

Queensland



ANNO TRICESIMO SEXTO

ELIZABETHAE SECUNDAE REGINAE



No. 50 of 1987

**An Act to facilitate the transfer to, from and through
Queensland of young offenders who wish to be so
transferred**

[ASSENTED TO 14TH SEPTEMBER, 1987]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. **Short title.** This Act may be cited as the *Young Offenders (Interstate Transfer) Act 1987*.

2. **Commencement.** (1) This section and section 1 shall commence on the day on which this Act is assented to for and on behalf of Her Majesty.

(2) Except as provided by subsection (1), this Act shall commence on a date appointed by Proclamation.

3. **Interpretation.** In this Act, unless the contrary intention appears—

“agreement” means an agreement entered into under section 5 between the Minister and a Minister of another State;

“arrangement” means an arrangement made under section 6 for the transfer of a young offender from Queensland to another State, or to Queensland from another State;

“Department” means the department of government of Queensland responsible for the administration of the *Family and Youth Services Act 1987*;

“guardian” means any person who is recognised in law as a legal guardian of a child: The term includes a person who but for the operation of section 55 or 64 of the *Children's Services Act 1965-1987* would in law be guardian of a child but does not include the permanent head;

“Minister”, in relation to—

(a) Queensland, includes a Minister of the Crown who is temporarily performing the duties of the Minister;

(b) a State other than Queensland, means—

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

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

(iii) where the other State is the Northern Territory of Australia—a person holding Ministerial office under section 36 of the *Northern Territory (Self-Government) Act 1978* of the Commonwealth (as amended from time to time);

“permanent head” has the same meaning as is ascribed to that term by section 4 of the *Family and Youth Services Act 1987*;

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

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

“State” means a State of the Commonwealth and includes the Australian Capital Territory and the Northern Territory of Australia;

“young offender” means a person—

(a) in another State who—

(i) is under the age of 18 years and who has committed or is alleged to have committed an offence;

or

(ii) is of or over the age of 18 years but under the age of 21 years and who has committed or is alleged to have committed an offence when he 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 punishment of a person who is under the age of 18 years;

(b) in Queensland who, pursuant to section 62 (1) (g), 62 (1) (k), 62 (4), 62 (5), 63 (2) or 68 (3) (e) of the *Children's Services Act 1965-1987* has been committed or recommitted or is deemed to have been committed to the care and control of the Director as defined in that Act and is still in the care and control of that Director;

(c) in Queensland over and in relation to whom, pursuant to an order made under Part VII of the *Children's Services Act 1965-1987* (other than an order made under section 61 (4) (a) (ii) of that Act), it has been ordered that that Director or the Chief Probation Officer exercise supervision and that supervision is still being exercised;

or

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

4. Administration of Act. This Act shall be administered by the Minister and, subject to the Minister, by the permanent head and other officers of the Department.

5. Minister may enter general agreements. The Minister may enter into a general agreement with a Minister of another State for the transfer of young offenders into or out of Queensland and for the transfer of young offenders through Queensland from one State to another.

6. Permanent head may make arrangements. Where the Minister enters into an agreement with a Minister of another State, the permanent head 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—

- (a) from Queensland to the other State;
- or
- (b) to Queensland from the other State.

7. Arrangement for transfer out of Queensland. (1) The permanent head shall not make an arrangement for the transfer of a young offender from Queensland to another State unless—

- (a) the young offender or his parent or guardian applies for the transfer to be made;
- (b) the permanent head 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 other relatives or guardian;
 - (ii) the education, future education, training or employment; and
 - (iii) the medical or other needs, of the young offender; and
- (c) the permanent head 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 Queensland to another State, the permanent head may ask—

- (a) the young offender;
- or
- (b) the parents or other relatives or the guardian of the young offender,

for any necessary information.

The young offender, parents, other relatives or guardian shall supply the information within the time specified by the permanent head.

8. Arrangement not to be made if facilities not adequate. The permanent head shall not make an arrangement for the transfer of a young offender from another State to Queensland unless the permanent head is satisfied that there are adequate facilities in Queensland for the young offender to be accepted and dealt with as provided in the arrangement.

