

INTERSTATE

CHILD PROTECTION WARRANTS

PROTOCOL

21 MARCH 2002

CONTENTS

1. PURPOSE.....	1
2. DEFINITIONS.....	1
3. THE ROLE OF POLICE.....	2
4. THE ROLE OF THE DEPARTMENTS.....	2
5. SEPA’S APPLICABILITY TO INTERSTATE CHILD PROTECTION WARRANTS	2
6. WHO MAY APPREHEND A PERSON UNDER SEPA	3
7. WHEN MUST THE PERSON BE TAKEN BEFORE A MAGISTRATE OR JUSTICE OF THE PEACE WHO IS ABLE TO ISSUE WARRANTS (OR VICTORIAN BAIL JUSTICE)	3
8. ADJOURNING AN APPLICATION.....	3
9. FINAL ORDERS.....	3
10. ANCILLARY PROVISIONS	4
11. INTERSTATE DEPARTMENTAL LIAISON OFFICER.....	4
12. INTERSTATE POLICE LIAISON OFFICER	4
13. PROVIDING INFORMATION REGARDING OFFICERS.....	4
14. THE INITIAL STEPS FOR THE CHILD PROTECTION OFFICER	5
15. THE INTERSTATE DEPARTMENTAL LIAISON OFFICER INFORMS INTERSTATE OFFICERS.....	5
16. INTERSTATE POLICE LIAISON OFFICER OVERSEEING CONTROL OF THE WARRANT	6
17. ONCE POLICE APPREHEND A CHILD.....	6
18. BRINGING THE CHILD BEFORE A MAGISTRATE OR JUSTICE OF THE PEACE WHO IS ABLE TO ISSUE WARRANTS (OR VICTORIAN BAIL JUSTICE)	6
19. ORDER IF THE ACCOMPANYING CHILD PROTECTION OFFICER IS PRESENT	6
20. INTERIM ORDER IF THE ACCOMPANYING CHILD PROTECTION OFFICER IS NOT PRESENT.....	7
21. VARYING THE PROCESS - GENERAL PRINCIPLES	7
22. VARYING THE PROCESS - ILLUSTRATIVE EXAMPLES:	8
23. COSTS	9
24. DISPUTE RESOLUTION	9
25. COMMENCEMENT OF THE PROTOCOL	9
26. REVIEW OF THE PROTOCOL	9
27. AMENDMENTS TO THE PROTOCOL.....	9
28. WITHDRAWAL	9

INTERSTATE CHILD PROTECTION WARRANTS PROTOCOL

Introduction

1. *Purpose*

The purpose of this Protocol is to:

- a) improve the provision of services to children and young persons who are the subject of an interstate child protection warrant of apprehension;
- b) provide guidance to Departmental and Police Officers and improve the co-ordination of Departmental and Police operations; and

Decisions made under this Protocol should promote the care, protection and best interests of children and young persons who are subject to Child Protection Warrants.

Whilst this Protocol is not legally binding on the Parties, all Parties undertake to comply with its terms.

2. *Definitions*

For the purposes of this protocol:

“Accompanying Child Protection Officer” means the Child Protection Officer who is referred to in clause 14(b)(iv) below;

“Child Protection Officer” means a person who has statutory authority or responsibility for undertaking child protection work within a Department;

“Child Protection Warrant” means a warrant, which is issued under a Child Welfare Law, for the apprehension of a child;

“Child Welfare Law” means State child protection legislation;

“Children’s Court Magistrate” means a magistrate who, in that capacity, deals with cases relating specifically to children. If there are no such magistrates in a State, then for that State it means a magistrate who can make orders in that State pursuant to the Child Welfare Laws;

“Department” means a State Department which has responsibility for administering the Child Welfare Law of the State or which has officers who have such responsibility;

“Interstate Departmental Liaison Officer” means a person appointed pursuant to clause 11 below;

“Interstate Liaison Officer” means an Interstate Departmental Liaison Officer and/or an Interstate Police Liaison Officer;

“Interstate Police Liaison Officer” means a person appointed pursuant to clause 12 below;

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Interstate Child Protection Warrants Protocol

“Justice of the Peace who is able to issue warrants” means a justice of the peace who has power to issue warrants under a law of the State in which the office is held;

“Victorian Bail Justice” means a person who is appointed under section 120 of the *Magistrates’ Court Act 1989 (Vic)* as a bail justice;

“Person under a Restraint” is defined in section 3 of SEPA and includes a person on bail or most other non-custodial sentences;

“Police” means a State police force or service or the Australian Federal Police;

“SEPA” means the *Service and Execution of Process Act 1992 (Cth)*; and

“State” includes the Northern Territory and the Australian Capital Territory.

