

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

PRISONERS' INTERSTATE LEAVE BILL 1997

EXPLANATORY MEMORANDUM

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ATTORNEY-GENERAL**

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Outline

At present, custody of prisoners stops at the boundary of their jurisdiction of imprisonment (or remand). The only means by which prisoners may be escorted over State and Territory boundaries are under the authority of warrants or under provisions of legislation which permits the transfer of custody for particular legal or welfare grounds. These mechanisms do not enable prisoners to be taken across State and Territory boundaries for short term compassionate purposes, such as attending a funeral of a close relative or to seek medical treatment, whilst remaining in lawful custody.

The Prisoners' Interstate Leave Bill 1997 (the Bill) is part of a proposed national legislative scheme to provide for prisoners to travel interstate for short periods for compassionate reasons, whilst remaining in the legal custody of their own jurisdictions. Mutual recognition of the Bill by other jurisdictions is required for the legislation to become operational.

The Bill will apply to persons in custody in the ACT under the *Remand Centres Act 1976*. It will provide a mechanism for such persons to travel outside the ACT for a variety of compassionate reasons, whilst remaining in the lawful custody of the ACT.

The Bill provides that interstate leave permits may be granted by the Administrator under the *Remand Centres Act 1976* (the Administrator) for periods of up to seven days. Permits may be varied, extended or revoked and will be made subject to conditions prescribed in regulations or specified by the Administrator. Release on an interstate leave of absence permit (a permit) will be into the custody of one or more escorts assigned to an escort by the Administrator. Where overnight accommodation is required in another jurisdiction, the Bill provides that custody of the prisoner may be transferred from the ACT escort to the person in charge of an interstate prison, remand centre or similar institution.

The Bill provides for the recognition of permits issued by other jurisdictions whose legislation has been recognised as corresponding law by the ACT. It provides for recognition of the powers of interstate escorts to keep custody of prisoners as provided for by interstate permits, and to use such force as is necessary to do so as would be lawful in the participating jurisdiction. The Bill provides that persons on interstate permits who escape or attempt to escape from custody whilst in the ACT may be arrested and brought before an ACT Magistrate. An ACT Magistrate may order that such a person be returned in custody to the participating jurisdiction, and may be detained in custody in the Territory for up to seven days pending this return.

The Bill also provides recognition for interstate prisoners to travel to the ACT on permits without escort, where this is allowed under interstate legislation. This provision will be particularly relevant in relation to the NSW legislation, which provides for interstate leave without escort for low security prisoners. Recognition of the NSW legislation by the ACT will make it possible for eligible prisoners in NSW to travel from their place of imprisonment in NSW to the ACT for a broader range of purposes than provided for in the ACT Bill. These include participation in education and works release programs.

The Bill is being introduced in association with, the *Remand Centres Amendment Bill 1997*

Financial Impact Statement

Implementation of the scheme is likely to involve some additional expenditure by the Territory. Under proposed administrative provisions, the prisoner or his or her family will be required to pay for the costs associated with the granting of an interstate leave permit. However, the Administrator will have the power to meet all or part of the costs on a case by case basis.

Details of the Bill are as follows:

PART I - PRELIMINARY

This Part covers formal requirements of the Act. Clauses 1, 2 and 3 refer to the short title of the Bill once enacted, commencement provisions, and interpretation. The delayed commencement provisions will enable administrative arrangements to be developed following discussions with other jurisdictions. Clause 3 (2) provides a mechanism which may facilitate recognition of the Bill once enacted, as a corresponding law under Victorian legislation.

PART II - RECOGNITION OF OTHER JURISDICTIONS

This part provides that the Minister may declare laws of States or another Territory to be corresponding laws, where the interstate laws contain provisions that substantially correspond to the provisions of the Bill

PART III - LEAVE OF ABSENCE FOR PRISONERS

This Part provides for a scheme to enable ACT prisoners to travel outside the ACT for short periods for a range of compassionate purposes, whilst remaining in lawful custody.

Clause 5 provides definitions of terms used in this Part.

Clause 6 outlines the grounds on which permits may be granted and the process for granting them.

