



# **Transfer of Prisoners Act 1983**

**No. 95, 1983**

## **Compilation No. 15**

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## About this compilation

### This compilation

This is a compilation of the *Transfer of Prisoners Act 1983* that shows the text of the law as amended and in force on 27 November 2015 (the **compilation date**).

This compilation was prepared on 7 December 2015.

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on ComLaw ([www.comlaw.gov.au](http://www.comlaw.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on ComLaw for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on ComLaw for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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# **An Act to make provision for certain transfers of prisoners between the States and the Territories, and for related purposes**

## **Part I—Preliminary**

### **1 Short title**

This Act may be cited as the *Transfer of Prisoners Act 1983*.

### **2 Commencement**

This Act shall come into operation on a day to be fixed by Proclamation.

### **3 Interpretation**

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

***appropriate Minister***, in relation to a State, means:

- (a) in the case of a State other than the Australian Capital Territory or the Northern Territory—the Minister of the State who is responsible for the administration of the State transfer law of that State; and
- (aa) in respect of the Australian Capital Territory—the Minister for that Territory who is responsible for the administration of the law of that Territory relating to the interstate transfer of prisoners; and
- (b) in the case of the Northern Territory—the person holding Ministerial office under section 36 of the *Northern Territory (Self-Government) Act 1978* who is responsible for the administration of the State transfer law of the Northern Territory.

***Commonwealth prisoner*** means a person who is either a federal prisoner or a Territory prisoner and includes a prisoner upon whom

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a sentence of imprisonment was imposed for an offence against 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*.

***complementary State order of transfer*** means a State order of transfer other than an order for the transfer of a State prisoner from a State to another State or to a Territory.

***default imprisonment*** means imprisonment in default of payment of a fine ordered to be paid on the conviction of a person for an offence.

***federal prisoner*** means a person upon whom a federal sentence of imprisonment has been imposed.

***federal sentence of imprisonment*** means a sentence of imprisonment for an offence against a law of the Commonwealth.

***fine*** means a pecuniary penalty imposed by a court for an offence against a law of the Commonwealth or of a State or Territory, together with any amount (including an amount of costs, compensation or revenue charges) the payment of which by the person on whom the fine was imposed was ordered by the court in the proceedings in which the fine was imposed.

***imprisonment*** includes penal servitude.

***joint prisoner*** means a Commonwealth prisoner who, if he or she were not a federal prisoner or a Territory prisoner, would be a State prisoner.

***legal practitioner*** means a person who is enrolled as a barrister, a solicitor, or a barrister and solicitor of a federal court or of a court of a State or Territory.

***local prisons authority***:

- (a) in relation to a State—has the meaning given by the State transfer law of that State; or

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- (b) in relation to a Territory—has the meaning prescribed by the regulations.

***minimum term of imprisonment*** means that part of a sentence of imprisonment that is fixed by a court or by operation of law as the period during which a prisoner is not eligible to be released on parole.

***Parliament*** means:

- (a) in relation to the Australian Capital Territory—the Legislative Assembly for the Australian Capital Territory; or  
(b) in relation to the Northern Territory—the Legislative Assembly of the Northern Territory.

***prison*** includes:

- (a) any place where a person who has been sentenced to imprisonment may be detained to undergo that imprisonment; and  
(b) any place where a person who has been charged with an offence may be remanded in custody for that offence.

***prisoner*** means a person who is a Commonwealth prisoner or a State prisoner.

***relevant security***, in relation to a person, means a security given by the person, with or without sureties, by recognizance or otherwise, that the person will comply with conditions relating to his or her behaviour.

***remand prisoner*** means a person who has been charged with an offence against a law of the Commonwealth and who has been remanded in custody for that offence.

***Removal Act*** means the *Removal of Prisoners (Australian Capital Territory) Act 1968* or the *Removal of Prisoners (Territories) Act 1923*.

***return transfer order*** means an order for the transfer of a prisoner made under section 14, 16A or 16C.

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***security*** means:

- (a) the protection of, and of the people of, the Commonwealth and the several States and Territories from:
  - (i) espionage; or
  - (ii) sabotage; or
  - (iii) politically motivated violence; or
  - (iv) promotion of communal violence; or
  - (v) attacks on Australia's defence system; or
  - (vi) acts of foreign interference; orwhether directed from, or committed within, Australia or not; and
- (b) the carrying out of Australia's responsibilities to any foreign country in relation to a matter mentioned in any of the subparagraphs of paragraph (a).

***security transfer order*** means an order for the transfer of a prisoner made under section 16B.

***sentence of imprisonment for an indeterminate period*** means:

- (a) a sentence of imprisonment for life; or
- (b) a sentence, order or direction of a kind referred to in paragraph (17)(c) or (d).

***service tribunal*** means a person, body or tribunal that, under a law relating to the discipline of the Defence Force, is empowered to impose a sentence of imprisonment.

***State*** includes the Australian Capital Territory and the Northern Territory.

***State order of transfer*** means an order, under a State transfer law of a State, for the transfer of a person who is a joint prisoner (in his or her capacity as a person upon whom a State sentence of imprisonment has been imposed) or who is a State prisoner from that State to another State or to a Territory.



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**State prisoner** means a person upon whom a State sentence of imprisonment has been imposed but does not include a person who is a Commonwealth prisoner.

**State sentence of imprisonment** means a sentence of imprisonment for an offence against a law of a State.

**State transfer law**, of a State, means a law declared under section 5 to be the State transfer law of that State.

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

**Territory prisoner** means a person upon whom a Territory sentence of imprisonment has been imposed but does not include a person who is a federal prisoner.

**Territory sentence of imprisonment** means a sentence of imprisonment for an offence against a law of a Territory.

**transfer order** means:

- (aa) a security transfer order; or
- (a) a return transfer order; or
- (b) a trial transfer order; or
- (c) a welfare transfer order; or
- (d) an order under section 16D or 16E.

**transferred sentence**, in relation to a prisoner, means a transferred State sentence of that prisoner or a transferred Territory sentence of that prisoner.

**transferred State sentence**, in relation to a prisoner who is transferred to a Territory in pursuance of a transfer order or a State order of transfer, or both, means a sentence of imprisonment that, in accordance with subsection 18(2), is taken to have been imposed upon that prisoner under, and for an offence against, a law of that last-mentioned Territory.

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***transferred Territory sentence***, in relation to a prisoner who is transferred from one State or Territory to another State or Territory in pursuance of a transfer order, means a sentence of imprisonment that, in accordance with subsection 18(1), is taken to have been imposed upon that prisoner under, and for an offence against, a law of the last-mentioned State or Territory.

***translated sentence***, in relation to a prisoner whose transfer from one State to another State is authorized by a complementary State order of transfer made under the State transfer law of that first-mentioned State, means a State sentence of imprisonment that, in accordance with the provisions of the State transfer law of the second-mentioned State that correspond to the provisions of Part V of this Act, is taken to have been imposed upon that prisoner under a law of that second-mentioned State.

***trial transfer order*** means an order for the transfer of a prisoner of the kind referred to in section 8 or 9.

***welfare transfer order*** means an order for the transfer of a prisoner made under section 6.

- (2) For the purposes of this Act, a complementary State order of transfer corresponds to a transfer order if the first-mentioned order is made for the same purposes as the second-mentioned order.
- (3) 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.
- (4) 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

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way of requiring him or her to serve the whole or a part of the remainder of that sentence;

(b) a person:

- (i) who has been released by a court from serving the whole or a part of that sentence upon his or her giving a relevant security; and
- (ii) in relation to whom action can no longer be taken under a law of the Commonwealth, a State or a Territory by reason of a breach of a condition of that security or by reason of the expiration of the security;

(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.

