



Prisoners (Interstate Transfer) Act 1982

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Reprint note

Powers under the *Reprints Act 1992* have been used in this reprint to bring the legislation into line with current drafting practice.

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Queensland

Prisoners (Interstate Transfer) Act 1982

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Prisoners (Interstate Transfer) Act 1982

An Act relating to the transfer interstate of prisoners

Part 1 Preliminary

1 Short title

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

2 Definitions

In this Act—

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, for the Northern Territory, means the person holding ministerial office under the *Northern Territory (Self-Government) Act 1978* (Cwlth), section 36 who is designated under that Act 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 Queensland, for a court of a participating State, means a Queensland court declared under section 5 to be a court corresponding to the court of the participating State.

corresponding Minister, for 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 recognisance to keep the peace or to be of good behaviour.

Governor, for the Australian Capital Territory, means—

- (a) in this section, definition *indeterminate sentence* and in section 27(4)—the Governor-General; or
- (b) in section 27(5)(b)—the Governor-General, or the Executive within the meaning of the *Australian Capital Territory (Self-Government) Act 1988* (Cwlth).

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.

indictment includes an information.

interstate law means a law declared under section 5 to be an interstate law.

joint prisoner see section 2A.

Magistrates Court means a Magistrates Court constituted by a magistrate sitting alone.

Minister means the Minister administering the *Corrective Services Act 2006*.

order of transfer means an order issued under section 6, 14, 15(6) or 19 for the transfer of a prisoner to a participating State.

participating State means any State in which there is in force an interstate law.

prison means a corrective services facility under the *Corrective Services Act 2006*.

prisoner means a State prisoner or a joint prisoner.

prison officer means a person who holds an appointment as a corrective services officer under the *Corrective Services Act 2006*.

relevant security, in relation to a person, means a security given by the person, with or without sureties, by recognisance or otherwise, that the person will comply with conditions relating to the person's behaviour.

sentence of imprisonment see section 2B.

State includes the Australian Capital Territory and 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—

- (a) the territory of Norfolk Island; or
- (b) the territory of Christmas Island; or
- (c) the territory of Cocos Island;

and includes a territory to which the *Transfer of Prisoners Act 1983* (Cwlth) is extended, but does not include the Australian Capital Territory or 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.

2A Meaning of *joint prisoner*

A ***joint prisoner*** is a person on whom both of the following sentences have been imposed—

- (a) a Commonwealth sentence of imprisonment;
- (b) any of the following sentences of imprisonment—
 - (i) a State sentence of imprisonment;
 - (ii) a State sentence of imprisonment as defined under an interstate law;
 - (iii) an ACT sentence of imprisonment as defined under the *Prisoners (Interstate Transfer) Act 1993* (ACT);
 - (iv) a Territory sentence of imprisonment within the meaning of the *Prisoners (Interstate Transfer) Act 1983* (NT).

2B Meaning of *sentence of imprisonment*

Each of the following is a ***sentence of imprisonment***—

- (a) a State sentence of imprisonment;
- (b) a State sentence of imprisonment as defined by an interstate law;
- (c) an ACT sentence of imprisonment as defined by the *Prisoners (Interstate Transfer) Act 1993* (ACT);
- (d) a Territory sentence of imprisonment within the meaning of the *Prisoners (Interstate Transfer) Act 1983* (NT);

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- (e) if relevant—a Commonwealth sentence of imprisonment.

3 Warrant of commitment issued by justice

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.

4 Sentences of imprisonment imposed by operation of law

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.

4A Persons completed serving sentence

- (1) 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.
- (2) 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.

4B References to release on parole

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.

5 Corresponding courts and interstate laws

- (1) A regulation may declare—
 - (a) a stated Queensland court to be a court corresponding to a stated court of a participating State; or
 - (b) a law of another State to be an interstate law.
- (2) However, a regulation may declare a law of another State to be an interstate law only if the Governor in Council is satisfied the law—

- (a) substantially corresponds to this Act; and
- (b) contains provisions that are mentioned in this Act as provisions of an interstate law that correspond to stated provisions of this Act.

Part 2 Transfer at request of prisoner

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;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 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;

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.

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- (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;
- 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 or her 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* (Cwlth) in respect of the person or the person's transfer is otherwise authorised under that Act.

8 Repeated requests for transfer

A request made by a prisoner for the prisoner's transfer to a participating State or to a Territory need not be entertained by the Minister if it is made within 1 year of a similar request made by the prisoner.

