



Western Australia

# **Young Offenders Amendment Act 2023**

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As at 26 Jun 2023

No. 15 of 2023

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# Young Offenders Amendment Act 2023

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Western Australia

# Young Offenders Amendment Act 2023

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No. 15 of 2023

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**An Act to amend the *Young Offenders Act 1994*.**

[Assented to 26 June 2023]

The Parliament of Western Australia enacts as follows:

**s. 1**

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**1. Short title**

This is the *Young Offenders Amendment Act 2023*.

**2. Commencement**

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on the day after that day.

**3. Act amended**

This Act amends the *Young Offenders Act 1994*.

**4. Section 15A amended**

After section 15A(7) insert:

- (7A) Despite this section, the chief executive officer may provide information relating to a person who is, or was, a young offender or detainee (as the case may be) to 1 or more of the individuals referred to in subsection (5)(a) if —
  - (a) the person is transferred under section 21(2); or
  - (b) a direction is made in respect of the person under section 178(3); or
  - (c) the person is transferred under section 178A(2).

**5. Section 19 amended**

- (1) In section 19(2) after “custody” insert:

who is under 18 years old and

- (2) In section 19(3) after “young person” insert:

who is under 18 years old

Note: The heading to amended section 19 is to read:

**Detention of young persons apprehended by police**

**6. Section 21 amended**

- (1) Delete section 21(1) and insert:

(1) Subject to the *Bail Act 1982* —

- (a) a young person who is under 18 years old may be detained in a detention centre during the period for which the person has been remanded by a court, or during the period of the person’s detention on committal for trial in the Supreme Court or the District Court; and
- (b) a young person who has reached the age of 18 years must not be detained in a detention centre during either of the periods described in paragraph (a) unless a direction under section 21A(1) or 178B(1) in respect of the young person is in force.

- (2) In section 21(2) delete the passage that begins with “subsection (1),” and continues to the end of the subsection and insert:

subsection (1)(a), the chief executive officer must transfer the young person to a prison under the *Prisons Act 1981* unless a direction under section 21A(1) or 178B(1) in respect of the young person is in force.

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(3) After section 21(2) insert:

- (3) A transfer under subsection (2) must be made within 30 days after —
  - (a) the day on which the young person reaches the age of 18 years; or
  - (b) if the chief executive officer revokes under section 21A(3) or 178B(3) a direction in respect of the young person — the day on which the direction is revoked.
- (4) A failure to comply with subsection (3) does not invalidate the transfer.
- (5) A young person transferred to a prison under subsection (2) is taken to be an adult prisoner on remand.

**7. Section 21A inserted**

At the end of Part 4 insert:

**21A. Chief executive officer may direct that mandatory transfer does not apply**

- (1) The chief executive officer may, in writing, direct that a transfer under section 21(2) does not apply in relation to a particular young person.
- (2) In giving a direction under subsection (1), the chief executive officer —
  - (a) must have regard to —
    - (i) the interests of the young person; and



- (ii) the interests of other persons detained in the detention centre;
- and
- (b) may have regard to any other matter the chief executive officer considers appropriate.
- (3) The chief executive officer may, in writing, revoke a direction given under subsection (1).
- (4) The rules known as the rules of natural justice (including any duty of procedural fairness) do not apply to or in relation to the doing or omission of any act, matter or thing under this section by the chief executive officer.
- (5) The young person cannot apply for a review of, or an appeal against, a decision under this section.
- (6) Subsection (5) does not limit judicial review for jurisdictional error.

**8. Section 118 amended**

In section 118(4) delete “section 178(4)(a),” and insert:

section 178(4),

Note: The heading to amended section 118 is to read:

**Sentencing for offences punishable by imprisonment**

**9. Section 118A amended**

- (1) In section 118A(1):
  - (a) delete “If —” and insert:

Subsection (1A) applies if —

- (b) in paragraph (b) delete “he or she is to be imprisoned,” and insert:  
  
the young person is to be imprisoned.
  - (c) delete the passage that begins with “then,” and continues to the end of the subsection.
- (2) After section 118A(1) insert:
- (1A) The young person must serve the sentence in a detention centre and not in a prison unless —
    - (a) a direction is made in respect of the young person under section 118(4) or 178(3); or
    - (b) the young person is transferred under section 178A(2).
- (3) In section 118A(2):
- (a) delete “If —” and insert:  
  
Subsection (2A) applies if —
  - (b) in paragraph (b) delete “he or she is to be imprisoned,” and insert:  
  
the young person is to be imprisoned.
  - (c) delete the passage that begins with “then” and continues to the end of the subsection.

(4) After section 118A(2) insert:

(2A) The young person must serve the sentence in a prison.

