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

ELEVENTH ASSEMBLY

Magistrates Court (Indicative Sentencing) Amendment Bill 2025

Revised Explanatory Statement

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MAGISTRATES COURT (INDICATIVE SENTENCING) AMENDMENT BILL 2025

This revised explanatory statement relates to the Magistrates Court (Indicative Sentencing) Amendment Bill 2025 (the **bill**) as presented to the ACT Legislative Assembly. It has been prepared to assist the reader of the bill and to help inform debate. It does not form part of the bill and has not been endorsed by the Legislative Assembly.

This statement must be read in conjunction with the bill. It is not, and is not meant to be, a comprehensive description of the bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

The Bill **is** a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004* (the **Human Rights Act**).

This revised explanatory statement responds to the comments made by the Standing Committee on Legal Affairs (Legislative Scrutiny Role) in Scrutiny Report 13.

OVERVIEW OF THE BILL

This bill introduces a new indicative sentencing scheme for the Magistrates Court.

The key policy objectives of the bill are set out below.

- a) To improve the experiences of complainants and witnesses in the criminal court system. Where a defendant accepts an indicated sentence, victims and witnesses will not need to give evidence during hearing and be subject to cross-examination. Giving evidence, particularly for offences with a personal or violent element, can be very emotional. Giving and being cross-examined on highly emotional evidence often results in victims being retraumatised and reliving the experience and can have a similar impact on witnesses. In addition, the bill intends to reduce delay in criminal proceedings. The earlier finalisation of matters will benefit victims by allowing them to take steps to try to move on from their experience. The bill intends to uphold and protect victim's rights.
- b) To improve the experiences of defendants in the criminal court system. A defendant may be reluctant to enter a guilty plea if they are apprehensive about the court process and their likely sentence. Particularly for less serious and non-violent offences, where the court indicates a penalty other than imprisonment, a defendant who committed the offence may be less likely to contest the matter. Earlier resolution of matters, particularly where the outcome is non-custodial, will allow the defendant to take steps to change course and avoid further interactions with the criminal justice system.
- c) 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. This should reduce the burden on defence and prosecution counsel, the courts, and ACT

Policing, not only for those matters where an indicative sentence is used, but for other matters that may be able to be heard sooner.

The bill amends the *Magistrates Court Act 1930* (the **Magistrates Court Act**) to allow a defendant to request an indication of the sentence the court would impose if the defendant plead guilty.

The bill makes consequential amendments to the *Crimes (Sentencing) Act 2005* (the **Crimes Sentencing Act**) to allow Victim Impact Statements to be considered and used for the purposes of indicative sentencing.

The proposed law does not affect any rights people may have under the *Administrative Decisions (Judicial Review) Act 1989* (the **ADJR Act**).

CONSULTATION ON THE PROPOSED APPROACH

The amendments were developed in consultation with the following key justice stakeholders:

- Aboriginal Legal Service
- ACT Bar Association
- ACT Corrective Services
- 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

CLIMATE IMPACT

The bill has no impact on climate change.

CONSISTENCY WITH HUMAN RIGHTS

During the development of the bill, due regard was given to its compatibility with human rights as set out in the Human Rights Act.

The bill is a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the Human Rights Act.

The preamble to the Human Rights Act notes that human rights may be subject only to the reasonable limits in law that can be demonstrably justified in a free and democratic society.

Section 28(2) of the Human Rights Act contains the framework that is used to determine the acceptable limitations that may be placed on human rights. Section 28 of the Human Rights Act requires that any limitation on a human right must be authorised by a Territory law, be based on evidence, and be reasonable to achieve a legitimate aim. Whether a limitation is reasonable depends on whether it is proportionate.

Proportionality can be understood and assessed as explained in *R v Oakes*¹, in which it was held that the measures must achieve the objective in question, be rationally connected to the objective, the means to achieve the objective must impair the right or freedom as little as possible, the limitation of the right must be proportionate, and the objective must have been identified to be of “sufficient importance”.²

The limitations on human rights in the Bill are proportionate and justified in the circumstances because they are the least restrictive means available to achieve the purpose of providing an alternative sentencing option that aims to rehabilitate certain offenders while also protecting the community as a whole.

Rights engaged

The bill engages, and places limitations on, the following human rights:

- The right to a fair trial – section 21; and
- The right to be presumed innocent until proved guilty – section 22 (1).

The bill also engages, and promotes, the following human rights:

- The right to be tried without delay – section 22 (2) (c).

Finally, the bill both promotes and limits the following human rights:

- The right to privacy and reputation – section 12.

RIGHTS LIMITED

Section 21 – Right to a Fair Trial

Nature of the right and the limitation (sections 28(2)(a) and (c))

The right to a fair trial is protected by section 21 of the Human Rights Act. Section 21 of the Human Rights Act provides that “everyone has the right to have criminal charges, and rights and obligations recognised by law, decided by a competent, independent and impartial court or tribunal after a fair and public hearing.”

The right to a fair trial is a basic human right and is guaranteed. Article 10 of the *Universal Declaration of Human Rights* states “everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him”.

¹ [1986] 1 S.C.R. 10.

² *R v Oakes* [1986] 1 S.C.R. 10.

This right is also captured in the *International Covenant on Civil and Political Rights* which states at Article 14.1 that “all persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law”.

The right to fair hearing is concerned with procedural fairness and encompasses notions of equality in proceedings. This requires that each party to a proceeding must have a reasonable opportunity to present their case under conditions that do not disadvantage them as against other parties to proceedings.

The right to a fair trial may be limited by these amendments as the bill affects the way evidence is to be presented and the process of criminal proceedings.

The bill limits the right to a fair trial by allowing a defendant to plead guilty and accept a sentence without proceeding to a full trial. The availability of sentence indications is limited to the jurisdiction of the Magistrates Court, and excludes a number of offences.

This bill provides that a person charged with an offence may apply to the Magistrates Court for an indication of the sentence that the court would likely impose on the defendant if they were to plead guilty to the charge for the offence (a sentence indication).

Legitimate purpose (section 28(2)(b))

As outlined above, the objective sought to be achieved by these amendments is to improve the experiences of complainants, witnesses, and defendants in the criminal court system by reducing delay and improving systemic inefficiencies.

One element of a fair trial is the obligation that a matter be heard expeditiously within a reasonable period and without undue delay. What constitutes an unreasonable delay will depend on the circumstances of the case, including the nature of the case (such as complexity of proceedings) and the conduct of the parties. Undue delay may warrant a stay of proceedings if a hearing ‘would involve unacceptable injustice or unfairness or would be so unfairly or unjustifiably oppressive as to constitute an abuse of process.’

The ability to give indicative sentences will help achieve wider policy and public benefits by reducing lengthy delays in criminal proceedings in the Magistrates Court. Delays in resolving criminal matters perverts access to justice and has prolonged impacts on both the accused and victim.

Rational connection between the limitation and the purpose (section 28(2)(d))

Enabling indicative sentences will help ensure timely resolution of criminal proceedings in the Magistrates Court by allowing a defendant to request or consent to the court providing an indication of the sentence the court would impose if the defendant entered a plea of guilty. It will allow for the completion of these matters months earlier than the time taken for a full hearing.

This will improve the complainant's experiences of the criminal court system, particularly for offences with a personal or violent element. Where a defendant accepts an indicated sentence, the court process is shortened meaning the complainant will not need to give evidence at hearing which can otherwise result in the victim being retraumatised and reliving the experience. Earlier finalisation of matters will also provide greater closure to victims, allowing them to be able to take steps to try to move on from their experience sooner than would otherwise be the case.

It will also improve the defendant's experience of the criminal court system, particularly for minor and non-violent offences. Defendants may be reluctant to enter a guilty plea if they are apprehensive about the court process and their likely sentence. Where the court indicates a penalty other than full time imprisonment, a defendant may be more likely to accept the indication and enter an earlier plea of guilty, allowing them to take steps sooner to change course and avoid further interactions with the criminal justice system. Defendants in more serious matters are also served by having an indication so they can make an informed decision about whether to pursue a contested hearing, and have an understanding of what time they would serve if they accept the sentence at that time. Where the indication is that a sentence of imprisonment would be imposed, this early information reduces the shock or surprise the defendant may otherwise experience when the sentence is imposed, and also provides an opportunity for a defendant to make necessary arrangements before serving a custodial sentence. Given the nature of the proposed indicative sentencing scheme, it is also expected to be an effective case management tool, and may contribute to the reduction of delays in finalising matters by increasing throughput of the Magistrates Court.

In addition, each matter that is completed under the scheme, particularly where the matter is completed early, will provide more time and capacity for the courts, prosecutors, defence counsel, and ACT Policing to progress other matters more quickly. Improved systemic efficiencies in the Magistrates Court will reduce the number of contested hearings and reduce the time for matters to be concluded. This will reduce the burden on defence and prosecution counsel and the courts. A reduction in the number of contested hearings not only benefits the individuals involved in matters where an indicative sentence is accepted, but is expected to reduce wait times for those involved in hearings in contested matters.

Proportionality (section 28(2)(e))

The limitations on the right to a fair trial are considered proportionate to the legitimate purpose.

The amendments limit the opportunity for parties to a proceeding having a reasonable opportunity to present their case, however, this limitation on the right to a fair trial is proportionate to the significant benefits the indicative sentencing scheme will provide to defendants by allowing them to have their matter resolved more quickly, complainants by avoiding the potentially re-traumatising effects of providing evidence and being subjected to cross examination at a hearing, as well as to the ACT community, such as easing time and

resourcing pressures on the ACT justice system and ensuring timely resolution of criminal matters.

The amendments are balanced with various safeguards and restrictions on the application of the indicative sentencing scheme.

These changes are limited in application to only proceedings for offences able to be heard in the Magistrates Court with the exception of family violence and sexual offences, and the offence of negligent driving occasioning death. In addition, the Children's Court has been excluded from the jurisdiction of this indicative sentencing scheme as a means of narrowing the scope of the scheme in order to pursue a less restrictive avenue for achieving the legitimate purpose.

The court must ensure that the defendant is properly informed of the effect of a sentence indication. These amendments therefore do not abrogate this responsibility of the court to ensure that the accused receives adequate information in order to ensure a defendant receives a fair trial.

The bill provides that an inference of guilt will not be drawn if the defendant withdraws their application or consent for the sentence indication, or does not accept the indicated sentence. The bill also presumes that an indicated sentence is taken to have been rejected by the defendant if the defendant fails to accept or reject it. The bill also ensures that if a sentence indication is rejected, the proceeding continues as if the sentence indication had not been given, and requires the hearing to be conducted by a Magistrate who did not consider the material provided for the purposes of giving a sentence indication. The bill does not authorise a defendant to request an indication after the first day of the scheduled hearing. Where a defendant does not accept or reject an indicated sentence by the court imposed deadline on the first day of the scheduled hearing, the defendant is deemed to have rejected the indication.

The bill includes safeguards for ensuring that a defendant is not compelled to confess guilt, including that the court must explain the process for and effect of sentence indications. The bill promotes the right not to be compelled to confess guilt in criminal proceedings as the defendant's application may be withdrawn. The amendments therefore provide an alternative to making a guilty plea, which enables the proceeding to continue as if the sentence indication had not been given.

The bill includes a requirement for the court to explain the process for and effect of sentence indications to a defendant. The bill promotes the right to legal assistance as it requires the court to recommend that an unrepresented defendant obtains legal advice in relation to whether to accept or reject an indicated sentence. The bill also protects the defendant by precluding the court from imposing an indicated sentence unless the court is satisfied that the defendant has obtained, or has had a reasonably opportunity to obtain, legal advice about the proposed indicative sentence.

The bill provides that a sentence indication does not affect any party to the proceedings' right to appeal against a sentence imposed. This inclusion recognises the importance of review rights in criminal proceedings.

These amendments represent a reasonable and justifiable limitation on the right to a fair trial, which is outweighed by the importance of improving access to justice for both defendants and complainants and ensuring expeditious progress of criminal proceedings.

Section 22 – Right to be Presumed Innocent

Nature of the right and the limitation (sections 28(2)(a) and (c))

The right to be presumed innocent until proved guilty according to law is protected by section 22 (1) of the Human Rights Act.

The bill includes new section 61F which contains an offence (subsection 61F (2)) of publishing the following information, related to a sentence indication, in specified circumstances:

- the defendant applying for a sentence indication,
- particulars of the defendant's application,
- the indicated sentence, and
- any victim impact statement prepared by or for the complainant (if any) in relation to the offence.

While section 61F includes an exemption and defences to the offence, the evidential burden (for the exemption) and legal burden of proof (for the defences) fall on the defendant albeit to a lower standard of proof. These reversals of onus limit the right to be presumed innocent.

Subsection 61F (3) creates an exemption to the offence for which the defendant bears the evidential burden of proof (see *Criminal Code 2002*, section 58). The exemption provides that the publication of the specified information is not an offence if the publication was necessary on reasonable grounds for the preparation of a pre-sentence indication report, for provision of the report to a court, for carrying out a court registry function, or for giving the information to the defendant or the defendant's legal representative.

Subsections 61F (4) and (5) create defences to the offence for which the defendant has the legal burden of proof (see *Criminal Code 2002*, sections 59 and 60).

Under subsection 61F (4), it is a defence to the prosecution of an offence under subsection 61F(2)(a), (b) or (c) if the person proves that the defendant consented to the publication of information about the defendant applying for a sentence indication, particulars of the defendant's application, or the indicated sentence, before it was published.

Under subsection 61F (5), it is a defence to the prosecution of an offence under section 61F (2) (d) if the person proves that the complainant consented to the publication of the victim impact statement or information from that statement, before it was published.

Legitimate purpose (section 28(2)(b))

As previously described, the purpose of the bill is to create an indicative sentencing scheme that improves the experience of all parties in criminal proceedings (including the defendant and any complainants) and provides for the efficient resolution of a matter.

Preventing information about a sentence indication being published is important to ensure that the information is not used or perceived to be used, to determine the defendant's guilt and to protect the right to privacy of both defendants and complainants. It is important to the effectiveness of the indicative sentencing scheme created by the bill, that both a defendant and complainant can engage fully without fear of personal and potentially damaging information being published and used inappropriately.

Rational connection between the limitation and the purpose (section 28(2)(d))

The creation of an effective offence relating to the publication of sentence indication matters is a necessary mechanism to achieve the legitimate purpose.

The reverse onuses in the exemption and defences are necessary to ensure that the offence provision is not rendered futile.

It would be difficult for the prosecution to have to disprove that the publication was necessary on reasonable grounds for the preparation of a pre-sentence indication report, for provision of the report to a court, for carrying out a court registry function, or for giving the information to the defendant or the defendant's legal representative. In respect to this exemption, the defendant (i.e. the person who published the information) would be uniquely or best placed to produce evidence to demonstrate why the exemption applies to the circumstances of their case.

Similarly, in relation to the defences in subsections 61F (4) and (5) and the legal burden of proof born by the defendant, the effectiveness of the offence provision would be diminished if the prosecution had to establish the absence of consent to establish that the offence had been committed. A person with access to the sentence indication information is aware of the seriousness of publication and is best placed to be able to demonstrate that they received clear, unambiguous consent to publish.

Proportionality (section 28(2)(e))

The limitations on the right to be presumed innocent are considered proportionate to the legitimate purpose.

The imposition of the evidential or legal burden of proof on the defendant is reasonable because, as explained above, the defendant will be uniquely placed to provide evidence and prove the circumstances of the exemption or the existence of consent to publication. In

contrast it would be difficult for the prosecution to have to prove that the relevant circumstances of the exemption did not exist or that no consent was given.

A person who has access to sentence indication information is aware of the sensitive and private nature of the information as well as the prohibition on publication. As such, in circumstances where the exemption or defence applies, it is not unreasonable to expect that the defendant will be able to discharge the reverse burdens.

Accordingly, the limitation of a person's rights under s 22 of the HR Act resulting from imposing an evidential burden or a legal burden of proof on the defendant where an exception or defence is raised, is reasonable and proportionate.

Section 12 – Right to Privacy

Nature of the right and the limitation (sections 28(2)(a) and (c))

The right to privacy is protected by section 12 of the Human Rights Act. Section 12 of the Human Rights Act provides that “everyone has the right (a) not to have their privacy, family, home or correspondence interfered with unlawfully or arbitrarily; and (b) not to have their reputation unlawfully attacked.”

The bill expands the circumstances in which a victim impact statement can be tendered, made orally or read out in court to facilitate the use of a victim impact statement in circumstances where a defendant has applied for a sentence indication.

Proposed new subsection 52 (2A) of the *Crimes (Sentencing) Act 2005*, provides that, where a defendant has applied for a sentence indication, a victim impact statement:

- may be tendered for the purpose of determining the indicated sentence at a time the court considers appropriate; and
- may be tendered, made orally or read out to the court for the purpose of sentencing the defendant.

Currently, under section 52 of the *Crimes (Sentencing) Act 2005*, a victim impact statement cannot be given until after an offender has plead guilty, the court has found the offence proved or the offender has been found guilty or convicted of the offence. Where a defendant has requested an indicated sentence, it will not be until after a defendant has accepted their indicated sentence and plead guilty that the court would consider sentencing. As such, the only expansion of the use of a victim impact statement, facilitated by proposed new subsection 52 (2A), that is meaningfully different to the current permitted uses, is the tendering of the statement for the purpose of the court determining an indicated sentence.

Legitimate purpose (section 28(2)(b))

The purpose of the bill is to create an indicative sentencing scheme that improves the experience of all parties in criminal proceedings (including the defendant and any complainants) and provides for the efficient resolution of a matter.

Rational connection between the limitation and the purpose (section 28(2)(d))

In order for a complainant to be able to actively engage in the indicative sentencing process (if they choose to) and have the impacts of the offence of them taken into account by the court when determining an appropriate indicated sentence, it is necessary for the court to be able to consider a victim impact statement when formulating the indicated sentence. Not providing for a complainant to participate, through a victim impact statement, in the indicative sentencing process, would impact the experience for complainants and may result in inappropriate indicated sentences being given.

Proportionality (section 28(2)(e))

While the bill permits a victim impact statement to be tendered for the purpose of determining a sentence indication, new subsection 52 (3A) of the *Crimes Sentencing Act 2005*, makes it clear that a victim impact statement prepared for the purposes of determining the indicated sentence (under new section 52(2A)(a)) is not to be read out in court for the purposes of the court determining an indicative sentence. It would not be appropriate for a victim impact statement to be read out in court and made public until after the defendant had accepted the indicated sentence and entered a guilty plea, and the court had decided to accept the plea.

As such, the expansion of permitted uses of a victim impact statement, permitting tendering for the purpose of determining an indicated sentence, is as narrow as possible to protect the rights of defendants and complaints but also facilitate the views of complainants being taken into account to determine an appropriate indicated sentence.

Accordingly, the limitation of a person's rights under s 12 of the Human Rights Act is reasonable and proportionate to facilitate the court being able to consider the impacts on a complainant when determining an appropriate indicated sentence.

RIGHTS PROMOTED

Section 12 – Right to privacy and reputation

As described above, the right to privacy is protected by section 12 of the Human Rights Act.

The bill includes safeguards on the use, communication or distribution of information in the sentence indication scheme. The bill specifically promotes the right to privacy by creating an offence for the publication of information about the sentence indication. The bill ensures that both the defendant's and complainant's privacy is protected by requiring their consent to publication of their information. As indicated above, the provisions in the bill restricting the use and publication of sentence indication matters reflect the Territory Privacy Principles and are an important legal protection for defendants in criminal proceedings.

Section 22(2)(c) – Minimum Guarantee to Be Tried Without Delay

The entitlement to the minimum guarantee to be tried without delay is protected by section 22(2)(c) of the Human Rights Act. Section 22(2)(c) of the Human Rights Act provides

that anyone charged with a criminal offence is entitled to the minimum guarantee to be tried without delay, equally with everyone else.

The bill creates a process for progressing and dealing with summary offences and all indictable offences that can be heard summarily with the exception of family and sexual offences and the offence of negligent driving that occasions death. The bill promotes the right to be tried without delay as the purpose of the bill is to reduce delay in criminal proceedings and improve efficiencies in the Magistrates Court. The bill intends to reduce the number of contested hearings and the time taken for matters to be concluded. This will increase throughput of the Magistrates Court improving efficiencies for all matters, not just those where an indicated sentence is given.

CLAUSE NOTES

Clause 1 Name of the Act

This clause provides that the name of the Act is the *Magistrates Court (Indicative Sentencing) Amendment Act 2025*.

Clause 2 Commencement

This clause provides that the Act commences 6 months after its notification day.

Clause 3 Legislation amended

The clause provides that the Act amends the *Magistrates Court Act 1930* (the **Magistrates Court Act**). Schedule 1 of the Act also amends the *Crimes (Sentencing) Act 2005* (the **Crimes Sentencing Act**).

Clause 4 Definitions for ch 3 Section 18A, new definition of *sexual offence*

Section 18A sets out definitions for the purposes of Chapter 3 of the Magistrates Court Act.

This clause inserts a definition for sexual offence, meaning, an offence against any of the following provisions of the *Crimes Act 1900*: part 3 (Sexual Offences), part 3A (Intimate image abuse), part 4 (Female genital mutilation) or part 5 (Sexual servitude).

Clause 5 New division 3.4.1A

Division 3.4.1A Sentence indications

The clause inserts new division 3.4.1A to create an indicative sentencing scheme for the Magistrates Court.

Section 55 Application—div 3.4.1A

New section 55 identifies the proceedings to which the indicative sentencing scheme in new division 3.4.1A applies.

New section 55(a) provides that the indicative sentencing scheme applies to any proceedings that the Magistrates Court has jurisdiction to hear and decide, other than a proceeding for a family violence offence, a sexual offence or the offence of negligent driving that occasions death (contrary to section 6(1)(a) of the *Road Transport (Safety and Traffic Management) Act 1999*).

The Magistrates Court has jurisdiction to hear and decide all summary offences and all indictable offences that can be heard summarily. An indictable offence is an offence that carries a maximum penalty of longer than 2 years imprisonment or is declared by an ACT law to be an indictable offence (see section 190 of the *Legislation Act 2001*). Part 17 of the *Crimes Act 1900* governs when indictable offences can be considered by the Magistrates Court, such as offences punishable by imprisonment for longer than 2 years but not longer than 5 years (section 374).

New section 55(b) limits the operation of new section 55(a) by providing that the indicative sentencing scheme does not apply to a proceeding within the jurisdiction of the Children's Court. Under Chapter 4A of the Magistrates Act, the Children's Court has jurisdiction to hear and decide criminal proceedings against persons under 18 years of age at the time of the offence, in relation to summary or indictable offences (other than offences punishable by imprisonment for life). Excluding these proceedings reflects the particular vulnerability of children engaged with the criminal legal system.

New section 55(c) provides that the indicative sentencing scheme does not apply to an offence prescribed by Regulation. This provides flexibility to exclude additional offences or offence types from the scheme should this be identified as necessary or desirable once the scheme commences operation.

Section 56 Definitions—div 3.4.1A

New section 56 provides definitions for the purpose of new division 3.4.1A.

Section 57 – Applications for sentence indication

New section 57 describes the process for commencing an indicative sentence process.

Section 57(1) provides that a defendant can request an indication of the sentence the court would likely impose if the defendant were to plead guilty to the charge. This is known as a sentence indication.

