

TASMANIA

INTERSTATE TRANSFER (COMMUNITY-BASED SENTENCES) BILL 2009

CONTENTS

PART 1 – PRELIMINARY

1. Short title
2. Commencement
3. Interpretation
4. Application

PART 2 – ADMINISTRATION

5. Register
6. Transfer criteria and information in relation to decisions

PART 3 – TRANSFER OF COMMUNITY-BASED SENTENCES FROM TASMANIA TO ANOTHER STATE OR A TERRITORY

7. Offender may apply to transfer sentence to another State or a Territory
8. Minister may request that sentence be registered in another State or a Territory
9. Minister may provide additional information to corresponding authority
10. Acceptance of transfer by corresponding authority subject to conditions
11. Withdrawal of request to transfer
12. Effect of registration in another State or a Territory

13. Record to be made in register of transfer of sentence to another State or a Territory

PART 4 – TRANSFER TO TASMANIA OF COMMUNITY-BASED SENTENCES OF ANOTHER STATE OR A TERRITORY

14. Requests from interstate for registration of sentences in this State
15. Minister may agree to register interstate community-based sentences
16. Offender may withdraw request for registration
17. Registration of sentence
18. Effect of registration under this Part

PART 5 – CORRECTION OF INFORMATION IN REGISTERS

19. Amendment of registration in another State or a Territory
20. Amendment of registration and records
21. Dispute about accuracy of information

PART 6 – MISCELLANEOUS

22. Application to court to alter sentence to enable registration in another State or a Territory
23. Delegation
24. Evidence
25. Regulations
26. Administration of Act

INTERSTATE TRANSFER (COMMUNITY-BASED SENTENCES) BILL 2009

(Brought in by the Minister for Corrections and Consumer Protection, the Honourable Lisa Maria Singh)

A BILL FOR

An Act relating to the transfer, between Tasmania and other States or Territories, of the enforcement of community-based sentences and for related purposes

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Interstate Transfer (Community-based Sentences) Act 2009*.

2. Commencement

This Act commences on a day to be proclaimed.

3. Interpretation

(1) In this Act, unless the contrary intention appears –

“community-based sentence” means –

Interstate Transfer (Community-based Sentences) Act 2009
Act No. of

s. 3

Part 1 – Preliminary

- (a) a community service order within the meaning of the *Sentencing Act 1997*; or
- (b) a probation order within the meaning of the *Sentencing Act 1997*; or
- (c) a sentence, imposed by a court of this State, another State or a Territory, that is a member of a class of sentences prescribed by regulations made under this Act; or
- (d) a sentence, imposed by a court of another State or a Territory, that corresponds, or substantially corresponds, to –
 - (i) an order referred to in paragraph (a) or (b); or
 - (ii) a sentence of a class prescribed by regulations made for the purposes of paragraph (c);

“corresponding authority” means a person or body with powers, under a corresponding law of another State or a Territory, that correspond, or substantially correspond, to those of the Minister under Parts 3 and 4;

“corresponding law” means a law, of another State or a Territory, that –

Interstate Transfer (Community-based Sentences) Act 2009
Act No. of

Part 1 – Preliminary

s. 3

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- (a) corresponds, or substantially corresponds, to this Act; or
 - (b) is declared to be a corresponding law under subsection (2);

“Director, Community Corrections” means the person appointed under the *State Service Act 2000* to manage probation officers working on community corrections programs under section 88 of the *Corrections Act 1997*;

“offender”, in relation to a community-based sentence, means the person on whom the sentence was imposed;

“register” means the register established under section 5;

“Registrar” means the Administrator of the Magistrates Court, within the meaning of that expression in the *Magistrates Court Act 1987*;

“sentence” means an order, decision or other sentence (however described) and includes part of a sentence;

“serve”, in relation to a sentence, includes –

- (a) to comply with or satisfy the sentence; and
- (b) to do anything else in accordance with the sentence;

Interstate Transfer (Community-based Sentences) Act 2009
Act No. of

s. 4

Part 1 – Preliminary

“transfer criteria” means the criteria specified in section 6(1).

