

Children (Interstate Transfer of Offenders) Act 1988 No 85

[1988-85]



New South Wales

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Children (Interstate Transfer of Offenders) Act 1988 No 85



New South Wales

An Act to facilitate the transfer of young offenders to, from or through New South Wales and to amend the *Search Warrants Act 1985* consequentially.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Children (Interstate Transfer of Offenders) Act 1988*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Definitions

In this Act:

agreement means an agreement under section 4.

arrangement means an arrangement under section 5 or, if such an arrangement has been varied by a further arrangement under that section, the arrangement as so varied.

authorised officer has the same meaning as it has in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

court includes a justice.

custody means custody to which a person is entitled by law.

Department means the Department of Juvenile Justice.

detention centre has the same meaning as in the *Children (Detention Centres) Act 1987*.

Director-General means the Director-General of the Department.

escort means a person (whether or not a New South Wales officer) who is authorised by

or under an agreement, an arrangement or a transfer order to take and keep custody of a young offender.

Minister, in relation to a State other than New South Wales, means:

- (a) except as provided by paragraph (b) or (c)—a Minister of the Crown of that State, or
- (b) in the case of the Australian Capital Territory—a person holding Ministerial office under the [Australian Capital Territory \(Self-Government\) Act 1988](#) of the Commonwealth, or
- (c) in the case of the Northern Territory—a person holding Ministerial office under the [Northern Territory \(Self-Government\) Act 1978](#) of the Commonwealth.

parent includes:

- (a) a guardian of a young offender, and
- (b) a person who has custody of a young offender,

but does not include the father or mother of a young offender if the father or mother, as the case may be, has neither guardianship nor custody of the young offender.

person responsible means:

- (a) a parent of a young offender, or
- (b) a person who has the care of a young offender (whether or not the person has the custody of the young offender), or
- (c) a person who had the care of a young offender immediately before the young offender became subject to control (within the meaning of the [Children \(Detention Centres\) Act 1987](#)).

receiving State means the State to which a young offender is transferred.

sending State means the State from which a young offender is transferred.

State means a State or Territory of the Commonwealth.

transfer order means an order under section 9 (1).

young offender means:

- (a) a person:
 - (i) who is under the age of 18 years and has committed an offence against the laws of another State, or
 - (ii) who is of or over the age of 18 years, but under the age of 21 years, and has committed an offence against the laws of another State when the person was

under the age of 18 years,

and who has been dealt with for the offence under a law which applies in that other State and which relates to the punishment of a person who is under the age of 18 years, but who is not on remand, or

(b) a person:

(i) who is a person subject to control (within the meaning of the *Children (Detention Centres) Act 1987*) but who is not on remand, or

(ii) who is subject to an order providing for the person to enter into a good behaviour bond, releasing the person on probation or requiring the person to perform community service work under section 33 of the *Children (Criminal Proceedings) Act 1987*,

and includes a person who is in New South Wales or another State and who is the subject of an arrangement.

Part 2 Interstate transfer generally

4 Minister may enter into general agreements

(1) The Minister 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:

(a) for the transfer of young offenders from or to New South Wales, or

(b) for the transfer of young offenders through New South Wales from one State to another.

(2) An agreement relating to another State must not be entered into unless a regulation is in force declaring that the other State has enacted legislation dealing with the interstate transfer of young offenders.

5 Director-General may make arrangements

If an agreement with or on behalf of a Minister of another State is in force, the Director-General may make an arrangement with that Minister, with a person authorised by that Minister or with another person as provided in the agreement, for the transfer of a particular young offender:

(a) from New South Wales to the other State, or

(b) to New South Wales from the other State,

and may make a further arrangement with that Minister or such a person for the purpose of rectifying any error in such an arrangement.

6 Arrangement for transfer from New South Wales

- (1) An arrangement for the transfer of a young offender from New South Wales to another State must not be made unless:
 - (a) the young offender or a person responsible for the young offender applies for the transfer to be made, and
 - (b) the Director-General is of the opinion that the transfer is appropriate, having regard to all the circumstances, including:
 - (i) the place or intended place of residence of the parents or other relatives of the young offender, and
 - (ii) the present and future education, training or employment of the young offender, and
 - (iii) the medical or other needs of the young offender, and
 - (c) the young offender has been given independent legal advice of the effect of the arrangement, and
 - (d) the young offender consents to the arrangement, or the Director-General determines that the particular circumstances of the case indicate the arrangement should be made without the young offender's consent, and
 - (e) the Director-General is satisfied that there is no appeal pending against an order of a court to which the young offender is subject.
- (2) For the purpose of deciding whether or not to arrange for the transfer of a young offender from New South Wales to another State, the Director-General may ask:
 - (a) the young offender, or
 - (b) a person responsible for the young offender,for any necessary information.
- (3) The Director-General may refuse to make an arrangement if information sought under this section is not supplied within the time specified by the Director-General.
- (4) This section does not apply to a further arrangement made for the purpose of rectifying an error.

