

Habitual Criminals Act 1957 No 19

[1957-19]



New South Wales

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Habitual Criminals Act 1957 No 19



New South Wales

An Act to make provision for and with respect to the pronouncement, detention and control of habitual criminals; to repeal the *Habitual Criminals Act 1905*; to amend the *Prisons Act 1952*, the *Criminal Appeal Act of 1912* and certain other Acts; and for purposes connected therewith.

1 Name of Act and commencement

- (1) This Act may be cited as the *Habitual Criminals Act 1957*.
- (2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2 Repeals and savings

- (1) The enactments mentioned in the Schedule to this Act are to the extent therein specified hereby repealed.
- (2)
 - (a) Nothing in this Act shall affect the validity of the declaration of any person as an habitual criminal under the provisions of the *Habitual Criminals Act 1905-1952*.
 - (b) Any person who, immediately before the commencement of this Act, was an habitual criminal under the provisions of the *Habitual Criminals Act 1905-1952*, shall be an habitual criminal under the provisions of this Act, and shall, unless immediately before such commencement, the person was at large pursuant to a licence granted under the provisions of section 7 of the *Habitual Criminals Act 1905-1952*, be detained in prison until released in accordance with the provisions of subsection (1) of section 7 of this Act.
 - (c) (Repealed)
 - (d) Any person detained in prison pursuant to the provisions of paragraph (b), or pursuant to a direction of a judge, justice or justices given under the provisions of section 8 of the *Habitual Criminals Act 1905-1952* shall be deemed to be a convicted inmate within the meaning of the *Crimes (Administration of Sentences) Act 1999*, as amended by this Act.

(3)

- (a) All moneys which immediately before the commencement of this Act were standing to the credit of an habitual criminal in an account opened in his or her name at a Gaol pursuant to Regulation twenty-one of the Regulations made under the *Habitual Criminals Act 1905*, as amended by subsequent Acts, and published in the Gazette number one hundred and thirty-five of the eleventh day of October, one thousand nine hundred and twenty-nine, shall continue to stand to the credit of such habitual criminal in such account until released in accordance with the provisions of subsection (1) of section 7, and shall upon release be dealt with in the manner prescribed by paragraph (1) of Regulation 22A of those Regulations as if that paragraph were in force at the date of release.
- (b) All moneys paid, either before or after the commencement of this Act, to the Managing Secretary of the Prisoners' Aid Association pursuant to the said paragraph (1) and held by the Managing Secretary for payment to an habitual criminal or held by such Association in trust for an habitual criminal shall continue to be so held and shall be dealt with as if the said Regulation 22A (paragraph (7) thereof excepted) were in force and applied to such moneys.

3 Definitions

- (1) In this Act, unless the context or subject matter otherwise indicates or requires:

Indictment includes any information presented or filed as provided by law for the prosecution of offences.

Judge means a Judge of the Supreme Court or the District Court.

Regulations means regulations made under this Act.

- (2) (Repealed)

4 Judge may pronounce convicted person an habitual criminal

- (1) When any person of or above the age of twenty-five years is convicted on indictment and has on at least two occasions previously served separate terms of imprisonment as a consequence of convictions of indictable offences, not being indictable offences that were dealt with summarily without his consent, then if the judge before whom such person is so convicted is satisfied that it is expedient with a view to such person's reformation or the prevention of crime that such person should be detained in prison for a substantial time, the judge may, in addition to passing sentence upon such person for the offence of which the person is so convicted, pronounce the person to be an habitual criminal and shall thereupon pass a further sentence upon the person in accordance with the provisions of section 6.
- (2) When any person of or above the age of twenty-five years is convicted summarily

before a Magistrate of an indictable offence punishable summarily only with the consent of such person, and has on at least two occasions previously served separate terms of imprisonment as a consequence of convictions of indictable offences, not being indictable offences that were dealt with summarily without his or her consent, the Magistrate may, in addition to passing sentence upon the person for the offence of which the person is then convicted, direct that an application be made by a registrar of the District Court to a judge to have such person pronounced to be an habitual criminal.

