



**Legislative Assembly for the  
Australian Capital Territory**  
Standing Committee on Legal Affairs

# **Inquiry into Magistrates Court (Indicative Sentencing) Amendment Bill 2025**

Legislative Assembly for the Australian Capital Territory  
Standing Committee on Legal Affairs

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Approved for publication

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Report 5  
11th Assembly  
February 2026



# About the committee

## Establishing resolution

The Assembly established the Standing Committee on Legal Affairs on 3 December 2024.

The Committee is responsible for the following areas:

- Emergency Management and the Emergency Services Agency
- Policing and ACT Policing
- Corrective Services
- Attorney-General
- Consumer Affairs
- Human Rights
- Victims of Crime
- Access to justice and restorative practice
- Public Trustee and Guardian

You can read the full establishing resolution [on our website](#).

## Committee members

Ms Chiaka Barry MLA, Chair

Mr Taimus Werner-Gibbings MLA, Deputy Chair

Mr Shane Rattenbury MLA

## Secretariat

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Ms Kate Mickelson, Assistant Secretary

Mr Adam Walker, Assistant Secretary

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## About this inquiry

The Magistrates Court (Indicative Sentencing) Amendment Bill 2025 was presented in the Assembly on 30 October 2025 and referred to the Standing Committee on Legal Affairs. Standing order 174 refers all bills presented to the Assembly to the relevant standing committee for inquiry. A Committee has three weeks from the date of presentation, or one week after the tabling of the relevant scrutiny report, whichever is later, to advise the Speaker on whether it will undertake an inquiry.

If the Committee does decide to undertake an inquiry, it must report within three months from the date of presentation of the bill, with the exception of bills presented in the last sitting period of a calendar year, in which case the Committee has four months to inquire and report.

The Committee decided to inquire into the bill on 5 November 2025. In accordance with standing order 174, the original reporting date was 29 January 2026.

Committees may seek an extension from the Assembly to the reporting date of a bill inquiry. The Committee sought and was granted an extension for this inquiry on 2 December 2025, with the new reporting date being 27 February 2026.<sup>1</sup>

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<sup>1</sup> *Minutes of Proceedings*, No 41, Tuesday 2 December 2025, p 548.

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# Acronyms & Abbreviations

Acronym or Abbreviation	Long form
Aboriginal Legal Service	Aboriginal Legal Services (NSW/ACT)
ACT	Australian Capital Territory
The bill	Magistrates Court (Indicative Sentencing) Amendment Bill 2025
Crimes Sentencing Act	<i>Crimes (Sentencing) Act 2005</i>
DPP	Office of the Director of Public Prosecutions
HRA	<i>Human Rights Act 2004</i>
JRI	Justice Reform Initiative
Legal Aid ACT	Legal Aid Commission (ACT)
Magistrates Court Act	<i>Magistrates Court Act 1930</i>
Scrutiny Committee	Standing Committee on legal Affairs (Legislative Scrutiny Role)
VIS	Victim Impact Statement
VOCC	Acting Victims of Crime Commissioner

# Recommendations

## Recommendation 1

The Committee recommends that the ACT Government consider a broadening of the scope of the proposed Indicative Sentencing scheme.

## 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.

## 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.

## Finding 1

The Committee finds that the use of the term ‘complainant’ is inconsistent with the use of the term ‘victim’ in the *Victims of Crime Act 1994 (ACT)*, *Crimes (Restorative Justice) Act 2004* and the *Bail Act 1992 (ACT)*.

## 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’.

## Recommendation 5

The Committee recommends that the ACT Government consider a legislative guarantee of a material discount if sentence indication is pursued.

## 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.

## 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.

## 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.

## 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.

### **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.

### **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 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.

### **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.

### **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.

### **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 operation of the Indicative Sentencing Scheme.

### **Recommendation 16**

The Committee recommends that the ACT Government address concerns raised by 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.

### **Recommendation 17**

The Committee recommends that the ACT Government should address concerns raised by stakeholders about how the amendments to the *Crimes (Sentencing) Act 2005* prohibits a Victim Impact Statement prepared for the purposes of determining the indicated sentence from being read out in court.

### **Recommendation 18**

The Committee recommends that the Assembly pass the bill, subject to consideration of the Committee's recommendations.



# 1. Introduction

## Background

- 1.1. The Magistrates Court (indicative Sentencing) Amendment Bill 2025 (the bill) proposes a new indicative sentencing scheme for the ACT Magistrates Court.
- 1.2. The bill seeks to amend the *Magistrates Court Act 1930* (Magistrates Court Act) to allow a defendant to request an indication of the sentence the court would impose if the defendant plead guilty.<sup>2</sup>
- 1.3. The bill also makes consequential amendments to the *Crimes (Sentencing) Act 2005* (Crimes Sentencing Act) to allow Victim Impact Statements (VIS) to be considered and used for the purpose of indicative sentencing.<sup>3</sup>
- 1.4. The bill's explanatory statement states that the bill has three key policy objectives:
  - a) To improve the experiences of complainants and witnesses in the criminal court system;
  - b) To improve the experiences of defendants in the criminal court system; and
  - c) To improve systemic efficiencies in the Magistrates Court system by reducing the number of contested hearings and reducing the time taken for matters to be concluded.<sup>4</sup>
- 1.5. In its submission, the ACT Government explained that as of 30 June 2024, 50 percent of people in custody in the ACT were on remand (i.e. unsentenced). The Government argued in its submission that by facilitating the faster resolution of matters, indicative sentencing may reduce the number and proportion of unsentenced people in custody. The Government submission observes that indicative sentencing is currently available in the following jurisdictions:
  - Victoria (both in summary and indicatable courts);
  - Tasmania (summary courts); and
  - Northern Territory (summary courts).<sup>5</sup>
- 1.6. In developing the bill, the Government consulted with the following stakeholders:
  - Aboriginal Legal Service;
  - ACT Bar Association;
  - ACT Corrective Services;

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<sup>2</sup> Explanatory Statement, Magistrates Court (indicative Sentencing) Amendment Bill 2025, p 3; ACT Government, *Submission 4*, p 2.

