



Submission cover sheet

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

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Submitter: Aboriginal Legal Service

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Ms Chiaka Barry MLA
Chair, Standing Committee on Legal Affairs
ACT Legislative Assembly
By email: LACommitteeLegal@parliament.act.gov.au

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

Dear Ms Barry,

I write to you on behalf of the Aboriginal Legal Service (NSW/ACT) Limited (**ALS**).

The ALS is a proud Aboriginal Community-Controlled Organisation (**ACCO**) and the primary legal assistance provider for Aboriginal and Torres Strait Islander adults and children in NSW and the ACT. Our vision is to achieve social justice and equity for Aboriginal and Torres Strait Islander people, families and communities.

More than 350 ALS staff members based at offices in 21 communities support Aboriginal and Torres Strait Islander people through the provision of high quality and culturally safe legal assistance, including court representation in criminal law, children's care and protection law, and family law. We also deliver a variety of wrap-around programs including bail support, family violence prevention, and child and family advocacy and support. We provide a Visiting Legal Service for Aboriginal children in youth detention centres, represent Aboriginal and Torres Strait Islander families in the NSW Coroner's Court, and deliver a variety of discrete civil law services including tenants' advocacy, assistance with fines and fine-related debt, and discrimination and employment law.

The ALS is the Justice Peak on the NSW Coalition of Aboriginal Peak Organisations and a key partner in Closing the Gap in NSW and the ACT. As an ACCO, we represent community interests in our advocacy for the reform and transformation of systems which impact the lives of Aboriginal and Torres Strait Islander people.

This submission is informed by the experiences of the clients and communities we serve, and the experiences of solicitors in our legal practice.

**Comments on the Magistrates Court (Indicative Sentencing)
Amendment Bill 2025**

The Bill should not be limited to particular offences

The ALS supports the introduction of an indicative sentencing scheme in the ACT Magistrates Court as an opportunity to improve the efficiency of the criminal legal system by facilitating earlier guilty pleas in appropriate circumstances. Improving efficiency in the Magistrates Court would also support and promote the right to be tried without delay, as enshrined in s 22(2)(c) *Human Rights Act 2004* (ACT).

The Bill as currently drafted excludes from the scope of the scheme family violence offences, sexual offences and the offence of negligent driving that occasions death (see proposed s 55). We oppose these exclusions and recommend that the scheme should be available in all proceedings.

The exclusion of these offences undermines the three key policy objectives of the Bill set out in the Explanatory Statement:

One of the key policy objectives of the proposed scheme is to improve the experiences of complainants and witnesses in the criminal court system.¹ If a defendant accepts an indicated sentence, complainants and witnesses will not be required to give evidence or be subject to cross-examination on evidence that is often retraumatising.² Including family violence and sexual offences in the scheme would support the public interest by incentivising early guilty pleas in appropriate cases, and enable swift resolution of these matters, which supports the stated policy objective of reducing the need for complainants to participate in lengthy and frequently traumatic defended court proceedings.

The second key policy objective listed in the Explanatory Statement is to improve the experiences of defendants in the criminal court system through earlier resolution of matters.³ The third key policy objective is to improve systemic efficiencies in the Magistrates Court by reducing the number of contested hearings and reducing the time taken for matters to be concluded.⁴ Removing excluded offences would maximise the potential for the scheme to achieve these policy objectives.

Remove s 58 – Prosecution's election about whether sentence indication may be given

The ALS does not support the inclusion of s 58 and recommends that this section be removed. 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 for a sentence indication.

This veto power inappropriately limits judicial independence and discretion in the sentencing process. If the prosecution is concerned that a sentence imposed is too lenient, existing appeal avenues against adequacy of sentence remain available.

The Explanatory Statement indicates that the purpose of this section is to ensure that 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.⁵ In our view, s 58 is not required to achieve this purpose because s 61D enables the court to revise an indicated sentence if there has been a change in circumstances that the court considers would result in a different sentence being imposed than the sentence indicated.

The ALS also anticipates that s 58 could result in delays in the indicative sentencing process, which would undermine one of the key policy objectives of the scheme, being to increase efficiency in the Magistrates Court. Section 58 provides the prosecution with up to 21 days to consider whether to consent to an indicative sentence being granted. This is a considerable amount of time and would unnecessarily delay the process.

Amend s 59 - Information for court to consider before giving sentence indication

Section 59 requires the court to consider the following matters 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;
- (c) if there is a complainant for the offence —

1 Explanatory Statement, Magistrates Court (Indicative Sentencing) Amendment Bill 2025 3.

2 Ibid.

3 Ibid.

4 Ibid.

5 Ibid 13.

- (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 indication.

The ALS recommends that s 59(1)(c)(ii) should be removed. Similar to our comments on s 58 above, this subsection would inappropriately limit judicial independence and discretion in the sentencing process. The Magistrate making the sentence indication will have access to the facts and any victim impact statement. Based on this information, the Magistrate will be able to consider for themselves whether there is sufficient information about the harm suffered by the complainant for the court to give a sentence indication.

Amend s 61D – Court may revise sentence indication

The ALS broadly supports the inclusion of s 61D but recommends the following clarifications to ensure it supports the objectives of the proposed scheme.

First, an amendment should make clear that s 61D enables the court to impose not only an increased sentence, but also a more lenient sentence if warranted by a change of circumstances. For example, if a defendant makes significant progress towards their rehabilitation after receiving an indicative sentence but before the sentence is passed, a Magistrate should have the discretion to reflect this in the sentence that is ultimately imposed.

Second, s 61(D)(3) should be amended 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. Typically, a defendant is required to seek leave to withdraw a guilty plea. However, to ensure the efficacy of the indicative sentencing scheme and limit hesitation by defendants to accept an indicated sentence in otherwise appropriate circumstances, the requirement to seek leave to withdraw a guilty plea should not apply if a Magistrate later indicates a different sentence.

Thank you for the opportunity to provide a submission. Please contact policy@alsnswact.org.au if you would like to discuss our submission further.

Yours faithfully,

Lauren Stefanou
Acting Principal Legal Officer
Aboriginal Legal Service (NSW/ACT) Limited