(5) In section 118A(3):

(a) delete “subsection (1),” and insert:

subsection (1A),

(b) delete “offender” and insert:

young person

**10. Section 142B amended**

In section 142B(2) delete “CEO.” and insert:

chief executive officer.

**11. Section 178 amended**

(1) Before section 178(1) insert:

(1A) This section applies to an offender who has reached the age of 16 years but is under 18 years old.

(2) In section 178(1) delete “an offender” and insert:

the offender

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- (3) Delete section 178(2).
- (4) In section 178(3) delete “sentence in a prison.” and insert:  
  
sentence.
- (5) Delete section 178(4) and insert:
  - (4) A direction under subsection (3) can be made only if the Court is satisfied that the offender should be transferred to a prison because —
    - (a) the offender’s behaviour in the detention centre (including when serving a previous sentence) is or has been a significant risk to the safety or welfare of other people in custody in, or of the staff of, the centre; or
    - (b) of the offender’s antecedents; or
    - (c) of any other reason the Court thinks is relevant.
- (6) In section 178(5)(b) delete “Part 8 and Division 8 of Part 7” and insert:

Part 7 Division 8 and Part 8

Note: The heading to amended section 178 is to read:

**Transfer of offender who is 16 or 17 years old from detention centre to prison**

**12. Sections 178A and 178B inserted**

After section 178 insert:

**178A. Transfer of offender who has reached age of 18 years from detention centre to prison**

- (1) This section applies to an offender who has reached the age of 18 years.
- (2) If the offender is in a detention centre serving a sentence of detention or a sentence of imprisonment, the chief executive officer must transfer the offender to a prison under the *Prisons Act 1981* to serve the unserved portion of the sentence unless a direction under section 178B(1) in respect of the offender is in force.
- (3) A transfer under subsection (2) must be made within 30 days after —
  - (a) the day on which the offender reaches the age of 18 years; or
  - (b) if the chief executive officer revokes under section 178B(3) a direction in respect of the offender — the day on which the direction is revoked.
- (4) A failure to comply with subsection (3) does not invalidate the transfer.
- (5) If the chief executive officer transfers under subsection (2) an offender who is serving a sentence of detention —
  - (a) the *Prisons Act 1981* applies to and in respect of the offender while in prison; and
  - (b) Part 7 Division 8 and Part 8 continue to apply to the sentence of detention.

**178B. Chief executive officer may direct that mandatory transfer does not apply**

- (1) The chief executive officer may, in writing, direct that a transfer under section 178A(2) does not apply in relation to a particular offender.
- (2) In giving a direction under subsection (1), the chief executive officer —
  - (a) must have regard to —
    - (i) the interests of the offender; and
    - (ii) the interests of other persons detained in the detention centre;
  - and
  - (b) may have regard to any other matter the chief executive officer considers appropriate.
- (3) The chief executive officer may, in writing, revoke a direction given under subsection (1).
- (4) The rules known as the rules of natural justice (including any duty of procedural fairness) do not apply to or in relation to the doing or omission of any act, matter or thing under this section by the chief executive officer.
- (5) The offender cannot apply for a review of, or an appeal against, a decision under this section.
- (6) Subsection (5) does not limit judicial review for jurisdictional error.

**13. Part 11 Division 3 heading replaced**

Delete the heading to Part 11 Division 3 and insert:

**Division 3 — Transitional provisions**

**Subdivision 1 — General**

**14. Part 11 Division 3 Subdivision 2 inserted**

After section 235 insert:

**Subdivision 2 — Transitional provisions for *Young Offenders Amendment Act 2023***

**235A. Term used: commencement day**

In this Division —

*commencement day* means the day on which the *Young Offenders Amendment Act 2023* section 4 comes into operation.

**235B. Young persons in detention on commencement day who have reached age of 18 years**

- (1) This section applies to a young person who —
  - (a) has reached the age of 18 years before commencement day; and
  - (b) is, on commencement day, detained in a detention centre under section 21(1) as in force immediately before commencement day.
- (2) Section 21 applies to the young person as if they reached the age of 18 years on commencement day.

**235C. Offenders in detention on commencement day who have reached age of 18 years**

- (1) This section applies to an offender who —
  - (a) has reached the age of 18 years before commencement day; and
  - (b) is, on commencement day, in a detention centre serving a sentence of detention or a sentence of imprisonment.
- (2) Section 178A applies to the offender as if they reached the age of 18 years on commencement day.

**235D. Applications not yet determined taken to be withdrawn**

- (1) An application under section 21(2) as in force immediately before commencement day that is made but not determined before commencement day is, on and from commencement day, taken to be withdrawn.
- (2) An application under section 178(1) as in force immediately before commencement day in relation to an offender who has reached the age of 18 years that is made but not determined before commencement day is, on and from commencement day, taken to be withdrawn.

