

Community Based Sentences (Interstate Transfer) Bill 2019

Explanatory Notes

Short title

The short title of the Bill is the Community Based Sentences (Interstate Transfer) Bill 2019 (the Bill).

Policy objectives and the reasons for them

The objective of the Bill is to establish Queensland's participation in a national scheme for the formal transfer and enforcement of community based sentences between Australian jurisdictions.

The model legislation underpinning the Bill has been supported and endorsed by all Australian Corrective Services Ministers and the former Standing Committee on Law and Justice (SCLJ) (now known as the Council of Attorneys-General). National model legislation currently operates in relation to the interstate transfer of prisoners and those on parole, and this Bill extends the framework to community based sentences.

Currently informal arrangements are in place between Queensland and other jurisdictions to supervise offenders on community based sentences when they travel or move interstate. Without participation in the national scheme there are no powers to initiate breach action where an offender is not abiding by the conditions of their sentence. Instead responsibility to manage the sentence resides with the originating jurisdiction.

Queensland's participation in the national scheme mitigates the risks associated with current informal transfer arrangements by:

- providing an ability for an offender to have their community based sentence formally transferred and registered in an interstate jurisdiction;
- ensuring that appropriate management and supervision of the community based sentence can occur in the receiving interstate jurisdiction;
- ensuring that any contravention of an offender's community based sentence can be dealt with in the receiving interstate jurisdiction; and
- limiting the requirement for costly enforcement and extradition action following an offender's contravention of a community based sentence interstate.

The Bill supports the Government's objective of Keep Communities Safe in *Our Future State: Advancing Queensland's Priorities* and recommendations made in the Queensland Parole System Review by ensuring community based sentences are flexible and support effective rehabilitation, reintegration and supervision of offenders.

Achievement of policy objectives

The Bill creates a new standalone Act in Queensland to implement the nationally agreed legislative framework facilitating the transfer of community based sentences across Australia, in accordance with the model legislation. The Bill provides for Queensland's participation in the national scheme.

Community based sentences currently available in Queensland that may be transferred under the scheme are:

- probation orders;
- community service orders;
- graffiti removal orders;
- intensive correction orders; and
- drug and alcohol treatment orders.

The Bill provides the ability for adult offenders with a community based sentence to transfer the supervision and administration of their sentence to a new jurisdiction, provided the requirements of the legislation are satisfied. The requested receiving jurisdiction has the ability to decline a transfer, or impose certain preconditions before registering the interstate sentence.

Once a sentence is registered in the interstate jurisdiction, the offender will then be managed in the new jurisdiction as if a court of the new jurisdiction had imposed the sentence. This provides that the offender may be dealt with in the receiving jurisdiction for a breach of the sentence. For the purpose of appeal of the sentence the originating jurisdiction retains responsibility.

The Bill also provides authority for Ministers to enter into arrangements to facilitate the administration of community based sentences for offenders travelling to or residing in Queensland or an interstate jurisdiction, and not subject to transfer and registration under the scheme.

The Bill has additional powers to ensure its effectiveness, including that the receiving interstate jurisdiction is provided with and can request additional information to consider a transfer request, such as relevant victim information; and that a register of sentences registered under the Bill must be kept.

Alternative ways of achieving policy objectives

There are no alternative ways to achieve the policy objectives.

Estimated cost for government implementation

There are no anticipated costs to government in implementing the Bill.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles as outlined by section 4 of the *Legislative Standards Act 1992* (Qld).

The national framework for the transfer of community based sentences requires all three parties, the offender, the local jurisdiction and the interstate jurisdiction, to agree to the transfer of a community based sentence from one jurisdiction to another. This administrative decision making has the potential to impact on the liberties of the offender and therefore may raise issues with fundamental legislative principles outlined in section 4(3)(a). However, the Bill has been developed based on model legislation that all Australian jurisdictions agreed to implement. Providing jurisdictions the flexibility to agree or decline the transfer of an offender on a community based order is in the interest of community safety and in the public interest. Additionally, there is nothing in the Bill that precludes the application of the *Judicial Review Act 1991* to decisions made by the local authority.

While the ability for a corresponding community based sentence to be declared by regulation under clause 13(2)(b) may potentially impact on the institution of Parliament, it is considered that the provision is justified through clarity in the legislation as to what types of community based sentences and associated penalties may apply, thus limiting what the regulation can prescribe. Further, this provision is considered necessary to ensure workability of the legislation and realise the overall intent of the national scheme.

