

# Explanatory Statement

## YOUTH JUSTICE LEGISLATION AMENDMENT BILL 2021

### SERIAL NO. 24

#### LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

#### MINISTER FOR POLICE, FIRE AND EMERGENCY SERVICES

#### GENERAL OUTLINE

The Bill implements a number of minor amendments to the *Bail Act 1982*, the *Youth Justice Act 2005* and the *Bail Regulations 1983*. Minor consequential amendments to the *Education Act 2015*, the *Liquor Regulations 2019* and the *Youth Justice Regulations 2005* are also present in the Bill. The Bill targets repeat youth offenders by decreasing the circumstances in which repeat youth offenders can obtain bail, expand the circumstances in which youth offenders can be electronically monitored and other amendments to the youth justice system.

#### NOTES ON CLAUSES

#### **Part 1                      Preliminary matters**

#### **Clause 1.                      Short title**

This is a formal clause which provides for the citation of the Bill. The Bill, when passed, may be cited as the *Youth Justice Legislation Amendment Act 2021*.

**Clause 2. Commencement**

This is a formal clause which provides for when the Act will commence. The Act will commence on the day after the day the Act is given assent by the Administrator.

**Part 2 Amendment of Bail Act 1982**

**Clause 3. Act amended**

This is a formal clause which provides that amendments are made to the *Bail Act 1982*.

**Clause 4. Section 3 amended (Interpretation)**

Section 3(1) of the *Bail Act 1982* contains a number of definitions to be adopted when interpreting the *Bail Act 1982*. This clause inserts an additional definition into section 3(1) of the *Bail Act 1982* defining 'serious breach of bail.' The definition of 'serious breach of bail' is defined in new provisions, sections 7B(1) and (2) of the *Bail Act 1982*.

**Clause 5. Part 2, Division 1A heading amended**

This clause provides for the omission of the term 'for certain offences' from the heading of Part 2, Division 1A of the *Bail Act 1982* which now reads 'Presumption against bail.'

**Clause 6. Section 7A amended (Presumption against bail for certain offences)**

This clause inserts new section 7A(2B) into the *Bail Act 1982*. The new provision follows section 7A(2A) of the *Bail Act 1982*. The new provision ensures that the presumption against bail provided for in section 7A(2) for the offences listed in section 7A(1) does not apply to a youth.

**Clause 7. Section 7B inserted**

This clause inserts the new provision, section 7B, to follow section 7A of the *Bail Act 1982*. The new provision provides that bail must not be granted to a youth who while already on bail is charged with a prescribed offence or breaches a curfew requirement pursuant to section 27A(1)(i) of the *Bail Act 1982* or an electronic monitoring condition pursuant to sections 27A(1)(iaa), (iab) or (ia) of the *Bail Act 1982* as provided for in their bail conduct agreement.

This new provision does not apply if the Court finds that the youth's serious breach of bail was trivial, technical or there was an exceptional circumstance leading to the breach.

Bail must not be granted to a youth who has engaged in a serious breach of bail unless the youth enters into a conduct agreement which contains electronic monitoring conditions pursuant to sections 27A(1)(iab) or (ia) of the *Bail Act 1982* or agrees to reside in supported bail accommodation pursuant to section 27A(1)(f) of the *Bail Act 1982*.

If the youth resides at a remote location that the Court deems to be an unreasonable distance from a prescribed supported bail accommodation, the Court may order the youth to remain in the remote community as a bail condition pursuant to section 27A(1)(f). If electronic monitoring is feasible within the remote community, then electronic monitoring may be attached to the youth as a bail condition pursuant to sections 27A(1)(iab) or (ia) of the *Bail Act 1982* in addition to ordering the youth to remain in the remote community under section 27A(1)(f) of the *Bail Act 1982*. If electronic monitoring is not possible, the Court may order the youth to remain in the remote community for the duration of their bail period pursuant to section 27A(1)(f) of the *Bail Act 1982*.

These requirements for bail cannot be dispensed with for youths who have engaged in a serious breach of bail and section 9(2) of the *Bail Act 1982* does not apply.

**Clause 8.                      Section 8A amended (Presumption in favour of bail for youths)**

This clause inserts the new provision, section 8A(1A), to follow section 8A(1) of the *Bail Act 1982*. The new provision provides that section 8A of the *Bail Act 1982* does not apply to a youth who while released on bail engages in a serious breach of bail.

**Clause 9.                      Section 28 amended (Imposition of bail conditions)**

Subsection (1) of this clause inserts the words 'but subject to section 7B' after the phrase 'subsection (2)' in section 28(2A) of the *Bail Act 1982*.

