



Effective from 1 February 2019

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.

The purpose of the ITP Scheme is to promote the successful rehabilitation and reintegration into society of the prisoner, while preserving the sentence imposed by the sentencing country as far as possible. The ITP Scheme contributes to community safety by ensuring that prisoners' convictions are recorded in their own country and 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. Transfers to Australia, and transfers of prisoners from Australia who have been convicted of an Australian State or Territory offence, also require the consent of the relevant Australian State or Territory Government.

Every transfer application is considered on its merits. When assessing an application for transfer, the Australian Attorney-General considers all the circumstances of the case, including the factors listed below.

(a) Sentence enforcement

Transfers under the ITP Scheme are not intended to provide a more lenient or convenient alternative for prisoners. As a result, sentence enforcement is an important consideration in all applications for transfer.

Incoming transfers (transfers to Australia)

- Australia applies the continued enforcement method of sentence enforcement to all prisoners transferred to Australia under the ITP Scheme. Under this method, the original sentence imposed on

the prisoner by the sentencing country (less reductions or remissions) is enforced in Australia upon transfer.

- A parole eligibility date will be determined as part of the sentence enforcement in Australia.
 - The earliest possible release date in the sentencing country will be enforced as the parole eligibility date.
 - If an earliest possible release date has not been determined by the sentencing country, Australia will propose a non-parole period that is 66 per cent of the original sentence imposed by the foreign country.
 - However, if the original sentence imposed by the foreign country significantly exceeds the maximum head sentence that could be imposed in Australia for a similar offence, Australia will propose a non-parole period that equates to 66 per cent of the maximum sentence that could be imposed in Australia for a similar offence.
 - Release on parole will be discretionary in accordance with relevant Australian processes and laws.
 - Where possible, 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.

Outgoing transfers (transfers from Australia)

- The original head sentence imposed on the prisoner by Australia should be preserved as far as possible.
- It is expected that 100 per cent of the Australian non-parole period will be enforced in custody upon transfer.
- Sentence enforcement will not ordinarily be considered acceptable if less than 100 per cent of the Australian non-parole period is to be enforced in custody upon transfer, unless there are exceptional extenuating circumstances such as exceptional humanitarian considerations. In such cases, at least 80 per cent of the Australian non-parole period would usually have to be enforced in custody upon transfer for sentence enforcement to be considered acceptable.
- The ability of the transfer country to enforce the full Australian non-parole period under its domestic laws may be taken into account. However, in such cases, at least 80 per cent of the Australian non-parole period would usually have to be enforced in custody upon transfer to be considered acceptable sentence enforcement.
- The extent to which the Australian head sentence would be enforced upon transfer will be considered on a case-by-case basis subject to overall sentence enforcement.

(b) Rehabilitation and reintegration

The following factors may be considered when assessing whether, and if so, the extent to which a prisoner's rehabilitation and reintegration into the community would be assisted by transfer:

- relevant cultural and/or language considerations
- opportunities for the prisoner to participate in custodial and post-release rehabilitative programs in the foreign country and Australia

- social and/or family support considerations, including the person’s familiarity with Australia and the foreign country, and
- whether the prisoner’s reintegration into the community will be appropriately supported eg assistance provided in regard to post release accommodation and employment.

(c) Community Safety

Issues relating to community safety may be considered when assessing an application for transfer. For example, whether the transfer will enable:

- the applicant’s reintegration into the community to be appropriately monitored and supervised by law enforcement agencies
- the applicant’s reintegration into the community to be appropriately supported with access to counselling or other programs designed to reduce the likelihood of re-offending
- the applicant’s conviction to be recorded in the receiving country, and/or
- the applicant to be recorded on appropriate offender registers.

(d) Humanitarian considerations

Humanitarian considerations relevant to the applicant may be considered when assessing a transfer application.

(e) Dual citizenship

Incoming transfers (transfers to Australia)

The citizenship of Australian citizens imprisoned overseas, who are also citizens of another country, may be considered, including, whether they:

- are imprisoned in their other country of citizenship;
- would be subject to parole conditions preventing their return to Australia prior to their sentence expiry date, and/or
- are likely to return to Australia following their release.

Outgoing transfers (transfers from Australia)

Australian citizens may apply to transfer to a foreign country under the ITP Scheme. However, in most cases Australian citizens are expected to serve their sentence in Australia (notwithstanding they may also be citizens of the foreign country).

(f) Views of relevant agencies

In considering applications for transfer under the ITP Scheme, views will be sought from relevant law enforcement and prosecutorial agencies. For example, if an agency objects to the transfer because the applicant is required to provide evidence in court proceedings, the transfer may be put on hold until the agency no longer objects to the 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 which the prisoner is required to serve in prison (custody) is the 'non-parole period' (NPP). 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).

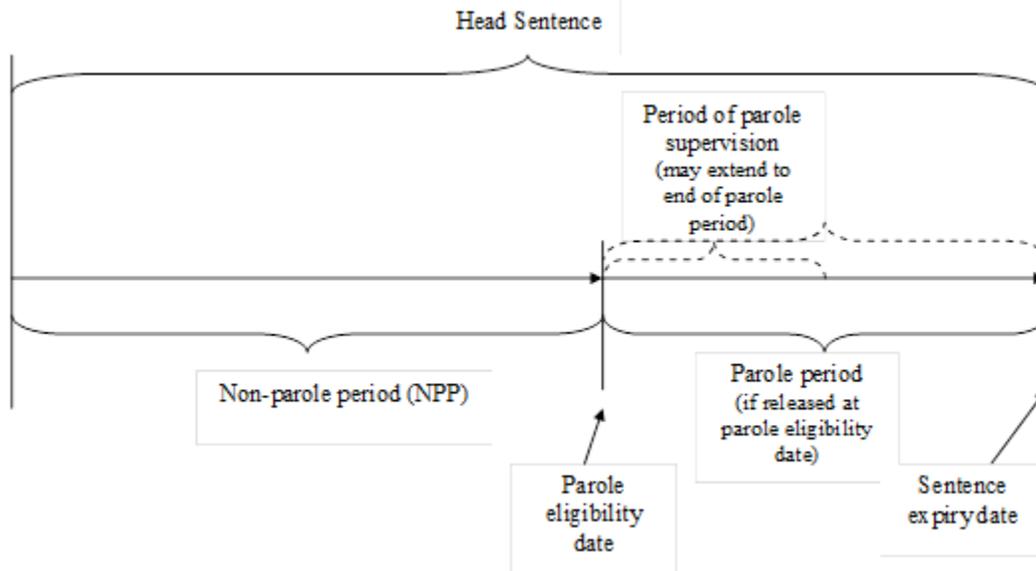
On transfer to Australia, the sentence imposed on the prisoner in the foreign country will be enforced through the 'continued enforcement method'. This means that Australia will enforce the sentence imposed by the foreign country and will only adapt the sentence as necessary to ensure enforcement is consistent 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 Australian Attorney-General (Attorney-General) will consider all the circumstances of the case and decide whether the prisoner should be released at that time. If the Attorney-General decides that the prisoner should not be released at the parole eligibility date, the Attorney-General 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). A person 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.

The following diagram illustrates these concepts:



In some foreign countries, 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.