

Prisoners (Interstate Transfer) Act 1982 No 104

[1982-104]



New South Wales

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The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
[Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2010 No 119](#) (not commenced — to commence on 7.1.2011)

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Prisoners (Interstate Transfer) Act 1982 No 104



New South Wales

An Act relating to the transfer interstate of prisoners.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Prisoners (Interstate Transfer) Act 1982*.

2 Commencement

- (1) This section and section 1 shall commence on the date of assent to this Act.
- (2) Except as provided in subsection (1), the several provisions of this Act shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

3 (Repealed)

4 Administration

This Act shall be administered by the Minister for Corrective Services.

5 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

arrest warrant means a warrant to apprehend, a warrant to arrest or a warrant to commit a person to prison, but does not include:

- (a) such a warrant, where the term of imprisonment which the person to be apprehended, arrested or committed under the warrant is liable to serve is default imprisonment, or
- (b) a warrant to secure the attendance of a witness.

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.

Commonwealth sentence of imprisonment means a sentence of imprisonment for an offence against a law of the Commonwealth or of a Territory.

corresponding court of New South Wales, in relation to a court of a participating State, means a court of New South Wales that is, under an order in force under section 6 (1), declared to be a corresponding court in relation to the court of the participating State.

corresponding Minister, in relation to a participating State, means the Minister of that State who is responsible for the administration of the interstate law of that State.

default imprisonment means imprisonment in default of:

- (a) payment of any fine, penalty, costs or other sum of money of any kind imposed or ordered to be paid by any court, judge or justice, or
- (b) entering into a recognizance to keep the peace or to be of good behaviour.

gaoler has the same meaning as **governor** has in the [Crimes \(Administration of Sentences\) Act 1999](#).

indeterminate sentence means a sentence of or order or direction for imprisonment or detention for life or during the pleasure of Her Majesty or during the pleasure of the Governor-General, the Governor or the Governor of a participating State, and includes such a sentence, order or direction imposed, made or given by, or by the operation of, an Act or other law.

interstate law means a law that, under an order in force under section 6 (1), is declared to be an interstate law for the purposes of this Act.

joint prisoner means a person on whom both:

- (a) any one of the following:
 - (i) a State sentence of imprisonment,
 - (ii) a State sentence of imprisonment as defined by an interstate law,
 - (iii) an ACT sentence of imprisonment as defined by the *Prisoners (Interstate Transfer) Act 1993* of the Australian Capital Territory,
 - (iv) a Territory sentence of imprisonment as defined by the *Prisoners (Interstate Transfer) Act 1983* of the Northern Territory, and
 - (b) a Commonwealth sentence of imprisonment,
- have been imposed.

justice means justice of the peace.

order of transfer means an order issued under section 7, 15, 16 (6) or 20 for the transfer of a prisoner to a participating State.

participating State means a State in which an interstate law is in force.

prison has the same meaning as **correctional centre** has in the [Crimes \(Administration of Sentences\) Act 1999](#).

prison officer has the same meaning as **correctional officer** has in the [Crimes \(Administration of Sentences\) Act 1999](#).

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.

sentence of imprisonment means:

- (a) a State sentence of imprisonment, or
- (b) a State sentence of imprisonment as defined by an interstate law, or
- (c) an ACT sentence of imprisonment as defined by the *Prisoners (Interstate Transfer) Act 1993* of the Australian Capital Territory, or
- (d) a Territory sentence of imprisonment as defined by the *Prisoners (Interstate Transfer) Act 1983* of the Northern Territory, or
- (e) where relevant, a Commonwealth sentence of imprisonment.

State includes the Australian Capital Territory and 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 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 a detention centre within the meaning of the [Children \(Detention Centres\) Act 1987](#) 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 Territory of Norfolk Island, the Territory of Christmas Island, the Territory of the Cocos (Keeling) Islands or the Jervis Bay 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.

- (2) Where a justice of a participating State, in the exercise of the justice's powers, issues a warrant of commitment while not constituting a court, the sentence of imprisonment imposed by the warrant shall, for the purposes of this Act, be deemed to have been imposed by a court.
- (3) For the purposes of this Act, a sentence of imprisonment imposed, or originally imposed, by, or by the operation of, an Act or other law of a State or Territory shall, except as prescribed by regulations under this Act, be deemed to have been imposed, or originally imposed, by a court of that State or Territory.
- (4) A reference in this Act to an Act of the Commonwealth includes a reference to an Act amending or replacing that Act.
- (5) In the case of a State other than the Australian Capital Territory or the Northern Territory, 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.
- (5A) In the case of the Australian Capital Territory:
 - (a) the reference in section 28 (4) to the Governor of the participating State is a reference to the Governor-General, and
 - (b) the references in section 28 (5) (b) to the Governor of the participating State are references to the Governor-General or to the Executive within the meaning of the *Australian Capital Territory (Self-Government) Act 1988* of the Commonwealth.
- (5B) In the case of the Northern Territory, a reference in this Act to the Governor of a participating State (or of the participating State) is a reference to the Administrator of the Northern Territory, and includes a reference to any person exercising all the powers and functions of the Administrator.
- (5C) A reference in this Act to the Governor-General includes a reference to any person exercising and performing all the powers and functions of the Governor-General.
- (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

(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.

6 Corresponding courts and interstate laws

(1) Subject to subsection (2), the Governor may, by order published in the Gazette, declare that:

- (a) a law of a State (other than New South Wales), is an interstate law for the purposes of this Act, and
- (b) a specified court of New South Wales or any court belonging to a specified class or description of courts of New South Wales is, for the purposes of this Act, a corresponding court in relation to a specified court of a participating State or in relation to any court belonging to a specified class or description of courts of a participating State.

(2) An order shall not be made under subsection (1) in respect of a law of another State unless the Governor is satisfied that that law substantially corresponds to the provisions of this Act and contains provisions that are referred to in this Act as provisions of an interstate law that correspond to specified provisions of this Act.

(3) (Repealed)

Part 2 Transfer at request of prisoner

7 Requests for, and orders of, transfer

(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,

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

(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,

the Minister shall give to the corresponding Minister of the participating State a written request asking that Minister to accept the transfer of a 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

(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,

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.

8 Effect of orders under this Part on joint prisoners

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.

9 Repeated requests for transfer

A request made by a prisoner for transfer to a participating State or to a Territory need not be entertained by the Minister if it is made within one year of a similar request made by

the prisoner.

10 Receipt of request for transfer to New South Wales

Where the Minister receives a written request given under the provision of an interstate law that corresponds to section 7, or a request made for the purposes of Part II of the *Transfer of Prisoners Act 1983* of the Commonwealth, asking the Minister to accept the transfer of an imprisoned person to New South Wales, the Minister shall either refuse to consent, or consent, to the transfer and shall give to the Minister by whom the written request was given or to the Attorney-General of the Commonwealth, as the case may be, written notice of the Minister's refusal or consent.

10A Matters to which Minister may have regard

In forming an opinion or exercising any discretion under this Part, the Minister may have regard to any one or more of the following:

- (a) the welfare of the prisoner concerned,
- (b) the administration of justice in this or any other State,
- (c) the security and good order of any prison in this or any other State,
- (d) the safe custody of the prisoner,
- (e) the protection of the community in this or any other State,
- (f) any other matter the Minister considers relevant.

11 Reports

- (1) For the purpose of forming an opinion or exercising any discretion under this Part, the Minister may inform himself or herself as the Minister thinks fit and, in particular, by reference to reports of parole and prison authorities of New South Wales and of any participating State.
- (2) Reports of parole and prison authorities may be sent to a corresponding Minister for the purpose of assisting the corresponding Minister to form an opinion or to exercise a discretion under the interstate law administered by the corresponding Minister.

Part 3 Transfer for trial

12 Request for transfer of prisoner to participating State

- (1) Where a person who is the subject of an arrest warrant issued in accordance with the law of a participating State, the Commonwealth or a Territory is a prisoner serving a sentence of imprisonment in New South Wales and the Attorney General receives:
 - (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
- (b) a written request made by the prisoner to the Minister and referred to the Attorney General,

being in any case a request for the transfer of the prisoner to a participating State or to a Territory to be dealt with according to law, the Attorney General shall either refuse to consent, or consent, to the transfer and shall give to the Attorney-General of the participating State, the Attorney-General of the Commonwealth or to the Minister, as the case may be, written notice of the Attorney General's refusal or consent.

- (2) Where the Minister receives a written request made by a prisoner for the transfer of the prisoner to a participating State, or to a Territory to be dealt with according to law, the Minister shall refer the written request to the Attorney General.
- (3) A request made by a prisoner for transfer to a participating State, or to a Territory need not be referred by the Minister to the Attorney General if it is made within one year of a similar request made by the prisoner.

13 Necessary consents

- (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.

- (2) A certificate signed by a prescribed officer certifying that any consent or request required under subsection (1) for the transfer of a prisoner to a participating State, or to a Territory, specified in the certificate has been given or made is, in the absence of evidence to the contrary, proof that the consent or request has been given or made.

14 Prisoner to be brought before Local Court

- (1) The Local Court, upon proof to its satisfaction that the conditions precedent specified in section 13 (1) have been complied with, shall by order in writing direct the gaoler of the prison where the prisoner to whom the certificate relates is then imprisoned to bring the prisoner before the Local Court (at the place, on a date and at a time specified in the order) for determination as to whether an order of transfer shall be issued.
- (2) Notice of an order made under subsection (1) shall be served on the Attorney General and on the prisoner to whom the order relates.
- (3) At a hearing for the purpose of determining whether an order for the transfer of a prisoner shall be issued:
 - (a) the prisoner shall be entitled to be represented by an Australian legal practitioner, and
 - (b) the Attorney General shall be entitled to appear or be represented.

15 Order of transfer

If a prisoner is brought before the Local Court pursuant to an order made under section 14 (1), the Local Court shall:

- (a) issue an order for the transfer of the prisoner to the participating State, or to the Territory specified in the certificate issued in accordance with section 13 (2) in respect of the prisoner, or
- (b) if the Local Court, on the application of the prisoner, is satisfied that it would be harsh or oppressive or not in the interests of justice to transfer the prisoner to that participating State or Territory or that the trivial nature of the charge or complaint against the prisoner does not warrant the transfer, refuse to issue such an order.

16 Review of decision of Local Court

- (1) Where the Attorney General, or the prisoner, or any other person who has requested or consented to the transfer of the prisoner, is dissatisfied with the decision of the Local Court under section 15, the Attorney General, the prisoner or that person, as the case may be, may, within 14 days of the decision, apply to the Supreme Court for a review of the decision and the Supreme Court may review the decision.
- (2) The prisoner shall be entitled to be present or be represented by an Australian legal

practitioner at the review and for that purpose any court or a person authorised by the rules of the Supreme Court may by order in writing direct the gaoler of the prison where the prisoner is then imprisoned to bring the prisoner to the place of the review specified in the order on a date and at a time so specified.

- (3) The Attorney General and any other person who has requested or consented to the transfer of the prisoner shall be entitled to appear or be represented at the review.
- (4) The review of the decision shall be by way of rehearing on the evidence, if any, given before the Local Court and on any evidence in addition to the evidence so given.
- (5) Upon the review of a decision, the Supreme Court may confirm the decision or quash the decision and substitute a new decision in its stead.
- (6) For the purpose of giving effect to any such substituted decision the Supreme Court may issue an order for the transfer of the prisoner to the appropriate participating State or Territory.

16A Effect of orders under this Part on joint prisoners

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.

17 Prisoner brought to be returned to custody

Where an order is made under section 14 (1) or 16 (2):

- (a) the gaoler to whom it is directed shall execute the order or may charge any prison officer or member of the police force with the execution of the order, and
- (b) the prisoner shall, while the order is being executed, be kept in the custody of the gaoler, prison officer or member of the police force acting under or in execution of the order, who shall in due course return the prisoner to the custody from which the prisoner has been brought.

18 Request for transfer of imprisoned person to New South Wales

Where a person who is the subject of an arrest warrant issued in accordance with the laws of New South Wales is imprisoned in a participating State, the Attorney General may give to the Attorney-General of the participating State a written request, accompanied by a copy of the warrant, for the transfer of the person to New South Wales to be dealt with

according to law.

19 Request for transfer to New South Wales by imprisoned person

Where:

- (a) a person is imprisoned in a participating State,
- (b) the person is the subject of an arrest warrant issued in accordance with the laws of New South Wales, and
- (c) the Attorney-General of the participating State has given a notice, in writing, to the Attorney General that the Attorney-General of the participating State has consented to a request made by the person to be transferred to New South Wales to enable the person to be dealt with according to law,

the Attorney General shall either refuse to consent, or consent, to the transfer and shall give to the Attorney-General of the participating State notice, in writing, of the Attorney General's refusal or consent.

Part 4 Transfer back to original State

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

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
- (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.

21 Effect of orders under this Part on joint prisoners

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.

22 (Repealed)

23 Provisions ancillary to section 20

(1) The provisions of section 20 do not apply in respect of a person if:

- (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,
 - (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 the person should serve the imprisonment in New South Wales, or

- (b) an indeterminate sentence (not being a translated sentence) is imposed upon the person by a court of New South Wales.

(1A) In making a decision under subsection (1) (a), the Minister may have regard to any one or more of the following:

- (a) the welfare of the person concerned,
- (b) the administration of justice in this or any other State,
- (c) the security and good order of any prison in this or any other State,
- (d) the safe custody of the person,

- (e) the protection of the community in this or any other State,
 - (f) any other matter the Minister considers relevant.
- (2) For the purpose of section 20, a complaint or information alleging an offence by a person is finally dealt with if:
- (a) the person is tried for the offence and:
 - (i) the time or extended time, if any, fixed by or under any Act, within which an appeal against, or an application for the review of, the decision given on the trial may be lodged, or within which a retrial may be ordered, has expired, and
 - (ii) any appeal or application for review in respect of the decision given on the trial has been determined or withdrawn and proceedings in respect of any retrial and any decision given on the retrial have been concluded, or
 - (b) the complaint or information is withdrawn or a nolle prosequi or similar instrument is filed in respect of the offence.
- (3) For the purpose of determining which of the periods referred to in section 20 (b) is the shorter or longer:
- (a) any entitlement to remissions shall be disregarded,
 - (b) a finite period of imprisonment shall be treated as being shorter than a period to be served under an indeterminate sentence,
 - (c) the expression “sentences of imprisonment” in section 20 (b) includes a translated sentence that was originally imposed by a court of New South Wales,
 - (d) the expression “translated sentence or translated sentences” in section 20 (b) does not include a translated sentence that was originally imposed by a court of New South Wales, and
 - (e) where a State sentence of imprisonment which a person became liable to serve in New South Wales (not being a translated sentence) is cumulative with a translated sentence or translated sentences originally imposed by a court other than a court of New South Wales, 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 New South Wales.

Part 5 Effect of order of transfer

24 Transfer in custody of escort

- (1) An order of transfer:
 - (a) shall direct the gaoler of the prison where the prisoner who is the subject of the order is then imprisoned to deliver the prisoner into the custody of an escort and shall be sufficient authority to the gaoler so to deliver the prisoner, and
 - (b) authorises the escort to take and keep custody of the prisoner for the purpose of conveying the prisoner from New South Wales to such prison in a participating State or a Territory as is specified in the order and there delivering the prisoner into the custody of the gaoler of that prison.
- (2) A reference in subsection (1) to an escort is a reference to a prison officer, a member of the police force or a person appointed by the Minister by an instrument in writing to be an escort for the purposes of this Act, or any 2 or more of them.
- (3) Where:
 - (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 New South Wales of a person imprisoned in a participating State or a Territory, and
 - (b) pursuant to the order an escort brings the person into New South Wales,

the escort, while in New South Wales, is authorised to hold, take and keep custody of the person for the purpose of conveying the person to such prison in New South Wales as is specified in the order and there delivering the person into the custody of the gaoler.

25 Transfer of sentence with prisoner

- (1) Where pursuant to an order of transfer a prisoner is conveyed to a participating State or a Territory specified in the order, then from the time the prisoner arrives in the participating State or the Territory every State sentence of imprisonment imposed upon the prisoner, including a translated sentence, ceases to have effect in New South Wales except:
 - (a) for the purpose of any appeal against or review of any conviction, judgment or sentence made, imposed or fixed by a court of New South Wales,
 - (b) in relation to any period of imprisonment served by the prisoner in New South Wales, or
 - (c) in relation to the remittance of money to the Minister which is paid in discharge or partial discharge of a sentence of default imprisonment originally imposed upon

the prisoner by a court of New South Wales.

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

26 Information to be sent to the participating State

- (1) Where pursuant to an order of transfer a prisoner is conveyed to a participating State, the Minister shall cause to be sent to the corresponding Minister of the participating State or to some person for the time being designated by the corresponding Minister:
- (a) the order of transfer,
 - (b) the warrant of, or other authority for, commitment for any sentence of imprisonment which the prisoner was, immediately before the prisoner left New South Wales, serving or liable to serve,
 - (c) a report relating to the prisoner, which shall contain such information and be accompanied by such documents available in New South Wales as appear to be likely to be of assistance to any court, authority or officer in the participating State and shall include details of convictions, sentences of imprisonment, minimum terms of imprisonment, periods of imprisonment served, entitlements to release on parole and a copy of any record relating to the prisoner's conduct, and
 - (d) details, accompanied by any relevant orders or other documents of any subsequent variations to the information provided in accordance with this subsection, whether arising from any appeal or review or otherwise.
- (2) A reference in subsection (1) to an order or other document is a reference to either the original or a copy certified in the prescribed manner.

27 Sentence deemed to have been imposed in this State

- (1) Where under an interstate law an order is issued for the transfer to New South Wales of a person imprisoned in a participating State and the person is brought into New South Wales pursuant to the order, then from the time the person arrives in New South Wales:
- (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) any direction or order given or made by a court of the participating State with respect to when any such State sentence of imprisonment shall commence shall, so far as practicable, be deemed to have been given or made,

by a corresponding court of New South Wales and, except as otherwise provided in this Act, shall be given effect to in New South Wales, and the laws of New South Wales shall apply, as if such a court had had power to impose the sentence and give or make the direction or order, if any, and did in fact impose the sentence and give or make the direction or order, if any.

- (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.

28 Provisions relating to translated sentences

- (1) Where under a law of a participating State there has been fixed by a court in respect of a translated sentence a minimum term of imprisonment (being a shorter term than the translated sentence), during which minimum term the person subject to the sentence is not eligible to be released on parole, then, except as otherwise provided in this Act, that minimum term shall be deemed likewise to have been fixed by the corresponding court of New South Wales.
- (2) Where a translated sentence or a minimum term deemed under subsection (1) to have been fixed by a corresponding court of New South Wales:
- (a) is varied or quashed on a review by or appeal to a court of the participating State where the sentence or minimum term was imposed or fixed, the sentence or minimum term shall be deemed to have been varied to the same extent, or to have been quashed, by a corresponding court of New South Wales, or
- (b) otherwise is varied or ceases to have effect as a result of action taken by any person or authority in that participating State, the sentence shall be deemed to have been varied to the same extent, or to have ceased to have effect, as a result of action taken by an appropriate person or authority in New South Wales.
- (3) Nothing in this Act operates to permit in New South Wales any appeal against or review of any conviction, judgment, sentence or minimum term made, imposed or fixed in relation to a person by a court of a participating State.
- (4) Where a translated sentence is an indeterminate sentence requiring that the person who is the subject of the sentence be detained during the pleasure of Her Majesty or during the pleasure of the Governor of the participating State in which the sentence was imposed, the person shall be detained during the Governor's pleasure.
- (5) The Governor:
- (a) may exercise the royal prerogative of mercy in favour of a person who is subject to a translated sentence as if the person were:
- (i) an offender convicted in a court of New South Wales, or
- (ii) an offender convicted within New South Wales before a judge or magistrate of

New South Wales, and

(b) in exercising that prerogative, may give effect to any indication given by the Governor of the participating State in which the sentence of imprisonment was imposed upon that person as to what the Governor of the participating State may have done had the person not been transferred to New South Wales.

(6) A person who is subject to a translated sentence:

(a) shall be deemed to have served in New South Wales such period of the translated sentence as, up to the time of the person's transfer to New South Wales, the person had served in respect of that sentence in a participating State (including any period deemed by the provision of an interstate law that corresponds to this paragraph to have been served in a participating State and any period spent in custody while being transferred to a prison in New South Wales), and

(b) shall, subject to subsection (7), be deemed to be entitled to any remission of the person's translated sentence for which, up to the time of the person's transfer to New South Wales, the person was eligible in respect of that sentence of imprisonment in the participating State (including any remission of sentence deemed by an interstate law to have been earned in a participating State).

(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.

29 Translated sentences—default imprisonment

(1) Where a translated sentence is a sentence by which default imprisonment was ordered and any portion of the amount in default of payment of which the default imprisonment was ordered is paid by or on behalf of the prisoner who is the subject of the sentence to the gaoler of the prison in which the prisoner is imprisoned:

(a) the term of default imprisonment shall be reduced by a period which bears to the term of default imprisonment the same proportion as the portion paid bears to the total amount that was payable and, subject to any other sentence of

imprisonment, the prisoner shall be entitled to be released on the expiry of the reduced period, and

(b) the portion so paid shall be remitted by the gaoler to the corresponding Minister of the participating State where the sentence, by which default imprisonment was ordered, was originally imposed.

(2) Where a translated sentence is a sentence by which default imprisonment was ordered and, on a review by or an appeal to a court of the participating State where the sentence was imposed or as a result of any other action taken by any person or authority in that participating State, the amount in default of payment of which the default imprisonment was ordered is reduced or the obligation to pay that amount is quashed:

(a) the term of default imprisonment shall, where the amount is reduced, be reduced by a period which bears to the term of default imprisonment the same proportion as the amount of the reduction bears to the total amount that was payable and, subject to any other sentence of imprisonment that may be imposed on the prisoner, the prisoner shall be entitled to be released on the expiry of that reduced period, or

(b) the prisoner shall, where the obligation to pay the amount is quashed, thereupon, subject to any other sentence of imprisonment that may be imposed on the prisoner, be entitled to be released.

Part 6 Miscellaneous

30 Notification to prisoners of certain decisions

The Attorney General shall, when the Attorney General makes a decision in respect of a prisoner for the purposes of this Act, advise that prisoner of that decision.

31 Lawful custody for transit through New South Wales

(1) Where, in relation to a person imprisoned in a participating State 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 pursuant to the order an escort brings the person into New South Wales, then:

(a) while in New South Wales the escort is authorised to hold, take and keep custody of the person for the purpose of conveying the person from New South Wales to such prison in the participating State or Territory as is specified in the order and there delivering the person into the custody of the gaoler, and

(b) any gaoler is authorised upon:

(i) the request of the escort, and

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

to receive the person and to detain the person in custody as though the person were a State prisoner for such time as the escort requests and is reasonably necessary for the purpose of executing the order.

(2) Where a gaoler has the custody of a person under subsection (1) (b), the gaoler is authorised, upon the request of an escort and production by the escort of the order of transfer relating to the person, to deliver the person into the custody of the escort.

32 Escape from custody of person being transferred

(1) A person in the custody of an escort pursuant to section 31 who escapes from that custody may be apprehended without warrant by the escort, any member of the police force or any other person.

(2) Where a person in custody pursuant to section 31:

(a) has escaped and been apprehended, or

(b) has attempted to escape,

that person may be taken before a Magistrate or authorised officer within the meaning of the *Criminal Procedure Act 1986* who may, notwithstanding the terms of any order of transfer issued under an interstate law, by warrant under the Magistrate's or authorised officer's hand:

(c) order the person to be returned to the participating State in which the order of transfer under which that person was being conveyed at the time of the escape or attempt to escape was issued, and

(d) for that purpose, order the person to be delivered to an escort.

(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.

(3) A warrant issued under subsection (2) may be executed according to its tenor.

(4) A person who is the subject of a warrant issued under subsection (2) may be detained in custody as a State prisoner until the person is delivered into the custody of an escort in accordance with that warrant or until the expiration of a period of 7 days from the issuing of the warrant, whichever first occurs.

(5) If a person who is the subject of a warrant issued under subsection (2) is not, in accordance with the warrant, delivered into the custody of an escort within a period of

7 days from the issuing of the warrant, the warrant shall have no further effect.

- (6) A reference in subsection (2), (4) or (5) to an escort in relation to a person who was, at the time of the person's escape or attempt to escape, being conveyed under an order of transfer issued in a participating State is a reference to:
- (a) the escort who had the custody of that person pursuant to that order,
 - (b) a prison officer or a member of the police force of the participating State, or
 - (c) a person appointed by the corresponding Minister of the participating State by an instrument in writing to be an escort for the purpose of conveying that person to the participating State,
- or any 2 or more of them.

33 Escape from custody—penalty

- (1) Any person who, being a person in custody under an order of transfer, escapes or attempts to escape from that custody while the person is not within New South Wales or the participating State or the Territory to which the person was being conveyed under that order is guilty of an indictable offence and is liable to imprisonment for a term not exceeding 7 years, to be served after the expiration of any term of imprisonment or detention to which the person was subject at the time of the person's escape or attempt to escape.
- (2) Without limiting the generality of section 254 of the *Crimes (Administration of Sentences) Act 1999*, that section applies to a person:
- (a) who is in custody under an order of transfer, and
 - (b) who escapes from that custody while the person is not within New South Wales or the participating State or the Territory to which the person was being conveyed under that order,
- in the same way as it applies to a person who escapes from lawful custody while undergoing a sentence involving deprivation of liberty in New South Wales.
- (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.

34 Revocation of order of transfer on escape from custody

The Local Court may revoke an order of transfer if it appears to the Local Court, on application made to it under this section by the holder of a prescribed office or position or by a person who belongs to a prescribed class of persons, that the person in respect of whom the order was issued has, in the course of being conveyed in accordance with that

order, committed:

- (a) the offence of escaping or attempting to escape, or
- (b) any other offence,

whether:

- (c) the offence was an offence against the law of New South Wales, the Commonwealth, a participating State or a Territory, or
- (d) a charge has been laid or a conviction secured in respect of the offence or not.

35 Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.