

CONCURRENCE COPY

PRISONERS (INTERSTATE TRANSFER) BILL, 1982

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to give effect to an agreement between the States, the Commonwealth and the Northern Territory to pass uniform legislation providing for the transfer of prisoners from one State to another, or from a State to a Territory or a Territory to a State.

The circumstances in which transfers of prisoners are to be allowed are as follows:—

(a) where—

- (i) a prisoner requests that he be transferred to another State or Territory to serve out the balance of his sentence;
- (ii) it is in the interests of the prisoner's welfare that he be transferred; and
- (iii) the Ministers administering the prisons systems in the "sending" and "receiving" States or Territory consent to the transfer;

(b) where—

- (i) the Attorney General of another State or a Territory requests that a prisoner be transferred to that State or Territory, or a prisoner himself requests that he be transferred, for the purpose of standing trial and being dealt with for offences committed in the other State or Territory; and
 - (ii) the Attorney General of the "sending" State consents to the transfer (the prisoner does not have to consent but will have a right to ask the court to refrain from issuing an order of transfer in certain circumstances); and
- (c) where a prisoner is to be returned to a State or Territory after trial or for the purposes of attending appeal proceedings.

The Bill contains the following provisions:—

PART I.—PRELIMINARY.

- Clause 1. Short title.
- Clause 2. Commencement.
- Clause 3. Arrangement.
- Clause 4. Administration.
- Clause 5. Interpretation.

Clause 6 contains provisions to identify corresponding courts and laws in other States (in this Explanatory Note, a reference to a "State" includes a reference to a "Territory" unless the context otherwise indicates or requires).

PART II.—TRANSFER FOR PRISONER'S WELFARE.

Clause 7 requires the Minister for Corrective Services—

- (a) upon request for a transfer to another State being made to him by a prisoner; and
- (b) if he is of the opinion that the transfer is in the interests of the welfare of the prisoner,

to request the corresponding Minister in the other State to accept the transfer of the prisoner.

Clause 8 provides for the issue of an order of transfer by the Minister for Corrective Services if the Minister in the "receiving" State consents to the transfer. The clause further provides that a decision to issue, or not to issue, an order is not reviewable by a court or tribunal.

Clause 9 deters repeated requests for transfers by providing that the Minister need not entertain a request for transfer if made within 1 year of a similar request.

Clause 10 authorises the Minister for Corrective Services to refuse or consent to a request from another State to accept the transfer of a prisoner.

Clause 11 provides—

- (a) that the Minister for Corrective Services may have regard to reports of parole and prison authorities for the purpose of assisting him in making a decision as to whether or not consent should be given to a request for transfer; and
- (b) for the supply to corresponding Ministers in other States of such reports in order to assist them in making decisions on requests for transfers.

PART III.—TRANSFER FOR TRIAL.

Clause 12. Subclause (1) provides that where, in respect of a prisoner who is the subject of an arrest warrant issued in another State, the Attorney General receives a request—

- (a) from the Attorney General of the other State; or
- (b) from the prisoner (being a request referred to the Attorney General by the Minister for Corrective Services),

for the transfer of the prisoner to the other State for the purpose of standing trial, the Attorney General may refuse or consent to the transfer.

Subclause (2) requires the Minister for Corrective Services to refer prisoners' requests for transfer to the Attorney General.

Subclause (3) deters repeated requests by prisoners for transfer by providing that the Minister for Corrective Services need not refer a request for transfer to the Attorney General if made within 1 year of a similar request.

Clause 13 provides that an order of transfer cannot be issued under Part III unless both the Attorney General and the Attorney General of the "receiving" State have consented to or requested, as the case may be, the transfer.

Clause 14 contains machinery for the bringing of a prisoner, whose transfer has been consented to or requested, before a court of petty sessions.

Clause 15 requires a court of petty sessions to issue an order of transfer of a prisoner to another State where the required consents or requests have been obtained unless the court, on the application of the prisoner, is satisfied that it would be harsh or oppressive, or not in the interests of justice, to transfer the prisoner to the other State or that the trivial nature of the charge or complaint against the prisoner does not warrant the transfer.

Clause 16 provides that where a court of petty sessions has made a decision in respect of an order of transfer as referred to in clause 15, the Attorney General, the Attorney General of the "receiving" State or the prisoner, may apply to the Supreme Court for a review of the decision.

Provision is also made in the clause for the attendance or representation of the prisoner, the Attorney General and the Attorney General of the "receiving" State at a review of a decision and for hearing of, and the carrying out of the decision in respect of, a review.

Clause 17 provides for the custody of prisoners while attending court hearings.

Clause 18 authorises the Attorney General to give to the Attorney General of another State a request for the transfer of a prisoner who is the subject of an arrest warrant issued in New South Wales.

Clause 19 authorises the Attorney General to refuse or consent to a request (initiated by a prisoner in another State) for the transfer of the prisoner from the other State.

PART IV.—TRANSFER BACK TO ORIGINAL STATE.

Clause 20 provides that, where a prisoner is transferred to New South Wales for the purpose of trial and he has been dealt with according to law, the Minister for Corrective Services shall issue an order for the transfer of the prisoner back to the State from which he was transferred, except in a case where the prisoner, as a result of his trial, became liable to serve in New South Wales a sentence which is longer than the period of imprisonment remaining to be served in the State from which he was transferred. In that case the prisoner will serve out the new sentence imposed and the remainder of his other sentence in New South Wales.

This clause is to be read subject to the provisions of clause 23.

Clause 21 authorises the Minister for Corrective Services, unless in his opinion it is contrary to the public interest to do so, to issue an order for the transfer of a prisoner (who has been transferred to New South Wales under a provision of the proposed Act) back to the State from which he was transferred for the purpose of attending appeal proceedings.

Clause 22 requires the Minister for Corrective Services to issue an order for the retransfer of a prisoner after attending appeal proceedings but only where the sentence to be served in the State from which he was transferred is longer than any sentence to which he is liable in New South Wales.

This clause is to be read subject to the provisions of clause 23.

Clause 23 is ancillary to clauses 20, 21 and 22. It provides—

- (a) that a prisoner need not be returned to another State (after trial or appeal proceedings) to serve his (longer) sentence where he requests that he be allowed to serve his sentence in New South Wales and the respective Ministers agree that it is in the interests of his welfare to do so;
- (b) that clauses 20 and 22 do not apply if the prisoner is sentenced in New South Wales to an indeterminate sentence (e.g., life imprisonment); and
- (c) for the determination of the time at which proceedings involving a prisoner are to be regarded as finalised and for the determination of the lengths of the respective periods of imprisonment which a prisoner is liable to serve in different States.

PART V.—EFFECT OF ORDER OF TRANSFER.

Clause 24 contains machinery provisions for the custody and conveyance of prisoners under an order of transfer.

Clause 25 provides that, on the transfer of a prisoner, sentences of imprisonment imposed in New South Wales cease to have effect in New South Wales, except in certain specified circumstances.

Clause 26 makes provision for the supply to a “receiving” State of certain documents and reports relating to a transferred prisoner for the assistance of the authorities in that State.

Clause 27 provides that, on the transfer of a prisoner to New South Wales, any sentences, orders, etc., imposed on or made against him in the State from which he was transferred shall be treated as if they were imposed or made in New South Wales.

Clause 28 contains provisions ancillary to clause 27, including provisions for determining the length of the sentence to be served by a prisoner transferred to New South Wales and the remissions to which such a prisoner is entitled and authorising the Governor to exercise Her Majesty’s prerogative of mercy in respect of such a prisoner.

Clause 29 provides for the termination, or the reduction, of a sentence of imprisonment where the imprisonment is in default of payment of a penalty imposed in another State and the penalty or a part thereof is paid. The clause also provides for the remission to other States of any amounts paid in reduction of penalties.

PART VI.—MISCELLANEOUS.

Clause 30 requires the Attorney General to notify a prisoner of any decision made in respect of him under the proposed Act.

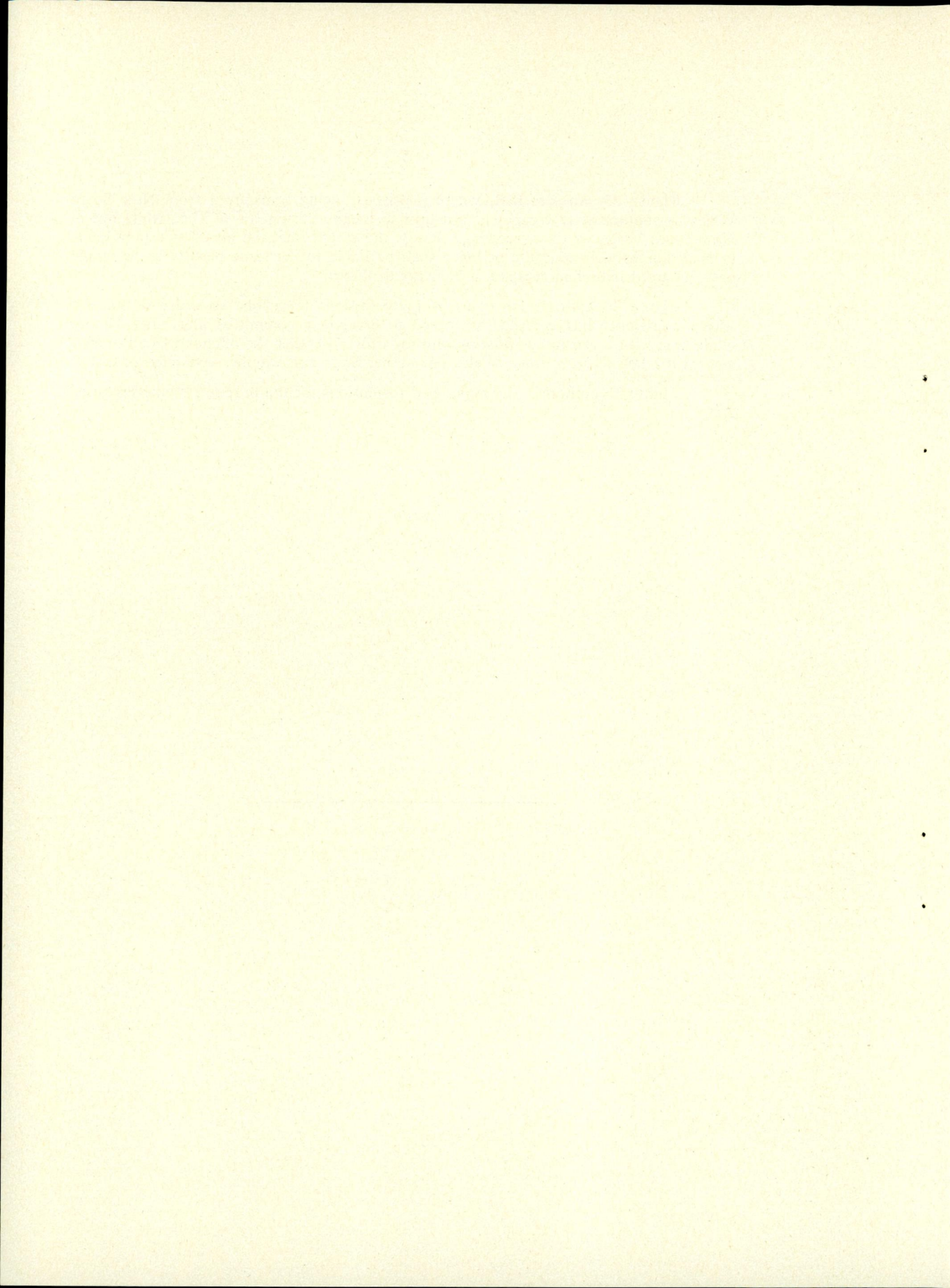
Clause 31 makes provision for the conveyance of a prisoner through, and the custody of a prisoner in, New South Wales during transit between other States.

