

South Australia

# Prisoners (Interstate Transfer) Act 1982

An Act relating to the transfer interstate of prisoners.

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## Legislative history

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### The Parliament of South Australia enacts as follows:

## Part 1—Preliminary

### 1—Short title

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

### 5—Interpretation

- (1) In this Act, unless the contrary intention appears—

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

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

***Attorney-General***, in relation to the Northern Territory, means the person holding the Ministerial office under section 36 of the *Northern Territory (Self-Government) Act 1978* of the Commonwealth who is, under that Act, designated for the time being as the holder of the office of Attorney-General;

***Commonwealth Act*** means the *Transfer of Prisoners Act 1983* 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;

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

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

***court of summary jurisdiction*** means a court of summary jurisdiction constituted by a magistrate;

***default imprisonment*** means imprisonment in default of—

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

***indeterminate sentence*** means a sentence of, or order or direction for, imprisonment or detention—

- (a) for life; or
- (b) during the pleasure of Her Majesty; or
- (c) during the pleasure of the Governor-General, the Governor or the Governor of a participating State; or
- (d) until further order of a court,

and includes any such sentence, order or direction imposed, made or given by, or by the operation of, any Act or law;

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

***joint prisoner*** means a person on whom both—

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

have been imposed;

***justice*** means justice of the peace;

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

***participating State*** means a State in which an interstate law is in force;

***prison*** means a prison as defined in the *Correctional Services Act 1982*;

***prison officer*** means an officer or employee of the administrative unit that is, under a Minister, responsible for the administration of the *Correctional Services Act 1982* employed in a prison;

***prisoner*** means a State prisoner or a joint prisoner;

***relevant security*** means a security given by a person, with or without sureties, by recognizance or otherwise, that the person will comply with conditions relating to the person's behaviour;

***sentence of imprisonment*** means—

- (a) a State sentence of imprisonment; or
- (b) a State sentence of imprisonment as defined by an interstate law; or
- (c) an ACT sentence of imprisonment as defined by the *Prisoners (Interstate Transfer) Act 1993* of the Australian Capital Territory; or

(d) a Territory sentence of imprisonment as defined by the *Prisoners (Interstate Transfer) Act 1983* of the Northern Territory; or

(e) where relevant, a Commonwealth sentence of imprisonment;

**State** includes the Australian Capital Territory and the Northern Territory;

**State prisoner** means a person on whom a State sentence of imprisonment has been imposed, but does not include a person on 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 this State, including a sentence of penal servitude, a sentence by which default imprisonment is ordered, an indeterminate sentence and a translated sentence, but does not include such a sentence while it is being served in a training centre pursuant to the *Children's Protection and Young Offenders Act 1979*, or an order for detention in a training centre made under that Act;

**Territory** means the Territory of Norfolk Island, the Territory of Christmas Island, the Territory of the Cocos (Keeling) Islands or the Jervis Bay Territory;

**translated sentence** means a sentence of imprisonment that is, by virtue of section 27, to be deemed to have been imposed on a person by a court of this State.

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

- (6) A reference in this Act to a person on whom a sentence of imprisonment has been imposed does not extend to a person who has completed serving that sentence.
- (7) A person on whom a sentence of imprisonment has been imposed will be taken, for the purposes of this Act, to have completed serving that sentence—
  - (a) if, in the case of a person who has been released from serving a part of that sentence on parole or on licence to be at large, no further action can be taken under a law of the Commonwealth, a State or a Territory to require the person to serve the whole or a part of the remainder of that sentence; or
  - (b) if, in the case of a person who has been released from serving the whole or a part of that sentence on giving a relevant security—
    - (i) no further action can 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
    - (ii) no further action can, by reason of the expiration of the security, be taken under a law of the Commonwealth, a State or a Territory to require the person to serve the whole or a part of that sentence; or
  - (c) if the person is, as the result of the exercise of the royal prerogative of mercy, no longer required to serve the whole or a part of that sentence.
- (8) A reference in this Act to release on parole extends to release on probation and to any other form of conditional release in the nature of parole.

