

2017

LEGISLATIVE ASSEMBLY OF THE  
NORTHERN TERRITORY

ATTORNEY-GENERAL AND MINISTER FOR JUSTICE

**PAROLE AMENDMENT BILL 2017**

**SERIAL NO. 21**

**EXPLANATORY STATEMENT**

**GENERAL OUTLINE**

The purpose of the Parole Amendment Bill 2017 is to amend the *Parole Act* to authorise the Chairperson of the NT Parole Board to, without revoking a parole order, impose a period of the person's sentence of imprisonment as a sanction for non-compliance with a parole condition. The sanctions matrix which sets out the period of the term of imprisonment to be served as a sanction is to be fixed through an instrument published in the Northern Territory *Gazette*. The Bill will allow for a swift, certain and proportionate response to non-compliance with a parole order.

The Bill also makes consequential amendments to related legislation.

**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 *Parole 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 Parole Act**

**Clause 3.                Act amended**

This Part amends the *Parole Act*.

#### **Clause 4.                    Section 3 amended**

This clause inserts the definitions of ‘non-parole period’, ‘sanction’, ‘sanctions matrix’ and ‘sanctions regime’. It also amends a typographical error in the definition of ‘approved monitoring device’.

#### **Clause 5.                    Section 3AA inserted**

This clause inserts new section 3AA to define ‘parole period’, which commences on the day a person is released from custody on a parole order and terminates on the day on which the term of imprisonment to which the person was sentenced expires or, otherwise, the date that the order is revoked or cancelled. If the parole order is subject to the sanctions regime any time served in custody as a sanction does not form part of the parole period. This definition assists with distinguishing between the time spent in custody for a sanction under the sanctions regime and the time spent in the community on the parole order.

#### **Clause 6.                    Section 5 replaced**

This clause inserts new section 4C and new sections 5 to 5G into the *Parole Act* to comply with current drafting practice and to accommodate the application of the sanctions regime. Section 5(6A) of the *Parole Act* is not replaced, as it is not a necessary provision.

#### **New section 4C        Sanctions matrix**

New section 4C grants the Chairperson the power, on behalf of the Parole Board, to determine a schedule of sanctions for non-compliance with conditions of a parole order. The schedule is to be published by Northern Territory *Gazette* notice.

#### **New section 5                    Release on parole**

New section 5 replaces sections 5(2), 5(2A) and 5(3) of the *Parole Act* to comply with current drafting practice.

#### **New section 5A                    Parole order conditions**

New section 5A replaces sections 5(5), 5(5A) and 5(5C) of the *Parole Act* to comply with current drafting practice. New section 5A provides the conditions that may be applied to a parole order, including, at new section 5A(3)(c), that a parole order may include a condition that the sanctions regime applies to instances of non-compliance with other conditions of the order.

#### **New section 5B        Amendment or revocation of parole order – before expiry of parole order**

New section 5B replaces sections 5(6) and 5(7) of the *Parole Act* to comply with current drafting practice and to insert a provision allowing the Chairperson to amend a parole order, any time before the expiration of the parole period, to include the

application of the sanctions regime in relation to non-compliance as a condition of the parole order.

**New section 5C                      Commission of offence or contravention of condition during parole period**

New section 5C replaces section 5(6AA) and 5(6AB) of the *Parole Act* to comply with current drafting practice.

**New section 5D                      Parole order taken to be revoked**

New section 5D replaces sections 5(8), 5(8A) and 5(8B) of the *Parole Act* to comply with current drafting practice.

**New section 5E                      Requirements when sanctions regime condition of parole order**

New section 5E provides that, if the application of the sanctions matrix applies when parole is granted by the Parole Board a probation and parole officer must provide a copy of the sanctions matrix to the prisoner prior to release. The probation and parole officer must explain to the person the consequences of non-compliance with the conditions of the parole order at the time the person signs the order.

