

2017

LEGISLATIVE ASSEMBLY OF THE  
NORTHERN TERRITORY

MINISTER FOR TERRITORY FAMILIES

**Youth Justice Legislation Amendment Bill 2017**

**SERIAL NO. 29**

**EXPLANATORY STATEMENT**

**GENERAL OUTLINE**

The purpose of the Youth Justice Legislation Amendment Bill 2017 is to amend the *Youth Justice Act*, Youth Justice Regulations and other associated legislation to provide that Territory Families is the primary responsible authority for exercising powers and functions relating to youth justice and youth detention. The Bill replaces references to the Commissioner of Correctional Services and probation and parole officers with the Chief Executive Officer (CEO) of the responsible agency, currently Territory Families, and with community youth justice officers.

**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 2017*.

**Clause 2.                 Commencement**

This is a formal clause which provides when the Act will commence. The Act will commence on a day fixed by the Administrator by Gazette notice.

**Part 2                      Amendment of Youth Justice Act**

**Clause 3.                      Act amended**

This Part amends the *Youth Justice Act*.

**Clause 4.                      Section 5 amended**

This clause amends the definitions in the *Youth Justice Act*. Subclause (1) makes a minor amendment to comply with current drafting practice.

Subclause (2) removes the definitions of ‘Commissioner’, ‘correctional officer’, ‘police officer’ and ‘probation and parole officer’.

Subclause (3) inserts the definition of ‘appropriate authority’ so that the CEO will replace the Commissioner of Correctional Services and become the default authority for youth justice unless a youth is sentenced to a term of imprisonment.

Subclause (3) also inserts the definition of the ‘CEO’ and a new statutory officer called a ‘community youth justice officer’ to replace probation and parole officer.

Subclause (3) also inserts the definitions of ‘approved monitoring device’, ‘monitoring device’, ‘monitoring order’, ‘prescribed alcohol/drug test’ and ‘restricted drug’ as part of introducing a new monitoring regime within the *Youth Justice Act* under the new Part 6AA.

**Clause 5.                      Part 1, Division 3 and sections 105 to 109 and 132 repealed**

This clause repeals Division 3 ‘Probation and parole officers’ of Part 1 of the *Youth Justice Act*.

This clause also repeals sections 105, 106, 107, 108 and 109 as a result of introducing an overall monitoring regime under the new Part 6AA.

This clause also repeals section 132 as a result of the consequential amendments to the *Parole Act*, contained in Division 4 of Part 4 of this Bill.

**Clause 6. Part 6AA inserted**

This clause inserts new Part 6AA, the new monitoring regime, into the *Youth Justice Act* to replace the regime which was previously applied by probation and parole officers through the operation of the *Correctional Services Act*. New section 140AA sets out the appointment and functions of community youth justice officers. Section 140AA(4) includes the definition of 'non-custodial order' which clarifies the scope of the function of supervision for community youth justice officers.

Division 2 of this new Part 6AA empowers the CEO to approve and direct the use of a monitoring device. New sections 140AC and 140AE enable community youth justice officers to give reasonable directions and provide them with a list of powers to ensure compliance of youths on monitoring orders.

Division 3 of this new Part 6AA deals specifically with alcohol and drug testing. New section 140AF gives community youth justice officers the power to direct a youth who is subject to a monitoring order to submit to alcohol and drug testing and sets out the relevant procedural requirements.

New section 140AG creates an offence for a person who tampers with a sample of breath or bodily substance under this Part.

New section 140AH sets out the evidentiary presumptions which apply to prescribed alcohol/drug testing and the form that the evidence should take.

**Clause 7. Sections 154 and 157B repealed**

This clause repeals sections 154 and 157B to remove the powers from the Commissioner of Correctional Services to temporarily accommodate youth detainees or provide operational assistance to a detention centre. The provision retains the mechanism enabling NT Police to provide temporary accommodation or operational assistance if necessary.

**Clause 8. Section 167B inserted**

This clause inserts a new section 167B to enable the CEO to make arrangements with the sheriff to accommodate youths in a detention centre who are in the custody of the sheriff.

