



Australian Capital Territory

# **Prisoners' Interstate Leave Act 1997 No 99**

## **Republication No 2**

Republication date: 26 February 2002

Last amendment made by Act 2001 No 44

Amendments incorporated to 12 September 2001

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Prisoners' Interstate Leave Act 1997* as in force on 26 February 2002. It includes any amendment, repeal or expiry affecting the republished law to 12 September 2001 and any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes).

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 includes 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.

Amendments incorporated to  
12 September 2001



Australian Capital Territory

# Prisoners' Interstate Leave Act 1997

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12 September 2001



Australian Capital Territory

## **Prisoners' Interstate Leave Act 1997**

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An Act to provide for interstate leave of absence for prisoners and the recognition of interstate laws permitting prisoners' leave of absence in the ACT

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## Part 1 Preliminary

### 1 Short title

This Act may be cited as the *Prisoners' Interstate Leave Act 1997*.

### 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).

***administrator*** means the administrator provided for by the *Remand Centres Act 1976*.

***corresponding law*** means a law of a participating jurisdiction, being a law that corresponds to this Act.

***participating jurisdiction*** means a State or Territory in which there is in force a corresponding law.

(2) Any function that, by a corresponding law, is to be vested on, or discharged by, the person responsible for the conduct of prisons in the ACT may be vested on, or discharged by, the administrator.

## Part 2                      Recognition of other jurisdictions

### 4        Declaration of participating jurisdictions

- (1) Subject to subsection (2), the Minister may, in writing, declare that a law of a State or another Territory is a corresponding law for this Act.
- (2) The Minister shall not make a declaration under subsection (1) unless he or she is satisfied that the law to which the declaration relates contains provisions that substantially correspond to the provisions of this Act.
- (3) A declaration under subsection (1) is a notifiable instrument.

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

## Part 3                      Leave of absence for prisoners

### 5            Interpretation for pt 3

- (1) In this part:

*assigned escort*, in relation to a permit or to a prisoner who is absent from a remand centre under a permit, means the escort or escorts assigned to exercise functions in relation to the permit under section 9 (1).

*custodial officer* means a person who is a custodial officer in relation to a remand centre under the *Remand Centres Act 1976*, section 6AA.

*escort* means an escort under the *Custodial Escorts Act 1998*.

*permit* means a permission under section 6.

*prisoner* means a person detained in a remand centre.

*remand centre*—see the *Remand Centres Act 1976*.

- (2) A reference in this part to a condition or restriction that a permit is subject to is, if a condition or restriction has been varied, a reference to the condition or restriction as varied.

### 6            Grants of interstate leave of absence permits

- (1) The administrator may, in writing, grant to a prisoner permission to absent himself or herself from a remand centre and to travel in or through a participating jurisdiction specified in the permission for a purpose that is specified in the permission, being a purpose of a kind set out in subsection (2).
- (2) A permit may be granted for any of the following purposes:
- (a) the medical treatment of the prisoner;



- (b) to visit a person with whom the prisoner has had a longstanding personal relationship if that person is seriously ill or in acute personal need;
  - (c) to attend the funeral of a person with whom the prisoner has had a longstanding personal relationship;
  - (d) if the prisoner is of Aboriginal or Torres Strait Islands origin—to attend—
    - (i) the funeral service or burial of a member of his or her immediate or extended family; or
    - (ii) an occasion of special significance to members of his or her immediate or extended family;
  - (e) any other compassionate purpose;
  - (f) to assist a police officer of the ACT or another State or Territory with the investigation of an offence;
  - (g) for any other purpose described in the regulations.
- (3) For this section, a person is of Aboriginal or Torres Strait Islands origin if he or she—
- (a) is a descendant of an Aboriginal person or a Torres Strait Islander; and
  - (b) identifies as an Aboriginal person or a Torres Strait Islander; and
  - (c) is accepted as an Aboriginal person or a Torres Strait Islander by an Aboriginal or a Torres Strait Island community.

## **7 Conditions and restrictions**

- (1) A permit may be issued subject to any condition or restriction that the administrator deems appropriate and is specified in the permit.
- (2) A permit has effect subject to the conditions and restrictions—
  - (a) prescribed by the regulations; or

- (b) of a kind that is prescribed by the regulations and are specified in the permit; or
- (c) specified under subsection (1) or section 10.