<sup>3</sup> Explanatory Statement, Magistrates Court (indicative Sentencing) Amendment Bill 2025, p 3.

<sup>4</sup> Explanatory Statement, Magistrates Court (Indicative Sentencing) Amendment Bill 2025, p 3.

<sup>5</sup> ACT Government, *Submission 4*, p 2.

- ACT Courts and Tribunal;
- ACT Director of Public Prosecutions;
- ACT Human Rights Commission;
- ACT Law Society;
- ACT Policing;
- Legal Aid ACT;
- Victims of Crime Commissioner.<sup>6</sup>

## Conduct of the inquiry

- 1.7. On 5 November 2025, the Committee resolved to conduct an Inquiry into Magistrates Court (Indicative Sentencing) Amendment Bill 2025 and called for submissions.
- 1.8. The Committee received 7 submissions, which were published on the inquiry webpage and are listed in [Appendix A](#).
- 1.9. The Committee did not hold public hearings for this inquiry.

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<sup>6</sup> Explanatory Statement, Magistrates Court (Indicative Sentencing) Amendment Bill 2025, p 4.

## 2. Scrutiny Committee comments

- 2.1. In its report, the Standing Committee on Legal Affairs (Legislative Scrutiny Role) (Scrutiny Committee) identified the following rights under the *Human Rights Act 2004* (HRA) as being limited by the bill:
- Right to a fair trial (including Rights in Criminal Proceedings);
  - Rights in Criminal Proceedings (presumption of innocence); and
  - Right to Privacy.
- 2.2. The Scrutiny Committee noted that the bill limits the rights in criminal proceedings protected by section 22 of the HRA by impacting the evidence and procedures before a court. It observed that the clause note in the Explanatory Statement for clause 7 does ‘not accurately reflect the amendment made by clause 7 of the Bill. Clause 7 inserts four new definitions, whereas the clause note lists 6 and omits one of the new definitions inserted by the Bill’.<sup>7</sup>
- 2.3. The Scrutiny Committee drew the discussion on human rights in the Explanatory Statement to the attention of the Assembly and recommended that the Minister amend clause note 7 to be consistent with clause 7 of the bill.<sup>8</sup>
- 2.4. The Scrutiny Committee also noted that proposed section 61F impacts the right to be presumed innocent until proven guilty provided by section 22(1) of the HRA.<sup>9</sup>
- 2.5. The Scrutiny Committee drew the bill’s impact on section 22(1) of the HRA to the attention of the Assembly and recommended that the Minister revise the Explanatory Statement to address the limitation of this right by new section 61F.<sup>10</sup>
- 2.6. The Scrutiny Committee noted that the bill amends the *Crimes (Sentencing) Act 2005* (Crimes Sentencing Act) to allow victim impact statements to be used for the purpose of indicative sentencing and for the purpose of sentencing.<sup>11</sup>
- 2.7. The Scrutiny Committee noted that the clause notes for Schedule 1 of the bill highlight that Schedule 1’s changes to section 52 of the Crimes Sentencing Act ‘expands section 52 by providing for the use of victim impact statements where a defendant has applied for a sentence indication in a proceeding for a defence’.<sup>12</sup>
- 2.8. The Scrutiny Committee recommended that the Minister revise the Explanatory Statement to recognise the limitation and ‘provide a brief explanation regarding the rationale and proportionality’.<sup>13</sup>

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<sup>7</sup> Standing Committee on Legal Affairs (Legislative Scrutiny Role), *Scrutiny Report 13*, November 2025, p 13.

<sup>8</sup> Standing Committee on Legal Affairs (Legislative Scrutiny Role), *Scrutiny Report 13*, November 2025, p 13.

<sup>9</sup> Standing Committee on Legal Affairs (Legislative Scrutiny Role), *Scrutiny Report 13*, November 2025, p 14.

<sup>10</sup> Standing Committee on Legal Affairs (Legislative Scrutiny Role), *Scrutiny Report 13*, November 2025, p 14.

<sup>11</sup> Standing Committee on Legal Affairs (Legislative Scrutiny Role), *Scrutiny Report 13*, November 2025, p 14.

<sup>12</sup> Standing Committee on Legal Affairs (Legislative Scrutiny Role), *Scrutiny Report 13*, November 2025, p 14.

<sup>13</sup> Standing Committee on Legal Affairs (Legislative Scrutiny Role), *Scrutiny Report 13*, November 2025, p 14.

- 2.9. The Scrutiny Committee further noted that the bill provides there is no right of appeal against an indicated sentence (new section 61C). However, the bill also provides that the defendant may reject or accept an indicated sentence, and provides that a sentence indication does not affect any party proceedings' right to appeal against the actual sentence imposed.<sup>14</sup>
- 2.10. The Scrutiny Committee drew this to the Assembly's attention but did not require a response from the Minister.<sup>15</sup>

## Government response

- 2.11. The ACT Government in its submission indicated that it has revised the explanatory statement to the bill in response to the Scrutiny Report, which will be tabled when the bill is debated.<sup>16</sup> The Scrutiny Committee noted that the Attorney-General had provided a response and revised explanatory statement in response to the points raised in Scrutiny Report no. 13 and provided no further comments.<sup>17</sup>

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<sup>14</sup> Standing Committee on Legal Affairs (Legislative Scrutiny Role), *Scrutiny Report 13*, November 2025, p 14.

<sup>15</sup> Standing Committee on Legal Affairs (Legislative Scrutiny Role), *Scrutiny Report 13*, November 2025, p 14.

<sup>16</sup> ACT Government, *Submission 4*, p 7.

<sup>17</sup> Standing Committee on Legal Affairs (Legislative Scrutiny Role), *Scrutiny Report 14*, January 2026, p 28.

