

South Australia

# **International Transfer of Prisoners (South Australia) Act 1998**

An Act relating to the transfer of prisoners to and from Australia.

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**The Parliament of South Australia enacts as follows:**

## **Part 1—Preliminary**

### **1—Short title**

This Act may be cited as the *International Transfer of Prisoners (South Australia) Act 1998*.

### 3—Object of Act

The object of this Act is to give effect to the scheme for the international transfer of prisoners set out in the Commonwealth Act by enabling such prisoners to be transferred to and from this jurisdiction.

### 4—Definitions

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

*Commonwealth Act* means the *International Transfer of Prisoners Act 1997* of the Commonwealth;

*corresponding law* means a law of another State that provides for the international transfer of prisoners;

*function* includes a power, authority or duty;

*State* includes a Territory;

*this jurisdiction* means South Australia;

*War Crimes Tribunal* means the Former Yugoslavia Tribunal or Rwanda Tribunal within the meaning of the Commonwealth Act.

- (2) If an expression is defined in the Commonwealth Act and is also used in this Act, the expression used in this Act has, unless the contrary intention appears, the same meaning as in that Act.
- (3) In this Act, a reference to the Commonwealth Act includes a reference to—
- (a) that Act as amended and in force for the time being; and
  - (b) an Act enacted in substitution for that Act.

### 5—Notes

Notes in the text of this Act do not form part of this Act.

## Part 2—Conferral of jurisdiction

### 6—Powers and functions of Minister

- (1) A Minister of this jurisdiction may exercise and perform any function conferred or expressed to be conferred on the Minister by or under the Commonwealth Act.
- (2) The Minister may delegate to an authorised person any such function.
- (3) In this section—

*authorised person* means any person prescribed by the regulations or belonging to a class of persons prescribed by the regulations;

*Minister* includes any Minister who under the law of this jurisdiction can act for and on behalf of the Minister.

### 7—Powers and functions of prison officers, police officers and others

- (1) A prison officer, police officer and any other official of this jurisdiction may exercise and perform any function conferred or expressed to be conferred on the official—
  - (a) by or under the Commonwealth Act or a corresponding law; or

- (b) in accordance with the arrangements referred to in section 8.
- (2) It is lawful for a prison officer, police officer or other official of this jurisdiction—
  - (a) to hold and deal with any prisoner in accordance with the terms of a warrant issued under the Commonwealth Act in respect of the prisoner; and
  - (b) to take any action in respect of a prisoner transferred, or to be transferred, to or from Australia in accordance with the Commonwealth Act that the official is authorised to take by or under that Act.

**Note—**

A number of provisions of the Commonwealth Act require State officials to exercise functions. For example, a warrant may be issued under section 30 of the Commonwealth Act requiring a prison officer, police officer or other person to escort a prisoner who is being transferred. A police officer of this jurisdiction may arrest a person escaping from custody under section 56 of the Commonwealth Act.

## **8—Arrangements for administration of Act**

- (1) The Governor may, in accordance with section 50 of the Commonwealth Act, make arrangements for the administration of that Act, including arrangements relating to the exercise by officers of this jurisdiction of functions under the Commonwealth Act.
- (2) An arrangement may be varied or terminated in accordance with the Commonwealth Act.

## **Part 3—Enforcement of sentences of imprisonment of transferred prisoners**

### **9—Prisoners transferred to Australia**

- (1) Any relevant enforcement law applies to and in respect of a prisoner who is transferred to Australia under the Commonwealth Act to complete serving a sentence of imprisonment in this jurisdiction that was imposed by a court or tribunal of a transfer country (or by a War Crimes Tribunal) in the same way as the enforcement law applies to and in respect of a federal prisoner serving a sentence of imprisonment in this jurisdiction that is imposed under a law of the Commonwealth.
- (2) Without limiting subsection (1), enforcement laws relating to the following matters are applicable to a prisoner or Tribunal prisoner who is transferred to Australia under the Commonwealth Act:
  - (a) conditions of imprisonment and treatment of prisoners;
  - (b) release on parole of prisoners;
  - (c) classification and separation of prisoners;
  - (d) removal of prisoners from one prison to another;
  - (e) removal of prisoners between prisons and hospitals or other places or between one hospital or other place and another;
  - (f) treatment of mentally impaired prisoners;
  - (g) eligibility for participation in prison programs, including release under a pre-release permit scheme (however called);

- (h) temporary absence from prison (for example, to work or seek work, to attend a funeral or visit a relative suffering a serious illness or to attend a place of education or training);
  - (i) transfer of prisoners between States and Territories.
- (3) Any direction given by the Attorney-General of the Commonwealth under section 44 of the Commonwealth Act concerning enforcement of such a sentence of imprisonment is to be given effect in this jurisdiction.
- (4) Any direction given by the Attorney-General of the Commonwealth under section 49 of the Commonwealth Act concerning a prisoner referred to in subsection (1) who is pardoned or granted amnesty or commutation of sentence of imprisonment as referred to in that section is to be given effect in this jurisdiction.
- (5) In this section—
- enforcement law** means—
- (a) any law of this jurisdiction; or
  - (b) any law of the Commonwealth or another State; or
  - (c) any practice or procedure lawfully observed,
- concerning the detention of prisoners.

**Note—**

See Part 1B of the *Crimes Act 1914* of the Commonwealth in relation to the imprisonment and release of prisoners. In particular see sections 19A and 19AA (remissions and reductions of sentences) and Division 5 (Conditional release on parole or licence).

## **10—Prisoners transferred from Australia**

- (1) Except as provided by subsection (2), the laws of this jurisdiction relating to the enforcement of a sentence of imprisonment by a court of this jurisdiction on a person cease to apply to a prisoner on whom such a sentence has been imposed who is transferred from Australia under the Commonwealth Act to complete serving such a sentence of imprisonment.
- (2) Nothing in this section limits the power of the Crown or of a court or tribunal of this jurisdiction to pardon, grant amnesty or commute such a sentence of imprisonment.

## **Part 4—Miscellaneous**

### **11—Regulations**

The Governor may make regulations, not inconsistent with this Act, 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.

## Appendix—Commonwealth Act

### Note—

This appendix contains the text of the Commonwealth Act for convenience of reference. The appendix is not to be regarded as part of the South Australian Act.

## International Transfer of Prisoners Act 1997

### No. 75, 1997

#### An Act relating to the transfer of prisoners to and from Australia

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## **International Transfer of Prisoners Act 1997**

**No. 75, 1997**

**An Act relating to the transfer of prisoners to and from Australia**

[Assented to 18 June 1997]

The Parliament of Australia enacts:

### **Part 1—Preliminary**

#### **1—Short title**

This Act may be cited as the *International Transfer of Prisoners Act 1997*.

#### **2—Commencement**

- (1) Sections 1 and 2 commence on the day on which this Act receives the Royal Assent.
- (2) The remaining provisions of this Act commence on a day or days to be fixed by Proclamation.

#### **3—Objects of Act**

The objects of this Act are:

- (a) to facilitate the transfer of prisoners between Australia and certain countries with which Australia has entered agreements for the transfer of prisoners so that the prisoners may serve their sentences of imprisonment in their countries of nationality or in countries with which they have community ties; and
- (b) to facilitate the transfer of prisoners to Australia from countries in which prisoners are serving sentences of imprisonment imposed by certain war crimes tribunals.

#### **4—Definitions**

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

*ACT* means the Australian Capital Territory.

*ACT Minister* means the Minister for the ACT administering the law of the ACT relating to the transfer of prisoners and includes any Minister acting for the time being for or on behalf of that Minister.

*appropriate Ministerial consent* means Ministerial consent given as required by section 5.

*Attorney-General* means the Attorney-General of the Commonwealth.

