

Serial 99
Community Based Sentences (Interstate Transfer) Bill 2023
Mr Paech

A Bill for an Act to provide for community based sentences imposed in participating jurisdictions to be transferred, by registration, between participating jurisdictions

NORTHERN TERRITORY OF AUSTRALIA

COMMUNITY BASED SENTENCES (INTERSTATE TRANSFER) ACT 2023

Act No. [] of 2023

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2023

An Act to provide for community based sentences imposed in participating jurisdictions to be transferred, by registration, between participating jurisdictions

[Assented to [] 2023]
[Introduced [] 2023]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Community Based Sentences (Interstate Transfer) Act 2023*.

2 Commencement

- (1) Subject to subsection (2), this Act commences on the day fixed by the Administrator by *Gazette* notice.
- (2) If a provision of this Act does not commence before 24 July 2025, it commences on that day.

3 Purpose of Act

The purpose of this Act is to enable community based sentences imposed in participating jurisdictions to be transferred, by registration, between participating jurisdictions.

4 Application of Act

- (1) This Act applies to sentences imposed by courts on:
 - (a) adults convicted or found guilty of offences; and
 - (b) persons under the age of 18 years who have been sentenced to a community based sentence under the *Sentencing Act 1995*.
- (2) This Act does not apply to the following:
 - (a) a parole order;
 - (b) a sentence to the extent it imposes a fine or other financial penalty;
 - (c) a sentence to the extent it requires the making of reparation.

5 Definitions

In this Act:

community based sentence, see section 6.

corresponding law, see section 8.

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 the Territory.

interstate register, for an interstate jurisdiction, means a register kept under the corresponding law of the interstate jurisdiction.

interstate sentence, see section 7(2).

jurisdiction means a State or Territory of the Commonwealth.

local authority, see section 9.

local register, see section 11(1).

local sentence, see section 7(1).

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

participating jurisdiction means the following:

- (a) the Territory;
- (b) a State or Territory of the Commonwealth declared by the regulations to be a participating jurisdiction.

registration criteria, see section 16.

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

Note for section 5

The Interpretation Act 1978 contains definitions and other provisions that may be relevant to this Act.

Part 2 Key concepts for Act

6 Community based sentences

(1) A **community based sentence** is:

- (a) for the Territory:
 - (i) a community work order made under Part 3, Division 4 of the *Sentencing Act 1995*; or
 - (ii) a community based order made under Part 3, Division 4A of the *Sentencing Act 1995*; or
 - (iii) a home detention order made under Part 3, Division 5, Subdivision 2 of the *Sentencing Act 1995*; or
 - (iv) an order made under section 11 or 13 of the *Sentencing Act 1995*, or varied under section 14 of that Act, that is a type of **monitoring order** as defined in section 166 of the *Correctional Services Act 2014*; or
 - (v) a community custody order made under Part 3, Division 5, Subdivision 2A of the *Sentencing Act 1995*; or
 - (vi) a suspended sentence of imprisonment under Part 3, Division 5, Subdivision 1 of the *Sentencing Act 1995* that is a type of **monitoring order** as defined in section 166 of the *Correctional Services Act 2014*; or
 - (vii) any other sentence prescribed by regulation; or

(b) for an interstate jurisdiction – a sentence that is a community based sentence under the corresponding law of the jurisdiction.

(2) For subsection (1)(a):

(a) a home detention order mentioned in subsection (1)(a)(iii) and the sentence of imprisonment in relation to which the order is made is taken to be a single community based sentence; and

(b) a community custody order mentioned in subsection (1)(a)(v) and the term of imprisonment in relation to which the order is made is taken to be a single community based sentence; and

(c) a suspended sentence of imprisonment mentioned in subsection (1)(a)(vi) and the sentence of imprisonment in relation to which the sentence is made is taken to be a single community based sentence.

7 Local and interstate sentences

(1) A **local sentence** is a community based sentence in force in the Territory.

(2) An **interstate sentence** is a community based sentence in force in an interstate jurisdiction.

8 Corresponding law

A **corresponding law** is 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.

Part 3 Administration

9 Local authority

The **local authority** is the Commissioner of Correctional Services.

10 Delegation by local authority

The local authority may delegate any of the local authority's functions under this Act to a person who, in the opinion of the local authority, is an appropriately qualified person to perform the function.

