

The Parliament of the
Commonwealth of Australia

The Senate

Transfer of Prisoners Bill 1983

Explanatory Memorandum

(Circulated by the authority of the Attorney-General
Senator the Honourable Gareth Evans)

TRANSFER OF PRISONERS BILL 1983

General Outline

The purpose of the Bill is to permit the transfer within Australia for welfare purposes or trial of prisoners who have been sentenced to terms of imprisonment for offences against laws of the Commonwealth, the Australian Capital Territory, Norfolk Island, Cocos (Keeling) Islands, and Christmas Island. There is provision for extension of the legislation to other external territories if the need arises.

The Commonwealth legislation will be supplementary to State and Northern Territory legislation permitting the transfer of State and Northern Territory prisoners. It is a result of a co-operative approach to law reform by the Commonwealth, States and Territories and is long overdue.

Notes on clauses

Clause 1 - Short title

Formal

Clause 2 - Commencement

The legislation will come into operation on a date to be fixed by Proclamation.

Clause 3 - Interpretation

This clause contains definition provisions.

Clause 4 - Application of Act to certain external Territories

This clause provides that the legislation extends to Norfolk Island, Christmas Island and Cocos (Keeling) Islands.

Clause 5 - Declaration of State transfer laws

This clause is definitional and provides for the Attorney-General to declare State legislation to be a State transfer law.

Clause 6 - Transfer of Commonwealth prisoner on welfare grounds

This clause regulates the transfer for welfare purposes of prisoners serving Federal or Territory sentences of imprisonment. Procedures for this type of transfer are initiated by written application of the prisoner to the Commonwealth Attorney-General. The Attorney-General may, in his discretion, make an order for the transfer of such a prisoner from one State or Territory to another -

- . if, where the prisoner is to be transferred to a State, the appropriate Minister in the receiving State consents; and

- . the Attorney-General considers that the transfer would be in the interests of the administration of justice and the welfare of the prisoner (it should be noted that any other relevant matters can be considered by the Attorney-General in exercising his discussion which is essentially unfettered).

The clause provides that the Attorney-General is not required to consider an application by a prisoner if the prisoner has made application within the preceding year.

Clause 7 - Revocation of Welfare Transfer Orders

This clause permits the Attorney-General to revoke a welfare transfer order at the request of the prisoner or on his own motion to reflect changed circumstances with respect to the administration of justice, the welfare of the prisoner or any other matter.

Clause 8 - Application for transfer to stand trial on charge in respect of offence against law of Commonwealth or a Territory

This clause regulates the transfer for trial on Federal or Territory changes of prisoners serving Federal or Territory sentences of imprisonment. If the Attorney-General considers that it is desirable in the interests of the administration of justice that a prisoner be transferred he may, either of his own motion or at the request of the prisoner, apply to a court of summary jurisdiction in the State or Territory where the prisoner is held for an order of transfer. Such an application shall not be made unless the appropriate Minister in the State where the prisoner is to be tried consents.

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

This clause regulates the transfer for trial on State or Northern Territory charges of prisoners serving Federal or Territory sentences of imprisonment. If the relevant State or Northern Territory Minister considers it is desirable in the interests of the administration of justice that the prisoner be transferred he may, either of his own motion or at the request of the prisoner, apply to a court of summary jurisdiction in the State or Territory where the prisoner is held for an order of transfer. Such an application shall not be made unless the Attorney-General consents.

Clause 10 - Proceedings before court of summary jurisdiction

This clause provides that the court of summary jurisdiction to which an application is made pursuant to clauses 8 or 9 shall make an order for transfer unless it considers that -

- . the charge in respect of which the prisoner is to stand trial is of a trivial nature; or
- . the application has not been made in good faith in the interests of the administration of justice; or
- . the transfer would be likely to prejudice 'appellate' proceedings to which the prisoner is or is likely to be a party; or
- . it would be unjust or oppressive.

Clause 11 - Review of decision made upon application for trial transfer order

This clause provides for the review, by way of rehearing, of decisions of courts of summary jurisdictions in relation to applications under clauses 8 and 9. The review is by way of application to the Supreme Court and must be made within fourteen days of the decision of the court of summary jurisdiction.

Clause 12 - Revocation of trial transfer orders

This clause permits a court of summary jurisdiction to revoke a trial transfer order on the basis of -

- . fresh evidence; or
- . a change in a matter which was material to the making of the transfer order; or
- . withdrawal of the charges in respect of which the prisoner was to be transferred to stand trial.

Clause 13 - Representation

This clause provides for an entitlement to representation to parties to proceedings before courts pursuant to clauses 10, 11 and 12.

Clause 14 - Return of Prisoner

This clause provides that where a prisoner is transferred for the purposes of trial he shall be returned by order of the Attorney-General to the State or Territory from where he was transferred if -

- . all charges are finally dealt with; and
- . he did not receive any sentence of imprisonment OR a sentence shorter than the unserved balance of the sentence he was to serve in the original State or Territory.

Before the Attorney-General makes the order for return transfer he must notify the prisoner that he may apply to remain in the State or Territory to which he has been transferred for welfare reasons. In such a case the same procedures apply as in a clause 6 transfer.

Clause 15 - Revocation of return transfer orders

This clause provides that the Attorney-General may revoke a return transfer order if any of the conditions precedent for making it no longer exist.

Clause 16 - Return of prisoner for appeal purposes

This clause provides that any court or judge may order the return of a prisoner, who has been transferred, to the State or Territory from which he was transferred, if the prisoner's attendance is necessary for the purpose of any appellate proceedings.

