



Australian Capital Territory

# **Prisoners (Interstate Transfer) Act 1993 No 70**

## **Republication No 1**

Republication date: 4 February 2002

Last amendment made by Act 2001 No 44

Amendments incorporated to 12 September 2001

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Prisoners (Interstate Transfer) Act 1993* as in force on 4 February 2002. It includes any amendment, repeal or expiry affecting the republished law to 12 September 2001 and any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes).

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.

Amendments incorporated to  
12 September 2001



Australian Capital Territory

# Prisoners (Interstate Transfer) Act 1993

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Amendments incorporated to  
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Australian Capital Territory

# **Prisoners (Interstate Transfer) Act 1993**

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An Act to provide for the interstate transfer of prisoners in accordance with a national legislative scheme

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## Part 1 Preliminary

### 1 Short title

This Act may be cited as the *Prisoners (Interstate Transfer) Act 1993*.

### 3 Interpretation for Act

(1) In this Act:

*Note* A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

***ACT prisoner*** means a person on whom an ACT sentence of imprisonment has been imposed, but does not include a person on whom a Commonwealth sentence of imprisonment has been imposed.

***ACT sentence of imprisonment*** means a sentence of imprisonment for an offence against a Territory law, including—

- (a) a sentence under which default imprisonment is ordered; and
- (b) an indeterminate sentence; and
- (c) a translated sentence;

but not including an order under the *Children and Young People Act 1999* for the committal of a child to an institution or a State institution within the meaning of that Act, or the period of such a committal.

***arrest warrant*** means a warrant to apprehend, a warrant to arrest or a warrant to commit a person to prison, except—

- (a) a warrant in relation to which the term of imprisonment that the person to be apprehended, arrested or committed is liable to serve is default imprisonment; or
- (b) a warrant to secure the attendance of a witness.



**Commonwealth Act** means the *Transfer of Prisoners Act 1983* (Cwlth).

**Commonwealth sentence of imprisonment** means a sentence of imprisonment for an offence against a law of the Commonwealth or of a non-participating Territory.

**corresponding court of the Territory**, in relation to a court of a participating State, means a court of the Territory that is, under an order in force under section 5 (1), declared to be a corresponding court in relation to the court of the participating State.

**corresponding Minister**, in relation to a participating State, means the Minister of that State responsible for the administration of the interstate law of that State.

**default imprisonment** means imprisonment in default of—

- (a) payment of any fine, penalty, costs or other amount of money of any kind imposed or ordered to be paid by any court, judge or justice; or
- (b) entering into a recognisance to keep the peace or to be of good behaviour.

**gaoler**, in relation to a prison, means the officer in charge of the prison.

**Governor**, in relation to a participating State, means—

- (a) in relation to a State other than the Northern Territory—the Governor of that State or any person performing the functions of the Governor of that State; or
- (b) in relation to the Northern Territory—the Administrator of the Northern Territory or any person performing the functions of the Administrator.

**indeterminate sentence** means a sentence of, or order or direction for, imprisonment or detention—

- (a) for life; or

- (b) during the pleasure of—
- (i) the Queen or the Governor-General; or
  - (ii) the Governor of a participating State;

and includes such a sentence, order or direction imposed, made or given by, or by the operation of, any Act or other law.

***interstate law*** means a law that is declared under section 5 (1) to be an interstate law for this Act.

***interstate sentence of imprisonment*** means—

- (a) a State sentence of imprisonment within the meaning of an interstate law; or
- (b) in the case of the Northern Territory—a Territory sentence of imprisonment within the meaning of the *Prisoners (Interstate Transfer) Act 1983* (NT).

***joint prisoner*** means a person whom both—

- (a) an ACT sentence of imprisonment or an interstate sentence of imprisonment; and
- (b) a Commonwealth sentence of imprisonment;

have been imposed.

***justice*** means a justice of the peace.

***Magistrates Court*** means the Magistrates Court constituted by a magistrate sitting alone.

***non-participating Territory*** means an external Territory or the Jervis Bay Territory.

***order of transfer*** means an order issued under section 6, 14, 15 (8) or 20 (1) for the transfer of a prisoner to a participating State.

***participating State*** means a State in which an interstate law is in force.

***prison*** means—

- (a) a place in the ACT where a person may be lawfully detained to serve any ACT sentence of imprisonment; or
- (b) a remand centre within the meaning of the *Remand Centres Act 1976*; or
- (c) a police lockup in the Territory.

***prisoner*** means an ACT prisoner or a joint prisoner.

***prison officer*** means—

- (a) a person appointed or employed to assist in the management of a prison; or
- (b) an escort under the *Custodial Escorts Act 1998*.

***release on parole*** includes—

- (a) release on probation; and
- (b) any other form of conditional release in the nature of parole.

