

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth).

Youth Justice and Related Legislation Amendment Bill 2019

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bill

This Bill gives effect to 11 Royal Commission recommendations and aims to reduce the interaction of youths with the criminal justice system, ensure procedural fairness for youths and further safeguard the rights of detainees in the Northern Territory.

Human Rights Implications –

The Bill engages the following human rights instruments:

- The Convention on the Rights of the Child (CRC);
- The International Covenant on Civil and Political Rights (ICCPR);
- The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP);
- The Convention against Torture (CAT);
- The Convention on the Rights of Persons with Disabilities (CRPD); and
- The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

This Bill engages the following rights:

1. Arrest, detention or imprisonment as a measure of last resort and for the shortest appropriate period of time – Article 37 of the CRC and Articles 9 and 10 of the ICCPR.
 - This Bill promotes the rights of youths alleged to or accused of infringing the law to be arrested, detained or imprisoned only as a measure of last resort and for the shortest appropriate period of time by 1) improving access to diversion; 2) introducing youth-specific bail considerations; 3) introducing a presumption in favour of granting bail for young people; and 4) specifying time limits that detainees must be brought before a Court.
2. Right of persons before the law – Article 14 of the ICCPR and right of children to have their privacy fully respected at all stages of the proceedings – Article 40 of the CRC.
 - This Bill promotes the right of youths in the determination of criminal matters against them to have the press and public excluded in circumstances where the interests of the private lives of the parties so requires. This Bill also ensures that the interests of youths are upheld by prohibiting the publication of information relating to their criminal proceedings.
 - This Bill also promotes the right of youths by ensuring that the limitation periods for bringing a cause of action for any act done or omitted to be done by a youth under the *Youth Justice Act* only begins after the youth turns 18 years of age or upon their release from detention or imprisonment.

3. Right of indigenous peoples to understand and be understood in political, legal and administrative proceedings – Article 13 of the UNDRIP and the right of the child to have the free assistance to an interpreter if they cannot understand or speak the language used – Article 40 of the CRC.
 - This Bill promotes the right of indigenous youths to understand and be understood in legal proceedings by requiring the provision of interpreters and, where appropriate, that police officers make reasonable efforts to provide youths with interpreters for the purposes of explanations and interviews.
4. Freedom from cruel, inhuman or degrading treatment or punishment – Article 37 of the CRC, Article 7 of the ICCPR and Articles 1 and 2 of the CAT and the right to humane treatment in detention – Article 10 of the ICCPR.
 - This Bill promotes the rights of youths to not to be subject to torture or other cruel, inhuman or degrading treatment or punishment by ensuring that searches in detention are conducted by no more than two people who are, where practicable, the same gender as the detainee being searched.
 - This Bill promotes the youths deprived of their liberty to have prompt access to legal and other appropriate assistance by introducing youth-specific bail considerations and by ensuring that, prior to being interviewed, a youth is made aware of their right to legal advice and assistance and that a support person may be present during the interview.
5. Right of children alleged to or accused of infringing the law to be treated in a manner consistent with the child’s sense of dignity and worth – Article 40 of the CRC.
 - This Bill promotes the right of youths to be treated in a manner consistent with their sense of dignity and worth by ensuring that proceedings are held in a closed court and that information relating to these proceedings may not be published.
 - The Bill also promotes the right of youths not to be compelled to give testimony or to confess guilt by introducing stronger safeguards to ensure procedural fairness when a youth is being interviewed by the police.
6. Right of children to be dealt with in a manner appropriate to their wellbeing and proportionate to their circumstances and the offence - Article 40(2), (3) and (4) of the CRC.
 - The Bill promotes the right of youths, where appropriate and desirable, to be dealt with, without resorting to judicial proceedings, in a manner that takes in to account the young youth’s well-being and is proportionate both to the youth’s circumstances and the offence. The imposition of bail conditions must take into account the circumstances of the youth, including their home environment and their capacity to comply with conditions.
7. Rights of persons with disabilities – Article 22 of the CRC, Article 7 of the CRPD and Article 22 of the UNDRIP.
 - This Bill promotes the right of youths with disabilities to enjoy all human rights and fundamental freedoms on an equal basis as youths without disabilities by requiring that explanations providing having with regard to the needs of every youth.
8. Right of indigenous peoples to the improvement of their economic and social conditions – Article 21 of the UNDRIP.

- This Bill promotes the right of indigenous youths to the improvement of their economic and social conditions, with particular attention paid to the rights and special needs of youths with disabilities. This is achieved by, where appropriate, diverting youths away from the youth justice system and increasing access to rehabilitative programs which are aimed at more generally improving life outcomes.
9. Freedom from discrimination against women – Article 2 of the CEDAW and right of indigenous women and children to the full protection and guarantees against all forms of violence and discrimination – Article 22 of the UNDRIP and the right to equality and non-discrimination – Articles 2, 16 and 26 of the ICCPR.
- This Bill promotes the right of women and girls to be free from discrimination and promotes the Northern Territory Government’s obligation to ensure that public authorities and institutions act in conformity with this principle by requiring that, as far as practicable, all searches of detainees are conducted by a member of staff of the same gender as the detainee and in the presence of another member of staff who is also of the same gender.

Conclusion

The Bill is compatible with human rights as it promotes the human rights of children and young people in custody and in detention in the Northern Territory.