*Australian court* means a court or tribunal of the Commonwealth, a State or a Territory.

*Australian law* means a law of the Commonwealth, a State or a Territory.

*community ties* has the meaning given by subsections (4) and (5).

*continued enforcement method*, in relation to enforcement of a sentence of imprisonment, has the meaning given by section 42.

**converted enforcement method**, in relation to enforcement of a sentence of imprisonment, has the meaning given by section 42.

**escort officer**, in relation to a prisoner, means the police officer, prison officer or other person specified in the warrant authorising the transfer of the prisoner under this Act as the escort officer for the prisoner.

**extradition country** has the same meaning as in the *Extradition Act 1988*.

**federal prisoner**:

- (a) means a prisoner who is serving a sentence of imprisonment imposed under a law of the Commonwealth; and
- (b) includes a prisoner who is serving a sentence of imprisonment imposed under a law of the Northern Territory and who was, before 12 June 1985, removed to the State of South Australia under section 3 of the *Removal of Prisoners (Territories) Act 1923*.

**foreign law** means a law of a foreign country or of a part of, or in force in a part of, a foreign country.

**Former Yugoslavia Tribunal**:

- (a) means the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, established by Resolution 827 (1993) of the Security Council of the United Nations, a copy of the English text of which is set out in Schedule 1 to the *International War Crimes Tribunals Act 1995*; and
- (b) includes any of the organs referred to in Article 11 of the Statute of the Tribunal.

**joint prisoner** means a prisoner who is:

- (a) both a State prisoner or a Territory prisoner (or both) and a federal prisoner; or
- (b) both a State prisoner and a Territory prisoner.

**law** of the Commonwealth, a State or a Territory, means a law (whether written or unwritten) of the Commonwealth, that State or that Territory, and includes a law (whether written or unwritten) in force in the Commonwealth, that State or that Territory or in any part of the Commonwealth, that State or that Territory.

**mental illness** means an underlying pathological infirmity of the mind, whether of long or short duration and whether permanent or temporary, but does not include a condition that results from the reaction of a healthy mind to extraordinary stimuli.

**mental impairment** includes senility, intellectual disability, mental illness, brain damage and severe personality disorder.

**mentally impaired prisoner** means:

- (a) a person serving a sentence of imprisonment on the acquittal of the person for an offence on the ground of mental impairment; or
- (b) a person serving a sentence of imprisonment because the person has been found mentally unfit to stand trial.

***national*** of a country means a person who is a citizen of the country under the law of the country.

***non-parole period***, in relation to a sentence of imprisonment, means that part of the period of imprisonment for that sentence during which the person is not to be released on parole, whether that part of the period is fixed or recommended by a court or tribunal or fixed by operation of law.

***police officer*** means:

- (a) a member or special member of the Australian Federal Police; or
- (b) a member of the police force of a State or Territory.

***prison officer*** means a person appointed or employed to assist in the management of a prison.

***prisoner*** means a person (however described) who is serving a sentence of imprisonment and includes:

- (a) a mentally impaired prisoner; and
- (b) a person who has been released on parole.

***prisoner's representative*** means a person who may consent to the transfer of a prisoner as referred to in section 6.

***release on parole*** means any form of conditional release in the nature of parole and includes:

- (a) release on probation; and
- (b) release on licence to be at large.

***Rwanda Tribunal***:

- (a) means the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwanda citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994, established by Resolution 955 (1994) of the Security Council of the United Nations, a copy of the English text of which is set out in Schedule 3 to the *International War Crimes Tribunals Act 1995*; and
- (b) includes any of the organs referred to in Article 10 of the Statute of the Tribunal.

***sentence of imprisonment*** means any punishment or measure involving deprivation of liberty ordered by a court or tribunal for a determinate or indeterminate period in the exercise of its criminal jurisdiction and includes any direction or order given or made by the court or tribunal with respect to the commencement of the punishment or measure.

***State*** includes the ACT and the Northern Territory.

***State Minister*** means:

- (a) in relation to a particular State other than the ACT or the Northern Territory—the Minister of the State administering the law of the State relating to the transfer of prisoners; and

- (b) in relation to the ACT—the ACT Minister; and
- (c) in relation to the Northern Territory—the Minister for the Northern Territory administering the law of the Northern Territory relating to the transfer of prisoners;

and includes any Minister acting for the time being for or on behalf of that Minister and any person to whom the Minister has delegated any of the Minister's functions under this Act.

**State prisoner** means a prisoner who is serving a sentence of imprisonment imposed under a law of a State.

**Statute of the Tribunal** means:

- (a) in the case of the Former Yugoslavia Tribunal—the Statute of the Tribunal (a copy of the English text of which is set out in Schedule 2 to the *International War Crimes Tribunals Act 1995*) adopted by Resolution 827 (1993) of the Security Council of the United Nations (a copy of the English text of which is set out in Schedule 1 to that Act); and
- (b) in the case of the Rwanda Tribunal—the Statute of the Tribunal (a copy of the English text of which is set out in Schedule 4 to the *International War Crimes Tribunals Act 1995*) adopted by Resolution 955 (1994) of the Security Council of the United Nations (a copy of the English text of which is set out in Schedule 3 to that Act).

**superintendent** of a prison means the person for the time being in charge of the prison.

**Territory** means the Jervis Bay Territory, Norfolk Island, the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands, but does not include the ACT and the Northern Territory.

**Territory Minister** means:

- (a) in relation to a particular Territory (other than Norfolk Island)—the Minister administering the law of the Territory relating to the transfer of prisoners; and
- (b) in relation to Norfolk Island—the executive member (within the meaning of the *Norfolk Island Act 1979*) administering the law of Norfolk Island relating to the transfer of prisoners;

and includes any Minister or executive member acting for the time being for or on behalf of that Minister or executive member and any person to whom the Minister or executive member has delegated any of the Minister's or executive member's functions under this Act.

**Territory prisoner** means a prisoner who is serving a sentence of imprisonment imposed under a law of a Territory.

**transfer country** means a foreign country that is declared by the regulations under section 8 to be a transfer country.

**treaty** includes a convention, protocol, agreement or arrangement.

**Tribunal** means:

- (a) the Former Yugoslavia Tribunal; or

- (b) the Rwanda Tribunal.

**Tribunal country** means a foreign country in which a Tribunal prisoner is serving, or is to serve, a sentence of imprisonment imposed by the Tribunal.

**Tribunal offence** means:

- (a) an offence in relation to which the Former Yugoslavia Tribunal has the power to prosecute persons under Article 2, 3, 4 or 5 of the Statute of the Tribunal;  
or  
(b) an offence in relation to which the Rwanda Tribunal has the power to prosecute persons under Article 2, 3 or 4 of the Statute of the Tribunal.

**Tribunal prisoner** means a prisoner who is serving a sentence of imprisonment imposed by a Tribunal for a Tribunal offence.

