

**PRISONERS (INTERSTATE TRANSFER) AMENDMENT ACT
1986**

No. 94 of 1986

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PRISONERS (INTERSTATE TRANSFER) AMENDMENT ACT
1986

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No. 94 of 1986
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AN ACT to amend the Prisoners (Interstate Transfer) Act 1982.
[Royal Assent 10 December 1986]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—This Act may be cited as the *Prisoners (Interstate Transfer) Amendment Act 1986*. Short title.

2—(1) This section and section 1 shall commence on the date on which this Act receives the Royal assent. Commencement.

(2) Except as provided in subsection (1), this Act shall commence on such day as may be fixed by proclamation.

3—In this Act, the *Prisoners (Interstate Transfer) Act 1982** Principal Act. is referred to as the Principal Act.

* No. 55 of 1982.

Amendment of
section 3 of
Principal Act
(Interpre-
tation).

4—Section 3 of the Principal Act is amended as follows:—

(a) by omitting from subsection (1) the definition of “Attorney-General” and substituting the following definitions:—

“Attorney-General”, in relation to the Northern Territory, means the person holding Ministerial office under section 36 of the *Northern Territory (Self-Government) Act 1978* of the Commonwealth who is, under that Act, designated for the time being as the holder of the office of Attorney-General;

“Australian Capital Territory” includes the Jervis Bay Territory;

“Commonwealth sentence of imprisonment” means a sentence of imprisonment for an offence against a law of the Commonwealth or of a Territory;

(b) by omitting from subsection (1) the definition of “corresponding Minister” and substituting the following definition:—

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

(a) except where the participating State is the Northern Territory—the Minister of the Crown of that participating State who is responsible for the administration of the interstate law of that participating State; and

(b) where the participating State is the Northern Territory—the person holding Ministerial office under section 36 of the *Northern Territory (Self-Government) Act 1978* of the Commonwealth who is responsible for the administration of the interstate law of the Northern Territory;

(c) by omitting from subsection (1) the definition of “Governor”;

- (d) by omitting from the definition of “indeterminate sentence” in subsection (1) “pleasure of the Governor” and substituting “pleasure of the Governor-General, the Governor”;
- (e) by inserting after the definition of “interstate law” in subsection (1) the following definitions:—
- “joint prisoner” means a person upon whom both—
- (a) a State sentence of imprisonment (as defined by this Act or by an interstate law); and
- (b) a Commonwealth sentence of imprisonment,
- have been imposed;
- “Northern Territory” means the Northern Territory of Australia;
- (f) by omitting from the definition of “order of transfer” in subsection (1) “6, 13, 14, 18, 19, or 20” and substituting “5, 13, 14, or 18”;
- (g) by omitting from subsection (1) the definition of “participating State” and substituting the following definition:—
- “participating State” means any State of the Commonwealth in which there is in force an interstate law;
- (h) by omitting from subsection (1) the definition of “prisoner” and substituting the following definitions:—
- “prisoner” means a State prisoner or a joint prisoner;
- “relevant security”, in relation to a person, means a security given by the person, with or without sureties, by recognizance or otherwise, that the person will comply with conditions relating to the person’s behaviour;
- (i) by inserting in the definition of “remission regulations” in subsection (1) “State” after “portions of”;

- (j) by omitting from subsection (1) the definition of “sentence of imprisonment” and substituting the following definition:—

“sentence of imprisonment” means a State sentence of imprisonment or a State sentence of imprisonment as defined by an interstate law, and includes (where relevant) a Commonwealth sentence of imprisonment;

- (k) by omitting from subsection (1) the definition of “transferred sentence” and substituting the following definitions:—

“State” includes the Northern Territory;

“State prisoner” means a person upon whom a State sentence of imprisonment has been imposed, but does not include a person upon whom a Commonwealth sentence of imprisonment has been imposed;

“State sentence of imprisonment” means a sentence of imprisonment for an offence against a law of Tasmania, including a sentence of penal servitude, a sentence by which default imprisonment is ordered, an indeterminate sentence and a translated sentence, but not including such a sentence while it is being served in an institution within the meaning of the *Child Welfare Act 1960*, or detention under any Act relating to the punishment of persons who committed offences when they were under the age of 18 years;

“Territory” means the Australian Capital Territory, the Territory of Norfolk Island, the Territory of Christmas Island, the Territory of Cocos (Keeling) Islands, and any prescribed external Territory to which the provisions of the *Transfer of Prisoners Act 1983* of the Commonwealth have been extended but does not include the Northern Territory;

“translated sentence” means a sentence of imprisonment deemed by section 25 to have been imposed on a person by a court of Tasmania;

(l) by adding after subsection (3) the following subsections:—

(4) A reference in this Act to the Governor of a participating State includes a reference—

(a) in the case of a State other than the Northern Territory—to any person exercising and performing all the powers and functions of the Governor of that State; and

(b) in the case of the Northern Territory—to the Administrator of the Northern Territory, and to any person exercising and performing all the powers and functions of the Administrator of the Northern Territory.

