

NORTHERN TERRITORY OF AUSTRALIA

PRISONERS (INTERSTATE TRANSFER) ACT

As in force at 8 March 2007

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 8 March 2007

PRISONERS (INTERSTATE TRANSFER) ACT

An Act relating to the transfer between the Territory and a State or another Territory of the Commonwealth of prisoners

Part I Preliminary

1 Short title

This Act may be cited as the *Prisoners (Interstate Transfer) Act*.

2 Commencement

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3 Interpretation

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

another Territory and ***other Territory*** mean the Jervis Bay Territory, the Territory of Norfolk Island, the Territory of Christmas Island, the Territory of Cocos (Keeling) Islands or any prescribed external Territory to which the provisions of the *Transfer of Prisoners Act 1983* of the Commonwealth have been extended.

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

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

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

Attorney-General, in relation to a participating State, means the person who is designated for the time being as holder of the office of Attorney-General for that State.

Commonwealth sentence of imprisonment means a sentence of imprisonment for an offence against a law of the Commonwealth or of another Territory.

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

corresponding Minister, in relation to a participating State, means the Minister of the Crown of that State charged for the time being with the administration of the interstate law of that State.

court of petty sessions means a court of summary jurisdiction constituted by a magistrate sitting alone.

default imprisonment means imprisonment in default of:

- (a) payment of any fine, penalty, costs or other amount of money of any kind imposed or ordered to be paid by a court, judge or justice on the finding of guilt of a person for an offence; or
- (b) entering into a recognizance to keep the peace or to be of good behaviour.

gaoler, in relation to a prison, means the person who, under the *Prisons (Correctional Services) Act*, is the Director of Correctional Services.

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

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

joint prisoner means a person upon whom both:

- (a) a Territory sentence of imprisonment (as defined by this Act) or a State sentence of imprisonment (as defined by an interstate law); and
 - (b) a Commonwealth sentence of imprisonment,
- have been imposed.

justice means justice of the peace.

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

participating State means a State of the Commonwealth in which there is in force an interstate law.

prison means a prison as defined in section 5 of the *Prisons (Correctional Services) Act*.

prisoner means a Territory prisoner or a joint prisoner.

prison officer means a person who is appointed to be a prison officer under the *Prisons (Correctional Services) Act*.

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 the person's behaviour.

remission provisions means a determination or grant made under Part XXV of the *Prisons (Correctional Services) Act*, relating to the remission of a portion of a Territory sentence of imprisonment.

sentence of imprisonment means a Territory sentence of imprisonment as defined by this Act or a State sentence of imprisonment as defined by an interstate law, and includes (where relevant) a Commonwealth sentence of imprisonment.

State includes the Australian Capital Territory.

Territory prisoner means a person upon whom a Territory sentence of imprisonment has been imposed, but does not include a person upon whom a Commonwealth sentence of imprisonment has been imposed.

Territory sentence of imprisonment means a sentence of imprisonment for an offence against a law of the Territory, including a sentence of penal servitude, a sentence by which default imprisonment is ordered, an indeterminate sentence and a translated sentence, but does not include a sentence of imprisonment imposed under the *Youth Justice Act* or detention in a detention centre within the meaning of that Act.

translated sentence means a sentence of imprisonment deemed by section 25 to have been imposed on a person by a court of the Territory.

- (2) Where a justice of a participating State, in the exercise of his powers, issues a warrant of commitment while not constituting a court, the sentence of imprisonment imposed by the warrant shall, for the purposes of this Act, be deemed to have been imposed by a court.

