

**PRISONERS (INTERSTATE TRANSFER) AMENDMENT
ACT 1986 No. 187**

NEW SOUTH WALES



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PRISONERS (INTERSTATE TRANSFER) AMENDMENT ACT 1986
No. 187

NEW SOUTH WALES



Act No. 187, 1986

An Act to amend the Prisoners (Interstate Transfer) Act 1982 consequent on and in connection with the enactment of the Transfer of Prisoners Act 1983 of the Commonwealth. [Assented to 18 December 1986]

Prisoners (Interstate Transfer) Amendment 1986

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

Short title

1. This Act may be cited as the "Prisoners (Interstate Transfer) Amendment Act 1986".

Commencement

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

Principal Act

3. The Prisoners (Interstate Transfer) Act 1982 is referred to in this Act as the Principal Act.

Amendment of Act No. 104, 1982

4. The Principal Act is amended in the manner set forth in Schedule 1.

SCHEDULE 1

(Sec. 4)

AMENDMENTS TO THE PRINCIPAL ACT

(1) Section 5 (**Interpretation**)—

(a) Section 5 (1), definitions of "Attorney-General", "Australian Capital Territory", "Commonwealth sentence of imprisonment"—

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Omit the definition of "Attorney-General", insert instead:

"Attorney-General", in relation to the Northern Territory, means the person holding 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 sentence of imprisonment" means a sentence of imprisonment for an offence against a law of the Commonwealth or of a Territory;

(b) Section 5 (1), definition of "corresponding Minister"—

Omit the definition, insert instead:

"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 that participating State who is responsible 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) Section 5 (1), definition of "Governor"—

Omit the definition.

(d) Section 5 (1), definition of "indeterminate sentence"—

Omit "pleasure of the Governor", insert instead "pleasure of the Governor-General, the Governor".

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AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(e) Section 5 (1), definition of “joint prisoner”—

After the definition of “interstate law”, insert:

“joint prisoner” means a person upon whom both—

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

(b) a Commonwealth sentence of imprisonment,

have been imposed;

(f) Section 5 (1), definition of “order of transfer”—

Omit “8, 15, 16 (6), 20, 21 or 22”, insert instead “7, 15, 16 (6) or 20”.

(g) Section 5 (1), definition of “participating State”—

Omit the definition, insert instead:

“participating State” means any State of the Commonwealth in which there is in force an interstate law;

(h) Section 5 (1), definitions of “prisoner”, “relevant security”—

Omit the definition of “prisoner”, insert instead:

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

“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;

(i) Section 5 (1), definition of “remission regulations”—

After “portions of”, insert “State”.

(j) Section 5 (1), definition of “section 27 sentence”—

Omit the definition.

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(k) Section 5 (1), definition of “sentence of imprisonment”—

Omit the definition, insert instead:

“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;

(l) Section 5 (1), definitions of “State”, “State prisoner”, “State sentence of imprisonment”, “Territory”, “translated sentence”—

Omit the definition of “Supreme Court”, insert instead:

“State” includes the Northern Territory;

“State prisoner” means a person upon whom a State sentence of imprisonment has been imposed, but does not include a person upon 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 New South Wales, including a sentence of penal servitude, a sentence by which default imprisonment is ordered, an indeterminate sentence and a translated sentence, but not including such a sentence while it is being served in an institution within the meaning of the Child Welfare Act 1939 or detention under any Act relating to the punishment of persons who committed offences when they were under the age of 18 years;

“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 Transfer of Prisoners Act 1983 of the Commonwealth have been extended but does not include the Northern Territory;

“translated sentence” means a sentence of imprisonment deemed by section 27 to have been imposed on a person by a court of New South Wales.

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AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(m) Section 5 (4)—

Omit “of the Parliament”.

(n) Section 5 (5)–(8)—

After section 5 (4), insert:

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

- (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 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, a State or a 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

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(ii) in relation to whom—

(A) action can no longer 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

(B) action cannot, by reason of the expiration of the security, be taken under a law of the Commonwealth, a State or a Territory 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.

(2) Section 6 (**Corresponding courts and interstate laws**)—

(a) Section 6 (1) (a)—

Omit “, the Australian Capital Territory or the Northern Territory”.

(b) Section 6 (2)—

Omit “or a Territory of the Commonwealth”.

(c) Section 6 (3)—

Omit the subsection.

