

NORTHERN TERRITORY OF AUSTRALIA
PRISONERS (INTERSTATE TRANSFER) AMENDMENT ACT 1989

No. 9 of 1989

TABLE OF PROVISIONS

Section

1. Short title
2. Commencement
3. Principal Act
4. Interpretation
5. Corresponding courts and interstate laws
6. Repeal and substitution:

"5. REQUESTS FOR, AND ORDERS OF, TRANSFER

"6. EFFECT OF ORDERS UNDER THIS PART ON JOINT PRISONERS"

7. Repeated requests for transfer
8. Receipt of request for transfer to the Territory
9. Request for transfer of prisoner to participating State or another Territory
10. Necessary consents
11. Order of transfer
12. Review of decision of court of petty sessions
13. New section:

"14A. EFFECT OF ORDERS UNDER THIS PART ON JOINT PRISONERS"

14. Repeal and substitution:

"PART IV - TRANSFER BACK TO ORIGINAL STATE OR TERRITORY

"18. RETURN OF PRISONER IF NO SENTENCE OR SHORTER SENTENCE IN THE TERRITORY

"19. EFFECT OF ORDERS UNDER THIS PART ON JOINT PRISONERS"

15. Provisions ancillary to section 18
16. Transfer in custody of escort
17. Transfer of sentence with prisoner
18. Sentence deemed to have been imposed in the Territory
19. Provisions relating to translated sentences
20. Translated sentences - default imprisonment
21. Lawful custody for transit through the Territory
22. Escape from custody of person being transferred
23. Escape from custody - penalty
24. Revocation of order of transfer on escape from custody



NORTHERN TERRITORY OF AUSTRALIA

No. 9 of 1989

AN ACT

to amend the Prisoners (Interstate Transfer) Act

[Assented to 28 March 1989]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

1. SHORT TITLE

This Act may be cited as the Prisoners (Interstate Transfer) Amendment Act 1989.

2. COMMENCEMENT

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

3. PRINCIPAL ACT

The Prisoners (Interstate Transfer) Act 1983 is in this Act referred to as the Principal Act.

4. INTERPRETATION

(1) Section 3(1) of the Principal Act is amended -

(a) by omitting the definition of "Attorney-General" and substituting the following:

"'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;

'Australian Capital Territory' includes the Jervis Bay Territory;

Prisoners (Interstate Transfer) Amendment

'Commonwealth sentence of imprisonment' means a sentence of imprisonment for an offence against a law of the Commonwealth or of another Territory;"

- (b) by omitting the definition of "corresponding Minister" and substituting the following:

"'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;"

- (c) by omitting the definition of "Governor";

- (d) by omitting from the definition of "indeterminate sentence" the words "pleasure of the Administrator" and substituting "pleasure of the Governor-General, the Administrator";

- (e) by inserting after the definition of "interstate law" the following:

"'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;"

- (f) by omitting from the definition of "order of transfer" the words "section 6, 13, 14(6), 18, 19 or 20" and substituting "section 5, 13, 14(6) or 18";

- (g) by omitting from the definition of "participating State" the words "or Territory";

- (h) by omitting the definition of "prisoner" and substituting the following:

"'prisoner' means a Territory prisoner or a joint prisoner;"

- (j) by inserting after the definition of "prison officer" the following:

"'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;"

Prisoners (Interstate Transfer) Amendment

- (k) by inserting in the definition of "remission provisions" after "a portion of a" the word "Territory"; and
- (m) by omitting the definitions of "section 25 sentence" and "sentence of imprisonment" and substituting the following:

"'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;

'Territory' means the Northern Territory, and 'another Territory' and 'other Territory' mean the Australian Capital Territory, the Territory of Norfolk Island, the Territory of Christmas Island, the Territory of Cocos (Keeling) Islands and any prescribed external Territory to which the provisions of the Transfer of Prisoners Act 1983 of the Commonwealth have been extended;

'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 Juvenile 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) Section 3(3) of the Principal Act is amended -
 - (a) by omitting "law of a State or Territory" and substituting "law of the Territory, a State or another Territory"; and
 - (b) by omitting "court of that State or Territory." and substituting "court of the Territory or, as the case may be, of that State or other Territory."

