

**CRIMES (ADMINISTRATION OF SENTENCES) LEGISLATION AMENDMENT  
(INTERSTATE TRANSFERS) BILL 2012**

18 OCTOBER 2012

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**Bill introduced on motion by Mr Greg Smith, read a first time and printed.**

**Second Reading**

**Mr GREG SMITH** (Epping—Attorney General, and Minister for Justice) [3.23 p.m.]: I move:

That this bill be now read a second time.

There are three uniform national model statutory schemes providing for the transfer of community-based sentences, parole orders and prisoners between the Australian States and Territories. The Crimes (Interstate Transfer of Community Based Sentences) Act 2004, the Parole Orders (Transfer) Act 1983, and the Prisoners (Interstate Transfer) Act 1982 are the New South Wales versions of the uniform national model legislation. The Crimes (Interstate Transfer of Community Based Sentences) Act 2004 provides for the interstate transfer of community-based sentences such as community service orders and good behaviour bonds. At present, three Australian jurisdictions have passed similar legislation: the Australian Capital Territory, Western Australia and Tasmania. The Parole Orders (Transfer) Act 1983 provides for the interstate transfer of parole orders. The Prisoners (Interstate Transfer) Act 1982 provides for the interstate transfer of prisoners. All Australian jurisdictions have laws that correspond with these Acts.

The bill before the House makes various amendments to these three Acts, which I will collectively call the interstate transfer Acts. The amendments have been endorsed by the Council of Australian Governments Standing Committee on Law and Justice. All the States and Territories have undertaken to introduce amendments to their own interstate transfer Acts to maintain the national model interstate transfer legislation and facilitate the efficient interstate transfer of offenders and their sentences. One of the major initiatives of this bill is to insert provisions into the Crimes (Interstate Transfer of Community Based Sentences) Act 2004 and the Parole Orders (Transfer) Act 1983 providing for reciprocal arrangements to be made between New South Wales and other Australian jurisdictions for an interstate travel permit scheme, which will permit offenders subject to community-based sentences and parole orders to temporarily travel interstate, and for interstate jurisdictions to administer the sentences and orders of offenders when they travel interstate on an interstate travel permit. This will change the current situation significantly.

Interstate travel arrangements have existed between the Probation and Parole and Community Corrections Services of the Australian States and Territories for many years, where an offender subject to a community-based sentence or a parole order is permitted to temporarily travel to, and remain in, an interstate jurisdiction. As these arrangements have no statutory basis, Probation and Parole officers lack authority to take immediate and effective action against interstate offenders for breaches of their sentences or orders. If an offender breaches his or her sentence or order, he or she remains accountable to the home jurisdiction. The bill will provide a statutory basis for these interstate travel arrangements.

It is envisaged that the schemes for parole orders and community-based sentences in the bill will operate along the lines of the National Operating Procedures for Parolee Interstate Travel Permits, which were approved by the Corrective Services Ministers Conference in 2009, subject to ministerial arrangements for the administration of the scheme to be made between jurisdictions. Establishing a statutory scheme for interstate travel permits and the administration by the States and Territories of the community-based sentences and parole orders of offenders who temporarily travel interstate has a number of benefits. It is more efficient than using the existing provisions for permanent transfer of such sentences and orders, which entail a lengthy and detailed application, approval and registration process by the authorities in the sending and receiving jurisdictions before a transfer can occur. The interstate travel permit scheme permits individual jurisdictions to issue interstate travel permits subject to agreed ministerial arrangements for issuing such permits. Importantly, the conditions of the travel permit will be agreed upon by the jurisdiction issuing the permit and the jurisdiction to which the offender is granted permission to travel.

The interstate travel permit scheme will promote community safety by providing a statutory basis for the administration of interstate community-based sentences and parole orders and the supervision and monitoring of offenders while they temporarily travel interstate. It will authorise the local police or correctional authorities to immediately intervene when an interstate offender breaches the conditions of a travel permit. The interstate travel permit scheme will benefit offenders by providing a formal process for them to travel and reside interstate for temporary periods. It will enable offenders to engage in activities which can assist with their rehabilitation and reintegration into society, such as visiting relatives, or taking up employment opportunities. It will give offenders the benefit of formal supervision and guidance from the local Probation and Parole or Community Corrections authorities while they are temporarily interstate.

I turn now to the main details of the bill. Schedule 1 amends the Crimes (Interstate Transfer of Community Based Sentences) Act 2004. Item [8] of schedule 1 inserts part 5A into the Act, which authorises the New South Wales Minister for Justice to make reciprocal arrangements with corresponding Ministers in the other States and Territories for New South Wales community-based sentences to be administered by interstate jurisdictions and for interstate community-based sentences to be administered by New South Wales. In particular, arrangements may be entered into to facilitate interstate travel between New South Wales and interstate jurisdictions by New South Wales and interstate offenders, in accordance with the conditions of interstate travel permits issued by each jurisdiction.

