

2002

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Crimes Legislation Amendment (People
Smuggling, Firearms Trafficking and
Other Measures) Bill 2002**

No. , 2002

(Justice and Customs)

**A Bill for an Act to amend various Acts relating to
law and justice, and for related purposes**

Contents

1	Short title.....	1
2	Commencement.....	1
3	Schedule(s).....	2
4	Transitional—items 1, 2 and 3 of Schedule 3.....	2
Schedule 1—People smuggling		3
	<i>Criminal Code Act 1995</i>	3
Schedule 2—Cross-border firearms trafficking		11
	<i>Criminal Code Act 1995</i>	11
Schedule 3—Other measures		14
	<i>Crimes Act 1914</i>	14
	<i>Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Act 1990</i>	14
	<i>Criminal Code Act 1995</i>	14
	<i>Financial Transaction Reports Act 1988</i>	17
	<i>International Transfer of Prisoners Act 1997</i>	18

1 **A Bill for an Act to amend various Acts relating to**
2 **law and justice, and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Crimes Legislation Amendment*
6 *(People Smuggling, Firearms Trafficking and Other Measures) Act*
7 2002.

8 **2 Commencement**

9 (1) Each provision of this Act specified in column 1 of the table
10 commences, or is taken to have commenced, on the day or at the
11 time specified in column 2 of the table.
12

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	
2. Schedules 1 and 2	The 28th day after the day on which this Act receives the Royal Assent	
3. Schedule 3, items 1 to 22	The 28th day after the day on which this Act receives the Royal Assent	
4. Schedule 3, item 23	At the same time as sections 3 to 338 of the <i>Proceeds of Crime Act 2002</i> commence	
5. Schedule 3, items 24 to 26	The 28th day after the day on which this Act receives the Royal Assent	

1 Note: This table relates only to the provisions of this Act as originally
2 passed by the Parliament and assented to. It will not be expanded to
3 deal with provisions inserted in this Act after assent.

4 (2) Column 3 of the table is for additional information that is not part
5 of this Act. This information may be included in any published
6 version of this Act.

7 **3 Schedule(s)**

8 Each Act that is specified in a Schedule to this Act is amended or
9 repealed as set out in the applicable items in the Schedule
10 concerned, and any other item in a Schedule to this Act has effect
11 according to its terms.

12 **4 Transitional—items 1, 2 and 3 of Schedule 3**

13 The amendments made by items 1, 2 and 3 of Schedule 3 apply to
14 any sentence imposed after the commencement of those items,
15 whether or not the offence concerned was committed before that
16 commencement.

1
2 **Schedule 1—People smuggling**
3

4 *Criminal Code Act 1995*

5 **1 The Schedule (at the end of Chapter 4 of the *Criminal Code*)**

6 Add:

7 **Division 73—People smuggling and related offences**

8 **Subdivision A—People smuggling offences**

9 **73.1 Offence of people smuggling**

10 (1) A person (the *first person*) is guilty of an offence if:

- 11 (a) the first person organises or facilitates the entry of another
12 person (the *other person*) into a foreign country (whether or
13 not via Australia); and
14 (b) the entry of the other person into the foreign country does not
15 comply with the requirements under that country's law for
16 entry into the country; and
17 (c) the other person is not a citizen or permanent resident of the
18 foreign country; and
19 (d) the first person organises or facilitates the entry:
20 (i) having obtained (whether directly or indirectly) a
21 benefit to do so; or
22 (ii) with the intention of obtaining (whether directly or
23 indirectly) a benefit.

24 Penalty: Imprisonment for 10 years or 1,000 penalty units, or
25 both.

26 (2) Absolute liability applies to the paragraph (1)(c) element of the
27 offence.

28 (3) For the purposes of this Code, an offence against subsection (1) is
29 to be known as the offence of people smuggling.

1 **73.2 Aggravated offence of people smuggling (exploitation etc.)**

2 (1) A person (the *first person*) is guilty of an offence if the first person
3 commits the offence of people smuggling in relation to another
4 person (the *victim*) and any of the following applies:

5 (a) the first person commits the offence intending that the victim
6 will be exploited after entry into the foreign country (whether
7 by the first person or another);

8 (b) in committing the offence, the first person subjects the victim
9 to cruel, inhuman or degrading treatment;

10 (c) in committing the offence, the first person's conduct:

11 (i) gives rise to a danger of death or serious harm to the
12 victim; and

13 (ii) the first person is reckless as to the danger of death or
14 serious harm to the victim that arises from the conduct.