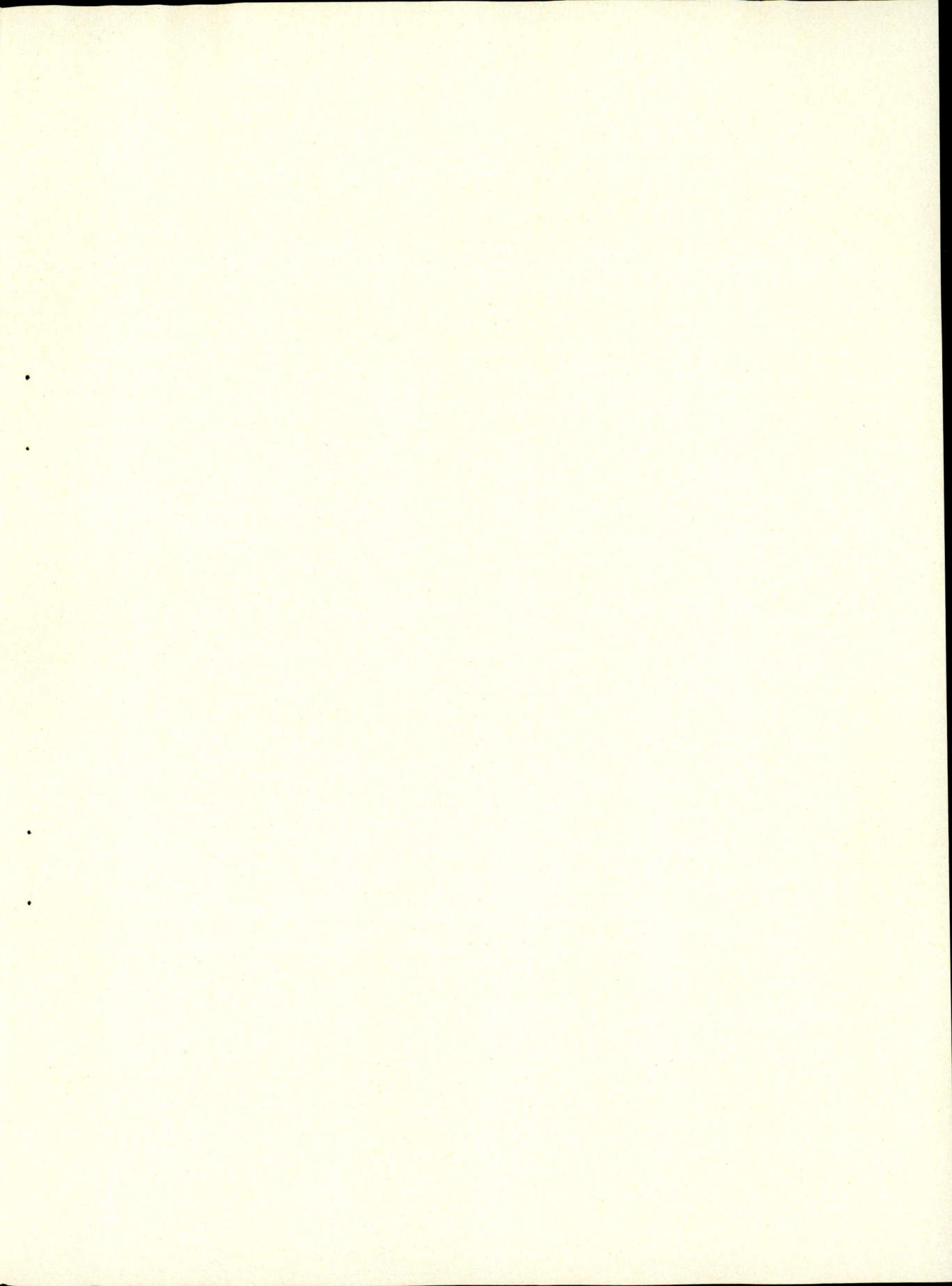
Clause 32 authorises the apprehension of a prisoner who escapes in New South Wales during transit between other States and provides that, upon his apprehension, a court may order his return to the “sending” State. The “sending” State is given 7 days in which to take custody of the prisoner for reconveyance, otherwise he is to be released.

Clause 33 provides that, where a prisoner being transferred from New South Wales to another State escapes or attempts to escape during transit (i.e., while not in New South Wales or the "receiving" State), the escape shall be an offence punishable in New South Wales and the prisoner shall be liable to the same penalty as he would have incurred if he had escaped in New South Wales.

Clause 34 authorises a court of petty sessions to revoke an order of transfer where a prisoner has escaped, attempted to escape or committed any other offence while being conveyed in accordance with the order, whether the offence was an offence against the law of New South Wales or another State and whether convicted or not.

Clause 35 authorises the making of regulations for the purposes of the proposed Act.





PRISONERS (INTERSTATE TRANSFER) BILL, 1982

No. , 1982.

A BILL FOR

An Act relating to the transfer interstate of prisoners.

[MR WALKER—14 *September*, 1982.]

Prisoners (Interstate Transfer).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

5

PART I.

PRELIMINARY.

Short title.

1. This Act may be cited as the "Prisoners (Interstate Transfer) Act, 1982".

10 Commencement.

2. (1) This section and section 1 shall commence on the date of assent to this Act.

(2) Except as provided in subsection (1), the several provisions of this Act shall commence on such day or days as may be appointed by the
15 Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Arrangement.

3. This Act is divided as follows:—

PART I.—PRELIMINARY—ss. 1–6.

20 **PART II.—TRANSFER FOR PRISONER'S WELFARE—ss. 7–11.**

PART III.—TRANSFER FOR TRIAL—ss. 12–19.

PART IV.—TRANSFER BACK TO ORIGINAL STATE—ss. 20–23.

PART V.—EFFECT OF ORDER OF TRANSFER—ss. 24–29.

PART VI.—MISCELLANEOUS—ss. 30–35.

Prisoners (Interstate Transfer).

Administration.

4. This Act shall be administered by the Minister for Corrective Services.

Interpretation.

5. (1) In this Act, except in so far as the context or subject-matter
5 otherwise indicates or requires—

“arrest warrant” means a warrant to apprehend, a warrant to arrest or a
warrant to commit a person to prison, but does not include—

- 10 (a) such a warrant, where the term of imprisonment which the
person to be apprehended, arrested or committed under
the warrant is liable to serve is default imprisonment; or
(b) a warrant to secure the attendance of a witness;

“Attorney-General”—

- 15 (a) in relation to the Australian Capital Territory, means the
Attorney-General of the Commonwealth; and
(b) in relation to the Northern Territory, means the person
holding ministerial office, as defined in section 4 (1) of
the Northern Territory (Self-Government) Act 1978 of
the Parliament of the Commonwealth, who is, under that
20 Act, designated for the time being as the holder of the
office of Attorney-General;

“corresponding court of New South Wales”, in relation to a court of a
participating State, means a court of New South Wales that is,
under an order in force under section 6 (1), declared to be a
corresponding court in relation to the court of the participating
25 State;

“corresponding Minister”, in relation to a participating State, means—

- 30 (a) except where the participating State is the Australian
Capital Territory or the Northern Territory—the Minister
of the Crown of that participating State charged for the
time being with the administration of the interstate law
of that participating State;

Prisoners (Interstate Transfer).

(b) where the participating State is the Australian Capital Territory—the Attorney-General of the Commonwealth; and

(c) where the participating State is the Northern Territory—the person holding ministerial office, as defined in section 4 (1) of the Northern Territory (Self-Government) Act 1978 of the Parliament of the Commonwealth, who is charged for the time being with the administration of the interstate law of the Northern Territory;

“court of petty sessions” means a court of petty sessions constituted by a stipendiary magistrate sitting alone;

“default imprisonment” means imprisonment in default of—

(a) payment of any fine, penalty, costs or other sum of money of any kind imposed or ordered to be paid by any court, judge or justice; or

(b) entering into a recognizance to keep the peace or to be of good behaviour;

“gaoler”, in relation to a prison, means the person who, under the Prisons Act, 1952, is the governor of the prison;

“Governor”—

(a) in relation to the Australian Capital Territory, means the Governor-General of Australia; and

(b) in relation to the Northern Territory, means the Administrator, as defined in section 4 (1) of the Northern Territory (Self-Government) Act 1978 of the Parliament of the Commonwealth;

“indeterminate sentence” means a sentence of or order or direction for imprisonment or detention for life or during the pleasure of Her Majesty or during the pleasure of the Governor or the Governor of a participating State, and includes such a sentence, order or direction imposed, made or given by, or by the operation of, an Act or other law;

“interstate law” means a law that, under an order in force under section 6 (1), is declared to be an interstate law for the purposes of this Act;

Prisoners (Interstate Transfer).

