



New South Wales

# Crimes (Administration of Sentences) Legislation Amendment (Interstate Transfers) Bill 2012

## Explanatory note

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

## Overview of Bill

The *Crimes (Interstate Transfer of Community Based Sentences) Act 2004*, the *Parole Orders (Transfer) Act 1983* and the *Prisoners (Interstate Transfer) Act 1982* comprise a package of uniform legislation with respect to the interstate transfer of sentences and the persons by whom such sentences are being served. This Bill contains amendments, agreed to by the various jurisdictions that have adopted the uniform legislation, that seek to facilitate the administration of the Acts included in that package.

The objects of this Bill are:

- (a) to amend the *Crimes (Interstate Transfer of Community Based Sentences) Act 2004* so as:
  - (i) to facilitate the making of reciprocal arrangements for the administration of local and interstate community based sentences, and
  - (ii) to clarify the application of the Act in relation to fines and other financial penalties imposed by an interstate sentence, and

- (iii) to limit the purposes for which an interstate penalty has effect in relation to an interstate sentence after it has been registered as a community based sentence under a law of this State, and
- (iv) to provide that proceedings against an offender whose interstate sentence is registered as a community based sentence under a law of this State may not be commenced or continued in relation to any breach of the conditions of the sentence that occurred before it was registered, and
- (v) to make other miscellaneous amendments to the Act, and
- (b) to amend the *Parole Orders (Transfer) Act 1983* so as:
  - (i) to facilitate the making of reciprocal arrangements for the administration of local and interstate parole orders, and
  - (ii) to vary the conditions that must be satisfied before an interstate parole order may be registered in this State, and
  - (iii) to extend the range of documents that may be used to support an application for the registration of an interstate parole order, and
  - (iv) to provide that an interstate parolee whose parole order is registered in this State may be dealt with under the laws of this State for any breach of the conditions of parole that occurred before the order was registered, and that proceedings against a NSW parolee whose parole order is registered under a law of another jurisdiction may not be commenced or continued in relation to any breach of the conditions of parole that occurred before the order was registered, and
  - (v) to provide that the consequences of the revocation of a parole order that has been registered under the Act are no different to those of the revocation under the laws of this State of any other parole order, and
  - (vi) to insert a provision with respect to the Minister's use of various documents and information in connection with the making of determinations and exercise of discretions under the Act, and
  - (vii) to make other miscellaneous amendments to the Act, and
- (c) to amend the *Prisoners (Interstate Transfer) Act 1982* so as:
  - (i) to enable prisoners who are being transferred to an interstate jurisdiction to be delivered to an interstate escort, and at a location, authorised for that purpose by the prisons authority for that jurisdiction, and
  - (ii) to ensure that the arrest powers given to an interstate escort in relation to an offender who escapes from custody while in this State extend not only to prisoners in transit to another jurisdiction but also to prisoners being transferred to this State.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent to the proposed Act.

## **Schedule 1      Amendment of Crimes (Interstate Transfer of Community Based Sentences) Act 2004 No 72**

### **Administration of local and interstate sentences**

**Schedule 1 [8]** inserts proposed Part 5A into the Act. The new Part contains the following provisions:

**Proposed section 27A** contains various definitions for the purposes of the proposed Part.

**Proposed section 27B** enables the Minister to enter into arrangements with the corresponding Minister of an interstate jurisdiction for the administration, within this State and that jurisdiction, of sentences imposed under the respective laws of each jurisdiction.

**Proposed section 27C** requires any permission for interstate travel that is given to a local offender to be given in the form of an interstate travel permit, and to be subject to such conditions as are required to be imposed on the permit by the arrangements referred to in proposed section 27B. The proposed section further provides that an interstate travel permit ceases to have effect in an interstate jurisdiction if the relevant authority in that jurisdiction is notified that permission to travel has been revoked, or if the offender is arrested in the interstate jurisdiction pursuant to a warrant issued under the laws of that jurisdiction.

**Proposed section 27D** provides that, while a local offender is travelling interstate in accordance with an interstate travel permit, the conditions of the permit are taken to have replaced the conditions of his or her sentence and his or her compliance (or non-compliance) with the conditions of the permit is taken to be compliance (or non-compliance) with the conditions of his or her sentence.

**Proposed section 27E** empowers the local authority (that is, the Commissioner of Corrective Services) to issue an arrest warrant for an interstate offender if advised by the relevant interstate authority that the offender's interstate travel permit is no longer in force in this State or if of the opinion that the offender has failed to comply with the conditions of the permit.

**Proposed section 27F** gives recognition in this State to arrest warrants of the kind referred to in proposed section 27E that are issued under the laws of another jurisdiction.

**Proposed section 27G** provides that nothing in the Act is intended to limit or otherwise affect the operation of the *Service and Execution of Process Act 1992* of the Commonwealth.

