

2019

LEGISLATIVE ASSEMBLY OF THE

NORTHERN TERRITORY

MINISTER FOR TERRITORY FAMILIES

Youth Justice and Related Legislation Amendment Bill 2019

SERIAL NO. 85

EXPLANATORY STATEMENT

GENERAL OUTLINE

This Bill amends the *Youth Justice Act 2005* and *Youth Justice Regulations 2006*, the *Bail Act 1982* and *Bail Regulations 1983* and the *Police Administration Act 1978*. This Bill aims to implement the intention and direction of 11 recommendations of the Royal Commission into the Protection and Detention of Children in the Northern Territory) that relate to the youth justice system. The key changes include:

- making youth diversion more accessible to young people by removing legislative barriers to its use, whilst maintaining police discretion to divert a youth in the case of serious offences;
- confirming arrest as a measure of last resort to align with the Government's reform direction of promoting therapeutic approaches;
- reducing the time young people spend in police custody;
- ensuring earlier access to legal assistance for young people to safeguard their rights;
- improving the application of bail for young people, ensuring appropriate youth-specific consideration are given to bail options and decriminalising breach of bail conditions as an offence;
- improving young people's understanding of their rights when in detention to enhance the Government's compliance with international obligations;
- protecting children and young people's right to privacy to avoid harm being caused to them by undue publicity or labelling;
- ensuring consistency for children and young people commencing legal proceedings; and
- other technical matters.

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 *Youth Justice and Related Legislation Amendment Act 2019*.

Clause 2. Commencement

This is a formal clause that provides that the commencement of the Act will occur on a day fixed by the Administrator by Gazette notice.

Part 2 Amendment of Bail Act 1982

Clause 3. Act amended

This is a formal clause that identifies that the legislation being amended in this part of the Bill is the *Bail Act 1982*.

Clause 4. Section 3 amended (Interpretation)

This clause amends section 3 of the *Bail Act 1982* which provides for the interpretation of definitions used in the *Bail Act 1982*. This amendment provides the definitions of 'bail offence' and 'original offence'. A 'bail offence' means a breach of bail undertaking, which is an offence against section 37B (1) or (2). An 'original offence' refers to the charge for which a youth is on bail for. These definitions were previously defined in section 37A which has now been repealed (see Clause 13).

This clause also inserts 'prescribed offences' as a term defined under section 3B for the purposes of the newly inserted section 8A, 'presumption in favour of bail for youths' (see Clause 9).

Clause 5. Section 3B inserted

This clause inserts a new section 3B which defines a 'prescribed offence' as an offence prescribed by regulations (see regulation 2A under clause 17) or a similar offence against a repealed law of the Territory or similar law from another jurisdiction. The amendment at clause 17 inserts regulation 2A which lists these 'prescribed offences'. The newly inserted section 8A provides that a youth who commits a prescribed offence and presents an ongoing and serious risk to the community will be excluded from the presumption in favour of bail for youths (see clause 9). The purpose of the amendments is to ensure bail is only refused if it is necessary and there is an ongoing serious risk to public safety, having considered all the relevant criteria under section 24 and the youth specific criteria included in the new section 24A (see Clause 11).

Clause 6. Section 4 amended (Application of Act)

This clause amends the current section 4(1) which provides for the application of the *Bail Act 1982* and clarifies that, except where otherwise expressly provided, the *Bail Act 1982* applies to both adults and youths in recognition of the newly inserted sections 8A and 24A which specifically relate to youths (see Clauses 9 and 11).

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

This clause amends the current section 7A which sets out a presumption against the granting of bail. This amendment ensures that section 7A no longer applies to youths. This amendment makes way for the inclusion of a youth-specific bail presumption under section 8A (see Clause 9) and youth-specific criteria for bail applications and conditions under sections 24A and 28, respectively (see clauses 11 and 12).

Clause 8. Section 8 amended (Presumption in favour of bail for certain offences)

This clause amends the current section 8 which provides for the presumption in favour of bail for certain offences. This amendment removes the application of this section to youths, because the new section 8A (see clause 9) will provide for a youth specific presumption of bail.

Clause 9. Section 8A inserted

This clause inserts a new section 8A 'Presumption in favour of bail for youths', which sets out the presumption in favour of the granting of bail for youths.

Subsection (1) provides that a youth is entitled to be granted bail, unless the offence they have been charged with a 'prescribed offence' as set out in section 3B and regulation 2A (see Clause

5 and 17) and they present an ongoing and serious risk to the community. This amendment will mean that a youth who is in custody is always entitled to bail unless they are charged with a prescribed offence and there is an ongoing and serious risk to the community.

Subsection (2) provides that this presumption will apply to young people who are in custody for some other offence. This is to ensure that a youth who is in custody for some other offence is not unnecessarily precluded from being considered for bail. This extended presumption is subject to subsection (3) which provides that a youth is not entitled to be granted bail where they are already in custody in connection with some other offence and the authorised member or court is satisfied they are likely to remain in custody for a longer period than that for which bail would be granted.

This amendment is reinforced by the newly inserted section 24A which provides for youth specific criteria to be taken into consideration for the purpose of bail applications (see Clause 11) and the amended section 28 which expands the factors to be considered when imposing bail conditions on a youth (see Clause 12).