Prisoners (Interstate Transfer) Amendment

(3) Section 3 of the Principal Act is further amended by adding after subsection (4) the following:

"(5) A reference in this Act to the Governor of a participating State includes a reference to any person exercising and performing all the powers and functions of the Governor of that State.

"(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; and

Prisoners (Interstate Transfer) Amendment

- (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."

5. CORRESPONDING COURTS AND INTERSTATE LAWS

Section 4 of the Principal Act is amended -

- (a) by omitting from subsection (1)(a) "or the Australian Capital Territory";
- (b) by omitting from subsection (2) "of another State or a Territory of the Commonwealth"; and
- (c) by omitting subsection (3).

6. REPEAL AND SUBSTITUTION

Sections 5 and 6 of the Principal Act are repealed and the following substituted:

"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.

Prisoners (Interstate Transfer) Amendment

"(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

Prisoners (Interstate Transfer) Amendment

- (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

Section 7 of the Principal Act is amended by inserting after "participating State" the words "or to another Territory".

8. RECEIPT OF REQUEST FOR TRANSFER TO THE TERRITORY

Section 8 of the Principal Act is amended -

Prisoners (Interstate Transfer) Amendment

- (a) by inserting after "corresponds to section 5" the words ", or a request made for the purposes of Part II of the Transfer of Prisoners Act 1983 of the Commonwealth,"; and
- (b) by inserting after "was given" the words "or to the Attorney-General of the Commonwealth, as the case may be,".

9. REQUEST FOR TRANSFER OF PRISONER TO PARTICIPATING STATE OR ANOTHER TERRITORY

- (1) Section 10(1) of the Principal Act is amended -

- (a) by omitting "is a prisoner" and substituting "the Commonwealth or another Territory is a prisoner serving a sentence of imprisonment in the Territory";
- (b) by omitting paragraph (a) and substituting the following:

"(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";

- (c) by omitting "either case" and substituting "any case";
- (d) by omitting "to the participating State" and substituting "to a participating State or to another Territory"; and
- (e) by inserting before "or to the Minister" the words ", the Attorney-General of the Commonwealth".

(2) Section 10(2) and (3) of the Principal Act are each amended by inserting after "to a participating State" the words "or to another Territory".

Prisoners (Interstate Transfer) Amendment

10. NECESSARY CONSENTS

Section 11 of the Principal Act is amended -

- (a) by omitting subsection (1) and substituting the following:

"(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."; and

- (b) by inserting in subsection (2) after "participating State" the words ", or to another Territory,".

11. ORDER OF TRANSFER

Section 13 of the Principal Act is amended -

- (a) by inserting in paragraph (a) after "participating State" the words ", or to the other Territory,"; and

- (b) by inserting in paragraph (b) after "participating State" the words "or other Territory,".

Prisoners (Interstate Transfer) Amendment

12. REVIEW OF DECISION OF COURT OF PETTY SESSIONS

Section 14 of the Principal Act is amended -

- (a) by omitting from subsection (1) ", the Attorney-General of the participating State or the prisoner" (first occurring) and substituting "or the prisoner or any other person who has requested or consented to the transfer of the prisoner,";
- (b) by omitting from subsection (1) ", the Attorney-General of the participating State or the prisoner" (second occurring) and substituting ", the prisoner or that person";
- (c) by omitting from subsection (3) "the Attorney-General of the participating State" and substituting "any other person who has requested or consented to the transfer of the prisoner"; and
- (d) by inserting in subsection (6) after "State" the words "or other Territory".

13. NEW SECTION

The Principal Act is amended by inserting after section 14 the following:

"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."

