Youth Justice and Related Legislation Amendment Bill 2019

Ms WAKEFIELD (Territory Families): Throughout this debate I think it has been a really informative and broad reaching debate. I do think the Member for Karama did just sum it up in her final words that this is about a better future.

This bill has been designed to provide the right legislative framework to support the coordinated efforts of this government to achieve important reform for young people and the community. We are committed to keeping communities for safe for all Territorians. We know that preventing reoffending is the most effective way to cut crime, improve public safety and reduce the cost to taxpayers. We also know that young people committing offences need to face the consequence of their behaviours and be held accountable to the community. It is critically important that victims of crime have a right to be heard.

On 21 August 2019 the Attorney-General and Minister for Justice confirmed our approach by putting the rights of victims first with the release of the strengthened victims' charter. We know the best way to put our victims first is to reduce, which is why we are delivering more police as well as part of this plan. New police stations in Palmerston and Nightcliff and a major investment right across our youth justice system. This government is determined to take the best action to keep our communities safe. We need better ways to address the behaviour of young offenders and to break the cycle of crime once and for all.

The Northern Territory youth justice system has placed young people in detention as the only means of addressing their behaviour in the past, and we know this has not worked. The Royal Commission into the Protection and Detention of Children in the Northern Territory was clear that children and young people need responses that change their behaviour. This bill implements 11 recommendations of the Royal Commission into the Protection and Detention of Children in the Northern Territory. It provides for responses to young people who have offended to be more timely, targeted and effective. It is based on research and evidence and reduces unnecessary police and court time.

The Northern Territory Government understands that if we do not invest now to reform the youth justice system and put young people back on the right path, the cost to Territorians will be far greater in the longer term. The wise words of the Member for Barkly clearly illustrated that.

We are modernising the system using evidence-based contemporary practices to create generational change in all areas, through historical investment into this youth justice portfolio. This significant investment covers the operation of both detention centres as well as expenditure on community-based programs spanning across early intervention, youth activities, diversion, bail and community youth justice programs.

These include the $6.1m Back on Track programs; $1.5m for a Palmerston Youth Drop-in Centre; $1.2m for breaking the cycle of crime in Alice Springs, which is the youth engagement night officers; and $800 000 for breaking the cycle of crime in Palmerston, crossover family management program.

These investments are fundamentally changing the way government works with young people who are at risk of, or engaging in, offending behaviours. Effective initiatives and partnerships across agencies and with the non-government sector are working to address and reduce youth crime and increase community safety across the Territory.

Territory Families has formed strong operational partnerships with police and is co-locating staff so the response to youth offending is swift and coordinated. In Alice Springs, we have created an intelligence position co-located with Northern Territory Police to drive information sharing and intelligence collecting around high risk young people and evolving crime trends.

Through this ongoing collaborative approach, our aim is to make sure young people and their families have access to appropriate services while working to reduce anti-social and criminal behaviour by young people and therefore reducing crime and improving community safety.

Territory Families has created a crossover families case management unit to help break the cycle of crime in Palmerston. The unit works with a broader crossover working group comprising senior representatives with operational and strategic youth services expertise from a number of agencies and organisations.

The group supports service delivery to identified families entrenched in the youth justice and child protection system by ensuring a joined up approach to children and families across government agencies, identifying

emerging opportunities for coordinating service delivery and driving inter-organisational information sharing, cooperation and communication about matters and issues relating to families and children.

The Northern Territory Government allocated an additional $2.35m into regional youth services programs in 2018-19, bringing the total amount invested to $4.1m. This funding supports delivery of core after-hours services including school holiday programs–both day and evening activities–with a focus on linking those who are most vulnerable to relevant support services.

School holiday programs were delivered across December and January, with 900 activities available to children, young people and their families.

This government has committed $5m to address youth crime and the high rates of young people reoffending, with the Back on Track program. This program is the most extensive suite of measures ever put in place to address repeat offending. It will put young people back on the right path to be more responsible and productive in the community, rather than continuing the cycle of crime.

Back on Track will tap into, and build on, existing programs such as the youth outreach and re-engagement teams and reintegrate young people into pro-social activities away from crime. For each young person and their family, a dedicated service worker will work in partnership with multiple agencies; police, health, education, Territory Families and justice, as well as non-government service providers. This will ensure that there is a coordinated and well managed response to each young person and their family to get them back on track.

I acknowledge the thanks that many of the members of this parliament have made to our frontline workers who are doing the work we are talking about. It is incredibly difficult work on the front line particularly when you are being told that it is not working loudly by many people. There are many people working hard, are committed to this work, to young people and making sure that there is the best possible outcome for them.

I acknowledge that we see that work and know how hard you are working. You have our full support to continue to put—people on the front line of this area put so much of themselves into their work and we thank them for it.

We are backing that support up with investment. All of these investments and new approaches to dealing with young offenders are already starting to show strong signs that we are on the right path. In 2019 we have a higher proportion of young people successfully completing their community based orders. It is now 71% compared to 51% three years ago. This is a long term journey to achieve generational change. We have more to do.

Youth justice infrastructure in the Northern Territory has not received significant investment for decades. Both the Don Dale Youth Detention Centre and the Alice Springs Youth Detention Centre continue to undergo significant fix and make safe works to strengthen the infrastructure we have at the moment. It is aimed at improving the safety and wellbeing of staff, visitors and young people in detention. This is an ongoing issue and the fact that we have had to spend the amount of money we have shows the shameful state of the infrastructure that we inherited when we came to government.

Recently I announced the location of the new youth justice centre as being a greenfield site at Holtze. Work on the design of the Darwin youth justice centre is continuing but the new facility will be much more than just a building. It will balance safety and security with rehabilitation and reintegration strategies while incorporating the gender, cultural and individual needs of young people. It will also include appropriate health and mental health programs and educational services.

We have been working with young people in detention, traditional owners, Aboriginal stakeholder groups, legal services, local government and our youth justice officers to design the new youth justice centre and develop a program and services that meets everyone's needs.

We are actively working to ensure more meaningful consequences for young offenders with the involvement of victims and families as part of the solution to young people learning how to right their wrongs and contribute back to our community. The data tells us that we are making an impact with our programs by the increased proportion of young people sentenced in detention rather than being on remand.

In 2018-19 government committed $5.5m to bail support programs. These services include bail support accommodation, bail supervision and a bail support and referral telephone line. The service infrastructure provides a safe, secure and homelike environment which improves the likelihood of young people maintaining

bail conditions. Of the incidences where young people have been accommodated in a supportive bail service during this period approximately 75% have successively completed their bail order.

One of the most effective ways to reduce the rates of reoffending is to put a young person in front of their victim to understand the consequences of their actions. This government introduction victim offender conferencing—restorative justice conferencing as it is also known—which is occurring for the first time in the Northern Territory. We have expanded the scope of victim conferences to be delivered so that they can now occur in Darwin, Palmerston, Katherine, Alice Springs and Tennant Creek. As well as being a proven strategy in reducing rates of reoffending, victim offender conferences also produce higher rates of victim healing and satisfaction.

That is really important to note—the high levels of positive feedback we have had from victims. One of the things many people have talked about today is conversations they have had with people who have been through this process.

I too have spoken to victims who have been through this process and have had nothing but positive feedback about how that has helped them, as a victim of crime, move past the experience. We acknowledge that it is—people have had dreadful experiences and we need to make sure the voices of victims are heard throughout this process. In 2018–19, a total of 283 young people completed a restorative justice conference and agreement as part of our commitment to victims and reducing reoffending.

