



Crimes (Interstate Transfer of Community Based Sentences) Bill.

Second Reading

Mr GRAHAM WEST (Campbelltown—Parliamentary Secretary) [11.16 a.m.], on behalf of Mr Bob Debus: I move:

That this bill be now read a second time.

This bill provides for New South Wales participation in a scheme for the formal transfer and enforcement of community-based sentences between Australian jurisdictions. Community-based sentences are sentences that are served within the community, imposed as an alternative to imprisonment, and can be supervised and administered in the local jurisdiction. Community-based sentences are good behaviour bonds, community service orders, home detention orders, and periodic detention orders. At present, all Australian jurisdictions have arrangements in place for transferring the administration of good behaviour bonds. However, no arrangement exists for the bond itself to be transferred. There is also no arrangement for the transfer of other types of community-based sentence.

Currently, if an offender breaches a community-based sentence while in a new jurisdiction, he or she remains accountable to the original sentencing jurisdiction. This situation is less than ideal because it limits the opportunities for enforcement action in the case of an offender who does not comply with their sentence. Extradition procedures are required to return offenders to their original jurisdictions if they do not return of their own volition, which can involve the expenditure of significant time, money, and effort. The project of developing legislation suitable for the formal reciprocal transfer and enforcement of community-based sentences between jurisdictions has been ongoing since 1996. Since that time, the Department of Corrective Services has worked in close consultation with members of a working group comprising representatives from each Australian State and Territory, relevant agencies, and the Parliamentary Counsels Committee on the development of a suitable legislative model.

In 2000 Australian Capital Territory Corrective Services was given the task of drafting initial legislation for this purpose, and the Community Based Sentences (Transfer) Act 2003 was passed by the Australian Capital Territory Legislative Assembly on 20 February 2003. This Act provides model legislation for implementation in all Australian States and Territories. The bill mirrors the scheme provided by the Australian Capital Territory Community Based Sentences (Transfer) Act 2003. It will be trialled between New South Wales and the Australian Capital Territory in order to establish suitable administrative processes for the efficient running of the scheme. Following an evaluation of the scheme and subsequent discussion and agreement by the jurisdictions, similar legislation will be enacted in each Australian State and Territory.

It is impossible to accurately predict how many persons with community-based sentences would transfer into and out of New South Wales if all Australian jurisdictions introduced complementary legislation to enable the transfer of such sentences. The legislative scheme that already exists for the interstate transfer of parole orders and the current administrative scheme for the interstate transfer of good behaviour bonds provide a rough guide. On the basis of transfers which currently occur under these two schemes, the Department of Corrective Services has estimated that when the proposed scheme for the transfer of community-based sentences has been introduced Australiawide, around 200 additional offenders will transfer into New South Wales each year, and around 400 offenders will transfer out of New South Wales each year. If the scheme proceeds, New South Wales may, therefore, be expected to become a net exporter of persons with community-based sentences.

I move now to the detail of the bill. It will apply to sentences imposed in relation to adults. This is because many jurisdictions, including New South Wales, have separate legislative, administrative, and judicial regimes for adults and juveniles. To provide for a single piece of legislation covering both distinct regimes would be administratively inefficient. Under the scheme created by the bill, an offender with a community-based sentence in New South Wales will be able to transfer the supervision and administration of the sentence to a new jurisdiction on a voluntary basis, provided certain requirements are satisfied. The offender will then be managed in the new jurisdiction as if a court of the new jurisdiction had imposed the sentence, except for the purposes of appeal or review, which will remain the responsibility of the originating jurisdiction.

The scheme will operate in much the same way as the scheme established by the Prisoners (Interstate Transfer) Act 1982 and related interstate legislation. The sentences that may be transferred from and to New South Wales under the scheme are community service orders, home detention orders, periodic detention orders, and good behaviour bonds. The bill will not apply to certain types of sentence that may be served in the community, namely parole orders, sentences to the extent that they impose fines or other financial penalties, and sentences to the extent that they require the making of reparations.

Interstate authorities that will administer the scheme will have a designated authority as the authority for that

jurisdiction. Having one local authority for each jurisdiction will ensure that there is a single communication point between an offender and a supervising authority, establishing clear communication procedures and practices. The bill provides that the local authority is to be the Commissioner of Corrective Services, who will process requests for transfer of sentences into and out of New South Wales. Details of the transferred sentences will be recorded and maintained on a register. The local authority will make decisions on the basis of information sent by the relevant interstate authority regarding the offender and sentence, provided specific criteria are satisfied.

The criteria that the local authority will apply when deciding whether to accept a request for transfer are that the offender has consented to the order and has not withdrawn that consent, there is a sentence in New South Wales that corresponds to the sentence imposed in the interstate jurisdiction, the offender can comply with the sentence in New South Wales and the sentence can be safely, efficiently, and effectively administered in New South Wales. The local authority will be able to refuse a request for transfer if the criteria are not met, or otherwise at the local authority's discretion. This will be particularly relevant in a case where the local authority becomes aware of concerns expressed by an individual for his or her safety if the offender were to reside in New South Wales.

Discretion may also be exercised in a case where the offender poses an unacceptable administrative burden to New South Wales because the offender has a history of not complying with directions issued by a supervising officer. If deciding to accept a request for transfer, the local authority may choose to register the sentence, decline to register the sentence or require the offender to meet certain preconditions before registering the sentence. Imposing preconditions provides a means for the local authority to confirm the offender's ability and willingness to comply with the sentence in New South Wales before registration and formal transfer occurs. A precondition may include the offender satisfying the local authority before a stated time that the offender is living in New South Wales or that the offender is reporting to a stated person in New South Wales at a stated time and place.

If the local authority decides to accept a request for transfer and registers the sentence, the offender will be supervised and administered by the Probation and Parole Service as though the sentence had been imposed in New South Wales. The administration of a sentence includes administering a breach of the sentence. Therefore, if the offender does not comply with the conditions of the transfer order, he or she may be re-sentenced by a New South Wales court according to the laws of this State. The New South Wales court may, however, refer to the penalty range and type that would have been applicable in the original jurisdiction, so as to ensure that the transfer does not serve to avoid the sentencing intentions of the original jurisdiction. Registration of the sentence does not affect an offender's right to seek an appeal or review of the conviction or finding of guilt or the imposition of a sentence in the original jurisdiction.

As a matter of practicality, if the offender seeks an appeal or amendment of the conviction or the sentence relating to the conviction, the appeal will be made to the original jurisdiction and not to a New South Wales court, even though New South Wales is the jurisdiction supervising and administering the transferred sentence. In the case that an appeal or request for amendment of sentence is successful, the amended sentence will be administered and supervised in New South Wales as though a New South Wales court had upheld the appeal or made the amendment. It would be contrary to natural justice to prevent an offender from seeking an appeal or review of their conviction or sentence by virtue of registration in a jurisdiction other than the original jurisdiction. The Government believes that this bill is pivotal legislation.

There are many reasons why offenders may wish to transfer to a new jurisdiction. Notable reasons may be proximity to improved family and community support or the prospect of increased choice of employment or study opportunities. Allowing a transfer to a new area in which the offender has good support increases the probability of the offender fulfilling the order, being positively re-integrated back into the community, and being diverted from returning to the prison system. The future involvement of New South Wales in the trial of the scheme with the ACT highlights the contribution New South Wales is making to the corrective services framework nationally by the framing of a cohesive national approach to corrective services provision and enforcement. The Government encourages the early passage of the bill to ensure the prompt and efficient implementation of the scheme. I commend the bill to the House.

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