

**CHILDREN (INTERSTATE TRANSFER OF OFFENDERS)
ACT 1988 No. 85**

NEW SOUTH WALES



TABLE OF PROVISIONS

PART 1—PRELIMINARY

1. Short title
2. Commencement
3. Definitions

PART 2—INTERSTATE TRANSFER GENERALLY

4. Minister may enter into general agreements
5. Director-General may make arrangements
6. Arrangement for transfer from New South Wales
7. Arrangement not to be made if facilities not adequate
8. Provisions to be contained in each arrangement
9. Transfer order
10. Transfer to New South Wales in custody of escort
11. Escape from custody of young offender being transferred from New South Wales

PART 3—TRANSFER OF SENTENCE OR ORDER

12. Transfer from New South Wales of sentence or order
13. Transfer to New South Wales of sentence or order

PART 4—TRANSIT THROUGH NEW SOUTH WALES

14. Lawful custody for transit through New South Wales
15. Escape from custody
16. Search warrants

PART 5—REVOCATION OF TRANSFER ORDERS

17. Revocation of transfer order on escape from custody
18. Revocation of transfer order by Director-General

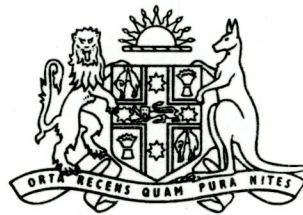
Children (Interstate Transfer of Offenders) 1988

PART 6—MISCELLANEOUS

19. Reports
 20. Delegation by Director-General
 21. Proceedings for offences
 22. Regulations
 23. Amendment of Search Warrants Act 1985 No. 37, s. 10 (Definitions)
-

CHILDREN (INTERSTATE TRANSFER OF OFFENDERS) ACT 1988
No. 85

NEW SOUTH WALES



Act No. 85, 1988

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.
[Assented to 12 December 1988]

Children (Interstate Transfer of Offenders) 1988

The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

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

Commencement

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

Definitions

3. 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 justice” means—

(a) a Magistrate; or

(b) a justice employed in the Attorney General’s Department;

“court” includes a justice;

“custody” means custody to which a person is entitled by law;

“detention centre” has the same meaning as in the Children (Detention Centres) Act 1987;

“Director-General” means the Director-General of the Department of Family and Community Services;

“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 a Territory other than the Northern Territory—a Minister of the Crown 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

Children (Interstate Transfer of Offenders) 1988

(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 under section 33 (1) (b), (e) or (f) 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

Minister may enter into general agreements

4. (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

Children (Interstate Transfer of Offenders) 1988

- (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.

Director-General may make arrangements

5. 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.

Arrangement for transfer from New South Wales

6. (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,

Children (Interstate Transfer of Offenders) 1988

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.

Arrangement not to be made if facilities not adequate

7. 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.

Provisions to be contained in each arrangement

8. (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; and
- (d) state that a young offender who is subject to a non-probation period may be treated as being subject to an equivalent non-parole period, if the laws of the receiving State do not provide for non-probation periods.

(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.

Children (Interstate Transfer of Offenders) 1988

Transfer order

9. (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 of Family and Community Services; or
- (d) a person acting as an escort with the approval of the Director-General.

Transfer to New South Wales in custody of escort

10. 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.

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

11. (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**Transfer from New South Wales of sentence or order**

12. 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.

Transfer to New South Wales of sentence or order

13. (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

Children (Interstate Transfer of Offenders) 1988

- (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

Lawful custody for transit through New South Wales

14. (1) The Director-General may authorise the superintendent 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 superintendent 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—

“superintendent” means the person for the time being in charge of a detention centre.

Escape from custody

15. (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 justice 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.

Children (Interstate Transfer of Offenders) 1988

(4) A young offender who is apprehended pursuant to such a warrant must as soon as practicable be brought before a 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 justice 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.