Consultation

A consultation draft of the Bill was provided to key stakeholders including: Magistrates Court of Queensland; District Court of Queensland; Supreme Court of Queensland; Court of Appeal; the Director of Public Prosecutions; Queensland Law Society; Bar Association of Queensland; Legal Aid Queensland; Aboriginal and Torres Strait Islander Legal Service; Prisoners' Legal Service; Women's Legal Service Queensland; Queensland Indigenous Family Violence Legal Service; Aboriginal and Torres Strait Islander Women's Legal Services NQ Inc; Sisters Inside; Bravehearts; Protect All Children Today Queensland; and the Queensland Council for Civil Liberties. Stakeholders were invited to provide feedback on the Bill.

Stakeholder feedback has been taken into account in finalising the Bill.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland. However, the introduction of the legislation will align Queensland with the majority of other Australian jurisdictions which have implemented the model legislation to participate in a national scheme for the formal transfer and enforcement of community based sentences between Australian jurisdictions.

Notes on provisions

Part 1 Preliminary

1 Short title

Clause 1 states that, when enacted, the Bill will be cited as the *Community Based Sentences (Interstate Transfer) Act 2019*.

2 Commencement

Clause 2 states that the Bill is intended to commence on a day fixed by proclamation.

3 Purposes of Act

Clause 3 provides that the main purpose of the Bill is to transfer community based sentences by registration between participating jurisdictions, and empower the Minister to enter into arrangements with Ministers of interstate jurisdictions to facilitate the administration of offenders on community based sentences travelling to Queensland or interstate.

4 Application of Act

Clause 4 describes the sentences that will be transferable under the legislation.

The legislation will only apply to adults. Juvenile offenders are able to be transferred under the *Young Offenders (Interstate Transfer) Act 1987*.

Parole orders are excluded under subclause (2)(a) as the formal transfer of parole orders between jurisdictions is provided for under the *Parole Orders (Transfer) Act 1984* and corresponding interstate legislation.

A sentence that imposes a fine or financial penalty, or includes reparation to a particular person, for instance a victim of crime, is excluded from the Bill. A fine or other financial penalty will remain payable to the original jurisdiction.

The exclusions under subclause (2)(b) and (c) will not prevent the transfer of the remaining components of the sentence, provided all other requirements of the legislation are satisfied.

5 Dictionary

Clause 5 provides that definitions are in the dictionary in schedule 1.

Part 2 Administration

6 Local authority

Clause 6 provides that the local authority for Queensland is the chief executive of the Department (Queensland Corrective Services) that administers the Bill.

7 Delegation by local authority

Clause 7 provides that a function of the local authority under the Bill may be delegated to an appropriately qualified person.

Subclause (2) permits the subdelegation of a delegated function under the Bill to another appropriately qualified person.

8 Functions and powers

Clause 8 provides for general functions and powers under the Bill.

Subclause (1) establishes that interstate sentences registered under the Bill must be recorded by the local authority.

Subclause (2) intends to support effective implementation of the Bill and Queensland's participation in the national scheme.

Part 3 Registration of interstate sentences in Queensland

9 Request for transfer of interstate sentence

Clause 9 establishes the power of the chief executive in Queensland to register an interstate sentence when requested by the interstate authority.

10 Form of request for registration

Clause 10 prescribes the form in which the interstate jurisdiction must present a request for registration of a community based sentence in Queensland for it to be considered.

The request must be in writing and state the offender's name, date of birth, last known address and any other details required by the chief executive. Accompanying documents support the local authority in considering the transfer request.

Other documents provided for under subclause (2)(i) might include, for example, documentation detailing protection or domestic violence orders imposed against the offender, or any other documentation that would assist the local authority to decide whether it can safely accept the request for transfer.

11 Request for additional information

Clause 11 empowers the local authority to request additional information that may be held by the interstate jurisdiction concerning the offender or the sentence.

12 Withdrawal of offender's consent

Clause 12 provides that an offender may withdraw their consent to the transfer at any time before the community based sentence is registered interstate.

The offender may not withdraw consent after registration of the sentence interstate. Instead, a new transfer request would be required.

13 Registration criteria

Clause 13 defines the criteria required for a sentence to be registered under the scheme.

The criteria to be applied are that:

- the offender has consented to the transfer and has not withdrawn that consent;
- there is a corresponding community based sentence in Queensland;
- the offender is capable of complying with the interstate sentence in Queensland; and
- the sentence is capable of being safely, efficiently and effectively administered in Queensland.

Factors that may be considered by the local authority under subclause (1)(d) could include, for example, whether it is administratively inefficient to transfer the sentence due to a short period of supervision remaining on the sentence; or the effect of the transfer upon individuals other than the offender, such as a victim of their crime.

