



# **Community Based Sentences (Interstate Transfer) Act 2020**

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Queensland

# Community Based Sentences (Interstate Transfer) Act 2020

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# Community Based Sentences (Interstate Transfer) Act 2020

**An Act to provide for the interstate transfer of community based sentences imposed in participating jurisdictions to be transferred, by registration, between participating jurisdictions**

## Part 1 Preliminary

### 1 Short title

This Act may be cited as the *Community Based Sentences (Interstate Transfer) Act 2020*.

### 2 Commencement

This Act commences on a day to be fixed by proclamation.

### 3 Purposes of Act

The purposes of this Act are to—

- (a) enable community based sentences imposed in participating jurisdictions to be transferred, by registration, between participating jurisdictions; and
- (b) 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.

#### **4 Application of Act**

- (1) This Act applies to sentences imposed by courts on adults convicted or found guilty of offences.
- (2) This Act does not apply to—
  - (a) a parole order; or
  - (b) a sentence to the extent it imposes a fine or other financial penalty, however described; or
  - (c) a sentence to the extent it requires the offender do a particular act or make reparation to a particular person who has been caused harm or loss by the offender.

#### **5 Dictionary**

The dictionary in schedule 1 defines particular words used in this Act.

## **Part 2 Administration**

#### **6 Local authority**

The *local authority* for Queensland is the chief executive.

#### **7 Delegation by local authority**

- (1) The local authority may delegate to an appropriately qualified person (the *delegate*) a function of the local authority under this Act.
- (2) The delegation may permit the delegate to subdelegate the delegated function to another appropriately qualified person.

#### **8 Functions and powers**

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

- (2) The local authority has the power to do anything necessary or convenient to be done for, or in connection with, the performance of its functions under this Act.

## **Part 3                      Registration of interstate sentences in Queensland**

### **9                      Request for transfer of interstate sentence**

The local authority may register an interstate sentence in Queensland at the request of the interstate authority for the interstate jurisdiction in which the sentence is in force.

### **10                     Form of request for registration**

- (1) The local authority must consider the request if the request—
  - (a) is in writing; and
  - (b) states the following particulars—
    - (i) the offender's name;
    - (ii) the offender's date of birth;
    - (iii) the offender's last known address;
    - (iv) the other particulars required by the local authority; and
  - (c) is accompanied by the documents mentioned in subsection (2).
- (2) The documents to accompany the request are—
  - (a) a copy of the interstate sentence certified by the interstate authority; and
  - (b) a copy of the offender's consent for the registration of the interstate sentence in Queensland; and
  - (c) a copy of all relevant pre-sentence reports about the offender held by the interstate jurisdiction for each

- offence committed by the offender for which the offender is subject to an interstate sentence; and
- (d) a copy of all relevant psychological or other assessments of the offender held by the interstate authority; and
  - (e) a document of the details held by the interstate authority of—
    - (i) the offender’s criminal record, whether in or outside Australia; and
    - (ii) the offender’s compliance with the interstate sentence and any other non-custodial sentence; and
  - (f) a statement by the interstate authority explaining which part of the interstate sentence has been served in the interstate jurisdiction, or any other interstate jurisdiction, before the request was made; and
  - (g) a statement by the interstate authority that the authority has explained to the offender, in language likely to be readily understood by the offender, that, if the interstate sentence is registered in Queensland—
    - (i) the offender will be bound by the requirements of the law of Queensland relating to the sentence; and
    - (ii) a breach of the sentence may result in the offender being resentenced in Queensland for the offence; and
    - (iii) the other consequences for a breach of the sentence in Queensland may be different from the consequences for a breach of the sentence in the interstate jurisdiction, and, in particular, the penalties for breach of the sentence may be different; and
  - (h) a statement by the interstate authority setting out the reasons given by the offender for requesting to register the interstate sentence in Queensland; and
  - (i) any other documents required by the local authority.



- (3) For subsection (2)(c), an offender is subject to an interstate sentence if the sentence has not been fully served or has not been discharged.
- (4) In considering the request, the local authority may consider any other information or other documents given to the local authority by the interstate authority.