## 3. Matters considered

### Support for the bill

- 3.1. The bill received broad support for the scheme in general from submissions provided as part of this inquiry, although many made recommendations for changes on particular issues.
- 3.2. Legal Aid ACT supported the introduction of indicative sentencing and noted the anticipated benefits of improving the efficiency of court proceedings, reducing the Court's workload, and providing defendants with more information for pleas.<sup>18</sup>
- 3.3. Legal Aid ACT was supportive of the requirement for a defendant to accept or reject the sentence indication within seven days. Legal Aid argued that the seven-day timeframe allows sufficient time to obtain and consider legal advice.<sup>19</sup>
- 3.4. The Acting Victims of Crime Commissioner (VOCC) supported the bill's protection given to Victim Impact Statements (VIS) in criminal and civil proceedings, being of the view that an Indicative Sentencing Scheme should not expose victims to further cross-examination, should a guilty plea not be entered.<sup>20</sup>
- 3.5. The VOCC also supported the inclusion of the amendments to the dictionary of the Magistrates Court Act, particularly that the definition of the term 'victim impact statement' refers to section 47 of the *Crimes (Sentencing) Act 2005*. That section defines a VIS as a 'statement made by or for a victim of the offence that contains details of any harm suffered by the victim because of the offence'.<sup>21</sup>
- 3.6. The Aboriginal Legal Service (NSW/ACT) (Aboriginal Legal Service) also expressed support for the bill as 'an opportunity to improve the efficiency of the criminal justice system by facilitating earlier guilty pleas in appropriate circumstances'. In particular, it supported the purported benefit of improved efficiency of court proceedings, and agreed that it would support the right to be tried without delay as expressed in section 22(2)(c) of the *Human Rights Act 2004* (HRA).<sup>22</sup>
- 3.7. The ACT Law Society and ACT Bar Association, in their joint submission, conveyed support for the bill, pointing out they have 'long supported the introduction of indicative sentencing, recognising its potential to significantly enhance the efficiency of the criminal justice system'. In expressing its support, the ACT Law Society and Bar Association was of the view that the bill has the potential to improve efficiency, encourage early guilty pleas, and reduce the burden on victims.<sup>23</sup>

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<sup>18</sup> Legal Aid Commission, *Submission 1*, p 1.

<sup>19</sup> Legal Aid Commission, *Submission 1*, p 3

<sup>20</sup> Acting Victims of Crime Commissioner, *Submission 2*, p 1.

<sup>21</sup> Acting Victims of Crime Commissioner, *Submission 2*, pp 1–2; *Crimes (Sentencing) Act 2005*, s 47.

<sup>22</sup> Aboriginal Legal Service, *Submission 3*, p 1.

<sup>23</sup> ACT Law Society & ACT Bar Association, *Submission 5*, p 1.

- 3.8. The Law Society and Bar Association were of the view that the scheme would promote accountability by defendants:

Early pleas also promote early accountability, ensuring that defendants take responsibility at a point where it has meaningful impact for both complainants and the administration of justice. By contrast, pleas entered at the last minute may reflect apathy or fatigue from proceedings and are more prone to be ‘pleas of convenience’, rather than genuine accountability. Indicative sentencing is an opportunity to promote accountability with all the advantages in promoting restorative justice and rehabilitation that accompany offender accountability.<sup>24</sup>

- 3.9. The ACT Office of the Director of Public Prosecutions (DPP) supported the bill in principle, highlighting that it had suggested introducing indicative sentencing to the Attorney-General. It concluded by stating that it ‘welcomes the indicative sentencing scheme as a practical reform to promote timely, fair and victim-sensitive outcomes in the Magistrates Court’.<sup>25</sup>
- 3.10. The Justice Reform Initiative (JRI) was also supportive of bill in principle, writing in its submission that it was pleased the Government was considering how early indicative sentencing would improve outcomes in the justice system for the courts and participants.<sup>26</sup>
- 3.11. The JRI in its submission noted the multiple potential benefits of the scheme, such as cases being resolved before going to full trial, clarity about penalties, encouraging informed guilty pleas, improved experiences for complainants by reducing the need to give traumatic evidence, and freeing up resources for other cases.<sup>27</sup>

## Concerns with the bill

### Proceedings not included

- 3.12. Clause 5 of the bill inserts new section 55, which excludes the operation of the Indicative Sentencing Scheme to Magistrates Court proceedings relating to:
- a) a family violence offence;
  - b) a sexual offence;
  - c) an offence of driving a motor vehicle negligently on a road or road related area that occasions in death; and
  - d) the jurisdiction of the Childrens Court.<sup>28</sup>
- 3.13. The ACT Government in its submission stated that the exclusions ‘reflect the particular vulnerability of either defendants or victims in these matters and the likelihood that a VIS

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<sup>24</sup> ACT Law Society & ACT Bar Association, *Submission 5*, p 2.

<sup>25</sup> Office of the Director of Public Prosecutions, *Submission 6*, pp 2, 5.

<sup>26</sup> Justice Reform Initiative, *Submission 7*, p 2.

<sup>27</sup> Justice Reform Initiative, *Submission 7*, p 2.

<sup>28</sup> Under Chapter 4A of the *Magistrates Court Act 1930*, the Magistrates Court is known as the Childrens Court when it is exercising the jurisdiction of the Childrens Court under section 288 of that Act. See *Magistrates Court Act 1930*, ss 287, 288; Magistrates Court (indicative Sentencing) Amendment Bill 2025, cl 5 (new division 3.4.1A, new section 55)

in these matters would take longer to prepare than the five business days' notice period required before a defendant makes an application for a sentence indication'.<sup>29</sup>