The Youth Justice and Related Legislation Amendment Bill 2019 strikes a balance between the complex operational requirements of our police; the power of the judiciary; youth detention; outreach and re-engagement services; the important work of our community sector organisations and Territory young people; their families and the victims all working together to address and prevent offending behaviours of young people and to ensure there are consequences for offending behaviour.

The key features of this bill include:

- removing the barriers to youth diversion so that government can address a young person's offending behaviour faster and more effectively

- limiting the time children and young people spend in police custody so that children and young people cannot be held in police custody for unreasonable lengths of time

- ensuring earlier access to legal assistance for young people so that young people have timely legal representation and are informed of their legal rights in an appropriate manner and language

- improving the application of bail so that young people are required to participate in programs where there are consequences closer to the time that the offending occurred; this will enable a young person on bail to undertake corrective actions attached to their original offending and to change their behaviour

- protecting the privacy for young people in court proceedings while permitting victims, witnesses, support people, relevant staff and genuine representation of the media to be in the closed court proceedings.

No part of this bill reduced penalties. This bill is about empowering frontline police to make the decisions they need to make in their everyday work and reducing red tape, which will make sure their work is more effective. The best people to make recommendations to the court are the frontline police. They see the victim of crime and the impact of the crime. They know their community and the kids in it, so they are the best people to make the decisions on bail and make recommendations to the court. We need to be very clear about this process.

We support our frontline police. We have a record budget for police. We know they work very hard and Territory Families will continue to work with police to provide support for their very important work to prevent crime.

We also know that the younger a child or a young person is when they first enter the youth justice system, the more likely they are to reoffend in the future and continue their offending into adulthood. Holding young people to account so that they learn the lessons and change their behaviour must be the primary outcome of any youth justice system. Without a system that holds young people to account and programs designed to change their behaviour, young people are not likely to stop offending.

The key to breaking the cycle of youth crime is implementing effective intervention and targeted programs to address offending behaviour more efficiently and effectively.

I will take a moment to address some of the issues raised by those on the other side, in particular, the issues raised by the Member for Nelson, raised in his usual thorough way. He asked about the presumption of bail and if we are defining the serious and ongoing risk to the community within the legislation before the House. No, we are not changing the definition to serious and ongoing risk to the community. When making a decision about bail, the risk of the accused to the safety or welfare of victims in the community is an existing consideration under the *Bail Act* and that remains.

As I said previously, with police bail and the courts—they have the information in front of them. They can make that decision and that is in no way weakened by this legislation. Police are best placed to make that decisions when they have someone in custody, and we will continue to do that.

He asked why the bail history or failure of a young person to appear in court is not a consideration when determining whether a young person should be granted bail. The history and failure of a young person to appear in court or a breach in bail conditions is a consideration when making decisions about granting bail. All this information is put before the court and is available to police through our information systems so they can make a considered risk assessment about a person's ability to successfully complete bail. That is why we need to make sure police and the courts are best placed to make this decision. It will continue to apply to young people through this legislation.

There is a question about why we are removing the offence of breach of bail, and I will talk about this further on. This is in no way weakening the response to young people who have committed a crime. It is about reducing red tape for police and making sure there is clear and consistent action in regard to young people when they have breached their bail. It is about returning to the original offence.

He also asked whether it is an offence to break an electronic monitoring device. Under the act a young person may be subject to an electronic monitoring bracelet as part of their bail conditions. This is some of the work we have put before the parliament in our term of government so that it is available under police bail. If a young person breaks their device they can be arrested by police and brought back to court to face the original charge or have their bail conditions altered or revoked. Police also have the option to charge a young person for damaging their device.

The other question was, what are the differences and similarities between police and court bail, and how does this relate to the bill? I will read out the technical answer to this. Part 3 and Part 4 of the current *Bail Act* prescribe the different powers between police and court bail. Courts can review or change police bail, but police cannot change or review court bail.

Police and courts must both consider the criteria of the current section 24 and the additional youth-specific criteria in section 24A. Part 5 also relates to imposing bail conditions and breaching bail conditions. Police bail and court bail are treated the same way in this Part. There is no change to the power of police to arrest for breach of bail conditions.

He also asked, how can you explain the difference of opinion between police and Territory Families about the bill that arose during the scrutiny process? I take this opportunity to thank everyone who was part of that scrutiny process. It was a complex piece of legislation with opposing views presented by people appearing before the House. I thank them for their time and thought.

This bill has been developed over two years. I acknowledge the work of the department in this. It has been a long haul with a lot of hard work by some very smart people who have gathered different views and approaches.

This government has worked a way through the middle with this legislation. It is a step in the right direction that has been acknowledged by the community sector. We know we have more to do. We are not backing away from the fact we have more to do and we will continue to work with police to make sure we see the best possible outcomes for Territorians.

Ultimately, what this bill is about is that simply locking kids up does not work. We need programs in detention and in the community to change young people's behaviour. We are not shying away from the challenges. We have not taken one step back from the fact that this is a large piece of work. There are no easy answers but we will continue to invest. Government is listening to the evidence. We are committed to making

generational change for our community and we will continue to commit to addressing youth crime in a way that is effective and long-standing.

Motion agreed to; bill read a second time.

Consideration in detail

Clauses 1 to 4 taken together and agreed to.

Clause 5:

Mrs FINOCCHIARO: Thank you, Mr Deputy Speaker. Minister, when determining the list of prescribed offences, who was consulted specifically on crafting that list.

Ms WAKEFIELD: That was part of the whole scrutiny committee process. There were a range of other negotiations between police and Territory Families, within government agencies, with justice, with the Office of the Solicitor-General. There was extensive consultation with the community through the LAAC and the Legal Advisory Council that we had in place as well. There were considerations through the scrutiny committee of which you were a member.

Mrs FINOCCHIARO: True. What I am asking is, when government came to the parliament with its legislation, how at that point had it determined what was on the list and what was not on the list. That has nothing to do with the scrutiny process.

Ms WAKEFIELD: There were some recommendations through the royal commission which we also consulted on. We also did extensive work within government on that list as well as through the LAAC.

Mrs FINOCCHIARO: I wanted to know why offences such as threat to kill, recklessly endangering a life, dangerous driving during a police pursuit and assaults on police when an officer suffers harm, were not included in the list of prescribed offences?

Ms WAKEFIELD: There was a range of considerations for those. Within all of those offences there is a wide range of behaviours that can be included. Can I give an example of driving an unregistered heavy vehicle? If you have a 16 year old who has a licence who is on a tractor that has crossed over a road, you would not want there to be no discretion within the judiciary that meant that that person automatically cannot have diversion.

Police need to deal with that matter. Having unregistered vehicles crossing a highway is not a great circumstance. That young person does need to understand the consequences of insurance and a range of other things involved in driving an unregistered vehicle but we do not believe it is reasonable that that offence does not allow police to act with some discretion. Having police making those decisions on the front line is the best place for those decisions to be made.

Mrs FINOCCHIARO: I understand what you are saying minister except in practical application that is not how the presumption works. Using your example of the tractor, even if that offence was on the prescribed offence list there would still be the discretion, albeit limited. There would still be discretion because the presumption of bail—you guys have removed the presumption for or against, it is just neutral.

Ms WAKEFIELD: To be clear, this list of prescribed offences is not what determines whether a decision is made about whether a young person gets bail or not. That decision still sits very clearly with police and with the courts. We believe that they are in the right place to make the decisions about bail because they see the offence and know the victims of crime.

This bill creates a list of prescribed offences that determine whether or not a young person is entitled for a presumption of bail. That is all. The decision powers are still with police. They can still oppose bail and say that they do not think that this person is suitable for bail. It does not change any of that. It allows there to be more flexibility with offences where there is a wide range of behaviours that may be included in that offence.

