



Transfer of Prisoners Act 1983

No. 95 of 1983

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Transfer of Prisoners Act 1983

No. 95 of 1983

An Act to make provision for certain transfers of prisoners between the States and the Territories, and for related purposes

[Assented to 22 November 1983]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Transfer of Prisoners Act 1983*.

Commencement

2. This Act shall come into operation on a day to be fixed by Proclamation.

Interpretation

3. (1) In this Act, unless the contrary intention appears—
“appropriate Minister”, in relation to a State, means—
 - (a) in the case of a State other than the Northern Territory—the Minister of the State who is responsible for the administration of the State transfer law of that State; and

(b) in the case of the Northern Territory—the person holding Ministerial office under section 36 of the *Northern Territory (Self-Government) Act 1978* who is responsible for the administration of the State transfer law of the Northern Territory;

“Australian Capital Territory” includes the Jervis Bay Territory;

“Commonwealth prisoner” means a person who is either a federal prisoner or a Territory prisoner;

“complementary State order of transfer” means a State order of transfer other than an order for the transfer of a State prisoner from a State to another State or to a Territory;

“default imprisonment” means imprisonment in default of payment of a fine ordered to be paid on the conviction of a person for an offence;

“federal prisoner” means a person upon whom a federal sentence of imprisonment has been imposed;

“federal sentence of imprisonment” means a sentence of imprisonment for an offence against a law of the Commonwealth;

“fine” means a pecuniary penalty imposed by a court for an offence against a law of the Commonwealth or of a State or Territory, together with any amount (including an amount of costs, compensation or revenue charges) the payment of which by the person on whom the fine was imposed was ordered by the court in the proceedings in which the fine was imposed;

“imprisonment” includes penal servitude;

“joint prisoner” means a Commonwealth prisoner who, if he were not a federal prisoner or a Territory prisoner, would be a State prisoner;

“legal practitioner” means a person who is enrolled as a barrister, a solicitor, or a barrister and solicitor of a federal court or of a court of a State or Territory;

“minimum term of imprisonment” means that part of a sentence of imprisonment that is fixed by a court or by operation of law as the period during which a prisoner is not eligible to be released on parole;

“Parliament”, in relation to the Northern Territory, means the Legislative Assembly of the Northern Territory;

“prison” includes any place where a person who has been sentenced to imprisonment may be detained to undergo that imprisonment;

“prisoner” means a person who is a Commonwealth prisoner or a State prisoner;

“relevant security”, in relation to a person, means a security given by the person, with or without sureties, by recognizance or otherwise, that the person will comply with conditions relating to his behaviour;

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- “Removal Act” means the *Removal of Prisoners (Australian Capital Territory) Act 1968* or the *Removal of Prisoners (Territories) Act 1923*;
- “return transfer order” means an order for the transfer of a prisoner made under section 14;
- “sentence of imprisonment for an indeterminate period” means—
- (a) a sentence of imprisonment for life; or
 - (b) a sentence, order or direction of a kind referred to in paragraph (17) (c) or (d);
- “State” includes the Northern Territory;
- “State order of transfer” means an order, under a State transfer law of a State, for the transfer of a person who is a joint prisoner (in his capacity as a person upon whom a State sentence of imprisonment has been imposed) or who is a State prisoner from that State to another State or to a Territory;
- “State prisoner” means a person upon whom a State sentence of imprisonment has been imposed but does not include a person who is a Commonwealth prisoner;
- “State sentence of imprisonment” means a sentence of imprisonment for an offence against a law of a State;
- “Territory” means the Australian Capital Territory, the Territory of Norfolk Island, the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands but does not include the Northern Territory;
- “Territory prisoner” means a person upon whom a Territory sentence of imprisonment has been imposed but does not include a person who is a federal prisoner;
- “Territory sentence of imprisonment” means a sentence of imprisonment for an offence against a law of a Territory;
- “transfer order” means—
- (a) a return transfer order;
 - (b) a trial transfer order; or
 - (c) a welfare transfer order;
- “transferred sentence”, in relation to a prisoner, means a transferred State sentence of that prisoner or a transferred Territory sentence of that prisoner;
- “transferred State sentence”, in relation to a prisoner who is transferred to a Territory in pursuance of a transfer order or a State order of transfer, or both, means a sentence of imprisonment that, in accordance with sub-section 18 (2), is taken to have been imposed upon that prisoner under, and for an offence against, a law of that last-mentioned Territory;
- “transferred Territory sentence”, in relation to a prisoner who is transferred from one State or Territory to another State or Territory in pursuance of a transfer order, means a sentence of imprisonment that, in accordance with sub-section 18 (1), is taken to have been imposed

upon that prisoner under, and for an offence against, a law of the last-mentioned State or Territory;

“translated sentence”, in relation to a prisoner whose transfer from one State to another State is authorized by a complementary State order of transfer made under the State transfer law of that first-mentioned State, means a State sentence of imprisonment that, in accordance with the provisions of the State transfer law of the second-mentioned State that correspond to the provisions of Part V of this Act, is taken to have been imposed upon that prisoner under a law of that second-mentioned State;

“trial transfer order” means an order for the transfer of a prisoner of the kind referred to in section 8 or 9;

“welfare transfer order” means an order for the transfer of a prisoner made under section 6.

(2) For the purposes of this Act, a complementary State order of transfer corresponds to a transfer order if the first-mentioned order is made for the same purposes as the second-mentioned order.

(3) A reference in this Act to a person upon whom a sentence of imprisonment has been imposed does not include a reference to a person who has completed serving that sentence.

(4) The following persons upon whom a sentence of imprisonment has been imposed shall be taken, for the purposes of this Act, to have completed serving that sentence:

(a) a person—

- (i) who has been released from serving a part of that sentence on parole or upon licence to be at large; and
- (ii) in respect of whom action can no longer be taken under a law of the Commonwealth, a State or a Territory by way of requiring him to serve the whole or a part of the remainder of that sentence;

(b) a person—

- (i) who has been released by a court from serving the whole or a part of that sentence upon his giving a relevant security; and
- (ii) in relation to whom action can no longer be taken under a law of the Commonwealth, a State or a Territory by reason of a breach of a condition of that security or by reason of the expiration of the security;

(c) a person who, as the result of the exercise of the Royal prerogative of mercy, is no longer required to serve the whole or a part of that sentence.