## **6—Corresponding courts and interstate laws**

- (1) Subject to subsection (2), the Governor may, by proclamation, declare that—
  - (a) a law of a State (other than South Australia) is an interstate law for the purposes of this Act; and
  - (b) a specified court of South Australia or any court belonging to a specified class or description of courts of South Australia is, for the purposes of this Act, a corresponding court in relation to a specified court of a participating State or in relation to any court belonging to a specified class or description of courts of a participating State.
- (2) A proclamation shall not be made under subsection (1) in respect of a law of another State unless the Governor is satisfied that that law substantially corresponds to the provisions of this Act and contains provisions that are referred to in this Act as provisions of an interstate law that correspond to specified provisions of this Act.

## **Part 2—Transfer at request of prisoner**

### **7—Requests for, and order of, transfer**

- (1) Where the Minister—
  - (a) receives a written request made by a State prisoner serving a sentence of imprisonment in this State for the transfer of the prisoner to a participating State or to a Territory; and
  - (b) is of the opinion that the prisoner should be transferred to that State or Territory,

the Minister must—

- (c) if the request is for transfer 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; or
- (d) if the request is for transfer 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) —
  - (i) has, in respect of a request made by a State prisoner for transfer to a participating State, given to the corresponding Minister of the participating State a written request under subsection (1)(c); and
  - (ii) has received from that Minister written notice of consent to the transfer of the prisoner to the participating State; or
- (b) —
  - (i) has, in respect of a request made by a State prisoner for transfer to a Territory, given to the Attorney-General of the Commonwealth a written request under subsection (1)(d); and
  - (ii) has 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 this State for the transfer of the prisoner to a participating State; and
- (b) is of the opinion that the prisoner should be transferred to that State,

the Minister must 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—

- (a) has, in respect of a request by a joint prisoner for transfer to a participating State, given to the corresponding Minister of the participating State a written request under subsection (3); and
- (b) has 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 this State 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 should be transferred to the Territory, the Minister may issue an order for the transfer of the prisoner to the Territory.
- (6) A decision to issue, or not to issue, an order under this section is not reviewable by a court or tribunal.

### **8—Effect of orders under this Part on joint prisoners**

An order of transfer issued under this Part in relation to a joint prisoner has no effect—

- (a) to the extent that, but for this section, it authorises or requires the doing of an act or thing under this Act in relation to that person in the person's capacity as a person on 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 Commonwealth Act in respect of the person or the transfer of the person is otherwise authorised under that Act.

### **9—Repeated requests for transfer**

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

### **10—Receipt of request for transfer to this State**

Where the Minister receives a written request given under the provision of an interstate law that corresponds to section 7, or a request made for the purposes of Part II of the Commonwealth Act, asking him to accept the transfer of an imprisoned person to South Australia, 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 require, written notice of his refusal or consent.

### **10A—Matters to which Minister may have regard**

In forming an opinion or exercising any discretion under this Part, the Minister may have regard to any 1 or more of the following:

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

## **11—Reports**

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

## **Part 3—Transfer for trial**

### **12—Request for transfer to participating State**

- (1) Where a person who is the subject of an arrest warrant issued in accordance with the law of a participating State, the Commonwealth or a Territory is a prisoner serving a sentence of imprisonment in this State and the Attorney-General receives—
  - (a) from—
    - (i) in the case of an arrest warrant issued in accordance with the law of a participating State—the Attorney-General of the participating State; or
    - (ii) in the case of an arrest warrant issued in accordance with the law of the Commonwealth or a Territory—the Attorney-General of the Commonwealth,a written request, accompanied by a copy of the warrant; or
  - (b) a written request made by the prisoner to the Minister and referred to the Attorney-General,

being a request for the transfer of a 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 his 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 his transfer to a participating State or to a Territory need not be referred by the Minister to the Attorney-General if it is made within one year of a similar request made by the prisoner.

