



Submission cover sheet

Inquiry into the Magistrates Court (Indicative Sentencing) Amendment Bill 2025

Submission number: 006

Submitter: Director of Public Prosecutions

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DPP Submission – Indicative Sentencing in the Magistrates Court

1. Position in Principle

From the outset, we would like to acknowledge that the ACT Director of Public Prosecutions (DPP) supports, in principle, the introduction of an indicative sentencing scheme for the Magistrates Court. Indeed, as acknowledged by Attorney-General Cheyne when presenting the Bill to the Legislative Assembly on 30 October 2025:

the first stakeholder with whom I met when I became the Attorney-General was the DPP, and it was in that very first meeting that the DPP suggested that indicative sentencing was something that would make a meaningful difference. Indicative sentencing was not on my dance card. It was not an election commitment, but I took her advice seriously and, with the support of stakeholders, in less than a year we have been able to get to this place.¹

The DPP supports a process that promotes genuine systemic efficiency, enhances access to justice for both defendants and complainants, and simultaneously safeguards victims' rights while ensuring fairness for accused persons.

As part of the August 2025 Roundtable and in the period since, the DPP has provided substantial feedback throughout the development of the scheme and remains committed to continued, constructive collaboration to support its effective implementation. The DPP however was unfortunately not provided an opportunity to comment on the final form of the Bill now presented.

2. Specific Provisions

2.1 Applications for Sentence Indication (s 57)

The DPP respectfully proposes inserting the words '*which materially change the nature of the case against the accused*' into the second and third examples in s 57(8). This refinement recognises the prosecution's ongoing duty of disclosure and clarifies that not every new piece of evidence warrants a renewed indication request; only those changes that materially alter the case should do so. This is consistent with the Explanatory Statement's aim:

These limits are designed to reduce the ability of a defendant to unnecessarily divert court resources, reducing the efficiencies of the scheme, by making multiple requests for a sentence indication in relation to the same charge where there have been no material changes to the circumstances.²

¹ Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 30 October 2025, 3520 (Tara Cheyne, Attorney-General).

² Explanatory Statement, Magistrates Court (Indicative Sentencing) Amendment Bill 2025 (ACT) 10.

2.2 Prosecution Election (s 58)

The DPP suggest some refinement to the discrete power in s 58, such that there could be prescribed grounds on which the DPP may elect not to provide consent. Those grounds could be drafted as:

- a. The victim has not been provided with a reasonable time to prepare a victim impact statement.
- b. The DPP has information that there is relevant medical material not yet available.
- c. The DPP has information that further charges are likely.

The DPP considers these narrow exceptions are necessary to ensure victim rights are maintained and to address matters where charges laid by ACT Policing may be incomplete or where material developments occur post-charge. For example, an assault initially apparent as actual bodily harm may later be revealed through medical material to involve grievous bodily harm, attempted murder, or murder; similarly, culpable driving matters can evolve rapidly as investigations progress. In such circumstances, the interests of justice and fairness to victims require that the prosecution may decline to proceed to an indication in certain circumstances such as where further investigation is pending, and additional charges are likely.

It is also important to note that in practice, victim impact statements (VIS) are ordinarily not available at the commencement of a prosecution, because it would be premature to request a victim to prepare a statement articulating the harm caused by the offending, in circumstances where the offending has not been proved or admitted to. To request a victim impact statement be prepared at the time of original complaint, in case an accused later sought a sentence indication, would be contrary to best practice, in particular because it may be that the accused person ultimately pleads not guilty and is acquitted and/or the prosecution is discontinued, leading to additional unnecessary angst for a complainant.

Whilst the DPP is very supportive of early pleas and the efficiency these bring to the whole system, including the benefit to victims of crime for speedy appropriate resolution, this refined protection is considered necessary to ensure the success of the scheme in the ACT.

Operational safeguards

The power for the prosecution to opt out is necessary in circumstances where absent this safeguard, the matter may proceed to sentence indication without a VIS, or where the wrong charge has been laid. These, being circumstances in which the victims' interests or the integrity of the proceedings may be compromised, are the only circumstances in which the DPP would seek to utilise the opt-out power. We reiterate our support for, and role in initiating, the indicative sentencing scheme.

Our position on this issue is informed by feedback received from the Victorian DPP about the problems which exist in their scheme where matters are being forced to continue without a VIS even where the prosecutor has requested an adjournment to obtain one. The practical impact of this is that the court is deprived of critical information about the

specific harm suffered by the victim, thereby effectively excluding the victim from any meaningful participation in the sentencing process.