## **11 Request for additional information**

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

## **12 Withdrawal of offender's consent**

The offender may withdraw consent to the registration of the interstate sentence at any time before, but not after, its registration by giving written notice of the withdrawal to the local authority.

## **13 Registration criteria**

- (1) The *registration criteria* are that—
  - (a) the offender has consented to the interstate sentence being registered in Queensland and has not withdrawn the consent; and
  - (b) there is a corresponding community based sentence under the law of Queensland; and
  - (c) the offender is capable of complying with the interstate sentence in Queensland; and
  - (d) the interstate sentence is capable of being safely, efficiently and effectively administered in Queensland.
- (2) For subsection (1)(b), there is a corresponding community based sentence under the law of Queensland for an interstate sentence if—

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- (a) a community based sentence under the law of Queensland corresponds, or substantially corresponds, to the interstate sentence because—
  - (i) a penalty of substantially the same nature as the penalty imposed by the interstate sentence can be imposed under the community based sentence; and
  - (ii) conditions of substantially the same nature as the conditions to which the interstate sentence is subject can be imposed in relation to the community based sentence; or
- (b) a community based sentence under the law of Queensland is declared by regulation to correspond to the interstate sentence, whether or not the sentence corresponds, or substantially corresponds, to the interstate sentence.

## **14 Decision on request**

- (1) The local authority may decide to—
  - (a) register the interstate sentence; or
  - (b) register the interstate sentence subject to preconditions imposed under section 15; or
  - (c) decline to register the interstate sentence.
- (2) In deciding whether to register the interstate sentence, the local authority—
  - (a) must have regard to the registration criteria; and
  - (b) may have regard to—
    - (i) any matter prescribed by regulation; and
    - (ii) any other matter the authority considers relevant.
- (3) The local authority—
  - (a) may decide not to register the interstate sentence even if satisfied the registration criteria are met; and

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- (b) must not register the interstate sentence 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, it is declared that 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 was previously registered in Queensland or Queensland is the originating jurisdiction for the sentence; or
    - (c) the authority has previously decided not to register the sentence in Queensland.
  - (6) If the local authority decides not to register the interstate sentence, the authority must give written notice of the decision to the offender and the interstate authority.
  - (7) In this section—  
*registration criteria* see section 13(1).

## 15 Preconditions for registration

- (1) The local authority may impose preconditions for the registration of the interstate sentence that the offender must meet to show that the offender can comply, and is willing to comply, with the sentence in Queensland.
- (2) Without limiting subsection (1), the local authority may impose the following preconditions—
  - (a) that the offender must satisfy the local authority before a stated day that the offender is living in Queensland;
  - (b) that the offender must report to a stated person in Queensland at a stated day and place or another day and

place agreed between the local authority and the offender.

- (3) If the local authority decides to impose preconditions for the registration of the interstate sentence, the local authority must give written notice of the decision and the preconditions to the offender and the interstate authority.
- (4) The local authority may, by written notice given to the offender and the interstate authority, amend or revoke a precondition.

## **16 How interstate sentence is registered**

- (1) If the local authority decides to register the interstate sentence in Queensland 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 the preconditions are capable of being met.
- (3) In this section—  
*required details* means the details of the offender and the interstate sentence as prescribed by regulation.

## **17 Notice of registration**

- (1) If the local authority registers the interstate sentence in Queensland, the local authority must give written notice of the registration to the offender and the interstate authority.
- (2) The notice must state the day the interstate sentence was registered.