Subsection (2) of this clause omits the words 'Also, a' from section 28(3A) of the *Bail Act 1982* and inserts the word 'A' to improve readability of the provision.

Subsection (3) of this clause inserts a new provision after section 28(3A) of the *Bail Act 1982*. The new section 28(3B) of the *Bail Act 1982* provides that the Court may require a youth enter into a conduct agreement requiring the youth to wear an electronic monitoring device pursuant to section 27A(1)(iab) of the *Bail Act 1982* while an assessment report is being prepared determining the suitability of continued electronic monitoring on a youth as ordered by the Court. This new provision operates despite subsection 28(3A) of the *Bail Act 1982*.

**Clause 10.                    Section 38 amended (Arrest for absconding or breach of condition)**

Subsection (1) of this clause omits the word 'Where' from section 38(1) of the *Bail Act 1982* and inserts the word 'If' to improve clarity of the provision.

Subsection (2) of this clause inserts new provision section 38(5) after section 38(4) of the *Bail Act 1982*. The new provision clarifies that sections 38(2) and 38(3) of the *Bail Act 1982* do not apply to youths who have engaged in a serious breach of bail.

**Clause 11.                    Section 38AA inserted**

This clause inserts the new section 38AA provision after section 38 of the *Bail Act 1982*. The new provision provides that if a youth has engaged in a serious breach of bail and is brought before the Court under section 38(1) of the *Bail Act 1982* or section 27 of the *Youth Justice Act 2005* after being arrested pursuant to section 123 of the *Police Administration Act 1978*, the Court must revoke the youth's original bail, not grant further bail to the youth and by warrant commit the youth into the custody of the CEO (Youth Justice). The requirements under this new provision to not grant bail do not apply if the serious breach of bail is found to be trivial, technical or there is an exceptional circumstance justifying the breach of bail.

**Clause 12.                    Part 9, Division 6 inserted**

This clause inserts new provision Part 9, Division 6 entitled 'Youth Justice Legislation Amendment Act 2021.' The new Division 6 inserts three new sections namely sections 68, 69 and 70 into the *Bail Act 1982*.

The new section 68 provides that for the purposes of the new Division 6, the definition of 'amending Act' refers to the *Youth Justice Legislation Amendment Act 2021*.

The proposed section 69 provides that amendments made by the *Youth Justice Legislation Amendment Act 2021* to sections 7, 8, 10 and 11 of the *Bail Act 1982* do not apply to bail conduct agreements that a youth was subject to at the time of engaging in a serious breach of bail before the commencement of the *Youth Justice Legislation Amendment Act 2021*.

The new section 70 provides that amendments made to the prescribed bail offences referred to in section 3B of the *Bail Act 1982* by the *Youth Justice Legislation Amendment Act 2021* do not apply to bail applications concerning newly inserted prescribed offences before the commencement of the *Youth Justice Legislation Amendment Act 2021*. The term 'commencement' is also defined to mean the commencement of section 35 of the *Youth*

*Justice Legislation Amendment Act 2021* for the purposes of the operation of the new section 70 of the *Bail Act 1982*.

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

#### **Clause 13.                      Act amended**

This is a formal clause which provides that amendments are being made to the *Youth Justice Act 2005*.

#### **Clause 14.                      Section 5 amended (Interpretation)**

Section 5(1) of the *Youth Justice Act 2005* contains a number of definitions to be adopted when interpreting the *Youth Justice Act 2005*. This clause inserts three new definitions into section 5(1). The term 'divert' is defined as 'for Part 3, see section 38' of the *Youth Justice Act 2005*. The term 'family responsibility agreement' is defined as an agreement under Part 6A, Division 2 of the *Youth Justice Act 2005*. 'Youth Justice Conference' is defined as a conference with the victim or victims of the offence the youth is believed to have committed and a conference with members of the youth's family.

#### **Clause 15.                      Section 18 amended (Interview of youth)**

This clause inserts new provision, section 18(2A), after section 18(2) in the *Youth Justice Act 2005*. The new provision provides that in despite of section 18(2) of the *Youth Justice Act 2005*, a police officer may conduct a breath test, breath analysis or saliva test in relation to a youth in accordance with the requirements set out in sections 24, 29AAA, 29AAB, 29AAC, 29AAD or 20AAF of the *Traffic Act 1987*. The new provision also exempts the police officer from requiring a person mentioned in section 18(1A)(c) of the *Youth Justice Act 2005* from being present while conducting a breath test, breath analysis or saliva test in relation to the above *Traffic Act 1987* offence provided that reasonable endeavours have been made by the police officer to arrange for the presence of a person mentioned in section 18(1A)(c) of the *Youth Justice Act 2005*.