- (3) For the purposes of this Act, a sentence of imprisonment imposed, or originally imposed, by, or by the operation of, an Act or other law of the Territory, a State or another Territory shall, except as prescribed by regulations under this Act, be deemed to have been imposed, or originally imposed, by a court of the Territory or, as the case may be, of that State or other Territory.
- (4) A reference in this Act to an Act of the Commonwealth includes a reference to an Act amending or replacing that Act.
- (5) A reference in this Act to the Governor-General or Governor of a participating State includes a reference to any person exercising and performing all the powers and functions of the Governor-General or Governor of that State, as the case may be.
- (5A) In relation to the Australian Capital Territory, the reference to the Governor of a participating State:
- (a) in section 26(4) is a reference to the Governor-General; and
 - (b) in section 26(5)(b) is a reference to the Governor-General or the Executive within the meaning of the *Australian Capital Territory (Self-Government) Act 1988* of the Commonwealth.
- (6) A reference in this Act to a person upon whom a sentence of imprisonment has been imposed does not include a reference to a person who has completed serving that sentence.
- (7) The following persons upon whom a sentence of imprisonment has been imposed shall be taken, for the purposes of this Act, to have completed serving that sentence:
- (a) a person:
 - (i) who has been released from serving a part of that sentence on parole or upon licence to be at large; and
 - (ii) in respect of whom action can no longer be taken under a law of the Commonwealth, the Territory, a State or another Territory by way of requiring the person to serve the whole or a part of the remainder of that sentence;
 - (b) a person:
 - (i) who has been released from serving the whole or a part of that sentence upon giving a relevant security; and

- (ii) in relation to whom:
 - (A) action can no longer be taken under a law of the Commonwealth, the Territory, a State or another Territory in respect of a breach of a condition of that security; or
 - (B) action cannot, by reason of the expiration of the security, be taken under any such law by way of requiring the person to serve the whole or a part of that sentence;
- (c) a person who, as the result of the exercise of the royal prerogative of mercy, is no longer required to serve the whole or a part of that sentence.
- (8) A reference in this Act to release on parole includes a reference to release on probation and to any other form of conditional release in the nature of parole.

4 Corresponding courts and interstate laws

- (1) Subject to subsection (2), the Administrator may, by notice in the *Gazette*, declare that:
 - (a) a law of a State is an interstate law for the purposes of this Act; and
 - (b) a specified court of the Territory or a court belonging to a specified class or description of courts of the Territory is, for the purposes of this Act, a corresponding court in relation to a specified court of a participating State or in relation to a court belonging to a specified class or description of courts of a participating State.
- (2) A declaration shall not be made under subsection (1) in respect of a law unless the Administrator is satisfied that that law substantially corresponds to the provisions of this Act and contains provisions that are referred to in this Act as provisions of an interstate law that correspond to specified provisions of this Act.

Part II Transfer for prisoner's welfare**5 Requests for, and orders of, transfer**

(1) Where the Minister:

- (a) receives a written request made by a Territory prisoner serving a sentence of imprisonment in the Territory for the transfer of the prisoner to a participating State or to another Territory; and
- (b) is of the opinion that the prisoner to whom the request relates should be transferred to the participating State or other Territory in the interests of the welfare of the prisoner,

the Minister shall:

- (c) where the request is for the transfer of the prisoner to a participating State – give to the corresponding Minister of the participating State a written request asking that Minister to accept the transfer of the prisoner to the participating State; and
- (d) where the request is for the transfer of the prisoner to another Territory – give to the Attorney-General of the Commonwealth a written request asking the Attorney-General of the Commonwealth to consent to that transfer.

(2) Where the Minister:

(a) has:

- (i) in respect of a request made by a Territory prisoner for a transfer to a participating State, given to the corresponding Minister of the participating State a written request under subsection (1)(c); and
- (ii) received from that Minister written notice of consent to the transfer of the prisoner to the participating State; or

(b) has:

- (i) in respect of a request made by a Territory prisoner for a transfer to another Territory, given to the Attorney-General of the Commonwealth a written request under subsection (1)(d); and

- (ii) received from the Attorney-General of the Commonwealth written notice of consent to the transfer of the prisoner to that other Territory,

the Minister may issue an order for the transfer of the prisoner to the participating State or other Territory, as the case may be.

(3) Where the Minister:

- (a) receives a written request made by a joint prisoner serving a sentence of imprisonment in the Territory for the transfer of the prisoner to a participating State; and
- (b) is of the opinion that the prisoner to whom the request relates should be transferred to the participating State in the interests of the welfare of the prisoner,

the Minister shall give to the corresponding Minister of the participating State a written request asking that Minister to accept the transfer of the prisoner to that participating State.