## **8 Length of period of leave of absence**

- (1) A permit has effect for the period specified in the permit, being a period that does not exceed 7 days.
- (2) The administrator may, before the expiry of the currency of a permit, extend it or further extend it for not more than 7 days.

## **9 Assigned escorts**

- (1) Subject to subsection (2), the administrator must assign 1 or more escorts to exercise functions in relation to each permit granted under this part.
- (2) The administrator must not assign under subsection (5) an escort who is a police officer without the consent of the chief police officer.
- (3) If more than 1 escort is assigned in relation to a permit, the administrator must designate 1 of them as the senior escort.
- (4) In this section:

*chief police officer* means the police officer who is responsible to the commissioner of police for the day-to-day administration and control of police services in the Territory.

## **10 Variation of permits**

- (1) Subject to this section, the administrator may, in writing, at any time—
  - (a) vary or revoke a permit; or
  - (b) vary, omit or add a condition or restriction to a permit.

- (2) Subject to this section, while a prisoner is absent from a remand centre under a permit, the assigned escort or, if more than 1 escort has been assigned, the escort designated as the senior escort, may—
- (a) vary or revoke the permit; or
  - (b) extend, or further extend, the currency of a permit; or
  - (c) vary, omit or add a condition or restriction to a permit.
- (3) This section does not apply in relation to a condition or restriction that is, or is of a kind, that is prescribed by the regulations.

## **11 Effect of permits**

Subject to this part, a prisoner to whom a permit has been granted is authorised to take leave of absence from a remand centre to undertake travel and return to the remand centre in accordance with the permit and the conditions and restrictions to which it is subject.

## **12 Custody of prisoners**

- (1) While on leave of absence from a remand centre under a permit, a prisoner is in the custody of the assigned escort or escorts.
- (2) An assigned escort or the assigned escorts may—
- (a) transfer the custody of the prisoner to whom the permit relates to a person in charge of a prison, correctional centre, watch-house or other institution, whether within or outside the ACT; and
  - (b) resume that custody.
- (3) On the expiry of the currency of a permit, the superintendent of the remand centre from which the prisoner has been on leave of absence resumes, under this subsection, custody of the prisoner.

## **13 Powers of assigned escorts**

- (1) An assigned escort may—

- (a) give to the prisoner directions that are necessary and reasonable; and
  - (b) use force that is necessary and reasonable;

to ensure that the permit, and any conditions and restrictions to which it is subject, are observed by the prisoner.
- (2) A prisoner to whom a permit has been issued shall not disobey a direction given by an assigned escort under subsection (1).

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.
- (3) An escort may, if he or she suspects on reasonable grounds that it would be prudent to do so to ascertain whether a prisoner is carrying a seizable item—
  - (a) conduct a frisk search or an ordinary search of the prisoner; and
  - (b) seize any seizable item found as a result of the search.
- (4) In addition to the powers conferred by subsection (1) or (3), for the purpose of ensuring a prisoner's compliance with this Act, the relevant permit and any condition or restriction to which the permit is subject, an assigned escort who is a police officer or custodial officer may—
  - (a) exercise other powers; and
  - (b) use force, weapons or means of restraint;

that he or she may lawfully exercise or use in his or her capacity as a police officer or custodial officer, as the case requires, by or under any other law in force in the ACT.
- (5) In subsection (3):

*frisk search*, *ordinary search* and *seizable item* have the same respective meanings as in the *Crimes Act 1900*, part 10.

## Part 4                      Interstate prisoners on leave of absence in the ACT

### 14      Definitions for pt 4

In this part:

*interstate permit* means a permit, issued under a corresponding law, permitting a prisoner to travel in or through the ACT and includes any condition or restriction to which the permit is subject.

*prisoner* means a person who is in custody under the law of a participating jurisdiction.

### 15      Effect of interstate permits

- (1) If, under an interstate permit, a prisoner is brought to the ACT by an escort, the escort, while the prisoner is in the ACT, is authorised to hold, take and keep custody of the prisoner in accordance with the corresponding law under which the permit is issued for the purpose of escorting him or her—
  - (a) for the purpose or purposes set out in the interstate permit; and
  - (b) in accordance with the terms of the interstate permit;and then returning him or her to the participating jurisdiction where the permit was issued.
- (2) If, under an interstate permit issued in a participating jurisdiction—
  - (a) a prisoner is permitted to travel in the custody of an escort to another jurisdiction, not being the ACT; and
  - (b) in the course of the travel to or from the other jurisdiction the prisoner is brought into the ACT;the escort, while the prisoner is in the ACT, is authorised to hold, take and keep custody of the prisoner for the purpose of escorting

him or her, in accordance with the terms of the interstate permit, through the ACT.