***relevant security***, in relation to a person, means a security given by the person—

- (a) with or without sureties; and
- (b) by recognisance or otherwise; and
- (c) to the effect that the person will comply with conditions relating to his or her behaviour.

***remission instrument*** means an instrument of remission under the *Crimes Act 1900*, section 434.

***sentence of imprisonment*** means—

- (a) an ACT sentence of imprisonment; or
- (b) an interstate sentence of imprisonment; or
- (c) where relevant—a Commonwealth sentence of imprisonment.

*State* includes the Northern Territory.

*translated sentence* means a sentence of imprisonment deemed by section 26 to have been imposed on a person by a court of the Territory.

- (2) Where a justice of a participating State, in the exercise of his or her powers, issues a warrant of commitment while not constituting a court, the sentence of imprisonment imposed by the warrant shall, for this Act, be deemed to have been imposed by a court.
- (3) For this Act, a sentence of imprisonment imposed (or originally imposed) by, or by the operation of, an Act or other Territory law, a State or a non-participating Territory shall, except as prescribed by regulations under this Act, be deemed to have been imposed (or originally imposed) by a court of the Territory, or a court of that State or non-participating Territory, as the case may be.
- (4) A reference in this Act to a person on whom a sentence of imprisonment has been imposed does not include a reference to a person who has completed serving that sentence.
- (5) The following persons on whom a sentence of imprisonment has been imposed are to be taken, for 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, the Territory, a participating State or a non-participating Territory by way of requiring the person to serve the whole or a part of the remainder of that sentence;
  - (b) a person—
    - (i) who has been released from serving the whole or a part of that sentence upon giving a relevant security; and

- (ii) in relation to whom—
  - (A) action can no longer be taken under a law of the Commonwealth, the Territory, a participating State or a non-participating Territory in respect of a breach of a condition of that security; or
  - (B) action cannot, by reason of the expiration of the security, be taken under any such law by way of requiring the person to serve the whole or a part of that sentence;
- (c) a person whose sentence has been remitted in whole under the *Crimes Act 1900*, section 434;
- (d) 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.

#### **4 Sentences being served in NSW under Removal of Prisoners Act 1968**

In this Act, a reference to a sentence of imprisonment being served in the ACT includes a reference to a sentence of imprisonment being served in New South Wales under the *Removal of Prisoners Act 1968*, section 4.

#### **5 Corresponding courts and interstate laws**

- (1) Subject to subsection (2), the Minister may, in writing, declare that—
  - (a) a law of a State is an interstate law for this Act; and
  - (b) a specified court of the Territory or any court belonging to a specified class or description of courts of the Territory is, for this Act, a corresponding court in relation to a specified court of a participating State or in relation to any court belonging to a specified class or description of courts of a participating State.

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- (2) A declaration shall not be made under subsection (1) in respect of a law of a State unless the Minister is satisfied that the law substantially corresponds to the provisions of this Act and contains provisions that are referred to in this Act as provisions of an interstate law that correspond to specified provisions of this Act.
- (3) A declaration under subsection (1) is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

## Part 2                      Transfer for prisoner's welfare

### 6        Requests for, and orders of, transfer

(1) Where the Minister—

- (a) receives a written request made by an ACT prisoner serving a sentence of imprisonment in the Territory for the prisoner's transfer to a participating State, or to a non-participating Territory; and
- (b) is of the opinion that the prisoner should be transferred to that State or Territory in the interests of his or her welfare;

the Minister shall—

- (c) where the request is for transfer to a participating State—give to the corresponding Minister a written request asking that Minister to accept the transfer of the prisoner to the participating State; or
- (d) where the request is for transfer to a non-participating Territory—give to the Attorney-General of the Commonwealth a written request asking that Attorney-General to consent to the transfer.

(2) Where the Minister—

- (a) has, in respect of a request made by an ACT prisoner for transfer to a participating State—
  - (i) given to the corresponding Minister a written request under subsection (1) (c); and
  - (ii) received from that Minister written notice of consent to the transfer of the prisoner to the participating State; or

- (b) has, in respect of a request made by an ACT prisoner for transfer to a non-participating Territory—
- (i) given to the Attorney-General of the Commonwealth a written request under subsection (1) (d); and
  - (ii) received from the Attorney-General of the Commonwealth written notice of consent to the transfer of the prisoner to the non-participating Territory;

the Minister may issue an order for the transfer of the prisoner to the participating State, or to the non-participating Territory, as the case may be.

- (3) Where a joint prisoner is serving a sentence of imprisonment in the Territory and the Minister—
- (a) receives a written request made by the prisoner for transfer to a participating State; and
  - (b) is of the opinion that the prisoner should be transferred to the participating State in the interests of his or her welfare;

the Minister shall give to the corresponding Minister a written request asking that Minister to accept the transfer of the prisoner to that State.