(4) Where the Minister has:

- (a) in respect of a request by a joint prisoner for a transfer to a participating State, given to the corresponding Minister of the participating State a written request under subsection (3); and
- (b) received from that Minister written notice of consent to the transfer of the prisoner to the participating State,

the Minister may issue an order for the transfer of the prisoner to the participating State.

(5) Where a joint prisoner is serving a sentence of imprisonment in the Territory and the Minister:

- (a) receives a written request made by the prisoner for the transfer of the prisoner to another Territory; and
- (b) is of the opinion that the prisoner to whom the request relates should be transferred to that other Territory in the interests of the welfare of the prisoner,

the Minister may issue an order for the transfer of the prisoner to that other Territory.

(6) A decision to issue, or not to issue, an order under this section is not reviewable by a court or tribunal.

6 Effect of orders under this part on joint prisoners

An order of transfer issued under this Part in relation to a joint prisoner, to the extent that (but for this section) it authorizes or requires the doing of an act or thing under this Act in relation to that person in his or her capacity as a person upon whom a Commonwealth sentence of imprisonment has been imposed, has no effect unless and until:

- (a) a transfer order corresponding to the order of transfer is in force in respect of that person under the *Transfer of Prisoners Act 1983* of the Commonwealth; or
- (b) the transfer of that person is otherwise authorized under that Act.

7 Repeated requests for transfer

A request made by a prisoner for his transfer to a participating State or to another Territory need not be entertained by the Minister if it is made within 12 months after a similar request made by the prisoner.

8 Receipt of request for transfer to the Territory

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

9 Reports

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

Part III Transfer for trial**10 Request for transfer of prisoner to participating State or another Territory**

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

(a) from:

(i) in the case of an arrest warrant issued in accordance with the law of a participating State – the Attorney-General of the participating State; or

(ii) in the case of an arrest warrant issued in accordance with the law of the Commonwealth or another Territory – the Attorney-General of the Commonwealth,

a written request, accompanied by a copy of the warrant; or

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

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

(2) Where the Minister receives a written request made by a prisoner for the transfer of the prisoner to a participating State or to another Territory to be dealt with according to law, the Minister shall, subject to subsection (3), refer the written request to the Attorney-General.

(3) A request made by a prisoner for his transfer to a participating State or to another Territory need not be referred by the Minister to the Attorney-General if it is made within 12 months after a similar request made by the prisoner.

11 Necessary consents

- (1) An order of transfer shall be issued under this Part only if:
- (a) the Attorney-General has, in writing, consented to the transfer of the prisoner to whom the order relates to the participating State or other Territory, as the case may be;
 - (b) in the case of a request for the transfer of a prisoner to a participating State (including a prisoner to whom paragraph (c)(ii) applies) – the Attorney-General of the participating State has, in writing, either consented to or requested the transfer; and
 - (c) in the case of:
 - (i) a request for the transfer of a prisoner to another Territory; or
 - (ii) a request for the transfer of a prisoner for the purpose of being dealt with in respect of an arrest warrant issued in accordance with the law of the Commonwealth,the Attorney-General of the Commonwealth has, in writing, either consented to or requested the transfer.
- (2) A certificate signed by a prescribed officer certifying that a consent or request required under subsection (1) for the transfer of a prisoner to a participating State, or to another Territory, specified in the certificate has been given or made is, in the absence of evidence to the contrary, proof that the consent or request has been given or made.

12 Prisoner to be brought before court of petty sessions

- (1) A court of petty sessions, upon proof to its satisfaction that the conditions precedent specified in section 11(1) have been complied with, shall by order in writing direct the gaoler of the prison where the prisoner to whom the certificate relates is then imprisoned to bring the prisoner before the court of petty sessions specified in the order, on a date and at a time so specified, for determination as to whether an order of transfer shall be issued.
- (2) Notice of an order made under subsection (1) shall be served on the Attorney-General and on the prisoner to whom it relates.