### **Application of Act to fines and penalties**

Section 4 (2) provides that the Act does not apply to a parole order, or to a sentence to the extent to which it imposes a fine or other penalty or requires the making of

reparation. **Schedule 1 [1]** substitutes the subsection with a new subsection that merely provides that the Act does not apply to a parole order.

**Schedule 1 [5]** amends section 24 (which deals with the effect of registering an interstate sentence as a community based sentence under a law of this State) so as to provide that the section does not apply to the extent to which the interstate sentence imposes a fine or other financial penalty or requires the making of reparation.

**Schedule 1 [7]** amends section 27 (which deals with the registration of a local sentence as a community based sentence under the laws of another jurisdiction) so as to provide that the section does not apply to the extent to which the sentence imposes a fine or other penalty or requires the making of reparation and, to that extent, the sentence remains a sentence in force in this jurisdiction and may be enforced accordingly.

#### **Effect of interstate penalties**

Section 24 (1) (e) provides that, if an interstate sentence is registered in this State, the penalty for the offence for which the penalty was imposed is taken to be the relevant penalty for the offence under the laws of the originating jurisdiction (that is, the jurisdiction in which the sentence was originally imposed) and not the penalty for an offence of that kind under the laws of this State. **Schedule 1 [4]** amends section 24 so as to provide 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 this State, re-sentenced in relation to the offence. If the offender breaches the conditions of the sentence in circumstances that do not result in the offender being re-sentenced for the original offence, the relevant penalty to be imposed for the breach is the penalty that could be imposed for a breach of a similar sentence imposed under the laws of this State.

#### **Proceedings for breaches arising before registration**

Section 24 (1) (g) provides that, if an interstate sentence is registered in this State, the offender may be dealt with in this State for a breach of the sentence, whether occurring before or after the sentence was registered. **Schedule 1 [6]** amends section 27 so as to provide that, if a local sentence is registered in an interstate jurisdiction, a breach of the sentence occurring before the sentence was registered cannot be dealt with under the laws of this State. This will prevent the offender from being subject to separate proceedings in each jurisdiction for the same breach.

#### **Miscellaneous amendments**

**Schedule 1 [2]** amends section 7 to provide that the regulations may declare that a combination of community based sentences is taken, for the purposes of the Act, to be a single community based sentence under a law of this State.

**Schedule 1 [3]** amends section 19 so as to clarify the circumstances in which a community based sentence under a law of this State is taken to correspond to an interstate sentence.

**Schedule 1 [9]** enables savings and transitional regulations to be made as a consequence of the proposed Act or any other Act that amends the Act.

## **Schedule 2      Amendment of Parole Orders (Transfer) Act 1983 No 190**

### **Administration of local and interstate parole orders**

**Schedule 2 [19]** inserts proposed Part 3 into the Act. The new Part contains the following provisions:

**Proposed section 10A** contains various definitions for the purposes of the proposed Part.

**Proposed section 10B** enables the Minister to enter into arrangements with the corresponding Minister of an interstate jurisdiction for the administration, within this State and that jurisdiction, of parole orders issued under the respective laws of each jurisdiction.

**Proposed section 10C** requires any permission for interstate travel that is given to a NSW parolee to be given in the form of an interstate travel permit, and to be subject to such conditions as are required to be imposed on the permit by the arrangements referred to in proposed section 10B. The proposed section further provides that an interstate travel permit ceases to have effect in an interstate jurisdiction if the relevant authority in 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.

**Proposed section 10D** provides that, while a NSW parolee is travelling interstate in accordance with an interstate travel permit, the conditions of the permit are taken to have replaced the conditions of his or her parole and his or her compliance (or non-compliance) with the conditions of the permit is taken to be compliance (or non-compliance) with the conditions of his or her parole.

**Proposed section 10E** empowers the local parole authority (that is, the State Parole Authority) to issue an arrest warrant for an interstate parolee if advised by the relevant interstate registrar that the parolee's interstate travel permit is no longer in force in this State or if of the opinion that the parolee has failed to comply with the conditions of the permit.

**Proposed section 10F** gives recognition in this State to arrest warrants of the kind referred to in proposed section 10E that are issued under the laws of another jurisdiction.

**Proposed section 10G** provides that nothing in the Act is intended to limit or otherwise affect the operation of the *Service and Execution of Process Act 1992* of the Commonwealth.

### **Registration of parole orders**

Section 5 enables the Minister to request registration interstate of a NSW parole order (section 5 (2)) and to respond to a similar request from interstate by directing the Registrar of Transferred Parole Orders to register an interstate parole order

(section 5 (1)). Section 7 sets out certain matters that must be satisfied before such a request or direction is given, in particular that the person to whom the request or direction relates has consented to (or requested) such action and is residing in the jurisdiction concerned.