(5) A reference in this Act to a sentence shall be construed as including a reference to any direction or order given or made by the court imposing the sentence with respect to the commencement of the sentence.

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(6) Where a sentence of death imposed on a person has been commuted to a term of imprisonment or to imprisonment for life, this Act applies to and in relation to the person as if the sentence of death had been a sentence of imprisonment for that term or for life, as the case requires.

(7) For the purposes of this Act, a prisoner shall be taken to have been transferred from one State or Territory to another State or Territory in pursuance of a transfer order from the time when the prisoner arrives, in pursuance of that order, in that other State or Territory.

(8) For the purposes of this Act, a charge in respect of an offence shall be taken to have been dealt with according to law if—

- (a) the charge has been heard and determined (whether or not there exists any right of appeal or review in respect of the decision given upon that hearing); or
- (b) the charge has been withdrawn or, for any reason, a decision has been taken not to proceed with the charge.

(9) For the purposes of this Act—

- (a) a transferred sentence of a prisoner who is transferred in pursuance of a transfer order shall be taken to be attributable to the corresponding sentence to which the prisoner was subject immediately before being so transferred; and
- (b) a translated sentence of a prisoner who is transferred in pursuance of a State order of transfer shall be taken to be attributable to the corresponding sentence to which the prisoner was subject immediately before being so transferred.

(10) A transfer order for the transfer of the person upon whom there has been imposed—

- (a) a sentence of imprisonment for contempt of court;
- (b) a sentence of imprisonment for breach of the privileges of the Parliament of the Commonwealth or of a State or of the Legislative Assembly of Norfolk Island; or
- (c) a sentence of imprisonment that involves the periodic detention of the person,

shall not be made or executed while he continues to be such a person.

(11) A transfer order for the transfer of a person upon whom there has been imposed by a court a sentence of imprisonment and who—

- (a) has been released by the court from serving the whole or a part of that sentence upon his giving a relevant security, being a relevant security in respect of a breach of a condition in respect of which action may be taken under a law of the Commonwealth, a State or a Territory; or
- (b) is serving a part of that sentence and is entitled, in accordance with the directions or orders of the court, to be released from serving the remainder of that sentence upon his giving a relevant security,

shall not be made or executed while he continues to be such a person.

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(12) A reference in this Act to a person who has been transferred to a State or Territory in pursuance of a transfer order shall not be taken to include a person whose transfer to that State or Territory is also authorized by a complementary State order of transfer.

(13) For the purposes of this Act and of any other law of the Commonwealth and for the purposes of any law of a State or Territory in its application by virtue of a provision of this Act, a sentence of imprisonment imposed under, and for an offence against, a law of a State or Territory shall be deemed to be imposed in, and by a court of, that State or Territory.

(14) For the purposes of this Act, where a person upon whom a sentence of penal servitude has been imposed is transferred in pursuance of a transfer order, that sentence shall be deemed, immediately before his being so transferred, to have been a sentence of imprisonment.

(15) A person upon whom a federal sentence of imprisonment has been imposed—

(a) by a court of a State or Territory (in this sub-section referred to as the “relevant State” or the “relevant Territory” in relation to the person);
or

(b) by the High Court or by a court created by the Parliament under Chapter III of the Constitution, being a person who is serving that sentence in a State or Territory (in this sub-section referred to as the “relevant State” or the “relevant Territory” in relation to the person),

is liable to undergo that sentence in the State or Territory that is the relevant State or relevant Territory in relation to the person or in any other State or Territory to which he is transferred in pursuance of a transfer order (whether from that relevant State or relevant Territory or any other State or Territory).

(16) Where—

(a) a direction under section 19 of the *Crimes Act 1914* fixed the commencement of a federal sentence of imprisonment imposed upon a person by reference to a State or Territory sentence of imprisonment (in this sub-section referred to as the “prior sentence”); and

(b) the person is transferred in pursuance of a transfer order,

then, for the purposes of sub-section (15) and of this sub-section, the direction shall be deemed, on and after the transfer of that person, to have fixed that commencement by reference to the transferred sentence or translated sentence attributable to the prior sentence.

(17) A sentence, order or direction referred to in any of the following paragraphs shall be taken, for the purposes of this Act, to be a sentence of imprisonment imposed for the offence referred to in that paragraph:

(a) a sentence of imprisonment imposed on a person convicted of an offence in default of his giving a relevant security in relation to that conviction;

(b) a sentence of imprisonment imposed in default of payment of a fine ordered to be paid upon the conviction of a person for an offence;

- (c) a sentence of, or an order or direction for, the imprisonment or detention of a person during the pleasure of the Queen, the Governor-General, a Governor of a State or the Administrator of a Territory made upon the conviction of that person for an offence on the ground (in whatever terms expressed) that the person has been declared to be a habitual criminal;
- (d) an order or direction for the imprisonment or detention of a person during the pleasure of the Queen, the Governor-General, the Governor of a State or the Administrator of a Territory upon the acquittal of the person of an offence on the ground of unsoundness of mind or insanity, being an order or direction by virtue of which the person is detained in a prison.

(18) A reference in this Act to a conviction of a person for an offence includes a reference to an acquittal of that person of the offence on the ground of unsoundness of mind or insanity.

(19) A reference in this Act to the Governor of a State includes a reference—

- (a) in the case of a State other than the Northern Territory—to any person exercising and performing all the powers and functions of the Governor of that State; and
- (b) in the case of the Northern Territory—to the Administrator of the Northern Territory, and to any person exercising and performing all the powers and functions of the Administrator of the Northern Territory.

(20) A reference in this Act to the Administrator of a Territory includes a reference to a person exercising and performing all the powers and functions of the Administrator of that Territory.

