

2016
LEGISLATIVE ASSEMBLY OF THE
NORTHERN TERRITORY
MINISTER FOR CORRECTIONAL SERVICES
YOUTH JUSTICE AMENDMENT BILL 2016
SERIAL NO. 165
EXPLANATORY STATEMENT

GENERAL OUTLINE

The purpose of the Youth Justice Amendment Bill 2016 is to:

- (a) clarify the provision of mechanical devices approved for use by the Commissioner of Correctional Services to restrict the movement of a detainee; and
- (b) further clarify when such devices can be used, or authorised for use, when escorting a detainee (both inside and external to a detention centre), as an exception to the use of force in maintaining discipline, or to protect the safety of the detainee and other persons.

The amendments contained in this Bill are in response to a number of critical incidents regarding young people in detention in the Northern Territory.

The Bill inserts clauses relating to an ‘approved restraint’ meaning a mechanical device that the Commissioner of Correctional Services has approved for restricting the movement of detainees. The Bill further defines what constitutes the ‘appropriate’ use of approved restraints, namely using the restraint in the least restrictive or invasive way reasonable in the circumstances, and using the restraint for the minimum amount of time reasonable in the circumstances.

The Bill amends clauses regarding the powers and functions of the superintendent of a detention centre. This pertains to clarifying the use of ‘approved restraints’ for the purposes of safety of the detainee and others, maintaining discipline (where maintaining discipline relates to the management of emergency situations and order or security in a detention centre) and escorting detainees (both internal and external to a detention centre).

NOTES ON CLAUSES

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 Amendment Act 2016*.

Clause 2. Commencement

This Act will commence on a day fixed by the Administrator by *Gazette* notice.

Clause 3. Act amended

This Act will amend the *Youth Justice Act*.

Clause 4. Section 5 amended

This clause inserts a reference to the terms ‘appropriate’ and ‘approved restraint’ in the interpretation section of the *Youth Justice Act*. ‘Approved restraint’ and ‘appropriate’ are new terms inserted by this Bill in section 151AA and 151AB.

Clause 5. Section 151A inserted

Clause 5 inserts before section 151 the new definition section 151AA. This section inserts definitions of ‘appropriate’ and ‘approved restraint’ which are applicable to Part 8, Division 2 of the *Youth Justice Act*.

Clause 5 inserts a definition of ‘appropriate’ in relation to the use of an approved restraint. This clause specifies that the ‘appropriate’ use of an ‘approved restraint’ means, using the restraint in the least restrictive or invasive way reasonable in the circumstances, and using the restraint for the minimum amount of time reasonable in the circumstances.

This clause thereby contains a two-fold safeguard regarding the manner in which the particular mechanical device is to be used to restrict the movement of detainees and the period of time that the mechanical device can be applied.

The definition clause in section 151AA includes a cross reference to the term, ‘approved restraint’ in section 151AB.

Clause 5 also inserts a further definition of an ‘approved restraint’ meaning a mechanical device that the Commissioner has approved for restricting the movement of detainees. The Commissioner means the Commissioner of Correctional Services.

This definition will provide members of staff with clarity as to the particular mechanical devices of restraint which can be used to restrict the movement of a detainee. It is anticipated that the term ‘approved restraint’ strictly refer to four categories of restraint instruments: handcuffs, ankle cuffs, waist restraining belts and safety equipment.

Clause 6. Section 152 amended

This clause contains a provision regarding the powers and functions of the superintendent of a detention centre and the use of approved restraints for safety purposes.

Section 151(3)(c) of the *Youth Justice Act* pertains to the superintendent's broad responsibility to maintain order and ensure the safe custody and protection of all persons who are within the precincts of the detention centre, whether as detainees or otherwise. Section 152 of the *Youth Justice Act* qualifies the

powers of the superintendent in carrying out such responsibility, in that the superintendent has the powers that are necessary or convenient for the performance of his or her functions.

The newly inserted section 152(1A) specifies that to protect a detainee from self-harm, or to protect the safety of another person, the superintendent may:

- (a) use appropriately an approved restraint on the detainee; or
- (b) authorise the appropriate use of an approved restraint on the detainee.

Clause 6 contains subsections (a) and (b) which respectfully pertain to the use, and authorisation of use, of an approved restraint. This means that for the purposes of implementing an instrument of delegation, the superintendent may distinguish the members of staff who can use approved restraints in specified circumstances, and those who can authorise the appropriate use of approved restraints.

Clauses 7(2) and 8 replicate the wording of clause 6, in ensuring that the superintendent may distinguish between delegation of the power to use appropriately, and authorise appropriate use of, an ‘approved restraint’ on the detainee.

