



Western Australia

Prisoners (Release for Deportation) Act 1989

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Defined terms

Prisoners (Release for Deportation) Act 1989

An Act relating to the release of prisoners for the purpose of deportation.

1. Short title

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

2. Commencement

This Act shall come into operation on such day as is fixed by proclamation¹.

3. Interpretation

- (1) In this Act, unless the contrary intention appears —
deportation order has the meaning given in section 4 of the *Migration Act 1958* of the Commonwealth;

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

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) a detention centre as defined in section 3 of the *Young Offenders Act 1994*;

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;

Prisoners Review Board means the Prisoners Review Board established under the *Sentence Administration Act 2003*.

- (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*.

[Section 3 amended: No. 17 of 1991 s. 4; No. 78 of 1995 s. 109; No. 10 of 1998 s. 60; No. 50 of 2003 s. 29(3); No. 41 of 2006 s. 93(2).]

4. Release for deportation

- (1) Where a deportation order is made in respect of a prisoner, the Prisoners Review Board shall, subject to subsection (2), furnish a written report to the Minister containing a recommendation as to whether or not an order for release should be made in respect of the prisoner.
- (2) The Prisoners Review Board shall not furnish a report under subsection (1) in respect of a prisoner (within the meaning of paragraph (a) of the definition of that term in section 3(1)) unless the circumstances are such that the prisoner could be released from prison on parole under an order made under the *Sentence Administration Act 2003*.
- (3) In a report furnished under subsection (1) the Prisoners Review Board shall give express attention to whether, if a deportation order had not been made in respect of the prisoner, the prisoner would have been considered suitable for release from prison, having regard to —

- (a) the nature and circumstances of the offence in respect of which the prisoner is serving a term of imprisonment or is being detained during the Governor's pleasure;
 - (b) the degree of risk that the release of the prisoner would have appeared to present to the community or to any individual in the community; and
 - (c) such other matters as the Prisoners Review Board thinks fit.
- (4) Where a report furnished under subsection (1) contains a recommendation that an order for release be 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.
- (5) 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.
- (6) Notwithstanding section 20 of the *Sentence Administration Act 2003*, the Prisoners Review Board is not required to make an order directing that a prisoner be released from prison on parole if an order for release is in force in respect of that prisoner.

[Section 4 inserted: No. 17 of 1991 s. 5; amended: No. 78 of 1995 s. 109; No. 50 of 2003 s. 29(3); No. 41 of 2006 s. 93(3).]

5. Variation or revocation of order

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

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- (a) the deportation of a prisoner released under section 4(4) 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 authorise 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(4) 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.

[Section 5 amended: No. 17 of 1991 s. 6.]

6. Sentence or detention deemed to have been served

If the deportation of a prisoner released under section 4(4) 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.

[Section 6 amended: No. 17 of 1991 s. 7.]

7. Exclusion of the rules of natural justice

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.

8. Regulations

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.

Notes

- ¹ This is a compilation of the *Prisoners (Release for Deportation) Act 1989* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Prisoners (Release for Deportation) Act 1989</i>	15 of 1989	16 Nov 1989	6 Dec 1991 (see s. 2 and <i>Gazette</i> 6 Dec 1991 p. 6067)
<i>Prisoners (Release for Deportation) Amendment Act 1991</i>	17 of 1991	21 Jun 1991	6 Dec 1991 (see s. 2 and <i>Gazette</i> 6 Dec 1991 p. 6067)
<i>Sentencing (Consequential Provisions) Act 1995 Pt. 68</i>	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2 and <i>Gazette</i> 25 Oct 1996 p. 5632)
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998 s. 60</i>	10 of 1998	30 Apr 1998	30 Apr 1998 (see s. 2(1))
<i>Sentencing Legislation Amendment and Repeal Act 2003 s. 29(3)</i>	50 of 2003	9 Jul 2003	31 Aug 2003 (see s. 2 and <i>Gazette</i> 29 Aug 2003 p. 3833)
Reprint 1: The <i>Prisoners (Release for Deportation) Act 1989</i> as at 3 Oct 2003 (includes amendments listed above)			
<i>Parole and Sentencing Legislation Amendment Act 2006 s. 93</i>	41 of 2006	22 Sep 2006	28 Jan 2007 (see s. 2 and <i>Gazette</i> 29 Dec 2006 p. 5867)

Defined terms

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

Defined term	Provision(s)
deportation order	3(1)
order for release	3(1)
prison	3(1)
prisoner	3(1)
Prisoners Review Board.....	3(1)
safe custody	3(3)