- (2) For the purposes of this Act, the following persons are taken not to be serving a sentence of imprisonment:
- (a) a person who has been released by a court from serving the whole or a part of a sentence of imprisonment on the person giving a security (with or without sureties) by recognisance or otherwise, that the person will comply with conditions relating to the person's behaviour and in relation to whom action can no longer be taken because of a breach of a condition of the security or because of the expiration of the security;
- (b) a person who, through exercise of the Royal prerogative of mercy or other executive prerogative or discretion given by law, is no longer required to serve the whole or part of a sentence of imprisonment;
- (c) a person on whom a sentence of imprisonment has been imposed that has not yet commenced.
- (3) If a sentence of death imposed on a person has been commuted to a term of imprisonment or to imprisonment for life, this Act applies to and in relation to the person as if the sentence of death had been a sentence of imprisonment for that term or for life.
- (4) For the purposes of this Act, a prisoner has **community ties** with a transfer country if:
- (a) the prisoner's principal place of residence immediately before being sentenced to imprisonment in Australia was in the transfer country; or
- (b) the prisoner's parent, grandparent or child has a principal place of residence in the transfer country; or
- (c) the prisoner is married to or has a de facto relationship with anyone whose principal place of residence is in the transfer country; or
- (d) the prisoner has a close continuing relationship (involving frequent personal contact and a personal interest in the other person's welfare) with anyone whose principal place of residence is in the transfer country.
- (5) For the purposes of this Act, a prisoner has **community ties** with a State or a Territory if:
- (a) the prisoner's principal place of residence immediately before being sentenced to imprisonment in the transfer country was in that State or Territory; or

- (b) the prisoner's parent, grandparent or child has a principal place of residence in that State or Territory; or
- (c) the prisoner is married to or has a de facto relationship with anyone whose principal place of residence is in that State or Territory; or
- (d) the prisoner has a close continuing relationship (involving frequent personal contact and a personal interest in the other person's welfare) with anyone whose principal place of residence is in that State or Territory.

### **5—Appropriate Ministerial consent to transfer**

- (1) Ministerial consent to the transfer of a prisoner from Australia to a transfer country is required to be given:
  - (a) if the prisoner is a federal prisoner—by the Attorney-General; or
  - (b) if the prisoner is a State prisoner—by both the Attorney-General and the State Minister concerned; or
  - (c) if the prisoner is a Territory prisoner—by both the Attorney-General and the Territory Minister concerned; or
  - (d) if the prisoner is a joint prisoner—by the Attorney-General and all State Ministers or Territory Ministers concerned.
- (2) Ministerial consent to the transfer of a prisoner from a transfer country to Australia is required to be given:
  - (a) by both the Attorney-General and the State or Territory Minister of the State or Territory in which the prisoner is to begin to complete serving a sentence of imprisonment imposed by the transfer country in accordance with this Act; and
  - (b) if applicable:
    - (i) if the prisoner is to begin to complete serving a sentence of imprisonment imposed by the transfer country in accordance with this Act in New South Wales but has community ties with the ACT, the Jervis Bay Territory or Norfolk Island—by the ACT Minister or Territory Minister concerned; or
    - (ii) if the prisoner is to begin to complete serving a sentence of imprisonment imposed by the transfer country in accordance with this Act in Western Australia but has community ties with a Territory other than the Jervis Bay Territory or Norfolk Island—by the Territory Minister.

**Note:**

Community ties with a State or Territory is defined in subsection 4(5).

- (3) Ministerial consent to the transfer of a Tribunal prisoner from a Tribunal country to Australia is required to be given by the Attorney-General and the State Minister or Territory Minister of the State or Territory in which the Tribunal prisoner is to begin to complete serving the sentence of imprisonment imposed by the Tribunal in accordance with this Act.

**Note:**

A prisoner may be transferred from the prison, hospital or other place in which the prisoner begins to complete serving a sentence of imprisonment to another prison, hospital or other place in the State or Territory or to a prison, hospital or other place in another State or Territory. See paragraphs 46(5)(d), (e) and (i).

**6—Prisoner's and prisoner's representative's consent to transfer**

- (1) A prisoner may consent to his or her transfer under this Act only if:
  - (a) the prisoner is an adult; and
  - (b) the prisoner is capable of consenting to the transfer.
- (2) A person may consent to the transfer under this Act of a prisoner who is a child or who is incapable of consenting to his or her transfer if the person is the prisoner's parent, guardian or legal representative (in this Act called the *prisoner's representative*).
- (3) A prisoner or prisoner's representative must be informed, through an interpreter if necessary, in language (including sign language or braille) in which the prisoner or prisoner's representative is able to communicate with reasonable fluency, of the legal consequences of transfer of the prisoner under this Act before consenting to the transfer.
- (4) The prisoner's or prisoner's representative's consent to transfer must be accompanied by certification by the prisoner or prisoner's representative that he or she has been so informed.
- (5) For the purposes of this section, a prisoner is incapable of consenting to his or her transfer if the prisoner is an adult who:
  - (a) is incapable of understanding the general nature and effect of the transfer; or
  - (b) is incapable of indicating whether he or she consents or does not consent to a transfer.
- (6) A prisoner's or prisoner's representative's consent to transfer cannot be withdrawn after the prisoner leaves the country from which the prisoner is being transferred.
- (7) In this section:

*adult* means:

- (a) in the case of a prisoner in Australia—a person of or above 18 years of age; and
- (b) in the case of a prisoner in a transfer country or a Tribunal country—a person of or above the age that under the law of that country is the age at which a person is considered for legal purposes to be an adult.

*child* means:

- (a) in the case of a prisoner in Australia—a person below 18 years of age; and
- (b) in the case of a prisoner in a transfer country or a Tribunal country—a person below the age that under the law of that country is the age at which a person is considered for legal purposes to be an adult.

**7—Extension to external Territories**

This Act extends to the external Territories.

## **8—Application of Act to transfer countries**

- (1) The regulations may provide that this Act applies to a foreign country declared by the regulations to be a transfer country for the purposes of this Act.
- (2) The regulations may declare that this Act applies in relation to such a foreign country subject to limitations, conditions, exceptions or qualifications referred to in the regulations.
- (3) The limitations, conditions, exceptions or qualifications in relation to a transfer country that may be referred to in the regulations are any one or more of the following:
  - (a) limitations, conditions, exceptions or qualifications that are necessary to give effect to a bilateral treaty in relation to transfer of prisoners to or from that country, a copy of which is set out in the regulations;
  - (b) limitations, conditions, exceptions or qualifications that are necessary to give effect to a multilateral treaty in relation to transfer of prisoners to or from that country, a copy of which is set out in the regulations;
  - (c) limitations, conditions, exceptions or qualifications (other than limitations, conditions, exceptions or qualifications that are necessary to give effect to a treaty) for the transfer of prisoners to or from that country that are set out, or identified in any other way, in the regulations.
- (4) The limitations, conditions, exceptions or qualifications that are necessary to give effect to a treaty in relation to a transfer country may be expressed in the form that this Act applies to that country subject to the treaty.
- (5) For the purposes of the application of this Act in relation to a transfer country:
  - (a) a colony, territory or protectorate of that country; and
  - (b) a territory for the international relations of which the country is responsible;are taken to be part of the country.

## **9—Act to bind Crown**

This Act binds the Crown in each of its capacities.

## **Part 2—Transfers generally**

### **10—When may a prisoner (other than a Tribunal prisoner) be transferred?**

A prisoner (other than a Tribunal prisoner) may be transferred between Australia and a transfer country under this Act if:

- (a) the prisoner is eligible for transfer from or to Australia (as the case requires); and
- (b) Australia and the transfer country have agreed to the transfer of the prisoner on terms agreed under this Act; and
- (c) the prisoner or the prisoner's representative has consented in writing to transfer on those terms; and
- (d) appropriate Ministerial consent in writing has been given to transfer on those terms; and

- (e) the relevant conditions for transfer of the prisoner are satisfied; and
- (f) the transfer of the prisoner is not likely to prevent the surrender of the prisoner to any extradition country known by the Attorney-General to have requested the extradition of the prisoner or to have expressed interest in extraditing the prisoner or that, in the opinion of the Attorney-General, is reasonably likely to request extradition.

#### **11—When may a Tribunal prisoner be transferred?**

A Tribunal prisoner may be transferred to Australia under this Act if:

- (a) Australia and the Tribunal have agreed to the transfer of the prisoner on terms agreed under this Act; and
- (b) unless the Attorney-General determines that it is not necessary in the prisoner's case—the prisoner or prisoner's representative has consented to transfer on those terms; and
- (c) appropriate Ministerial consent in writing has been given to transfer on those terms; and
- (d) the relevant conditions for transfer to Australia of Tribunal prisoners are satisfied.

