

**2004**

**THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**EXPLANATORY STATEMENT**

**COMMUNITY BASED SENTENCES (TRANSFER) REGULATION 2004**

**Subordinate Law SL2004-51**

Circulated by the authority of  
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## EXPLANATORY STATEMENT

### Authority

These regulations are authorised by section 31 of the *Community Based Sentences (Transfer) Act 2003*.

### Outline/background

Following the commencement of the *Community Based Sentences (Transfer) Act 2003*, which provides for the transfer of community based sentences between jurisdictions with reciprocal legislation, regulations are required to enable the scheme to be administered appropriately and effectively. The objective of the transfer of community based sentences scheme is to:

- provide for the formal transfer and enforcement of community based sentences between Australian jurisdictions;
- allow a jurisdiction that receives a transferred community based sentence to administer that order as though it had been made in that jurisdiction; and
- release a jurisdiction's obligations to administer a community based sentence after that order has been transferred to another jurisdiction.

For the ACT, community based sentences include periodic detention orders, home detention orders, community service orders and orders for conditional release (recognisances).

The Regulations will declare jurisdictions that are participating jurisdictions for purposes of formally transferring and enforcing community based sentences between the ACT and other jurisdictions. The Regulations will also define the details of the offender and the sentence to be transferred to the ACT, that will be required to be recorded in the local register by the local authority for the scheme.

### Revenue/cost implications

There is no additional cost involved in these regulations. The matters described in and provided for by the regulations have already been anticipated in the arrangements for the implementation of the authorising legislation.

### Formal Clauses

#### Clause 1 – name of Regulations

This is a machinery provision that establishes the name of the Regulations.

#### Clause 2 – commencement

This is a machinery provision that establishes the commencement date for the Regulations. The Regulations are necessary for the authorizing legislation to be effective, and so have been set to commence the day after the Regulations are notified.

#### Clause 3 – dictionary

The dictionary at the end of the Regulations is part of the Regulations.

**Clause 4 – notes**

Notes in the Regulations are explanatory and are not part of the Regulations.

**Clause 5 – participating jurisdiction – Act, section 8(3)**

Section 8 of the authorising legislation states that community based sentences may only be transferred to and from jurisdictions that have been declared to be participating jurisdictions. Participating jurisdictions are those jurisdictions that have passed legislation that permits the transfer of community based sentences from the ACT to the other jurisdiction, and from the other jurisdiction to the ACT, in the manner and form prescribed by the authorising legislation.

The NSW *Crimes (Interstate Transfer of Community Based Sentences) Act 2004* is mirror legislation to the ACT *Community Based Sentences (Transfer) Act 2003*. The NSW legislation permits the transfer of community based sentences to and from NSW, in the manner and form prescribed by the authorising legislation. This makes NSW a participating jurisdiction.

**Clause 6 – registration of interstate sentences, *required details* – Act, section 22**

Section 22 of the authorising legislation states that an interstate sentence is registered in the ACT by entering required details in the local register. Required details are details of the offender and the interstate sentence as stated in Schedule 1 of the Regulations.

Other details regarding the offender and interstate sentence that are apparent from the request to transfer and accompanying documentation will be recorded administratively. Examples of other details that may be recorded include the offender's reason for moving to the receiving jurisdiction, or the details of any other sentences being served concurrently by the offender.

**Schedule 1 – registration of interstate sentences – *required details* in the local register**

Schedule 1 establishes the details of the offender and interstate sentence that are the required details to be entered in the local register, to effect registration of an interstate sentence.