If the judge to whom such application is made is satisfied that it is expedient with a view to such person's reformation or the prevention of crime that such person should be detained in prison for a substantial time, the judge may pronounce the person to be an habitual criminal and shall thereupon pass sentence upon the person in accordance with the provisions of section 6.

(3) This section shall apply:

- (a) whether any such previous conviction or imprisonment took place within or without New South Wales and either before or after the commencement of this Act,
- (b) whether any such previous imprisonment was served as a consequence of a conviction for an indictable offence committed before or after any previous pronouncement as an habitual criminal, made under this Act, of the person to whom the conviction relates, or any previous declaration as an habitual criminal, made under the *Habitual Criminals Act 1905-1952*, of such person.

(4)

- (a) Any term of imprisonment served by any person as a consequence of conviction of an indictable offence which term was served cumulatively upon any other term of imprisonment served by such person as a consequence of conviction of such an offence shall not, for the purposes of this section, be counted as a separate term of imprisonment previously served by such person as a consequence of conviction of such an offence.
- (b) Where any term of imprisonment served by any person as a consequence of conviction of an indictable offence was served concurrently or partly concurrently with any other term of imprisonment served by such person as a consequence of conviction of such an offence, such terms of imprisonment shall, for the purposes of this section, be counted as one separate term of imprisonment previously served by such person as a consequence of conviction of such an offence.

5 Proof of previous conviction and imprisonment

- (1) For the purposes of this Act, a previous conviction against any person, whether such conviction took place within or without New South Wales, may be proved by producing

a record or extract of such conviction, and by giving proof of the identity of such person with the person appearing in the record or extract of conviction to have been convicted.

A record or extract of a conviction shall consist of:

- (a) an extract from the indictment or the counts of the indictment on which the said person was convicted,
- (b) a statement of the verdict,
- (c) a statement of the sentence,

certified under the hand of the clerk of the court or other officer purporting to have the custody of the records of the court by which such conviction was made.

(2) For the purposes of this Act, previous imprisonment:

(a) served within New South Wales by any person may be proved by:

- (i) producing a certificate under the hand of the Commissioner of Corrective Services specifying the term of such imprisonment and the convictions in respect whereof such person was imprisoned, and
- (ii) giving proof of the identity of such person with the person appearing in the certificate to have been imprisoned,

(b) served without New South Wales by any person may be proved by:

- (i) producing a certificate under the hand of the Commissioner of Corrective Services or other officer in charge of penal institutions in the state or country within which the imprisonment was served, specifying the term of such imprisonment and the convictions in respect whereof such person was imprisoned, and
- (ii) giving proof of the identity of such person with the person appearing in the certificate to have been imprisoned.

(3) The record, extract or certificate referred to in this section shall be admissible in evidence without proof of the signature or official character of the person appearing to have signed the same.

(4) The mode of proving a previous conviction or previous imprisonment authorised by this section shall be in addition to and not in exclusion of any other authorised mode of proving any such conviction or imprisonment.

6 Sentence to be imposed on persons pronounced to be habitual criminals

(1) The judge who, pursuant to the provisions of section 4, has pronounced a person to be

an habitual criminal, shall pass a sentence of imprisonment upon such person for a term of not less than five years nor more than fourteen years.

- (2) Any sentence of imprisonment being served by any such person at the time the person is pronounced to be an habitual criminal shall be served concurrently with the sentence imposed pursuant to the provisions of subsection (1).

7 Governor may direct habitual criminal's release

- (1) If the Governor determines that an habitual criminal undergoing imprisonment or detention at the commencement of this Act, or detained in prison pursuant to a direction of a judge, justice or justices given under the provisions of section 8 of the *Habitual Criminals Act 1905-1952* is sufficiently reformed, or for other good cause, the Governor may grant to the habitual criminal a written licence to be at large, for such period endorsed on the licence and subject to such conditions so endorsed as the Governor shall prescribe:

Provided that where an habitual criminal is at such commencement serving a definite term of imprisonment, a written licence to be at large shall not be granted to the habitual criminal under this subsection until that term has expired or been otherwise vacated.

