



Australian Capital Territory

# **Removal of Prisoners Act 1968**

**A1968-82**

**Republication No 5 (RI)**

**Effective: 27 February 2002 – 1 June 2006**

Republication date: 28 February 2002

Last amendment made by Act 2002 No 1

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Removal of Prisoners Act 1968* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 28 February 2002. It also includes any amendment, repeal or expiry affecting the republished law to 27 February 2002.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

# Removal of Prisoners Act 1968

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R5 (RI)  
28/02/02

Removal of Prisoners Act 1968  
Effective: 27/02/02-01/06/06

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Australian Capital Territory

## Removal of Prisoners Act 1968

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An Act relating to the removal from the ACT to prisons in New South Wales of prisoners and certain other persons, and for other purposes

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**1 Short title**

This Act may be cited as the *Removal of Prisoners Act 1968*.

**3 Interpretation for Act**

(1) In this Act:

*Note* A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

***authorised person*** means—

- (a) the sheriff or a deputy sheriff of the Territory; or
- (b) a magistrate; or
- (c) the registrar or a deputy registrar of the Supreme Court or the Magistrates Court; or
- (d) the chairperson, a deputy chairperson or the secretary of the sentence administration board established under the *Rehabilitation of Offenders (Interim) Act 2001*; or
- (e) a sheriff, registrar, deputy registrar, district registrar, or similar officer, of a federal court.

***constable*** means a member or special member of the Australian Federal Police, and includes—

- (a) an escort under the *Custodial Escorts Act 1998*; and
- (b) in section 5B—a member of the police force of a State or another Territory.

***court*** means—

- (a) a federal court; or
- (b) the Supreme Court; or
- (c) the Magistrates Court; or

- (d) any other court that has, or has had, jurisdiction in respect of the ACT or a part of the ACT.

**magistrate** means a magistrate or special magistrate, and includes a magistrate of a State who is performing the duties of a magistrate in the ACT under an arrangement in force under the *Public Sector Management Act 1994*, section 120, and in section 5B, includes:

- (a) a chief, police, stipendiary, resident or special magistrate of a State or another Territory; or
- (b) any other magistrate of a State or another Territory in respect of whose office an annual salary is payable.

**order** includes direction.

**prison** includes any place that is, or was at the relevant time, a prison for the purposes of the law of the State.

**State** means New South Wales.

- (3) For this Act, a reference to the making of an order by a court includes a reference to the issue by a court or a magistrate of a warrant remanding or committing a person to prison or to some gaol, lockup or other place of security, and a reference in this Act to an order shall be construed accordingly.

#### **4 Imprisonment may be served in State**

- (1) Where, under a law as in force in the ACT, a person is to undergo imprisonment or other detention in custody, he or she is liable to undergo that imprisonment or other detention in the ACT, or, in accordance with this Act, in the State.
- (2) Where a person has, in accordance with a warrant issued under this Act by reason of an order or sentence by virtue of which he or she is to undergo imprisonment, been placed in custody in a prison in the State, he or she shall be deemed, so long as he or she is in custody in the State under this Act in consequence of that warrant, to be undergoing that imprisonment.

**5 Removal to, or detention in, State**

- (1) Where, under a law as in force in the ACT, a person is liable to undergo imprisonment or other detention in custody, an authorised person may, by warrant directed to all constables, require them to convey that person in custody from the ACT to such prison in the State as is specified in the warrant and there to deliver him or her into the custody of the officer in charge of the prison or some other officer doing duty at the prison, and the warrant may be executed by any constable.
- (2) Where a person is delivered into custody at a prison in the State under a warrant under subsection (1), the person may, subject to this Act, be detained in that prison or any other prison in the State for so long as his or her detention or custody is necessary for the execution of the order or sentence by reason of which the warrant was issued.
- (3) Subject to the succeeding provisions of this Act, the person may, while so in custody, be dealt with in the like manner, and is subject to the like laws, including laws relating to the reduction or remission of sentences or nonparole periods, as if the order or sentence by virtue of which the person became liable to undergo imprisonment or other detention in custody had been a like order or sentence made or pronounced under a law in force in the State.
- (4) Without limiting the generality of subsection (3), where—
  - (a) the order or sentence includes the imposition of a nonparole period; and
  - (b) a like order or sentence made or pronounced under a law in force in the State could include the imposition of a nonprobation period and not a nonparole period;the nonparole period is subject to the same reduction or remission as if it were a nonprobation period.



- (5) A reference in subsection (1) to a person liable to undergo imprisonment or other detention in custody shall be taken to include a reference to a person remanded into the custody of the administrator within the meaning of the *Remand Centres Act 1976*.
- (6) A reference in this section to a nonparole period or a nonprobation period is a reference to a period before the end of which a person shall not be released on parole or probation, as the case may be.

