



Western Australia

# **Prisoners (Interstate Transfer) Act 1983**

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Western Australia

## Prisoners (Interstate Transfer) Act 1983

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Western Australia

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## **Prisoners (Interstate Transfer) Act 1983**

**An Act relating to the transfer interstate of prisoners.**

## **Part I — Preliminary**

### **1. Short title**

This Act may be cited as the *Prisoners (Interstate Transfer) Act 1983*<sup>1</sup>.

### **2. Commencement**

The provisions of this Act shall come into operation on such day or days as is or are respectively fixed by proclamation<sup>1</sup>.

### **3. Terms used**

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

**arrest warrant** means a warrant to apprehend, a warrant to arrest, or a warrant to commit a person to prison, but does not include —

(a) such a warrant, where the term of imprisonment which the person to be apprehended, arrested or committed under the warrant is liable to serve is default imprisonment; or

(b) a warrant to secure the attendance of a witness;

**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;

**chief executive officer** means chief executive officer of the department principally assisting the Minister to whom the administration of the *Prisons Act 1981* is for the time being committed by the Governor with that administration;

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

**corresponding court of Western Australia**, in relation to a court of a participating State, means a court of Western Australia that

is, under an order in force under section 4(1), declared to be a corresponding court in relation to the court of the participating State;

**corresponding Minister**, in relation to a participating State, means the Minister of that State who is responsible for the administration of the interstate law of that State;

**default imprisonment** means imprisonment in default of —

- (a) payment of any fine, penalty, costs or other sum of money of any kind imposed or ordered to be paid by any court, judge or justice; or
- (b) entering into a recognizance to keep the peace or to be of good behaviour;

**indeterminate sentence** means a sentence of or order or direction for imprisonment or detention for life or during the pleasure of Her Majesty or during the pleasure of the Governor-General, the Governor or the Governor of a participating State, and includes such a sentence, order, or direction imposed, made or given by, or by the operation of, an Act or other law;

**interstate law** means a law that, under an order in force under section 4(1), is declared to be an interstate law for the purposes of this Act;

**joint prisoner** means a person upon whom both —

- (a) any of the following —
  - (i) a State sentence of imprisonment; or
  - (ii) a State sentence of imprisonment as defined by an interstate law; or
  - (iii) an ACT sentence of imprisonment as defined by the *Prisoners (Interstate Transfer) Act 1993* of the Australian Capital Territory; or
  - (iv) a Territory sentence of imprisonment as defined by the *Prisoners (Interstate Transfer) Act* of the Northern Territory;

and

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(b) a Commonwealth sentence of imprisonment,  
have been imposed;

**Magistrates Court** means the Magistrates Court constituted by a  
magistrate;

**order of transfer** means an order issued under section 5, 13,  
14(6) or 18 for the transfer of a prisoner to a participating State;

**participating State** means a State in which an interstate law is in  
force;

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

**prison officer** means a person who is a prison officer under the  
*Prisons Act 1981*;

**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, recognizance or  
otherwise, that the person will comply with conditions relating  
to the person's behaviour;

**sentence of imprisonment** means —

- (a) a State sentence of imprisonment; or
- (b) a State sentence of imprisonment as defined by an  
interstate law; or
- (c) an ACT sentence of imprisonment as defined by the  
*Prisoners (Interstate Transfer) Act 1993* of the  
Australian Capital Territory; or
- (d) a Territory sentence of imprisonment as defined by the  
*Prisoners (Interstate Transfer) Act* of the Northern  
Territory; or
- (e) where relevant, a Commonwealth sentence of  
imprisonment;

**State** includes the Australian Capital Territory and 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;

**superintendent**, in relation to a prison, means the person who, under the *Prisons Act 1981*, is the superintendent of the prison;

**Territory** means the Territory of Norfolk Island, the Territory of Christmas Island, the Territory of the Cocos (Keeling) Islands or the Jervis Bay 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.

- (2) Where a justice of a participating State, in the exercise of his powers, issues a warrant of commitment while not constituting a court, the sentence of imprisonment imposed by the warrant shall, for the purposes of this Act, be deemed to have been imposed by a court.
- (3) For the purposes of this Act, a sentence of imprisonment imposed, or originally imposed, by, or by the operation of, an Act or other law of a State or Territory shall, except as prescribed by regulations under this Act, be deemed to have been imposed, or originally imposed, by a court of that State or Territory.
- (4) A reference in this Act to an Act of the Commonwealth includes a reference to an Act amending or replacing that Act.
- (5) In the case of a State other than the Australian Capital Territory or the Northern Territory, a reference in this Act to the

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Governor of a participating State includes a reference to any person exercising and performing all the powers and functions of the Governor of that State.