9. Provisions to be made in each arrangement. (1) An arrangement for the transfer of a young offender to or from Queensland shall—

- (a) provide for the acceptance of and means of dealing with the young offender in the receiving State;
- (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 Queensland or with another State to have been made by a court of the sending State);
and

- (c) for each order specified under paragraph (b)—
- (i) specify the way in which it is to operate in the receiving State, which shall be as similar as possible to the way in which it would operate in the sending State if the arrangement were not made;
and
 - (ii) specify the maximum time for which it is to operate, which shall not be longer than the maximum time for which it would operate in the sending State if the arrangement were not made.

(2) An arrangement made by the permanent head for the transfer of a young offender from Queensland to another State may provide for an escort to be authorized in Queensland to hold, take and keep custody of the young offender for the purpose of transferring the young offender to the place and custody specified in the arrangement.

(3) A reference in subsection (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.

10. Transfer order made under an arrangement. (1) Where the permanent head makes an arrangement under this Act for the transfer of a young offender to another State in the custody of an escort he shall make a transfer order which—

- (a) directs the person who has the care of the young offender to deliver him into the custody of the escort named in the order;
and
- (b) authorizes the escort to take and keep custody of the young offender for the purpose of transferring him to the place and into the custody in the receiving State specified in the arrangement.

(2) A reference in subsection (1) to a person having the care of a young offender is a reference to—

- (a) a person who, pursuant to the *Family and Youth Services Act 1987*, is in charge of—
 - (i) a residential care facility established under section 18 of that Act;
or
 - (ii) any other place established under that section or which is under the control of the permanent head;
or

(b) any other person who has care of the young offender.

(3) A reference in subsection (1) to an escort is a reference to—

(a) any officer of the Department;

(b) any member of the police force of Queensland;

or

(c) a person appointed by the permanent head by an instrument in writing to be an escort for the purposes of this Act,

or any 2 or more of them.

11. Transfer to Queensland in custody of escort. Where under an arrangement for the transfer of a young offender to Queensland an escort authorized under the arrangement brings him to Queensland, the escort, while in Queensland, is authorized to hold, take and keep custody of him for the purpose of transferring him to the place and custody specified in the arrangement.

12. Reports. (1) For the purpose of forming an opinion or exercising a discretion under this Act, the permanent head may be informed as he thinks fit and, in particular, may have regard to reports from any person who has or has had the custody, care or supervision of a young offender in Queensland or in another State.

(2) Reports of any person who has or has had the custody, care or supervision of a young offender may be sent to a Minister of another State who has entered into an agreement or to a person authorized by that Minister to make arrangements with the permanent head.

13. Transfer of sentence or order with young offender. Where under an arrangement a young offender is transferred from Queensland to another State, 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 Queensland before that time ceases to have effect in Queensland except—

(a) in relation to any period of detention served by the young offender before that time;

(b) in relation to any part of the order carried out in respect of the young offender before that time;

(c) in relation to an order made pursuant to section 62 (1) of the *Children's Services Act 1965-1987* whereby the young offender has been ordered to pay a fine, compensation, restitution or costs and he has failed to pay the fine, compensation, restitution or costs forthwith or within the time allowed him in that behalf.

14. Sentence, etc., deemed to have been imposed in Queensland. Where under an arrangement a young offender is transferred to

Queensland from another State, then, from the time the young offender arrives in Queensland—

- (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 deemed to have been imposed or made;
- (b) any sentence or order deemed by a previous arrangement with Queensland 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 Queensland is deemed to have been imposed or made; and
- (c) any direction or order given or made by a court of the sending State concerning the time when anything to be done 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 Queensland specified in the arrangement and, except as otherwise provided in this Act, has effect in Queensland as specified in the arrangement in accordance with section 9 and the laws of Queensland 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.

15. Lawful custody for transit through Queensland. (1) The permanent head may authorize a person referred to in section 10 (2) (a) to receive young offenders being transferred through Queensland from one State to another.