- 3.14. However, most submissions received raised concerns with the exclusion of these matters.
- 3.15. Legal Aid ACT highlighted the lack of applicability of the scheme to Childrens Court matters, arguing that 'Children facing the criminal justice system are, arguably, the most vulnerable category of offender'.<sup>30</sup>
- 3.16. Legal Aid ACT felt that expanding the indicative sentencing scheme to Childrens Court proceedings would allow for early resolution of matters dealing with young offenders and improve certainty which it felt is lacking through the current system of making submissions and acts as a deterrent for young offenders.<sup>31</sup>
- 3.17. Legal Aid ACT also proposed expanding the scheme specifically to include family violence matters in the Childrens Court's jurisdiction, suggesting it would be beneficial by encouraging and incentivising quick resolutions. It explained they have seen an increase in the number of clients who are charged with family violence related offences and added that defendants often plead not guilty and are 'disinclined to resolve matters, or resolutions occur very close to when the matter is listed for hearing'.<sup>32</sup>
- 3.18. In suggesting the inclusion of family violence matters, Legal Aid ACT acknowledged that expanding the scheme to such matters has the potential to negatively impact victims if defendants were given the opportunity for a sentence reduction, and suggested that any inclusion of these matters be considered during a statutory review within two years.<sup>33</sup>
- 3.19. The Aboriginal Legal Service too opposed the exclusion of family violence offences, as well as the exclusion of sexual offences and the offence of negligent driving that occasions death.<sup>34</sup>
- 3.20. The Aboriginal Legal Service argued that the exclusion of these offences undermines the key policy objectives of the bill as, absent the option of indicative sentencing, there would be less encouragement for the defendant to make an early guilty plea which would enable a swift resolution of these kinds of matters. Further, complainants and witnesses could still be required to give evidence which may re-traumatise them.<sup>35</sup>
- 3.21. The ACT Law Society and ACT Bar Association similarly expressed concern with the exclusion of family violence offences, asserting that these matters make up a significant proportion of the Magistrates Court's criminal caseload, and that their exclusion undermines the bill's efficiency objectives while denying victims the benefits of early resolution.<sup>36</sup>

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<sup>29</sup> ACT Government, *Submission 4*, p 3.

<sup>30</sup> Legal Aid Commission, *Submission 1*, p 1.

<sup>31</sup> Legal Aid Commission, *Submission 1*, p 1.

<sup>32</sup> Legal Aid Commission, *Submission 1*, pp 1–2.

<sup>33</sup> Legal Aid Commission, *Submission 1*, p 2.

<sup>34</sup> Aboriginal Legal Service NSW/ACT, *Submission 3*, p 1.

<sup>35</sup> Aboriginal Legal Service NSW/ACT, *Submission 3*, p 2.

<sup>36</sup> ACT Law Society & ACT Bar Association, *Submission 5*, p 4.

- 3.22. The Law Society and Bar Association acknowledged that including family violence offences engages certain rights under the HRA, but considered these manageable and appropriate, pointing to section 28 of the HRA, which permits reasonable limits where demonstrably justifiable, and arguing that the bill's objectives of efficiency, justice and victim protection are compelling justifications.<sup>37</sup>
- 3.23. With respect to the exclusion of family violence and sexual offences, the DPP was of the view that these should be included as part of a staged rollout. It argued that this approach would allow practitioners and the judiciary to consolidate practice and address any operational issues before extending to more complex matter types with more significant risk.<sup>38</sup>

### Committee comment

- 3.24. The Committee considers that family violence offences, sexual offences and the offence of negligent driving occasioning death would benefit by being included in the indicative sentencing scheme, as early resolution of these matters by Courts is equally, and arguably more important for the victims of these offences.
- 3.25. The Committee is also of the view that children facing the criminal justice system are the most vulnerable category of offender. The extension of indicative sentencing to Childrens Court proceedings would allow for early resolution of these matters but also improve certainty for all parties.
- 3.26. The Committee therefore believes that consideration should be given to broadening the proposed indicative sentencing scheme to include these matters.

#### Recommendation 1

The Committee recommends that the ACT Government consider a broadening of the scope of the proposed Indicative Sentencing scheme.

### Prosecution election for indicative sentence

- 3.27. Proposed section 58 of the bill allows the prosecution to elect whether an indicative sentence may be given. The prosecution has up to 21 days to consider whether to consent to an indicative sentence being granted.<sup>39</sup>
- 3.28. Both the ACT Government and DPP argued that giving the prosecution this power will 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.<sup>40</sup>

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<sup>37</sup> ACT Law Society & ACT Bar Association, *Submission 5*, p 4.

<sup>38</sup> Office of the Director of Public Prosecutions, *Submission 6*, p 5.

<sup>39</sup> Magistrates Court (Indicative Sentencing) Amendment Bill 2025, cl 5 (new section 58)

<sup>40</sup> ACT Government, *Submission 4*, p 3; Office of the Director of Public Prosecutions, *Submission 6*, p 3

- 3.29. Legal Aid ACT however expressed concern with proposed section 58, arguing that based on its current formulation, the DPP may regularly opt out of receiving an indicative sentence, preferring matters to be listed for hearing.<sup>41</sup>
- 3.30. Legal Aid ACT further argued that allowing the DPP to opt out of a sentence indication ‘infers their consent or approval is vital to a sentence indication being given’, conflicting with the High Court’s reasoning in *Barbaro v The Queen* [2014] HCA 2, which established that the role of prosecutors is separate from the decision to pursue sentence indication.<sup>42</sup>
- 3.31. Instead, Legal Aid ACT proposed defendants be able to apply for indicative sentencing at the discretion of the court.<sup>43</sup> Should the DPP disagree with the indicated sentence, it can be reviewed in an appeal after the sentence is handed down.<sup>44</sup>
- 3.32. The Aboriginal Legal Service similarly wrote that ‘Section 58 gives the prosecution unfettered discretion to refuse to consent to the court giving a sentence indication. If the prosecution does not consent, the court must not grant the defendant’s application’.<sup>45</sup>
- 3.33. The Aboriginal Legal Service felt that this proposed section ‘inappropriately limits judicial independent and discretion in the sentencing process’ and argued that if the prosecution was concerned with a too lenient a sentence, the appropriate avenue to contest the adequacy of the sentence is through appeal.<sup>46</sup>
- 3.34. The Aboriginal Legal Service further contested the view in the Explanatory Statement that the purpose of the section is to ensure the prosecution has time to amend the charges where there has been a change in the circumstances or the incorrect charge was laid before a court can impose an indicative sentence. In the Aboriginal Legal Service’s view, proposed section 58 is not required to achieve this purpose due to new section 61D enabling the court to revise an indicated sentence if there has been a change in circumstances the court considers would result in a different sentence being imposed than the sentence indicated.<sup>47</sup>
- 3.35. The Aboriginal Legal Service also expressed the view that new section 58 could delay the indicative sentencing process, further undermining the aim of the scheme to increase the Magistrates Court’s efficiency.<sup>48</sup>
- 3.36. The ACT Law Society and ACT Bar Association also felt that new section 58 of the bill would grant the DPP ‘an unfettered veto over indicative sentencing’ and be effectively an extension of the model in the ACT where the DPP has, under section 334(4) of the *Crimes Act 1900* effective veto powers over the dismissal of indictable offences heard summarily.

