

Version No. 001
International Transfer of Prisoners
(Victoria) Act 1998

Act No. 67/1998

Version as at 8 August 2002

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**International Transfer of Prisoners
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The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. Purpose

The purpose of this Act is to give effect to the scheme for the international transfer of prisoners set out in the International Transfer of Prisoners Act 1997 of the Commonwealth by enabling such prisoners to be transferred to and from this jurisdiction.

2. Commencement

- (1) This Part comes into operation on the day on which this Act receives the Royal Assent.
- (2) The remaining provisions of this Act come into operation on a day or days to be proclaimed.

3. Definitions

- (1) In this Act—

"Commonwealth Act" means the International Transfer of Prisoners Act 1997 of the Commonwealth;

"corresponding law" means a law of another State that provides for the international transfer of prisoners;

"function" includes power, authority or duty;

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Part 1—Preliminary

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"member of the police force" has the same meaning as "member of the force" has in the **Police Regulation Act 1958**;

"prison officer" has the same meaning as in the **Corrections Act 1986**;

"State" includes a Territory;

"this jurisdiction" means Victoria;

"War Crimes Tribunal" means the Former Yugoslavia Tribunal or Rwanda Tribunal within the meaning of the Commonwealth Act.

- (2) If an expression is defined in the Commonwealth Act and is also used in this Act, the expression as used in this Act has, unless the contrary intention appears, the same meaning as in that Act.
- (3) In this Act, a reference to the Commonwealth Act includes a reference to—
 - (a) that Act as amended and in force for the time being; and
 - (b) an Act enacted in substitution for that Act.

PART 2—CONFERRAL OF FUNCTIONS

4. Functions of the Minister

- (1) A Minister of this jurisdiction may exercise and perform any function conferred or expressed to be conferred on the Minister by or under the Commonwealth Act.
- (2) The Minister may delegate to an authorised person any such function.
- (3) In this section—

"authorised person" means—

- (a) the Secretary to the Department of Justice, the Commissioner appointed under section 8A of the **Corrections Act 1986** or any officer or employee of the Department of Justice; or
- (b) the Secretary of the Department of Human Services, the chief psychiatrist (within the meaning of the **Mental Health Act 1986**) or any other person or body having functions under that Act; or
- (c) any prescribed person or class of persons.

5. Functions of prison officers, members of the police force and others

- (1) A prison officer, member of the police force and any other official of this jurisdiction may exercise and perform any function conferred or expressed to be conferred on the official—
 - (a) by or under the Commonwealth Act or a corresponding law; or
 - (b) in accordance with any arrangements referred to in section 6.
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Part 2—Conferral of Functions

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- (2) It is lawful for a prison officer, member of the police force or other official of this jurisdiction—
- (a) to hold and deal with any prisoner in accordance with the terms of a warrant issued under the Commonwealth Act in respect of the prisoner; and
 - (b) to take any action in respect of a prisoner transferred, or to be transferred, to or from Australia in accordance with the Commonwealth Act that the official is authorised to take by or under that Act.

6. Arrangements for administration of Act

- (1) The Governor in Council may, in accordance with section 50 of the Commonwealth Act, make arrangements for the administration of that Act, including arrangements relating to the exercise by officers of this jurisdiction of functions under the Commonwealth Act.
 - (2) An arrangement may be varied or terminated in accordance with the Commonwealth Act.
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Part 3—Enforcement of Sentences of Imprisonment of Transferred Prisoners

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**PART 3—ENFORCEMENT OF SENTENCES OF
IMPRISONMENT OF TRANSFERRED PRISONERS**