(2)

(a) The Governor may:

- (i) if the Governor is satisfied that the conduct and attitude of an habitual criminal during the period of such habitual criminal's imprisonment pursuant to a sentence imposed under the provisions of section 6 or 8 warrant such habitual criminal's release on licence under the provisions of this subsection, grant to such habitual criminal, at any time after the expiration of two-thirds of such sentence, a written licence to be at large,
- (ii) if for any other good cause the Governor determines that an habitual criminal sentenced under the provisions of section 6 or 8 should be released on licence under the provisions of this subsection, grant to such habitual criminal a written licence to be at large.

(b) Where in the exercise of the royal prerogative of mercy the Governor proposes to remit any sentence imposed on an habitual criminal under the provisions of section 6 or 8 the Governor may in lieu of remitting such sentence grant to such habitual criminal a written licence to be at large.

(c) Any written licence granted under this subsection shall be for such period endorsed on the licence and subject to such conditions so endorsed as the Governor may prescribe:

Provided that such period shall not extend beyond the time when the term of

imprisonment imposed on such habitual criminal under the said section 6 or 8 would, if the habitual criminal were not released on licence under the provisions of paragraph (a) or (b), expire by effluxion of time.

- (3) Nothing in this section shall limit or in any way affect the powers vested in the Governor in the exercise of the royal prerogative of mercy.

8 Conditions under which offender may be arrested

- (1) A licence, granted to an habitual criminal under the provisions of section 7 of the *Habitual Criminals Act 1905-1952* and in force immediately before the commencement of this Act, and the conditions endorsed thereon shall, notwithstanding anything contained in this Act, continue to have full force and effect until the period specified in the licence has expired and the licence shall be deemed to have been granted and the conditions shall be deemed to have been endorsed on the licence under the provisions of section 7 of this Act.

- (2) If an habitual criminal or a former habitual criminal:

- (a) is proved to the Local Court to have failed during the period endorsed on the licence held by such habitual criminal or previously held by such former habitual criminal to comply with a condition of such licence, or
- (b) is convicted before the Local Court of any offence punishable on summary conviction for which imprisonment for a period exceeding three months may be imposed, such offence having been committed during the period endorsed on the licence held by such habitual criminal or previously held by such former habitual criminal, or
- (c) is convicted before the Local Court of an indictable offence punishable summarily, such offence having been committed during the period endorsed on the licence held by such habitual criminal or previously held by such former habitual criminal,

then the Local Court shall, in addition to passing sentence upon such habitual criminal or former habitual criminal for any offence of which he or she is so convicted, by warrant commit such habitual criminal or former habitual criminal to appear at such sittings of the Supreme Court or the District Court as the Local Court may direct, and the provisions of the *Criminal Procedure Act 1986*, relating to warrants of commitment for trial, shall apply mutatis mutandis to any such warrant.

- (3) If an habitual criminal or a former habitual criminal is convicted on indictment of an offence committed during the period endorsed on the licence held by such habitual criminal or previously held by such former habitual criminal then the judge before whom such habitual criminal or former habitual criminal is so convicted may, in addition to passing sentence upon such habitual criminal or former habitual criminal for that offence, deal with such habitual criminal or former habitual criminal as

hereinafter in this section provided.

(4) Where it appears to a registrar of the District Court from information in the registrar's possession:

(a) that an habitual criminal or a former habitual criminal has been convicted:

(i) before the Local Court of an offence mentioned in paragraph (b) or (c) of subsection (2), or

(ii) on indictment,

and that the offence of which he or she was so convicted was committed during the period endorsed on the licence held by such habitual criminal or previously held by such former habitual criminal, and

(b) that the Magistrate or judge before whom such habitual criminal or former habitual criminal was so convicted was not aware that such offence was committed during such period,

the registrar may make application to a judge for an order that such habitual criminal or former habitual criminal, if he or she is in custody, be brought before that or some other judge, or for a warrant for the arrest of such habitual criminal or former habitual criminal, if he or she is at large, and the judge to whom the application is made may make such order or issue such warrant.

