

**1998**

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY**

**PRISONERS (INTERNATIONAL TRANSFER) BILL 1998**

**EXPLANATORY MEMORANDUM**

**Circulated by the Authority of**

**Mr Gary Humphries MLA**

**Attorney-General**

## **PRISONERS (INTERNATIONAL TRANSFER) BILL 1998**

### **OUTLINE**

The Prisoners (International Transfer) Bill 1998 (the Bill) complements the *International Transfer of Prisoners Act 1997 (Cth)* (Commonwealth Act) which provides for a scheme of prisoner transfers between Australia and other countries.

The Commonwealth Act enables Australians imprisoned in foreign countries to be able to return to Australia to serve their sentences. It also enables foreigners imprisoned in Australia to return to their home countries to complete serving their sentences. The Act covers the transfer to Australia of prisoners convicted by tribunals dealing with war crimes in the former Yugoslavia or Rwanda.

The Bill will enable the scheme to operate in the ACT. A person with community ties with the ACT who is imprisoned in a foreign country will be able to seek a transfer to the ACT. Until the Territory establishes its own prison, such a prisoner will be transferred to a gaol in New South Wales. A foreigner undergoing a Territory sentence will become eligible to seek a transfer to his or her home country. In either case, the scheme will require the consent of the relevant Minister of the Territory to be given before such a transfer may occur.

### **FINANCIAL CONSIDERATIONS**

The ACT may incur expense in respect of a prisoner with Territory ties being transferred back to Australia. Alternatively the ACT would expect to reduce expenditure where a foreign national convicted of an ACT offence is transferred back to his or her home country to serve a term of imprisonment. It is not possible to estimate the nature of any such expenditure or savings.

## CLAUSE NOTES

### **Clauses 1 and 2: Short title and Commencement**

These clauses are formal provisions dealing with the short title of the Bill, once enacted, and the commencement of its provisions

### **Clause 3: Object**

Clause 3 provides that the object of the proposed Act is to give effect to the scheme for the international transfer of prisoners set out in the *International Transfer of Prisoners Act 1997* (Cth) by enabling such prisoners to be transferred to and from the Territory.

### **Clause 4: Interpretation**

This clause provides for the meaning of the terms "Commonwealth Act", "corresponding law", and "function".

Subclause 4(2) provides that an expression defined in the Commonwealth Act will have the same meaning when used in the Bill, once enacted, unless the contrary intention appears.

### **Clause 5: Powers and functions of Minister**

Clause 5 empowers the Minister to exercise and perform any function conferred on him or her by the Commonwealth Act.

These include the power to give consent to the transfer of prisoners to the Territory and to the international transfer of ACT prisoners, and the power to request the Commonwealth Attorney-General to obtain information from a transfer country to enable the Minister to assess an application for a transfer of an ACT prisoner.

**Clause 6: Powers and functions of prison officers, police officers and others**

Subclause 6(1) empowers a prison officer, police officer or any other officer of the Territory to exercise and perform any function conferred on him or her by or under the Commonwealth Act or a corresponding law, or in accordance with any arrangements made under proposed section 7 (clause 7).

Subclause 6(2) provides that it is lawful for such an officer to hold and deal with a prisoner in accordance with the terms of a warrant issued under the Commonwealth Act, and to take action as authorised by the Commonwealth Act in respect of a prisoner transferred or to be transferred.

**Clause 7: Arrangements for administration of Act**

This clause provides that the Chief Minister may, in accordance with section 50 of the Commonwealth Act, make arrangements for the administration of the Commonwealth Act in the Territory including arrangements relating to the exercise of functions under that Act by officers of the Territory.

An arrangement may be varied or terminated in accordance with the Commonwealth Act.

**Clause 8: Prisoners transferred to Australia**

Subclause 8(1) provides that a prisoner who is transferred to Australia under the Commonwealth Act is to be treated as if he or she is a federal prisoner serving a federal sentence of imprisonment.

Subclause 8(2) provides that the enforcement laws will apply to such prisoner in relation to the following matters:

- \* conditions of imprisonment and treatment of prisoners;
- \* release on parole;
- \* classification and separation of prisoners;
- \* removal of prisoners between prisons, hospitals and other places;
- \* treatment of mentally impaired prisoners;

- \* eligibility for participation in prison programs, including release under a pre-release permit system;
- \* temporary absence from prison (for example, to work or seek work, to attend a funeral or visit a relative suffering a serious illness, or to attend a place of education or training); and
- \* transfer of prisoners between States and Territories.

Subclause 8(3) provides for the operation in the Territory of a direction given by the Commonwealth Attorney-General under section 44 of the Commonwealth Act. Under section 44 of the Commonwealth Act the Commonwealth Attorney-General has power to give directions concerning the enforcement in Australia of a foreign sentence of imprisonment.

Subclause 8(4) provides for the operation in the Territory of a direction given by the Commonwealth Attorney-General under section 49 of the Commonwealth Act. Section 49 of the Commonwealth Act empowers the Commonwealth Attorney-General to give a direction that a prisoner should not be subjected to detention or supervision under a foreign sentence only because of that sentence,

- \* where the prisoner is pardoned, or granted amnesty or commutation of sentence under an Australian law; or
- \* where the transfer country (ie. the country from where the prisoner was transferred to Australia), notifies the Commonwealth Attorney-General that the prisoner's conviction has been quashed or otherwise nullified or that the prisoner has been pardoned or granted amnesty or commutation of sentence; or
- \* where, in the case of a Tribunal prisoner (ie. a prisoner who was convicted by a war crimes tribunal and was transferred to Australia to serve his or her sentence of imprisonment), the relevant tribunal notifies the Commonwealth Attorney-General
  - \* that the prisoner may be pardoned or granted amnesty or commutation of sentence of imprisonment under an Australian law and the prisoner is granted such amnesty or commutation of sentence of imprisonment, or
  - \* that the prisoner's conviction has been quashed or otherwise nullified or that the prisoner has been pardoned or granted amnesty or commutation of sentence of imprisonment by the tribunal

Subclause (5) defines the term "enforcement law".

**Clause 9: Prisoners transferred from Australia**

Clause 9 provides that the Territory laws relating to the enforcement of sentence of imprisonment imposed by a Territory court will cease to apply to a prisoner who is transferred from Australia under the Commonwealth Act .

However, the power of the Executive to grant a pardon or remit a sentence of imprisonment or other penalty will not be limited by this clause.

**Clause 10: Regulations**

This clause empowers the Executive to make regulations for the purposes of the proposed Act.