



ANNO TRICESIMO OCTAVO

# ELIZABETHAE II REGINAE

A.D. 1989

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No. 49 of 1989

An Act to amend the Prisoners (Interstate Transfer) Act, 1982

[Assented to 31 August 1989]

The Parliament of South Australia enacts as follows:

## Short title

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

(2) The *Prisoners (Interstate Transfer) Act, 1982*, is referred to in this Act as “the principal Act”.

## Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

## Interpretation

3. Section 5 of the principal Act is amended—

(a) by striking out from subsection (1) the definition of “Attorney-General” and substituting the following definitions:

“Attorney-General”, in relation to the Northern Territory, means the person holding the Ministerial office under section 36 of the *Northern Territory (Self-Government) Act 1978* of the Commonwealth who is, under that Act, designated for the time being as the holder of the office of Attorney-General:

“Australian Capital Territory” includes the Jervis Bay Territory:

“Commonwealth Act” means the *Transfer of Prisoners Act 1983* of the Commonwealth:

“Commonwealth sentence of imprisonment” means a sentence of imprisonment for an offence against a law of the Commonwealth or of a Territory;

(b) by striking out from subsection (1) the definition of “corresponding Minister” and substituting the following definition:

“corresponding Minister”, in relation to a participating State, means—

(a) except where the participating State is the Northern Territory—the Minister of the Crown of the participating State who is respon-

sible for the administration of the interstate law of that participating State;

and

(b) where the participating State is the Northern Territory—the person holding Ministerial office under section 36 of the *Northern Territory (Self-Government) Act 1978* of the Commonwealth who is responsible for the administration of the interstate law of the Northern Territory;;

(c) by striking out from subsection (1) the definition of “court of summary jurisdiction” and substituting the following definition:

“court of summary jurisdiction” means a court of summary jurisdiction constituted by a magistrate;;

(d) by striking out from subsection (1) the definition of “Governor”;

(e) by striking out from subsection (1) the definition of “indeterminate sentence” and substituting the following definition:

“indeterminate sentence” means a sentence of, or order or direction for, imprisonment or detention—

(a) for life;

(b) during the pleasure of Her Majesty;

(c) during the pleasure of the Governor-General, the Governor or the Governor of a participating State;

or

(d) until further order of a court,

and includes any such sentence, order or direction imposed, made or given by, or by the operation of, any Act or law;;

(f) by inserting in subsection (1) after the definition of “interstate law” the following definition:

“joint prisoner” means a person on whom both—

(a) a State sentence of imprisonment (as defined by this Act or an interstate law);

and

(b) a Commonwealth sentence of imprisonment,

have been imposed;;

(g) by striking out from the definition of “order of transfer” in subsection (1) “section 8, 15, 16 (6), 20, 21 or 22” and substituting “7, 15, 16 (6) or 20”;

(h) by striking out from subsection (1) the definitions of “participating State” and “prison” and substituting the following definitions:

“participating State” means a State of the Commonwealth in which an interstate law is in force:

“prison” means a prison as defined in the *Correctional Services Act, 1982*::;

(i) by striking out from subsection (1) the definition of “prisoner” and substituting the following definitions:

“prisoner” means a State prisoner or a joint prisoner:

“relevant security” means a security given by a person, with or without sureties, by recognizance or otherwise, that the person will comply with conditions relating to the person’s behaviour;

(j) by striking out from subsection (1) the definitions of “section 27 sentence”, “sentence of imprisonment”, “superintendent” and “Supreme Court” and substituting the following definitions:

“sentence of imprisonment” means a State sentence of imprisonment or a State sentence of imprisonment as defined by an interstate law, and includes (where relevant) a Commonwealth sentence of imprisonment:

“State” includes the Northern Territory:

“State prisoner” means a person on whom a State sentence of imprisonment has been imposed, but does not include a person on whom a Commonwealth sentence of imprisonment has been imposed:

“State sentence of imprisonment” means a sentence of imprisonment for an offence against a law of this State, 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 such a sentence while it is being served in a training centre pursuant to the *Children’s Protection and Young Offenders Act, 1979*, or an order for detention in a training centre made under that Act:

“Territory” means 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 Commonwealth Act have been extended, but does not include the Northern Territory:

“translated sentence” means a sentence of imprisonment that is, by virtue of section 27, to be deemed to have been imposed on a person by a court of this State.;

(k) by striking out from subsection (4) “of the Parliament”;

and

(l) by inserting after subsection (4) the following subsections:

(5) A reference in this Act to the Governor of a participating State extends—

(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

(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.

(6) A reference in this Act to a person on whom a sentence of imprisonment has been imposed does not extend to a person who has completed serving that sentence.

(7) A person on whom a sentence of imprisonment has been imposed will be taken, for the purposes of this Act, to have completed serving that sentence—

(a) if, in the case of a person who has been released from serving a part of that sentence on parole or on licence to be at large, no further action can be taken under a law of the Commonwealth, a State or a Territory to require the person to serve the whole or a part of the remainder of that sentence;

(b) if, in the case of a person who has been released from serving the whole or a part of that sentence on giving a relevant security—

(i) no further action can be taken under a law of the Commonwealth, a State or a Territory in respect of a breach of a condition of that security;

or

(ii) no further action can, by reason of the expiration of the security, be taken under a law of the Commonwealth, a State or a Territory to require the person to serve the whole or a part of that sentence;

or

(c) if the person is, as the result of the exercise of the royal prerogative of mercy, no longer required to serve the whole or a part of that sentence.

(8) A reference in this Act to release on parole extends to release on probation and to any other form of conditional release in the nature of parole.

#### **Corresponding courts and interstate laws**

4. Section 6 of the principal Act is amended—

(a) by striking out from paragraph (a) of subsection (1) “, the Australian Capital Territory or the Northern Territory”;

(b) by striking out from subsection (2) “or a Territory of the Commonwealth”;

and

(c) by striking out subsection (3).

#### **Substitution of ss. 7 and 8**

5. Sections 7 and 8 of the principal Act are repealed and the following sections are substituted:

##### **Requests for, and order of, transfer**

7. (1) Where the Minister—

(a) receives a written request made by a State prisoner serving a sentence of imprisonment in this State for the transfer of the prisoner to a participating State or to a Territory;

and

(b) is of the opinion that the prisoner should be transferred to that State or Territory in the interests of the welfare of the prisoner,

the Minister must—

(c) if the request is for transfer 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;

or

(d) if the request is for transfer to a Territory—give to the Attorney-General of the Commonwealth a written request asking the Attorney-General to consent to that transfer.

(2) Where the Minister—

(a) —

(i) has, in respect of a request made by a State prisoner for transfer to a participating State, given to the corresponding Minister of the participating State a written request under subsection (1) (c);

and

(ii) has received from that Minister written notice of consent to the transfer of the prisoner to the participating State;

or

(b) —

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

and

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

the Minister may issue an order for the transfer of the prisoner to the participating State or the 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 this State for the transfer of the prisoner to a participating State;

and

(b) is of the opinion that the prisoner should be transferred to that State in the interests of the welfare of the prisoner,

the Minister must 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—

(a) has, in respect of a request by a joint prisoner for transfer to a participating State, given to the corresponding Minister of the participating State a written request under subsection (3);

and

(b) has 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 this State and the Minister—

(a) receives a written request made by the prisoner for the transfer of the prisoner to a Territory;

and

(b) is of the opinion that the prisoner should be transferred to the Territory in the interests of the welfare of the prisoner,

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

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

**Effect of orders under this Part on joint prisoners**

8. An order of transfer issued under this Part in relation to a joint prisoner has no effect—

(a) 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 the person's capacity as a person on whom a Commonwealth sentence of imprisonment has been imposed;

and

(b) unless and until a transfer order corresponding to the order of transfer is in force under the Commonwealth Act in respect of the person or the transfer of the person is otherwise authorized under that Act.