Mrs FINOCCHIARO: That is why I am asking why these were not included in the prescribed offence list. I think it used to be called serious offence under the old legislation. When it was serious offence there used to be a presumption against bail. You have changed it and called it prescribed offence and made it a neutral presumption for lack of a better descriptor.

How was it determined? Was there a matrix or was it based on the consultations you described earlier of what offences were considered serious enough to end up in the prescribed list?

Ms WAKEFIELD: The list comes from Schedule 2 and Schedule 3 of the *Sentencing Act*. That is the list that was worked on. This has gone through the scrutiny committee and there was opportunity to question the list. In fact, one of the amendments I have today is to add to something the prescribed list.

There was opportunity through the scrutiny committee for people to say if they thought that any of the offences were inappropriate or that things needed to stay on. That was the list that was originally worked on, we have worked on the recommendations from the royal commission and we have put this through scrutiny committee.

Mrs FINOCCHIARO: When initially pulling together that prescribed offences list, prior to it being introduced into the Parliament, was any consideration given to adding some provision around a second or subsequent offence, to that list of prescribed offences?

Ms WAKEFIELD: Just to be clear, because this is about the presumption of bail not the decision around bail, so therefore the list of prescribed offences is a starting point only.

Mrs FINOCCHIARO: As a starting point, was any consideration given to, if that was a repeat offence, so it is either one of the prescribed or perhaps it is a number of offences, was that considered?

Ms WAKEFIELD: My advice is that is dealt through considerations.

Mrs FINOCCHIARO: What do you mean, considerations? A different section, is that what you mean?

Ms WAKEFIELD: Through sections 24 and 24(a) later in our amendments. We can deal with it then, if that works.

Clauses 5 to 6, by leave, taken together and agreed to.

Mr DEPUTY SPEAKER: Honourable members, the Deputy Leader of the Opposition has indicated her intention to seek leave of the Assembly to go back to revisit clause 7. I have been asked to put that question to the House. I will do that in the order to maintain consistency of the House. Is leave granted?

Leave granted.

Clause 7:

Mrs FINOCCHIARO: I appreciate the will of the parliament to allow me to revisit clause 7.

Why is there no presumption for or against in section 7A for those very serious offences that we talked about before, such as murder, kidnapping, et cetera. Why was the presumption against bail removed?

Ms WAKEFIELD: This is a section about the presumption of bail against young people. Because that is amended with clarity further in the act, this no longer applies to youths. We made the amendment, at this stage, with the rest of the bill dealing with issues for young people.

Mrs FINOCCHIARO: Are you saying that somewhere else in the bill there is a presumption against bail?

Ms WAKEFIELD: No. What I am saying is that the rest of the bill provides clarity. This bill creates a presumption in favour of bail for young people unless they are charged with a prescribed offence and present an ongoing and serious risk to the community by amending sections 7A and 8 of the *Bail Act 1982* and inserting new section into 8A.

Mrs FINOCCHIARO: Previously, that section was a presumption against bail for those very serious offences and now there is no presumption for or against. Is that a deliberate policy position of the government?

Ms WAKEFIELD: I will step through the bail process. What has not changed is that it is frontline police making a decision about bail. At any time throughout this process, a presumption is a way that people need to think about the law. In reality, it means that each time a young person is in front a police officer and they are in custody, they need to make a decision based on all of the evidence, including the young person's past history, the offence they committed, the risk to the community, their ability to meet bail conditions and their place of safety.

The decision about bail will still be made by police on the front line. At any time, whether there is a presumption or not, police can oppose bail if they think a young person is a risk to the community.

Mrs FINOCCHIARO: But is it not true that the government has changed this legislation. There was a presumption against bail, so that is a different starting point, to then having no presumptive position to start with.

Ms WAKEFIELD: That is correct. I again stress that it does not change the decision-making and where the decision-making is made. If there is a risk to the community, police can oppose bail.

Mrs FINOCCHIARO: Why did you change it if it makes no change?

Ms WAKEFIELD: This is about making sure we have a clear for our police officers on the front line. It has very clear information and steps that they have to take. It is also ensuring we have a system that is clear, that young people need to be treated differently to adults. We want to make sure that there are the reforms in place that are very clearly stepped out in the royal commission. It does not change the outcome in terms of police and courts ultimately making that decision.

What we have also wrapped around it is a range of other services as discussed, bail support, youth outreach, a range of other things that can be considered as part of that decision. To be clear, this is a very technical part of the act which is about making sure that it works better, it is more effective and more efficient but ultimately, if police and the courts have a concern about the safety of the community, they can act.

Mrs FINOCCHIARO: How does removing a presumption against bail for a very serious offender make it more efficient?

Ms WAKEFIELD: I think I have answered that. If police consider someone to be a serious offender, they have the tools to act.

Clause 7 agreed to.

Clause 8, by leave, agreed to.

Clause 9:

Ms WAKEFIELD: Mr Chair, I move amendment 1 to clause 9, which amends section 8A of the *Bail Act* regarding the presumption in favour of bail for youths to omit the current wording in section 8A(1) and insert a new subclause that reads:

(1) *This section applies to an offence except a prescribed offence.*

(1A) A youth accused of an offence to which this section applies is entitled to be granted bail in accordance with this Act unless:

(a) *an authorised member or a court is satisfied refusing bail is justified having considered the matters mentioned in sections 24 and 24A; or*

(b) *the youth stands convicted of the offence; or*

(c) *the requirement for bail is dispensed with under section 9.*

The original amendment to clause 9 created a new way of dealing with presumptions in favour of bail for young people, based on expert advice from stakeholders and recommendations from the royal commission. The scrutiny process helped identify the original amendment created a different legal standard for young people.

The purpose of the change in this assembly amendment is to achieve consistent legal standards with the current sections of the *Bail Act 1982*. This will mean young people, expect those who commit a prescribed offence, have a presumption in favour of bail. It does not mean they are automatically entitled to bail. Police and the courts must still make the decision about bail based on the list of considerations that include risks to the community.

To be really clear, the police and court must consider the risks to the community as part of the process.

This bill makes an important shift in line with our improved approach that recognises young people should be treated differently to adults to achieve more effective outcomes for our community. The change in the assembly amendment implements recommendation 3 of the Social Policy Scrutiny Committee. The recommendation was to clarify in the bill that the presumption in favour of bail for young people is subject to the consideration of the matters mentioned in sections 24 and 24(a) in the *Bail Act 1982*.

Some of the matters listed in sections 24 and 24(a) include the probability, whether the young person will appear for their court date; any risk that the young person would interfere with the evidence, witnesses or jurors; and the desirability of allowing the young person to continue their education, employment or training without interruption.

Mrs FINOCCHIARO: This is one of the provisions that the government amended and certainly it was something as an opposition that we can raise concerns about. Now this provision is being linked through to the criteria which is a small step in the right direction whereas before they were not.

Were police consulted—talking before the amendment—on the original version of this clause prior to it being put through Cabinet?

Ms WAKEFIELD: The police have been involved at all decision gateways of this legislation and reform process. They have been part of our Legislative Advisory Committee, I have had meetings with the Commissioner. The police minister has been deeply involved in making sure that police are part of this decision-making process. We will continue to do that work. We both have the same goals. We want to make sure that police on the frontline have the tools they need to do the job that we need them to do.

Mrs FINOCCHIARO: Does this clause give repeat offenders and those who have previously breached their bail conditions, the entitlement to a presumption in favour of bail?

Ms WAKEFIELD: No. It is very clear that if young people have a history of breaching bail—that is part of the information that is used on a daily basis by police and by courts when making decisions about bail.