- (5a) In the case of the Australian Capital Territory —
- (a) the reference in section 26(4) to the Governor of a participating State is a reference to the Governor-General; and
  - (b) the references in section 26(5)(b) to the Governor of a participating State are references to the Governor-General or to the Executive within the meaning of the *Australian Capital Territory (Self-Government) Act 1988* of the Commonwealth.
- (5b) In the case of the Northern Territory, a reference in this Act to the Governor of a participating State is a reference to the Administrator of the Northern Territory, and includes a reference to any person exercising and performing all the powers and functions of the Administrator.
- (5c) A reference in this Act to the Governor-General includes a reference to any person exercising and performing all the powers and functions of the Governor-General.
- (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 3 amended by No. 72 of 1986 s. 4; No. 47 of 1987 s. 23; No. 113 of 1987 s. 32; No. 5 of 1994 s. 3; No. 59 of 2004 s. 141.]*

#### **4. Corresponding courts and interstate laws**

- (1) Subject to subsection (2), the Governor may, by order published in the *Gazette*, declare that —
- (a) a law of a State (other than Western Australia) is an interstate law for the purposes of this Act; and

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- (b) a specified court of Western Australia or any court belonging to a specified class or description of courts of Western Australia is, for the purposes of this Act, a corresponding court in relation to a specified court of a participating State or in relation to any court belonging to a specified class or description of courts of a participating State.
- (2) An order shall not be made under subsection (1) in respect of a law of another State unless the Governor is satisfied that that law substantially corresponds to the provisions of this Act and contains provisions that are referred to in this Act as provisions of an interstate law that correspond to specified provisions of this Act.

*[Section 4 amended by No. 72 of 1986 s. 5.]*

*[5A.<sup>1M</sup> Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section inserted 1 Nov 2009. See endnote 1M.]*

## **Part II — Transfer at request of prisoner**

*[Heading inserted by No. 1 of 2009 s. 4.]*

**[5B.]**<sup>1M</sup> *Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section inserted 1 Nov 2009. See endnote 1M.]*

### **5. Requests for, and orders of, transfer**

(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,

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

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- (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,

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,

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.

*[Section 5 inserted by No. 72 of 1986 s. 6; amended by No. 1 of 2009 s. 5.]*

**6. Effect of orders under this Part on joint prisoners**

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 authorises 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 authorised under that Act.

*[Section 6 inserted by No. 72 of 1986 s. 6.]*

*[7A.<sup>1M</sup> Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section inserted 1 Nov 2009. See endnote 1M.]*

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**7. Repeated requests for transfer**

A request made by a prisoner for his transfer to a participating State or to a Territory need not be entertained by the Minister if it is made within one year after a similar request was made by the prisoner.

*[Section 7 amended by No. 72 of 1986 s. 7.]*

**8. Receipt of request for transfer to Western Australia**

Where the Minister receives a written request given under the provision of an interstate law that corresponds to section 5, or a request made for the purposes of Part II of the *Transfer of Prisoners Act 1983* of the Commonwealth, asking him to accept the transfer of an imprisoned person to Western Australia, the Minister shall either refuse to consent, or consent, to the transfer and shall give to the Minister by whom the written request was given or to the Attorney-General of the Commonwealth, as the case may be, written notice of his refusal or consent.

*[Section 8 amended by No. 72 of 1986 s. 8.]*

**9A. Matters to which the Minister may have regard**

In forming an opinion or exercising a discretion under this Part, the Minister may have regard to any one or more of the following —

- (a) the welfare of the prisoner or person concerned;
- (b) the administration of justice in this or any other State;
- (c) the security and good order of any prison in this or any other State;
- (d) the safe custody of the prisoner or person concerned;
- (e) the protection of the community in this or any other State;
- (f) any other matter the Minister considers relevant.

*[Section 9A inserted by No. 1 of 2009 s. 6.]*



**9. Reports**

- (1) For the purpose of forming an opinion or exercising any discretion under this Part, the Minister may inform himself as he thinks fit and, in particular, by reference to reports of parole and prison authorities of Western Australia and of any participating State.
- (2) Reports of parole and prison authorities may be sent to a corresponding Minister for the purpose of assisting him to form an opinion or to exercise a discretion under the interstate law administered by him.

