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**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

ELEVENTH ASSEMBLY

**Standing Committee on Legal Affairs – Report No. 5 -
Inquiry into Magistrates Court (Indicative Sentencing) Amendment Bill 2025**

Government Response

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Introduction

The ACT Government welcomes the Report of the Standing Committee on Legal Affairs inquiry into the Magistrates Court (Indicative Sentencing) Amendment Bill 2025 (the Bill) and the submissions made to the inquiry by various organisations. The Report made 18 recommendations.

The Government has carefully considered all of the views presented to the Inquiry and has taken these into account in formulating this response. The Government Response is below.

RECOMMENDATION	GOVERNMENT RESPONSE
Recommendation 1 The Committee recommends that the ACT Government consider a broadening of the scope of the proposed Indicative Sentencing scheme.	Not agreed. The Bill deliberately provides for a narrow indicative sentencing scheme. The scheme is limited to matters that can be considered in the Magistrates Court. The scheme does not apply to the Children’s Court, reflecting the particular vulnerability of children in the criminal justice system and does not apply to matters considered in the Supreme Court, reflecting the relatively serious nature of strictly indictable offences. In addition, the scheme does not apply to the offence of negligent driving occasioning death or offences involving sexual and/or family violence that could otherwise be considered in the Magistrates Court. These types of offences are likely to need more time to prepare and provide a victim impact statement than the 5 working days notice period provided for in the Bill and required before a defendant can make an application for a sentence indication. Application of the scheme to objectively more serious offences as well as those assessed as more likely to involve vulnerable victims of crime would require additional safeguards and protections for both defendants and victims to ensure the scheme is consistent with human rights obligations, significantly increasing the complexity and administrative burden of the scheme. While the Government does not agree to apply the proposed scheme to a broader range of offences at this time, the operation of the scheme will be reviewed after 2 years of operation to identify how it has impacted both criminal justice entities and victims and defendants. The outcomes of that review will inform decisions about any changes to the scheme, including whether it would be appropriate to apply the scheme to additional offences.

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Recommendation 2 The Committee recommends that the ACT Government amend the bill to provide that indicative sentencing be offered at the discretion of the magistrate alone.	Not Agreed. The Government understands this recommendation refers to the prosecution’s ability to make an election about whether a sentence indication may be given under new section 58. The Bill is drafted to ensure the prosecution can elect not to consent to a sentence indication being given within a limited timeframe. Where the prosecution makes an election to not consent, a court may not grant an application for a sentence indication. Allowing the prosecution to elect that a matter not proceed by way of an indicative sentence for a limited period after the first court appearance is designed to ensure the prosecution can amend the charges where the incorrect charge has been laid, including where the seriousness of the offending was not fully apparent when the charge was initially laid. However, the Government acknowledges the concerns raised that the circumstances in which the prosecution can use the election power are not restricted. To ensure the election power is appropriately limited and the parties have clarity about when and why the election power can be utilised, the Government is considering government amendments that would limit the circumstances in which the prosecution can elect for a matter not to proceed through indicative sentencing, including where: a. The victim has not had sufficient time to prepare a victim impact statement; b. The prosecution has information that additional relevant medical or other evidence is not yet available; or c. The prosecution has information that further and/or different charges are likely to be laid.

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Recommendation 3 The Committee recommends that the ACT Government amend the bill to make the language of the bill consistent with that of the Crimes (Sentencing) Act 2005 in relation to the preparation of Victim Impact Statements by or for the complainant.	Not agreed. Section 49 of the <i>Crimes (Sentencing) Act 2005</i> (Crimes (Sentencing) Act) provides that the following people may make a VIS: (a) victim; (b) a person who has parental responsibility for a victim of the offence; (c) a close family member of a victim of the offence; (d) a carer for a victim of the offence; (e) a person with an intimate personal relationship with a victim of the offence. Section 50 of the Crimes (Sentencing) Act provides that a victim impact statement may be made as a written or oral statement by or for a victim of the offence. Consistent with this, section 47 of the Crimes (Sentencing) Act provides that a victim impact statement is a statement made by or for a victim of the offence. Accordingly, statements made by the persons listed in section 49(1)(b) to (e) of the Crimes (Sentencing) Act are statements made by or for a victim. Consequently, the language used in section 59(1)(c)(i) of the Bill is consistent with the language used in section 49 of the Crimes (Sentencing) Act. The Government recognises that the Explanatory Statement creates confusion by referring to a statement made by the person identified in sections 49(1)(b) to (e) of the Crimes (Sentencing) Act as additional information rather than constituting a victim impact statement. The Government will consider revisions to the Explanatory Statement to make clear that all persons who can make a victim impact statement under the Crimes (Sentencing) Act can make a victim impact statement for the purpose of the court determining an indicative sentence.