#### **5A Escaping from custody**

A person who escapes from lawful custody while subject to an order or sentence of imprisonment or other detention in custody shall, upon being returned to lawful custody, undergo the punishment that the person would have undergone if the person had not escaped.

#### **5B Arrest of prisoner unlawfully at large**

- (1) A constable may, without warrant, apprehend a person whom the constable, with reasonable cause, suspects is a prisoner unlawfully at large.
- (2) The constable shall forthwith take the person before a magistrate.
- (3) If the magistrate is satisfied that the person is a prisoner unlawfully at large, the magistrate may issue a warrant—
  - (a) authorising any constable to convey the person to a prison specified in the warrant; and
  - (b) directing that the person, having been conveyed to that prison in accordance with the warrant, be detained in prison to undergo the term of imprisonment or other detention that the person is required by law to undergo.
- (4) In this section:

***prisoner unlawfully at large*** means a person who is at large (otherwise than by reason of having escaped from lawful custody) at a time when the person is required by law to be in custody for an offence against a law in force in the ACT.

## **6 Return of persons to ACT**

- (1) Where a person is being detained in a prison in the State under this Act, an authorised person may issue a warrant requiring the person in charge of the prison to deliver the firstmentioned person into the custody of a constable, and requiring the constable into whose custody the person is so delivered to convey him or her in custody to the ACT.
- (2) A person returned to the ACT under a warrant referred to in subsection (1), shall be held in custody by the constable, some other constable or in a remand centre until released, or returned to the State, in accordance with law.
- (3) So long as a person returned to the ACT under a warrant under subsection (1) continues to be liable to be kept in custody by virtue of the order or sentence by reason of which he or she was conveyed to the State, the constable executing the warrant, any other constable or the person in charge of the remand centre, as the case requires, may keep the person in custody in the ACT, and that constable or person in charge may return the person in custody to the prison in the State, where he or she shall again be received into custody and dealt with as if he or she had not been returned to the ACT.

## **6A Relationship between this Act and Transfer of Prisoners Act 1983 (Cwlth)**

- (1) A person shall not be removed from the ACT under a warrant under section 5 (1), and a person shall not be returned to the State under section 6 (3), if the Attorney-General has directed in writing that this Act is not to apply in relation to that removal or return.

- (2) The Attorney-General shall not give a direction under subsection (1) in relation to the removal of a person from the ACT or to the return of a person to the State unless the Attorney-General is of the opinion that action to remove the person from the ACT (whether or not to the State) should be taken under the *Transfer of Prisoners Act 1983* (Cwlth).
- (3) The Attorney-General may, either generally or as otherwise provided in the instrument of delegation, by writing signed by the Attorney-General, delegate to an officer of the Attorney-General's Department the power of the Attorney-General to give a direction under subsection (1).
- (4) A power delegated under subsection (3), when exercised by the delegate, shall, for this Act, be deemed to have been exercised by the Attorney-General.
- (5) A delegation under subsection (3) does not prevent the exercise of a power by the Attorney-General.

## **7      Application of Removal of Prisoners (Territories) Act (Cwlth)**

Subject to this Act, the *Removal of Prisoners (Territories) Act 1923* (Cwlth) sections 8 (3) and 8A, apply, so far as they are capable of so applying, to and in relation to a person who is being detained in a prison in the State under this Act as if his or her removal from the ACT to the State had been effected under that Act and, in the case of a person who is not a prisoner or criminal lunatic within the meaning of that Act, as if he or she were a prisoner within the meaning of that Act.

## **8      Application of Act to persons in custody etc at commencement of Act**

This Act applies to and in relation to a person who was, before the commencement of this Act, placed in custody in a prison in the State for the purpose of giving effect to an order or sentence

of a magistrate or court and has not been unconditionally released before the commencement of this Act, as if—

- (a) this Act had been in force at the time he or she was so placed in custody; and
- (b) he or she had been delivered into the custody of the officer in charge of that prison under a warrant issued under this Act in relation to that order or sentence; and
- (c) his or her detention in the State before the commencement of this Act had been detention under this Act.

## **10 Evidence**

A warrant purporting to be a warrant under this Act and to be under the hand of an authorised person shall be received in evidence in any court without further proof, and is evidence of the facts stated in the warrant.

## **11 Saving of certain laws**

This Act does not affect—

- (a) the exercise of the royal prerogative of mercy; or
- (c) the operation of any other law relating to the release of offenders; or
- (d) the operation of the *Mental Health Act 1962* and the *Insane Persons and Inebriates (Committal and Detention) Act 1936*.

