

# Young Offenders (Interstate Transfer) Bill

No.

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# LEGISLATIVE ASSEMBLY

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Read 1° 18 March 1986

*(Brought from the Legislative Council)*

## A BILL

*for*

An Act to provide for the transfer of young offenders into, out of and through Victoria, to amend the *Community Welfare Services Act 1970* and for other purposes.

### **Young Offenders (Interstate Transfer) Act 1985**

The Parliament of Victoria enacts as follows:

**Purpose.**

1. The purpose of this Act is to facilitate the transfer to and from and through Victoria of young offenders who wish to be so transferred.

**5 Commencement.**

2. (1) Subject to sub-section (2) this Act comes into operation on a day or days to be proclaimed.

(2) Section 7 comes into operation on the same day as section 3 (1) of the *Adoption Act 1984*.

**10 Principal Act.**

3. In this Act the *Community Welfare Services Act 1970* is called the Principal Act.

Principal Act No.  
8089.  
Reprinted to No.  
10152.

**Amendment of table.**

- 4. In the table of contents in section 1 of the Principal Act—
  - (a) for “Part IV.—Adolescent Welfare Services ss. 86–110A” substitute “Part IV.—Adolescent Welfare Services ss. 86–110Q”; and
  - (b) after “Division 7—Miscellaneous Provisions ss. 108–110A” insert “Division 8—Young Offenders—Interstate Transfer ss. 110B–110Q”.

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**New Division 8 inserted in Part IV. of Principal Act.**

- 5. After section 110A of the Principal Act, insert—
  - ‘Division 8—Young Offenders—Interstate Transfer’

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**Interpretation.**

‘110B. In this Division—

“Agreement” means an agreement between the Minister and a Minister of another State under section 110C.

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“Arrangement” means an arrangement made under section 110D for the transfer of a young offender from Victoria to another State, or to Victoria from another State.

“Minister”, in relation to a State other than Victoria, means—

(a) except where the other State is the Australian Capital Territory or the Northern Territory—a Minister of the Crown of that State; and

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(b) where the other State is the Australian Capital Territory—a Minister of the Crown of the Commonwealth; and

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(c) where the other State is the Northern Territory—a person holding Ministerial office, as defined in section 4 (1) of the *Northern Territory (Self-Government) Act 1978* of the Parliament of the Commonwealth.

“Sending State”, in relation to the transfer of a young offender, means the State from which the young offender is transferred.

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“State” means any State or Territory of the Commonwealth.

“Receiving State”, in relation to the transfer of a young offender, means the State to which the young offender is transferred.

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“Young offender” means a person—

(a) in another State who—

(i) is under the age of 18 years; or

(ii) is of or above the age of 18 years but under the age of 21 years and who has committed or is alleged to

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have committed an offence when the person was under the age of 18 years—

and who has been dealt with under a law which applies in that State and which relates to the welfare or punishment of such a person; or

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(b) in Victoria who—

(i) is subject to an order made under paragraph (c) or (f) of section 26 (1) of the *Children's Court Act* 1973, whether the order was made by a Children's Court or by some other court; or

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(ii) is under the age of 21 years and is serving a sentence of detention in a youth training centre; or

(iii) is under the age of 21 years and is subject to a youth attendance order under the *Penalties and Sentences Act* 1981 or the *Penalties and Sentences Act* 1985; or

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(iv) is a child within the meaning of the *Children's Court Act* 1973 and is subject to a probation order under the *Crimes Act* 1958 or under the *Penalties and Sentences Act* 1985; or

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(v) is under the age of 21 years and has been released on parole under this Act; or

(c) who is in Victoria and is subject to an arrangement for the transfer of the person to Victoria or is being transferred through Victoria from one State to another under an agreement.

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#### **Minister may enter general agreement.**

“110C. The Minister may enter into a general agreement with a Minister of another State for the transfer of young offenders into or out of Victoria and for the transfer of young offenders through Victoria from one State to another.”

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#### **Director-General may make arrangements.**

“110D. Where the Minister enters an agreement with a Minister of another State, the Director-General may make an arrangement with the Minister of the other State, or with a person authorized by that Minister as provided in the agreement, for the transfer of a particular young offender—

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(a) to that State from Victoria; or

(b) to Victoria from that State.”