- (4) Where the Minister has, in respect of a request by a joint prisoner for transfer to a participating State—
- (a) given to the corresponding Minister a request under subsection (3); and
  - (b) received from that Minister written notice of consent to the transfer of the prisoner to that State;

the Minister may issue an order for the transfer of the prisoner to that State.



- (5) Where a joint prisoner is serving a sentence of imprisonment in the ACT and the Minister—
- (a) receives a written request made by the prisoner for transfer to a non-participating Territory; and
  - (b) is of the opinion that the prisoner should be transferred to that Territory in the interests of his or her welfare;
- the Minister may issue an order for the transfer of the prisoner to that Territory.

## **7 Effect of orders under pt 2 on joint prisoners**

An order of transfer issued under this part in relation to a joint prisoner has no effect—

- (a) to the extent that, but for this section, it authorises or requires the doing of an act or thing under this Act in relation to that person in the person's capacity as a person whom a Commonwealth sentence of imprisonment has been imposed; and
- (b) unless and until—
  - (i) a transfer order corresponding to the order of transfer under this part is in force under the Commonwealth Act in respect of the person; or
  - (ii) the transfer of the person is otherwise authorised under that Act.

## **8 Repeated requests for transfer**

A request under this part made by a prisoner for transfer to a participating State, or to a non-participating Territory, need not be entertained by the Minister if it is made within 1 year after a similar request made by the prisoner.

## **9 Receipt of request for transfer to ACT**

Where the Minister receives a written request made under the provision of an interstate law that corresponds to section 6, or a request made for, the Commonwealth Act, part 2, for the acceptance of the transfer of an imprisoned person to the ACT, the Minister shall—

- (a) consent, or refuse to consent, to the transfer; and
- (b) give to the corresponding Minister of the relevant participating State, or to the Attorney-General of the Commonwealth, as the case requires, written notice of that consent or refusal.

## **10 Reports**

- (1) For the purpose of forming an opinion or exercising a discretion under this part, the Minister may inform himself or herself as he or she thinks fit and, in particular, may have regard to any report of a parole or prison authority of the Territory or of any participating State.
- (2) A report of a parole or prison authority may be sent to a corresponding Minister for the purpose of assisting that Minister to form an opinion or to exercise a discretion under the relevant interstate law.

## Part 3                      Transfer for trial

### 11      Request for transfer of prisoner to participating State

- (1) This section applies where—
  - (a) a prisoner serving a sentence of imprisonment in the ACT is the subject of an arrest warrant issued in accordance with the law of a participating State, the Commonwealth or a non-participating Territory; and
  - (b) the Attorney-General of the Territory receives a transfer request from—
    - (i) the relevant Attorney-General, accompanied by a copy of the warrant; or
    - (ii) the Minister under subsection (3).
- (2) Where this section applies, the Attorney-General of the Territory shall—
  - (a) consent, or refuse to consent, to the transfer; and
  - (b) give to the relevant Attorney-General, or the Minister, as the case requires, written notice of that consent or refusal.
- (3) Where the Minister receives a transfer request from a prisoner, he or she shall refer the request to the Attorney-General.
- (4) A transfer request need not be referred by the Minister to the Attorney-General under subsection (3) if it is made within 1 year after a similar request made by the relevant prisoner.
- (5) In this section:

***relevant Attorney-General***, in relation to an arrest warrant, means—

  - (a) in the case of a warrant issued in accordance with the law of a participating State—the Attorney-General of that State; or

- (b) in the case of a warrant issued in accordance with the law of the Commonwealth or a non-participating Territory—the Attorney-General of the Commonwealth.

*transfer request*, in relation to a prisoner serving a sentence of imprisonment in the ACT, means a written request for the transfer of the prisoner to a participating State, or to a non-participating Territory, to be dealt with according to law.

## 12 Necessary consents

- (1) An order of transfer shall be issued under this part only if—
- (a) the Attorney-General of the Territory has, in writing, consented to the transfer; and
  - (b) in the case of the transfer of a prisoner to a participating State (including a transfer to which paragraph (c) (ii) applies)—the Attorney-General of that State has, in writing, either consented to or requested the transfer; and
  - (c) in the case of a request for transfer—
    - (i) to a non-participating Territory; or
    - (ii) for the purpose of an arrest warrant issued in accordance with the law of the Commonwealth;the Attorney-General of the Commonwealth has, in writing, either consented to or requested the transfer.
- (2) A certificate signed by a person holding an office or position prescribed by the regulations certifying that any consent or request for subsection (1) for the transfer of a prisoner to a specified participating State or non-participating Territory has been given or made is, in the absence of evidence to the contrary, proof that the consent or request has been given or made.