## **12 Approved forms**

- (1) The Minister may, in writing, approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.

- (3) An approved form is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

## **13 Regulation-making power**

The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

## Endnotes

1 About the endnotes

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## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	pt = part
exp = expires/expired	r = rule/subrule
Gaz = gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

### 3 Legislation history

The *Removal of Prisoners Act 1968* was originally the *Removal of Prisoners Act 1968 Act* of the Commonwealth.

The *Australian Capital Territory (Self-Government) Act 1988* (Cwlth) provided for the conversion of certain Commonwealth laws to Territory enactments after self-government. The *Removal of Prisoners Act 1968* became a Territory enactment on 11 May 1989.

After 11 May 1989 and before 10 November 1999, Acts commenced on their notification day unless otherwise stated (see *Australian Capital Territory (Self-Government) Act 1988* (Cwlth) s 25).

#### Commonwealth legislation

##### **Removal of Prisoners Act 1968 No 82**

assented 12 November 1968  
commenced 12 November 1968

##### **Statute Law Revision Act 1973 No 216 sch 1**

assented 19 December 1973  
commenced 31 December 1973 (s 2)

##### **Australian Federal Police (Consequential Amendments) Act 1979 No 155 sch**

assented 28 November 1979  
commenced 19 October 1979 (see s 2 (1) and Cwlth Gaz No S206)

##### **Australian Federal Police (Consequential Amendments) Act 1980 No 70 sch**

assented 28 May 1980  
commenced 28 May 1980 (s 2)

##### **Statute Law (Miscellaneous Amendments) Act (No 2) 1982 No 80 pt 64**

assented 22 September 1982  
pt 64 commenced 16 December 1985 (see 2 (6))

## Endnotes

3      Legislation history

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**Transfer of Prisoners (Consequential Amendments) Act 1983  
No 96**

assented 22 November 1983  
s 1, s 2 and s 6 commenced 22 November 1983  
ss 3-5 and s 8 commenced 1 August 1984 (s 2 (2))  
remainder commenced 12 June 1985 (see Cwltz Gaz 1985  
No S199)

**Statute Law (Miscellaneous Provisions) Act (No 1) 1985 No 65  
sch 1**

assented 5 June 1985  
amds commenced 1 February 1986 (see s 2 (41) and Cwltz Gaz  
1986 No S27)

**Statute Law (Miscellaneous Provisions) Act (No 2) 1985 No 193  
sch 1**

assented 16 December 1985  
amds commenced 16 December 1985 (s 2 (1))

**Statute Law (Miscellaneous Provisions) Act (No 2) 1986 No 168  
sch 1**

assented 18 December 1985  
amds commenced 18 December 1985 (s 2 (1))

**Crimes Legislation Amendment Act 1987 No 120 s 74**

assented 16 December 1987  
s 74 commenced 1 March 1989 (see s 2 (1) and Gaz No S54)

**Statute Law (Miscellaneous Provisions) Act 1987 No 141 sch 1**

assented 18 December 1987  
amds commenced 18 December 1987 (s 2 (1))

**Legislation after self-government**

**Statute Law Revision (Miscellaneous Provisions) Act 1992 No 23  
sch 1**

notified 4 June 1992 (Gaz 1992 No S71)  
commenced 4 June 1992



**Public Sector Management (Consequential and Transitional Provisions) Act 1994 No 38 sch 1 pt 70**

notified 30 June 1994 (Gaz 1994 No S121)  
s 1, s 2 commenced 30 June 1994 (s 2 (1))  
sch 1 pt 70 commenced 1 July 1994 (see s 2 (2) and Gaz 1994 No S142)

**Mental Health (Consequential Provisions) Act 1994 No 45 s 33**

notified 7 September 1994 (Gaz 1994 No S177)  
s 1, s 2 commenced 7 September 1994 (s 2 (1))  
s 33 commenced 6 February 1995 (see s 2 (2) and Gaz 1995 No S33)

**Remand Centres (Amendment) Act 1995 No 40 s 6**

notified 7 November 1995 (Gaz 1995 No S274)  
s 1, s 2 commenced 7 November 1995  
s 6 commenced 7 May 1996 (s 2 (3))

**Remand Centres (Amendment) Act (No 2) 1996 No 81 s 8**

notified 20 December 1996 (Gaz 1996 No S328)  
ss 1-3 commenced 20 December 1996 (s 2 (1))  
s 8 commenced 1 January 1997 (see s 2 (2) and Gaz 1996 No S353)