Mrs FINOCCHIARO: So you are saying that this clause says that young people who are repeat offenders or have previously breached their bail conditions do not have a presumption in favour of bail.

Ms WAKEFIELD: The presumption applies to the offence so each offence is dealt with separately through the legal process as you well know as a lawyer. This is about making sure that there is still the ability to look at what is needed for that individual person. That means that everything is considered. If that person is a first offender with a good family who is mortified to be in this position and wants to put the supports around, there is an ability for bail to be considered. But also, if there is a history of breaching bail, that will also be part of the consideration of police and the courts.

Mrs FINOCCHIARO: I am not talking about the consideration, I am talking about the initial threshold. Do repeat offenders and those who breach their bail conditions have a presumption in favour of bail and then it goes onto working through the conditions.

Ms WAKEFIELD: Presumption is the starting point only. That is all this is. This is about making sure we have a consistent legal standard for the starting point of consideration of bail.

Mrs FINOCCHIARO: It is obviously a pretty important starting point or you would not change the starting point.

Mr DEPUTY SPEAKER: I remind honourable members, no interjections or cutting a member off when they are talking. You will have an opportunity upon the end of the member's contribution.

Ms WAKEFIELD: That is the goal of this bill, to take away a lot of those technical rules about presumption and make sure the focus is on the decision-making regarding the individual before the court, the offences they have committed and are charged with, and what that means in the broader picture of their history. We need to make sure we have that consideration for police and courts to make the important decisions and give them the tools to make those decisions effectively.

Mrs FINOCCHIARO: Can you describe a set of circumstances where a youth would be remanded in custody under these amendments?

Ms WAKEFIELD: There are a multitude of examples. It is up to the police and the courts to decide that. They do that on a daily basis and will continue to make decisions that are in the best interests of the community and the victims of crime, as well as considering what will change the behaviour of the young person before them.

Mrs FINOCCHIARO: What percentage of youths that are currently either granted police or court bail—has there been any modelling or research done on the percentage of youths who will no longer be remanded? You must have done some modelling on the impact this will have on the number being bailed or remanded.

Ms WAKEFIELD: Because that is based on the individual decision of each case, there is no way for us to model what individual police officers will recommend and what individual court decisions will be.

Is it not the intent of government to ensure that more youths are bailed?

It is the intent that we have a youth justice system that changes young people's behaviour, and that means that in each decision the individual circumstances of that young person's offending behaviour—the crime they have committed and the impact on the victim—needs to be considered.

Amendment agreed to.

Ms WAKEFIELD: I move amendment 2 to clause 9 of the bill regarding the proposed section 8A of the *Bail Act* amends subsection 8A(2) of the *Bail Act 1982* omit the word 'offence' and insert the following words: 'offence or reason for which the youth is not entitled to be granted bail'.

This is a technical amendment to make clause 9 of the bill consistent with the current section 8 of the *Bail Act*. This means the new section 8A regarding presumption in favour of bail for youths has the same wording about presumptions in favour of bail in the current section 8 of the *Bail Act* that applies to adults and young people.

The major difference between current section 8 and new section 8A of the *Bail Act* is that a young person can get a presumption in favour of bail as long as they do not commit a prescribed offence or would be reused bail by an authorised officer of court after considering the matters in section 24 and new section 24 that applies to young people. Some of the matters listed in sections 24 and 24A include the probability of whether the young person will appear for their court date; any risk that the young person would interfere with evidence, witnesses or jurors; and the desirability in allowing the young person to continue their education, employment or training without interruption.

Amendment agreed to

Clause 9, as amended, agreed to.

Clause 10:

Ms WAKEFIELD: I move amendment 3, which inserts after clause 10 of the bill, inserting clause 10A section 24 amended. Clause 10A omits the word 'in' in section 24(1) of the bail act and insets the word 'subject to section 24A, in'. This is a very technical amendment to clarify section 24 of the *Bail Act 1982* 'criteria to be considered in bail applications' and section 24A of the *Bail Act 1982* 'criteria to be considered in bail applications for youths'. These will both be considered by authorised officers in the court when a making a determination whether to grant bail for young people. This change implements recommendation 3 of the Social Policy Scrutiny Committee to ensure that sections 24 and 24A apply to young people being considered for bail.

With the proposed amendment to the bill section 24 of the *Bail Act 1982* would read 'subject to section 24A, in making a determination as to the grant of bail to an accused person and authorised member or a court must take into consideration so far that they can reasonably be ascertained the following matters only'.

Again, this is a technical amendment to make sure we put the decision to grant bail in the hands of authorised officers, which is police, and the court to grant bail based on the list of existing considerations under section 24 of the bail act and adding the additional considerations under new section 24A that apply to young people. This technical change was identified as necessary through the scrutiny process to ensure we achieve our intent with the bill, which is to use the same legal standards in decision-making about bail, but with some more tailored considerations for young people that is more appropriate for the circumstances.

Amendment agreed to.

Clause 10, as amended, agreed to.

Clause 11:

Ms WAKEFIELD: Mr Deputy Speaker, I move amendment 4 that clause 11 proposed section 24A(2) be amended by omitting 'to the extent practicable, take into consideration the following:' and replacing it with the following words being inserted to read 'take into consideration, so far as they can reasonably be ascertained, the following matters:'.

This is another minor technical amendment to make it clear that an authorised officer, a police officer, or the court must apply the same legal standards in their decision-making process that currently exists under section 24 of the bail act when making a decision under proposed 24A(2). With the proposed amendment to the bill new section 24A(2) would read 'in addition to the criteria mentioned in section 24 an authorised member or court must take into consideration as far as it can reasonably be ascertained the following matters:'.

This technical amendment is making sure we put the decision to grant bail in the hands of police and the court, and confirms their decision-making is based on the list of existing considerations under section 24 of the bail act and additional considerations under the new section 24A that applies to young people. This consistency in wording across provisions will help avoid any doubt about different legal standards being applied to decision. The rest of 'so far as they can reasonably be ascertained' will be the same as the current section 24.

We want to make sure that police are critical decision makers and equipped with very clear standards. This is about clarifying their ability to make decisions based on the information before them.

Mrs FINOCCHIARO: Is there some form of matrix or way in which courts and police are supposed to weigh or apply these considerations, given the number of them?

Ms WAKEFIELD: It is at their discretion. We know the expertise in within our courts and police. This is about giving them the tools to do so. It is up to their discretion in applying them.

Mrs FINOCCHIARO: Subsection 24A(4) states that the authorised member or the court must not refuse to grant bail to a youth on the sole ground that the youth does not have any, or any adequate, accommodation. What would then happen to that person if they do not have adequate accommodation?

Ms WAKEFIELD: That is why we have supported bail accommodation facilities and why we have put them in place. This is about making sure that young people that are homeless are not disadvantaged. That is why we are funding those facilities to make sure they have the proper support if that is the only barrier to bail. However, if their behaviour is unacceptable, they are a risk to the community or their offending is serious then bail will still be considered. If homelessness is the only consideration then that means a referral to our bail support accommodation.

Amendment agreed to.

Clause 11, as amended, agreed to.

Clause 12:

Mrs FINOCCHIARO: I want to ask the minister what is meant by the capacity of the youth to comply with bail conditions proposed in section 28(2A)(c)?

Ms WAKEFIELD: There is no point making a bail condition that someone cannot comply to. This is an important consideration for the court. For instance, the example that you gave previously of a young person who is homeless and the court makes a bail condition that they have to stay at home and they do not have one. Clearly they do not have the capacity to meet that bail condition. It might be then that the court orders for them to stay at bail accommodation to make sure that there is capacity to meet a bail condition that makes a similar outcome. It is about making sure the courts consider that young person's ability to meet that capacity.

