



Australian Government
Attorney-General's Department

Effective from 1 February 2019

International Transfer of Prisoners Scheme

Prisoner transfers to Australia

Information pack

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General information

The International Transfer of Prisoners (ITP) Scheme allows prisoners serving a sentence of imprisonment in a foreign country to transfer to their home country to serve the remainder of their sentence.

The ITP Scheme aims 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 home country and that their reintegration into the community is able to be appropriately supported, monitored and supervised.

Transfers under the ITP Scheme are not intended to provide a more lenient or convenient alternative for prisoners.

Transfers are not automatic. Consent to the transfer must be given by the Australian Government, the government of the foreign country, the government of the Australian State or Territory to which the prisoner seeks to transfer, and the prisoner before the transfer can take place.

Frequently asked questions

What are the requirements for transfer to Australia?

- A prisoner may apply to transfer from a foreign country to Australia if:
- the foreign country is listed as a transfer country under the *International Transfer of Prisoners Act* (Cth) (ITP Act) (see the [list of participating countries](#) at page 9 of this Information Pack)
- the prisoner is:
 - an Australian citizen, or
 - is permitted to travel to, enter and remain in Australia indefinitely pursuant to the [Migration Act 1958](#) and has community ties with an Australian State or Territory
- neither the prisoner's sentence of imprisonment nor the conviction on which it is based is subject to appeal
- the conduct constituting the offence for which the prisoner is serving a sentence would also constitute an offence in Australia (this requirement may be waived in certain cases), and
- at least:
 - six months of the prisoner's sentence remains to be served (this requirement may be waived in some circumstances); or
 - for transfers to or from some countries with whom Australia has a bilateral arrangement (such as Hong Kong, Thailand, Cambodia, China, Vietnam and India), at least one year of the prisoner's sentence remains to be served (this requirement may be waived in some circumstances).
- Foreign countries may have additional conditions for transfer. For example, some countries may exclude transfers for prisoners who have committed particular types of offences, or require prisoners to serve a specified minimum period of their sentence before they can apply for transfer.
- Please check with local consular staff for more information on the transfer requirements of particular countries.

What are 'community ties' with an Australian State or Territory?

A prisoner has community ties with a State or Territory if:

- the prisoner's principal place of residence immediately before being sentenced to imprisonment in Australia was in the State or Territory; or
- a close family member* of the prisoner has a principal place of residence in the State or Territory; or
- the prisoner has a close continuing relationship (involving frequent personal contact and a personal interest in the other person's welfare) with anyone whose principal place of residence is in the State or Territory.

*Note: Close family member is defined in the *International Transfer of Prisoners Act 1997* (Cth)

It is important to note that Australian citizens are not required to prove community ties with Australia to be eligible for transfer. However, the consent of the relevant minister in the Australian State or Territory to which a prisoner wishes to transfer is required for the transfer to occur. The relevant minister may require the prisoner to demonstrate community ties with the State or Territory before giving consent to the transfer. Applicants should therefore provide as much detail as possible about their community ties with Australia.

Is a prisoner still eligible to transfer if they are on parole or serving the suspended part of a sentence?

A prisoner may be eligible to transfer to Australia if they are on parole or coming up for parole, or serving the suspended part of their sentence, depending on the requirements of the country from which they seek to transfer. Some foreign countries may not allow prisoners on parole, or prisoners serving the suspended part of their sentence, to transfer under the ITP Scheme.

Are prisoners who have received the death penalty eligible to transfer to Australia?

The definition of 'prisoner' under the ITP Act does not include a person who has been sentenced to death. This means that people who have been sentenced to death cannot transfer to Australia under the ITP Act. However, the ITP Act provides that if a sentence of death imposed on a person has been commuted to a life sentence or term of imprisonment, the person may apply to transfer to Australia.

How long does it take to process an application for transfer to Australia?

The time that it takes to process an application for transfer varies from case to case, depending on individual circumstances and the jurisdictions involved. For an application to be approved, consideration and consent must be given by a number of different parties including the Australian Government, the government of the Australian State or Territory to which the prisoner wishes to transfer, the foreign country and the prisoner.

Obtaining all relevant parties' consent to a transfer can take time, however every effort is made to progress applications as quickly as possible.

When the Attorney-General's Department receives an application for transfer to Australia, it will seek reports about the prisoner's sentence, health, behaviour and custodial progress from the transfer country. Once the

reports are received, the Australian Attorney-General will decide whether to provide preliminary consent to the transfer. If preliminary consent is given, the Attorney-General will determine the proposed terms of transfer and seek the consent of the relevant Australian State or Territory Minister to the transfer on the proposed terms. If the State or Territory Minister consents, the consent of the transfer country and prisoner will be sought. If all parties consent, the Australian Attorney-General will consider the application and determine whether to provide final consent to the transfer.