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<sup>41</sup> Legal Aid Commission, *Submission 1*, p 3.

<sup>42</sup> Legal Aid Commission, *Submission 1*, p 3.

<sup>43</sup> Legal Aid Commission, *Submission 1*, p 3.

<sup>44</sup> Legal Aid Commission, *Submission 1*, p 3.

<sup>45</sup> Aboriginal Legal Service NSW/ACT, *Submission 3*, p 2.

<sup>46</sup> Aboriginal Legal Service NSW/ACT, *Submission 3*, p 2.

<sup>47</sup> Aboriginal Legal Service NSW/ACT, *Submission 3*, p 2.

<sup>48</sup> Aboriginal Legal Service NSW/ACT, *Submission 3*, p 2.

Under this provision, the ACT Magistrates Court must obtain DPP consent before dismissing indictable offences heard summarily.<sup>49</sup>

- 3.37. The Law Society and Bar Association observed that experience in other jurisdictions ‘demonstrates the drawbacks of a prosecutorial veto in indicative sentencing schemes’ and recommended that proposed section 58 be removed as ‘a prosecutorial veto impedes transparency, undermines consistency, and erodes the efficiency rationale for indicative sentencing’.<sup>50</sup>
- 3.38. This was echoed by the Justice Reform Initiative, who submitted that the ‘comparative evidence from Victoria, New South Wales, New Zealand and Canada demonstrates that such schemes work best, when they preserve judicial discretion, operate transparently, clearly disclose the impact of an early guilty plea, and remain grounded in safeguards that protect voluntariness and fairness’.<sup>51</sup>
- 3.39. The DPP also proposed some amendments to new section 58, in the form of prescribed grounds on which the DPP may elect to not provide consent.
- 3.40. The DPP in their submission proposed the following grounds on which to elect to not provide consent:
- a) The victim has not been provided with a reasonable time to prepare a VIS;
  - b) The DPP has information that there is relevant medical material not yet available; and
  - c) The DPP has information that further charges are likely.<sup>52</sup>
- 3.41. The DPP argued that these 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’.<sup>53</sup>
- 3.42. The DPP specifically referred to the experience of the Victorian Office of the Director of Public Prosecutions in which matters are being forced to continue without a VIS even where the prosecutor has requested an adjournment to obtain one, depriving the court of critical information about the specific harm suffered by the victim.<sup>54</sup>
- 3.43. The DPP were of the view that including these proposed protections in new section 58 would not undermine judicial independence, and that their proposed amendments to new section 58 in general provides ‘discrete powers for use in achieving specific purposes which have been identified as critical to support the interests of justice and fairness’.<sup>55</sup>

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<sup>49</sup> ACT Law Society & ACT Bar Association, *Submission 5*, p 3.

<sup>50</sup> ACT Law Society & ACT Bar Association, *Submission 5*, pp 3–4.

<sup>51</sup> Justice Reform Initiative, *Submission 7*, p 5.

<sup>52</sup> Office of the Director of Public Prosecutions, *Submission 6*, p 3

<sup>53</sup> Office of the Director of Public Prosecutions, *Submission 6*, p 3

<sup>54</sup> Office of the Director of Public Prosecutions, *Submission 6*, pp 3–4

<sup>55</sup> Office of the Director of Public Prosecutions, *Submission 6*, pp 3- 4.

## Committee comment

- 3.44. The Committee is of the view that, while it has confidence that the DPP would exercise a veto power over indicative sentencing applications cautiously and with care, judicial discretion is an important safeguard and that having a prosecutorial veto undermines the independence and efficiency of the Court. The Committee further holds that judicial discretion enables the explicit consideration of the factors identified in paragraph 3.40 while maintain the intended impact of the reform.
- 3.45. The Committee considers that the bill should be amended to remove the prosecutorial veto over indicative sentencing applications, which instead should be offered at the discretion of the Magistrate alone.

### 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.

## Terminology concerns

### 'Prepared by or for the complainant'

- 3.46. The VOCC expressed concern with the phrase 'prepared by or for the complainant' in new section 59 in relation to a VIS, expressing concern that the phrase could limit the scope of who can provide a VIS. She highlighted that currently under section 49 of the Crimes Sentencing Act, the following can make a VIS:
- a victim of the offence;
  - a person who has parental responsibility for a victim of the offence;
  - a close family member of a victim of the offence;
  - a carer for a victim of the offence; and
  - a person with an intimate personal relationship with a victim of the offence.<sup>56</sup>
- 3.47. The VOCC pointed out that page 11 of the Explanatory Statement provides that the court may consider the mandatory information required to be taken into account is not sufficient, and therefore may consider any additional information it considers relevant, such as statements provided by a person who has parental responsibility for a complainant, a close family member or a carer for a complainant, or a person with an intimate personal relationship with a complainant.<sup>57</sup>
- 3.48. She submitted that this 'makes it clear that the addition of 'prepared by or for the complainant' is intended to limit the scope of who can prepare a VIS. The VOCC considered that 'there is no clear justification articulated for limiting who can provide a VIS' and

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<sup>56</sup> Acting Victims of Crime Commissioner, *Submission 2*, p 2.

