

SECOND READING SPEECH

INTERSTATE TRANSFERS (MISCELLANEOUS AMENDMENTS) BILL 2013

This Bill seeks to make amendment to three existing Acts, the *Interstate Transfer (Community-based Sentences) Act 2009*, the *Parole Orders (Transfer) Act 1983* and the *Prisoners (Interstate Transfers) Act 1982*.

Each of these Tasmanian Acts is based on the model laws developed and endorsed by the Corrective Services Ministers Conference and the Standing Committee of Attorneys-General (now known as the Standing Council on Law and Justice). The cooperative arrangements between jurisdictions depend largely on bilateral Ministerial Arrangements which in turn are based on an agreement that each jurisdiction recognises the “corresponding law” of the other jurisdictions. Having similar provisions makes the administration of transfers of offenders subject to community service orders, prisoners and parolees in and out of the State and other jurisdictions simpler, as the same principles are applied by all administrators.

The key feature of each of the pieces of model legislation in these model Bills is that an order or sentence made or imposed in one jurisdiction, when transferred and registered in another jurisdiction becomes an order or sentence imposed in the second jurisdiction, and therefore the offender becomes subject to all the laws of that State or Territory in relation to breaches of those sentences or orders.

The *Interstate Transfer (Community-based Sentences) Act* provides that if a person wishes to permanently move between jurisdictions during the period of their community based sentence (for instance, a community service order) the order can be transferred and be administered by the receiving jurisdiction as if that order had originally been made in that jurisdiction. The Act is a reciprocal one with all the other

States and Territories in Australia, meaning offenders can apply to the 'local authority', who in Tasmania is the Director of Corrective Services, to be permitted to move both out of and into Tasmania.

The amendments allow Ministers to enter into Ministerial arrangements for the administration of local and interstate community-based sentences to facilitate offenders travelling interstate temporarily. The existing Corrective Services Ministerial Conference-endorsed *National Operating Procedures Interstate Transfer and Interstate Travel Permits for Community Based Sentences* will form the substance of the Ministerial arrangements.

Part 3A of the *Interstate Transfer (Community-based Sentences) Act* establishes a system under which an offender on a community based sentence can be issued with an interstate travel permit to allow for an offender to travel temporarily to another State. This would allow an offender to travel to attend a funeral or undertake a family obligation, and remain under sentence. They also empower the relevant authority of the jurisdiction being visited to issue a warrant for the arrest of an interstate offender whose travel permit is no longer in force, if the offender has failed to comply with its conditions, or the time period in the permit has expired.

The Bill also contains a series of smaller amendments that clarify and correct the *Interstate Transfer (Community-based Sentences) Act*. It confirms that a fine cannot be transferred between jurisdictions, and clarifies that the penalties that apply in the event that an offender breaches the conditions of a community-based sentence following the interstate transfer of that sentence are those of the receiving jurisdiction. The Bill also addresses a gap in the legislation which could lead to an original jurisdiction continuing or commencing proceedings for breach where only the receiving jurisdiction should be able to do this. This amendment is intended to avoid double jeopardy.

The *Parole Orders (Transfer) Act 1983* was introduced to allow parole orders from other States to be registered in Tasmania, and the registration of Tasmanian parole orders in other States. This reciprocal arrangement allows parolees to move permanently between jurisdictions and their conditions of parole to be overseen by the authorities in the second jurisdiction.

The amendments in this Bill insert a new Part 3 into the Act to provide a legislative basis for travel permits to be issued similar to the case of community based sentences. A parolee can, with the approval of the relevant local authority, temporarily travel from one jurisdiction to another and these amendments will enable the authorities in the second jurisdiction to oversee compliance with conditions of parole and conditions of the travel permit on behalf of the original jurisdiction.

The remainder of the adjustments to the *Parole Orders (Transfer) Act* are of a minor nature and provide clarity in the transfer process. In particular, they provide for:

- Registration of a parole order to become effective after a parolee first reports to the receiving jurisdiction.
- A receiving jurisdiction to have authority to commence investigations in the course of processing an application for transfer of a parole order.
- Matters to which a Minister may have regard when considering an application for transfer of parole.
- An extension to the definition of 'parole order' to include an order that has been made but is not yet in force. This amendment will allow arrangements for the transfer of parole to be made in anticipation of an order, while the offender is still in custody, for immediate transfer after release.
- Certainty in the authenticity of documents accompanying requests for the transfer of parole orders.
- Recognition that there may be multiple transfers of a parole order between two or more jurisdictions.

- The situation of a breach that occurs after the transfer has begun but before registration has taken place (i.e. while the parolee is in transit).
- Confirmation that any calculation of remaining sentence where there has been a breach of a parole order in Tasmania is done in accordance with the laws of Tasmania.
- Confirmation that only the receiving jurisdiction is able to continue or commence proceedings for breach once the parole order is transferred. This amendment is similarly intended to avoid double jeopardy.
- Clarification of how the Minister may use the documents and information gathered in the course of an application to transfer parole.

The *Prisoners (Interstate Transfers) Act 1982* was introduced to allow prisoners in Tasmania to apply to the Minister for their sentence order to be transferred to another jurisdiction in Australia and for prisoners to transfer to Tasmania with Ministerial approval. It sets up a process to manage requests to transfer and consents to receive prisoners between jurisdictions.

Owing to the current limitations in the provisions of the model legislation, it is understood that all prisoners are currently transferred interstate by air travel and that prisoners are escorted by officers of one jurisdiction from a gaol in the originating jurisdiction to the gaol nominated in the transfer order in the receiving jurisdiction. The model legislation, as it is currently worded and adopted in Tasmania, does not allow for the handover of prisoners to be carried out at locations such as border police stations or to the custody of the interstate officers at any place other than at a gaol. Perhaps not for Tasmania but for other jurisdictions, road transport would be a more efficient and cheaper means of making the transfer and hand over to prison staff should be able to be effected at places other than a gaol.

These amendments allow a transfer to occur at whatever location is deemed suitable by jurisdictions. This will provide sufficient flexibility for transfers to occur at prisons, police stations and airports, as well as locations which may be identified as a result of future initiatives. The proposed additional flexibility may be particularly useful for those jurisdictions that are sparsely populated and have remote or mobile facilities, and when it has been agreed that the prisoner is to be delivered directly to such a place.

Whilst these amendments to the model legislation have been supported by all States and territories, some jurisdictions have indicated that, for reasons of security and public safety, the exchange of prisoners in their jurisdiction is likely to continue to occur at a designated prison only. Each case will be managed on the assessment of the risks associated with the particular prisoner.

There is also a minor amendment to address a gap in the model legislation that could lead to confusion in the event that a prisoner escapes during the transfer process. The amendment clarifies that a police officer may apprehend without warrant any escapee, no matter whose custody the prisoner has escaped from.

This combined Bill will ensure consistency in the approach of jurisdictions to the transfer of community service orders, parole orders and prisoners, which enables mutual recognition, improves the ability to enforce orders of a court or Parole Board across jurisdictional borders, improves the administration of justice and improves safety and outcomes for both offenders and correctional staff.

I commend this Bill to the House.