**13 Order for prisoner to be brought before Magistrates Court**

- (1) The Magistrates Court, on proof to its satisfaction that section 12 (1) applies in relation to a prisoner, shall by order in writing direct the gaoler of the prison where the prisoner is being held to bring the prisoner before the court at a specified place, on a specified date and at a specified time, for determination as to whether an order of transfer should be issued.
- (2) Notice of an order under subsection (1) shall be served on the Attorney-General and on the prisoner to whom the order relates.
- (3) At a hearing pursuant to an order under subsection (1)—
  - (a) the prisoner is entitled to be represented by a legal practitioner; and
  - (b) the Attorney-General is entitled to appear or to be represented.

**14 Order of transfer**

At a hearing pursuant to an order under section 13 (1), the Magistrates Court shall—

- (a) issue an order for the transfer of the prisoner to the participating State or non-participating Territory specified in the certificate referred to in section 12 (2); or
- (b) refuse to issue such an order, if, on the application of the prisoner, the court is satisfied that—
  - (i) it would be harsh, oppressive or not in the interests of justice to do so; or
  - (ii) the trivial nature of the charge or complaint against the prisoner does not warrant the transfer.

**15 Review of decision of Magistrates Court**

- (1) Within 14 days after a decision is made under section 14, any of the following persons may apply to the Supreme Court for the review of the decision:
  - (a) the prisoner;
  - (b) the Attorney-General;
  - (c) any other person who has requested or consented to the transfer of the prisoner.
- (2) On application under subsection (1), the Supreme Court may review the relevant decision.
- (3) The following persons are entitled to appear, and to be represented, at a review:
  - (a) the prisoner;
  - (b) the Attorney-General;
  - (c) any other person who has requested or consented to the transfer of the prisoner.
- (4) A prisoner may only be represented at a review by a legal practitioner.
- (5) For the purposes of a review, the Supreme Court may, by order in writing, direct the gaoler of the relevant prison to bring the prisoner to the specified place of review on a specified date and at a specified time.
- (6) A review is to be by way of rehearing on the evidence (if any) given before the Magistrates Court and on any additional evidence given before the Supreme Court.
- (7) On the review of a decision, the Supreme Court may—
  - (a) confirm the decision; or
  - (b) quash the decision and substitute a new decision.

- (8) For the purpose of giving effect to a substituted decision under subsection (7) (b), the Supreme Court may issue an order for the transfer of the prisoner to a specified participating State or non-participating Territory.

## **16 Effect of orders under pt 3 on joint prisoners**

An order of transfer issued under this part in relation to a joint prisoner has no effect—

- (a) to the extent that, but for this section, it authorises or requires the doing of an act or thing under this Act in relation to that person in the person's capacity as a person on whom a Commonwealth sentence of imprisonment has been imposed; and
- (b) unless and until—
- (i) a transfer order corresponding to the order of transfer under this part is in force under the Commonwealth Act in respect of the person; or
  - (ii) the transfer of the person is otherwise authorised under that Act.

## **17 Execution of orders for prisoners to be brought before courts**

Where an order is made under section 13 (1) or 15 (5)—

- (a) the gaoler to whom it is directed shall execute the order, or cause the order to be executed by a prison officer or police officer; and
- (b) the prisoner shall, while the order is being executed, be kept in the custody of the person executing the order; and
- (c) the person executing the order shall in due course return the prisoner to the custody from which he or she has been brought.

**18 Request by Attorney-General for transfer of imprisoned person to ACT**

Where a person who is the subject of an arrest warrant issued in accordance with a Territory law is imprisoned in a participating State, the Attorney-General of the Territory may give to the Attorney-General of that State a written request (accompanied by a copy of the warrant) for the transfer of the person to the ACT to be dealt with according to law.

**19 Request by imprisoned person for transfer to ACT**

Where—

- (a) a person is imprisoned in a participating State; and
- (b) he or she is the subject of an arrest warrant issued in accordance with a Territory law; and
- (c) the Attorney-General of the participating State has given written notice to the Attorney-General of the Territory that he or she has consented to a request made by the person to be transferred to the ACT to enable the imprisoned person to be dealt with according to law;

the Attorney-General of the Territory shall—

- (d) consent, or refuse to consent, to the transfer; and
- (e) give to the Attorney-General of the participating State written notice of that consent or refusal.



## Part 4                      **Transfer back to original state or territory**

### **20      Return of prisoner to participating State**

- (1) The Minister shall, subject to section 21, issue an order for the return transfer of a prisoner to a participating State or a non-participating Territory where—
- (a) the prisoner was transferred to this Territory under an order issued under—
    - (i) the provision of the interstate law of that State that corresponds to section 14 or 15 (8); or
    - (ii) the Commonwealth Act, part 3; and
  - (b) so far as the Minister is aware, each complaint or information alleging an offence by the person against the law of this Territory or of the Commonwealth has been finally dealt with according to law, and as a result—
    - (i) the prisoner did not become liable to serve any sentence of imprisonment in this Territory; or
    - (ii) in any other case—the total period of imprisonment which the prisoner is liable to serve in this Territory (including any period of imprisonment under any translated sentence originally imposed by a court of this Territory) is shorter than the total period of imprisonment remaining to be served under—
      - (A) any translated sentence (not including a translated sentence originally imposed by a court of this Territory); and
      - (B) any sentence of imprisonment imposed for an offence against a law of the Commonwealth or of a non-participating Territory.

