

1983

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Presented and read a first time, 19 October 1983

(Minister representing the Attorney-General)

A BILL

FOR

An Act to amend certain Acts in consequence of the enactment of the *Transfer of Prisoners Act 1983*, and for related purposes

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

5 **1.** This Act may be cited as the *Transfer of Prisoners (Consequential Amendments) Act 1983*.

Commencement

2. (1) Sections 1, 2 and 6 shall come into operation on the day on which this Act receives the Royal Assent.

10 **(2)** Sections 3, 4, 5 and 8 shall come into operation on the day on which the *Transfer of Prisoners Act 1983* comes into operation.

(3) Sections 7 and 9 shall come into operation on a day to be fixed by Proclamation.

**PART II—AMENDMENTS OF THE REMOVAL OF PRISONERS
(AUSTRALIAN CAPITAL TERRITORY) ACT 1968**

Principal Act

3. The *Removal of Prisoners (Australian Capital Territory) Act 1968*¹ is in this Part referred to as the Principal Act. 5

Removal to, or detention in, the State

4. Section 5 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “Where a magistrate or a court has, whether before or after the commencement of this Act, made an order or pronounced a sentence by virtue of which a person is to be, or may be, imprisoned or otherwise held in custody” and substituting “Where, under a law as in force in the Territory, a person is liable to undergo imprisonment or other detention in custody”; and 10
- (b) by omitting from sub-section (3) “of the magistrate or court by reason of which the warrant was issued” and substituting “by virtue of which the person became liable to undergo imprisonment or other detention in custody”. 15

5. After section 6 of the Principal Act the following section is inserted:

Relationship between this Act and *Transfer of Prisoners Act 1983*

“6A. (1) A person shall not be removed from the Territory in pursuance of a warrant under sub-section 5 (1), and a person shall not be returned to the State in pursuance of sub-section 6 (2), without the consent in writing of the Attorney-General. 20

“(2) The Attorney-General shall grant his consent under sub-section (1) to the removal of a person from the Territory or to the return of a person to the State unless he 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*. 25

“(3) Where—

- (a) the consent of the Attorney-General to the removal or return of a person is in force under this section; and 30
- (b) the Attorney-General becomes 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*,

the Attorney-General shall, by writing signed by him, revoke that consent. 35

“(4) Where the consent of the Attorney-General to the removal of a person from the Territory or to the return of a person to the State is in force under this section, the Attorney-General is not required to make an order under section 14 of the *Transfer of Prisoners Act 1983* in respect of the person.

“(5) The consent under sub-section (1) of the Attorney-General to the removal of a person from the Territory or to the return of a person to the State 40

comes into force on the day on which it is granted and remains in force until the person is so removed or returned.

5 “(6) A transfer order under the *Transfer of Prisoners Act 1983* for the transfer of a person from the State to the Territory shall not be made or executed if the removal of the person from the State to the Territory could be, or is, authorized by a warrant that could be issued, or that is in force, under sub-section 6 (1) of this Act.

10 “(7) The Attorney-General may, either generally or as otherwise provided in the instrument of delegation, by writing signed by him, delegate to a person all or any of his powers under this section other than this power of delegation.

“ (8) A power delegated under sub-section (7), when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Attorney-General.

15 “(9) A delegation under sub-section (7) does not prevent the exercise of a power by the Attorney-General.”.

PART III—AMENDMENTS OF THE REMOVAL OF PRISONERS (TERRITORIES) ACT 1923

Principal Act

20 6. The *Removal of Prisoners (Territories) Act 1923*² is in this Part referred to as the Principal Act.

Removal of prisoners from Territories in certain cases

7. (1) Section 3 of the Principal Act is amended by inserting in sub-section (1) “other than the Northern Territory” after “a Territory”.

25 (2) Notwithstanding the amendment made by sub-section (1), the Principal Act continues in force, on and after the date of commencement of sub-section (1), in relation to a prisoner removed, or ordered to be removed, from the Northern Territory in pursuance of the Principal Act before that date as if the amendment had not been made.

8. After section 8 of the Principal Act the following section is inserted:

30 Relationship between this Act and *Transfer of Prisoners Act 1983*

“8AA. (1) A prisoner shall not be removed from a Territory in pursuance of a warrant under sub-section 4 (1) without the consent in writing of the Attorney-General.

35 “(2) The Attorney-General shall grant his consent under sub-section (1) to the removal of a prisoner from a Territory unless he is of the opinion that action to remove the person from the Territory should be taken under the *Transfer of Prisoners Act 1983*.

“(3) Where—

- (a) the consent of the Attorney-General to the removal of a prisoner from a Territory is in force under this section; and
- (b) the Attorney-General becomes of the opinion that action to remove the prisoner from the Territory should be taken under the *Transfer of Prisoners Act 1983*,

5

the Attorney-General shall, by writing signed by him, revoke that consent.

“(4) Where the consent of the Attorney-General to the removal of a person from a Territory is in force under this section, the Attorney-General is not required to make an order under section 14 of the *Transfer of Prisoners Act 1983* in respect of the person.

10

“(5) The consent under sub-section (1) of the Attorney-General to the removal of a person from a Territory comes into force on the day on which it is granted and remains in force until the person is so removed.

“(6) A transfer order under the *Transfer of Prisoners Act 1983* for the transfer of a person to a Territory shall not be made or executed if the removal of the person to the Territory could be, or is, authorized by a warrant that could be issued, or that is in force, under sub-section 4 (2) of this Act.

15

“(7) The Attorney-General may, either generally or as otherwise provided in the instrument of delegation, by writing signed by him, delegate to a person all or any of his powers under this section other than this power of delegation.

20

“(8) A power delegated under sub-section (7), when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Attorney-General.

“(9) A delegation under sub-section (7) does not prevent the exercise of a power by the Attorney-General.”.

25

PART IV—AMENDMENTS OF OTHER ACTS

Amendments of other Acts

9. (1) The Acts specified in the Schedule are amended as set out in the Schedule.

30

(2) The amendments made by sub-section (1) do not apply in relation to a person committed to prison in the Northern Territory in pursuance of an Act specified in the Schedule before the commencement of this section.

SCHEDULE

Section 9

Act	Amendment
<i>Extradition (Commonwealth Countries) Act 1966</i>	Section 35 Insert "other than the Northern Territory" after "Territory" (first occurring)
<i>Extradition (Foreign States) Act 1966</i>	Section 29 Insert "other than the Northern Territory" after "Territory" (first occurring).

NOTES

1. No. 82, 1968, as amended. For previous amendments, see No. 216, 1973; No. 155, 1979; No. 70, 1980; and No. 80, 1982.
2. No. 14, 1923, as amended. For previous amendments, see No. 11, 1936; No. 80, 1950; No. 2, 1957; No. 69, 1962; No. 9, 1968; No. 216, 1973; No. 91, 1976; No. 36, 1978; No. 155, 1979; No. 80, 1980; and No. 80, 1982.