7 Arrangement not to be made if facilities not adequate

An arrangement for the transfer of a young offender from another State to New South Wales must not be made unless the Director-General is satisfied that there are adequate facilities in New South Wales for the young offender to be accepted and dealt with as

provided in the arrangement.

8 Provisions to be contained in each arrangement

- (1) An arrangement for the transfer of a young offender from or to New South Wales must:
 - (a) be in writing, and
 - (b) provide for the acceptance of, and means of dealing with, the young offender in the receiving State, and
 - (c) specify each order of a court of the sending State to which the young offender is subject (including any order required by a previous arrangement with New South Wales or with another State to be treated as having been made by a court of the sending State).
- (2) For each order so specified, the arrangement must:
 - (a) state the way in which it is to operate in the receiving State, which must be as similar as possible to the way in which it would operate in the sending State if the arrangement were not made, and
 - (b) state the maximum time for which it may operate, which must not be longer than the maximum time for which it could operate in the sending State if the arrangement were not made, and
 - (c) state any entitlement of the young offender to a reduction in detention in the sending State and how that entitlement is to operate in the receiving State, which must be as similar as possible to the way in which it would operate in the sending State if the arrangement were not made.
 - (d) (Repealed)
- (3) A reference in this section to an order of a court is a reference to any sentence, detention, probation, parole or other order, which could be made or imposed by such a court.

9 Transfer order

- (1) If the Director-General makes an arrangement under this Act for the transfer of a young offender from New South Wales to another State in the custody of an escort, the Director-General must make a written order which:
 - (a) directs the person who has custody of the young offender to deliver the young offender to the custody of the escort, and
 - (b) authorises the escort to take and keep custody of the young offender for the purpose of transferring the young offender to the place in the receiving State and

to the custody specified in the arrangement.

- (2) The authority conferred on an escort by this section is conferred only on an escort who is:
- (a) a member of the Police Force, or
 - (b) a person appointed by the Director-General, or
 - (c) an officer employed in the Department, or
 - (d) a person acting as an escort with the approval of the Director-General.

10 Transfer to New South Wales in custody of escort

If, under an arrangement for the transfer of a young offender to New South Wales, an escort authorised under the arrangement brings the young offender into New South Wales, the escort, while in New South Wales, is authorised to take and keep custody of the young offender for the purpose of transferring the young offender to the place in New South Wales and to the custody specified in the arrangement.

11 Escape from custody of young offender being transferred from New South Wales

- (1) A young offender;
- (a) who is in custody under an arrangement made for his or her transfer from New South Wales to another State, and
 - (b) who escapes or attempts to escape from that custody while he or she is not within New South Wales or the receiving State,
- is guilty of an offence against this Act and is liable to imprisonment for not more than 3 months.
- (2) Sections 28A–28F of the *Children (Detention Centres) Act 1987* apply to a person who commits an offence under this section as if the offence were a detention centre offence as defined by section 28C of that Act.

Part 3 Transfer of sentence or order

12 Transfer from New South Wales of sentence or order

If a young offender is transferred from New South Wales to another State under an arrangement, then, from the time the young offender arrives in that State, any sentence imposed on, or order made in relation to, the young offender in New South Wales before that time ceases to have effect in New South Wales except for the purpose of:

- (a) any appeal against or review of any conviction, judgment, sentence or order made, imposed or fixed by a court of New South Wales, and

- (b) taking into account any period of detention served before that time by the young offender or any reduction of the period of detention granted before that time, and
- (c) taking into account anything done before that time by the young offender in carrying out the order, and
- (d) allowing for any remittance of money to the Minister which is or has been paid at any time in discharge or partial discharge of the sentence or order.

13 Transfer to New South Wales of sentence or order

- (1) If a young offender is transferred to New South Wales from another State under an arrangement, then, from the time the young offender arrives in New South Wales:
 - (a) any sentence imposed on, or order made in relation to, the young offender by a court of the sending State and specified in the arrangement is to be considered as having been imposed or made by such court of New South Wales as is specified in the arrangement, and
 - (b) any sentence or order considered by a previous arrangement with New South Wales or with another State to have been imposed or made by a court of the sending State (being a sentence or order specified in the arrangement under which the young offender is transferred to New South Wales) is to be considered as having been imposed or made by such court of New South Wales as is specified in the arrangement, and
 - (c) any direction given or order made by a court of the sending State concerning the time when anything is to be done under an order made by a court of that State is, so far as practicable, to be considered as having been given or made by such court of New South Wales as is specified in the arrangement.
- (2) Any such sentence, order or direction has effect in New South Wales as specified in the arrangement and the laws of New South Wales apply as if the court of New South Wales specified in the arrangement:
 - (a) had had power to impose the sentence and to give or make the order or direction, and
 - (b) did in fact impose the sentence and make or give the order or direction when it was imposed, made or given.

Part 4 Transit through New South Wales

14 Lawful custody for transit through New South Wales

- (1) The Director-General may authorise the centre manager of a detention centre to receive, at the detention centre, young offenders being transferred through New South Wales from one State to another in accordance with an agreement.