#### **40 Arrangement for transfer out of Victoria.**

“110E. (1) The Director-General must not make an arrangement for the transfer of a young offender from Victoria to another State unless—

- (a) the young offender or a parent or guardian of the young offender applies for the transfer to be made; and
- (b) the Director-General is of the opinion that the transfer is appropriate in all the circumstances including—
- (i) the place or intended place of residence of the parents or guardians; and 5
  - (ii) the education, further education, training or employment; and
  - (iii) the medical or other needs— 10  
of the young offender; and
- (c) the young offender has been given independent legal advice of the effect of the arrangement and consents to it; and
- (d) the Director-General is satisfied that there is no appeal pending against an order of a court to which the young offender is subject. 15
- (2) For the purposes of deciding whether or not to arrange for the transfer of a young offender from Victoria to another State, the Director-General may ask—
- (a) the young offender; or
  - (b) the parents or guardians of the young offender— 20
- for any necessary information, and the young offender or parents or guardians must supply the information within the time specified by the Director-General.”
- Arrangement for transfer to Victoria.** 25
- “110F. The Director-General must not make an arrangement for the transfer of a young offender from another State to Victoria unless the Director-General is satisfied that there are adequate facilities in Victoria for the young offender to be accepted and dealt with as provided in the arrangement.”
- Provisions to be made in each arrangement.** 30
- “110G. (1) An arrangement for the transfer of a young offender to or from Victoria must—
- (a) provide for the acceptance and means of dealing with the young offender in the receiving State; and
  - (b) specify each order of a court of the sending State to which the young offender is subject (including an order deemed by a previous arrangement with Victoria or with another State to have been made by a court of the sending State); and 35
  - (c) for each order specified under paragraph (b)— 40
    - (i) specify 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

- 5 (ii) specify the maximum time for which it is to operate, which must not be longer than the maximum time for which it would operate in the sending State if the arrangement were not made.

10 (2) An arrangement made by the Director-General for the transfer of a young offender from Victoria to another State must provide for the escort under section 110H (1) (b) to be authorized in that State to hold, take and keep custody of the young offender for the purpose of transferring the young offender to the place and the custody specified in the arrangement.

15 (3) A reference in sub-section (1) to an order of a court of a sending State is a reference to any sentence, period of detention, probation, parole or other order which could be made or imposed by such a court.”

**Transfer order made under an arrangement.**

20 “110H. (1) Where the Director-General makes an arrangement under this Division for the transfer of a person to another State he must make a transfer order which—

- (a) directs the person who has the custody of the young offender to deliver the young offender to the custody of the escort; and
- 25 (b) authorizes 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) A reference in sub-section (1) to a person having the custody of a young offender is a reference to—

- 30 (a) a person in charge of a remand centre, youth training centre, youth hostel or youth welfare service appointed under section 92; or
- (b) a person in charge of any other establishment conducted and managed by the Department; or
- 35 (c) any other person who has custody of the young offender.

(3) A reference in sub-section (1) to an escort is a reference to a youth officer, a member of the police force or a person appointed by the Director-General by an instrument in writing to be an escort for the purposes of this Division, or any two or more of them.”

40 **Transfer to Victoria in custody of escort.**

“110I. Where under an arrangement for the transfer of a young offender to Victoria an escort authorized under the arrangement brings the young offender to Victoria, the escort, while in Victoria, is authorized

to hold, take and keep custody of the young offender for the purpose of transferring the young offender to the place in Victoria and to the custody specified in the arrangement.”

**Reports.**

“110j. (1) For the purpose of forming an opinion or exercising a discretion under this Division, the Director-General may be informed as the Director-General thinks fit and, in particular, may have regard to reports from any person who has or has had the custody or supervision of a young offender in Victoria or in another State. 5

(2) Reports of any person who has or has had the custody or supervision of a young offender may be sent to a Minister of another State who has entered an agreement or to a person authorized under an agreement to make arrangements with the Director-General.” 10

**Transfer of sentence or order with transferee.**

“110k. Where under an arrangement a young offender is transferred from Victoria to another State, then from the time the young offender arrives in that State any sentence or order imposed on the young offender in Victoria before that time ceases to have effect in Victoria except— 15

- (a) in relation to any period of detention served by the young offender before that time; 20
- (b) in relation to any part of the order carried out in respect of the young offender before that time;
- (c) in relation to the remittance of money to the Minister which is paid in discharge or partial discharge of a sentence of default detention or default imprisonment originally imposed upon the young offender by a court of Victoria.” 25

**Sentence etc. deemed to have been imposed in this State.**

“110l. Where under an arrangement a young offender is transferred to Victoria from another State, then from the time the young offender arrives in Victoria— 30