**Repeated requests for transfer**

6. Section 9 of the principal Act is amended by inserting "or to a Territory" after "participating State".

**Receipt of request to transfer to this State**

7. Section 10 of the principal Act is amended—

(a) by inserting " , or a request made for the purposes of Part II of the Commonwealth Act," after "section 7";

and

(b) by inserting "or to the Attorney-General of the Commonwealth, as the case may require," after "was given".

**Request for transfer to participating State**

8. Section 12 of the principal Act is amended—

(a) by striking out "is a prisoner" and substituting " , the Commonwealth or a Territory is a prisoner serving a sentence of imprisonment in this State";

(b) by striking out paragraph (a) of subsection (1) and substituting the following paragraph:

(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 a Territory—the Attorney-General of the Commonwealth,

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

- (c) by striking out from subsection (1) “in either case”;
- (d) by striking out from subsection (1) “to the participating State” and substituting “to a participating State or to a Territory”;
- (e) by inserting in subsection (1) “, the Attorney-General of the Commonwealth” before “or to the Minister”;
- (f) by inserting in subsections (2) and (3) “or to a Territory” after “to a participating State” wherever occurring.

#### Necessary consents

##### 9. Section 13 of the principal Act is amended—

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

(1) An order of transfer cannot be issued under this Part unless—

- (a) the Attorney-General has, in writing, consented to the transfer of the prisoner to whom the order relates to the participating State or to the 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 a 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) “or to a Territory” after “participating State”.

#### Prisoner to be brought before court of summary jurisdiction

10. Section 14 of the principal Act is amended by striking out from subsection (1) “superintendent” and substituting “manager”.

#### Order of transfer

11. Section 15 of the principal Act is amended—

- (a) by inserting in paragraph (a) “or to the Territory” after “participating State”;

and

- (b) by inserting in paragraph (b) “or Territory” after “participating State”.

#### Review of decision of court of summary jurisdiction

12. Section 16 of the principal Act is amended—

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

(1) The Attorney-General, the prisoner or any person who requested or consented to the transfer of the prisoner may, if dissatisfied with the decision

of the court under section 15, apply to the Supreme Court for a review of the decision and the Supreme Court may, on such an application, review the decision.;

- (b) by striking out from subsection (2) “superintendent” and substituting “manager”;
  - (c) by striking out from subsection (3) “and the Attorney-General of the participating State” and substituting “and any other person who requested or consented to the transfer of the prisoner”;
- and
- (d) by inserting in subsection (6) “or Territory” after “participating State”.

**Insertion of s. 16a**

13. The following section is inserted after section 16 of the principal Act:

**Effect of orders under this Part on joint prisoners**

16a. An order of transfer made under this Part in relation to a joint prisoner has no effect—

- (a) 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 the person’s capacity as a person on whom a Commonwealth sentence of imprisonment has been imposed;
- and
- (b) unless and until a transfer order corresponding to the order of transfer is in force under the Commonwealth Act in respect of the person or the transfer of the person is otherwise authorized under that Act.

**Return of prisoners to custody**

14. Section 17 of the principal Act is amended by striking out “superintendent” wherever it occurs and substituting, in each case, “manager”.

**Request for transfer of imprisoned person to this State**

15. Section 18 of the principal Act is amended—

- (a) by inserting “or a Territory” after “in a participating State”;
- and
- (b) by inserting “or the Territory” after “the participating State”.

**Request by imprisoned person for transfer to this State**

16. Section 19 of the principal Act is amended—

- (a) by inserting “or a Territory” after “in a participating State”;
- and
- (b) by inserting “or the Territory” after “the participating State” wherever it occurs.