- (5) A reference in this Act to a sentence shall be construed as including a reference to any direction or order given or made by the court imposing the sentence with respect to the commencement of the sentence.
  - (6) Where 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, as the case requires.
  - (7) For the purposes of this Act, a prisoner shall be taken to have been transferred from one State or Territory to another State or Territory in pursuance of a transfer order from the time when the prisoner arrives, in pursuance of that order, in that other State or Territory.
  - (8) For the purposes of this Act, a charge in respect of an offence shall be taken to have been dealt with according to law if:
    - (a) the charge has been heard and determined (whether or not there exists any right of appeal or review in respect of the decision given upon that hearing); or
    - (b) the charge has been withdrawn or, for any reason, a decision has been taken not to proceed with the charge.
  - (9) For the purposes of this Act:
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- (a) a transferred sentence of a prisoner who is transferred in pursuance of a transfer order shall be taken to be attributable to the corresponding sentence to which the prisoner was subject immediately before being so transferred; and
  - (b) a translated sentence of a prisoner who is transferred in pursuance of a State order of transfer shall be taken to be attributable to the corresponding sentence to which the prisoner was subject immediately before being so transferred.
- (10) A transfer order (other than an order under Part IV) for the transfer of the person upon whom there has been imposed:
  - (a) a sentence of imprisonment for contempt of court; or
  - (b) a sentence of imprisonment for breach of the privileges of the Parliament of the Commonwealth or of a State; or
  - (c) a sentence of imprisonment that involves the periodic detention of the person;shall not be made or executed while he or she continues to be such a person.
- (11) A transfer order for the transfer of a person upon whom there has been imposed by a court a sentence of imprisonment and who:
  - (a) has been released by the court from serving the whole or a part of that sentence upon his or her giving a relevant security, being a relevant security in respect of a breach of a condition in respect of which action may be taken under a law of the Commonwealth, a State or a Territory; or
  - (b) is serving a part of that sentence and is entitled, in accordance with the directions or orders of the court, to be released from serving the remainder of that sentence upon his or her giving a relevant security;shall not be made or executed while he or she continues to be such a person.
- (12) A reference in this Act to a person who has been transferred to a State or Territory in pursuance of a transfer order shall not be taken not to include a person whose transfer to that State or Territory is also authorized by a complementary State order of transfer.

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- (13) For the purposes of this Act and of any other law of the Commonwealth and for the purposes of any law of a State or Territory in its application by virtue of a provision of this Act, a sentence of imprisonment imposed under, and for an offence against, a law of a State or Territory shall be deemed to be imposed in, and by a court of, that State or Territory.
- (14) For the purposes of this Act, where a person upon whom a sentence of penal servitude has been imposed is transferred in pursuance of a transfer order, that sentence shall be deemed, immediately before his or her being so transferred, to have been a sentence of imprisonment.
- (15) A person upon whom a federal sentence of imprisonment has been imposed:
- (a) by a court of a State or Territory (in this subsection referred to as the **relevant State** or the **relevant Territory** in relation to the person); or
  - (b) by the High Court, by a court created by the Parliament under Chapter III of the Constitution or by a service tribunal, being a person who is serving that sentence in a State or Territory (in this subsection referred to as the **relevant State** or the **relevant Territory** in relation to the person);
- is liable to undergo that sentence in the State or Territory that is the relevant State or relevant Territory in relation to the person or in any other State or Territory to which he or she is transferred in pursuance of a transfer order (whether from that relevant State or relevant Territory or any other State or Territory).
- (16) Where:
- (a) a direction under section 19 of the *Crimes Act 1914* fixed the commencement of a federal sentence of imprisonment imposed upon a person by reference to a State or Territory sentence of imprisonment (in this subsection referred to as the **prior sentence**); and
  - (b) the person is transferred in pursuance of a transfer order;
- then, for the purposes of subsection (15) and of this subsection, the direction shall be deemed, on and after the transfer of that person,

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to have fixed that commencement by reference to the transferred sentence or translated sentence attributable to the prior sentence.

- (17) A sentence, order or direction referred to in any of the following paragraphs shall be taken, for the purposes of this Act, to be a sentence of imprisonment imposed for the offence referred to in that paragraph:
- (a) a sentence of imprisonment imposed on a person convicted of an offence in default of his or her giving a relevant security in relation to that conviction;
  - (b) a sentence of imprisonment imposed in default of payment of a fine ordered to be paid upon the conviction of a person for an offence;
  - (c) a sentence of, or an order or direction for, the imprisonment or detention of a person during the pleasure of the Queen, the Governor-General, a Governor of a State or the Administrator of a Territory made upon the conviction of that person for an offence on the ground (in whatever terms expressed) that the person has been declared to be a habitual criminal;
  - (d) an order or direction for the imprisonment or detention of a person during the pleasure of the Queen, the Governor-General, the Governor of a State or the Administrator of a Territory upon the acquittal of the person of an offence on the ground of unsoundness of mind or insanity, being an order or direction by virtue of which the person is detained in a prison.
- (18) A reference in this Act to a conviction of a person for an offence includes a reference to an acquittal of that person of the offence on the ground of unsoundness of mind or insanity.
- (19) A reference in this Act to the Governor of a State includes a reference:
- (a) in the case of a State other than the Northern Territory—to any person exercising and performing all the powers and functions of the Governor of that State; and

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- (b) in the case of the Northern Territory—to the Administrator of the Northern Territory, and to any person exercising and performing all the powers and functions of the Administrator of the Northern Territory.
- (20) A reference in this Act to the Administrator of a Territory includes a reference to a person exercising and performing all the powers and functions of the Administrator of that Territory.

**4 Application of Act to certain external Territories**

This Act extends to Norfolk Island, the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands.

**5 Declaration of State transfer laws**

The Minister may, by instrument in writing published in the *Gazette*, declare a law of a State specified in the instrument, being a law relating to the transfer of prisoners between that State and other States and Territories, to be the State transfer law of that State for the purposes of this Act.

## **Part II—Transfer for prisoner's welfare**

### **6 Transfer of Commonwealth prisoner on welfare grounds**

- (1) Subject to this section, upon application made in writing to the Attorney-General by a Commonwealth prisoner serving a federal, Territory or State sentence of imprisonment in a prison of a State or Territory, the Attorney-General may, in his or her discretion, make an order in writing for the transfer of the prisoner from that State or Territory to another State or Territory.
- (2) An application made by a Commonwealth prisoner under subsection (1) shall set out such matters with respect to the welfare of the prisoner as the prisoner considers relevant.
- (3) In exercising his or her powers under subsection (1) to make an order for the transfer of a prisoner, the Attorney-General shall have regard to all matters that he or she considers relevant, including, but without limiting the generality of the foregoing:
  - (a) the administration of justice; and
  - (b) the welfare of the prisoner.
- (4) The Attorney-General shall not make an order under subsection (1) for the transfer of a prisoner to a State unless the appropriate Minister of that State has consented in writing to the transfer.
- (5) The Attorney-General is not required to consider an application made by a prisoner under subsection (1) for transfer from a State or Territory to another State or Territory if the prisoner has previously made application under that subsection for transfer to that other State or Territory within the period of one year immediately preceding the making of the first-mentioned application.

### **7 Revocation of welfare transfer orders**

- (1) Where a welfare transfer order has been made in respect of a Commonwealth prisoner, the Attorney-General:



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- (a) may, of his or her own motion; and
  - (b) shall, upon written request to do so being made to him or her by the prisoner;
- by order in writing served, at any time before the commencement of the execution of that transfer order, upon the Superintendent or other officer in charge of the prison in which the prisoner is detained, revoke that transfer order.
- (2) In exercising his or her powers under subsection (1) to revoke, of his or her own motion, an order for the transfer of a prisoner, the Attorney-General shall have regard to all matters that he or she considers relevant, including, but without limiting the generality of the foregoing:
  - (a) the administration of justice; and
  - (b) the welfare of the prisoner.

## **Part III—Transfer for purpose of trial**

### **Division 1—Trial transfer order**

#### **8 Application for transfer to stand trial on charge in respect of offence against a law of the Commonwealth or a Territory**

- (1) Subject to this section, where:
  - (a) a warrant for the apprehension of a Commonwealth prisoner serving a federal, Territory or State sentence of imprisonment in a State or Territory has been issued; and
  - (b) the warrant relates to a charge or charges in respect of an offence or offences against a law of the Commonwealth or of a Territory; and
  - (c) the Attorney-General certifies in writing that it is desirable in the interests of the administration of justice that the prisoner be transferred from the State or Territory in which he or she is imprisoned to another State or Territory to stand trial for the charge or charges to which the warrant relates;the Attorney-General may, either of his or her own motion or upon written request to do so being made to him or her by the prisoner, apply to a court of summary jurisdiction in the State or Territory in which the prisoner is imprisoned for an order for the transfer of the prisoner to that other State or Territory.
- (2) The Attorney-General shall not make an application under subsection (1) for an order for the transfer of a prisoner imprisoned in one State to another State unless the Attorney-General of that other State has consented, in writing, to the transfer.
- (3) An application under subsection (1) for an order for the transfer of a prisoner shall be accompanied by a copy of the warrant concerned, by the certificate referred to in paragraph (1)(c) and by such consent (if any) as are required under this section in relation to the transfer.