### **13—Necessary consents**

- (1) An order of transfer cannot be issued under this Part unless—
  - (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 the transfer of a prisoner to a Territory; or
    - (ii) a request for the transfer of a prisoner for the purpose of being dealt with in respect of an arrest warrant issued in accordance with the law of the Commonwealth,  
  
the Attorney-General of the Commonwealth has, in writing, either consented to or requested the transfer.
- (2) A certificate signed by a prescribed officer certifying that any consent or request required under subsection (1) for the transfer of a prisoner to a participating State or to a Territory specified in the certificate has been given or made is, in the absence of evidence to the contrary, proof that the consent or request has been given or made.

#### **14—Prisoner to be brought before court of summary jurisdiction**

- (1) A court of summary jurisdiction, upon proof to its satisfaction that the conditions precedent specified in section 13(1) have been complied with, shall by order in writing direct the manager of the prison where the prisoner to whom the certificate relates is then imprisoned to bring the prisoner before a court of summary jurisdiction 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.

#### **15—Order of transfer**

The court of summary jurisdiction before which the prisoner is brought pursuant to an order made under section 14(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 13(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.

## **16—Review of decision of court of summary jurisdiction**

- (1) The Attorney-General, the prisoner or any person who requested or consented to the transfer of the prisoner may, if dissatisfied with the decision of the court under section 15, apply to the Supreme Court for a review of the decision and the Supreme Court may, on such an application, review the decision.
- (2) The prisoner shall be entitled to be present or 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 manager of the prisoner where the prisoner is then imprisoned to bring the prisoner to the place of the review specified in the order on a date and at a time so specified.
- (3) The Attorney-General and any other person who 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 court of summary jurisdiction and on any evidence in addition to the evidence so given.
- (5) Upon the review of a decision, the Supreme court may confirm the decision or quash the decision and substitute a new decision in its stead.
- (6) For the purpose of giving effect to any such substituted decision the Supreme Court may issue an order for the transfer of the prisoner to the appropriate participating State or Territory.

## **16A—Effect of orders under this Part on joint prisoners**

An order of transfer 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 the person's capacity as a person on 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 Commonwealth Act in respect of the person or the transfer of the person is otherwise authorised under that Act.

## **17—Return of prisoners to custody**

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

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

### **18—Request for transfer of imprisoned person to this State**

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

### **19—Request by imprisoned person for transfer to this State**

Where—

- (a) a person is imprisoned in a participating State or a Territory; and
- (b) he is the subject of an arrest warrant issued in accordance with the laws of South Australia; and
- (c) the Attorney-General of the participating State or the Territory has given a notice, in writing, to the Attorney-General that he has consented to a request made by the person to be transferred to South Australia to enable him 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 or the Territory notice, in writing, of his refusal or consent.

## **Part 4—Transfer back to original State or Territory**

### **20—Return of prisoner to participating State if no sentence or shorter sentence imposed in this State**

Where—

- (a) a person is transferred to this State from a participating State or a Territory pursuant to an order issued under the provision of the interstate law of that participating State that corresponds to section 15 or 16(6), or under Part III of the Commonwealth Act, or both; and
- (b) so far as the Minister is aware, every complaint or information alleging any offence by the person against the law of this State 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 this State; or
  - (ii) the person did become liable to serve in this State 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 on 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 must, subject to section 23, issue an order for the transfer of the person to the participating State or to the Territory, as the case may require.

## **21—Effect of orders under this Part on joint prisoners**

An order of transfer 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 the person's capacity as a person on 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 Commonwealth Act in respect of the person or the transfer of the person is otherwise authorised under that Act.