**Amendment of heading**

17. The heading to Part IV of the principal Act is amended by inserting “OR TERRITORY” after “STATE”.

**Substitution of ss. 20, 21 and 22**

18. Sections 20, 21 and 22 are repealed and the following sections are substituted:



**Return of prisoner to participating State if no sentence or shorter sentence imposed in this State**

20. Where—

- (a) a person is transferred to this State from a participating State or a Territory pursuant to an order issued under the provision of the interstate law of that participating State that corresponds to section 15 or 16 (6), or under Part III of the Commonwealth Act, or both;
- (b) so far as the Minister is aware, every complaint or information alleging any offence by the person against the law of this State 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 this State;
  - or
  - (ii) the person did become liable to serve in this State 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 on the person for any other offence against a law of the Commonwealth or a Territory;

and

- (c) the person is either a State prisoner or a joint prisoner,

the Minister must, subject to section 23, issue an order for the transfer of the person to the participating State or to the Territory, as the case may require.

**Effect of orders under this Part on joint prisoners**

21. An order of transfer made under this Part in relation to a joint prisoner has no effect—

- (a) 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 the person's capacity as a person on whom a Commonwealth sentence of imprisonment has been imposed;

and

- (b) unless and until a transfer order corresponding to the order of transfer is in force under the Commonwealth Act in respect of the person or the transfer of the person is otherwise authorized under that Act.

**Ancillary provisions**

19. Section 23 of the principal Act is amended—

- (a) by striking out from subsection (1) "The provisions of section 20 or 22 do not apply in respect of" and substituting "Section 20 does not apply in relation to";
- (b) by striking out paragraph (a) of subsection (1) and substituting the following paragraph:
  - (a) the Minister receives a written request made by the person, being a request for the person to serve the person's imprisonment in this State, and the Minister and—
    - (i) in the case of a person transferred from a participating State (being a person who is a State 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 a 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 this State;;

(c) by striking out from subsections (1) and (3) “section 27” wherever occurring and substituting, in each case, “translated”;

(d) by striking out from subsection (2) “sections 20 and 21” and substituting “section 20”;

(e) by striking out from subsection (3) “or 22 (c) (ii)”;

(f) by striking out from paragraph (c) of subsection (3) “, and the expression” other sentence or sentences of imprisonment “in section 22 (c) (ii),” and substituting “includes”;

(g) by striking out from paragraph (d) of subsection (3) “sections 20 (b) and 22 (c) (ii)” and substituting “section 20b”;

and

(h) by striking out from paragraph (e) of subsection (3) “sentence of imprisonment imposed upon a person” and substituting “State sentence of imprisonment that a person becomes liable to serve”.

#### **Transfers to be effected in custody of escort**

20. Section 24 of the principal Act is amended—

(a) by striking out from paragraph (a) of subsection (1) “superintendent” twice occurring and substituting, in each case, “manager”;

(b) by inserting in paragraph (b) of subsection (1) “or a Territory” after “participating State”;

(c) by striking out paragraph (a) of subsection (3) and substituting the following paragraph:

(a) under an interstate law or the Commonwealth Act, or both, an order is issued for the transfer to this State of a person imprisoned in a participating State or a Territory;;

and

(d) by striking out from subsection (3) “superintendent” and substituting “manager”.

#### **Transfer of sentence with prisoner**

21. Section 25 of the principal Act is amended—

(a) by inserting “or a Territory” after “a participating State”;

(b) by striking out “the participating State every” and substituting “the participating State or the Territory, every State”;

(c) by striking out “by a court of South Australia” first occurring;

(d) by striking out “section 27” and substituting “translated”;

and

(e) by inserting after its present contents, as amended (now to be designated as subsection (1)) the following subsection:

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

#### **Information to be sent to the participating State or Territory**

22. Section 26 of the principal Act is amended—

(a) by inserting in subsection (1) “or a Territory” after “a participating State”;

and

(b) by inserting in subsection (1) “or the Territory” after “the participating State” wherever it occurs.