#### **12—Eligibility for transfer from Australia of prisoners (other than Tribunal prisoners)**

A prisoner (other than a Tribunal prisoner) is eligible for transfer from Australia to a transfer country under this Act if the prisoner:

- (a) is a national of the transfer country; or
- (b) has community ties with the transfer country.

**Note:**

Community ties with a transfer country is defined in subsection 4(4).

#### **13—Eligibility for transfer to Australia of prisoners (other than Tribunal prisoners)**

A prisoner (other than a Tribunal prisoner) is eligible for transfer to Australia from a transfer country under this Act if the prisoner:

- (a) is an Australian citizen; or
- (b) is permitted to travel to, enter and remain in Australia indefinitely pursuant to the *Migration Act 1958* and has community ties with a State or a Territory.

**Note:**

Community ties with a State or Territory is defined in subsection 4(5).

#### **14—Transfer conditions—transfer from Australia**

- (1) The conditions for transfer from Australia of a prisoner (other than a mentally impaired prisoner) are satisfied if:
  - (a) neither the sentence of imprisonment imposed by the Australian court nor the conviction on which it is based is subject to appeal; and
  - (b) subject to subsection (3), the acts or omissions constituting the offence on account of which the prisoner is serving the sentence in Australia would, if the acts or omissions had occurred in the transfer country, have constituted an offence in the transfer country; and

- (c) if the sentence of imprisonment is determinate—on the day of receipt of the request for transfer at least 6 months of the prisoner's sentence remains to be served (whether or not the prisoner has been released on parole), or a shorter period remains to be served and the Attorney-General has determined that, in the circumstances, transfer for a shorter period is acceptable.
- (2) The conditions for transfer from Australia of a mentally impaired prisoner are satisfied if:
  - (a) neither the sentence of imprisonment imposed by the Australian court nor the acquittal or finding of unfitness to stand trial on which it is based is subject to appeal; and
  - (b) subject to subsection (3), the acts or omissions constituting the offence:
    - (i) in respect of which the prisoner was charged but acquitted on the ground of mental impairment or found unfit to stand trial; and
    - (ii) on account of which the prisoner is serving the sentence in Australia; would, if the acts or omissions had occurred in the transfer country, have constituted an offence in the transfer country; and
  - (c) if the sentence of imprisonment is determinate—on the day of receipt of the request for transfer at least 6 months of the prisoner's sentence remains to be served (whether or not any review affecting the duration of the sentence is pending), or a shorter period remains to be served and the Attorney-General has determined that, in the circumstances of the case, transfer for a shorter period is acceptable.
- (3) The Attorney-General may determine that the requirements of subsection (1)(b) or (2)(b) need not be satisfied in a particular prisoner's case.

#### **15—Transfer conditions—transfer to Australia**

- (1) The conditions for transfer to Australia of a prisoner (other than a mentally impaired prisoner or Tribunal prisoner) are satisfied if:
  - (a) neither the sentence of imprisonment imposed by the transfer country's court or tribunal nor the conviction on which it is based is subject to appeal under the law of the transfer country; and
  - (b) subject to subsection (3), the acts or omissions constituting the offence on account of which the prisoner is serving the sentence in the transfer country would, if the acts or omissions had occurred in Australia, have constituted an offence in Australia; and
  - (c) if the sentence of imprisonment is determinate—on the day of receipt of the request for transfer at least 6 months of the prisoner's sentence remains to be served (whether or not the prisoner has been released on parole), or a shorter period remains to be served and the Attorney-General has determined that, in the circumstances, transfer for a shorter period is acceptable.
- (2) The conditions for transfer to Australia of a mentally impaired prisoner are satisfied if:
  - (a) neither the sentence of imprisonment imposed by the transfer country's court or tribunal nor the acquittal or finding of unfitness to stand trial on which it is based is subject to appeal under the law of the transfer country; and

- (b) subject to subsection (3), the acts or omissions constituting the offence:
    - (i) in respect of which the prisoner was charged but acquitted on the ground of mental impairment or found unfit to stand trial; and
    - (ii) on account of which the prisoner is serving the sentence in the transfer country;would, if the acts or omissions had occurred in Australia, have constituted an offence in Australia; and
  - (c) if the sentence of imprisonment is determinate—on the day of receipt of the request for transfer at least 6 months of the prisoner's sentence remains to be served (whether or not any review affecting the duration of the sentence is pending), or a shorter period remains to be served and the Attorney-General has determined that, in the circumstances, transfer for a shorter period is acceptable.
- (3) The Attorney-General may determine that the requirements of subsection (1)(b) or (2)(b) need not be satisfied in a particular prisoner's case.
- (4) The conditions for transfer to Australia of a Tribunal prisoner are satisfied if:
- (a) neither the sentence of imprisonment imposed by the Tribunal nor the conviction on which it is based is subject to appeal under the Statute of the Tribunal; and
  - (b) if the sentence of imprisonment is determinate—on the day of receipt of the request for transfer at least 6 months of the prisoner's sentence remains to be served (whether or not the prisoner has been released on parole), or a shorter period remains to be served and the Attorney-General has determined that, in the circumstances, transfer for a shorter period is acceptable.

## **Part 3—Transfers from Australia**

### **16—Applications for transfer from Australia**

A prisoner serving a sentence of imprisonment in Australia, or the prisoner's representative, may apply to the Attorney-General, in the manner prescribed by the regulations, for transfer of the prisoner to a transfer country to complete serving the sentence on terms agreed in accordance with this Act.

### **17—Preliminary consideration of application for transfer**

- (1) The Attorney-General is to forward a copy of the application:
- (a) to the State Minister of the State, or Territory Minister of the Territory, in which the prisoner is serving the sentence of imprisonment; and
  - (b) to any other State or Territory Minister or Ministers whose consent to the transfer is required under this Act.
- (2) A Minister to whom an application is forwarded may advise the Attorney-General of any matter the Minister considers relevant to the processing of the application.
- (3) A Minister to whom an application is forwarded may request the Attorney-General to obtain information from the transfer country that is relevant to the Minister's assessment of the application.

- (4) The Attorney-General is to notify a transfer country of any application for transfer to that country and may request the transfer country to indicate its provisional views on the application, including the method by which it is likely that the sentence of imprisonment would be enforced by the transfer country if, following a formal request for transfer, it consents to the transfer.
- (5) The Attorney-General may provide the transfer country with:
  - (a) details of any request for extradition of the prisoner that has been made under the *Extradition Act 1988* or of any expression of interest in extradition made by another country or of any country that, in the opinion of the Attorney-General, may wish to extradite the prisoner; and
  - (b) any other information the Attorney-General considers may assist the transfer country in giving its provisional views on the proposed transfer.

### **18—Formal request for transfer**

- (1) The Attorney-General may make a formal request in writing for transfer of a prisoner from Australia to a transfer country.
- (2) In deciding whether to make a formal request, the Attorney-General may take into account any matter the Attorney-General considers relevant, including any matter advised by a State or Territory Minister.
- (3) The Attorney-General is not to make a formal request for transfer of a prisoner to a transfer country unless the Attorney-General is satisfied that the transfer will (if the consents referred to in subsection 20(2) are given) be able to be made in compliance with section 10.

### **19—Information to accompany a formal request**

A formal request for transfer from Australia to a transfer country is to be accompanied by:

- (a) any information required to be provided in accordance with arrangements made with the transfer country; and
- (b) any other available information the Attorney-General considers relevant to the request and that may appropriately be provided.