## **23—Ancillary provisions**

- (1) Section 20 does not apply in relation to 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 this State, 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 this State; or
  - (b) an indeterminate sentence (not being a translated sentence) is imposed upon the person by a court of South Australia.
- (1a) In making a decision under subsection (1)(a), the Minister may have regard to any 1 or more of the following:
  - (a) the welfare of the person concerned;
  - (b) the administration of justice in this or any other State;
  - (c) the security and good order of any prison in this or any other State;
  - (d) the safe custody of the person;
  - (e) the protection of the community in this or any other State;
  - (f) any other matter that the Minister considers relevant.
- (2) For the purpose of section 20, a complaint or information alleging an offence by a person is finally dealt with if—
  - (a) the person is tried for the offence and—

- (i) the time or extended time, if any, fixed by or under any Act, within which an appeal against, or an application for the review of, the decision given on the trial may be lodged, or within which a retrial may be ordered, has expired; and
    - (ii) any appeal or application for review in respect of the decision given on the trial has been determined or withdrawn and proceedings in respect of any retrial and any decision given on the retrial have been concluded; or
  - (b) the complaint or information is withdrawn or a nolle prosequi or similar instrument is filed in respect of the offence.
- (3) For the purpose of determining which of the periods referred to in section 20(b) is the shorter or longer—
- (a) any entitlement to remission 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 20(b) includes a translated sentence that was originally imposed by a court of South Australia; and
  - (d) the expression "translated sentence or translated sentences" in section 20(b) does not include a translated sentence that was originally imposed by a court of South Australia; and
  - (e) where a State sentence of imprisonment that a person becomes liable to serve in South Australia (not being a translated sentence) is cumulative with a translated sentence or translated sentences originally imposed by a court other than a court of South Australia, 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 South Australia.

## **Part 5—Effect of order of transfer**

### **24—Transfers to be effected in custody of escort**

- (1) An order of transfer—
- (a) shall direct the manager of the prison where the prisoner who is the subject of the order is then imprisoned to deliver the prisoner into the custody of an escort and shall be sufficient authority to the manager so to deliver the prisoner; and
  - (b) authorises the escort to take and keep custody of the prisoner for the purpose of conveying him from South Australia to such prison in a participating State or a Territory as is specified in the order and there delivering him into the custody of the person for the time being in charge of that prison.

- (2) A reference in subsection (1) to an escort is a reference to a prison officer, a member of the police force or a person appointed by the Minister by an instrument in writing to be an escort for the purposes of this Act, or any two or more of them.
- (3) Where—
- (a) under an interstate law or the Commonwealth Act, or both, an order is issued for the transfer to this State of a person imprisoned in a participating State or a Territory; and
  - (b) pursuant to the order an escort brings the person into South Australia,
- the escort, while in South Australia, is authorised to hold, take and keep custody of the person for the purpose of conveying him to such prison in South Australia as is specified in the order and there delivering him into the custody of the manager.

## **25—Transfer of sentence with prisoner**

- (1) Where pursuant to an order of transfer a prisoner is conveyed to a participating State or a Territory specified in the order, then from the time the prisoner arrives in the participating State or the Territory, every State sentence of imprisonment imposed upon the prisoner, including a translated sentence, ceases to have effect in South Australia 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 South Australia; or
  - (b) in relation to any period of imprisonment served by the prisoner in South Australia; 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 South Australia.
- (2) Subsection (1) does not apply to a sentence of imprisonment that the person has completed serving.

## **26—Information to be sent to the participating State or Territory**

- (1) Where pursuant to an order of transfer a prisoner is conveyed to a participating State or a Territory, the Minister shall cause to be sent to the corresponding Minister of the participating State or the Territory or to some person for the time being designated by him—
- (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 he left South Australia, 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 South Australia as appear to be likely to be of assistance to any court, authority or officer in the participating State or the Territory and shall include details of convictions, sentences of imprisonment, non-parole periods, periods of imprisonment served, entitlements to remission 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.

## 27—Translated sentences

- (1) Where under an interstate law an order is issued for the transfer to South Australia of a person imprisoned in a participating State and the person is brought into South Australia pursuant to the order, then from the time the person arrives in South Australia—
- (a) any State sentence of imprisonment (as defined in the interstate law of the participating State) imposed on 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 will be deemed to have been imposed on 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 South Australia and, except as otherwise provided in this Act, shall be given effect to in South Australia, and the laws of South Australia 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 relation to a sentence of imprisonment imposed on a person if the person has completed serving that sentence.

