

2021

LEGISLATIVE ASSEMBLY OF THE  
NORTHERN TERRITORY

LIA FINOCCHIARO MLA

LEADER OF THE OPPOSITION

***Bail Legislation Amendment Bill 2021***

**Serial No. 17**

## **EXPLANATORY STATEMENT**

### **GENERAL OUTLINE**

This Bill amends the *Bail Act 1982* and, as well as consequential changes, achieves four primary purposes: (1) it creates a presumption against bail for repeat offenders and those that commit offences while on bail; (2) it reverses changes made to the Bail Act by the Government, including reinstating breach of bail conditions as an offence for youth; (3) it strengthens electronic monitoring by providing that if a repeat offender and those that re-offend while on mail will be subject to mandatory monitoring; and (4) ensures that offenders that commit serious offences—known as prescribed offences—will face a presumption against bail whether it is their first or fifth offence.

### **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 *Bail Legislation Amendment Act 2021*.

##### **Clause 2. Commencement**

This is a formal clause, which provides that the Bill will on the day after the day on which the Administrator declares assent.

#### **Part 2 Amendment of the *Bail Act 1982***

##### **Clause 3. Act Amended**

This clause explains that this part amends the *Bail Act 1982*.

##### **Clause 4. Section 7A amended (Presumption against bail for certain offences)**

This clause amends section 7A to provide for the inclusion of all of the currently defined prescribed offences into section 7A of the Act.

**Clause 5.                      Section 7B inserted**

This clause creates a new section 7B and creates a presumption against bail for repeat offenders—defined as those that have been found guilty of 2 or more offences within the previous 2 years—and those that are alleged to have committed another crime while on bail. The presumption may be rebutted under subsection (2) with regard to the factors identified in sections 24 and 24A; however, even where the presumption is overcome, a person subject to section 7B will be required to enter into a conduct agreement which includes electronic monitoring. This clause also provides at subsection (3) that bail for a person subject to section 7B cannot be dispensed with under section 9(2).

**Clause 6.                      Section 8 amended (Presumption in favour of bail for certain offences)**

This clause amends section 8 in order to make clear that section is subject to any presumption under sections 7A or 7B, as well as adding references to section 24 and 24A. This clause also removes section 8(5) which made the section inapplicable to youth.

**Clause 7.                      Section 8A repealed (Presumption in favour of bail for youths)**

This clause repeals and removes section 8A, which created a separate bail procedure for youths. Under the other Clauses of this Bill the same provisions will apply equally to youths and adults, including the repeat offender provisions added under new section 7B.

**Clause 8.                      Section 12 amended (Bail may be granted where no entitlement)**

This clause omits reference to section 8A, which is repealed by the previous clause, Clause 7.

**Clause 9.                      Section 24 amended (Criteria to be considered in bail applications)**

This clause amends section 24 to add reference to that section being subject to new section 7B.

**Clause 10.                      Section 24A amended (Criteria to be considered in bail applications for youths)**

This clause amends section 24A to add reference to that section being subject to new section 7B.

**Clause 11.                      Section 28 amended (imposition of bail conditions)**

This Clause amends section 28(2A) in order to make the considerations in that subsection discretionary rather than mandatory.

**Clause 12.                      Section 37B amended (Offence to breach bail)**

Clause 12 amends section 37B in order to reinstate breach of bail conditions as an offence for youth.

**Clause 13.                    Section 66 amended (Application of section 8A and 24A)**

This clause amends the transitional provisions in section 66 to accommodate the changes in the Bill.

**Clause 14.                    Part 9, Division 6 inserted**

Clause 14 provides for transitional arrangements under the *Bail Act* following the passage of the Bill.

**Part 3      Amendment of Bail Regulations 1983**

**Clause 15.                    Regulations Amended**

This clause provides that Part 3 amends the *Bail Regulations 1983*.

**Clause 16.                    Regulation 2A amended (Prescribed Offences)**

This clause modifies the prescribed offences list to take into account those already included in section 7A.

**Part 4      Amendment of Bail Regulations 1983**

**Clause 17.                    Repeal of Act**

This clause provides that this Act will be repealed on the day after it commences.

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