“justice” means justice of the peace;

“order of transfer” means an order issued under section 8, 15, 16 (6), 20, 21 or 22 for the transfer of a prisoner to a participating State;

5 “participating State” means any State or Territory of the Commonwealth in which there is in force an interstate law;

“prison” means a prison as defined in section 4 of the Prisons Act, 1952;

“prison officer” means a person who is a prison officer under the Prisons Act, 1952;

10 “prisoner” means a person serving a sentence of imprisonment in a prison in New South Wales other than—

(a) a person serving or sentenced to serve a sentence of imprisonment imposed for an offence against a law of the Commonwealth; or

15 (b) a person who is a prisoner received from the Australian Capital Territory and who is detained in a prison under Part IX of the Prisons Act, 1952;

20 “remission regulations” means the regulations made under the Prisons Act, 1952, relating to the remission of portions of sentences of imprisonment;

“section 27 sentence” means a sentence of imprisonment deemed by section 27 to have been imposed on a person by a court of New South Wales;

25 “sentence of imprisonment” includes a sentence of penal servitude, a sentence by which default imprisonment is ordered, an indeterminate sentence and a section 27 sentence, but does not include such a sentence while it is being served in an institution within the meaning of the Child Welfare Act, 1939, or detention imposed under any Act relating to the punishment of persons who committed offences when they were under the age of 18 years;

30 “Supreme Court” means the Supreme Court of New South Wales.

(2) Where a justice of a participating State, in the exercise of his powers, issues a warrant of commitment while not constituting a court, the sentence of imprisonment imposed by the warrant shall, for the purposes of 35 this Act, be deemed to have been imposed by a court.

Prisoners (Interstate Transfer).

(3) For the purposes of this Act, a sentence of imprisonment imposed, or originally imposed, by, or by the operation of, an Act or other law of a State or Territory shall, except as prescribed by regulations under this Act, be deemed to have been imposed, or originally imposed, by a
5 court of that State or Territory.

(4) A reference in this Act to an Act of the Parliament of the Commonwealth includes a reference to an Act amending or replacing that Act.

Corresponding courts and interstate laws.

10 6. (1) Subject to subsection (2), the Governor may, by order published in the Gazette, declare that—

(a) a law of a State (other than New South Wales), the Australian Capital Territory or the Northern Territory is an interstate law for the purposes of this Act; and

15 (b) a specified court of New South Wales or any court belonging to a specified class or description of courts of New South Wales is, for the purposes of 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
20 participating State.

(2) An order shall not be made under subsection (1) in respect of a law of another State or a Territory of the Commonwealth unless the Governor is satisfied that that law substantially corresponds to the provisions of this Act and contains provisions that are referred to in this Act as
25 provisions of an interstate law that correspond to specified provisions of this Act.

(3) Notwithstanding subsection (2), an order may be made under subsection (1) in respect of a law of the Australian Capital Territory if the Governor is satisfied that, if that law contained—

30 (a) provisions corresponding to the provisions contained in Part II and other provisions relating to the transfer of prisoners on grounds referred to in section 7; and

Prisoners (Interstate Transfer).

- (b) provisions that are referred to in this Act as provisions of an interstate law that correspond to specified provisions of this Act (those specified provisions being provisions corresponding to provisions referred to in paragraph (a)),
- 5 that law would be a law referred to in subsection (2).

PART II.

TRANSFER FOR PRISONER'S WELFARE.

Proposal to transfer interstate.

7. Where the Minister—

- 10 (a) receives a written request made by a prisoner for the transfer of the prisoner to a participating State; and
- (b) is of the opinion that the prisoner to whom the request relates should be transferred to the participating State in the interests of the welfare of the prisoner,
- 15 the Minister shall give to the corresponding Minister of the participating State a written request asking him to accept the transfer of the prisoner to the participating State.

Order of transfer.

8. (1) Where the Minister—

- 20 (a) has given to a corresponding Minister of a participating State a written request under section 7 in respect of a prisoner; and
- (b) has received from that corresponding Minister written notice (being a notice given under the provision of an interstate law that corresponds to section 10) of his consent to the transfer of the
- 25 prisoner to that participating State,

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

Prisoners (Interstate Transfer).

(2) A decision to issue, or not to issue, an order under subsection (1) is not reviewable by a court or tribunal.

Repeated requests for transfer.

9. A request made by a prisoner for his transfer to a participating State need not be entertained by the Minister if it is made within one year of a similar request made by the prisoner.

Receipt of request for transfer to New South Wales.

10. Where the Minister receives a written request given under the provision of an interstate law that corresponds to section 7 asking him to accept the transfer of an imprisoned person to New South Wales, the Minister shall either refuse to consent, or consent, to the transfer and shall give to the Minister by whom the written request was given written notice of his refusal or consent.

Reports.

15 11. (1) For the purpose of forming an opinion or exercising any discretion under this Part, the Minister may inform himself as he thinks fit and, in particular, may have regard to reports of parole and prison authorities of New South Wales and of any participating State.

20 (2) Reports of parole and prison authorities may be sent to a corresponding Minister for the purpose of assisting him to form an opinion or to exercise a discretion under the interstate law administered by him.

Prisoners (Interstate Transfer).

PART III.**TRANSFER FOR TRIAL.****Request for transfer of prisoner to participating State.**

12. (1) Where a person who is the subject of an arrest warrant issued in
5 accordance with the law of a participating State is a prisoner and the Attorney
General receives—

- (a) from the Attorney-General of the participating State a written
request given under the provision of an interstate law that corres-
ponds to section 18, accompanied by a copy of the warrant; or
- 10 (b) a written request made by the prisoner to the Minister and referred
to the Attorney General,

being in either case a request for the transfer of the prisoner to the par-
ticipating State to be dealt with according to law, the Attorney General shall
either refuse to consent, or consent, to the transfer and shall give to the
15 Attorney-General of the participating State or to the Minister, as the case
may be, written notice of his refusal or consent.

(2) Where the Minister receives a written request made by a prisoner
for the transfer of the prisoner to a participating State to be dealt with
according to law, the Minister shall refer the written request to the Attorney
20 General.

(3) A request made by a prisoner for his transfer to a participating
State need not be referred by the Minister to the Attorney General if it is
made within one year of a similar request made by the prisoner.

Necessary consents.

25 13. (1) An order of transfer shall be issued under this Part only if—

- (a) the Attorney General has, in writing, consented to the transfer of
the prisoner to whom the order relates to the participating State;
and
- (b) the Attorney-General of a participating State has, in writing, either
30 consented to or requested that transfer.

Prisoners (Interstate Transfer).

(2) A certificate signed by a prescribed officer certifying that any consent or request required under subsection (1) for the transfer of a prisoner to a participating State specified in the certificate 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.

Prisoner to be brought before court of petty sessions.

14. (1) A court of petty sessions, upon proof to its satisfaction that the conditions precedent specified in section 13 (1) have been complied with, shall by order in writing direct the gaoler of the prison where the prisoner to whom the certificate relates is then imprisoned to bring the prisoner before a court of petty sessions specified in the order on a date and at a time so specified for determination as to whether an order of transfer shall be issued.

(2) Notice of an order made under subsection (1) shall be served on the Attorney General and on the prisoner to whom the order relates.

(3) At a hearing for the purpose of determining whether an order for the transfer of a prisoner shall be issued—

- (a) the prisoner shall be entitled to be represented by a legal practitioner; and
- (b) the Attorney General shall be entitled to appear or be represented.

Order of transfer.

15. The court of petty sessions before which the prisoner is brought pursuant to an order made under section 14 (1) shall—

- (a) issue an order for the transfer of the prisoner to the participating State specified in the certificate issued in accordance with section 13 (2) in respect of the prisoner; or
- (b) if the court, on the application of the prisoner, is satisfied that it would be harsh or oppressive or not in the interests of justice to transfer the prisoner to that participating State or that the trivial nature of the charge or complaint against the prisoner does not warrant the transfer, refuse to issue such an order.

Prisoners (Interstate Transfer).

Review of decision of court of petty sessions.

16. (1) Where the Attorney General, the Attorney-General of the participating State or the prisoner is dissatisfied with the decision of the court of petty sessions under section 15, the Attorney General, the
5 Attorney-General of the participating State or the prisoner, as the case may be, may, within 14 days of the decision, apply to the Supreme Court for a review of the decision and the Supreme Court may review the decision.

(2) The prisoner shall be entitled to be present or be represented by a legal practitioner at the review and for that purpose any court or a
10 person authorised by the rules of the Supreme Court may by order in writing direct the gaoler of the prison where the prisoner is then imprisoned to bring the prisoner to the place of the review specified in the order on a date and at a time so specified.

(3) The Attorney General and the Attorney-General of the
15 participating State shall be entitled to appear or be represented at the review.

(4) The review of the decision shall be by way of rehearing on the evidence, if any, given before the court of petty sessions and on any evidence in addition to the evidence so given.

(5) Upon the review of a decision, the Supreme Court may confirm
20 the decision or quash the decision and substitute a new decision in its stead.

(6) For the purpose of giving effect to any such substituted decision the Supreme Court may issue an order for the transfer of the prisoner to the appropriate participating State.

Prisoner brought to be returned to custody.

25 17. Where an order is made under section 14 (1) or 16 (2)—

- (a) the gaoler to whom it is directed shall execute the order or may charge any prison officer or member of the police force with the execution of the order; and

Prisoners (Interstate Transfer).

- 5 (b) the prisoner shall, while the order is being executed, be kept in the custody of the gaoler, prison officer or member of the police force acting under or in execution of the order, who shall in due course return the prisoner to the custody from which he has been brought.

