



Speech By  
**Hon. Mark Ryan**


**MEMBER FOR MORAYFIELD**

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Record of Proceedings, 20 February 2020

## **COMMUNITY BASED SENTENCES (INTERSTATE TRANSFER) BILL**

### **Second Reading**

 **Hon. MT RYAN** (Morayfield—ALP) (Minister for Police and Minister for Corrective Services) (12.02 pm): I move—

That the bill be now read a second time.

I thank the committee for its consideration and support of this very important bill and for the valuable work that the committee undertakes. I also thank stakeholders who made submissions and appeared before the committee. I acknowledge that stakeholders supported and welcomed the bill, recognising that it allows more flexibility in the exercise of sentencing discretion. I am aware that during the committee process stakeholders made some observations regarding decision-making time frames and processes.

In relation to feedback about corresponding community based sentences and the ability for specific conditions to be transferred interstate, Section 13 of the bill defines a corresponding community based sentence as 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.

The inclusion of this provision supports the workability of the legislation and the overall intent of the national scheme. It recognises that each state and territory operates a community based sentencing regime that is unique to their jurisdiction's legislative framework and provides 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 is not in itself a barrier to transfer. These requirements are universal across the legislation enacted by other states and territories to facilitate the national scheme.

If an interstate jurisdiction does not have a comparable sentence or does not believe that the sentence is capable of being safely, efficiently and effectively administered in their jurisdiction, the sentence is ineligible for interstate registration. This bill acknowledges that each transfer request will be considered on a case-by-case basis. For some, it may be a simple transfer request, however, for others it may be more complex, with additional information required to appropriately consider the risks and needs of the offender.

It is important that all factors are given appropriate consideration to meet the intent of the transfer scheme and ultimately support flexibility in the administration of community based sentences, support offender rehabilitation and reintegration and ensure community safety. While supportive of a timeframe for decision-making being provided for in the bill in principle, such an amendment is unenforceable without reciprocal arrangements in other jurisdictions' equivalent legislation. To meaningfully add such a requirement there needs to be agreement by all jurisdictions to an amended model bill.

Feedback was provided about an offender's natural justice and right to reasons when a transfer request is declined. The bill provides that a decision to decline to register an interstate sentence must be provided to the offender and interstate authority in writing. While the bill does not specify that this will include the reason for the decision, I am advised that Queensland Corrective Services will provide this information when possible. For instance, there may be situations where a full reason is unable to be provided to the offender, such as if there is a need to protect intelligence or victim information. This approach is consistent with the existing process for applications declined under the Parole Orders (Transfer) Act 1984 and guidance provided to jurisdictions in the national operating procedures that are in the process of being drafted.

In relation to an internal review process following a decline of a transfer request, it is important to note that the scheme requires the voluntary participation of all parties. 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. A local jurisdiction may request an interstate jurisdiction to register the sentence, but it cannot do so without the consent of the offender. Likewise, an interstate jurisdiction cannot be compelled to accept the transfer of an offender's sentence. In all of these instances, there is nothing in the bill that precludes the application of the Judicial Review Act 1991 to decisions made by the local authority in Queensland or restricts an offender's ability to request, and for Queensland Corrective Services to issue, 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 other relevant jurisdictions.

The cancellation 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. The ability for ministers to enter into arrangements regarding the management of offenders temporarily travelling to Queensland or an interstate jurisdiction not subject to a formal transfer under the scheme ensures community safety. This includes empowering an interstate authority to issue an arrest warrant if an offender fails to comply with the conditions of the travel permit or if an offender's travel permit is no longer in force. 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 noncompliance can be mitigated. It does not apply to offenders subject to formal transfers under the scheme.

This bill supports Queensland's participation in the national scheme to facilitate the transfer of community based offenders and brings Queensland into line with Victoria, New South Wales, Western Australia, South Australia, Tasmania and the Australian Capital Territory. It creates a new standalone act in Queensland and extends existing legislation to facilitate the interstate transfer of community based offenders. There are a number of circumstances where it is appropriate for an adult offender to be voluntarily transferred to another jurisdiction to serve the remainder of their community based sentence. This includes improving an offender's rehabilitation prospects or where offenders usually live in another state but have committed their offence in Queensland. Without this bill, no legislative authority exists for community based sentences to be transferred in or out of Queensland.

The bill complements existing transfer schemes by providing an opportunity for offenders on a community based sentence to have their sentence registered and managed interstate, ultimately transferring all responsibility for the sentence from the issuing state or territory to the receiving state or territory. When an interstate offender requests to transfer to Queensland, the bill ensures that the request is in writing and is accompanied with sufficient details regarding the offender and their sentence. Providing Queensland Corrective Services with sufficient details of the offender and the imposed sentence ensures the safety and security of local communities. This could include relevant presentence reports and psychological assessments held by the interstate jurisdiction, protection or domestic violence orders against the offender, the offender's previous criminal history or the offender's compliance with the interstate sentence or any other non-custodial sentence. Queensland Corrective Services also has the authority to request any additional information on the offender that may be held by the interstate jurisdiction.

The legislation provides consistent registration criteria and gives local authorities, including Queensland Corrective Services, the ability to ascertain whether the offender and the sentence, including conditions attached to the sentence, are able to be safely, effectively and efficiently managed in the receiving jurisdiction. The requirements include that the offender has consented to the order and that that consent has not been withdrawn; that there is a sentence in the receiving jurisdiction that corresponds to the sentence imposed in the interstate jurisdiction; that the offender can comply with the sentence in the receiving jurisdiction; and that the sentence can be safely, efficiently and effectively

administered in the receiving jurisdiction. Upon receiving a transfer request, a receiving jurisdiction can decide to register the sentence, require the offender to meet certain preconditions before registering the sentence or decline to register the interstate sentence.

With an emphasis placed on ensuring community safety, this bill provides Queensland Corrective Services with the ability to impose preconditions before registering the sentence. The imposition of preconditions allows risk mitigation strategies to be put in place to ensure safety. Importantly, the bill also provides for the ability to decline the registration of an interstate sentence, even if all eligibility criteria and/or preconditions are met. This provision provides Queensland with the ability to exercise discretion to ensure community safety, for example, where a person's safety may be compromised should an offender transfer to Queensland.

The ability for community based offenders to be dealt with by local courts is, in essence, a fundamental principle of the importance of the national scheme. These provisions allow the receiving jurisdiction to act on a breach. The bill also assists courts when dealing with breach matters that require the offender to be resentenced. When determining the penalty to be imposed for resentencing an offender, the bill requires the penalty for the offence to be taken as the penalty for the offence under the law of the originating jurisdiction. Treating breaches in this way is efficient and effective. It also ensures that the transfer does not serve to avoid the sentencing intentions of the original jurisdiction.

The bill also enables ministerial arrangements to be entered into to oversee the administration of offenders on community based sentences travelling interstate on an approved travel permit rather than a formal transfer. This bill ensures appropriate supervision is maintained and, importantly, it supports community safety. I commend the bill to the House.