- (2) For subsection (1) (b), a complaint or information alleging an offence by a prisoner is to be taken to be finally dealt with if—
- (a) the prisoner is tried for the offence, and—
    - (i) the time has expired within which an appeal against the decision may be lodged, a review of the decision applied for, or a retrial ordered; and
    - (ii) any such appeal or review has been determined or withdrawn, or any proceedings (including appeals) in relation to such a retrial have been concluded; or
  - (b) the complaint or information is withdrawn, or a nolle prosequi (or similar instrument) is filed in respect of the offence.
- (3) For the purpose of determining the period, or the total period, remaining to be served under a sentence or sentences of imprisonment referred to in subsection (1) (b) (ii)—
- (a) any entitlement to remissions is to be disregarded; and
  - (b) a period of imprisonment including a period to be served under an indeterminate sentence is to be taken to be longer than any period of imprisonment not including such a period; and
  - (c) where an ACT sentence of imprisonment which the prisoner became liable to serve in the ACT (not being a translated sentence) is cumulative with any translated sentence originally imposed by a court other than a court of the Territory, any such lastmentioned sentence is deemed—
    - (i) not to be a translated sentence; and
    - (ii) to be a sentence which the prisoner is liable to serve in the ACT.
- (4) This section does not apply to a prisoner where an indeterminate sentence (not being a translated sentence) is imposed upon the prisoner by a court of the Territory.

**21 Prisoner's request to serve sentence in ACT**

(1) Section 20 does not apply in respect of a prisoner if, on the prisoner's written request to the Minister, the Minister and the relevant Minister (or relevant Ministers) agree in writing that it is in the interests of the welfare of the prisoner to serve his or her imprisonment in the ACT.

(2) In this section:

*relevant Minister*, in relation to a prisoner, means—

- (a) in the case of an ACT prisoner transferred from a participating State—the corresponding Minister of the participating State; or
- (b) in the case of a joint prisoner transferred from a participating State—
  - (i) the corresponding Minister of the participating State; and
  - (ii) the Attorney-General of the Commonwealth; or
- (c) in the case of a joint prisoner transferred from a non-participating Territory—the Attorney-General of the Commonwealth.

**22 Effect of orders under pt 4 on joint prisoners**

An order of transfer issued under this part in relation to a joint prisoner has no effect—

- (a) to the extent that, but for this section, it authorises or requires the doing of an act or thing under this Act in relation to that person in the person's capacity as a person on whom a Commonwealth sentence of imprisonment has been imposed; and
- (b) unless and until—
  - (i) a transfer order corresponding to the order of transfer under this part is in force under the Commonwealth Act in respect of the person; or

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Section 22

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- (ii) the transfer of the person is otherwise authorised under that Act.

## Part 5 Effect of transfer orders

### 23 Transfer in custody of escort

- (1) An order of transfer—
  - (a) shall direct the gaoler of the prison where the prisoner is currently imprisoned to deliver the prisoner into the custody of an escort; and
  - (b) authorises the gaoler to follow that direction; and
  - (c) authorises the escort to have custody of the prisoner for the purpose of conveying him or her from the ACT to the prison specified in the order and from there into the custody of the gaoler of that prison.
- (2) An order of transfer under an interstate law, or under the Commonwealth Act, or both, for the transfer of a prisoner to the ACT authorises the person or persons escorting the prisoner pursuant to that law or Act (while in the ACT) to have custody of the prisoner for the purpose of conveying him or her to the prison specified in the order and delivering him or her into the custody of the gaoler.
- (3) In this section:

*escort* means 1 or more of the following persons:

  - (a) a prison officer;
  - (b) a police officer;
  - (c) a person appointed as an escort by the Minister by instrument.

*prison* includes a prison within the meaning of an interstate law.

*prisoner* includes a prisoner within the meaning of an interstate law or the Commonwealth Act.

**24 Transfer of sentence with prisoner**

- (1) Where, under an order of transfer, a prisoner is conveyed to a participating State or a non-participating Territory, then from the time the prisoner arrives in that State or Territory, any ACT sentence of imprisonment imposed on the prisoner, including a translated sentence, ceases to have effect in this Territory except—
  - (a) for the purpose of an appeal against, or review of, a conviction, judgment or sentence of a court of this Territory; or
  - (b) in relation to any period of imprisonment served by the prisoner in this Territory; or
  - (c) in relation to any remittance of money to the Minister paid in discharge (or partial discharge) of a sentence of default imprisonment originally imposed upon the prisoner by a court of this Territory.
- (2) Subsection (1) does not apply to a sentence of imprisonment where a person has completed serving that sentence.