Clause 10. Section 12 (Bail may be granted where no entitlement)

This is a technical amendment to section 12 to insert reference to the new section 8A in addition to section 8 that states that where an accused person is not entitled to a presumption then they may still be granted bail.

Clause 11. Section 24A inserted

The Royal Commission found that in some cases bail conditions are imposed on children and young people that are not appropriately tailored to address the individual circumstances of the youth. This clause inserts a new section 24A 'Criteria to be considered in bail applications for youths', which outlines the youth-specific principle to be considered by Police and the Court, in addition to the general criteria set out in section 24, when making a bail determination for a youth. These youth-specific criteria have been modelled on sections 3A and 3B of the *Bail Act 1977 (Vic)* and reflects the complex needs of young offenders which must be taken into account when making bail determinations. Subsection (2) provides the following criteria when making a bail determination:

- the need to consider all other options before remanding a youth in custody;
- the need to strengthen and preserve the relationship between a youth and their family, their responsible adult or their carer;
- the desirability of allowing the living arrangements and the education, training or employment of the youth to continue without interruption or disturbance;
- the need to minimise the stigma to the youth resulting from being remanded in custody;
- the likely sentence should the youth be found guilty of the offence;
- the youth's prior exposure to, experience of and reaction to trauma;
- the cognitive capacity, health and developmental needs of the youth;
- if the youth is an Aboriginal person – any issues that arise due to the youth's Aboriginality, including their cultural background, ties to extended family and place, and any other relevant cultural issue or obligation.

Subsection (3) provides that, in making a determination, the authorised member or a court may take into account any recommendation or information provided by a bail support service. A bail support service is defined under regulation 2B of the *Bail Act Regulations* (see Clause 17).

The inclusion of section 24A (4) ensures that a youth cannot be denied bail solely on the grounds that a youth does not have any, or any adequate, accommodation. This amendment recognises that a youth should not be required to remain in a custodial setting awaiting their hearing because of a lack of alternative accommodation options. This reflects the same principle in section 3B(3) of the *Bail Act 1977 (Vic)*. The Royal Commission heard evidence about young people in out-of-home care being refused bail and remanded in detention because alternative placements could not be identified.

Clause 12. Section 28 amended (Imposition of bail conditions)

This clause amends the current section 28, which governs the imposition of bail conditions. In addition to section 28(2), which requires that conditions must be reasonably proportionate to the risks, the Bill inserts a new subsection (2A) to provide for further youth-specific considerations which Police or a Court must take into account when determining the conditions of bail. These considerations include:

- the need to ensure such conditions are no more onerous than necessary and do not constitute unfair management of the youth;
- the age, health, maturity and circumstances of the youth, including their home environment; and
- the capacity of the youth to comply with the conditions.

The purpose of this amendment is to provide guidance to an authorised member or a Court when determining suitable bail conditions for young people which are reflective of their circumstances. This amendment is supported by the insertion of section 24A which provides the criteria to be considered in bail applications for youths (see clause 11) and allows Police or the Court to consider any recommendation or information provided by a bail support service to determine the most appropriate bail conditions under this section.

Clause 13. Section 37A and 37B replaced

This clause replaces the current sections 37A and 37B which sets out the offence of breach of bail. The effect of this amendment is to decriminalise breach of bail conditions as it applies to young people. The offence of breach of bail condition was introduced in 2011 and resulted in a significant increase in the number of children and young people entering the youth justice system. The comparatively high rates of young people being held on custodial remand in the Northern Territory is attributable to the criminalisation of bail breaches, the setting of unrealistic or inappropriate bail conditions and a lack of support services for young people to comply with them. This amendment, in conjunction with the inclusion of youth-specific considerations for bail under sections 8A, 24A and 28 (see Clauses 9, 11 and 12) which promotes the granting of bail for young people, intends to reduce the number of young people being charged and held in detention on remand.

The new section 37B separates the offence of breach of bail undertaking and breach of bail condition into two distinct subsections. Section 37B (1) provides the offence of breach of bail undertaking. A bail undertaking is a written promise that the person granted bail will appear in Court to answer a charge on a certain date and, if breached, results in a warrant being issued for that person's arrest.

Section 37B (2) provides the offence of breach of bail condition. Bail conditions relate to all other requirements upon a person granted bail and, if breached, also results in a warrant being issued for that person's arrest. However, subsection (4) provides that this offence will no longer apply to young people.

Clause 14. Section 38 amended (Arrest for absconding or breach of condition)

This clause amends the current section 38 which provides that a person on bail who has failed to comply or is about to fail to comply with their bail undertaking or condition. The amendment inserts a new subsection (2B) that excludes section 38(2A)(b) from applying to a youth. This section provides that the court must revoke bail when a person breaches a condition of a conduct agreement in certain circumstances including failure to wear or tamper with an approved monitoring device. This is to ensure consistency with the policy intent of decriminalising breach of bail condition as an offence.

Clause 15. Part 9, Division 5 inserted

This clause inserts the new Division 5 in Part 9. Included in this Division are sections 64, 65, 66 and 67. This Division sets out the transitional provisions for the amendments relating to the *Bail Act 1982*.

The new section 64 defines the transitional arrangements of the amendments to the *Bail Act 1982*. Under this Division, 'amending Act' refers to this Bill when enacted and 'commencement' refers to the commencement of Part 2 of this Bill.