Request for transfer of imprisoned person to New South Wales.

- 10 **18.** Where a person who is the subject of an arrest warrant issued in accordance with the laws of New South Wales is imprisoned in a participating State, the Attorney General may give to the Attorney-General of the participating State a written request, accompanied by a copy of the warrant, for the transfer of the person to New South Wales to be dealt with according to law.

Request for transfer to New South Wales by imprisoned person.**19. Where—**

- 15 (a) a person is imprisoned in a participating State;
- (b) he is the subject of an arrest warrant issued in accordance with the laws of New South Wales; and
- 20 (c) the Attorney-General of the participating State has given a notice, in writing, to the Attorney General that he has consented to a request made by the person to be transferred to New South Wales to enable him to be dealt with according to law,

the Attorney General shall either refuse to consent, or consent, to the transfer and shall give to the Attorney-General of the participating State notice, in writing, of his refusal or consent.

Prisoners (Interstate Transfer).

PART IV.**TRANSFER BACK TO ORIGINAL STATE.****Return of prisoner to participating State if no sentence or shorter sentence in New South Wales.**

5 **20.** Where a person is transferred to New South Wales from a participating State pursuant to an order issued under the provision of the interstate law of that participating State that corresponds to section 15 or 16 (6) and, so far as the Minister is aware, every complaint or information alleging any offence by the person against the law of New South Wales has
10 been finally dealt with according to law and as a result—

- (a) the person did not become liable to serve any sentence of imprisonment in New South Wales; or
- (b) the person did become liable to serve in New South Wales one or
15 more sentences of imprisonment under which the period of imprisonment remaining to be served is shorter than the period of imprisonment remaining to be served by him under any section 27 sentence or section 27 sentences,

the Minister shall, subject to section 23, issue an order for the transfer of the person to the participating State.

20 Transfer to attend appeal.

21. Where a person is transferred to New South Wales from a participating State pursuant to an order issued under the provision of an interstate law that corresponds to section 8, 15 or 16 (6) and—

- (a) so far as the Minister is aware, every complaint or information
25 alleging any offence by the person against the law of New South Wales has been finally dealt with;
- (b) the person is serving a sentence of imprisonment;
- (c) under a law of the participating State the person is entitled to be present at proceedings in the participating State with respect to—
30 (i) any application for leave or other proceeding preliminary or incidental to an appeal against or review of; or

Prisoners (Interstate Transfer).

(ii) an appeal against or review of,
a conviction of him, or sentence of imprisonment imposed on him,
or both; and

5 (d) the person applies in writing to the Minister to be present at the
proceedings,

the Minister shall, unless in his opinion it is contrary to the public interest to
do so, issue an order for the transfer of the person to the participating State.

Transfer after attending appeal.**22. Where—**

10 (a) a person is, pursuant to an order issued under the provision of an
interstate law that corresponds to section 21, transferred to New
South Wales from a participating State to enable him to attend
proceedings in New South Wales;

15 (b) those proceedings (including any retrial that may have been
ordered and any appeal or review arising from those proceedings
or any such retrial) have been determined; and

(c) either—

20 (i) the person is liable to serve a section 27 sentence or section
27 sentences and is not liable to serve in New South Wales
any other sentence of imprisonment; or

25 (ii) the period of imprisonment remaining to be served by the
person under any section 27 sentence or section 27
sentences is longer than any period of imprisonment which
he is liable to serve in New South Wales under any other
sentence or sentences of imprisonment,

the Minister shall, subject to section 23, issue an order for the transfer
of the person to the participating State.

*Prisoners (Interstate Transfer).***Provisions ancillary to sections 20, 21 and 22.**

23. (1) The provisions of section 20 or 22 do not apply in respect of a person if—

- 5 (a) the Minister receives a written request made by the person, being a request for the person to serve his imprisonment in New South Wales, and the Minister and the corresponding Minister of the participating State from which the person was transferred agree in writing that it is in the interests of the welfare of the person that he should serve his imprisonment in New South Wales; or
- 10 (b) an indeterminate sentence (not being a section 27 sentence) is imposed upon the person by a court of New South Wales.

(2) For the purpose of sections 20 and 21, a complaint or information alleging an offence by a person is finally dealt with if—

- (a) the person is tried for the offence and—
 - 15 (i) the time or extended time, if any, fixed by or under any Act, within which an appeal against, or an application for the review of, the decision given on the trial may be lodged, or within which a retrial may be ordered, has expired; and
 - 20 (ii) any appeal or application for review in respect of the decision given on the trial has been determined or withdrawn and proceedings in respect of any retrial and any decision given on the 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.

25 **(3)** For the purpose of determining which of the periods referred to in section 20 (b) or 22 (c) (ii) is the shorter or longer—

- (a) any entitlement to remissions shall be disregarded;
- (b) a finite period of imprisonment shall be treated as being shorter than a period to be served under an indeterminate sentence;
- 30 (c) the expression “sentences of imprisonment” in section 20 (b), and the expression “other sentence or sentences of imprisonment” in section 22 (c) (ii), include a section 27 sentence that was originally imposed by a court of New South Wales;

Prisoners (Interstate Transfer).

- (d) the expression "section 27 sentence or section 27 sentences" in sections 20 (b) and 22 (c) (ii) does not include a section 27 sentence that was originally imposed by a court of New South Wales; and
- 5 (e) where a sentence of imprisonment imposed upon a person in New South Wales (not being a section 27 sentence) is cumulative with a section 27 sentence or section 27 sentences originally imposed by a court other than a court of New South Wales, that section 27 sentence or those section 27 sentences shall be deemed—
- 10 (i) not to be a section 27 sentence or section 27 sentences, as the case may be; and
- (ii) to be a sentence or sentences, as the case may be, which the person is liable to serve in New South Wales.

PART V.

15 EFFECT OF ORDER OF TRANSFER.

Transfer in custody of escort.

24. (1) An order of transfer—

- 20 (a) shall direct the gaoler of the prison where the prisoner who is the subject of the order is then imprisoned to deliver the prisoner into the custody of an escort and shall be sufficient authority to the gaoler so to deliver the prisoner; and
- 25 (b) authorises the escort to take and keep custody of the prisoner for the purpose of conveying him from New South Wales to such prison in a participating State as is specified in the order and there delivering him into the custody of the gaoler of that prison.

(2) A reference in subsection (1) to an escort is a reference to a prison officer, a member of the police force or a person appointed by the Minister by an instrument in writing to be an escort for the purposes of this Act, or any 2 or more of them.

Prisoners (Interstate Transfer).

(3) Where—

- (a) under an interstate law an order is issued for the transfer to New South Wales of a person imprisoned in the participating State where the order is issued; and
- 5 (b) pursuant to the order an escort brings the person into New South Wales,
the escort, while in New South Wales, is authorised to hold, take and keep custody of the person for the purpose of conveying him to such prison in New South Wales as is specified in the order and there delivering him into
10 the custody of the gaoler.

Transfer of sentence with prisoner.

25. Where pursuant to an order of transfer a prisoner is conveyed to a participating State specified in the order, then from the time the prisoner arrives in the participating State every sentence of imprisonment imposed
15 upon the prisoner by a court of New South Wales, including a section 27 sentence, ceases to have effect in New South Wales except—

- (a) for the purpose of any appeal against or review of any conviction, judgment or sentence made, imposed or fixed by a court of New South Wales;
- 20 (b) in relation to any period of imprisonment served by the prisoner in New South Wales; or
- (c) in relation to the remittance of money to the Minister which is paid in discharge or partial discharge of a sentence of default imprisonment originally imposed upon the prisoner by a court
25 of New South Wales.

Information to be sent to the participating State.

26. (1) Where pursuant to an order of transfer a prisoner is conveyed to a participating State, the Minister shall cause to be sent to the corresponding Minister of the participating State or to some person for the time being
30 designated by him—

- (a) the order of transfer;

Prisoners (Interstate Transfer).

- (b) the warrant of, or other authority for, commitment for any sentence of imprisonment which the prisoner was, immediately before he left New South Wales, serving or liable to serve;
- 5 (c) a report relating to the prisoner, which shall contain such information and be accompanied by such documents available in New South Wales as appear to be likely to be of assistance to any court, authority or officer in the participating State and shall include details of convictions, sentences of imprisonment, minimum terms of imprisonment, periods of imprisonment served, entitlements to remissions and grants of parole and a copy of any record relating to the prisoner's conduct; and
- 10 (d) details, accompanied by any relevant orders or other documents, of any subsequent variations to the information provided in accordance with this subsection, whether arising from any appeal or review or otherwise.
- 15

(2) A reference in subsection (1) to an order or other document is a reference to either the original or a copy certified in the prescribed manner.

Sentence deemed to have been imposed in this State.

20 **27.** Where under an interstate law an order is issued for the transfer to New South Wales of a person imprisoned in a participating State and the person is brought into New South Wales pursuant to the order, then from the time the person arrives in New South Wales—

- 25 (a) any sentence of imprisonment imposed upon him by a court of the participating State (including any sentence of imprisonment deemed by the provision of an interstate law that corresponds to this section to have been imposed by a court of the participating State) shall be deemed to have been imposed upon him; and
- (b) any direction or order given or made by a court of the participating State with respect to when that sentence shall commence shall, so far as practicable, be deemed to have been given or made,
- 30

by a corresponding court of New South Wales and, except as otherwise provided in this Act, shall be given effect to in New South Wales, and the laws of New South Wales shall apply, as if such a court had had power to

Prisoners (Interstate Transfer).

impose the sentence and give or make the direction or order, if any, and did in fact impose the sentence and give or make the direction or order, if any.

Provisions relating to section 27 sentences.

5 **28. (1)** Where under a law of a participating State there has been fixed by a court in respect of a section 27 sentence a minimum term of imprisonment (being a shorter term than the section 27 sentence), during which minimum term the person subject to the sentence is not eligible to be released on parole, then, except as otherwise provided in this Act, that
10 minimum term shall be deemed likewise to have been fixed by the corresponding court of New South Wales.