- (2) The Minister, by notice, may declare a law of another State or a Territory to be a corresponding law for the purposes of this Act.
- (3) A declaration may be made under subsection (2) whether or not the law specified in the declaration corresponds, or substantially corresponds, to this Act.

4. Application

- (1) This Act does not apply in relation to a sentence that was imposed by a court in this State, another State or a Territory, on a person who was not an adult at the time he or she committed the offence in relation to which the sentence was imposed.
- (2) This Act does not apply to –
 - (a) a parole order within the meaning of section 3 of the *Parole Orders (Transfer) Act 1983*; or
 - (b) a sentence to the extent that it imposes a fine or other financial penalty, however described; or
 - (c) a sentence to the extent that it requires the offender to make a specific act of reparation to a specific person who has been caused harm or loss by the offender.

PART 2 – ADMINISTRATION

5. Register

- (1) The Registrar must establish and maintain, for the purposes of this Act, a register of sentences.
- (2) The register is to consist of 2 parts.
- (3) One part of the register is to consist of sentences registered under Part 4.
- (4) The other part of the register is to consist of entries made under section 13(2) in relation to sentences that were in force in this State but which have subsequently become registered under a corresponding law pursuant to a request under section 8.
- (5) Subject to this Act, the register may be in a form determined by the Registrar.

6. Transfer criteria and information in relation to decisions

- (1) In this Act, the transfer criteria in relation to a community-based sentence are –
 - (a) whether a sentence that corresponds to the sentence could be made in the State (including this State) or Territory in which it is proposed to register the sentence; and
 - (b) the welfare of the offender; and

Interstate Transfer (Community-based Sentences) Act 2009
Act No. of

s. 6

Part 2 – Administration

- (c) the administration of justice in this State, another State or a Territory; and
 - (d) the protection of the community in this State, another State or a Territory; and
 - (e) whether the offender can comply with the sentence in the State (including this State) or Territory in which it is proposed to register the sentence; and
 - (f) whether the sentence can be administered safely, efficiently and effectively; and
 - (g) any other matters that are prescribed by regulations made under this Act.
- (2) In making a decision under this Act, the Minister may have regard to any reports from persons who are parole, prison, or correctional services authorities –
- (a) in this State; or
 - (b) in another State or a Territory in relation to which a law has been declared to be a corresponding law.
- (3) The Minister may send to a corresponding authority reports from persons referred to in subsection (2), so as to assist the corresponding authority to form an opinion or to exercise a discretion under a corresponding law.

Interstate Transfer (Community-based Sentences) Act 2009
Act No. of

Part 3 – Transfer of Community-based Sentences from Tasmania to Another
State or a Territory

s. 7

**PART 3 – TRANSFER OF COMMUNITY-BASED
SENTENCES FROM TASMANIA TO ANOTHER
STATE OR A TERRITORY**

**7. Offender may apply to transfer sentence to another
State or a Territory**

- (1) An offender may, in writing addressed to the Minister, request that a community-based sentence in relation to the offender that is in force under a law of this State be transferred to another State or a Territory.
- (2) The Minister must agree, or refuse to agree, to a request received under subsection (1) from an offender.
- (3) In deciding whether to agree or refuse to agree under subsection (2), the Minister –
 - (a) must have regard to the transfer criteria; and
 - (b) may have regard to any other matter or information that the Minister thinks fit, including any matter that has arisen since the request to which the decision relates was made.
- (4) The Minister may not agree to a request received under subsection (1) from an offender unless the Minister is satisfied that it has been explained to the offender that, if the community-based sentence in relation to the offender is registered

Interstate Transfer (Community-based Sentences) Act 2009
Act No. of

s. 8 Part 3 – Transfer of Community-based Sentences from Tasmania to Another
State or a Territory

in another State or a Territory under a corresponding law –

- (a) the offender will be bound by the requirements of the law of the other State or the Territory; and
 - (b) a breach of the sentence may result in the offender being resentenced in the other State or the Territory; and
 - (c) the other consequences of a breach of the sentence in the other State or the Territory (in particular the penalties that may be imposed for the breach) may be different from the consequences of a breach of the sentence in this State.
- (5) The Minister must cause to be served on the offender from whom a request was received under subsection (1) notice of –
- (a) the decision of the Minister under subsection (2) in relation to the request; and
 - (b) if the Minister decided not to agree with the request, his or her reasons for not agreeing.