## 28—Ancillary 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 South Australia as a non-parole period.
- (2) Where a translated sentence or a minimum term deemed under subsection (1) to have been fixed by a corresponding court of South Australia—
- (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 South Australia; 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 or minimum term 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 South Australia.

- (3) Nothing in this Act operates to permit in South Australia 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 must be detained until the Supreme Court discharges the sentence, but may be released earlier on licence subject to and in accordance with the *Sentencing Act 2017*, as if the sentence were a sentence of indeterminate duration imposed under that Act.
- (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 South Australia; or
    - (ii) an offender convicted within South Australia before a judge or magistrate of South Australia; 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 South Australia.
- (5a) Subsection (5) does not apply in relation to a conviction or transferred sentence referred to in section 24(2)(a) or (b) of the Commonwealth Act, but nothing in this subsection may 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.
- (6) A person who is subject to a translated sentence—
- (a) shall be deemed to have served in South Australia such period of the translated sentence as, up to the time of his transfer to South Australia, he had served in respect of that sentence in a participating State (including any period deemed by the provision of an interstate law that corresponds to this paragraph to have been served in a participating State and any period spent in custody while being transferred to a prison in South Australia); and
  - (b) shall, subject to subsection (6a), be credited, in respect of the part of the translated sentence served in a participating State, with such entitlements to remission as may be specified in the order of transfer or fixed on the application of the prisoner by the appropriate South Australian court; and
  - (c) shall, in accordance with the law of this State, be entitled to earn further entitlements to remission in respect of that sentence as from the day of his arrival in South Australia.
- (6a) 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 this State; and
  - (b) that 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,
- cannot be taken into account for the purposes of subsection (6)(b).

(7) A non-parole period in respect of a person subject to a translated sentence may be fixed, extended or reduced by the appropriate South Australian court on the application of the person subject to the sentence or the Crown.

(8) In this section—

*the appropriate South Australian court*, in relation to a person subject to a translated sentence, means a court that is, in relation to the court by which the sentence was imposed, a corresponding court of South Australia.

## **29—Translated sentences of 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 manager of the prison in which he is imprisoned—

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

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

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

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

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

## **Part 6—Miscellaneous**

### **30—Notification to prisoners of certain decisions**

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

### 31—Lawful custody during transit through this State

- (1) The following provisions apply in relation to a person who passes through this State in the course of being conveyed by an escort from one participating State or Territory to another pursuant to an order made under an interstate law or the Commonwealth Act, or both:
  - (a) while in this State the escort is authorised to hold, take and keep custody of the person for the purpose of conveying him or her to such prison in the participating State or Territory as is specified in the order and there delivering him or her into custody;
  - (b) the manager of any prison in this State is authorised—
    - (i) on the request of the escort; and
    - (ii) on delivery to the manager of a copy of the order of transfer certified by the escort to be such a copy,  
  
to receive and detain the person in custody as if he or she were a State prisoner for such period as the escort requests and is reasonably necessary for the purpose of executing the order.
- (2) Where a manager has the custody of a person under subsection (1)(b), the manager is authorised, upon the request of an escort and production by the escort of the order of transfer relating to the person, to deliver the person into the custody of the escort.

### 32—Arrest of persons who escape from custody

- (1) A person in the custody of an escort pursuant to section 31 who escapes from that custody may be apprehended without warrant by the escort, any member of the police force or any other person.
- (2) Where a person in custody pursuant to section 31—
  - (a) has escaped and been apprehended; or
  - (b) has attempted to escape,  
  
that person may be taken before a justice who may, notwithstanding the terms of any order of transfer issued under an interstate law, by warrant under his hand—
    - (c) order the person to be returned to the participating State in which the order of transfer under which that person was being conveyed at the time of the escape or attempt to escape was issued; and
    - (d) for that purpose, order the person to be delivered to an escort.
- (2a) Subsections (1) and (2) do not apply to a person to whom (by virtue of section 26(2) of the Commonwealth Act) section 47 of the *Crimes Act 1914* of the Commonwealth applies.
- (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 he is delivered into the custody of an escort in accordance with that warrant or until the expiration of a period of seven days from the issuing of the warrant, whichever first occurs.