Mrs FINOCCHIARO: A concern could be that a youth is highly unlikely not to comply with something or shows an indifference—that is not intended to be captured by this. It could that they are not going to do it anyway so let us not bother making a condition.

Ms WAKEFIELD: Absolutely no. This is about the physical capacity to meet a bail condition. There are many examples but we do not want to set young people up to fail and the court does not want to do that. We want to make sure that there is an ability for young people to meet those conditions and that consideration must be made by the court to do so.

Mrs FINOCCHIARO: With subsection (a), will there be any guidelines or policy directions around the wording, such as 'no more onerous than necessary' and 'do not constitute unfair management of the youth'?

Ms WAKEFIELD: That sort of consideration would be set by normal legal processes around precedents and as the legislation is used.

Clause 12 agreed to.

Clause 13:

Mrs FINOCCHIARO: How does removing breach of bail as an offence increase consequences for youth offenders?

Ms WAKEFIELD: In terms of the response to young people, it changes very little. If a young person breaches their bail conditions, they are brought back before the court to explain why they have done so. It is very much an administrative process where that charge is an additional charge which means additional paperwork for police. It means that it delays the process so there is an immediate consequence for a young person. It delays access to a range of other services.

We know that what we want is clear and consistent consequences for young people. This is about making the system more effective and more streamlined and ensuring that the young person is held responsible for their original offence.

The example I would give is a young person who—just stepping through the bail process—has been found in possession of drugs. They have been set bail conditions because it is their first offence, they have a supportive family and they are attending school regularly. They have conditions that include drug testing. The YORETs are drug testing, they fail that drug test. Instead of there being a new offence there, they come straight back to court on the original offence which is around drug taking and the court deals with that then and there.

Bail is given so that people have—you said it yourself today in the debate—a second chance. If people do not take that second chance, the ability to prove that you can change your behaviour, you need to be held accountable to that original offence.

Mrs FINOCCHIARO: What then is the mechanism for the breach of the bail condition if it is not an offence? What is going to be triggering that person from being brought back before the courts?

Ms WAKEFIELD: Section 38 of the act I am advised.

Mrs FINOCCHIARO: So are Territory Families staff required—I would like to know how they are required—to notify police when a youth breaches their bail conditions even though the breach may not constitute a separate offence under this bill. In the past, in the parliament, we have talked about breaching curfew and whether or not Territory Families staff are notifying police if there is a breach of curfew.

Ms WAKEFIELD: Yes, they are required to notify police of breach of bail. It is police who then make the decision of what happens with that bail. Territory Families have very clear procedures that we will notify breaches of bail and will provide evidence to the court as well as making recommendations on that young person's ability to complete bail successfully. We have put a range of information before the court meaning that since we have had the youth outreach officers in place, the court has better quality and more information to make decisions that are focussed on community safety.

Mrs FINOCCHIARO: With breach of bail conditions no longer being an offence, will breach of those conditions be included in the pre-sentencing report under section 70 of the *Youth Justice Act*?

Ms WAKEFIELD: Absolutely.

Mrs FINOCCHIARO: Will breach of bail conditions be recorded for the purposes of a report to the court as part of the young person's police record?

Ms WAKEFIELD: None of that changes. We have a more effective and better-resourced system in place, unlike the system that was cut under your government. We have Territory Families working closely with police. In many cases Territory Families workers are based in police stations, co-located. There are reports on compliance that occur every day.

This is where we will continue to work closely with police to support their work and to take our role in the system, which is about making sure young people comply with the act, but also giving them the rehabilitation and pathway out of a life of crime.

Mrs FINOCCHIARO: Territory Families is repealing—it would no longer be an offence to breach a bail and you are saying that there are still plenty of consequences. At the same time, you have said that the reason you are not repealing breach of bail undertaking is—I think this is from the public hearing, not from you, minister. I quote:

> *Repealing this offence …*

That is of breach of bail undertaking.

> *… in the absence of any new policy response would create significant operational challenges for Police and courts to effectively manage young people through the current youth justice system.*

I cannot understand why the logic is any different for breach of bail conditions as it is with breach of bail undertaking.

Ms WAKEFIELD: For justice to be applied you have to go to court. That is why we structured it that way.

Mrs FINOCCHIARO: Sorry, could you explain that again?

Ms WAKEFIELD: The word is 'undertaking', which means you have promised to appear in court. That is why we have focused on that wording.

Mrs FINOCCHIARO: What you have done—there is breach of bail condition. Under the current law, if you breach a bail condition the police can charge you for breaching your bail condition. Your government's argument is, 'We can do that, that is fine, there are still plenty of consequences' et cetera. But in the same breath, you are saying, 'No, we are not repealing the offence of breach of bail undertaking, where someone has promised to rock up to court, because it will provide operational challenges for police, the courts and the youth justice system'. How are they any different?

Ms WAKEFIELD: Because a condition is about changing someone's behaviour. Conditions will be things like curfew and taking drug tests. It is about monitoring someone's behaviour whilst they are in the community and judging whether they have changed their behaviour in a way that is significant enough for the court to consider.

A bail undertaking is that you say to the court, 'I will turn up on this day, that is my undertaking with you'. If they do not, it shows a complete lack of respect to the court. They are quite separate and need to be dealt with separately.

Mrs FINOCCHIARO: I would argue that by breaching your bail condition you are showing a complete lack of respect to the court …

Ms WAKEFIELD: I did not say that.

Mrs FINOCCHIARO: I never said that you said that. I am saying that I say that. You said, 'By not complying with you bail undertaking you are showing disrespect', and I am saying, 'By not complying with your conditions of bail, you are equally not showing respect to the court'.

Ms WAKEFIELD: Absolutely, it is not showing respect for the court; I completely agree with you. But it is a very different mechanism about showing that you are not willing to change your behaviour or whether you do not turn up on a court date.

Mrs FINOCCHIARO: How will information about breaches of bail be accurately represented to the courts and police if it is not recorded as an offence?

Ms WAKEFIELD: My understanding is that it is recorded in the PROMIS system, but also as part of the YORETs' work, they provide reports to the court.

Mrs FINOCCHIARO: But given the Territory Families database and IT systems not being hugely capable at this point in time, I suppose, not having huge amounts of capacity. We already know you cannot measure recidivism, so you do not even know if someone has come into your bail facility twice.

How is Territory Families going to be collecting around how many times a youth has breached their bail condition, in order to provide that to the court?

Ms WAKEFIELD: Whilst there is a need for significant investment in both the PROMIS system and the Territory Families database, which I have to say was ignored by the previous CLP government, we are investing in both. They both still have databases which are able to be used for case management and the PROMIS system is still working.

Mrs FINOCCHIARO: Are you saying when a young person is brought back to court because they have breached their bail, Territory Families and police will provide the court, even though there may be no conviction recorded or, obviously breach of bail is no longer an offence, the instances of breach will be provided to the court?

Ms WAKEFIELD: There is still an apprehension recorded in the PROMIS system.

Mrs FINOCCHIARO: And that will be provided to the court?

Ms WAKEFIELD: Absolutely. As it has always been and will continue to be.

Clause 13 agreed to.

Clause 14:

Mrs FINOCCHIARO: Minister, I want to ask why the decision was made with clause 14 around no longer requiring bail to be revoked if someone is tampering with or destroying or interfering with their electronic monitoring device.

Ms WAKEFIELD: This is the main thrust of this bill, which is about making sure we maintain court discretion and the decision-making being made where it needs to be. This is all about court discretion and that is why that amendment has been made.

Mrs FINOCCHIARO: But in practice, what this amendment does then, if someone has been bailed with an electronic monitoring device and they tamper, destroy or remove it, their bail will not be revoked. They would not have breached a condition of their bail. What will happen to them?

Ms WAKEFIELD: I have already answered that in my reply to the Member for Nelson. The court have the discretion and ability to make that decision. If it has been damaged, they have the ability to charge on that. There are a range of options available to the court. They absolutely have the discretion about whether to act or not.

Mrs FINOCCHIARO: If that is what was intended, why was it removed? Why not continue, if your government wants to send a message saying, you have been given your second chance, you have been given your electronic monitoring bracelet, we are now going to support you to comply. And then that person cuts off their bracelet, why then has your government made the decision not to deal with bail? Why has it just pushed it back to the courts?

Ms WAKEFIELD: If a person has been given a condition to wear the electronic bracelet, and they have broken that, it can be dealt with as a breach of that condition. There is also the option for police to charge them for breaking the device. But it is about going back to court for the original offence.

They might be charged with other offences. So whilst they may not be charged with breaching their bail; that offence does not exist, they can be charged with other offences that are related to their breach of bail.

Mrs FINOCCHIARO: Are you not concerned, minister, that clause 14 and clause 13 send the wrong message to youth offenders that the government holds bail conditions in a lower regard?

Ms WAKEFIELD: What the electronic monitoring provides us is more timely and more accurate responses to breaches of bail because with that data we have more ability to show more evidence through court. This process is about making sure we have a timely response to the original crime that young person committed. This is about making the system more effective, cutting red tape for police. They have the ability to charge other offences at any time if they believe a young person has committed an offence. This is one of them; they can charge them with damage to electronic monitoring bracelets.

Electronic monitoring gives us much more accountability for young people. We know where they are, when they have breached and we have clear evidence. We will continue to support the court to make those decisions as well as giving police the ability to use electronic monitoring when necessary to maintain community safety.

Mrs FINOCCHIARO: Is Territory Families required to provide the data from the electronic monitoring to court when there is a breach of bail condition?

Ms WAKEFIELD: That would be part of our normal reporting.

Mrs FINOCCHIARO: So you are saying Territory Families always provides data location—information it has from its service provider on the whereabouts et cetera of the young person when they have breached their bail or tampered with their bracelet?

Ms WAKEFIELD: I can see no reason why that would not occur. It would be part of our reporting. If someone has breached their conditions by removing their bracelet it is reported to police. I see no reason for that evidence to not be provided to the court if the court seeks it.

Mrs FINOCCHIARO: Has anything progressed with working with police and Territory Families so police can have that data in real time?

Ms WAKEFIELD: I am happy to answer that but it is outside the scope of the legislation. I can provide that information to the Deputy Opposition Leader outside this debate.

Clause 14 agreed to.

Clauses 15 and 16, by leave, taken together and agreed to.

Clause 17:

Ms WAKEFIELD: I move amendment 5 that clause 17 of the bill, proposed regulation 2A(a) of the Bail Regulations 1983 be amended to omit 130(3B) and insert 130(3A) or (3B). This amendment is essential, adding an offence to the list of prescribed offences to exclude a young person from the presumption in favour of bail. Section 130(3A) is an offence under the Criminal Code relating to sexual intercourse or gross indecency by provider of services to mentally ill or handicapped persons.

Adding this offence to the list of prescribed offences was a recommendation of the scrutiny committee. This offence was not originally included on the list of prescribed offences. It was considered difficult or uncommon for a young person to be considered a provider of services.

In preparation for the bill we tried to think of a circumstance where that might be applied. We could not come up with one but are happy to take the recommendation of the scrutiny committee to include it. We also think it is important to show that we have considered other offences through the scrutiny committee and we thank it for its work in making sure this is a thorough bill.

Amendment agreed to.

Ms WAKEFIELD: I move amendment 6 that clause 17 proposed regulation 2A(c) be amended at 2A(c) to omit section (3) and insert (3) of the code. This amendment relates to the list of prescribed offences in the

bill which inserts regulations 2A and 2B in the Bail Regulations 1983 about prescribed offences and bail support services.

This is a technical amendment made on the advice of the Office of the Parliamentary Counsel in their further review of the bill. This amendment makes this subsection 2A(c) consistent with the other two subsections in this regulation 2A(a) and 2A(b) which end in the words of the code. I thank the Office of the Parliamentary Counsel for their excellent work on this bill. It has been a complicated and hard piece of work. They have done an excellent job.

Amendment agreed to.

Ms WAKEFIELD: I move amendment 7 that clause 17 after proposed regulation 2A(c) to insert a new subsection (d) section 213(1) of the Criminal Code in the circumstances mentioned in section 213(6) of the Code with a firearm or dangerous weapon. This is an amendment to the list of prescribed offences that exclude a young person from the presumption of bail. This amendment means that if a young person commits the offence of an unlawful entrance to building when armed with a firearm or offensive weapon they do not get presumption in favour of bail.

Mrs FINOCCHIARO: I have a question on clause 17 but it is not on the minister's amendment. In regards to 2B bail support services, what are the currently available bail support programs?

Ms WAKEFIELD: There are a range of bail programs available in Darwin and Alice Springs. We are also look at opportunities in other regional areas. There is a 24 hour bail hotline which provides support for young people and practitioners. From my experiences of working at the women's shelter that Friday afternoon trying to work out bail by defence lawyers—it is important that they get support through those processes. We will continue to review those services as we move forward.

Mrs FINOCCHIARO: So you cannot tell me what they are?

Ms WAKEFIELD: I have told you that there are a range of services including bail support accommodation in both Alice Springs and Darwin. They provide accommodation for a young person who does not have a suitable place for the court to feel confident or comfortable that that young person will get the support and supervision they need to ensure success in bail. It is also an alternative to community bail if there is not proper support around that young person.

The example we gave before of a homeless young person is an important one. We also have the YORET support which provides supervision that was not available under the previous government. We have 60 YORETs across the Territory who can provide a high level or monitoring that was not previously available.

Mrs FINOCCHIARO: Thank you. What treatment services are currently available for those youth with a substance abuse or other behavioural problem?

Ms WAKEFIELD: There are a range of services across the Territory. In terms of relationship to this bill, the court has the ability to know what services are available in their regional there. We have Territory Families' workers based at the court who can provide the court with advice about what services are available, whether they are appropriate or not. We also have that linkage so that we are ensuring the court has the ability to make those decisions.

YORETs may also provide that information to the court in their recommendation reports but also our judiciary are long-term Territorians who have a good understanding of the service system that surrounds them. They are able to make those referrals when possible.

Amendment agreed to.

Clause 17, as amended, agreed to.

Clauses 18 to 20, by leave, taken together and agreed to.

Clause 21:

Ms WAKEFIELD: I move amendment 8 to clause 21 proposed subsection 137(4)(b) of the *Police Administration Act 1978* be amended to omit the words 'at the expiry' and insert the words 'before the expiry.'

Clause 21 of the bill amends section 137 of the *Police Administration Act 1978* regarding the time for bringing a person before the court generally.

The intention of the proposed section 137(4)(b) of the *Police Administration Act 1978* is that police must only hold young people in custody for a maximum time of 24 hours unless they make an application to the court and the judge allows for the young person to be held for a longer period.

This is a technical amendment to clarify that police can make an application at any time during the 24 hour period rather than having to wait until the last minute to apply for the extension time. This will mean that if it is obvious to the police that they are going to need more than 24 hours—and on a practical frontline basis that is often very clear to police, the examples being the young person needs medical treatment or is under the influence of drugs or alcohol—it means that police do not have to wait for that to apply to the judge for the extension.