“Warrant” includes the original document and subsequent copies made and distributed to Interstate Police

The Role of Police and the Departments in Relation to Interstate Child Protection Warrants

3. *The Role of Police*

Police are responsible for finding a child who is referred to in a Child Protection Warrant, executing that warrant, taking the child into safe custody and seeking the orders referred to in this Protocol.

4. *The Role of the Departments*

The Departments are responsible for seeking Child Protection Warrants and providing care to the children who are apprehended pursuant to those warrants in accordance with the directions of a Magistrate or Justice of the Peace who is able to issue warrants (or a Victorian Bail Justice).

Outline of SEPA

5. *SEPA’s Applicability to Interstate Child Protection Warrants*

- a) SEPA is a Commonwealth Act which enables, amongst other things, for warrants from one State to be executed in another State. If a warrant is executed interstate, it must be executed in accordance with SEPA. SEPA addresses issues such as who can execute the warrant, taking the apprehended person before the Court and the orders that the Court can then make.
- b) SEPA enables valid child protection warrants to be executed interstate.
- c) Warrant is defined in section 3 of SEPA to include “a process issued by a court ... in accordance with a law of a State ... that authorises the apprehension of a person.”

- d) A person who is named in a Child Protection Warrant issued in a State may be apprehended in another State, if that person is not in gaol: s.82(1) & (2).

6. *Who May Apprehend a Person Under SEPA*

The person may be apprehended by:

- a) a police officer in the State in which the person is found; or
 b) the Sheriff of that State or any of the Sheriff's officers; or
 c) a member of the Australian Federal Police: s.82(3).

7. *When Must the Person be Taken Before a Magistrate or Justice of the Peace Who Is Able To Issue Warrants (or Victorian Bail Justice)*

Section 83(1)(a) provides that:

“As soon as practicable after being apprehended, the person is to be taken before a magistrate or justice of the peace who is able to issue warrants” [or Victorian bail justice] “of the State in which the person was apprehended.”

8. *Adjourning an Application*

Section 83(14)(a) has the following provision for adjournments:

“the magistrate or justice of the peace who is able to issue warrants” [or Victorian bail justice] “may adjourn the proceeding and remand the person on bail, or in such custody as the magistrate or justice of the peace who is able to issue warrants” [or Victorian bail justice] “specifies, for the adjournment.”

9. *Final Orders*

Section 83(8) provides, amongst other things, that if:

- * a Child Protection Warrant is valid and produced to the court (the warrant can be either a copy or the original); and
- * the magistrate or justice of the peace who is able to issue warrants [or Victorian bail justice] does not adjourn the hearing; and
- * the magistrate or justice of the peace who is able to issue warrants [or Victorian bail justice] does not place the child on bail; and
- * the person is not a Person Under Restraint or in a gaol:

“the magistrate or justice of the peace who is able to issue warrants” [or Victorian bail justice] “must order

... (b) *that the person be taken, in such custody or otherwise as the magistrate or justice of the peace who is able to issue warrants* [or Victorian bail justice] *“specifies, to a specified place in the place of issue of the warrant.”*

10. *Ancillary Provisions*

Sub-sections 83(9),(11) & (12) also provide that:

- (9) *The order may be subject to other specified conditions.*
- (11) *The magistrate or justice of the peace who is able to issue warrants [or a Victorian bail justice] may suspend an order made under Section 83 paragraph (8)(b) for a specified period.*
- (12) *On suspending the order, the magistrate or justice of the peace [or Victorian bail justice] must order that the person be remanded ...*
- (a) *in such custody as the magistrate or justice of the peace [or Victorian bail justice] specifies ... until the end of that period.*

Interstate Liaison Officers

11. *Interstate Departmental Liaison Officer*

Each Department must nominate a position which will be referred to in this Protocol as the “**Interstate Departmental Liaison Officer**”. This position must have either a 24 hour number or there must be an alternative number which is an after hours number.

