

NORTHERN TERRITORY OF AUSTRALIA

SENTENCING LEGISLATION AMENDMENT ACT 2023

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Act No. 11 of 2023

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# NORTHERN TERRITORY OF AUSTRALIA

Act No. 11 of 2023

An Act to amend the *Sentencing Act 1995* and the *Youth Justice Act 2005*

[Assented to 26 May 2023]  
[Introduced 30 March 2023]

The Legislative Assembly of the Northern Territory enacts as follows:

## Part 1 Preliminary matters

### 1 Short title

This Act may be cited as the *Sentencing Legislation Amendment Act 2023*.

### 2 Commencement

- (1) Subject to subsection (2), this Act commences on the day fixed by the Administrator by *Gazette* notice.
- (2) If a provision of this Act does not commence before 9 October 2024, it commences on that day.

## Part 2 Amendment of Sentencing Act 1995

### 3 Act amended

This Part amends the *Sentencing Act 1995*.

**4 Section 3 amended (Interpretation)**

Section 3(1)

*insert*

**Aboriginal experience report**, for Part 6, Division 3A, see section 107B.

**community court sentencing procedure**, for Part 6, Division 3A, see section 107A.

**Law and Justice Group**, for Part 6, Division 3A, see section 107C.

**5 Part 6, Division 3A inserted**

After section 107

*insert*

**Division 3A Community court sentencing procedure****107A Definitions**

In this Division:

**Aboriginal experience report**, see section 107B.

**community court sentencing procedure** means the sentencing of an offender in accordance with this Division.

**Law and Justice Group**, for a place, see section 107C.

**107B Aboriginal experience report**

- (1) An **Aboriginal experience report** is a report that is prepared by members of a Law and Justice Group in respect of an offender and the offence.
- (2) An Aboriginal experience report may contain the following information in respect of an offender and the offence:
  - (a) the personal circumstances and background of the offender and the offender's family;
  - (b) the family relationships of the offender;
  - (c) the employment status of the offender;
  - (d) the offender's health;

- (e) the victim of the offence;
  - (f) the impact of the offending on the offender's community;
  - (g) the relationship between the offender and the offender's community, including cultural connection;
  - (h) the steps the offender has taken towards rehabilitation or restoration;
  - (i) general information or research about criminogenic factors.
- (3) An Aboriginal experience report must be in a manner or form approved by the Chief Judge.

### **107C Law and Justice Group**

- (1) The Minister may approve a place for which a **Law and Justice Group** may be established.
- (2) The regulations may prescribe how a Law and Justice Group for a place is constituted.
- (3) Without limiting subsection (2), the regulations may prescribe the following:
- (a) how the members of a Law and Justice Group for a place are appointed;
  - (b) who appoints the members of a Law and Justice Group for a place.
- (4) A Law and Justice Group for a place has functions under this or any other Act.

### **107D Application for community court sentencing procedure**

- (1) An offender may apply to the Local Court for the Court to sentence the offender for an offence in accordance with the community court sentencing procedure if the offender:
- (a) has pleaded guilty to an offence in the Local Court; and
  - (b) has agreed with the prosecutor to facts in relation to the offence and those facts have been given to the Court; and
  - (c) is Aboriginal.
- (2) The application must specify a place:
- (a) in the Territory for the sitting of the Court; and

- (b) for which a Law and Justice Group is established.
- (3) The Court may grant the application or refuse to grant the application.
- (4) In deciding whether to grant the application or refuse to grant the application, the Court must have regard to:
  - (a) the offender's connection to the place specified in the application; and
  - (b) any other matter the Court considers relevant.

**107E Community court sentencing procedure**

- (1) If the Local Court grants an application under section 107D(3), the Court must:
  - (a) sit and hear the proceedings at the place specified in the offender's application; and
  - (b) impose the sentence on the offender at the place.
- (2) Before imposing a sentence on the offender, the Court:
  - (a) must have regard to an Aboriginal experience report in relation to the offender and the offence; and
  - (b) may have regard to the responses given to any questions asked of the members of the Law and Justice Group who prepared the report as mentioned in subsection (4).
- (3) The Court may adjourn the proceedings to enable the Aboriginal experience report to be prepared and may admit the offender to bail or remand the offender in custody.
- (4) After receiving the Aboriginal experience report the Court may, in relation to the information contained in the report:
  - (a) ask questions of the members of the Law and Justice Group who prepared the Aboriginal experience report; and
  - (b) allow another person to ask questions of the members of the Law and Justice Group who prepared the Aboriginal experience report.
- (5) The response given to a question asked under subsection (4) may be given in writing or orally.

- (6) To avoid doubt, this section does not limit the matters the Court would ordinarily have regard to in imposing a sentence on the offender.

**107F Information in Aboriginal experience report and responses of Law and Justice Group**

- (1) The fact that information is contained in an Aboriginal experience report or a response given to a question asked under section 107E(4) does not constitute proof of the information.
- (2) If section 104A applies to information contained in an Aboriginal experience report or a response given to a question asked under section 107E(4), the failure of a court to comply with section 104A in relation to the information does not invalidate the information.