This means efficiency for police to implement and operationalise this change and the most important thing about this amendment is that the decision to hold a young person in police custody for more than 24 hours can only be made by the judge.

Mrs FINOCCHIARO: How was the 24 hour time period arrived at?

Ms WAKEFIELD: This was one of the areas where we worked extensively with police considering the unique circumstances of the Northern Territory. It was under the recommendation of police that we went for a 24-hour period.

Amendment agreed to.

Clause 21, as amended, agreed to.

Clauses 22 to 23, by leave, taken together and agreed to.

Clause 24:

Mrs FINOCCHIARO: Minister, could you please explain what would be considered ‘reasonable efforts’ under this clause?

Ms WAKEFIELD: Contacting an interpreter service, which we are very proud that we have extended the funding for under the leadership of the Member for Barkly. We have greatly extended the reach of the interpreter services but that is what is considered reasonable under this clause.

Mrs FINOCCHIARO: Can it only be a qualified interpreter? Could it be a family member, friend or trusted support person?

Ms WAKEFIELD: That is the intent of the act.

Mrs FINOCCHIARO: That it only be a qualified interpreter?

Ms WAKEFIELD: Yes.

Clause 24 agreed to.

Clause 25:

Ms WAKEFIELD: I move amendment 9 in relation to clause 25, to be opposed. Clause 25 of the bill proposed to amend section 16 of the *Youth Justice Act 2005*, guidelines in relation to the arrest of youths. Clause25 replaced section16 with a new section, that arrest of a young person must be an action of last resort. This amendment has the effect of omitting the whole clause 25 in its entirety.

This clause is being removed because during the scrutiny process it became clear that it presented technical and operational issues for implementation that would interfere with police powers of arrest. Territory Families has worked closely with police to ensure that the proposed amendments to this bill do not detract in any way from the operational ability of police as first responders to keep our community safe.

Police are continuing their focus on tackling the issue of youth crime with arrest being one of several options available to them. 'Arrest as a last resort' already forms part of the police general orders in relation to the arrest of persons. Young offenders may be dealt with by several means, with arrest powers remaining available to ensure that police can apply necessary community safety considerations dependent on the type of offending.

As use of alternatives to arrest and detention are available, police will continue to ensure that the needs of the youth and the community are apriority when dealing with youth offenders. Police have confirmed they are re-writing their youth justice policies to reflect the royal commission outcomes and reinforce a principle of arrest being a last resort, where appropriate.

Mrs FINOCCHIARO: What consultation with police was undertaken on this section prior to the legislation being introduced?

Ms WAKEFIELD: There was police consideration right throughout the time of the LAAC, which was two years. This is a complex part of the act and there was significant consideration of how it might be applied because of the recommendations of the royal commission in this area.

Stepping through how that is then applied on the ground and on the frontline by police was a complex piece of work. We continue to work with police on that. We also received significant legal advice around where there might be risks within the legislation. In partnership with police, we agreed to withdraw this section, knowing that there are already police orders in place and that police will continue the work to make sure there is practical application of the recommendations of the royal commission.

Mrs FINOCCHIARO: Given there was long term consultation between Territory Families and police on this section—and this was only discovered very late in the process and would have created operational issues for police, which no one wants to see—how can you be confident that they are not more areas of this legislation that create operational issues for police?

Ms WAKEFIELD: We saw the breadth of work that was done by the LAAC. There was also consideration of the other recommendations of the royal commission. This is a very complicated piece of work and the implications are not always clear, as precedence is set, there is further interpretation of existing laws and further testing of the royal commission outcomes. We came to this position—this is about us being thorough and putting in processes that have not been in place in the Northern Territory before.

I am proud to be part of a government that has a scrutiny process at all. This is about making sure that we put the best legislation before this House so that everyone's interest are met. It is part of us doing a thorough process.

Amendment agreed to.

Clause 25, as amended, agreed to.

Clause 26:

Mrs FINOCCHIARO: What happens, practically, if a youth refuses legal representation?

Ms WAKEFIELD: The police would proceed with interview.

Clause 26 agreed to.

Clause 27:

Mrs FINOCCHIARO: Was any examination made of the time it currently takes to bring youth before the courts in the Territory when you were developing this clause?

Ms WAKEFIELD: Yes, there was consideration. It currently allowed seven days.

Mrs FINOCCHIARO: This bring it down from seven days to 24 hours or the next business day?

Ms WAKEFIELD: Yes. That is why we had extensive conversation with police—to work it through.

Clause 27 agreed to.

Clauses 28 to 30, by leave, taken together and agreed to.

Clause 31:

Mrs FINOCCHIARO: If a police officer decides to undertake one of the options under 39(2) or charges the youth, will the officer still need to complete the reports as set out in 42A, B and C?

Ms WAKEFIELD: Yes.

Mrs FINOCCHIARO: Was there any feedback from police about this being overly burdensome on their operational ability?

Ms WAKEFIELD: That has been part of the conversation with police and my understanding is no.

Clause 31 agreed to.

Clause 32, by leave, agreed to.

Clause 33:

Ms WAKEFIELD: I move amendment 10 that clause 33, after proposed section 49(2)(g) be amended to insert an additional subsection that reads:

(ga) a genuine representative of the news media.

Clause 33 amends section 49 and 50 of the *Youth Justice Act 2005* regarding closed court proceedings and the restriction of publication of court material. This amendment to clause 33 implements recommendation 5 of the scrutiny committee. The committee made this recommendation to amend section 49 to promote transparency and accountability in the youth justice system.

The term 'genuine representative of the news media' is used in section 24 of the South Australia *Youth Act 1993.* This amendment as drafted would allow more than one genuine member of the media to be present. The court will be able to hear applications about whether or not it is appropriate for any person to be at the court and use its discretion to make that decision. The court in South Australia does not define this term and has said that as a smaller jurisdiction the genuine members of the media are known to the court and provide identification upon entry to confirm their professional status in the media.

These amendments to court process will balance the need for limiting general access to court proceedings, whilst ensuring there is independent scrutiny and reporting on proceedings. This process will align with other sensitive court matters concerning young people and families, like family matters court and will put the Northern Territory more in line with other jurisdictions that already have strong protections about closing youth courts and restricting publications about proceedings.

Mrs FINOCCHIARO: I wanted to ask, will the genuine representative of the media—is that on an individual journalist basis not on a news outlet basis?

Ms WAKEFIELD: People will need to show identification. That just assures the court that they are employed and having to follow a code of conduct and ethics in their reporting, and have an understanding of the requirements of the court.

Mrs FINOCCHIARO: Will that journalist have to—is it a blanket recognition of their 'genuine representation of the media'? So could that person then go to all court proceedings or is it every single proceeding they have to apply?

Ms WAKEFIELD: Just as we need to show ID coming into a whole range of places, people need to show ID going through. It just assures they are still employed as a journalist.

Mrs FINOCCHIARO: Just so that I clarify, the journalist does not have to make application they just have essentially prove that they do work for a media outlet?

Ms WAKEFIELD: That is our understanding of how it works in South Australia. The courts here are very comfortable, where I have spoken to the chief judge and the judges primarily work on children's' court. They

are very comfortable that they can find a workable way through. It is a very small jurisdiction, we all know who the journalists are, where they are working. There may be more than one journalist allowed in, so it can be plural so there might be multiple from the ABC in court for instance for different reasons. We really want this to be a flexible, workable system and the courts are very open to that from my conversations with them.

Mrs FINOCCHIARO: Who will be the person who allows—when they are putting their phone and wallet through security, is it the security person? Is it one of the clerks? Is it the judge themselves?