**9 Application for transfer to stand trial on charge in respect of offence against a law of a State**

- (1) Subject to this section, where:
- (a) a warrant for the apprehension of a Commonwealth prisoner serving a federal, Territory or State sentence of imprisonment in a State or Territory has been issued in a State, being, in the case of a prisoner serving a sentence of imprisonment in a State, a State other than the State in which he or she is imprisoned; and
  - (b) the warrant relates to a charge or charges in respect of an offence or offences against a law of the State in which the warrant was issued; and
  - (c) the Attorney-General of the State in which the warrant was issued certifies in writing that it is desirable in the interests of the administration of justice that the prisoner be transferred from the State or Territory in which he or she is imprisoned to the State in which the warrant was issued to stand trial for the charge or charges to which the warrant relates;
- that Attorney-General may, of his or her own motion or upon written request to do so being made to him or her by the prisoner, apply to a court of summary jurisdiction in the State or Territory in which the prisoner is imprisoned for an order for the transfer of the prisoner to the State in which the warrant was issued.
- (2) The Attorney-General of a State shall not make an application under subsection (1) for an order for the transfer of a Commonwealth prisoner imprisoned in another State or in a Territory to the first-mentioned State unless he or she has obtained the consent, in writing, of the Attorney-General of the Commonwealth to the transfer.
- (3) An application under subsection (1) for an order for the transfer of a prisoner shall be accompanied by a copy of the warrant concerned, by the certificate referred to in paragraph (1)(c) and by the consent required under this section in relation to the transfer.

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**10 Proceedings before court of summary jurisdiction**

- (1) Subject to this section, a court of summary jurisdiction shall hear and determine an application for a trial transfer order made to it under section 8 or 9.
- (2) Where, in a proceeding before a court of summary jurisdiction under this section with respect to an application for a trial transfer order, the court is satisfied that the applicant for that transfer order is entitled to make the application, the court:
  - (a) shall, for the purposes of that proceeding, make an order directed to the Superintendent or other officer in charge of the prison where the prisoner to whom the application relates is detained requiring him or her to produce the prisoner at a time and place specified in the order; and
  - (b) shall not continue with the hearing of the proceeding except in the presence of the prisoner.
- (3) Where an order under subsection (2) for the production of a prisoner is served on the Superintendent or officer to whom it is directed, the Superintendent or officer, as the case may be, shall:
  - (a) cause a copy of the order to be given to the prisoner forthwith; and
  - (b) produce the prisoner, in such custody as he or she thinks fit, in accordance with the order.
- (4) Where a court of summary jurisdiction to which an application for a trial transfer order has been made under section 8 or 9 is satisfied that the applicant for that transfer order is entitled to make that application, the court shall grant the application unless it is satisfied that:
  - (a) the charge concerned is of a trivial nature; or
  - (b) the application has not been made in good faith in the interests of the administration of justice; or
  - (c) the transfer of the prisoner in pursuance of such a trial transfer order would be likely to prejudice the conduct of any proceeding in which the prisoner is, or is likely to be, an

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appellant or an applicant for review or of any proceeding incidental to such a proceeding; or

- (d) for any reason, it would be unjust or oppressive to grant the application;

and if it is satisfied as to a matter referred to in a paragraph of this subsection, it shall refuse to grant the application.

- (5) Where a court of summary jurisdiction grants an application for a trial transfer order, it shall make the order to which the application relates.
- (6) A trial transfer order made under subsection (5) shall not come into force:
- (a) if application for review of the decision to grant the application for that transfer order is not made under subsection 11(1) within a period of 14 days after the decision comes to the notice of the prisoner—until the expiration of that period; or
  - (b) if application for review of such a decision is made under subsection 11(1) within the period referred to in paragraph (a)—unless and until the decision is affirmed.
- (7) Where a court of summary jurisdiction makes a decision under this section granting, or refusing to grant, an application for a trial transfer order, the court shall cause a copy of that decision to be served on the prisoner to whom the decision relates.
- (8) A copy of a decision served on a prisoner in accordance with subsection (7) shall be accompanied by a statement informing the prisoner that if he or she is dissatisfied with the decision he or she may, in accordance with section 11 of this Act, make application to the Supreme Court of the State or Territory in which he or she is imprisoned for a review of that decision.

## **11 Review of decision made upon application for trial transfer order**

- (1) Where:

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- (a) a court of summary jurisdiction of a State or Territory grants or refuses to grant an application for a trial transfer order made under section 8 or 9; and
  - (b) the applicant in the proceedings before that court or the prisoner to whom the application relates is dissatisfied with that decision;

the applicant or the prisoner may, within a period of 14 days after the decision comes to his or her notice, apply to the Supreme Court of that State or Territory for a review of the decision, and the court may review that decision.
- (2) A hearing of a proceeding on a review under this section of a decision relating to the transfer of a prisoner shall be held in the presence of the prisoner.
- (3) For the purposes of the hearing of a proceeding before a Court under this section, the Court may make an order directed to the Superintendent or other officer in charge of the prison where the prisoner to whom the proceeding relates is detained requiring him or her to produce the prisoner at a time and place specified in the order.
- (4) Where an order under subsection (3) for the production of a prisoner is served on the Superintendent or officer to whom it is directed, the Superintendent or officer, as the case may be, shall:
  - (a) cause a copy of the order to be given to the prisoner forthwith; and
  - (b) produce the prisoner, in such custody as he or she thinks fit, in accordance with the order.
- (5) The review of a decision shall be by way of a rehearing and evidence in addition to, or in substitution for, the evidence given in the proceeding resulting in that decision may be given in or in connection with the review.
- (6) Upon the review of a decision made upon an application for a trial transfer order, the Court shall:
  - (a) affirm the decision under review; or

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- (b) set aside the decision under review and make a decision in substitution for the decision under review.
- (7) Where the Court sets aside the decision of a court of summary jurisdiction to refuse to grant an application for a trial transfer order and substitutes another decision, being a decision to grant that application:
  - (a) the Court shall make the trial transfer order to which the application relates; and
  - (b) that order has effect, for the purposes of all provisions of this Act other than this section, as if it had been made by the court of summary jurisdiction.

**12 Revocation of trial transfer orders**

Where:

- (a) a trial transfer order has been made in respect of a prisoner serving a sentence of imprisonment in a State or Territory; and
- (b) an application for the revocation of the trial transfer order is made to a court of summary jurisdiction of that State or Territory by the applicant for that trial transfer order or the prisoner; and
- (c) the court is, having regard to:
  - (i) any evidence not reasonably available to the court that made the trial transfer order or, if there was a review by a court under section 11 of the decision to make the trial transfer order, that court; or
  - (ii) any change in a matter material to the making of the trial transfer order;satisfied as to a matter referred to in a paragraph of subsection 10(4) or is satisfied that the warrant referred to in section 8 or 9, as the case requires, has been withdrawn or has expired;

the court may, by order in writing served, at any time before the commencement of the execution of the trial transfer order, upon

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the Superintendent or other officer in charge of the prison in which the prisoner is detained, revoke the trial transfer order.

**13 Representation**

- (1) At a hearing of a proceeding under section 10 in relation to an application for a trial transfer order, the applicant and the prisoner to whom the application relates are each entitled to appear or to be represented by a legal practitioner.
- (2) At a hearing of a proceeding under section 11 in respect of the review of a decision granting or refusing to grant an application under section 8 for a trial transfer order, or a proceeding under section 12 for the revocation of a trial transfer order made under section 8, the Attorney-General and the prisoner to whom the application or trial transfer order relates are each entitled to appear or to be represented by a legal practitioner.
- (3) At a hearing of a proceeding under section 11 in respect of the review of a decision granting or refusing to grant an application under section 9 for a trial transfer order, or a proceeding under section 12 for the revocation of a trial transfer order made under section 9, the applicant for the trial transfer order, the Attorney-General and the prisoner to whom the application or trial transfer order relates are each entitled to appear or to be represented by a legal practitioner.