8. Minister may request that sentence be registered in another State or a Territory

- (1) The Minister may request the corresponding authority of another State or a Territory to

Interstate Transfer (Community-based Sentences) Act 2009
Act No. of

Part 3 – Transfer of Community-based Sentences from Tasmania to Another
State or a Territory

s. 9

register a community-based sentence that is in force under a law of this State.

- (2) A request under subsection (1) may be accompanied by any information or documents that are required under the corresponding law or that the Minister thinks fit.
- (3) The Minister must not make a request under subsection (1) to the corresponding authority of another State or a Territory in relation to a community-based sentence unless –
 - (a) the Minister has agreed under section 7 to a request from the offender that the sentence be transferred to that State or Territory and is satisfied that the offender consents to the registration of the sentence in that State or Territory; and
 - (b) the Minister is satisfied that there is no application for appeal or review in relation to the sentence that has not been finally determined.

9. Minister may provide additional information to corresponding authority

If the Minister makes under section 8(1) a request to a corresponding authority in relation to a community-based sentence, the Minister may, at the request of the corresponding authority or on the Minister's own initiative, give the authority further information about the sentence or the offender.

Interstate Transfer (Community-based Sentences) Act 2009
Act No. of

s. 10 Part 3 – Transfer of Community-based Sentences from Tasmania to Another
State or a Territory

**10. Acceptance of transfer by corresponding authority
subject to conditions**

(1) If a corresponding authority –

- (a) agrees to a request made to the authority under section 8(1) to register a community-based sentence; and
- (b) makes the agreement subject to conditions (in this section referred to as “preconditions”) being satisfied by the offender before the sentence is registered –

the Minister must decide whether to agree to the registration of the sentence being subject to those preconditions being satisfied.

(2) Before making a decision under subsection (1) in relation to a sentence, the Minister must –

- (a) consult with the offender; and
- (b) consider the welfare of the offender.

(3) If the Minister does not agree to the registration of the sentence being subject to the preconditions specified by the corresponding authority being satisfied, the Minister must –

- (a) cause notice to be served on the offender; and
- (b) notify the corresponding authority –

that the Minister does not agree, and set out the Minister’s reasons for disagreeing.

Interstate Transfer (Community-based Sentences) Act 2009
Act No. of

Part 3 – Transfer of Community-based Sentences from Tasmania to Another
State or a Territory

s. 11

11. Withdrawal of request to transfer

- (1) An offender may, before a community-based sentence is registered in another State or a Territory, provide to the Minister a notice, in a form approved by the Minister, to the effect that the offender no longer consents to the registration of the sentence in the other State, or the Territory, specified in the notice.
- (2) As soon as practicable after a notice is provided to the Minister under subsection (1), the Minister must forward the notice to the relevant corresponding authority.

12. Effect of registration in another State or a Territory

- (1) If a community-based sentence that is in force in this jurisdiction is registered under a corresponding law of another State or a Territory –
 - (a) the sentence becomes a community-based sentence in force in the State or Territory; and
 - (b) the sentence ceases to be a sentence in force in this State; and
 - (c) the offender may be dealt with in the State or Territory for a breach of the sentence, whether the breach happened before or after the sentence is registered in the State or Territory; and

Interstate Transfer (Community-based Sentences) Act 2009
Act No. of

s. 13 Part 3 – Transfer of Community-based Sentences from Tasmania to Another
State or a Territory

- (d) where the sentence was, immediately before being registered in the other State or the Territory, registered under Part 4, it ceases to be registered under Part 4.
- (2) This section does not affect any right to appeal or review against –
 - (a) a conviction imposed, or a finding of guilt made, in this State; or
 - (b) any sentence imposed in this State.
- (3) Nothing in this Part is to be taken to prevent a sentence imposed in this State and registered in another State or a Territory subsequently being registered under Part 4.