12. *Interstate Police Liaison Officer*

Each Police Force and Service must nominate a position which will be referred to in this Protocol as the “**Interstate Police Liaison Officer**”. This position must have either a 24 hour number or there must be an alternative number which is an after hours number.

13. *Providing Information Regarding Officers*

- a) Each Police and Department must provide:
- i) the contact details of each Interstate Liaison Officer to all of the other Police and Departments; and
- ii) the details of the senior officer referred to in clause **24** (b) below;
- b) If any of the above details change, the Police or Department (as the case may be) must notify the other Police and Departments of the new details within 2 weeks of the change.
- c) The Interstate Liaison Officer is responsible for:

Interstate Child Protection Warrants Protocol

- i) ensuring that this clause is complied with in relation to his or her Department or Police Force or Service; and
- ii) promoting knowledge of, and compliance with, this Protocol.

Process

14. *The Initial Steps for the Child Protection Officer*

If a Child Protection Officer obtains a Child Protection Warrant which is to be executed interstate:

- a) the Child Protection Officer must arrange for the the original warrant to be forwarded to the Interstate Police Liaison Officer from his or her own State;
- b) the Child Protection Officer must inform the Interstate Departmental Liaison Officer from his or her own State and the Police Liaison Officer from his or her own State of:
 - i) the type of warrant and child protection order, if any, that applies to the child; and
 - ii) where the child may be located, who may be with the child; and
 - iii) any special circumstances regarding the child; and
 - iv) if available, the details of the Child Protection Officer who is likely to accompany the child from the place where the child is apprehended to the State where the Child Protection Warrant was issued (“Accompanying Child Protection Officer”).
- c) If any of the above details change, the Child Protection Officer must inform the Interstate Departmental Liaison Officer from her/his State of the changes.
- d) The Child Protection Officer must ensure that the warrant contains the details of the person who applied for the warrant and, if possible, the details of the Interstate Departmental Liaison Officer from the officer’s State.

15. *The Interstate Departmental Liaison Officer Informs Interstate Officers*

The Interstate Departmental Liaison Officer (from the State where the warrant was issued) will provide the information which he or she received pursuant to clause 14 above to:

- a) the Interstate Departmental Liaison Officer from the State where the child is believed to have gone; and
- b) the Interstate Police Liaison Officer from the State where the child is believed to have gone; and

- c) the Interstate Police Liaison Officer from the State where the warrant was issued.

16. *Interstate Police Liaison Officer Overseeing Control of the Warrant*

The Interstate Police Liaison Officer (from the State where the warrant was issued) oversees the control of the warrant and is responsible for copying the warrant and, where appropriate, arranging for the destruction of the warrant.

When the Interstate Police Liaison Officer provides a copy of the warrant to interstate police, the warrant should have a coversheet which :

- a) provides the details of the warrant; and
- b) provides contact details from the Department where the warrant was sought; and
- c) refers to this Protocol; and
- d) any other information that would assist in the execution of this warrant, such as where the child may be located, who may be with the child and any special circumstances regarding the child.

17. *Once Police Apprehend a Child*

Once Police have apprehended the child, the police must promptly notify the Interstate Departmental Liaison Officer from the State where the child was apprehended of:

- a) the place and time of the apprehension of the child; and
- b) the likely place and time when the child will be taken before a magistrate or justice of the peace who is able to issue warrants (or Victorian bail justice).

The Interstate Departmental Liaison Officer from the State where the child was apprehended must then promptly provide this information to the Interstate Departmental Liaison Officer from the State where the warrant was issued and the Accompanying Child Protection Officer.

18. *Bringing the Child Before a Magistrate or Justice of the Peace who is able to issue warrants [or Victorian bail justice]*

As soon as practicable after the child is taken into safe care, the police must have the child brought before a magistrate or justice of the peace who is able to issue warrants (or Victorian bail justice). If practicable, the police should seek to have the matter heard by a Children's Court Magistrate.

