

Passed by both Houses



New South Wales

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

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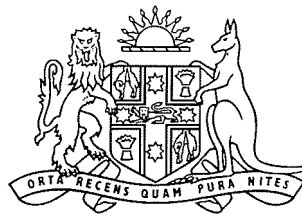
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*I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,  
Sydney, , 2012*



New South Wales

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

Act No , 2012

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*An Act to amend the *Crimes (Interstate Transfer of Community Based Sentences) Act 2004*, the *Parole Orders (Transfer) Act 1983* and the *Prisoners (Interstate Transfer) Act 1982* so as to make further provision for the uniform administration of sentences imposed by local and interstate jurisdictions.*

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*I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.*

*Assistant Speaker of the Legislative Assembly.*

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**The Legislature of New South Wales enacts:**

**1    Name of Act**

This Act is the *Crimes (Administration of Sentences) Legislation Amendment (Interstate Transfers) Act 2012*.

**2    Commencement**

This Act commences on the date of assent to this Act.

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

### **[1] Section 4 Application of Act**

Omit section 4 (2). Insert instead:

- (2) This Act does not apply to a parole order.

### **[2] Section 7 What is a “community based sentence”?**

Insert after section 7 (2) (d):

- (e) any combination of 2 or more community based sentences referred to in subsection (1) (a) that is declared by the regulations to be a single community based sentence.

### **[3] Section 19 Registration criteria**

Insert after section 19 (2):

- (3) For the purposes of subsection (2) (a), a community based sentence under a law of this jurisdiction corresponds, or substantially corresponds, to an interstate sentence if and only if the law of this jurisdiction provides that:
  - (a) a penalty of substantially the same nature as the penalty imposed by the interstate sentence can be imposed by the community based sentence, and
  - (b) conditions of substantially the same nature as the conditions to which the interstate sentence is subject can be imposed in relation to the community based sentence.

### **[4] Section 24 Effect of local registration of interstate sentences**

Insert after section 24 (2):

- (2A) Subsection (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 law of this jurisdiction, re-sentenced in relation to that offence.

### **[5] Section 24 (5A)**

Insert after section 24 (5):

- (5A) This section does not apply to an interstate sentence to the extent to which:
  - (a) it imposes a fine or other financial penalty (however described), or

(b) it requires the making of reparation (however described).

**[6] Section 27 Effect of interstate registration of local sentences**

Insert after section 27 (1) (c):

(d) proceedings against the offender may not be commenced or continued under the law of this jurisdiction in relation to any breach of the conditions attached to the sentence that occurred before it was registered in the interstate jurisdiction.

**[7] Section 27 (2A)**

Insert after section 27 (2):

(2A) If this jurisdiction is the originating jurisdiction for the local sentence, this section does not affect the sentence to the extent to which:

(a) it imposes a fine or other financial penalty (however described), or

(b) it requires the making of reparation (however described), and, to that extent, the sentence remains a sentence in force in this jurisdiction and may be enforced accordingly.

**[8] Part 5A**

Insert after Part 5:

**Part 5A Reciprocal arrangements for administration of local and interstate sentences**

**27A Definitions**

In this Part:

*corresponding Minister*, in relation to an interstate jurisdiction, means the person who has powers under the corresponding law of that jurisdiction that correspond to the powers of the Minister under this Part.

*interstate law enforcement officer*, in relation to an interstate jurisdiction, means a local law enforcement officer within the meaning of the corresponding law of that jurisdiction.

*interstate offender* means an offender who is subject to an interstate sentence.

***local law enforcement officer*** means a correctional officer, compliance and monitoring officer or probation and parole officer (within the meaning of the *Crimes (Administration of Sentences) Act 1999*) or a police officer.

***local offender*** means an offender who is subject to a local sentence.

***Ministerial arrangements*** means arrangements referred to in section 27B.

**27B Ministerial arrangements for the administration of local and interstate sentences**

- (1) The Minister may enter into arrangements with the corresponding Minister of an interstate jurisdiction so as to facilitate:
  - (a) the administration, within this jurisdiction, of interstate sentences imposed under a law of the interstate jurisdiction, and
  - (b) the administration, within the interstate jurisdiction, of local sentences,either in relation to particular local or interstate offenders or particular classes of local or interstate offenders.
- (2) In particular, such arrangements may be entered into so as to facilitate:
  - (a) travel to the interstate jurisdiction by local offenders, and
  - (b) travel to this jurisdiction by interstate offenders.
- (3) The local authority has, and may exercise, such powers, authorities, duties and functions as are necessary, under the relevant Ministerial arrangements, for the administration of interstate sentences in relation to interstate offenders who are present in this jurisdiction.
- (4) For the purposes of the law of this jurisdiction with respect to local sentences, anything that is done:
  - (a) by the appropriate interstate authority of an interstate jurisdiction, and
  - (b) in accordance with the relevant Ministerial arrangements, and
  - (c) in the administration of a local sentence in relation to a local offender who is present in the interstate jurisdiction, is taken to have been done pursuant to the law of this jurisdiction.

