

Queensland



ANNO TRICESIMO SEXTO

ELIZABETHAE SECUNDAE REGINAE

No. 14 of 1987

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 15TH APRIL, 1987]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. Short title and citation. (1) This Act may be cited as the *Prisoners (Interstate Transfer) Act Amendment Act 1987*.

(2) In this Act, the *Prisoners (Interstate Transfer) Act 1982* is referred to as the Principal Act.

(3) The Principal Act as amended by this Act may be cited as the *Prisoners (Interstate Transfer) Act 1982-1987*.

2. Commencement. (1) Section 1 and this section shall commence on the day on which this Act is assented to for and on behalf of Her Majesty.

(2) Except as provided by subsection (1), the provisions of this Act or such of them as are specified in the Proclamation shall commence on the date or dates appointed by Proclamation.

3. Amendment of s. 4. Interpretation. Section 4 of the Principal Act is amended by—

(a) in subsection (1)—

(i) omitting the definitions “Attorney-General” and “Australian Capital Territory” and substituting the following definitions:—

““Attorney General”—

(a) in relation to Queensland includes any Minister of the Crown who is temporarily performing the duties of the Attorney-General;

(b) 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 of the Commonwealth;

“Commonwealth sentence of imprisonment” means a sentence of imprisonment for an offence against a law of the Commonwealth or of a Territory;”;

(ii) omitting the definition “Corresponding Minister” and substituting the following definition:—

““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;”;

(iii) omitting the definition “Governor”;

(iv) in the definition “indeterminate sentence” omitting the words “pleasure of the Governor” and substituting the words “pleasure of the Governor-General, the Governor”;

(v) inserting after the definition “interstate law” the following definition:—

“ “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;”;

(vi) in the definition “Minister” omitting the words “Minister for Welfare Services, or other”;

(vii) in the definition “order of transfer” omitting the words “section 7, 14, 15 (6), 19, 20 or 21” and substituting the words “section 6, 14, 15 (6) or 19”;

(viii) omitting the definition “participating State” and substituting the following definition:—

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

(ix) omitting the definition “prisoner” and substituting the following definitions:—

“ “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;”;

(x) in the definition “remission regulations” inserting after the words “portions of” the word “State”;

(xi) omitting the definitions “section 26 sentence”, “sentence of imprisonment”, “State”, “Supreme Court” and “Territory” and substituting the following definitions:—

“ “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;

“State” means a State of the Commonwealth and 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 Queensland, including a sentence by which default imprisonment is ordered, an indeterminate sentence and a translated sentence, but does not include detention under any Act relating to the punishment of persons who committed offences when they were under the age of 17 years;

“Territory” means the following Territories of the Commonwealth:—

the Australian Capital Territory;

the Territory of Norfolk Island;

the Territory of Christmas Island;

the Territory of Cocos (Keeling) Islands,

and any Territory of the Commonwealth to which the provisions of the Transfer of Prisoners Act 1983 of the Commonwealth is extended under section 32 thereof but does not include the Northern Territory;

“translated sentence” means a sentence of imprisonment deemed by section 26 to have been imposed on a person by a court of Queensland.”;

(b) in subsection (4) omitting the words “of the Parliament”;

(c) adding at the end of the section the following subsections:—

“(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
 - (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 a 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.”.

4. Amendment of s. 5. Corresponding courts and interstate laws. Section 5 of the Principal Act is amended by—

- (a) in subsection (1), omitting from paragraph (a) the words “, the Australian Capital Territory or the Northern Territory”;
- (b) in subsection (2), omitting the words “or a Territory”;
- (c) omitting subsection (3).

5. Repeal of and new ss. 6 and 7. The Principal Act is amended by repealing section 6 and section 7 and substituting the following sections:—

“6. 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 Queensland

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 paragraph (c) of subsection (1);

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 paragraph (d) of subsection (1);

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 Queensland 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

- (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 Queensland 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.

7. 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 his 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 his transfer is otherwise authorised under that Act.”.

6. Amendment of s. 8. Repeated requests for transfer. Section 8 of the Principal Act is amended by inserting after the words "participating State" the words "or to a Territory".

7. Amendment of s. 9. Receipt of request for transfer to Queensland. Section 9 of the Principal Act is amended by—

(a) inserting after the words "corresponds to section 6" the words "or a request made for the purposes of Part 11 of the Transfer of Prisoners Act 1983 of the Commonwealth";

(b) inserting after the words "was given" the words "or to the Attorney-General of the Commonwealth, as the case may be,".

