

2002

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Police, Emergency Services and Corrections)

Community Based Sentences (Transfer) Bill 2002

Contents

	Page
Part 1	
Preliminary	
1 Name of Act	2
2 Commencement	2
3 Purpose of Act	2
4 Application of Act	2
5 Dictionary	3
6 Notes	3
Part 2	
Key concepts for Act	
7 What is a <i>community based sentence</i>	4
8 Jurisdictions and participating jurisdictions	5
9 Local and interstate sentences	5

Contents

	Page
10 What is a <i>corresponding law</i>	5
11 Local authority and interstate authorities	6
Part 3 Administration	
12 Appointment of local authority	7
13 Delegation by local authority	7
14 Local register	7
Part 4 Registration of interstate sentences in this jurisdiction	
15 Request for transfer of interstate sentence	8
16 Form of request for registration	8
17 Request for additional information	10
18 Withdrawal of offender's consent	10
19 Registration criteria	10
20 Decision on request	11
21 Preconditions for registration	12
22 How interstate sentence registered	13
23 Notice of registration	13
24 Effect of registration generally	13
Part 5 Registration of local sentences in interstate jurisdictions	
25 Request for transfer of local sentence	16
26 Response to request for additional information	16
27 Effect of interstate registration	16
Part 6 Miscellaneous	
28 Inaccurate information about local sentence registered interstate	18
29 Dispute about accuracy of information in interstate register	18
30 Evidence of registration and registered particulars	19
31 Regulation-making power	20
Dictionary	21

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(Minister for Police, Emergency Services and Corrections)

Community Based Sentences (Transfer) Bill 2002

A Bill for

An Act relating to the interstate transfer of community based sentences, and
for related purposes

The Legislative Assembly for the Australian Capital Territory enacts as
follows:

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Community Based Sentences (Transfer) Act 2002*.

4 **2 Commencement**

5 This Act commences on a day fixed by the Minister by written
6 notice.

7 *Note 1* The naming and commencement provisions automatically commence on
8 the notification day (see Legislation Act, s 75 (1)).

9 *Note 2* A single day or time may be fixed, or different days or times may be
10 fixed, for the commencement of different provisions (see Legislation
11 Act, s 77 (1)).

12 *Note 3* If a provision has not commenced within 6 months beginning on the
13 notification day, it automatically commences on the first day after that
14 period (see Legislation Act, s 79).

15 **3 Purpose of Act**

16 The purpose of this Act is to allow community based sentences
17 imposed in participating jurisdictions to be transferred, by
18 registration, between participating jurisdictions.

19 **4 Application of Act**

20 (1) This Act applies only to sentences imposed by courts on adults
21 convicted or found guilty of offences.

22 (2) This Act does not apply to—

23 (a) a parole order; or

24 (b) a sentence to the extent that it imposes a fine or other financial
25 penalty (however described); or

1 (c) a sentence to the extent that it requires the making of
2 reparation (however described).

3 (3) In this section:

4 *parole order*—see the *Parole Orders (Transfer) Act 1983*, section 3.

5 **5 Dictionary**

6 The dictionary at the end of this Act is part of this Act.

7 *Note 1* The dictionary at the end of this Act defines certain words and
8 expressions used in this Act, and includes references (*signpost*
9 *definitions*) to other words and expressions defined elsewhere in this
10 Act.

11 For example, the signpost definition '*community based sentence*—see
12 section 7.' means that the expression 'community based sentence' is
13 defined in that section.

14 *Note 2* A definition in the dictionary (including a signpost definition) applies to
15 the entire Act unless the definition, or another provision of the Act,
16 provides otherwise or the contrary intention otherwise appears (see
17 Legislation Act, s 155 and s 156 (1)).

