

WESTERN AUSTRALIA

PRISONERS (RELEASE FOR DEPORTATION) ACT

No. 15 of 1989

**AN ACT relating to the release of prisoners for the purpose of
deportation.**

[Assented to 16 November 1989]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Prisoners (Release for Deportation) Act 1989*.

Commencement

2. This Act shall come into operation on such day as is fixed by proclamation.

Interpretation

3. (1) In this Act, unless the contrary intention appears—

“deportation order” has the meaning given in section 5 of the *Migration Act 1958* of the Commonwealth;

“order for release” means an order made under section 4 (1);

“prison” means—

(a) a prison as defined in section 3 of the *Prisons Act 1981*;

(b) any place where a person is detained in safe custody;

(c) an institution within the meaning of section 666 of *The Criminal Code*;

“prisoner” means a person—

(a) serving a term of imprisonment, or being detained during the Governor’s pleasure, in a prison for an offence against the law of the State, or another State, or a Territory; or

(b) being detained in safe custody;

“the Parole Act” means the *Offenders Probation and Parole Act 1963*.

(2) In this Act a reference to detention during the Governor’s pleasure shall be construed so as to include a reference to detention in safe custody.

(3) In this section “safe custody” means safe custody during the Governor’s pleasure pursuant to an order made—

(a) under section 19 (6a) (a) of *The Criminal Code* before the commencement of section 31 of the *Acts Amendment (Imprisonment and Parole) Act 1987*; or

(b) under section 653 or 693 (4) of *The Criminal Code*.

Release for deportation

4. (1) Where a deportation order is made in respect of a prisoner, the Governor may by order in writing direct that the prisoner be released from prison into the custody of a person or persons specified in the order for the purpose of deportation, and the prisoner shall be released accordingly.

(2) An order for release may be made in respect of a prisoner (within the meaning of paragraph (a) of the definition in section 3 (1)) if, and only if—

- (a) the circumstances are such that the prisoner could be released from prison on parole under an order under the Parole Act; and
- (b) a report has been furnished under section 34 (2) (b) of the Parole Act in respect of the prisoner.

(3) An order for release may be made in respect of a prisoner (within the meaning of paragraph (b) of the definition in section 3 (1)) if, and only if, a report has been furnished under section 34 (2) (a) of the Parole Act in respect of the prisoner.

(4) An order for release—

- (a) shall specify the period of time within which the prisoner is to be deported; and
- (b) is subject to such conditions, if any, as are specified in the order.

(5) An order for release may be made notwithstanding section 40A (1) of the Parole Act.

Variation or revocation of order

5. (1) The Governor may by order in writing at any time before the deportation of a prisoner released under section 4 (1) vary or revoke an order for release.

(2) If—

- (a) the deportation of a prisoner released under section 4 (1) has not been effected within the period of time specified in the order for release; or
- (b) the deportation order in respect of such a prisoner is revoked,

the order for release of the prisoner ceases to have effect, by force of this section, on the expiration of the period of time referred to in paragraph (a) or on the revocation of the deportation order, as the case may be.

(3) Where an order for release is revoked or ceases to have effect the prisoner shall be returned to prison to serve the unexpired portion of his or her term of imprisonment or to be further detained during the Governor's pleasure, as the case may be, unless the prisoner is otherwise released.

(4) For the purposes of subsection (3), a Judge or a District Court Judge may, whenever necessary, by warrant authorize a member of the Police Force to apprehend the prisoner and return the prisoner to a prison specified in the warrant, and the warrant is sufficient authority for the apprehension of the prisoner and the return of the prisoner to the prison so specified.

(5) Where a prisoner is returned to prison in accordance with subsection (3) the period spent by the prisoner in the custody of the person or persons referred to in section 4 (1) shall be regarded as time served in respect of his or her term of imprisonment or detention during the Governor's pleasure, as the case may be.

(6) In the case of a sentence of strict security life imprisonment or life imprisonment a reference in this section to serving the unexpired portion of a term of imprisonment shall be construed as a reference to resuming the service of the sentence.

Sentence or detention deemed to have been served

6. If the deportation of a prisoner released under section 4 (1) is effected within the period of time specified in the order for release, the prisoner—

- (a) shall be regarded as having served his or her term of imprisonment or detention during the Governor's pleasure in a prison, as the case may be; and
- (b) by force of this section is wholly discharged from that imprisonment or detention and in the case of an habitual criminal ceases to be an habitual criminal.

Exclusion of the rules of natural justice

7. The rules known as the rules of natural justice (including any duty of procedural fairness) do not apply to or in relation to the doing or omission of any act, matter or thing under this Act by the Governor.

Regulations

8. The Governor may make regulations prescribing all matters that are necessary or convenient to be prescribed for carrying out or giving effect to this Act.