15 Penalty: Imprisonment for 20 years or 2,000 penalty units, or
16 both.

17 (2) For the purposes of subsection (1), and without limitation, the
18 victim will be *exploited* by a person (the *exploiter*) if either of the
19 following applies:

20 (a) the exploiter's conduct causes the victim to enter into
21 slavery, forced labour or sexual servitude;

22 (b) the exploiter's conduct causes an organ of the victim to be
23 removed and:

24 (i) neither the victim nor the victim's legal guardian
25 consented to the removal of the organ; and

26 (ii) the organ was not removed to meet a medical or
27 therapeutic need of the victim.

28 (3) In this section:

29 *forced labour* means the condition of a person who provides labour
30 or services (other than sexual services) and who, because of the use
31 of force or threats:

32 (a) is not free to cease providing labour or services; or

33 (b) is not free to leave the place or area where the person
34 provides labour or services.

35 *sexual servitude* has the same meaning as in Division 270.

1 *slavery* has the same meaning as in Division 270.

2 *threat* means:

- 3 (a) a threat of force; or
 4 (b) a threat to cause a person's deportation; or
 5 (c) a threat of any other detrimental action unless there are
 6 reasonable grounds for the threat of that action in connection
 7 with the provision of labour or services by a person.

8 **73.3 Aggravated offence of people smuggling (at least 5 people)**

- 9 (1) A person (the *first person*) is guilty of an offence if:
 10 (a) the first person organises or facilitates the entry of a group of
 11 at least 5 persons (the *other persons*) into a foreign country
 12 (whether or not via Australia); and
 13 (b) the entry of at least 5 of the other persons into the foreign
 14 country does not comply with the requirements under that
 15 country's law for entry into that country; and
 16 (c) at least 5 of the other persons whose entry into the foreign
 17 country is covered by paragraph (b) are not citizens or
 18 permanent residents of the foreign country; and
 19 (d) the first person organises or facilitates the entry:
 20 (i) having obtained (whether directly or indirectly) a
 21 benefit to do so; or
 22 (ii) with the intention of obtaining (whether directly or
 23 indirectly) a benefit.

24 Penalty: Imprisonment for 20 years or 2,000 penalty units, or
 25 both.

26 (2) Absolute liability applies to the paragraph (1)(c) element of the
 27 offence.

28 (3) If, on a trial for an offence against subsection (1), the trier of fact is
 29 not satisfied that the defendant is guilty of that offence, but is
 30 satisfied beyond reasonable doubt that the defendant is guilty of an
 31 offence against subsection 73.1(1), the trier of fact may find the
 32 defendant not guilty of an offence against subsection (1) but guilty
 33 of an offence against subsection 73.1(1), so long as the defendant
 34 has been accorded procedural fairness in relation to that finding of
 35 guilt.

1 **73.4 Jurisdictional requirement**

2 A person commits an offence against this Subdivision only if:

3 (a) both:

4 (i) the person is an Australian citizen or a resident of
5 Australia; and

6 (ii) the conduct constituting the alleged offence occurs
7 wholly outside Australia; or

8 (b) both:

9 (i) the conduct constituting the alleged offence occurs
10 wholly or partly in Australia; and

11 (ii) a result of the conduct occurs, or is intended by the
12 person to occur, outside Australia.

13 **73.5 Attorney-General's consent required**

14 (1) Proceedings for an offence against this Subdivision must not be
15 commenced without the Attorney-General's written consent.

16 (2) However, a person may be arrested, charged, remanded in custody
17 or released on bail in connection with an offence against this
18 Subdivision before the necessary consent has been given.

19 **Subdivision B—Document offences related to people smuggling**
20 **and unlawful entry into foreign countries**

21 **73.6 Meaning of *travel or identity document***

22 (1) For the purposes of this Subdivision, a document is a *travel or*
23 *identity document* if it is:

24 (a) a travel document; or

25 (b) an identity document.