9 Receipt of request for transfer to Queensland

Where the Minister receives a written request given under the provision of an interstate law that corresponds to section 6, or a request made for the purposes of the *Transfer of Prisoners Act 1983* (Cwlth), part II, asking the Minister to accept the transfer of an imprisoned person to Queensland, 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.

10 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 corrective services authorities of Queensland and of any participating State.
- (2) Reports of parole and corrective services authorities may be sent to a corresponding Minister for the purpose of assisting the Minister to form an opinion or to exercise a discretion under the interstate law administered by the Minister.

10A Matters that the Minister may have regard to

When forming an opinion or exercising a discretion under this part, the Minister may have regard to any one or more of the following—

- (a) the welfare of the prisoner;
- (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 that the Minister considers relevant.

Part 3 Transfer for trial

11 Request for transfer of prisoner to participating State or to a Territory

- (1) Where a person 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 Queensland 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;

- (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 the prisoner's 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 1 year of a similar request made by the prisoner.

12 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; and
 - (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 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.
- (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 evidence that the consent or request has been given or made and, in the absence of evidence to the contrary, conclusive evidence that the consent or request has been given or made.

13 Prisoner to be brought before Magistrates Court

- (1) A Magistrates Court, upon proof to its satisfaction that the conditions precedent specified in section 12(1) have been complied with, shall by order in writing direct the chief executive (corrective services) to bring the prisoner before a Magistrates Court specified in the order on a date and at a time so specified 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 a legal practitioner; and
 - (b) the Attorney-General shall be entitled to appear or be represented.

14 Order of transfer

The Magistrates Court before which the prisoner is brought pursuant to an order made under section 13(1) 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 12(2) in respect of the prisoner; or
- (b) if the 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.

15 Review of decision of Magistrates 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 Magistrates Court under section 14, 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 and be represented by a 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 chief executive (corrective services) 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 Magistrates 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.

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 or her 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* (Cwlth) in respect of the person or the person's transfer is otherwise authorised under that Act.

16 Prisoner brought to be returned to custody

Where an order is made under section 13(1) or 15(2)—

- (a) the chief executive (corrective services) must execute the order or may charge any prison officer or Queensland police officer with the execution of the order; and
- (b) the prisoner shall, while the order is being executed, be kept in the custody of the chief executive (corrective services), prison officer or police officer 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.

17 Request for transfer of imprisoned person to Queensland

Where a person who is the subject of an arrest warrant issued in accordance with the laws of Queensland 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 Queensland to be dealt with according to law.

18 Request for transfer to Queensland by imprisoned person

Where—

- (a) a person is imprisoned in a participating State; and

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 or her 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* (Cwlth) in respect of the person or the person's transfer is otherwise authorised under that Act.

22 Provisions ancillary to ss 19 and 20

- (1) The provisions of section 19 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 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; or
- (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 Queensland;
- (b) an indeterminate sentence (not being a translated sentence) is imposed upon the person by a court of Queensland.
- (1A) When 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 prisoner;
 - (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 that the Minister considers relevant.
- (2) For the purpose of section 19, a complaint or indictment 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 is withdrawn or a nolle prosequi or similar instrument is entered in respect of the offence.
- (3) For the purpose of determining which of the periods referred to in section 19(b) is the shorter or longer—
 - (a) any entitlement to remissions shall be disregarded; and
 - (b) a finite period of imprisonment shall be treated as being shorter than a period to be served under an indeterminate sentence; and
 - (c) the expression ‘sentences of imprisonment’ in section 19(b)(ii) includes a translated sentence that was originally imposed by a court of Queensland; and
 - (d) the expression ‘translated sentence or translated sentences’ in section 19(b)(ii) does not include a translated sentence that was originally imposed by a court of Queensland; and
 - (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.

Part 5 Effect of order of transfer

23 Transfer in custody of escort

- (1) An order of transfer—
 - (a) must direct the chief executive (corrective services) to deliver the prisoner who is the subject of the order into the custody of an escort; and
 - (aa) is sufficient authority to the chief executive to deliver the prisoner as directed under the order; and
 - (b) authorises the escort to take and keep custody of the prisoner for the purpose of conveying the prisoner from Queensland 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 chief executive (corrective services).
- (2) A reference in subsection (1) to an escort is a reference to a prison officer, a Queensland police officer 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* (Cwlth), or both, an order is issued for the transfer to Queensland of a person imprisoned in a participating State or a Territory; and
 - (b) pursuant to the order an escort brings the person into Queensland;

the escort, while in Queensland, is authorised to hold, take and keep custody of the person for the purpose of conveying the person to such prison in Queensland as is specified in the order and there delivering the person into the custody of the chief executive (corrective services).

