

Explanatory Statement

BAIL AND YOUTH LEGISLATION AMENDMENT BILL 2025

SERIAL NO. 24 LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

CHIEF MINISTER

GENERAL OUTLINE

The Bill amends the *Bail Act 1982* and the *Youth Justice Act 2005*.

The purpose of this Bill is to amend the Bail Act to further strengthen the amendments made to the Bail Act in October 2024 through Declan's law (*Bail Amendment Act 2024*).

This Bill does this by making further amendments to the Bail Act to change how bail is determined for certain offences and in doing so, makes community safety the paramount consideration when considering bail.

The Bill therefore:

- (a) Rewords the existing presumption against bail in section 7A(2) to make it clear that the starting point for offences captured by this section is a position of no bail;
- (b) Inserts a new section 7A(2AA) to ensure that when a court is balancing the considerations as to why a person should be granted bail the paramount consideration is whether release of the accused on bail is a risk to the safety of the community;
- (c) Provides an additional test in section 7(2AB) to be considered in determining whether to grant bail under s7A of the Bail Act so that bail must not be granted to a person unless the court has a high degree of confidence that the person will not, if released, commit a serious violence offence or prescribed offence or endanger the safety of the community.
- (d) Strengthens the youth bail criteria by removing the requirement for an authorised member or court to take into consideration all other options before remanding the youth in custody (relating to the principle of keeping a youth in custody as a last resort), and the need to minimise the stigma to the youth resulting from being remanded in custody; and
- (e) Amends the general principles of the *Youth Justice Act 2005* that must be taken into account in the Administration of the Act. The general principle that a youth should only be kept in custody for an offence (whether on arrest, in remand or under sentence) as a last resort and for the shortest appropriate period of time is removed.

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 will be cited as the *Bail and Youth Justice Legislation Amendment Bill 2025*.

Clause 2. Commencement

This clause sets out how the Amendment Act will be commenced. In this case the Act will commence on the day fixed in the Act, being 7 May 2025.

Part 2 Amendment of Bail Act 1982

Clause 3. Act amended

This is a formal clause which provides that this Part of the Amendment Act amends the *Bail Act 1982*.

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

This clause amends section 7A of the Act to insert a new test for granting bail for offences where the presumption is against bail and brings community safety to the forefront for bail consideration.

Clause 4(1) amends the heading for section 7A to reflect the change to the provision 'no bail for certain offences without high degree of confidence in accused person'.

Clause 4(2) amends section 7A(2) by rewording the section to make it clear that where the presumption against bail applies the starting position is that a decision maker (police or the court) must not grant bail unless the accused can satisfy the decision maker that bail should be granted.

The onus is on the accused to satisfy the decision maker that they should be granted bail.

In considering whether a person has discharged the onus of satisfying the decision maker that bail should be granted, clause 4 inserts a note for subsection (2) to direct the decision maker to the considerations that can be taken into account when determining bail under section 24 of the Act.

This clause also inserts new section 7A(2AA). The intention of this provision is to elevate the risk to the safety of the community in consideration of whether a person released on bail. Therefore community safety is the paramount consideration when balancing the criteria in section 24.

This clause also inserts section 7A(2AB) which provides for an additional test to be considered in determining whether bail should be granted where the presumption is against bail. The new test applies only after the court has determined that the person applying for bail has satisfied the court that they should be granted bail under section 7A(2) and that after considering the risk to the community under section 7A(2AA) the risk to the safety of the community can be mitigated by bail conditions imposed under section 28 of the Act.

New section 7A(2AB) does not require the court to reconsider the criteria for granting bail under section 24. It is a standalone consideration that requires the decision maker (either police or the court) in determining whether bail should be granted to be satisfied to a "high degree of confidence" that the person will not, if released on bail:

- a. Commit a prescribed offence or a serious violence offence; or
- b. Endanger the safety of the community.

If the decision maker cannot be satisfied to a high degree of confidence, then the court must refuse bail. If the court is satisfied to a high degree of confidence, then conditions under section 28 of the Act must be applied.

Clause 5. Section 12 amended (Bail may be granted where no entitlement)

This clause corrects an inconsistency in section 12 to remove reference to section 8A which was previously repealed.

