

Serial
Justice and Other Legislation Amendment (Summary Procedure) Bill 2014
Mr Elferink

A Bill for an Act to amend Acts administered by the Attorney-General and
Minister for Justice and Minister for Correctional Services relating to summary
procedure

DRAFT ONLY

Prepared by the Office of the Parliamentary Counsel

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2014

A Bill for an Act to amend Acts administered by the Attorney-General and Minister for Justice and Minister for Correctional Services relating to summary procedure

[Assented to [] 2014]
[Second reading [] 2014]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Justice and Other Legislation Amendment (Summary Procedure) Act 2014*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

Part 2 Amendment of Justices Act

3 Act amended

This Part amends the *Justices Act*.

4 Section 4 amended

Section 4

insert (in alphabetical order)

summary matter is an offence that may proceed in a summary manner:

- (a) because the offence is a simple offence; or
- (b) under sections 120, 121A and 131A; or
- (c) under section 23 of the *Misuse of Drugs Act*.

5 Part IV, Division 2A inserted

After section 60

insert

Division 2A Pre-hearing procedure for offences

60AA Prosecution to give preliminary brief of evidence

- (1) This section applies once the information or complaint has been filed in relation to an offence.
- (2) The prosecution must give a preliminary brief of evidence to the defendant within 7 days after the defendant's matter is first mentioned in Court.

60AB Contents of preliminary brief of evidence

- (1) A preliminary brief of evidence mentioned in section 60AA must include the following:
 - (a) a copy of the information or complaint in respect of the offence;
 - (b) a statement made by the informant that complies with subsection (2);
 - (c) a certificate of evidence issued under an Act that is likely to be relevant to the alleged offence and is available at the time the preliminary brief is served;
 - (d) a copy of the defendant's criminal record, as defined in the *Criminal Records (Spent Convictions) Act*, or a statement that the defendant does not have a criminal record;
 - (e) if the informant is not required by law to disclose any information, document or thing that would otherwise be included in the preliminary brief, a written statement that the informant will not disclose the information, document or thing;

- (f) a list of any orders that are or will be sought by the prosecution;
 - (g) any other document prescribed by the Regulations.
- (2) A statement by the informant must be a complete and accurate statement of the material available to the informant at the time the statement is made and must include the following:
- (a) a statement of the alleged facts on which the offence is based, including reference to any material available to the prosecution to support the alleged facts;
 - (b) a description of the background to and consequences of the offence, if known;
 - (c) a copy of any confessional material by the defendant and a summary of any statements made by the defendant concerning the offence;
 - (d) a list of the names of each person who may be called as a witness at a hearing of the offence and an indication of whether those persons have made statements;
 - (e) a list of any documents or things the prosecution may tender as exhibits and an indication of whether they are in the possession of the prosecution.

- (3) In this section:

confessional material means:

- (a) any written statement signed by the defendant; and
- (b) any record of interview with the defendant (whether recorded electronically or otherwise), but not a transcript of an electronic record of interview.

60AC Summary case conferences

- (1) Subject to section 60AD, the prosecution and a defendant must engage in at least one summary case conference:
- (a) after the prosecution has served the preliminary brief of evidence on the defendant under section 60AA but before the matter is set down for hearing; or
 - (b) as ordered by the Court.
- (2) The summary case conference is a conference between the

prosecution and the defendant for the purpose of managing the progression of the matter, including:

- (a) identifying and providing to the defendant any information, document or thing in the possession of the prosecution that may assist the defendant to understand the evidence available to the prosecution; and
 - (b) identifying any issues in dispute; and
 - (c) identifying the steps required to advance the matter; and
 - (d) identifying agreed facts; and
 - (e) any other purpose prescribed in a practice direction.
- (3) Evidence of anything said or done in the course of a summary case conference or any document prepared for the summary case conference is not admissible, unless all parties to the summary case conference agree:
- (a) in any proceeding before any court or tribunal; or
 - (b) in any inquiry in which the evidence is or may be given before any court or person acting judicially.
- (4) A defendant may request specific evidence from the prosecution during the summary case conference for a purpose mentioned in subsection (2) and the summary case conference may be adjourned in order to provide the evidence to the defendant.
- (5) Nothing in this section prevents a summary case conference from being conducted at any other time, if the prosecution and defendant agree.

