

**Consultation Draft
Justice and Other Legislation
Amendment (Summary Procedure)
Bill 2014**

DISCUSSION PAPER

April 2014

CONSULTATION

Comments are sought on or before the 16 May 2014 on the issues set out in this document.

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Comments should be sent to:

Acting Director, Legal Policy
Policy Coordination
NT Department of the Attorney-General and Justice
GPO Box 1722
Darwin NT 0801

Comments can be made by post or to the following email address:

policy.AGD@nt.gov.au

An electronic copy of this paper can be found at: www.nt.gov.au/justice

INTRODUCTION

The Department of the Attorney-General and Justice is seeking your comments and suggestions on the draft Justice and Other Legislation Amendment (Summary Procedure) Bill 2014.

This Discussion Paper is intended to provide a background and an outline of the draft Bill. It also raises specific questions the Department is seeking comments on. However this Discussion Paper is not intended to limit the scope of any comments or suggestions you wish to raise.

It is intended the Bill be introduced into the Legislative Assembly of the Northern Territory in the June 2014 Sittings of the Legislative Assembly. The Department appreciates that the time in which to respond is tight and would be grateful for any responses to be received on or before 16 May 2014.

BACKGROUND

On 16 May 2013, the NT Government announced in the Legislative Assembly the Pillars of Justice framework for reforming the criminal justice system. On 28 August 2013, a further Ministerial Statement was made on part of the Pillars of Justice, that is, the reforms to summary criminal procedure under the banner of 'Swift Justice'. The key aim of these reforms is to make the case management procedures in the Court of Summary Jurisdiction more efficient.

Statistically we know that approximately 85-90% of all matters adjudicated by the Court of Summary Jurisdiction resolve by a plea of guilt rather than a contested summary hearing. Anecdotally we also know that a significant number of these pleas are entered 'late' in the proceedings, that is, after a hearing date is set and after police have had to prepare a full brief of evidence, and arrange for the attendance of prosecution witnesses.

Studies have shown that obtaining guilty pleas earlier in proceedings makes case management in the lower criminal courts more efficient. Almost all jurisdictions in Australia have in the recent past changed their case management procedures to try to make their lower criminal courts operate more efficiently.

The key aims of the draft Justice and Other Legislation Amendment (Summary Procedure) Bill 2014 are:

- to provide early disclosure of the prosecution case without the need for Police to prepare a brief of evidence that is unnecessary or not crucial to the prosecution case;
- to encourage pleas of guilt earlier in the proceedings without the need to set a hearing date, in cases where the matter would ordinarily result in a plea of guilt; and
- to ensure that where a matter does proceed to hearing the prosecution and defence have isolated issues and charges that are in dispute.

The Bill is only intended to amend procedures in the Court of Summary Jurisdiction.

The contents of the draft Bill have been informed by practices and procedures adopted in other jurisdictions, specifically Victoria, Western Australia, Queensland and South Australia.

The Department is aware that the Chief Magistrate, Dr John Lowndes, has recently issued a Practice Direction which in a number of ways is substantially similar to the proposed Bill. However, there are a number of other matters included in the Bill which cannot be dealt with by way of Practice Direction, for example sentencing indications.

KEY FEATURES OF PROPOSED BILL

This section of the Discussion Paper provides explanations for the key features of the draft Justice and Other Legislation Amendment (Summary Procedure) Bill 2014.

1. The Preliminary Brief of Evidence - new sections 60AA and 60AB

The purpose of the Preliminary Brief is to provide early disclosure of the prosecution's case and the evidence to prove the elements of the offence as early as possible in the proceedings. This Preliminary Brief will require more targeted information than the current précis, and is to contain an outline of the evidence that the prosecution has or will obtain in order to prove the elements of the offence.

The requirement to serve a Preliminary Brief will apply to all matters, whether indictable or summary. The rest of the procedures in the Bill will only apply to summary matters. The term 'summary matter' will include regulatory and simple offences, or indictable offences that are dealt with summarily. It is understood that NT Police have already initiated the use of the Preliminary Brief.

The provisions are based on the requirements in section 37 of the *Criminal Procedure Act 2009 (Vic)* (the Victorian Act).

2. Summary Case Conferences - new sections 60AC and 60AD

Where a matter does not resolve in a plea of guilty following receipt of a Preliminary Brief, the parties to a prosecution of a summary matter must engage in a summary case conference before a matter can be set for hearing and before a full brief of evidence can be ordered to be served.

The purpose of the summary case conference is for the parties to frankly discuss the matter with a view to defining issues and, to resolve the matter in a plea where appropriate, identify charges that cannot be proven, and to develop an agreed facts statement where possible. The defence is permitted (and encouraged) to request specific statements or evidence and the summary case conference can be adjourned for the purposes of the provision of this evidence.