13. Record to be made in register of transfer of sentence to another State or a Territory

- (1) If the Minister is informed that a community-based sentence that was in force in this State is registered under a corresponding law of another State or a Territory as a community-based sentence, the Minister is to direct the Registrar to make an entry in relation to the sentence in the part of the register referred to in section 5(4).
- (2) If the Registrar is directed under subsection (1) to make an entry in relation to a sentence, he or she is to –
 - (a) enter in the part of the register referred to in section 5(4) the details of the offender

Interstate Transfer (Community-based Sentences) Act 2009
Act No. of

Part 3 – Transfer of Community-based Sentences from Tasmania to Another
State or a Territory

s. 13

and the sentence that the Registrar thinks
fit; and

- (b) endorse on the memorandum of sentence made by a court in this State, or the certified copy of the sentence provided by the relevant corresponding authority under section 14(2)(b), as the case may be, a statement signed by the Registrar to the effect that the sentence is, on the date of the endorsement, registered under a corresponding law of another State or a Territory.

Interstate Transfer (Community-based Sentences) Act 2009
Act No. of

s. 14 Part 4 – Transfer to Tasmania of Community-based Sentences of Another
State or a Territory

**PART 4 – TRANSFER TO TASMANIA OF
COMMUNITY-BASED SENTENCES OF ANOTHER
STATE OR A TERRITORY**

14. Requests from interstate for registration of sentences in this State

- (1) A corresponding authority of another State or a Territory may request the Minister to register under this Part a community-based sentence that is in force in the State or Territory.
- (2) A request under subsection (1) for registration of a community-based sentence under this Part must be accompanied by –
 - (a) details of the name, date of birth and last-known address of the offender; and
 - (b) a copy, certified by the corresponding authority, of the community-based sentence and of any amendment made to it; and
 - (c) a copy, certified by the corresponding authority, of the judgment, or order, to which the sentence relates.
- (3) The Minister may request a corresponding authority from which the Minister has received a request under subsection (1) to provide further information in relation to the offender, or the community-based sentence, to which the request under subsection (1) relates.

Interstate Transfer (Community-based Sentences) Act 2009
Act No. of

Part 4 – Transfer to Tasmania of Community-based Sentences of Another
State or a Territory

s. 15

15. Minister may agree to register interstate community-based sentences

- (1) The Minister must, after receiving a request under section 14 from a corresponding authority, agree, or refuse to agree, to the registration under this Part of the community-based sentence to which the request relates.
- (2) The Minister, in deciding under subsection (1) whether to agree or to refuse to agree to the registration under this Part of a community-based sentence –
 - (a) must have regard to the transfer criteria; and
 - (b) may have regard to any other matter or information that the Minister thinks fit, including any matter that has arisen since the request to which the decision relates was made.
- (3) The Minister must not agree under subsection (1) to the registration of a community-based sentence under this Part unless he or she is satisfied that the offender consents to the registration of the sentence in this State.
- (4) The Minister must not agree under subsection (1) to the registration of a community-based sentence unless the agreement is subject to the condition (in this section referred to as the “mandatory precondition”) that the registration will not take place unless the offender reports, to a person who is specified in

Interstate Transfer (Community-based Sentences) Act 2009
Act No. of

s. 15 Part 4 – Transfer to Tasmania of Community-based Sentences of Another
State or a Territory

the notice given to the offender under subsection (8), at a time and place in this State –

- (a) specified in the notice; or
 - (b) agreed between the person and the offender.
- (5) The Minister may agree under subsection (1) to the registration of a community-based sentence on the condition that the registration will not take place unless the offender complies with certain conditions (in this section referred to as “individual preconditions”).
- (6) Individual preconditions specified under subsection (5) are to be conditions that will show that the offender can comply, and is willing to comply, with the community-based sentence in this jurisdiction.
- (7) If the Minister refuses to agree to the registration of a community-based sentence under this Part, the Minister must –
- (a) cause notice of the refusal and the reasons for the refusal to be served on the offender; and
 - (b) notify in writing the relevant corresponding authority of the refusal and the reasons for the refusal.
- (8) If the Minister agrees to the registration of a community-based sentence under this Part, the Minister must cause notice of the mandatory precondition –