- (3) At a hearing for the purpose of determining whether an order for the transfer of a prisoner shall be issued:
 - (a) the prisoner shall be entitled to be represented by a legal practitioner; and
 - (b) the Attorney-General shall be entitled to appear or be represented.

13 Order of transfer

The court of petty sessions before which the prisoner is brought pursuant to an order made under section 12(1) shall:

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

14 Review of decision of court of petty sessions

- (1) Where the Attorney-General or the prisoner or any other person who has requested or consented to the transfer of the prisoner, is dissatisfied with the decision of the court of petty sessions under section 13, the Attorney-General, the prisoner or that person, as the case may be, may, within 14 days after the decision, apply to the Supreme Court for a review of the decision and the Supreme Court may review the decision.
- (2) The prisoner shall be entitled to be present or be represented by a legal practitioner at the review referred to in subsection (1) and for that purpose any court or a person authorized by the rules of the Supreme Court may, by order in writing, direct the gaoler of the prison where the prisoner is then imprisoned to bring the prisoner to the place of the review specified in the order on a date and at a time so specified.
- (3) The Attorney-General and any other person who has requested or consented to the transfer of the prisoner shall be entitled to appear or be represented at the review referred to in subsection (1).

- (4) The review of the decision under section 13 shall be by way of rehearing on the evidence, if any, given before the court of petty sessions and on any evidence in addition to the evidence so given.
- (5) Upon the review of a decision under section 13, the Supreme Court may confirm the decision or quash the decision and substitute a new decision in its stead.
- (6) For the purpose of giving effect to a substituted decision made under subsection (5), the Supreme Court may issue an order for the transfer of the prisoner to the appropriate participating State or other Territory.

14A Effect of orders under this part on joint prisoners

An order of transfer issued under this Part in relation to a joint prisoner, to the extent that (but for this section) it authorizes or requires the doing of an act or thing under this Act in relation to that person in his or her capacity as a person upon whom a Commonwealth sentence of imprisonment has been imposed, has no effect unless and until:

- (a) a transfer order corresponding to the order of transfer is in force in respect of that person under the *Transfer of Prisoners Act 1983* of the Commonwealth; or
- (b) the transfer of that person is otherwise authorized under that Act.

15 Prisoner brought to be returned to custody

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

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

16 Request for transfer of imprisoned person to the Territory

Where a person who is the subject of an arrest warrant issued in accordance with a law of the Territory is imprisoned in a participating State, the Attorney-General may give to the Attorney-General of the participating State a written request, accompanied by a copy of the warrant, for the transfer of the person to the

Territory to be dealt with according to law.

17 Request for transfer to the Territory by imprisoned person

Where:

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

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

Part IV Transfer back to original State or Territory

18 Return of prisoner if no sentence or shorter sentence in the Territory

Where:

- (a) a person is transferred to the Territory from a participating State or another Territory pursuant to an order issued under the provision of the interstate law of that participating State that corresponds to section 13 or 14(6) or under Part III of the *Transfer of Prisoners Act 1983* of the Commonwealth, or both;
- (b) so far as the Minister is aware, every complaint or information alleging any offence by the person against the law of the Territory or the Commonwealth has been finally dealt with according to law and as a result:
 - (i) the person did not become liable to serve any sentence of imprisonment in the Territory; or
 - (ii) the person did become liable to serve in the Territory one or more sentences of imprisonment under which the period of imprisonment remaining to be served is shorter than the period of imprisonment remaining to be served by the person under any translated sentence or translated sentences or any sentence of imprisonment that has been imposed upon the person for any other offence against a law of the Commonwealth or another

Territory; and

- (c) the person is either a Territory prisoner or a joint prisoner, the Minister shall, subject to section 21, issue an order for the transfer of the person to the participating State or to the other Territory, as the case may require.

19 Effect of orders under this Part on joint prisoners

An order of transfer issued under this Part in relation to a joint prisoner, to the extent that (but for this section) it authorizes or requires the doing of an act or thing under this Act in relation to that person in his or her capacity as a person upon whom a Commonwealth sentence of imprisonment has been imposed, has no effect unless and until:

- (a) a transfer order corresponding to the order of transfer is in force in respect of that person under the *Transfer of Prisoners Act 1983* of the Commonwealth; or
- (b) the transfer of that person is otherwise authorized under that Act.