If the person's parole order is amended by determining that the sanctions regime applies in relation to non-compliance with conditions of the order then a probation and parole officer must provide a copy of the sanctions matrix to the person and explain to the person the consequences of non-compliance with the conditions of the parole order as soon as practicable after the Chairperson has amended the order.

In both situations the person must acknowledge receipt of a copy of the sanctions matrix and that the probation and parole officer has explained the consequences of non-compliance..

**New section 5F                      Application of sanctions regime**

New section 5F sets out the application of the sanctions regime. Where a person's parole order is subject to the sanctions regime and a probation and parole officer believes on reasonable grounds that an act of non-compliance has occurred, the officer must give a written report about the matter to the Chairperson, as soon as practicable, after the occurrence of non-compliance.

Where the Chairperson is satisfied an act of non-compliance has occurred, the Chairperson may:

- a) issue a written warning; or
- b) impose the applicable sanction under the sanctions matrix; or
- c) revoke the person's parole order; or
- d) take no action.

The intention is to apply the corresponding sanctions to acts of non-compliance set out in the gazetted sanctions matrix. The Chairperson also retains the power to revoke or amend the parole order, or take no further action. The purpose of the sanctions regime is to ensure that a swift, certain and proportionate response is applied to acts of non-compliance; however, the Chairperson has these alternative powers to ensure that, in the circumstances, an appropriate response is afforded.

Where multiple instances of non-compliance have been alleged and the Chairperson has determined that sanctions under the sanctions regime are a proportionate response to the instances of non-compliance, the Chairperson must not impose a sanction under the sanctions matrix that is greater than the longest individual sanction to be imposed and must not impose a sanction that extends the term of imprisonment imposed at sentence.

A sanction is a period of the person's sentence of imprisonment to be served which must be served by the person in prison under the sanctions matrix, for non-compliance with a condition of the person's parole order. Consequently, as set out in new section 5F(4) the sanction imposed by the Chairperson cannot extend the sentence of imprisonment imposed at sentence.

Similarly to the amendment to section 7, made in clause 8, new section 5F(8) allows a person to be brought before, or to appear before the Local Court. This addresses situations where a person has been arrested by a police member and brought before the Court as well as a situation where a person has been directed to attend the Court by a probation and parole officer in order for the matter to be heard and a warrant of commitment be issued in accordance with the order of the Chairperson.

Where the Chairperson has determined to impose a sanction, he or she must, by written order, state that a sanction has been imposed and specify the nature of the non-compliance and the sanction to be served. This order is authority for police to arrest a person and bring them before the Local Court.

The Local Court must issue a warrant of commitment of a person into the custody of the Commissioner of Correctional Services to serve the part of the relevant term of imprisonment as set out in the Chairperson's order. The Local Court must be satisfied that the Chairperson has made an order under the relevant section to impose a sanction under the sanctions matrix.

## **New section 5G                      Arrest of person**

New section 5G replaces sections 5(9), 5(9A) and 5(10) of the *Parole Act* to comply with current drafting practice.

## **Clause 7.                      Section 6 amended**

This clause amends section 6 of the *Parole Act* by updating the cross reference from section 5(9)(b) of the *Parole Act* to new section 5G(1)(b) or (c). It also omits the word 'taken' replacing it with 'brought' to be consistent with the terminology elsewhere in the *Parole Act*.

**Clause 8.                   Section 7 replaced**

This clause repeals and replaces current section 7 to comply with current drafting practice and also inserts a provision to allow a person to appear before the Local Court. This is to ensure that a person may be brought before the Local Court in pursuance of new section 5G(4) and also may appear before the Local Court of their own volition or where the person has not been arrested by a police officer.

**Clause 9.                   Section 8 amended**

This clause amends section 8 of the *Parole Act*. The clause updates the cross reference from section 5(10) of the *Parole Act* to new section 5G(4).