Explanatory notes are also included in the new provision which provide an example of a police officer making a reasonable attempt at arranging the presence of a person mentioned in section 18(1A)(c) of the *Youth Justice Act 2005*. This example includes directing police officers to use multiple contact methods to contact multiple friends, relatives, responsible adults or support persons before exercising their new power under section 18(2A) of the *Youth Justice Act 2005*.

**Clause 16.                    Section 22 amended (Charge to be by summons except in certain cases)**

This clause inserts new provision, section 22(3), after section 22(2) of the *Youth Justice Act 2005*. The provision excludes the operation of section 22(2)(a) of the *Youth Justice Act 2005* if the offence for which the youth is charged is a prescribed offence as defined in section 3B of the *Bail Act 1982*.

**Clause 17.                    Section 39 amended (Diversion of youth)**

Subsection (1) of the clause omits all words after the words 'an offence' and inserts the phrase 'with which the youth has been charged.'

Subsection (2) of the clause omits section 39(7) of the *Youth Justice Act 2005* entirely because the definition of 'Youth Justice Conference' has been moved to section 5(1) of the *Youth Justice Act 2005* by this Bill.

**Clause 18.                    Section 51 amended (Youth in need of protection)**

Subsection (1) of this clause inserts the new provision, section 51(1A), after section 51(1) of the *Youth Justice Act 2005*. The new section 51(1A) provides that the Court may take into account a parent's compliance with a Family Responsibility Agreement in forming their belief under section 51(1) of the *Youth Justice Act 2005*.

Subsection (2) of this clause inserts the phrase '**parent**, see section 140A' into section 51(5) of the *Youth Justice Act 2005*.

**Clause 19.                    Section 64 amended (Court may refer youth to diversion)**

Subsection (1) of this clause omits the term 'This section' in section 64(2) of the *Youth Justice Act 2005* and inserts the words 'Subsection (1).'

Subsection (2) of this clause omits the words 'offence: or' in section 64(2)(b) of the *Youth Justice Act 2005* and inserts the word 'offence.'

Subsection (3) of this clause omits section 64(2)(c) from the *Youth Justice Act 2005*.

Subsection (4) of this clause inserts the new provision, section 64(3), after section 64(2) of the *Youth Justice Act 2005*. The provision provides that section 64(1) of the *Youth Justice Act 2005* does not apply to a youth in relation to an offence if the youth was previously assessed for inclusion in a diversion program or a Youth Justice Conference conducted for the purposes of Part 3 of the *Youth Justice Act 2005*.

**Clause 20.                      Section 64A amended (Youth Justice Court may dismiss charges)**

Subsection (1) of this clause omits the word 'The' from section 64A of the *Youth Justice Act 2005* and inserts the phrase '(1) Subject to subsection (2), the.'

Subsection (2) of this clause inserts the new provision, section 64A(2), to follow section 64A of the *Youth Justice Act 2005*. The new provision provides that the Youth Justice Court must not dismiss charges against a youth for an offence resulting in the youth's inclusion in a diversion program as defined in section 39(2)(d) of the *Youth Justice Act 2005* or a Youth Justice Conference and the youth has not successfully completed the diversion program or Conference in relation to that offence.

**Clause 21.                      Section 64B inserted**

This clause inserts the new provision, section 64B, after section 64A of the *Youth Justice Act 2005*. The new provision provides the Court with the ability to order that an appropriate Agency take reasonable steps to enter into a Family Responsibility Agreement with the parent or parents of the youth or review the family's compliance with the Agreement in relation to the youth at any stage of the Court proceedings.

The new provision also defines the terms 'appropriate Agency' and 'parent' as having the same respective meanings as their respective terms in section 140A of the *Youth Justice Act 2005*.

**Clause 22.                      Section 83 amended (Orders Court may make)**

This clause inserts notes after section 83(1) of the *Youth Justice Act 2005* providing an example for the operation of section 83(1)(d)(iii) which allows the Court to adjourn a matter and grant bail for any purpose the Court considers appropriate in the circumstances. The notes provide the example the Court can adjourn a matter and grant bail to allow a parent or responsible adult in respect of a charged youth to demonstrate compliance with a Family Responsibility Agreement.

