

**CHILDREN (INTERSTATE TRANSFER OF OFFENDERS)
BILL 1988**

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to provide a scheme for the transfer of young offenders from, to or through New South Wales.

PART 1—PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 defines expressions used in the proposed Act, including the expressions "young offender" and "State".

In general terms, a "young offender" is a person who is subject to a court order because of having committed an offence while under the age of 18. "State" is defined as including a Territory of the Commonwealth.

PART 2—INTERSTATE TRANSFER GENERALLY

Clause 4 provides that the Minister for Family and Community Services may enter into an agreement with a Minister of another State, or with a person authorised to enter into an agreement on behalf of such a Minister, providing generally for the transfer of young offenders from, to or through New South Wales. An agreement relating to another State must not be entered into unless a regulation has been made by the Governor-in-Council declaring that the other State has enacted legislation dealing with the interstate transfer of young offenders.

Clause 5 provides that, once the Minister has entered into such an agreement, the Director-General of the Department of Family and Community Services may make a more detailed arrangement in writing with a Minister of another State, or a person authorised by a Minister of that State, for the transfer of a particular young offender from or to New South Wales. Provision is also made for rectifying any error in an arrangement.

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Clause 6 sets out the prerequisites to the Director-General's making of an arrangement for the transfer of a young offender from New South Wales. In particular, the transfer must be appropriate in all the circumstances, and there must not be an appeal pending against an order of a court to which the young offender is subject. Generally, a transfer will be made only with the consent of the young offender. Provision exists, however, for the Director-General to determine that the particular circumstances of the case indicate the transfer should be made without the young offender's consent.

Clause 7 provides that an arrangement for the transfer of a young offender to New South Wales must not be made unless the Director-General is satisfied that there are adequate facilities in New South Wales to deal with the young offender.

Clause 8 sets out the matters for which provision must be made in each arrangement for the transfer of a young offender from or to New South Wales.

Clause 9 provides that, if the Director-General makes an arrangement for the transfer of a young offender from New South Wales, a transfer order must be prepared to provide for the custody of the offender and to authorise an escort for the purpose of the transfer.

Clause 10 gives to an escort of a young offender being transferred to New South Wales authority to deal with the young offender, while in New South Wales, for the purposes of the arrangement.

Clause 11 provides that, if a young offender (subject to detention before an arrangement is made and being transferred from New South Wales) escapes or attempts to escape from custody under the arrangement while the young offender is not within New South Wales or the receiving State, that young offender is guilty of an offence.

The same consequences follow as if the offender had committed an offence under section 33 (escaping) of the Children (Detention Centres) Act 1987.

PART 3—TRANSFER OF SENTENCE OR ORDER

Clause 12 provides that once a young offender being transferred from New South Wales arrives in the other State, New South Wales sentences or orders cease to have effect in New South Wales except for limited purposes, such as for the purpose of enabling the exercise of any right of appeal to a New South Wales court.

Clause 13 provides that once a young offender being transferred to New South Wales arrives in this State, sentences, orders or directions imposed, made or given in relation to the young offender in the sending State are to be taken to have been imposed, made or given in New South Wales.

PART 4—TRANSIT THROUGH NEW SOUTH WALES

Clause 14 enables the Director-General to authorise the superintendent of a detention centre to receive a young offender being transferred through New South Wales. The clause also authorises an escort of a young offender being transferred through New South Wales to take and keep custody of the young offender while in New South Wales.

Clause 15 provides that a young offender being transferred through New South Wales and who escapes can be apprehended in New South Wales without a warrant. The young offender can be taken before an authorised justice who may order the young offender to be detained in custody at a detention centre. The young offender must then be brought, as soon as practicable, before a Local Court or a Children's Court which may order—

that the young offender be delivered into the custody of an escort; or

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- that the young offender be detained for no longer than 7 days until an escort is available from the sending State to carry out the arrangement relating to the transfer or any order made by a court of that State.

Clause 16 provides that an escort, any member of the Police Force, or any officer of the Department of Family and Community Services may apply to an authorised justice for a search warrant if such a person has reasonable grounds for believing that a young offender, who has escaped from the custody of an escort while being transferred through New South Wales from one State to another in accordance with an agreement, is on or in any particular premises.

PART 5—REVOCATION OF TRANSFER ORDERS

Clause 17 deals with the revocation of a transfer order by the Children's Court if a young offender has escaped or attempted to escape or has committed any other offence.

Clause 18 deals with the revocation of a transfer order by the Director-General.

PART 6—MISCELLANEOUS

Clause 19 gives the Director-General access to reports about young offenders in New South Wales or in other States, and allows the Director-General to send reports about New South Wales young offenders to another State.

Clause 20 enables the Director-General to delegate powers and duties conferred or imposed on the Director-General by the proposed Act.

Clause 21 provides for proceedings for an offence against the proposed Act or regulations to be made under it to be dealt with by a Local Court. In appropriate cases, such an offence will be dealt with by the Children's Court as required by the Children (Criminal Proceedings) Act 1987.

Clause 22 enables the Governor-in-Council to make regulations in aid of the proposed Act. A regulation may impose a penalty of not more than 5 penalty units (presently \$500).

Clause 23 amends the Search Warrants Act 1985 so as to apply Part 3 of that Act to a search warrant to be issued under the proposed Act.