**Schedule 2 [8]** transfers these latter matters to section 5, with two changes. Firstly, the amendment enables the person to whom the request or direction relates to withdraw any consent or request that he or she has previously given. Secondly, the amendment provides that it is sufficient if that person is present, rather than residing, in the jurisdiction concerned. The latter change is intended to facilitate the interstate transfer of a parole order concerning a person whose whereabouts are known but whose intentions as to residence cannot be established. **Schedule 2 [12]** makes a consequential amendment to section 8, making it clear that a parole order may not be registered under the Act unless the person to whom it relates is actually present in this State.

**Schedule 2 [11]** substitutes section 7. The new section contains only those matters to which the Minister must have regard when deciding whether to make a request or direction under section 5, but requires additional matters (such as the administration of justice and the protection of the community) to be taken into consideration.

#### **Documents to accompany requests for registration**

Section 6 sets out the documents that must accompany a request by the Minister for registration interstate of a NSW parole order. In particular, those documents must include the original parole order and the originals of any variations that have been made to it. Copies of documents other than the parole order and its variations are acceptable, but must be certified by the person in whose custody the originals have been entrusted. In many cases the supply of an original parole order is impracticable or inappropriate. **Schedule 2 [10]** inserts proposed section 6 (3) to allow a copy to be provided instead, so long as the copy has the same legal effect as the original. **Schedule 2 [9]** amends section 6 (2) so as to enable copies of other documents to be certified by the Registrar of Transferred Parole Orders instead of the person having possession of the document, so allowing for a single certificate.

#### **Proceedings for breaches arising before registration**

Section 9 states that registration of an interstate parole order under the Act gives the order the same effect as a parole order issued under the laws of this State. The section is silent as to how a breach of the conditions of a parole order is to be dealt with if the breach occurred before the order was registered. **Schedule 2 [13]** amends section 9 so as to make it clear that such a breach is to be dealt with under the laws of this State. **Schedule 2 [17]** amends section 10 so as to provide that a breach of the conditions of a NSW parole order may not be dealt with under the laws of this State if, subsequent to the breach, the parole order has been registered in another jurisdiction.

### **Consequences of revocation of parole**

Section 9 (1) provides that, while a parole order is registered under the Act, the laws of this State apply to and in relation to the order and the person to whom the order relates. Section 9 (4) specifically provides that a person whose parole order is revoked is liable to imprisonment for the remainder of his or her sentence, calculated from the date of his or her release on parole. The general rule for revocation of parole is that the remainder of the person's sentence is calculated as from the date on which the parole order is revoked (see sections 168 and 254 of the *Crimes (Administration of Sentences) Act 1999*). **Schedule 2 [15]** omits section 9 (4), and thereby reinstates the general rule (via section 9 (1)).

### **Miscellaneous amendments**

**Schedule 2 [1], [5] and [20]** insert Part headings before existing sections 1, 5 and 11 of the Act.

**Schedule 2 [2]** amends the definition of *designated authority* in section 3 so as to ensure that such an authority must be a natural person, and not a body corporate.

**Schedule 2 [4]** extends the definition of *parole order* in section 3 to prospective parole orders, so as to allow an interstate parole order to be registered in this State before it takes effect. **Schedule 2 [6] and [7]** make consequential amendments to section 5.

**Schedule 2 [14]** substitutes section 9 (3) so as to define *appropriate court* in a way that avoids the need to make regulations under the Act. The new definition follows a definition of the same expression in the *Crimes (Interstate Transfer of Community Based Sentences) Act 2004*.

**Schedule 2 [18]** amends section 10 (2) (b) so as to remove a potential ambiguity of meaning.

**Schedule 2 [21]** inserts proposed section 11A. The new section deals with the use by the Minister of certain documents and information when making determinations under the Act or exercising discretions conferred by the Act.

**Schedule 2 [3] and [16]** are law revision amendments that insert missing words.

## **Schedule 3      Amendment of Prisoners (Interstate Transfer) Act 1982 No 104**

### **Delivery of transferred prisoners**

Section 24 currently requires a prisoner who is being transferred from this State to another jurisdiction, or from another jurisdiction to this State, to be conveyed to a specified prison and there delivered into the custody of the gaoler of that prison. **Schedule 3 [2]** inserts proposed subsection (4) into that section so as to state that these requirements are satisfied if the prisoner concerned is delivered to an interstate escort, and at a location, authorised by the local prisons authority of the transferee

jurisdiction. **Schedule 3 [1] and [3]** make consequential amendments to sections 5 and 31.

**Arrest powers of interstate escorts**

Section 32 enables an interstate escort to arrest a prisoner who escapes from custody while being conveyed through this State to a prison in another jurisdiction pursuant to section 31. **Schedule 3 [4]** amends section 32 so as to confer the same power on an interstate escort who is conveying a prisoner to a prison in this State pursuant to section 24.