



## NSW Legislative Council Hansard

### Prisoners (Interstate Transfer) Amendment Bill

Extract from NSW Legislative Council Hansard and Papers Friday 6 May 2005.

#### Second Reading

**The Hon. JOHN HATZISTERGOS** (Minister for Justice, Minister for Fair Trading, Minister Assisting the Minister for Commerce, and Minister Assisting the Premier on Citizenship) [11.53 a.m.]: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

#### Leave granted.

This Bill introduces amendments to Parts 2 and 4 of the Prisoners (Interstate Transfer) Act 1982 to broaden the range of factors that the Minister may have regard to when considering a request by a prisoner to be transferred to, or from, another State or Territory.

The Prisoners (Interstate Transfer) Act 1982 commenced on 1 July 1984. The Act forms part of national co-operative legislative scheme which permits inmates to be transferred between participating jurisdictions for two purposes: to stand trial or for welfare purposes.

Part 2 of the Prisoners (Interstate Transfer) Act 1982 covers transfers for welfare purposes. A transfer for welfare purposes may be made at the request of the prisoner concerned and depends on the Minister forming the opinion that it is in the interests of the prisoner's welfare that the prisoner should be transferred.

This Bill amends Part 2 of the Prisoners (Interstate Transfer) Act 1982 to remove the limitation on the Minister's discretion in relation to transfer requests and provides, instead, that the Minister may have regard to certain matters.

Currently, under the national co-operative legislative scheme, welfare transfers involve a three step process.

Firstly a prisoner makes a request to the Minister in his or her state for a transfer. If that Minister is of the opinion that the prisoner should be transferred in the interests of the welfare of the prisoner, the Minister writes to the corresponding Minister in the receiving jurisdiction requesting that the Minister accept the transfer.

Secondly, under the corresponding legislation the relevant Minister in the receiving jurisdiction then has discretion to approve the transfer.

Thirdly, if the Minister in the receiving jurisdiction consents to the transfer, the Minister making the original request may make the order for transfer.

Where the prisoner is a federal offender, or a joint state or territory and federal offender, the Commonwealth Attorney-General must also consent to the transfer.

Part 4 of the Prisoners (Interstate Transfer) Act 1982 deals with prisoners who have been transferred for the purposes of standing trial, but whose trial has resulted in no sentence being imposed in New South Wales or a New South Wales sentence of imprisonment being imposed that is shorter than the period of imprisonment the prisoner has left to serve in another participating jurisdiction. In either case the Minister must, with certain exceptions, transfer the prisoner back to the original participating state or territory.

One of the exceptions to this requirement for the Minister to transfer prisoners back if no sentence is imposed in New South Wales or the New South Wales sentence imposed is shorter than the other jurisdiction's sentence is where the Minister receives a request from the prisoner for a transfer for welfare purposes.

This Bill amends Part 4 of the Prisoners (Interstate Transfer) Act 1982 to provide that the Minister may have regard to a broader range of matters.

I now turn to the detail of the Bill.

Schedule 1 [1] amends the heading of Part 2, to change it from "Transfer for prisoner's welfare" to "Transfer at the request of prisoner".

This emphasises the fact that the impetus for a transfer comes from the prisoners themselves and better reflects the prisoner's own part in the welfare transfer procedures.

Schedule 1 [2] amends section 7 of the Prisoners (Interstate Transfer) Act 1982 to broaden the matters the Minister may take into account in relation to transfer requests under the current Act.

A new section 10A is inserted into the Act to provide a non-exhaustive list of factors that the Minister may consider when a prisoner makes a request to be transferred to, or from, another State or Territory.

This Bill provides that the Minister may have regard to the following when considering such a request:

- the welfare of the prisoner concerned;
- the administration of justice in New South Wales or any other State;
- the security and good order of any prison in New South Wales or any other State ;
- the safe custody of the prisoner concerned;
- the protection of the community in New South Wales or any other State; and
- any other matter the Minister considers relevant.

Schedule 1 [4] provides that, when forming an opinion or exercising any discretion about a request for the welfare transfer of a prisoner, the Minister should particularly consider any reports of parole and prison authorities of New South Wales or of any participating State.

Schedule 1 [6] inserts a mirror provision to new section 10A into Part 4 of the Act.

Part 4 of the Prisoners (Interstate Transfer) Act 1982 contains a requirement that a Minister must, in respect of prisoners who have been transferred for trial purposes, transfer those prisoners back if no sentence is imposed in New South Wales or the New South Wales sentence is shorter than the other jurisdiction's sentence. One of the exceptions to this requirement, which is already contained in section 23 of the Act, is where the Minister receives a request from a prisoner for a transfer for welfare purposes.

It follows that the Minister consider the same factors with respect to an application for a transfer for welfare purposes from a prisoner transferred for trial purposes, as the Minister would for an application received for a general request for transfer for welfare purposes.

This Bill amends section 23 of the Prisoners (Interstate Transfer) Act 1982 to remove the limitations in relation to welfare transfer requests after transfer for trial and provides, instead, that the Minister may have regard to the broader range of matters I have just outlined, that is: the prisoner's welfare; the administration of justice; the security and good order of prisons; the safe custody of the prisoner; the protection of the community; and any other matter the Minister considers relevant.

The current terms of the Prisoners (Interstate Transfer) Act 1982 only allow the Minister to consider welfare transfers in a relatively narrow and unclarified manner. This Bill opens up the Minister's discretion to consider broader policy objectives such as the general administration of justice, as well as other important matters such as the prisoner's safety and the safety of the community in general.

A recent Federal Court of Australia case highlighted the need for the current provisions to be clarified.

The changes the Bill makes in relation to welfare transfers may provide increased opportunities for inmates and their families to develop and foster relationships during the prisoner's period of incarceration.

I am pleased to commend the Bill to the House.