- (a) any sentence imposed or order made in relation to the young offender by a court of the sending State and specified in the arrangement is deemed to have been imposed or made; and
- (b) any sentence or order deemed by a previous arrangement with Victoria or with another State to have been imposed or made by a court of the sending State and specified in the arrangement under which the young offender is transferred to Victoria is deemed to have been imposed or made; and 35
- (c) any direction or order given or made by a court of the sending State concerning the time when anything to be done 40



under an order made by a court of that State commences is, so far as practicable, deemed to have been given or made—  
by the court of Victoria specified in the arrangement and, except as otherwise provided in this Division, has effect in Victoria as specified  
5 in the arrangement in accordance with section 110G, and the laws of Victoria apply, as if that court had had power to impose the sentence and give or make the directions or orders, and did in fact impose the sentence and give or make the directions or orders.”

#### **Lawful custody for transit through Victoria.**

10 “110M. (1) The Director-General may authorize the person in charge of a youth training centre, remand centre or youth welfare service established under this Act or any other person to receive young offenders being transferred through Victoria from one State to another.

15 (2) Where under an agreement for the transfer of young offenders through Victoria from one State to another, a young offender is brought into Victoria by an escort authorized as provided in the agreement—

(a) while in Victoria, the escort is authorized to take, hold and keep custody of the young offender for the purposes of the transfer;

20 (b) a person authorized under sub-section (1) may at the request of the escort and upon receiving from the escort written authority for the transfer as provided in the agreement—

(i) receive and detain the young offender in the custody and for the time the escort requests, if it is reasonably  
25 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.”

#### **Escape from custody of person being transferred.**

30 “110N. (1) A young offender being transferred through Victoria from one State to another in the custody of an escort and who escapes from that custody may be apprehended without warrant by the escort, any member of the police force or any other person.

(2) Where a young offender being transferred through Victoria from one State to another in the custody of an escort—

35 (a) has escaped and been apprehended; or

(b) has attempted to escape—

the young offender may be taken before a justice who may by warrant under his hand order the young offender to be detained in custody at a youth training centre or remand centre.

40 (3) A warrant issued under sub-section (2) may be executed according to its tenor.

(4) A young offender who is the subject of a warrant under sub-section (2) must as soon as possible be brought before a Magistrate's Court or a Children's Court (as the case requires) 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 seven 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 under sub-section (4) (b) is not, in accordance with the order, delivered into the custody of an escort within a period of seven days from the making of the order, the order has no further effect.

(6) A reference in this section to an escort in relation to a young offender being transferred through Victoria from one State to another under an agreement is a reference to—

- (a) the escort authorized in the manner provided for in the agreement; or
- (b) where the young 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 the Minister of the sending State by instrument in writing to be an escort for the purposes of carrying out any orders of a court of the sending State—

or any two or more of them.”

**Escape from custody—penalty.**

“110o. (1) A young offender—

- (a) who is in custody under an arrangement made for his or her transfer from Victoria to another State; and
- (b) who was subject before the arrangement to detention in Victoria; and
- (c) who escapes or attempts to escape from that custody while he or she is not within Victoria or the receiving State—

is guilty of an offence and is liable to imprisonment for a term not exceeding six months or to detention in a youth training centre for a term not exceeding six months, to be served after the expiration of any term of detention to which he or she was subject at the time of the escape or attempt to escape.

(2) Without limiting the generality of section 98, that section applies to a person—

- (a) who is in custody under an arrangement for the transfer of the person from Victoria to another State; and
  - (b) who escapes from that custody while he or she is not within Victoria or the receiving State—
- 5 in the same way as it applies to a person who escapes, attempts to escape or is absent without lawful authority from a remand centre or youth training centre or from the custody of any person in which he or she is lawfully detained.”

**Revocation of order of transfer on escape from custody.**

- 10 “110P. Any Magistrate’s Court or Children’s Court may revoke an order made under an arrangement for the transfer of a young offender from Victoria to another State on application made to it under this section by the Director-General that the young offender has, while being transferred, committed—
- 15 (a) the offence of escaping or attempting to escape; or
  - (b) any other offence,
- whether—
- 20 (c) the offence was an offence against the law of Victoria or of the receiving State or of a State through which the young offender was being transferred; or
  - (d) a charge has been laid or a conviction secured in respect of the offence or not.”