**Clause 23.                      Section 89A inserted**

This clause inserts the new provision, section 89A, to follow section 89 of the *Youth Justice Act 2005*. The provision allows the Court to order that the parent or responsible adult of a youth before the Court enter into a Family Responsibility Agreement with an appropriate Agency.

The Court use their power in the new provision to make an order whether or not a charge is proven or a finding of guilt is found against a youth before the Court.

The new provision also defines the terms 'appropriate Agency' and 'parent' as having the same respective meanings as their respective terms in section 140A of the *Youth Justice Act 2005*.

**Clause 24.                      Section 140A amended (Definitions)**

This clause omits the definition of 'publish' from section 140A of the *Youth Justice Act 2005*.

**Clause 25.                      Section 140B amended (Guiding principles)**

This clause omits the term 'or order' from section 140B(2)(c) from the *Youth Justice Act 2005*.

**Clause 26.                      Section 140C amended**

Subsection (1) of this clause omits the word 'Part' from the heading of section 140C of the *Youth Justice Act 2005* and inserts the word 'Act.' The heading of section 140C now reads 'How Agency acts for the purposes of this Act.'

Subsection (2) of this clause omits the word 'Part' from sections 140C(1) and (2) of the *Youth Justice Act 2005* and replaces it with the word 'Act.'

**Clause 27.                      Section 140CA inserted**

This clause inserts new provision, section 140CA, to follow section 140C in Part 6A, Division 1 of the *Youth Justice Act 2005*. The new provision clarifies that Part 6A does not affect any of the Court's existing powers to deal with a youth under the *Youth Justice Act 2005*.

**Clause 28.                      Section 140E amended (Family responsibility agreement)**

This clause omits section 140E(3) of the *Youth Justice Act 2005* and inserts a new section 140E(3). The provision requires that the appropriate Agency responsible for administering Family Responsibility Agreements, before entering into an Agreement, must ensure that facilities and services required by the youth's parents to comply with the Agreement are reasonably available.

The appropriate Agency must also consider the circumstances of the youth's family and what the likely effect the agreement would have on the family, whether the youth or the youth's parent suffers from a physical or mental disability or condition that contributes to



problem behaviour displayed by the youth and what the likely outcome of an inquiry made under Part 6A, Division 3 of the *Youth Justice Act 2005* would be before entering into a Family Responsibility Agreement.

The appropriate Agency must also ensure that procedures are in place to allow for the regular review and assessment of parental compliance and capacity to comply with the Family Responsibility Agreement before entering into the Agreement.

**Clause 29.                      Section 140F amended (Family responsibility agreement not to give rise to enforceable obligations)**

Subsection (1) of this clause omits the word 'A' from section 140F of the *Youth Justice Act 2005* and inserts '(1) A.'

Subsection (2) of this clause inserts the new provision, section 140F(2), to follow section at the end of section 140F of the *Youth Justice Act 2005*. The new provision provides that despite section 140F(1) of the *Youth Justice Act 2005*, the failure of a parent to comply with the requirements set out in a Family Responsibility Agreement may be grounds leading to an inquiry into the safety of a child pursuant to section 32 of the *Care and Protection of Children Act 2007*.

**Clause 30.                      Part 6A, Division 3 heading replaced**

This clause omits the previous heading and inserts the new heading 'Division 3    Family Circumstances.'

**Clause 31.                      Section 140H amended (General provisions about inquiry)**

This clause omits the word 'order' from section 140H(1)(b) of the *Youth Justice Act 2005* and replaces it with the word 'agreement.'

**Clause 32.                      Sections 140J to 140R repealed**

This clause repeals all sections from section 140J to section 140R from the *Youth Justice Act 2005*. This is because Family Responsibility Orders have been removed from the *Youth Justice Act 2005*.

**Part 4                              Amendment of Bail Regulations 1983**

**Clause 33.                      Regulations amended**

This is a formal clause which provides that amendments are being made to the *Bail Regulations 1983*.