Application of Act to certain external Territories

4. This Act extends to Norfolk Island, the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands.

Declaration of State transfer laws

5. The Minister may, by instrument in writing published in the *Gazette*, declare a law of a State specified in the instrument, being a law relating to the transfer of prisoners between that State and other States and Territories, to be the State transfer law of that State for the purposes of this Act.

PART II—TRANSFER FOR PRISONER'S WELFARE

Transfer of Commonwealth prisoner on welfare grounds

6. (1) Subject to this section, upon application made in writing to the Attorney-General by a Commonwealth prisoner serving a federal, Territory or State sentence of imprisonment in a prison of a State or Territory, the Attorney-General may, in his discretion, make an order in writing for the

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transfer of the prisoner from that State or Territory to another State or Territory.

(2) An application made by a Commonwealth prisoner under sub-section (1) shall set out such matters with respect to the welfare of the prisoner as the prisoner considers relevant.

(3) In exercising his powers under sub-section (1) to make an order for the transfer of a prisoner, the Attorney-General shall have regard to all matters that he considers relevant, including, but without limiting the generality of the foregoing—

- (a) the administration of justice; and
- (b) the welfare of the prisoner.

(4) The Attorney-General shall not make an order under sub-section (1) for the transfer of a prisoner to a State unless the appropriate Minister of that State has consented in writing to the transfer.

(5) The Attorney-General is not required to consider an application made by a prisoner under sub-section (1) for transfer from a State or Territory to another State or Territory if the prisoner has previously made application under that sub-section for transfer to that other State or Territory within the period of one year immediately preceding the making of the first-mentioned application.

Revocation of welfare transfer orders

7. (1) Where a welfare transfer order has been made in respect of a Commonwealth prisoner, the Attorney-General—

- (a) may, of his own motion; and
- (b) shall, upon written request to do so being made to him by the prisoner,

by order in writing served, at any time before the commencement of the execution of that transfer order, upon the Superintendent or other officer in charge of the prison in which the prisoner is detained, revoke that transfer order.

(2) In exercising his powers under sub-section (1) to revoke, of his own motion, an order for the transfer of a prisoner, the Attorney-General shall have regard to all matters that he considers relevant, including, but without limiting the generality of the foregoing—

- (a) the administration of justice; and
- (b) the welfare of the prisoner.

PART III—TRANSFER FOR PURPOSE OF TRIAL

Application for transfer to stand trial on charge in respect of offence against law of Commonwealth or a Territory

8. (1) Subject to this section, where—

- (a) a warrant for the apprehension of a Commonwealth prisoner serving a federal, Territory or State sentence of imprisonment in a State or Territory has been issued;
- (b) the warrant relates to a charge or charges in respect of an offence or offences against a law of the Commonwealth or of a Territory; and
- (c) the Attorney-General certifies in writing that it is desirable in the interests of the administration of justice that the prisoner be transferred from the State or Territory in which he is imprisoned to another State or Territory to stand trial for the charge or charges to which the warrant relates,

the Attorney-General may, either of his own motion or upon written request to do so being made to him by the prisoner, apply to a court of summary jurisdiction in the State or Territory in which the prisoner is imprisoned for an order for the transfer of the prisoner to that other State or Territory.

(2) The Attorney-General shall not make an application under sub-section (1) for an order for the transfer of a prisoner imprisoned in one State to another State unless the appropriate Minister of that other State has consented, in writing, to the transfer.

(3) An application under sub-section (1) for an order for the transfer of a prisoner shall be accompanied by a copy of the warrant concerned, by the certificate referred to in paragraph (1) (c) and by such consent (if any) as are required under this section in relation to the transfer.

(4) In this section, “appropriate Minister”, in relation to Queensland, means the Attorney-General of Queensland.

Application for transfer to stand trial on charge in respect of offence against a law of a State

9. (1) Subject to this section, where—

- (a) a warrant for the apprehension of a Commonwealth prisoner serving a federal, Territory or State sentence of imprisonment in a State or Territory has been issued in a State, being, in the case of a prisoner serving a sentence of imprisonment in a State, a State other than the State in which he is imprisoned;
- (b) the warrant relates to a charge or charges in respect of an offence or offences against a law of the State in which the warrant was issued; and
- (c) the appropriate Minister of the State in which the warrant was issued certifies in writing that it is desirable in the interests of the administration of justice that the prisoner be transferred from the State or Territory in which he is imprisoned to the State in which the

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warrant was issued to stand trial for the charge or charges to which the warrant relates,

that Minister may, of his own motion or upon written request to do so being made to him by the prisoner, apply to a court of summary jurisdiction in the State or Territory in which the prisoner is imprisoned for an order for the transfer of the prisoner to the State in which the warrant was issued.

(2) A Minister of a State shall not make an application under sub-section (1) for an order for the transfer of a Commonwealth prisoner imprisoned in another State or in a Territory to the first-mentioned State unless he has obtained the consent, in writing, of the Attorney-General to the transfer.

(3) An application under sub-section (1) for an order for the transfer of a prisoner shall be accompanied by a copy of the warrant concerned, by the certificate referred to in paragraph (1) (c) and by the consent required under this section in relation to the transfer.

(4) In this section, "appropriate Minister", in relation to Queensland, means the Attorney-General of Queensland.

Proceedings before court of summary jurisdiction

10. (1) Subject to this section, a court of summary jurisdiction shall hear and determine an application for a trial transfer order made to it under section 8 or 9.

(2) Where, in a proceeding before a court of summary jurisdiction under this section with respect to an application for a trial transfer order, the court is satisfied that the applicant for that transfer order is entitled to make the application, the court—

- (a) shall, for the purposes of that proceeding, make an order directed to the Superintendent or other officer in charge of the prison where the prisoner to whom the application relates is detained requiring him to produce the prisoner at a time and place specified in the order; and
- (b) shall not continue with the hearing of the proceeding except in the presence of the prisoner.

