determines.

(2) At a meeting of the Board, three members shall be a quorum.

(3) Subject to this Act and of any regulations made under it, the procedures of the Board are as determined by the Board.

JURISDICTION AND FUNCTIONS OF BOARD

34. (1) The Board shall have jurisdiction in respect of persons undergoing sentences of imprisonment and of persons released on probation under this Part after serving a sentence of imprisonment.

(2) The functions of the Board are —

- (a) to make recommendations to the Minister as to the release of an offender undergoing imprisonment for life, and as to the release of an offender undergoing imprisonment whose case the Board is requested to consider under subsection (7);
- (b) to make recommendations to the Minister as to the discharge from probation of an offender who is on probation under this Part after undergoing imprisonment;
- (c) to make recommendations to the Minister as to the remission, suspension, or variation of any condition of the probation of an offender who is on probation under this Part after undergoing imprisonment, or as to the imposition on an offender of an additional condition of probation;
- (d) to report to the Minister from time to time, when requested by him to do so, on a matter relating to a recommendation made under this section.

(3) The Board, for the purpose of carrying out its functions, shall consider the cases of offenders --

(a) in the case of an offender undergoing imprisonment for life consequent upon his conviction for murder — as soon as practicable after the expiry of 10 years from the date of his reception in the prison, and at least once in every period of 12 months thereafter;

(b) in the case of any other offender undergoing imprisonment for life — as soon as practicable after the expiry of 5 years from the date of his reception in the prison and at least once in every period of 12 months thereafter.

(4) After an offender has become entitled to have his case considered for the first time under subsection (3), he may at any time, subject to subsection (5), apply to the Parole Board for further consideration of his case.

(5) No application under subsection (4) shall be made to the Board at any time within 6 months after the making of a previous application under subsection (4).

(6) An offender who is entitled to have his case considered under subsection (3) shall be given an opportunity of appearing before the Board and stating his case in person at least once in every year, and for that purpose the Board shall from time to time —

(a) visit any prison where there are offenders undergoing imprisonment for life; or

(b) have the offender brought before it.

(7) A member of the Board may at any time request the Board to consider any case, including the case of an offender who is undergoing imprisonment for any term, and on that request the Board shall consider that case at its next meeting.

(8) In considering a case under this section, the Board shall have regard to —

(a) the safety of the public, and of any person or a class or classes of persons who may be affected by the release of the offender; and

(b) the likelihood that the offender will re-offend before his sentence expires; and

(c) the welfare of the offender and his reformation and training in the prison in which he is detained; and

(d) the class of sentence imposed by the Court and the term of sentence; and

(e) any recommendation made by the Superintendent of the prison; and

(f) any representation made by the offender.

(9) Where the Board recommends the release of an offender, it may recommend that the release be subject to such special conditions as it thinks fit.

(10) The Board shall, not later than the thirty-first day of March in every year, send to the Minister a report on its proceedings during the year ended on the previous thirty-first day of December.

RELEASE OR DISCHARGE OF OFFENDER

35. (1) Where the Board recommends the release of a person from imprisonment or his discharge from probation, the Minister may direct —

(a) the release of that person from imprisonment subject to the provisions of this Part and to such special conditions as he thinks fit; or

(b) as the case may require — the discharge of that person from probation.

(2) A direction given by the Minister for the release from imprisonment of an offender may be revoked by the Minister at any time before the offender is released.

RELEASED OFFENDER TO BE ON PROBATION

36. (1) Where an offender who is detained under a sentence of imprisonment of one year or more, not being imprisonment for life, is released from imprisonment under this Part before the expiry of the maximum term for which he is liable to be imprisoned under the sentence, he shall be on probation —

- (a) from the time of his release until the expiry of the term of his sentence; or
- (b) where the unexpired part of that term is less than a year — for one year.

(2) Where an offender detained under a sentence of imprisonment for life is released from imprisonment under this Part, he shall be on probation from the time of his release for the rest of his life.

(3) Where an offender detained under a sentence of imprisonment of one year or more is released from imprisonment at the expiry of the maximum term for which he is liable to be detained under the sentence, he shall be on probation for one year from the time of his release.

(4) Where a person detained under a sentence of imprisonment is released on probation before the expiry of the sentence, the term of the sentence shall continue to run while he is on probation as if he were still serving the sentence, and the date of expiry of the sentence shall be determined accordingly.

(5) A period of probation under this Part shall not be extended by virtue of the fact that the probationer is sentenced to imprisonment.

(6) This section shall apply to all releases under this Part, whether for the first time or after a recall of a probationer under section 38.

(7) For the purposes of this section, cumulative terms of imprisonment shall be deemed to be one term.

CONDITIONS OF RELEASE

37. (1) Where an offender is released on probation under this Part, the conditions in section 7, other than in section 7(a), shall apply in addition to any special conditions imposed under this Part.

(2) In addition to the conditions specified in subsection (1), every release on probation under this Part shall be subject to the condition that the probationer shall, within 24 hours after his release, report to the probation officer under whose supervision he has been placed.

(3) A person released on probation under this Part shall be issued with a copy of the direction for release setting out the conditions subject to which he has been released.

RECALL OF OFFENDERS

38. (1) Where an offender detained under a sentence of imprisonment for life is released from detention under section 36, the Minister may, at any time while the offender is on probation, direct that the offender be recalled.

(2) On the giving of a direction under subsection (1), the probation is automatically cancelled and the offender —

- (a) may be arrested without warrant by a police officer; and
- (b) shall continue to serve his sentence unless he is again released on the recommendation of the Board under this Part, or is released or discharged under any other law.

(3) Where an offender detained under a sentence of imprisonment of one year or more, not being imprisonment for life, is released from detention under section 36, or before the expiry of the term of his sentence, a judge may at any time before the expiry of that term and while the offender is still on probation, on the application of a probation officer, direct that the offender be recalled.

(4) On the giving of a direction under subsection (3), the probation is automatically cancelled, and the offender shall be detained and shall serve the unexpired part of his sentence, unless he is again released on the recommendation of the Board under this Part or is released or discharged under any other law.

(5) A probation officer or a police officer may without warrant arrest a probationer who has been recalled under this section for the purpose of taking him before a judge to be dealt with in accordance with this section.

(6) The powers conferred by this section may be exercised on such grounds as the Minister or the judge, as the case may be, thinks fit, and whether or not the offender has committed a breach of the conditions of his probation.

(7) On an application to a judge under subsection (3) —

- (a) the probationer shall be entitled to be heard; and
- (b) he may be represented by counsel; and
- (c) the application may be dealt with in chambers.

(8) Where a judge directs the recall of a probationer under this section, he may issue a warrant in the prescribed form directing that the probationer be returned to a prison or other institution in which he may be lawfully detained.

VARIATION OF PROBATION AND DISCHARGE

39. (1) A probationer under this Part may at any time apply to the Board for the remission, suspension, or variation of any condition imposed by or under this Part.

(2) A probationer under this Part may apply to the Board for his discharge from probation —

- (a) if he is under sentence of imprisonment for life — at any time after the expiry of three years from the time of his release on probation; or
- (b) in any other case — at any time after the expiry of half of the period of his probation.

(3) A probation officer may at any time apply to the Board for —

- (a) the remission, suspension, or variation of any condition imposed on a probationer; or
- (b) the discharge from probation of a probationer; or
- (c) the imposition of any additional condition in respect of a probationer.

(4) On an application under this section, the Board may make to the Minister such recommendations as it thinks fit; and the Minister may give such directions as he thinks fit.

(5) Where under this section the Minister directs the discharge from probation of a probationer under this Part, the period of his probation shall expire on the date specified in the direction, and on that date his sentence, if still in force, expires.

(6) Where an application is made under this section for the remission, suspension, or variation of any special condition, the probation officer may in his discretion suspend the condition until the application has been heard and disposed of.

(7) Notice of any direction given by the Minister under this section shall be given by the Secretary for Justice to the probation officer.

BREACH OF CONDITIONS OF PROBATION

40. (1) A probationer under this Part who contravenes or fails to comply with any condition of his probation is guilty of an offence and is liable to imprisonment for a term not exceeding three months, or to a fine not exceeding \$100.

(2) Where a probation officer or a police officer believes on reasonable grounds that a probationer under this Part has committed a breach of any condition of his probation, he may arrest the probationer without warrant.

(3) The conviction of a probationer under this section does not limit the power of recall conferred by section 38.

PART V — MISCELLANEOUS

POWER OF ADJOURNMENT FOR INQUIRIES AS TO SUITABLE PUNISHMENT

41. (1) The Court may from time to time adjourn the proceedings in a case against an offender after he has been convicted and before he has been sentenced or otherwise dealt with, for the purpose of enabling inquiries to be made or of determining the most suitable method of dealing with his case.

(2) Where a case is adjourned under subsection (1), a judge or magistrate having jurisdiction to deal with an offence of the same kind, whether or not he is the judge or magistrate before whom the case was heard, may, after inquiry into the circumstances of the case, sentence or otherwise deal with the offender for the offence to which the adjournment relates.

REGULATIONS

42. The Cabinet may make regulations not inconsistent with this Act prescribing all matters necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular for prescribing penalties for offences against the regulations of a term of imprisonment not exceeding three months or a fine not exceeding \$100 or both.

TRANSITIONAL PROVISIONS AS TO EXISTING SENTENCES

43. (1) The provisions of Part IV, so far as they are applicable and with the necessary modifications, shall apply to a person serving a sentence of imprisonment at the time of commencement of this Act.

(2) In the application of Part IV for the purposes of subsection (1), the term of a sentence of imprisonment imposed on a person shall continue to run while that person is on probation under Part IV, and the date of expiry of the sentence shall be determined accordingly.