It is not intended that the summary case conference be a formal conference and can occur any way the parties prefer as the Bill is not prescriptive in that respect. However, it is a requirement for the parties to engage in a discussion prior to the matter being set down for hearing or the service of a full brief of evidence.

The provisions are based on section 54(1) and (2) of the Victorian Act.

The requirement to engage in a summary case conference will be subject to some prescribed exceptions in draft section 60AD. These are minor matters that should be able to proceed directly to a hearing or a plea and sentencing, or where the defendant is not legally represented.

3. Defence Disclosure Requirements - new sections 60AE and 60AH-60AI

In order to facilitate the timely identification of issues so that summary hearings are confined to issues that need testing, so that the court is able to better predict hearing lengths, and so as to avoid late pleas of guilty 'at the door of the court', it is intended that certain limited disclosure obligations be placed on defendants, so that a defendant is required to:

- (a) give notice and disclose details of any alibi evidence or expert evidence;
- (b) provide written notice of any factual elements the defendant contends cannot be proven on the evidence; and
- (c) provide written notice of any document or evidence objected to by the defence that the prosecution intends to adduce at the summary hearing.

Under draft section 60AH (4) and (5), the Court may dispense with the requirement to disclose.

The provisions are based on sections 62, 63 and 138 of the *Criminal Procedure Act* (WA) and sections 331 and 331A of the *Criminal Code* (NT).

4. Setting a contested matter down for hearing and order of full brief - new sections 60AF and 60AG

Following the conduct of the summary case conference, the defendant will be required to enter a plea to the charge or each of the charges before a matter is set down for hearing. This is so that it is clear which charges are in dispute. The Court may also order that any remaining statements or evidence not already provided to the defence be provided.

The court may not set a matter down for hearing unless the parties have engaged in a summary case conference where required to do so and the defendant has entered a plea to the charge or charges.

Draft section 60AF(5) also states that if one Magistrate takes a plea in relation to a summary matter he or she is not part heard in the matter and a different Magistrate may preside over a hearing or sentencing of the defendant.

5. Sentence indications - new section 60AJ of the *Justices Act*

This section is intended to explicitly permit Magistrates to provide sentence indications with respect to matters dealt with in the Court of Summary Jurisdiction.

These provisions are based on sections 60 and 61 of the Victorian Act.

6. Sentencing consideration of facilitating the administration of justice new section 5(2)(ja) of the *Sentencing Act*

It is proposed that section 5(2) of the *Sentencing Act* be amended to include new subsection (ja) to require the Court to take into account during sentencing the degree of assistance the defendant gave to facilitate the administration of justice. This might include isolating the factual issues in dispute prior to a hearing for example.

This section is based on section 35A of the ACT *Crimes (Sentencing) Act*.

7. Sentence discounts - new sections 107A to 107E of the *Sentencing Act*

It is proposed that graduated maximum discounts that correspond to specified milestones in the progress of a matter be introduced into the *Sentencing Act*. The purpose of these provisions is to encourage a defendant who pleads guilty to do so in a timely way. The provisions will only apply to summary matters. A mandatory minimum penalty cannot be reduced but otherwise a sentence can be discounted under section 107B.

These provisions are based on section 10B of the South Australian *Criminal Law (Sentencing) Act* except draft section 107B(7).

It is also proposed that if a Magistrate includes a discount in the sentence he or she imposes because of an early plea of guilty, the Magistrate is required to expressly state what the sentence would have been but for the plea of guilty. This is in order to encourage earlier pleas of guilt in appropriate cases and to promote transparency in sentencing discounts.

This provision is based on section 6AAA of the *Sentencing Act (Vic)*.

8. Amendment to *Youth Justice Act*

Finally, the draft Bill amends section 58 of the *Youth Justice Act* to ensure that a Magistrate in the Youth Justice Court is also not part heard when taking a plea under section 58. This is consistent with the amendment made by draft section 60AF(5) of the *Justices Act* outlined above.

SPECIFIC ISSUES

The following are some particular issues in relation to the draft Bill. The Department encourages any other comments or suggestions you may have in respect of the draft Bill.

- Should the Bill specify that a preliminary brief should be served on the defendant and defendant's lawyer or only the defendant?
- Should there be a definition of full brief? If so, what should the definition be? Should it codify the prosecution's duty of disclosure? What should the duty cover?

- Are the timeframes provided for in the Bill for compliance with specified requirements (eg service of Preliminary Brief; compliance with disclosure) realistic? How should they be changed?
- Should sentencing discount provisions in draft section 107A of the *Sentencing Act* also apply to indictable matters in the Supreme Court?
- Should draft section 107B of the *Sentencing Act* apply to all sentences where a discount has been applied, whether for a summary or indictable offence?
- Are the transitional provisions adequate?