60AD Matters excluded from summary case conference requirement

The parties to the following matters are excluded from the requirement to attend a summary case conference:

- (a) a summary matter where the defendant is not represented by a legal practitioner;
- (b) an offence against section 47 of the *Summary Offences Act*;
- (c) an offence against Part V, Divisions 2, 3 or 4, or sections 31, 32, 33, 33A or 34 of the *Traffic Act*;
- (d) an offence against section 9(1), in the circumstances specified in section 9(2)(c) or (f), of the *Misuse of Drugs Act*;

- (e) an offence where only an infringement notice or fine is issued for the offence.
- (f) any other offence specified in the Regulations.

60AE Defendant's disclosure requirements for evidence of an alibi

- (1) This section applies in relation to a summary matter.
- (2) If the defendant intends to give or adduce any evidence of an alibi in relation to an offence, the defendant must serve the prosecution with the following before the summary case conference:
 - (a) written notice of the defendant's intention to do so; and
 - (b) the details of the nature of the evidence; and
 - (c) the name of each person who the defendant intends to call to give the evidence and the person's address or other information that would locate the person; and
- (3) The defendant must comply with subsection (2):
 - (a) if the parties are required to undertake a summary case conference for the matter – before the summary case conference; or
 - (b) otherwise – within 14 days of defendant's receipt of the preliminary brief.

- (4) In this section:

evidence of an alibi, see section 331 of the Criminal Code.

60AF Taking plea and setting down matter for hearing

- (1) This section applies in relation to a summary matter.
- (2) The defendant must enter a plea to the offence before the matter is set down for hearing.
- (3) If the defendant enters a not guilty plea to the offence, and subject to subsection (4), the Court may set the matter down for hearing after the prosecution and the defendant identify the following to the Court:
 - (a) the issues in dispute;
 - (b) the witnesses who will give evidence at a hearing;
 - (c) a genuine estimate of the time required for a hearing.

- (4) If the prosecution and a defendant are required to engage in a summary case conference under section 60AC, the Court may only set a matter down for hearing after the parties have completed the summary case conference.
- (5) Nothing in this section prevents different magistrates from taking a plea of a defendant and presiding over a hearing or the sentencing of the defendant.

60AG Court may order full brief of evidence to be served

- (1) This section applies after a defendant has entered a plea of not guilty.
- (2) The Court may order that the prosecution serve a full brief of evidence on the defendant in relation to a summary matter by a specified time.
- (3) If the prosecution and a defendant are required to engage in a summary case conference under section 60AC, the Court may only make an order under subsection (1) after the parties have completed the summary case conference.

60AH Defendant's disclosure requirements after summary matter set down for hearing

- (1) This section applies in relation to a summary matter that has been set down for hearing under section 60AF.
- (2) A defendant must serve the prosecution with the following at least 7 days before the hearing:
 - (a) any expert evidence material that is relevant to the charge;
 - (b) written notice of any of the facts to the offence that the defendant contends cannot be proved;
 - (c) written notice of an objection, and the grounds for the objection, by the defendant to:
 - (i) a document that the prosecution intends to adduce at the hearing; or
 - (ii) evidence to be given by a witness who the prosecution intends to call at the hearing.
- (3) If, after complying with subsection (2), a defendant receives or obtains evidence, information or material referred to in subsection (2), the defendant must serve it on the prosecution as soon as practicable.

- (4) A Court may make orders in relation to a defendant's disclosure requirements.
- (5) Without limiting subsection (4), the Court may make an order:
 - (a) that the requirements of this section be dispensed with if the Court is satisfied that there is good reason to do so; and
 - (b) that shortens or extends the time for complying with this requirement; or
 - (c) that amends or cancels an order previously made under this section.
- (6) This section applies to a defendant in addition to the requirements under section 177 of the *Evidence (National Uniform Legislation) Act*.
- (7) In this section:

expert evidence material means:

 - (a) written notice of the name and, if known, the address of the person who defendant intends to call to give expert evidence; and
 - (b) written description of the expert evidence intended to be adduced.