### **20—Governmental consent to transfer from Australia**

- (1) The Attorney-General is to notify the prisoner (or the prisoner's representative) and any State or Territory Minister or Ministers whose consent to the transfer is required under this Act:
  - (a) of the transfer country's decision; and
  - (b) if consent is given, of the proposed method by which the sentence of imprisonment will be enforced by the transfer country and any other proposed terms of transfer.
- (2) The prisoner or prisoner's representative and Minister concerned are to advise the Attorney-General as to whether they consent to the transfer on the terms proposed by the transfer country.

- (3) The Attorney-General is to determine whether or not consent should be given to the transfer of a prisoner on the terms proposed by the transfer country and is to notify the transfer country as to whether consent has been given to transfer of the prisoner on those terms or, if consent will be given if the transfer country agrees to variation of the terms, of the variation proposed.

#### **21—Issue of warrant for transfer from Australia**

The Attorney-General may, subject to Part 2, issue a warrant, in the form prescribed by the regulations, for the transfer of the prisoner from Australia to a transfer country if the prisoner's or the prisoner's representative's consent and appropriate Ministerial consent in writing to the transfer on the terms proposed by the transfer country (or, if the transfer country has agreed to variation of the terms, the terms as varied) have been given.

#### **22—Warrants for transfer from Australia**

- (1) A warrant for the transfer of a prisoner from Australia authorises the transfer of the prisoner from Australia to the transfer country to complete serving the sentence of imprisonment in accordance with the terms agreed under this Act.
- (2) A warrant for transfer from Australia must:
- (a) specify the name and date of birth of the prisoner to be transferred; and
  - (b) specify the transfer country to which the prisoner is to be transferred; and
  - (c) state that the following written consents to the transfer have been given:
    - (i) the prisoner's or prisoner's representative's consent;
    - (ii) the transfer country's consent;
    - (iii) appropriate Ministerial consent.
- (3) If the prisoner is a prisoner other than a prisoner who has been released on parole, the warrant is:
- (a) to require the superintendent of the prison, or the person in charge of the hospital or other place, in which the prisoner is serving the sentence of imprisonment to release the prisoner into the custody of a person specified in the warrant; and
  - (b) to authorise the person to take the prisoner to a place in Australia and, if necessary, to detain the prisoner in custody for the purpose of placing the prisoner in the custody of an escort officer for transport out of Australia; and
  - (c) to authorise the escort officer to transport the prisoner in custody out of Australia to the transfer country for surrender to a person appointed by the transfer country to receive the prisoner.
- (4) If the prisoner has been released on parole, the warrant is:
- (a) to specify any approvals, authorities, permissions or variations to the parole or other order or licence to be at large that have been made under an Australian law; and
  - (b) to specify any procedures for the transfer of the prisoner to the transfer country that have been agreed upon with the transfer country and to give any necessary authorisations and directions.

- (5) The Attorney-General may give any direction or approval that is necessary to ensure that the warrant is executed in accordance with its tenor.

### **23—Cancellation of warrant for transfer from Australia**

- (1) The Attorney-General may cancel a warrant for transfer from Australia at any time before the prisoner it concerns leaves Australia.
- (2) Without limiting the grounds on which the Attorney-General may cancel a warrant for transfer, it must be cancelled if the Attorney-General, a State or Territory Minister, the prisoner or prisoner's representative or the transfer country concerned, withdraws consent to the transfer.

## **Part 4—Transfers to Australia of prisoners from transfer countries**

### **24—Transfer request from outside Australia**

The Attorney-General may consent to a request from a transfer country for the transfer of a prisoner (other than a Tribunal prisoner) serving a sentence of imprisonment in that country to Australia to complete serving the sentence on terms agreed under this Act if the Attorney-General is satisfied that, were the Attorney-General to give that consent, the transfer could be made in compliance with section 10.

### **25—Information to accompany request**

Before consenting to the transfer of a prisoner to Australia under this Part, the Attorney-General may request the transfer country to provide:

- (a) details of any request for extradition of the prisoner that has been made to the transfer country or of any country that has expressed interest in extraditing the prisoner or that is likely, in the opinion of the transfer country, to request extradition; and
- (b) any other information the Attorney-General considers relevant to the assessment of whether consent should be given for the transfer of the prisoner to Australia.

### **26—Enforcement of foreign sentence**

Before consenting to the transfer of a prisoner to Australia under this Part, the Attorney-General is to determine, in accordance with Part 6, the method by which the sentence of imprisonment imposed by the transfer country will be enforced in Australia if the prisoner is transferred and is to advise the transfer country of this and of any other proposed terms on which consent will be given to the transfer.

### **27—Governmental consent to transfer to Australia**

- (1) Before consenting to the transfer of a prisoner to Australia under this Part, the Attorney-General is to notify the State or Territory Minister of the place in which the prisoner wishes to begin to complete serving the sentence of imprisonment imposed by the transfer country in Australia, in writing, in the form prescribed by the regulations, of receipt of the request.
- (2) If the prisoner wishes to begin to complete serving the sentence of imprisonment in New South Wales or Western Australia but has community ties with the ACT or a Territory, the Attorney-General is also to notify the ACT Minister or Territory Minister concerned of the matters referred to in subsection (1).

**Note:**

Community ties with a State or Territory is defined in subsection 4(5).

- (3) The Attorney-General is to provide each Minister concerned with any information that the transfer country has given the Attorney-General and particulars of the method by which the Attorney-General considers the sentence of imprisonment imposed by the transfer country could be enforced by Australia and any other proposed terms of the transfer.
- (4) Each Minister concerned is to advise the Attorney-General in writing as to whether the Minister consents to the transfer on the terms proposed as soon as possible after receiving the notification.
- (5) If the Minister of the State or Territory in which the prisoner is to begin to complete serving the sentence of imprisonment imposed by the transfer country consents to the transfer, the Minister is to advise the Attorney-General of:
  - (a) the prison, or hospital or other place, in which the prisoner will begin to complete serving the sentence in the State or Territory; and
  - (b) in the case of a prisoner who has been released on parole—any recommended terms or conditions on which the prisoner is to complete serving the sentence; and
  - (c) any other matters the Minister considers relevant to sentence enforcement in the State or Territory.

**Note:**

A prisoner may be transferred from the prison, hospital or other place in the State or Territory in which the prisoner begins to complete serving a sentence of imprisonment to another prison, hospital or other place in the State or Territory or to a prison, hospital or other place in another State or Territory. See paragraphs 46(5)(d), (e) and (i).

**28—Formal consent to transfer**

The Attorney-General is to notify the transfer country as soon as possible after all appropriate Ministerial consents to the transfer have been given and is to ask the transfer country to formally consent to the transfer on the terms proposed by Australia and to advise of the prisoner's formal consent to transfer on those terms.

**29—Issue of warrant for transfer to Australia**

The Attorney-General may issue a warrant, in the form prescribed by the regulations, for the transfer of the prisoner from a transfer country to Australia if the written consent of the prisoner or prisoner's representative and the transfer country and appropriate Ministerial consent in writing to transfer on the terms proposed by Australia have been given.