The new section 65 provides that the amended sections 7A, 8, 28 and 38 will apply to the granting of bail to any youth if the youth had not been sentenced for the offence before the commencement.

The new section 66 provides the commencement details for when sections 8A and 24A will apply. The new youth-specific sections 8A (presumption in favour of bail for youths) and 24A (criteria to be considered in bail applications for youths) will apply to the granting of bail if the youth had not been sentenced for the offence before the commencement.

The new section 67 provides the commencement details for the amended section 37B. Subsection (1) provides that it will apply to any bail offence committed by a youth before the commencement, if the youth had not been sentenced for that offence prior to commencement. Subsection (2) provides that if the conduct constituting a bail offence occurred before the commencement, the bail offence is to be taken to have been committed before the commencement.

Part 3 Amendment of Bail Regulations 1983

Clause 16. Regulations amended

This is a formal clause that identifies that this Part of the Bill amends the *Bail Regulations 1983*.

Clause 17. Regulations 2A and 2B inserted

This clause inserts the new regulations 2A and 2B, under the respective headings of 'Prescribed offences' and 'Bail support services'.

The new regulation 2A lists the 'prescribed offences', as defined under section 3B of the *Bail Act 1982* (see Clause 5) for the purposes of the newly inserted section 8A 'presumption in favour of bail for youths' (see Clause 9). The list of offences set out in the new regulation 2A contains all relevant offences listed in Schedule 2 and 3 of the *Sentencing Act 1995* which carry a maximum penalty of ten years or more that can apply to a youth.

If a youth is charge with a prescribed offence and they present an ongoing and serious risk to the community then the presumption in favour of bail is rebutted.

The new regulation 2B provides the definition of a 'bail support service' for the purposes of section 24A (3) of the *Bail Act 1982* which permits police or a court to take into account any recommendation or information provided by the bail support service to assist in making a bail determination (see Clause 11). The definition is specifically designed to reflect the Northern Territory context as a 'service provided to assist an accused person to comply with the accused person's bail undertaking and any conditions of bail', which can include bail support programs, medical treatment, counselling services and homelessness services. The intention of this amendment is to provide a definition of bail support services to guide the Court or Police in having regard to what bail service providers can do to assist a youth in complying with their bail conditions. As these youth specific bail provisions were modelled on the *Bail Act 1977* (Vic), there was a need to define 'bail support services' in a similar manner.

Part 4 Amendment of Police Administration Act 1978

Clause 18. Act amended

This is a formal clause that identifies that the legislation being amended in this Part of the Bill is the *Police Administration Act 1978*.

Clause 19. Section 123 amended (Arrest without warrant by members of Police Force)

This clause amends the current section 123 which provides the power of arrest, without warrant, where there are reasonable grounds to believe that the person has committed, is committing or about to commit an offence. This amendment inserts a note clearly stating that sections 16 and 22 of the *Youth Justice Act 2005* apply where this power is exercised against a youth. The newly amended section 16 provides that a police officer may only arrest a youth as an action of last resort (see Clause 25), whilst section 22 provides that proceedings against a youth are to be commenced by way of summons, except in certain cases. The purpose of this amendment is to ensure that a police officer's use of their power to arrest without warrant under section 123 is subject to these sections to limit the time that young people spend in custodial settings and promote the use of charges to proceeding by summons.

Clause 20. Section 135 amended (Disclosure of names)

This clause amends the current section 135 which permits a police officer to disclose the name and location of a person being held in custody upon request of their legal representative or a spouse, parent or child. This amendment removes the requirement that the consent of the person being held in custody be obtained prior to disclosing this information to a legal practitioner representing the person. The effect of this amendment is to ensure that legal services are immediately notified whenever a youth is brought into police custody. This amendment aims to move towards a Custody Notification Service.

Clause 21. Section 137 amended (Time for bringing person before court generally)

This clause amends the current section 137 which provides for time limits on how long a youth can be held in lawful custody by Police without charge for the purpose of questioning and investigation. The Royal Commission found that children and young people were held in Police custody for unreasonably long periods of time and recommended a time limit be legislated.

Subclause (1) inserts a reference to new subsections (3) and (4). Subclause (2) inserts the new subsection 137(4) and (5).

Under subsection (4), a Senior Sergeant or member of a higher rank must review and record the necessity of holding a youth in custody every 4 hours for up to 24 hours. At the expiration of this period, they must either release the youth or apply to a Local Court Judge to hold them for a further 4 hours. Every subsequent 4 hour holding period will only be granted by application to a Local Court Judge.

Subsection (5) provides that a failure to comply with requirements under subsection (4) will not make any action under this section unlawful.

Part 5 Amendment of Youth Justice Act 2005

Clause 22. Act amended

This is a formal clause that identifies that the legislation being amended in this Part of the Bill is the *Youth Justice Act 2005*.

Clause 23. Section 5 amended (Interpretation)

This clause amends the current section 5 which provides for the interpretation of definitions used in the *Youth Justice Act 2005*. This amendment inserts 'prescribed offence' as a term defined under section 38A for the purposes of the amended section 39, 'diversion of youth' (see Clause 28).

Clause 24. Section 15 amended (Explanations by police officers)

This clause amends the current section 15 which provides for the requirements concerning how explanations by police officers are made to youths.