(3) Where an order under sub-section (2) for the production of a prisoner is served on the Superintendent or officer to whom it is directed, the Superintendent or officer, as the case may be, shall—

- (a) cause a copy of the order to be given to the prisoner forthwith; and
- (b) produce the prisoner, in such custody as he thinks fit, in accordance with the order.

(4) Where a court of summary jurisdiction to which an application for a trial transfer order has been made under section 8 or 9 is satisfied that the applicant for that transfer order is entitled to make that application, the court shall grant the application unless it is satisfied that—

- (a) the charge concerned is of a trivial nature;

- (b) the application has not been made in good faith in the interests of the administration of justice;
- (c) the transfer of the prisoner in pursuance of such a trial transfer order would be likely to prejudice the conduct of any proceeding in which the prisoner is, or is likely to be, an appellant or an applicant for review or of any proceeding incidental to such a proceeding; or
- (d) for any reason, it would be unjust or oppressive to grant the application,

and if it is satisfied as to a matter referred to in a paragraph of this sub-section, it shall refuse to grant the application.

(5) Where a court of summary jurisdiction grants an application for a trial transfer order, it shall make the order to which the application relates.

(6) A trial transfer order made under sub-section (5) shall not come into force—

- (a) if application for review of the decision to grant the application for that transfer order is not made under sub-section 11 (1) within a period of 14 days after the decision comes to the notice of the prisoner—until the expiration of that period; or
- (b) if application for review of such a decision is made under sub-section 11 (1) within the period referred to in paragraph (a)—unless and until the decision is affirmed.

(7) Where a court of summary jurisdiction makes a decision under this section granting, or refusing to grant, an application for a trial transfer order, the court shall cause a copy of that decision to be served on the prisoner to whom the decision relates.

(8) A copy of a decision served on a prisoner in accordance with sub-section (7) shall be accompanied by a statement informing the prisoner that if he is dissatisfied with the decision he may, in accordance with section 11 of this Act, make application to the Supreme Court of the State or Territory in which he is imprisoned for a review of that decision.

Review of decision made upon application for trial transfer order

11. (1) Where—

- (a) a court of summary jurisdiction of a State or Territory grants or refuses to grant an application for a trial transfer order made under section 8 or 9; and
- (b) the applicant in the proceedings before that court or the prisoner to whom the application relates is dissatisfied with that decision,

the applicant or the prisoner may, within a period of 14 days after the decision comes to his notice, apply to the Supreme Court of that State or Territory for a review of the decision, and the court may review that decision.

(2) A hearing of a proceeding on a review under this section of a decision relating to the transfer of a prisoner shall be held in the presence of the prisoner.

(3) For the purposes of the hearing of a proceeding before a Court under this section, the Court may make an order directed to the Superintendent or other officer in charge of the prison where the prisoner to whom the proceeding relates is detained requiring him to produce the prisoner at a time and place specified in the order.

(4) Where an order under sub-section (3) for the production of a prisoner is served on the Superintendent or officer to whom it is directed, the Superintendent or officer, as the case may be, shall—

- (a) cause a copy of the order to be given to the prisoner forthwith; and
- (b) produce the prisoner, in such custody as he thinks fit, in accordance with the order.

(5) The review of a decision shall be by way of a rehearing and evidence in addition to, or in substitution for, the evidence given in the proceeding resulting in that decision may be given in or in connection with the review.

(6) Upon the review of a decision made upon an application for a trial transfer order, the Court shall—

- (a) affirm the decision under review; or
- (b) set aside the decision under review and make a decision in substitution for the decision under review.

(7) Where the Court sets aside the decision of a court of summary jurisdiction to refuse to grant an application for a trial transfer order and substitutes another decision, being a decision to grant that application—

- (a) the Court shall make the trial transfer order to which the application relates; and
- (b) that order has effect, for the purposes of all provisions of this Act other than this section, as if it had been made by the court of summary jurisdiction.

Revocation of trial transfer orders

12. Where—

- (a) a trial transfer order has been made in respect of a prisoner serving a sentence of imprisonment in a State or Territory;
- (b) an application for the revocation of the trial transfer order is made to a court of summary jurisdiction of that State or Territory by the applicant for that trial transfer order or the prisoner; and
- (c) the court is, having regard to—
 - (i) any evidence not reasonably available to the court that made the trial transfer order or, if there was a review by a court under section 11 of the decision to make the trial transfer order, that court; or
 - (ii) any change in a matter material to the making of the trial transfer order,

satisfied as to a matter referred to in a paragraph of sub-section 10 (4) or is satisfied that the warrant referred to in section 8 or 9, as the case requires, has been withdrawn or has expired, the court may, by order in writing served, at any time before the commencement of the execution of the trial transfer order, upon the Superintendent or other officer in charge of the prison in which the prisoner is detained, revoke the trial transfer order.

Representation

13. (1) At a hearing of a proceeding under section 10 in relation to an application for a trial transfer order, the applicant and the prisoner to whom the application relates are each entitled to appear or to be represented by a legal practitioner.

(2) At a hearing of a proceeding under section 11 in respect of the review of a decision granting or refusing to grant an application under section 8 for a trial transfer order, or a proceeding under section 12 for the revocation of a trial transfer order made under section 8, the Attorney-General and the prisoner to whom the application or trial transfer order relates are each entitled to appear or to be represented by a legal practitioner.

(3) At a hearing of a proceeding under section 11 in respect of the review of a decision granting or refusing to grant an application under section 9 for a trial transfer order, or a proceeding under section 12 for the revocation of a trial transfer order made under section 9, the applicant for the trial transfer order, the Attorney-General and the prisoner to whom the application or trial transfer order relates are each entitled to appear or to be represented by a legal practitioner.

