

**Crimes (Interstate Transfer of
Community Based Sentences)
Bill 2004**

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to establish a scheme for the formal transfer and enforcement of community based sentences between Australian jurisdictions.

Under the scheme, 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 the requirements of the proposed Act 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 purposes of appeal or review, which remains the responsibility of the originating jurisdiction.

The sentences currently available in New South Wales that may be transferred under the scheme are:

- (a) community service orders, and
- (b) home detention orders, and
- (c) periodic detention orders, and
- (d) good behaviour bonds.

Parole orders, fines and reparation orders are excluded from the scope of the proposed Act.

The Bill provides that the Commissioner of Corrective Services is to be the local authority, who will process requests for transfer into and out of the local jurisdiction. Details of the transferred orders will be recorded and maintained on a register. The local authority will make decisions on the basis of information sent by the interstate equivalent of the local authority (the *interstate authority*) regarding the offender and the sentence, provided specific criteria are satisfied.

The criteria that the local authority will apply when deciding whether to accept a request for transfer are as follows:

- (a) the offender has consented to the order and has not withdrawn that consent,
- (b) there is a sentence in the local jurisdiction that corresponds to the sentence imposed in the interstate jurisdiction,
- (c) the offender can comply with the sentence in the local jurisdiction,
- (d) the sentence can be safely, efficiently and effectively administered in the local jurisdiction.

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 the local jurisdiction.

The authority's discretion may also be exercised in a case where the offender poses an unacceptable administrative burden to the local jurisdiction because the offender has a history of not complying with directions issued by a supervising officer.

If the local authority decides to accept a request for transfer, the offender will be supervised and administered by the local authority as though the sentence had been made in the local jurisdiction. The administration of the 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 will be re-sentenced

by a court of the local jurisdiction according to the laws of the local jurisdiction. The 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. If, however, the offender seeks an appeal or review of the conviction or the sentence relating to the conviction, the appeal will be made to the original jurisdiction and not to the jurisdiction supervising and administering the transferred sentence. In the case that the appeal or request for review is successful, the amended sentence will be administered and supervised in the jurisdiction supervising and administering the transferred sentence as though the appeal or review had been made by a court of the local jurisdiction.