Clause 17 - Transfer in custody of escort and etc.

This clause sets out the procedures in relation to the physical removal of transferred prisoners. Sub-clause 17(5) makes it clear that where a prisoner is a joint prisoner (i.e. a prisoner serving a State sentence AND a Federal or Territory Sentence) a transfer order under this legislation cannot operate until there is a complementary State order of transfer made pursuant to State transfer legislation.

Clause 18 - Transferred sentences

This clause provides that where a Territory prisoner is transferred the sentence of imprisonment is regarded as having been imposed in the State or Territory to which he has been transferred. Thus an A.C.T. prisoner transferred to Queensland will become a Queensland prisoner. The clause is included to simplify release procedures. It does not apply to Federal prisoners. Such prisoners will continue to be housed in State gaols throughout Australia, as Federal prisoners. It would accordingly be artificial to change their status if they were transferred.

Clause 19 - Transferred sentences-non parole periods

This clause provides that where a prisoner is transferred the non-parole period to be applied in the State or Territory to which he has been transferred will be the same as the non-parole period fixed in the State or Territory from which he was transferred. This clause does not apply to federal prisoners whose status does not change pursuant to clause 18.

Clause 20 - Transferred Sentences - Reductions and remissions

This clause provides that where a prisoner is transferred he shall be granted reductions and remissions equivalent to and in substitution for any reductions or remissions earned in the State or Territory from which he was transferred. Once again this clause does not apply to federal prisoners whose status does not change pursuant to clause 18.

Clause 21 - Transferred sentences - default imprisonment

This clause provides that where the sentence of imprisonment in respect of which a prisoner is transferred is to cease or

be reduced on payment of the whole or part of a specified sum of money, the sentence shall cease or be reduced on payment of a whole or part of that specified sum of money.

Clause 22 - Territory sentences cease to have effect on transfer

This clause provides that where a person serving a Territory sentence of imprisonment is transferred that sentence ceases to have effect except for the purpose of 'appellate' proceedings. This clause complements clause 18.

Clause 23 - Federal sentences - reductions and remissions

Section 19 of the Commonwealth Prisoners Act provides that State and Territory reductions and remissions apply to federal prisoners serving sentences in the relevant State or Territory. This clause provides that where a federal offender is transferred pursuant to this legislation, in applying section 19 of the Commonwealth Prisoners Act, he shall be granted reductions or remissions equivalent to and in substitution for reductions or remissions earned in the State or Territory from which he was transferred.

Clause 24 - Royal prerogative of mercy

This clause provides for the exercise of the Royal prerogative of mercy in the State or Territory to which a prisoner is transferred by the State Governor or the Queen (in the case of the transfer of a Territory prisoner to a State) or by the Governor-General or the Queen (in the case of transfer of a State or Territory prisoner to a Territory). The exercise of the royal prerogative in respect of Federal prisoners is unaffected.

Clause 25 - Lawful custody of State prisoner in transit in Territory

This clause provides that, where a prisoner is being transferred pursuant to a State order of transfer, and in the course of transfer the prison passes through a Territory, the prisoner may be kept in custody whilst in the Territory for purposes in connection with the transfer for such time as is reasonably necessary to facilitate the transfer.

Clause 26 - Escape of prisoners from lawful custody

Section 47 of the Commonwealth Crimes Act 1914 makes it an offence to escape from lawful custody. This clause applies that section to prisoners who are being transferred pursuant to this legislation or who are in custody pursuant to clause 25.

Clause 27 - Escape charges may be dealt with in other courts

This clause provides that where a person is charged with an offence against s. 47 of the Crimes Act (as applied by clause 26) a court before which the person is brought may remit the case to a court in another State or Territory.

Clause 28 - State laws may make provision in relation to certain transfers of joint prisoners and State prisoners.

This clause provides that this legislation does not apply to exclude State laws insofar as they relate to the transfer of State prisoners and joint prisoners (joint prisoners are prisoners serving State AND Federal or Territorial sentences of imprisonment).

Clause 29 - Delegation

This clause provides for the Attorney-General and the appropriate Ministers in the States to delegate their powers under this Act.

Clause 30 - Operation of other laws

This clause provides that this legislation is not intended to affect -

- . the operation of certain Commonwealth laws which make provision for the release or transfer of offenders (the Crimes Act 1914 makes provision in relation to the release of offenders; the Service and Execution of Process Act makes provisions for prisoners to be transferred interstate to give evidence; the Removal Acts provide for prisoners sentenced to terms of imprisonment in a Territory to be removed to a State/Territory to serve such sentences).
- . the operation of State laws to the extent that they can operate concurrently with this legislation (see also clause 28).

Clause 31 - Orders may be made in consequence of appeal or retrial

This clause provides that a court dealing with an appeal or retrial of a transferred prisoner may make orders varying the application of this legislation to that prisoner. The clause is necessary to cover many contingencies. One example would be where an A.C.T. prisoner is transferred to Queensland pursuant to this legislation. Pursuant to clause 18 he becomes a Queensland prisoner. Assume he is returned to the A.C.T. to prosecute an appeal pursuant to clause 16 and is acquitted. Without this clause the court in the A.C.T. would be unable to order his discharge as he is a Queensland prisoner.

Clause 32 - Modification of Act in relation to certain external territories.

This clause provides that the regulations may extend the legislation with modifications to external territories other than those to which it already applies (Norfolk Island, Christmas Island, Cocos (Keeling) Islands).

Clause 33 - Regulations

This clause provides for a regulation - making power.