Section 57(2) provides that the application may be made at any time during the proceeding for the offence up to and including the first day of the hearing of the charge for the offence.

Section 57(3) provides that the defendant's legal representative must give the court written notice of the defendant's intention to apply for a sentence indication at least five working days before the application is made.

Section 57(4) provides that if notice is not given in accordance with section 57(3), the court must adjourn the proceeding for the offence for at least five working days.

Section 57(5) provides that sections 57(3) and (4) do not apply if a defendant applies for a sentence indication within five days of the first day of the hearing of the charge for the offence.

Section 57(6) provides that the defendant may withdraw the defendant's application for the court to give the defendant a sentence indication at any time before the indicated sentence is given.

Section 57(7) provides that a defendant may apply for a sentence indication more than once in a proceeding, but not more than 3 times in relation to a charge for an offence. In addition, section 57(8) provides that a sentence indication may be given only once in relation to a charge for an offence unless there has been a material change in relation to the charge since the court provided an indicated sentence (e.g. defendant charged with a different offence, brief of evidence about the offence served on defendant, or a

prosecutor's disclosure of information, a document or another thing that has not previously been given to the defendant) or an indicative sentence is revised under section 61D. These limits are designed to reduce the ability of a defendant to unnecessarily divert court resources, reducing the efficiencies of the scheme, by making multiple requests for a sentence indication in relation to the same charge where there have been no material changes to the circumstances.

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

New section 58 sets out the requirements for the prosecution's election about whether a sentence indication may be given. This is designed to ensure that the prosecution has time to amend the charges where there has been a change in the circumstance or the incorrect charge was laid before a court can impose an indicative sentence.

Section 58(1) provides that if a defendant has applied for a sentence indication in a proceeding for an offence, the prosecution may, within the time required under section 58(2), elect whether or not it consents to a sentence indication being given. Section 58(2) provides that an election must be made before the later of the second time the proceeding for the offence is before the court; and 21 days after the first time the proceeding for the offence is before the court.

Section 58(3) provides that the court must not grant a defendant's application for a sentence indication before the time required under section 58(2) has ended if the prosecution has not made an election under section 58(1).

Section 58(4) provides that if the prosecution elects that it consents to the sentence indication, the court must grant the defendant's application for a sentence indication and deal with the application in accordance with division 3.4.1A. This provision must be read in conjunction with other relevant provisions in the Division, including the Magistrates Court's discretion under section 60 not to give an indicative sentence.

Section 58(5) provides that if the prosecution elects not to consent to the court giving the sentence indication, the court must not grant the defendant's application for a sentence indication.

Section 58(6) provides that if the prosecution does not make an election within the time required under section 58(2), the court may grant the defendant's application for a sentence indication and deal with the application in accordance with division 3.4.1A.

Section 58(7) provides that if a defendant applies for a sentence indication more than once in a proceeding, the prosecution may make an election under section 58(1) for each application.

Section 59 Information for court to consider before giving sentence indication

New section 59 sets out the information the Magistrates Court must and may consider before giving a sentence indication.

The court *must* consider:

- a statement of agreed facts on which the charge is based,
- the defendant's criminal history, and
- if there is a complainant for the offence, any victim impact statement prepared by or for the complainant and whether the prosecution believes there is sufficient information about the harm suffered by the complainant for the court to give a sentence indication.

In some cases, the court may consider the mandatory information required to be taken into account is not sufficient. Therefore, this section also provides that the court *may* consider any additional information the court considers relevant. For example, statements may be 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.

Section 60 Court's discretion not to give sentence indication

New section 60(1)(a) provides that the court has discretion not to give a sentence indication if the court does not have sufficient information. For example, the court may have insufficient information about a complainant and the impact of the offence on a complainant. This includes in circumstances where the court has sought, or has obtained and considered, additional information under new section 58.

Section 60(1)(b) provides that the court has discretion not to give a sentence indication if the court considers a sentence indication would not be appropriate. For example, the court may consider it is not in the interest of justice to give the defendant a sentence indication in circumstances where the agreed facts are inconsistent with the information provided by the defendant for the purposes of the pre-sentence report.