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- (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 seven 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 his 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 prison officer or a member of the police force of the participating State; or
  - (c) a person appointed by the corresponding Minister of the participating State by an instrument in writing to be an escort for the purpose of conveying that person to the participating State,
- or any two or more of them.

### **33—Escape from custody**

- (1) Any person who, being a person in custody under an order of transfer, escapes or attempts to escape from that custody while he is not within South Australia or the participating State or the Territory to which he was being conveyed under that order is guilty of an offence and is liable to imprisonment for a term not exceeding seven years, to be served after the expiration of any term of imprisonment or detention to which he was subject at the time of his escape or attempt to escape.
- (2) A person who, being a person in custody under an order of transfer, escapes from that custody is not, for any time that he is unlawfully at large, serving his sentence of imprisonment.
- (3) Subsections (1) and (2) do not apply to a person to whom (by virtue of section 26(2) of the Commonwealth Act) section 47 of the *Crimes Act 1914* of the Commonwealth applies.

### **34—Revocation of order of transfer on escape from custody**

Any court of summary jurisdiction 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 his being conveyed in accordance with that order, committed—

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

whether—

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

### **35—Regulations**

The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.

## Legislative history

### Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1982	85	<i>Prisoners (Interstate Transfer) Act 1982</i>	7.10.1982	1.7.1984 ( <i>Gazette 28.6.1984 p1893</i> )
1984	54	<i>Prisoners (Interstate Transfer) Act Amendment Act 1984</i>	24.5.1984	1.7.1984 ( <i>Gazette 28.6.1984 p1893</i> )
1989	49	<i>Prisoners (Interstate Transfer) Act Amendment Act 1989</i>	31.8.1989	1.11.1989 ( <i>Gazette 19.10.1989 p1204</i> )
1991	33	<i>Statutes Amendment (Attorney-General's Portfolio) Act 1991</i>	24.4.1991	s 14—6.6.1991 ( <i>Gazette 6.6.1991 p1776</i> )
1996	67	<i>Statutes Amendment (Attorney-General's Portfolio) Act 1996</i>	15.8.1996	s 25—17.10.1996 ( <i>Gazette 17.10.1996 p1361</i> )
2006	44	<i>Statutes Amendment (Justice Portfolio) Act 2006</i>	14.12.2006	Pt 22 (ss 36—40)—18.1.2007 ( <i>Gazette 18.1.2007 p234</i> )
2009	84	<i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i>	10.12.2009	Pt 119 (ss 274 & 275)—1.2.2010 ( <i>Gazette 28.1.2010 p320</i> )
<b>2017</b>	<b>53</b>	<b><i>Statutes Amendment (Sentencing) Act 2017</i></b>	<b>28.11.2017</b>	<b>Pt 16 (s 26)—30.4.2018 (<i>Gazette 6.2.2018 p612</i>)</b>

### Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1		
<i>ss 2 and 3</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	
<i>s 4</i>	<i>amended by 54/1984 s 3</i>	<i>1.7.1984</i>
	<i>deleted by 84/2009 s 274</i>	<i>1.2.2010</i>
s 5		