<sup>57</sup> Explanatory Statement, Magistrates Court (Indicative Sentencing) Amendment Bill 2025, p 11.

strongly recommended that proposed section 59 be amended to remove the phrase ‘by or for the complainant’ to ensure that the court is required to consider any VIS.<sup>58</sup>

- 3.49. In contrast, the DPP supported the requirement considering it appropriately framed. The DPP added that ‘it does not adversely affect the efficiency of proceedings as an indicative sentence would not be precluded in the event that a VIS has not been prepared’, but reinforces the court’s obligation under section 53 of the Crimes Sentencing Act to consider the VIS, and the importance of victims having an opportunity to present a VIS.<sup>59</sup>
- 3.50. The DPP noted in Victoria the courts are regularly not waiting for the preparation of these statements, and ‘thus are effectively excluding the victim from the process’. The DPP compared this to the provisions drafted in the bill, which require the court to consider a VIS, if prepared.<sup>60</sup>

### Committee comment

- 3.51. The Committee is of the view that the use of the phrase ‘victim impact statement prepared by or for the complainant’ is inconsistent with section 49 of the *Crimes (Sentencing) Act 2005* which provides a broader range of persons who can prepare a victim impact statement. The Committee considers that the language of the bill in this respect should mirror the language of the *Crimes (Sentencing) Act 2005*.

### 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.

### Use of the term ‘complainant’

- 3.52. The VOCC highlighted that the term ‘complainant’ is not defined in the bill, the *Magistrates Act 1930* or the *Legislation Act 2001*.<sup>61</sup>
- 3.53. The VOCC also observed that the *Victims of Crime Act 1994*, the *Crimes (Restorative Justice) Act 2004*, and the *Bail Act 1992* refer solely to ‘victim’ rather than ‘complainant’ in relation to proceedings prior to a finding of guilt or a conviction.<sup>62</sup>
- 3.54. The VOCC also expressed concern about the potentially misleading nature of the word ‘victim’ in the context of a sentencing exercise.<sup>63</sup>

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<sup>58</sup> Acting Victims of Crime Commissioner, *Submission 2*, p 2.

<sup>59</sup> Office of the Director of Public Prosecutions, *Submission 6*, p 4.

<sup>60</sup> Office of the Director of Public Prosecutions, *Submission 6*, p 4.

<sup>61</sup> Acting Victims of Crime Commissioner, *Submission 2*, p 3.

<sup>62</sup> Acting Victims of Crime Commissioner, *Submission 2*, p 3

<sup>63</sup> Acting Victims of Crime Commissioner, *Submission 2*, p 3

- 3.55. The VOCC ultimately proposed that the term ‘complainant’ is replaced with the word ‘victim’, using the definition in section 47 of the *Crimes (Sentencing) Act 2005*.<sup>64</sup>

#### Committee comment

- 3.56. The Committee notes concern about the use of the term ‘complainant’ rather than ‘victim’ and acknowledges the importance of language for those suffering. The Committee however is cognisant that this is a standard drafting convention in the ACT.

#### 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 (Restorative Justice) Act 2004* and the *Bail Act 1992 (ACT)*.

#### 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’.

## Guaranteed sentence reduction

- 3.57. Legal Aid ACT also argued to include a legislative guarantee of a significant sentence discount if the sentence indication is pursued, proposing 25 percent.<sup>65</sup>
- 3.58. Legal Aid ACT argued that this would ‘ensure the efficiency and incentive of the scheme to reduce the workload of courts’, noting sentence indication schemes in other jurisdictions that included a ‘clear and significant reduction in sentence for a guilty plea entered’.<sup>66</sup>
- 3.59. The ACT Government in its submission wrote that ‘by not providing a further sentence discount for requesting a sentence indication, a defendant is not pressured to request a sentence indication’ describing this as a safeguard.<sup>67</sup>

#### Committee comment

- 3.60. The Committee is of the view that if part of the indicative sentencing scheme’s operation and success will be the use of sentence discounts to incentivise participation, then the Government should consider being explicit about this in order to ensure defendant confidence in the scheme.

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<sup>64</sup> Acting Victims of Crime Commissioner, *Submission 2*, p 3.

<sup>65</sup> Legal Aid Commission, *Submission 1*, p 2.

<sup>66</sup> Legal Aid Commission, *Submission 1*, pp 2- 3.

<sup>67</sup> ACT Government, *Submission 4*, p 6.

### Recommendation 5

The Committee recommends that the ACT Government consider a legislative guarantee of a material discount if sentence indication is pursued.

## Removal of pre-sentence indication reports

- 3.61. Legal Aid ACT expressed concern about removing pre-sentence indication reports, arguing that it 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’.<sup>68</sup>
- 3.62. Legal Aid ACT held the view that defendants rely on these reports to indicate the length of a potential sentence, which can determine whether a defendant would accept or reject an indicated sentence, and suggested that the court should be given discretion to still order a pre-sentence report.<sup>69</sup>

### 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.

## Cost to Legal Aid ACT

- 3.63. Legal Aid ACT were also concerned about the expected additional workload the bill would create for the organisation:

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.<sup>70</sup>

- 3.64. Legal Aid ACT outlined several areas in which the bill would impose additional costs:
- 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 attendance at court dates;

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<sup>68</sup> Legal Aid Commission, *Submission 1*, pp 3–4.

<sup>69</sup> Legal Aid Commission, *Submission 1*, p 4.

<sup>70</sup> Legal Aid Commission, *Submission 1*, p 4

- Additional follow-up conferences with clients regarding their instructions on the indicative sentencing process;
- Further conferences where 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; and
- Appearances at the sentences and/or defended hearing.<sup>71</sup>

3.65. Legal Aid ACT asked that additional funding be considered should the bill be passed by the Assembly.<sup>72</sup>

#### Committee comment

3.66. The Committee notes the intention of the bill to improve efficiency of Magistrates Court proceedings but acknowledges concerns by Legal Aid ACT of the potential for increased costs. The Committee therefore asks the ACT Government to monitor the scheme's financial impacts on impacted organisations and if it does increase pressure, consider the need for increased resources.

#### 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.

#### 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.

### Repeal of section 35(4) of the *Crimes (Sentencing) Act 2005*

- 3.67. In its submission, the ACT Law Society and ACT Bar Association proposed the inclusion in the bill of a provision that repeals section 35(4) of the Crimes Sentencing Act.<sup>73</sup>
- 3.68. Section 35(4) of the Crimes Sentencing Act limits a court's ability to give a significant sentence discount for early guilty pleas where the court considers the prosecution's case is considered 'overwhelmingly strong'.<sup>74</sup>

<sup>71</sup> Legal Aid Commission, *Submission 1*, p 4.