**Division 2—Return of prisoner****14 Return of prisoner**

- (1) Where a prisoner is, in pursuance of a trial transfer order or a State order of transfer or both, transferred to a State or Territory to stand trial for a charge in respect of an offence against a law of the Commonwealth or of that State or Territory, the Attorney-General shall, if:
- (a) the Attorney-General is satisfied that that charge and such other charges (if any) as have been laid against the prisoner (whether before or after the prisoner was so transferred):
    - (i) in respect of offences against laws of the Commonwealth that are triable in that State or Territory; or
    - (ii) in respect of offences against laws of that State or Territory;have been finally dealt with according to law; and
  - (b) the prisoner is, upon that charge or those charges having been so dealt with, a Commonwealth prisoner; and
  - (c) the prisoner has not, upon that charge or those charges having been so dealt with, been sentenced in that State or Territory to a term of imprisonment for an offence against a law of the Commonwealth or of that State or Territory that expires on a day later than the last day of any federal sentence, transferred sentence or translated sentence of the prisoner;
- by notice in writing served on the prisoner, inform the prisoner that unless:
- (d) the prisoner applies to the Attorney-General in accordance with subsection (2) by such date as is specified in the notice, being a date later than 14 days after service of the notice, for an order declaring the prisoner to be an exempt prisoner; and

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- (e) the Attorney-General makes that order;  
the Attorney-General may make an order in writing for the transfer of the prisoner from that State or Territory back to the State or Territory from which he or she has been transferred in pursuance of that trial transfer order or order of transfer.
- (2) Subject to this section, upon application made to the Attorney-General by a prisoner upon whom a notice has been served under subsection (1), the Attorney-General may, in his or her discretion, make an order declaring the prisoner to be an exempt prisoner.
- (3) An application made by a prisoner under subsection (2) shall set out such matters with respect to the welfare of the prisoner as the prisoner considers relevant.
- (4) In exercising his or her powers under subsection (2) to make an order declaring a prisoner to be an exempt prisoner, the Attorney-General shall have regard to all matters that he or she considers relevant, including, but without limiting the generality of the foregoing:
- (a) the administration of justice; and
  - (b) the welfare of the prisoner.
- (5) Where a prisoner upon whom a notice has been served under subsection (1) is, at the time when the notice is served upon him or her, serving a sentence of imprisonment in a State, the Attorney-General shall not make an order declaring that prisoner to be an exempt prisoner unless the appropriate Minister of that State has consented in writing to the making of that order.
- (6) Subject to subsections (8A) and (9), if:
- (a) a prisoner upon whom a notice has been served under subsection (1) fails to apply in accordance with the notice for an order declaring him or her to be an exempt prisoner; or

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- (b) a prisoner upon whom a notice has been served under subsection (1) applies in accordance with the notice for such an order but the Attorney-General refuses to make the order so sought;  
the Attorney-General shall make the order for the transfer of the prisoner that is set out in the notice unless:
  - (c) the Attorney-General has ceased to be satisfied with respect to the matter referred to in paragraph (1)(a); or
  - (d) paragraph (1)(b) or (c) has ceased to apply in relation to the prisoner.
- (7) A return transfer order shall come into force on a day specified in the order, being a day not later than 7 days after it is made.
- (8) For the purpose of determining, under subsection (1), whether a term of imprisonment to which a prisoner is sentenced in a State or Territory expires on a later day than the last day of any federal sentence, transferred sentence or translated sentence of the prisoner, a sentence of imprisonment for an indeterminate period shall be taken to expire on a later day than the last day of any sentence of imprisonment for a finite period.
- (8A) Despite subsection (6), the Attorney-General is not required to make an order for the transfer of a prisoner under that subsection from New South Wales to another State or to a Territory if:
  - (a) the prisoner has been removed to New South Wales under the *Removal of Prisoners (Australian Capital Territory) Act 1968*; and
  - (b) the prisoner has not applied for an order declaring him or her to be an exempt prisoner but, if he or she had so applied, the Attorney-General would have made such an order.
- (9) Notwithstanding subsection (6), the Attorney-General is not required to make an order for the transfer of a prisoner under that subsection from a State or Territory to another State or Territory if he or she has made an order under section 6 for the transfer of the prisoner from the first-mentioned State or Territory to a State or Territory other than the second-mentioned State or Territory.

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**15 Revocation of return transfer orders**

Where a return transfer order has been made under section 14 for the transfer of a prisoner from a State or Territory, the Attorney-General shall, by order in writing served, at any time before the commencement of the execution of the transfer order, upon the Superintendent or other officer in charge of the prison in which the prisoner is detained, revoke that transfer order if:

- (a) the Attorney-General has ceased to be satisfied with respect to the matter referred to in paragraph 14(1)(a); or
- (b) paragraph 14(1)(b) or (c) has ceased to apply in relation to the prisoner.

**16 Return of prisoner for appeal purposes**

- (1) Where it appears to a court, or to the Judge of a court, sitting in a State or Territory that the attendance before the court of a person who is undergoing a sentence or sentences of imprisonment in any other State or Territory and who has been transferred to that other State or Territory in pursuance of a transfer order or a State order of transfer or both is necessary for the purposes of a proceeding before the court by way of appeal or review of or in relation to any conviction, judgment, sentence or minimum term of imprisonment or of a proceeding incidental to such a proceeding, the court or Judge may issue an order directed to the Superintendent or other officer in charge of the gaol where the person is undergoing imprisonment requiring him or her to produce the person at the time and place specified in the order.
- (1A) However, subsection (1) does not apply if the transfer order in pursuance of which the person is in that other State or Territory is an order under Part IV.
- (2) An order made under subsection (1) may be served upon the Superintendent or officer to whom it is directed in whatever State or Territory he or she may be and he or she shall thereupon produce, in such custody as he or she thinks fit, the person referred to in the order at the time and place specified in the order.

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- (3) Where a person who is undergoing a sentence or sentences of imprisonment in any State or Territory is, in pursuance of an order under this section, produced in another State or Territory, he or she shall, while in that other State or Territory in compliance with that order, be deemed to be undergoing the first-mentioned sentence or sentences of imprisonment, and the officer in whose custody he or she is has the same powers, in relation to the detention and disposition of that person, as the Superintendent or officer to whom the order was directed has in the first-mentioned State or Territory.
- (4) Without limiting the generality of paragraph 30(b):
  - (a) the powers conferred under this section are in addition to, and not in derogation of, the powers conferred under section 16A of the *Service and Execution of Process Act 1901*; and
  - (b) the powers conferred under that section of that Act are in addition to, and not in derogation of, the powers conferred by this section.

**16A Return of prisoner after attending appeal**

- (1) Where:
  - (a) a prisoner is transferred to a State or Territory under an order made under section 16 to attend a proceeding in that State or Territory; and
  - (b) the Attorney-General is satisfied that the proceeding (including any retrial that may have been ordered and any appeal or review arising from that proceeding or any such retrial) has been dealt with according to law; and
  - (c) the prisoner has not been sentenced in that State or Territory to a term of imprisonment for an offence against a law of the Commonwealth or of that State or Territory that expires on a day later than the last day of any federal sentence, transferred sentence or translated sentence of the prisoner;the Attorney-General shall serve a notice on the prisoner under subsection (2).
- (2) A notice shall state that unless:

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- (a) the prisoner applies to the Attorney-General under subsection (3) by such date as is specified in the notice for an order declaring the prisoner to be an exempt prisoner; and
  - (b) the Attorney-General makes that order;

the Attorney-General will make an order for the transfer of the prisoner from that State or Territory back to the State or Territory from which the prisoner has been transferred under section 16.
- (3) Subject to this section, upon application made to the Attorney-General by a prisoner upon whom a notice has been served, the Attorney-General may make an order declaring the prisoner to be an exempt prisoner.
- (4) An application shall set out such matters with respect to the welfare of the prisoner as the prisoner considers relevant.
- (5) The Attorney-General shall, in deciding whether to make an order declaring a prisoner to be an exempt prisoner, have regard to all matters that the Attorney-General considers relevant, including, but without limiting the generality of the foregoing:
  - (a) the administration of justice; and
  - (b) the welfare of the prisoner.
- (6) The Attorney-General shall not make an order declaring a prisoner who is serving a sentence of imprisonment in a State to be an exempt prisoner unless the appropriate Minister of that State has consented in writing to the making of that order.
- (7) Where:
  - (a) a prisoner fails to apply in accordance with a notice for an order declaring the prisoner to be an exempt prisoner; or
  - (b) a prisoner applies for such an order in accordance with a notice but the Attorney-General refuses to make the order;

the Attorney-General shall make the order for the transfer of the prisoner that is set out in the notice unless:

  - (c) the Attorney-General has ceased to be satisfied with respect to the matter referred to in paragraph (1)(b); or

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- (d) paragraph (1)(c) has ceased to apply in relation to the prisoner.
- (8) A return transfer order under this section shall come into force on a day specified in the order, being a day not later than 7 days after it is made.
- (9) For the purposes of this section, a sentence of imprisonment for an indeterminate period shall be taken to expire on a later day than the last day of any sentence of imprisonment for a finite period.