26 (2) In subsection (1):

27 *identity document* includes any kind of document that may be used
28 to establish the identity of a person in a country under the law or
29 procedures of that country.

30 *travel document* includes any kind of document required, under the
31 law of a country, to enter or leave that country.

1 **73.7 Meaning of *false travel or identity document***

- 2 (1) For the purposes of this Subdivision, a travel or identity document
 3 is a ***false travel or identity document*** if, and only if:
 4 (a) the document, or any part of the document:
 5 (i) purports to have been made in the form in which it is
 6 made by a person who did not make it in that form; or
 7 (ii) purports to have been made in the form in which it is
 8 made on the authority of a person who did not authorise
 9 its making in that form; or
 10 (b) the document, or any part of the document:
 11 (i) purports to have been made in the terms in which it is
 12 made by a person who did not make it in those terms; or
 13 (ii) purports to have been made in the terms in which it is
 14 made on the authority of a person who did not authorise
 15 its making in those terms; or
 16 (c) the document, or any part of the document:
 17 (i) purports to have been altered in any respect by a person
 18 who did not alter it in that respect; or
 19 (ii) purports to have been altered in any respect on the
 20 authority of a person who did not authorise its alteration
 21 in that respect; or
 22 (d) the document, or any part of the document:
 23 (i) purports to have been made or altered by a person who
 24 did not exist; or
 25 (ii) purports to have been made or altered on the authority
 26 of a person who did not exist; or
 27 (e) the document, or any part of the document, purports to have
 28 been made or altered on a date on which, at a time at which,
 29 at a place at which, or otherwise in circumstances in which, it
 30 was not made or altered.
- 31 (2) For the purposes of this Subdivision, a person is taken to ***make*** a
 32 false travel or identity document if the person alters a document so
 33 as to make it a false travel or identity document (whether or not it
 34 was already a false travel or identity document before the
 35 alteration).
- 36 (3) This section has effect as if a document that purports to be a true
 37 copy of another document were the original document.
-

1 **73.8 Making, providing or possessing a false travel or identity**
2 **document**

3 A person (the *first person*) is guilty of an offence if:

- 4 (a) the first person makes, provides or possesses a false travel or
5 identity document; and
6 (b) the first person intends that the document will be used to
7 facilitate the entry of another person (the *other person*) into a
8 foreign country, where the entry of the other person into the
9 foreign country would not comply with the requirements
10 under that country's law for entry into the country; and
11 (c) the first person made, provided or possessed the document:
12 (i) having obtained (whether directly or indirectly) a
13 benefit to do so; or
14 (ii) with the intention of obtaining (whether directly or
15 indirectly) a benefit.

16 Penalty: Imprisonment for 10 years or 1,000 penalty units, or
17 both.

18 **73.9 Providing or possessing a travel or identity document issued or**
19 **altered dishonestly or as a result of threats**

20 (1) A person (the *first person*) is guilty of an offence if:

- 21 (a) the first person provides or possesses a travel or identity
22 document; and
23 (b) the first person knows that:
24 (i) the issue of the travel or identity document; or
25 (ii) an alteration of the travel or identity document;
26 has been obtained dishonestly or by threats; and
27 (c) the first person intends that the document will be used to
28 facilitate the entry of another person (the *other person*) into a
29 foreign country, where the entry of the other person into the
30 foreign country would not comply with the requirements
31 under that country's law for entry into the country; and
32 (d) the first person provided or possessed the document:
33 (i) having obtained (whether directly or indirectly) a
34 benefit to do so; or

1 (ii) with the intention of obtaining (whether directly or
2 indirectly) a benefit.

3 Penalty: Imprisonment for 10 years or 1,000 penalty units, or
4 both.

5 (2) For the purposes of subsection (1), a *threat* may be:

- 6 (a) express or implied; or
7 (b) conditional or unconditional.

8 (3) For the purposes of subsection (1), *dishonest* means:

- 9 (a) dishonest according to the standards of ordinary people; and
10 (b) known by the defendant to be dishonest according to the
11 standards of ordinary people.

12 (4) In a prosecution for an offence against this section, the
13 determination of dishonesty is a matter for the trier of fact.