- (3) An escort appointed in relation to an interstate permit may use the force that is necessary to ensure that the permit and any conditions to which it is subject are observed.
- (4) If, under an interstate permit, a prisoner is permitted to be in the ACT without an escort, the prisoner shall be deemed, while in the ACT, to be in lawful custody in accordance with the laws of the jurisdiction in which the interstate permit was issued.

## **16 Escape from custody**

- (1) If a prisoner who is in escorted custody in the ACT escapes or attempts to escape from custody—
  - (a) the interstate permit under which the prisoner is in the ACT ceases, under this paragraph, to have effect in the ACT; and
  - (b) the prisoner, if he or she has escaped, may be apprehended by any person without a warrant.
- (2) A person other than a police officer who apprehends a prisoner under subsection (1) (b) must deliver the prisoner into the custody of a police officer as soon as practicable.
- (3) A police officer who apprehends a prisoner under subsection (1) (b) or into whose custody a prisoner is delivered under subsection (2) shall cause the prisoner to be brought before a magistrate as soon as practicable.
- (4) A magistrate before whom a prisoner is brought under subsection (3) may order that the prisoner—
  - (a) be returned in custody to the participating jurisdiction where the interstate permit had issued; and
  - (b) that, for that purpose, he or she be placed within 7 days in the custody of an appropriate interstate escort; and

- (c) that, until appropriate arrangements are made for an appropriate interstate escort to take custody of the prisoner or 7 days have expired, whichever sooner happens, the prisoner be detained in custody in the ACT.

(5) In this section:

*appropriate interstate escort* means—

- (a) a person who had custody of the prisoner when the prisoner entered the ACT; or
- (b) a police officer or custodial officer holding office in the jurisdiction to which the prisoner is to be returned; or
- (c) a person appointed in writing by a person who, in the jurisdiction to which the prisoner is to be returned, has authority to issue interstate leave permits.

*prisoner* includes—

- (a) a prisoner who has escaped from custody; and
- (b) a prisoner who, having escaped, has been apprehended.

## **17 Powers of escorts who are police or custodial officers**

An escort who, for the purpose of—

- (a) keeping custody of a prisoner; or
- (b) apprehending a prisoner who has escaped;

uses force, weapons or means of restraint in a manner and in circumstances that would be lawful in the participating jurisdiction where the interstate permit was issued if the use occurred in that jurisdiction, does not commit an offence against a Territory law by reason of that use.

## **Part 5                      Miscellaneous**

### **18      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

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 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 endnotes.

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.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

### 2 Abbreviation key

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

## Endnotes

3 Legislation history

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### 3 Legislation history

#### **Prisoners' Interstate Leave Act 1997 No 99**

notified 24 December 1997 (Gaz 1997 No S420)  
s 1, s 2 commenced 24 December 1997 (s 2 (1))  
remainder commenced 24 June 1998 (s 2 (3))

as amended by

#### **Custodial Escorts (Consequential Provisions) Act 1998 No 67 pt 9**

notified 23 December 1998 (Gaz 1998 No S212)  
s 1, s 2 commenced 23 December 1998 (s 2 (1))  
pt 9 commenced 23 December 1998 (s 2 (2) and Gaz 1998 No 51)

#### **Legislation (Consequential Amendments) Act 2001 No 44 pt 297**

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 297 commenced 12 September 2001 (s 2 and Gaz 2001 No S65)

### 4 Amendment history

#### **Commencement**

s 2 om 2001 No 44 amdt 1.3277

#### **Declaration of participating jurisdictions**

s 4 am 2001 No 44 amdt 1.3278-1.3279

#### **Interpretation for pt 3**

s 5 def **escort** am 1998 No 67 s 32

#### **Assigned escorts**

s 9 am 1998 No 67 s 33; ss renum R1 LA

#### **Powers of assigned escorts**

s 13 am 1998 No 67 s 34

#### **Escape from custody**

s 16 am 1998 No 67 s 35

#### **Regulation-making power**

s 18 sub 2001 No 44 amdt 1.3280

## 5 Earlier replications

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

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

Replication No	Amendments to	Replication date
1	Act 1998 No 67	17 April 2000

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