**27C Issue of interstate travel permit to local offender**

- (1) This section applies to a local offender whose sentence is subject to a condition (whether imposed by the sentence or otherwise) that prohibits the offender from leaving this jurisdiction without permission.
- (2) Permission to leave this jurisdiction is to be granted, varied and revoked, and conditions of permission are to be imposed and varied, in accordance with the relevant Ministerial arrangements.
- (3) As soon as practicable after any such permission is granted, the local authority:
  - (a) must incorporate the terms and conditions of the permission in an interstate travel permit, and
  - (b) must provide a copy of the permit to the offender, and
  - (c) must provide:
    - (i) a copy of the permit, and
    - (ii) such other documents or information about the offender as are required or authorised to be sent under the relevant Ministerial arrangements,to the interstate authority of each interstate jurisdiction to which the permit authorises travel.
- (4) As soon as practicable after the terms or conditions of any such permission are varied, the local authority:
  - (a) must incorporate the terms and conditions of the permission, as varied, in an amended interstate travel permit, and
  - (b) must provide a copy of the amended permit to the offender, and
  - (c) must provide:
    - (i) a copy of the amended permit, and
    - (ii) such other documents or information as are relevant to the variation,to the interstate authority of each interstate jurisdiction to which the permit authorises travel.
- (5) As soon as practicable after any such permission is revoked, the local authority must provide written notice of that fact to the offender and to the interstate authority of each interstate jurisdiction to which the permit authorised travel.



- (6) An interstate travel permit ceases to have effect in an interstate jurisdiction to which it authorises travel:
  - (a) if written notice referred to in subsection (5) is provided to the interstate authority of that jurisdiction (regardless of whether or not the offender has received such notice), or
  - (b) if the offender is arrested pursuant to a warrant issued under the corresponding law of that jurisdiction.

**27D Effect of interstate travel permit issued to local offender**

- (1) This section applies in respect of any period during which:
  - (a) an interstate travel permit is in force in respect of a local offender, and
  - (b) the local offender is present in an interstate jurisdiction to which the permit authorises travel.
- (2) For the purposes of the law of this jurisdiction with respect to local sentences:
  - (a) the conditions of the interstate travel permit are taken to be substituted for the conditions of the relevant local sentence, and
  - (b) any compliance or non-compliance by the offender with the conditions of the interstate travel permit is taken to be compliance or non-compliance, as the case may be, with the conditions of the relevant local sentence.

**27E Powers exercisable in relation to interstate offenders**

- (1) This section applies to an interstate offender:
  - (a) who holds an interstate travel permit that authorises the offender to travel to this jurisdiction, and
  - (b) who is present in this jurisdiction.
- (2) The local authority may issue a warrant for the offender's arrest:
  - (a) if advised by the relevant interstate authority that the interstate travel permit is no longer in force in this jurisdiction, or
  - (b) if of the opinion that the offender has failed to comply with the conditions of the interstate travel permit.
- (3) A warrant under subsection (2) is sufficient authority for a local law enforcement officer:
  - (a) to arrest the offender, and

- (b) to convey the offender to a place specified in the warrant (whether in this jurisdiction or an interstate jurisdiction), and
  - (c) to deliver the offender into the custody of an interstate law enforcement officer of the jurisdiction in which the interstate travel permit was issued.
- (4) For the avoidance of doubt, such a warrant authorises a local law enforcement officer to convey the offender within or across any interstate jurisdiction for the purpose of taking the offender to a place specified in the warrant.

**27F Powers of interstate law enforcement officers**

A warrant issued under the corresponding law of an interstate jurisdiction that authorises an interstate law enforcement officer of that jurisdiction to convey an interstate offender or local offender within or across this jurisdiction for the purpose of taking the offender to a place specified in the warrant has effect, in this jurisdiction, according to its tenor.

**27G Operation of Service and Execution of Process Act 1992 (Cth)**

Nothing in this Act is intended to limit or otherwise affect the operation of the *Service and Execution of Process Act 1992* of the Commonwealth.

