

WESTERN AUSTRALIA

PRISONERS (INTERSTATE TRANSFER) AMENDMENT ACT

No. 72 of 1986

AN ACT to amend the *Prisoners (Interstate Transfer) Act 1983*.

[Assented to 4 December 1986]

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

Short title

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

Commencement

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

Principal Act

3. In this Act the *Prisoners (Interstate Transfer) Act 1983** is referred to as the principal Act.

[*Act No. 75 of 1983.]

Section 3 amended

4. Section 3 of the principal Act is amended—

(a) in subsection (1)—

(i) by deleting 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; ”;

(ii) by deleting 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; ”;
- (iii) by deleting the definition of “Governor”;
- (iv) in the definition of “indeterminate sentence”, by deleting “pleasure of the Governor” and substituting the following—
- “ pleasure of the Governor-General, the Governor ”;
- (v) by inserting after the definition of “interstate law” the following definition—
- “ “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; ”;
- (vi) in the definition of “order of transfer”, by deleting “6, 13, 14(6), 18, 19 or 20” and substituting the following—
- “ 5, 13, 14 (6) or 18 ”;
- (vii) in the definition of “participating State”, by deleting “or Territory”;
- (viii) by deleting 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; ”;

- (ix) by deleting the definitions of “section” and “section 25 sentence”;
- (x) by deleting the definitions of “sentence of imprisonment” and “subsection” and substituting the following definitions—

“ “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;

“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 Western Australia, including a sentence of penal servitude, a sentence by which default imprisonment is ordered, an indeterminate sentence and a translated sentence, but does not include detention imposed under any Act relating to the punishment of persons who committed offences when they were under the age of 18 years; ”; and

- (xi) by deleting the full stop at the end of the definition of “superintendent”, substituting a semi-colon and inserting after that definition the following definitions—

“ “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 Western Australia. ”;

(b) in subsection (4), by deleting “of the Parliament”; and

(c) by inserting after subsection (4) the following subsections—

“ (5) 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.

(6) 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.

(7) 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.

(8) 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. ”.

Section 4 amended

5. Section 4 of the principal Act is amended—

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

Sections 5 and 6 repealed and substituted

6. Sections 5 and 6 of the principal Act are repealed and the following sections 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 Western Australia 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 Western Australia 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 Western Australia 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.

Effect of orders under this Part on joint prisoners

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. ”.

Section 7 amended

7. Section 7 of the principal Act is amended by inserting after “participating State” the following—

“ or to a Territory ”.

Section 8 amended

8. Section 8 of the principal Act is amended—

(a) by inserting after “corresponds to section 5” the following—

“ , or a request made for the purposes of Part II of the *Transfer of Prisoners Act 1983* of the Commonwealth, ”;

and

(b) by inserting after “was given” the following—

“ or to the Attorney-General of the Commonwealth, as the case may be, ”.

Section 10 amended

9. Section 10 of the principal Act is amended—

(a) in subsection (1)—

(i) by deleting “is a prisoner” and substituting the following—

“ , the Commonwealth or a Territory is a prisoner serving a sentence of imprisonment in Western Australia ”;

(ii) by deleting paragraph (a) 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 ”;

(iii) by deleting “either case” and substituting the following—

“ any case ”;

(iv) by deleting “to the participating State” and substituting the following—

“ to a participating State or to a Territory ”; and

(v) by inserting before “or to the Minister” the following—

“ , the Attorney-General of the Commonwealth ”;

and

(b) in subsections (2) and (3), by inserting after “to a participating State” wherever it occurs the following—

“ or to a Territory ”.

Section 11 amended

10. Section 11 of the principal Act is amended—

(a) by repealing 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. ”; and

(b) in subsection (2), by inserting after “participating State” the following—

“ , or to a Territory, ”.

Section 13 amended

11. Section 13 of the principal Act is amended—

(a) in paragraph (a), by inserting after “participating State” the following—

“ , or to the Territory, ”; and

(b) in paragraph (b), by inserting after “participating State” the following—

“ or Territory ”.

Section 14 amended

12. Section 14 of the principal Act is amended—

(a) in subsection (1)—

(i) by deleting “, the Attorney-General of the participating State or the prisoner” where it first occurs and substituting the following—

“ or the prisoner, or any other person who has requested or consented to the transfer of the prisoner, ”; and

(ii) by deleting “, the Attorney-General of the participating State or the prisoner” in the second place where it occurs and substituting the following—

“ , the prisoner or that person ”;

- (b) in subsection (3), by deleting “the Attorney-General of the participating State” and substituting the following—
- “ any other person who has requested or consented to the transfer of the prisoner ”; and
- (c) in subsection (6), by inserting after “State” the following—
- “ or Territory ”.