**Clause 10.                Section 11 replaced**

Clause 10 repeals and replaces section 11 of the *Parole Act* to comply with current drafting practice and to insert new section 11(1)(b), (3) and (4) to ensure that time spent in custody, whether police custody or custody of the Commissioner of Correctional Services, is to count toward the time served for the sanction ordered by the Chairperson. This is to be reflected in the warrant of commitment issued by the Local Court. That is, the Local Court must backdate the warrant of commitment issued to reflect any time (prior to the person's commitment into a correctional custodial facility to serve a sanction under the sanctions regime) which the person spent in custody after the person's arrest.

New section 11(2) ensures that any period of custody that the person serves, whether by revocation of the parole order or by serving a term of imprisonment under the sanctions regime, is taken to be serving the part of the term of imprisonment that remained to be served at the commencement of the person's parole period. The total period of time ordered to be served by the Chairperson as a sanction under the sanctions regime cannot exceed the term of imprisonment that remained to be served at the commencement of the person's parole period.

**Clause 11.                Section 13A and 13B inserted**

This clause inserts new sections 13A and 13B after section 13 of the *Parole Act*.

New section 13A(2) clarifies that, at the completion of a sanction served under the sanctions regime, the person is to be released on parole and, subsequently while on parole, will continue to be subject to the parole order originally applying to the person when the sanction was imposed (unless the Chairperson, under new section 14A, also amends the conditions of the parole order when the person is released at the completion of a sanction).

New section 13A(3) provides that a probation and parole officer must, before the person is released under the parole order originally applying to the person, or as soon as practicable after the person's release, explain to the person that their parole continues to be subject to the sanctions regime and warn the person accordingly. This is to ensure that the person understands that their order is subject to the

sanctions regime as well as other conditions set out in the parole order. The probation and parole officer must also advise the person that the person will continue to be supervised by a probation and parole officer until the parole period expires or the person's parole order is revoked or cancelled.

New section 13B sets out the effect of serving a sanction on the term of imprisonment. This section only applies if the parole order includes a condition that the sanctions regime applies to the parole order. At the completion of a sanction a person is re-released on the same parole order that was in operation when the sanction was imposed (subject to any amendments to the conditions). The expiration date of the parole order is not affected by the imposition of a sanction or multiple sanctions.

New section 13B(3) ensures that when a the parole order is revoked or cancelled only the time spent in custody is taken to be time served under the term of imprisonment imposed by the sentencing court. The time in custody includes the time spent in the custody of the Commissioner for Correctional Services before the person was initially granted and released on parole as well as any time spent in custody serving a sanction imposed by the Chairperson. To avoid doubt, where the parole order is revoked or cancelled, time spent on the parole order in the community does not count toward time served under the relevant sentence of imprisonment.

#### **Clause 12.                   Section 14 amended**

This clause ensures that when a parole order, which is not subject to the sanctions regime, is revoked or cancelled the total period of time to be served is the part of the term of imprisonment that remained to be served at the commencement of the parole period. This reflects the existing position under section 14. The clause also amends section 14(2) of the *Parole Act* to update the necessary cross-reference with the new section 5C.

#### **Clause 13.                   Section 14A inserted**

This clause allows the Chairperson to amend a person's parole order by varying the conditions of parole when the person is released on parole after serving a period of imprisonment under the sanctions regime.

#### **Clause 14.                   Part 6 inserted**

This clause inserts new section 20 in the *Parole Act*. It is a transitional provision to clarify that the sanctions regime applies not just to parole orders entered into after commencement of the *Parole Amendment Act 2017*, but also to orders in existence at the time of commencement. Such orders can be made subject to the sanctions regime through the operation of new section 5B(1)(a)(ii).

**Part 3                      Amendment of other laws**

**Clause 15.                Other laws amended**

This clause provides that the Schedule amends the laws mentioned in it. The Schedule sets out the consequential amendments to other legislation required as a result of the amendments made by the *Parole Amendment Act 2017*.

**Part 4                      Expiry of Act**

**Clause 16.                Expiry of Act**

This is a standard clause which provides that the *Parole Amendment Act 2017* expires the day after it commences. As this is an amending Act, there is no need to retain the Act on the statute book, once all the amendments to other Acts have been effected.