(2) Where a section 27 sentence or a minimum term deemed under subsection (1) to have been fixed by a corresponding court of New South Wales—

15 (a) is varied or quashed on a review by or appeal to a court of the participating State where the sentence or minimum term was imposed or fixed, the sentence or minimum term shall be deemed to have been varied to the same extent, or to have been quashed, by a corresponding court of New South Wales; or

20 (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 shall be 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 New South Wales.

25 **(3)** Nothing in this Act operates to permit in New South Wales 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.

Prisoners (Interstate Transfer).

(4) Where a section 27 sentence is an indeterminate sentence requiring that the person who is the subject of the sentence be detained during the pleasure of Her Majesty or during the pleasure of the Governor of the participating State in which the sentence was imposed, the person
5 shall be detained during the Governor's pleasure.

(5) The Governor—

- (a) may exercise the royal prerogative of mercy in favour of a person who is subject to a section 27 sentence as if the person were—
- 10 (i) an offender convicted in a court of New South Wales; or
- (ii) an offender convicted within New South Wales before a judge or magistrate of New South Wales; and
- (b) in exercising that prerogative, may give effect to any indication given by the Governor of the participating State in which the sentence of imprisonment was imposed upon that person as to
15 what the Governor of the participating State may have done had the person not been transferred to New South Wales.

(6) A person who is subject to a section 27 sentence—

- (a) shall be deemed to have served in New South Wales such period of the section 27 sentence as, up to the time of his transfer to New South Wales, he had served in respect of that sentence in a participating State (including any period deemed by the provision of an interstate law that corresponds to this paragraph to have been served in a participating State and any period spent in custody while being transferred to a prison in New South Wales); and
- 20
- (b) shall be deemed to be entitled under the remission regulations to any remission of his sentence of imprisonment for which, up to the time of his transfer to New South Wales, he 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) and any further remission of sentence under the remission regulations shall be calculated from the time of the arrival of the person in New South Wales.
- 25
- 30

Prisoners (Interstate Transfer).

Section 27 sentences—default imprisonment.

29. (1) Where a section 27 sentence is a sentence by which default imprisonment was ordered and any portion of the amount in default of payment of which the default imprisonment was ordered is paid by or on behalf of the prisoner who is the subject of the sentence to the gaoler of the prison in which he is imprisoned—

- 10 (a) the term of default imprisonment shall be 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, subject to any other sentence of imprisonment, the prisoner shall be entitled to be released on the expiry of the reduced period; and
- 15 (b) the portion so paid shall be remitted by the gaoler to the corresponding Minister of the participating State where the sentence, by which default imprisonment was ordered, was originally imposed.

(2) Where a section 27 sentence is a sentence by which default imprisonment was ordered and, on a review by or an appeal to a court of the participating State where the sentence was imposed or as a result of any other action taken by any person or authority in that participating State, the amount in default of payment of which the default imprisonment was ordered is reduced or the obligation to pay that amount is quashed—

- 25 (a) the term of default imprisonment shall, where the amount is reduced, be 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 amount that was payable and, subject to any other sentence of imprisonment that may be imposed on him, the prisoner shall be entitled to be released on the expiry of that reduced period; or
- 30 (b) the prisoner shall, where the obligation to pay the amount is quashed, thereupon, subject to any other sentence of imprisonment that may be imposed on him, be entitled to be released.
-

Prisoners (Interstate Transfer).

PART VI.

MISCELLANEOUS.

Notification to prisoners of certain decisions.

30. The Attorney General shall, when he makes a decision in respect
5 of a prisoner for the purposes of this Act, advise that prisoner of that
decision.

Lawful custody for transit through New South Wales.

31. (1) Where, in relation to a person imprisoned in a participating
State, an order is made under an interstate law for the transfer of that person
10 to another participating State and in the course of conveying the person to the
participating State pursuant to the order an escort brings the person into
New South Wales, then—

(a) while in New South Wales the escort is authorised to hold, take
and keep custody of the person for the purpose of conveying him
15 from New South Wales to such prison in the participating State as
is specified in the order and there delivering him into the custody
of the gaoler; and

(b) any gaoler is authorised upon—

(i) the request of the escort; and
20 (ii) delivery to the gaoler by the escort of a copy of the order
of transfer certified by the escort to be such a copy,
to receive the person and to detain him in custody as though he
were a prisoner for such time as the escort requests and is
reasonably necessary for the purpose of executing the order.

25 (2) Where a gaoler has the custody of a person under subsection
(1) (b), the gaoler is authorised, upon the request of an escort and produc-
tion by the escort of the order of transfer relating to the person, to deliver
the person into the custody of the escort.

Prisoners (Interstate Transfer).

Escape from custody of person being transferred.

32. (1) A person in the custody of an escort pursuant to section 31 who escapes from that custody may be apprehended without warrant by the escort, any member of the police force or any other person.

5 **(2)** Where a person in custody pursuant to section 31—

(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
10 under his hand—

(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.

15 **(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 a prisoner until he is delivered into the custody of an escort in accordance with that warrant or until the expiration
20 of a period of 7 days from the issuing of the warrant, 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 from the issuing of the warrant, the warrant shall have no further effect.

25 **(6)** A reference in subsection (2), (4) or (5) to an escort in relation to a person who was, at the time of his escape or attempt to escape, being conveyed under an order of transfer issued in a participating State is a reference to—

30 (a) the escort who had the custody of that person pursuant to that order;

(b) a prison officer or a member of the police force of the participating State; or

Prisoners (Interstate Transfer).

- (c) a person appointed by the corresponding Minister of the participating State by an instrument in writing to be an escort for the purpose of conveying that person to the participating State,

or any 2 or more of them.

5 Escape from custody—penalty.

33. (1) Any person who, being a person in custody under an order of transfer, escapes or attempts to escape from that custody while he is not within New South Wales or the participating State to which he was being conveyed under that order is guilty of a felony and is liable to penal servitude for a term not exceeding 7 years, to be served after the expiration of any term of imprisonment, penal servitude or detention to which he was subject at the time of his escape or attempt to escape.

(2) Without limiting the generality of section 447A of the Crimes Act, 1900, that section applies to a person—

- 15 (a) who is in custody under an order of transfer; and
- (b) who escapes from that custody while he is not within New South Wales or the participating State to which he was being conveyed under that order,

in the same way as it applies to a person who escapes from lawful custody while undergoing a sentence involving deprivation of liberty in New South Wales.

Revocation of order of transfer on escape from custody.

34. Any court of petty sessions may revoke an order of transfer if it appears to the court, on application made to it under this section by the holder of a prescribed office or position or by a person who belongs to a prescribed class of persons, that the person in respect of whom the order was issued has, in the course of his being conveyed in accordance with that order, committed—

- (a) the offence of escaping or attempting to escape; or
- 30 (b) any other offence,

Prisoners (Interstate Transfer).

whether—

- (c) the offence was an offence against the law of New South Wales or of a participating State; or
 - (d) a charge has been laid or a conviction secured in respect of the offence or not.
- 5

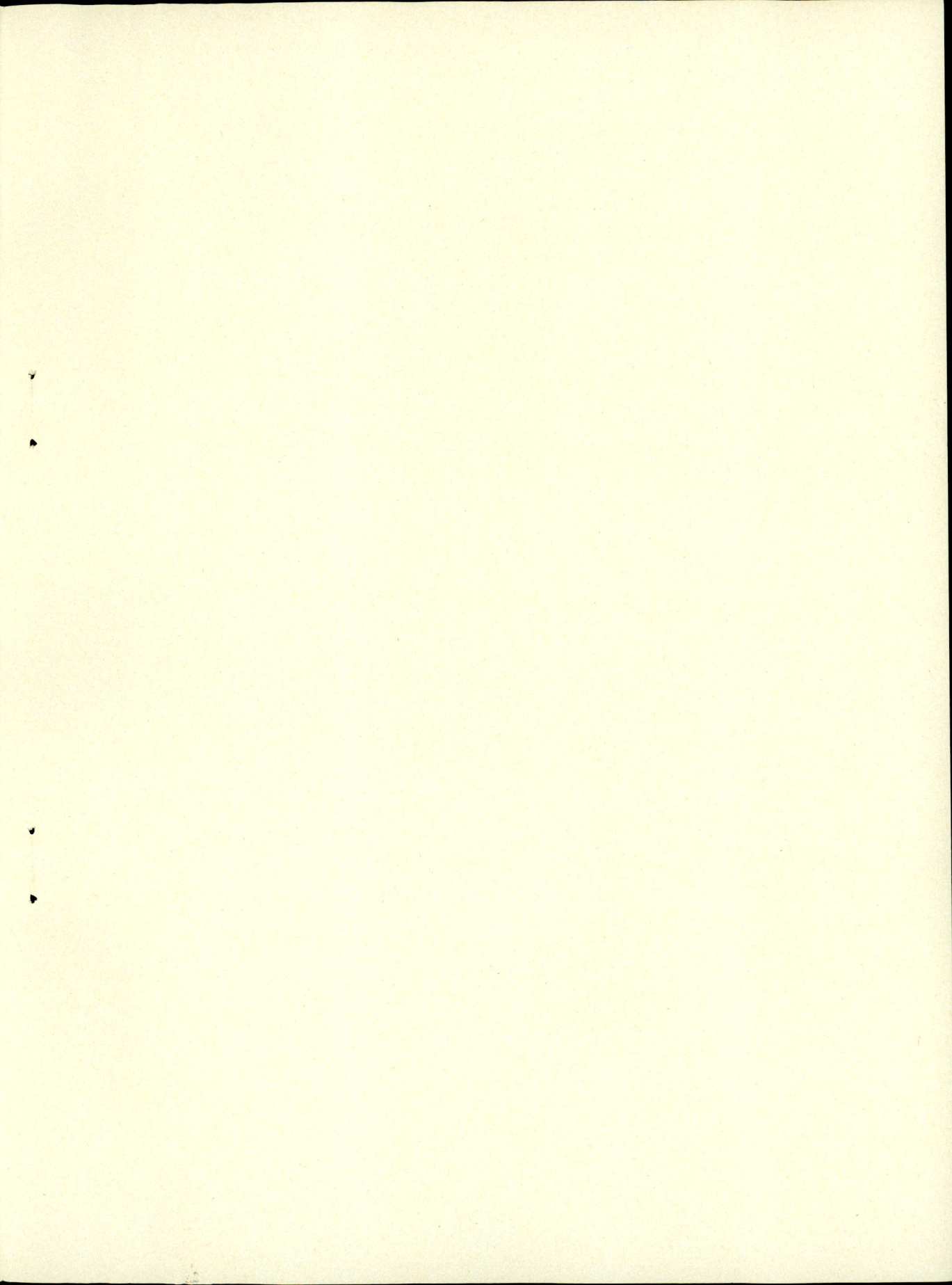
Regulations.