If final consent is given, the Attorney-General will sign a warrant authorising the transfer. Once the warrant has been signed, arrangements for the prisoner's physical transfer will be made between the relevant Australian State or Territory and the transfer country.

The process for applications for transfer to Australia is outlined in the diagram later in this Information Pack

How does the Australian Government assess applications for transfer to Australia?

The Australian Attorney-General assesses each transfer application on its merits, taking all relevant factors into account. For transfers to Australia, relevant factors may include:

- the extent to which the prisoner's rehabilitation and reintegration into the Australian community would be assisted by the transfer
- whether the transfer will contribute to community safety
- whether the prisoner is a dual citizen of Australia and another country
- the views of relevant authorities and agencies, such as the Australian Federal Police, and
- any relevant humanitarian considerations

Further details can be found in the [ITP Statement of Policy](#). The ITP Statement of Policy sets out the policies that guide the assessment of each application.

Will a prisoner's health be taken into account when a decision about a transfer is being made?

The Australian Attorney-General takes a number of factors into account when deciding whether to consent to a transfer to Australia, including humanitarian considerations such as the health and age of the prisoner. However, an Australian State or Territory Minister may decide not to agree to a transfer if they do not have the facilities available to care for a prisoner who is unwell, or if they feel that the prisoner's health condition endangers other prisoners.

Will prisoners be required to pay for their transfer?

Prisoners transferring to Australia may be asked by the relevant Australian State or Territory to pay all or part of the costs involved with their transfer, depending on the requirements of the relevant State or Territory. In such cases, financial arrangements may have to be finalised and agreed to by the prisoner, or the prisoner's representative, before the prisoner's physical transfer takes place.

How will transferring to Australia affect a prisoner's sentence?

Generally the sentence a prisoner will serve in Australia will be as close as possible in nature and duration to that imposed by the transfer country. The sentence of imprisonment cannot be harsher than that imposed by the transfer country.

The Australian Attorney-General is guided by the [ITP Statement of Policy](#) when determining how a sentence imposed by a transfer country will be enforced in Australia upon transfer.

What conditions will apply to a prisoner who transfers to Australia?

When a prisoner applies to transfer to Australia they will be asked to nominate the Australian State or Territory to which they wish to transfer. This would normally be the State or Territory in which they have family, friends or support networks.

If an application for transfer to Australia is successful, the prisoner will be classified in Australia as a federal prisoner, as if they were serving a sentence of imprisonment imposed under a law of the Commonwealth.

Federal prisoners are held in Australian State and Territory prisons under the same conditions, and are eligible for the same programs, as other prisoners. The main difference is that decisions about their sentence, including parole, are made by Commonwealth rather than State or Territory authorities.

The non-parole periods and parole conditions imposed on prisoners who transfer to Australia under the ITP Scheme may differ from those imposed on other federal prisoners.

To which Australian prison will a prisoner be transferred?

The prison to which a prisoner is transferred will depend on the Australian State or Territory to which they are transferred. Prisoners will generally be received, upon transfer, into a metropolitan prison for assessment and classification. In most cases, the prisoner will then be transferred to a prison appropriate to their classification and needs. For further information, prisoners may wish to contact individual State and Territory corrective services departments.

Will a prisoner have a criminal record in Australia if they don't transfer?

Australian authorities may become aware of a prisoner's foreign conviction regardless of whether the prisoner applies to transfer to Australia.

When a prisoner applies to transfer to Australia, the Australian Federal Police are usually notified of the application.

If a prisoner is transferred, the sentence and conviction will be recorded in Australia.

Whether a prisoner transfers or not, they may be required to disclose any criminal convictions, including any offence committed overseas, on entry into Australia.

Can a prisoner appeal if their transfer is refused?

Decisions of the Australian Attorney-General are reviewable under the [Administrative Decisions \(Judicial Review\) Act 1977](#). Prisoners who are considering whether to seek review of a Ministerial decision may wish to seek their own independent legal advice.

Can a prisoner submit a further application if their earlier application for transfer was refused or withdrawn?

A prisoner may submit a new application for transfer if their earlier application was refused or withdrawn. However, unless the prisoner is able to provide new information or demonstrate a change in circumstances relevant to their request for transfer, any application made less than twelve months since an earlier application was refused or withdrawn will not be progressed.

How does a prisoner apply to transfer from Australia to another country?

Prisoners applying for transfer from Australia are required to submit the official application forms which are available on the AGD website at www.ag.gov.au.

