



Accommodation of detainees over 18 in adult custody – information for legal stakeholders

Background

The *Strengthening Communities Safety Act 2023* was passed by the Queensland Parliament on 16 March 2023 and commenced on 22 March 2023, making changes to the *Youth Justice Act 1992*, the *Bail Act 1980*, the *Police Powers and Responsibilities Act 2000* and the Criminal Code.

These changes include new arrangements in the *Youth Justice Act 1992* for the accommodation of detainees over 18 in adult facilities.

Sentenced detainees

Transfers during period of detention

If a court sentences a young person to a detention order, they become liable for transfer to a corrective service facility if:

- they turn eighteen years of age whilst serving a period of detention and are liable to serve a remaining period of detention of two months or more of actual custody (s.276B(1)(a)), or
- they are 18 years old when commencing detention (sentence date) and are liable to serve a remaining period of two months or more actual custody (s.276B(1)(b)).

If this is the case the chief executive must give the young person a 'prison transfer direction' advising them they will be transferred to a correctional service facility on a given day (s.276C(1)).

A process then follows, including the chief executive facilitating a consultation between the person and a lawyer (s.276C(4)), the opportunity for the young person to apply for a delay (s.276C(3)(c)), and the chief executive considering a range of factors before making a decision (s.276DA(4) & (5)). An application for delay under s.276DA must be made within five business days of the consultation with the lawyer, or if the young person refused to consult with a lawyer, within five business days of that refusal (s.276DA(2)).

Following the decision, the chief executive must facilitate a further consultation with a lawyer (s.276DA(7)(c)).

The detainee may seek a review of the chief executive's decision in the Childrens Court (s.276DB). The application must be made within five business days of the further consultation with the lawyer, or if the young person refused to consult with a lawyer, within five business days of that refusal. (s.276DB(2)). If a review is in progress, any transfer will be stayed until the review is finalised (s.276DB(3)).

Application for delay at the time of sentencing

Apart from consequential amendments, there are no changes to section 276D of the Act, which provides for an application to a sentencing court for a delay of transfer if the court's sentence order has made a young person liable for transfer.



Automatic accommodation in an adult facility of persons sentenced when aged over 18½

Apart from a consequential amendment, there is no change to section 276F of the Act, which provides that young people are automatically accommodated in a correctional services facility if they are 18½ or older when sentenced, or when they return to custody to complete a period of detention, for example, because of a breach of an order.

Remanded detainees

New provisions establish a process for the transfer of a remandee if they are 17 years and 10 months while remanded in custody with no set court date, or no court date for at least two months (part 8, division 2A, subdivision 3).

If this is the case, the chief executive may give a prison transfer notice to the young person informing them they are being considered for transfer to an adult correctional facility (s.276H(1)).

A remandee aged at least 17 years and 10 months may also request a prison transfer notice (s.276H(5)).

A process then follows, including the chief executive facilitating a consultation between the person and a lawyer (s.276H(7)), the opportunity for the person to make a submission (s.276H(1)(d)), and the chief executive considering a range of factors before making a decision (s.276I(2)).

An actual transfer cannot occur until the young person turns 18 years of age (s.276I(1)).

If the decision is to transfer the person, the chief executive must facilitate a further consultation with a lawyer (s.276I(4)(b)).

The remandee may seek a review of the chief executive's decision in the Childrens Court (s.276J). The young person must make the

application for review within five business days of the consultation with the lawyer, or if the young person refused to consult with a lawyer, within five business days of that refusal (s.276J(2)).

If a review is in progress, any transfer will be stayed until the review is finalised (s.276J(3)).

Further information

For further information about the *Strengthening Communities Safety Act 2023* please email Youth Justice Policy, Strategy and Legislation (YJPSL) at OSED_YJPSL@cyjma.qld.gov.au.

YJPSL cannot give legal advice but may be able to assist with other questions.