Interstate Transfer (Community-based Sentences) Act 2009
Act No. of

Part 4 – Transfer to Tasmania of Community-based Sentences of Another
State or a Territory

s. 15

- (a) to be served on the offender; and
 - (b) to be given in writing to the relevant corresponding authority.
- (9) If the Minister agrees to the registration of a community-based sentence under this Part on the condition that the registration will not take place unless the offender complies with individual preconditions, the Minister must cause notice of the individual preconditions –
 - (a) to be served on the offender; and
 - (b) to be given in writing to the relevant corresponding authority.
- (10) The Minister may, before a community-based sentence is registered under this Part, amend or revoke any individual preconditions specified in a notice to the offender and the relevant corresponding authority under subsection (9).
- (11) The Minister must cause notice of an amendment or revocation under subsection (10) of individual preconditions in relation to an offender –
 - (a) to be served on the offender; and
 - (b) to be given in writing to the relevant corresponding authority.

Interstate Transfer (Community-based Sentences) Act 2009
Act No. of

s. 16 Part 4 – Transfer to Tasmania of Community-based Sentences of Another
State or a Territory

16. Offender may withdraw request for registration

- (1) An offender in relation to whom a request has been made under section 15 may, at any time before the community-based sentence to which the request relates is registered under this Part, by notice in writing to the Minister, withdraw his or her consent to the registration of the sentence.
- (2) The Minister, as soon as practicable after receiving a notice from an offender under subsection (1), must give notice, in writing, of the withdrawal of consent to the corresponding authority which made a request under section 15 in relation to the offender.

17. Registration of sentence

- (1) The Minister must direct the Registrar to register a community-based sentence under this Part, if the Minister is satisfied that –
 - (a) the mandatory precondition to which the sentence is subject under section 15(4); and
 - (b) any individual preconditions to which the sentence is subject under section 15(5) –have been satisfied.
- (2) The Minister must not direct the Registrar to register a community-based sentence under this Part unless the Minister is satisfied that the offender has not withdrawn under section 16 his or her consent to the registration of the sentence.

Interstate Transfer (Community-based Sentences) Act 2009
Act No. of

Part 4 – Transfer to Tasmania of Community-based Sentences of Another
State or a Territory

s. 17

- (3) The Minister may, in a direction under subsection (1), direct the Registrar to register a community-based sentence under this Part as a community-based sentence that is to be taken to be –
- (a) a community service order within the meaning of the *Sentencing Act 1997*; or
 - (b) a probation order within the meaning of the *Sentencing Act 1997*; or
 - (c) a member of a class of sentences, specified in the direction, that has been prescribed in regulations made for the purposes of paragraph (c) of the definition of “community-based sentence” in section 3.
- (4) If the Registrar is directed under subsection (1) to register a community-based sentence under this Part, he or she must –
- (a) register the sentence by entering in the part of the register referred to in section 5(3) the details of the offender and the sentence, including the details of any direction given in accordance with subsection (3); and
 - (b) endorse on the certified copy of the sentence provided by the relevant corresponding authority under section 14(2)(b) a statement signed by the Registrar to the effect that the sentence is, on the date of the

Interstate Transfer (Community-based Sentences) Act 2009
Act No. of

s. 18 Part 4 – Transfer to Tasmania of Community-based Sentences of Another
State or a Territory

endorsement, registered under this Act;
and

- (c) keep the endorsed certified copy of the sentence together with the copy of the judgment or order to which the sentence relates that was provided to the Minister by the corresponding authority under section 14(2)(c).

- (5) The Registrar must cause notice in writing of the registration of a sentence under this Part –

- (a) to be given in writing to the corresponding authority from which the request in relation to the sentence was received under section 14; and
 - (b) to be served on the offender.