**25 Information sent to participating State**

- (1) Where, under an order of transfer, a prisoner is conveyed to a participating State, the Minister shall cause to be sent to the corresponding Minister of that State, or to a person designated by him or her for that purpose—
  - (a) the order of transfer; and
  - (b) the warrant of commitment, or any other authority for commitment, for any sentence of imprisonment which the prisoner was serving, or was liable to serve, immediately before he or she left the ACT; and
  - (c) a report, and other documents, under subsection (2) relating to the prisoner; and

- (d) details of any subsequent variations to the information contained in such a report, accompanied by any relevant orders or other documents.
- (2) For subsection (1) (c), a report relating to a prisoner shall—
- (a) contain such information as appears likely to assist any court, authority or officer in the relevant State; and
  - (b) be accompanied by such documents, including records relating to the prisoner's conduct, as appear likely to assist any court, authority or officer in the relevant State; and
  - (c) include details of the following matters:
    - (i) the prisoner's convictions;
    - (ii) the prisoner's sentences and minimum terms of imprisonment;
    - (iii) periods of imprisonment served by the prisoner;
    - (iv) the prisoner's entitlements to remissions;
    - (v) the prisoner's release on probation or parole.
- (3) A reference in this section to an order or other document is a reference to the original or a copy certified in the manner prescribed by the regulations.

## **26 Translated sentences**

- (1) This section applies where—
- (a) an interstate sentence of imprisonment is imposed, or a translated sentence within the meaning of an interstate law is taken to be imposed under that law, on a person by a court of a participating State; and
  - (b) that person is brought into the ACT in accordance with an order under an interstate law of that State for the person's transfer to the ACT.

- (2) Where this section applies in relation to a person—
- (a) the sentence referred to in subsection (1) (a) is deemed to have been lawfully imposed on the person by a corresponding court of the Territory; and
  - (b) a direction or order given or made by a court of the participating State in relation to the commencement of such a sentence is (so far as practicable) deemed to have been lawfully given, or made, by the corresponding court of the Territory; and
  - (c) subject to this Act, the laws of the Territory apply as if such a sentence, direction or order were a lawful sentence, direction or order of the corresponding court of the Territory.

## **27 Provisions relating to translated sentences**

- (1) Where, in relation to a translated sentence, a court of the relevant participating State has fixed a minimum term of imprisonment (being a shorter term than the translated sentence) during which the person subject to the sentence is not entitled to be released on parole, then, subject to this Act, the minimum term is deemed to have been fixed by the corresponding court of the Territory.
- (2) Where a translated sentence or a minimum term deemed under subsection (1) to have been fixed by a corresponding court of the Territory—
- (a) is varied or quashed on review by (or appeal to) a court of the relevant participating State—the sentence or minimum term is deemed to have been varied to the same extent, or to have been quashed, by a corresponding court of the Territory; or
  - (b) otherwise is varied or ceases to have effect as a result of action taken by any person or authority in that participating State—the sentence is deemed to have been varied to the same extent, or to have ceased to have effect, as a result of action taken by an appropriate person or authority in the ACT.



- (3) Nothing in this Act operates to permit in the ACT any appeal against or review of any conviction, judgment, sentence or minimum term made, imposed or fixed in relation to a person by a court of a participating State.
- (4) Where a translated sentence is an indeterminate sentence requiring that the person who is the subject of the sentence be detained during the pleasure of the Queen or of the Governor of the participating State in which the sentence was imposed, the person shall be detained during the pleasure of the Governor-General.
- (5) If a person is subject to a translated sentence—
- (a) the Executive may grant a pardon to the person under the *Crimes Act 1900*, section 433; or
  - (b) the Governor-General may exercise the royal prerogative of mercy in favour of the person;
- as if the person were an offender convicted in a court of the Territory, or convicted within the ACT before a judge or magistrate of the ACT.
- (6) If a person is subject to a translated sentence, and the Governor of the participating State in which the sentence of imprisonment was imposed on the person has given an indication as to what he or she may have done had the person not been transferred to the ACT—
- (a) the Executive may give effect to that indication in granting a pardon to that person under the *Crimes Act 1900*, section 433; or
  - (b) the Governor-General may give effect to that indication in exercising the royal prerogative of mercy in favour of that person.
- (7) Subsection (5) does not apply in relation to the conviction of a person for an offence against a law of a non-participating Territory, but that does not prevent the Governor-General from exercising the royal prerogative of mercy under the Commonwealth Act, section 24 (2) in relation to that conviction.