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Finding 1 The Committee finds that the use of the use of the term ‘complainant’ is inconsistent with the use of the term ‘victim’ in the Victims of Crime Act 1994 (ACT), Crimes (<i>Restorative Justice</i>) Act 2004 and the <i>Bail Act 1992</i> (ACT).	Noted. The term ‘complainant’ rather than victim is generally appropriate prior to an accused person pleading guilty or being found guilty or convicted or otherwise accepting responsibility for an offence. Given that, in relation to the indicative sentencing provisions, the cohort intended to be captured by the term ‘complainant’ is the same cohort who would be considered a ‘victim’, under section 47 of the Crimes (Sentencing) Act, post conviction or guilty plea, the Government will work with the Parliamentary Counsel’s Office to determine whether the use of victim would be appropriate and accurate.
Recommendation 4 The Committee recommends that the ACT Government consider the evidence provided by the Acting Victims of Crime Commissioner and amend the bill to include a definition of the word ‘complainant’.	Noted. Noting the response to recommendation 3 and Finding 1, the Government will engage with the Parliamentary Counsel’s Office about whether it is necessary and/or appropriate to define ‘complainant’ by reference to, or consistently with, the definition of ‘victim’ in section 47 of the Crimes (Sentencing) Act.
Recommendation 5 The Committee recommends that the ACT Government consider a legislative guarantee of a material discount if sentence indication is pursued.	Not agreed. There are no compelling reasons to provide a greater sentence reduction to a defendant who enters a guilty plea following the acceptance of an indicated sentence compared to a defendant who enters a guilty plea without an indicated sentence. Accordingly, the Government has made the policy decision to not provide for additional reductions for defendants who are eligible for and who apply for and accept an indicative sentence. Every Australian jurisdiction except Tasmania includes a guilty plea as a mitigating factor in their sentencing legislation. This recognises the utilitarian value of a guilty plea, as it

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	reduces the resources associated with criminal hearings and trials. The reduction is applied after determining the appropriate sentence. In the ACT, sections 35, 35A, 36 and 37 of the Crimes (Sentencing) Act govern the application of sentence reductions. Those provisions will apply to defendants who utilise the indicative sentencing scheme in the same way they apply to defendants who do not. Accordingly, a defendant who requests and accepts an indicative sentence and enters a guilty plea early in the process would be expected to receive a greater reduction than a defendant who requests and accepts an indication on the first day of a scheduled hearing.
Recommendation 6 The Committee recommends that the ACT Government clarify whether under the bill the Magistrates Court will retain the discretion to order a pre-sentence report.	Agreed. Part 4.2 of the Crimes (Sentencing) Act governs pre-sentence reports. In particular, section 41 of the Crimes (Sentencing) Act provides that the Magistrates Court can order a pre-sentence report in relation to an offender if the court either finds the offender guilty or accepts the offender's guilty plea. Section 41 does not provide for the court to order a pre-sentence report at an earlier stage in proceedings. To clarify, the Bill does not change the circumstances in which a pre-sentence report can be obtained. Accordingly, where a court determines a pre-sentence report is appropriate and necessary under the Crimes (Sentencing) Act, the court can order one for the purpose of sentencing. Nor does the Bill provide for a new type of pre-sentence indication report that could be ordered in circumstances where the defendant has requested a sentence indication. The preparation of such reports would divert scarce criminal justice system resources from other priorities and necessarily delay proceedings.