Search warrants

16. (1) An escort, any member of the Police Force, or any officer of the Department of Family and Community Services may apply to an authorised justice 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 justice 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 of Family and Community Services named in the warrant—

- (a) to enter specified premises; and

Children (Interstate Transfer of Offenders) 1988

- (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) Part 3 of the Search Warrants Act 1985 applies to a search warrant issued under this section.

(4) Without limiting the generality of section 18 of the Search Warrants Act 1985, a member of the Police Force—

- (a) may accompany an escort or an officer of the Department of Family and Community Services 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

Revocation of transfer order on escape from custody

17. (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.

Revocation of transfer order by Director-General

18. (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**Reports**

19. (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.

Delegation by Director-General

20. 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.

Proceedings for offences

21. Proceedings for an offence against this Act or the regulations shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Regulations

22. (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.

Children (Interstate Transfer of Offenders) 1988

Amendment of Search Warrants Act 1985 No. 37, s. 10 (Definitions)

23. The Search Warrants Act 1985 is amended by inserting in the definition of "search warrant" in section 10 in alphabetical order the matter "section 16 of the Children (Interstate Transfer of Offenders) Act 1988;".

*[Minister's second reading speech made in—
Legislative Council on 9 November 1988
Legislative Assembly on 15 November 1988]*





**CHILDREN (INTERSTATE TRANSFER OF OFFENDERS)
BILL 1988**

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to provide a scheme for the transfer of young offenders from, to or through New South Wales.

PART 1—PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 defines expressions used in the proposed Act, including the expressions "young offender" and "State".

In general terms, a "young offender" is a person who is subject to a court order because of having committed an offence while under the age of 18. "State" is defined as including a Territory of the Commonwealth.

PART 2—INTERSTATE TRANSFER GENERALLY

Clause 4 provides that the Minister for Family and Community Services 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 for the transfer of young offenders from, to or through New South Wales. An agreement relating to another State must not be entered into unless a regulation has been made by the Governor-in-Council declaring that the other State has enacted legislation dealing with the interstate transfer of young offenders.

Clause 5 provides that, once the Minister has entered into such an agreement, the Director-General of the Department of Family and Community Services may make a more detailed arrangement in writing with a Minister of another State, or a person authorised by a Minister of that State, for the transfer of a particular young offender from or to New South Wales. Provision is also made for rectifying any error in an arrangement.

Children (Interstate Transfer of Offenders) 1988

Clause 6 sets out the prerequisites to the Director-General's making of an arrangement for the transfer of a young offender from New South Wales. In particular, the transfer must be appropriate in all the circumstances, and there must not be an appeal pending against an order of a court to which the young offender is subject. Generally, a transfer will be made only with the consent of the young offender. Provision exists, however, for the Director-General to determine that the particular circumstances of the case indicate the transfer should be made without the young offender's consent.

Clause 7 provides that an arrangement for the transfer of a young offender to New South Wales must not be made unless the Director-General is satisfied that there are adequate facilities in New South Wales to deal with the young offender.

Clause 8 sets out the matters for which provision must be made in each arrangement for the transfer of a young offender from or to New South Wales.

Clause 9 provides that, if the Director-General makes an arrangement for the transfer of a young offender from New South Wales, a transfer order must be prepared to provide for the custody of the offender and to authorise an escort for the purpose of the transfer.

Clause 10 gives to an escort of a young offender being transferred to New South Wales authority to deal with the young offender, while in New South Wales, for the purposes of the arrangement.

Clause 11 provides that, if a young offender (subject to detention before an arrangement is made and being transferred from New South Wales) escapes or attempts to escape from custody under the arrangement while the young offender is not within New South Wales or the receiving State, that young offender is guilty of an offence.

The same consequences follow as if the offender had committed an offence under section 33 (escaping) of the Children (Detention Centres) Act 1987.

PART 3—TRANSFER OF SENTENCE OR ORDER

Clause 12 provides that once a young offender being transferred from New South Wales arrives in the other State, New South Wales sentences or orders cease to have effect in New South Wales except for limited purposes, such as for the purpose of enabling the exercise of any right of appeal to a New South Wales court.