This amendment recognises that many young people who interact with the police have complex needs and vulnerabilities which may impact on their ability to understand information being communicated to them. The inclusion of the word "health" in subsection (1) is to recognise these factors and ensure that people who are in a position of explaining important information to youths do so in a manner that is sensitive to these difficulties to ensure that this information is fully understood. The health of a youth will now be an additional factor, alongside the youth's age, maturity, cultural background and English language skills, which a police officer is to have regard to when informing a youth of any matter in relation to the investigation of an offence.

The inclusion of "health" as a factor to consider when explaining information to young people is mirrored in the amendments to sections 61, 123, 140L and 150 and regulation 31 (see Clauses 35, 37, 38, 39 and 45). The purpose of these amendments is to ensure consistency across the Act in relation to explanations to young people.

Subclause (2) introduces a new subsection (1A) which requires that, if the youth appears to have insufficient English language skills to understand the explanation, a police officer must take reasonable efforts to obtain a qualified interpreter for the purpose of explaining information to young people. This amendment recognises that many young experience language barriers when interacting with the police and the importance of young people knowing their rights during these interactions.

Subclause (3) removes the reference to "interviewed" in subsection (2) to make it clear that section 15 relates only to explanations by police officers, and not interviews of young people which is covered by section 18 (see Clause 26). The purpose of this amendment is to ensure that the *Youth Justice Act 2005* does not contain two different tests in relation to legal advice for interviewing.

Clause 25. Section 16 replaced

This clause replaces the current section 16, under the heading 'Guidelines in relation to arrest of youths', with the new section 16, under the heading 'Arrest as a last resort'. This section requires that a police officer may only arrest a youth as an action of last resort. Police are guided by factors set out in section 22 of the *Youth Justice Act 2005* as to whether or not it is appropriate to charge a youth or issue the youth with a summons.

The Police General Orders govern the exercise of the discretion to arrest for children, young people and adults, providing that arrest should only be used as a last resort. The Royal Commission found that "the Northern Territory Police sometimes fail to comply with the requirement that arrest is only used as a last resort. Children and young people, however, are more vulnerable than adults and require further protections and safeguards to prevent unnecessary arrest.

Clause 26. Section 18 amended (Interview of youth)

This clause amends the current section 18 which provides for the requirements around Police interviews of young people. This purpose of this amendment is to ensure earlier access to legal assistance for children and young people, prior to being interviewed by Police. The Royal Commission noted that many young people feel intimidated and confused or unsure of their rights when being interviewed by police. They further noted that there is a significant power imbalance

when children and young people are interviewed by police and that police have a systemic advantage over young people due to their status as agents of the state and their greater knowledge and familiarity of law and its processes. This amendment gives a youth the right, prior to and whilst being interviewed, to talk openly with people that they can trust and access legal advice and legal assistance from a lawyer.

Subclause (1) inserts the new subsections (1A) and (1B). Under the new subsection (1A), a Police officer cannot attempt to interview a youth unless they have complied with requirements to inform the youth of their ability to access legal advice and assistance, provide the youth with access to legal advice in a place and manner that allows the youth privacy and to inform the youth that a friend, relative, responsible adult or support person may be present during the interview or while the youth does the act.

Subsection (1A) includes a note for the amendment that clarifies that section 15 (explanations by police officers) applies to all explanations by Police in relation to the investigation of an offence. This means that a person mentioned in subsection (1A)(c) must be present before a police officer interviews or does anything in connection with the investigation of an offence. Furthermore, police must take reasonable efforts to obtain an interpreter for an explanation under section 15 (as inserted by clause 24). This amendment recognises that many young people experience language barriers when interacting with the police and the importance of young people knowing their rights in these interactions.

The new subsection (1B) provides that if a youth wishes to exercise their right to silence, Police must not interview the youth and this can be communicated through a lawyer speaking on their behalf to Police.

Subclause (2) is a minor amendment to the wording of subsection (2) to replace “support person” with “person mentioned in subsection (1A)(c)”, which includes a friend, relative, a responsible adult in respect of the youth or other support person to ensure consistency across this section and expand the current conception of a “support person” under the *Youth Justice Act 2005* as wider than that defined under section 35. Subclause (3) requires that a police officer interviewing a youth must keep a record of the particulars prescribed by the Regulations when exercising their powers under this section (see Clause 44 for the newly introduced regulation 3, ‘Particulars required to be recorded in interview’).

Clause 27. Section 27 replaced

This clause replaces the current section 27 which provides the time in which a youth who is charged and not released from police custody is to be brought before the Court. The current section requires that a youth be brought before the Court as soon as practicable and within 7 days of their arrest. The Royal Commission found that ‘children and young people were held in police custody in the Watch House for unreasonably long periods of time.’ The purpose of this amendment is to limit the time young people spend in custody awaiting an appearance by prescribing explicit time limits in the *Youth Justice Act 2005*.

The new subsection (1) requires that a youth must be brought before the Court as soon as practicable and within 24 hours of their charge or on the next business day after their charge.

The Royal Commission reported that;

“The automatic transfer of children and young people in custody in remote areas to an urban centre would appear to be in breach of the principle in section 4(i) of the *Youth Justice Act* that children and young people should not be withdrawn unnecessarily from their family and environment.”

