

Serial 105
Bail Amendment Bill 2014
Mr Elferink

A Bill for an Act to amend the *Bail Act*

NORTHERN TERRITORY OF AUSTRALIA

BAIL AMENDMENT ACT 2014

Act No. [] of 2014

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2014

An Act to amend the *Bail Act*

[Assented to [] 2014]
[Second reading [] 2014]

The Legislative Assembly of the Northern Territory enacts as follows:

1 Short title

This Act may be cited as the *Bail Amendment Act 2014*.

2 Commencement

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

3 Act amended

This Act amends the *Bail Act*.

4 Section 3 amended

(1) Section 3(1), definition ***authorised member***

omit

Part III

insert

Part 3

(2) Section 3(1), definition ***original offence***

omit

Part VII

insert

Part 7

5 Section 5A inserted

After section 5, in Part 1

insert

5A Application of Criminal Code

Part IIAA of the Criminal Code applies to an offence against this Act.

Note for section 5A

Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.

6 Section 6 amended

Section 6(ca)

omit

7 Section 7A amended

(1) Section 7A(1)(b)

omit

(2) Section 7A(1)(c)

omit

more than 7 years

insert

7 years or more

(3) Section 7A(1)(dc) and (e)

omit, insert

- (dc) an offence against section 54, 103A, 242 or 243(1) of the Criminal Code;
- (dd) an offence against section 181 of the Criminal Code, or section 120 of the *Domestic and Family Violence Act*, if the person accused of the offence has, at any time before the date of that offence, been found guilty of any of the following offences (the **previous offence**):
 - (i) the offence of murder;
 - (ii) an offence against section 181, 188A, 189A or 192 of the Criminal Code;
 - (iii) an offence against a law of a State or other Territory or another country that is similar to an offence mentioned in subparagraph (i) or (ii);
- (de) a serious offence (**offence A**) if the person accused of offence A is an adult charged with committing offence A while on bail for a serious offence (the **previous offence**);
- (df) a serious offence (**offence B**) if the person accused of offence B has, within the period of 10 years immediately preceding the date of the alleged commission of offence B, been found guilty of a serious violence offence (the **previous offence**);
- (dg) an offence where the accused person is the subject of an order made under section 40 of the *Sentencing Act* (the **sentencing order**) which may be breached if the person is convicted of the offence, unless:
 - (i) the offence is a contravention of, or failure to comply with, an instrument of a legislative or administrative character; or
 - (ii) the authorised member or court is of the opinion that the offence is so minor that a court is unlikely to regard it as a breach of the suspended sentence;
- (dh) an offence against section 120 of the *Domestic and Family Violence Act* (**offence C**), if the person accused of offence C has, within the period of 2 years immediately preceding the date of the alleged commission of offence C, been found guilty of a DVO contravention offence (the **previous offence**);

-
- (4) Section 7A(2)

omit, insert

- (2) Bail must not be granted to a person accused of an offence to which this section applies unless the person satisfies an authorised member or court that bail should be granted.

Note for subsection (2)

Section 24 requires the authorised member or court determining whether bail should be granted to take into consideration the matters in that section only.

- (5) After section 7A(3)

insert

- (4) In this section:

DVO contravention offence, see section 4 of the *Domestic and Family Violence Act*.

previous offence includes an offence committed before the commencement of section 6 of the *Bail Amendment Act 2014*.

sentencing order includes an order made before the commencement of section 6 of the *Bail Amendment Act 2014*.

8 Section 8 amended

- (1) Section 8(1) and (1A)

omit, insert

- (1) This section applies to an offence except an offence to which section 7A applies.

- (2) Section 8(4)(a)

omit

he

insert

the person

- (3) Section 8(5)

omit

9 Section 11 amended

Section 11

omit

Part VI

insert

Part 6

10 Section 18 amended

Section 18

omit

Part V

insert

Part 5

11 Section 24 amended

(1) After section 24(1)(b)(iii)

insert

(iiia) any needs of the person relating to:

(A) any cognitive impairment, as defined in section 6A(2) of the *Mental Health and Related Services Act* of the person; or

(B) any mental impairment, as defined in section 43A of the *Criminal Code* of the person; and

(iiib) whether or not the person is a youth within the meaning of the *Youth Justice Act*; and

(iiic) any needs relating to the person's cultural background, including any ties to extended family or place, or any other cultural obligation; and

-
- (2) Section 24(1), at the end

insert

Note for section 24(1)(b)(iiic)

When considering bail, an authorised member or court must have regard to section 15AB(1)(b) of the Crimes Act 1914 (Cth).

