

Removal of Prisoners Act 2004

No. 20, 2004

**Compilation No. 2**

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Note: The formatting of this compilation was updated in 2022 to align with current formatting practices.

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Removal of Prisoners Act 2004

An Act relating to the removal from Norfolk Island to prisons in New South Wales and Queensland of prisoners and certain other persons, and for other purposes

1 Short title

 This Act may be cited as the *Removal of Prisoners Act 2004*.

2 Commencement

 This Act commences on the day on which notification of its assent is published in the Gazette.

3 Interpretation for Act

 (1) In this Act—

***authorised person*** means—

 (a) a magistrate; or

 (b) the registrar or a deputy registrar of the Supreme Court or the Court of Petty Sessions; or

 (c) a sheriff, registrar, deputy registrar, district registrar, or similar officer, of a federal court.

***constable*** means a member or special member of the Australian Federal Police, and includes—

 (a) a member of the Norfolk Island Police Force; and

 (b) in section 7—a member of the police force of a State or Territory.

***court*** means—

 (a) a federal court; or

 (b) the Supreme Court; or

 (c) the Court of Petty Sessions; or

 (d) any other court that has, or has had, jurisdiction in respect of Norfolk Island or a part of Norfolk Island.

***magistrate*** means a magistrate and in section 7, includes—

 (a) a chief, police, stipendiary, resident or special magistrate of a State or Territory; or

 (b) any other magistrate of a State or Territory in respect of whose office an annual salary is payable.

***order*** includes direction.

***prison*** includes any place that is, or was at the relevant time, a prison for the purposes of the law of the State.

***State*** means New South Wales or Queensland (as the case may be).

 (3) For this Act, a reference to the making of an order by a court includes a reference to the issue by a court or a magistrate of a warrant remanding or committing a person to prison or to some gaol, lockup or other place of security, and a reference in this Act to an order shall be construed accordingly.

4 Imprisonment may be served in State

 (1) Where, under a law as in force in Norfolk Island, a person is to undergo imprisonment or other detention in custody, he or she is liable to undergo that imprisonment or other detention in Norfolk Island, or, in accordance with this Act, in the State.

 (2) Where a person has, in accordance with a warrant issued under this Act by reason of an order or sentence by virtue of which he or she is to undergo imprisonment or other detention, been placed in custody in a prison in the State, he or she shall be deemed, so long as he or she is in custody in the State under this Act in consequence of that warrant, to be undergoing that imprisonment or detention.

5 Removal to, or detention in, State

 (1) Where, under a law as in force in Norfolk Island, a person is liable to undergo imprisonment or other detention in custody, an authorised person may, by warrant directed to all constables, require them to convey that person in custody from Norfolk Island to such prison in the State as is specified in the warrant and there to deliver him or her into the custody of the officer in charge of the prison or some other officer doing duty at the prison, and the warrant may be executed by any constable.

 (2) Where a person is delivered into custody at a prison in the State under a warrant under subsection (1), the person may, subject to this Act, be detained in that prison or any other prison in the State for so long as his or her detention or custody is necessary for the execution of the order or sentence by reason of which the warrant was issued.

 (3) Subject to the succeeding provisions of this Act, the person may, while so in custody, be dealt with in the like manner, and is subject to the like laws, including laws relating to the reduction or remission of sentences or non-parole periods, as if the order or sentence by virtue of which the person became liable to undergo imprisonment or other detention in custody had been a like order or sentence made or pronounced under a law in force in the State.

 (4) Without limiting the generality of subsection (3), where—

 (a) the order or sentence includes the imposition of a non-parole period; and

 (b) a like order or sentence made or pronounced under a law in force in the State could include the imposition of a non-probation period and not a non-parole period,

the non-parole period is subject to the same reduction or remission as if it were a non-probation period.

 (5) A reference in subsection (1) to a person liable to undergo imprisonment or other detention in custody shall be taken to include a reference to a person remanded into custody by order of a court.

 (6) A reference in this section to a non-parole period or a non-probation period is a reference to a period before the end of which a person shall not be released on parole or probation, as the case may be.

6 Escaping from custody

 A person who escapes from lawful custody while subject to an order or sentence of imprisonment or other detention in custody shall, upon being returned to lawful custody, undergo the punishment that the person would have undergone if the person had not escaped.

7 Arrest of prisoner unlawfully at large

 (1) A constable may, without warrant, apprehend a person whom the constable, with reasonable cause, suspects is a prisoner unlawfully at large.

 (2) The constable shall forthwith take the person before a magistrate.

 (3) If the magistrate is satisfied that the person is a prisoner unlawfully at large, the magistrate may issue a warrant—

 (a) authorising any constable to convey the person to a prison specified in the warrant; and

 (b) directing that the person, having been conveyed to that prison in accordance with the warrant, be detained in prison to undergo the term of imprisonment or other detention that the person is required by law to undergo.

 (4) In this section—

***prisoner unlawfully at large*** means a person who is at large (otherwise than by reason of having escaped from lawful custody) at a time when the person is required by law to be in custody for an offence against a law in force in Norfolk Island.