18. Effect of registration under this Part

- (1) If a community-based sentence is registered under this Part –
 - (a) the sentence becomes a community-based sentence in force in this State; and
 - (b) the sentence is to be taken to have been validly imposed by a court of petty sessions; and
 - (c) the sentence continues to apply to the offender in accordance with its terms despite anything to the contrary in another law of this State; and

Interstate Transfer (Community-based Sentences) Act 2009
Act No. of

Part 4 – Transfer to Tasmania of Community-based Sentences of Another
State or a Territory

s. 18

- (d) the offence for which the sentence was imposed is taken to be an offence against the law of this State and not an offence against the law of the other State or the Territory under which the sentence was originally imposed or in which the sentence was registered under a corresponding law; and
- (e) the penalty that may be imposed for the offence for which the sentence was imposed is taken to be the penalty that may be imposed for the offence under the law of the State or Territory in which the sentence was imposed and not the penalty that may be imposed for an offence of that kind, if any, under the law of this State; and
- (f) any part of the sentence served in another State or a Territory before the sentence was registered under this Act is to be taken to have been served in this State; and
- (g) the offender may be dealt with in this State for a breach of the sentence, whether the breach occurred before or after the sentence was registered under this Part; and
- (h) if the sentence is registered, in accordance with a direction under section 17(1) given in accordance with section 17(3), as a sentence that is to be taken to be a community service order, or

Interstate Transfer (Community-based Sentences) Act 2009
Act No. of

s. 18 Part 4 – Transfer to Tasmania of Community-based Sentences of Another
State or a Territory

a probation order, within the meaning of the *Sentencing Act 1997* or to be a member of a class of sentences, the sentence is to be treated for all purposes as such an order or sentence; and

- (i) the law of this State applies to the sentence and any breach of the sentence with the changes, if any, that may be prescribed by regulations made under this Act.
- (2) This section does not affect a right, in the State or Territory in which a sentence was originally made, or in which the sentence was in force under a corresponding law, to an appeal or a review against –
 - (a) a conviction imposed, or a finding of guilt made, in another State or a Territory; or
 - (b) a sentence imposed in another State or a Territory.
- (3) A sentence or decision imposed or made on an appeal or review referred to in subsection (2) has effect in this State as if it were validly imposed or made on an appeal or review in this State.
- (4) This section does not give to the offender a right to an appeal or review in this State in relation to the conviction, finding or imposition of a sentence referred to in subsection (2).

**PART 5 – CORRECTION OF INFORMATION IN
REGISTERS**

19. Amendment of registration in another State or a Territory

- (1) This subsection applies in relation to a community-based sentence that was in force in this State if –
 - (a) the sentence is registered in another State or a Territory; and
 - (b) the Minister becomes aware that the information about the sentence, or the offender, recorded in the register kept under a corresponding law in the other State or the Territory is not, or is no longer, accurate.
- (2) If subsection (1) applies in relation to a community-based sentence, the Minister must inform the corresponding authority of the State or the Territory in which the sentence is registered how the information, about the sentence or the offender, that is in the register in the other State or the Territory needs to be changed in order to be made accurate.
- (3) Without limiting subsection (2), the Minister must inform the corresponding authority of –
 - (a) any part of the sentence served in this State in the period between the making to the corresponding authority of the

Interstate Transfer (Community-based Sentences) Act 2009
Act No. of

s. 20

Part 5 – Correction of Information in Registers

request under section 8 in relation to the sentence and its registration under the corresponding law; or

- (b) the outcome of any appeal or review in this State after the sentence was imposed.

20. Amendment of registration and records

- (1) The Registrar may amend the details in the register in respect of –
 - (a) the registration of a community-based sentence under Part 4; or
 - (b) an entry in the register made under section 13.
- (2) The Minister, after receiving a request, from the corresponding authority that made a request for registration under section 14 in relation to an offender, to amend the details of the registration of the offender under Part 4, may direct the Registrar to amend the details of the registration of the offender under Part 4 accordingly.
- (3) The Registrar must cause notice in writing of any amendment made under this section –
 - (a) to be given in writing to the corresponding authority; and
 - (b) to be served on the offender.