Subsection (2) provides that a youth appearance before the Court may be by audio visual link or by telephone to assist police officer’s in complying with this section promptly and also to allow further compliance with the principle set out in section 4(i) of the *Youth Justice Act 2005*.

Subsection (3) requires that a youth should be immediately released from police custody if they are not brought before the Court within the timeframe as set out in subsection (1). However, subsection (4) allows an application to be made to a Local Court Judge to extend this time.

Subsection (5) provides that the application can be made by audiovisual link or by telephone.

Subsection (6) provides that a Judge may grant the extension of time if the Judge is satisfied that there are circumstances beyond the control of person in whose custody the youth is, that prevents them from bringing the youth before the Court. This can include emergency situations or a natural disaster, riotous conduct in remote community where the youth is located. There is a non-exhaustive list of examples included in a note in subsection (6).

If an order is granted, subsection (7) requires the Court to order when and how the youth is to be brought before the Court. The purpose of this amendment is to ensure that a youth is brought before the Court as soon as practicable and within a certain time limit, but allowances are made for certain circumstances, such as an emergency situation or natural disaster, where compliance with this section would be impossible.

Clause 28. Section 38 amended (Definitions)

This clause amends the current section 38 which provides the definition of 'offence' for the purposes of diversion.

The purpose of this amendment is to ensure that young people are not excluded from diversion because they have committed minor, non-habitual traffic offences this clause means that some offences under the *Traffic Act 1987* will now qualify for automatic diversion. This amendment does not affect a police officer's discretionary power under section 38(3(d) not to divert a youth where their history makes diversion an unsuitable option (including a history of previous diversion or previous convictions).

Subclause (2) inserts the new definition of 'prescribed offence' for the purposes of Part 3 'Diversion of Youth', as defined under section 38A (see Clause 29).

Clause 29. Section 38A inserted

This clause inserts a new section 38A that defines 'prescribed offence' as an offence prescribed by regulation (see regulation 3A under clause 44) or an offence against a law of the Territory or similar offence in another jurisdiction. This list of 'prescribed offences' replaces the repealed list of 'serious offences' for the purpose of youth diversion.

The amendment at clause 44 inserts the regulation 3A which lists these 'prescribed offences' for the purposes of diversion under section 39. This means that that a youth who commits a 'prescribed offence' listed under regulation 3A will not be automatically referred to diversion.

Clause 30. Section 39 amended (Diversion of youth)

This clause amends the current section 39 which sets out how and when a youth can be diverted. Currently, Police are not required to consider a youth for diversion if they have left the Territory, if their offence is a 'serious offence' or if they have previously participated in a diversion program or conference.

Subclause (1) removes the restriction upon a youth's diversion where they have left the Territory. As a result, youths will not be precluded from diversion where they are interstate, but their whereabouts are known and they are likely to return to the Territory.

Subclauses (2) and (3) change the references from 'Serious Offences' to 'Prescribed Offences.' They have the effect of increasing the list of offences that can be automatically diverted through replacing the list of offences from 'serious offences' to 'prescribed offences'. Subclause (3) also removes the restrictions on police for consideration of diversion where a youth has previously

been diverted or involved in a Youth Justice Conference. This clause aims to remove these legal barriers to diversion and allow more youths to be assessed for suitability for diversion.

Clause 31. Section 42A inserted

This clause inserts a new section 42A, under the heading 'Reporting on diversion of youth'.

Subsection (1) requires the Police to document their assessments for diversion by way of preparing a report, or obtaining a report from the relevant service provider carrying out the diversion program. The following sub paragraphs require either the police officer declining to refer a youth to a diversion program or the youth declining to participate or failing to complete a diversion program, to provide a statement of that fact and the reasons behind it for the purposes of this report where:

- a youth is referred to, but declines to participate in or does not complete, a diversion program;
- a police officer declines to refer the youth to a diversion program;
- section 39(4) applies, that is, where the Commissioner of Police or their delegate has authorised a police officer to refer a youth to diversion notwithstanding the fact that the case is covered by section 39(3) (either the youth has committed a prescribed offence or has some other history that makes diversion an unsuitable option) and the police officer declines to refer the youth to a diversion program; or
- section 39(4) applies and the youth declines to participate in or does not complete the program;

Where a youth may not be referred to a diversion program because the case is covered by section 39(3), sub paragraph (e) requires that a statement of that fact must be included in the report. These amendments allow the Court to make an informed decision as to whether a youth should be given further opportunity to be referred back to diversion or to take into account any participation in diversion.

Subsection (2) provides that, where a youth is charged with the offence, the prosecution must provide the aforementioned report to the youth's legal representative and to the Youth Justice Court as soon as practicable.

The purpose of this amendment is to provide for greater accountability regarding decisions made by police about suitability and assessment for diversion and ensures that all of the relevant information regarding diversion is before the Court.

Clause 32. Section 43 amended (Reporting on diversion of youth)

This clause amends the current section 43 which provides how information concerning the diversion of a youth is to be used and reported.

Subclause (1) replaces the current heading of the section, 'Reporting on diversion of youth', with the heading 'Publication of information of diversion' to better reflect the substance of this section.

Subclause (2) is a technical amendment to the wording of subsection (2) which provides that information and details of the diversion of a youth may only be published as aggregate data for statistical purposes.