Clause 7. Section 153 amended

Clause 7(1) omits the words ‘handcuffing or use of similar devices to restrain’ from section 153(3)(d) of the *Youth Justice Act*, replacing it with, ‘use of approved restraints to restrict’.

The amended section 153(3)(d) states that reasonably necessary force does not include the use of ‘approved restraints’ to restrict the normal movement of a detainee. Approved restraints used to restrict normal movement is not considered force which is reasonably necessary in the circumstances, and is therefore prohibited.

The term ‘restrict, in restricting the normal movement of a detainee, has been inserted to achieve consistency with the newly inserted definition of ‘approved restraint’ (refer clause 5).

Clause 7(2) amends section 153(4) of the *Youth Justice Act* and provides an exception to the ban on the use of approved restraints (in the newly amended section 153(3)(d) above). If the superintendent is of the opinion that an emergency situation exists, or that restraining a detainee would reduce a risk to the good order or security of the detention centre, the superintendent may: use appropriately an approved restraint on the detainee; or authorise the appropriate use of an approved restraint on the detainee.

Clause 7(2) therefore describes limited circumstances where the prohibition against using approved restraints for the purposes of maintaining discipline is lifted.

Reference to a detainee being temporarily restrained to protect the detainee from self-harm or to protect the safety of another person has been omitted from section 153(4) of the *Youth Justice Act*, and is now reflected in clause 6 (inserted into section 152). The use of restraints to protect the detainee from self-harm or to protect other persons is inconsistent with the wording of section 153, which is aimed at limiting what a superintendent can authorise in maintaining discipline.

Clause 8. Section 155 replaced

Clause 8 repeals section 155 of the *Youth Justice Act* and replaces it with a provision which states that when a detainee is being escorted, whether inside or outside the detention centre, the superintendent may:

use appropriately an approved restraint on the detainee; or authorise the appropriate use of an approved restraint on the detainee.

In practice, the provision will have application to detainees escorted outside a detention centre and for movement of detainees inside a detention centre.

Clause 9. **Section 157A amended**

Clause 9 regards section 157A(2) of the *Youth Justice Act* and an inconsistency in the spelling of the word, ‘superintendent’. This clause rectifies this issue by ensuring the word ‘superintendent’ is spelt consistently throughout the *Youth Justice Act*.

Clause 10. Section 157B amended

Clause 10 regards section 157B(1) of the *Youth Justice Act* and an inconsistency in the spelling of the word, ‘superintendent’. This clause rectifies this issue by ensuring the word ‘superintendent’ is spelt consistently throughout the *Youth Justice Act*.

Clause 11. Section 158 amended

Clause 11 amends the heading in section 158 of the *Youth Justice Act* to insert the words, ‘of detainees’. This will allow for distinction to be made with the register of use of approved restraints created by the newly inserted section 158A (refer clause 12).

Clause 12. **Section 158A inserted**

Clause 12 inserts a new section 158A, under the heading of ‘Register of use of approved restraints’. This clause states that the superintendent of a detention centre must keep a register containing the following particulars in relation to the use of approved restraints:

- (a) the name of the detainee who was restrained;
- (b) the particular approved restraint that was used;
- (c) the circumstances in which the approved restraint was used;
- (d) the date on which the approved restraint was used;
- (e) the time the approved restraint was used, including the time at which the approved restraint was applied and the time at which the approved restraint was removed;
- (f) the name of the person who authorised the use of the approved restraint;
- (g) any medical attention that was required; and
- (h) any other particulars prescribed by the Regulations.

The obligation of the superintendent to maintain a register of the particulars of the mechanical device and the circumstances in which it was used is anticipated to ensure transparency and accountability in the use of approved restraints on detainees in detention centres. In particular, this clause contains a requirement that the superintendent must record specific details about the circumstances in which the approved restraint was used, and the person who authorised the use of the approved restraint. This complements the

notion that approved restraints must only be used when it is reasonable in the circumstances and when appropriate authority is given.

Additionally, the requirement on the superintendent to record the date and time in which the approved restraint was applied and removed reinforces that approved restraints are a temporary measure used to assist the detainee and members of staff in safely de-escalating the detainee's behaviour.

Clause 12 further specifies that a register may be kept in any form and on any medium that the Commissioner considers appropriate. This replicates the requirement for the Commissioner to keep a register of detainees in section 158 of the *Youth Justice Act*.

The register created in this clause is not intended to supplant any current legislative requirements, but will instead complement the superintendent's obligation to maintain details regarding detainees in the Integrated Offender Management System, commonly known as IOMS, pursuant to section 158 of the *Youth Justice Act*.

Clause 13. Expiry of Act

Clause 13 notes that this Act expires on the day after it commences. This clause is contained in every 'amendment' Bill and ensures the Bill is removed from the Statute Book after it commences.