PART IV—RETURN OF PRISONER

Return of prisoner

14. (1) Where a prisoner is, in pursuance of a trial transfer order or a State order of transfer or both, transferred to a State or Territory to stand trial for a charge in respect of an offence against a law of the Commonwealth or of that State or Territory, the Attorney-General shall, if—

- (a) the Attorney-General is satisfied that that charge and such other charges (if any) as have been laid against the prisoner (whether before or after the prisoner was so transferred)—
 - (i) in respect of offences against laws of the Commonwealth that are triable in that State or Territory; or
 - (ii) in respect of offences against laws of that State or Territory, have been finally dealt with according to law;
- (b) the prisoner is, upon that charge or those charges having been so dealt with, a Commonwealth prisoner; and
- (c) the prisoner has not, upon that charge or those charges having been so dealt with, been sentenced in that State or Territory to a term of

imprisonment for an offence against a law of the Commonwealth or of that State or Territory that expires on a day later than the last day of any federal sentence, transferred sentence or translated sentence of the prisoner,

by notice in writing served on the prisoner, inform the prisoner that unless—

- (d) the prisoner applies to the Attorney-General in accordance with sub-section (2) by such date as is specified in the notice, being a date later than 14 days after service of the notice, for an order declaring the prisoner to be an exempt prisoner; and
- (e) the Attorney-General makes that order,

the Attorney-General will make an order in writing for the transfer of the prisoner from that State or Territory back to the State or Territory from which he has been transferred in pursuance of that trial transfer order or order of transfer.

(2) Subject to this section, upon application made to the Attorney-General by a prisoner upon whom a notice has been served under sub-section (1), the Attorney-General may, in his discretion, make an order declaring the prisoner to be an exempt prisoner.

(3) An application made by a prisoner under sub-section (2) shall set out such matters with respect to the welfare of the prisoner as the prisoner considers relevant.

(4) In exercising his powers under sub-section (2) to make an order declaring a prisoner to be an exempt prisoner, the Attorney-General shall have regard to all matters that he considers relevant, including, but without limiting the generality of the foregoing—

- (a) the administration of justice; and
- (b) the welfare of the prisoner.

(5) Where a prisoner upon whom a notice has been served under sub-section (1) is, at the time when the notice is served upon him, serving a sentence of imprisonment in a State, the Attorney-General shall not make an order declaring that prisoner to be an exempt prisoner unless the appropriate Minister of that State has consented in writing to the making of that order.

(6) Where—

- (a) a prisoner upon whom a notice has been served under sub-section (1) fails to apply in accordance with the notice for an order declaring him to be an exempt prisoner; or
- (b) a prisoner upon whom a notice has been served under sub-section (1) applies in accordance with the notice for such an order but the Attorney-General refuses to make the order so sought,

the Attorney-General shall make the order for the transfer of the prisoner that is set out in the notice unless—

- (c) the Attorney-General has ceased to be satisfied with respect to the matter referred to in paragraph (1) (a); or

(d) paragraph (1) (b) or (c) has ceased to apply in relation to the prisoner.

(7) A return transfer order shall come into force on a day specified in the order, being a day not later than 7 days after it is made.

(8) For the purpose of determining, under sub-section (1), whether a term of imprisonment to which a prisoner is sentenced in a State or Territory expires on a later day than the last day of any federal sentence, transferred sentence or translated sentence of the prisoner, a sentence of imprisonment for an indeterminate period shall be taken to expire on a later day than the last day of any sentence of imprisonment for a finite period.

(9) Notwithstanding sub-section (6), the Attorney-General is not required to make an order for the transfer of a prisoner under that sub-section from a State or Territory to another State or Territory if he has made an order under section 6 for the transfer of the prisoner from the first-mentioned State or Territory to a State or Territory other than the second-mentioned State or Territory.

Revocation of return transfer orders

15. Where a return transfer order has been made for the transfer of a prisoner from a State or Territory, the Attorney-General shall, by order in writing served, at any time before the commencement of the execution of the transfer order, upon the Superintendent or other officer in charge of the prison in which the prisoner is detained, revoke that transfer order if—

- (a) the Attorney-General has ceased to be satisfied with respect to the matter referred to in paragraph 14 (1) (a); or
- (b) paragraph 14 (1) (b) or (c) has ceased to apply in relation to the prisoner.

Return of prisoner for appeal purposes

16. (1) Where it appears to any court of a State or Territory or to any Judge of such a court that the attendance before the court of a person who is undergoing a sentence or sentences of imprisonment in any other State or Territory and who has been transferred to that other State or Territory in pursuance of a transfer order or a State order of transfer or both is necessary for the purposes of a proceeding before the court by way of appeal or review of or in relation to any conviction, judgment, sentence or minimum term of imprisonment or of a proceeding incidental to such a proceeding, the court or Judge may issue an order directed to the Superintendent or other officer in charge of the gaol where the person is undergoing imprisonment requiring him to produce the person at the time and place specified in the order.

(2) An order made under sub-section (1) may be served upon the Superintendent or officer to whom it is directed in whatever State or Territory he may be and he shall thereupon produce, in such custody as he thinks fit, the person referred to in the order at the time and place specified in the order.

(3) Where a person who is undergoing a sentence or sentences of imprisonment in any State or Territory is, in pursuance of an order under this section, produced in another State or Territory, he shall, while in that other State or Territory in compliance with that order, be deemed to be undergoing the first-mentioned sentence or sentences of imprisonment, and the officer in whose custody he is has the same powers, in relation to the detention and disposition of that person, as the Superintendent or officer to whom the order was directed has in the first-mentioned State or Territory.

- (4) Without limiting the generality of paragraph 30 (b)—
- (a) the powers conferred under this section are in addition to, and not in derogation of, the powers conferred under section 16A of the *Service and Execution of Process Act 1901*; and
 - (b) the powers conferred under that section of that Act are in addition to, and in derogation of, the powers conferred by this section.

PART V—EFFECT OF TRANSFER ORDER

Transfer in custody of escort, &c.

17. (1) A transfer order shall direct that the prisoner to whom the transfer order relates be removed to the State or Territory mentioned in the order, and, for that purpose, be delivered into the custody of a person named or described in the order and be held in custody and conveyed to such prison in that State or Territory as is specified in the order.

(2) Upon production to him of a transfer order, the Superintendent or other officer in charge of the prison where the prisoner to whom the transfer order relates is imprisoned shall deliver the prisoner into the custody of the person named or described in the order.