- (2) If a young offender is brought into New South Wales by an escort authorised by such an agreement to have custody of the young offender:
- (a) while in New South Wales, the escort for the time being is authorised to take and keep custody of the young offender for the purposes of the transfer, and
 - (b) a centre manager authorised under this section may (at the request of the escort for the time being and upon receiving from the escort written authority for the transfer of the young offender as provided in the agreement):
 - (i) receive and detain the young offender at the detention centre, in such custody and for such time as the escort requests, if it is reasonably necessary for the purposes of the transfer, and
 - (ii) at the end of that time, deliver the young offender into the custody of the escort.

- (3) In this section:

centre manager means the person for the time being in charge of a detention centre.

15 Escape from custody

- (1) A young offender being transferred through New South Wales from one State to another in accordance with an agreement who escapes from the custody of an escort authorised by the agreement to have custody of the offender may be apprehended by any person without a warrant.
- (2) Where a young offender being so transferred through New South Wales from one State to another in the custody of such an escort:
- (a) has escaped and been apprehended, or
 - (b) has attempted to escape,
- the young offender may be taken before an authorised officer who may by warrant under his or her hand order the young offender to be detained in custody at a detention centre.
- (3) Such a warrant may be executed according to its tenor.
- (4) A young offender who is apprehended pursuant to such a warrant must as soon as practicable be brought before the Local Court, in the case of a young offender who is of or over the age of 18 years, or a Children's Court, in the case of a young offender who is under the age of 18 years, which may order:
- (a) that the young offender be delivered to the custody of an escort, or

- (b) 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 or any orders made by a court of that State.
- (5) If a young offender who is the subject of an order made by an authorised officer is not, in accordance with the order, delivered into the custody of an escort within 7 days after the making of the order, the order has no further effect, but nothing in this section prevents a further such order from being made.
- (6) The references in subsections (4) and (5) to an escort for a young offender being transferred through New South Wales from one State to another under an agreement is a reference to:
 - (a) the escort authorised by the agreement to have custody of the young offender, or
 - (b) where the offender has escaped or attempted to escape:
 - (i) that escort, or
 - (ii) a member of the Police Force of the sending State, or
 - (iii) a person appointed by instrument in writing (by the Minister of the sending State or a person authorised to enter into an agreement on behalf of that Minister) to be an escort for the purpose of carrying out any orders of a court of the sending State,or any two or more of them.

16 Search warrants

- (1) An escort, any member of the Police Force, or any officer of the Department may apply to an authorised officer 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 premises.
- (2) An authorised officer to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an escort, a member of the Police Force or an officer of the Department named in the warrant:
 - (a) to enter specified premises, and
 - (b) to inspect the premises for evidence of the young offender who has escaped from custody, and
 - (c) to observe and converse with any person apparently residing there.
- (3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.

- (4) Without limiting the generality of section 71 of the *Law Enforcement (Powers and Responsibilities) Act 2002*, a member of the Police Force:
- (a) may accompany an escort or an officer of the Department executing a search warrant issued under this section, and
 - (b) may take all reasonable steps to assist in the apprehension of the young offender at the premises.

- (5) In this section:

escort means the escort authorised by the agreement to have custody of the young offender.

premises includes any land, building, vehicle and vessel.

Part 5 Revocation of transfer orders

17 Revocation of transfer order on escape from custody

- (1) The Children's Court may revoke a transfer order on application made to it by the Director-General that the young offender to whom it applies has, while being transferred, committed:
- (a) the offence of escaping or attempting to escape, or
 - (b) any other offence.
- (2) This section applies whether:
- (a) the offence concerned was an offence against the law of New South Wales or of the receiving State or of a State through which the young offender was being transferred, or
 - (b) an information has been laid or a conviction secured in respect of the offence concerned or not.

18 Revocation of transfer order by Director-General

- (1) The Director-General may revoke a transfer order at any time before the young offender is delivered in the receiving State into the custody specified in the arrangement concerned.
- (2) Where, under this section, the Director-General revokes a transfer order, the Director-General may make a further arrangement with the receiving State for the return of the young offender to New South Wales.

Part 6 Miscellaneous

19 Reports

- (1) For the purpose of forming an opinion or exercising a discretion under this Act, the Director-General may:
 - (a) be informed as the Director-General thinks fit, and
 - (b) have regard to reports from:
 - (i) any person responsible for a young offender, or
 - (ii) any person who has had the custody, care or supervision of a young offender, in New South Wales or in another State.
- (2) Any such reports that relate to a New South Wales young offender may be sent to a Minister of another State who has entered into an agreement or on whose behalf an agreement has been entered into or to a person authorised under an agreement to make arrangements with the Director-General.

20 Delegation by Director-General

The Director-General may delegate to a person any of the Director-General's powers, authorities, duties or functions under this Act, other than this power of delegation.

21 Proceedings for offences

Proceedings for an offence against this Act or the regulations shall be dealt with summarily before the Local Court.

22 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

23 (Repealed)