(5) A reference in this Act to a person upon whom a sentence of imprisonment has been imposed does not include a reference to a person who has completed serving that sentence.

(6) The following persons upon whom a sentence of imprisonment has been imposed shall be taken, for the purposes of this Act, to have completed serving that sentence:—

(a) a person—

(i) who has been released from serving a part of that sentence on parole or upon licence to be at large; and

(ii) in respect of whom action can no longer be taken under a law of the Commonwealth, a State, or a Territory by way of requiring the person to serve the whole or a part of the remainder of that sentence;

(b) a person—

(i) who has been released from serving the whole or a part of that sentence upon giving a relevant security; and

(ii) in relation to whom—

- (A) action can no longer be taken under a law of the Commonwealth, a State, or a Territory in respect of a breach of a condition of that security; or
- (B) action cannot, by reason of the expiration of the security, be taken under a law of the Commonwealth, a State, or a Territory by way of requiring the person to serve the whole or a part of that sentence;
- (c) a person who, as the result of the exercise of the royal prerogative of mercy, is no longer required to serve the whole or a part of that sentence.

(7) A reference in this Act to release on parole includes a reference to release on probation and to any other form of conditional release in the nature of parole.

Amendment of section 4 of Principal Act (Corresponding courts and interstate laws).

5—Section 4 of the Principal Act is amended as follows:—

- (a) by omitting from subsection (1) (a) “, the Australian Capital Territory, or the Northern Territory”;
- (b) by omitting from subsection (2) “, or a Territory, of the Commonwealth”;
- (c) by omitting subsection (3).

Substitution of sections 5 and 6 of Principal Act.

6—Sections 5 and 6 of the Principal Act are repealed and the following sections are substituted:—

Requests for, and orders of, transfer.

5—(1) Where the Minister—

- (a) receives a written request made by a State prisoner serving a sentence of imprisonment in Tasmania for the transfer of the prisoner to a participating State or to a Territory; and

(b) is of the opinion that the prisoner to whom the request relates should be transferred to the participating State or the Territory in the interests of the welfare of the prisoner,

the Minister shall—

(c) where the request is for the transfer of the prisoner to a participating State—give to the corresponding Minister of the participating State a written request asking that Minister to accept the transfer of the prisoner to the participating State; and

(d) where the request is for the transfer of the prisoner to a Territory—give to the Attorney-General of the Commonwealth a written request asking the Attorney-General to consent to that transfer.

(2) Where the Minister—

(a) has—

(i) in respect of a request made by a State prisoner for a transfer to a participating State, given to the corresponding Minister of the participating State a written request under subsection (1) (c); and

(ii) received from that Minister written notice of consent to the transfer of the prisoner to the participating State; or

(b) has—

(i) in respect of a request made by a State prisoner for a transfer to a Territory, given to the Attorney-General of the Commonwealth a written request under subsection (1) (d); and

(ii) received from the Attorney-General of the Commonwealth written notice of consent to the transfer of the prisoner to the Territory,

the Minister may issue an order for the transfer of the prisoner to the participating State or the Territory, as the case may be.

(3) Where the Minister—

- (a) receives a written request made by a joint prisoner serving a sentence of imprisonment in Tasmania 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 that Minister to accept the transfer of the prisoner to that participating State.

(4) Where the Minister has—

- (a) in respect of a request by a joint prisoner for a transfer to a participating State, given to the corresponding Minister of the participating State a written request under subsection (3); and
- (b) received from that Minister written notice of consent to the transfer of the prisoner to the participating State,

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

(5) Where a joint prisoner is serving a sentence of imprisonment in Tasmania and the Minister—

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

the Minister may issue an order for the transfer of the prisoner to the Territory.

(6) A decision to issue, or not to issue, an order under this section is not reviewable by a court or tribunal.

6—An order of transfer issued under this Part in relation to a joint prisoner has no effect—

- (a) to the extent that, but for this section, it authorizes or requires the doing of an act or thing under

- this Act in relation to that person in the person's capacity as a person upon whom a Commonwealth sentence of imprisonment has been imposed; and
- (b) unless and until a transfer order corresponding to the order of transfer is in force under the *Transfer of Prisoners Act* 1983 of the Commonwealth in respect of the person or the transfer of the person is otherwise authorized under that Act.