The following are grounds on which a permit may be granted:

- for medical treatment;
- to visit a person with whom a prisoner has had a long-standing personal relationship if that person is seriously ill or in acute personal need;
- to attend a funeral of a person with whom a prisoner has had a long-standing personal relationship, or
- for any other compassionate purpose

For Indigenous prisoners, the grounds on which interstate leave of absence may be granted also include:

- to attend the funeral service or burial of a member of a prisoner's immediate or extended family; or

- to attend an occasion of special significance to members of a prisoner's immediate or extended family

The definition of an Aboriginal or Torres Strait Islander person provided at Clause 6 is considered to be the most appropriate way of defining such persons

The intention is that a permit may be granted for one or more of the above grounds. The ground of 'any other compassionate purpose' is included to provide for maximum flexibility in being able to respond compassionately to prisoners' particular circumstances

The word 'may' has been used in relation to the granting of a permit. Therefore, applications for permits may also be refused. Although not contained in the Bill, grounds for refusal of an application for a permit may include security risk, costs associated with the granting of a permit, the general behaviour of the prisoner making the application, and staffing and other administrative considerations. Proposed amendments to the *Remand Centres Act 1976*, contained in the *Remand Centres Amendment Bill 1997*, provide a mechanism for prisoners whose application for a permit is refused, to make a complaint to the Official Visitor

Power to grant (or refuse to grant) a permit is vested in the Administrator, as provided for by the *Remand Centres Act 1976*. The Director of ACT Corrective Services is the officer responsible for performing the functions of the Administrator, who, pursuant to section 7 of the *Remand Centres Act 1976*, is responsible for the conduct of all remand centres in the Territory. If granting a permit, the Administrator must do so in writing, setting out the purpose(s) for which it is granted, and the State or Territory to which the prisoner is permitted to travel, and any other State or Territory through which the prisoner may travel to or from the destination. For lawful custody to be maintained, transit and destination jurisdictions are required to be participating jurisdictions

Clause 7 provides that permits have effect subject to conditions or restrictions as prescribed by regulations or as specified in the permit by the Administrator. The words 'conditions' and 'restrictions' have both been used, with the intention of covering the full range of ways in which a permit may be limited. It is not intended that the wording of a permit must distinguish between conditions and restrictions. However, the strict difference envisaged by using these two words, is that a 'condition' covers cases where a permit allows a prisoner to do something, conditional upon something else occurring, while a 'restriction' covers cases where a permit allows a prisoner to do something, but not something else, or only in a certain way

For example, a permit may allow a prisoner to attend a funeral on the condition that he or she is handcuffed to one of the escorts whilst at the funeral. It may also allow the prisoner to attend the wake after the funeral, but with a restriction that this be only for two hours' duration (and with a further condition that the prisoner remain handcuffed to an escort)

Clause 8 covers the length of periods of leave of absence and extensions of permits. The length of a permit must not exceed 7 days and must be specified in the permit. Permits may be extended as many times as considered necessary by the Administrator, by periods of up to and including 7 days. The extension of a permit must be made before the expiry of a current permit.

It is expected that permits will, in general, be granted primarily for the achievement a purpose, and it is expected that in some cases, the length of time required for the achievement of the purpose will not be known by the Administrator at the time he or she grants a permit. In such cases, the permit may include a condition relating to its length that states that it is for a period required to achieve a particular purpose, or for a specified period, whichever occurs first

For example, a prisoner may require investigation of a medical problem which cannot be undertaken in the ACT. A permit may be granted to allow the prisoner to travel interstate for the purpose of this investigation. It is possible that the scope of tests et cetera required for the investigation may only be known after an initial consultation interstate. A permit may therefore be worded along the lines that

The period of absence authorised under this permit is the time required to travel to and from (destination jurisdiction) and for medical consultation(s) (with Doctor 'x' or at Hospital 'y') and investigation(s) or further consultation(s) specified by (Doctor 'x' or Hospital 'y') in relation to (description of a medical problem), or the expiration of 7 days, whichever occurs first

The extension of a permit may provide for foreseen or unforeseen circumstances which arise after the granting of a permit in relation to any ground, or to provide for extended medical assessment or treatment interstate. Examples of these scenarios include.