**30—Warrants for transfer to Australia**

- (1) A warrant for the transfer of a prisoner to Australia authorises the transfer of the prisoner from the transfer country to Australia to complete serving the sentence of imprisonment imposed by the transfer country in accordance with the terms agreed under this Act.
- (2) A warrant for transfer to Australia must:
  - (a) specify the name and date of birth of the prisoner to be transferred; and
  - (b) specify the transfer country from which the prisoner is to be transferred; and

- (c) state that the following written consents to the transfer have been given:
  - (i) the prisoner's or prisoner's representative's consent;
  - (ii) the transfer country's consent;
  - (iii) appropriate Ministerial consent.
- (3) If the prisoner is a prisoner other than a prisoner who has been released on parole, the warrant is:
  - (a) to authorise an escort officer to collect the prisoner from a place (whether in Australia or the transfer country) specified in the warrant; and
  - (b) if the place is in the transfer country, to authorise the escort officer to transport the prisoner in custody to Australia for surrender to a person appointed by the Attorney-General to receive the prisoner and, if appropriate, to authorise the appointed person to escort the prisoner to the prison, or hospital or other place, in Australia where the prisoner is to begin to complete serving the sentence of imprisonment in accordance with this Act; and
  - (c) if the place is in Australia, to authorise the escort officer to escort the prisoner to the prison, or hospital or other place, in Australia where the prisoner is to begin to complete serving the sentence of imprisonment in accordance with this Act; and
  - (d) if the prisoner is to be escorted to a prison, to require the superintendent of the prison to take the prisoner into custody to be dealt with in accordance with the terms agreed under this Act; and
  - (e) if the prisoner is to be escorted to a hospital or other place, to authorise the detention of the prisoner in that hospital or place to be dealt with in accordance with the terms agreed under this Act.

**Note :**

A prisoner may be transferred from the prison, hospital or other place in the State or Territory in which the prisoner begins to complete serving a sentence of imprisonment to another prison, hospital or other place in the State or Territory or to a prison, hospital or other place in another State or Territory. See paragraphs 46(5)(d), (e) and (i).

- (4) If the prisoner has been released on parole, the warrant is to specify any procedures for the transfer of the prisoner to Australia that have been agreed upon with the transfer country and to give any necessary authorisations and directions.
- (5) The Attorney-General may give any direction or approval that is necessary to ensure the warrant is executed in accordance with its tenor.

**31—Cancellation of warrant**

- (1) The Attorney-General may cancel a warrant for transfer to Australia at any time before the prisoner it concerns leaves the transfer country.
- (2) Without limiting the grounds on which the Attorney-General may cancel a transfer warrant, it must be cancelled if the Attorney-General, a State or Territory Minister, a prisoner or prisoner's representative, or the transfer country concerned, withdraws consent to the transfer.

### **32—Effect of warrant on prisoner's sentence**

The prisoner to whom a warrant relates is to be released when the prisoner has completed serving the sentence of imprisonment in accordance with this Act unless any other law authorises the prisoner's detention in respect of an offence other than that on account of which the sentence of imprisonment was imposed.

## **Part 5—Transfer to Australia of Tribunal prisoners**

### **33—Transfer request from a Tribunal**

The Attorney-General may consent to a request from a Tribunal for the transfer of a Tribunal prisoner serving a sentence of imprisonment imposed by the Tribunal in a Tribunal country to Australia to complete serving the sentence of imprisonment on terms agreed under this Act if the Attorney-General is satisfied that the transfer can be made in compliance with section 11.

### **34—Information to accompany request**

Before consenting to the transfer of a Tribunal prisoner to Australia, the Attorney-General may request the Tribunal requesting the transfer to provide the Attorney-General with any relevant information that will enable the Attorney-General to assess whether consent should be given for the transfer of the prisoner to Australia.

### **35—Enforcement of Tribunal sentence of imprisonment**

Before consenting to the transfer of a Tribunal prisoner to Australia under this Part, the Attorney-General is to determine, in accordance with Part 6, the method by which the sentence of imprisonment imposed by the Tribunal will be enforced in Australia if the prisoner is transferred and is to advise the Tribunal of this and of any other proposed terms on which consent will be given to the transfer.

### **36—Governmental consent to transfer to Australia**

- (1) Before consenting to the transfer of a Tribunal prisoner to Australia, the Attorney-General is to determine the State or Territory in which it would be most appropriate for the prisoner to begin to complete serving the sentence of imprisonment imposed on the prisoner by the Tribunal in Australia and to seek the consent of the State or Territory Minister concerned.
- (2) The Attorney-General is to provide the Minister with details of any information that the Tribunal has given the Attorney-General and particulars of the method by which the Attorney-General considers the sentence of imprisonment could be enforced by Australia and any other proposed terms of the transfer.
- (3) The Minister is to advise the Attorney-General in writing as to whether the Minister consents to the transfer on the terms proposed as soon as possible after receiving the notification.
- (4) If the Minister refuses to consent to the transfer, the Attorney-General may request consent to transfer of the prisoner to another State or Territory from the appropriate State or Territory Minister.

- (5) If a State Minister or Territory Minister consents to the transfer, the Minister is to advise the Attorney-General of:
- (a) the prison, or hospital or other place, in which the prisoner is to begin to complete serving the sentence of imprisonment in accordance with this Act in the State or Territory; and
  - (b) in the case of a prisoner who has been released on parole—any recommended terms or conditions on which the prisoner is to complete serving the sentence of imprisonment in accordance with this Act; and
  - (c) any other matters the Minister considers relevant to enforcement of the sentence of imprisonment in the State or Territory.

**Note:**

A prisoner may be transferred from the prison, hospital or other place in the State or Territory in which the prisoner begins to complete serving a sentence of imprisonment to another prison, hospital or other place in the State or Territory or to a prison, hospital or other place in another State or Territory. See paragraphs 46(5)(d), (e) and (i).

**37—Formal consent to transfer**

The Attorney-General is to notify the Tribunal as soon as possible after appropriate Ministerial consent to the transfer has been given and is to ask the Tribunal:

- (a) to formally consent to the transfer on the terms proposed by Australia; and
- (b) to advise of the prisoner's formal consent to transfer on those terms (if the Tribunal has determined that it is appropriate to obtain the prisoner's consent).

**38—Issue of warrant for transfer to Australia**

The Attorney-General may issue a warrant, in the form prescribed by the regulations, for the transfer of a Tribunal prisoner from a Tribunal country to Australia if the written consent of the prisoner or prisoner's representative (if the Attorney-General considers such consent is necessary), and the Tribunal and appropriate Ministerial consent in writing to transfer on the terms proposed by Australia, have been given.

**39—Warrants for transfer to Australia**

- (1) A warrant for the transfer of a Tribunal prisoner to Australia authorises the transfer of the prisoner from the Tribunal country to Australia to complete serving the sentence of imprisonment imposed by the Tribunal in accordance with the terms agreed under this Act.
- (2) A warrant for transfer to Australia must:
  - (a) specify the name and date of birth of the Tribunal prisoner to be transferred; and
  - (b) specify the Tribunal country from which the prisoner is to be transferred; and
  - (c) state that the following written consents to the transfer have been given:
    - (i) the prisoner's or prisoner's representative's consent (if the Attorney-General considers such consent is necessary);
    - (ii) the Tribunal's consent;
    - (iii) appropriate Ministerial consent.

- (3) If the prisoner is a Tribunal prisoner other than a Tribunal prisoner who has been released on parole, the warrant is:
- (a) to authorise an escort officer to collect the Tribunal prisoner from a place (whether in Australia or the Tribunal country) specified in the warrant; and
  - (b) if the place is in a Tribunal country, to authorise the escort officer to transport the Tribunal prisoner in custody to Australia for surrender to a person appointed by the Attorney-General to receive the prisoner and, if appropriate, to authorise the appointed person to escort the prisoner to the prison, or hospital or other place, in Australia where the Tribunal prisoner is to begin to complete serving the sentence of imprisonment in accordance with this Act; and
  - (c) if the place is in Australia, to authorise the escort officer to escort the Tribunal prisoner to the prison, or hospital or other place, in Australia where the prisoner is to begin to complete serving the sentence of imprisonment in accordance with this Act; and
  - (d) if the Tribunal prisoner is to be escorted to a prison, to require the superintendent of the prison to take the prisoner into custody to be dealt with in accordance with the terms agreed under this Act; and
  - (e) if the Tribunal prisoner is to be escorted to a hospital or other place, to authorise the detention of the prisoner in that hospital or place to be dealt with in accordance with the terms agreed under this Act.