7—Section 7 of the Principal Act is amended by inserting “ or to a Territory ” after “ participating State ”.

Amendment of section 7 of Principal Act (Repeated requests for transfer).

8—Section 8 of the Principal Act is amended as follows:—

Amendment of section 8 of Principal Act (Receipt of request for transfer to Tasmania).

- (a) by inserting “, or a request made for the purposes of Part II of the *Transfer of Prisoners Act* 1983 of the Commonwealth,” after “ corresponds to section 5 ”;
- (b) by inserting “ or to the Attorney-General of the Commonwealth, as the case may be,” after “ was given ”.

9—Section 10 of the Principal Act is amended as follows:—

Amendment of section 10 of Principal Act (Request for transfer of prisoner to participating State).

- (a) by omitting from subsection (1) “ is a prisoner ” and substituting “, the Commonwealth, or a Territory is a prisoner serving a sentence of imprisonment in Tasmania ”;
- (b) by omitting paragraph (a) of subsection (1) and substituting the following paragraph:—

(a) from—

(i) in the case of an arrest warrant issued in accordance with the law of a participating State—the Attorney-General of the participating State;
or

(ii) in the case of an arrest warrant issued in accordance with the law of the Commonwealth or a Territory—the Attorney-General of the Commonwealth,

a written request, accompanied by a copy of the warrant; or

- (c) by omitting from subsection (1) “ either case ” and substituting “ any case ”;
- (d) by omitting from subsection (1) “ to the participating State ” and substituting “ to a participating State or to a Territory ”;
- (e) by inserting before “ or to the Minister ” in subsection (1) “, the Attorney-General of the Commonwealth,”;
- (f) by inserting in subsections (2) and (3) “ or to a Territory ” after “ to a participating State ”.

Amendment of section 11 of Principal Act (Necessary consents).

10—Section 11 of the Principal Act is amended as follows:—

(a) by omitting subsection (1) and substituting the following subsection:—

(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 or to the Territory, as the case may be;

(b) in the case of a request for the transfer of a prisoner to a participating State (including a prisoner to whom paragraph (c) (ii) applies)—the Attorney-General of the participating State has, in writing, either consented to or requested the transfer; and

(c) in the case of—

(i) a request for the transfer of a prisoner to a Territory; or

(ii) a request for the transfer of a prisoner for the purpose of being dealt with in respect of an arrest warrant issued in accordance with the law of the Commonwealth,

the Attorney-General of the Commonwealth has, in writing, either consented to or requested the transfer.

(b) by inserting in subsection (2) “, or to a Territory,” after “ participating State ”.

11—Section 13 of the Principal Act is amended as follows:—

(a) by inserting in paragraph (a) “, or to a Territory,” after “ participating State ”;

(b) by inserting in paragraph (b) “ or Territory ” after “ participating State ”.

Amendment of section 13 of Principal Act (Order of transfer).

12—Section 14 of the Principal Act is amended as follows:—

(a) by omitting from subsection (1) “, the Attorney-General of the participating State, or the prisoner ”, firstly occurring, and substituting “ or the prisoner, or any other person who has requested or consented to the transfer of the prisoner,”;

(b) by omitting from subsection (1) “ the Attorney-General of the participating State, or the prisoner ”, secondly occurring, and substituting “ the prisoner, or that person ”;

(c) by omitting from subsection (3) “ the Attorney-General of the participating State ” and substituting “ any other person who has requested or consented to the transfer of the prisoner ”;

(d) by inserting in subsection (6) “ or Territory ” after “ State ”.

Amendment of section 14 of Principal Act (Review of decision of court of petty sessions.)

13—After section 14 of the Principal Act, the following section is inserted:—

14A—An order of transfer made under this Part in relation to a joint prisoner has no effect—

(a) to the extent that, but for this section, it authorizes or requires the doing of an act or thing under this Act in relation to that person in the person’s capacity as a person upon whom a Commonwealth sentence of imprisonment has been imposed; and

Insertion in Principal Act of new section 14A.

Effect of orders under this Part on joint prisoners.

- (b) unless and until a transfer order corresponding to the order of transfer is in force under the *Transfer of Prisoners Act 1983* of the Commonwealth in respect of the person or the transfer of the person is otherwise authorized under that Act.

Substitution of sections 18 and 19, and repeal of section 20, of Principal Act.