8 Return of persons to Norfolk Island

 (1) Where a person is being detained in a prison in the State under this Act, an authorised person may issue a warrant requiring the person in charge of the prison to deliver the first mentioned person into the custody of a constable, and requiring the constable into whose custody the person is so delivered to convey him or her in custody to Norfolk Island.

 (2) A person returned to Norfolk Island under a warrant referred to in subsection (1), shall be held in custody by the constable, some other constable or in a place of remand until released, or returned to the State, in accordance with law.

 (3) So long as a person returned to Norfolk Island under a warrant under subsection (1) continues to be liable to be kept in custody by virtue of the order or sentence by reason of which he or she was conveyed to the State, the constable executing the warrant, any other constable or the person in charge of the place of remand, as the case requires, may keep the person in custody in Norfolk Island, and that constable or person in charge may return the person in custody to the prison in the State, where he or she shall again be received into custody and dealt with as if he or she had not been returned to Norfolk Island.

9 Relationship between this Act and *Transfer of Prisoners Act 1983* (Clth)

 (1) A person shall not be removed from Norfolk Island under a warrant under subsection 5(1), and a person shall not be returned to the State under subsection 8(3), if the Minister has directed in writing that this Act is not to apply in relation to that removal or return.

 (2) The Minister shall not give a direction under subsection (1) in relation to the removal of a person from Norfolk Island or to the return of a person to the State unless the Minister is of the opinion that action to remove the person from Norfolk Island (whether or not to the State) should be taken under the *Transfer of Prisoners Act 1983* (Clth).

10 Application of *Removal of Prisoners (Territories) Act 1923* (Clth)

 Subject to this Act, the *Removal of Prisoners (Territories) Act 1923* (Clth) sections 8(3) and 8A, apply, so far as they are capable of so applying, to and in relation to a person who is being detained in a prison in the State under this Act as if his or her removal from Norfolk Island to the State had been effected under that Act and, in the case of a person who is not a prisoner or criminal lunatic within the meaning of that Act, as if he or she were a prisoner within the meaning of that Act.

11 Application of Act to persons in custody, etc at commencement of Act

 (1) This Act applies to and in relation to a person who was, before the commencement of this Act, placed in custody in a prison in the State for the purpose of giving effect to an order or sentence of a magistrate or court and has not been unconditionally released before the commencement of this Act, as if—

 (a) this Act had been in force at the time he or she was so placed in custody; and

 (b) he or she had been delivered into the custody of the officer in charge of that prison under a warrant issued under this Act in relation to that order or sentence; and

 (c) his or her detention in the State before the commencement of this Act had been detention under this Act.

 (2) To remove any doubt (and without limiting subsection (1)), this Act extends to any person who is in custody on remand immediately before the commencement of the Act.

12 Evidence

 A warrant purporting to be a warrant under this Act and to be under the hand of an authorised person shall be received in evidence in any court without further proof, and is evidence of the facts stated in the warrant.

13 Saving of certain laws

 This Act does not affect—

 (a) the exercise of the royal prerogative of mercy; or

 (c) the operation of any other law relating to the release of offenders; or

 (d) the operation of the *Mental Health Act 1996*.

14 Approved forms

 (1) The Minister may, in writing, approve forms for this Act.

 (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.

15 Regulation-making power

 The Administrator may make regulations for this Act.

Endnotes

Legislation history

The *Removal of Prisoners Act 2004* as shown in this compilation comprises Act No. 20 of 2004 and amendments as indicated in the Tables below.

| Enactment | Number and year | Commencement | Application saving or transitional provisions |
| --- | --- | --- | --- |
| *Removal of Prisoners Act 2004* | 20, 2004 | 1.10.04 |  |
| *Interpretation (Amendment) Act 2012**[to substitute throughout —Commonwealth Minister for Minister; and to substitute Minister for executive member]* | 14, 2012 | 28.12.12 |  |

| Ordinance | Registration | Commencement | Application, saving and transitional provisions |
| --- | --- | --- | --- |
| Norfolk Island Continued Laws Amendment Ordinance 2015(No. 2, 2015)(now cited as Norfolk Island Continued Laws Ordinance 2015 (see F2015L01491)) | 17 June 2015 (F2015L00835) | Sch 1 (items 293, 294, 344, 345): 18 June 2015 (s 2(1) item 1) | Sch 1 (items 344, 345) |
| as amended by |  |  |  |
| Norfolk Island Continued Laws Amendment (Removal of Prisoners) Ordinance 2022 | 28 Nov 2022 (F2022L01531) | 29 Nov 2022 (s 2(1) item 1) | — |

**Note:** The amendment history in the Table of Amendments below reflects the amendment of this title by the *Norfolk Island Continued Laws Ordinance 2015* (Ord No 2, 2015) incorporating all amendments to the *Norfolk Island Continued Laws Ordinance 2015* up to the compilation date. The as amended by information is not referenced in the Table of Amendments but can be seen in the legislation history above.

Table of Amendments

| ad = added or inserted | am = amended | rep = repealed | rs = repealed and substituted |
| --- | --- | --- | --- |
| Provisions affected | How affected |
| Title  | am | Ord No 2, 2015 |
| s 3  | am | Ord No 2, 2015 |
| s 8  | am | 14, 2012 |
| s 14  | am | 14, 2012; Ord No 2, 2015 |
| s 15  | am | Ord No 2, 2015 |