



New South Wales

International Transfer of Prisoners (New South Wales) Bill 1997

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The *International Transfer of Prisoners Act 1997* of the Commonwealth sets out a scheme:

- (a) to facilitate the transfer of prisoners between Australia and certain countries with which Australia has entered agreements for the transfer of prisoners so that prisoners may serve their sentences of imprisonment in their countries of nationality or in countries with which they have community ties, and
- (b) to facilitate the transfer of prisoners to Australia from countries in which prisoners are serving sentences of imprisonment imposed by certain war crimes tribunals.

The scheme will enable Australians imprisoned overseas, and foreign nationals imprisoned in Australia, to be returned to their home countries to complete the serving of their sentences. It will also enable persons who have a connection with Australia and who have been convicted by certain

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international war crimes tribunals (namely the Former Yugoslavia Tribunal and the Rwanda Tribunal) to be transferred to Australia to serve their sentences.

The Commonwealth Act by itself will be insufficient to give effect to the scheme. Incoming prisoners will have to be housed in prisons controlled by States and Territories which participate in the scheme (as there are no federal prisons) and many of the prisoners who wish to take advantage of the scheme and leave Australia will be serving sentences for State or Territory offences.

The Bill for the Commonwealth Act (as well as a Bill for the complementary legislation that States and Territories which have agreed to participate in the scheme will need to enact) was developed in consultation with the States and Territories through the Standing Committee of Attorneys-General.

The object of this Bill is to give effect to the scheme for the international transfer of prisoners set out in the Commonwealth Act by enabling prisoners to be transferred to and from this jurisdiction under the scheme.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 sets out the object of the proposed Act as described in the Overview above.

Clause 4 defines certain words and expressions used in the proposed Act. *Commonwealth Act* means the *International Transfer of Prisoners Act 1997* of the Commonwealth and *War Crimes Tribunal* means the Former Yugoslavia Tribunal or the Rwanda Tribunal within the meaning of the Commonwealth Act. Expressions defined in the Commonwealth Act which are used in the proposed Act have the same meaning as in the Commonwealth Act, unless a contrary intention appears. For example, the Commonwealth Act defines *prisoner* as being a person who is serving a sentence of imprisonment and includes a mentally impaired prisoner and a prisoner released on parole. A *Tribunal prisoner* is defined as a prisoner who is serving a sentence of imprisonment imposed by a War Crimes Tribunal for an offence for which that Tribunal is empowered to prosecute.

Clause 5 provides that notes in the text of the proposed Act do not form part of the proposed Act.

Part 2 Conferral of functions

Clause 6 empowers a New South Wales Minister to exercise and perform functions conferred on the Minister by or under the Commonwealth Act.

Clause 7 empowers prison officers, police officers and other officials to exercise the powers and functions conferred on the officials by or under the Commonwealth Act in accordance with any arrangement made under clause 8 in relation to the administration of the Commonwealth Act.

Clause 8 states that the Governor may make arrangements with the Governor-General for the administration of the Commonwealth Act. This complements the power conferred on the Governor-General under the Commonwealth Act. These arrangements may be varied or terminated at any time in accordance with the Commonwealth Act.

Part 3 Enforcement of sentences of imprisonment of transferred prisoners

Clause 9 provides that, for the purposes of enforcement of sentence, a prisoner or Tribunal prisoner serving a sentence in New South Wales under the Commonwealth Act is to be treated in the same way as a federal prisoner.

Clause 9 (1) provides for the application of relevant enforcement laws to such a prisoner.

Clause 9 (2) gives examples of matters covered by the enforcement laws that will apply to the prisoner. These include release on parole, removal from one prison to another and eligibility for participation in prison schemes.

Clause 9 (3) gives effect in New South Wales to directions given by the Attorney-General of the Commonwealth under section 44 of the Commonwealth Act. Those directions relate to enforcement of sentences and include, subject to certain limitations, directions as to the duration and legal nature of the sentence of imprisonment as it is to be enforced under the Commonwealth Act, and directions relating to entitlement to release on parole. If the prisoner or Tribunal prisoner is mentally impaired, directions can be given regarding any review of the mental condition or treatment of that prisoner.