21 Provisions ancillary to section 18

- (1) Section 18 does not apply in respect of a person if:
- (a) the Minister receives a written request made by the person, being a request for the person to serve the person's imprisonment in the Territory, and the Minister and:
- (i) in the case of a person transferred from a participating State (being a person who is a Territory prisoner) – the corresponding Minister of the participating State;
- (ii) in the case of a person transferred from a participating State (being a person who is a joint prisoner) – the corresponding Minister of the participating State and the Attorney-General of the Commonwealth; or
- (iii) in the case of a person transferred from another Territory (being a person who is a joint prisoner) – the Attorney-General of the Commonwealth,
- agree in writing that the person should serve the imprisonment in the Territory; or
- (b) an indeterminate sentence (not being a translated sentence) is imposed upon the person by a court of the Territory.

- (2) For the purposes of section 18, a complaint or information alleging an offence by a person is finally dealt with if:
- (a) the person is tried for the offence and:
 - (i) the time or extended time, if any, fixed by or under an Act, within which an appeal against, or an application for the review of, the decision given on the trial may be lodged, or within which a retrial may be ordered, has expired; and
 - (ii) any appeal or application for review in respect of the decision given on the trial has been determined or withdrawn and proceedings in respect of any retrial and any decision given on the retrial have been concluded; or
 - (b) the complaint or information is withdrawn or a nolle prosequi or similar instrument is filed in respect of the offence.
- (3) For the purpose of determining which of the periods referred to in section 18(b) is the shorter or longer:
- (a) any entitlement to remissions shall be disregarded;
 - (b) a finite period of imprisonment shall be treated as being shorter than a period to be served under an indeterminate sentence;
 - (c) the expression ***sentences of imprisonment*** in section 18(b)(ii) includes a translated sentence that was originally imposed by a court of the Territory;
 - (d) the expression ***translated sentence or translated sentences*** in section 18(b)(ii) does not include a translated sentence that was originally imposed by a court of the Territory; and
 - (e) where a Territory sentence of imprisonment which a person became liable to serve in the Territory (not being a translated sentence) is cumulative with a translated sentence or translated sentences originally imposed by a court other than a court of the Territory, that translated sentence or those translated sentences shall be deemed:
 - (i) not to be a translated sentence or translated sentences, as the case may be; and
 - (ii) to be a sentence or sentences, as the case may be, which the person is liable to serve in the Territory.

Part V Effect of order of transfer

22 Transfer in custody of escort

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

the escort, while in the Territory, is authorized to hold, take and keep custody of the person for the purpose of conveying him to such prison in the Territory as is specified in the order and there to deliver him into the custody of the gaoler.

23 Transfer of sentence with prisoner

- (1) Where pursuant to an order of transfer a prisoner is conveyed to a participating State or another Territory specified in the order, then from the time the prisoner arrives in the participating State or that other Territory every Territory sentence of imprisonment imposed upon the prisoner, including a translated sentence, ceases to have effect in the Territory except:
 - (a) for the purpose of an appeal against or review of a conviction, finding of guilt, judgment or sentence made, imposed or fixed by a court of the Territory;

- (b) in relation to a period of imprisonment served by the prisoner in the Territory; or
 - (c) in relation to the remittance of money to the Minister which is paid in discharge or partial discharge of a sentence of default imprisonment originally imposed upon the prisoner by a court of the Territory.
- (2) Subsection (1) does not apply to a sentence of imprisonment imposed upon a person where the person has completed serving that sentence.