**Note:**

A prisoner may be transferred from the prison, hospital or other place in the State or Territory in which the prisoner begins to complete serving a sentence of imprisonment to another prison, hospital or other place in the State or Territory or to a prison, hospital or other place in another State or Territory. See paragraphs 46(5)(d), (e) and (i).

- (4) If the Tribunal prisoner has been released on parole, the warrant is to specify any procedures for the transfer of the prisoner to Australia that have been agreed upon with the Tribunal and to give any necessary authorisations and directions.
- (5) The Attorney-General may give any direction or approval that is necessary to ensure the warrant is executed in accordance with its tenor.

**40—Cancellation of warrant**

- (1) The Attorney-General may cancel a warrant for transfer to Australia at any time before the Tribunal prisoner it concerns leaves the Tribunal country.
- (2) Without limiting the grounds on which the Attorney-General may cancel a transfer warrant, it must be cancelled if the Attorney-General, a State or Territory Minister or the Tribunal concerned (or, in those cases where a Tribunal prisoner or prisoner's representative's consent to transfer was required by the Attorney-General, the Tribunal prisoner or prisoner's representative) withdraws consent to the transfer.

**41—Effect of warrant on Tribunal prisoner's sentence**

The Tribunal prisoner to whom a warrant relates is to be released when the prisoner has completed serving the sentence of imprisonment in accordance with this Act unless any other law authorises the prisoner's detention in respect of an offence other than that on account of which the sentence of imprisonment was imposed.

## Part 6—Enforcement of sentences

### 42—Sentence enforcement in Australia

The Attorney-General may direct that a sentence of imprisonment imposed on a prisoner by a court or tribunal of a transfer country, or on a Tribunal prisoner by a Tribunal, be enforced on transfer of the prisoner to Australia under this Act:

- (a) without any adaptation of the duration of the sentence of imprisonment or its legal nature, or with only such adaptations to the duration of the sentence or its legal nature as the Attorney-General considers are necessary to ensure that enforcement of the sentence is consistent with Australian law (in this Act called the *continued enforcement method*); or
- (b) by substituting a different sentence of imprisonment for that imposed by the transfer country or Tribunal (in this Act called the *converted enforcement method*).

### 43—Duration and nature of enforced sentence

- (1) The sentence of imprisonment to be enforced under the continued enforcement method or converted enforcement method must not be harsher, in legal nature or duration, than the sentence of imprisonment imposed by the transfer country or Tribunal.
- (2) Without limiting subsection (1):
  - (a) if the sentence of imprisonment imposed by the transfer country or Tribunal is for a determinate period, the sentence of imprisonment to be enforced under this Act must not be for a longer duration than that sentence; and
  - (b) if the sentence of imprisonment imposed by the transfer country or Tribunal is for an indeterminate period, the sentence of imprisonment to be enforced under this Act is, as far as practicable, to be subject to similar terms affecting the duration of the sentence as those imposed in the transfer country or by the Tribunal; and
  - (c) the sentence of imprisonment to be enforced under this Act must not be of a kind that involves a more severe form of deprivation of liberty than the sentence of imprisonment imposed by the transfer country or Tribunal.

### 44—Directions concerning enforcement of sentence

- (1) In ordering that a sentence of imprisonment be enforced by the continued enforcement method or the converted enforcement method, the Attorney-General may, subject to section 43, give such directions as the Attorney-General considers appropriate as to the duration and legal nature of the sentence of imprisonment as it is to be enforced under this Act.
- (2) Without limiting subsection (1), directions may be made:
  - (a) as to entitlements to release on parole (including any non-parole period) of the prisoner or Tribunal prisoner following transfer; and
  - (b) if the prisoner is a mentally impaired prisoner—as to any review to be undertaken of the mental condition of the prisoner and treatment to be provided to the prisoner following transfer.

- (3) For the purpose of forming an opinion or exercising a discretion under this section, the Attorney-General may inform himself or herself as the Attorney-General thinks fit and, in particular, may have regard to the following:
- (a) any submissions made by the transfer country or Tribunal;
  - (b) any views expressed by any State Minister or Territory Minister concerned with the proposed transfer;
  - (c) any views expressed by parole or prison authorities of any State or Territory;
  - (d) the sentence of imprisonment that might have been imposed if the acts and omissions constituting the offence had been committed in Australia;
  - (e) any limitations or requirements in relation to the way in which a sentence of imprisonment imposed by a transfer country or Tribunal may be enforced in Australia arising from any agreement to which Australia and the transfer country or Tribunal are parties.

**45—Appeal and review of sentences of imprisonment imposed by transfer country or Tribunal and sentence enforcement decisions of Attorney-General**

- (1) On transfer of a prisoner to Australia under this Act, no appeal or review lies in Australia against the sentence of imprisonment imposed by the court or tribunal of the transfer country or by the Tribunal.
- (2) No appeal lies against a decision of the Attorney-General concerning the enforcement in Australia under this Act of a sentence of imprisonment imposed by a court or tribunal of a transfer country or the Tribunal.

**46—Prisoner transferred to Australia taken to be federal prisoner**

- (1) A sentence of imprisonment imposed by the transfer country or Tribunal that is to be enforced in Australia under the continued enforcement method or the converted enforcement method is taken, for the purpose of enforcement of the sentence of imprisonment in Australia on transfer of the prisoner or Tribunal prisoner to Australia under this Act, to be a federal sentence of imprisonment and the prisoner to be a federal prisoner.
- (2) Any period of the sentence of imprisonment as originally imposed by the transfer country or Tribunal served by the prisoner or Tribunal prisoner before the transfer is taken to have been served under the sentence of imprisonment as it is enforced under this Act.
- (3) A prisoner or Tribunal prisoner who is transferred to Australia under this Act may, while serving a sentence of imprisonment imposed by a transfer country or Tribunal that is enforced under this Act, be detained in a prison or hospital or other place in a State or Territory.
- (4) Any relevant Australian law, or practice or procedure lawfully observed, concerning the detention of prisoners applies in relation to the prisoner or Tribunal prisoner on and after that transfer to the extent that it is capable of applying concurrently with this Act.
- (5) Without limiting subsection (4), Australian law and practice and procedure relating to the following matters are applicable to a prisoner or Tribunal prisoner who is transferred to Australia under this Act:
  - (a) conditions of imprisonment and treatment of prisoners;

- (b) release on parole of prisoners;
- (c) classification and separation of prisoners;
- (d) removal of prisoners from one prison to another;
- (e) removal of prisoners between prisons and hospitals or other places or between one hospital or other place and another;
- (f) treatment of mentally impaired prisoners;
- (g) eligibility for participation in prison programs, including release under a pre-release permit scheme (however called);

**Note:**

See, for example, subsection 19AZD (3) of the *Crimes Act 1914*.

- (h) temporary absence from prison (for example, to work or seek work, to attend a funeral or visit a relative suffering a serious illness or to attend a place of education or training);
  - (i) transfer of prisoners between States and Territories.
- (6) The prisoner or Tribunal prisoner is entitled to any remission or reduction of the sentence of imprisonment imposed by the transfer country or Tribunal that is to be enforced under this Act for which the prisoner would be eligible in accordance with any applicable Australian law if the sentence were a sentence of imprisonment for an offence against a law of the Commonwealth.
- (7) Nothing in this section prevents the transfer country or Tribunal from pardoning or granting amnesty to or quashing or otherwise nullifying the conviction of a prisoner serving a sentence of imprisonment imposed by the transfer country or Tribunal in Australia in accordance with this Act, or from commuting the sentence.
- (8) Nothing in this Act imposes any financial responsibility on the Commonwealth to maintain a prisoner transferred under Part 4 of this Act in a prison, or hospital or other place, in a State or Territory unless the prisoner has community ties with the Jervis Bay Territory, the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands.

**47—Prisoner transferred from Australia taken to be prisoner of transfer country**

On transfer of a prisoner from Australia under this Act, the sentence of imprisonment imposed by the Australian court ceases to have effect in Australia and, except as provided by section 48, the sentence of imprisonment is taken for all purposes in Australia to be a sentence of imprisonment imposed by a court or tribunal of the transfer country and the prisoner is to be a prisoner of the transfer country.

**48—Pardon, amnesty or commutation of sentences of imprisonment—prisoners transferred from Australia**

- (1) During the period in which a sentence of imprisonment is served in a transfer country by a prisoner transferred from Australia under this Act, the prisoner's conviction may be quashed or otherwise nullified and the prisoner may be pardoned or granted any amnesty or commutation of sentence of imprisonment that could be granted under Australian law if the prisoner were serving the sentence of imprisonment in Australia.

- (2) If, during the period in which the sentence of imprisonment is served by a prisoner transferred from Australia under this Act in a transfer country, the prisoner's conviction is quashed or otherwise nullified or the prisoner is pardoned or granted amnesty or commutation of sentence of imprisonment under Australian law, the Attorney-General is to immediately notify the transfer country that the prisoner should no longer be detained in custody or otherwise subjected to detention or supervision only because of the sentence of imprisonment.

**49—Pardon, amnesty or commutation of sentences of imprisonment—prisoners transferred to Australia**

- (1) During the period in which a sentence of imprisonment is served in Australia by a prisoner transferred to Australia under this Act, the prisoner may be pardoned or granted any amnesty or commutation of sentence of imprisonment that could be granted under Australian law if the sentence of imprisonment had been imposed for an offence against an Australian law.
- (2) The Attorney-General is to direct, in a form prescribed by the regulations, that a prisoner must not be detained in custody or otherwise be subjected to detention or supervision in Australia under a sentence of imprisonment imposed by a transfer country enforced under this Act only because of that sentence of imprisonment if, during the period in which the sentence of imprisonment is served in Australia:
  - (a) the prisoner is pardoned or granted amnesty or commutation of sentence of imprisonment under an Australian law; or
  - (b) the transfer country notifies the Attorney-General that the prisoner's conviction has been quashed or otherwise nullified or that the prisoner has been pardoned or granted amnesty or commutation of sentence of imprisonment under the law of the transfer country.
- (3) The Attorney-General is to direct, in a form prescribed by the regulations, that a prisoner must not be detained in custody or otherwise be subjected to detention or supervision in Australia under a sentence of imprisonment imposed by a Tribunal enforced under this Act only because of that sentence of imprisonment if, during the period in which the sentence is served in Australia:
  - (a) the Tribunal notifies the Attorney-General that the prisoner may be pardoned or granted amnesty or commutation of sentence of imprisonment under an Australian law and the prisoner is granted such amnesty or commutation of sentence of imprisonment; or
  - (b) the Tribunal notifies the Attorney-General that the prisoner's conviction has been quashed or otherwise nullified or that the prisoner has been pardoned or granted amnesty or commutation of sentence of imprisonment by the Tribunal.

## **Part 7—Miscellaneous**

### **50—Arrangements with States and Territories**

- (1) The Governor-General may make arrangements with the Governor of a State, the Chief Minister of the ACT or the Administrator of a Territory with respect to the administration of this Act, including arrangements relating to the exercise by officers of the State or Territory of functions under this Act.

- (2) An arrangement may be varied or terminated at any time.
- (3) The Attorney-General is to cause notice of the making, variation or termination of an arrangement to be published in the *Gazette*.

#### **51—Recovery of costs and expenses of transfer**

- (1) The terms agreed under this Act for transfer of a prisoner or Tribunal prisoner may, if the Attorney-General considers it appropriate, include terms relating to the recovery of the costs and expenses reasonably incurred in transferring the prisoner or Tribunal prisoner.
- (2) If any costs or expenses in respect of money recovered in accordance with such terms were incurred by a State or Territory, the Commonwealth is to reimburse the State or Territory concerned.

#### **52—Prisoner and prisoner's representative to be kept informed**

The Attorney-General is to arrange for any prisoner or prisoner's representative who makes a request for transfer under this Act to be kept informed as to progress of the request.

#### **53—Delegation**

The Attorney-General may delegate in writing all or any of the Attorney-General's powers under this Act or the regulations to:

- (a) the Secretary to the Department; or
- (b) a person holding or performing the duties of a Senior Executive Service office in the Department.

#### **54—Notification of countries as transfer countries**

The Attorney-General is to inform each State and Territory Minister whenever a country is declared by the regulations to be a transfer country and request the State and Territory Ministers to use their best endeavours to notify any prisoner who may be eligible for transfer under this Act of the application of this Act to a country of which the prisoner is a national and of the operation of this Act.

#### **55—Transit of prisoners**

- (1) The following provisions apply to the transport in custody through Australia of a prisoner or Tribunal prisoner who is being transferred from a transfer country or Tribunal country to another transfer country or Tribunal country:
  - (a) the prisoner may be transported in custody through Australia for the purposes of the transfer;
  - (b) if the aircraft or ship that transports the prisoner makes a landing or calls at a place in Australia:
    - (i) the person holding the prisoner in custody before the landing or call is made may hold the prisoner in custody at the place for a period not exceeding 24 hours;
    - (ii) any police officer may provide such assistance at the place as is reasonable and necessary to facilitate transporting of the prisoner in custody;

- (iii) any magistrate to whom application is made, in the form prescribed by the regulations, by or on behalf of the transfer country or Tribunal concerned must issue a warrant ordering a person specified in the warrant to hold the prisoner in custody for such period or periods as the magistrate considers necessary to facilitate the transporting of the prisoner;
  - (iv) the Attorney-General may, on application by the transfer country or Tribunal concerned, authorise in writing a magistrate to issue a warrant ordering a person specified in the warrant to hold the prisoner in custody for a further specified period in order to facilitate the transporting of the prisoner;
  - (v) the Attorney-General may at any time direct a person having custody of the prisoner under this paragraph to release the prisoner from custody.
- (2) The total period or periods of any custody in accordance with subparagraphs (1)(b)(i) and (ii) must not exceed 96 hours.

#### **56—Arrest of persons escaping from custody**

- (1) A police officer may, without warrant, arrest a person if the officer has reasonable grounds to believe that the person has escaped from custody authorised by this Act.
- (2) The police officer must, as soon as practicable, take the person before a magistrate.
- (3) If the magistrate is satisfied that the person has escaped from custody authorised by this Act, the magistrate may issue a warrant authorising any police officer to return the person to the custody from which the person escaped.

#### **57—Consultation with Minister for Immigration and Multicultural Affairs**

The Attorney-General must not make any decision under this Act affecting a prisoner who is not an Australian citizen without the consent of the Minister for Immigration and Multicultural Affairs.

#### **58—Regulations**

- (1) The Governor-General may make regulations prescribing matters:
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, regulations may make provision for or with respect to information to be provided to prisoners and other persons for the purposes of this Act and any State or Territory Act relating to the international transfer of prisoners.
- (3) The regulations may prescribe penalties not exceeding a fine of 10 penalty units for offences against the regulations.

*[Minister's second reading speech made in—  
House of Representatives on 21 November 1996  
Senate on 13 May 1997]*

## Legislative history

### Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes.

### Principal Act

Year	No	Title	Assent	Commencement
1998	11	<i>International Transfer of Prisoners (South Australia) Act 1998</i>	2.4.1998	2.4.2000 (s 7(5) <i>Acts Interpretation Act 1915</i> )

### Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1		
<i>s 2</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	§