- A prisoner was granted leave to visit a person with whom he or she has had a long-standing personal relationship who is seriously ill. The person dies while the prisoner is on the permit. The permit may be extended to enable to prisoner to remain in the other jurisdiction to attend the person's funeral.
- A prisoner is granted a permit for any reason. Whilst on the permit, the prisoner becomes ill and requires hospitalisation, and medical advice is that the prisoner should not travel

- Whilst a prisoner is on a permit, a natural disaster (such as fire or flood) makes it inadvisable or impossible for the return of the prisoner within the specified period

Clause 9 provides for the appointment of escorts and the assignment of escorts in relation to particular permits

People may be appointed as escorts by two possible mechanisms via employment as a custodial officer in relation to a remand centre under section 6AA of the *Remand Centres Act 1976*, or by appointment as an escort by the Administrator, which must be in writing

The appointment of persons as escorts and the assigning of persons as escorts in relation to particular permits has been separated, to provide for maximum flexibility in the assignment of persons as escorts for a particular permit. Due to the tight timeframe that will often occur between an application for a permit, a decision to grant it, and its commencement, the nature of reasons for which a permit may be granted, and the nature of duties of an escort, it is desirable that a pool of people be available to be assigned as escorts in relation to a particular permit at any one time

It is anticipated that in most cases, two escorts will be assigned in relation to a permit, and also that, in most cases, at least one and sometimes two custodial officers will be assigned as escorts

However, it may be desirable that a person other than a custodial officer be assigned as an escort in relation to a particular permit. In general, this will arise from the nature of the ground on which the permit is issued. People other than custodial officers who, it is envisaged, may be appointed as escorts by the Administrator, ready for assignment in particular cases, include welfare staff, nursing staff and Community Corrections Officers employed by ACT Corrective Services, and community representatives, where this is considered appropriate

There also may be occasions where one or more police officers are considered the most appropriate person(s) to be assigned as escorts. The Administrator may not appoint a police officer as an escort or assign a police officer to duties as an escort in relation to a particular permit without the agreement of the Chief Police Officer

Although the appointment of a person other than a custodial officer as an escort must be in writing, the assignment of an escort to duties in relation to a particular permit is not required to be in writing. Again, this is to provide for maximum flexibility in responding to the granting of a permit, and for decisions to be made within very tight timeframes

Where more than one escort is assigned in relation to a permit, one is to be designated as the senior escort by the Administrator. This provision is required to identify which escort may exercise powers in relation to the varying of permits when the prisoner is absent from a remand centre, which is covered at clause 10

Clause 10 provides for the varying, including the revocation of, and extension by an escort of, permits and of conditions of permits

Subject to this clause, the Administrator may at any time vary or revoke a permit or vary, add or delete a condition or restriction of a permit. In addition, whilst a prisoner is absent from a remand centre subject to a permit, an assigned escort or where there is more than one assigned escort, the senior escort, may also exercise these powers. In addition, the assigned escort, or senior assigned escort may also extend (or further extend) a permit of prisoner whilst he or she is absent from a remand centre subject to the permit. The powers that are described in this paragraph only apply as long as they are consistent with any condition or restriction imposed under the regulations.

Clause 11 sets out simply the effect of a permit, which is to enable a prisoner to leave a remand centre, travel interstate for the purpose(s) specified in the permit, in accordance with the conditions and restrictions to which the permit is subject, before returning to the remand centre

Clause 12 provides for the custody of a prisoner whilst he or she is subject to a permit, and after its expiry

While a prisoner is absent from a remand centre on a permit, he or she is in the custody of the escort or escorts assigned in relation to the permit. The assigned escort or escorts may transfer the custody of the prisoner to, and resume custody from, a person in charge of an institution which normally holds prisoners in custody, either within or outside the ACT. This provision is designed to enable overnight accommodation of a prisoner on a permit whilst interstate, or upon returning from interstate (if a remand centre in the ACT is full)

Sub-clause 12 (3) provides that custody of the prisoner is resumed by the Superintendent of the remand centre at the expiration of a permit

Clause 13 describes the powers of assigned escorts and the penalties for prisoners for failing to comply with reasonable directions given by an assigned escort.

