

**YOUNG OFFENDERS AMENDMENT BILL 2023**

*Introduction and First Reading*

Bill introduced, on motion by **Mr W.J. Johnston (Minister for Corrective Services)**, and read a first time.

Explanatory memorandum presented by the minister.

*Second Reading*

**MR W.J. JOHNSTON (Cannington — Minister for Corrective Services)** [12.17 pm]: I move —

That the bill be now read a second time.

Detaining adults together with children in the same facility presents an inherent risk to the safety and wellbeing of young detainees, and to the good order of the detention centre. International instruments and contemporary research emphasise the importance of separating children from adults in detention. The basis for this is that the presence of adults can have a negative impact on the health, safety and wellbeing of children. In fact, this is already recognised under the general principles of juvenile justice contained in section 7 of the Young Offenders Act 1994, which provides that a young person in detention is not exposed to contact with any adult detained in that facility. It is important to observe that the reform proposed in the bill is broadly consistent with most other Australian jurisdictions that provide for the transfer of detainees from youth detention centres to adult prisons upon reaching the age of 18. Relevant legislation in the Northern Territory, Queensland, the Australian Capital Territory and New South Wales provides for the transfer of adult detainees to a prison without the involvement of a court, subject to the exercise of discretion in some circumstances by the relevant public sector authority or minister.

Locating adults at prison facilities rather than with children in detention centres not only benefits children in detention, but also can be beneficial for the adult. Most current adult detainees held in youth detention are sentenced offenders, rather than remandees. Accordingly, it is important that they have access to age-appropriate programs and rehabilitation over the course of their sentence. Prisons provide a better opportunity for adults to engage in work-ready training and programs that will support young adults in their transition to independence. Programs of this kind are not offered to the same extent in youth detention facilities, which largely focus on school-based education programs. Further, transfer to a prison may enable an adult to be accommodated in a facility closer to home, which may improve their access to family support and engagement.

In this state, it is already the case that an offender who has reached 18 years of age must be sentenced under the Sentencing Act 1995, and any term of imprisonment must be served in prison. This is set out in sections 50B and 118A of the Young Offenders Act 1994. Similarly, if a young person is released from detention under a supervised release order, the equivalent of an adult parole order, and they breach the order after turning 18 years of age, the offender must be placed in a prison. This is set out in existing section 150 of the Young Offenders Act 1994. However, the existing provisions in the Young Offenders Act 1994 that permit the transfer of a detainee from a detention centre to a prison once they reach 18 years of age are procedurally cumbersome, resource intensive and inconsistent with the principle that adults ought not to be detained with children.

Currently, to transfer an adult who is serving a sentence in a detention centre to a prison, an application must be made to a judge of the Children's Court—that is, a District Court judge. An application must address a range of factors and the decision is ultimately at the court's discretion. Similarly, to transfer an adult who is remanded in a detention centre to a prison, an application must be made to the court for a direction that the person be transferred to a prison. This is an inefficient use of resources, particularly when having regard to the overarching principle that adults ought not to be detained in the same facility as children. This bill, the Young Offenders Amendment Bill 2023, will remedy that situation.

I now turn to some of the key amendments to the Young Offenders Act 1994 contained in the bill. Clause 5 of the bill will amend section 19 to make it clear that young persons over the age of 18 who are apprehended by police are not required to be held in a detention centre. This amendment is consistent with current operational practice. Clause 6 of the bill will amend section 21 to require the chief executive officer, being the director general of the Department of Justice, to transfer a person to a prison if they reach 18 years of age while on remand or committal for trial in a detention centre. Similarly, clause 12 of the bill will insert new section 178A to require the chief executive officer to transfer an offender who has reached 18 years of age in a detention centre to a prison to serve the unserved portion of their sentence.

The effect of these amendments will be to enshrine the principle already contained in section 7 of the Young Offenders Act 1994 that children shall be kept separate from adults. However, there will be circumstances in which it is not necessary or appropriate to transfer a detainee to a prison upon their reaching 18 years of age. This bill accounts for those circumstances by permitting the chief executive officer to direct that a relevant transfer provision does not apply in respect of a particular offender. This will be effected in relation to both remandees and offenders serving

a sentence under proposed sections 21A and 178B respectively. These amendments are set out under clauses 7 and 12 of the bill.

In making that decision, the chief executive officer must have regard to the interests of the young person, the interests of other persons detained in the detention centre and to any other matter that the chief executive officer considers appropriate. The bill also makes it clear that the chief executive officer is not required to afford a person natural justice and no review or appeal right exists in relation to the exercise of the chief executive officer's discretion. These limiting provisions set out in proposed sections 21A and 178B are consistent with the primary position that a person must be transferred to a prison once reaching 18 years of age.

The bill will also make a number of consequential amendments, including improved information-sharing arrangements to ensure that the superintendent of a prison to which a person will be transferred is able to access information in relation to the person held by a detention centre.

To conclude, the reforms proposed in this bill are consistent with international instruments, contemporary research and existing statutory principles of juvenile justice. They will improve the wellbeing of children in detention, the rehabilitation prospects of young adults in the custodial system, and the safe operation and good order of Banksia Hill Detention Centre.

Debate adjourned, on motion by **Mr P.J. Rundle**.