**6 Section 108 amended (Time and place of sentence)**

Section 108(1)

*omit*

The

*insert*

Subject to Division 3A, the

**7 Part 12, Division 11 inserted**

Before Schedule 2

*insert*

**Division 11 Transitional matters for Sentencing Legislation Amendment Act 2023**

**149 Application of Part 6, Division 3A**

- (1) Part 6, Division 3A, as inserted by the *Sentencing Legislation Amendment Act 2023*, applies in relation to the sentencing of an offender for an offence committed after the commencement.
- (2) For subsection (1), if any of the conduct constituting an offence occurred before the commencement, the offence is taken to have been committed before the commencement.

(3) In this section:

**commencement** means the commencement of Part 2 of the *Sentencing Legislation Amendment Act 2023*.

## **Part 3                    Amendment of Youth Justice Act 2005**

### **8                    Act amended**

This Part amends the *Youth Justice Act 2005*.

### **9                    Section 5 amended (Interpretation)**

Section 5(1)

*insert*

**Aboriginal experience report**, for Part 5, Division 4, see section 80B.

**community court sentencing procedure**, for Part 5, Division 4, see section 80A.

**Law and Justice Group**, for Part 5, Division 4, see section 107C of the *Sentencing Act 1995*.

### **10                  Part 5, Division 4 inserted**

After section 80

*insert*

## **Division 4            Community court sentencing procedure**

### **80A            Definitions**

In this Division:

**Aboriginal experience report**, see section 80B.

**community court sentencing procedure** means the sentencing of a youth in accordance with this Division.

**Law and Justice Group**, see section 107C of the *Sentencing Act 1995*.



**80B      *Meaning of Aboriginal experience report***

An ***Aboriginal experience report***, as defined in section 107B of the *Sentencing Act 1995*, applies to this Division as if an offender is a youth under this Act.

**80C      *Application for community court sentencing procedure***

- (1) A youth may apply to the Youth Justice Court for the Court to sentence the youth for an offence in accordance with the community court sentencing procedure if the youth:
  - (a) has pleaded guilty to an offence in the Youth Justice Court; and
  - (b) has agreed with the prosecutor to facts in relation to the offence and those facts have been given to the Court; and
  - (c) is Aboriginal.
- (2) The application must specify a place:
  - (a) in the Territory for the sitting of the Court; and
  - (b) for which a Law and Justice Group is established.
- (3) The Court may grant the application or refuse to grant the application.
- (4) In deciding whether to grant the application or refuse to grant the application, the Court must have regard to:
  - (a) the youth's connection to the place specified in the application; and
  - (b) any other matter the Court considers relevant.

**80D      *Community court sentencing procedure***

- (1) If the Youth Justice Court grants an application under section 80C(3), the Court must:
  - (a) sit and hear the proceedings at the place specified in the youth's application; and
  - (b) make an order under section 83 in relation to the offence at the place.

- (2) Before making the order under section 83, the Court:
  - (a) must consider an Aboriginal experience report in respect of the youth and the offence; and
  - (b) may consider the responses given to any questions asked of the members of the Law and Justice Group who prepared the report as mentioned in subsection (5).
- (3) Sections 72, 73 and 75 apply to an Aboriginal experience report as if the report was requested, received or prepared under Division 2.
- (4) The Court may adjourn the proceedings to enable the Aboriginal experience report to be prepared.
- (5) After receiving the Aboriginal experience report the Court may, in relation to the information contained in the report:
  - (a) ask questions of the members of the Law and Justice Group who prepared the Aboriginal experience report; and
  - (b) allow another person to ask questions of the members of the Law and Justice Group who prepared the Aboriginal experience report.
- (6) The response given to a question asked under subsection (5) may be given in writing or orally.
- (7) To avoid doubt, this section does not limit the matters the Court would ordinarily consider in imposing a sentence on the youth.

**80E Information in Aboriginal experience report and responses of Law and Justice Group**

The fact that information is contained in an Aboriginal experience report or a response given to a question asked under section 80D(5) does not constitute proof of the information.

**80F Rules of Court and practice directions**

The Chief Judge may make rules of Court, or issue practice directions, regulating the practice and procedure of the Court under this Division.

**11 Part 17, Division 8 inserted**

Before the Schedule

*insert*

**Division 9 Transitional matters for Sentencing Legislation Amendment Act 2023**

**241 Application of Part 5, Division 4**

- (1) Part 5, Division 4, as inserted by the *Sentencing Legislation Amendment Act 2023*, applies in relation to the sentencing of a youth for an offence committed after the commencement.
- (2) For subsection (1), if any of the conduct constituting an offence occurred before the commencement, the offence is taken to have been committed before the commencement.
- (3) In this section:

**commencement** means the commencement of Part 3 of the *Sentencing Legislation Amendment Act 2023*.

**Part 4 Repeal of Act**

**12 Repeal of Act**

This Act is repealed on the day after it commences.