## **Part IV—Transfer for purpose of security**

### **16B Transfer of prisoner on security grounds**

- (1) The Attorney-General may make an order in writing for the transfer of:
  - (a) a prisoner serving a federal sentence of imprisonment in a prison of a State or Territory; or
  - (b) a remand prisoner in a prison of a State or Territory; to another State or Territory if the Attorney-General believes on reasonable grounds that it is necessary in the interests of security.
- (2) In exercising his or her powers under subsection (1) to make an order, the Attorney-General must have regard to all matters that he or she considers relevant, including, but without limiting the generality of the foregoing:
  - (a) the administration of justice; and
  - (b) the welfare of the prisoner or remand prisoner.
- (3) The Attorney-General must not make an order under subsection (1) for the transfer of the prisoner or remand prisoner unless both:
  - (a) the appropriate Minister of the State or Territory in which the prisoner or remand prisoner is in prison; and
  - (b) the appropriate Minister of the State or Territory to which the prisoner or remand prisoner is to be transferred; have consented in writing to the transfer.

### **16C Return of prisoner**

- (1) If:
  - (a) a prisoner or remand prisoner is transferred to a State or Territory pursuant to:
    - (i) a security transfer order; or



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- (ii) a return transfer order under this section (unless it orders a transfer to the originating State or Territory); and
  - (b) the Attorney-General reviews the order; and
  - (c) as a result of the review, the Attorney-General believes on reasonable grounds that, if he or she were now to consider the transfer of the prisoner or remand prisoner to the State or Territory, the order would not be made;the Attorney-General may make an order in writing for the transfer of the prisoner or remand prisoner from that State or Territory back to:
  - (d) the State or Territory from which he or she has been transferred pursuant to that order; or
  - (e) if that State or Territory is not the originating State or Territory:
    - (i) the originating State or Territory; or
    - (ii) any other State or Territory to which the prisoner or remand prisoner has been transferred, pursuant either to a security transfer order or to a return transfer order under this section, since his or her transfer from the originating State or Territory.
- (2) The Attorney-General must conduct a review of an order referred to in paragraph (1)(a), within 3 months after:
  - (a) the day on which the Attorney-General made the order; and
  - (b) the day on which the Attorney-General last reviewed the order;unless the Attorney-General has made an order under subsection (1) after a review of that order.
- (3) In exercising his or her powers under subsection (1) to make an order, the Attorney-General must have regard to all matters that he or she considers relevant, including, but without limiting the generality of the foregoing:
  - (a) the administration of justice; and
  - (b) the welfare of the prisoner or remand prisoner.

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- (4) The Attorney-General must not make an order under subsection (1) for the transfer of the prisoner or remand prisoner unless both:
- (a) the appropriate Minister of the State or Territory in which the prisoner or remand prisoner is in prison; and
  - (b) the appropriate Minister of the State or Territory to which the prisoner or remand prisoner is to be transferred;
- have consented in writing to the transfer.

- (5) In this section:

*originating State or Territory* means the last State or Territory in which the prisoner or remand prisoner was held other than as a result of an order under this Part.

**16D Transfer for court proceedings—general**

- (1) If a security transfer order, or a return transfer order under section 16C, has been made in relation to a prisoner or remand prisoner, the Attorney-General may make an order in writing for:
- (a) the transfer of the prisoner or remand prisoner from the State or Territory in which the prisoner or remand prisoner is in prison to another State or Territory to appear in proceedings before a court in that other State or Territory; and
  - (b) the transfer of the prisoner or remand prisoner from the other State or Territory back to the first-mentioned State or Territory as soon as practicable after that appearance has concluded.
- (2) However:
- (a) the Attorney-General must not make an order under subsection (1) if the Attorney-General believes on reasonable grounds that it is contrary to the interests of security; and
  - (b) this section does not apply in relation to the appearance of a remand prisoner in proceedings for the offence with which he or she is charged and for which he or she has been remanded in custody; and

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- (c) this section does not apply once the prisoner or remand prisoner has been returned to the originating State or Territory (within the meaning of section 16C).
- (3) In exercising his or her powers under subsection (1) to make an order, the Attorney-General must have regard to all matters that he or she considers relevant, including, but without limiting the generality of the foregoing:
  - (a) the administration of justice; and
  - (b) the welfare of the prisoner or remand prisoner.
- (4) The Attorney-General must not make an order under subsection (1) for the transfers of the prisoner or remand prisoner unless both:
  - (a) the appropriate Minister of the State or Territory in which the prisoner or remand prisoner is in prison at the time the order is made; and
  - (b) the appropriate Minister of the State or Territory to which the prisoner or remand prisoner is to be transferred to appear in the proceedings;have consented in writing to the transfers.

**16E Transfer for trial of remand prisoner**

- (1) If:
  - (a) a security transfer order, or a return transfer order under section 16C, has been made in relation to a remand prisoner; and
  - (b) the remand prisoner is required to appear in proceedings for the offence with which he or she is charged and for which he or she has been remanded in custody before a court in a State or Territory; and
  - (c) the remand prisoner is in prison in another State or Territory;the Attorney-General must make an order in writing for:
  - (d) the transfer of the remand prisoner from the other State or Territory to the State or Territory in which he or she is required to appear; and

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- (e) the transfer of the remand prisoner from the State or Territory in which he or she is required to appear back to the other State or Territory as soon as practicable after that appearance has concluded.
- (2) However:
  - (a) the Attorney-General is not required to make an order under subsection (1) if:
    - (i) the Attorney-General believes on reasonable grounds that it is essential in the interests of security that the order not be made; and
    - (ii) the court that remanded the remand prisoner in custody orders that his or her detention may continue; and
  - (b) this section does not apply once the prisoner or remand prisoner has been returned to the originating State or Territory (within the meaning of section 16C).

**16F Transfer under State transfer laws**

- (1) If an order under this Part has been made in relation to a prisoner or remand prisoner:
  - (a) an application must not be made to a court for an order under a State transfer law for the transfer of the prisoner or remand prisoner to another State or Territory; and
  - (b) an order (other than an order by a court) must not be made under a State transfer law for the transfer of the prisoner or remand prisoner to another State or Territory;unless the Attorney-General has consented in writing to the transfer.
- (2) This section does not apply once the prisoner or remand prisoner has been returned to the originating State or Territory (within the meaning of section 16C).

**Part V—Effect of transfer order****17 Transfer in custody of escort etc.**

- (1) A transfer order shall direct that the prisoner or remand prisoner to whom the transfer order relates be removed to the State or Territory mentioned in the order, and, for that purpose, be delivered into the custody of a person named or described in the order and be held in custody and conveyed to such prison in that State or Territory as is specified in the order.
- (2) Upon production to him or her of a transfer order, the Superintendent or other officer in charge of the prison where the prisoner or remand prisoner to whom the transfer order relates is imprisoned shall deliver the prisoner into the custody of the person named or described in the order.
- (3) Where a prisoner or remand prisoner to whom a transfer order relates is delivered, in pursuance of subsection (2) into the custody of a person named or described in that order, that person:
  - (a) shall keep the prisoner in custody for purposes in connection with the transfer of the prisoner; and
  - (b) shall deliver the prisoner into the custody of the Superintendent or other officer in charge of the prison specified in that order.
- (3A) Without limiting subsection (1) or (3), it is sufficient compliance with a transfer order if the prisoner or remand prisoner:
  - (a) is delivered into the custody of an escort of the State or Territory to which the prisoner is being transferred, being an escort who is authorised by the local prisons authority for that State or Territory to receive custody of the prisoner; and
  - (b) is so delivered into custody at a place at which the escort mentioned in paragraph (a) is authorised by the local prisons authority for that State or Territory to receive custody of the prisoner.