(3) Where a prisoner to whom a transfer order relates is delivered, in pursuance of sub-section (2) into the custody of a person named or described in that order, that person—

- (a) shall keep the prisoner in custody for purposes in connection with the transfer of the prisoner; and
- (b) shall deliver the prisoner into the custody of the Superintendent or other officer in charge of the prison specified in that order.

(4) A prisoner to whom a transfer order relates may, in the course of being transferred in pursuance of that transfer order, be detained in any State or Territory in a prison or in a police station or other premises in which persons awaiting trial may lawfully be detained for such time as is reasonably necessary to facilitate the transfer.

(5) A transfer order relating to a person who is a joint prisoner has no effect—

- (a) to the extent that, but for this sub-section, it authorizes or requires the doing of any act or thing under this Act in relation to that person in his

capacity as a person upon whom a State sentence of imprisonment has been imposed; and

(b) unless and until a complementary State order of transfer corresponding to the transfer order is in force in respect of the person.

(6) A transfer order has no effect to the extent that it purports to authorize the transfer of a State prisoner from a State to another State or to a Territory.

(7) The Commonwealth may, for the purpose of enabling officers or employees of a State to carry out functions in relation to the execution of transfer orders, enter into such arrangements with that State as are necessary to secure the services of those officers or employees for that purpose.

Transferred sentences

18. (1) Where a prisoner upon whom a sentence of imprisonment for an offence against a law of a Territory has been imposed is transferred, in pursuance of a transfer order, to a State or Territory, any law of the Commonwealth (including this section) applies, and the provisions of any law of that State or Territory and the provisions of the State transfer law of any other State apply, in relation to that sentence on and after the transfer of that prisoner as if that sentence had been imposed upon the prisoner under, and for an offence against, a law of the State or Territory to which he is transferred.

(2) Where a prisoner upon whom a sentence of imprisonment for an offence against a law of a State has been imposed is transferred, in pursuance of a transfer order or a State order of transfer or both, to a Territory, any law of the Commonwealth (including this section) applies, and the provisions of any law of that Territory apply, in relation to that sentence on and after the transfer of that prisoner as if that sentence had been imposed upon the prisoner under, and for an offence against, the law of that Territory.

(3) In the application—

(a) of any law of the Commonwealth (including this section) and of the provisions of any law of a State or Territory in relation to a transferred Territory sentence of a prisoner; or

(b) of any law of the Commonwealth (including this section) and of the provisions of any law of a Territory in relation to a transferred State sentence of a prisoner,

any period of imprisonment served by the prisoner in respect of the sentence of imprisonment to which the transferred sentence is attributable has the effect that it would have if the prisoner had served it in respect of the transferred sentence.

Transferred sentences—non-parole periods

19. (1) Where a prisoner upon whom a sentence or sentences of imprisonment has or have been imposed under, and for an offence or offences against, a law of a Territory, being a sentence or sentences in respect of which a minimum term of imprisonment has been fixed, is transferred, in pursuance of a transfer order, to a State or Territory, then, in the application of the provisions

of the law of that State or Territory relating to the fixing of minimum terms of imprisonment, those provisions have effect upon his being so transferred as if, in lieu of any minimum term of imprisonment that would or might have been fixed by or under those provisions in relation to the transferred sentence or the transferred sentences, there had been fixed the first-mentioned minimum term of imprisonment.

(2) Where a prisoner upon whom a sentence or sentences of imprisonment has or have been imposed under, and for an offence or offences against, a law of a State, being a sentence or sentences in respect of which a minimum term of imprisonment has been fixed, is transferred, in pursuance of a transfer order or a State order of transfer or both, to a Territory, then, in the application of the provisions of the law of that Territory relating to the fixing of minimum terms of imprisonment, those provisions have effect upon his being so transferred as if, in lieu of any minimum term of imprisonment that would or might have been fixed by or under those provisions in relation to the transferred State sentence or the transferred State sentences, there had been fixed the first-mentioned minimum term of imprisonment.

(3) Except as expressly provided, nothing in this section affects the application, in accordance with section 18—

- (a) of the provisions of a law of a State or Territory relating to the fixing of minimum terms of imprisonment to the transferred Territory sentence or transferred Territory sentences of a prisoner; or
- (b) of the provisions of a law of a Territory relating to the fixing of minimum terms of imprisonment to the transferred State sentence or transferred State sentences of a prisoner.

Transferred sentences—reductions and remissions

20. (1) Where a prisoner upon whom a sentence or sentences of imprisonment has or have been imposed under, and for an offence or offences against, a law of a Territory is transferred, in pursuance of a transfer order, to a State or Territory, then, in the application of the provisions of a law of that State or Territory relating to the reduction or remission of sentences or of minimum terms of imprisonment to the transferred Territory sentence or transferred Territory sentences of the prisoner, the prisoner shall be deemed to be entitled under those provisions, upon his being so transferred—

- (a) in lieu of any period or periods of reduction or remission of the transferred Territory sentence or transferred Territory sentences to which he would otherwise be entitled upon being so transferred—to a period or periods of reduction or remission of the transferred Territory sentence or the transferred Territory sentences equivalent to the period or periods of reduction or remission applicable, immediately before he was so transferred, to the sentence or sentences to which the transferred Territory sentence or the transferred Territory sentences is or are attributable; and
- (b) in lieu of any period or periods of reduction or remission of a minimum term of imprisonment fixed in relation to the transferred Territory

sentence or transferred Territory sentences to which he would otherwise be entitled upon being so transferred—to a period or periods of reduction or remission of the minimum term of imprisonment fixed in relation to the transferred Territory sentence or the transferred Territory sentences equivalent to the period or periods of reduction or remission applicable, immediately before he was so transferred, to the minimum term of imprisonment fixed in relation to the sentence or sentences to which the transferred Territory sentence or the transferred Territory sentences is or are attributable.