(5)

(a) Any judge:

(i) before whom an habitual criminal or a former habitual criminal appears pursuant to a warrant issued under subsection (2), or

(ii) authorised by subsection (3) to deal with an habitual criminal or a former habitual criminal, or

(iii) before whom an habitual criminal or a former habitual criminal is brought pursuant to any order or warrant made or issued under subsection (4),

may sentence such habitual criminal or former habitual criminal to imprisonment for a term not exceeding fourteen years:

Provided that a former habitual criminal shall not be sentenced by a judge under the provisions of this paragraph unless the judge first pronounces such former habitual criminal to be an habitual criminal:

Provided further that where an habitual criminal or a former habitual criminal is brought before a judge pursuant to any order or warrant made or issued under subsection (4) the judge shall not sentence such habitual criminal, or pronounce

such former habitual criminal to be an habitual criminal and sentence him or her, under the provisions of this paragraph, unless the judge is satisfied as to the matters mentioned in paragraphs (a) and (b) of the said subsection (4).

(b) Any sentence of imprisonment being served by any such habitual criminal or former habitual criminal at the time he or she is sentenced by a judge under the provisions of this subsection shall be served concurrently with the sentence imposed under those provisions.

(6) Any member of the police force who reasonably suspects that an habitual criminal or a former habitual criminal has failed to comply with any one or more of the conditions endorsed on the licence held by such habitual criminal or previously held by such former habitual criminal, may arrest such habitual criminal or former habitual criminal and bring him or her before the Local Court to be dealt with in accordance with this section.

(7) In this section:

habitual criminal means an habitual criminal who is the holder of a licence granted or deemed to have been granted under the provisions of section 7.

former habitual criminal means a person who has ceased to be an habitual criminal and who, while the person was an habitual criminal was the holder of a licence granted or deemed to have been granted under the provisions of section 7.

9 Judge to consider report of Adult Probation Service

Before sentencing any person under the provisions of this Act, a judge shall consider any report in respect of such person that may be obtained by such judge from the Adult Probation Service.

10 When person ceases to be an habitual criminal

- (1) In the case of an habitual criminal to whom a licence is granted under section 7, the habitual criminal shall if, during the period endorsed on such licence:
- (a) a warrant committing the habitual criminal to appear at a sitting of the Supreme Court or the District Court has not been issued under subsection (2) of section 8, and the habitual criminal has not been convicted on indictment, or
 - (b) such a warrant has been so issued or the habitual criminal has been so convicted, but the habitual criminal has not been sentenced under the provisions of subsection (5) of the said section 8, or
 - (c) the habitual criminal has been sentenced under the provisions of the said subsection (5), but the term of imprisonment imposed under such sentence did not extend beyond such period,

cease upon the expiration of such period to be an habitual criminal.

- (2) In the case of any other habitual criminal, the habitual criminal shall cease to be an habitual criminal upon the expiration of the habitual criminal's sentence as an habitual criminal.

11 (Repealed)

12 Amendment of Act No 16, 1912

- (1) (Repealed)

- (2) Notwithstanding anything contained in subsection (1), section 5E of the [Criminal Appeal Act of 1912](#), as amended by subsequent Acts other than this Act, shall continue in force as respects any declaration of a person as an habitual criminal made under the *Habitual Criminals Act 1905-1952* before the commencement of this Act.

Schedule

(Section 2 (1))

| No of Act | Name of Act | Extent of Repeal |
|------------------|---|--|
| 1905 No 15 | Habitual Criminals Act 1905 | The whole. |
| 1924 No 10 | Crimes (Amendment) Act 1924 | Section thirty-one. |
| 1937 No 35 | Statute Law Revision Act 1937 | So much of the Second Schedule as amended section twelve of Act No 15, 1905. |
| 1951 No 31 | Crimes (Amendment) Act 1951 | Section nine. |
| 1952 No 9 | Prisons Act 1952 | Section fifty-one. |