The forms may also be obtained from the Australian Embassy or High Commission in the country in which a person is imprisoned.

Which forms need to be completed?

Different forms need to be completed by prisoners who are serving a sentence of imprisonment in a prison or a hospital facility, prisoners who have been released on parole, and prisoners who are serving the suspended part of their sentence.

Prisoners who are serving a sentence of imprisonment in a prison or a hospital facility

Prisoners who are serving a sentence of imprisonment in a prison or a hospital facility, and have not been released on parole and are not serving a suspended part of a sentence, are required to submit the following application forms:

- Form D: Application for transfer to Australia – prisoner not on parole and not serving suspended sentence, and
- Form G: Collection, Use and Disclosure of Personal Information.

Prisoners who are on parole

Prisoners who are on parole are required to submit the following application forms:

- Form E: Application for transfer to Australia – prisoner on parole, and
- Form G: Collection, Use and Disclosure of Personal Information.

Prisoners who are serving the suspended part of their sentence

Prisoners who are serving the suspended part of their sentence are required to submit the following application forms:

- Form F: Application for transfer to Australia – prisoner serving suspended sentence, and
- Form G: Collection, Use and Disclosure of Personal Information.

Amongst other things, by signing Form G: Collection, Use and Disclosure of Personal Information, the prisoner consents to the disclosure of personal information on these application forms to other parties, for the purpose of processing their application.

Prisoners wishing to apply to transfer to Australia should seek assistance from the Australian Embassy or High Commission in the country in which they are imprisoned as the process for applying for transfer can vary from one country to another.

Completed applications should be sent to:

International Transfer of Prisoners Unit
Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600
AUSTRALIA

The department will also be in regular contact with the prisoner while their application is being processed.

