

# Attachment C – Explanatory Statement

Youth Justice Legislation Amendment Bill 2016

SERIAL NO. XX

LEGISLATIVE ASSEMBLY OF THE

NORTHERN TERRITORY

MINISTER FOR TERRITORY FAMILIES

## EXPLANATORY STATEMENT

### **GENERAL OUTLINE**

The *Youth Justice Legislation Amendment Bill 2016* amends the *Youth Justice Act* and *Youth Justice Regulations* for the purposes of:

- approving specific restraints that may be used on youth detainees and thereby prohibiting the use of restraint chairs; and
- providing increased accountability as to the use of approved restraints on youth detainees through requiring the Commissioner to make a determination governing the use of approved restraints.

### **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 Legislation Amendment Act 2016*.

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

This clause provides for the commencement of the Act to occur on a day fixed by the Administrator by Gazette notice.

#### **Clause 3.                      Act amended**

This clause provides that this Part amends the *Youth Justice Act*.

**Clause 4. Section 151AA amended**

This clause provides that appropriate, in relation to the use of an approved restraint, means using the restraint:

- (a) in the least restrictive or invasive way reasonable in the circumstances; and
- (b) for the minimum amount of time reasonable in the circumstances; and
- (c) in accordance with a determination made by the Commissioner under the Regulations in relation to the use of approved restraints.

This clause inserts paragraph (c) into the definition of appropriate in section 151AA, to provide that appropriate means using the restraint in accordance with the determination made by the Commissioner under regulation 30(1).

Section 217(3) of the *Youth Justice Act* prescribes that the Regulations may authorise the Commissioner or superintendent of a detention centre to make a determination.

Determinations may be made pursuant to regulation 30(1) of the *Youth Justice Regulations* on matters relating to the management and operation of a detention centre, the maintenance of order within a detention centre, a grievance or complaint of a detainee and the health, welfare, safe custody and protection of a detainee as amended (clause 8 refers).

The manner in which an approved restraint is used is a matter falling within regulation 30(1) as amended. Appropriate use of an approved restraint will be governed by the *Youth Justice Act* and a determination made by the Commissioner.

**Clause 5. Section 151AB replaced**

This clause repeals section 151AB which provided authority for the Commissioner to approve a mechanical device (an approved restraint) for restricting the movement of detainees.

This clause replaces section 151AB to specify that only the following devices are approved restraints for use on youth detainees:

- (a) handcuffs;
- (b) ankle cuffs; and
- (c) waist restraining belts.

Any device not listed is therefore prohibited from use on a youth detainee for the purposes of an approved restraint in section 151AB as amended.

**Clause 6. Section 158A amended**

Section 158A of the *Youth Justice Act* provides that a register of the use of approved restraints on youth detainees must be kept by the superintendent of a detention centre. The register contains particulars relating to the identity of the youth detainee, the type of restraint that was used, the circumstances leading to the use of the restraint, the date the restraint was used, the time the restraint was applied and the time the restraint was removed, the identity of the person who authorised the use of the restraint and any medical attention that was required.

This clause omits paragraphs (d) and (e) from subsection 158A(1) and inserts new paragraph (d) to specify that the superintendent of a detention centre must record the

period for which the approved restraint was used, including the date and time at which the restraint was applied and the date and time at which the restraint was removed. The considerations under existing paragraph (d), regarding the requirement to record the date on which the approved restraint was used and existing paragraph (e), regarding the requirement to record the time period of restraint use, are now provided for in newly inserted paragraph (d). This avoids inconsistency in terminology or repetition in the particulars that must be contained in the register, relative to recording details of any assessment made during the period the restraint was used, through the insertion of new paragraph (e).

This clause inserts new paragraph (e) into subsection 158A(1) to specify that the superintendent of a detention centre must include in the register, details of any assessment made during the period the restraint was used on a youth detainee. This includes the time the assessment was made, the outcome of the assessment and the reasons for that outcome.

This clause further amends section 158A to insert subsection (3) which provides that for the purposes of section 158A, assessment means an assessment as to whether:

- (a) the restraint can be removed; or
- (b) the restraint is still necessary.

When making an assessment, staff must record in the register the reasons as to why the restraint was removed from the detainee, or alternatively, the reasons as to why the restraint was still necessary.

#### **Clause 7. Regulations amended**

This clause provides that this Part amends the *Youth Justice Regulations*.

#### **Clause 8. Regulation 30 amended**

This clause amends regulation 30(1) to provide that the Commissioner or superintendent may make a determination in relation to any of the following:

- (a) the management and operation of a detention centre;
- (b) the maintaining of order within a detention centre;
- (c) a grievance or complaint of a detainee;
- (d) the health, welfare, safe custody and protection of a detainee.

The amended regulation 30(1) widens the matters that the Commissioner or superintendent may make a determination in relation to, so as to cover the entirety of section 217(3) of the *Youth Justice Act*. The use of approved restraints is a matter falling within regulation 30(1) as amended.

#### **Clause 9. Expiry of Act**

This clause provides 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.