- (3) After subsection 24(3)

insert

- (3A) In assessing the risks to others under subsection (3), the authorised member or court must consider the following:

- (a) the previous, current or proposed living arrangements for an alleged victim and for the accused person (assuming the accused person's release on bail);
- (b) whether those arrangements include or would include their living in unreasonably close proximity to each other.

12 Section 37B amended

Section 37B(4)

omit

13 Section 38 amended

Section 38(2A)(a), after "offence"

insert

or an offence to which section 7A applies

14 Section 42 amended

Section 42(3)

omit

Part VI

insert

Part 6

15 Sections 44 and 45 replaced

Sections 44 and 45

repeal, insert

44 Misleading information in acknowledgements

- (1) A person commits an offence if the person:
- (a) makes an acknowledgement under section 27(2)(b); and
 - (b) knows that the acknowledgement contains misleading information.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (2) Strict liability applies to subsection (1)(a).
- (3) In this section:

misleading information means information that is misleading in a material particular or because of the omission of a material particular.

45 Indemnification of acceptable person

- (1) This section applies if:
- (a) a person (***person A***) and another person (***person B***) enter into an agreement; and
 - (b) the agreement is that person A will indemnify person B against any forfeiture that person B may incur as a result of entering into an agreement under section 27 as an acceptable person.

- (2) If subsection (1) applies, person A and person B each commit an offence.

Maximum penalty: 300 penalty units or imprisonment for 3 years.

- (3) This section also applies if:
- (a) a person (***person C***) engages in conduct; and
 - (b) the conduct results in the indemnification of another person (***person D***) against any forfeiture that person D incurs as a result of entering into an agreement under section 27 as an acceptable person.

-
- (4) If subsection (3) applies, person C and person D each commit an offence.

Maximum penalty: 300 penalty units or imprisonment for 3 years.

- (5) Strict liability applies:

(a) to subsection (1)(b) in relation to person B; or

(b) to subsection (3)(b) in relation to person D.

- (6) In this section:

indemnify includes compensate in a way that is not monetary.

16 Part 9 heading replaced

Part 9, heading

omit, insert

Part 9 Transitional matters

Division 1 Bail Amendment (Repeat Offenders) Act 2005

17 Part 9, Division 2 inserted

After section 54

insert

Division 2 Bail Amendment Act 2014

55 Definitions

In this Division:

Amending Act means the *Bail Amendment Act 2014*.

commencement means the commencement of the Amending Act.

56 Application of amendments to sections 7A, 8 and 24

- (1) Sections 7A, 8 and 24, as amended by the Amending Act, apply in relation to the granting of bail to an accused person for an offence only if the charge for the offence was filed after the commencement.

-
- (2) Sections 7A, 8 and 24, as in force before the commencement, continue to apply in relation to the granting of bail to an accused person for an offence if the charge for the offence was filed on or before the commencement.

57 Application of amendment to section 38

- (1) Section 38, as amended by the Amending Act, applies in relation to the revocation of bail that was granted to a person for an offence only if the charge for the offence was filed after the commencement.
- (2) Section 38, as in force before the commencement, continues to apply in relation to the revocation of bail that was granted to a person for an offence if the charge for the offence was filed on or before the commencement.

58 Offence provisions – before and after commencement

- (1) This section applies subject to sections 56 and 57.
- (2) The offence provisions, as amended by the Amending Act, apply only in relation to offences alleged to have been committed after the commencement.
- (3) The offence provisions, as in force before the commencement, continue to apply in relation to offences alleged to have been committed on or before the commencement.
- (4) For this section, if any of the conduct constituting an offence occurred on or before the commencement, the offence is taken to have been committed on or before the commencement.
- (5) In this section:

offence provisions means the provisions of this Act that create or relate to offences (including in relation to criminal responsibility, defences and penalties).

18 Expiry of Act

This Act expires on the day after it commences.