**Custodial Escorts (Consequential Provisions) Act 1998 No 67 pt 12**

notified 23 December 1998 (Gaz 1998 No S212)  
s 1, s 2 commenced 23 December 1998 (s 2 (1))  
pt 12 commenced 23 December 1998 (see s 2 (2) and Gaz 1998 No 51)

**Legislation (Consequential Amendments) Act 2001 No 44 pt 330**

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 330 commenced 12 September 2001 (s 2 and Gaz 2001 No S65)

**Rehabilitation of Offenders (Interim) Act 2001 No 82 sch 1 pt 1.7 (as am by Act 2002 No 1)**

notified 10 September 2001 (Gaz 2001 No S66)  
s 1, s 2 commenced 10 September 2001 (IA s 10B)  
sch 1 pt 1.7 commenced 24 September 2001 (s 2 and CN 2001 No 4)

## Endnotes

### 4 Amendment history

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#### **Rehabilitation of Offenders (Interim) Amendment Act 2002 No 1**

notified LR 26 February 2002

s 1, s 2 commenced 26 February 2002 (LA s 75)

s 5 commenced 27 February 2002 (s 2 (2))

remainder taken to have commenced 23 September 2001 (s 2 (1))

*Note* This Act only amends the Rehabilitation of Offenders (Interim) Act 2001 No 82.

## 4 Amendment history

In this table Acts for 1987 and earlier years are Commonwealth Acts and Acts for 1992 and later years are ACT Acts.

### **Title**

title am 1992 No 23 sch 1

### **Short title**

s 1 am 1992 No 23 sch 1

### **Commencement**

s 2 om 2001 No 44 amdt 1.3627

### **Interpretation for Act**

s 3 am 1985 No 65 sch 1  
def **authorised person** am 1985 No 65 sch 1; 1985 No 193 sch 1; 1998 No 67 sch 1  
om R4 LA  
ins 2001 No 82 amdt 1.17 (as am 2002 No 1 s 4)  
am 2001 No 82 amdt 1.17 (as am 2002 No 1 s 5)  
def **constable** am 1979 No 155 sch; 1980 No 70 sch; 1985 No 65 sch 1; 1987 No 141 sch 1; 1992 No 23 sch 1  
sub 1998 No 67 sch 1  
def **court** am 1985 No 65 sch 1; 1992 No 23 sch 1  
def **magistrate** am 1985 No 65 sch 1; 1987 No 141 sch 1; 1992 No 23 sch 1; 1994 No 38 sch 1 pt 70  
def **State** am 1985 No 65 sch 1  
def **Territory** am 1973 No 216 sch 1; 1985 No 65 sch 1  
om 1992 No 23 sch 1

### **Removal to, or detention in, State**

s 5 am 1983 No 96; 1985 No 65 sch 1; 1986 No 168 sch 1; 1996 No 81 s 8; R3 LA s 116 (1) (e)

### **Escaping from custody**

s 5A ins 1986 No 168 sch 1

**Arrest of prisoner unlawfully at large**

s 5B ins 1987 No 141 sch 1  
am 1992 No 23 sch 1

**Return of persons to ACT**

s 6 am 1985 No 65 sch 1; 1995 No 40 s 6; R3 LA s 116 (1)  
(e)

**Relationship between this Act and Transfer of Prisoners Act 1983 (Cwlth)**

s 6A ins 1983 No 96  
sub 1985 No 193 sch 1

**Application of Removal of Prisoners (Territories) Act (Cwlth)**

s 7 am 1985 No 65 sch 1; 1987 No 120 s 74; 1992 No 23 sch 1; 1994 No 45 s 33

**Validation**

s 9 om 1985 No 65 sch 1

**Evidence**

s 10 am 1985 No 65 sch 1; 1992 No 23 sch 1

**Saving of certain laws**

s 11 am 1982 No 80; 1985 No 6 sch 1; 1992 No 23 sch 1

**Warrants issued by sentence administration board**

s 11A ins 2001 No 82 amdt 1.18 (as am 2002 No 1 s 6)  
exp 24 September 2001 (s 11A (2))

**Approved forms**

s 12 am 1992 No 23 sch 1  
sub 2001 No 44 amdt 1.3628

**Regulation-making power**

s 13 ins 2001 No 44 amdt 1.3628

## Endnotes

5 Earlier republishings

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### 5 Earlier republishings

Some earlier republishings were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republishings have also been published in printed format. These republishings are marked with an asterisk (\*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	Act 1992 No 23	4 June 1992
2	Act 1994 No 45	28 February 1995
3	Act 1996 No 81	31 January 1998
4	Act 2001 No 82 ‡	28 February 2002
4A	Act 2001 No 82 ‡	29 January 2004

‡ includes retrospective amendments by Act 2002 No 1

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