*[Section 9 amended by No. 1 of 2009 s. 7.]*

### **Part III — Transfer for trial**

#### **10. Request for transfer of prisoner to participating State**

- (1) Where a person the subject of an arrest warrant issued in accordance with the law of a participating State, the Commonwealth or a Territory is a prisoner serving a sentence of imprisonment in Western Australia and the Attorney General receives —

(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

- (b) a written request made by the prisoner to the Minister and referred to the Attorney General,

being in any case a request for the transfer of the prisoner to a participating State or to a Territory to be dealt with according to law, the Attorney-General shall either refuse to consent, or consent, to the transfer and shall give to the Attorney-General of the participating State, the Attorney-General of the Commonwealth or to the Minister, as the case may be, written notice of his refusal or consent.

- (2) Where the Minister receives a written request made by a prisoner for the transfer of the prisoner to a participating State or to a Territory to be dealt with according to law, the Minister shall refer the written request to the Attorney-General.

- (3) A request made by a prisoner for his transfer to a participating State or to a Territory need not be referred by the Minister to the Attorney-General if it is made within one year after a similar request was made by the prisoner.

*[Section 10 amended by No. 72 of 1986 s. 9.]*

**11. Necessary consents**

- (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.
- (2) A certificate signed by a prescribed officer certifying that any consent or request required under subsection (1) for the transfer of a prisoner to a participating State, or to a Territory, specified in the certificate, or to a Territory, has been given or made is, in the absence of evidence to the contrary, proof that the consent or request has been given or made.

*[Section 11 amended by No. 72 of 1986 s. 10.]*

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**12. Prisoner to be brought before Magistrates Court**

- (1) The Magistrates Court, upon proof to its satisfaction that the conditions precedent specified in section 11(1) have been complied with, shall by order in writing direct the Superintendent of the prison where the prisoner to whom the certificate relates is then imprisoned to bring the prisoner before the court at the place specified in the order on a date and at a time so specified for determination as to whether an order of transfer shall be issued.
- (2) Notice of an order made under subsection (1) shall be served on the Attorney-General, the chief executive officer and on the prisoner to whom the order relates.
- (3) At a hearing for the purpose of determining whether an order for the transfer of a prisoner shall be issued —
  - (a) the prisoner may be represented by a legal practitioner; and
  - (b) the Attorney-General may appear or be represented.

*[Section 12 amended by No. 47 of 1987 s. 24; No. 113 of 1987 s. 32; No. 59 of 2004 s. 141.]*

**13. Order of transfer**

When a prisoner is brought before the Magistrates Court pursuant to an order made under section 12(1), the court shall —

- (a) issue an order for the transfer of the prisoner to the participating State, or to the Territory, specified in the certificate issued in accordance with section 11(2) in respect of the prisoner; or
- (b) if the court, on the application of the prisoner, is satisfied that it would be harsh or oppressive or not in the interests of justice to transfer the prisoner to that participating State or Territory or that the trivial nature of the charge against the prisoner does not warrant the transfer, refuse to issue such an order.

*[Section 13 amended by No. 72 of 1986 s. 11; No. 59 of 2004 s. 141; No. 84 of 2004 s. 80.]*

**14. Review of decision of Magistrates Court**

- (1) Where the Attorney-General or the prisoner, or any other person who has requested or consented to the transfer of the prisoner, is dissatisfied with the decision of the Magistrates Court under section 13, the Attorney-General, the prisoner or that person, as the case may be, may, within 14 days of the decision, apply to the Supreme Court for a review of the decision and the Supreme Court may review the decision.
- (2) The prisoner shall be entitled to be present and may be represented by a legal practitioner at the review and for that purpose any court or a person authorised by the rules of the Supreme Court may, by order in writing, direct the superintendent of the prison where the prisoner is then imprisoned to bring the prisoner to the place of the review specified in the order on a date and at a time so specified.
- (3) The Attorney-General and any other person who has requested or consented to the transfer of the prisoner shall be entitled to appear or be represented at the review.
- (4) The review of the decision shall be by way of rehearing on the evidence, if any, given before the Magistrates Court and on any evidence in addition to the evidence so given.
- (5) Upon the review of a decision, the Supreme Court may confirm the decision or quash the decision and substitute a new decision in its stead.
- (6) For the purpose of giving effect to any such substituted decision, the Supreme Court may issue an order for the transfer of the prisoner to the appropriate participating State or Territory.

*[Section 14 amended by No. 72 of 1986 s. 12; No. 59 of 2004 s. 141.]*

**s. 14A**

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**14A.    Effect of orders under this Part on joint prisoners**

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 authorises 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 authorised under that Act.