7. Prisoners transferred to Australia

- (1) Any relevant enforcement law applies to and in respect of a prisoner who is transferred to Australia under the Commonwealth Act to complete serving a sentence of imprisonment in this jurisdiction that was imposed by a court or a tribunal of a transfer country (or by a War Crimes Tribunal) in the same way as the enforcement law applies to and in respect of a federal prisoner serving a sentence of imprisonment in this jurisdiction that is imposed under a law of the Commonwealth.
- (2) Without limiting sub-section (1), enforcement laws relating to the following matters are applicable to a prisoner or a Tribunal prisoner who is transferred to Australia under the Commonwealth Act—
 - (a) conditions of imprisonment and treatment of prisoners;
 - (b) release on parole of prisoners;
 - (c) classification and separation of prisoners;
 - (d) removal of prisoners from one prison to another;
 - (e) removal of prisoners between prisons and hospitals or other places or between one hospital or other place and another;
 - (f) treatment of mentally impaired prisoners;
 - (g) eligibility for participation in prison programs, including release under a pre-release permit scheme (however called);

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Part 3—Enforcement of Sentences of Imprisonment of Transferred Prisoners

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- (h) temporary absence from prison (for example, to work or seek work, to attend a funeral or visit a relative suffering from a serious illness or to attend a place of education or training);
 - (i) transfer of prisoners between States.
- (3) Any direction given by the Attorney-General of the Commonwealth under section 44 of the Commonwealth Act concerning enforcement of such a sentence of imprisonment is to be given effect to in this jurisdiction.
- (4) Any direction given by the Attorney-General of the Commonwealth under section 49 of the Commonwealth Act concerning a prisoner referred to in sub-section (1) who is pardoned or granted amnesty or commutation of sentence of imprisonment as referred to in that section is to be given effect to in this jurisdiction.
- (5) In this section—
- "enforcement law"** means—
- (a) any law of this jurisdiction; or
 - (b) any law of the Commonwealth or another State; or
 - (c) any practice or procedure lawfully observed—
- concerning the detention of prisoners.

8. Prisoners transferred from Australia

- (1) Except as provided for in sub-section (2), the laws of this jurisdiction relating to the enforcement of a sentence of imprisonment imposed by a court of this jurisdiction on a person cease to apply to a prisoner on whom such a sentence has been imposed who is transferred from Australia under

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Part 3—Enforcement of Sentences of Imprisonment of Transferred Prisoners

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the Commonwealth Act to complete serving such a sentence of imprisonment.

- (2) Nothing in this section limits the power of the Crown or of a court or tribunal of this jurisdiction to pardon, grant amnesty or commute such a sentence of imprisonment.
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PART 4—MISCELLANEOUS

9. Regulations

- (1) The Governor in Council may make regulations, not inconsistent with this Act, for or with respect to any matter that is required or permitted to be prescribed by this Act or is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations—
 - (a) may be of general or limited application; and
 - (b) may differ according to differences in time, place or circumstances; and
 - (c) may confer a discretionary authority or impose a duty on a specified person or class of person; and
 - (d) may impose a penalty not exceeding 10 penalty units for a contravention of the regulations; and
 - (e) may apply adopt or incorporate any matter contained in any document whether—
 - (i) wholly or partially or as amended by the regulations; or
 - (ii) as in force at a particular time or as in force from time to time.

PART 5—CONSEQUENTIAL AMENDMENTS

10. Amendment of section 3 of the Parole Orders (Transfer) Act 1983—definitions

In section 3 of the **Parole Orders (Transfer) Act 1983** insert the following definition—

' **"international prisoner"** means a person who is serving a sentence of imprisonment in Australia in accordance with the International Transfer of Prisoners Act 1997 of the Commonwealth;'

11. Amendment of section 9 of the Parole Orders (Transfer) Act 1983—effect of registration

In section 9 of the **Parole Orders (Transfer) Act 1983**, for sub-section (3) substitute—

- "(3) For the purposes of sub-section (2), the appropriate court of this State in relation to a sentence of imprisonment—
- (a) imposed on a person other than an international prisoner, is the court that, under the regulations, is the court corresponding to the court of the other State or the Territory by which the sentence of imprisonment was imposed; or
 - (b) imposed on an international prisoner, is the court that, under the regulations, is declared to correspond to the court of the country, or the Tribunal, within the meaning of the International Transfer of Prisoners Act 1997 of the Commonwealth, by which the sentence of imprisonment that the prisoner is serving in Australia under that Act was imposed."

