TRANSFER OF PRISONERS BILL 1983

Date Introduced: 19 October 1983
House: House of Representatives
Presented by: Hon L.F. Bowen, M.P., Minister representing the Attorney-General

Purpose

To permit the transfer of prisoners between Australia's several jurisdictions, in accordance with a scheme agreed by the Standing Committee of Attorneys-General.

Background

Federal responsibility for prisoners arises in two ways, either when prisoners have been convicted under federal laws such as Customs or taxation legislation applying to the whole of the Commonwealth or when they have been convicted of offences under Territory laws by Territory courts. The prisoners may thus be categorized as "federal prisoners" or "Territory prisoners". Only in the Territories where the Commonwealth Parliament has full power to legislate on peace, order and good government does it have responsibility for all prisoners. In the Northern Territory this responsibility is now exercised by the Legislative Assembly.

Most federal offences are tried by the courts of the State in which the offence was committed, State courts having been invested with jurisdiction in relation to most federal laws.

Federal prisoners are held in State prisons, which are obliged to receive them by section 120 of the Constitution. The costs are met by the States[1]. In 1979, Federal prisoners represented some 400 of the total 10,000 prisoners in Australia[2].

Although there are gaols in the Northern Territory, some Northern Territory prisoners are held in State prisons. The Australian Capital Territory has no prison. Territory prisoners from the A.C.T. are held in N.S.W. gaols at Commonwealth cost. The transfer is by warrant under the provisions of the Removal of Prisoners (Australian Capital
Early projections of a Territory prisoner population for the A.C.T. of 100 in 1975 and 150 in 1980 have proved excessive and a population of more than 80 prisoners over the next decade now seems unlikely[3].

In America, a system for transfer of prisoners between U.S. court jurisdictions already exists. Recent U.S. court decisions have emphasized the optional nature of transfers and the right of a prisoner to remain where he is. A strong case for transfer arises in Australia to enable a prisoner to receive concurrent sentences for similar offences committed in different States. At present such a prisoner will be extradited to another State only after serving his sentence and so will receive consecutive sentences[4].

The introduction of a prisoner transfer scheme would not only permit concurrency of sentences but would also help prisoners' welfare and rehabilitation through making visits more convenient. The scheme has been mooted since 1973 but details of the agreement were worked out at a meeting of the standing committee of Commonwealth and State Attorneys-General in 1981[5]. The system could be followed by an international agreement which would permit transfer to Australian prisons of prisoners sentenced to terms in foreign prisons for drug-related or other offences. Preliminary negotiations between the Federal Government and the governments of Papua New Guinea, New Zealand and Canada have been reported[6].

Main Provisions

The Commonwealth Bill introduces the transfer scheme in respect of "Federal prisoners" and "Territory prisoners". Complementary legislation is to be introduced in each State. The Commonwealth Bill would commence on a date to be proclaimed (clause 2).

Parts II to IV of the Bill establish three types of transfer orders, for respective purposes of the prisoner's welfare, trial in another jurisdiction, or return following trial or hearing of appeals.

A welfare transfer order may be made by the Attorney-General under clause 6 in respect of a "Commonwealth prisoner", a category defined to include both Federal prisoners and Territory prisoners. The order is to be made upon application by the prisoner and is subject to approval by the relevant Minister in the receiving State.
Clause 7 provides for revocation of such order. Revocation is mandatory if the prisoner requests it.

Part III provides for trial transfer orders, which are issued by a court of summary jurisdiction in the State or Territory in which the Commonwealth prisoner is currently held. In the case of trials or charges under a Federal or Territory law, application shall be made by the Federal Attorney-General (clause 8) and in the case of trials under State law, the appropriate Minister in the State where the offence charged occurred (clause 9). The procedure in the State or Territory court hearing is dealt with in clause 10 and legal representation is permitted (clause 13). The decision may be reviewed by the State or Territory's Supreme Court (clause 11).

Part IV provides for return of prisoners, whether Commonwealth or State prisoners, who have been transferred on a charge now finally dealt with, and are now Commonwealth prisoners. The initial transfer order may have been a trial transfer order under this Bill, or an order under State legislation. The Federal Attorney-General may make a return transfer order which is effective unless the prisoner applies for exemption.

Leaving aside Federal sentences, the general effect of the legislation is to deem State or Territory prisoners' sentences to have been imposed in the jurisdiction in which the sentence is presently being served. Clause 18 has this effect in respect of Territory prisoners transferred to a State or Territory and State prisoners transferred to a Territory. Clause 22 provides for the termination of Territory-imposed sentences following transfer but rights to appeal or review are prescribed. Clause 31 permits Court Orders to be made to give effect to an appeal, should it prove successful, by a court in the original jurisdiction, whose relevance is otherwise extinguished by clause 22.

Clauses 19, 20 and 23 provide in effect that non-parole periods and reductions and remissions of sentence attach to the prisoner and override provisions in respect of prisoners sentenced in the jurisdiction to which he may be transferred.

Clause 21 provides that where a prisoner serving a sentence for default is transferred he retains the option to pay the fine. Exercise of the Royal prerogative of mercy in
the State or Territory to which a State or Territory prisoner is transferred is provided for by clause 24.

For further information, if required, contact:

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References

3. loc.cit., para 53.