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SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(3) Sections 7, 8—

Omit the sections, insert instead:

Requests for, and orders of, transfer

7. (1) Where the Minister—

- (a) receives a written request made by a State prisoner serving a sentence of imprisonment in New South Wales for the transfer of the prisoner to a participating State or to a Territory; and
- (b) is of the opinion that the prisoner to whom the request relates should be transferred to the participating State or the 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 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) has—

- (i) in respect of a request made by a State 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

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AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(b) has—

- (i) in respect of a request made by a State prisoner for a transfer to a 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 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 New South Wales 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

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AMENDMENTS TO THE PRINCIPAL ACT—*continued*

- (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 New South Wales 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 to whom the request relates 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 authorises 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 upon 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 Transfer of Prisoners Act 1983 of the Commonwealth in respect of the person or the transfer of the person is otherwise authorised under that Act.

(4) Section 9 (**Repeated requests for transfer**)—

After “participating State”, insert “or to a Territory”.

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- (5) Section 10 (**Receipt of request for transfer to New South Wales**)—
- (a) After “corresponds to section 7”, insert “, or a request made for the purposes of Part II of the Transfer of Prisoners Act 1983 of the Commonwealth.”.
 - (b) After “was given”, insert “or to the Attorney-General of the Commonwealth, as the case may be.”.
- (6) Section 12 (**Request for transfer of prisoner to participating State**)—
- (a) Section 12 (1)—
Omit “is a prisoner”, insert instead “, the Commonwealth or a Territory is a prisoner serving a sentence of imprisonment in New South Wales”.
 - (b) Section 12 (1) (a)—
Omit the paragraph, insert instead:
 - (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;
or
 - (c) Section 12 (1)—
Omit “either case”, insert instead “any case”.
 - (d) Section 12 (1)—
Omit “to the participating State”, insert instead “to a participating State or to a Territory”.
 - (e) Section 12 (1)—
Before “or to the Minister”, insert “, the Attorney-General of the Commonwealth”.

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AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(f) Section 12 (2), (3)—

After “to a participating State” wherever occurring, insert “or to a Territory”.

(7) Section 13 (**Necessary consents**)—

(a) Section 13 (1)—

Omit the subsection, insert instead:

(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 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.

(b) Section 13 (2)—

After “participating State”, insert “, or to a Territory,”.

(8) Section 15 (**Order of transfer**)—

(a) Section 15 (a)—

After “participating State”, insert “, or to the Territory,”.

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SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(b) Section 15 (b)—

After “participating State”, insert “or Territory”.

(9) Section 16 (**Review of decision of Local Court**)—

(a) Section 16 (1)—

Omit “, the Attorney-General of the participating State or the prisoner” where firstly occurring, insert instead “or the prisoner, or any other person who has requested or consented to the transfer of the prisoner.”.

(b) Section 16 (1)—

Omit “, the Attorney-General of the participating State or the prisoner” where secondly occurring, insert instead “, the prisoner or that person”.

(c) Section 16 (3)—

Omit “the Attorney-General of the participating State”, insert instead “any other person who has requested or consented to the transfer of the prisoner”.

(d) Section 16 (6)—

After “State”, insert “or Territory”.

(10) Section 16A—

After section 16, insert:

Effect of orders under this Part on joint prisoners

16A. 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 authorises 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 upon whom a Commonwealth sentence of imprisonment has been imposed; and

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AMENDMENTS TO THE PRINCIPAL ACT—*continued*

- (b) unless and until a transfer order corresponding to the order of transfer is in force under the Transfer of Prisoners Act 1983 of the Commonwealth in respect of the person or the transfer of the person is otherwise authorised under that Act.

(11) Sections 20, 21—

Omit sections 20–22, insert instead:

Return of prisoner to participating State if no sentence or shorter sentence in New South Wales

20. Where—

- (a) a person is transferred to New South Wales 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 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 New South Wales 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 New South Wales; or
 - (ii) the person did become liable to serve in New South Wales 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 a Territory; and

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(c) the person is either a State prisoner or a joint prisoner, the Minister shall, 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 issued under this Part in relation to a joint prisoner has no effect—

- (a) to the extent that, but for this section, it authorises 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 upon 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 Transfer of Prisoners Act 1983 of the Commonwealth in respect of the person or the transfer of the person is otherwise authorised under that Act.