*[Section 14A inserted by No. 72 of 1986 s. 13.]*

**15.    Prisoner brought to be returned to custody**

Where an order is made under section 12(1) or 14(2) —

- (a) the Superintendent to whom it is directed shall execute the order or may charge any prison officer or, subject to section 33, member of the police force with the execution of the order; and
- (b) the prisoner shall, while the order is being executed, be kept in the charge of the superintendent, prison officer or member of the police force acting under or in execution of the order, who shall in due course return the prisoner to the custody from which he has been brought.

**16.    Request for transfer of imprisoned person to Western Australia**

Where a person who is the subject of an arrest warrant issued in accordance with the laws of Western Australia is imprisoned in a participating State, the Attorney-General may give to the Attorney-General of the participating State a written request,

accompanied by a copy of the warrant, for the transfer of the person to Western Australia to be dealt with according to law.

**17. Request for transfer to Western Australia by imprisoned person**

Where —

- (a) a person is imprisoned in a participating State;
- (b) he is the subject of an arrest warrant issued in accordance with the laws of Western Australia; and
- (c) the Attorney-General of the participating State has given a notice, in writing, to the Attorney-General that he has consented to a request made by the person to be transferred to Western Australia to enable him to be dealt with according to law,

the Attorney-General shall either refuse to consent, or consent, to the transfer and shall give to the Attorney-General of the participating State notice, in writing, of his refusal or consent.

## **Part IV — Transfer back to original State**

### **18. Return of prisoner to participating State if no sentence or shorter sentence in Western Australia**

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 charge against the person of an offence 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.

*[Section 18 inserted by No. 72 of 1986 s. 14; amended by No. 84 of 2004 s. 80.]*



**19. Effect of orders under this Part on joint prisoners**

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 authorises 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 authorised under that Act.

*[Section 19 inserted by No. 72 of 1986 s. 14.]*

*[20. Deleted by No. 72 of 1986 s. 14.]*

**21. Provisions ancillary to sections 18, 19**

- (1) The provisions of section 18 do not apply in respect of a person if —
  - (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

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- (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 the person should serve the imprisonment in Western Australia; or
  - (b) an indeterminate sentence (not being a translated sentence) is imposed upon the person by a court of Western Australia.
- (2A) In forming an opinion or exercising a discretion under this Part, the Minister may have regard to any one or more of the following —
  - (a) the welfare of the person concerned;
  - (b) the administration of justice in this or any other State;
  - (c) the security and good order of any prison in this or any other State;
  - (d) the safe custody of the person concerned;
  - (e) the protection of the community in this or any other State;
  - (f) any other matter the Minister considers relevant.
- (2) For the purpose of section 18, a charge against a person of an offence is finally dealt with if —
  - (a) the person is tried for the offence and —
    - (i) the time or extended time, if any, fixed by or under any Act, within which an appeal against, or an application for the review of, the decision given on the trial may be lodged, or within which a retrial may be ordered, has expired; and
    - (ii) any appeal or application for review in respect of the decision given on the trial has been determined or withdrawn and proceedings in

respect of any retrial and any decision given on  
the retrial have been concluded;

or

- (b) the prosecution of the charge is discontinued.
- (3) For the purpose of determining which of the periods referred to in section 18(b) is the shorter or longer —
- (a) any entitlement to remissions shall be disregarded;
  - (b) a finite period of imprisonment shall be treated as being shorter than a period to be served under an indeterminate sentence;
  - (c) the expression *sentences of imprisonment* in section 18(b) includes a translated sentence that was originally imposed by a court of Western Australia;
  - (d) the expression *translated sentence or sentences* in section 18(b) does not include a translated sentence that was originally imposed by a court of Western Australia; and
  - (e) where a State sentence of imprisonment which a person became liable to serve in Western Australia (not being a translated sentence) is cumulative with a translated sentence or translated sentences originally imposed by a court other than a court of Western Australia, that translated sentence or those translated sentences shall be deemed —
    - (i) not to be a translated sentence or translated sentences, as the case may be; and
    - (ii) to be a sentence or sentences, as the case may be, which the person is liable to serve in Western Australia.