The inclusion of subclause (2) supports the workability of the legislation and the overall intent of the national scheme. It recognises that where a community based sentence is able to be managed by an interstate jurisdiction, the difference in sentence structure or name of the sentence should not in itself be a barrier to transfer.

14 Decision on request

Clause 14 specifies the decision that the local authority may make upon receiving a request for transfer.

The local authority may decide to:

- register the sentence;
- require the offender to meet certain preconditions before registering the sentence; or
- decline to register the interstate sentence.

Subclause (2) requires the local authority to have regard to the registration criteria under clause 13, and allows regard for any other matter considered relevant or prescribed by regulation.

Subclause (3) provides that the registration criteria must be satisfied before the local authority can accept a request for transfer. However, the local authority may decline to register the sentence even if all registration criteria are met.

Subclause (4) makes it clear that the local authority may decide whether or not to register the interstate sentence, or impose preconditions, on the information and documents provided, without hearing the offender.

Subclause (5) is included, for example, to accommodate offenders who may move between jurisdictions more than once, and allows offenders to return to jurisdictions. It removes any doubt of the ability for the local authority to register the sentence in Queensland, even if a decision had been previously made to not register the sentence.

The local authority must provide written notice to the offender and interstate authority if the request for transfer is declined.

15 Preconditions for registration

Clause 15 provides for the process by which the local authority may impose preconditions to registration under clause 14.

Imposing preconditions provides a means for the local authority to confirm the offender can and is willing to comply with the sentence in Queensland. This may be imposed, for example where the offender's proposed residence in Queensland is unconfirmed at the time of the request.

The local authority must provide written notice to the offender and interstate authority on precondition decisions.

16 How interstate sentence is registered

Clause 16 establishes the action to be taken if the chief executive decides to register an interstate sentence in Queensland, with or without preconditions.

17 Notice of registration

Clause 17 establishes that if the local authority decides to register the sentence, the local authority must write to the offender and the interstate authority advising of the registration, and stating the date the interstate sentence was registered.

18 Effect of registration

Clause 18 outlines the effect of registration of an interstate community based sentence in Queensland. This includes the administration of the sentence, and how a breach before or after the registration of a sentence, should be dealt with.

Subclause (1)(d) provides that the offence for which the sentence was imposed is taken to be an offence against the law of Queensland and not an offence against the law of the originating jurisdiction. However, subclause (1)(e) and (3) make it clear that for the purpose of determining the penalty to be imposed for resentencing the

offence, the penalty is taken to be the penalty imposed under the law of the originating jurisdiction and not under the law of Queensland. This does not apply if Queensland is the originating jurisdiction. For example, if a Queensland offender has transferred their sentence interstate and then transfers the sentence back to Queensland.

Subclause (4) makes it clear that registration does not affect any right, including the offender's right, to seek an appeal or review of the conviction, finding of guilt, or imposition of a sentence in the originating jurisdiction.

Subclause (5) makes it clear that any sentence or decision imposed or made on appeal or review in the originating jurisdiction has effect in Queensland, other than to the extent that the sentence or decision imposes a fine or financial penalty, requires the making of reparation or imposes a period of detention or imprisonment.

Subclause (6) makes it clear that this section does not give any right to the offender to an appeal or review in Queensland.

Part 4 Registration of local sentences in interstate jurisdictions

19 Request for transfer of local sentence

Clause 19 establishes that the chief executive in Queensland may request the interstate authority register a community based sentence in the interstate jurisdiction.

20 Providing additional information

Clause 20 ensures that additional information not already prescribed in the legislation can be provided to the interstate authority, for example to assist with their consideration of the transfer request.

21 Effect of interstate registration

Clause 21 outlines the effects of registration of a Queensland community based sentence in an interstate jurisdiction.

This clause does not limit any right of appeal or review of the conviction, finding of guilt or sentence in Queensland, if Queensland is the originating jurisdiction. This could include, for example, an application for amendment or revocation of an order under Part 7, Division 1 of the *Penalties and Sentences Act 1992*.

Subclause (2)(b) makes it clear that this section does not affect a sentence to the extent it imposes a fine or financial penalty, requires the making of reparation or imposes a period of detention or imprisonment.

Part 5 Reciprocal arrangements for administration of local and interstate sentences

This part provides authority for the Minister to enter into arrangements with a Minister of an interstate jurisdiction to facilitate the administration of community based sentences for offenders travelling to, or residing in, Queensland or an interstate jurisdiction. It does not apply to offenders where their sentence has been registered under Part 3 or 4 of the Bill.

22 Definitions

Clause 22 contains definitions for the purposes of this part.