**Clause 34. Regulation 2A replaced**

This clause inserts a number of new prescribed offences into regulation 2A of the *Bail Regulations 1983*. The new prescribed offences are the following offences in the *Criminal Code Act 1983*;

- Terrorism pursuant to section 54;
- Contribution towards acts of terrorism pursuant to section 55(1);
- Riot pursuant to section 65;
- Offences relating to riot pursuant to section 66;
- Going armed in public pursuant to section 69;
- Possession of child abuse material pursuant to section 125B(1);
- Sexual intercourse or gross indecency involving a child under 16 years pursuant to section 127;
- Sexual intercourse or gross indecency by a provider of services to mentally ill or handicapped person who is under the age of 16 pursuant to section 130(3A);
- Sexual intercourse or gross indecency by provider of services to mentally ill or handicapped person who is under the age of 10 pursuant to section 130(3B);
- Indecent dealing with a child under 16 years pursuant to section 132;
- Incest including with children between the ages of 10 and 16 and below the age of 10 pursuant to sections 134;
- Murder pursuant to section 156;
- Manslaughter pursuant to section 160;
- Violent act causing death pursuant to section 161A;
- Attempt to murder pursuant to section 165;
- Recklessly endangering life pursuant to section 174C;
- Recklessly endangering serious harm pursuant to section 174D;
- Negligently causing serious harm pursuant to section 174E;
- Driving a motor vehicle causing death or serious harm pursuant to section 174F;
- Hit and run pursuant to section 174FA;
- Dangerous driving during a pursuit pursuant to section 174FB;
- Disabling in order to commit an indictable offence pursuant to section 175;
- Stupefying in order to commit an indictable offence pursuant to section 176;
- Acts intended to cause serious harm or prevent apprehension pursuant to section 177;
- Serious harm pursuant to section 181;
- Attempting to injure by explosive substances pursuant to section 182;
- Cause harm pursuant to section 186;

- Assault within a circumstance described in section 188(2) aggravating the offence of assault in section 188(1);
- Assault a worker pursuant to section 188A;
- Assault a Police or emergency worker pursuant to section 189A;
- Assaults on the Administrator or judges pursuant to section 190;
- Assaults on member of crew of aircraft pursuant to section 191;
- Sexual intercourse and gross indecency without consent pursuant to sections 192(3), (4), (7) and (8);
- Coerced sexual self-manipulation pursuant to section 192B;
- Kidnapping for ransom pursuant to section 194;
- Stealing pursuant to section 210;
- Robbery pursuant to section 211;
- Assault with intent to steal pursuant to section 212;
- Unlawfully entering a building pursuant to section 213;
- Unlawful use of a vessel, motor vehicle, caravan or trailer pursuant to section 218;
- Criminal damage pursuant to section 241; and
- Arson pursuant to section 243.

This clause also inserts breaching a Domestic Violence Order pursuant to section 120 of the *Domestic and Family Violence Act 2007* as a prescribed offence under regulation 2A of the *Bail Regulations 1983*.

**Clause 35. Regulation 2AB inserted**

This clause inserts new provision, regulation 2AB, to follow after regulation 2A of the *Bail Regulations 1983*. The new provision prescribes Saltbush Social Enterprises (Darwin and Alice Springs) as a supported bail accommodation provider for the purpose of section 7B(2)(a)(ii) of the *Bail Act 1982*.

**Part 5 Consequential amendments**

**Division 1 Education Act 2015**

**Clause 36. Act amended**

This is a formal clause which provides that amendments are being made to the *Education Act 2015*.

**Clause 37. Section 173 amended (Compulsory conference)**

This clause omits the phrase ‘, or orders for a family responsibility order under that Act’ from section 173(8)(d) of the *Education Act 2015*.

## **Division 2                      Liquor Regulations 2019**

### **Clause 38.                      Regulations amended**

This is a formal clause which provides that amendments are being to the *Liquor Regulations 2019*.

### **Clause 39.                      Regulation 105 amended (Persons subject to prohibition relating to purchase of liquor)**

This clause omits the phrase ‘or a family responsibility order made under section 140J’ from regulation 105(b) of the *Liquor Regulations 2019*.

## **Division 3                      Youth Justice Regulations 2005**

### **Clause 40.                      Regulations amended**

This is a formal clause which provides that amendments are being made to the *Youth Justice Regulations 2005*.

### **Clause 41.                      Part 4A repealed (Family responsibility orders)**

This clause repeals Part 4A from the *Youth Justice Regulations 2005*.

### **Clause 42.                      Regulation 75 amended (Prescribed forms)**

This clause omits regulation 75(15B) from the *Youth Justice Regulations 2005*.

### **Clause 43.                      Schedule 1 repealed (Geographical areas for family responsibility orders)**

This clause repeals Schedule 1 from the *Youth Justice Regulations 2005*.

### **Clause 44.                      Schedule 2 amended (Forms)**

This clause omits Schedule 2, Form 15B from the *Youth Justice Regulations 2005*.

## **Part 6                          Repeal of Act**

### **Clause 45.                      Repeal of Act**

This is a standard clause which provides that the *Youth Justice Legislation Amendment Act 2021* is repealed on the day after it commences.