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Office of the
Commissioner

**Queensland
Corrective Services**

13 SEP 2019

Mr Peter Russo MP
Chair
Legal Affairs and Community Safety Committee
lacsc@parliament.qld.gov.au

Dear Mr Russo

I am writing further to your letter dated 26 August 2019 and the Legal Affairs and Community Safety Committee's (the committee) request for a response from Queensland Corrective Services (QCS) to written submissions received by the committee as part of its inquiry into the Community Based Sentences (Interstate Transfer) Bill 2019.

QCS appreciates the ability to provide a written response to the committee about the issues raised in the public submissions. Please find enclosed a table that summarises the key issues raised in the submissions and provides a response from QCS (**Attachment 1**).

If you require further information regarding this matter, please contact Mr Tom Humphreys, General Manager, Strategy and Governance, QCS, on [REDACTED] or [REDACTED].

I trust this information is helpful to you.

Yours sincerely



Peter Martin APM
Commissioner

Enc.

cc The Honourable Mark Ryan MP
Minister for Police and Minister for Corrective Services
police@ministerial.qld.gov.au

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Response to Legal Affairs and Community Safety Committee
Issues raised in written submissions

The following 4 submissions were received in relation to the Community Based Sentences (Interstate Transfer) Bill 2019 (the Bill):

- 001 – Robert Heron
- 002 – Sisters Inside
- 003 – Queensland Law Society
- 004 – Aboriginal & Torres Strait Islander Legal Service (QLD) Ltd.

| Issue | Submission/Submission Key Points | Queensland Corrective Services (QCS) Response |
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| Timeframe for making a decision | <p><u>Sisters Inside</u> – 002</p> <ul style="list-style-type: none"> Sisters Inside holds concerns that the absence of a time period within which a decision must be made under clause 14 may result in extended delays impacting the ability of a person to retain work, study, or housing opportunities in other jurisdictions. Sisters Inside acknowledges it is not reflected in other jurisdictions but propose a 21 day time frame from receiving the request to a decision being made. | <p>Similar to existing schemes facilitating the interstate transfer of parolees and prisoners, the Bill creates a new standalone Act in Queensland to implement the nationally agreed legislative framework to facilitate the transfer of community based sentences across Australia, in accordance with the model legislation.</p> <p>The Bill implements a co-operative scheme which requires consent to the transfer by the offender, originating jurisdiction and receiving jurisdiction. It supports offender rehabilitation and ensures community safety.</p> <p>It is noted that it is in the best interest of all parties for transfer requests to be considered in a timely manner. Requests for transfer will be considered on a case-by-case basis in accordance with the legislative framework. Some requests may be more complex, requiring further information and detail prior to consideration. Further, without reciprocal arrangements agreed and implemented in other jurisdictions' legislation the imposition of a timeframe would be difficult to enforce.</p> |
| Decision making process | <p><u>Robert Heron</u> – 001</p> <ul style="list-style-type: none"> Robert Heron proposes that the legislation state on what basis law enforcement officers may discriminate upon the suitability of candidates for interstate transfers and travel permits. This may include the nature of the crime and whether or not the decision is final or may be subject to unlimited appeal. | <p>The national legislative scheme is a mutual recognition between the States and Territories that a community based sentence handed down in one location may be served by the offender in the community in a different location.</p> <p>Similar to the existing schemes that exist to facilitate the interstate transfer of parolees and</p> |

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| | <ul style="list-style-type: none"> Robert Heron noted the potential for community concern regarding offenders who have committed aggravated or sexual offences. <p><u>Sisters Inside – 002</u></p> <ul style="list-style-type: none"> Sisters Inside holds concerns that the discretionary nature of the decision making process for registering interstate orders may result in decisions that are not consistent between local decision makers. Sisters Inside proposes Ministerial guidelines be developed to assist local authorities in their decision making to ensure decisions are consistent, fair, and unbiased. | <p>interstate transfer of prisoners on welfare grounds, the scheme is co-operative, requiring voluntary participation of all parties.</p> <p>This is important to achieve the intent of the scheme – to support flexibility in the administration of community based sentences, support offender rehabilitation and reintegration, and ensure community safety.</p> <p>An offender cannot be compelled to seek a transfer of his or her sentence and may withdraw consent to a transfer at any time before the sentence is registered in an interstate jurisdiction.</p> <p>A local jurisdiction may request an interstate jurisdiction to register the sentence, but is not compelled to do so. Likewise, an interstate jurisdiction cannot be compelled to accept the transfer of an offender's sentence.</p> |
| Requirement for written reasons | <p><u>Sisters Inside – 002</u></p> <ul style="list-style-type: none"> Sisters Inside holds concerns that clause 14(6) only requires a written notice rather than written reasons, noting an absence of written reasons for a refusal disallowing the applicant the ability to respond to specifically concerns, and affecting their ability to appeal a decision. Sisters Inside proposes that clause 14(6) be amended from written notice to written reasons. | <p>Offenders who do not request to transfer under the scheme, but still wish to travel interstate, will still be able to request a travel permit. These decisions will continue to be considered by Queensland Corrective Services on a case-by-case basis, and in close consultation with the other jurisdictions involved.</p> |
| Local level appeal process | <p><u>Sisters Inside – 002</u></p> <ul style="list-style-type: none"> Sisters Inside notes that nothing in the Bill precludes the application of the <i>Judicial Review Act 1991</i> to decisions made by the local authority. Sisters Inside asserts that a process should be available to allow an appeal at a local level. Sisters | <p>There is nothing in the Bill that precludes the application of the <i>Judicial Review Act 1991</i> to decisions made by the local authority in Queensland.</p> |