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Clause 9 (4) gives effect in New South Wales to a direction given by the Attorney-General of the Commonwealth under section 49 of the Commonwealth Act. That section provides that where a transferred prisoner is serving a sentence in Australia, the prisoner may be pardoned or granted amnesty or commutation of sentence as if the sentence had been imposed for an offence against an Australian law. The section also provides that, where a prisoner is pardoned or granted amnesty or commutation of sentence (either under Australian law or the law of the transfer country) or a prisoner's conviction is quashed or otherwise nullified under the law of a transfer country, the Attorney-General of the Commonwealth must direct that the person be released. Similar directions must be given if a Tribunal prisoner is pardoned or granted amnesty or commutation of sentence (either under Australian law or by a Tribunal) or the prisoner's conviction is quashed or otherwise nullified.

Clause 10 provides that where a prisoner is transferred from Australia, the laws of this jurisdiction relating to the enforcement of a sentence imposed by a New South Wales court cease to have effect. Clause 10 (2) ensures that where a prisoner is serving a sentence in a transfer country following transfer from Australia, the prisoner may still be pardoned or granted amnesty or commutation of sentence as if he or she were still in New South Wales.

Part 4 Miscellaneous

Clause 11 empowers the Governor to make regulations for the purposes of the proposed Act.

Clause 12 provides for the review of the proposed Act by the Minister 5 years after it is assented to.



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New South Wales

International Transfer of Prisoners (New South Wales) Bill 1997

No. , 1997

A Bill for

An Act relating to the transfer of prisoners to and from Australia.

Clause 1 International Transfer of Prisoners (New South Wales) Bill 1997

Part 1 Preliminary

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *International Transfer of Prisoners (New South Wales) Act 1997*.

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2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Object of Act

The object of this Act is to give effect to the scheme for the international transfer of prisoners set out in the Commonwealth Act by enabling such prisoners to be transferred to and from this jurisdiction.

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4 Definitions

(1) In this Act:

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Commonwealth Act means the *International Transfer of Prisoners Act 1997* of the Commonwealth.

corresponding law means a law of another State that provides for the international transfer of prisoners.

function includes a power, authority or duty.

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State includes a Territory.

this jurisdiction means New South Wales.

War Crimes Tribunal means the Former Yugoslavia Tribunal or Rwanda Tribunal within the meaning of the Commonwealth Act.

(2) If an expression is defined in the Commonwealth Act and is also used in this Act, the expression as used in this Act has, unless the contrary intention appears, the same meaning as in that Act.

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- (3) In this Act, a reference to the Commonwealth Act includes a reference to:
- (a) that Act as amended and in force for the time being, and
 - (b) an Act enacted in substitution for that Act.

5 Notes

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Notes in the text of this Act do not form part of this Act.

Part 2 Conferral of functions

6 Powers and functions of Minister

(1) A Minister of this jurisdiction may exercise and perform any function conferred or expressed to be conferred on the Minister by or under the Commonwealth Act and may delegate to an authorised person any such function. 5

(2) In this section:

authorised person means:

(a) the head, or other member of staff, of a government department administered by a Minister referred to in subsection (1), or 10

(b) any person prescribed by the regulations or belonging to a class of persons prescribed by the regulations.

Minister includes any Minister who under the law of this jurisdiction can act for and on behalf of the Minister. 15

7 Powers and functions of prison officers, police officers and others

(1) A prison officer, police officer and any other official of this jurisdiction may exercise and perform any function conferred or expressed to be conferred on the official: 20

(a) by or under the Commonwealth Act or a corresponding law, or

(b) in accordance with any arrangements referred to in section 8.

(2) It is lawful for a prison officer, police officer or other official of this jurisdiction: 25

(a) to hold and deal with any prisoner in accordance with the terms of a warrant issued under the Commonwealth Act in respect of the prisoner, and

(b) to take any action in respect of a prisoner transferred, or to be transferred, to or from Australia in accordance with the Commonwealth Act that the official is authorised to take by or under that Act. 30

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- (3) In this section, a reference to a prison officer is a reference to a correctional officer within the meaning of the *Correctional Centres Act 1952*.

