

THE TRANSFER OF CONVICTED OFFENDERS FROM AND TO COMMONWEALTH JURISDICTIONS

Memorandum by the Government of Australia

This memorandum briefly gives Australia's preliminary views on Mr. Webb's Discussion Paper, LMM(80)5.

2. The last sentence of para. 18 of the paper suggests that legislation exists in Australia under which prisoners may be removed between the States, and between the States and the Territories under the authority of the Government of the Commonwealth of Australia. The only legislation in Australia that currently deals with the transfer of convicted prisoners, is the Removal of Prisoners (Territories) Act 1923-1968 and the Removal of Prisoners (A.C.T.) Act 1968, both enactments of the Federal Parliament. Under the former, prisoners may be transferred from a Territory under the authority of the Commonwealth (except the Australian Capital Territory) to a State. The latter Act provides for the transfer to New South Wales of persons sentenced by the courts of the Australian Capital Territory. The need for this legislation stems from the lack of adequate prison facilities in those Territories.

3. The Acts do not, however, provide for the reciprocal transfer to the Territories of persons

sentenced in the States. Nor is there State legislation providing for the transfer of prisoners between the States.

4. Discussions are, however, in train between Commonwealth and State Attorneys-General with a view to producing reciprocal legislation to provide for the transfer between the Australian States and Territories of sentenced persons for rehabilitation purposes and for the purpose of facing charges. While considerable agreement has been reached on points of principle, it is not possible to predict when the necessary legislation will be enacted.

5. Although Australia had preliminary negotiations with a Canadian delegation in late 1978, progress on the negotiation of arrangements for the transfer of prisoners between Australia and other countries will depend, for practical purposes, on the progress of the arrangements for the inter-State transfer of prisoners. The Federal Government has no prisons and its prisoners are detained in institutions operated by State Governments.