**[9] Schedule 1 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

any other Act that amends this Act

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

**[1] Part 1, heading**

Insert before section 1:

### **Part 1 Preliminary**

**[2] Section 3 Definitions**

Omit “the person or body with” from the definition of *designated authority*.

Insert instead “the person (other than a body corporate) having”.

**[3] Section 3, definition of “parole order”**

Insert “and” after “parole,” in paragraph (a) of the definition.

**[4] Section 3, definition of “parole order”**

Insert after paragraph (b) of the definition:

- (b1) a prospective parole order, or a prospective authority of the kind referred to in paragraph (a) or (b), but only for the purpose of making or dealing with a request under section 5, and

**[5] Part 2, heading**

Insert before section 5:

### **Part 2 Registration of parole orders**

**[6] Section 5 Requests for registration of transferred parole orders**

Omit “that was in force at the time of the request” from section 5 (1).

Insert instead “made”.

**[7] Section 5 (2)**

Omit “that is in force”. Insert instead “made”.

**[8] Section 5 (3) and (4)**

Insert after section 5 (2):

- (3) A direction or request is not to be made under this section unless the Minister is satisfied that the person to whom the parole order relates:
  - (a) has given consent to, or has requested, the registration of the parole order under this Act or under the relevant corresponding law (as the case requires), and has not withdrawn that consent or request, or
  - (b) is present in the State or Territory in which the order is proposed to be registered.
- (4) A person who has given consent to, or has requested, the registration of a parole order, as referred to in subsection (3) (a), may withdraw the consent or request at any time before (but not after) the parole order is registered.

**[9] Section 6 Documents to accompany requests**

Omit “a person purporting to be the person in whose custody the original is entrusted” from section 6 (2).

Insert instead “the Registrar”.

**[10] Section 6 (3)**

Insert after section 6 (2):

- (3) In subsection (1) (a), a reference to a parole order (including any variation of a parole order) is a reference not only to the original but also to a copy that, under a law of New South Wales, has the same effect as the original.

**[11] Section 7**

Omit the section. Insert instead:

**7 Matters to which Minister to have regard**

In determining whether to make a direction or request under section 5, the Minister must have regard to the following matters:

- (a) the interests (including the welfare) of the person to whom the parole order relates,
- (b) the administration of justice in this or any other State or a Territory,

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- (c) the protection of the community in this or any other State or a Territory,
  - (d) any other matter the Minister considers relevant.

**[12] Section 8 Registration**

Insert after section 8 (1):

- (1A) Despite subsection (1), a parole order must not be registered under this Act unless, or until, the person to whom the order relates is present in New South Wales.

**[13] Section 9 Effect of registration**

Insert after section 9 (2):

- (2A) Without limiting subsections (1) and (2), the person to whom the parole order relates may be dealt with under the laws of New South Wales in relation to any breach of the conditions of the parole order that occurred before it was registered under this Act.

**[14] Section 9 (3)**

Omit the subsection. Insert instead:

- (3) For the purposes of subsection (2), the *appropriate court* of this jurisdiction is:
  - (a) if the sentence of imprisonment referred to in subsection (2) (a) was imposed by a court of summary jurisdiction or by a court on appeal from a court of summary jurisdiction—the Local Court, and
  - (b) in any other case—the Supreme Court.

**[15] Section 9 (4)**

Omit the subsection.

**[16] Section 10 Effect of transfer of parole order to another State or a Territory**

Insert “and” after “New South Wales,” in section 10 (1) (a).

**[17] Section 10 (1) (d)**

Insert at the end of section 10 (1) (c):

- , and
- (d) proceedings against the person to whom the parole order relates may not be commenced or continued under the laws of New South Wales in relation to any breach of the

conditions of the parole order that occurred before it was registered under the corresponding law.

[18] **Section 10 (2) (b)**

Omit “the registration under the corresponding law”.

Insert instead “its first registration under a corresponding law”.

[19] **Part 3**

Insert after section 10:

**Part 3 Reciprocal arrangements for administration of NSW and interstate parole orders**

**10A Definitions**

In this Part:

*interstate law enforcement officer*, in relation to another State or a Territory, means a local law enforcement officer within the meaning of the corresponding law of that State or Territory.

*interstate parole order* means a parole order made under a law of another State or a Territory.

*interstate parolee* means a person to whom an interstate parole order relates.

*interstate registrar*, in relation to another State or a Territory, means the person or body having powers under the corresponding law of that State or Territory that correspond to those of the Registrar under this Act.