18 **6 Notes**

19 A note included in this Act is explanatory and is not part of this Act.

20 *Note* See Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

- 1 **Part 2** **Key concepts for Act**
- 2 **7 What is a *community based sentence***
- 3 (1) A *community based sentence* is—
- 4 (a) for this jurisdiction—any of the following:
- 5 (i) a community service order under the *Crimes Act 1900*,
- 6 part 19 (Community service orders);
- 7 (ii) a home detention order under the *Rehabilitation of*
- 8 *Offenders (Interim) Act 2001*, section 6 (Imprisonment by
- 9 way of home detention) and the sentence of
- 10 imprisonment (or the part of the sentence of
- 11 imprisonment) in relation to which the order is made;
- 12 (iii) an order under the *Crimes Act 1900*, section 402 (1)
- 13 (Conditional release of offenders without proceeding to
- 14 conviction) or section 403 (1) (Conditional release of
- 15 offenders);
- 16 (iv) a periodic detention order under the *Periodic Detention*
- 17 *Act 1995*;
- 18 (v) a sentence declared under the regulations to be a
- 19 community based sentence; and
- 20 (b) for an interstate jurisdiction—a sentence that is a community
- 21 based sentence under the corresponding law of the jurisdiction.
- 22 (2) For subsection (1) (a) (ii), the home detention order, and the
- 23 sentence of imprisonment (or the part of the sentence of
- 24 imprisonment) imposed in relation to it, are taken to be a single
- 25 community based sentence.

8 Jurisdictions and participating jurisdictions

- (1) A *jurisdiction* is a State or the Australian Capital Territory.

Note *State* is defined in the Legislation Act, dict, pt 1 to include the Northern Territory.

- (2) *This jurisdiction* is this Territory.

- (3) A *participating jurisdiction* is this jurisdiction or a State declared under the regulations to be a participating jurisdiction.

- (4) An *interstate jurisdiction* is a participating jurisdiction other than this jurisdiction.

9 Local and interstate sentences

- (1) A *local sentence* is a community based sentence in force in this jurisdiction.

Note For the effect of interstate registration of a local sentence, see s 27.

- (2) An *interstate sentence* is a community based sentence in force in an interstate jurisdiction.

Note For the effect of registration in this jurisdiction of an interstate sentence, see s 24.

10 What is a *corresponding law*

A *corresponding law* is—

- (a) a law of an interstate jurisdiction corresponding, or substantially corresponding, to this Act; or
- (b) a law of an interstate jurisdiction that is declared under the regulations to be a corresponding law, whether or not the law corresponds, or substantially corresponds, to this Act.

1 **11 Local authority and interstate authorities**

2 (1) The *local authority* is the person appointed under section 12 as the
3 local authority for this jurisdiction.

4 (2) The *interstate authority* for an interstate jurisdiction is the entity
5 that is the local authority for the jurisdiction under the
6 corresponding law of the jurisdiction.

Part 3 Administration

12 Appointment of local authority

The chief executive may appoint a public servant to be the local authority for this jurisdiction.

Note 1 For the making of appointments (including acting appointments), see Legislation Act, div 19.3.

Note 2 A power to appoint a person to a position includes power to appoint a person to act in the position (see Legislation Act, s 209).

13 Delegation by local authority

The local authority may delegate the authority's functions under this Act to another public servant.

Note For the making of delegations and the exercise of delegated functions, see Legislation Act, pt 19.4.

14 Local register

(1) The local authority must keep a register (the *local register*) of interstate sentences registered under this Act.

(2) The local authority may correct a mistake or omission in the local register.

1 **Part 4** **Registration of interstate**
2 **sentences in this jurisdiction**

3 **15 Request for transfer of interstate sentence**

4 The local authority may register an interstate sentence in this
5 jurisdiction at the request of the interstate authority for the interstate
6 jurisdiction in which the sentence is in force.

7 **16 Form of request for registration**

8 (1) The local authority must consider the request if the request—

9 (a) is in writing; and

10 (b) states the following particulars:

11 (i) the offender's name;

12 (ii) the offender's date of birth;

13 (iii) the offender's last-known address;

14 (iv) any other particulars required by the local authority; and

15 (c) is accompanied by the documents mentioned in subsection (2).

16 (2) The documents to accompany the request are as follows:

17 (a) a copy of the interstate sentence certified by the interstate
18 authority;

19 (b) a copy of the offender's consent for the registration of the
20 sentence in this jurisdiction;

21 (c) a copy of any relevant pre-sentence report about the offender
22 held by the interstate jurisdiction in relation to any offence
23 committed by the offender for which the offender is subject to
24 a sentence;