24 Information to be sent to participating State

- (1) Where pursuant to an order of transfer a prisoner is conveyed to a participating State, the Minister shall cause to be sent to the corresponding Minister of the participating State or to some person for the time being designated by the corresponding Minister:
- (a) the order of transfer;
 - (b) the warrant of, or other authority for, commitment for a sentence of imprisonment which the prisoner was, immediately before he left the Territory, serving or liable to serve;
 - (c) a report relating to the prisoner, which shall contain such information and be accompanied by such documents available in the Territory as appear likely to be of assistance to a court, authority or officer in the participating State and shall include details of findings of guilt, sentences of imprisonment, minimum terms of imprisonment, periods of imprisonment served, entitlements to remissions and grants of parole and a copy of any record relating to the prisoner's conduct; and
 - (d) details, accompanied by relevant orders or other documents, of any subsequent variations to the information provided in accordance with this subsection, whether arising from an appeal or review or otherwise.
- (2) A reference in subsection (1) to an order or other document is a reference to either the original or a copy certified in the prescribed manner.

25 Sentence deemed to have been imposed in the Territory

- (1) Where under an interstate law an order is issued for the transfer to the Territory of a person imprisoned in a participating State and the person is brought into the Territory pursuant to the order, then from the time the person arrives in the Territory:
- (a) any State sentence of imprisonment (as defined in the interstate law of the participating State) imposed upon the person by a court of the participating State and any sentence of imprisonment deemed by the provision of an interstate law that corresponds to this section to have been imposed by a court of the participating State shall be deemed to have been imposed upon the person; and
 - (b) a direction or order given or made by a court of the participating State in relation to when any such State sentence of imprisonment shall commence shall, so far as practicable, be deemed to have been given or made,
- by a corresponding court of the Territory and, except as otherwise provided in this Act, shall be given effect to in the Territory, and the laws of the Territory shall apply, as if such a court had had power to impose the sentence and give or make the direction or order, if any, and did in fact impose the sentence and give or make the direction or order, if any.
- (2) Subsection (1) does not apply to or in respect of a sentence of imprisonment imposed upon a person where the person has completed serving that sentence.

26 Provisions relating to translated sentences

- (1) Where under a law of a participating State there has been fixed by a court in respect of a translated sentence a minimum term of imprisonment (being a shorter term than the translated sentence), during which minimum term the person subject to the sentence is not eligible to be released on parole, then, except as otherwise provided in this Act, that minimum term shall be deemed likewise to have been fixed by the corresponding court of the Territory.
- (2) Where a translated sentence or a minimum term deemed under subsection (1) to have been fixed by a corresponding court of the Territory:
- (a) is varied or quashed on a review by or appeal to a court of the participating State where the sentence or minimum term was imposed or fixed, the sentence or minimum term shall be deemed to have been varied to the same extent, or to have been quashed, by a corresponding court of the Territory; or

- (b) otherwise is varied or ceases to have effect as a result of action taken by a person or authority in that participating State, the sentence shall be deemed to have been varied to the same extent, or to have ceased to have effect, as a result of action taken by an appropriate person or authority in the Territory.
- (3) Nothing in this Act operates to permit in the Territory an appeal against or review of a conviction, finding of guilt, judgment, sentence or minimum term made, imposed or fixed in relation to a person by a court of a participating State.
- (4) Where a translated sentence is an indeterminate sentence requiring that the person who is the subject of the sentence be detained during the pleasure of Her Majesty or during the pleasure of the Governor of the participating State in which the sentence was imposed, the person shall be detained during the Administrator's pleasure.
- (5) The Administrator:
 - (a) may exercise the royal prerogative of mercy in favour of a person who is subject to a translated sentence as if the person were:
 - (i) an offender found guilty in a court of the Territory; or
 - (ii) an offender found guilty within the Territory before a judge or magistrate of the Territory; and
 - (b) in exercising that prerogative, may give effect to any indication given by the Governor of the participating State in which the sentence of imprisonment was imposed upon that person as to what the Governor of the participating State may have done had the person not been transferred to the Territory.
- (6) A person who is subject to a translated sentence:
 - (a) shall be deemed to have served in the Territory such period of the translated sentence as, up to the time of his transfer to the Territory, he had served in respect of that sentence in a participating State (including a period deemed under the provision of an interstate law that corresponds to this paragraph to have been served in a participating State and a period spent in custody while being transferred to a prison in the Territory); and
 - (b) shall, subject to subsection (7), be deemed to be entitled under the remission provisions to any remission of his translated sentence for which, up to the time of his transfer to

the Territory, he was eligible in respect of that translated sentence in the participating State (including a remission of sentence deemed under an interstate law to have been earned in a participating State) and any further remission of sentence under the remission provisions shall be calculated from the time of the arrival of the person in the Territory.