35. 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
10 carrying out or giving effect to this Act.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1982

(80c)



PRISONERS (INTERSTATE TRANSFER) ACT, 1982, No. 104

New South Wales



ANNO TRICESIMO PRIMO

ELIZABETHÆ II REGINÆ

Act No. 104, 1982.

An Act relating to the transfer interstate of prisoners. [Assented to, 8th November, 1982.]

Prisoners (Interstate Transfer).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY.

Short title.

1. This Act may be cited as the "Prisoners (Interstate Transfer) Act, 1982".

Commencement.

2. (1) This section and section 1 shall commence on the date of assent to this Act.

(2) Except as provided in subsection (1), the several provisions of this Act shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Arrangement.

3. This Act is divided as follows:—

PART I.—PRELIMINARY—ss. 1–6.

PART II.—TRANSFER FOR PRISONER'S WELFARE—ss. 7–11.

PART III.—TRANSFER FOR TRIAL—ss. 12–19.

PART IV.—TRANSFER BACK TO ORIGINAL STATE—ss. 20–23.

PART V.—EFFECT OF ORDER OF TRANSFER—ss. 24–29.

PART VI.—MISCELLANEOUS—ss. 30–35.

Prisoners (Interstate Transfer).

Administration.

4. This Act shall be administered by the Minister for Corrective Services.

Interpretation.

5. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

“arrest warrant” means a warrant to apprehend, a warrant to arrest or a warrant to commit a person to prison, but does not include—

- (a) such a warrant, where the term of imprisonment which the person to be apprehended, arrested or committed under the warrant is liable to serve is default imprisonment; or
- (b) a warrant to secure the attendance of a witness;

“Attorney-General”—

- (a) in relation to the Australian Capital Territory, means the Attorney-General of the Commonwealth; and
- (b) in relation to the Northern Territory, means the person holding ministerial office, as defined in section 4 (1) of the Northern Territory (Self-Government) Act 1978 of the Parliament of the Commonwealth, who is, under that Act, designated for the time being as the holder of the office of Attorney-General;

“corresponding court of New South Wales”, in relation to a court of a participating State, means a court of New South Wales that is, under an order in force under section 6 (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—

- (a) except where the participating State is the Australian Capital Territory or the Northern Territory—the Minister of the Crown of that participating State charged for the time being with the administration of the interstate law of that participating State;

Prisoners (Interstate Transfer).

- (b) where the participating State is the Australian Capital Territory—the Attorney-General of the Commonwealth; and
- (c) where the participating State is the Northern Territory—the person holding ministerial office, as defined in section 4 (1) of the Northern Territory (Self-Government) Act 1978 of the Parliament of the Commonwealth, who is charged for the time being with the administration of the interstate law of the Northern Territory;

“court of petty sessions” means a court of petty sessions constituted by a stipendiary magistrate sitting alone;

“default imprisonment” means imprisonment in default of—

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

“gaoler”, in relation to a prison, means the person who, under the Prisons Act, 1952, is the governor of the prison;

“Governor”—

- (a) in relation to the Australian Capital Territory, means the Governor-General of Australia; and
- (b) in relation to the Northern Territory, means the Administrator, as defined in section 4 (1) of the Northern Territory (Self-Government) Act 1978 of the Parliament of the Commonwealth;

“indeterminate sentence” means a sentence of or order or direction for imprisonment or detention for life or during the pleasure of Her Majesty or during the pleasure of the Governor or the Governor of a participating State, and includes such a sentence, order or direction imposed, made or given by, or by the operation of, an Act or other law;

“interstate law” means a law that, under an order in force under section 6 (1), is declared to be an interstate law for the purposes of this Act;

Prisoners (Interstate Transfer).

"justice" means justice of the peace;

"order of transfer" means an order issued under section 8, 15, 16 (6), 20, 21 or 22 for the transfer of a prisoner to a participating State;

"participating State" means any State or Territory of the Commonwealth in which there is in force an interstate law;

"prison" means a prison as defined in section 4 of the Prisons Act, 1952;

"prison officer" means a person who is a prison officer under the Prisons Act, 1952;

"prisoner" means a person serving a sentence of imprisonment in a prison in New South Wales other than—

(a) a person serving or sentenced to serve a sentence of imprisonment imposed for an offence against a law of the Commonwealth; or

(b) a person who is a prisoner received from the Australian Capital Territory and who is detained in a prison under Part IX of the Prisons Act, 1952;

"remission regulations" means the regulations made under the Prisons Act, 1952, relating to the remission of portions of sentences of imprisonment;

"section 27 sentence" means a sentence of imprisonment deemed by section 27 to have been imposed on a person by a court of New South Wales;

"sentence of imprisonment" includes a sentence of penal servitude, a sentence by which default imprisonment is ordered, an indeterminate sentence and a section 27 sentence, but does not include such a sentence while it is being served in an institution within the meaning of the Child Welfare Act, 1939, or detention imposed under any Act relating to the punishment of persons who committed offences when they were under the age of 18 years;

"Supreme Court" means the Supreme Court of New South Wales.

(2) Where a justice of a participating State, in the exercise of his powers, issues a warrant of commitment while not constituting a court, the sentence of imprisonment imposed by the warrant shall, for the purposes of this Act, be deemed to have been imposed by a court.

Prisoners (Interstate Transfer).

(3) For the purposes of this Act, a sentence of imprisonment imposed, or originally imposed, by, or by the operation of, an Act or other law of a State or Territory shall, except as prescribed by regulations under this Act, be deemed to have been imposed, or originally imposed, by a court of that State or Territory.

(4) A reference in this Act to an Act of the Parliament of the Commonwealth includes a reference to an Act amending or replacing that Act.

Corresponding courts and interstate laws.

6. (1) Subject to subsection (2), the Governor may, by order published in the Gazette, declare that—

- (a) a law of a State (other than New South Wales), the Australian Capital Territory or the Northern Territory is an interstate law for the purposes of this Act; and
- (b) a specified court of New South Wales or any court belonging to a specified class or description of courts of New South Wales is, for the purposes of 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.

(2) An order shall not be made under subsection (1) in respect of a law of another State or a Territory of the Commonwealth unless the Governor is satisfied that that 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) Notwithstanding subsection (2), an order may be made under subsection (1) in respect of a law of the Australian Capital Territory if the Governor is satisfied that, if that law contained—

- (a) provisions corresponding to the provisions contained in Part II and other provisions relating to the transfer of prisoners on grounds referred to in section 7; and

Prisoners (Interstate Transfer).

- (b) provisions that are referred to in this Act as provisions of an interstate law that correspond to specified provisions of this Act (those specified provisions being provisions corresponding to provisions referred to in paragraph (a)),
that law would be a law referred to in subsection (2).

PART II.

TRANSFER FOR PRISONER'S WELFARE.

Proposal to transfer interstate.

7. Where the Minister—

- (a) receives a written request made by a prisoner for the transfer of the prisoner to a participating State; and
- (b) is of the opinion that the prisoner to whom the request relates should be transferred to the participating State in the interests of the welfare of the prisoner,

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

Order of transfer.

8. (1) Where the Minister—

- (a) has given to a corresponding Minister of a participating State a written request under section 7 in respect of a prisoner; and
- (b) has received from that corresponding Minister written notice (being a notice given under the provision of an interstate law that corresponds to section 10) of his consent to the transfer of the prisoner to that participating State,

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

Prisoners (Interstate Transfer).

(2) A decision to issue, or not to issue, an order under subsection (1) is not reviewable by a court or tribunal.

Repeated requests for transfer.

9. A request made by a prisoner for his transfer to a participating State need not be entertained by the Minister if it is made within one year of a similar request made by the prisoner.

Receipt of request for transfer to New South Wales.

10. Where the Minister receives a written request given under the provision of an interstate law that corresponds to section 7 asking him to accept the transfer of an imprisoned person to New South Wales, the Minister shall either refuse to consent, or consent, to the transfer and shall give to the Minister by whom the written request was given written notice of his refusal or consent.

Reports.

11. (1) For the purpose of forming an opinion or exercising any discretion under this Part, the Minister may inform himself as he thinks fit and, in particular, may have regard to reports of parole and prison authorities of New South Wales and of any participating State.

(2) Reports of parole and prison authorities may be sent to a corresponding Minister for the purpose of assisting him to form an opinion or to exercise a discretion under the interstate law administered by him.

Prisoners (Interstate Transfer).

PART III.**TRANSFER FOR TRIAL.****Request for transfer of prisoner to participating State.**

12. (1) Where a person who is the subject of an arrest warrant issued in accordance with the law of a participating State is a prisoner and the Attorney General receives—

- (a) from the Attorney-General of the participating State a written request given under the provision of an interstate law that corresponds to section 18, accompanied by a copy of the warrant; or
- (b) a written request made by the prisoner to the Minister and referred to the Attorney General,

being in either case a request for the transfer of the prisoner to the participating State to be dealt with according to law, the Attorney General shall either refuse to consent, or consent, to the transfer and shall give to the Attorney-General of the participating State or to the Minister, as the case may be, written notice of his refusal or consent.

(2) Where the Minister receives a written request made by a prisoner for the transfer of the prisoner to a participating State to be dealt with according to law, the Minister shall refer the written request to the Attorney General.