- (8) A person who is subject to a translated sentence is deemed to have served in the ACT such period of the translated sentence as, up to the time of transfer to the ACT, the person has served in respect of that sentence in a participating State, including—
- (a) any period deemed by the provision of an interstate law that corresponds to this subsection to have been served in a participating State; and
  - (b) any period spent in custody while being transferred to a prison in the ACT.
- (9) A person who is subject to a translated sentence is, subject to subsection (10), deemed to be entitled under a remission instrument to any remission of his or her translated sentence for which, up to the time of transfer to the ACT, the person was eligible in respect of that sentence of imprisonment in the participating State, including any remission of sentence deemed by an interstate law to have been earned in a participating State.
- (10) For subsection (9), a remission of a translated sentence is not to be taken into account where—
- (a) the person subject to the sentence was eligible for remission up to the time of his or her transfer to the ACT; and
  - (b) the remission is attributable to a part of the sentence not served or not to be served in the participating State from which that person was transferred.
- (11) Any remission of a translated sentence under a remission instrument, except a remission referred to in subsection (9), is to be calculated from the time of arrival in the ACT of the person subject to that sentence.

## **28 Translated sentences—default imprisonment**

- (1) This section applies where a person is serving a translated sentence by which default imprisonment was ordered.

- (2) Where this section applies, and any portion of the default amount is paid by or on behalf of the prisoner to the gaoler of the prison in which he or she is held—
- (a) the term of default imprisonment is reduced by a period which bears to the term of default imprisonment the same proportion as the portion paid bears to the total amount that was payable; and
  - (b) the prisoner is entitled to be released on the expiry of the reduced period, subject to any other sentence of imprisonment; and
  - (c) the gaoler shall remit the portion so paid to the corresponding Minister of the participating State where the translated sentence was originally imposed.
- (3) Where this section applies, and on review by (or appeal to) a court of the participating State where the default sentence was imposed, or as a result of any other action taken by any person or authority in that participating State—
- (a) the default amount is reduced—
    - (i) the term of default imprisonment is reduced by a period which bears to the term of default imprisonment the same proportion as the amount of the reduction bears to the total of the default amount; and
    - (ii) the prisoner is entitled to be released on the expiry of that reduced period, subject to any other sentence of imprisonment; or
  - (b) the obligation to pay the default amount is quashed—the prisoner is entitled to be released immediately, subject to any other sentence of imprisonment.

(4) In this section:

*default amount*, in relation to a sentence of default imprisonment, means the amount in default of payment of which the default imprisonment was ordered.

*prisoner* means the person referred to in subsection (1) in relation to whom this section applies.

## Part 6                      Miscellaneous

### 29      Notification to prisoners of decisions

The Attorney-General shall advise a prisoner of any decision made in relation to the prisoner for this Act.

### 30      Lawful custody for transit through ACT

- (1) This section applies where, in relation to a person imprisoned in a participating State or a non-participating Territory—
  - (a) an order of transfer is made under an interstate law, under the Commonwealth Act, or both, for the transfer of that person to a State or a non-participating Territory; and
  - (b) in the course of conveying the person under the order an escort brings him or her into the ACT.
- (2) Where this section applies, while the person being conveyed pursuant to the transfer order is in the ACT—
  - (a) the escort is authorised to have custody of the person for the purpose of conveying him or her from the ACT to the prison specified in the order and there delivering him or her into the custody of the gaoler; and
  - (b) a gaoler is authorised upon—
    - (i) the request of the escort; and
    - (ii) receipt from the escort of a copy of the transfer order, being a copy certified by the escort as a true copy;to detain him or her in custody as though the person were an ACT prisoner for such time as the escort requests, or for such shorter or longer time as is reasonably necessary for the purposes of executing the transfer order; and

- (c) a gaoler having custody of the person under paragraph (b) is authorised upon—
  - (i) the request of the escort; and
  - (ii) production by the escort of the transfer order;to deliver the person back into the custody of the escort.

### **31 Escape from custody of person being transferred**

- (1) A person in the custody of an escort under section 30 who escapes from that custody may be apprehended without warrant by the escort, a police officer or any other person.
- (2) Where a person in custody under section 30—
  - (a) has escaped and been apprehended; or
  - (b) has attempted to escape;that person may be taken before a justice who may, notwithstanding the terms of any order of transfer issued under an interstate law, by warrant—
  - (c) order the person to be returned to the participating State in which the order of transfer under which that person was being conveyed at the time of the escape or attempt to escape was issued; and
  - (d) for that purpose, order the person to be delivered to an escort.
- (3) A warrant issued under subsection (2) may be executed according to its tenor.
- (4) A person who is the subject of a warrant issued under subsection (2) may be detained in custody as an ACT prisoner until—
  - (a) he or she is delivered into the custody of an escort in accordance with that warrant; or
  - (b) the expiration of a period of 7 days after the warrant is issued;whichever first occurs.