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- (4) A prisoner or remand prisoner to whom a transfer order relates may, in the course of being transferred in pursuance of that transfer order, be detained in any State or Territory in a prison or in a police station or other premises in which persons awaiting trial may lawfully be detained for such time as is reasonably necessary to facilitate the transfer.
- (5) A transfer order (other than an order under Part IV) relating to a person who is a joint prisoner has no effect:
  - (a) to the extent that, but for this subsection, it authorizes or requires the doing of any act or thing under this Act in relation to that person in his or her capacity as a person upon whom a State sentence of imprisonment has been imposed; and
  - (b) unless and until a complementary State order of transfer corresponding to the transfer order is in force in respect of the person.
- (6) A transfer order (other than an order under Part IV) has no effect to the extent that it purports to authorize the transfer of a State prisoner from a State to another State or to a Territory.
- (7) The Commonwealth may, for the purpose of enabling officers or employees of a State to carry out functions in relation to the execution of transfer orders, enter into such arrangements with that State as are necessary to secure the services of those officers or employees for that purpose.

### **18 Transferred sentences**

- (1) Where a prisoner upon whom a sentence of imprisonment for an offence against a law of a Territory has been imposed is transferred, in pursuance of a transfer order, to a State or Territory, any law of the Commonwealth (including this section) applies, and the provisions of any law of that State or Territory and the provisions of the State transfer law of any other State apply, in relation to that sentence on and after the transfer of that prisoner as if that sentence had been imposed upon the prisoner under, and for

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an offence against, a law of the State or Territory to which he or she is transferred.

- (2) Where a prisoner upon whom a sentence of imprisonment for an offence against a law of a State has been imposed is transferred, in pursuance of a transfer order or a State order of transfer or both, to a Territory, any law of the Commonwealth (including this section) applies, and the provisions of any law of that Territory apply, in relation to that sentence on and after the transfer of that prisoner as if that sentence had been imposed upon the prisoner under, and for an offence against, the law of that Territory.
- (3) In the application:
- (a) of any law of the Commonwealth (including this section) and of the provisions of any law of a State or Territory in relation to a transferred Territory sentence of a prisoner; or
  - (b) of any law of the Commonwealth (including this section) and of the provisions of any law of a Territory in relation to a transferred State sentence of a prisoner;
- any period of imprisonment served by the prisoner in respect of the sentence of imprisonment to which the transferred sentence is attributable has the effect that it would have if the prisoner had served it in respect of the transferred sentence.

## **19 Transferred sentences—non-parole periods**

- (1) Where a prisoner upon whom a sentence or sentences of imprisonment has or have been imposed under, and for an offence or offences against, a law of a Territory, being a sentence or sentences in respect of which a minimum term of imprisonment has been fixed, is transferred, in pursuance of a transfer order, to a State or Territory, then, in the application of the provisions of the law of that State or Territory relating to the fixing of minimum terms of imprisonment, those provisions have effect upon his or her being so transferred as if, in lieu of any minimum term of imprisonment that would or might have been fixed by or under those provisions in relation to the transferred sentence or the

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transferred sentences, there had been fixed the first-mentioned minimum term of imprisonment.

- (2) Where a prisoner upon whom a sentence or sentences of imprisonment has or have been imposed under, and for an offence or offences against, a law of a State, being a sentence or sentences in respect of which a minimum term of imprisonment has been fixed, is transferred, in pursuance of a transfer order or a State order of transfer or both, to a Territory, then, in the application of the provisions of the law of that Territory relating to the fixing of minimum terms of imprisonment, those provisions have effect upon his or her being so transferred as if, in lieu of any minimum term of imprisonment that would or might have been fixed by or under those provisions in relation to the transferred State sentence or the transferred State sentences, there had been fixed the first-mentioned minimum term of imprisonment.
- (3) Except as expressly provided, nothing in this section affects the application, in accordance with section 18:
  - (a) of the provisions of a law of a State or Territory relating to the fixing of minimum terms of imprisonment to the transferred Territory sentence or transferred Territory sentences of a prisoner; or
  - (b) of the provisions of a law of a Territory relating to the fixing of minimum terms of imprisonment to the transferred State sentence or transferred State sentences of a prisoner.

### **20 Transferred sentences—reductions and remissions**

- (1) Where a prisoner upon whom a sentence or sentences of imprisonment has or have been imposed under, and for an offence or offences against, a law of a Territory is transferred, in pursuance of a transfer order, to a State or Territory, then, in the application of the provisions of a law of that State or Territory relating to the reduction or remission of sentences or of minimum terms of imprisonment to the transferred Territory sentence or transferred Territory sentences of the prisoner, the prisoner shall be deemed to



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be entitled under those provisions, upon his or her being so transferred:

- (a) in lieu of any period or periods of reduction or remission of the transferred Territory sentence or transferred Territory sentences to which he or she would otherwise be entitled upon being so transferred—to a period or periods of reduction or remission of the transferred Territory sentence or the transferred Territory sentences equivalent to the period or periods of reduction or remission applicable, immediately before he or she was so transferred, to the sentence or sentences to which the transferred Territory sentence or the transferred Territory sentences is or are attributable; and
  - (b) in lieu of any period or periods of reduction or remission of a minimum term of imprisonment fixed in relation to the transferred Territory sentence or transferred Territory sentences to which he or she would otherwise be entitled upon being so transferred—to a period or periods of reduction or remission of the minimum term of imprisonment fixed in relation to the transferred Territory sentence or the transferred Territory sentences equivalent to the period or periods of reduction or remission applicable, immediately before he or she was so transferred, to the minimum term of imprisonment fixed in relation to the sentence or sentences to which the transferred Territory sentence or the transferred Territory sentences is or are attributable.
- (2) Where a prisoner upon whom a sentence or sentences of imprisonment has or have been imposed under, and for an offence or offences against, a law of a State is transferred, in pursuance of a transfer order or a State order of transfer or both, to a Territory, then, in the application of the provisions of a law of that Territory relating to the reduction or remission of sentences or of minimum terms of imprisonment to the transferred State sentence or transferred State sentences of the prisoner, the prisoner shall be deemed to be entitled under those provisions, upon his or her being so transferred;
- (a) in lieu of any period or periods of reduction or remission of the transferred State sentence or transferred State sentences

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to which he or she would otherwise be entitled upon being so transferred—to a period or periods of reduction or remission of the transferred State sentence or the transferred State sentences equivalent to the period or periods of reduction or remission applicable, immediately before he or she was so transferred, to the sentence or sentences to which the transferred State sentence or the transferred State sentences is or are attributable; and

- (b) in lieu of any period or periods of reduction or remission of a minimum term of imprisonment fixed in relation to the transferred State sentence or the transferred State sentences to which he or she would otherwise be entitled upon being so transferred—to a period or periods of reduction or remission of the minimum term of imprisonment fixed in relation to the transferred State sentence or transferred State sentences equivalent to the period or periods of reduction or remission applicable, immediately before he or she was so transferred, to the minimum terms of imprisonment fixed in relation to the sentence or sentences to which the transferred State sentence or the transferred State sentences is or are attributable.
- (3) Except as expressly provided, nothing in this section affects the application, in accordance with section 18:
- (a) of the provisions of a law of a State or Territory relating to the reduction or remission of sentences or of minimum terms of imprisonment to the transferred Territory sentence or transferred Territory sentences of a prisoner; or
  - (b) of the provisions of a law of a Territory relating to the reduction or remission of sentences or of minimum terms of imprisonment to the transferred State sentence or transferred State sentences of a prisoner.

## 21 Transferred sentences—default imprisonment

Where a prisoner is serving a transferred sentence that is attributable to a sentence of default imprisonment and the whole or any part of the total amount in default of payment of which that

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sentence of default imprisonment was imposed is paid by or on behalf of the prisoner to the Superintendent or other officer in charge of the prison in which the prisoner is imprisoned:

- (a) the transferred sentence shall:
  - (i) upon receipt of the whole of that total amount by the Superintendent or other officer, by force of this subsection, expire forthwith; or
  - (ii) except in a case where, but for the transfer of the prisoner, the sentence of default imprisonment imposed on the prisoner would have expired only on payment of the whole of that total amount—upon receipt of part of that total amount, be reduced, by force of this subsection, by a period that bears to the total sentence of default imprisonment the same proportion as the amount paid bears to the total amount; and
- (b) the Superintendent or other officer shall, forthwith upon receipt of the amount by him or her, remit the amount:
  - (i) in a case where the sentence of default imprisonment was imposed under a law of the Commonwealth or a Territory—to the Attorney-General; and
  - (ii) in a case where the sentence of default imprisonment was imposed under a law of a State—to the appropriate Minister of that State.