Clause 13 provides that once a young offender being transferred to New South Wales arrives in this State, sentences, orders or directions imposed, made or given in relation to the young offender in the sending State are to be taken to have been imposed, made or given in New South Wales.

PART 4—TRANSIT THROUGH NEW SOUTH WALES

Clause 14 enables the Director-General to authorise the superintendent of a detention centre to receive a young offender being transferred through New South Wales. The clause also authorises an escort of a young offender being transferred through New South Wales to take and keep custody of the young offender while in New South Wales.

Clause 15 provides that a young offender being transferred through New South Wales and who escapes can be apprehended in New South Wales without a warrant. The young offender can be taken before an authorised justice who may order the young offender to be detained in custody at a detention centre. The young offender must then be brought, as soon as practicable, before a Local Court or a Children's Court which may order—

- that the young offender be delivered into the custody of an escort; or

Children (Interstate Transfer of Offenders) 1988

- 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 relating to the transfer or any order made by a court of that State.

Clause 16 provides that an escort, any member of the Police Force, or any officer of the Department of Family and Community Services may apply to an authorised justice 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 any particular premises.

PART 5—REVOCATION OF TRANSFER ORDERS

Clause 17 deals with the revocation of a transfer order by the Children's Court if a young offender has escaped or attempted to escape or has committed any other offence.

Clause 18 deals with the revocation of a transfer order by the Director-General.

PART 6—MISCELLANEOUS

Clause 19 gives the Director-General access to reports about young offenders in New South Wales or in other States, and allows the Director-General to send reports about New South Wales young offenders to another State.

Clause 20 enables the Director-General to delegate powers and duties conferred or imposed on the Director-General by the proposed Act.

Clause 21 provides for proceedings for an offence against the proposed Act or regulations to be made under it to be dealt with by a Local Court. In appropriate cases, such an offence will be dealt with by the Children's Court as required by the Children (Criminal Proceedings) Act 1987.

Clause 22 enables the Governor-in-Council to make regulations in aid of the proposed Act. A regulation may impose a penalty of not more than 5 penalty units (presently \$500).

Clause 23 amends the Search Warrants Act 1985 so as to apply Part 3 of that Act to a search warrant to be issued under the proposed Act.



CHILDREN (INTERSTATE TRANSFER OF OFFENDERS) BILL 1988

NEW SOUTH WALES



TABLE OF PROVISIONS

PART 1—PRELIMINARY

1. Short title
2. Commencement
3. Definitions

PART 2—INTERSTATE TRANSFER GENERALLY

4. Minister may enter into general agreements
5. Director-General may make arrangements
6. Arrangement for transfer from New South Wales
7. Arrangement not to be made if facilities not adequate
8. Provisions to be contained in each arrangement
9. Transfer order
10. Transfer to New South Wales in custody of escort
11. Escape from custody of young offender being transferred from New South Wales

PART 3—TRANSFER OF SENTENCE OR ORDER

12. Transfer from New South Wales of sentence or order
13. Transfer to New South Wales of sentence or order

PART 4—TRANSIT THROUGH NEW SOUTH WALES

14. Lawful custody for transit through New South Wales
15. Escape from custody
16. Search warrants

PART 5—REVOCAION OF TRANSFER ORDERS

17. Revocation of transfer order on escape from custody
18. Revocation of transfer order by Director-General

Children (Interstate Transfer of Offenders) 1988

PART 6—MISCELLANEOUS

19. Reports
 20. Delegation by Director-General
 21. Proceedings for offences
 22. Regulations
 23. Amendment of Search Warrants Act 1985 No. 37, s. 10 (Definitions)
-

**CHILDREN (INTERSTATE TRANSFER OF OFFENDERS)
BILL 1988**

NEW SOUTH WALES



No. , 1988

A BILL FOR

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.