The local authority for New South Wales will be authorised to issue an interstate travel permit to a New South Wales offender permitting the offender to travel to an interstate jurisdiction. The local authority for New South Wales will be the Commissioner of Corrective Services. Each interstate travel permit issued to a New South Wales offender by the commissioner authorising the offender to travel to an interstate jurisdiction will be subject to conditions. Any compliance or non-compliance by the New South Wales offender with the conditions of the interstate travel permit will be taken to be compliance or non-compliance with the conditions of his or her non-compliance. With respect to interstate offenders who travel to New South Wales on an interstate travel permit, the commissioner will have the authority and may exercise such powers, duties and functions as are necessary, under the ministerial arrangements, to administer interstate offenders' interstate community-based sentences while they are present in New South Wales.

The commissioner will have the authority to issue a warrant for the arrest of an interstate offender, present in New South Wales on an interstate travel permit issued by an interstate jurisdiction, in two circumstances: where advised by the relevant interstate authority that the interstate travel permit is no longer in force, and where the commissioner forms the opinion that the interstate offender has failed to comply with the conditions of the interstate permit. A warrant issued by the commissioner will be sufficient authority for a New South Wales law enforcement officer to arrest the interstate offender and convey the offender to a place specified in the warrant, whether in New South Wales or an interstate jurisdiction, and to convey the offender into the custody of a law enforcement officer of the relevant interstate jurisdiction. A New South Wales law enforcement officer will be defined to include police officers, correctional officers, compliance and monitoring officers, and probation and parole officers. Arrest warrants issued under the corresponding law of an interstate jurisdiction, authorising law enforcement officers of that jurisdiction to convey an interstate offender through New South Wales to the offender's home jurisdiction, or to convey a New South Wales offender to New South Wales, will have legal effect in New South Wales according to each warrant's tenor.

Schedule 1 also provides for a number of other amendments to the Crimes (Interstate Transfer of Community Based Sentences) Act 2004. Item [2] of schedule 1 provides that a combination of community-based sentences may be treated as a single community-based sentence for the purposes of the Act. Item [3] of schedule 1 clarifies the circumstances in which a community-based sentence under the law of New South Wales is taken to correspond to an interstate community-based sentence. This amendment provides that a New South Wales community-based sentence corresponds, or substantially corresponds, to an interstate community-based sentence when the New South Wales community-based sentence can impose a penalty of substantially the same nature as the penalty imposed by the interstate community-based sentence, and conditions can be imposed on the New South Wales community-based sentence of substantially the same nature as the conditions to which the interstate community-based sentence is subject.

Item [4] of schedule 1 clarifies the application of section 24 (1) (e) of the Act to interstate community-based sentences registered in New South Wales. Section 24 (1) (e) provides that, if an interstate community-based sentence is registered in New South Wales, the penalty for the offence for which the sentence was imposed is taken to be the relevant penalty for the offence under the laws of the originating jurisdiction, which is the jurisdiction in which the sentence was originally imposed, and not the penalty for an offence of that kind under the laws of New South Wales. The amendment provides that section 24 (1) (e) applies only for the purpose of determining the penalty to be imposed for the relevant offence in circumstances in which the offender is, under the laws of New South Wales, resentenced by a New South Wales court in relation to the offence. If an offender breaches the conditions of a community-based sentence registered in New South Wales and the offender is not resentenced for the original offence, the offender may be subject to such action under the laws of New South Wales as could be taken against an offender for a breach of a sentence imposed by a New South Wales court, such as the imposition of further conditions on the sentence.

Item [6] of schedule 1 amends section 27 of the Act to provide that, if a New South Wales community-based sentence is registered in an interstate jurisdiction, a breach of a condition of the sentence occurring before it was registered in the interstate jurisdiction cannot be dealt with under the laws of New South Wales. This amendment will prevent the offender from

being subject to separate proceedings in each jurisdiction for the same breach. Existing section 24 (1) (g) correspondingly provides that where an interstate community-based sentence is registered in New South Wales, the offender may be dealt with in New South Wales for a breach of the sentence, whether occurring before or after the registration of the sentence in New South Wales. Item [7] will provide that section 27 does not apply to the extent to which a community-based sentence imposes a fine or other penalty, or requires the making of reparation. To that extent, the sentence will remain in force in New South Wales and may be enforced accordingly.

Item [5] will amend section 24 of the Act to correspondingly provide that when an interstate community-based sentence is registered in New South Wales, that section will not apply to the extent that the interstate sentence imposes a fine or other financial penalty or requires the making of reparation. I turn now to schedule 2 to the bill. Schedule 2 amends the Parole Orders (Transfer) Act 1983. It reorganises the subject matter of the Act into parts for clarification and to make it easier to understand. Item [19] of schedule 2 inserts Part 3 into the Act which will authorise the New South Wales Minister for Justice to enter into reciprocal arrangements with corresponding Ministers in the other States and Territories for New South Wales parole orders to be administered by interstate jurisdictions, and for interstate parole orders to be administered by New South Wales.