## **22 Territory sentences cease to have effect on transfer**

Where a prisoner upon whom a sentence of imprisonment has been imposed under, and for an offence against, a law of a Territory is transferred, in pursuance of a transfer order, to a State or Territory, that sentence ceases, for the purposes of this Act and of any law of that first-mentioned Territory, upon the prisoner's being so transferred, to have effect in that first-mentioned Territory except for the purpose of any appeal against, or review of, any conviction, judgment, sentence or minimum term of imprisonment made, imposed or fixed by a court of that first-mentioned Territory.

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### 23 Federal sentences—reductions and remissions

Where a Commonwealth prisoner is transferred, in pursuance of a transfer order, from a State or Territory to another State or Territory, then, in the application of the provisions of the law of that last-mentioned State or Territory by virtue of section 19AA of the *Crimes Act 1914*, those provisions have effect upon his or her being so transferred as if he or she were entitled, upon his or her so being transferred:

- (a) in lieu of any period or periods of reduction or remission of his or her federal sentence to which he or she would otherwise be entitled under that law in that application upon being so transferred—to a period or periods of reduction or remission of his or her federal sentence equivalent to the period or periods of reduction or remission of his or her sentence to which he or she was entitled under the law of the first-mentioned State or Territory in its application, by virtue of that section of that Act, immediately before being so transferred; and
- (b) in lieu of any period or periods of reduction or remission of a minimum term of imprisonment fixed under section 19AB, 19AC or 19AR, as the case may be, of that Act in relation to his or her federal sentence to which he or she would otherwise be entitled under that law in that application upon being so transferred—to a period or periods of reduction or remission of that minimum term of imprisonment equivalent to the period or periods of reduction or remission of that minimum term of imprisonment to which he or she was entitled under the law of the first-mentioned State or Territory in its application, by virtue of section 19 of that Act, immediately before being so transferred.

### 24 Royal prerogative of mercy

- (1) Subject to this section, this Act does not affect the exercise of the Royal prerogative of mercy.

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- (2) Where a prisoner is transferred to a State in pursuance of a transfer order, the Royal prerogative of mercy may:
- (a) in relation to any conviction for an offence against a law of a Territory; or
  - (b) in relation to a transferred sentence attributable to a sentence imposed in respect of such an offence;
- be exercised by the Queen or the Governor of that State as if that offence were an offence against the law of that State.
- (3) Where a prisoner is transferred to a Territory in pursuance of a transfer order, the Royal prerogative of mercy may:
- (a) in relation to any conviction for an offence against a law of a State or a Territory other than that Territory; or
  - (b) in relation to a transferred sentence attributable to a sentence imposed in respect of such an offence;
- be exercised by the Queen or the Governor-General as if that offence were an offence against the law of the Territory to which the prisoner has been transferred.
- (4) The reference in subsection (2) to the Governor of a State is, in respect of the Australian Capital Territory, a reference to the Governor-General.

## Part VI—Miscellaneous

### 25 Lawful custody of State prisoner in transit in Territory

Where:

- (a) a State order of transfer of a State is made under a State transfer law for the transfer of a State prisoner or a joint prisoner between that State and another State; and
- (b) a person is authorized in accordance with a State transfer law (whether or not that law is a law of that State) to keep that prisoner in custody in a State for the purpose of so transferring the prisoner; and
- (c) in the course of so transferring the prisoner, the person brings the prisoner into a Territory;

then:

- (d) the person may keep the prisoner in custody in the Territory for purposes in connection with the transfer of the prisoner; and
- (e) the prisoner may be detained in the Territory in a prison or in a police station or other premises in which persons awaiting trial may lawfully be detained for such time as is reasonably necessary to facilitate the transfer.

### 26 Escape of prisoners from lawful custody

- (1) Section 47 of the *Crimes Act 1914* applies to a State prisoner in lawful custody in accordance with section 25 of this Act as if a reference in the definition of ***federal criminal detention*** in section 45A of that Act to an offence against a law of the Commonwealth were a reference to an offence against a law of the Commonwealth or of a State.
- (2) Section 47 of the *Crimes Act 1914* applies to a prisoner or remand prisoner in lawful custody in pursuance of a transfer order (whether or not the person is also in lawful custody in pursuance of a State

order of transfer) as if a reference in the definition of ***federal criminal detention*** in section 45A of that Act to an offence against a law of the Commonwealth were a reference to an offence against a law of the Commonwealth or of a State or Territory.

## **27 Escape charges may be dealt with in other courts**

Where a person is arrested and charged with:

- (a) an offence against section 47 of the *Crimes Act 1914* in its application for the purposes of subsection 26(1) or (2) of this Act; or
- (c) an ancillary offence (within the meaning of the *Criminal Code*) that relates to an offence against section 47 of the *Crimes Act 1914* in its application for the purposes of subsection 26(1) or (2) of this Act;

the court before which the person is brought, being a court in a State or Territory, may, subject to section 80 of the Constitution, remit the charge to be dealt with by a court in another State or Territory.

## **28 State laws may make provision in relation to certain transfers of joint prisoners and State prisoners**

It is the intention of the Parliament that, without limiting the generality of paragraph 30(e), this Act shall not apply to the exclusion of a law of a State in so far as that law makes provision:

- (a) for complementary State orders of transfer corresponding to transfer orders; or
- (b) for State orders of transfer providing for the transfer of State prisoners from a State to another State or to a Territory; or
- (c) of a kind similar to Part V or section 31 in relation to persons:
  - (i) who are State prisoners or are joint prisoners in their capacity as persons upon whom State sentences of imprisonment have been imposed; and
  - (ii) who are transferred to that State in pursuance of a transfer order, a State order of transfer, or both.

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**29 Delegation**

- (1) The Attorney-General may, either generally or as otherwise provided in the instrument of delegation, by writing signed by him or her, delegate to a person all or any of his or her powers under this Act other than this power of delegation or the powers under Part IV.
- (1A) However, a delegation under subsection (1) does not extend to the power:
  - (a) to make or revoke an order under Part II; or
  - (b) to make an application under section 8; or
  - (c) to give consent for the purposes of subsection 9(2); or
  - (d) to serve notices or make orders under Division 2 of Part III; in any case:
    - (e) that relates to a prisoner or remand prisoner who is subject to an order under Part IV; or
    - (f) in which making or revoking the order, making the application, giving the consent or serving the notice would involve consideration of questions of security.
- (2) A power delegated under subsection (1), when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Attorney-General.
- (3) A delegation under subsection (1) does not prevent the exercise of a power by the Attorney-General.
- (4) The appropriate Minister of a State may, either generally or as otherwise provided in the instrument of delegation, by writing signed by him or her, delegate to a person all or any of his or her powers under this Act other than this power of delegation or the powers under Part IV.
- (5) A power delegated under subsection (4) by the appropriate Minister of a State, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the appropriate Minister of that State.



- (6) A delegation under subsection (4) by the appropriate Minister of a State does not prevent the exercise of a power by the appropriate Minister of that State.

### **30 Operation of other laws**

This Act is not intended to affect:

- (a) the operation of provisions of the *Crimes Act 1914* including those provisions as affected by a law of a Territory; or
- (b) the operation of the *Service and Execution of Process Act 1992*; or
- (c) the operation of a Removal Act; or
- (d) the operation of any other law of the Commonwealth relating to the release of offenders; or
- (e) the operation of a law of a State or Territory, to the extent that that law is capable of operating concurrently with this Act.