<sup>72</sup> Legal Aid Commission, *Submission 1*, p 4.

<sup>73</sup> ACT Law Society & ACT Bar Association, *Submission 5*, p 5.

<sup>74</sup> *Crimes (Sentencing) Act 2005*, s 35(4)

- 3.69. The Law Society and Bar Association in their submission considered that this section undermines the objectives of indicative sentencing, and disincentivises early guilty pleas, leading to uncertainty in legal advice and complicating plea negotiations.<sup>75</sup>
- 3.70. The Law Society and Bar Association highlighted several cases where there has been judicial criticism of the provision and strongly recommended that it be repealed to ‘ensure fairer incentives for early guilty pleas, reduce unnecessary litigation and procedural complexity; and support the effective implementation of the indicative sentencing framework.’<sup>76</sup>

### 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.

## Notification of an intention to apply for a sentence indication

- 3.71. Whilst supportive of proposed section 57(3) requiring the defendant’s legal representative to give the court written notice of the defendant’s intention to apply for a sentence indication at least five days before the application is made, the VOCC was of the view it was not clear in the bill whether there is any obligation for the victim to be also notified of the sentence indication hearing so they can prepare a VIS.<sup>77</sup>
- 3.72. The VOCC referenced a report by the Victorian Victims of Crime Commissioner, which highlighted a similar concern about sentence indications being ‘sprung on’ prosecutors, impacting their ability to prepare a Victim Impact Statement.<sup>78</sup>
- 3.73. The VOCC proposed that the bill be amended to require victims to be informed about sentence indication applications and provided the opportunity to provide their Victims Impact Statement to the prosecution so that it may be provided to the court at a sentence indication hearing.<sup>79</sup>

### Committee comment

- 3.74. The Committee notes the importance of views of victims being reflected in the sentencing process and consider that it is very important that this be retained as part of the process.

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<sup>75</sup> ACT Law Society & ACT Bar Association, *Submission 5*, p 5.

<sup>76</sup> ACT Law Society & ACT Bar Association, *Submission 5*, pp 5–6.

<sup>77</sup> Acting Victims of Crime Commissioner, *Submission 2*, p 4.

<sup>78</sup> Acting Victims of Crime Commissioner, *Submission 2*, p 4.

<sup>79</sup> Acting Victims of Crime Commissioner, *Submission 2*, p 4.

### 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.

## Proposed section 59 – information for court to consider before giving sentence indication

- 3.75. Proposed section 59(1) requires the court to consider several factors before giving a sentence indication:
- a) A statement of agreed facts on which the charge for the offence is based;
  - b) The defendant’s criminal history; and
  - c) If there is a complainant for the offence:
    - i) Any victim impact statement prepared by or for the complainant; and
    - ii) Whether the prosecution believes there is sufficient information about the harm suffered by the complainant for the court to give a sentence reduction.<sup>80</sup>
- 3.76. The court may decide not to give a defendant a sentence indication if it considers that it does not have enough information or considers a sentence indication would be inappropriate.<sup>81</sup>
- 3.77. The Aboriginal Legal Service argued that proposed section 59(1)(c)(ii) should be removed, as it too would inappropriately limit judicial independence and discretion in the sentencing process, arguing that the Magistrate making the sentence indication will have access to the facts and any VIS, and should be able to consider for themselves whether there is sufficient information about the harm suffered.<sup>82</sup>

### 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 complainant for the court to give a sentence indication.

## Proposed section 61D – Court may revise sentence indication

- 3.78. Under proposed section 61D, any time before the defendant is sentenced, the court could revise an indicative sentence if there has been a change in circumstances. The court could

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<sup>80</sup> Magistrates Court (indicative Sentencing) Amendment Bill 2025, clause 5 (new section 59).

<sup>81</sup> ACT Government, *Submission 4*, pp 3-4.

<sup>82</sup> Aboriginal Legal Service (NSW/ACT), *Submission 3*, p 3.

only revise the sentence if it would not be appropriate under the change in circumstances.<sup>83</sup>

- 3.79. While supportive of proposed section 61D, the Aboriginal Legal Service suggested changes to clarify that the section enables the court to impose not only an increased sentence, but also a more lenient sentence if warranted by change of circumstances.<sup>84</sup>
- 3.80. The ACT Government submitted that the current standard sentence reductions will apply to indicative sentencing procedures, so that a defendant who requests and accepts an indicative sentence early in the process would be expected to receive a greater reduction than a defendant who requests and accepts an indicative sentence on the first day of a scheduled hearing.<sup>85</sup>

#### Committee comment

- 3.81. The Committee considers there is a need for clarity in the bill. The Committee considered whether this was an issue, but the Committee's understanding is that it would be part of the normal sentencing process.

#### 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.

- 3.82. Proposed subsection 61D(3) provides that a defendant may withdraw the plea of guilty if a court revises an indicated sentence.
- 3.83. The Aboriginal Legal Service also suggested that new subsection 61D(3) should provide that leave is not required for the defendant to withdraw their plea of guilty in circumstances where the court revises an indicated sentence. It observed that usually a defendant is required to seek leave to withdraw a guilty plea. However, to ensure the efficacy of the scheme and limit hesitation by defendants to accept an indicated sentence in other appropriate circumstances, the requirement to seek leave to withdraw a guilty plea should not apply if a Magistrate later indicates a different sentence.<sup>86</sup>

#### Committee comment

- 3.84. The Committee believes that withdrawing the leave requirement would encourage more participation in the scheme.

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<sup>83</sup> ACT Government, *Submission 4*, p 4.

<sup>84</sup> Aboriginal Legal Service NSW/ACT, *Submission 3*, p 3.

<sup>85</sup> ACT Government, *Submission 4*, p 4.

<sup>86</sup> Aboriginal Legal Service NSW/ACT, *Submission 3*, p 3.

