

9 September 2019

Our ref: DK-CrLC

Committee Secretary
Legal Affairs and Community Safety Committee
Parliament House
Brisbane Qld 4000

By email: lacsc@parliament.qld.gov.au

Dear Committee Secretary

Community Based Sentences (Interstate Transfer) Bill 2019

Thank you for the opportunity to provide comments on the Community Based Sentences (Interstate Transfer) Bill 2019 (the **Bill**). Queensland Law Society (**QLS**) appreciates being consulted on this important piece of legislation.

QLS is the peak professional body for the State's legal practitioners. We represent and promote over 13,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

This response has been compiled by the QLS Criminal Law Committee who have substantial expertise in this area. With respect to the Bill we raise the following:

- Right of appeal or review in the originating State/Territory;
- Conditions attachable to the transferred order; and
- Transfer of 'corresponding community based sentence'.

QLS notes that the objective of the Bill is to implement a nationally consistent legislation scheme to facilitate the transfer of community-based orders between Australian jurisdictions. On the whole, the Society welcomes the draft Bill.

According to practitioners' experiences, situations arise where a court cannot exercise full discretion over appropriate sentences, due to community based orders that cannot be transferred interstate. Examples include matters where defence counsel submits for a suspended sentence (which would otherwise not be the appropriate sentence), as their client wishes to resume residing interstate. We are hopeful that the Bill will allow for more flexibility in the exercise of sentencing discretion.

Right of appeal or review in the originating State/Territory

QLS notes that proposed section 21(2) preserves the right of appeal or review in the originating jurisdiction. This confirms the ability to allow the originating Queensland order to be re-registered in Queensland under proposed section 21(4). The Bill appears to protect the interests of the offender who has been subject to a transferred order.

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Conditions attachable to the transferred order

The Society seeks clarification regarding the proposed Bill's approach to conditions attachable to the transferred order. It appears that under the Bill, the mandatory conditions applicable to the order become those of the jurisdiction that takes on the transferred order.

QLS is concerned about the consequences of this arrangement upon any special conditions that are attached to Queensland (for example, psychiatric or psychological counselling). Do they form part of the transferred order? Are Queensland-specific orders actioned and honoured?

Transfer of 'corresponding community based sentence'

QLS also expresses its concern regarding proposed section 13 of the Bill and the transfer of a 'corresponding community based sentence'. How will this section operate in jurisdictions where Probation Orders, Community Services Orders and Intensive Correction Orders have been abolished in favour of a Community Correction Order (CCO)?

As an example, if a Queensland defendant receives a Probation Order, can the order be transferred to a jurisdiction that only operates a CCO? QLS queries whether such a situation would be considered a 'corresponding order'.

Further, Schedule 1 of the Bill defines 'corresponding law' as 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.

QLS seeks confirmation on whether the phrase 'substantially corresponding' within the definition would address the above concern.

QLS also notes that QSAC has recently released its Final Report into Community-based sentencing orders, imprisonment and parole options. The government is yet to table its response to the Final Report.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team by phone on (07) 3842 5930 or by email on policy@qls.com.au.

Yours faithfully



Bill Potts
President