14 **73.10 Providing or possessing a travel or identity document to be**
15 **used by a person who is not the rightful user**

16 A person (the *first person*) is guilty of an offence if:

- 17 (a) the first person provides or possesses a travel or identity
18 document; and
19 (b) the first person intends that the document will be used to
20 facilitate the entry of another person (the *other person*) into a
21 foreign country, where the entry of the other person into the
22 foreign country would not comply with the requirements
23 under that country's law for entry into the country; and
24 (c) the first person knows that the other person is not the person
25 to whom the document applies; and
26 (d) the first person provided or possessed the document:
27 (i) having obtained (whether directly or indirectly) a
28 benefit to do so; or
29 (ii) with the intention of obtaining (whether directly or
30 indirectly) a benefit.

31 Penalty: Imprisonment for 10 years or 1,000 penalty units, or
32 both.

1 **73.11 Taking possession of or destroying another person’s travel or**
2 **identity document**

3 A person (the *first person*) is guilty of an offence if:

- 4 (a) the first person takes possession of, or destroys, a travel or
5 identity document that applies to another person (the *other*
6 *person*); and
7 (b) the first person does so intending to conceal the other
8 person’s identity or nationality; and
9 (c) at the time of doing so, the first person intends to organise or
10 facilitate the entry of the other person into a foreign country:
11 (i) having obtained, or with the intention of obtaining,
12 whether directly or indirectly, a benefit to organise or
13 facilitate that entry; and
14 (ii) where the entry of the other person into the foreign
15 country would not comply with the requirements under
16 that country’s law for entry into the country.

17 Penalty: Imprisonment for 10 years or 1,000 penalty units, or
18 both.

19 **73.12 Jurisdictional requirement**

20 Section 15.2 (extended geographical jurisdiction—category B)
21 applies to an offence against this Subdivision.

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Schedule 2—Cross-border firearms trafficking

Criminal Code Act 1995

1 The Schedule (after Chapter 8 of the *Criminal Code*)

Insert:

Chapter 9—Dangers to the community

Part 9.4—Dangerous weapons

Division 360—Cross-border firearms trafficking

360.1 Disposal and acquisition of a firearm

- (1) For the purposes of this Division, and without limitation, a person *disposes* of a firearm if any of the following applies:
 - (a) the person sells the firearm (whether or not the person to whom the firearm is sold also acquires physical control of the firearm);
 - (b) the person hires, leases or rents the firearm to another person;
 - (c) the person passes physical control of the firearm to another person (whether or not the person to whom physical control is passed also acquires ownership of the firearm).
- (2) For the purposes of this Division, and without limitation, a person *acquires* a firearm if any of the following applies:
 - (a) the person purchases the firearm (whether or not the person also acquires physical control of the firearm);
 - (b) the person hires, leases or rents the firearm from another person;
 - (c) the person obtains physical control of the firearm (whether or not the person also acquires ownership of the firearm).

360.2 Cross-border offence of disposal or acquisition of a firearm

- (1) A person is guilty of an offence if:

1 (a) in the course of trade or commerce among the States,
2 between Territories or between a Territory and a State, the
3 person engages in conduct that constitutes an offence against
4 a firearm law; and

5 (b) the primary element of the offence is:
6 (i) the disposal of a firearm by the person; or
7 (ii) the acquisition of a firearm by the person.

8 Penalty: Imprisonment for 10 years or a fine of 2,500 penalty
9 units, or both.

10 (2) Absolute liability applies to the paragraph (1)(a) element of the
11 offence.

12 (3) In this section:

13 *firearm* means a firearm within the meaning of the firearm law
14 concerned.

15 *firearm law* means a law of a State or Territory which is prescribed
16 by the regulations for the purposes of this Division.

17 **360.3 Taking or sending a firearm across borders**

18 (1) A person is guilty of an offence if:

19 (a) in the course of trade or commerce among the States,
20 between Territories or between a Territory and a State, the
21 person takes or sends a firearm from one State or Territory to
22 another State or Territory; and

23 (b) the person does so intending that the firearm will be disposed
24 of in the other State or Territory (whether by the person or
25 another); and

26 (c) the person knows that, or is reckless as to whether:

27 (i) the disposal of the firearm; or
28 (ii) any acquisition of the firearm that results from the
29 disposal;
30 would happen in circumstances that would constitute an
31 offence against the firearm law of that other State or
32 Territory.