Clause 33. Sections 49 and 50 replaced

This clause replaces the current sections 49 and 50.

The new section 49(1) requires that all proceedings involving a youth will be in a closed court to avoid the potential stigmatisation and detrimental effects of labelling young people as criminal or delinquent and 'naming and shaming' of young people.

The new section 49(2) provides a list of people who may attend these proceedings and section 49(3) allows those not expressly permitted to seek the leave of the Court to attend.

The new section 49(4) grants the Court the power to order that a person, leave or not be admitted into the Court or be within the hearing of the Court.

The new section 49(4) give the Court the power to order that a person must not remain in a room or place where the Court is being held or must not remain within the hearing of the Court other than persons mentioned in section 49(5).

The new section 49(5) provides that the Court is not authorised to exclude the youth, their legal representative, or the prosecutor from entering or remaining in the court.

The new section 49(6) makes it an offence to contravene an order of the Court to this effect. The aim of these amendments follows the Royal Commission's recommendation that Youth Justice Proceedings should provide closed court provisions similar to child protection proceedings under the *Care and Protection of Children Act* (NT).

The new section 49(7) provides that a person entering or remaining in the Court or within the hearing of the Court will have committed an offence.

This clause also replaces the current section 50. This amendment removes the onus upon the Court to order that information relating to proceedings in the Youth Justice Court must not be published. The Royal Commission heard that media reporting identifying young offenders can affect their prospects of rehabilitation, their sense of identify and their connection to the community.

The new section 50(1) provides that a person who publishes any information relating to a youth's proceeding before the Court that is likely to lead to the identification of the youth is guilty of an offence. As has been noted, the labelling of young people has significant detrimental effects. The purpose of this amendment is to ensure that publication of information which may lead to the identification of a youth as an offender before the Youth Justice Court is a criminal offence.

The new section 50(2) maintains the exception in subsection (3) of the current section 50 which permits police officers to share information relating to a youth's offending to a Police Force in another State or Territory.

The new section 50(2) also introduces another exception to the application of subsection (1) where the permission of the youth has been given to publish their information.

The new section 50(3) and (4) provides that the Court may grant an application to publish information of proceedings where emergency circumstances have given rise to the application and the publication is reasonably necessary for the safety of the youth, a witness or any other person in the community.

The new section 50(5) and (6) provides for limited circumstances where the CEO may grant permission for publication of particulars of a detainee who has escaped detention.

The new section 50(7) provides a list of particulars that would likely lead to the identification of a youth and includes particulars such as their name, address, the school they attend, physical description and other particulars.

The new section 50 is, in part, modelled on section 534 of the *Children, Youth and Families Act 2005* (Vic).

Clause 34. Section 53 amended (Application of other Acts)

This clause amends the current section 53 which provides for the application of other Acts to the *Youth Justice Act 2005*. Currently there is no provision in the *Youth Justice Act* permitting the Youth Justice Court to correct errors arising from clerical error, slip or omission. Although this rule is contained in section 42 of the *Local Court Act 2015*, this section does not apply to the *Youth Justice Act 2005*. Subclause (1) ensures that this rule now applies to the *Youth Justice Act 2005*. Subclause (2) corrects a drafting error, such that reference to the Local Court includes, in relation

to a youth, a reference to the Youth Justice Court and not the *Youth Justice Act 2005* as it reads currently.

Clause 35. Section 61 amended (Court must explain proceedings to youth)

This clause amends the current section 61 which provides for the requirements concerning how the Court is to explain proceedings to a youth. This amendment introduces the word “health” as an additional factor, alongside the youth’s age, maturity, cultural background and English language skills, which the Court is to have regard to when explaining proceedings to a youth who is not represented by a legal practitioner.

Clause 36. Section 64 replaced

This clause repeals the current section 64 and replaces it with the new section 64. Currently section 64 requires that the Court may only refer a youth for re-assessment if the prosecution and the youth both consent to referring them for re-assessment for inclusion in a diversion program or youth justice conference.

The new subsection (1) allows the Court to refer a youth for inclusion in a diversion program or youth justice conference at any stage of proceedings. This amendment removes barriers to diversion and supports the amendments made to section 39 (see Clause 30).

The new subsection (2) provides that this section applies whether or not the youth has entered a plea, been found guilty, or has been previously been assessed for inclusion in a diversion program. This amendment gives legislative effect to the decision of the Supreme Court in *Firth & Ors vs JM* [2015] NTSC 20 which clarified the difference between a youth entering a plea and a ‘finding of guilt’ for the purposes of court referrals to diversion. The purpose of this amendment is to ensure consistent practice and interpretation of section 64 by clarifying that the Court’s power to dismiss a charge and refer a youth to diversion is not conditional upon a ‘finding of guilt’.

This clause inserts the new section 64A, under the heading ‘Youth Justice Court may dismiss charges’, to permit the Court to dismiss charges against a youth, at any stage of proceedings and whether or not the court finds the charge proven against them. The purpose of this amendment is to ensure that, upon completion of court-referred diversion under section 64, a Court has the power to dismiss the charge for the offence without having to make a determination as to whether the charge was proven or not to ensure consistency in the legal outcomes and criminal histories of young people diverted under section 64.