23 Ministerial arrangements for the administration of local and interstate sentences

Clause 23 authorises the Minister to enter into arrangements with a corresponding Minister of an interstate jurisdiction to facilitate:

- the administration of interstate sentences in Queensland;
- the administration of Queensland sentences interstate;
- travel to an interstate jurisdiction by Queensland offenders; and
- travel to Queensland by interstate offenders.

Subclause (2) makes it clear that the local authority has the powers and functions necessary to support the arrangements.

Subclause (3) makes it clear that anything done by the interstate authority in accordance with the arrangements is taken to have been done under the law of Queensland.

24 Issuing interstate travel permit to local offender

Clause 24 provides that permission for a Queensland community based offender to leave Queensland is to occur in accordance with Ministerial arrangements in place.

This requires the chief executive in Queensland to incorporate the terms and conditions of the interstate travel into a travel permit, and provide a copy of the permit to the offender and interstate authority where travel has been authorised.

Subclause (4) requires the chief executive in Queensland to amend the travel permit and provide an amended copy to the offender and interstate authority for any variation of the permission to travel interstate.

Subclause (5) requires the chief executive in Queensland to provide written notice to the offender and interstate authority about any revocation of the permission to travel interstate.

Subclause (6) makes it clear that the travel permit ceases to have effect if permission to travel interstate is revoked, or the offender is arrested under a warrant issued under the corresponding law of the interstate jurisdiction.

Subclause (7) makes it clear that this section applies despite any other law of Queensland about the issuing of interstate travel permits to offenders.

25 Effect of interstate travel permit issued to local offender

Clause 25 provides that, while a local offender is travelling interstate in accordance with an interstate travel permit, the conditions of the permit substitute the conditions of the sentence. The offender's compliance (or non-compliance) with the conditions of the permit is taken to be compliance (or non-compliance) with the conditions of their sentence.

26 Powers exercisable in relation to interstate offenders

Clause 26 empowers the chief executive in Queensland to issue an arrest warrant for an interstate offender on a travel permit in Queensland if advised by the relevant interstate authority that the offender's interstate travel permit is no longer in force, or is satisfied that the offender has failed to comply with the conditions of the permit.

The warrant provides sufficient authority for a local law enforcement officer to arrest the interstate offender, convey the interstate offender to a place stated in the warrant, whether in Queensland or an interstate jurisdiction, and deliver the interstate offender into the custody of an interstate law enforcement officer of the jurisdiction in which the interstate travel permit was issued.

27 Powers of interstate law enforcement officers

Clause 27 gives recognition in Queensland to arrest warrants of the kind referred to in clause 26 that are issued under the laws of another jurisdiction.

28 Operation of *Service and Execution of Process Act 1992* (Cwth)

Clause 28 provides that nothing in this Bill is intended to limit or otherwise affect the operation of the *Service and Execution of Process Act 1992* of the Commonwealth.

Part 6 Miscellaneous

29 Inaccurate information about local sentence registered interstate

Clause 29 requires the chief executive in Queensland to tell the interstate authority about inaccurate information held about a Queensland sentence or offender registered interstate. This includes how the information in the interstate register needs to be changed.

For example, the register may have become inaccurate because the offender may have fulfilled additional components of the sentence registered in the interstate jurisdiction between the request for transfer and registration of the transfer, or because the

offender has been successful in seeking a review or appeal of their sentence in Queensland.

30 Dispute about accuracy of information about local sentence registered interstate

Clause 30 states the action that must be taken by the local and interstate authority if there is a dispute over the accuracy of information held about a Queensland sentence or offender that has been registered interstate.

The offender may make a claim in writing to the interstate authority, stating how the information held in a register concerning the offender and/or the sentence is inaccurate. The offender will communicate initially with the interstate authority as the interstate authority represents the jurisdiction administering and supervising the sentence. The interstate authority may send the local authority a copy of the claim, and a copy of the interstate register listing the information that pertains to the claimed inaccuracy.

If the interstate authority sends the local authority the specified information, the local authority must check whether the offender's claims and the information sent are accurate. The local authority must then advise the interstate authority either that the information held on the interstate register is accurate, or if the information is inaccurate must give the correct information.

31 Evidence of registration and registered particulars

Clause 31 establishes that a certificate signed by the local or interstate authority stating a matter in or that can be ascertained from the local or interstate register is evidence of the particular matter. The certificate will be evidence of the registration and other details that appear on the register whenever required in a court.

32 Regulation-making power

Clause 32 establishes that the Governor in Council may make regulations necessary for this legislation. The regulations may relate to any matter under the legislation.

Schedule 1 Dictionary

Schedule 1 contains definitions for terms used in the Bill.