

[Act 1997 No 144]



New South Wales

International Transfer of Prisoners (New South Wales) Bill 1997

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.*

Overview of Bill

The *International Transfer of Prisoners Act 1997* of the Commonwealth sets out a scheme:

- (a) to facilitate the transfer of prisoners between Australia and certain countries with which Australia has entered agreements for the transfer of prisoners so that prisoners may serve their sentences of imprisonment in their countries of nationality or in countries with which they have community ties, and
- (b) to facilitate the transfer of prisoners to Australia from countries in which prisoners are serving sentences of imprisonment imposed by certain war crimes tribunals.

* Amended in committee—see table at end of volume.

The scheme will enable Australians imprisoned overseas, and foreign nationals imprisoned in Australia, to be returned to their home countries to complete the serving of their sentences. It will also enable persons who have a connection with Australia and who have been convicted by certain international war crimes tribunals (namely the Former Yugoslavia Tribunal and the Rwanda Tribunal) to be transferred to Australia to serve their sentences.

The Commonwealth Act by itself will be insufficient to give effect to the scheme. Incoming prisoners will have to be housed in prisons controlled by States and Territories which participate in the scheme (as there are no federal prisons) and many of the prisoners who wish to take advantage of the scheme and leave Australia will be serving sentences for State or Territory offences.

The Bill for the Commonwealth Act (as well as a Bill for the complementary legislation that States and Territories which have agreed to participate in the scheme will need to enact) was developed in consultation with the States and Territories through the Standing Committee of Attorneys-General.

The object of this Bill is to give effect to the scheme for the international transfer of prisoners set out in the Commonwealth Act by enabling prisoners to be transferred to and from this jurisdiction under the scheme.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 sets out the object of the proposed Act as described in the Overview above.

Clause 4 defines certain words and expressions used in the proposed Act. Commonwealth Act means the International Transfer of *Prisoners Act 1997* of the Commonwealth and *War Crimes Tribunal* means the Former Yugoslavia Tribunal or the Rwanda Tribunal within the meaning of the Commonwealth Act. Expressions defined in the Commonwealth Act which are used in the proposed Act have the same meaning as in the Commonwealth Act, unless a contrary intention appears. For example, the Commonwealth Act defines *prisoner* as being a person who is serving a

sentence of imprisonment and includes a mentally impaired prisoner and a prisoner released on parole. A *Tribunal prisoner* is defined as a prisoner who is serving a sentence of imprisonment imposed by a War Crimes Tribunal for an offence for which that Tribunal is empowered to prosecute.

Clause 5 provides that notes in the text of the proposed Act do not form part of the proposed Act.

Part 2 Conferral of functions

Clause 6 empowers a New South Wales Minister to exercise and perform functions conferred on the Minister by or under the Commonwealth Act.

Clause 7 empowers prison officers, police officers and other officials to exercise the powers and functions conferred on the officials by or under the Commonwealth Act in accordance with any arrangement made under clause 8 in relation to the administration of the Commonwealth Act.

Clause 8 states that the Governor may make arrangements with the Governor-General for the administration of the Commonwealth Act. This complements the power conferred on the Governor-General under the Commonwealth Act. These arrangements may be varied or terminated at any time in accordance with the Commonwealth Act.

Part 3 Enforcement of sentences of imprisonment of transferred prisoners

Clause 9 provides that, for the purposes of enforcement of sentence, a prisoner or Tribunal prisoner serving a sentence in New South Wales under the Commonwealth Act is to be treated in the same way as a federal prisoner.

Clause 9 (1) provides for the application of relevant enforcement laws to such a prisoner.

Clause 9 (2) gives examples of matters covered by the enforcement laws that will apply to the prisoner. These include release on parole, removal from one prison to another and eligibility for participation in prison schemes.

Clause 9 (3) gives effect in New South Wales to directions given by the Attorney-General of the Commonwealth under section 44 of the Commonwealth Act. Those directions relate to enforcement of sentences and include, subject to certain limitations, directions as to the duration and legal nature of the sentence of imprisonment as it is to be enforced under the Commonwealth Act, and directions relating to entitlement to release on

parole. If the prisoner or Tribunal prisoner is mentally impaired, directions can be given regarding any review of the mental condition or treatment of that prisoner.

Clause 9 (4) gives effect in New South Wales to a direction given by the Attorney-General of the Commonwealth under section 49 of the Commonwealth Act. That section provides that where a transferred prisoner is serving a sentence in Australia, the prisoner may be pardoned or granted amnesty or commutation of sentence as if the sentence had been imposed for an offence against an Australian law. The section also provides that, where a prisoner is pardoned or granted amnesty or commutation of sentence (either under Australian law or the law of the transfer country) or a prisoner's conviction is quashed or otherwise nullified under the law of a transfer country, the Attorney-General of the Commonwealth must direct that the person be released. Similar directions must be given if a Tribunal prisoner is pardoned or granted amnesty or commutation of sentence (either under Australian law or by a Tribunal) or the prisoner's conviction is quashed or otherwise nullified.

Clause 10 provides that where a prisoner is transferred from Australia, the laws of this jurisdiction relating to the enforcement of a sentence imposed by a New South Wales court cease to have effect. Clause 10 (2) ensures that where a prisoner is serving a sentence in a transfer country following transfer from Australia, the prisoner may still be pardoned or granted amnesty or commutation of sentence as if he or she were still in New South Wales.

Part 4 Miscellaneous

Clause 11 empowers the Governor to make regulations for the purposes of the proposed Act.

Clause 12 provides for the review of the proposed Act by the Minister 5 years after it is assented to.