**Clause 9. Section 215 amended**

This clause amends the immunity provision protecting a person performing functions in good faith under the *Youth Justice Act* from civil or criminal liabilities to include the CEO and community youth justice officers.

**Clause 10. Part 17, Division 4 inserted**

This clause inserts the transitional provisions. New section 229 contains definitions of 'amending Act', 'commencement', 'probation and parole officer' and 'the Board'. New section 230 clarifies that immunity continues to apply to a probation and parole officer. New section 231 limits any commencement of prosecutions for an offence against the *Youth Justice Act* by the Commissioner of Correctional Services to a period of 6 months. New section 232 ensures existing orders of the court and Parole Board will continue to have effect.

**Clause 11. Act further amended**

This clause provides that Schedule 1 amends other sections contained in it. Schedule 1 sets out all other amendments to the *Youth Justice Act* which are required to provide that the powers and functions for youth justice matters lie with the CEO and community youth justice officers.

Schedule 1 also contains several minor amendments to comply with current drafting practice.

**Part 3 Amendment of Youth Justice Regulations****Clause 12. Regulations amended**

This Part amends the Youth Justice Regulations.

**Clause 13. Regulation 2A inserted**

This clause inserts various definitions including 'blood analysis', 'breath analysis', 'breath test', 'health practitioner', 'pathologist', 'phlebotomist', 'prescribed breath analysis instrument', 'saliva test' and 'urine test'.

**Clause 14. Part 4AA inserted**

This clause inserts Part 4AA with provisions dealing with alcohol and drug testing on an operational level which were previously applied through operation of the *Correctional Services Act*. New regulations 28AA and 28AB set out the detailed definitions for breath test, saliva test, urine test, breath analysis and blood analysis. New regulation 28AC provides that a person is only a prescribed sampler if the person is authorised under regulations 28AD, 28AE or 28AF which lists the various types of authorised persons who can carry out the prescribed tests of breath test, saliva test, urine test, breath analysis and blood analysis respectively.

New regulation 28AG provides for a mechanism through which different authorities and professionals may issue different evidentiary certificates for the purposes of legal proceedings.

**Clause 15. Regulations further amended**

This clause provides that Schedule 2 amends other regulations contained in it. Schedule 2 sets out all other amendments to the Youth Justice Regulations which are required to provide that the powers and functions for youth justice matters lie with the CEO and community youth justice officers. Schedule 2 also contains several minor amendments to comply with current drafting practice.

**Part 4 Consequential amendments**

The consequential amendments make the amendments necessary to provide for powers and functions for youth justice matters to be exercised by the CEO and community youth justice officers in circumstances where the powers previously were exercised for youth by the Commissioner for Correctional Services and probation and parole officers.

**Division 1 Bail Act**

**Clause 16. Act amended**

This Division amends the *Bail Act*.

**Clause 17. Section 3 amended**

This clause inserts a new definition for ‘approved monitoring device’ and the definitions of ‘CEO (Youth Justice)’, ‘community youth justice officer’ and ‘youth’.

**Clause 18. Section 4 amended**

This clause replaces the word ‘child’ with ‘youth’ to ensure uniformity and consistency of terminology.

**Clause 19. Section 24 amended**

This clause removes the reference to ‘within the meaning of the *Youth Justice Act*’ to comply with current drafting practice.

**Clause 20. Section 26 amended**

This clause adds the CEO (Youth Justice) as the new authority for a bail undertaking in respect of youth.

**Clause 21. Section 27A amended**

This clauses inserts ‘community youth justice officer’ to allow courts to impose a bail condition to provide that a youth must comply with all reasonable directions of a community youth justice officer regarding the use of a monitoring device.

**Clause 22. Section 27B amended**

This clause inserts a deeming provision which gives community youth justice officers the same powers under Part 6AA to supervise a youth who is subject to an approved monitoring device imposed by court as part of the youth’s bail conditions imposed by court.

**Clause 23. Section 28 amended**

This clause inserts a new definition for ‘assessment report’ to ensure the CEO (Youth Justice) will prepare the assessment report for the court to consider electronic monitoring for bail in matters involving youth.

**Clause 24. Section 31 amended**

This clause adds the CEO (Youth Justice) to allow the court to commit a youth into the custody of the CEO if the court decides to discharge a person who previously acted as a surety for the youth as part of a bail agreement.