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	As the scheme excludes the more serious offences for which pre-sentence reports are most often sought in the Magistrates Court, it is unlikely that a pre-sentence report would be required for the types of matters to which the scheme will apply. In any case, section 59(2) of the Bill provides that the court can consider ‘additional information the court considers relevant to sentencing the defendant’. This ensures the court can consider information of the type that is routinely included in a pre-sentence report where this is appropriate and necessary to ensure that the court has sufficient information to determine an indicative sentence.
Recommendation 7 The Committee recommends that the ACT Government consider additional funding requirements to implement the bill including to the community legal sector, Legal Aid Commission, Aboriginal Legal Service, and the Victims of Crime Commissioner.	Noted. Any funding will be subject to consideration in future budget processes. The mandatory statutory review will assess any resource impacts flowing from the implementation of the scheme for both government and non-government entities including members of the community legal sector such as the Legal Aid Commission, Aboriginal Legal Service, or the Victims of Crime Commissioner. Implementation of the scheme is not expected to result in additional costs to government or non-government criminal justice entities. The Bill is designed to improve the experience of defendants, victims and witnesses interacting with the criminal justice system and create efficiencies by reducing the number of times individual defendants appear in court and the number of matters that proceed to a contested hearing. In the event implementation of the scheme utilises additional resources, any requests for additional funding will be considered by the government in the usual manner.

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Recommendation 8 The Committee recommends that the ACT Government monitor the financial impacts that the bill, if passed, may have on the community legal sector.	Agreed in principle. Any funding will be subject to consideration in future budget processes. While the Government is not able to directly monitor any financial impacts of the scheme on the community legal sector, the Government regularly engages with these stakeholders and will continue to engage with these and other stakeholders during the implementation of the scheme post commencement and for the purposes of the mandatory statutory review. In addition to the ongoing engagement with the community legal sector, the Government will engage with the Magistrate’s Court to assess how the scheme is impacting the number of appearances and contested hearings in the Magistrate’s Court.
Recommendation 9 The Committee recommends that the ACT Government consider repealing section 35(4) of the Crimes (Sentencing) Act 2005 (in relation to restrictions on sentence discounts) as a relevant consideration for Indicative Sentencing purposes.	Not agreed. While the recommendation is limited to sentence reductions, it should be noted that the submissions to the Inquiry seeking the repeal of the section 35(4) of the Crimes (Sentencing) Act have sought complete repeal of this section and not simply in its application to the sentence indication scheme. In the ACT, section 35(4) of the Crimes (Sentencing) Act provides that a court must not make any significant reduction for a guilty plea if the court considers the prosecution’s case to have been ‘overwhelmingly strong’ on the established facts. In response to the specific recommendation, the Government sees no clear reason for this sentencing principle to not apply in the context of the indicative sentencing scheme while continuing to apply in relation to other guilty pleas and the Bill is not intended as a vehicle for broader sentencing reforms that have not been thoroughly considered. The application of section 35(4) was considered in the <i>ACT Law Reform and Sentencing Advisory Council</i> (the Council) in the context of dangerous driving in the <i>2024 Report into</i>

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	<i>Dangerous Driving: Sentencing and Recidivism.</i> While the Council noted that commenting on the repeal of section 35(4) was outside the scope of its terms of reference, the report identified that the test of ‘overwhelmingly strong’ is a high bar which is not often reached and that section 35(4) does not preclude appropriate sentence reductions for other factors, which may ultimately mean there is still a significant reduction of the penalty. According to the Australian Bureau of Statistics, the majority of defendants in Australian criminal courts plead guilty. A number of factors contribute to this, including access to sentence reductions, avoiding the cost and stress of a hearing or trial, and mitigating risks when the evidence is strong.
Recommendation 10 The Committee recommends that the ACT Government amend the bill to ensure that prosecutors are given immediate notice of a request to receive an indicative sentence, so that victim impact statements can be properly developed.	Agreed. The Government proposes to move a government amendment to the existing notification obligation in the Bill to require that notice be given to the prosecution in addition to the court.
Recommendation 11 The Committee recommends that the ACT Government amend the bill to remove proposed section 59(1)(c)(ii) which requires the court to consider whether the prosecution believes there is insufficient information about the harm suffered by the	Noted. The Government in considering whether this provision is necessary and appropriate in light of possible amendments to the Bill (see response to recommendation 2) regarding the right for the prosecution to elect that a sentence indication not be given. Any amendment to section 59(1)(c)(ii) will support the victim’s perspective being considered in the sentence indication process.

