

PRISONERS (INTERNATIONAL TRANSFER) BILL 1999
Explanatory Notes

Part 1 - Preliminary

Clause 1 Short title

Short title of the Act.

Clause 2 Commencement

The Act will come into operation on a date, or dates, to be specified by way of proclamation made by the Governor in Executive Council. It is likely that the Act will come into effect once the necessary administrative arrangements and regulations under the Commonwealth Act have been settled by of all jurisdictions who are participating in the International Transfer of Prisoners Scheme.

Clause 3 Object of Act

The Act is designed to give effect to the International Transfer of Prisoners Scheme which is enshrined in the *International Transfer of Prisoners Act 1997 (Clth)*.

Clause 4 Interpretation

Clause 4 defines commonly used terms throughout the Bill. The clause also provides that where expressions are used in both the Bill and the *International Transfer of Prisoners Act 1997 (Clth)* then unless it is specifically defined in a different form, the expressions have the same meaning as in the *International Transfer of Prisoners Act 1997 (Clth)*.

Clause 5 Notes not part of Act

Clauses 8 and 10 of the Bill contain "footnotes" which are designed to aid understanding of the relevant provisions of the clause. In particular the "footnotes" reference provisions in the *International Transfer of Prisoners Act 1997 (Clth)* and provide examples of how the provisions might be exercised. These "footnotes" are not to be considered as part of the Bill.

Part 2 - Conferral of functions

Clause 6 Powers and functions of Minister

Clause 6 provides that in respect of the functions of a State Minister under the *International Transfer of Prisoners Act 1997 (Clth)* such functions can be performed by a Western Australian Minister. It is intended that the relevant Minister will be the Minister for Justice.

Clause 7 Delegation

Clause 7 allows the Western Australian Minister to delegate any of his functions under the *International Transfer of Prisoners Act 1997 (Clth)* to the Chief Executive Officer of the department (Director General, Ministry of Justice), a public servant or any other prescribed person. Where a delegate exercises such functions it is deemed to have been done by the relevant Minister.

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

Clause 8 enables certain officials (Police officers, prison officers and other authorised persons) to perform functions in Western Australia which are conferred upon them under either the Commonwealth Act or a law of another State relating to the international transfer of prisoners. The Clause also enables these officials to perform functions which may have been conferred upon them under the administrative arrangements proposed by s.50 of the Commonwealth Act (a matter dealt with by clause 9 of this Bill).

Subclause (2) provides that it is lawful for these officials to deal with any prisoner the subject of a warrant issue under the Commonwealth Act, and in relation to any prisoner who is being transferred under that Act.

As set out in Clause 5 of this Bill, the footnote to Clause 8 is not part of the Bill.

Clause 9 Arrangements for administration of Act

Before the International Transfer of Prisoners Scheme can come into operation administrative arrangements will have to be entered into between the States and the Commonwealth, defining the relationship between, and the responsibilities of, the Commonwealth and States in administering the scheme. Clause 9 provides that the Governor can, in accordance with s.50 of the Commonwealth Act, make such arrangements relating to the administration of that Act.

The arrangements are likely to include such matters as cost sharing arrangements and the Western Australian policy in respect of consent to transfer to this State.

Part 3 - Enforcement of sentences of imprisonment of transferred prisoners

Clause 10 Prisoners transferred to Western Australia

Prisoners transferred to Western Australia are deemed by the Commonwealth Act to be federal prisoners. While there are a number of provisions under the Commonwealth *Crimes Act 1914* that apply only in relation to federal prisoners, there are a number of State laws and procedures that apply equally to both State and federal prisoners.

Clause 10 provides that any such federal laws or State law and procedures are to apply to prisoners who are transferred to western Australia under the *International Transfer of Prisoners Act 1997 (Clth)*

Subclauses (4) and (5) provides that orders made by the Commonwealth Attorney-General in relation to the enforcement of sentences and pardons/amnesties/commutations are to be given effect in Western Australia.

As set out in Clause 5 of this Bill, the footnote to Clause 10 is not part of the Bill.

Clause 11 Prisoners transferred from Western Australia

Clause 11 provides that in respect of prisoners who are transferred out of Western Australia under the provisions of the Commonwealth Act, then the laws of Western Australia will no longer apply in relation to the prisoner. This however does not prevent any subsequent exercise of pardon, amnesty or commutation in respect of the sentence.

It is recognised that a receiving country would very rarely grant pardon, amnesty or commutation of a sentence imposed by another country. As there may be circumstances which justify such means, provision has been made to enable such actions to be taken in this State notwithstanding that the prisoner has been transferred. However, this would rarely, if ever, be used.

Part 4 - Miscellaneous

Clause 12 Regulations

Clause 12 is a general regulation making power.