- 1 (d) a copy of any relevant psychological or other assessment of the
2 offender held by the interstate authority;
- 3 (e) details held by the interstate jurisdiction of—
- 4 (i) the offender's criminal record (whether in or outside
5 Australia); and
- 6 (ii) the offender's compliance with the interstate sentence
7 and any other relevant non-custodial sentence;
- 8 (f) a statement by the interstate authority explaining what part of
9 the sentence has been served in the interstate jurisdiction or
10 any other interstate jurisdiction before the making of the
11 request;
- 12 (g) a statement by the interstate authority that the authority has
13 explained to the offender, in language likely to be readily
14 understood by the offender, that, if the sentence is registered in
15 this jurisdiction—
- 16 (i) the offender will be bound by the requirements of the law
17 of this jurisdiction in relation to the sentence; and
- 18 (ii) a breach of the sentence may result in the offender being
19 resented in this jurisdiction for the offence; and
- 20 (iii) the other consequences for a breach of the sentence in
21 this jurisdiction may be different from the consequences
22 for a breach of the sentence in the interstate jurisdiction,
23 and, in particular, the penalties for breach of the sentence
24 may be different;
- 25 (h) any other document required by the local authority.
- 26 (3) For subsection (2) (c), the offender is *subject* to a sentence if the
27 sentence has not been fully served and has not been discharged.
- 28 (4) In considering the request, the local authority may take into account
29 any other information or other documents given to the local
30 authority by the interstate authority.

1 **17 Request for additional information**

2 The local authority may ask the interstate authority for additional
3 information about the interstate sentence or the offender.

4 **18 Withdrawal of offender's consent**

5 The offender may withdraw consent to the registration of the
6 interstate sentence at any time before (but not after) its registration
7 by giving written notice to the local authority.

8 **19 Registration criteria**

9 (1) The *registration criteria* are that—

10 (a) the offender has consented to the sentence being registered in
11 this jurisdiction and has not withdrawn the consent; and

12 (b) there is a corresponding community based sentence under the
13 law of this jurisdiction; and

14 (c) the offender can comply with the sentence in this jurisdiction;
15 and

16 (d) the sentence can be safely, efficiently and effectively
17 administered in this jurisdiction.

18 (2) For this section, there is a corresponding community based sentence
19 under the law of this jurisdiction for the interstate sentence if—

20 (a) a community based sentence under the law of this jurisdiction
21 corresponds, or substantially corresponds, to the interstate
22 sentence; or

23 (b) a community based sentence under the law of this jurisdiction
24 is declared under the regulations to correspond to the interstate
25 sentence, whether or not the sentence corresponds, or
26 substantially corresponds, to the interstate sentence.

20 Decision on request

- (1) The local authority may decide—
- (a) to register the interstate sentence; or
 - (b) to register the sentence if the offender meets preconditions imposed under section 21 (Preconditions for registration); or
 - (c) not to register the sentence.
- (2) In deciding whether to register the interstate sentence, the local authority must have regard to the registration criteria, but may have regard to any other relevant matter.
- (3) The local authority—
- (a) may decide not to register the interstate sentence even if satisfied the registration criteria are met; but
 - (b) must not decide to register the interstate sentence (with or without preconditions) unless satisfied that the registration criteria are met.
- (4) The local authority may decide whether to register the interstate sentence, or to impose any preconditions, on the information and documents given to the authority under this part, and any other information or documents available to the authority, without hearing the offender.
- (5) To remove any doubt, the local authority may decide to register the interstate sentence even if—
- (a) the interstate jurisdiction is not the originating jurisdiction for the sentence; or
 - (b) the sentence has previously been registered in this jurisdiction or this jurisdiction is the originating jurisdiction for the sentence; or

- 1 (c) the authority has previously decided not to register the
2 sentence in this jurisdiction.

3 *Note* For the effect of registration in this jurisdiction of an interstate sentence,
4 see s 24.

- 5 (6) If the local authority decides not to register the interstate sentence,
6 the authority must give written notice of the decision to the offender
7 and the interstate authority.

8 **21 Preconditions for registration**

- 9 (1) The local authority may impose preconditions for the registration of
10 the interstate sentence that the offender must meet to show that the
11 offender can comply, and is willing to comply, with the sentence in
12 this jurisdiction.

13 **Examples of preconditions**

- 14 1 the offender must satisfy the local authority before a stated time that the
15 offender is living in this jurisdiction
16 2 the offender must report to a stated person in this jurisdiction at a stated time
17 and place (or another time and place agreed between the local authority and
18 the offender)

19 *Note* An example is part of the Act, is not exhaustive and may extend, but
20 does not limit, the meaning of the provision in which it appears (see
21 Legislation Act, s 126 and s 132).