Clause 37. Section 123 amended (Explanation of orders)

This clause amends the current sections 123 which provide for the requirements concerning how the Court is to explain any orders to a youth. Consistent with amendments to other sections which relate to explanations to young people under the *Youth Justice Act 2005* and *Youth Justice Regulations 2006*, this amendment introduces the word “health” as an additional factor, alongside the youth’s age, maturity, cultural background and English language skills, which the Court is to have regard to when explaining any orders. The purpose of these amendments is to ensure consistency across the *Youth Justice Act 2005* in relation to explanations to young people.

Clause 38. Section 140L amended (Explanation of orders)

This clause amends the current sections 140L in the same way as clause 37 and other to ensure consistency across the Act in relation to explanation to young people and the factors that should be taken into account.

Clause 39. Section 150 amended (Explanation of rights and responsibilities)

This clause amends the current section 150 which provides for the explanation of the rights and responsibilities of a youth after they are admitted to a detention centre.

Similar to clauses 37 and 38, subclause (1) introduces the word “health” as an additional factor, alongside the youth’s age, maturity, cultural background and English language skills, which the person giving the explanation is to have regard to when explaining the youth’s rights and responsibilities.

Subclause (2) inserts a new subsection (5) to require that the superintendent of the detention centre must take all reasonable steps to ensure this section is complied with. The purpose of this inclusion is to make it clear that it is the superintendent’s responsibility to ensure that all young people understand their rights and responsibilities upon being admitted to a detention centre.

Clause 40. Section 161 amended (Search of detainees)

This clause amends the current section 161 which permits the search of detainees under certain circumstances. This amendment inserts the words “only direct a detainee to submit to a screening search in the following circumstances” so that a search of a youth in detention centre may only be conducted when these circumstances are present. The purpose of this amendment is to ensure that the restrictions on searching detainees are more clearly framed to reduce unnecessary searches of young people in detention.

Clause 41. Section 215B amended (Civil proceedings)

This clause amends the current section 215B which provides the time limits in which civil proceedings are to be commenced for acts done or omitted to be done by a person under the *Youth Justice Act 2005*. The Royal Commission recommended that this section should be amended to reflect the provisions of sections 4 and 36 of the *Limitation Act 1981*, to recognise that by reason of age or sentenced imprisonment status a person may be incapable of managing their affairs in respect of legal proceedings.

Subclause (1) amends the time limit for bringing proceedings from 6 months to 3 years and subclause (2) inserts “limitation period” as a term defined under subsection (1) as the 3 year time period to bring an action.

Subclause (3) inserts the new subsections (1A), (1B), (1C) and (1D) which provides for exceptions to this limitation period.

The new section 215 (1A) provides that where a person with a cause of action under subsection (1) has a disability, as defined under the new section 215(1B), the limitation period does not run until the person is no longer disabled. The 3 year limitation period will begin to run on the date which the person ceases to be under a disability or the death of that person, whichever is the earlier. For the purposes of this section, subsection (1B) provides that a person is subject to a disability where they are under 18 years of age or where they are serving a term of imprisonment after being convicted of an offence.

The new section 215(1C) provides that the ability to suspend a limitation period because of a disability is not affected by the existence of the same or another disability during the limitation period.

The new section 215(1D) provides that a running of a limitation period under subsection (1A) cannot be extended for more than 30 years from the date when the act was done or omitted to be done. This is to prevent against historical causes of action from being brought for conduct carried out. More than 30 years from the date the action arose.

Clause 42. Part 17, Division 6 inserted

This clause inserts the new Division 6, under the heading ‘Transitional matters for Youth Justice and Related Legislation Amendment Act 2019’, in Part 17.

The new section 236 provides the definitions of ‘amending Act’, which refers to this Bill when enacted as the *Youth Justice and Related Legislation Amendment Act*, and ‘commencement’, which refers to the commencement of section 41 of the amending Act.

The new section 237, under the heading 'Application of section 215B', provides the commencement details for the amendments to civil proceedings made under clause 41 relating to the amendment to section 215B of the *Youth Justice Act 2005*

The new sections 237(1) and (2) provide that the extended limitation period applies in relation to acts done or omitted to be done after commencement and the 6 month limitation period will apply to those acts done or omitted to be done before commencement.

The new section 238 clarifies that where any of the conduct constituting the act giving rise to the cause of action occurred before commencement, the current section 215B will apply. The amended section 215B will apply to an omission that began before commencement will be taken to be done after commencement if it continues after commencement.

Part 6 Amendment of Youth Justice Regulations

Clause 43. Regulations amended

This is a formal clause that identifies that the regulation being amended is the *Youth Justice Regulations 2006*.

Clause 44. Regulation 3 replaced

This clause repeals the current regulation 3 and replaces it with a new regulation 3, under the heading 'Particulars required to be recorded in interview' for the purposes of section 18 (see clause 26). When interviewing a youth, a police officer must keep a record of the following:

- that they have informed the youth of their right to silence;
- whether the youth has elected to exercise their right to silence or answer the officer's question;
- that they have informed the youth that they may contact a friend, relative, responsible adult or support person; and
- if the youth has elected to contact one of the aforementioned people, the details of the efforts made by the officer to contact them and the name and details of the person sought to be contacted.