- (7) Any remission of a translated sentence:
- (a) for which the person who is subject to the sentence was eligible up to the time of the person's transfer to the Territory; and
 - (b) which is attributable to a part of the sentence not served or not to be served in the participating State from which the person was transferred,

shall not be taken into account for the purposes of subsection (6)(b).

- (8) Subsection (5) does not apply in relation to a conviction or transferred sentence referred to in section 24(2)(a) or (b) of the *Transfer of Prisoners Act 1983* of the Commonwealth, but nothing in this subsection shall be construed as preventing the Queen or the Administrator from exercising the royal prerogative of mercy as referred to in section 24(2) of that Act.

27 Translated sentences – default imprisonment

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

as a result of any other action taken by a person or authority in that participating State, the amount in default of payment of which the default imprisonment was ordered is reduced or the obligation to pay that amount is quashed:

- (a) the term of default imprisonment shall, where the amount is reduced, be reduced by a period which bears to the term of default imprisonment the same proportion as the amount of the reduction bears to the total amount that was payable and, subject to any other sentence of imprisonment that may be imposed on him, the prisoner shall be entitled to be released on the expiry of that reduced period; or
- (b) the prisoner shall, where the obligation to pay the amount is quashed, thereupon, subject to any other sentence of imprisonment that may be imposed on him, be entitled to be released.

Part VI Miscellaneous

28 Notification to prisoners of certain decisions

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

29 Lawful custody for transit through the Territory

- (1) Where, in relation to a person imprisoned in a participating State, or in another Territory, an order is made under an interstate law or under the *Transfer of Prisoners Act 1983* of the Commonwealth, or both, for the transfer of that person to a participating State or another Territory, and in the course of conveying the person to the participating State or other Territory pursuant to the order an escort brings the person into the Territory, then:
 - (a) while in the Territory, the escort is authorized to hold, take and keep custody of the person for the purpose of conveying him from the Territory to such prison in the participating State or other Territory as is specified in the order and there to deliver him into the custody of the gaoler; and
 - (b) any gaoler is authorized upon:
 - (i) the request of the escort; and
 - (ii) delivery to the gaoler by the escort of a copy of the order of transfer certified by the escort to be such a copy,

to receive the person and to detain him in custody as though he were a Territory prisoner for such time as the escort requests and is reasonably necessary for the purpose of executing the order.

- (2) Where a gaoler has the custody of a person under subsection (1)(b), the gaoler is authorized, upon the request of an escort and production by the escort of the order of transfer relating to the person, to deliver the person into the custody of the escort.

30 Escape from custody of person being transferred

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

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

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

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

- (c) order the person to be returned to the participating State in which the order of transfer under which that person was being conveyed at the time of the escape or attempt to escape was issued; and
(d) for that purpose, order the person to be delivered to an escort.
- (2A) Subsections (1) and (2) do not apply to a person to whom section 47 of the *Crimes Act 1914* of the Commonwealth applies by virtue of section 26(2) of the *Transfer of Prisoners Act 1983* of the Commonwealth.
- (3) A warrant issued under subsection (2) may be executed according to its tenor.
- (4) A person who is the subject of a warrant issued under subsection (2) may be detained in custody as a Territory prisoner until he is delivered into the custody of an escort in accordance with that warrant or until the expiration of a period of 7 days from the issuing of the warrant, whichever first occurs.

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

31 **Escape from custody – penalty**

- (1) A person who, being a person in custody under an order of transfer, escapes or attempts to escape from that custody while he is not within the Territory or the participating State or other Territory to which he was being conveyed under that order is guilty of an offence.

Penalty: Imprisonment for 7 years.