- 22 (2) If the local authority decides to impose preconditions, the local
23 authority must give written notice of the decision and the
24 preconditions to the offender and the interstate authority.
- 25 (3) The local authority may, by written notice to the offender and the
26 interstate authority, amend or revoke any precondition.

22 How interstate sentence registered

(1) If the local authority decides to register the interstate sentence in this jurisdiction without imposing preconditions for the registration of the sentence, the local authority must register the sentence by entering the required details in the local register.

(2) If the local authority decides to impose preconditions for the registration of the interstate sentence, the local authority must register the sentence by entering the required details in the local register only if the authority is satisfied that the preconditions have been met.

(3) In this section:

required details means the details of the offender and the interstate sentence prescribed under the regulations.

23 Notice of registration

(1) If the local authority registers the interstate sentence in this jurisdiction, the local authority must give written notice of the registration to the offender and the interstate authority.

(2) The notice must state the date the sentence was registered.

24 Effect of registration generally

(1) If the interstate sentence is registered in this jurisdiction, the following provisions apply:

(a) the sentence becomes a community based sentence in force in this jurisdiction, and ceases to be a community based sentence in force in the interstate jurisdiction;

(b) the sentence is taken to have been validly imposed by the appropriate court of this jurisdiction;

(c) the sentence continues to apply to the offender in accordance with its terms despite anything to the contrary under the law of this jurisdiction;

- 1 (d) the offence (the *relevant offence*) for which the sentence was
2 imposed on the offender is taken to be an offence against the
3 law of this jurisdiction, and not an offence against the law of
4 the originating jurisdiction;
- 5 (e) the penalty for the relevant offence is taken to be the relevant
6 penalty for the offence under the law of the originating
7 jurisdiction, and not the penalty for an offence of that kind
8 (if any) under the law of this jurisdiction;
- 9 (f) any part of the sentence served in an interstate jurisdiction
10 before its registration is taken to have been served in this
11 jurisdiction;
- 12 (g) the offender may be dealt with in this jurisdiction for a breach
13 of the sentence, whether the breach happened before, or
14 happens after, the registration of the sentence;
- 15 (h) the law of this jurisdiction applies to the sentence and any
16 breach of it with the changes (if any) prescribed under the
17 regulations.
- 18 (2) Subsection (1) (d) and (e) do not apply if this jurisdiction is the
19 originating jurisdiction.
- 20 (3) This section does not affect any right, in the originating jurisdiction,
21 of appeal or review (however described) in relation to—
- 22 (a) the conviction or finding of guilty on which the interstate
23 sentence was based; or
- 24 (b) the imposition of the interstate sentence.
- 25 (4) Any sentence or decision imposed or made on an appeal or review
26 mentioned in subsection (3) has effect in this jurisdiction as if it
27 were validly imposed or made on an appeal or review in this
28 jurisdiction.

- 1 (5) This section does not give any right to the offender to an appeal or
2 review (however described) in this jurisdiction in relation to the
3 conviction, finding of guilty or imposition of sentence mentioned in
4 subsection (3).
- 5 (6) In this section:
- 6 *appropriate court*, of this jurisdiction, means—
- 7 (a) if the interstate sentence was imposed by a court of summary
8 jurisdiction or by a court on appeal from a court of summary
9 jurisdiction—the Magistrates Court; and
- 10 (b) in any other case—the Supreme Court.

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The local authority may request the interstate authority for an interstate jurisdiction to register a local sentence in the interstate jurisdiction.

The local authority may, at the request of the interstate authority or on its own initiative, give the interstate authority any additional information about the local sentence or the offender.

- (1) If the local sentence is registered in the interstate jurisdiction, the following provisions have effect:
 - (a) the sentence becomes a community based sentence in force in the interstate jurisdiction, and ceases to be a community based sentence in force in this jurisdiction;
 - (b) the offender may be dealt with in the interstate jurisdiction for a breach of the sentence, whether the breach happened before, or happens after, the registration of the sentence;
 - (c) if the sentence is registered in the local register—the sentence ceases to be registered.
- (2) If this jurisdiction is the originating jurisdiction for the local sentence, this section does not affect any right of appeal or review (however described) in relation to—
 - (a) the conviction or finding of guilty on which the sentence was based; or

- 1 (b) the imposition of the sentence.
- 2 (3) To remove any doubt, this section does not prevent the local
- 3 sentence from later being registered in this jurisdiction.