1 Penalty: Imprisonment for 10 years or a fine of 2,500 penalty
2 units, or both.

3 (2) In this section:

4 *firearm* means a firearm within the meaning of the firearm law
5 mentioned in paragraph (1)(c).

6 *firearm law* means a law of a State or Territory which is prescribed
7 by the regulations for the purposes of this Division.

8 **360.4 Concurrent operation intended**

9 This Division is not intended to exclude or limit the concurrent
10 operation of any law of a State or Territory.

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Schedule 3—Other measures

4

Crimes Act 1914

5

1 Section 16G

6

Repeal the section.

7

2 Section 19AG

8

Repeal the section.

9

3 Subsection 19AR(6)

10

Omit “19AG,”.

11

Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Act 1990

12

13

4 Part 1 of Schedule 3 (after table item dealing with Fenetylline)

14

15

Insert:

Gamma-hydroxybutyric acid	2.00	1.00
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16

Criminal Code Act 1995

17

5 The Schedule (paragraph 131.7(1)(b) of the *Criminal Code*)

18

Omit “or its proceeds”, substitute “, its proceeds or value”.

19

6 The Schedule (subsection 135.2(1) of the *Criminal Code*)

20

Repeal the subsection, substitute:

21

(1) A person is guilty of an offence if:

22

(a) the person obtains a financial advantage for himself or

23

herself from another person, knowing or believing that he or she is not eligible to receive that financial advantage; and

24

(b) the other person is a Commonwealth entity.

25

26

Penalty: Imprisonment for 12 months.

1 (1A) Absolute liability applies to the paragraph (1)(b) element of the
2 offence.

3 **7 The Schedule (subsection 135.2(2) of the *Criminal Code*)**

4 Repeal the subsection, substitute:

- 5 (2) A person is guilty of an offence if:
6 (a) the person obtains a financial advantage for another person
7 from a third person, knowing or believing that the other
8 person is not eligible to receive that financial advantage; and
9 (b) the third person is a Commonwealth entity.

10 Penalty: Imprisonment for 12 months.

11 (2A) Absolute liability applies to the paragraph (2)(b) element of the
12 offence.

13 **8 The Schedule (after subsection 136.1(1) of the *Criminal***
14 ***Code*)**

15 Insert:

16 (1A) Absolute liability applies to each of the subparagraph (1)(d)(i), (ii)
17 and (iii) elements of the offence.

18 **9 The Schedule (after subsection 136.1(4) of the *Criminal***
19 ***Code*)**

20 Insert:

21 (4A) Absolute liability applies to each of the subparagraph (4)(d)(i), (ii)
22 and (iii) elements of the offence.

23 **10 The Schedule (after subsection 137.1(1) of the *Criminal***
24 ***Code*)**

25 Insert:

26 (1A) Absolute liability applies to each of the subparagraph (1)(c)(i), (ii)
27 and (iii) elements of the offence.

28 **11 The Schedule (subparagraph 145.2(3)(a)(i) of the *Criminal***
29 ***Code*)**

30 Before “cause”, insert “dishonestly”.

1 **12 The Schedule (after subsection 147.1(1A) of the *Criminal***
2 ***Code*)**

3 Insert:

4 (1B) If:

5 (a) a person is charged with an offence against subsection (1);
6 and

7 (b) the public official concerned is a Commonwealth judicial
8 officer or a Commonwealth law enforcement officer;

9 a court of summary jurisdiction may, with the consent of the
10 defendant and the prosecutor and if the court is satisfied that it is
11 proper to do so, determine the charge summarily.

12 (1C) If a court of summary jurisdiction convicts a person of an offence
13 against subsection (1) in accordance with subsection (1B), the
14 penalty that the court may impose is a sentence of imprisonment
15 not exceeding 2 years or a fine not exceeding 120 penalty units, or
16 both.