8. Amendment of s. 11. Request for transfer of prisoner to participating State. Section 11 of the Principal Act is amended by—

(a) in the note appearing in and at the beginning of the section, inserting after the words "participating State" the words "or to a Territory".

(b) in subsection (1)—

(i) in the general words appearing before paragraph (a), omitting the words "is a prisoner" and substituting the words "the Commonwealth or a Territory is a prisoner serving a sentence of imprisonment in Queensland";

(ii) omitting paragraph (a) and substituting the following paragraph:—

"(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";

(iii) in the general words that follow paragraph (b)—

(A) omitting the words "either case" and substituting the words "any case";

(B) omitting the words "to the participating State" and substituting the words "to a participating State or to a Territory";

(C) inserting before the words "or to the Minister" the words "the Attorney-General of the Commonwealth";

(c) in subsection (2), inserting after the words "to a participating State" the words "or to a Territory";

(d) in subsection (3), inserting after the words "to a participating State" the words "or to a Territory".

9. Amendment of s. 12. Necessary consents. Section 12 of the Principal Act is amended by—

(a) omitting subsection (1) and substituting the following subsection:—

“(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 provision (ii) of paragraph (c) 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 a 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) in subsection (2), inserting after the words “participating State” the words “, or to a Territory,”.

10. Amendment of s. 14. Order of transfer. Section 14 of the Principal Act is amended by—

(a) in paragraph (a), inserting after the words “participating State” the words “, or to the Territory,”;

(b) in paragraph (b), inserting after the words “participating State” the words “or Territory”.

11. Amendment of s. 15. Review of decision of Magistrates Court. Section 15 of the Principal Act is amended by—

(a) in subsection (1)—

(i) omitting the words “, the Attorney-General of the participating State or the prisoner” where firstly occurring and substituting the words “or the prisoner, or any other person who has requested or consented to the transfer of the prisoner,”;

(ii) omitting the words “, the Attorney-General of the participating State or the prisoner” where secondly occurring and substituting the words “, the prisoner or that person”;

(b) in subsection (3), omitting the words “the Attorney-General of the participating State” and substituting the words “any other person who has requested or consented to the transfer of the prisoner”;

(c) in subsection (6), inserting after the word “State” the words “or Territory”.

12. New s. 15A. The Principal Act is amended by inserting after section 15 the following section:—

“15A. Effect of orders under this Part on joint prisoners. An order of transfer made 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 his 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 his transfer is otherwise authorised under that Act.”.

13. Repeal of ss. 19, 20 and 21 and new ss. 19 and 20. The Principal Act is amended by repealing sections 19, 20 and 21 and substituting the following sections:—

“19. Return of Prisoner to participating State or to a Territory if no sentence or shorter sentence in Queensland. Where—

- (a) a person is transferred to Queensland 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 14 or 15 (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 indictment alleging any offence by the person against the law of Queensland 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 Queensland;
or
 - (ii) the person did become liable to serve in Queensland 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 22, issue an order for the transfer of the person to the participating State or to the Territory, as the case may require.

20. Effect of orders under this Part on joint prisoners. An order of transfer made 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 his 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 his transfer is otherwise authorised under that Act.”.

14. Amendment of s. 22. Provisions ancillary to ss. 19, 20 and 21. Section 22 of the Principal Act is amended by—

(a) in the note appearing in and at the beginning of the section omitting the words “sections 19, 20 and 21” and substituting the words “sections 19 and 20”;

(b) in subsection (1)—

(i) omitting from the general words appearing before paragraph (a) the words “or 21”;

(ii) omitting paragraph (a) and substituting the following paragraph:—

“(a) the Minister receives a written request made by the person, being a request for the person to serve his imprisonment in Queensland, 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 it is in the interests of the welfare of the person that he should serve the imprisonment in Queensland”;

(iii) in paragraph (b), omitting the words “section 26” and substituting the word “translated”;

(c) in subsection (2), omitting the words “sections 19 and 20” and substituting the words “section 19”;

(d) in subsection (3)—

(i) omitting from the general words appearing before paragraph (a) the words “or 21 (c) (ii)”;

(ii) omitting paragraphs (c), (d) and (e) and substituting the following paragraphs:—

“(c) the expression “sentences of imprisonment” in provision (ii) of section 19 (b) includes a translated sentence that was originally imposed by a court of Queensland;

(d) the expression “translated sentence or translated sentences” in provision (ii) of section 19 (b) does not include a translated sentence that was originally imposed by a court of Queensland;

(e) where a State sentence of imprisonment which a person became liable to serve in Queensland (not being a translated sentence) is cumulative with a translated sentence or translated sentences originally imposed by a court other than a court of Queensland, 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 Queensland.”.