Note. A number of provisions of the Commonwealth Act require State officials to exercise functions. For example, a warrant may be issued under section 30 of the Commonwealth Act requiring a prison officer, police officer or other person to escort a prisoner who is being transferred. A police officer of this jurisdiction may arrest a person escaping from custody under section 56 of the Commonwealth Act.

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8 Arrangements for administration of Act

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- (1) The Governor may, in accordance with section 50 of the Commonwealth Act, make arrangements for the administration of that Act, including arrangements relating to the exercise by officers of this jurisdiction of functions under the Commonwealth Act.
- (2) An arrangement may be varied or terminated in accordance with the Commonwealth Act.

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Part 3 Enforcement of sentences of imprisonment of transferred prisoners

9 Prisoners transferred to Australia

- (1) Any relevant enforcement law applies to and in respect of a prisoner who is transferred to Australia under the Commonwealth Act to complete serving a sentence of imprisonment in this jurisdiction that was imposed by a court or tribunal of a transfer country (or by a War Crimes Tribunal) in the same way as the enforcement law applies to and in respect of a federal prisoner serving a sentence of imprisonment in this jurisdiction that is imposed under a law of the Commonwealth. 5 10
- (2) Without limiting subsection (1), enforcement laws relating to the following matters are applicable to a prisoner or Tribunal prisoner who is transferred to Australia under the Commonwealth Act: 15
- (a) conditions of imprisonment and treatment of prisoners,
 - (b) release on parole of prisoners,
 - (c) classification and separation of prisoners,
 - (d) removal of prisoners from one prison to another,
 - (e) removal of prisoners between prisons and hospitals or other places or between one hospital or other place and another, 20
 - (f) treatment of mentally impaired prisoners,
 - (g) eligibility for participation in prison programs, including release under a pre-release permit scheme (however called), 25
 - (h) temporary absence from prison (for example, to work or seek work, to attend a funeral or visit a relative suffering a serious illness or to attend a place of education or training),
 - (i) transfer of prisoners between States. 30
- (3) Any direction given by the Attorney-General of the Commonwealth under section 44 of the Commonwealth Act concerning enforcement of such a sentence of imprisonment is to be given effect in this jurisdiction.

(4) Any direction given by the Attorney-General of the Commonwealth under section 49 of the Commonwealth Act concerning a prisoner referred to in subsection (1) who is pardoned or granted amnesty or commutation of sentence of imprisonment as referred to in that section is to be given effect in this jurisdiction. 5

(5) In this section:

enforcement law means:

- (a) any law of this jurisdiction, or
 - (b) any law of the Commonwealth or another State, or 10
 - (c) any practice or procedure lawfully observed,
- concerning the detention of prisoners.

prison, in relation to a law of this jurisdiction, means a correctional centre within the meaning of the *Correctional Centres Act 1952*. 15

prisoner, in relation to a law of this jurisdiction, means an inmate within the meaning of the *Correctional Centres Act 1952*.

Note. See Part 1B of the *Crimes Act 1914* of the Commonwealth in relation to the imprisonment and release of prisoners. In particular, see sections 19A (Detention of person in State or Territory prisons) and 19AA (Remissions and reductions of sentences) and Division 5 (Conditional release on parole or licence). 20

10 Prisoners transferred from Australia

- (1) Except as provided by subsection (2), the laws of this jurisdiction relating to the enforcement of a sentence of imprisonment imposed by a court of this jurisdiction on a person cease to apply to a prisoner on whom such a sentence has been imposed who is transferred from Australia under the Commonwealth Act to complete serving such a sentence of imprisonment. 25
- (2) Nothing in this section limits the power of the Crown or of a court or tribunal of this jurisdiction to pardon, grant amnesty or commute such a sentence of imprisonment. 30

Clause 11 International Transfer of Prisoners (New South Wales) Bill 1997

Part 4 Miscellaneous

Part 4 Miscellaneous

11 Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act. 5

12 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives. 10
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years. 15