19. *Order if the Accompanying Child Protection Officer is Present*

If, at the time that the child is brought before a magistrate or justice of the peace who is able to issue warrants (or Victorian bail justice), the

Interstate Child Protection Warrants Protocol

Accompanying Child Protection Officer is present, the police should seek an order that the child is placed in the custody of the Accompanying Child Protection Officer.

20. *Interim Order if the Accompanying Child Protection Officer is Not Present*

If, at the time that the child is brought before a magistrate or justice of the peace who is able to issue warrants (or Victorian bail justice), the Accompanying Child Protection Officer is not present, the police should seek an interim order which provides that:

- a) the child is placed in the custody of the Department Head or a Child Protection Officer from the Department in the State where the child was apprehended until the earlier of:
 - i) custody is transferred to the person referred to in paragraph "(b)" below; or
 - ii) a specified period (eg 5 working days);
- b) the Department Head or a Child Protection Officer (as the case may be) from the Department in the State where the warrant was issued shall have custody of the child when custody is transferred by the person referred to in paragraph "(a)".

21. *Varying the Process - General Principles*

The process outlined in this protocol is based on the actions which the parties believe are in the best interests of the child who is subject to an Interstate Child Protection Warrant. The process may be varied in the following situations:

- a) If the following people agree to a varied process:
 - i) a Child Protection Officer from the State where the warrant was issued;
 - ii) a Child Protection Officer from the State where the child is apprehended to the extent (if any) that the decision relates to the care of a person pursuant to an order referred to in clause 20 above; and
 - iii) a Police Officer to the extent (if any) that the decision would impose further obligations upon the relevant officer from the Police
- b) If:
 - i) the child is in gaol;
 - ii) the child is a Person Under Restraint; or

- iii) a magistrate or justice of the peace who is able to issue warrants (or Victorian bail justice) notes that he or she is unwilling to grant the orders which are sought by the police officer,

the orders sought should reflect what the officers, referred to in clause "21(a)" above, believe is appropriate and in the best interests of the child.

22. *Varying the Process - Illustrative examples:*

If the child is apprehended very close to the office of the Department which sought the warrant, the police force which apprehended the child may deal directly with that Department. For instance, the police may apprehend a child in Albury in accordance with a warrant issued in Wodonga. In this case, the police who apprehend the child may deal directly with the Departmental Liaison Officer in Wodonga (this is different to the process contained in clause 17 above);

After the execution of the warrant, the child could be placed on a plane in the State where the child was apprehended and the relevant officer in the State which issued the child protection warrant could collect the child at the airport. This approach would need to be consistent with the order of a magistrate or justice of the peace who is able to issue warrants (or a Victorian bail justice);

If, at the time that the child is brought before the magistrate or justice of the peace who is able to issue warrants (or Victorian bail justice), the Accompanying Child Protection Officer is not present and the Magistrate is not prepared to grant the order outlined in clause 20 above, the police should seek an order adjourning the hearing and placing the child in the custody of the Department Head or a Child Protection Officer from the Department in the State where the child was apprehended. Upon the return of the matter, the child could be placed with the Department Head or a Child Protection Officer from the Department in the State which sought the order.

These examples are not exhaustive. They illustrate the capacity for some flexibility in ensuring the best interests of the child who is subject to an Interstate Child Protection Warrant.

Financial Arrangements

23. Costs

Each Department and Police Force or Service shall be responsible for the costs it incurs in relation to any proceeding under SEPA.

Dispute Resolution Process

24. Dispute Resolution

- a) Any dispute in relation to a party's compliance with this protocol should initially be dealt with by the relevant Interstate Liaison Officers.
- b) If the dispute cannot be settled by the respective Interstate Liaison Officers, then the matter shall be referred to people who are senior officers nominated by each Department and Police Force or Service as the appropriate officers to resolve such disputes.

Review & Withdrawal

25. Commencement of the Protocol

This protocol will commence operation on 1 June 2002.

26. Review of the Protocol

The parties will constantly monitor the Protocol and will commence a formal review of the Protocol 12 months after it comes into effect.

27. Amendments to the Protocol

The Protocol can be amended if all of the Interstate Liaison Officers agree to the change.

28. Withdrawal

A party to this protocol may withdraw from the protocol with 12 months notice. If a party withdraws from the protocol, the protocol continues to apply to all other parties.

Interstate Child Protection Warrants Protocol

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CONTENTS