17 **13 The Schedule (paragraphs 148.1(2)(a) and (b) of the**
18 ***Criminal Code*)**

19 Repeal the paragraphs, substitute:

20 (a) the person falsely represents himself or herself to be a
21 Commonwealth public official in a particular capacity; and

22 (b) the person does so in the course of doing an act, or attending
23 a place, in the assumed capacity of such an official.

24 **14 The Schedule (subsection 148.1(2A) of the *Criminal Code*)**

25 Repeal the subsection, substitute:

26 (2A) For the purposes of subsection (2), it is immaterial whether that
27 capacity as a Commonwealth public official exists or is fictitious.

28 **15 The Schedule (subparagraph 148.1(3)(a)(ii) of the *Criminal***
29 ***Code*)**

30 Repeal the subparagraph, substitute:

31 (ii) falsely represents himself or herself to be a
32 Commonwealth public official in a particular capacity;
33 and

1 **16 The Schedule (subsection 148.1(3A) of the *Criminal Code*)**

2 Repeal the subsection, substitute:

3 (3A) For the purposes of subparagraph (3)(a)(ii), it is immaterial
4 whether that capacity as a Commonwealth public official exists or
5 is fictitious.

6 **17 The Schedule (paragraphs 148.2(2)(a) and (b) of the**
7 ***Criminal Code*)**

8 Repeal the paragraphs, substitute:

- 9 (a) the official falsely represents himself or herself to be a
10 Commonwealth public official in a particular capacity; and
11 (b) the official does so in the course of doing an act, or attending
12 a place, in the assumed capacity of such an official.

13 **18 The Schedule (subsection 148.2(2A) of the *Criminal Code*)**

14 Repeal the subsection, substitute:

15 (2A) For the purposes of subsection (2), it is immaterial whether that
16 capacity as a Commonwealth public official exists or is fictitious.

17 **19 The Schedule (subparagraph 148.2(3)(a)(ii) of the *Criminal***
18 ***Code*)**

19 Repeal the subparagraph, substitute:

- 20 (ii) falsely represents himself or herself to be a
21 Commonwealth public official in a particular capacity;
22 and

23 **20 The Schedule (subsection 148.2(3A) of the *Criminal Code*)**

24 Repeal the subsection, substitute:

25 (3A) For the purposes of subparagraph (3)(a)(ii), it is immaterial
26 whether that capacity as a Commonwealth public official exists or
27 is fictitious.

28 ***Financial Transaction Reports Act 1988***

29 **21 Subsection 3(1) (subparagraph (k)(ib) of the definition of**
30 ***cash dealer*)**

1 After “commercial instruments”, insert “, or making electronic funds
2 transfers,”.

3 **22 Subsection 3(1) (after paragraph (k) of the definition of**
4 **cash dealer)**

5 Insert:

6 (1) a person (other than a financial institution or a real estate
7 agent acting in the ordinary course of real estate business)
8 who carries on a business in Australia of:

9 (i) on behalf of other persons, arranging for funds to be
10 made available outside Australia to those persons or
11 others; or

12 (ii) on behalf of persons outside Australia, making funds
13 available, or arranging for funds to be made available,
14 in Australia to those persons or others;

15 **23 Section 17**

16 Omit “sections 81 and 82 of the *Proceeds of Crime Act 1987*”,
17 substitute “Division 400 of the *Criminal Code*”.

18 ***International Transfer of Prisoners Act 1997***

19 **24 Subsection 4(1)**

20 Insert:

21 ***Immigration Minister*** means the Minister administering the
22 *Migration Act 1958*.

23 **25 At the end of section 13**

24 Add:

25 (2) If a request is made for the transfer of a prisoner (other than a
26 Tribunal prisoner) to Australia, the Attorney-General must consult
27 with the Immigration Minister about whether the prisoner:

28 (a) is eligible under subsection (1) for a transfer to Australia; or

29 (b) is likely to be eligible under subsection (1) for a transfer to
30 Australia at a future time specified by the Attorney-General
31 for the purposes of the consultation.

1 **26 Section 57**

2 Repeal the section, substitute:

3 **57 Consent of the Immigration Minister**

4 If the Attorney-General proposes to consent to the transfer to
5 Australia of a Tribunal prisoner, the Attorney-General must first
6 obtain the consent of the Immigration Minister.