**Clause 25. Section 36 amended**

This clause adds the CEO (Youth Justice) to allow the court to commit a youth into the custody of the CEO if the court decides to either revoke the youth's bail or require the youth to enter into a new bail undertaking before release upon review of bail.

**Clause 26. Section 38 amended**

This clause adds the CEO (Youth Justice) to allow the court to commit a youth into the custody of the CEO if the court refuses to grant bail upon arrest for absconding or breach of condition.

**Division 2 Correctional Services Act****Clause 27. Act amended**

This Division amends the *Correctional Services Act*.

**Clause 28. Section 4 amended**

This clause amends the definition of 'youth detainee'.

**Clause 29. Section 13 amended**

This clause removes the reference to section 66 in this section because the Commissioner of Correctional Services will no longer have power to use a custodial correctional facility to temporarily accommodate youths.

**Clause 30. Section 14 amended**

This clause also removes the reference to section 66 in this section because the Commissioner of Correctional Services will no longer have power to use a custodial correctional facility to temporarily accommodate youths.

**Clause 31. Section 40 amended**

This clause omits the second note to section 40 because section 154 of the *Youth Justice Act* is repealed and the Commissioner of Correctional Services will no longer have power to use a custodial correctional facility to temporarily accommodate youths.

**Clause 32. Section 65 amended**

This clause replaces the Commissioner of Correctional Services with the superintendent of a detention centre as the authority who has power to transfer a youth prisoner back to a custodial correctional facility, with the consent of the Commissioner of Correctional Services.

**Clause 33. Section 66 repealed**

This clause repeals section 66 because the Commissioner of Correctional Services will no longer have power to use a custodial correctional facility to temporarily accommodate youths.

**Clause 34. Section 67 amended**

This clause removes the reference to section 66 in this section because the Commissioner of Correctional Services will no longer have power to use a custodial correctional facility to temporarily accommodate youths.

**Division 3 Mental Health and Related Services Act****Clause 35. Act amended**

This Division amends the *Mental Health and Related Services Act*.

**Clause 36. Section 8AB inserted**

This clause inserts a deeming provision to allow all the powers and obligations under the *Mental Health and Related Services Act* to apply to youth detainees and the CEO to assume the same responsibilities over youth detainees in the same way the Commissioner of Correctional Services has over adult prisoners and previously for youth.

New subsection 8AB(2) includes definitions of 'detainee' and 'detention centre'.

**Division 4            Parole Act**

**Clause 37.            Act amended**

This Division amends the *Parole Act*.

**Clause 38.            Section 3AB inserted**

This clause inserts a deeming provision to replace the repealed section 132 of the *Youth Justice Act*. New section 3AB contains deeming provisions which enable the *Parole Act* to apply to youths who are sentenced to a non-parole period. The deeming provisions include references to the CEO (Youth Justice) and a community youth justice officer which in turn allow the transfer of functions and powers to be recognized in the *Parole Act*.

New subsection 3AB(2) includes definitions of ‘CEO (Youth Justice)’, ‘Community Youth Justice Officer’, ‘detention centre’, ‘youth detainee’ and ‘Youth Justice Court’.

**Division 5    Other laws amended**

**Clause 39.            Other laws amended**

This clause provides that Schedule 3 amends other legislation contained in it. Schedule 3 sets out all other consequential amendments to other associated legislation which are required to provide that the exercise of powers and functions relating to youth lie with the CEO and Community Youth Justice Officers.

The associated legislation includes the *Child Protection (Offender Reporting and Registration) Act*, the *Child Protection (Offender Reporting and Registration) Regulations*, the *Cross-Border Justice Act*, the *Cross-Border Justice Regulations*, the *Interpretation Act*, the *Sentencing Act*, the *Sheriff Act*, the *Surveillance Devices Regulations*, the *Terrorism (Emergency Powers) Act* and the *Victims of Crime Rights and Services Act* as legislation containing provisions relating to youth.

Schedule 3 also contains several minor amendments to comply with current drafting practice.

**Part 5                      Repeal of Act**

## Clause 40.                      Repeal of Act

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