

Serial 107
Bail Amendment Bill 2007
Mr Stirling

**A BILL
for
AN ACT**

to amend the *Bail Act*

NORTHERN TERRITORY OF AUSTRALIA

BAIL AMENDMENT ACT 2007

Act No. [] of 2007

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2007

AN ACT

to amend the *Bail Act*

[Assented to [] 2007]
[Second reading [] 2007]

The Legislative Assembly of the Northern Territory enacts as follows:

1. Short title

This Act may be cited as the *Bail Amendment Act 2007*.

2. Commencement

This Act commences on the date fixed by the Administrator by *Gazette* notice.

3. Act amended

This Act amends the *Bail Act*.

4. Amendment of section 3 (Interpretation)

Section 3(1)

insert (in alphabetical order)

"child" means a person under the age of 18 years;

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"Commonwealth sexual offence" means an indictable offence against the law of the Commonwealth of which an element is:

- (a) sexual intercourse or sexual penetration; or
- (b) an indecent act or an act of a sexual nature; or
- (c) sexual slavery, sexual servitude or any other form of sexual exploitation; or
- (d) encouraging, or benefiting from, child sex tourism; or
- (e) production, communication, use, or any other act involving, pornographic material; or
- (f) an attempt to commit, an act of procuring, or any other act preparatory to the commission of, any of the above;

"conduct agreement" means an agreement by an accused person to observe specified requirements as to conduct while on bail – see section 27(2)(a);

"pornographic material" means material of an indecent, sadistic, sadomasochistic or abusive character (including material related to child abuse);

"serious sexual offence", see section 3A;

"Territory sexual offence" means an indictable offence of which an element is:

- (a) sexual intercourse or sexual penetration; or
- (b) a sexual relationship; or
- (c) sexual abuse; or
- (d) indecent touching or an indecent assault; or
- (e) any other indecent act directed against a person; or
- (f) the making, collection, exhibition or display of an indecent object or pornographic material; or
- (g) sexual servitude or any other form of sexual exploitation; or
- (h) an attempt to commit, an act of procuring, or any other act preparatory to the commission of, any of the above.

5. New section 3A

After section 3

insert

3A. Serious sexual offences

(1) In this Act, a serious sexual offence is a Territory sexual offence or a Commonwealth sexual offence for which a maximum penalty of imprisonment for 7 years or more is prescribed.

(2) The following offences are also serious sexual offences (even though a lesser maximum penalty may be prescribed):

- (a) an offence, committed by an adult, consisting of an attempt to procure, or the act of procuring, a child under the age of 16 years to engage in sexual intercourse or an indecent act;
- (b) an offence, committed by an adult, consisting of indecent assault on a child under the age of 16 years;
- (c) an offence, committed by an adult in the presence of a child, consisting of the commission of an act of gross indecency in a public place.

6. Amendment of section 7A (Presumption against bail for certain offences)

After section 7A(1)(e)

insert

- (f) a serious sexual offence.

7. Amendment of section 24 (Criteria to be considered in bail applications)

(1) Section 24(1)(c) and (d)

omit, substitute

- (c) the risk (if any) that the accused person would (if released on bail) interfere with evidence, witnesses or jurors;
- (d) the risk (if any) that the accused person would (if released on bail) commit an offence, a breach of the peace, or a breach of the conditions of bail;

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- (e) the risk (if any) that would result from the accused person's release on bail to the safety or welfare of:
 - (i) the alleged victim of the offence; or
 - (ii) the close relatives of the alleged victim; or
 - (iii) if the alleged victim is a child – any person (other than a close relative) who has the care of the child; or
 - (iv) any other person whose safety or welfare could, in the circumstances of the case, be at risk if the accused person were to be released on bail.

(2) After section 24(2)

insert

(3) In assessing risks to others that could result from the release of an accused person on bail, the authorised member or court must have regard to risks of the following kinds:

- (a) a risk of violence or intimidation;
- (b) a risk of property damage;
- (c) a risk of harassment;
- (d) any other risk to safety or welfare.

(4) If the alleged victim of an offence is a child, or the alleged offence is a serious sexual offence or a serious violence offence, the safety and welfare of the alleged victim must be considered with particular care.

(5) In regard to a child's safety and welfare, the following matters are to be considered:

- (a) the child's age;
- (b) the age of the accused person;
- (c) any familial relationship that may exist between the child and the accused person;
- (d) the living arrangements for the child and for the accused person (assuming the accused person's release on bail);
- (e) the desirability of preserving the child's living arrangements and family and community relationships;

- (f) the emotional as well as the physical wellbeing of the child;
- (g) any other relevant matter.

(6) If an alleged victim expresses concern to the prosecutor that the release of the accused person on bail could lead to a risk to the alleged victim's safety or welfare, the prosecutor must, wherever practicable, inform the authorised member or court about that concern and the reasons for it.

8. Amendment of section 27 (Conditions of bail)

Section 27(2A)

omit

9. Repeal and substitution of sections 27A and 28

Sections 27A and 28

repeal, substitute

27A. Conduct agreements

- (1) A conduct agreement may:
 - (a) prohibit an accused person from associating, or being in company, with one or more specified persons; or
 - (b) require an accused person to keep away from one or more specified persons or from persons of a specified class; or
 - (c) prohibit an accused person from communicating in any way (directly or indirectly) with one or more specified persons, or with a person of a specified class; or
 - (d) prohibit an accused person from being within a particular locality or area; or
 - (e) prohibit an accused person from being outside a particular locality or area; or
 - (f) require an accused person to reside at a specified place; or
 - (g) require the accused person to report at specified intervals at a police station or other place; or
 - (h) prohibit an accused person from consuming alcoholic liquor or non-prescription drugs; or

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(i) prohibit an accused person from engaging in conduct of any other specified kind; or

(j) contain a combination of 2 or more of the above.

(2) A conduct agreement operates (subject to its terms) throughout the period for which the accused person is on bail.

(3) A conduct agreement may be subject to exceptions and qualifications stated in the agreement.

Example

A conduct agreement might permit the accused person to leave a particular locality, contrary to a prohibition under subsection (1)(e), with a particular permission or in specified circumstances.

(4) Contravention of a provision of a conduct agreement is to be regarded as a breach of a condition of bail.

(5) A court may excuse a contravention of a conduct agreement if satisfied that the accused person had a reasonable excuse for the contravention.

28. Imposition of bail conditions

(1) An authorised member or a court must, in granting bail, impose conditions that appear necessary to minimise risks to the safety or welfare of others, or to the proper administration of justice, that may result from releasing the accused person on bail.

(2) The conditions must be reasonably proportionate to the risks.

10. Amendment of section 29 (Entry into agreement)

Section 29

omit

or 27A