Sub-clauses 1, 3 and 4 outline the powers of assigned escorts which enable them to fulfil their duties. These powers are:

- to give reasonable directions,

- to use reasonable force,
- to conduct 'frisk' and 'ordinary' searches of prisoners if the escort(s) reasonably thinks it would be appropriate to do so, and to confiscate any seizeable item found as a result of such searches, and
- where an assigned escort is a custodial or police officer, such other powers or use of force, weapons or means of restraint as he or she may lawfully use in his or her capacity as a custodial or police officer

The aim of sub-clause 13 (4) is to put beyond doubt the fact that a police officer or custodial officer assigned as an escort retains his or her powers as a police or custodial officer whilst performing duties as an escort. It is expected that reciprocal arrangements with other jurisdictions will provide for ACT police officers and custodial officers who are escorts to be able to exercise their powers as a police or custodial officer in relation to the permit whilst interstate.

Sub-clause 13 (5) defines the terms 'frisk search', 'ordinary search' and 'seizable item' as being the same as in Part X of the *Crimes Act 1900*. Frisk and ordinary searches are not considered highly intrusive, require removal of outer clothing (such as a coat, gloves and shoes) only, and may be performed by escorts of the opposite sex to the prisoner.

Sub-clause 13 (2) requires a prisoner on a permit to obey reasonable directions given by assigned escorts for the purposes of ensuring compliance with the permit. It provides a penalty for failure to comply with this requirement, of 50 penalty units or imprisonment for 6 months, or both

PART IV - INTERSTATE PRISONERS ON LEAVE OF ABSENCE IN THE TERRITORY

This part provides for recognition of permits issued by States and the Northern Territory if the State or Territory and the ACT have both recognised each others legislation as corresponding for the purposes of this Bill once enacted. It also provides a mechanism for responding to escapes or attempted escapes by prisoners in the ACT on interstate permits.

Clause 14 provides definitions of terms used in this Part. An important aspect of the definition of an interstate permit is that it enables prisoners from participating jurisdictions to travel to the ACT on a permit for grounds that apply to the granting of a permit in the participating jurisdiction. These may differ from those for which an ACT prisoner may be granted a permit. This will enable minimum security prisoners from NSW to travel to the ACT to for the purposes of education or employment

Clause 15 provides recognition whilst in the ACT of the powers of escorts under corresponding laws of participating jurisdictions. The powers of interstate escorts recognised by clause 15 are the power to hold, take and keep custody in accordance with the corresponding interstate law. Recognition is extended whether the interstate permit is for the prisoner to travel to or through the ACT.

Sub-clause 15 (3) allows interstate escorts to use such force as is necessary to ensure compliance with the interstate permit.

Sub-clause 15 (4) deems prisoners on interstate permits which do not require them to be escorted, to be in the lawful custody of the participating jurisdiction whilst they are in the ACT.

Clause 16 provides for responses to a prisoner who is in the ACT under escort in relation to an interstate permit who escapes or attempts to escape whilst in the ACT.

The escape or attempt to escape of a prisoner on an interstate permit in the ACT automatically cancels the interstate permit. Upon the cancellation of the interstate permit, the prisoner may be apprehended without warrant by any person. Upon such capture of the prisoner, he or she should be delivered to a member of the ACT police force as soon as possible. The ACT police should then bring the prisoner before a Magistrate as soon as possible.

Sub-clause 16 (4) provides a response that may be followed by a Magistrate when dealing with a person who escapes or attempts to escape whilst in the ACT under escort in relation to a permit. This option is that the Magistrate may order that the person be returned in custody to the jurisdiction which issued the interstate permit, and that the person may be detained in custody in the ACT for up to 7 days to allow for arrangements to be made for this to be achieved. The place where the person may be detained under sub-clause 16 (4) is intended to be a remand centre under the *Remand Centres Act 1976*, which, under amendments proposed in the *Remand Centres (Amendment) Bill 1997*, will be able to detain such people.

The return in custody of a prisoner dealt with under section 16 (4) to the jurisdiction which issued their permit is to occur via the placing of the prisoner into the custody of an interstate escort, who may be the person who had custody of the prisoner prior to their escape or attempt to escape, a police officer or custodial officer from the jurisdiction, or a person appointed by a person in the jurisdiction who has the authority to issue interstate leave permits.

Clause 17 provides that interstate escorts who use force, weapons or means of restraint for the purposes of keeping custody of the prisoner on an interstate permit, or recapturing that prisoner if he or she escapes, do not commit an offence in the ACT if their actions would be lawful if conducted in the participating jurisdiction

PART V - MISCELLANEOUS

This part provides that regulations may be made for the purposes of this Bill once enacted