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## 18 Effect of registration

- (1) If the interstate sentence is registered in Queensland, the following provisions apply—
  - (a) the sentence becomes a local sentence and ceases to be an interstate sentence;
  - (b) the sentence is taken to have been validly imposed by a court of Queensland with appropriate jurisdiction;
  - (c) the sentence continues to apply to the offender in accordance with its terms despite anything to the contrary under the law of Queensland;
  - (d) the offence (the *relevant offence*) for which the sentence was imposed is taken to be an offence against the law of Queensland and not an offence against the law of the originating jurisdiction;
  - (e) the penalty for the relevant offence is taken to be the penalty for the offence under the law of the originating jurisdiction and not the penalty for an offence of that kind, if any, under the law of Queensland;
  - (f) any part of the sentence served in an interstate jurisdiction before its registration is taken to have been served in Queensland;
  - (g) the offender may be dealt with in Queensland for a breach of the sentence, whether the breach happened before, or happens after, the registration of the sentence;
  - (h) the law of Queensland applies to the sentence, and any breach of it, with the changes, if any, prescribed by regulation.
- (2) Subsection (1)(d) and (e) do not apply if Queensland is the originating jurisdiction.
- (3) Subsection (1)(e) applies only for the purpose of determining the penalty to be imposed for the relevant offence in circumstances in which the offender is, under the law of Queensland, resentenced for that offence.



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any additional information about the local sentence or the offender.

## **21 Effect of interstate registration**

- (1) If the local sentence is registered in the interstate jurisdiction, the following provisions have effect—
  - (a) the sentence becomes an interstate sentence for the interstate jurisdiction and ceases to be a local sentence;
  - (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 local authority must remove the sentence from the register;
  - (d) proceedings against the offender may not be commenced or continued under the law of Queensland for any breach of the conditions attached to the sentence that occurred before it was registered in the interstate jurisdiction.
- (2) If Queensland is the originating jurisdiction for the local sentence, this section does not affect—
  - (a) any right of appeal or review, however described, in relation to—
    - (i) the conviction or finding of guilt on which the sentence was based; or
    - (ii) the imposition of the sentence; and
  - (b) the sentence to the extent it—
    - (i) imposes a fine or other financial penalty, however described; or
    - (ii) requires the making of reparation, however described; or
    - (iii) imposes a period of detention or imprisonment.

- (3) For the purpose of subsection (2)(b), the local sentence remains a community based sentence in force in Queensland and may be enforced accordingly.
- (4) To remove any doubt, it is declared that this section does not prevent the local sentence from again being registered in Queensland after being registered in the interstate jurisdiction.

## Part 5                      **Reciprocal arrangements for administration of local and interstate sentences**

### 22      **Definitions**

In this part—

*corresponding Minister*, of an interstate jurisdiction, means the person who has powers under the corresponding law of the interstate jurisdiction that correspond to the powers of the Minister under this part.

*interstate law enforcement officer*, of an interstate jurisdiction, means a local law enforcement officer within the meaning of the corresponding law of the interstate jurisdiction.

*local law enforcement officer* means a corrective services officer under the *Corrective Services Act 2006* or a police officer.

*local offender* means an offender who is subject to a local sentence.

*Ministerial arrangements* means arrangements mentioned section 23.



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## **23 Ministerial arrangements for the administration of local and interstate sentences**

- (1) The Minister may enter into arrangements with the corresponding Minister of an interstate jurisdiction to facilitate—
  - (a) the administration, within Queensland, of interstate sentences imposed under a law of the interstate jurisdiction; and
  - (b) the administration, within the interstate jurisdiction, of local sentences, in relation to particular local or interstate offenders or particular classes of local or interstate offenders; and
  - (c) travel to the interstate jurisdiction by local offenders; and
  - (d) travel to Queensland by interstate offenders.
- (2) The local authority has the powers and functions necessary, under the arrangements, for the administration of interstate sentences for interstate offenders in Queensland.
- (3) For the purposes of a law of Queensland about local sentences, anything done—
  - (a) by the interstate authority of an interstate jurisdiction; and
  - (b) in accordance with the arrangements; and
  - (c) in the administration of a local sentence for a local offender who is in the interstate jurisdiction;is taken to have been done under the law of Queensland.

## **24 Issuing interstate travel permit to local offender**

- (1) This section applies to a local offender whose local sentence is subject to a condition, whether imposed by the sentence or otherwise, that prohibits the offender from leaving Queensland without permission.

