

# International Transfer of Prisoners

## Statement of Policy

The International Transfer of Prisoners (ITP) Scheme is a consent-based scheme that allows Australians imprisoned overseas, and foreign nationals imprisoned in Australia, to apply to serve the balance of their sentence in their home country.

An important purpose of the ITP Scheme is to promote the successful rehabilitation and reintegration of the prisoner into society, while preserving the original sentence as far as possible in the country to which the prisoner is transferred. The ITP Scheme contributes to community safety by ensuring that prisoners' convictions are recorded in their own country and that their reintroduction into that country's community is able to be appropriately supported, monitored and supervised.

Australia's ITP relationships are governed by international agreements that are implemented in Australia through the *International Transfer of Prisoners Act 1997* (the ITP Act).

Transfers are not automatic and require the consent of the Australian Government, the government of the foreign country and the prisoner to the terms of the transfer before the transfer can take place. All transfers to Australia also require the consent of the relevant Minister in the State or Territory to which the prisoner is seeking transfer. In addition, transfers of prisoners from Australia who have been convicted of State or Territory offences also require the consent of the relevant State or Territory Minister.

Every transfer application is assessed on its merits, taking all relevant factors into account. The policies set out below guide the assessment of each application.

### ***1. Policy on applications for transfer to Australia***

Australian citizens (including dual citizens) or permanent residents imprisoned in a foreign country are eligible, but not entitled, to transfer to Australia under the ITP Scheme.

All the circumstances of the case, including the factors listed below, will be taken into account in determining whether the transfer of a prisoner to Australia will be approved:

#### *Rehabilitation and reintegration*

Whether, and if so, the extent to which, the prisoner's rehabilitation and reintegration into the Australian community would be assisted by the proposed transfer, with reference to the following:

- any cultural or language barriers faced in the foreign country
- opportunities to participate in custodial and post-release rehabilitative programs in the foreign country and in Australia
- any social or family support networks in the foreign country and in Australia, and
- the prisoner's familiarity with Australia, eg how recently and for how long the prisoner resided in Australia.

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## ***Policy on applications for transfer to Australia (continued)***

### *Community safety*

Whether the transfer will contribute to community safety, with reference to the following:

- whether the prisoner is likely to return to Australia upon release in the transfer country if not transferred under the ITP Scheme, and
- whether the transfer will enable the prisoner's reintegration into the Australian community to be appropriately supported, monitored and supervised by law enforcement agencies, and his or her conviction to be recorded in Australia.

### *Dual citizens*

Whether the prisoner is a dual citizen, and if so, whether, he or she:

- is imprisoned in his or her other country of citizenship
- is likely to return to Australia, or his or her other country of citizenship, upon release, and/or
- would be released on *parole* with *parole conditions* that would prevent the person from returning to Australia prior to his or her *sentence expiry date*.

### *Relevant views*

The views of relevant authorities and agencies.

### *Humanitarian considerations*

Whether any relevant humanitarian considerations apply to the case, eg the health of the prisoner.

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Terms in italics are explained in *Explanation of Terms* below.

## ***2. Policy on Incoming Sentence Enforcement***

Where a transfer to Australia is supported the following policy will guide how the sentence will be enforced in Australia.

### *Continued enforcement*

- Australia will apply the *continued enforcement method* of sentence enforcement to all prisoners transferred to Australia under the ITP Scheme.
- The *recognised head sentence* imposed on the prisoner in the sentencing country will be preserved.

### *Parole*

- Wherever possible, a *parole eligibility date* will be determined as part of sentence enforcement for all prisoners transferred to Australia.
- The *possible release date* in the sentencing country will be enforced in Australia as the *parole eligibility date*.

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### ***Policy on Incoming Sentence Enforcement (continued)***

- If a *possible release date* has not been determined by the sentencing country, Australia will propose a *non-parole period* that is 66 per cent (or two-thirds) of the *recognised head sentence* to be served in Australia.
- However, in cases where the *recognised head sentence* significantly exceeds the maximum sentence that could be imposed in Australia, a *non-parole period* that better accords with Australian practice will be proposed.
- Release on *parole* will be discretionary.
- The *parole eligibility date* will be at least 12 months before the *sentence expiry date*.
- The *parole period* will expire at the *sentence expiry date*.
- The *period of parole supervision* will be determined at the time that the prisoner is released on *parole* and may continue for the duration of the parole period.

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Terms in italics are explained in *Explanation of Terms* below.

### **3. *Policy on outgoing transfer of Australian citizens***

Australian citizens imprisoned in Australia may apply to transfer to a foreign country under the ITP Scheme. However, in most cases a prisoner who is an Australian citizen will be expected to serve his or her sentence in Australia.

### **4. *Policy on approval of outgoing transfers***

People imprisoned in Australia may apply to transfer to a foreign country under the ITP Scheme if they are citizens of, or otherwise eligible to transfer to, that country.

All the circumstances of the case, including the factors listed below, will be taken into account in determining whether the transfer of a prisoner from Australia will be approved:

#### *Rehabilitation and reintegration*

Whether, and if so, the extent to which, the prisoner's rehabilitation and reintegration into society would be assisted by the proposed transfer, with reference to the following:

- any cultural or language barriers faced in Australia
- opportunities to participate in custodial and post-release rehabilitative programs in the foreign country and in Australia
- any social or family support networks in the foreign country and in Australia, and
- the prisoner's familiarity with Australia, eg how recently and for how long the prisoner resided in Australia.

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***Policy on approval of outgoing transfers (continued)***

***Sentence enforcement***

Whether the enforcement of the Australian sentence in the receiving country is acceptable. In most cases acceptable enforcement of the Australian sentence will be where at least 75 per cent of the Australian *non-parole period* will be enforced in custody upon transfer.

