



Submission cover sheet

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

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Standing Committee on Legal Affairs
Legislative Assembly for the ACT
GPO Box 120
Canberra ACT 2601

By email: LACCommitteeLegal@parliament.act.gov.au

Dear Committee,

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

Thank you for the opportunity to provide contributions on behalf of Legal Aid ACT in relation to the proposed indicative sentencing scheme. This submission draws on the feedback and experience of lawyers from the Commission's Criminal Litigation Practice ('CLP'), who represent and advise defendants regarding their pleas.

I note that the Commission has made submissions contributing to the development of the Magistrates Court (Indicative Sentencing) Amendment Bill 2025 ('the Bill'). These comments, where relevant, are replicated below. Broadly, the Commission is supportive of the introduction of this scheme. We note the importance of improving the efficiency of court proceedings, reducing the Court's workload, and providing defendants with more information for pleas. Our specific concerns are as follows:

1. Applicability to the Children's Court jurisdiction

The Commission has highlighted the scheme's lack of applicability to matters before the ACT Children's Court in previous submissions. Children facing the criminal justice system are, arguably, the most vulnerable category of offender. The application for indicative sentencing to Children's Court proceedings would allow for early resolution but also improves certainty for all parties which is often lacking through the current system of making submissions and waiting for a definitive outcome. This uncertainty can be a deterrent for young offenders and consideration of this inclusion would be highly valuable to assist in the efficiency of dealing with young offender matters.

In addition to this consideration, the Commission suggests the proposal be widened to include family violence matters in the Children's Court jurisdiction. In our experience, these matters often come with their own complications where indicative sentencing may of benefit to all parties.

2. Exclusion of family violence offences from scheme

Whilst acknowledging the policy implications associated with family violence matters, on reflection, the Commission raises concern as to the exclusion of these offences in the current draft of the Bill. In our experience, we have noticed an increase in the number of clients who are charged with family violence-related offences. Often defendants plead not guilty and are disinclined to resolve matters, or resolutions occur very close to when the matter is listed for hearing. In our opinion, defendants of family violence matters may benefit from a sentencing indication to encourage and incentivise quick resolutions. However, the Commission recognises the purpose of the scheme, at this stage, is to be limited to certain offences, noting that introducing sentence indication for indictable offences will have implications for case management in courts that handle indictable proceedings.¹ We also acknowledge the potential negative impact on victims if defendants of family violence matters were given the opportunity for a sentence reduction. At the least, the possible inclusion of these types of matters should be considered upon a statutory review within 2 years.

3. Admissibility of sentence indication information

Again, the Commission notes that caution must be exercised in relation to the drafting of the admissibility provisions. It is clearly not the intention of this legislation to create a backdoor for evidence to be admissible that would otherwise be irrelevant, prejudicial, or inadmissible on another basis should the sentence indication be rejected and the matter proceed to defended hearing. As such, s 61E(2)(b) must be drafted carefully to reflect what is captured under the exception to inadmissibility. On a current reading, it is only the application for a sentence indication, the indicated sentence, and a complainant impact statement that is captured by this exception. This leaves an avenue for other documents and evidence tendered in support of the application but not comprising the application itself to be admissible. The inclusion of a further provision to make clear that evidence tendered by either the defendant or prosecution in support of such an application is inadmissible in a primary proceeding or any other criminal or civil proceeding unless the court hearing the proceeding considers the evidence admissible is appropriate to avoid an unintended exception to many of the provisions of the *Evidence Act 2011* (ACT).

4. Guaranteed sentence reduction

The Commission also submits that there is a need for a legislative guarantee of a significant sentence discount (proposing 25%) if sentence indication is pursued. This ensures the efficiency and incentive of the scheme to reduce the workload of courts. We note that

¹ Sentencing Advisory Council, *Sentence Indication and Specified Sentence Discounts*, Discussion Paper (January 2007) xiv.

sentence indication schemes introduced in other jurisdictions have always permitted a clear and significant reduction in sentence for a guilty plea entered.² NSW cases like *Bao v R*³ and *JM v R*⁴ provide guidance as to how discounts are to be applied to the starting point of each sentence, and how it is an error to apply an average discount to each indicative sentence for multiple offences and pleas.⁵