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

- (a) the escort, while in Queensland, is authorized to take, hold and keep custody of the young offender for the purposes of the transfer;
- (b) a person authorized under subsection (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 custody for the time 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.

16. Escape from custody of young offender being transferred. (1) A young offender who escapes from the custody of an escort while being transferred through Queensland from one State to another under an

agreement may be apprehended without warrant by the escort, any member of the police force of Queensland or any officer of the Department.

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

(a) has escaped and been apprehended;

or

(b) has attempted to escape,

he may be taken before a justice who, by warrant under his hand, may order the young offender to be placed in the custody of the permanent head.

(3) A warrant issued under subsection (2) may be executed according to its tenor.

(4) A young offender who is the subject of a warrant under subsection (2) shall, as soon as possible, be brought before a Children's Court which may order—

(a) that the young offender be delivered into the custody of an escort;

or

(b) that the young offender be placed in the custody of the permanent head for no longer than 14 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 under subsection (4) (b) is not, in accordance with the order, delivered into the custody of an escort within a period of 14 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 Queensland 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;

(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 2 or more of them.

17. Escape from custody—penalty. (1) A young offender within the meaning of paragraph (b) of that term who—

- (a) is in custody under an arrangement made for his transfer from Queensland to another State;
and
- (b) escapes or attempts to escape from that custody while he is not within Queensland or the receiving State,

commits an offence against this Act and may be ordered to be committed to the care and control of the permanent head for a period of 6 months, to be served after the expiration of any term of care and control to which he was subject at the time of the escape or attempt to escape.

(2) Without limiting the generality of the third paragraph of section 20 of *The Criminal Code*, that paragraph applies to a young offender who—

- (a) is in custody under an arrangement for the transfer of the young offender from Queensland to another State;
and
- (b) escapes from that custody while he is not within Queensland or that other State,

in the same way as it applies to a person who escapes from lawful custody while undergoing a sentence involving deprivation of liberty in Queensland.

18. Revocation of order of transfer on escape from custody. Any Children's Court may revoke an order made under an arrangement for the transfer of a young offender from Queensland to another State if it appears to the court on application made to it under this section by the permanent head that the young offender has, while being transferred, committed—

- (a) the offence of escaping or attempting to escape;
or
- (b) any other offence,

whether—

- (c) the offence was an offence against the law of Queensland or of the receiving State or of a State through which the young offender was being transferred;
or
- (d) a conviction has been secured in respect of the offence or not.

19. Revocation of order of transfer by permanent head. (1) With the consent of the Minister or other person in the receiving State with whom the permanent head has made an arrangement, the permanent head may revoke an order made under the arrangement for the transfer of a young offender from Queensland to the receiving State at any time before the young offender is delivered in the receiving State into the custody specified in the arrangement.

(2) Where the permanent head revokes an order under subsection (1), he may make a further arrangement for the return of the young offender to Queensland from the receiving State.

20. Confidentiality provisions. (1) A person engaged in work for the purposes of this Act shall preserve and aid in preserving confidentiality with respect to all matters that come to his knowledge in his official capacity under this Act and shall not communicate any such matter to any person except—

- (a) for the purpose of carrying this Act into effect;
- (b) to a lawfully constituted court or tribunal;
- (c) to the person to whom the matter relates;
- (d) to a person who, in the opinion of the permanent head is authorized, expressly or impliedly, by the person to whom the matter relates to obtain it;
- (e) to a person engaged in a bona fide research programme.

(2) Any matter referred to in subsection (1) shall not be communicated to a person referred to in paragraph (e) of that subsection except—

- (a) with the prior approval of the permanent head;
and
- (b) upon the person giving an undertaking in writing—
 - (i) to preserve confidentiality in respect of the matter;
and
 - (ii) to preserve anonymity of the person to whom the matter relates.

(3) A person who contravenes or fails to comply with—

- (a) subsection (1) or (2);
or
- (b) the terms of an undertaking given under subsection (2),
commits an offence against this Act.

Penalty: 40 penalty units, or imprisonment for 2 years, or both such penalty and imprisonment.

21. Regulations. The Governor in Council 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.