(2) Where a prisoner upon whom a sentence or sentences of imprisonment has or have been imposed under, and for an offence or offences against, a law of a State is transferred, in pursuance of a transfer order or a State order of transfer or both, to a Territory, then, in the application of the provisions of a law of that Territory relating to the reduction or remission of sentences or of minimum terms of imprisonment to the transferred State sentence or transferred State sentences of the prisoner, the prisoner shall be deemed to be entitled under those provisions, upon his being so transferred—

- (a) in lieu of any period or periods of reduction or remission of the transferred State sentence or transferred State sentences to which he would otherwise be entitled upon being so transferred—to a period or periods of reduction or remission of the transferred State sentence or the transferred State sentences equivalent to the period or periods of reduction or remission applicable, immediately before he was so transferred, to the sentence or sentences to which the transferred State sentence or the transferred State sentences is or are attributable; and
- (b) in lieu of any period or periods of reduction or remission of a minimum term of imprisonment fixed in relation to the transferred State sentence or the transferred State sentences to which he would otherwise be entitled upon being so transferred—to a period or periods of reduction or remission of the minimum term of imprisonment fixed in relation to the transferred State sentence or transferred State sentences equivalent to the period or periods of reduction or remission applicable, immediately before he was so transferred, to the minimum terms of imprisonment fixed in relation to the sentence or sentences to which the transferred State sentence or the transferred State sentences is or are attributable.

(3) Except as expressly provided, nothing in this section affects the application, in accordance with section 18—

- (a) of the provisions of a law of a State or Territory relating to the reduction or remission of sentences or of minimum terms of imprisonment to the transferred Territory sentence or transferred Territory sentences of a prisoner; or
- (b) of the provisions of a law of a Territory relating to the reduction or remission of sentences or of minimum terms of imprisonment to the transferred State sentence or transferred State sentences of a prisoner.

Transferred sentences—default imprisonment

21. Where a prisoner is serving a transferred sentence that is attributable to a sentence of default imprisonment and the whole or any part of the total amount in default of payment of which that sentence of default imprisonment was imposed is paid by or on behalf of the prisoner to the Superintendent or other officer in charge of the prison in which the prisoner is imprisoned—

- (a) the transferred sentence shall—
 - (i) upon receipt of the whole of that total amount by the Superintendent or other officer, by force of this sub-section, expire forthwith; or
 - (ii) except in a case where, but for the transfer of the prisoner, the sentence of default imprisonment imposed on the prisoner would have expired only on payment of the whole of that total amount—upon receipt of part of that total amount, be reduced, by force of this sub-section, by a period that bears to the total sentence of default imprisonment the same proportion as the amount paid bears to the total amount; and
- (b) the Superintendent or other officer shall, forthwith upon receipt of the amount by him, remit the amount—
 - (i) in a case where the sentence of default imprisonment was imposed under a law of the Commonwealth or a Territory—to the Attorney-General;
 - (ii) in a case where the sentence of default imprisonment was imposed under a law of a State—to the appropriate Minister of that State; and
 - (iii) in a case where the sentence of default imprisonment was imposed under Part IVA of the *Service and Execution of Process Act 1901*—
 - (A) if the sentence was imposed by reason of the non-payment of the whole or a part of a fine that had been imposed for an offence against a law of the Commonwealth or of a Territory—to the Attorney-General; or
 - (B) if the sentence was imposed by reason of the non-payment of the whole or a part of a fine that had been imposed for an offence against a law of a State—to the appropriate Minister of that State.

Territory sentences cease to have effect on transfer

22. Where a prisoner upon whom a sentence of imprisonment has been imposed under, and for an offence against, a law of a Territory is transferred, in pursuance of a transfer order, to a State or Territory, that sentence ceases, for the purposes of this Act and of any law of that first-mentioned Territory, upon the prisoner's being so transferred, to have effect in that first-mentioned Territory except for the purpose of any appeal against, or review of, any

conviction, judgment, sentence or minimum term of imprisonment made, imposed or fixed by a court of that first-mentioned Territory.

Federal sentences—reductions and remissions

23. Where a Commonwealth prisoner is transferred, in pursuance of a transfer order, from a State or Territory to another State or Territory, then, in the application of the provisions of the law of that last-mentioned State or Territory by virtue of section 19 of the *Commonwealth Prisoners Act 1967*, those provisions have effect upon his being so transferred as if he were entitled, upon his so being transferred—

- (a) in lieu of any period or periods of reduction or remission of his federal sentence to which he would otherwise be entitled under that law in that application upon being so transferred—to a period or periods of reduction or remission of his federal sentence equivalent to the period or periods of reduction or remission of his sentence to which he was entitled under the law of the first-mentioned State or Territory in its application, by virtue of that section of that Act, immediately before being so transferred; and
- (b) in lieu of any period or periods of reduction or remission of a minimum term of imprisonment fixed under section 4 of that Act in relation to his federal sentence to which he would otherwise be entitled under that law in that application upon being so transferred—to a period or periods of reduction or remission of that minimum term of imprisonment equivalent to the period or periods of reduction or remission of that minimum term of imprisonment to which he was entitled under the law of the first-mentioned State or Territory in its application, by virtue of section 19 of that Act, immediately before being so transferred.

Royal prerogative of mercy

24. (1) Subject to this section, this Act does not affect the exercise of the Royal prerogative of mercy.

(2) Where a prisoner is transferred to a State in pursuance of a transfer order, the Royal prerogative of mercy may—

- (a) in relation to any conviction for an offence against a law of a Territory; or
- (b) in relation to a transferred sentence attributable to a sentence imposed in respect of such an offence,

be exercised by the Queen or the Governor of that State as if that offence were an offence against the law of that State.

(3) Where a prisoner is transferred to a Territory in pursuance of a transfer order, the Royal prerogative of mercy may—

- (a) in relation to any conviction for an offence against a law of a State or a Territory other than that Territory; or
- (b) in relation to a transferred sentence attributable to a sentence imposed in respect of such an offence,

be exercised by the Queen or the Governor-General as if that offence were an offence against the law of the Territory to which the prisoner has been transferred.