60AI Consequences of non-disclosure

- (1) If, at the hearing of a summary matter, the Court is satisfied that a party has not obeyed a disclosure requirement, the Court, on the application of a party affected by the nondisclosure, may adjourn the hearing to a date that allows enough time:
 - (a) if necessary, for the party in breach of the requirement to obey it; and
 - (b) for a party affected by the nondisclosure to investigate any evidence or other matter disclosed under paragraph (a) and to obtain any further evidence that may be necessary as a result of the disclosure.
- (2) On the resumption of the hearing of the summary matter adjourned under subsection (1), a party affected by the nondisclosure:
 - (a) may require a person who has given evidence, including the defendant, to be recalled as a witness; and

- (b) may cross-examine or further cross-examine the person about the evidence or other matter disclosed in accordance with the disclosure requirement; and
- (c) may adduce evidence in rebuttal of the evidence or other matter disclosed in accordance with the disclosure requirement.

60AJ Sentence indication for summary matters

- (1) At any time during a proceeding for a summary matter the Court may indicate that, if the defendant pleads guilty to the offence at that time, the Court would be likely to impose on the defendant:
 - (a) a sentence of imprisonment that commences immediately; or
 - (b) a sentence of a specified type.
- (2) A sentence indication under subsection (1) may be made by application or on the Court's own initiative.
- (3) If the Court gives a sentence indication under subsection (1) and the defendant pleads guilty to the offence at the first available opportunity, the Court, when sentencing the defendant for the offence must not impose a more severe sentence than the sentence indicated.
- (4) If the Court gives a sentence indication under subsection (1) and the defendant does not plead guilty to the offence at the first available opportunity, the Court that hears and determines the charge must be constituted by a different Magistrate, unless all parties otherwise agree.
- (5) A sentence indication does not bind the Court on any hearing before the Court constituted by a different Magistrate.
- (6) A decision to give or not to give a sentence indication is final and conclusive.
- (7) An application for a sentence indication and the determination of the application are not admissible in evidence against the defendant in any proceeding.
- (8) This section does not affect any right to appeal against a sentence.

6 Part VIII heading replaced

Part VIII, heading

omit, insert

Part VIII Transitional matters

Division 1 Justice Legislation Amendment (Committals Reform) Act 2010

7 Part IX heading replaced

Part IX, heading

omit, insert

Division 2 Criminal Code Amendment (Criminal Damage) Act 2011

8 Part VIII, Division 3 inserted

After section 205

insert

Division 3 Justices Amendment (Summary Procedure) Act 2014

206 Definitions

In this Division:

amendment Act means the *Justices Amendment (Summary Procedure) Act 2014*.

commencement means commencement of the amendment Act.

207 Application of amendment Act for offences

Part IV, Division 2A, as inserted by the amendment Act, applies in relation to a proceeding on an information or complaint:

- (a) if the information or complaint for the proceeding was filed after the commencement; and
- (b) whether or not an offence charged in the information or complaint is alleged to have been committed before the commencement.

208 Application of amendment Act for joined offences

(1) This section applies if:

- (a) an information or complaint is filed before the commencement

- (the **first complaint**); and
- (b) another information or complaint is filed after the commencement (the **second complaint**); and
 - (c) the first complaint and the second complaint proceed together.
- (2) The proceeding under subsection (1)(c) proceeds as if the amendment Act had not commenced.

Part 3 Amendment of Sentencing Act

9 Act amended

This Part amends the *Sentencing Act*.

10 Section 5 amended

Section 5(2)(h)

omit, insert

- (h) the degree of assistance the offender gave to law enforcement agencies in the investigation of the offence or other offences; and
- (ja) the degree of assistance the offender gave to the prosecution and the court that facilitated the administration of justice; and

11 Part 6, Division 3A inserted

After section 107

insert

Division 3A Sentencing discounts

107A Definitions

In this Division:

summary offence has the same meaning as in section 388 of the Criminal Code.