In particular, ministerial arrangements may be entered into to facilitate interstate travel between New South Wales and interstate jurisdictions by New South Wales and interstate parolees in accordance with the conditions of interstate travel permits issued by each jurisdiction. It is in similar terms as the provisions for the making of ministerial arrangements for the administration of community-based sentences and interstate travel in schedule 1 to the bill, to which I referred earlier. A New South Wales parolee whose parole order requires the parolee to obtain permission to travel interstate will be required to apply for an interstate travel permit. The permit will be subject to such conditions as are required to be imposed on it by the agreed ministerial arrangements. The conditions of the permit will be substituted for the conditions to which the parole order is subject.

The prisons authority for the interstate jurisdiction will have authority to administer the parole order in accordance with the conditions of the interstate travel permit and the agreed ministerial arrangements for the administration of parole orders. Any compliance or non-compliance by the New South Wales parolee with the conditions of the interstate travel permit will be taken to be compliance or non-compliance with the conditions of the parole order. The permit will cease to have effect in the interstate jurisdiction when that jurisdiction is notified that permission to travel has been revoked, or if the parolee is arrested in the interstate jurisdiction pursuant to a warrant issued under the laws of that jurisdiction.

With respect to interstate parolees who travel to New South Wales on an interstate travel permit, the local prisons authority for New South Wales, who will be the Commissioner of Corrective Services, will have and may exercise such powers, authorities, duties and functions as are necessary under the agreed ministerial arrangements to administer interstate parolees' parole orders while they are present in New South Wales. The New South Wales State Parole Authority will have authority to issue a warrant for the arrest of an interstate parolee present in New South Wales on an interstate travel permit issued by an interstate

jurisdiction in two circumstances: where advised by the relevant interstate authority that the interstate travel permit is no longer in force and where the New South Wales State Parole Authority forms the opinion that the interstate parolee has failed to comply with the conditions of the interstate permit.

An arrest warrant issued by the New South Wales State Parole Authority will be sufficient authority for a New South Wales law enforcement officer, including police officers, correctional officers, compliance and monitoring officers, and probation and parole officers, to arrest the interstate parolee and convey the parolee to a place specified in the warrant, whether that is in New South Wales or an interstate jurisdiction, and convey the parolee into the custody of a law enforcement officer of the relevant interstate jurisdiction. Schedule 2 also provides for a number of other amendments to the Parole Orders (Transfer) Act 1983, including item [11], which inserts a number of matters to which the Minister is required to have regard when deciding whether to direct that an interstate parole order be registered in New South Wales or to make a request to an interstate jurisdiction for a New South Wales parole order to be registered in that jurisdiction. Currently, the Act only requires the interests of the parolee to be considered when making this decision.

The amendment in item [11] requires consideration to be given to other significant factors, such as community safety and the administration of justice, and largely mirrors the factors that the Minister is required to consider when deciding whether to approve the interstate transfer of a prisoner under the Prisoners (Interstate Transfer) Act 1982. Item [13] amends section 9 of the Act to make clear that where an interstate parole order is registered in New South Wales, any breach of that order that occurred before it was registered in New South Wales and was not dealt with by the parole authority for the interstate jurisdiction, is to be dealt with under the laws of New South Wales.

Item [17], likewise, provides that any breach of a New South Wales parole order that occurred before the order was registered in an interstate jurisdiction and was not dealt with by the New South Wales State Parole Authority, is to be dealt with under the laws of the interstate jurisdiction in which it is registered. Item [15] omits subsection (4) of section 9 of the Act, with the effect that the laws of New South Wales apply to and in relation to an interstate parole order registered in New South Wales, in the same way as they apply to parole orders made under the laws of New South Wales.

Schedule 3 amends the Prisoners (Interstate Transfer) Act 1982. Item [2] of schedule 3 provides that when a prisoner is being transferred from New South Wales into the custody of an interstate jurisdiction, it is sufficient for a prison escort from the interstate jurisdiction to receive the prisoner into their custody at a location nominated by the interstate jurisdiction's prisons authority. Presently, the Act requires a New South Wales prison escort to escort the prisoner to a prison in the interstate jurisdiction to which the prisoner is being transferred. This amendment will enable the transfer of custody to occur at a location which is mutually convenient for both jurisdictions, such as a border town police station. Item [4] of schedule 3 amends the arrest powers conferred on interstate prison escorts present in New South Wales

by section 32 of the Act. Section 32 enables an interstate escort to arrest a prisoner who escapes from custody while being conveyed through New South Wales to a prison in another jurisdiction pursuant to section 31 of the Act.

Item [4] amends section 32 to confer the same power on an interstate escort which is conveying a prisoner to a prison in New South Wales pursuant to section 24 of the Act. As I indicated earlier, the amendments in this bill have been agreed to by all Australian States and Territories and they have undertaken to introduce similar amendments to their own interstate transfer Acts to complement the amendments in this bill. The amendments in this bill form part of uniform national model legislation, which will facilitate the efficient and safe operation of the statutory schemes for the interstate transfer of offenders and their sentences between New South Wales and other States and Territories, and thereby contribute to the rehabilitation of offenders, while safeguarding community safety. I commend the bill to the House.

**Debate adjourned on motion by Mr Paul Lynch and set down as an order of the day for a future day.**