Children (Interstate Transfer of Offenders) 1988

The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

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

Commencement

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

Definitions

10 3. 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;

15 “authorised justice” means—

(a) a Magistrate; or

(b) a justice employed in the Attorney General’s Department;

“court” includes a justice;

“custody” means custody to which a person is entitled by law;

20 “detention centre” has the same meaning as in the Children (Detention
Centres) Act 1987;

“Director-General” means the Director-General of the Department of
Family and Community Services;

25 “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

30 (b) in the case of a Territory other than the Northern Territory—a
Minister of the Crown 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;

35 “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
40 custody of the young offender;

Children (Interstate Transfer of Offenders) 1988

“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
- 5 (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;

10 “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—

- 15 (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
- 25 (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 under section 33 (1) (b), (e) or (f) of the Children (Criminal Proceedings) Act 1987,
- 30 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

Minister may enter into general agreements

35 4. (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
- 40 (b) for the transfer of young offenders through New South Wales from one State to another.

Children (Interstate Transfer of Offenders) 1988

(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.

Director-General may make arrangements

- 5 **5.** 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
- 10 (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.

Arrangement for transfer from New South Wales

15 **6. (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—
- 20 (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
- 25 (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
- 30 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.

35 **(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.

Children (Interstate Transfer of Offenders) 1988

(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.

Arrangement not to be made if facilities not adequate

7. 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.

Provisions to be contained in each arrangement

8. (1) An arrangement for the transfer of a young offender from or to New South Wales must—

- (a) be in writing; and
- 15 (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
- 20 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
- 25 (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
- 30 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
- (d) state that a young offender who is subject to a non-probation period
- 35 may be treated as being subject to an equivalent non-parole period, if the laws of the receiving State do not provide for non-probation periods.

(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.

Transfer order

9. (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
5 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 of Family and Community Services; or
- (d) a person acting as an escort with the approval of the Director-General.

Transfer to New South Wales in custody of escort

10. 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.

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

11. (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**Transfer from New South Wales of sentence or order**

12. 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.

Transfer to New South Wales of sentence or order

13. (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

Lawful custody for transit through New South Wales

- 5 14. (1) The Director-General may authorise the superintendent 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
10 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
- 15 (b) a superintendent 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,
20 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—
25 “superintendent” means the person for the time being in charge of a detention centre.

Escape from custody

- 30 15. (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,
- 35 the young offender may be taken before an authorised justice 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.

Children (Interstate Transfer of Offenders) 1988

- (4) A young offender who is apprehended pursuant to such a warrant must as soon as practicable be brought before a 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
5 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.
- 10 (5) If a young offender who is the subject of an order made by an authorised justice 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.
- 15 (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
 - 20 (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
25 purpose of carrying out any orders of a court of the sending State,
- or any two or more of them.

Search warrants

- 30 16. (1) An escort, any member of the Police Force, or any officer of the Department of Family and Community Services may apply to an authorised justice 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
35 another in accordance with an agreement, is on or in premises.
- (2) An authorised justice 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 of Family and Community Services named in the
40 warrant—
- (a) to enter specified premises; and

Children (Interstate Transfer of Offenders) 1988

(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) Part 3 of the Search Warrants Act 1985 applies to a search warrant
5 issued under this section.

(4) Without limiting the generality of section 18 of the Search Warrants Act 1985, a member of the Police Force—

(a) may accompany an escort or an officer of the Department of Family
10 and Community Services 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—

15 “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

Revocation of transfer order on escape from custody

20 17. (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—

25 (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.

30 Revocation of transfer order by Director-General

18. (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.

35 (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**Reports**

19. (1) For the purpose of forming an opinion or exercising a discretion under this Act, the Director-General may—

- 5 (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
 10 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
 15 Director-General.

Delegation by Director-General

20. 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.

