



Young Offenders (Interstate Transfer) Act 1987

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Queensland

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Young Offenders (Interstate Transfer) Act 1987

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

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—

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.

guardian means any person who is recognised in law as a legal guardian of a child, and includes a person who, apart from the operation of the *Child Protection Act 1999*, would in law be guardian of a child.

Minister, in relation to—

- (a) Queensland, includes a Minister 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—a Minister of the Crown of that State; or
- (ii) where the other state is the Australian Capital Territory—a Minister of the Crown of the Commonwealth; or
- (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* (Cwlth).

permanent head means the chief executive of the department.

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.

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 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 punishment of a person who is under the age of 18 years; or

- (b) in Queensland who is subject to a sentence order under section 175(1)(d), (da), (db), (e) or (g) (Sentence orders—general) or section 176(1), (2) or (3) (Sentence orders—serious offences) of the *Youth Justice Act 1992*; or
- (c) 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 authorised 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 the young offender's parent or guardian applies for the transfer to be made; and
 - (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; and

- (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.
- (3) 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; 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 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 authorised 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 the permanent head shall make a transfer order which—
- (a) directs the person who has the care of the young offender to deliver the young offender into the custody of the escort named in the order; 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 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, under the *Youth Justice Act 1992*—
 - (i) is a detention centre manager; or
 - (ii) is in charge of any other place established under section 262 (Establishment of detention centres and other places) of the *Youth Justice Act 1992*; 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; or
 - (b) any police officer; 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 authorised under the arrangement brings the young offender to Queensland, the escort, while in Queensland, is authorised 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.

12 Reports

- (1) For the purpose of forming an opinion or exercising a discretion under this Act, the permanent head may be informed as the permanent head 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 authorised 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—
 - (i) made under section 175(1)(c) (Sentence orders—general) of the *Youth Justice Act 1992* that the young offender pay an amount by way of fine; or
 - (ii) made under Part 7, Division 11 of the *Youth Justice Act 1992* that the young offender pay an amount by way of restitution or compensation;

and the young offender has failed to pay the amount by the time specified.

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; and

- (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 authorise 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 authorised as provided in the agreement—
 - (a) the escort, while in Queensland, is authorised to take, hold and keep custody of the young offender for the purposes of the transfer; and
 - (b) a person authorised 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 police officer 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;
- the young offender may be taken before a justice who, by warrant under the justice's 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 the Childrens 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 authorised 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 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 the young offender's transfer from Queensland to another State; and
 - (b) escapes or attempts to escape from that custody while the young offender is not within Queensland or the receiving State;
- commits an offence, and is liable to punishment, to the same extent as if the young offender had escaped or attempted to escape in Queensland from detention under the *Youth Justice Act 1992*.
- (2) If the young offender is sentenced to a period of detention or term of imprisonment for the offence against subsection (1), the detention or imprisonment must be served after the expiration of any current period of detention or imprisonment.

(3) The period for which the young offender was unlawfully at large must not be counted as part of any current period of detention or imprisonment.

(4) In this section—

current period of detention or imprisonment, in relation to a young offender who commits an offence against subsection (1), means a period of detention or term of imprisonment that the young offender was liable to serve at the time of the offence.

18 Revocation of order of transfer on escape from custody

The Childrens 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), the permanent head 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 the person's knowledge in the person's 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; or
 - (b) to a lawfully constituted court or tribunal; or
 - (c) to the person to whom the matter relates; or
 - (d) to a person who, in the opinion of the permanent head is authorised, expressly or impliedly, by the person to whom the matter relates to obtain it; or
 - (e) to a person engaged in a bona fide research program.
- (2) Any matter referred to in subsection (1) shall not be communicated to a person referred to in subsection (1)(e) 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.

Maximum penalty—40 penalty units or imprisonment for 2 years.

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.