The purpose of this regulation is to ensure greater accountability and transparency as to the steps taken by police officer's to comply with their powers under section 18 when interviewing young people.

This clause also inserts the new regulations 3A which provides the list of 'prescribed offences' as defined under section 38A (see Clause 29). The following offences will remain as "prescribed offences" for the purposes of diversion under section 39 (see Clause 30):

- (a) Section 54 (terrorism); section 55(1) (contribution towards acts of terrorism); section 110 (forcibly rescuing certain offenders); section 111 (aiding escape from lawful custody); section 125B(1) (possession of child abuse material); section 127(1), (2) or (3) (sexual intercourse or gross indecency involving a child under 16 years); section 134(1), (2) or (3) (incest); section 156 (murder); section 160 (manslaughter); section 165 (attempt to murder); section 170 (killing unborn child); section 174C (recklessly endangering life); section 174F (driving motor vehicle causing death or serious harm); section 175 (disabling in order to commit indictable offence); section 176 (stupefying in order to commit indictable offence); section 177 (acts intended to cause serious harm or prevent apprehension); section 179 (intentionally endangering safety of persons travelling by railway or roadway); section 180 (intentionally endangering safety of persons travelling by aircraft or ship); section 181 (serious harm); section 192 (sexual intercourse and gross indecency without consent); section 192B (coerced sexual self-manipulation); section 194 (kidnapping for ransom); section 195 (kidnapping); section 196(1) (deprivation of liberty); section 201 (abduction, enticement or detention of child under 16 years for immoral purposes); section 228(1) (blackmail and extortion); section 243 (arson) and section 246 (endangering operation of aircraft) of the *Criminal Code Act 1983*;

- (b) Section 189A (1) of the *Criminal Code Act 1983* in the circumstances mentioned in section 189A (2) (b) of the Code (assaults on police where the police officer suffers serious harm);
- (c) Section 211(1) of the *Criminal Code Act 1983* in the circumstances mentioned in section 211(2) of the Code (robbery where the offender is armed with a firearm or any other dangerous or offensive weapon or is in company with one or more person or persons or, if immediately before, at or after the robbery, the offender causes harm to any person).
- (d) Section 212(1) of the *Criminal Code Act 1983* in the circumstances mentioned in section 212(2) or (3) of the Code (assault with intent to steal where the offender is armed with a firearm or any other dangerous or offensive weapon or is in company with one or more person or persons or if such assault causes harm; and assault with intent to steal where the offender is armed with a firearm and immediately before, at or immediately after the assault, the offender injures any person by discharging the firearm).
- (e) Section 213(1) of the *Criminal Code Act 1983* in the circumstances mentioned in section 213(6) of the Code (unlawful entry of buildings where the offender enters the building armed with a firearm or any other dangerous or offensive weapon).
- (f) Section 5(1) (supply of a commercial quantity of a dangerous drug); section 6(1) (cultivation of a commercial quantity of a prohibited plant); section 6E(1) (manufacture of a commercial quantity of a dangerous drug) and section 6F(1) (manufacture of less than a commercial quantity of a dangerous drug) of the *Misuse of Drugs Act 1990*;
- (g) Section 21 (driving a motor vehicle with a high range breath or blood alcohol content); section 22 (driving a motor vehicle with a medium range breath or blood alcohol content); section 23 (driving a motor vehicle with a low range breath or blood alcohol content); section 24 (driving a motor vehicle with an above zero breath or blood alcohol content in circumstances where the driver is not permitted to drive if their breath or blood contains alcohol); section 25 (driving certain vehicles with an above zero breath or blood alcohol content); section 28 (driving with certain drugs in body); section 29AAA (driving under influence); section 29AAB (failure to comply with a police direction to pull over at random); section 29AAE (failing to submit to breath analysis); section 29AAFA (failing to submit to a saliva test); section 29AAH (failing to provide blood sample); section 29AAP (refusing or failing to surrender suspended licence and applying for a licence while disqualified from driving); section 29AAYD (driving a non-alcohol ignition lock vehicle while an alcohol ignition lock licence has effect); section 30 (dangerous driving or riding); section 30A (driving at dangerous speed) and section 31 (driving while disqualified) of the *Traffic Act 1987*.

Clause 45. Regulation 31 amended (Certain determinations become rules of detention centres)

This clause amends the current regulation 31 which provides for determinations relating to the conduct of detainees becoming rules of the detention centre. Consistent with the amendments to sections relating to explanations under the *Youth Justice Act 2005*, this amendment introduces the word “health” as an additional factor, alongside the youth’s age, maturity, cultural background and English language skills, which a member of staff is to have regard to when explaining the rules of a detention centre to a detainee who is unable to read and understand them.

Clause 46. Regulation 73 amended (Searches)

This clause amends the current regulation 73 which regulates the searching of detainees.

Subclause (1) replaces the current subsection (2) to provide that a search of a detainee must be conducted by a member of staff of the same gender as the detainee being searched which must, as far as practicable, also be in the presence of another member of staff of the same gender as the detainee.

Subclause (2) amends the wording of sub regulation (3) to ensure that a search of a detainee may only be conducted by a maximum of two members of staff.

Part 7 Repeal of Act

Clause 47. Repeal of Act

This is a standard clause which provides that the *Youth Justice and Related Legislation Amendment Act 2019* is repealed on the day after it commences.