s 5(1)		
Attorney-General	substituted by 49/1989 s 3(a)	1.11.1989
<i>Australian Capital Territory</i>	<i>inserted by 49/1989 s 3(a)</i>	<i>1.11.1989</i>
	<i>deleted by 67/1996 s 25(a)</i>	<i>17.10.1996</i>
Commonwealth Act	inserted by 49/1989 s 3(a)	1.11.1989
Commonwealth sentence of imprisonment	inserted by 49/1989 s 3(a)	1.11.1989
<i>conditional release</i>	<i>deleted by 54/1984 s 4(a)</i>	<i>1.7.1984</i>
corresponding Minister	substituted by 49/1989 s 3(b)	1.11.1989
	substituted by 67/1996 s 25(b)	17.10.1996
court of summary jurisdiction	substituted by 49/1989 s 3(c)	1.11.1989
<i>Governor</i>	<i>deleted by 49/1989 s 3(d)</i>	<i>1.11.1989</i>
indeterminate sentence	substituted by 49/1989 s 3(e)	1.11.1989
joint prisoner	inserted by 49/1989 s 3(f)	1.11.1989
	substituted by 67/1996 s 25(c)	17.10.1996
order of transfer	amended by 49/1989 s 3(g)	1.11.1989
	amended by 67/1996 s 25(d)	17.10.1996
participating State	substituted by 49/1989 s 3(h)	1.11.1989
	substituted by 67/1996 s 25(e)	17.10.1996
prison	amended by 54/1984 s 4(b)	1.7.1984
	substituted by 49/1989 s 3(h)	1.11.1989
prisoner	substituted by 49/1989 s 3(i)	1.11.1989
prison officer	substituted by 84/2009 s 275	1.2.2010
relevant security	inserted by 49/1989 s 3(i)	1.11.1989
<i>section 27 sentence</i>	<i>deleted by 49/1989 s 3(j)</i>	<i>1.11.1989</i>
sentence of imprisonment	substituted by 49/1989 s 3(j)	1.11.1989
	substituted by 67/1996 s 25(f)	17.10.1996
State	inserted by 49/1989 s 3(j)	1.11.1989
	amended by 67/1996 s 25(g)	17.10.1996
State prisoner	inserted by 49/1989 s 3(j)	1.11.1989
State sentence of imprisonment	inserted by 49/1989 s 3(j)	1.11.1989
<i>superintendent</i>	<i>deleted by 49/1989 s 3(j)</i>	<i>1.11.1989</i>
<i>Supreme Court</i>	<i>deleted by 49/1989 s 3(j)</i>	<i>1.11.1989</i>
Territory	inserted by 49/1989 s 3(j)	1.11.1989
	substituted by 67/1996 s 25(h)	17.10.1996
translated sentence	inserted by 49/1989 s 3(j)	1.11.1989
s 5(4)	amended by 49/1989 s 3(k)	1.11.1989
	amended by 33/1991 s 14	6.6.1991

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s 5(5)	inserted by 49/1989 s 3(l)	1.11.1989
	substituted by 67/1996 s 25(i)	17.10.1996
s 5(5a)—(5c)	inserted by 67/1996 s 25(i)	17.10.1996
s 5(6)—(8)	inserted by 49/1989 s 3(l)	1.11.1989
s 6		
s 6(1)	amended by 49/1989 s 4(a)	1.11.1989
s 6(2)	amended by 49/1989 s 4(b)	1.11.1989
s 6(3)	<i>deleted by 49/1989 s 4(c)</i>	<i>1.11.1989</i>
Pt 2		
heading	substituted by 44/2006 s 36	18.1.2007
s 7	substituted by 49/1989 s 5	1.11.1989
s 7(1)	amended by 44/2006 s 37	18.1.2007
s 7(3)	amended by 44/2006 s 37	18.1.2007
s 7(5)	amended by 44/2006 s 37	18.1.2007
s 8	substituted by 49/1989 s 5	1.11.1989
s 9	amended by 49/1989 s 6	1.11.1989
s 10	amended by 49/1989 s 7	1.11.1989
s 10A	inserted by 44/2006 s 38	18.1.2007
s 11		
s 11(1)	amended by 44/2006 s 39	18.1.2007
Pt 3		
s 12		
s 12(1)	amended by 49/1989 s 8(a)—(e)	1.11.1989
s 12(2) and (3)	amended by 49/1989 s 8(f)	1.11.1989
s 13		
s 13(1)	substituted by 49/1989 s 9(a)	1.11.1989
s 13(2)	amended by 49/1989 s 9(b)	1.11.1989
s 14		
s 14(1)	amended by 49/1989 s 10	1.11.1989
s 15	amended by 49/1989 s 11	1.11.1989
s 16		
s 16(1)	substituted by 49/1989 s 12(a)	1.11.1989
s 16(2)	amended by 49/1989 s 12(b)	1.11.1989
s 16(3)	amended by 49/1989 s 12(c)	1.11.1989
s 16(6)	amended by 49/1989 s 12(d)	1.11.1989
s 16A	inserted by 49/1989 s 13	1.11.1989
s 17	amended by 49/1989 s 14	1.11.1989
s 18	amended by 49/1989 s 15	1.11.1989
s 19	amended by 49/1989 s 16	1.11.1989
Pt 4	heading amended by 49/1989 s 17	1.11.1989
ss 20 and 21	substituted by 49/1989 s 18	1.11.1989
s 22	<i>deleted by 49/1989 s 18</i>	<i>1.11.1989</i>
s 23		