Transfer under the ITP Scheme is not intended to provide a more lenient or convenient alternative for the prisoner.

***Relevant views***

The views of relevant authorities and agencies.

***Humanitarian considerations***

Whether any relevant humanitarian considerations apply to the case, eg the health of the prisoner.

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Terms in italics are explained in *Explanation of Terms* below.

**5. *Policy on action to be taken where consent to transfer has been refused by a foreign country or an Australian State or Territory***

A decision by a foreign country to refuse consent to a transfer means that the transfer cannot occur.

If an Australian State or Territory refuses a transfer that the Australian Government believes should be approved, the Australian Government may ask the State or Territory to reconsider the application.

**6. *Policy on action to be taken where there is an objection to the transfer occurring immediately***

Where a prisoner has applied to transfer from Australia and his or her transfer is objected to by a law enforcement or prosecutorial agency, the transfer will be put on hold until the agency no longer objects to the prisoner's transfer.

### ***Explanation of Terms***

When a person is convicted of an offence, the total sentence imposed on him or her by the court is the ***'head sentence'***. The head sentence runs until the ***'sentence expiry date'***. The portion of the head sentence that the prisoner is required to serve in prison is the ***'non-parole period'***. If a prisoner serving a sentence in a foreign country is eligible for release from prison at a date prior to his or her sentence expiry date, this is referred to as the ***'possible release date'***.

If a prisoner is transferred to Australia under the ITP Scheme he or she will usually be incarcerated in an Australian prison on his or her return to Australia. (A prisoner may also be transferred on parole, in which case he or she will re-enter the Australian community, usually subject to conditions, on his or her return to Australia).

On transfer to Australia, the sentence imposed on the prisoner in the foreign country will be enforced through the ***'continued enforcement method'***. This means that Australia will enforce the sentence imposed by the court in the foreign country and will only adapt the sentence as necessary to ensure consistency with Australian law.

In Australia, the expiry of the prisoner's NPP is referred to as the ***'parole eligibility date'***, as it is the date on which the prisoner becomes eligible for release on parole. A transferred prisoner will not automatically be released at the parole eligibility date. Instead, the Minister for Home Affairs (the Minister) will consider all the circumstances of the case and decide whether the prisoner should be released at that time. If the Minister decides that the prisoner should not be released at the parole eligibility date he may reconsider the prisoner's release on parole at a later time. If the prisoner is released at his or her parole eligibility date, or at any other time prior to the sentence expiry date, he or she will be on ***'parole'***. The person's ***'parole period'*** will run from the time that he or she is released on parole until the sentence expiry date.

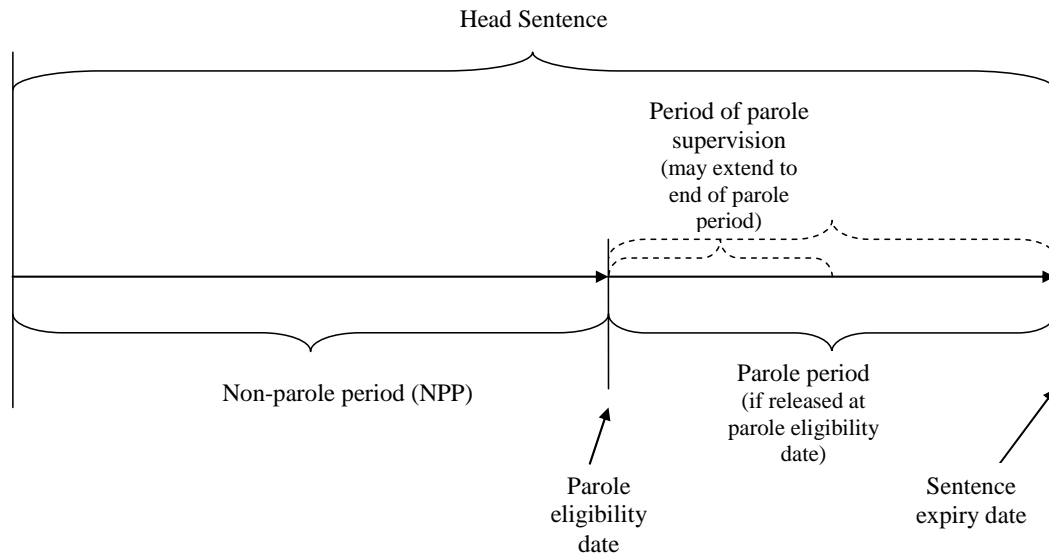
When a person is on parole, he or she will be subject to ***'parole conditions'*** (for example, drug offenders may be required to submit to urinalysis). People on parole will also usually be subject to a ***'period of parole supervision'***. Parole supervision may involve the person reporting to a parole officer, keeping the parole officer informed of any change of address or job, and requesting permission from the relevant authorities to travel interstate or overseas. The period of parole supervision will be determined at the time that the prisoner is released on parole. For transferred prisoners, the period of parole supervision may continue for the duration of the parole period, or it may be shorter than the parole period.

If a person does not comply with his or her parole conditions (including supervision requirements) his or her parole may be revoked and he or she may be required to serve a further period of imprisonment.

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**Explanation of Terms** (continued)

The following diagram illustrates these concepts:



In some jurisdictions, the law provides for reduction or remission of the head sentence imposed by the court. Such reductions may be dependent on the good behaviour of the prisoner, or may be automatically applied to all prisoners serving custodial sentences. If the head sentence of a prisoner who transfers to Australia has been reduced in this way, the sentence that will be enforced in Australia will reflect the reduction or remission granted by the sentencing country. This reduced sentence is referred to as the **'recognised head sentence'**. This is illustrated below:

