

Serial 69
Justice and Other Legislation Amendment Bill 2014
Mr Elferink

A Bill for an Act to amend Acts administered by the Attorney-General and
Minister for Justice and Minister for Correctional Services

NORTHERN TERRITORY OF AUSTRALIA

JUSTICE AND OTHER LEGISLATION AMENDMENT ACT 2014

Act No. [] of 2014

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2014

An Act to amend Acts administered by the Attorney-General and Minister for Justice and Minister for Correctional Services

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

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Justice and Other Legislation Amendment Act 2014*.

2 Commencement

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

Part 2 Criminal Code amended

3 Criminal Code amended

This Part amends the Criminal Code.

4 Part IX, Division 7 inserted

After section 387

insert

Division 7 Hearing summary offence with indictable offence**388 Definition**

In this Division:

summary offence means:

- (a) a simple offence or regulatory offence; or
- (b) an indictable offence that the court of summary jurisdiction has jurisdiction to hear and determine; or
- (c) an offence mentioned in section 22(1) of the *Misuse of Drugs Act* if:
 - (i) the prosecution has elected under section 23(2) of that Act that proceedings for the offence be proceedings with a view to summary conviction; and
 - (ii) a magistrate has not abstained from determining the charge for the offence summarily under section 23(4) of that Act.

389 Supreme Court may hear and determine summary offence with indictable offence

- (1) When hearing and determining a charge against a person on indictment, the Supreme Court may also, if it considers appropriate, hear and determine summarily any charge of a summary offence that has been laid against the person.
- (2) However, the Supreme Court must not hear and determine the charge of the summary offence unless the charge has been transmitted to a Registrar of the Supreme Court under section 390.
- (3) Subject to this section, the practice and procedure of the Supreme Court and the provisions of this Code relating to taking a plea on an indictment apply in relation to the taking of a plea to the charge of the summary offence.
- (4) On finding the accused person guilty of the summary offence, the Supreme Court may make any orders in relation to the finding that the court of summary jurisdiction could have made, but may not

impose a penalty in excess of the penalty that the court of summary jurisdiction could have imposed.

- (5) Within 30 days after the final determination of the charge of the summary offence, a Registrar of the Supreme Court must notify the result of the determination to a clerk of the court of summary jurisdiction and no further appearance is required in that court by any party to the proceeding.

390 Transmission of charge of summary offence

- (1) This section applies if:
- (a) an indictment has been presented against a person; and
 - (b) the person has been charged with a summary offence, whether the charge was laid before or after the indictment was presented.
- (2) If the person wishes to have the charge of the summary offence heard and determined by the Supreme Court under section 389, the person may apply to a clerk of the court of summary jurisdiction to transmit the charge to a Registrar of the Supreme Court.
- (3) The application must be:
- (a) made as a written statutory declaration; and
 - (b) contain the following:
 - (i) details of the charge to be transmitted;
 - (ii) a statement that the applicant wishes to have the charge transmitted to the Supreme Court;
 - (iii) a statement of the applicant's intention to plead guilty to the charge.
- (4) The clerk must transmit the charge to a Registrar of the Supreme Court if satisfied:
- (a) the application meets the requirements of this section; and
 - (b) the court of summary jurisdiction has not started hearing sentencing submissions in relation to the charge.

391 Remission of charge to court of summary jurisdiction

- (1) This section applies if a charge of a summary offence laid against a person has been transmitted to a Registrar of the Supreme Court under section 390.

- (2) The Supreme Court must direct that the charge be heard and determined by the court of summary jurisdiction and remit the charge to a clerk of the court of summary jurisdiction if:
- (a) the person pleads not guilty to the charge before the Court; or
 - (b) the Court decides for any other reason not to hear and determine the charge.

5 Section 410 amended

Section 410, after "indictment"

insert

, or a person found guilty of a summary offence under section 389,

6 Part XI, Division 5 inserted

After section 447

insert

Division 5 Justice and Other Legislation Amendment Act 2014

448 Application of section 389

To avoid doubt, the Supreme Court may exercise powers under section 389 in relation to an indictment that was presented, or a summary offence the charge for which was laid, before the commencement of section 4 of the *Justice and Other Legislation Amendment Act 2014*.

Part 3 Sentencing Act amended

7 Act amended

This Part amends the *Sentencing Act*.