- (2) A term of imprisonment imposed on a person for an offence against subsection (1) shall be served after the expiration of a term of imprisonment, penal servitude or detention to which he was subject at the time of his escape or attempt to escape.
- (3) Without limiting the generality of section 94 of the *Prisons (Correctional Services) Act*, that section applies to a person:
- (a) who is in custody under an order of transfer; and
 - (b) who escapes or attempts to escape from that custody while he is not within the Territory or the participating State or other Territory to which he was being conveyed under that order,

in the same way as it applies to a person who escapes or attempts to escape from lawful custody while undergoing a sentence involving deprivation of liberty in the Territory.

- (4) Subsections (1) to (3) do not apply to a person to whom section 47 of the *Crimes Act 1914* of the Commonwealth applies by virtue of section 26(1) or (2) of the *Transfer of Prisoners Act 1983* of the Commonwealth.

32 Revocation of order of transfer on escape from custody

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

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

whether or not:

- (c) the offence was an offence against a law of the Territory, the Commonwealth, a participating State or another Territory; or
- (d) a charge has been laid or a finding of guilt secured in respect of the offence.

33 Regulations

The Administrator may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

ENDNOTES
1**KEY**

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz = Gazette
hdg = heading
ins = inserted
lt = long title
nc = not commenced

od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

2**LIST OF LEGISLATION*****Prisoners (Interstate Transfer) Act 1983 (Act No. 7, 1983)***

Assent date 27 April 1983
 Commenced 21 September 1984 (*Gaz S50*, 21 September 1984)

Prisoners (Interstate Transfer) Amendment Act 1989 (Act No. 9, 1989)

Assent date 28 March 1989
 Commenced 12 February 1992 (*Gaz G6*, 12 February 1992, p 3)

Sentencing (Consequential Amendments) Act 1996 (Act No. 17, 1996)

Assent date 19 April 1996
 Commenced s 7: 19 April 1996; rem: 1 July 1996 (s 2, s 2 *Sentencing Act 1995* (Act No. 39, 1995) and *Gaz S15*, 13 June 1996)

Prisoners (Interstate Transfer) Amendment Act 1997 (Act No. 10, 1997)

Assent date 26 March 1997
 Commenced 26 March 1997

Youth Justice (Consequential Amendments) Act 2005 (Act No. 33, 2005)

Assent date 22 September 2005
 Commenced 1 August 2006 (s 2, s 2 *Youth Justice Act 2005* (Act No. 32, 2005) and *Gaz G30*, 26 July 2006, p 3)

Statute Law Revision Act 2007 (Act No. 4, 2007)

Assent date 8 March 2007
 Commenced 8 March 2007

3**LIST OF AMENDMENTS**

s 3 amd No. 9, 1989, s 4; No. 17, 1996, s 6; No. 10, 1997, s 2; No. 33, 2005, s 5; No. 4, 2007, s 7

s 4 amd No. 9, 1989, s 5

ss 5 – 6 sub No. 9, 1989, s 6

ENDNOTES

s 7	amd No. 9, 1989, s 7
s 8	amd No. 9, 1989, s 8
s 10	amd No. 9, 1989, s 9
s 11	amd No. 9, 1989, s 10
s 13	amd No. 9, 1989, s 11
s 14	amd No. 9, 1989, s 12
s 14A	ins No. 9, 1989, s 13
pt IV hdg	sub No. 9, 1989, s 14
ss 18 – 19	sub No. 9, 1989, s 14
s 20	rep No. 9, 1989, s 14
s 21	amd No. 9, 1989, s 15
s 22	amd No. 9, 1989, s 16
s 23	amd No. 9, 1989, s 17
s 24	amd No. 17, 1996, s 6
s 25	amd No. 9, 1989, s 18
s 26	amd No. 9, 1989, s 19; No. 17, 1996, s 6
s 27	amd No. 9, 1989, s 20
s 29	amd No. 9, 1989, s 21
s 30	amd No. 9, 1989, s 22
s 31	amd No. 9, 1989, s 23
s 32	amd No. 9, 1989, s 24; No. 17, 1996, s 6