*[Section 21 amended by No. 72 of 1986 s. 15; No. 84 of 2004 s. 80; No. 2 of 2008 s. 68; No. 1 of 2009 s. 8.]*

## **Part V — Effect of order of transfer**

### **22. Transfer in custody of escort**

- (1) An order of transfer —
  - (a) shall direct the chief executive officer to deliver the prisoner into the custody of an escort and shall be sufficient authority to the chief executive officer so to deliver the prisoner; and
  - (b) authorises the escort to take and keep custody of the prisoner for the purpose of conveying him from Western Australia to such prison in a participating State or a Territory as is specified in the order and there delivering him into the custody of the gaoler or superintendent of that prison.
- (2) A reference in subsection (1) to an escort is a reference to a prison officer, a member of the police force or a person appointed by the Minister by an instrument in writing to be an escort for the purposes of this Act, or any 2 or more of them.
- (3) Where —
  - (a) under an interstate law or under the *Transfer of Prisoners Act 1983* of the Commonwealth, or both, an order is issued for the transfer to Western Australia of a person imprisoned in a participating State or a Territory; and
  - (b) pursuant to the order an escort brings the person into Western Australia,

the escort, while in Western Australia, is authorised to hold, take and keep custody of the person for the purpose of conveying him to such prison in Western Australia as is specified in the order and there delivering him into the custody of the chief executive officer.

*[Section 22 amended by No. 72 of 1986 s. 16; No. 47 of 1987 s. 24; No. 113 of 1987 s. 32.]*

**23. Transfer of sentence with prisoner**

- (1) Where pursuant to an order of transfer a prisoner is conveyed to a participating State or a Territory specified in the order, then from the time the prisoner arrives in the participating State or the Territory every State sentence of imprisonment imposed upon the prisoner, including a translated sentence, ceases to have effect in Western Australia except —
- (a) for the purpose of any appeal against or review of any conviction, judgment or sentence made, imposed or fixed by a court of Western Australia;
  - (b) in relation to any period of imprisonment served by the prisoner in Western Australia; or
  - (c) in relation to the remittance of money to the Minister which is paid in discharge or partial discharge of a sentence of default imprisonment originally imposed upon the prisoner by a court of Western Australia.
- (2) Subsection (1) does not apply to a sentence of imprisonment imposed upon a person where the person has completed serving that sentence.

*[Section 23 amended by No. 72 of 1986 s. 17.]*

**24. Information to be sent to the participating State**

- (1) Where pursuant to an order of transfer a prisoner is conveyed to a participating State, the Minister shall cause to be sent to the corresponding Minister of the participating State or to some person for the time being designated by him —
- (a) the order of transfer;
  - (b) the warrant of, or other authority for, commitment for any sentence of imprisonment which the prisoner was, immediately before he left Western Australia, serving or liable to serve;
  - (c) a report relating to the prisoner, which shall contain such information and be accompanied by such documents

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available in Western Australia as appear to be likely to be of assistance to any court, authority or officer in the participating State and shall include details of convictions, sentences of imprisonment, minimum terms of imprisonment, periods of imprisonment served, entitlements to remissions and grants of parole and a copy of any record relating to the prisoner's conduct; and

- (d) details, accompanied by any relevant orders or other documents, of any subsequent variations to the information provided in accordance with this subsection, whether arising from any appeal or review or otherwise.
- (2) A reference in subsection (1) to an order or other document is a reference to either the original or a copy certified in the prescribed manner.

**25. Sentence deemed to have been imposed in Western Australia**

- (1) Where under an interstate law an order is issued for the transfer to Western Australia of a person imprisoned in a participating State and the person is brought into Western Australia pursuant to the order, then from the time the person arrives in Western Australia —
- (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
  - (b) any direction or order given or made by a court of the participating State with respect to when any such State sentence of imprisonment shall commence shall, so far as practicable, be deemed to have been given or made,

by a corresponding court of Western Australia and, except as otherwise provided in this Act, shall be given effect to in Western Australia, and the laws of Western Australia shall apply, as if

such a court had had power to impose the sentence and give or make the direction or order, if any, and did in fact impose the sentence and give or make the direction or order, if any.

- (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 25 amended by No. 72 of 1986 s. 18.]*

**26. Provisions relating to translated sentences**

- (1) Where under a law of a participating State there has been fixed by a court in respect of a translated sentence a minimum term of imprisonment (being a shorter term than the translated sentence), during which minimum term the person subject to the sentence is not eligible to be released on parole, then, except as otherwise provided in this Act, that minimum term shall be deemed likewise to have been fixed by the corresponding court of Western Australia.
- (2) Where a translated sentence or a minimum term deemed under subsection (1) to have been fixed by a corresponding court of Western Australia —
- (a) is varied or quashed on a review by or appeal to a court of the participating State where the sentence or minimum term was imposed or fixed, the sentence or minimum term shall be deemed to have been varied to the same extent, or to have been quashed, by a corresponding court of Western Australia; or
  - (b) otherwise is varied or ceases to have effect as a result of action taken by any person or authority in that participating State, the sentence shall be deemed to have been varied to the same extent, or to have ceased to have effect, as a result of action taken by an appropriate person or authority in Western Australia.
- (3) Nothing in this Act operates to permit in Western Australia any appeal against or review of any conviction, judgment, sentence

or minimum term made, imposed or fixed in relation to a person by a court of a participating State.