12. Amendment of section 4 of the Prisoners (Interstate Transfer) Act 1983—definitions

In section 4 of the **Prisoners (Interstate Transfer) Act 1983**—

- (a) in the definition of "sentence of imprisonment", after paragraph (e) **insert**—
"; or
- (f) a sentence of imprisonment within the meaning of the International Transfer of Prisoners Act 1997 of the Commonwealth;"
- (b) **insert** the following definition—
' **"international prisoner"** means a person serving a sentence of imprisonment in Australia in accordance with the International Transfer of Prisoners Act 1997 of the Commonwealth;'.

13. Amendment of section 7 of the Prisoners (Interstate Transfer) Act 1983—transfers

After section 7(5) of the **Prisoners (Interstate Transfer) Act 1983** **insert**—

"(5A) Where the Minister—

- (a) receives a written request made by an international prisoner serving a sentence of imprisonment in this State for the transfer of the prisoner to a participating State; and
- (b) is of the opinion that the prisoner to whom the request relates should be transferred to the participating State in the interests of the welfare of the prisoner—

the Minister is to give to the corresponding Minister of the participating State a written

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Part 5—Consequential Amendments

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request asking that Minister to accept the transfer of the prisoner to the participating State.

- (5B) Where an international prisoner is serving a sentence of imprisonment in this State and the Minister—
- (a) receives a written request made by the prisoner for the transfer of the prisoner to a Territory; and
 - (b) is of the opinion that the prisoner to whom the request relates should be transferred to the Territory in the interests of the welfare of the prisoner—

the Minister may issue an order for the transfer of the prisoner to the Territory."

14. Insertion of new section 8A in the Prisoners (Interstate Transfer) Act 1983

After section 8 of the **Prisoners (Interstate Transfer) Act 1983** insert—

"8A. Effect of orders under this Part on transferred prisoners

An order of transfer issued under this Part in relation to an international prisoner has no effect—

- (a) to the extent that, but for this section, it authorises or requires the doing of an act or thing under this Act in relation to that person in the person's capacity as a prisoner serving a sentence of imprisonment in accordance with the International Transfer of Prisoners Act 1997 of the Commonwealth; and

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Part 5—Consequential Amendments

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- (b) unless and until a transfer order corresponding to the order of transfer is in force under the Transfer of Prisoners Act 1983 of the Commonwealth or the transfer is otherwise authorised under that Act."

15. Amendment of section 26 of the Prisoners (Interstate Transfer) Act 1983—information to be sent to participating State

In section 26(1) of the **Prisoners (Interstate Transfer) Act 1983**—

- (a) at the end of paragraph (a) **insert "and"**;
- (b) at the end of paragraph (b) **insert "and"**;
- (c) after paragraph (c) **insert**—
- "(ca) in the case of an international prisoner, a report relating to the prisoner, which is to contain such information and to be accompanied by such documents available in this State as appear to be of assistance to any court, authority or officer in the participating State and is to include details of any directions made by the Attorney-General under section 44 of the International Transfer of Prisoners Act 1997 of the Commonwealth and any other relevant details of the kind referred to in paragraph (c); and".

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Part 5—Consequential Amendments

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16. Amendment of section 3 of the Mental Health Act 1986—definition of security patient

In the definition of "security patient" in section 3 of the **Mental Health Act 1986**, after paragraph (a) **insert**—

"; or

- (b) a person detained in an approved mental health service while serving a sentence of imprisonment within the meaning of the International Transfer of Prisoners Act 1997 of the Commonwealth."
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Endnotes

ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 30 April 1998

Legislative Council: 21 October 1998

The long title for the Bill for this Act was "A Bill relating to the transfer of prisoners to and from Australia."

The **International Transfer of Prisoners (Victoria) Act 1998** was assented to on 4 November 1998 and came into operation as follows:

Part 1 (sections 1–3) on 4 November 1998: section 2(1); Parts 2–5 (sections 4–16) on 8 August 2002: Government Gazette 8 August 2002 page 2162.

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Endnotes

2. Table of Amendments

There are no amendments made to the **International Transfer of Prisoners (Victoria) Act 1998** by Acts and subordinate instruments.

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Endnotes

3. Explanatory Details

No entries at date of publication.