- (2) Permission to leave Queensland is to be granted, varied and revoked, and conditions of permission are to be imposed and varied, in accordance with the Ministerial arrangements.
- (3) As soon as practicable after the permission is granted, the local authority must—
  - (a) incorporate the terms and conditions of the permission in an interstate travel permit; and
  - (b) give a copy of the interstate travel permit to the local offender; and
  - (c) give a copy of the following things to the interstate authority of each interstate jurisdiction to which the interstate travel permit authorises travel—
    - (i) the interstate travel permit;
    - (ii) the other documents, or information about the local offender, required or authorised to be provided under the Ministerial arrangements.
- (4) If the terms or conditions of the permission are varied, the local authority must, as soon as practicable after the variation happens—
  - (a) incorporate the terms and conditions of the permission, as varied, in an amended interstate travel permit; and
  - (b) give a copy of the amended interstate travel permit to the local offender; and
  - (c) give a copy of the following things to the interstate authority of each interstate jurisdiction to which the permit authorises travel—
    - (i) the amended interstate travel permit;
    - (ii) the other documents or information relevant to the variation.
- (5) If the permission is revoked, the local authority must, as soon as practicable after the revocation happens, give written notice of the revocation to the local offender and to the interstate authority of each interstate jurisdiction to which the interstate travel permit authorised travel.

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- (6) An interstate travel permit ceases to have effect in an interstate jurisdiction to which it authorises travel if—
- (a) written notice is given under subsection (5) to the interstate authority of that jurisdiction, regardless of whether or not the local offender has received the notice; or
  - (b) the offender is arrested under a warrant issued under the corresponding law of that jurisdiction.
- (7) This section applies despite any other law of Queensland about issuing interstate travel permits to local offenders.

## **25 Effect of interstate travel permit issued to local offender**

- (1) This section applies to any period during which—
- (a) an interstate travel permit is in force for a local offender; and
  - (b) the local offender is present in an interstate jurisdiction to which the interstate travel permit authorises travel.
- (2) For the purposes of the law of Queensland about local sentences—
- (a) the conditions of the interstate travel permit are taken to be substituted for the conditions of the relevant local sentence; and
  - (b) any compliance or noncompliance by the local offender with the conditions of the interstate travel permit is taken to be compliance or noncompliance, as the case may be, with the conditions of the relevant local sentence.

## **26 Powers exercisable in relation to interstate offenders**

- (1) This section applies to an interstate offender who—
- (a) holds an interstate travel permit that authorises the offender to travel to Queensland; and
  - (b) is present in Queensland.

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- (2) The local authority may issue a warrant for the interstate offender's arrest if the local authority is—
  - (a) advised by the relevant interstate authority that the interstate travel permit is no longer in force in Queensland; or
  - (b) satisfied the offender has failed to comply with the conditions of the interstate travel permit.
- (3) A warrant under subsection (2) is sufficient authority for a local law enforcement officer to—
  - (a) arrest the interstate offender; and
  - (b) convey the interstate offender to a place stated in the warrant, whether in Queensland or an interstate jurisdiction; and
  - (c) deliver the interstate offender into the custody of an interstate law enforcement officer of the jurisdiction in which the interstate travel permit was issued.
- (4) To remove any doubt, it is declared that the warrant authorises a local law enforcement officer to convey the interstate offender within or across any interstate jurisdiction for the purpose of taking the offender to a place stated in the warrant.

## **27 Powers of interstate law enforcement officers**

A warrant issued under the corresponding law of an interstate jurisdiction that authorises an interstate law enforcement officer of that jurisdiction to convey an interstate offender or local offender within or across Queensland for the purpose of taking the offender to a place stated in the warrant has effect in Queensland according to its terms.

## **28 Operation of Service and Execution of Process Act 1992 (Cwlth)**

Nothing in this Act is intended to limit or otherwise affect the operation of the *Service and Execution of Process Act 1992* (Cwlth).

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## Part 6 Miscellaneous

### 29 Inaccurate information about local sentence registered interstate

- (1) This section applies if—
  - (a) a local sentence is registered in an interstate jurisdiction under part 4; and
  - (b) the local authority becomes aware that information about the local 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 local sentence served in Queensland 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 Queensland affecting the local sentence.