- (4) Where a translated sentence is an indeterminate sentence requiring that the person who is the subject of the sentence be detained during the pleasure of Her Majesty or during the pleasure of the Governor of the participating State in which the sentence was imposed, the person shall be detained during the Governor's pleasure.
- (5) The Governor —
- (a) may exercise the royal prerogative of mercy in favour of a person who is subject to a translated sentence as if the person were —
    - (i) an offender convicted in a court of Western Australia; or
    - (ii) an offender convicted within Western Australia before a judge or magistrate of Western Australia;
  - and
  - (b) in exercising that prerogative, may give effect to any indication given by the Governor of the participating State in which the sentence of imprisonment was imposed upon that person as to what the Governor of the participating State may have done had the person not been transferred to Western Australia.
- (6) A person who is subject to a translated sentence —
- (a) shall be deemed to have served in Western Australia such period of the translated sentence as, up to the time of his transfer to Western Australia, he had served in respect of that sentence in a participating State (including any period deemed by the provision of an interstate law that corresponds to this paragraph to have been served in a participating State and any period spent in custody while being transferred to a prison in Western Australia);



- (b) shall be deemed to be entitled under the *Prisons Act 1981* to any remission of his translated sentence for which, up to the time of his transfer to Western Australia, he was eligible in respect of that translated sentence in the participating State (including any remission of sentence deemed by an interstate law to have been earned in a participating State), except that if the remission of sentence to which a person would otherwise be deemed to be eligible under this paragraph relates to or is conferred or calculated by reference to a period of his sentence greater than that which he has served prior to the time of his transfer to Western Australia, he shall be deemed to be entitled under the *Prisons Act 1981* to such proportionate amount of that period of remission of sentence as the period of sentence served by him prior to his transfer to Western Australia bears to the period by reference to which the remission to which he would otherwise have been deemed to be eligible was calculated; and
- (c) shall be entitled, in addition to the remission to which he is deemed to be entitled under paragraph (b) of this subsection, to further remission of sentence under the *Prisons Act 1981* which shall be calculated with reference to the balance of the term of his sentence remaining to be served from the time of the arrival of that person in Western Australia.
- (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 26 amended by No. 72 of 1986 s. 19.]*

**27. Translated sentence — default imprisonment**

- (1) Where a translated sentence is a sentence by which default imprisonment was ordered and any portion of the amount in default of payment of which the default imprisonment was ordered is paid by or on behalf of the prisoner who is the subject of the sentence to the superintendent of the prison in which he is imprisoned —
  - (a) the term of default imprisonment shall be reduced by a period which bears to the term of default imprisonment the same proportion as the portion paid bears to the total amount that was payable and, subject to any other sentence of imprisonment, the prisoner shall be entitled to be released on the expiry of the reduced period; and
  - (b) the portion so paid shall be remitted by the superintendent to the corresponding Minister of the participating State where the sentence, by which default imprisonment was ordered, was originally imposed.
- (2) Where a translated sentence is a sentence by which default imprisonment was ordered and, on a review by or an appeal to a court of the participating State where the sentence was imposed or as a result of any other action taken by any person or authority in that participating State, the amount in default of payment of which the default imprisonment was ordered is reduced or the obligation to pay that amount is quashed —
  - (a) the term of default imprisonment shall where the amount is reduced, be reduced by a period which bears to the term of default imprisonment the same proportion as the amount of the reduction bears to the total amount that was payable and, subject to any other sentence of imprisonment that may be imposed on him, the prisoner shall be entitled to be released on the expiry of that reduced period; or

- (b) the prisoner shall, where the obligation to pay the amount is quashed, thereupon, subject to any other sentence of imprisonment that may be imposed on him, be entitled to be released.

*[Section 27 amended by No. 72 of 1986 s. 20.]*

## Part VI — Miscellaneous

### 28. Notification to certain prisoners of certain decisions

The Attorney-General shall, when he makes a decision in respect of a prisoner for the purposes of this Act advise that prisoner of that decision.