#### **Translated sentences**

23. Section 27 of the principal Act is amended—

(a) by striking out paragraph (a) and substituting the following paragraph:

(a) any State sentence of imprisonment (as defined in the interstate law of the participating State) imposed on 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 will be deemed to have been imposed on the person;;

(b) by striking out from paragraph (b) “that sentence” and substituting “any such State sentence of imprisonment”;

and

(c) by inserting after its present contents, as amended (now to be designated as subsection (1)) the following subsection:

(2) Subsection (1) does not apply to or in relation to a sentence of imprisonment imposed on a person if the person has completed serving that sentence.

#### **Ancillary provisions relating to translated sentences**

24. Section 28 of the principal Act is amended—

(a) by striking out “section 27” wherever it occurs and substituting, in each case, “translated”;

(b) by striking out from subsection (4) “the person shall be detained during the Governor’s pleasure” and substituting “the person must be detained until the Supreme Court discharges the sentence, but may be released earlier on licence subject to and in accordance with the *Criminal Law (Sentencing) Act, 1988*, as if the sentence were a sentence of indeterminate duration imposed under that Act”;

(c) by inserting after subsection (5) the following subsection:

(5a) Subsection (5) does not apply in relation to a conviction or transferred sentence referred to in section 24 (2) (a) or (b) of the Commonwealth Act, but nothing in this subsection may be construed as preventing the Queen or the Governor from exercising the royal prerogative of mercy as referred to in section 24 (2) of that Act.;

(d) by striking out paragraph (b) of subsection (6) and substituting the following paragraph:

(b) shall, subject to subsection (6a), be credited, in respect of the part of the translated sentence served in a participating State, with such entitlements to remission as may be specified in the order of transfer or fixed on the application of the prisoner by the appropriate South Australian court;

(e) by striking out from paragraph (c) of subsection (6) "conditional release" and substituting "remission";

and

(f) by inserting after subsection (6) the following subsection:

(6a) 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 this State;

and

(b) that 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,

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

#### **Translated sentences of default imprisonment**

25. Section 29 of the principal Act is amended—

(a) by striking out "section 27" wherever it occurs and substituting, in each case, "translated";

and

(b) by striking out "superintendent" wherever it occurs and substituting, in each case, "manager".

#### **Lawful custody during transit through this State**

26. Section 31 of the principal Act is amended—

(a) by striking out subsection (1) and substituting the following subsection:

(1) The following provisions apply in relation to a person who passes through this State in the course of being conveyed by an escort from one participating State or Territory to another pursuant to an order made under an interstate law or the Commonwealth Act, or both:

(a) while in this State the escort is authorized to hold, take and keep custody of the person for the purpose of conveying him or her to such prison in the participating State or Territory as is specified in the order and there delivering him or her into custody;

(b) the manager of any prison in this State is authorized—

(i) on the request of the escort;

and

(ii) on delivery to the manager of a copy of the order of transfer certified by the escort to be such a copy,

to receive and detain the person in custody as if he or she were

a State prisoner for such period as the escort requests and is reasonably necessary for the purpose of executing the order.;

and

(b) by striking out from subsection (2) "superintendent" wherever it occurs and substituting, in each case, "manager".

**Arrest of persons who escape from custody**

27. Section 32 of the principal Act is amended—

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

(2a) Subsections (1) and (2) do not apply to a person to whom (by virtue of section 26 (2) of the Commonwealth Act) section 47 of the *Crimes Act 1914* of the Commonwealth applies.;

and

(b) by inserting in subsection (4) "State" before "prisoner".

**Escape from custody**

28. Section 33 of the principal Act is amended—

(a) by inserting in subsection (1) "or the Territory" after "participating State";

and

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

(3) Subsections (1) and (2) do not apply to a person to whom (by virtue of section 26 (2) of the Commonwealth Act) section 47 of the *Crimes Act 1914* of the Commonwealth applies.

**Revocation of order of transfer on escape from custody**

29. Section 34 of the principal Act is amended by striking out from paragraph (c) "or of a participating State" and substituting "the Commonwealth, a participating State or a Territory".

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor