

# International Transfer of Prisoners (New South Wales) Act 1997 No 144

[1997-144]



New South Wales

## Status Information

### Currency of version

Current version for 1 July 2023 to date (accessed 28 May 2024 at 13:14)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

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

### Notes—

- **Editorial note**

The Parliamentary Counsel's Office is progressively updating certain formatting styles in versions of NSW in force legislation published from 29 July 2019. For example, colons are being replaced by em-dashes. Text of the legislation is not affected.

This version has been updated.

### Responsible Minister

- Minister for Corrections

For full details of Ministerial responsibilities, see the [Administrative Arrangements \(Minns Ministry—Administration of Acts\) Order 2023](#).

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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## Contents

**Long title** ..... 4

**Part 1 Preliminary** ..... 4

1 Name of Act..... 4

2 Commencement ..... 4

3 Object of Act..... 4

4 Definitions ..... 4

5 Notes ..... 5

**Part 2 Conferral of functions** ..... 5

6 Powers and functions of Minister ..... 5

7 Powers and functions of prison officers, police officers and others ..... 5

8 Arrangements for administration of Act..... 6

9 Annual report..... 6

**Part 3 Enforcement of sentences of imprisonment of transferred prisoners** ..... 7

10 Prisoners transferred to Australia ..... 7

11 Prisoners transferred from Australia ..... 8

**Part 4 Miscellaneous** ..... 8

12 Regulations..... 8

13 Review of Act..... 8

# International Transfer of Prisoners (New South Wales) Act 1997 No 144



New South Wales

An Act relating to the transfer of prisoners to and from Australia.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *International Transfer of Prisoners (New South Wales) Act 1997*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Object of Act

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

### 4 Definitions

(1) In this Act—

**Commonwealth Act** means the *International Transfer of Prisoners Act 1997* of the Commonwealth.

**corresponding law** means a law of another State that provides for the international transfer of prisoners.

**function** includes a power, authority or duty.

**State** includes a Territory.

**this jurisdiction** means New South Wales.

**War Crimes Tribunal** means the Former Yugoslavia Tribunal or Rwanda Tribunal within the meaning of the Commonwealth Act.

- (2) If an expression is defined in the Commonwealth Act and is also used in this Act, the expression as used in this Act has, unless the contrary intention appears, the same meaning as in that Act.
- (3) In this Act, a reference to the Commonwealth Act includes a reference to—
  - (a) that Act as amended and in force for the time being, and
  - (b) an Act enacted in substitution for that Act.

## 5 Notes

Notes in the text of this Act do not form part of this Act.

## Part 2 Conferral of functions

### 6 Powers and functions of Minister

- (1) A Minister of this jurisdiction may exercise and perform any function conferred or expressed to be conferred on the Minister by or under the Commonwealth Act and may delegate to an authorised person any such function.
- (2) In this section—

**authorised person** means—

- (a) the head, or other member of staff, of a government department administered by a Minister referred to in subsection (1), or
- (b) any person prescribed by the regulations or belonging to a class of persons prescribed by the regulations.

**Minister** includes any Minister who under the law of this jurisdiction can act for and on behalf of the Minister.

### 7 Powers and functions of prison officers, police officers and others

- (1) A prison officer, police officer and any other official of this jurisdiction may exercise and perform any function conferred or expressed to be conferred on the official—
  - (a) by or under the Commonwealth Act or a corresponding law, or
  - (b) in accordance with any arrangements referred to in section 8.
- (2) It is lawful for a prison officer, police officer or other official of this jurisdiction—
  - (a) to hold and deal with any prisoner in accordance with the terms of a warrant issued under the Commonwealth Act in respect of the prisoner, and
  - (b) to take any action in respect of a prisoner transferred, or to be transferred, to or from Australia in accordance with the Commonwealth Act that the official is

authorised to take by or under that Act.

- (3) In this section, a reference to a prison officer is a reference to a correctional officer within the meaning of the [Crimes \(Administration of Sentences\) Act 1999](#).

**Note—**

A number of provisions of the Commonwealth Act require State officials to exercise functions. For example, a warrant may be issued under section 30 of the Commonwealth Act requiring a prison officer, police officer or other person to escort a prisoner who is being transferred. A police officer of this jurisdiction may arrest a person escaping from custody under section 56 of the Commonwealth Act.

## **8 Arrangements for administration of Act**

- (1) The Governor may, in accordance with section 50 of the Commonwealth Act, make arrangements for the administration of that Act, including arrangements relating to the exercise by officers of this jurisdiction of functions under the Commonwealth Act.
- (2) An arrangement may be varied or terminated in accordance with the Commonwealth Act.

## **9 Annual report**

- (1) The State Minister is to prepare an annual report for presentation to each House of Parliament on each relevant decision made by the State Minister during the year and of the reasons for that decision.
- (2) It is sufficient compliance with this section if the annual report is included in the annual reporting information for any Department for which the Minister is responsible prepared under the [Government Sector Finance Act 2018](#) and the regulations under that Act.
- (3) In this section—

**relevant decision** means—

- (a) a consent, or refusal to consent, to the transfer of a prisoner from Australia on the terms proposed by a transfer country under section 20 (2) of the Commonwealth Act, or
- (b) a consent, or refusal to consent, to the transfer of a prisoner to Australia under section 27 (4) of the Commonwealth Act, or
- (c) a consent, or refusal to consent, to the transfer of a Tribunal prisoner to Australia under section 36 (3) of the Commonwealth Act.

**Note—**

The State Minister is defined in the Commonwealth Act as the Minister of the State administering the law of the State relating to the transfer of prisoners.

## **Part 3 Enforcement of sentences of imprisonment of transferred prisoners**

### **10 Prisoners transferred to Australia**

- (1) Any relevant enforcement law applies to and in respect of a prisoner who is transferred to Australia under the Commonwealth Act to complete serving a sentence of imprisonment in this jurisdiction that was imposed by a court or tribunal of a transfer country (or by a War Crimes Tribunal) in the same way as the enforcement law applies to and in respect of a federal prisoner serving a sentence of imprisonment in this jurisdiction that is imposed under a law of the Commonwealth.
- (2) Without limiting subsection (1), enforcement laws relating to the following matters are applicable to a prisoner or Tribunal prisoner who is transferred to Australia under the Commonwealth Act—
  - (a) conditions of imprisonment and treatment of prisoners,
  - (b) release on parole of prisoners,
  - (c) classification and separation of prisoners,
  - (d) removal of prisoners from one prison to another,
  - (e) removal of prisoners between prisons and hospitals or other places or between one hospital or other place and another,
  - (f) treatment of mentally impaired prisoners,
  - (g) eligibility for participation in prison programs, including release under a pre-release permit scheme (however called),
  - (h) temporary absence from prison (for example, to work or seek work, to attend a funeral or visit a relative suffering a serious illness or to attend a place of education or training),
  - (i) transfer of prisoners between States.
- (3) Any direction given by the Attorney-General of the Commonwealth under section 44 of the Commonwealth Act concerning enforcement of such a sentence of imprisonment is to be given effect in this jurisdiction.
- (4) Any direction given by the Attorney-General of the Commonwealth under section 49 of the Commonwealth Act concerning a prisoner referred to in subsection (1) who is pardoned or granted amnesty or commutation of sentence of imprisonment as referred to in that section is to be given effect in this jurisdiction.
- (5) In this section—

**enforcement law** means—

- (a) any law of this jurisdiction, or
  - (b) any law of the Commonwealth or another State, or
  - (c) any practice or procedure lawfully observed,
- concerning the detention of prisoners.

**prison**, in relation to a law of this jurisdiction, means a correctional centre within the meaning of the [Crimes \(Administration of Sentences\) Act 1999](#).

**prisoner**, in relation to a law of this jurisdiction, means an inmate within the meaning of the [Crimes \(Administration of Sentences\) Act 1999](#).

**Note—**

See Part 1B of the [Crimes Act 1914](#) of the Commonwealth in relation to the imprisonment and release of prisoners. In particular, see sections 19A (Detention of person in State or Territory prisons) and 19AA (Remissions and reductions of sentences) and Division 5 (Conditional release on parole or licence).

## **11 Prisoners transferred from Australia**

- (1) Except as provided by subsection (2), the laws of this jurisdiction relating to the enforcement of a sentence of imprisonment imposed by a court of this jurisdiction on a person cease to apply to a prisoner on whom such a sentence has been imposed who is transferred from Australia under the Commonwealth Act to complete serving such a sentence of imprisonment.
- (2) Nothing in this section limits the power of the Crown or of a court or tribunal of this jurisdiction to pardon, grant amnesty or commute such a sentence of imprisonment.

## **Part 4 Miscellaneous**

### **12 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.

### **13 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 12 months from the date of assent to this Act.



- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 12 months referred to in subsection (2).