ACT DPP anticipates developing internal procedures and policies to govern use of this election, providing an additional practical safeguard and ensuring consistent, measured application.

It is important to note that the proposed scheme will involve an ‘election’ by an accused for a sentence indication; it will not be a process that the Court can of its own volition enter into. This is an appropriate safeguard for an accused, which the DPP supports. The refined DPP election proposed, to opt out (rather than in, as is the case for the accused) of the process, would respectfully not undermine judicial independence, and neither does the power for an accused to ‘opt in’ to the scheme. Section 58 provides discrete powers for use in achieving specific purposes which have been identified as critical to support the interests of justice and fairness.

Comparative note

While the Victorian summary scheme does not include a comparable election provision, the contexts are not equivalent. The *Sentencing Act 1991* (Vic) caps the Magistrates’ Court’s sentencing power at two years’ imprisonment for a single offence and five years in total for multiple offences (with specified maximum fines), whereas the ACT Magistrates Court exercises broader powers. The proposed ACT mechanism is therefore a proportionate and principled safeguard in a different jurisdictional setting.

2.3 Victim Impact Statements (s 59)

Section 59(1)(c) requires the court to consider ‘any victim impact statement prepared by or for the complainant’. We are supportive of this requirement and consider that it is appropriately framed. It will not adversely affect the efficiency of proceedings as it does not mean that an indicative sentence is precluded in the event that a VIS has not been prepared. These protections also reinforce the court’s obligation under s 53 of the *Crimes (Sentencing) Act 2005* to consider the VIS.

The importance of victims having an opportunity to present a VIS is well-documented and accepted by the judiciary. His Honour Mossop J noted that ‘the purpose of a victim impact statement is not purely evidentiary but also represents an important aspect of participation by a victim in the sentencing process: *R v Loeschner* [2022] ACTSC 30; 98 MVR 484 at [41]’.³

The anecdotal experience in Victoria, where the scheme has been in place for some time, is that the Courts are regularly not waiting for the preparation of these statements and thus are effectively excluding the victim from the process. The provision as drafted indicates that the court must consider the VIS, if prepared. It does not follow that in the absence of a VIS, the scheme has no application. The timings and notice provisions in new section 57 should facilitate orderly progression and minimise delay.

³ *DPP v Mitchell (No 2)* [2023] ACTSC 118 14. See also *DPP v DJK* [2003] VSCA 109 at 17; *R v Swift* [2007] VSCA 52 at [4]-[9].

2.4 Complainant Interests (ss 60, 61F)

The DPP supports the additional protections for complainant interests under s 60, recognising that these measures operate as a further important safeguard for victims' rights to participate meaningfully in the sentencing process. For issues relating to the publication or dissemination of a VIS under s 61F, the DPP recommends that consent be provided by the prosecution rather than directly by the victim, who may not be fully aware of the legal consequences of such consent. Consistent with existing practice in areas affecting complainants' legal rights, the DPP ensures that victims are supported through access to independent legal advice so they can make informed decisions about their position. This approach also provides an important safeguard for victims who may face pressure from an accused person to agree to the release.

2.5 Review and Evaluation (s 61G)

The DPP supports a formal review after implementation as proposed in new section 61G. Subject to resource availability, the DPP is willing to assist with data collection, the provision of stakeholder feedback, addressing any shifts in victim engagement and satisfaction, and the development of any refinements to practice directions or procedural rules arising from the review.

3. Exclusion of Family Violence and Sexual Offences

The DPP supports a staged rollout, initially excluding family violence and sexual offences. This approach will allow practitioners and the judiciary to consolidate practice and address any operational issues before extending to more complex matter types with more significant risk. It is prudent to prioritise long term success, noting the planned review.

4. Jurisdiction of the Magistrates Court

It is understood that there is current consideration around the jurisdiction of the Magistrates Court, which the DPP is generally supportive of; however, those conversations need to be considered alongside this scheme.

5. Conclusion

The DPP welcomes the indicative sentencing scheme as a practical reform to promote timely, fair, and victim-sensitive outcomes in the Magistrates Court. With the targeted textual refinements outlined above and with measured operational safeguards, the scheme is well-placed to deliver genuine efficiencies without compromising fairness or judicial discretion. The DPP remains committed to supporting implementation through policy development, training, and ongoing inter-agency collaboration.