Part 6 Miscellaneous

28 Inaccurate information about local sentence registered interstate

(1) This section applies if—

- (a) a community based sentence that was a local sentence is registered in an interstate jurisdiction; and
- (b) the local authority becomes aware that information about the sentence or the offender recorded in the register kept under the corresponding law of the interstate jurisdiction (the *interstate register*) is not, or is no longer, accurate.

(2) The local authority must tell the interstate authority for the interstate jurisdiction how the information in the interstate register needs to be changed to be accurate.

(3) Without limiting subsection (2), the local authority must tell the interstate authority about—

- (a) any part of the sentence served in this jurisdiction between the making of the request to register the sentence in the interstate jurisdiction and its registration in the interstate jurisdiction; or
- (b) the outcome of any appeal or review in this jurisdiction affecting the sentence.

29 Dispute about accuracy of information in interstate register

(1) This section applies if—

- (a) a community based sentence that was a local sentence is registered in an interstate jurisdiction; and

- 1 (b) the offender claims, in writing, to the interstate authority for
2 the interstate jurisdiction that the information recorded about
3 the sentence or the offender in the register kept under the
4 corresponding law of the interstate jurisdiction (the *interstate*
5 *register*) is not, or is no longer, accurate, and states in the claim
6 how the information is inaccurate.
- 7 (2) The interstate authority may send the local authority—
8 (a) a copy of the claim; and
9 (b) an extract from the interstate register containing the
10 information that the offender claims is inaccurate.
- 11 (3) The local authority must check whether the information in the
12 extract is accurate, having regard to the offender's claims.
- 13 (4) If the local authority is satisfied that the information is accurate, the
14 local authority must tell the interstate authority.
- 15 (5) If the local authority is satisfied that the information is inaccurate,
16 the local authority must give the interstate authority the correct
17 information.

18 **30 Evidence of registration and registered particulars**

- 19 (1) A certificate that appears to be signed by or on behalf of the local
20 authority or the interstate authority for an interstate jurisdiction, and
21 states a matter that appears in or can be worked out from the register
22 kept under this Act or a corresponding law, is evidence of the
23 matter.
- 24 (2) A certificate under subsection (1) may state a matter by reference to
25 a date or period.
- 26 (3) A certificate that appears to be signed by or on behalf of the local
27 authority or the interstate authority for an interstate jurisdiction, and
28 states any matter prescribed under the regulations, is evidence of the
29 matter.

Section 31

- 1 (4) A certificate that appears to be signed by or on behalf of the local
2 authority or the interstate authority for an interstate jurisdiction and
3 states any of the following details is evidence of the matter:
- 4 (a) details of a community based sentence or the offender in
5 relation to a community based sentence;
- 6 (b) details of any part of a community based sentence that has or
7 has not been served.
- 8 (5) A court must accept a certificate mentioned in this section as proof
9 of the matters stated in it if there is no evidence to the contrary.
- 10 (6) A court must or may admit into evidence other documents
11 prescribed under the regulations in the circumstances prescribed
12 under the regulations.

13 **31 Regulation-making power**

14 The Executive may make regulations for this Act.

15 *Note* Regulations must be notified, and presented to the Legislative
16 Assembly, under the Legislation Act.

Dictionary

(see s 5)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 In particular, the Legislation Act, dict, pt 1, defines the following terms:

- adult
- breach
- change
- chief executive
- contravene
- entity
- found guilty
- function
- public servant
- regulations
- State.

community based sentence—see section 7.

corresponding law—see section 10.

interstate authority—see section 11 (2).

interstate jurisdiction—see section 8 (4).

interstate sentence—see section 9 (2).

jurisdiction—see section 8 (1).

local authority—see section 11 (1).

local register—see section 14.

local sentence—see section 9 (1).

offender, in relation to a community based sentence, means the person on whom the sentence was imposed.

- 1 ***originating jurisdiction***, for a community based sentence, means the
2 jurisdiction where the sentence was originally imposed.
- 3 ***participating jurisdiction***—see section 8 (3).
- 4 ***registration criteria***, for part 4 (Registration of interstate sentences
5 in this jurisdiction)—see section 19.
- 6 ***sentence*** means an order, decision or other sentence (however
7 described), and includes part of a sentence.
- 8 ***serve*** a sentence includes—
- 9 (a) comply with or satisfy the sentence; or
- 10 (b) do anything else in accordance with the sentence.
- 11 ***this jurisdiction***—see section 8 (2).