(3) A request made by a prisoner for his transfer to a participating State need not be referred by the Minister to the Attorney General if it is made within one year of a similar request made by the prisoner.

Necessary consents.

13. (1) An order of transfer shall be issued under this Part only if—

- (a) the Attorney General has, in writing, consented to the transfer of the prisoner to whom the order relates to the participating State; and
- (b) the Attorney-General of a participating State has, in writing, either consented to or requested that transfer.

Prisoners (Interstate Transfer).

(2) A certificate signed by a prescribed officer certifying that any consent or request required under subsection (1) for the transfer of a prisoner to a participating State specified in the certificate 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.

Prisoner to be brought before court of petty sessions.

14. (1) A court of petty sessions, upon proof to its satisfaction that the conditions precedent specified in section 13 (1) have been complied with, shall by order in writing direct the gaoler of the prison where the prisoner to whom the certificate relates is then imprisoned to bring the prisoner before a court of petty sessions specified in the order on a date and at a time so specified for determination as to whether an order of transfer shall be issued.

(2) Notice of an order made under subsection (1) shall be served on the Attorney General and on the prisoner to whom the order relates.

(3) At a hearing for the purpose of determining whether an order for the transfer of a prisoner shall be issued—

- (a) the prisoner shall be entitled to be represented by a legal practitioner; and
- (b) the Attorney General shall be entitled to appear or be represented.

Order of transfer.

15. The court of petty sessions before which the prisoner is brought pursuant to an order made under section 14 (1) shall—

- (a) issue an order for the transfer of the prisoner to the participating State specified in the certificate issued in accordance with section 13 (2) in respect of the prisoner; or
- (b) if the court, on the application of the prisoner, is satisfied that it would be harsh or oppressive or not in the interests of justice to transfer the prisoner to that participating State or that the trivial nature of the charge or complaint against the prisoner does not warrant the transfer, refuse to issue such an order.

Prisoners (Interstate Transfer).

Review of decision of court of petty sessions.

16. (1) Where the Attorney General, the Attorney-General of the participating State or the prisoner is dissatisfied with the decision of the court of petty sessions under section 15, the Attorney General, the Attorney-General of the participating State or the prisoner, as the case may be, may, within 14 days of the decision, apply to the Supreme Court for a review of the decision and the Supreme Court may review the decision.

(2) The prisoner shall be entitled to be present or be represented by a legal practitioner at the review and for that purpose any court or a person authorised by the rules of the Supreme Court may by order in writing direct the gaoler of the prison where the prisoner is then imprisoned to bring the prisoner to the place of the review specified in the order on a date and at a time so specified.

(3) The Attorney General and the Attorney-General of the participating State shall be entitled to appear or be represented at the review.

(4) The review of the decision shall be by way of rehearing on the evidence, if any, given before the court of petty sessions and on any evidence in addition to the evidence so given.

(5) Upon the review of a decision, the Supreme Court may confirm the decision or quash the decision and substitute a new decision in its stead.

(6) For the purpose of giving effect to any such substituted decision the Supreme Court may issue an order for the transfer of the prisoner to the appropriate participating State.

Prisoner brought to be returned to custody.

17. Where an order is made under section 14 (1) or 16 (2)—

- (a) the gaoler to whom it is directed shall execute the order or may charge any prison officer or member of the police force with the execution of the order; and

Prisoners (Interstate Transfer).

- (b) the prisoner shall, while the order is being executed, be kept in the custody of the gaoler, prison officer or member of the police force acting under or in execution of the order, who shall in due course return the prisoner to the custody from which he has been brought.

Request for transfer of imprisoned person to New South Wales.

18. Where a person who is the subject of an arrest warrant issued in accordance with the laws of New South Wales is imprisoned in a participating State, the Attorney General may give to the Attorney-General of the participating State a written request, accompanied by a copy of the warrant, for the transfer of the person to New South Wales to be dealt with according to law.

Request for transfer to New South Wales by imprisoned person.**19. Where—**

- (a) a person is imprisoned in a participating State;
- (b) he is the subject of an arrest warrant issued in accordance with the laws of New South Wales; and
- (c) the Attorney-General of the participating State has given a notice, in writing, to the Attorney General that he has consented to a request made by the person to be transferred to New South Wales to enable him to be dealt with according to law,

the Attorney General shall either refuse to consent, or consent, to the transfer and shall give to the Attorney-General of the participating State notice, in writing, of his refusal or consent.

Prisoners (Interstate Transfer).

PART IV.**TRANSFER BACK TO ORIGINAL STATE.****Return of prisoner to participating State if no sentence or shorter sentence in New South Wales.**

20. Where a person is transferred to New South Wales from a participating State pursuant to an order issued under the provision of the interstate law of that participating State that corresponds to section 15 or 16 (6) and, so far as the Minister is aware, every complaint or information alleging any offence by the person against the law of New South Wales has been finally dealt with according to law and as a result—

- (a) the person did not become liable to serve any sentence of imprisonment in New South Wales; or
- (b) the person did become liable to serve in New South Wales one or more sentences of imprisonment under which the period of imprisonment remaining to be served is shorter than the period of imprisonment remaining to be served by him under any section 27 sentence or section 27 sentences,

the Minister shall, subject to section 23, issue an order for the transfer of the person to the participating State.

Transfer to attend appeal.

21. Where a person is transferred to New South Wales from a participating State pursuant to an order issued under the provision of an interstate law that corresponds to section 8, 15 or 16 (6) and—

- (a) so far as the Minister is aware, every complaint or information alleging any offence by the person against the law of New South Wales has been finally dealt with;
- (b) the person is serving a sentence of imprisonment;
- (c) under a law of the participating State the person is entitled to be present at proceedings in the participating State with respect to—
 - (i) any application for leave or other proceeding preliminary or incidental to an appeal against or review of; or

Prisoners (Interstate Transfer).

- (ii) an appeal against or review of,
a conviction of him, or sentence of imprisonment imposed on him,
or both; and
- (d) the person applies in writing to the Minister to be present at the
proceedings,

the Minister shall, unless in his opinion it is contrary to the public interest to do so, issue an order for the transfer of the person to the participating State.

Transfer after attending appeal.

22. Where—

- (a) a person is, pursuant to an order issued under the provision of an interstate law that corresponds to section 21, transferred to New South Wales from a participating State to enable him to attend proceedings in New South Wales;
- (b) those proceedings (including any retrial that may have been ordered and any appeal or review arising from those proceedings or any such retrial) have been determined; and
- (c) either—
 - (i) the person is liable to serve a section 27 sentence or section 27 sentences and is not liable to serve in New South Wales any other sentence of imprisonment; or
 - (ii) the period of imprisonment remaining to be served by the person under any section 27 sentence or section 27 sentences is longer than any period of imprisonment which he is liable to serve in New South Wales under any other sentence or sentences of imprisonment,

the Minister shall, subject to section 23, issue an order for the transfer of the person to the participating State.

Prisoners (Interstate Transfer).

Provisions ancillary to sections 20, 21 and 22.

23. (1) The provisions of section 20 or 22 do not apply in respect of a person if—

- (a) the Minister receives a written request made by the person, being a request for the person to serve his imprisonment in New South Wales, and the Minister and the corresponding Minister of the participating State from which the person was transferred agree in writing that it is in the interests of the welfare of the person that he should serve his imprisonment in New South Wales; or
- (b) an indeterminate sentence (not being a section 27 sentence) is imposed upon the person by a court of New South Wales.

(2) For the purpose of sections 20 and 21, a complaint or information alleging an offence by a person is finally dealt with if—

- (a) the person is tried for the offence and—
 - (i) the time or extended time, if any, fixed by or under any Act, within which an appeal against, or an application for the review of, the decision given on the trial may be lodged, or within which a retrial may be ordered, has expired; and
 - (ii) any appeal or application for review in respect of the decision given on the trial has been determined or withdrawn and proceedings in respect of any retrial and any decision given on the 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 which of the periods referred to in section 20 (b) or 22 (c) (ii) is the shorter or longer—

- (a) any entitlement to remissions shall be disregarded;
- (b) a finite period of imprisonment shall be treated as being shorter than a period to be served under an indeterminate sentence;
- (c) the expression “sentences of imprisonment” in section 20 (b), and the expression “other sentence or sentences of imprisonment” in section 22 (c) (ii), include a section 27 sentence that was originally imposed by a court of New South Wales;

Prisoners (Interstate Transfer).

- (d) the expression "section 27 sentence or section 27 sentences" in sections 20 (b) and 22 (c) (ii) does not include a section 27 sentence that was originally imposed by a court of New South Wales; and
- (e) where a sentence of imprisonment imposed upon a person in New South Wales (not being a section 27 sentence) is cumulative with a section 27 sentence or section 27 sentences originally imposed by a court other than a court of New South Wales, that section 27 sentence or those section 27 sentences shall be deemed—
 - (i) not to be a section 27 sentence or section 27 sentences, as the case may be; and
 - (ii) to be a sentence or sentences, as the case may be, which the person is liable to serve in New South Wales.

PART V.

EFFECT OF ORDER OF TRANSFER.

Transfer in custody of escort.

24. (1) An order of transfer—

- (a) shall direct the gaoler of the prison where the prisoner who is the subject of the order is then imprisoned to deliver the prisoner into the custody of an escort and shall be sufficient authority to the gaoler so to deliver the prisoner; and
- (b) authorises the escort to take and keep custody of the prisoner for the purpose of conveying him from New South Wales to such prison in a participating State as is specified in the order and there delivering him into the custody of the gaoler of that prison.

(2) A reference in subsection (1) to an escort is a reference to a prison officer, a member of the police force or a person appointed by the Minister by an instrument in writing to be an escort for the purposes of this Act, or any 2 or more of them.

Prisoners (Interstate Transfer).

(3) Where—

- (a) under an interstate law an order is issued for the transfer to New South Wales of a person imprisoned in the participating State where the order is issued; and
- (b) pursuant to the order an escort brings the person into New South Wales,

the escort, while in New South Wales, is authorised to hold, take and keep custody of the person for the purpose of conveying him to such prison in New South Wales as is specified in the order and there delivering him into the custody of the gaoler.