Section 14A inserted

13. After section 14 of the principal Act the following section is inserted—

Effect of orders under this Part on joint prisoners

- “ 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
- (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. ”.

Sections 18 to 20 repealed and sections 18 and 19 substituted

14. Sections 18 to 20 of the principal Act are repealed and the following sections substituted—

Return of prisoner to participating State if no sentence or shorter sentence in Western Australia

- “ 18. Where—
- (a) a person is transferred to Western Australia 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 Western Australia 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 Western Australia; or

(ii) the person did become liable to serve in Western Australia 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.

Effect of orders under this Part on joint prisoners

19. 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

(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. ”.

Section 21 amended**15. Section 21 of the principal Act is amended—****(a) in subsection (1)—**

(i) by deleting “or 20”;

(ii) by deleting paragraph (a) 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 Western Australia, 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 Western Australia; or ”; and

(iii) in paragraph (b), by deleting “section 25” and substituting the following—

“ translated ”;

(b) in subsection (2), by deleting “sections 18 and 19” and substituting the following—

“ section 18 ”; and

- (c) in subsection (3)—
- (i) by deleting “or 20 (c) (ii)”;
 - (ii) by deleting “section 25” wherever it occurs in paragraphs (c) to (e) and substituting the following—
“ translated ”;
 - (iii) by deleting “, and the expression “other sentence or sentences of imprisonment” in section 20 (c) (ii), include” in paragraph (c) and substituting the following—
“ includes ”;
 - (iv) by deleting “sections 18 (b) and 20 (c) (ii)” in paragraph (d) and substituting the following—
“ section 18 (b) ”; and
 - (v) by deleting “sentence of imprisonment imposed upon a person” in paragraph (e) and substituting the following—
“ State sentence of imprisonment which a person became liable to serve ”.

Section 22 amended

16. Section 22 of the principal Act is amended—

- (a) in subsection (1), by inserting after “participating State” the following—
“ or a Territory ”; and
- (b) in subsection (3) (a)—
 - (i) by inserting after “interstate law” the following—
“ or under the *Transfer of Prisoners Act 1983* of the Commonwealth, or both, ”; and
 - (ii) by deleting “the participating State where the order is issued” and substituting the following—
“ a participating State or a Territory ”.

Section 23 amended

17. Section 23 of the principal Act is amended—

- (a) by inserting after the section designation “23.” the subsection designation “(1)”;
- (b) by inserting after “a participating State” the following—

“ or a Territory ”;
- (c) by deleting “the participating State every” and substituting the following—

“ the participating State or the Territory every State ”;
- (d) by deleting “by a court of Western Australia” where it first occurs;
- (e) by deleting “section 25 sentence” and substituting the following—

“ translated sentence ”; and
- (f) by inserting the following subsection—

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

Section 25 amended

18. Section 25 of the principal Act is amended—

- (a) by inserting after the section designation “25.” the subsection designation “(1)”;
- (b) by deleting paragraph (a) 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) in paragraph (b), by deleting “that sentence” and substituting the following—

“ any such State sentence of imprisonment ”; and

(d) by inserting the following subsection—

“ (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. ”.

Section 26 amended

19. Section 26 of the principal Act is amended—

(a) by deleting “section 25 sentence” wherever it occurs and substituting the following—

“ translated sentence ”;

(b) in subsection (6) (b) by deleting “sentence of imprisonment” wherever it occurs and substituting the following—

“ translated sentence ”; and

(c) by inserting after subsection (6) the following subsection—

“ (7) Subsection (5) 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. ”.

Section 27 amended

20. Section 27 of the principal Act is amended by deleting “section 25 sentence” in both places where it occurs and substituting the following—

“ translated sentence ”.

Section 29 amended

21. Section 29 of the principal Act is amended in subsection (1)—

- (a) by deleting “, 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 the following—

“ 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 after “participating State” in paragraph (a) the following—

“ or Territory ”; and

- (c) by inserting before “prisoner” in paragraph (b) the following—

“ State ”

Section 30 amended

22. Section 30 of the principal Act is amended—

- (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. ”;

and

- (b) in subsection (4), by inserting before “prisoner” the following—

“ State ”.

Section 31 amended

23. Section 31 of the principal Act is amended—

(a) in subsections (1) and (2) (b), by inserting after “participating State” in both places where it occurs the following—

“ or the Territory ”; and

(b) by inserting 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. ”.

Section 32 amended

24. Section 32 of the principal Act is amended in paragraph (c) by deleting “or of a participating State” and substituting the following—

“ , the Commonwealth, a participating State or a Territory ”.