8 Section 64 replaced

Section 64

repeal, insert

64 Further sentence if person on parole

- (1) This section applies if:
- (a) a person is sentenced in the Territory to a term of imprisonment, or is committed to prison under section 15(4), for an offence that was committed while a parole order under the *Parole of Prisoners Act* was in force for the person; and
 - (b) the parole order:
 - (i) was revoked by the Chairperson under section 5 of the *Parole of Prisoners Act* before the person was sentenced or committed; or
 - (ii) was cancelled by a court under section 6 of the *Parole of Prisoners Act* before the person was sentenced or committed; or
 - (iii) is taken, under section 5(8) of the *Parole of Prisoners Act*, to have been revoked because of the sentence or commitment.
- (2) The court that sentences or commits the person must also order the person to be imprisoned for:
- (a) if the parole order was revoked or cancelled as mentioned in subsection (1)(b)(i) or (ii) – the term that the person had not served when released from prison under the parole order minus the part of the term the person served after the parole order was revoked or cancelled; or
 - (b) otherwise – the term that the person had not served when released from prison under the parole order.
- (3) The term of imprisonment to be served in accordance with subsection (2) starts at the end of the term of imprisonment to which the person is sentenced or committed for the offence mentioned in subsection (1).
- (4) In this section:

Chairperson, see section 3(1) of the *Parole of Prisoners Act*.

offence includes an offence against an Act or regulation of the Commonwealth.

9 Section 90 amended

Section 90(3)

omit

10 Section 104A replaced

Section 104A

repeal, insert

104A Special provisions regarding cultural information

- (1) This section applies if, as part of the sentencing process, a party to proceedings seeks to present information to a court about:
 - (a) an aspect of any form of customary law (including any punishment or restitution under that law); or
 - (b) a cultural practice.
- (2) Despite section 104, before agreeing to receive the information the court must have regard to:
 - (a) whether the party intends to present the information in the form of evidence on oath, an affidavit or a statutory declaration; and
 - (b) whether each other party to the proceedings:
 - (i) has been given notice that the information will be presented to the court; and
 - (ii) has had a reasonable opportunity to respond to the information.

11 Part 6, Division 3 heading replaced

Part 6, Division 3, heading

omit, insert

Division 3 Taking alleged offences into account

12 Section 107 amended

(1) Section 107, heading

omit, insert

107 Court may take alleged offences into account

(2) Section 107(1) to (3)

omit, insert

(1) This section applies if:

(a) a court finds a person (the *offender*) guilty of an offence, not being or including murder; and

(b) there has been filed in court a document, in the prescribed form, that:

(i) lists other offences (the *listed offences*), whether indictable or summary, not being or including murder, that it is alleged the offender has committed (whether or not the offender has been charged) but in respect of which the offender has not been found guilty; and

(ii) is signed by the offender and either a police officer or the prosecutor; and

(c) a copy of the document has been given to the offender.

(2) If the court considers it appropriate to do so and the prosecution consents, the court may ask the offender whether the offender:

(a) admits committing any of the listed offences; and

(b) wishes those listed offences to be taken into account by the court when passing sentence for the offence mentioned in subsection (1)(a).

(3) If the offender admits committing any of the listed offences and wishes those listed offences to be taken into account, the court may do so if it considers it appropriate, but must not impose a sentence in respect of the offence mentioned in subsection (1)(a) in excess of the maximum penalty for that offence.

(3A) Despite subsection (3), the court of summary jurisdiction may not take into account a listed offence unless it is:

(a) a summary offence; or

(b) an indictable offence of a type that is capable of being heard and determined in a summary manner.

(3) Section 107(4)

omit

Where an

insert

If a listed

(4) Section 107(4)

omit (all references)

the offence

insert

the listed offence

(5) Section 107(5) and (6)

omit, insert

(5) An order made under subsection (4) in respect of a listed offence may be appealed against as if it has been made on the conviction of the offender for the listed offence.