5. Prosecution election for indicative sentence

The Commission is concerned that, due to the current composition of s 58, the DPP may commonly opt out of receiving an indicative sentence. In doing so, the Commission acknowledges that it is neither practicable nor desirable to fetter the prosecutor's discretion, as justice and fairness varies from case to case. However, there is concern that opting out may become common, with the DPP preferring matters to be listed for hearing. The High Court case of *Barbaro v The Queen* established the role of prosecutors as quite separate from the decision to pursue sentence indication.⁶ Allowing the DPP to opt out of sentence indication infers their consent or approval is vital to a sentence indication being given, which is contrary to the High Court's reasoning in *Barbaro*. Defendants in this scheme should have the opportunity to apply for indicative sentencing at the discretion of the Magistrates Court. Should the DPP disagree with an indicative sentence issued, this can be reviewed in an appeal after the sentence is handed down.

6. Requirement for a defendant to accept or reject the indicated sentence within 7 days

The Commission supports the requirement for a defendant to accept or reject the indicated sentence within 7 days of indication. In our view, this timeframe allows sufficient time to obtain and consider legal advice. I note that the Commission previously raised concern that waiting 7 days for a defendant's decision may cause delays and place further demand on the court's time and resources. As above, in practice we hope to see matters heard as early as possible, and preferably on the first appearance.

7. Removal of pre-sentence indication reports

We are concerned about the removal of pre-sentence indication reports. In our experience, defendants are often concerned with how they will serve a term of imprisonment. The removal of pre-sentence indication reports, where demonstrably required in a particular

² Sentencing Advisory Council, *Sentencing Indication and Specified Sentence Discounts*, Discussion Paper Summary (2019) 4.

³ [2016] NSWCCA 16 at [44].

⁴ [2014] NSWCCA 297.

⁵ See also *PG v R* [2017] NSWCCA 179 at [71]; *Berryman v R* [2017] NSWCCA 297 at [29].

⁶ (2014) 253 CLR 58.

matter, may not allow for the proper determination as to whether certain sentencing options, such as an intensive correction order or a community service condition, are available. Defendants rely on these reports to indicate the length of a potential sentence, which can determine whether a defendant would accept or reject the indicated sentence. In our view, some form of pre-sentence report may still be necessary, and the court's discretion to order a report must be available.

8. Cost to the Commission

The Commission would like to note that although this scheme will be beneficial, it will also create significant work for the Commission that other agencies will not necessarily feel. The proposed Bill would inevitably result in more court events which creates additional costs for the Commission. This will only be exacerbated by the need to advise a higher number of clients, as we expect that all unrepresented defendants will be referred to us for advice regarding indicative sentence proceedings. Often solicitors will use pre-hearing events, like Criminal Case conferences, as the place to resolve the matter rather than encouraging early resolutions. In our view, the additional costs created by this Bill include:

- A new matter that advice needs to be provided on;
- A new application that will need to be drafted to instigate this type of proceeding;
- Additional attendances at court dates;
- Additional follow-up conferences with clients regarding their instructions on the indicative sentencing process;
- Further conferences where, if our submission on the DPP ability to veto is not accepted, explanations will need to be given for why indicative sentencing is not available;
- Consideration and instructions on any reports;
- Consideration on the admissibility of material;
- Appearances at the sentence and/or defended hearing.

Many of these considerations relate only to the Commission where clients are not able to meet additional costs. The vulnerability of our clients, as well as those supported by other community legal organisations, also sees the costs implicit in the above endeavours increased. For example, we will have a higher rate of interpreter fees for conferences, higher costs for securing communication with homeless or itinerant clients (e.g. repeated attempted contact through the use of paralegals, letters, emails, etc), as well as engagement of support staff additional to the lawyer assisting to manage volatile and/or vulnerable clients. As such, consideration should be given to additional funding for the Commission if this amendment is implemented.

Should you have any questions in relation to the above submissions, please do not hesitate to contact me 

Yours sincerely,



 Chief Executive Officer
Legal Aid Commission (ACT)