

Prisoners (International Transfer) Bill 1999

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Western Australia

LEGISLATIVE COUNCIL

**Prisoners (International Transfer)
Bill 1999**

A Bill for

**An Act to provide for the international transfer of prisoners to and
from Western Australia.**

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Prisoners (International Transfer) Act 1999*.

5 **2. Commencement**

- (1) This Act comes into operation on a day fixed by proclamation.
- (2) Different days may be fixed under subsection (1) for different provisions.

3. Object of Act

10 The object of this Act is to give effect to the scheme for the international transfer of prisoners set out in the *International Transfer of Prisoners Act 1997* of the Commonwealth by enabling those prisoners to be transferred to and from Western Australia.

15 **4. Interpretation**

- (1) In this Act —

“**Commonwealth Act**” means the *International Transfer of Prisoners Act 1997* of the Commonwealth;

20 “**corresponding law**” means a law of another State that provides for the international transfer of prisoners;

“**department**” means the department of the Public Service principally assisting the Minister to whom the administration of the *Prisons Act 1981* is for the time being committed by the Governor;

25 “**function**” includes a power, authority or duty;

“**State**” includes the Australian Capital Territory and the Northern Territory;

“War Crimes Tribunal” means the former Yugoslavia Tribunal or Rwanda Tribunal within the meaning of the Commonwealth Act.

- 5 (2) If an expression is defined in the Commonwealth Act and is also used in this Act, the expression as used in this Act has, unless the contrary intention appears, the same meaning as in the Commonwealth Act.
- (3) In this Act, a reference to the Commonwealth Act includes a reference to —
- 10 (a) the Commonwealth Act as amended and in force for the time being; and
- (b) an Act enacted in substitution for the Commonwealth Act.

5. Notes not part of Act

15 Notes in this Act are provided to assist understanding and do not form part of the Act.

Part 2 — Conferral of functions

6. Powers and functions of Minister

5 A Minister of this State may perform any function conferred or expressed to be conferred on the Minister by or under the Commonwealth Act.

7. Delegation

(1) The Minister may, by instrument, delegate the performance of a function referred to in section 6 to —

- 10 (a) the chief executive officer of the department;
(b) a public service officer working in the department; or
(c) a person prescribed by the regulations or belonging to a class of persons prescribed by the regulations.

(2) A function performed by a delegate is to be taken as being performed by the Minister.

8. Powers and functions of prison officers, police officers and others

15 (1) A prison officer, police officer and any other person who is authorized for the purposes of the Commonwealth Act may perform any function conferred or expressed to be conferred on him or her —

- 20 (a) by or under the Commonwealth Act or a corresponding law; or
(b) in accordance with an arrangement referred to in section 9.

25 (2) It is lawful for a person referred to in subsection (1) —

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

- (b) to take any action in respect of a prisoner transferred, or to be transferred, to or from this State in accordance with the Commonwealth Act that the person is authorized to take by or under that Act.

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

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9. Arrangements for administration of Act

- (1) The Governor may, in accordance with section 50 of the Commonwealth Act, make arrangements with respect to the administration of that Act, including arrangements relating to the performance by prison officers, police officers or other persons of functions under that Act.

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- (2) An arrangement may be varied or terminated in accordance with the Commonwealth Act.

s. 10

Part 3 — Enforcement of sentences of imprisonment of transferred prisoners

10. Prisoners transferred to Western Australia

(1) In this section —

5 “**enforcement law**” means —

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

10 (2) Any relevant enforcement law applies to and in respect of a prisoner who is transferred to this State under the Commonwealth Act to complete serving a sentence of imprisonment in this State that was imposed by a court or tribunal of a transfer country (or by a War Crimes Tribunal) in
15 the same way as the enforcement law applies to and in respect of a federal prisoner serving a sentence of imprisonment in this State that is imposed under a law of the Commonwealth.

20 (3) Without limiting subsection (2), enforcement laws relating to the following matters are applicable to a prisoner or Tribunal prisoner who is transferred to Australia under the Commonwealth Act —

- (a) conditions of imprisonment and treatment of prisoners;
- (b) release on parole of prisoners;
- (c) classification and separation of prisoners;
- 25 (d) removal of prisoners from one prison to another;
- (e) removal of prisoners between prisons and hospitals or other places or between one hospital or other place and another;
- (f) treatment of mentally impaired prisoners;

- (g) eligibility for participation in prison programs, including release under a pre-release permit scheme (however called);
- 5 (h) temporary absence from prison (for example, to work or seek work, to attend a funeral or visit a relative suffering a serious illness or to attend a place of education or training);
- (i) transfer of prisoners between States and Territories.
- 10 (4) Any direction given by the Attorney-General of the Commonwealth under section 44 of the Commonwealth Act concerning enforcement of such a sentence of imprisonment is to be given effect in this State.
- 15 (5) Any direction given by the Attorney-General of the Commonwealth under section 49 of the Commonwealth Act concerning a prisoner referred to in subsection (2) who is pardoned or granted amnesty or commutation of sentence of imprisonment as referred to in that section is to be given effect in this State.

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

11. Prisoners transferred from Western Australia

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

Part 4 — Miscellaneous

12. Regulations

5 The Governor may make regulations prescribing all matters that
 are required or permitted by this Act to be prescribed or are
 necessary or convenient to be prescribed for giving effect to this
 Act.