(6) Section 107(9)

omit

offence to which it

insert

listed offence to which the admission

(7) Section 107(10) and (12)

omit

an

insert

a listed

(8) Section 107(11)

omit

a crime

insert

an offence

(9) Section 107(11)

omit

other offence or offences

insert

listed offence

13 Part 12, Division 6 inserted

After section 133

insert

Division 6 Transitional matters for Justice and Other Legislation Amendment Act 2014

134 Application of section 64 to offences committed before commencement

(1) Section 64, as amended by the *Justice and Other Legislation Amendment Act 2014*, applies only in relation to a sentence of imprisonment, or commitment to prison, for an offence committed before the commencement of this section (***commencement***) if:

(a) the sentence is imposed in proceedings in which a court starts hearing sentencing submissions after commencement; or

(b) the commitment is imposed in a hearing under section 15(4) that starts after commencement.

(2) Section 64, as in force before commencement, continues to apply in relation to a sentence of imprisonment, or commitment to prison, for an offence committed before commencement if:

(a) the sentence is imposed in proceedings in which a court started hearing sentencing submissions before commencement; or

- (b) the commitment is imposed in a hearing under section 15(4) that started before commencement.

135 Application of section 104A to offences committed before commencement

- (1) Section 104A, as amended by the *Justice and Other Legislation Amendment Act 2014*, applies only in relation to proceedings for an offence committed before the commencement of this section (**commencement**) if a court starts hearing sentencing submissions after commencement.
- (2) Section 104A, as in force before commencement, continues to apply in relation to proceedings for an offence committed before commencement if a court started hearing sentencing submissions before commencement.

136 Application of section 107 to offences committed before commencement

- (1) Section 107, as amended by the *Justice and Other Legislation Amendment Act 2014*, applies only in relation to proceedings for an offence committed before the commencement of this section (**commencement**) if a court starts hearing sentencing submissions after commencement.
- (2) To avoid doubt, an offence may be listed in a document filed under section 107(1)(b), as amended by the *Justice and Other Legislation Amendment Act 2014*, even if:
- (a) the charge for the offence was laid before commencement; or
- (b) the offence is alleged to have been committed before commencement.
- (3) Section 107, as in force before commencement, continues to apply in relation to proceedings for an offence committed before commencement if a court started hearing sentencing submissions before commencement.

Part 4 Youth Justice Act amended

14 Act amended

This Part amends the *Youth Justice Act*.

15 Section 131 replaced

Section 131

repeal, insert

131 Further sentence if detainee on parole

- (1) This section applies if:
- (a) a youth is sentenced in the Territory to a term of detention or imprisonment for an offence that was committed while a parole order under the *Parole of Prisoners Act* was in force for the youth; and
 - (b) the parole order:
 - (i) was revoked by the Chairperson under section 5 of the *Parole of Prisoners Act* before the youth was sentenced; or
 - (ii) was cancelled by a court under section 6 of the *Parole of Prisoners Act* before the youth was sentenced; or
 - (iii) is taken, under section 5(8) of the *Parole of Prisoners Act*, to have been revoked because of the sentence.
- (2) The Court must also order the youth to be detained or imprisoned for:
- (a) if the parole order was revoked or cancelled as mentioned in subsection (1)(b)(i) or (ii) – the term that the youth had not served when released from detention under the parole order minus the part of the term the youth served after the parole order was revoked or cancelled; or
 - (b) otherwise – the term that the youth had not served when released from detention under the parole order.
- (3) The term of detention or imprisonment to be served in accordance with subsection (2) starts at the end of the term of detention or imprisonment to which the youth is sentenced for the offence mentioned in subsection (1).
- (4) In this section:

Chairperson, see section 3(1) of the *Parole of Prisoners Act*.

16 Part 17 heading replaced

Part 17, heading

omit, insert

Part 17 Transitional matters

Division 1 Criminal Code Amendment (Criminal Damage) Act 2011

17 Part 17, Division 2 inserted

After section 226

insert

Division 2 Justice and Other Legislation Amendment Act 2014

227 Application of section 131 to offences committed before commencement

- (1) Section 131, as amended by the *Justice and Other Legislation Amendment Act 2014*, applies only in relation to a sentence for an offence committed before the commencement of this section (**commencement**) if the sentence is imposed in proceedings in which a court starts hearing sentencing submissions after commencement.
- (2) Section 131, as in force before commencement, continues to apply in relation to a sentence for an offence committed before commencement if the sentence is or was imposed in proceedings in which a court started hearing sentencing submissions before commencement.

Part 5 Expiry of Act

18 Expiry

This Act expires on the day after it commences.