

Ms Chiaka Barry MLA
Chair
Standing Committee on Legal Affairs (Legislative Scrutiny Role)

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

7 January 2026

Dear Ms Barry

Chiaka

I am writing in response to comments made by the Standing Committee on Legal Affairs (Legislative Scrutiny Role) in Scrutiny Report 13 on the Magistrates Court (Indicative Sentencing) Amendment Bill 2025 (the Bill).

I thank the Committee for its comments relating to the Bill. The Committee's comments requesting a response are addressed below.

A revised explanatory statement has been prepared to address the Committee's comments and is attached for the Committee's information. I note that the Bill is currently before the Standing Committee on Legal Affairs for inquiry and as such the attached revised explanatory statement may require further revision prior to tabling during debate of the Bill. A revised explanatory statement will be tabled in the Legislative Assembly during debate of the Bill containing the changes made to address the Committee's comments.

Clause 7 - Clause note does not align with the amendment in the Bill

I thank the Committee for identifying this error in the preparation of the explanatory statement. This issue has been addressed in the revised explanatory statement.

Clause 5 – Proposed new division 3.4.1A Sentence indications - Proposed new section 61F

I note the Committee's recommendation that I revise the explanatory statement to address the limitation on the right to be presumed innocent until proven guilty resulting from proposed new section 61F.

As noted by the Committee subsection (3) provides for the reversal of evidential burden from the prosecution to the defence. Subsection (3) is an exception to the offence in subsection (2) in the circumstances where the publishing of the information was necessary on reasonable grounds for carrying out a court registry function, or giving information to the defendant or the defendant's legal

representative. The forming of an opinion on whether there were reasonable grounds is a matter uniquely within the knowledge of the defendant and thus it is appropriate for the defence to have the evidential burden.

As noted by the Committee, subsections (4) and (5) reverse the legal burden in relation to the matters covered from residing with the prosecution to residing with the defendant. As with subsection (3) this information is uniquely within the knowledge of the defendant and thus it is appropriate for the defence to have the legal burden of proving these matters.

The Revised Explanatory Statement addresses the limitation on the right to the presumption of innocence imposed by the reverse evidential and legal burdens within proposed new section 61F. The limitation is considered to be legitimate and proportionate given the purpose and objectives of the indicative sentencing scheme.

Schedule 1 – Amendments to section 52 of the *Crimes (Sentencing) Act 2025*

I note the Committee's recommendation that I revise the explanatory statement to address the limitation on the right to privacy resulting from the proposed amendments to section 52 of the *Crimes (Sentencing) Act 2005*.

As noted by the Committee, the expansion of the use of a victim impact statement to the indicative sentencing scheme has the potential to limit the right to privacy of the maker of a victim impact statement.

The Revised Explanatory Statement assesses the limitation on the right to privacy created by this expansion and considers that the limitation is legitimate and proportionate given the importance of the court being able to take into account the impacts on a victim in determining an appropriate indicative sentence.

I trust this response and the revised explanatory statement addresses the Committee's comments in relation to the bill.

I thank the Committee once again for its careful consideration of the Bill for the benefit of the Assembly and the public.

Sincerely



Tara Cheyne MLA
Attorney-General