24 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 Queensland 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 Queensland; or
 - (b) in relation to any period of imprisonment served by the prisoner in Queensland; 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 Queensland.
- (2) Subsection (1) does not apply to a sentence of imprisonment imposed upon a person where the person has completed serving that sentence.

25 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 Minister—
 - (a) the order of transfer; and
 - (b) the warrant of, or other authority for, commitment for any sentence of imprisonment which the prisoner was, immediately before the prisoner left Queensland, serving or liable to serve; and
 - (c) a report relating to the prisoner, which shall contain such information and be accompanied by such documents available in Queensland as appear to be likely to be of assistance to any court, authority or officer in the participating State and shall include details of

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convictions, sentences of imprisonment, eligibility for release on parole, periods of imprisonment served, entitlements to remissions and grants of 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.

26 Sentence deemed to have been imposed in this State

- (1) Where under an interstate law an order is issued for the transfer to Queensland of a person imprisoned in a participating State and the person is brought into Queensland pursuant to the order, then from the time the person arrives in Queensland—
- (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 Queensland and, except as otherwise provided in this Act, shall be given effect to in Queensland, and the laws of Queensland 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.

27 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 Queensland and, notwithstanding any other Act, that person is not eligible to be released on parole until the person has served that minimum term of imprisonment.
- (2) Where a translated sentence or a minimum term deemed under subsection (1) to have been fixed by a corresponding court of Queensland—
- (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 Queensland; 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 Queensland.
- (3) Nothing in this Act operates to permit in Queensland 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 Queensland; or
 - (ii) an offender convicted within Queensland before a judge or magistrate of Queensland; 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 Queensland.
- (6) A person who is subject to a translated sentence is taken to have served in Queensland the period of the translated sentence that, up to the time of the person's transfer to Queensland, the person had served in respect of that sentence in a participating State, including—
 - (a) a period taken, under the provision of an interstate law that corresponds to this subsection, to have been served in a participating State; and
 - (b) a period spent in custody while being transferred to a prison in Queensland.
- (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 subsection (6)(b).

- (8) Subsection (5) does not apply in relation to a conviction or transferred sentence referred to in the *Transfer of Prisoners Act 1983* (Cwlth), section 24(2)(a) or (b), 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.

28 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 chief executive (corrective services)—
- (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 chief executive (corrective services) 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

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- the participating State or Territory as is specified in the order and there delivering the person into the custody of the chief executive (corrective services); and
- (b) the chief executive (corrective services) is authorised upon—
- (i) the request of the escort; and
 - (ii) delivery to the chief executive (corrective services) 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 the chief executive (corrective services) has the custody of a person under subsection (1)(b), the chief executive (corrective services) 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.

31 Escape from custody of person being transferred

- (1) A person in the custody of an escort pursuant to section 30 who escapes from that custody may be apprehended without warrant by the escort, any Queensland police officer or any other person.
- (2) Where a person in custody pursuant to section 30—
- (a) has escaped and been apprehended; or
 - (b) has attempted to escape;
- that person may be taken before a justice who may, notwithstanding the terms of any order of transfer issued under an interstate law, by signed warrant—
- (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 the *Crimes Act 1914* (Cwlth), section 47 applies by virtue of the *Transfer of Prisoners Act 1983* (Cwlth), section 26(2).
- (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; or
 - (b) a—
 - (i) prison officer; or
 - (ii) 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.

32 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 Queensland 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 3 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 the third paragraph of section 20 of the Criminal Code, that paragraph 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 Queensland 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 Queensland.
- (3) Subsections (1) and (2) do not apply to a person to whom the *Crimes Act 1914* (Cwlth), section 47 applies by virtue of the *Transfer of Prisoners Act 1983* (Cwlth), section 26(1) or (2).

33 Revocation of order of transfer on escape from custody

Any Magistrates Court may revoke an order of transfer if it appears to the 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 the person being conveyed in accordance with that order, committed—

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- (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 Queensland, 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.

34 Regulation-making power

The Governor in Council may make regulations under this Act.