

Serial 85
Sentencing Legislation Amendment Bill 2023
Mr Paech

A Bill for an Act to amend the *Sentencing Act 1995* and the *Youth Justice Act 2005*

NORTHERN TERRITORY OF AUSTRALIA

SENTENCING LEGISLATION AMENDMENT ACT 2023

Act No. [] of 2023

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2023

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

[Assented to [] 2023]
[Introduced [] 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.