20 Proceedings for offences

21. Proceedings for an offence against this Act or the regulations shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

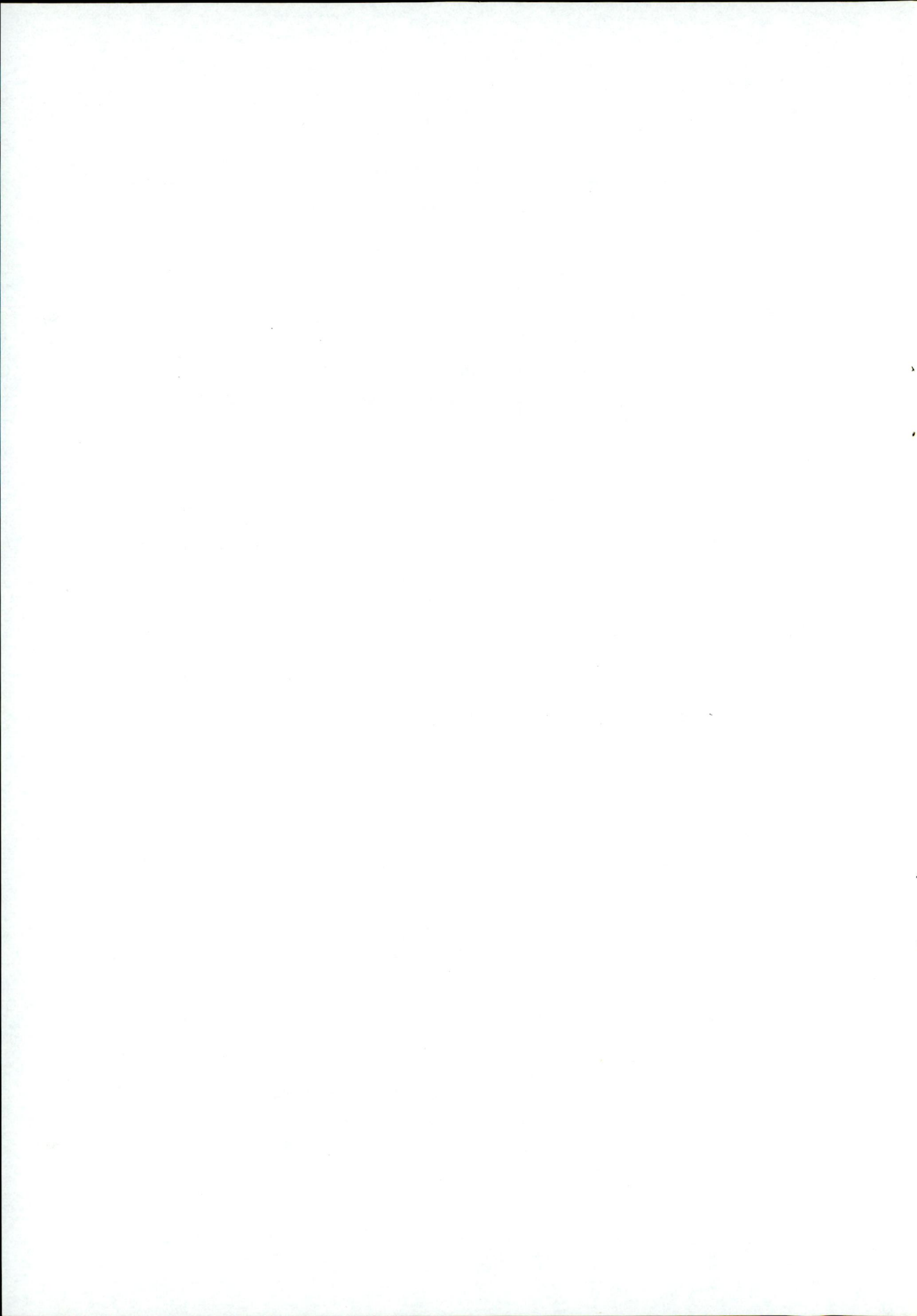
Regulations

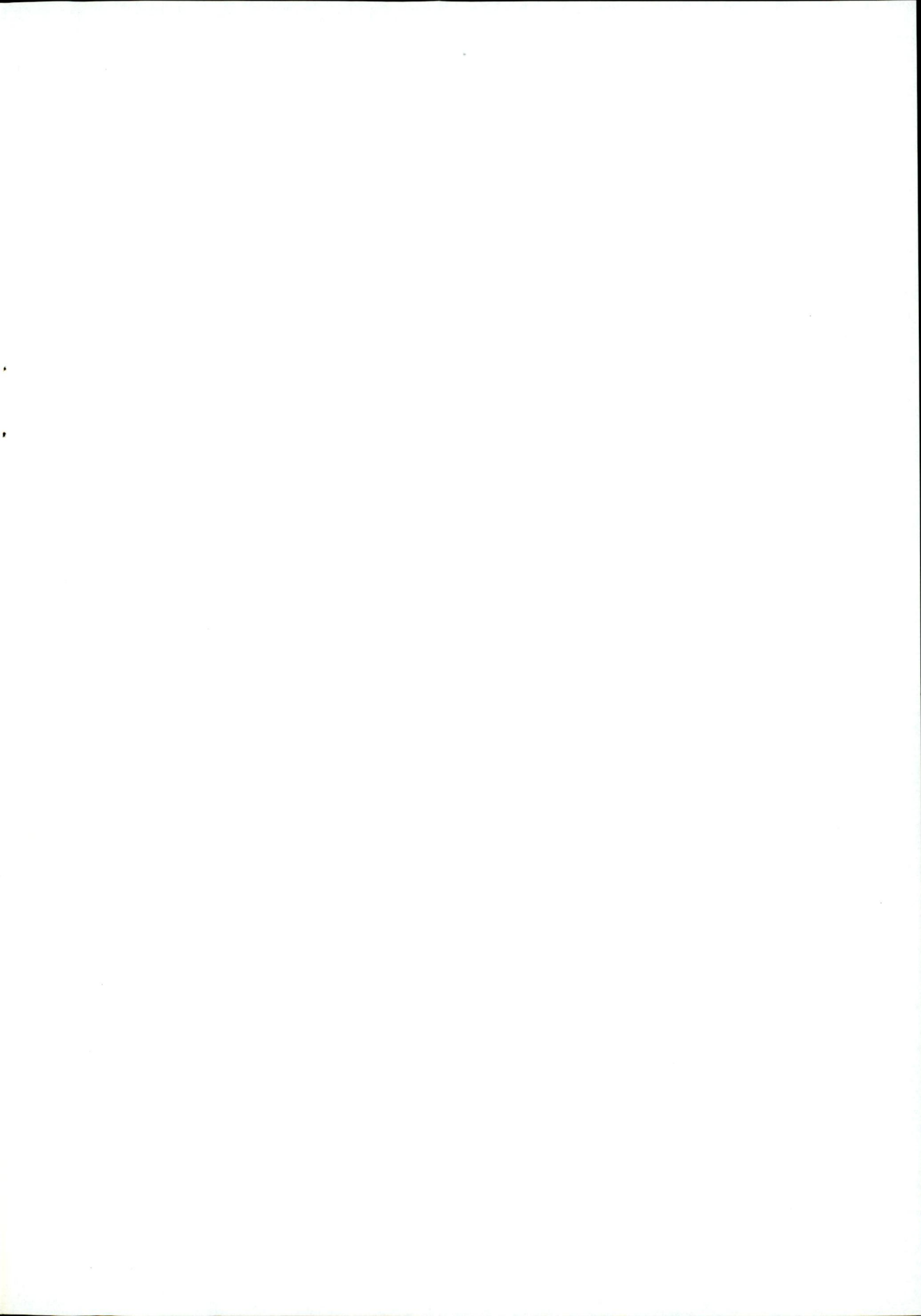
25 22. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) A regulation may create an offence punishable by a penalty not
 30 exceeding 5 penalty units.

Amendment of Search Warrants Act 1985 No. 37, s. 10 (Definitions)

23. The Search Warrants Act 1985 is amended by inserting in the definition of "search warrant" in section 10 in alphabetical order the matter "section 16 of the Children (Interstate Transfer of Offenders) Act 1988;".





11

11