

Young Offenders (Interstate Transfer) Bill

EXPLANATORY MEMORANDUM

Clause 1 sets out the purpose of the Bill which is to facilitate the transfer to and from and through Victoria of Young Offenders who have been dealt with by a court and wish to be transferred interstate.

Clause 2 contains the usual commencement provisions.

Clause 3 identifies the *Community Welfare Services Act 1970* as the Principal Act.

Clause 4 amends the Table of Contents in section 1 of the Principal Act.

Clause 5 creates a new Division 8 in Part IV. of the *Community Welfare Services Act 1970* to provide for the interstate transfer of young offenders. In the new Division the following provisions are inserted:

Section 110B defines the terms "Agreement", "Arrangement", "Minister", "Sending State", "State", "Receiving State" and "Young Offender".

Section 110C enables the Minister in Victoria to enter into a general agreement with a Minister of another State for the transfer of young offenders into, out of, or through Victoria from one State to another.

Section 110D enables the Director-General, upon agreement by the Ministers, to make arrangements with the Minister or authorized person in another State for the transfer of a young offender from Victoria to another State or to Victoria from another State.

Section 110E (1) deals with arrangement for transfer out of Victoria and provides that Director-General is not to make such an arrangement unless—

- (a) the young offender or a parent or guardian applies for the transfer;
- (b) the Director-General is of the opinion that the transfer is appropriate in all the circumstances;
- (c) the young offender is given independent legal advice of the effect of the transfer and consents to it; and
- (d) there is no appeal pending on the court order to which the young offender is subject.

Sub-clause (2) allows the Director-General to ask the young offender or the parents or guardian of the young offender for any necessary information for the purposes of deciding on the transfer.

Section 110F deals with arrangements for transfer to Victoria and provides that the Director-General is to be satisfied that there are adequate facilities in Victoria for the young offender to be accepted, placed and supervised as provided in the arrangement.

Section 110G (1) sets out the matters to be included in each arrangement; namely:

- (a) Provision for the young offender to be accepted and dealt with in the receiving State.
- (b) Any Court orders of the sending State to which the young offender is subject, including an order that was transferred under a previous arrangement are specified.
- (c) There is also specified the way in which each Court order in relation to a sentence of detention, or probation, parole or another order, is to operate in the receiving State and the maximum time for which the orders are to operate which must not be longer than it would operate in the sending State.

Sub-clause 2 requires an arrangement to provide for an authorized escort to hold, take and keep custody of the young offender for the purpose of transferring and delivering the young offender into the custody of the person specified in the arrangement.

Section 110H enables the Director-General when making arrangements to transfer a young offender to another State to make a transfer order which directs the person who has the custody of the young offender to deliver him or her to the custody of the escort and authorizes the escort to take and keep the young offender in custody for the purpose of transferring and delivering the young offender into the custody of the person specified in the arrangement. The escort may be a member of the police force or a person appointed by the Director-General.

Section 110I authorizes the escort authorized under the arrangement to transfer a young offender to Victoria, to hold and keep the young offender in custody while in Victoria for the purpose of transferring and delivering the young offender into the custody of the person in Victoria specified in the arrangement.

Section 110J allows the Director-General to obtain, and the Minister or authorized officer of another State to be sent information and reports on any young offender for the purpose of forming an opinion or exercising a discretion where an agreement has been entered into.

Section 110K provides that when a young offender is transferred to a State specified in the arrangement, the sentence or order imposed on him or her in Victoria ceases to have effect in Victoria from the time the young offender arrives in that State except for any period of detention that has already been served or any part of the order that has already been carried out or any part of a default detention or default imprisonment in place of which payment has already been made.

Section 110L provides that when a young offender is transferred to Victoria then from the time the person arrives in Victoria any sentence or order imposed in the sending State is deemed to have been imposed in this State and the laws of Victoria apply and the sentence or order is to be carried out as provided in the arrangement.

Section 110M enables the Director-General to authorize any person in charge of Departmental facilities or any other person to receive young offenders being transferred through Victoria to another State and provides for the lawful custody whilst the young offender is under an authorized escort in Victoria.

Section 110N (1) provides for the apprehension of a young offender who escapes from the custody of an authorized escort officer whilst in transit through Victoria.

Sub-clauses (2) and (3) provide that the young offender who has escaped and been apprehended or has attempted to escape may be brought before a justice who may by a warrant order that young person be held in custody in a youth training centre or remand centre and to be brought before a Magistrate's Court or a Children's Court as soon as possible.

Sub-clause (4) empowers the Courts to make an order to deliver the young offender to the custody of escort or detain the young offender for no longer than seven days to enable arrangements to be made for the young offender to be returned to the custody of an escort authorized to carry out the orders of the sending State.

Sub-clause (5) provides for order made by the Court in sub-clause (4) to cease to have effect after seven days if a young offender has not been delivered into the custody of an escort officer in accordance with the order.

Sub-clause (6) defines escort officer.

Section 110O creates an offence and penalty where a young offender who is subject to sentence of detention under an order of the Court in Victoria and whilst being transferred

from Victoria to another State escapes or attempts to escape from the custody of an authorized escort in a State other than Victoria or the receiving State similar to existing penalty provisions for escape or attempted escape in Victoria contained in section 98 of the *Community Welfare Services Act 1970*.

Section 110P enables the Magistrate's Court or the Children's Court to revoke an order made under an arrangement for the transfer of a young offender from Victoria to another State upon application by the Director-General where the young offender has escaped or attempted escape or committed further offence whilst being transferred.

Section 110Q enables the Director-General to revoke an arrangement for the transfer of a young offender to another State with the consent of all parties up to the time the young offender arrives at the receiving State.

Clause 6 amends section 44A (7) of the Principal Act to allow the Director-General to discharge Wards who were admitted under section 35 of the Act prior to 6 January 1982 as voluntary applications for admission to wardship made before January 1982 were not covered by the Act with regard to power to discharge wardship or a requirement for an annual review of wardship.

Clause 7 amends references in the Principal Act to the *Adoption of Children Act 1964* to be changed to *Adoption Act 1984*.

Clause 8 amends section 99 (2) of the Principal Act to provide that, in the case of young persons serving a sentence of detention in a youth training centre, warrants requiring detention in a youth training centre to be served in lieu of payment of a fine, are to be served after completion of any sentence.

Clause 9 amends section 155 (c) of the Principal Act to correct the reference to any person placed on probation under the *Crimes Act 1958* requiring to be supervised by the Department of Community Services by referring only to a "child within the meaning of the Children's Court Act" placed on probation under the *Crimes Act 1958*.

Clause 10 amends section 199 (2) of the Principal Act to allow provisions concerning consent to operations to apply to children who are placed in community based placements whereas existing provisions only apply to children placed in Departmental facilities.

Clause 11 amends Schedules Three and Three A of the Principal Act consequential to amendments in 1984 to sections 97 and 129 of the Act concerning the removal of young persons or prisoners from custody for attendance at Courts.