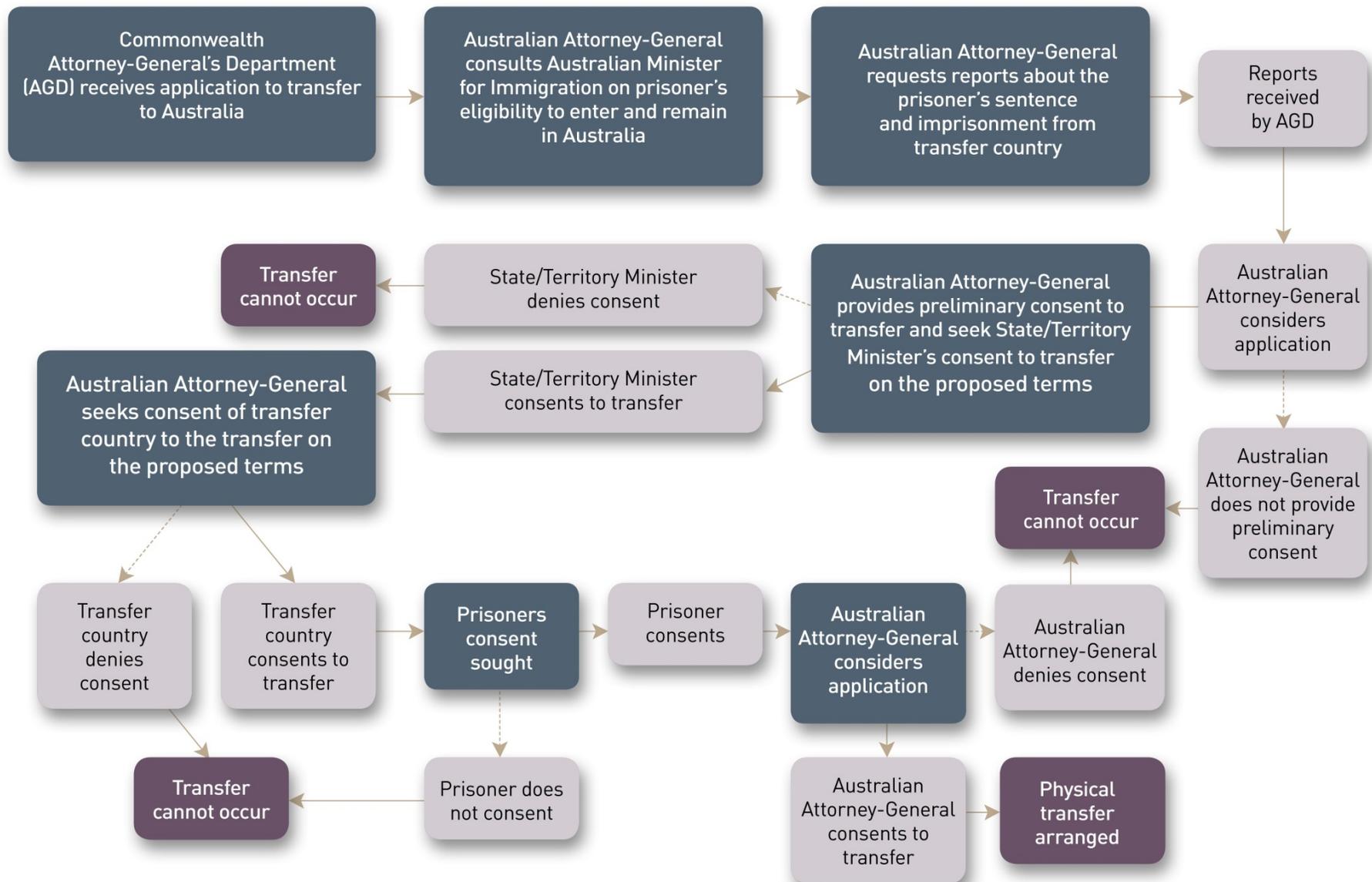
List of participating countries

The following countries are 'transfer countries' under the International Transfer of Prisoners Scheme:

- Albania
- Andorra
- Armenia
- Austria
- Azerbaijan
- Bahamas
- Belgium
- Bolivia
- Bosnia and Herzegovina
- Bulgaria
- Cambodia*
- Canada
- Chile
- China
- China (Hong Kong Special Administrative Region)
- Costa Rica
- Croatia
- Cyprus
- Czech Republic
- Denmark
- Ecuador
- Estonia
- Finland
- France
- Georgia
- Germany
- Greece
- Honduras
- Hungary
- Iceland
- India
- Ireland
- Israel
- Italy
- Japan
- Korea
- Latvia
- Liechtenstein
- Lithuania
- Luxembourg
- Malta
- Mauritius
- Mexico
- Moldova
- Mongolia
- Montenegro
- Netherlands
- Norway
- Panama
- Poland
- Portugal
- Romania
- Russia
- San Marino
- Serbia
- Slovakia
- Slovenia
- Spain
- Sweden
- Switzerland
- Thailand
- The Former Yugoslav Republic of Macedonia
- Tonga
- Trinidad and Tobago
- Turkey
- Ukraine
- United Kingdom
- United States
- Venezuela
- Vietnam.

* A treaty between Australia and Cambodia on the transfer of prisoners is in force but is currently only operational in respect of transfers from Cambodia to Australia.

Process for applications for transfer to Australia





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).

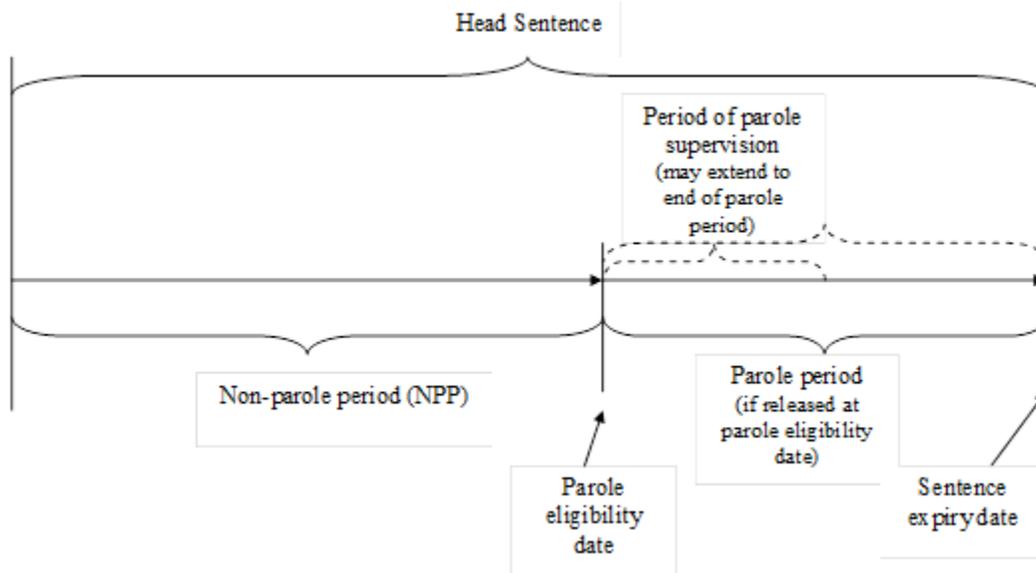
On transfer to Australia, the sentence imposed on the prisoner in the foreign country will be enforced through the 'continued enforcement method'. This means that Australia will enforce the sentence imposed by the foreign country and will only adapt the sentence as necessary to ensure enforcement is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