21. Dispute about accuracy of information

- (1) This subsection applies if –
 - (a) a community-based sentence that was in force in this State is registered in another State or a Territory; and
 - (b) the Minister receives from the corresponding authority of the State or the Territory notice of a relevant claim made by the offender.
- (2) A relevant claim made by an offender is a claim, made by the offender in writing to the corresponding authority of the other State or the Territory, that specifies –
 - (a) that information recorded about the offender, or a community-based sentence in relation to the offender, in a register kept under a corresponding law in that State or Territory is not accurate or is no longer accurate; and
 - (b) how the information is inaccurate.
- (3) If subsection (1) applies, the Minister must check whether the information to which the offender's claim relates is accurate or not.
- (4) If the Minister is satisfied that the information in the register to which the offender's claim relates is accurate, the Minister must, in writing, inform the corresponding authority and the offender accordingly.

Interstate Transfer (Community-based Sentences) Act 2009
Act No. of

s. 21

Part 5 – Correction of Information in Registers

- (5) If the Minister is satisfied that the information in the register to which the offender's claim relates is not accurate or is no longer accurate, the Minister must, in writing –
- (a) inform the corresponding authority and provide to the authority the accurate information; and
 - (b) inform the offender about the information that the Minister has provided to the corresponding authority under paragraph (a).

PART 6 – MISCELLANEOUS

22. Application to court to alter sentence to enable registration in another State or a Territory

- (1) An offender who is subject to a community-based sentence may apply to the court that imposed (or is to be taken, under section 18(1), to have imposed) the community-based sentence, to have the sentence reviewed, so as to make the sentence a sentence of a kind that is able to be registered under a corresponding law.
- (2) If an application under subsection (1) is made to the Supreme Court, a copy of the application and notification of the time and place of the hearing of the application is to be served, at least 7 days before the hearing, on –
 - (a) the Director of Public Prosecutions; and
 - (b) the Director, Community Corrections.
- (3) If an application under subsection (1) is made to a court of petty sessions, a copy of the application and notification of the time and place of the hearing of the application is to be served, at least 7 days before the hearing, on –
 - (a) the Commissioner of Police; and
 - (b) the Director, Community Corrections.
- (4) Subject to subsection (5), at the hearing of an application under subsection (1), the court may –

Interstate Transfer (Community-based Sentences) Act 2009
Act No. of

s. 22

Part 6 – Miscellaneous

- (a) vary the community-based sentence; or
 - (b) cancel the sentence and deal with the offender for the offence or offences in respect of which it was made in any manner in which the court could deal with the offender had it just found the offender guilty of that offence or those offences.
- (5) The court must not vary the sentence, or deal with the offender in any manner, except in so far as the variation or dealing is necessary to make the sentence a sentence of a kind that is able to be registered under a corresponding law.
- (6) At the hearing of the application, the court may refuse to vary or cancel the sentence.
- (7) If an application under subsection (1) is made in relation to a sentence that is a community service order within the meaning of the *Sentencing Act 1997*, any variation or cancellation of the sentence under this section is to be taken to have been made under section 35 of the *Sentencing Act 1997*.
- (8) If an application under subsection (1) is made in relation to a sentence that is a probation order within the meaning of the *Sentencing Act 1997*, any variation or cancellation of the sentence under this section is to be taken to have been made under section 41 of the *Sentencing Act 1997*.

23. Delegation

- (1) The Minister may delegate any of his or her functions or powers under this Act other than this power of delegation.
- (2) The Registrar may delegate any of his or her functions or powers under this Act other than this power of delegation.

24. Evidence

- (1) An instrument in writing that purports –
 - (a) to be a copy of a sentence on which a statement is endorsed in accordance with section 17(4)(b) on a specified date; and
 - (b) to have been signed by the Registrar –is, until the contrary is proved, evidence that the sentence was registered under this Act on that date.
- (2) A community-based sentence made under a law of another State or a Territory and registered under Part 4 may be received in evidence in any court without further proof, by the production of a copy of the sentence certified as a true copy by the Registrar.
- (3) A copy of a sentence certified by the Registrar under subsection (2) is, until the contrary is proved, evidence of the matters stated in the sentence.

Interstate Transfer (Community-based Sentences) Act 2009
Act No. of

s. 25

Part 6 – Miscellaneous

25. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) The regulations may be made so as to apply differently according to such factors as are specified in the regulations.
- (3) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the relevant provision or provisions of this Act.

26. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Corrections and Consumer Protection; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Justice.