

# **PRISONERS INTERNATIONAL TRANSFER (QUEENSLAND) BILL 1997**

## **EXPLANATORY NOTES**

### **GENERAL OUTLINE**

#### **Objectives of the Legislation**

The objective of the legislation is to give effect to the scheme for the international transfer of prisoners set out in the *International Transfer of Prisoners Act 1997* (Cth) ( the Commonwealth Act) by:

- i. facilitating the transfer of prisoners between Queensland and certain overseas countries so that prisoners may serve their sentences of imprisonment in their countries of nationality or in countries with which they have community ties; and
- ii. facilitating the transfer of prisoners who have been convicted by certain international war crimes tribunals to Queensland to serve their sentences.

#### **Reasons for the objectives and how they will be achieved**

The Commonwealth Act provides a procedural framework to allow Australian participation in international prisoner transfer agreements, both multi-lateral and bi-lateral. However, the Commonwealth legislation alone does not permit Australia to accede to such agreements. Complementary State and Territory legislation is necessary to give effect to the scheme in each jurisdiction.

As there are no federal prisons, incoming prisoners will need to be housed by prisons controlled by States and Territories which participate in the scheme. In addition, many of the prisoners who may seek to take advantage of the scheme to leave Australia will be serving sentences for State or Territory offences.

The Commonwealth Act contains separate schemes for the two different types of prisoners. General prisoner transfers between Australia and other countries can proceed only with the consent of the transferring prisoner, the Commonwealth Government—and any involved State or Territory Government—and the government of the other country. The transfer to Australia of persons who have been convicted by the international war crimes tribunals of war crimes in the former Yugoslavia and Rwanda can proceed without the prisoner's consent, but will require the consent of the Commonwealth Government and any involved State or Territory government.

The scheme for general prisoner transfers applies to all offences and will cover persons who have been convicted of a crime and sentenced to imprisonment or other deprivation of liberty, and includes persons confined in connection with criminal conduct by reason of mental disorder, and persons released on parole. Conditions for transfer include imprisonment under a final order and at least six months of the sentence remaining to be served (unless the Attorney-General of the Commonwealth determines that a shorter period is acceptable). For transfers to Australia, the person must be an Australian citizen or be permitted to travel to, enter and remain in Australia indefinitely pursuant to the *Migration Act 1958* and have community ties with a State or Territory.

There are no explicit citizenship or migration requirements for Tribunal prisoners. However, the Commonwealth Act provides that decisions affecting a person who is not an Australian citizen cannot be made without the consent of the Minister for Immigration and Multicultural Affairs.

All transfers are to be considered on a case-by case basis.

### **Administrative cost to Government of implementation**

The impact on State expenditure or revenue cannot be predicted with any degree of precision.

The scheme is predicated on the internationally accepted “receiver pays” principle, which means that, subject to any alternative treaty or arrangement, all costs of the transfer incurred exclusively in the territory of the sending country will be borne by that country, and all other costs will be borne by the receiving country.

Under the Standing Committee of Attorneys-General (SCAG) Agreement, Queensland will meet all transfer costs for general prisoner

transfers into the state including sending escort officers, returning prisoners (including airfares) and the cost of maintaining prisoners during the terms of sentences in Australia. The Commonwealth Act does allow for recovery of costs and transfer expenses to be included in the terms of transfer, where appropriate.

The cost arrangements will be different in relation to transfers of Tribunal prisoners. As this responsibility arises from international relations and Australia's membership of the United Nations, the Commonwealth will be responsible for all costs associated with transfers from the Tribunals.

If there is a net outflow of prisoners, there may be significant savings to the State. However, there is no way of estimating how many prisoners will seek to take advantage of the scheme.

The cost implications will be examined as part of the evaluation strategy which is to review the legislation after it has been in place for a period of 12 months to determine the extent to which the legislation has been utilised and to assess the resource implications.

### **Fundamental legislative principles**

The Bill is consistent with fundamental legislative principles.

### **Consultation**

The legislative scheme is the outcome of extensive consultation between the Commonwealth and States and Territories through the SCAG forum over a five year period, commencing in July 1992.

The Queensland Corrective Services Commission was directly involved in the negotiations with the Commonwealth that led to in-principle agreement to the implementation of such a scheme and is fully supportive of Queensland participation.

The Commonwealth legislation, which enacts the core elements of the scheme, was referred to the House of Representatives Standing Committee on Legal and Constitutional Affairs which tabled its advisory report on 3 March 1997 after taking oral and written evidence from government departments, community bodies and interested private citizens. The Committee strongly supported the Bill and made no recommendations for substantive amendments.

## NOTES ON PROVISIONS

### PART 1—PRELIMINARY

*Clause 1* sets out the Short Title of the Bill.

*Clause 2* provides for the resultant Act to commence on a day to be fixed by proclamation.

*Clause 3* sets out the object of the Bill.

*Clause 4* expressly binds the State.

*Clause 5* provides for a dictionary of words used in the Bill. The dictionary is located in the Schedule to the Bill.

### PART 2—CONFERRAL OF FUNCTIONS

*Clause 6* empowers a Minister of this jurisdiction, or his or her delegate, to perform functions conferred by or under the Commonwealth Act.

*Clause 7* empowers a State official to perform any function which is conferred or expressed to be conferred on the official under the Commonwealth Act, or a corresponding law, and any function provided for under administrative arrangements entered into between the Commonwealth and Queensland pursuant to Clause 8 of the Bill. For example, section 30 of the Commonwealth Act provides that a warrant may be issued requiring a prison officer, police officer or other person to escort a prisoner who is being transferred. Section 56 of the Commonwealth Act permits a police officer to arrest a person without warrant if the officer has reasonable grounds for believing that the person has escaped from custody as authorised by the Commonwealth Act.

*Clause 8* complements the power conferred on the Governor-General under section 50 of the Commonwealth Act by empowering the Governor to make appropriate arrangements with the Governor-General for the administration of the Commonwealth Act, including arrangements relating

to the performance by officers of this jurisdiction of functions under the Commonwealth Act. The arrangements may be varied or terminated at any time as provided for under 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 Queensland under the Commonwealth Act is to be treated as a federal prisoner.

Subclause (2) spells out a series of circumstances in which the prisoner, or Tribunal prisoner will be treated, or will gain an entitlement, as if he, or she were a federal prisoner including in relation to detention of prisoners, parole, removal of prisoners from one prison to another, hospitalisation, participation in prison programs and transfers between States.

Subclause (3) gives effect in this jurisdiction to a direction 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, and directions relating to entitlement as to release on parole. If the prisoner or Tribunal prisoner is mentally impaired, directions can be given regarding any review of his or her mental condition or treatment.

Subclause (4) gives effect in this jurisdiction 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 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, then 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* precludes a person serving a sentence for the same conduct more than once. It provides that where a prisoner is transferred from Australia, the sentence of imprisonment imposed by a court of this jurisdiction ceases to have effect in Australia. There is a qualification in subclause (2) which 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 this jurisdiction.

## **PART 4—MISCELLANEOUS**

*Clause 11* empowers the Governor in Council to make regulations.

*Clause 12* clarifies the relationship between the Bill and the Commonwealth Act. The Commonwealth Act does not form part of this Bill, but is attached to the Bill to assist in an understanding of the Bill. To remove any doubt, the copy of the Commonwealth Act which is attached to the Bill must be revised so that it is an accurate copy of the Commonwealth Act as enacted and amended from time to time.

### ***Schedule***

The Schedule contains a dictionary which defines terms used in the Bill.