### 30 Dispute about accuracy of information about local sentence registered interstate

- (1) This section applies if—
  - (a) a local sentence is registered in an interstate jurisdiction under part 4; and
  - (b) the offender claims, in writing, to the interstate authority for the interstate jurisdiction that the information recorded about the local sentence or the offender in the register kept under the corresponding law of the

interstate jurisdiction (the *interstate register*) is not, or is no longer, accurate, and states in the claim how the information is inaccurate.

- (2) The interstate authority may send the local authority—
  - (a) a copy of the claim; and
  - (b) an extract from the interstate register containing the information that the offender claims is inaccurate.
- (3) The local authority must check whether the information in the extract is accurate, having regard to the offender's claims.
- (4) If the local authority is satisfied the information is accurate, the local authority must tell the interstate authority.
- (5) If the local authority is satisfied the information is inaccurate, the local authority must give the interstate authority the correct information.

### **31 Evidence of registration and registered particulars**

- (1) A certificate, purporting to be signed by or for the local authority, that states a matter that appears in or can be worked out from the register kept under this Act, is evidence of the matter.
- (2) A certificate, purporting to be signed by or for the interstate authority of an interstate jurisdiction, that states a matter that appears in or can be worked out from the register kept under the corresponding law of the interstate jurisdiction, is evidence of the matter.
- (3) A certificate under subsection (1) or (2) may state a matter by reference to a date or period.
- (4) A certificate, purporting to be signed by or for the local authority or the interstate authority for an interstate jurisdiction, that states any of the following details is evidence of the matter—
  - (a) details of a community based sentence or the offender for a community based sentence;

- (b) details of a part of a community based sentence that has or has not been served.
- (5) A court must accept a certificate mentioned in this section as proof of the matters stated in it unless there is evidence to the contrary.

## **32 Regulation-making power**

The Governor in Council may make regulations under this Act.

## Schedule 1 Dictionary

### section 5

***community based sentence***—

- (a) for Queensland—means any of the following—
  - (i) a probation order made under the *Penalties and Sentences Act 1992*, part 5;
  - (ii) a community service order made under the *Penalties and Sentences Act 1992*, part 5;
  - (iii) a graffiti removal order made under the *Penalties and Sentences Act 1992*, part 5A;
  - (iv) an intensive correction order made under the *Penalties and Sentences Act 1992*, part 6;
  - (v) an amendment of a community based order under the *Penalties and Sentences Act 1992*, part 7;
  - (vi) a drug and alcohol treatment order made under the *Penalties and Sentences Act 1992*, part 8A;
  - (vii) another sentence prescribed by regulation; or
- (b) for an interstate jurisdiction—means a sentence imposed under a law of the interstate jurisdiction that corresponds, or substantially corresponds, to a sentence mentioned in paragraph (a).

***corresponding law*** means a law of an interstate jurisdiction—

- (a) corresponding, or substantially corresponding, to this Act; or
- (b) prescribed by regulation, whether or not the law corresponds, or substantially corresponds, to this Act.

***corresponding Minister***, for part 5, see section 22.

***interstate authority***, for an interstate jurisdiction, means the local authority for the jurisdiction under the corresponding law of the jurisdiction.



***interstate jurisdiction*** means a participating jurisdiction other than Queensland.

***interstate law enforcement officer***, for part 5, see section 22.

***interstate offender*** means a person who is subject to an interstate sentence.

***interstate sentence*** means a community based sentence, for an interstate jurisdiction, in force in that jurisdiction.

***local authority*** see section 6.

***local law enforcement officer***, for part 5, see section 22.

***local offender***, for part 5, see section 22.

***local register*** see section 8(1).

***local sentence*** means a community based sentence, for Queensland, in force in Queensland.

***Ministerial arrangements***, for part 5, see section 22.

***offender***, for a sentence, means the person who is subject to the sentence.

***originating jurisdiction***, for a sentence, means the jurisdiction in which the sentence was originally imposed.

***participating jurisdiction*** means—

- (a) Queensland; or
- (b) a State prescribed by regulation.

***sentence*** means an order, decision or other sentence, however described, and includes part of a sentence.

***serve***, a sentence, includes—

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