### 29. Lawful custody for transit through Western Australia

- (1) Where, in relation to a person imprisoned in a participating State 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 Territory and in the course of conveying the person to the participating State or Territory pursuant to the order an escort brings the person into Western Australia, then —
- (a) while in Western Australia the escort is authorised to hold, take and keep custody of the person for the purpose of conveying him from Western Australia to such prison in the participating State or Territory as is specified in the order and there delivering him into the custody of the gaoler or superintendent; and
  - (b) any superintendent is authorised upon —
    - (i) the request of the escort;
    - (ii) delivery to the superintendent by the escort of a copy of the order of transfer certified by the escort to be such a copy; and
    - (iii) subject to the approval of the chief executive officer,  
  
to receive the person and to detain him in custody as though he were a State prisoner for such time as the escort requests and is reasonably necessary for the purpose of executing the order.
- (2) Where a superintendent has the charge of a person under subsection (1)(b), the superintendent is authorised, upon the

request of an escort and production by the escort of the order of transfer relating to the person, to deliver the person into the custody of the escort.

[Section 29 amended by No. 72 of 1986 s. 21; No. 47 of 1987 s. 24; No. 113 of 1987 s. 32.]

**30. Escape from custody of person being transferred**

(1) A person in the custody of an escort pursuant to section 29 who escapes from that custody may be apprehended without warrant by the escort, any member of the police force or any other person.

(2) Where a person in custody pursuant to section 29 —

- (a) has escaped and been apprehended; or
- (b) has attempted to escape,

that person may be taken before a justice who may, notwithstanding the terms of any order of transfer issued under an interstate law, by warrant under his hand —

- (c) order the person to be returned to the participating State in which the order of transfer under which that person was being conveyed at the time of the escape or attempt to escape was issued; and
- (d) for that purpose, order the person to be delivered to an escort.

(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.

(3) A warrant issued under subsection (2) may be executed according to its tenor.

(4) A person who is the subject of a warrant issued under subsection (2) may be detained in custody as a State prisoner until he is delivered into the custody of an escort in accordance

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with that warrant or until the expiration of a period of 7 days from the issuing of the warrant, whichever first occurs.

- (5) If a person who is the subject of a warrant issued under subsection (2) is not, in accordance with the warrant, delivered into the custody of an escort within a period of 7 days from the issuing of the warrant, the warrant shall have no further effect.
- (6) A reference in subsection (2), (4) or (5) to an escort in relation to a person who was, at the time of his escape or attempt to escape, being conveyed under an order of transfer issued in a participating State is a reference to —
  - (a) the escort who had the custody of that person pursuant to that order;
  - (b) a prison officer or a member of the police force of the participating State; or
  - (c) a person appointed by the corresponding Minister of the participating State by an instrument in writing to be an escort for the purpose of conveying that person to the participating State,

or any 2 or more of them.

*[Section 30 amended by No. 72 of 1986 s. 22.]*

**31.     Escape from custody — penalty**

- (1) Any person who, being a person in custody under an order of transfer, escapes or attempts to escape from that custody while he is not within Western Australia or the participating State or the Territory to which he was being conveyed under that order is guilty of a crime and is liable to imprisonment for a term not exceeding 3 years, to be served after the expiration of any term of imprisonment, penal servitude or detention to which he was subject at the time of his escape or attempt to escape.
- (2) Without limiting the generality of section 146 of *The Criminal Code*, that section applies to a person —
  - (a) who is in custody under an order of transfer; and

- (b) who escapes from that custody while he is not within Western Australia or the participating State or the Territory to which he was being conveyed under that order,

in the same way as it applies to a person who escapes from lawful custody while undergoing a sentence involving deprivation of liberty in Western Australia.

- (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 31 amended by No. 72 of 1986 s. 23.]*

### **32. Revocation of order of transfer on escape from custody**

The Magistrates Court may revoke an order of transfer if it appears to the court, on application made to it under this section by the holder of a prescribed office or position or by a person who belongs to a prescribed class of persons, that the person in respect of whom the order was issued has, in the course of his being conveyed in accordance with that order, committed —

- (a) the offence of escaping or attempting to escape; or  
(b) any other offence,

whether —

- (c) the offence was an offence against the law of Western Australia, the Commonwealth, a participating State or a Territory; or  
(d) a charge has been laid or a conviction secured in respect of the offence or not.