11 Functions and powers of local authority

- (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 4 Registration of interstate sentences in the Territory**12 Request for transfer of interstate sentence**

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

13 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) any other particulars required by the local authority; and
 - (c) is accompanied by the documents mentioned in subsection (2).
- (2) The following documents must accompany the request:
 - (a) a copy of the interstate sentence certified by the interstate authority;
 - (b) a copy of the offender's consent to the registration of the interstate sentence in the Territory;
 - (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;

- (d) a copy of all relevant psychological or other assessments of the offender held by the interstate authority;
 - (e) a document including the following details held by the interstate authority:
 - (i) the offender's criminal record, whether in or outside Australia;
 - (ii) the offender's compliance with the interstate sentence and any other non-custodial sentence;
 - (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;
 - (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 the Territory:
 - (i) the offender will be bound by the requirements of the law of the Territory relating to the sentence; and
 - (ii) a breach of the sentence may result in the offender being resentenced in the Territory for the offence; and
 - (iii) the other consequences for a breach of the sentence in the Territory 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;
 - (h) a statement by the interstate authority setting out the reasons given by the offender for requesting to register the interstate sentence in the Territory;
 - (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.

14 Request for additional information

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

15 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.

16 Registration criteria

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

17 Decision on request

- (1) The local authority may decide:
 - (a) to register the interstate sentence; or
 - (b) to register the interstate sentence subject to any preconditions imposed under section 18; or
 - (c) to not 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 that the registration criteria are met; and
 - (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, based 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 avoid doubt, 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 has previously been registered in the Territory or the Territory is the originating jurisdiction for the sentence; or
 - (c) the authority has previously decided not to register the sentence in this jurisdiction.
- (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.

18 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 the Territory.
- (2) Without limiting subsection (1), the local authority may impose the following preconditions:
 - (a) that the offender must satisfy the local authority before a specified date that the offender is living in the Territory;
 - (b) that the offender must report to a specified person in the Territory on a specified date and at a specified place or another date and place agreed between the local authority and the offender.
- (3) If the local authority decides to impose any 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.

19 Registration of interstate sentence

- (1) If the local authority decides to register the interstate sentence in the Territory without imposing preconditions for the registration of the sentence, the local authority must register the sentence by entering the details of the offender and the interstate sentence as prescribed by regulation.
- (2) If the local authority decides to impose preconditions for the registration of the interstate sentence in the Territory, the local authority must register the sentence by entering the details of the offender and the interstate sentence as prescribed by regulation in the local register only if the authority is satisfied the preconditions are capable of being met.

20 Notice of registration

- (1) If the local authority registers the interstate sentence in the Territory, 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.

21 Effect of registration

- (1) If the interstate sentence is registered in the Territory, 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 the Territory 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 the Territory;
 - (d) any part of the sentence served in an interstate jurisdiction before its registration is taken to have been served in the Territory;
 - (e) the offender may be dealt with in the Territory for a breach of the sentence, whether the breach happened before, or happens after, the registration of the sentence;
 - (f) the law of the Territory applies to the sentence, and any breach of it, with the changes, if any, prescribed by regulation.
- (2) This section does not affect any right, in the originating jurisdiction, of appeal or review, however described, in relation to:
 - (a) the conviction or finding of guilt on which the interstate sentence was based; or
 - (b) the imposition of the interstate sentence.
- (3) Any sentence or decision imposed or made on an appeal or review mentioned in subsection (2) has effect in the Territory as if it were validly imposed or made on an appeal or review in the Territory other than to the extent the sentence or decision:
 - (a) imposes a fine or other financial penalty, however described; or
 - (b) requires the making of reparation, however described; or
 - (c) imposes a period of detention or imprisonment.
- (4) This section does not give any right to the offender to an appeal or review, however described, in the Territory in relation to the conviction, finding of guilt or imposition of the interstate sentence mentioned in subsection (2).

Part 5 Registration of local sentences in interstate jurisdictions

22 Request for transfer of local sentence

The local authority may request the interstate authority for an interstate jurisdiction to register a local sentence in the interstate jurisdiction under the corresponding law of the interstate jurisdiction.

23 Providing additional information

The local authority may, at the request of the interstate authority or on its own initiative, give the interstate authority any additional information about the local sentence or the offender.

24 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 the Territory for any breach of the conditions attached to the sentence that occurred before it was registered in the interstate jurisdiction.
- (2) If the Territory 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) To avoid doubt, this section does not prevent the local sentence from again being registered in the Territory after being registered in the interstate jurisdiction.

Part 6 Miscellaneous matters

25 Inaccurate information about local sentence registered interstate

- (1) This section applies if:
 - (a) a local sentence is registered in an interstate jurisdiction under Part 5; and
 - (b) the local authority becomes aware that information about the local sentence or the offender recorded in 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 the Territory 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 the Territory affecting the local sentence.

26 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 5; 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 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.

27 Evidence of registration and registered particulars

- (1) A certificate that appears to be signed by or on behalf of 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 that appears to be signed by or on behalf of the interstate authority of an interstate jurisdiction that states a matter that appears in or can be worked out from the interstate register, 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 that appears to be signed by or on behalf of the local authority or 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.

28 **Regulations**

The Administrator may make regulations under this Act.

Note for section 28

See section 65 of the Interpretation Act 1978.