PART VI—MISCELLANEOUS

Lawful custody of State prisoner in transit in Territory

25. Where—

- (a) a State order of transfer of a State is made under a State transfer law for the transfer of a State prisoner or a joint prisoner between that State and another State;
- (b) a person is authorized in accordance with a State transfer law (whether or not that law is a law of that State) to keep that prisoner in custody in a State for the purpose of so transferring the prisoner; and
- (c) in the course of so transferring the prisoner, the person brings the prisoner into a Territory,

then—

- (d) the person may keep the prisoner in custody in the Territory for purposes in connection with the transfer of the prisoner; and
- (e) the prisoner may be detained in the Territory in a prison or in a police station or other premises in which persons awaiting trial may lawfully be detained for such time as is reasonably necessary to facilitate the transfer.

Escape of prisoners from lawful custody

26. (1) Section 47 of the *Crimes Act 1914* applies to a State prisoner in lawful custody in accordance with section 25 as if a reference in that section of that Act to an offence against a law of the Commonwealth were a reference to an offence against a law of the Commonwealth or of a State.

(2) Section 47 of the *Crimes Act 1914* applies to a prisoner in lawful custody in pursuance of a transfer order (whether or not the person is also in lawful custody in pursuance of a State order of transfer) as if a reference in that section to an offence against a law of the Commonwealth were a reference to an offence against a law of the Commonwealth or of a State or Territory.

Escape charges may be dealt with in other courts

27. Where a person is arrested and charged with—

- (a) an offence against section 47 of the *Crimes Act 1914* in its application for the purposes of sub-section 26 (1) or (2) of this Act; or
- (b) an offence against—
 - (i) section 6, 7 or 7A of that Act; or
 - (ii) sub-section 86 (1) of that Act by virtue of paragraph (a) of that sub-section,

being an offence that relates to an offence against section 47 of that Act in its application for the purposes of sub-section 26 (1) or (2) of this Act,

the court before which the person is brought, being a court in a State or Territory, may, subject to section 80 of the Constitution, remit the charge to be dealt with by a court in another State or Territory.

State laws may make provision in relation to certain transfers of joint prisoners and State prisoners

28. It is the intention of the Parliament that, without limiting the generality of paragraph 30 (e), this Act shall not apply to the exclusion of a law of a State in so far as that law makes provision—

- (a) for complementary State orders of transfer corresponding to transfer orders;
- (b) for State orders of transfer providing for the transfer of State prisoners from a State to another State or to a Territory; or
- (c) of a kind similar to Part V or section 31 in relation to persons—
 - (i) who are State prisoners or are joint prisoners in their capacity as persons upon whom State sentences of imprisonment have been imposed; and
 - (ii) who are transferred to that State in pursuance of a transfer order, a State order of transfer, or both.

Delegation

29. (1) The Attorney-General may, either generally or as otherwise provided in the instrument of delegation, by writing signed by him, delegate to a person all or any of his powers under this Act other than this power of delegation.

(2) A power delegated under sub-section (1), when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Attorney-General.

(3) A delegation under sub-section (1) does not prevent the exercise of a power by the Attorney-General.

(4) The appropriate Minister of a State may, either generally or as otherwise provided in the instrument of delegation, by writing signed by him, delegate to a person all or any of his powers under this Act other than this power of delegation.

(5) A power delegated under sub-section (4) by the appropriate Minister of a State, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the appropriate Minister of that State.

(6) A delegation under sub-section (4) by the appropriate Minister of a State does not prevent the exercise of a power by the appropriate Minister of that State.

Operation of other laws

30. This Act is not intended to affect—

- (a) the operation of provisions of the *Crimes Act 1914* including those provisions as affected by a law of a Territory;
- (b) the operation of the *Service and Execution of Process Act 1901*;
- (c) the operation of a Removal Act;
- (d) the operation of any other law of the Commonwealth relating to the release of offenders; or
- (e) the operation of a law of a State or Territory, to the extent that that law is capable of operating concurrently with this Act.

Orders may be made in consequence of appeal or retrial

31. (1) A court before which there are instituted—

- (a) proceedings by way of appeal against, or review of, a conviction, judgment, sentence or minimum term of imprisonment made, imposed or fixed in relation to a person in respect of whom a transfer order has been made; or

(b) proceedings by way of the retrial of such a person, may, if it is satisfied that it would be unjust or oppressive not to do so, make orders (including interim orders) in relation to the application of the provisions of this Act to the person as if the provisions of this Act were modified in such manner as the court thinks fit, and may, at any time, vary or rescind an order so made.

(2) Without limiting the generality of sub-section (1), orders made under that sub-section in relation to a person may make provision for—

- (a) the transfer of the person from one State or Territory to another State or Territory;
- (b) the re-calculation of any sentence imposed upon the person, of any minimum term of imprisonment fixed in relation to any such sentence or of the remission or reduction of any such sentence or minimum term of imprisonment; and
- (c) staying or suspending the operation of any provision of this Act or of any action taken under a provision of this Act.

(3) A reference in this section to the provisions of this Act includes a reference to the provisions of any other law of the Commonwealth or of any law of a State or Territory in their application for the purposes of this Act.

(4) In this section, “modification” includes the addition or omission of a provision or the substitution of a provision for another provision.

(5) The powers conferred by this section upon a court are in addition to, and not in derogation of, any other powers of that court.

Modification of Act in relation to certain external Territories

32. (1) The regulations may make provision for the provisions of this Act to extend to a specified external Territory (other than Norfolk Island, the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands) subject to such modifications and adaptations (if any) as are prescribed.

(2) In sub-section (1), “modification” includes the addition or omission of a provision or the substitution of a provision for another provision.

Regulations

33. The Governor-General may make regulations, not inconsistent with this Act, prescribing matters—

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act,

and, in particular—

- (c) prescribing the manner in which notices and other documents under this Act may be given or served; and
- (d) making provision for or in relation to the dissemination to Commonwealth prisoners of information concerning the operation of this Act, the Removal Acts and the State transfer laws.