Clause 6. Section 24 amended (Criteria to be considered in bail applications)

This clause amends section 24 which sets out the criteria to be considered in bail applications, to insert a new criteria section 24(1)(aa) for considering risk to safety of the community if the accused was released on bail.

This new criteria must be taken into account by the decision maker when determining whether to grant bail to an accused person. This clause inserts a general consideration of risk to the community.

Section 24 applies to all bail applications, whether the presumption is for or against bail, however for applications where section 7A applies this new criteria is the paramount consideration for determining bail applications by virtue of new section 7A(2AA) (as inserted in clause 4).

Clause 7. Section 24A amended (Criteria to be considered in bail applications for youths)

This clause relates to bail applications for youths to provide for criteria to be considered in bail applications. The clause omits the matters in sections 24(2)(a) and (e) from the Bail Act.

The amendment removes the requirement for a decision maker to consider all other options before remanding the youth in custody. This removes the application of the principle of keeping a youth in custody as a last resort as found in section 4(c) of the *Youth Justice Act 2005* (which is omitted through clause 10 of the Amending Act).

The amendment also removes the requirement for a decision maker to take into account the need to minimise the stigma to the youth resulting from being remanded in custody.

Clause 8. Part 9, Division 10 inserted

Clause 8 inserts new Division 10 'Bail and Youth Justice Legislation Amendment Act 2025' into Part 9 of the Bail Act, after section 76. New Division 10 provides for the transitional arrangements in relation to the amendments effected by the Amending Act.

New section 77 provides for the definitions for Division 10, namely: '**amending Act**' meaning the *Bail and Youth Justice Legislation Amendment Act 2025*, and '**commencement**' meaning the day on which section 3 of the Amending Act commences.

New section 78 provides transitional provisions in relation to the application of the amendments to sections 7A, 24 and 24A.

Subsection (1) provides that for sections 7A, 24 and 24A, any new bail applications will apply the amended provisions at section 7A, 24 and 24A regardless of when the offence is alleged to have occurred. This means that:

- A person who is on bail at the time of commencement who breaches bail will have the new amendments apply to their bail application;
- A person who is on bail at the time of commencement and reoffends after commencement of the provision will have the new amendments apply;
- A person who commits an offence before the commencement of the new provisions but applies for bail after commencement will have the new amendments apply to their bail application

Subsection (2) continues the application of section 7A, 24 and 24A, as in force immediately before the commencement. It is intended that those provisions will continue to apply to any application for bail that was made or commenced before commencement including:

- (a) To an application for bail made before the commencement of the Amending Act;

- (b) Where a person is granted bail before the commencement of the new provisions and comes before the court after the commencement of the provisions and their bail is continued under section 32 of the Bail Act;
- (c) Where a review of a grant of police bail made before the commencement of the provisions occurs as mentioned in section 33(3) or (5) of the Bail Act;
- (d) To a review of a decision under section 34 or 35 if the decision being reviewed:
 - a. relates to a matter mentioned in section 33(3) or (5) that occurred before the commencement; or
 - b. was made by the Local Court or the Supreme Court before the commencement.

New section 79 provides for a procedural transitional provision in circumstances where a person is granted bail by the Local Court to appear in the Supreme Court for trial or sentence.

The provision provides that despite section 32 of the Bail Act, the provisions of the Amending Act are to be applied for a person on bail appearing before the Supreme Court. The intention of this provision is to ensure that the new provisions 7A, 24 and 24A apply to bail considerations in the Supreme Court made through a new application and to not continue bail under the old considerations.

This provision provides that once before the Supreme Court for trial or sentence, a person's bail cannot be continued under section 32 and that bail must be considered by the Supreme Court using the new test in section 7A, 24 or 24A.

Part 3 Amendment of Youth Justice Act 2005

Clause 9 Act amended

This is a formal clause which provides that this Part of the Amending Act amends the *Youth Justice Act 2005*.

Clause 10 Section 4 amended (Principles)

This clause amends the principles of the Youth Justice Act to omit section 4(c) which requires that in the Administration of the Act, a youth should only be kept in custody for an offence (whether on arrest, in remand or under sentence) as a last resort and for the shortest appropriate period of time.

Part 4 Repeal

Clause 11. Repeal of Act

Clause 10 is a formal clause that repeals this Act on the day after it commences.