

Community Based Sentences (Interstate Transfer) Regulation 2021

Explanatory notes for SL 2021 No. 16

Made under the

Community Based Sentences (Interstate Transfer) Act 2020

General Outline

Short title

Community Based Sentences (Interstate Transfer) Regulation 2021

Authorising law

Sections 13(2)(b), 14(2)(b)(i), 16(3), 32, and Schedule 1 of the *Community Based Sentences (Interstate Transfer) Act 2020* (the Act).

Policy objectives and the reasons for them

The purposes of the authorising Act under which the *Community Based Sentences (Interstate Transfer) Regulation 2021* (the Regulation) is made are first, to enable community based sentences imposed in participating jurisdictions to be transferred by registration and enforced between participating jurisdictions. Second, to empower the Minister to enter into arrangements with Ministers of interstate jurisdictions to facilitate the administration of community based sentences for offenders travelling to Queensland or an interstate jurisdiction.

The Act applies to community based sentences imposed by courts on adults and complements existing legislation which enables the interstate transfer of adult prisoners and parolees among states and territories.

The Act was based on national model legislation agreed by states and territories, which requires all three parties, the offender, the local jurisdiction and the interstate jurisdiction, to agree to the transfer of a community based sentence from one jurisdiction to another.

The objective of the Regulation is to support the purposes of the Act by prescribing:

- declared corresponding interstate community based sentences
- matters for consideration when deciding to register an interstate sentence
- required details to register an interstate sentence, and
- participating jurisdictions.

Achievement of policy objectives

The Regulation sets out, for each relevant Queensland community based sentence under the *Penalties and Sentences Act 1992*, which interstate sentences are declared to correspond for the purpose of section 13(2)(b) of the Act. Declaring corresponding sentences under the Regulation supports the workability of the Act and overall intent of the national scheme. It recognises 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 should not in itself be a barrier to transfer.

The interstate sentences declared to correspond with a Queensland community based sentence are not exhaustive and sentences not included in the Regulation still can be assessed against the registration criteria in section 13 of the Act.

The Regulation prescribes that the local authority (Commissioner for Queensland Corrective Services (QCS) or delegate) may have regard to the safety of an offender's victim/s or victim/s family member when deciding whether to register an interstate sentence. This measure aims to ensure the safety of the victim, or a family member of the victim, to which the interstate sentence relates and may be particularly important where an offender has perpetrated domestic, family or sexual violence.

The Regulation intends to improve criminal justice responses, protect victims, and hold perpetrators to account by ensuring the victims and their families are a relevant consideration in transferring a sentence. The matters prescribed for consideration under the Regulation are discretionary criteria. These are in addition to the registration criteria in section 13(1) of the Act which the local authority must have regard to in deciding whether to register the interstate sentence. This includes that:

- the offender is capable of complying with the interstate sentence in Queensland, and
- the interstate sentence is capable of being safely, efficiently and effectively administered in Queensland.

Section 14(2)(b)(ii) of the Act also allows the local authority to have regard to any other matter the authority considers relevant in determining whether to register the interstate sentence. To facilitate this, section 11 of the Act allows the local authority to ask the interstate authority for additional information about the interstate sentence or the offender.

The Regulation prescribes the required details relating to the offender and the interstate community based sentence for the purpose of registering the sentence in the local register. These details are necessary in order for the sentence to be effectively managed by QCS and are consistent with the details prescribed in other jurisdictions' regulations. The local register is held by QCS and is not publicly available.

The details of the offender include:

- name
- date of birth
- proposed address in Queensland, and
- any known aliases.

The details of the interstate sentence include:

- the name and date of each offence/s subject to each community based sentence
- the name and type of sentence
- the name of the court that imposed the sentence
- dates relevant to the sentence
- details of the sentence including any conditions, and
- details of any previous registration interstate.

Further, the Regulation recognises all Australian states and territories as participating jurisdictions for the purpose of the Act. This provides that where there is reciprocal recognition of Queensland under an interstate jurisdiction's equivalent community based sentence transfer legislation, offenders are able to request to have their sentence transferred by registration in or out of Queensland. It also enables the Minister to enter into arrangements with Ministers of interstate jurisdictions to facilitate the administration of offenders on community based sentences travelling to Queensland or interstate.

Consistency with policy objectives of authorising law

In declaring corresponding interstate sentences and prescribing matters for consideration by the local authority, details required for the local register and participating jurisdictions, the Regulation supports the objective of the authorising law in providing for the transfer and enforcement of community based sentences between interstate jurisdictions. Prescribing participating jurisdictions also supports the ability for the Minister to enter into arrangements with Ministers of interstate jurisdictions to facilitate the administration of community based sentences for offenders travelling to Queensland or an interstate jurisdiction.

Inconsistency with policy objectives of other legislation

The Regulation is consistent with the policy objectives of other legislation.

Benefits and costs of implementation

The primary benefit of the Regulation is that it will support the operation of the Act by giving effect to the national scheme agreed by states and territories for the formal transfer and enforcement of community based sentences among jurisdictions. Importantly, the Regulation will help protect victims by providing that the local authority may have regard to the safety of the victim and the victim's family when deciding whether to register an interstate community based sentence.

The costs associated with the implementation of the Regulation will be met within existing resources.

Consistency with fundamental legislative principles

The Regulation is consistent with the fundamental legislative principles in section 4 of the *Legislative Standards Act 1992*.

Consultation

The Department of the Premier and Cabinet, Queensland Treasury, Queensland Police Service, and the Department of Justice and Attorney-General were consulted and support the making of the *Community Based Sentences (Interstate Transfer) Regulation 2021*.

The Regulation meets category (j) *Regulatory proposals relating to police powers and administration, general criminal laws, the administration of courts and tribunals and corrective services*, an agency-assessed exclusion category and accordingly does not require consultation with the Office of Best Practice Regulation, Queensland Productivity Commission.