

The Parliament of the
Commonwealth of Australia

The Senate

Transfer of Prisoners (Consequential Amendments) Bill 1983

Explanatory Memorandum

(Circulated by the authority of the Attorney-General
Senator the Honourable Gareth Evans)

TRANSFER OF PRISONERS (CONSEQUENTIAL AMENDMENTS) BILL 1983

General Outline

The Removal of Prisoners (Australian Capital Territory) Act 1968 and the Removal of Prisoners (Territories) Act 1923 authorise both the removal of prisoners from the territorial sentencing jurisdiction to serve sentences of imprisonment and their return in certain circumstances. The Transfer of Prisoners Bill 1983 will authorise the transfer of prisoners for welfare or trial purposes and accordingly there is a possibility of conflict between that Bill and the two Acts referred to. The Transfer of Prisoners (Consequential Amendments) Bill 1983 is intended to resolve those possible conflicts. Because of the difficulty in defining in legislation the circumstances in which a Removal Act should be used rather than the Transfer legislation and vice versa the Bill provides for the Commonwealth Attorney-General to make a choice of the appropriate law according to the circumstances of each individual case. In addition it should be noted that that the Removal of Prisoners (Territories) Act will be amended by the Bill to no longer apply to transfers from the Northern Territory. This amendment has been requested by the Northern Territory and accordingly all transfers from the Northern Territory will henceforth be dealt with by the Northern Territory Transfer of Prisoners legislation.

Notes on Clauses

Part 1 - Preliminary

Clause 1 - Short Title

Formal

Clause 2 - Commencement

Sub. Clause 2(1) provides that the formal clauses [1, 2] come into operation when the Act receives the Royal Assent. It also provides for clause 6 to come into operation at that time because clause 6 must be in operation when clauses referred to in sub-clauses 2(2) and 2(3) come into operation.

Sub-clause 2(2) provides that clauses which provide for the Commonwealth Attorney-General to decide whether a Removal Act or the Transfer of Prisoners Act should be used come into operation at the same time as the Transfer of Prisoners Act.

Sub-Clause 2(3) provides that clauses excluding the Northern Territory from the operation of the Removal of Prisoners (Territories) Act simpliciter and, as applied by the extradition legislation, come into operation on a date to be fixed by proclamation. It is intended to proclaim these clauses when the Northern Territory transfer of prisoners legislation is in operation.

Part 11 - Amendments of the Removal of Prisoners (Australian Capital Territory) Act 1968

Clause 3 - Principal Act

Formal

Clause 4 - Removal to, or detention in, the State

This clause amends Section 5 of the Principal Act to make the drafting of that Section consistent with the drafting of section 4.

Clause 5

This clause inserts a new section 6A in the Principal Act entitled "Relationship between this Act and Transfer of Prisoners Act 1983". The effect of section 6A is that a person cannot be removed pursuant to the Removal of Prisoners (Australian Capital Territory) Act 1968 unless the Attorney-General consents. The Attorney-General is nevertheless obliged to consent unless he is of the opinion that the removal should take place pursuant to the Transfer of Prisoners Act 1983, with the proviso that, a removal from a State to a Territory shall not be made pursuant to that Act if the Removal of Prisoners (Australian Capital Territory) Act could be used. The section provides that the Attorney-General's powers, pursuant to it, may be delegated.

Part III Amendments of the Removal of Prisoners (Territories)
Act 1923

Clause 6 - Principal Act

Formal

Clause 7 - Removal of prisoners from Territories in certain
cases

This clause amends Section 3 of the Principal Act by excluding the Northern Territory from its operation, and providing for a saving provision in respect of persons already removed from the Northern Territory.

Clause 8

This Clause inserts a new section 8AA in the Principal Act entitled 'Relationship between this Act and Transfer of Prisoners Act 1983'. The effect of section 8AA is that a person cannot be removed pursuant to the Removal of Prisoners (Territories) Act 1923 unless the Attorney-General consents. The Attorney-General is nevertheless obliged to consent unless he is of the opinion that the removal should take place pursuant to the Transfer of Prisoners Act 1983, with the proviso that a removal from a State to a Territory shall not be made pursuant to that Act if the Removal of Prisoners (Territories) Act could be used. The section provides that the Attorney-General's powers, pursuant to it, may be delegated.

PART IV - Amendments of other Acts

Clause 9 - Amendments of other Acts

The Australian extradition legislation [Extradition (Commonwealth Countries) Act 1966 and Extradition (Foreign States) Act 1966] provides that the Removal Acts apply to persons committed to prison to await extradition. This clause amends the extradition legislation to provide that the Removal Acts do not apply to persons so committed in the Northern Territory