*[Section 32 amended by No. 72 of 1986 s. 24; No. 59 of 2004 s. 141.]*

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**33. Assistance by police officers**

Subject to the directions of the Commissioner of Police, a police officer may, upon the request of the chief executive officer or a prison officer, assist in the exercise or performance of any power or duty conferred or imposed by this Act and when so acting a police officer, in addition to the powers and duties conferred and imposed on him by or under any other law, shall have the powers and be subject to the responsibilities and shall receive the protection from liability which in like circumstances would be conferred or imposed on a prison officer.

*[Section 33 amended by No. 47 of 1987 s. 24; No. 113 of 1987 s. 32.]*

**34. Regulations**

The Governor may make regulations for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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### Notes

<sup>1</sup> This reprint is a compilation as at 24 July 2009 of the *Prisoners (Interstate Transfer) Act 1983* and includes the amendments made by the other written laws referred to in the following table<sup>1M</sup>. The table also contains information about any reprint.

#### Compilation table

Short title	Number and year	Assent	Commencement
<i>Prisoners (Interstate Transfer) Act 1983</i>	75 of 1983	22 Dec 1983	1 Jul 1984 (see s. 2 and <i>Gazette</i> 1 Jun 1984 p. 1753)
<i>Prisoners (Interstate Transfer) Amendment Act 1986</i>	72 of 1986	4 Dec 1986	s. 1 and 2: 4 Dec 1986; Act other than s. 1 and 2: 2 Sep 1988 (see s. 2 and <i>Gazette</i> 2 Sep 1988 p. 3393)
<i>Acts Amendment (Corrective Services) Act 1987 Pt. IV</i>	47 of 1987	3 Oct 1987	11 Dec 1987 (see s. 2 and <i>Gazette</i> 11 Dec 1987 p. 4363)
<i>Acts Amendment (Public Service) Act 1987 s. 32</i>	113 of 1987	31 Dec 1987	16 Mar 1988 (see s. 2 and <i>Gazette</i> 16 Mar 1988 p. 813)
<i>Prisoners (Interstate Transfer) Amendment Act 1994</i>	5 of 1994	11 Apr 1994	s. 1 and 2: 11 Apr 1994; Act other than s. 1 and 2: 4 Nov 1995 (see s. 2 and <i>Gazette</i> 3 Nov 1995 p. 5163)
<b>Reprint of the <i>Prisoners (Interstate Transfer) Act 1983</i> as at 6 Dec 2002</b> (includes amendments listed above)			
<i>Courts Legislation Amendment and Repeal Act 2004 s. 141</i>	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 80</i>	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
<i>Criminal Law and Evidence Amendment Act 2008 s. 68</i>	2 of 2008	12 Mar 2008	27 Apr 2008 (see s. 2 and <i>Gazette</i> 24 Apr 2008 p. 1559)
<i>Prisoners (Interstate Transfer) Amendment Act 2009</i>	1 of 2009	17 Apr 2009	s. 1 and 2: 17 Apr 2009 (see s. 2(a)); Act other than s. 1 and 2: 18 Apr 2009 (see s. 2(b))
<b>Reprint 2: The <i>Prisoners (Interstate Transfer) Act 1983</i> as at 24 Jul 2009</b> (includes amendments listed above)			

<sup>1M</sup> Under the *Cross-border Justice Act 2008* section 14, in order to give effect to that Act, this Act must be applied with the modifications prescribed by the *Cross-border Justice Regulations 2009* Part 3 Division 15 as if this Act had been altered in that way. If a modification is to replace or insert a numbered provision, the new provision is identified by the superscript 1M appearing after the provision number. If a modification is to replace or insert a definition, the new definition is identified by the superscript 1M appearing after the defined term.

## Defined Terms

*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

<b>Defined Term</b>	<b>Provision(s)</b>
arrest warrant .....	3(1)
Attorney-General .....	3(1)
chief executive officer.....	3(1)
Commonwealth sentence of imprisonment .....	3(1)
corresponding court of Western Australia .....	3(1)
corresponding Minister .....	3(1)
default imprisonment .....	3(1)
indeterminate sentence.....	3(1)
interstate law .....	3(1)
joint prisoner.....	3(1)
Magistrates Court.....	3(1)
order of transfer.....	3(1)
participating State .....	3(1)
prison .....	3(1)
prison officer.....	3(1)
prisoner .....	3(1)
relevant security .....	3(1)
sentence of imprisonment .....	3(1)
sentences of imprisonment.....	21(3)(c)
State .....	3(1)
State prisoner .....	3(1)
State sentence of imprisonment .....	3(1)
superintendent.....	3(1)
Territory .....	3(1)
translated sentence .....	3(1)
translated sentence or sentences.....	21(3)(d)