14. REPEAL AND SUBSTITUTION

The Principal Act is amended by repealing the heading to Part IV and sections 18 to 20 and substituting the following:

Prisoners (Interstate Transfer) Amendment

"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 -

Prisoners (Interstate Transfer) Amendment

- (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. PROVISIONS ANCILLARY TO SECTION 18

- (1) Section 21(1) of the Principal Act is amended -

- (a) by omitting "or 20";
- (b) by omitting paragraph (a) and substituting the following:

"(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 it is in the interests of the welfare of the person that the person should serve the imprisonment in the Territory; or"; and

- (c) by omitting from paragraph (b) "section 25" and substituting "translated".

(2) Section 21(2) of the Principal Act is amended by omitting "sections 18 and 19" and substituting "section 18".

- (3) Section 21(3) of the Principal Act is amended -

- (a) by omitting "or 20(c)(ii)"; and

Prisoners (Interstate Transfer) Amendment

- (b) by omitting paragraphs (c) to (e) and substituting the following:
- "(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."

16. TRANSFER IN CUSTODY OF ESCORT

Section 22 of the Principal Act is amended -

- (a) by inserting in subsection (1)(b) after "participating State" the words "or another Territory"; and
- (b) by omitting paragraph (a) of subsection (3) and substituting the following:
 - "(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"

17. TRANSFER OF SENTENCE WITH PRISONER

Section 23 of the Principal Act is amended -

- (a) by inserting after "a participating State" the words "or another Territory";

Prisoners (Interstate Transfer) Amendment

- (b) by omitting "every sentence of imprisonment imposed upon the prisoner by a court of the Territory, including a section 25 sentence," and substituting "or that other Territory every Territory sentence of imprisonment imposed upon the prisoner, including a translated sentence,"; and

- (c) by adding at the end the following:

"(2) Subsection (1) does not apply to a sentence of imprisonment imposed upon a person where the person has completed serving that sentence.".

18. SENTENCE DEEMED TO HAVE BEEN IMPOSED IN THE TERRITORY

Section 25 of the Principal Act is amended -

- (a) by omitting paragraph (a) and substituting the following:

"(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) by omitting from paragraph (b) "that sentence" and substituting "any such State sentence of imprisonment"; and

- (c) by adding at the end the following:

"(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.".

19. PROVISIONS RELATING TO TRANSLATED SENTENCES

Section 26 of the Principal Act is amended -

- (a) by omitting "section 25 sentence" (wherever occurring) and substituting "translated sentence";
- (b) by inserting in subsection (6)(b) after "shall" (first occurring) ", subject to subsection (7),";
- (c) by omitting from subsection (6)(b) "sentence of imprisonment" (wherever occurring) and substituting "translated sentence"; and

Prisoners (Interstate Transfer) Amendment

(d) by adding after subsection (6) the following:

"(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."

20. TRANSLATED SENTENCES - DEFAULT IMPRISONMENT

Section 27 of the Principal Act is amended by omitting "section 25 sentence" (wherever occurring) and substituting "translated sentence".

21. LAWFUL CUSTODY FOR TRANSIT THROUGH THE TERRITORY

Section 29 of the Principal Act is amended -

- (a) by omitting from subsection (1) "an order is made under an interstate law for the transfer of that person to another participating State and in the course of conveying the person to the participating State" and substituting "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";
- (b) by inserting in subsection (1)(a) after "participating State" the words "or other Territory"; and
- (c) by inserting in subsection (1)(b) before "prisoner" the word "Territory".

Prisoners (Interstate Transfer) Amendment

22. ESCAPE FROM CUSTODY OF PERSON BEING TRANSFERRED

Section 30 of the Principal Act is amended -

(a) by inserting after subsection (2) the following:

"(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."; and

(b) by inserting in subsection (4) before "prisoner" the word "Territory".

23. ESCAPE FROM CUSTODY - PENALTY

Section 31 of the Principal Act is amended -

(a) by inserting in subsections (1) and (3)(b) after "participating State" the words "or other Territory"; and

(b) by adding at the end the following:

"(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.".

24. REVOCATION OF ORDER OF TRANSFER ON ESCAPE FROM CUSTODY

Section 32 of the Principal Act is amended by omitting from paragraph (c) "or of a participating State" and substituting ", the Commonwealth, a participating State or another Territory".