14—Sections 18, 19, and 20 of the Principal Act are repealed and the following sections are substituted:—

Return of prisoner to participating State if no sentence or shorter sentence in Tasmania.

18—Where—

- (a) a person is transferred to Tasmania from a participating State or a Territory pursuant to an order issued under the provision of the interstate law of that participating State that corresponds to section 13 or 14 (6), or under Part III of the *Transfer of Prisoners Act 1983* of the Commonwealth, or both;
- (b) so far as the Minister is aware, every complaint or information alleging any offence by the person against the law of Tasmania or the Commonwealth has been finally dealt with according to law and as a result—
- (i) the person did not become liable to serve any sentence of imprisonment in Tasmania; or
 - (ii) the person did become liable to serve in Tasmania 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 the person under any translated sentence or translated sentences or any sentence of imprisonment that has been imposed upon the person for any other offence against a law of the Commonwealth or a Territory; and
- (c) the person is either a State prisoner or a joint prisoner,

the Minister shall, subject to section 21, issue an order for the transfer of the person to the participating State or to the Territory, as the case may require.

19—An order of transfer made under this Part in relation to a joint prisoner has no effect—

Effect of orders under this Part on joint prisoners.

(a) to the extent that, but for this section, it authorizes or requires the doing of an act or thing under this Act in relation to that person in the person's capacity as a person upon whom a Commonwealth sentence of imprisonment has been imposed; and

(b) unless and until a transfer order corresponding to the order of transfer is in force under the *Transfer of Prisoners Act* 1983 of the Commonwealth in respect of the person or the transfer of the person is otherwise authorized under that Act.

15—Section 21 of the Principal Act is amended as follows:—

Amendment of section 21 of Principal Act (Provisions ancillary to sections 18 and 19).

(a) by omitting from subsection (1) " or 20 ";

(b) by omitting paragraph (a) of subsection (1) and substituting the following paragraph:—

(a) the Minister receives a written request made by the person, being a request for the person to serve the person's imprisonment in Tasmania, and the Minister and—

(i) in the case of a person transferred from a participating State (being a person who is a State prisoner)—the corresponding Minister of the participating State;

(ii) in the case of a person transferred from a participating State (being a person who is a joint prisoner)—the corresponding Minister of the participating State and the Attorney-General of the Commonwealth; or

(iii) in the case of a person transferred from a Territory (being a person who is a joint prisoner)—the Attorney-General of the Commonwealth,

agree in writing that it is in the interests of the welfare of the person that the person should serve the imprisonment in Tasmania; or

- (c) by omitting from subsection (1) (b) “transferred sentence” and substituting “translated sentence”;
- (d) by omitting from subsection (2) “sections 18 and 19” and substituting “section 18”;
- (e) by omitting from subsection (3) “or 20 (c) (ii)”;
- (f) by omitting from subsection (3) (c) “and the expression ‘other sentence or sentences of imprisonment’ in section 20 (c) (ii), include” and substituting “includes”;
- (g) by omitting from subsection (3) (c) “transferred sentence” and substituting “translated sentence”;
- (h) by omitting from subsection (3) (d) “‘transferred sentence or transferred sentences’ in section 18 (b) and 20 (c) (ii)” and substituting “‘translated sentence or translated sentences’ in section 18 (b)”;
- (i) by omitting from subsection (3) (e) “sentence of imprisonment imposed on a person” and substituting “State sentence of imprisonment which a person became liable to serve”;
- (j) by omitting from subsection (3) (e) “transferred sentence” (wherever occurring) and “transferred sentences” (wherever occurring) and substituting “translated sentence” and “translated sentences”, respectively.

Amendment of section 22 of Principal Act (Transfer in custody of escort).

16—Section 22 of the Principal Act is amended as follows:—

- (a) by inserting in subsection (1) (b) “or a Territory” after “participating State”;
- (b) by inserting in subsection (3) (a) “or under the *Transfer of Prisoners Act* 1983 of the Commonwealth, or both,” after “interstate law”;

- (c) by omitting from subsection (3) (a) “ the participating State where the order is issued ” and substituting “ a participating State or a Territory ”.

17—Section 23 of the Principal Act is amended as follows:—

Amendment of section 23 of Principal Act (Transfer of sentence with prisoner).

