



AUSTRALIAN CAPITAL TERRITORY

Prisoners' Interstate Leave Act 1997

No. 99 of 1997

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

[Notified in ACT Gazette S420: 24 December 1997]

The Legislative Assembly for the Australian Capital Territory enacts as follows:

PART I—PRELIMINARY

Short title

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

Commencement

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.

(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

Interpretation

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

“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 Territory may be vested on, or discharged by, the Administrator.

PART II—RECOGNITION OF OTHER JURISDICTIONS

Declaration of participating jurisdictions

4. (1) Subject to subsection (2), the Minister may, by notice published in the *Gazette*, declare that a law of a State or another Territory is a corresponding law for the purposes of 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.

PART III—LEAVE OF ABSENCE FOR PRISONERS

Interpretation

5. (1) In this Part—

“assigned escort”, in relation to a permit or to a prisoner who is absent from a remand centre by virtue of a permit, means the escort or escorts assigned to perform functions in relation to the permit under subsection 9 (5);

“custodial officer” means a person who is a custodial officer in relation to a remand centre under section 6AA of the *Remand Centres Act 1976*;

“escort” means a person referred to in subsection 9 (4);

“permit” means a permission under section 6;

“prisoner” means a person detained in a remand centre;

“remand centre” has the same meaning as in the *Remand Centres Act 1976*.

(2) A reference in this Part to a condition or restriction that a permit is subject to shall be read, where a condition or restriction has been varied, to the condition or restriction as varied.

Grants of interstate leave of absence permits

6. (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 long-standing 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 long-standing 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 the purposes of 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;
- (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.

Conditions and restrictions

7. (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 such conditions and restrictions as—

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

Length of period of leave of absence

8. (1) A permit has effect for such period as is 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, as the case requires, for not more than 7 days.

Escorts

9. (1) There shall be 1 or more escorts for the purposes of this Part.

(2) Subject to subsection (3), the Administrator may, in writing, appoint a person to be an escort.

(3) The Administrator shall not appoint a police officer under subsection (2) without the consent of the chief police officer.

(4) The following persons are escorts:

- (a) a custodial officer;
- (b) a person appointed under subsection (2).

(5) Subject to subsection (6), the Administrator shall assign 1 or more escorts to perform functions in relation to each permit granted under this Part.

(6) The Administrator shall not assign under subsection (5) an escort who is a police officer without the consent of the chief police officer.

(7) Where more than 1 escort is assigned in relation to a permit, the Administrator shall designate 1 of them as the senior escort.

(8) 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.

Variation of permits

10. (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 by virtue of 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;
- (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.

Effect of permits

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

Custody of prisoners

12. (1) While on leave of absence from a remand centre by virtue of a permit a prisoner is in the custody of the assigned escort or escorts, as the case requires.

(2) An assigned escort or the assigned escorts, as the case requires, 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 Territory; 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, by virtue of this subsection, custody of the prisoner.

Powers of assigned escorts

13. (1) An assigned escort may—

- (a) give to the prisoner such directions as are reasonable; and

(b) use such force as is 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).

Penalty: 50 penalty units or 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 in order 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 such other powers; and

(b) use such force, weapons or means of restraint;

as 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 Territory.

(5) In subsection (3), "frisk search", "ordinary search" and "seizable item" have the same respective meanings as in Part X of the *Crimes Act 1900*.

PART IV—INTERSTATE PRISONERS ON LEAVE OF ABSENCE IN THE TERRITORY

Interpretation

14. In this Part—

"interstate permit" means a permit, issued under a corresponding law, permitting a prisoner to travel in or through the Territory 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.

Effect of interstate permits

15. (1) Where, under an interstate permit, a prisoner is brought to the Territory by an escort, the escort, while the prisoner is in the Territory, 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) Where, 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 Territory; and
- (b) in the course of the travel to or from the other jurisdiction the prisoner is brought into the Territory;

the escort, while the prisoner is in the Territory, 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 Territory.

(3) An escort appointed in relation to an interstate permit may use such force as is necessary to ensure that the permit and any conditions to which it is subject are observed.

(4) Where, under an interstate permit, a prisoner is permitted to be in the Territory without an escort, the prisoner shall be deemed, while in the Territory, to be in lawful custody in accordance with the laws of the jurisdiction in which the interstate permit was issued.

Escape of prisoners from custody

16. (1) Where a prisoner who is in escorted custody in the Territory escapes or attempts to escape from custody—

- (a) the interstate permit by virtue of which the prisoner is in the Territory ceases, by virtue of this paragraph, to have effect in the Territory; 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 paragraph (1) (b) shall deliver the prisoner into the custody of a police officer as soon as practicable.

(3) A police officer who apprehends a prisoner under paragraph (1) (b) or into whose custody a prisoner is delivered under subsection (2) shall take the prisoner 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;
- (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 Territory.

(5) In this section—

“appropriate interstate escort” means—

- (a) a person who had custody of the prisoner when the prisoner entered the Territory;
- (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.

Powers of escorts who are police or custodial officers

17. 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 such manner and in such circumstances as would be lawful in the participating jurisdiction in which the interstate permit was issued if the use occurred in that jurisdiction, does not commit an offence against a law of the Territory by reason of that use.

PART V—MISCELLANEOUS

Regulations

18. The Executive may make regulations for the purposes of this Act.

NOTE

Penalty units

See section 33AA of the *Interpretation Act 1967*.

[Presentation speech made in Assembly on 13 November 1997]