

Removal of Prisoners (Australian Capital Territory)

No. 82 of 1968

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

[Assented to 12 November 1968]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

Short title.

1. This Act may be cited as the *Removal of Prisoners (Australian Capital Territory) Act 1968*.

Commencement.

2. This Act shall come into operation on the day on which it receives the Royal Assent.

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

Definitions.

“ authorized person ” means the Sheriff, or a Deputy Sheriff, of the Territory, a magistrate, the Clerk or a Deputy Clerk of the Court of Petty Sessions established under the law of the Territory or the Sheriff or like officer of a Federal Court;

“ constable ” means a member of the Police Force of the Territory or a Commonwealth Police Officer;

“ court ” means—

(a) a Federal Court;

(b) the Supreme Court of the Australian Capital Territory;

(c) the Court of Petty Sessions established under the law of the Territory; 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 Stipendiary Magistrate or Special Magistrate appointed under the law of the Territory, 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 78 of the *Public Service Act 1922–1968*;

“ 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;

“ the State ” means the State of New South Wales;

“ the Territory ” means the Australian Capital Territory, and includes the Territory accepted by the Commonwealth in pursuance of the *Jervis Bay Territory Acceptance Act 1915*.

(2.) Where the Governor-General has commuted a sentence of death pronounced on a person to a term of imprisonment, this Act applies to and in relation to the person as if the sentence of death had been a sentence of imprisonment for that term.

(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.—(1.) Where, under a law as in force in the Territory, a person is to undergo imprisonment or other detention in custody, he is liable to undergo that imprisonment or other detention in the Territory, or, in accordance with this Act, in the State.

Imprisonment
may be served
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 is to undergo imprisonment, been placed in custody in a prison in the State, he shall be deemed, so long as he is in custody in the State under this Act in consequence of that warrant, to be undergoing that imprisonment.

Removal to,
or detention
in, the State.

5.—(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, an authorized person may, by warrant directed to all constables, require them to convey that person in custody from the Territory to such prison in the State as is specified in the warrant and there to deliver him 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 the last preceding sub-section, the person may, subject to this Act, be detained in that prison or any other prison in the State for so long as his 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, as if the order or sentence of the magistrate or court by reason of which the warrant was issued had been a like order or sentence made or pronounced under a law in force in the State.

Return of
persons to
the Territory.

6.—(1.) Where a person is being detained in a prison in the State under this Act, an authorized 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 in custody to the Territory, and a person returned to the Territory in pursuance of such a warrant shall be held in custody in the Territory by that constable or some other constable 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 the last preceding sub-section continues to be liable to be kept in custody by virtue of the order or sentence by reason of which he was conveyed to the State, the constable executing the warrant or any other constable may keep the person in custody in the Territory and may return him in custody to the prison in the State, where he shall again be received into custody and dealt with as if he had not been returned to the Territory.

Application of
Removal of
Prisoners
(Territories)
Act.

7.—(1.) Upon the commencement of this Act, the *Removal of Prisoners (Territories) Act 1923–1968* ceases to authorize the removal of prisoners or criminal lunatics from the Territory.

(2.) Subject to this Act, section 7, sub-section (3.) of section 8, and sections 8A and 10A of the *Removal of Prisoners (Territories) Act 1923–1968* 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 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 were a prisoner within the meaning of that Act.

8. 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—

Application of Act to persons in custody, &c., at commencement of Act.

- (a) this Act had been in force at the time he was so placed in custody;
- (b) he 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 detention in the State before the commencement of this Act had been detention in pursuance of this Act.

9.—(1.) Where, before the commencement of this Act, a person has undergone a period of imprisonment in a prison in the State by way of execution, or purported execution, of a sentence of imprisonment imposed under a law as in force in the Territory, whether or not the person is in such a prison at the commencement of this Act, he shall be deemed to have duly served that period of imprisonment in accordance with that sentence or law.

Validation.

(2.) Where, before the commencement of this Act, a person has been removed in custody from the Territory to the State, and detained in custody in the State, for the purpose of giving effect to an order or sentence of a magistrate or court, that removal and detention, and any act or thing done in relation to that removal or detention, shall be deemed, for all purposes (including the purposes of any action or proceeding, whether instituted before or after the commencement of this Act), to have been as lawful as they would have been if this Act had been in force at the time of the removal and detention and the removal and detention had been in accordance with this Act.

10. A warrant purporting to be a warrant under this Act and to be under the hand of an authorized person shall be received in evidence in any Federal or State court or court of a Territory without further proof, and is evidence of the facts stated in the warrant.

Evidence.

11. This Act does not affect—

- (a) the exercise of the Royal prerogative of mercy;
- (b) the operation of sections 17, 19A and 20 of the *Crimes Act* 1914–1966, including those sections as affected by section 7 of the *Interpretation Ordinance* 1937–1967 of the Territory;

Saving of certain laws.

- (c) the operation of any other law of the Commonwealth, or of any law in force in the Territory, relating to the release of offenders; or
- (d) the operation of any of the following ordinances of the Territory, namely, the *Child Welfare Agreement Ordinance 1941–1962*, the *Mental Health Ordinance 1962–1966* and the *Insane Persons and Inebriates (Committal and Detention) Ordinance 1936–1937*.

Regulations.

12. The Governor-General 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.