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complainant for the court to give a sentence indication.	
Recommendation 12 The Committee recommends that the ACT Government amend the current language of proposed section 61D to make clear that the court may impose either an increased sentence or a more lenient sentence if warranted by a change of circumstances.	Not agreed. The Government does not consider the amendment necessary and notes that such an amendment could limit the discretion currently afforded to the court. Under section 61D as drafted, the court has a broad discretion to revise an indicated sentence before the defendant is sentenced where there has been a change in circumstances that the court considers would result in a different sentence than the indicated sentence being imposed. There is no requirement for the court to consider whether the indicated sentence is ‘appropriate’ or either ‘too lenient’ or ‘too severe’. Before revising an indicated sentence, the court must be satisfied that, as a result of the change in circumstances, the indicated sentence would not be an appropriate sentence. The court could consider the indicated sentence is no longer appropriate because it is too severe or too lenient, or that a different type of sentence would be more appropriate in light of the change in circumstances. In other words, the court could decide to change the duration of the indicated sentence by either increasing or decreasing it, or could change the nature of the indicated sentence from custodial to non-custodial (or vice versa). Further, the only limitation in the Bill is that the court cannot impose a sentence more severe than the sentence specified in the indicated sentence (new section 61C(2)) after the defendant has accepted the sentence indication. Accordingly, it would be open to the court, following the receipt of new information to impose a more lenient sentence than the sentence indicated after the defendant accepted the indicated sentence and entered a guilty plea, even if the sentence indication was not revised.

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Recommendation 13 The Committee recommends that the ACT Government amend the bill to change the current language to provide that leave is not required for the defendant to withdraw their plea of guilty in circumstances where the court revises an indicated sentence.	Not agreed. The Government does not consider an amendment is necessary. Section 61D(3) specifically provides that a defendant can withdraw their plea of guilty if the court revises the indicated sentence after the defendant pleads guilty. The Bill does not require the defendant to seek leave to withdraw their guilty plea before a sentence is imposed.
Recommendation 14 The Committee recommends that the ACT Government amend the bill to add a new section allowing a defendant to withdraw their plea of guilty should the prosecution successfully appeal a sentence imposed as a result of the indicative sentencing process.	Not agreed. The Government has made a policy decision to not allow for the withdrawal of a guilty plea if the sentence imposed is successfully appealed. Section 61(1)(e) of the Bill requires the court to advise defendants that a more severe or different sentence could be imposed on appeal if the defendant accepts an indicated sentence and pleads guilty. This is consistent with the situation where a defendant enters a guilty plea without an indicative sentence and the prosecution appeals the sentence imposed. It should be noted that the threshold for appealing a sentence is very high. To appeal a sentence, the prosecution would have to show the sentence imposed is manifestly inadequate.
Recommendation 15 The Committee recommends that the ACT Government consider how it is approaching the issue of apprehended bias to ensure it is not a problem in the	Noted. The Bill contains a number of provisions to safeguard against real or apprehended bias where the court gives a defendant an indicative sentence, but the defendant does not accept the indicated sentence.

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operation of the Indicative Sentencing Scheme.	Sections 61B(1) and (2) of the Bill provides that, where a defendant has rejected a sentence indication, the court that subsequently hears and decides the charge must be constituted by a magistrate other than the magistrate who gave the sentence indication (the original magistrate). This is to ensure the magistrate who hears the matter is not aware of either the fact that the defendant applied for (and rejected) the indication, information provided for the purposes of determining the sentence indication, or the indicated sentence itself. Section 61B(2)(a) provides for limited exceptions. Section 61B(2)(a)(i) provides an exception where the original magistrate had already been assigned to hear the charge for the offence when the defendant applied for the sentence indication. This is designed to ensure a hearing is not required to be vacated because the defendant applies for a sentence indication relatively late during the process – after a magistrate has been assigned to hear the charge. Section 61B(2)(a)(ii) provides a second exception where both parties agree that the original magistrate can hear the matter. In both cases, the magistrate who hears the matter is not bound by the indicated sentence given earlier. Separately, section 61E of the Bill provides that, if a defendant has applied for a sentence indication in a proceeding for an offence (the primary proceeding), evidence of specified matters is inadmissible in the primary proceeding unless the defendant (or in the case of a victim impact statement, the victim) consents. This prevents the use of information about the defendant’s application for a sentence indication or the indicated sentence given being used to the defendant’s disadvantage in the proceedings. In addition, section 61F restricts the publication of sentence indication information to further reduce any risk of bias.
Recommendation 16 The Committee recommends that the ACT Government address concerns raised by	Agreed in principle. Section 61E(2)(b) of the Bill provides that evidence of the defendant’s application for a sentence indication and the indicated sentence can only be admitted in a proceeding