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| | <p>Inside propose this could be achieved by providing an opportunity to respond in writing to written reasons at a local level before a final decision is made.</p> <ul style="list-style-type: none"> • Sisters Inside also seeks clarification as to whether the written notice is a final and operative decision for the purpose of the <i>Judicial Review Act 1991</i>. | |
| Conditions attachable to the transferred order | <p><u>Queensland Law Society – 003</u></p> <ul style="list-style-type: none"> • The QLS is concerned about whether special conditions that are attached to Queensland orders, such as psychiatric or psychological counselling, will form part of the transferred order and be actioned and honoured. • The QLS seeks clarification regarding the approach to conditions attachable to the transferred order. | <p>The registration criteria in the legislation requires there to be a corresponding community based sentence prior to approval for transfer being provided (refer to section 13). This includes a need to have:</p> <ul style="list-style-type: none"> • 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. <p>This requirement is universal across existing legislation passed by states to facilitate the national scheme.</p> |
| Transfer of 'corresponding community based sentence' | <p><u>Queensland Law Society – 003</u></p> <ul style="list-style-type: none"> • The QLS is concerned about the transfer of community based orders where jurisdictions differ as to available order type. Noting that in some jurisdictions Probation Orders, Community Services Orders, and Intensive Correction Orders have been replaced with a Community Correction Order. • The QLS seeks clarification regarding the definition of '<i>substantially corresponding</i>' in relation to the 'corresponding law' definition in Schedule 1, and whether that definition would address the identified | <p>The national legislative scheme is a mutual recognition between the States and Territories that a community based sentence handed down in one location may be served by the offender in the community in a different location. The legislation is designed with sufficient flexibility to allow for any changes in jurisdictions' community based order regimes.</p> <p>The model legislation this Bill incorporates recognises that each State and Territory operates</p> |

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| | concern. | <p>a community based sentencing regime that is unique to each jurisdiction's legislative framework.</p> <p>To ensure effective implementation of the national scheme both now and into the future, the legislation defines a corresponding community based sentence as (refer to section 13):</p> <ul style="list-style-type: none"> • a sentence under law that corresponds, or substantially corresponds because a penalty and conditions of substantially the same nature can be imposed, or • is a community based sentence under law declared by regulation to correspond, whether or not the sentence corresponds, or substantially corresponds, to the interstate sentence. <p>The inclusion of provisions to determine comparable sentences supports the workability of the legislation and the overall intent of the national scheme.</p> <p>It recognises that where a community based sentence is able to be managed by an interstate jurisdiction, the difference in sentence structure or name of the sentence should not in itself be a barrier to transfer.</p> |
| Cessation of travel permit upon arrest under warrant | <p><u>Robert Heron</u> – 001</p> <ul style="list-style-type: none"> • Mr Heron is concerned that the automatic cessation of a travel permit upon an offender being arrested under warrant is arbitrary, and lacks proportionality and legal justification. Mr Heron noted arrests do not always | <p>The concerns are noted.</p> <p>The ability for the Minister for Police and Minister for Corrective Services to enter into arrangements with Ministers of interstate jurisdictions to facilitate the administration of community based sentences for offenders temporarily travelling to Queensland</p> |

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| | <p>lead to charges being pursued.</p> <ul style="list-style-type: none"> • Mr Heron proposes there be a discretion to cancel a travel permit, possibly determined by a senior law enforcement officer. | <p>or an interstate jurisdiction and not subject to formal transfer under the scheme ensures community safety.</p> <p>This includes, but is not limited to, empowering the interstate authority to issue an arrest warrant if the offender fails to comply with the conditions of the travel permit or the offender's travel permit is no longer in force.</p> <p>These provisions enable offenders to temporarily travel interstate, for example for short-term work, and return to their originating jurisdiction while ensuring any risk to the community for any non-compliance can be mitigated. It does not apply to offenders subject to formal transfer under the scheme.</p> <p>The cessation of a travel permit does not necessarily result in breach action or imprisonment, but provides a mechanism for enforcement of the sentence to ensure community safety. This includes the ability for the interstate jurisdiction to deliver the offender to the jurisdiction in which the interstate travel permit was issued.</p> |
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