s 23(1)	amended by 49/1989 s 19(a)—(c)	1.11.1989
	amended by 44/2006 s 40(1)	18.1.2007
s 23(1a)	inserted by 44/2006 s 40(2)	18.1.2007
s 23(2)	amended by 49/1989 s 19(d)	1.11.1989
s 23(3)	amended by 54/1984 s 5	1.7.1984
	amended by 49/1989 s 19(c), (e)—(h)	1.11.1989
Pt 5		
s 24		
s 24(1)	amended by 49/1989 s 20(a), (b)	1.11.1989
s 24(3)	amended by 49/1989 s 20(c), (d)	1.11.1989
s 25		
s 25(1)	s 25 amended and redesignated as s 25(1) by 49/1989 s 21	1.11.1989
s 25(2)	inserted by 49/1989 s 21(e)	1.11.1989
s 26		
s 26(1)	amended by 54/1984 s 6	1.7.1984
	amended by 49/1989 s 22	1.11.1989
s 27		
s 27(1)	s 27 amended and redesignated as s 27(1) by 49/1989 s 23	1.11.1989
s 27(2)	inserted by 49/1989 s 23(c)	1.11.1989
s 28		
s 28(1)	amended by 54/1984 s 7(a)	1.7.1984
	amended by 49/1989 s 24(a)	1.11.1989
s 28(2)	amended by 49/1989 s 24(a)	1.11.1989
s 28(4)	amended by 49/1989 s 24(a), (b)	1.11.1989
	<b>amended by 53/2017 s 26</b>	<b>30.4.2018</b>
s 28(5)	amended by 49/1989 s 24(a)	1.11.1989
s 28(5a)	inserted by 49/1989 s 24(c)	1.11.1989
s 28(6)	amended by 54/1984 s 7(b), (c)	1.7.1984
	amended by 49/1989 s 24(a), (d), (e)	1.11.1989
s 28(6a)	inserted by 49/1989 s 24(f)	1.11.1989
s 28(7) and (8)	inserted by 54/1984 s 7(d)	1.7.1984
	amended by 49/1989 s 24(a)	1.11.1989
s 29		
s 29(1)	amended by 49/1989 s 25	1.11.1989
s 29(2)	amended by 49/1989 s 25(a)	1.11.1989
Pt 6		
s 31		
s 31(1)	substituted by 49/1989 s 26(a)	1.11.1989
s 31(2)	amended by 49/1989 s 26(b)	1.11.1989
s 32		
s 32(2a)	inserted by 49/1989 s 27(a)	1.11.1989

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s 32(4)	amended by 49/1989 s 27(b)	1.11.1989
s 33		
s 33(1)	amended by 49/1989 s 28(a)	1.11.1989
s 33(3)	inserted by 49/1989 s 28(b)	1.11.1989
s 34	amended by 49/1989 s 29	1.11.1989

**Historical versions**

Reprint No 1—15.11.1991

Reprint No 2—17.10.1996

18.1.2007

1.2.2010