*interstate travel permit* means an interstate travel permit issued under section 10C or an interstate travel permit (however described) issued under the corresponding law of another State or a Territory.

*local law enforcement officer* means a correctional officer, compliance and monitoring officer or probation and parole officer (within the meaning of the *Crimes (Administration of Sentences) Act 1999*) or a police officer.

*NSW parole order* means a parole order made under a law of New South Wales.

*NSW parolee* means a person to whom a NSW parole order relates.

*relevant Ministerial arrangements*, in relation to another State or a Territory, means arrangements entered into under

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section 10B between the Minister and the designated authority of that State or Territory.

**10B Ministerial arrangements for the administration of NSW and interstate parole orders**

- (1) The Minister may enter into arrangements with the designated authority of another State or a Territory so as to facilitate:
  - (a) the administration, within New South Wales, of interstate parole orders made under a law of the other State or Territory, and
  - (b) the administration, within the other State or Territory, of NSW parole orders,either in relation to particular NSW or interstate parolees or particular classes of NSW or interstate parolees.
- (2) In particular, such arrangements may be entered into so as to facilitate:
  - (a) travel to the other State or Territory by NSW parolees, and
  - (b) travel to New South Wales by interstate parolees of the other State or Territory.
- (3) The local prisons authority has, and may exercise, such powers, authorities, duties and functions as are necessary, under the relevant Ministerial arrangements, for the administration of interstate parole orders in relation to interstate parolees who are present in New South Wales.
- (4) For the purposes of the laws of New South Wales with respect to parole, anything that is done in another State or a Territory:
  - (a) by the interstate prisons authority of that State or Territory, and
  - (b) in accordance with the relevant Ministerial arrangements, and
  - (c) in the administration of a NSW parole order in relation to a NSW parolee who is present in that State or Territory,is taken to have been done pursuant to the laws of New South Wales.
- (5) In this section:

*interstate prisons authority*, in relation to another State or a Territory, means the person or body having powers under the corresponding law of that State or Territory that correspond to those of the local prisons authority under subsection (3).

*local prisons authority* means the Commissioner of Corrective Services.

**10C Issue of interstate travel permit to NSW parolee**

- (1) This section applies to a NSW parolee whose parole is subject to a condition (whether imposed by the parole order or otherwise) that prohibits the parolee from leaving New South Wales without permission.
- (2) Permission to leave New South Wales is to be granted, varied and revoked, and conditions of permission are to be imposed and varied, in accordance with the relevant Ministerial arrangements.
- (3) As soon as practicable after any such permission is granted, the Registrar:
  - (a) must incorporate the terms and conditions of the permission in an interstate travel permit, and
  - (b) must provide a copy of the permit to the parolee, and
  - (c) must provide:
    - (i) a copy of the permit, and
    - (ii) such other documents or information about the parolee as are required or authorised to be sent under the relevant Ministerial arrangements,to the interstate registrar of each State or Territory to which the permit authorises travel.
- (4) As soon as practicable after the terms or conditions of any such permission are varied, the Registrar:
  - (a) must incorporate the terms and conditions of the permission, as varied, in an amended interstate travel permit, and
  - (b) must provide a copy of the amended permit to the parolee, and
  - (c) must provide:
    - (i) a copy of the amended permit, and
    - (ii) such other documents or information as are relevant to the variation,to the interstate registrar of each State or Territory to which the permit authorises travel.
- (5) As soon as practicable after any such permission is revoked, the Registrar must provide written notice of that fact to the parolee and to the interstate registrar of each State or Territory to which the permit authorised travel.



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- (6) An interstate travel permit ceases to have effect in a State or Territory to which it authorises travel:
- (a) if written notice referred to in subsection (5) is provided to the interstate registrar of that State or Territory (regardless of whether or not the parolee has received such notice), or
  - (b) if the parolee is arrested pursuant to a warrant issued under the corresponding law of that State or Territory.

**10D Effect of interstate travel permit issued to NSW parolee**

- (1) This section applies in respect of any period during which:
  - (a) an interstate travel permit is in force in respect of a NSW parolee, and
  - (b) the NSW parolee is present in a State or Territory to which the permit authorises travel.
- (2) For the purposes of the laws of New South Wales with respect to parole:
  - (a) the conditions of the interstate travel permit are taken to be substituted for the conditions of the relevant NSW parole order, and
  - (b) any compliance or non-compliance by the parolee with the conditions of the interstate travel permit is taken to be compliance or non-compliance, as the case may be, with the conditions of the relevant NSW parole order.