**Revocation of order of transfer by consent.**

- 25 “110Q. (1) The Director-General may revoke an order for the transfer of a young offender from Victoria to another State—
- (a) at any time before the young offender is delivered in the receiving State into the custody specified in the arrangement; and
  - 30 (b) only with the consent of the young offender and of the Minister or other person in the receiving State with whom the Director-General made the arrangement.
- (2) Where the Director-General revokes an order under sub-section (1), the Director-General may make a further arrangement with the receiving State for the return of the young offender to Victoria.”.

35 **Amendment of section 44A.**

6. In section 44A (7) of the Principal Act, after “pursuant to section 35 or 45” insert “(except a child or young person admitted under section 35 before it was amended by the *Community Welfare Services Act 1978*)”.

**Amendments consequential to *Adoption Act 1984*.**

7. In sections 40, 45 and 65 of the Principal Act for “*Adoption of Children Act 1964*” (wherever occurring) substitute “*Adoption Act 1984*”.

**Amendment of section 99 (2).**

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8. In section 99 (2) of the Principal Act—

- (a) after “prison” insert “or to a youth training centre”; and
- (b) after “imprisonment” insert “or detention”.

**Amendment of section 155 (c).**

9. In section 155 (c) of the Principal Act, after “*Children’s Court Act 1973* or” insert “any child within the meaning of that Act placed on probation under”. 10

**Amendment of section 199.**

10. In section 199 of the Principal Act—

- (a) in sub-section (1) after “custody” insert “or placed in any of the ways provided in section 22 (4) of the *Children’s Court Act 1973*”; and 15

(b) after sub-section (2) insert—

“(2A) The Minister or the Director-General or any person authorized for the purpose by the Minister may consent to a surgical or other operation upon a person who is not a ward of the Department and is not in the custody of the Director-General where— 20

- (a) the person to whom the consent relates is placed in any of the ways provided in section 22 (4) of the *Children’s Court Act 1973*; 25

(b) the person consenting is advised by a legally qualified medical practitioner that the operation is necessary to avoid a serious threat to the health of the person to whom the consent relates; and 30

(c) the parents or guardians of the person to whom the consent relates—

- (i) refuse to give their consent; or
- (ii) cannot be found within a time which is reasonable in the circumstances.”. 35

**Amendment of Schedules**

**11.** For Schedules Three and Three A of the Principal Act, substitute—

**“SCHEDULE THREE**

Section 129

**ORDER TO BRING A PRISONER BEFORE A COURT**

To the \*Governor of the Prison/\*Keeper of the Lock Up at  
AND to all members of the Police Force of Victoria

IT IS HEREBY ORDERED under the provisions of section 129 of the *Community Welfare Services Act 1970* that (full name) a prisoner now in custody in the above prison or lock up be brought up before the \*Children’s/\*Magistrate’s/\*County/\*Supreme Court at (place) at a.m./p.m./ on the day of 19 to—

- \*answer a charge of (specify)
- \*give evidence in or upon legal proceedings
- \*be dealt with for breach of a probation order
- \*be dealt with in relation to breach of \*/variation of\*/Attendance Centre Order\*/Community Service Order\*/a Youth Attendance Order\*
- \*appear for the purpose of (specify)

And the prisoner is to be kept in the custody of a member of the police force, governor or prison officer until returned to legal custody in the above prison or lock up.

Dated the day of 19  
Justice of the Peace  
Children’s Court Magistrate  
Magistrate  
Judge of the Supreme Court  
Judge of the County Court

\* Delete whichever does not apply.

**SCHEDULE THREE A**

Section 97

**ORDER TO BRING PERSON IN REMAND OR YOUTH TRAINING CENTRE BEFORE A COURT**

To the Superintendent of the Centre \*Youth Training Centre/\*Remand Centre

IT IS HEREBY ORDERED under the provisions of section 97 of the *Community Welfare Services Act 1970* that (full name) a person now in your custody be brought before the \*Children’s/\*Magistrate’s/\*County/\*Supreme Court at (place) at a.m./p.m. on the day of 19 to—

- \*answer a charge of (specify)
- \*give evidence in or upon legal proceedings
- \*be dealt with for breach of a probation order
- \*be dealt with in relation to breach of \*/variation of\*/Attendance Centre Order\*/Community Service Order\*/a Youth Attendance Order\*
- \*appear for the purpose of (specify)

And the person is to be kept in custody by a member of the police force or other officer until returned to the custody of the above superintendent.

Dated the day of 19  
Justice of the Peace  
Children’s Court Magistrate

Magistrate  
Judge of the County Court  
Judge of the Supreme Court  
Clerk of Courts  
Registrar  
Prothonotary".

\* Delete whichever does not apply.



