



including being remanded in youth prisons rather than bailed, further offending and potential life-long involvement with the justice system. On the other hand, the NT Royal Commission identified that the vast majority of children who are dealt with outside of the formal criminal justice system do not reoffend.

The solutions for challenging behaviours lie within the community and not a court. The sorts of intervention

and supports that children need are those which foster healthy development and positive behaviours; these don't and will never exist within a prison. I know, as a lawyer for twenty years working in those courts, that children need to be connected to family, culture and community. It is time our governments did what is right and followed calls from expert United Nations bodies, medical experts, and Aboriginal and Torres Strait Islander-led organisations to raise the age to 14 years.

Summary of youth justice reforms

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In its *Final Report* published on 17 November 2017, the Royal Commission into the Protection and Detention of Children in the Northern Territory recommended substantial statutory reform in the areas of both youth justice and child protection. The Royal Commission made at least 34 recommendations for statutory reform in relation to youth justice, and a further 15 recommendations for the amendment of child protection law.

This brief article summarises the youth justice reforms in response to the Royal Commission that have been enacted so far.

In essence, there have been two such enactments. The first was the *Youth Justice Legislation Amendment Act 2017*, commencing on 5 January 2018, which undertook the

technically complex task of transferring primary statutory responsibility for youth justice and youth detention from the Commissioner of Correctional Services to the Chief Executive Officer of the Department of Territory Families. As Minister Wakefield stated in introducing the legislation to the Legislative Assembly:

Territory Families was established to bring under one area of responsibility a whole-of-life approach to supporting families and placing child protection and youth justice within a broader framework of prevention and early intervention.

Among other things, the Bill established:

- a new statutory officer, the 'community youth justice

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officer', whose powers and functions effectively replaced those previously exercised by probation and parole officers in relation to youth;

- a framework for youths subject to monitoring and supervision, including electronic monitoring; and
- procedural and evidentiary requirements for alcohol and drug testing of youths under supervision.

The Bill was an important procedural reform but did not affect any of the substantive changes to the law recommended by the Royal Commission; however, it was a logical first step that needed to be taken before the substantive reforms could be implemented.

The second enactment was the *Justice Legislation Amendment Act 2018*, commencing on 24 May 2018. The Minister introduced the Bill in these terms:

The amendments in this bill are based on evidence that overly punitive measures in youth detention are counterproductive and on the contrary contribute to further, more serious offending. Depriving children and young people of their liberty without proper treatment and support is therefore one of the most harmful acts we can do to our children, families and broader community.

Accordingly, the provisions of the Bill regulated the management of youth in detention, including provisions in relation to the use of force, restraints and isolation. Specific provisions included:

- A prohibition on the use of force that is unnecessary, disproportionate or cruel.
- Restrictions on the use of restraints to: circumstances of emergency; of imminent risk of harm to a person; of imminent risk of seriously damaging property; or, when the superintendent believes on reasonable grounds that a detainee is likely to attempt to escape, when escorting the detainee outside the detention centre.
- A prohibition on the use of isolation of youth in detention. (As the Minister stated, "The dangers and psychological effects of isolation are too severe to be permitted under the law, even in emergency circumstances.")
- Limits on the imposition and extent of separation of youth in detention.
- Increased safeguards and limitations in relation to the carrying out of searches of youth in detention.
- The prohibition of physical, verbal or emotional abuse of youth in detention, including any act, omission or psychological pressure intended to degrade or humiliate.
- Much remains to be done to give full effect to the Royal Commission's sweeping recommendations, which, if enacted in full, will see among other things:
 - the raising of the age of criminal capacity from 10 to 12;
 - significant restrictions on the power to detain children under 14;
 - reform and expansion of youth diversion;
 - limitations on the powers of police to arrest and detain children;
 - abolition of the offence of breaching bail for youth;
 - Youth Justice Court proceedings conducted on camera;
 - the consolidation of the *Youth Justice Act and the Care and Protection of Children Act*;
 - the establishment of a Commission for Children and Young People with broader powers to inspect, monitor and inquire in relation to youth detention.