Transfer of sentence with prisoner.

25. Where pursuant to an order of transfer a prisoner is conveyed to a participating State specified in the order, then from the time the prisoner arrives in the participating State every sentence of imprisonment imposed upon the prisoner by a court of New South Wales, including a section 27 sentence, ceases to have effect in New South Wales except—

- (a) for the purpose of any appeal against or review of any conviction, judgment or sentence made, imposed or fixed by a court of New South Wales;
- (b) in relation to any period of imprisonment served by the prisoner in New South Wales; or
- (c) in relation to the remittance of money to the Minister which is paid in discharge or partial discharge of a sentence of default imprisonment originally imposed upon the prisoner by a court of New South Wales.

Information to be sent to the participating State.

26. (1) Where pursuant to an order of transfer a prisoner is conveyed to a participating State, the Minister shall cause to be sent to the corresponding Minister of the participating State or to some person for the time being designated by him—

- (a) the order of transfer;

Prisoners (Interstate Transfer).

- (b) the warrant of, or other authority for, commitment for any sentence of imprisonment which the prisoner was, immediately before he left New South Wales, serving or liable to serve;
- (c) a report relating to the prisoner, which shall contain such information and be accompanied by such documents available in New South Wales as appear to be likely to be of assistance to any court, authority or officer in the participating State and shall include details of convictions, sentences of imprisonment, minimum terms of imprisonment, periods of imprisonment served, entitlements to remissions and grants of parole and a copy of any record relating to the prisoner's conduct; and
- (d) details, accompanied by any relevant orders or other documents, of any subsequent variations to the information provided in accordance with this subsection, whether arising from any appeal or review or otherwise.

(2) A reference in subsection (1) to an order or other document is a reference to either the original or a copy certified in the prescribed manner.

Sentence deemed to have been imposed in this State.

27. Where under an interstate law an order is issued for the transfer to New South Wales of a person imprisoned in a participating State and the person is brought into New South Wales pursuant to the order, then from the time the person arrives in New South Wales—

- (a) any sentence of imprisonment imposed upon him by a court of the participating State (including any sentence of imprisonment deemed by the provision of an interstate law that corresponds to this section to have been imposed by a court of the participating State) shall be deemed to have been imposed upon him; and
- (b) any direction or order given or made by a court of the participating State with respect to when that sentence shall commence shall, so far as practicable, be deemed to have been given or made,

by a corresponding court of New South Wales and, except as otherwise provided in this Act, shall be given effect to in New South Wales, and the laws of New South Wales shall apply, as if such a court had had power to

Prisoners (Interstate Transfer).

impose the sentence and give or make the direction or order, if any, and did in fact impose the sentence and give or make the direction or order, if any.

Provisions relating to section 27 sentences.

28. (1) Where under a law of a participating State there has been fixed by a court in respect of a section 27 sentence a minimum term of imprisonment (being a shorter term than the section 27 sentence), during which minimum term the person subject to the sentence is not eligible to be released on parole, then, except as otherwise provided in this Act, that minimum term shall be deemed likewise to have been fixed by the corresponding court of New South Wales.

(2) Where a section 27 sentence or a minimum term deemed under subsection (1) to have been fixed by a corresponding court of New South Wales—

- (a) is varied or quashed on a review by or appeal to a court of the participating State where the sentence or minimum term was imposed or fixed, the sentence or minimum term shall be deemed to have been varied to the same extent, or to have been quashed, by a corresponding court of New South Wales; 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 shall be 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 New South Wales.

(3) Nothing in this Act operates to permit in New South Wales 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.

Prisoners (Interstate Transfer).

(4) Where a section 27 sentence is an indeterminate sentence requiring that the person who is the subject of the sentence be detained during the pleasure of Her Majesty or during the pleasure of the Governor of the participating State in which the sentence was imposed, the person shall be detained during the Governor's pleasure.

(5) The Governor—

- (a) may exercise the royal prerogative of mercy in favour of a person who is subject to a section 27 sentence as if the person were—
 - (i) an offender convicted in a court of New South Wales; or
 - (ii) an offender convicted within New South Wales before a judge or magistrate of New South Wales; and
- (b) in exercising that prerogative, may give effect to any indication given by the Governor of the participating State in which the sentence of imprisonment was imposed upon that person as to what the Governor of the participating State may have done had the person not been transferred to New South Wales.

(6) A person who is subject to a section 27 sentence—

- (a) shall be deemed to have served in New South Wales such period of the section 27 sentence as, up to the time of his transfer to New South Wales, he had served in respect of that sentence in a participating State (including any period deemed by the provision of an interstate law that corresponds to this paragraph to have been served in a participating State and any period spent in custody while being transferred to a prison in New South Wales); and
- (b) shall be deemed to be entitled under the remission regulations to any remission of his sentence of imprisonment for which, up to the time of his transfer to New South Wales, he 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) and any further remission of sentence under the remission regulations shall be calculated from the time of the arrival of the person in New South Wales.

Prisoners (Interstate Transfer).

Section 27 sentences—default imprisonment.

29. (1) Where a section 27 sentence is a sentence by which default imprisonment was ordered and any portion of the amount in default of payment of which the default imprisonment was ordered is paid by or on behalf of the prisoner who is the subject of the sentence to the gaoler of the prison in which he is imprisoned—

- (a) the term of default imprisonment shall be 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, subject to any other sentence of imprisonment, the prisoner shall be entitled to be released on the expiry of the reduced period; and
- (b) the portion so paid shall be remitted by the gaoler to the corresponding Minister of the participating State where the sentence, by which default imprisonment was ordered, was originally imposed.

(2) Where a section 27 sentence is a sentence by which default imprisonment was ordered and, on a review by or an appeal to a court of the participating State where the sentence was imposed or as a result of any other action taken by any person or authority in that participating State, the amount in default of payment of which the default imprisonment was ordered is reduced or the obligation to pay that amount is quashed—

- (a) the term of default imprisonment shall, where the amount is reduced, be 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 amount that was payable and, subject to any other sentence of imprisonment that may be imposed on him, the prisoner shall be entitled to be released on the expiry of that reduced period; or
 - (b) the prisoner shall, where the obligation to pay the amount is quashed, thereupon, subject to any other sentence of imprisonment that may be imposed on him, be entitled to be released.
-

Prisoners (Interstate Transfer).

PART VI.**MISCELLANEOUS.****Notification to prisoners of certain decisions.**

30. The Attorney General shall, when he makes a decision in respect of a prisoner for the purposes of this Act, advise that prisoner of that decision.

Lawful custody for transit through New South Wales.

31. (1) Where, in relation to a person imprisoned in a participating State, an order is made under an interstate law for the transfer of that person to another participating State and in the course of conveying the person to the participating State pursuant to the order an escort brings the person into New South Wales, then—

- (a) while in New South Wales the escort is authorised to hold, take and keep custody of the person for the purpose of conveying him from New South Wales to such prison in the participating State as is specified in the order and there delivering him into the custody of the gaoler; and
- (b) any gaoler is authorised upon—
 - (i) the request of the escort; and
 - (ii) delivery to the gaoler by the escort of a copy of the order of transfer certified by the escort to be such a copy,to receive the person and to detain him in custody as though he were a prisoner for such time as the escort requests and is reasonably necessary for the purpose of executing the order.

(2) Where a gaoler has the custody of a person under subsection (1) (b), the gaoler is authorised, upon the request of an escort and production by the escort of the order of transfer relating to the person, to deliver the person into the custody of the escort.

Prisoners (Interstate Transfer).

Escape from custody of person being transferred.

32. (1) A person in the custody of an escort pursuant to section 31 who escapes from that custody may be apprehended without warrant by the escort, any member of the police force or any other person.

(2) Where a person in custody pursuant to section 31—

- (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 under his hand—

- (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 a prisoner until he is delivered into the custody of an escort in accordance with that warrant or until the expiration of a period of 7 days from the issuing of the warrant, 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 from the issuing of the warrant, the warrant shall have no further effect.

(6) A reference in subsection (2), (4) or (5) to an escort in relation to a person who was, at the time of his escape or attempt to escape, being conveyed under an order of transfer issued in a participating State is a reference to—

- (a) the escort who had the custody of that person pursuant to that order;
- (b) a prison officer or a member of the police force of the participating State; or

Prisoners (Interstate Transfer).

(c) a person appointed by the corresponding Minister of the participating State by an instrument in writing to be an escort for the purpose of conveying that person to the participating State, or any 2 or more of them.

Escape from custody—penalty.

33. (1) Any person who, being a person in custody under an order of transfer, escapes or attempts to escape from that custody while he is not within New South Wales or the participating State to which he was being conveyed under that order is guilty of a felony and is liable to penal servitude for a term not exceeding 7 years, to be served after the expiration of any term of imprisonment, penal servitude or detention to which he was subject at the time of his escape or attempt to escape.

(2) Without limiting the generality of section 447A of the Crimes Act, 1900, that section applies to a person—

- (a) who is in custody under an order of transfer; and
- (b) who escapes from that custody while he is not within New South Wales or the participating State to which he was being conveyed under that order,

in the same way as it applies to a person who escapes from lawful custody while undergoing a sentence involving deprivation of liberty in New South Wales.

Revocation of order of transfer on escape from custody.

34. Any court of petty sessions may revoke an order of transfer if it appears to the court, on application made to it under this section by the holder of a prescribed office or position or by a person who belongs to a prescribed class of persons, that the person in respect of whom the order was issued has, in the course of his being conveyed in accordance with that order, committed—

- (a) the offence of escaping or attempting to escape; or
- (b) any other offence,

Prisoners (Interstate Transfer).

whether—

- (c) the offence was an offence against the law of New South Wales or of a participating State; or
- (d) a charge has been laid or a conviction secured in respect of the offence or not.

Regulations.

35. 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.

In the name and on behalf of Her Majesty I assent to this Act.

J. A. ROWLAND,
Governor.

Government House,
Sydney, 8th November, 1982.



v

r

v

r