15. Amendment of s. 23. Transfer in custody of escort. Section 23 of the Principal Act is amended by—

(a) in subsection (1), inserting in paragraph (b) after the words “participating State” the words “or a Territory”;

(b) in subsection (3), omitting paragraph (a) and substituting the following paragraph:—

“(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 Queensland of a person imprisoned in a participating State or a Territory”.

16. Amendment of s. 24. Transfer of sentence with prisoner. Section 24 of the Principal Act is amended by—

(a) numbering the existing provisions as subsection (1) and in that subsection—

(i) inserting after the words “a participating State” the words “or a Territory”;

(ii) omitting the words “the participating State every” and substituting the words “the participating State or the Territory every State”;

(iii) omitting the words “by a court of Queensland” where firstly occurring;

(iv) omitting the words “section 26” and substituting the word “translated”;

(b) adding at the end of the section the following subsection:—

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

17. Amendment of s. 26. Sentence deemed to have been imposed in this State. Section 26 of the Principal Act is amended by—

(a) numbering the existing provisions as subsection (1) and in that subsection—

(i) omitting paragraph (a) and substituting the following paragraph:—

“(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;”;

(ii) in paragraph (b) omitting the words “that sentence” and substituting the words “any such State sentence of imprisonment”;

(b) adding at the end of the section the following subsection:—

“(2) Subsection (1) does not apply to or in respect of a sentence of imprisonment imposed upon a person where he has completed serving that sentence.”.

18. Amendment of s. 27. Provisions relating to section 26 sentences. Section 27 of the Principal Act is amended by—

(a) omitting the words “section 26” wherever they occur in the section and in the note appearing in and at the beginning of the section and substituting the word “translated”;

(b) in paragraph (b) of subsection (6)—

(i) inserting after the word “shall” where firstly occurring, the words “, subject to subsection (7),”;

(ii) omitting the words “sentence of imprisonment” wherever they occur and substituting the words “translated sentence”;

(c) adding at the end of the section the following subsections:—

“(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 Queensland;

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 paragraph (b) of subsection (6).

(8) Subsection (5) does not apply in relation to a conviction or transferred sentence referred to in paragraph (a) or (b) of section 24(2) 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.”.

19. Amendment of s. 28. Section 26 sentences—default imprisonment. Section 28 of the Principal Act is amended by—

(a) in the note appearing in and at the beginning of the section omitting the words “Section 26” and substituting the word “Translated”;

(b) in subsection (1), omitting the words “section 26” and substituting the word “translated”;

(c) in subsection (2), omitting the words “section 26” and substituting the word “translated”.

20. Amendment of s. 30. Lawful custody for transit through Queensland. Section 30 of the Principal Act is amended, in subsection (1), by—

(a) in the general words appearing before paragraph (a), omitting the words “, 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” and substituting the words “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”;

(b) in paragraph (a) inserting after the words “participating State” the words “or Territory”;

(c) in paragraph (b) inserting before the word “prisoner” the word “State”.

21. Amendment of s. 31. Escape from custody of person being transferred. Section 31 of the Principal Act is amended by—

(a) inserting after subsection (2) the following subsection:—

“(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) in subsection (4), inserting before the word “prisoner” the word “State”.

22. Amendment of s. 32. Escape from custody—penalty. Section 32 of the Principal Act is amended by—

(a) in subsection (1), inserting after the words “participating State” the words “or the Territory”;

(b) in subsection (2), inserting in paragraph (b) after the words “participating State” the words “or the Territory”;

(c) adding at the end of the section the following subsection:—

“(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.”.

23. Amendment of s. 33. Revocation of order of transfer on escape from custody. Section 33 of the Principal Act is amended by omitting from paragraph (c) the words “or of a participating State” and substituting the words “, the Commonwealth, a participating State or a Territory”.