**10E Powers exercisable in relation to interstate parolees**

- (1) This section applies to an interstate parolee:
  - (a) who holds an interstate travel permit that authorises the parolee to travel to New South Wales, and
  - (b) who is present in New South Wales.
- (2) The local parole authority may issue a warrant for the parolee's arrest:
  - (a) if advised by the relevant interstate registrar that the interstate travel permit is no longer in force in New South Wales, or
  - (b) if of the opinion that the parolee has failed to comply with the conditions of the interstate travel permit.

- (3) A warrant under subsection (2) is sufficient authority for a local law enforcement officer:
  - (a) to arrest the parolee, and
  - (b) to convey the parolee to a place specified in the warrant (whether in New South Wales or in another State or a Territory), and
  - (c) to deliver the parolee into the custody of an interstate law enforcement officer of the State or Territory in which the interstate travel permit was issued.
- (4) For the avoidance of doubt, such a warrant authorises a local law enforcement officer to convey the parolee within or across any other State or a Territory for the purpose of taking the parolee to a place specified in the warrant.
- (5) In this section, *local parole authority* means the State Parole Authority.

**10F Powers of interstate law enforcement officers**

A warrant issued under the corresponding law of another State or a Territory that authorises a local law enforcement officer (within the meaning of that law) to convey an interstate parolee or NSW parolee within or across New South Wales for the purpose of taking the parolee to a place specified in the warrant has effect, in New South Wales, according to its tenor.

**10G Operation of Service and Execution of Process Act 1992 (Cth)**

Nothing in this Act is intended to limit or otherwise affect the operation of the *Service and Execution of Process Act 1992* of the Commonwealth.

**[20] Part 4, heading**

Insert before section 11:

**Part 4 General**

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**[21] Section 11A**

Insert after section 11:

**11A Use of documents and information**

- (1) For the purpose of making a determination or exercising a discretion under this Act, or for the purpose of complying with any obligations imposed by the relevant Ministerial arrangements under Part 3, the Minister:
  - (a) may inform himself or herself as the Minister thinks fit including, in particular, by reference to relevant documents and information:
    - (i) forwarded to the Minister by the designated authority of another State or a Territory, or
    - (ii) obtained in the course of investigations carried out in New South Wales in connection with the making of the determination or the exercise of the discretion, and
  - (b) may provide any such documents or information (including any personal information about the person to whom a parole order relates) to any government agencies or other persons that may be directly affected by that person's presence in the State or Territory in which the parole order is, or is proposed to be, registered.
- (2) This section does not authorise the disclosure of information about a person to whom a parole order relates unless the person:
  - (a) has given consent to, or has requested, the registration of the parole order under this Act or under the relevant corresponding law (as the case requires), and has not withdrawn that consent or request, or
  - (b) is present in the State or Territory in which the parole order is, or is proposed to be, registered, or
  - (c) has applied for permission to travel to that State or Territory.
- (3) A person who has given consent to, or has requested, the registration of a parole order, as referred to in subsection (2) (a), may withdraw the consent or request at any time before (but not after) the parole order is registered.

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

### **[1] Section 5 Definitions**

Insert in alphabetical order in section 5 (1):

*local prisons authority* means:

- (a) in relation to New South Wales, the Commissioner of Corrective Services, or
- (b) in relation to a participating State other than New South Wales, the local prisons authority for that State within the meaning of the interstate law of that State, or
- (c) in relation to a Territory, the local prisons authority for that Territory within the meaning of the *Transfer of Prisoners Act 1983* of the Commonwealth.

### **[2] Section 24 Transfer in custody of escort**

Insert after section 24 (3):

- (4) Without limiting subsections (1) and (3), it is sufficient compliance with an order referred to in either of those subsections if the prisoner concerned:
  - (a) is delivered into the custody of an escort of the State or Territory to which the prisoner is being transferred, being an escort who is authorised by the local prisons authority for that State or Territory to receive custody of the prisoner, and
  - (b) is so delivered into custody at a place at which the escort referred to in paragraph (a) is authorised by the local prisons authority for that State or Territory to receive custody of the prisoner.

### **[3] Section 31 Lawful custody for transit through New South Wales**

Omit “from New South Wales to such prison in the participating State or Territory as is specified in the order and there delivering the person into the custody of the gaoler” from section 31 (1) (a).

Insert instead “within New South Wales in accordance with the order”.

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**[4] Section 32 Escape from custody of person being transferred**

Insert “24 (3) or” after “section” in section 32 (1).