Ms WAKEFIELD: The judge has control of the court space, they also direct security guards. It is really up to the judge who is proceeding over the court, how that court is run that day. This is absolutely within their discretion, something that has been ongoing. We completely support them to make decisions on a daily basis about these types of complexities.

Mrs FINOCCHIARO: Then why have you gone down the road of closing the court if currently the judge has the discretion to do that? If you are essentially not having a process to keep your court closed, why not just leave how it is and allow the judges to make that decision as they are now?

Ms WAKEFIELD: As I have already answered we have one of the—this is an area are not in step with other jurisdictions. Young people should have their privacy protected. We also know that there are times when witnesses want their privacy protected as well. Victims and witnesses' support people, relevant staff and media representatives can be permitted in the closed court proceedings. This is about making sure that the judge has control of his or her court to ensure that there are good outcomes that allow justice to be heard and executed, in a way that is focused on the best outcomes for the victim of crime and the community.

Mrs FINOCCHIARO: Even though judges currently have the discretion, you are saying they do not have control over who can be in their court.

Ms WAKEFIELD: This was a consideration of the royal commission. They considered the evidence from a range of experts in this area. We agree with that recommendation and think it gives the presumption of a closed court to the judge, but there is still discretion and ability for a range of people to be within that court system. It supports the judge in their decision-making.

Amendment agreed to.

Ms WAKEFIELD: I move amendment 11 that clause 33, proposed section 49(4) be amended to insert a new subsection (4A) that reads: 'In making an order under subsection (4), the Court must have regard to any prejudicial impact on the interests of the youth of the person's presence in the room or place in which the Court is being held, or within the hearing of the Court'.

Clause 33 amends section 49 of the *Youth Justice Act 2005* regarding closed court proceedings. The purpose of this amendment is to ensure that when considering who is allowed in the closed court there is an overarching consideration of the prejudicial impact of the interests of the young person or of a person present in the courtroom.

This amendment is based on a recommendation of experts involved in the Legislative Amendment Advisory Committee who identified a similar provision of the *Children's Court Act* Queensland to be inserted to be included in its overarching consideration. This is a protection for youth court proceedings where the majority of children coming into contact with the youth justice system have experienced trauma.

An open court can undermine the ability of the young person to fully participate in proceedings with a range of reasons, including that they become embarrassed to expose sensitive, personal or family information to the court.

Amendment agreed to.

Ms WAKEFIELD: I move amendment 12 that clause 33, after proposed section 50(2)(b) be amended to insert after the words 'consent of' the word 'the'. Clause 33 also relates to section 50 of the *Youth Justice Act 2005* regarding the restriction on publication of court material. This is a technical amendment on advice from the Office of Parliamentary Counsel to enhance the wording of the clause. In the bill this clause currently reads:

Subsection (1) does not apply if:

…

… a person publishes a report or information containing particulars of the youth who is the subject of the proceedings with the consent of youth

With this amendment it would read, 'Subsection (1) does not apply if … a person publishes a report or information containing particulars of the youth who is the subject of the proceedings with the consent of the youth'.

Mrs FINOCCHIARO: With the restriction of publication, is this section based on information obtained from the court proceedings?

Ms WAKEFIELD: Information related to the court proceedings.

Mrs FINOCCHIARO: How does, or does it, capture—you see a lot of people using their CCTV footage, for example, of young people and putting it on Facebook. Does this play any bearing on that type of publication.

Ms WAKEFIELD: It the CCTV footage is evidence in court or identifies a young person, it would not be permitted.

Mrs FINOCCHIARO: So if someone has, for example, been broken into overnight. They have CCTV footage. It has captured a good photo of the person's face. They put it up on Facebook and say, something you see all the time, like, we were robbed last night and this is the person. If you see them, report it to police. Police then go on to arrest a person. Can the original victim who put that Facebook post up then be guilty of this provision?

Ms WAKEFIELD: No, it is related to court proceedings. The restriction is once court proceedings have commenced.

Mrs FINOCCHIARO: So prior to the commencement of proceedings, any disclosure around the identity of the person does not fall foul of this provision?

Ms WAKEFIELD: That is the advice I am given.

Mrs FINOCCHIARO: So if that same person who was broken into and the offender is before the courts, at that point they could not then post new posts around that person?

Ms WAKEFIELD: Once they have provided that vision to the police, the police will obviously tell them what their responsibilities are around the publication of that footage.

Mrs FINOCCHIARO: It becomes complicated in a practical sense because we are sharing and taking screenshots of it. How far, foreseeably, it could then be not the victim themselves who breaches this restriction on publication section, but someone who later shares the original post or has taken a screenshot.

Ms WAKEFIELD: It goes back to intent. If someone has posted some information of the film, it has then gone to police, they have arrested a person in charge and the police may ask that person to take that footage down because it is prejudicial. If that has been screenshot and shared in the circumstances as you have stated, I do not think that is the intent of that person and not necessarily within the control of that person who has acted.

We have to go back to intent, to whether you meant to disclose the identity of a person you know is a youth or in the care of the CEO. It is about that intent about why you have put it up.

If you have put it up before police have charged anyone or court proceedings have started, to say this is a person who has robbed my property, that is a different intent.

Amendment agreed to.

Ms WAKEFIELD: I move amendment 13, Clause 33, proposed section 50 section 7, omit and insert a new subsection so that it reads:

Section 50, section 7 in this section, particulars likely to lead to the identification in relation to a person including the following particulars:

(a) the name of the person;

(b) the names of:

(i) any relative of the person; or

(ii) any other person having the care of the person; or

(iii) in addition to subparagraphs (i) and (ii), in the case of an Aboriginal person – a member of the person's community;

(c) the name or address of any place of residence of the person, or the locality in which the residence is situated;

(d) the name or address of any place of education, training or employment attended by the person, or the locality in which the place is situated.

Clause 33 relates to section 50 of the *Youth Justice Act 2005* regarding the restriction of publication of court material. Clause 33 currently outlines that a person is guilty of an offence if they publish certain information contained in a list about court proceedings that could lead to a person being identified, people identifying the court hearing, the proceeding or anyone who is party or witness to the proceeding. The list of information that cannot be published is set out in section 50(7) of the *Youth Justice Act 2005.*

The list of particulars likely to lead to identification in the bill was assessed during the scrutiny process to be overly complex and included particulars that were not likely to lead to identification. We have listened to feedback and streamlined the information to ensure it is much easier to use.

Amendment agreed to.

Clause 33, as amended, agreed to.

Clauses 34 to 39, by leave, taken together and agreed to.

Clause 40:

Ms WAKEFIELD: I move amendment 14 that clause 40(1) so that the word ‘omit’ is inserted before the word ‘insert.’ This is another technical amendment on the advice of the very wise Office of Parliamentary Counsel.

Amendment agreed to.

Clause 40, as amended, agreed to.

Remainder of the bill, by leave, taken as a whole and agreed to.

Bill, as amended, agreed to.

Ms WAKEFIELD (Territory Families): Mr Deputy Speaker, I move that the bill be now read a third time.

Mr DEPUTY SPEAKER: The question is that the bill be now read a third time.

The Assembly divided:

Ayes 14	Noes 2
Ms Ah Kit	Mrs Finocchiaro
Mr Costa	Ms Purick
Mr Gunner	
Mr Kirby	
Ms Lawler	
Mr McCarthy	
Ms Manison	

Ms Moss
Ms Nelson
Mr Paech
Mr Sievers
Ms Uibo
Ms Wakefield
Mrs Worden

Motion agreed to; bill read a third time.