- (a) by inserting “(1)” before “ Where ”;
- (b) by inserting in subsection (1) (as renumbered) “ or a Territory ” after “ a participating State ”;
- (c) by omitting from subsection (1) (as renumbered) “ the participating State, every ” and substituting “ the participating State or the Territory, every State ”;
- (d) by omitting from subsection (1) (as renumbered) “ by a court of Tasmania ”, firstly occurring;
- (e) by omitting from subsection (1) (as renumbered) “ transferred sentence ” and substituting “ translated sentence ”;
- (f) by adding the following subsection as subsection (2) of that section:—

(2) Subsection (1) does not apply to a sentence of imprisonment imposed upon a person where the person has completed serving that sentence.

18—Section 25 of the Principal Act is amended as follows:—

Amendment of section 25 of Principal Act (Sentence deemed to have been imposed in Tasmania).

- (a) by inserting “(1)” before “ Where ”;
- (b) by omitting paragraph (a) of subsection (1) (as renumbered) and substituting the following paragraph:—
- (a) any State sentence of imprisonment (as defined in the interstate law of the participating State) imposed upon the person by a court of the participating State and 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 the person; and
- (c) by omitting from subsection (1) (b) “ that sentence ” and substituting “ any such State sentence of imprisonment ”;

(d) by adding the following subsection as subsection (2) of that section:—

(2) Subsection (1) does not apply to or in respect of a sentence of imprisonment imposed upon a person where the person has completed serving that sentence.

Amendment of section 26 of Principal Act (Provisions relating to translated sentences).

19—Section 26 of the Principal Act is amended as follows:—

(a) by omitting from subsection (1) “by a court” and substituting “by or under a law”;

(b) by omitting from subsections (1), (2), (3), (5), (6), and (7) “transferred sentence”, wherever occurring, and substituting “translated sentence”;

(c) by inserting in subsection (7) (b) “, subject to subsection (8),” after “shall”, firstly occurring;

(d) by omitting from subsection (7) (b) “sentence of imprisonment”, wherever occurring, and substituting “translated sentence”;

(e) by adding after subsection (7) the following subsections:—

(8) Any remission of a translated sentence—

(a) for which the person who is subject to the sentence was eligible up to the time of the person’s transfer to Tasmania; and

(b) which is attributable to a part of the sentence not served or not to be served in the participating State from which the person was transferred,

shall not be taken into account for the purposes of subsection (7) (b).

(9) Subsection (6) does not apply in relation to a conviction or transferred sentence referred to in section 24 (2) (a) or (b) of the *Transfer of Prisoners Act* 1983 of the Commonwealth, but nothing in this subsection shall be construed as preventing the Queen or the Governor from exercising the royal prerogative of mercy as referred to in section 24 (2) of that Act.

Amendment of section 27 of Principal Act (Translated sentences—default imprisonment).

20—Section 27 of the Principal Act is amended by omitting from subsections (1) and (2) “transferred sentence” and substituting “translated sentence”.

21—Section 29 of the Principal Act is amended as follows:—

Amendment of section 29 of Principal Act (Lawful custody for transit through Tasmania).

(a) by omitting from subsection (1) “, 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” and substituting “or a Territory, an order is made under an interstate law or under the *Transfer of Prisoners Act* 1983 of the Commonwealth, or both, for the transfer of that person to a participating State or a Territory and in the course of conveying the person to the participating State or Territory”;

(b) by inserting in subsection (1) (a) “or Territory” after “participating State”;

(c) by inserting in subsection (1) (b) “State” before “prisoner”.

22—Section 30 of the Principal Act is amended as follows:—

Amendment of section 30 of Principal Act (Escape from custody of person being transferred).

(a) by inserting after subsection (2) the following subsection:—

(2A) Subsections (1) and (2) do not apply to a person to whom section 47 of the *Crimes Act* 1914 of the Commonwealth applies by virtue of section 26 (2) of the *Transfer of Prisoners Act* 1983 of the Commonwealth.

(b) by inserting in subsection (4) “State” before “prisoner”.

23—Section 31 of the Principal Act is amended as follows:—

Amendment of section 31 of Principal Act (Escape from custody—penalty).

(a) by inserting in subsections (1) and (2) (b) “or the Territory” after “participating State”;

(b) by adding after subsection (2) the following subsection:—

(3) Subsections (1) and (2) do not apply to a person to whom section 47 of the *Crimes Act* 1914 of the Commonwealth applies by virtue of section 26 (1) or (2) of the *Transfer of Prisoners Act* 1983 of the Commonwealth.

Amendment of
section 32 of
Principal Act
(Revocation
of order of
transfer on
escape from
custody).

24—Section 32 of the Principal Act is amended by omitting from paragraph (c) “ or of a participating State ” and substituting “, the Commonwealth, a participating State, or a Territory ”.