### 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.

## Successful prosecution appeals of a final sentence

- 3.85. The Bar Association and Law Society felt that, noting the ‘whole point’ of the scheme is to encourage early guilty pleas on the basis of sentence certainty, the ability of the prosecution to successfully appeal a final sentence without the ability of the defendant to withdraw their plea of guilty undermines the integrity of the scheme.<sup>87</sup>
- 3.86. They argued that if the defendant does not have that option, on appeal the defendant will have pleaded guilty on a false premise (that is on the basis that they will not receive a sentence greater than that indicated by the magistrate).<sup>88</sup>

### Committee comment

- 3.87. The Committee is of the view that the absence of any provision allowing a defendant to withdraw their plea of guilty should the prosecution successfully appeal the ‘final’ sentence flowing from the indicative sentencing process undermines the scheme by obtaining a plea on a ‘false premise.’

### 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.

## Apprehended bias

- 3.88. When suggesting changes to proposed section 58, (to prescribe grounds on which the DPP may elect not to provide consent to giving an sentence indication), the DPP highlighted that in practice, a VIS is normally 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’.<sup>89</sup>
- 3.89. The DPP considered that the preparation of a VIS at the time of original complaint would be against best practice:

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<sup>87</sup> ACT Law Society & ACT Bar Association, *Submission 5*, p 5.

<sup>88</sup> ACT Law Society & ACT Bar Association, *Submission 5*, p 5.

<sup>89</sup> Office of the Director of Public Prosecutions, *Submission 6*, p 3.

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 unnecessary angst for a complainant'.<sup>90</sup>

### Committee comment

- 3.90. The issues raised by the DPP led to the Committee holding concerns about how the issue of apprehended bias may impact a trial in circumstances where a VIS is provided in response to an Indicative sentence application which is later either withdrawn or not accepted and the matter then goes to trial.
- 3.91. The Committee is of the view that the Government should consider the potential for apprehended bias in the operation of the indicative sentencing scheme via the provision of VIS and whether changes are warranted to the bill to prevent or limit it.

### 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 operation of the Indicative Sentencing Scheme.

## Admissibility of sentence indication information

- 3.92. Proposed section 61E provides that information provided as part of the indicative sentencing process would not be admissible except in specified circumstances.<sup>91</sup>
- 3.93. Legal Aid ACT raised concerns about the drafting of the admissibility provisions, arguing that it is only the application for a sentence indication, the indicated sentence, and complainant's victim impact statement that is captured by the exception to inadmissibility under proposed paragraph 61E(2)(b).<sup>92</sup>
- 3.94. Legal Aid ACT warned that 'This leaves an avenue for other documents and evidence tendered in support of the application but not comprising the application itself to be admissible'.<sup>93</sup>
- 3.95. Legal Aid suggested that a further provision was required to clarify that the evidence tendered by either the defendant or prosecution in support of a sentence indication application is inadmissible in a primary proceeding or any other civil or criminal proceeding unless the court hearing the proceeding considers the evidence appropriate to avoid an unintended exception to many of the provisions of the *Evidence Act 2011*.<sup>94</sup>

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<sup>90</sup> Office of the Director of Public Prosecutions, *Submission 6*, p 3.

<sup>91</sup> ACT Government, submission 4, p 5.

<sup>92</sup> Legal Aid Commission, *Submission 1*, p 2.

<sup>93</sup> Legal Aid Commission, *Submission 1*, p 2.

<sup>94</sup> Legal Aid Commission, *Submission 1*, p 2.

### Recommendation 16

The Committee recommends that the ACT Government address concerns raised by 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.

## Tendering of Victim Impact Statements to the court

- 3.96. The VOCC also held concerns with the amendments in the bill to the *Crimes (Sentencing) Act 2005* relating to the tendering of a VIS to the court.
- 3.97. Proposed section 52(2A) provides a VIS may be tendered to the court when the court considers it appropriate for the purpose of determining the indicated sentence, and may be tendered to the court, made orally or read out when the court considers it appropriate for the purpose of sentencing the defendant.<sup>95</sup>
- 3.98. However, the VOCC states that ‘new section 52(3A) makes it clear that a victim impact statement prepared for the purposes of determining the indicated sentence is not to be read out in court’.<sup>96</sup>
- 3.99. The VOCC expressed concern that this ‘limits victims’ ability to participate in the proceedings and in the absence of any articulated and significant justification to do so’. The VOCC proposed that proposed new sections 52(2A) and 52(3A) be amended to remove any limitation on the ability of victims to read out their VIS in an indicated sentence hearing.<sup>97</sup>

### Recommendation 17

The Committee recommends that the ACT Government should address concerns raised by stakeholders about how the amendments to the *Crimes (Sentencing) Act 2005* prohibits a Victim Impact Statement prepared for the purposes of determining the indicated sentence from being read out in court.

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<sup>95</sup> Acting Victims of Crime Commissioner, *Submission 2*, pp 2–3.

<sup>96</sup> Acting Victims of Crime Commissioner, *Submission 2*, p 3.

<sup>97</sup> Acting Victims of Crime Commissioner, *Submission 2*, p 3.

## 4. Conclusion

- 4.1. The Committee considers that the introduction of an indicative sentencing scheme has the potential to bring many benefits to the ACT's criminal justice system. The Committee is therefore of view that the bill should be passed, subject to the Committee's recommendations being considered by the Assembly.

### **Recommendation 18**

The Committee recommends that the Assembly pass the bill, subject to consideration of the Committee's recommendations.

- 4.2. The Committee would like to express its thanks to all those who submitted to the inquiry.
- 4.3. The Committee has made 18 recommendations and one finding in the report.

Ms Chiaka Barry MLA

Chair, Standing Committee on Legal Affairs

24 February 2026

## Appendix A: Submissions

No.	Submission by	Received	Published
1	Legal Aid	7/01/2026	21/01/2026
2	Victims of Crime Commissioner	14/01/2026	21/01/2026
3	Aboriginal Legal Service	15/01/2026	21/01/2026
4	ACT Government	15/01/2026	21/01/2026
5	ACT Law Society and ACT Bar Association	15/01/2026	21/01/2026
6	Director of Public Prosecutions	29/01/2026	11/02/2026
7	Justice Reform Initiative	2/02/2026	11/02/2026