(12) Section 23 (**Provisions ancillary to section 20**)—

(a) Section 23 (1)—

Omit "or 22".

(b) Section 23 (1) (a)—

Omit the paragraph, insert instead:

- (a) the Minister receives a written request made by the person, being a request for the person to serve the person's imprisonment in New South Wales, 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;

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(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 New South Wales; or

(c) Section 23 (1) (b), (3) (c)–(e)—

Omit “section 27” wherever occurring, insert instead “translated”.

(d) Section 23 (2)—

Omit “sections 20 and 21”, insert instead “section 20”.

(e) Section 23 (3)—

Omit “or 22 (c) (ii)”.

(f) Section 23 (3) (c)—

Omit “, and the expression ‘other sentence or sentences of imprisonment’ in section 22 (c) (ii), include”, insert instead “includes”.

(g) Section 23 (3) (d)—

Omit “sections 20 (b) and 22 (c) (ii)”, insert instead “section 20 (b)”.

(h) Section 23 (3) (e)—

Omit “sentence of imprisonment imposed upon a person”, insert instead “State sentence of imprisonment which a person became liable to serve”.

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- (13) Section 24 (**Transfer in custody of escort**)—
- (a) Section 24 (1) (b)—
After “participating State”, insert “or a Territory”.
- (b) Section 24 (3) (a)—
After “interstate law”, insert “or under the Transfer of Prisoners Act 1983 of the Commonwealth, or both,”.
- (c) Section 24 (3) (a)—
Omit “the participating State where the order is issued”, insert instead “a participating State or a Territory”.
- (14) Section 25 (**Transfer of sentence with prisoner**)—
- (a) Section 25—
After “a participating State”, insert “or a Territory”.
- (b) Section 25—
Omit “the participating State every”, insert instead “the participating State or the Territory every State”.
- (c) Section 25—
Omit “by a court of New South Wales” where firstly occurring.
- (d) Section 25—
Omit “section 27 sentence”, insert instead “translated sentence”.
- (e) Section 25 (2)—
At the end of section 25, insert:

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

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AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(15) Section 27 (**Sentence deemed to have been imposed in this State**)—

(a) Section 27 (a)—

Omit the paragraph, insert instead:

- (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) Section 27 (b)—

Omit “that sentence”, insert instead “any such State sentence of imprisonment”.

(c) Section 27 (2)—

At the end of section 27, insert:

- (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.

(16) Section 28 (**Provisions relating to translated sentences**)—

(a) Section 28—

Omit “section 27 sentence” wherever occurring, insert instead “translated sentence”.

(b) Section 28 (6) (b)—

After “shall” where firstly occurring, insert “, subject to subsection (7),”.

(c) Section 28 (6) (b)—

Omit “sentence of imprisonment” wherever occurring, insert instead “translated sentence”.

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(d) Section 28 (7), (8)—

After section 28 (6), insert:

(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 New South Wales; 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 Governor from exercising the royal prerogative of mercy as referred to in section 24 (2) of that Act.

(17) Section 29 (**Translated sentences—default imprisonment**)—

Omit "section 27 sentence" wherever occurring, insert instead "translated sentence".

(18) Section 31 (**Lawful custody for transit through New South Wales**)—

(a) Section 31 (1)—

Omit ", 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", insert instead "or a 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 a Territory and in the course of conveying the person to the participating State or Territory".

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SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

- (b) Section 31 (1) (a)—
After “participating State”, insert “or Territory”.
- (c) Section 31 (1) (b)—
Before “prisoner”, insert “State”.
- (19) Section 32 (**Escape from custody of person being transferred**)—
- (a) Section 32 (2A)—
After section 32 (2), insert:
(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.
- (b) Section 32 (4)—
Before “prisoner”, insert “State”.
- (20) Section 33 (**Escape from custody—penalty**)—
- (a) Section 33 (1), (2) (b)—
After “participating State” wherever occurring, insert “or the Territory”.
- (b) Section 33 (3)—
After section 33 (2), insert:
(3) 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 (1) or (2) of the Transfer of Prisoners Act 1983 of the Commonwealth.

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SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(21) Section 34 (**Revocation of order of transfer on escape from custody**)—

Section 34 (c)—

Omit “or of a participating State”, insert instead “, the Commonwealth, a participating State or a Territory”.