### **31 Orders may be made in consequence of appeal or retrial**

- (1) A court before which there are instituted:
- (a) proceedings by way of appeal against, or review of, a conviction, judgment, sentence or minimum term of imprisonment made, imposed or fixed in relation to a person in respect of whom a transfer order has been made; or
  - (b) proceedings by way of the retrial of such a person;
- may, if it is satisfied that it would be unjust or oppressive not to do so, make orders (including interim orders) in relation to the application of the provisions of this Act to the person as if the provisions of this Act were modified in such manner as the court thinks fit, and may, at any time, vary or rescind an order so made.
- (2) Without limiting the generality of subsection (1), orders made under that subsection in relation to a person may make provision for:
- (a) the transfer of the person from one State or Territory to another State or Territory; and

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- (b) the re-calculation of any sentence imposed upon the person, of any minimum term of imprisonment fixed in relation to any such sentence or of the remission or reduction of any such sentence or minimum term of imprisonment; and
  - (c) staying or suspending the operation of any provision of this Act or of any action taken under a provision of this Act.
- (3) A reference in this section to the provisions of this Act includes a reference to the provisions of any other law of the Commonwealth or of any law of a State or Territory in their application for the purposes of this Act.
- (4) In this section, **modification** includes the addition or omission of a provision or the substitution of a provision for another provision.
- (5) The powers conferred by this section upon a court are in addition to, and not in derogation of, any other powers of that court.

### 32 Modification of Act in relation to certain external Territories

- (1) The regulations may make provision for the provisions of this Act to extend to a specified external Territory (other than Norfolk Island, the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands) subject to such modifications and adaptations (if any) as are prescribed.
- (2) In subsection (1), **modification** includes the addition or omission of a provision or the substitution of a provision for another provision.

### 33 Regulations

The Governor-General may make regulations, not inconsistent with this Act, 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;

and, in particular:

- (c) prescribing the manner in which notices and other documents under this Act may be given or served; and

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- (d) making provision for or in relation to the dissemination to Commonwealth prisoners of information concerning the operation of this Act, the Removal Acts and the State transfer laws.

## Endnotes

### Endnote 1—About the endnotes

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## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Endnotes about misdescribed amendments and other matters are included in a compilation only as necessary.

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the amendment is set out in the endnotes.

## Endnote 2—Abbreviation key

**Endnote 2—Abbreviation key**

A = Act	orig = original
ad = added or inserted	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
am = amended	pres = present
amdt = amendment	prev = previous
c = clause(s)	(prev...) = previously
C[x] = Compilation No. x	Pt = Part(s)
Ch = Chapter(s)	r = regulation(s)/rule(s)
def = definition(s)	Reg = Regulation/Regulations
Dict = Dictionary	reloc = relocated
disallowed = disallowed by Parliament	renum = renumbered
Div = Division(s)	rep = repealed
exp = expires/expired or ceases/ceased to have effect	rs = repealed and substituted
F = Federal Register of Legislative Instruments	s = section(s)/subsection(s)
gaz = gazette	Sch = Schedule(s)
LI = Legislative Instrument	Sdiv = Subdivision(s)
LIA = <i>Legislative Instruments Act 2003</i>	SLI = Select Legislative Instrument
(md) = misdescribed amendment	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
o = order(s)	<u>underlining</u> = whole or part not commenced or to be commenced
Ord = Ordinance	

**Endnote 3—Legislation history**

## Endnotes

### Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Transfer of Prisoners Act 1983	95, 1983	22 Nov 1983	1 Aug 1984 (gaz 1984, No S292) (s 2)	
Defence Legislation Amendment Act 1984	164, 1984	25 Oct 1984	s 117–119: 1 Aug 1984 (s 2(8))	—
Crimes Legislation Amendment Act 1987	120, 1987	16 Dec 1987	s 68, 69(a): 13 Jan 1988 (s 2(6)) s 69(b) and 70–73: 19 Dec 1988 (s 2(1) and gaz 1988, No S384)	—
Crimes Legislation Amendment Act (No. 2) 1989	4, 1990	17 Jan 1990	s. 34: 17 July 1990 (s 2(14))	—
Service and Execution of Process (Transitional Provisions and Consequential Amendments) Act 1992	166, 1992	11 Dec 1992	10 Apr 1993 (s 2 and gaz 1993, No GN13)	s 4
Crimes and Other Legislation Amendment Act 1994	182, 1994	19 Dec 1994	s 25 and 28: (gaz 1995, No GN18) (s 2(7)) s 26 and 27: 19 Dec 1994 (s 2(1))	s 24 and 29
Statute Law Revision Act 1996	43, 1996	25 Oct 1996	Sch 2 (item 112): 1 Aug 1984 (s 2(2))	—
Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001	24, 2001	6 Apr 2001	s 4(1), (2) and Sch 48: 24 May 2001 (s 2(1)(a)) Sch 51 (item 5): 15 Dec 2001 (s 2(3))	s 4(1) and (2)
Anti-terrorism Act (No. 2) 2004	124, 2004	16 Aug 2004	Sch 4 (items 2–20): 16 Aug 2004 (s 2(1) item 5)	—

## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Statute Law Revision Act 2008	73, 2008	3 July 2008	Sch 1 (items 48–58): 3 July 2008 (s 2(1) item 32) Sch 4 (items 492–494): 4 July 2008 (s 2(1) item 64)	—
Federal Court of Australia Amendment (Criminal Jurisdiction) Act 2009	106, 2009	6 Nov 2009	Sch 1 (item 112): 4 Dec 2009 (s 2(1) item 2)	—
Service and Execution of Process Amendment (Interstate Fine Enforcement) Act 2010	143, 2010	15 Dec 2010	Sch 2 (items 3–5): 15 June 2011 (s 2(1) item 2)	Sch 2 (item 5)
Law and Justice Legislation Amendment (Identity Crimes and Other Measures) Act 2011	3, 2011	2 Mar 2011	Sch 2 (items 29, 30): 3 Mar 2011 (s 2(1) item 4)	—
Norfolk Island Legislation Amendment Act 2015	59, 2015	26 May 2015	Sch 1 (item 183): 18 June 2015 (s 2(1) item 2) Sch 1 (items 184–195, 197–203): 27 May 2015 (s 2(1) item 3)	Sch 1 (items 184– 203)
Crimes Legislation Amendment (Powers, Offences and Other Measures) Act 2015	153, 2015	26 Nov 2015	Sch 8: 27 Nov 2015 (s 2(1) item 2)	—

*Transfer of Prisoners Act 1983*

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Compilation No. 15

Compilation date: 27/11/15

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## Endnotes

### Endnote 4—Amendment history

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### Endnote 4—Amendment history

Provision affected	How affected
<b>Part I</b>	
s 3 .....	am No 164, 1984; No 120, 1987; No 182, 1994; No 124, 2004; No 73, 2008; No 59, 2015, No 153, 2015
<b>Part II</b>	
s 6 .....	am No 73, 2008
s 7 .....	am No 73, 2008
<b>Part III</b>	
<b>Division 1</b>	
Division 1 heading.....	ad No 124, 2004
s 8 .....	am No 120, 1987; No 73, 2008
s 9 .....	am No 120, 1987; No 73, 2008
s 10 .....	am No 73, 2008
s 11 .....	am No 73, 2008
s 12 .....	am No 73, 2008
<b>Division 2</b>	
Division 2 heading.....	ad No 124, 2004
s 14 .....	am No 182, 1994; No 73, 2008
s 15 .....	am No 120, 1987
s 16 .....	am No 164, 1984; No 124, 2004; No 73, 2008; No 106, 2009
s 16A .....	ad No 120, 1987
	am No 73, 2008
<b>Part IV</b>	
Part IV heading.....	rs No 124, 2004
Part IV .....	ad No 124, 2004
s 16B .....	ad No 124, 2004
s 16C .....	ad No 124, 2004
s 16D .....	ad No 124, 2004
s 16E.....	ad No 124, 2004



## Endnote 4—Amendment history

Provision affected	How affected
s 16F .....	ad No 124, 2004
<b>Part V</b>	
s 17 .....	am No 124, 2004; No 73, 2008; No 153, 2015
s 18 .....	am No 73, 2008
s 19 .....	am No 73, 2008
s 20 .....	am No 73, 2008
s 21 .....	am No 166, 1992; No 73, 2008; No 143, 2010
s 23 .....	am No 4, 1990; No 182, 1994; No 73, 2008
s 24 .....	am No 182, 1994
<b>Part VI</b>	
s 25 .....	am No 73, 2008
s 26 .....	am No 3, 2011; No 153, 2015
s 27 .....	am No 24, 2001
s 28 .....	am No 73, 2008
s 29 .....	am No 43, 1996; No 124, 2004; No 73, 2008
s 30 .....	am No 166, 1992; No 73, 2008
s 31 .....	am No 73, 2008