107B Sentence discount for guilty plea for summary offences

- (1) This section applies to summary offences.
- (2) If an offender pleads guilty to an offence, a judge or magistrate may reduce the sentence that he or she would otherwise have imposed

on the offender for the offence.

- (3) A judge or magistrate must not reduce the sentence by more than 40% if the offender pleaded guilty not more than 4 weeks after the prosecution served a preliminary brief of evidence on the offender for the offence under section 60AA of the *Justices Act*.
- (4) A judge or magistrate must not reduce the sentence by more than 30% if:
 - (a) the offender pleaded guilty less than 4 weeks before the date of the hearing of the offence; and
 - (b) the judge or magistrate is satisfied that the offender could not have pleaded guilty earlier.
- (5) A judge or magistrate must not reduce the sentence by more than 30% if the offender pleaded guilty:
 - (a) more than 4 weeks after the prosecution served a preliminary brief of evidence on the offender for the offence; and
 - (b) before the date for hearing the offence is set by the judge or magistrate.
- (6) A judge or magistrate must not reduce the sentence by more than 10% if:
 - (a) the offender pleaded guilty less than 4 weeks before the date of the hearing of the offence; and
 - (b) the judge or magistrate is satisfied that the offender could not have pleaded guilty earlier.
- (7) A judge or magistrate must not reduce the sentence if the offender pleaded guilty within 3 days before the date of the hearing of the offence unless the judge or magistrate is satisfied that the offender could not have pleaded guilty earlier.

107C Sentence discount if guilty plea not entered in relevant period

- (1) This section applies if:
 - (a) a defendant enters a guilty plea to a summary offence; and
 - (b) the guilty plea was not entered in the relevant period; and
 - (c) a judge or magistrate is satisfied that the only reason the defendant did not plead guilty in the relevant period is because:

-
- (i) the court did not sit during that period; or
 - (ii) the court did not sit during that period at a place where the defendant could reasonably have been expected to attend; or
 - (iii) the court was, because of reasons outside the control of the defendant, unable to take the defendant's plea during that period.
- (2) The judge or magistrate may reduce the sentence under section 107A as if the defendant had pleaded guilty in the relevant period.
 - (3) In this section:
relevant period means the period mentioned in section 107A(3), (4), (5), (6) or (7).

107D Mandatory minimum penalties may be reduced

Nothing in this Division prevents a judge or magistrate from reducing a sentence for a summary offence that carries a mandatory minimum penalty so long as the reduced sentence complies with the mandatory minimum penalty.

107E Sentence discount to be stated and recorded

- (1) This section applies if:
 - (a) an offender is sentenced for a summary offence; and
 - (b) the offender's sentence is discounted.
- (2) The magistrate must state and record the sentence that the magistrate would have imposed but for the guilty plea.

12 Part 17, Division 3 inserted

Division 3 Justices Amendment (Summary Procedure) Act 2014

228 Definitions

In this Division:

amendment Act means the *Justices Amendment (Summary Procedure) Act 2014*.

commencement means commencement of the amendment Act.

229 Application of sections 107A and 107B

Sections 107A to 107E, as inserted by the amendment Act, apply in relation to a proceeding on an information or complaint:

- (a) if the information or complaint for the proceeding was filed after the commencement; and
- (b) whether or not an offence charged in the information or complaint is alleged to have been committed before the commencement.

230 Application of amendment Act for joined offences

- (1) This section applies if:
 - (a) an information or complaint is filed before the commencement (the ***first complaint***); and
 - (b) another information or complaint is filed after the commencement (the ***second complaint***); and
 - (c) the first complaint and the second complaint proceed together.
- (2) The proceeding under subsection (1)(c) proceeds as if the amendment Act had not commenced.

Part 4 Amendment of Youth Justice Act**13 Act amended**

This Part amends the *Youth Justice Act*.

14 Section 58 amended

Section 58, at the end

insert

- (6) Nothing in this section prevents different magistrates from taking a plea of a youth and presiding over a hearing or the sentencing of the youth.

Part 5 Expiry**15 Expiry of Act**

This Act expires the day after it commences.