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stakeholders about whether the current drafting of proposed paragraph 61E(2)(b) leaves open the possibility that other documents and evidence tendered in support of an application for sentence indication could be admissible in subsequent proceedings.	where the primary proceeding has not been finally decided if the court hearing a proceeding decides it is relevant and the defendant consents to the admission of the evidence. This ensures the defendant has control over their information. In this way, the defendant can prevent the relevant information from being used against their interests but can authorise the use of the relevant information where this would benefit their interests. Section 61E(3) operates consistently with section 61E(2) to protect the complainant's information. For example, a complainant can prevent or authorise the admission of their victim statement in either or both the primary proceedings of other proceedings. In addition, section 61F give defendants and complainants control over the publication of their information. Section 61E is intended to capture any documents or other evidence submitted as part of the sentence indication process under the description of 'evidence of': (a) the defendant's application for a sentence indication; (b) the indicated sentence for the defendant; and (c) if there is a complainant for the offence—any victim impact statement prepared by or for the complainant. The Government will consider revisions to the Explanatory Statement to make the intended coverage of section 61E clear.
Recommendation 17 The Committee recommends that the ACT Government should address concerns raised by stakeholders about how the amendments to the Crimes (Sentencing)	Noted. Part 4.3 of the Crimes (Sentencing) Act governs the preparation and use of victim impact statements. Section 52(1) of the Crimes (Sentencing) Act provides that a victim impact statement may be tendered, made orally or read out in court. However, section 52(2) provides that the statement may only be given when the court considers appropriate

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Act 2005 prohibits a Victim Impact Statement prepared for the purposes of determining the indicated sentence from being read out in court.	<u>after</u> the defendant has pleaded guilty or been found guilty or convicted or the court has found the offence proved, and <u>before</u> the offender is sentenced. Section 52(3) requires the court to allow the victim to read their statement in court (after the finding of guilty or conviction and before the sentence is imposed) if the victim wishes to do so. By ensuring a victim impact statement cannot be given until after the conviction or finding of guilt, these provisions ensure sensitive information in the victim impact statement is not made available to the defendant before they are found guilty or convicted. Consistent with this, the Bill inserts section 52(2A)(a) into the Crimes (Sentencing) Act to provide that a victim impact statement may be tendered to the court for the purposes of determining the sentence indication. In addition, the Bill inserts new section 52(3A) into the Crimes (Sentencing) Act to provide that a victim impact statement can not be read out in court. This limit only applies where the statement is being used for the purpose of determining the appropriate sentence indication It is important to protect the victim's sensitive information contained in a victim impact statement prepared for the purposes of a sentence indication process. The Government will develop amendments to ensure that a victim impact statement is not made available to a defendant unless and until the defendant is convicted or found guilty. The Government will develop Government amendments to section 53(2)(b) of the Crimes (Sentencing) Act to preclude the provision of a copy of the victim impact statement, prepared for the purposes of the court determining an indicative sentence, to the defendant. The existing requirement in section 52 to provide a copy of a victim impact statement to the defendant where the defendant has been found guilty or convicted will continue to apply after the sentence indication process is completed. In addition, the Bill inserts section 52(2A)(b) into the Crimes (Sentencing) Act to provide that, where a defendant has applied for a sentence indication, a victim impact statement may be tendered, made orally or read out in court where it is being used for the purposes

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	sentencing. If the defendant has accepted and pleads guilty to the offence, the victim has the right to read their statement in court if that is their preference.
Recommendation 18 The Committee recommends that the Assembly pass the bill, subject to consideration of the Committee's recommendations.	Agreed.