



Australian Capital Territory

# **Removal of Prisoners Act 1968**

**A1968-82**

**Republication No 3 (RI)**

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Authorised by the ACT Parliamentary Counsel

## **About this republication**

### **The republished law**

This is a republication of the *Removal of Prisoners Act 1968* effective 31 January 1998 to 22 December 1998.

### **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 (Republication) Act 1996*, part 3, division 2 authorised 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 (Republication) Act 1996*, s 14 and s 16). 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.



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## REMOVAL OF PRISONERS ACT 1968

This consolidation has been prepared by the ACT Parliamentary Counsel's Office

Reprinted as at 31 January 1998

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## REMOVAL OF PRISONERS ACT 1968

An Act relating to the Removal from the Territory to Prisons in the State of New South Wales of Prisoners and certain other Persons, and for other purposes

**1. Short title**

This Act may be cited as the *Removal of Prisoners Act 1968*.<sup>1</sup>

**2. Commencement**

This Act shall come into operation on the day on which it receives the Royal Assent.<sup>1</sup>

**3. Interpretation**

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

“authorised person” means the Sheriff, or a Deputy Sheriff, of the Territory, a magistrate, the Clerk or a Deputy Clerk of the Magistrates Court established under the law of the Territory or the Sheriff, a Registrar, a Deputy Registrar, a District Registrar or other like officer of a federal court;

“constable” means a member or special member of the Australian Federal Police and, in section 5B, includes a member of the police force of a State or another Territory;

“court” means—

- (a) a federal court;
- (b) the Supreme Court of the Australian Capital Territory;

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- (c) the Magistrates Court; or
- (d) any other court that has, or has had, jurisdiction in respect of the Territory or a part of the Territory;

“magistrate” means a Magistrate or Special Magistrate, and includes a magistrate of a State who is performing the duties of a magistrate in the Territory in pursuance of an arrangement in force under section 120 of the *Public Sector Management Act 1994* 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 the State of New South Wales.

(3) For the purposes of 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, lock-up or other place of security, and a reference in this Act to an order shall be construed accordingly.

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

(1) Where, under a law as in force in the Territory, 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 Territory, 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, the State**

(1) Where, under a law as in force in the Territory, 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

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custody from the Territory 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 in pursuance of 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 non-parole 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 non-parole 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 non-probation period and not a non-parole period;

the non-parole period is subject to the same reduction or remission as if it were a non-probation period.

(4A) 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*.

(5) A reference in this section to a non-parole period or a non-probation 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 Territory.

**6. Return of persons to the Territory**

- (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 first-mentioned 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 Territory.
  - (1A) A person returned to the Territory pursuant to 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.
  - (2) So long as a person returned to the Territory in pursuance of 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 Territory, 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 Territory.

**6A. Relationship between this Act and *Transfer of Prisoners Act 1983* of the Commonwealth**

(1) A person shall not be removed from the Territory pursuant to a warrant under subsection 5 (1), and a person shall not be returned to the State pursuant to subsection 6 (2), 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 Territory 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 Territory (whether or not to the State) should be taken under the *Transfer of Prisoners Act 1983* of the Commonwealth.

(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 the purposes of 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 Commonwealth Removal of Prisoners (Territories) Act**

(2) Subject to this Act, subsection 8 (3) and section 8A of the *Removal of Prisoners (Territories) Act 1923* of the Commonwealth 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 Territory to the State had been effected in pursuance of 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—

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- (a) this Act had been in force at the time he or she was so placed in custody;
- (b) he or she had been delivered into the custody of the officer in charge of that prison in pursuance of 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 in pursuance of 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;
- (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. Regulations**

The Executive may make regulations, not inconsistent with this Act, prescribing all matters necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, prescribing forms for the purposes of this Act.

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### NOTES

1. The *Removal of Prisoners Act 1968* as shown in this reprint comprises Act No. 82, 1968 of the Commonwealth (as amended).

The *Australian Capital Territory (Self-Government) Act 1988* (No. 106, 1988) of the Commonwealth subsection 34 (2) and Schedule 2 allowed for the conversion of certain Commonwealth laws (including that first mentioned Act) to Territory enactments.

For the amendment history of the *Removal of Prisoners (Australian Capital Territory) Act 1968* of the Commonwealth see Commonwealth Acts Tables and Commonwealth Acts of the Parliament Volumes printed annually. A Table showing the amendment history as provided by the Commonwealth as at 4 June 1992 is located at the back of this reprint for the reader's convenience.

Citation of Laws—The *Self-Government (Citation of Laws) Act 1989* (No. 21, 1989) altered the citation of most Ordinances so that after Self-Government day they are to be cited as Acts. That Act also affects references in ACT laws to Commonwealth Acts.

2. The *Legislation (Republication) Act 1996* (No. 51, 1996) authorises the Parliamentary Counsel in preparing a law for republication, to make certain editorial and other formal amendments in accordance with current legislative drafting practice. Those amendments make no change in the law. Amendments made pursuant to that Act do not appear in the Table of Amendments but details may be obtained on request from the Parliamentary Counsel's Office.

### Table of Acts

Act	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Statute Law Revision (Miscellaneous Provisions) Act 1992</i>	23, 1992	4 June 1992	4 June 1992	—
<i>Public Sector Management (Consequential and Transitional Provisions) Act 1994</i>	38, 1994	30 June 1994	Ss. 1 and 2: 30 June 1994 Remainder: 1 July 1994 (see <i>Gazette</i> 1994, No. S142, p. 2)	Ss. 3, 5-12, 15 and 19
<i>Mental Health (Consequential Provisions) Act 1994</i>	45, 1994	7 Sept 1994	Ss. 1 and 2: 7 Sept 1994 Remainder: 6 Feb 1995 (see s. 2 (2) and <i>Gazette</i> 1995, No. S33, p.2)	S. 38
<b>(Reprinted as at 28 February 1995)</b>				
<i>Remand Centres (Amendment) Act 1995</i>	40, 1995	7 Nov 1995	Ss. 1 and 2: 7 Nov 1995 Remainder: 7 May 1996	—

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**NOTES**—continued

**Table of Acts**—continued

Act	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Remand Centres (Amendment) Act (No. 2) 1996</i>	81, 1996	20 Dec 1996	Ss. 1-3: 20 Dec 1996 Remainder: 1 Jan 1997 (see <i>Gazette</i> 1996, No. S353, p.2)	—

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision	How affected
Title .....	am. No. 23, 1992
S. 1 .....	am. No. 23, 1992
S. 3 .....	am. No. 23, 1992; No. 38, 1994
S. 5 .....	am. No. 81, 1996
S. 5B .....	am. No. 23, 1992
S. 6 .....	am. No. 40, 1995
S. 7 .....	am. No. 23, 1992; No. 45, 1994
Ss. 10-12 .....	am. No. 23, 1992

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