- (5) If a person who is the subject of a warrant issued under subsection (2) is not, in accordance with the warrant, delivered into the custody of an escort within a period of 7 days after the warrant is issued, the warrant has no further effect.
- (6) This section does not apply to a person to whom the *Crimes Act 1914* (Cwlth), section 47 applies under the *Transfer of Prisoners Act 1983* (Cwlth), section 26 (2).
- (7) In this section:
- escort*, in relation to a person who (while in the ACT) escapes, or attempts to escape from custody while being conveyed under a transfer order issued under the interstate law of a participating State, means—
- (a) in subsection (1)—the escort accompanying the person at the time of the escape or attempted escape; or
- (b) in any other case—1 or more of the following persons:
- (i) the escort within the meaning of paragraph (a);
  - (ii) a prison officer or a member of the police force of the participating State;
  - (iii) a person appointed by the corresponding Minister of the participating State by instrument to escort the person back to that State.

### **32 Escape from custody—penalty**

- (1) A person in custody under an order of transfer under which he or she is being conveyed from this Territory to a participating State or non-participating Territory shall not—
- (a) escape; or

(b) attempt to escape;

from that custody while not in this Territory, that participating State or that non-participating Territory.

Maximum penalty: imprisonment for 7 years.

- (2) A sentence imposed on a person for an offence under subsection (1) shall be served after the expiration of the term of any other sentence which the person was serving at the time of the commission of that offence.
- (3) A person in custody under an order of transfer who escapes from that custody is not serving his or her sentence of imprisonment while he or she is unlawfully at large.
- (4) This section does not apply to a person to whom the *Crimes Act 1914* (Cwlth), section 47 applies under the *Transfer of Prisoners Act 1983* (Cwlth), section 26 (2).

### **33 Revocation of order of transfer on escape from custody**

- (1) The Magistrates Court may revoke an order of transfer if it appears to the court, on application made to it under this section by a person holding an office or position prescribed by the regulations, that the person in respect of whom the order was issued has, in the course of being conveyed in accordance with that order, committed—
- (a) the offence of escaping or attempting to escape; or
- (b) any other offence;
- being an offence against the law of the Territory, the Commonwealth, a participating State or a non-participating Territory.
- (2) Subsection (1) applies irrespective of whether a charge has been laid or a conviction secured in relation to the relevant offence.



**34 Regulation-making power**

The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

## Endnotes

1 About the endnotes

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## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnotes.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
ins = inserted/added	renum = renumbered
LA = Legislation Act 2001	reloc = relocated
LR = legislation register	R[X] = Republication No
LRA = Legislation (Republication) Act 1996	s = section/subsection
mod = modified / modification	sch = schedule
No = number	sdiv = subdivision
o = order	sub = substituted
om = omitted/repealed	SL = Subordinate Law
	<u>underlining</u> = whole or part not commenced

### 3 Legislation history

**Prisoners (Interstate Transfer) Act 1993 No 70**

notified 27 September 1993 (Gaz 1993 No S195)

s 1, s 2 commenced 27 September 1993 (s 2 (1))

remainder (ss 3-34) commenced 27 March 1994 (s 2 (3))

as amended by

**Custodial Escorts (Consequential Provisions) Act 1998 No 67 pt 10**

notified 23 December 1998 (Gaz 1998 No S212)

s 1, s 2 commenced 23 December 1998 (s 2 (1))

pt 10 commenced 23 December 1998 (s 2 (2) and Gaz 1998 No 51)

**Children and Young People (Consequential Amendments) Act 1999 No 64 sch 2**

notified 10 November 1999 (Gaz 1999 No 45)

s 1, s 2 commenced 10 November 1999 (IA s 10B)

sch 2 commenced 10 May 2000 (s 2 (2))

**Statute Law Amendment Act 2000 No 80 amdt 3.19**

notified 21 December 2000 (Gaz 2000 No S69)

amdt 3.19 commenced 21 December 2000 (s 2)

**Legislation (Consequential Amendments) Act 2001 No 44 pt 298**

notified 26 July 2001 (Gaz 2001 No 30)

s 1, s 2 commenced 26 July 2001 (IA s 10B)

pt 298 commenced 12 September 2001 (s 2 and Gaz 2001 No S65)

### 4 Amendment history

**Commencement**

s 2 om 2001 No 44 amdt 1.3281

**Interpretation for Act**

s 3 def **ACT sentence of imprisonment** am 1999 No 64 sch 2;

2000 No 80 amdt 3.19; par renum R1 LA

def **interstate law** sub 2001 No 44 amdt 1.3282

def **prison officer** sub 1998 No 67 s 37

**Corresponding courts and interstate laws**

s 5 am 2001 No 44 amdt 1.3283, amdt 1.3284

**Regulation-making power**

s 34 sub 2001 No 44 amdt 1.3285

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