Under section 60(2), where the court decides not to give a sentence indication, the court is required to consider the impact on the complainant, if any, of not giving a sentence indication.

Section 61 Explanation of process for and effect of sentence indications

To assist the defendant to make an informed decision, under new section 61, the court is required to provide information to the defendant about the process and their rights. Under section 61(1), this includes explaining the process for, and the effect of, giving a sentence indication. This is designed to ensure the defendant's rights in criminal proceedings are protected and they are not compelled to testify against themselves or to confess guilt. The court's explanation must include:

- that the defendant may withdraw their application or consent at any time before the indicated sentence is given (section 61(1)(a)),
- the effect of sections 61A, 61B and 61C of the Act,

- that an inference of guilt will not be drawn if the defendant withdraws their application, or does not accept the indicated sentence (section 61(1)(c)),
- the maximum penalty for the offence charged (section 61(1)(d)), and
- that, even if the defendant accepts the indicated sentence and there is an appeal by either party, a different and potentially more severe sentence may be imposed (section 61(1)(e)).

Section 61(2) requires the court to recommend that an unrepresented defendant obtain legal advice about whether to accept or reject an indicated sentence.

This is aimed to address any access to justice issues for an unrepresented defendant and the legal complexities of sentence indications. This requirement also helps protect the defendant's human rights, including the right to a fair trial, the right against self-incrimination, and the right to be presumed innocent, which are engaged where there is a risk of 'pleas of convenience' and where a defendant may feel pressured into pleading guilty.

Section 61A Acceptance or rejection of sentence indication

New section 61A sets out the procedure for acceptance or rejection of a sentence indication.

If the Magistrates Court gives a defendant a sentence indication, section 61A provides for a timeframe for the defendant to make a decision.

If the defendant applies for the sentence indication before the first day of the hearing of the charge for the offence, the defendant must accept or reject it by the date determined by the court (section 61A(1)(a)). If the defendant applies for the sentence indication on the first day of the hearing of the charge for the offence, the defendant must accept or reject it by the time on that day determined by the court (section 61A(1)(b)). The date determined by the court under section 61A(1)(a) must be not later than the first day of the hearing of the charge for the offence. These timeframes are designed to ensure the defendant has sufficient time to consider the sentence indication given and to seek legal advice without causing hearings to be vacated and rescheduled.

Section 61A(3) provides that the indicated sentence is taken to have been rejected by the defendant if the defendant:

- fails to accept or reject the indicated sentence in accordance with section 61A(1), or
- does accept the indicated sentence, but the court is not satisfied the defendant has received, or had a reasonable opportunity to receive, legal advice about the indicated sentence.

The requirement in section 61(1)(b) for the Magistrates Court to explain the effect of section 61A will help prevent a defendant from attempting to accept an indicated sentence

before they have the opportunity to obtain legal advice which could otherwise result in a deemed rejection of the sentence indication under section 61A(3)(b).

New section 61B Effect of rejected sentence indication

New section 61B applies if the Magistrates Court gives a defendant an indicated sentence in relation to a charge for an offence and the defendant rejects, or is taken to have rejected, the indicated sentence.

The court that hears and decides the charge must be constituted by a magistrate other than the magistrate who gave the sentence indication (the original magistrate) unless the original magistrate had already been assigned to hear the charge for the offence when the defendant applied for the sentence indication or all the parties to the proceeding agree. The court that hears and decides the charge is not bound by the indicated sentence if imposing a sentence on the defendant for the offence.

Section 61C Effect of accepted sentence indication

New section 61C applies if the Magistrates Court gives a defendant an indicated sentence in relation to a charge for an offence and the defendant accepts the indicated sentence.

Section 61C(3) provides that, in these circumstances, the court that hears and decides the charge must be constituted by a magistrate other than the magistrate who gave the sentence indication (the original magistrate) unless the original magistrate had already been assigned to hear the charge for the offence when the defendant applied for the sentence indication or all the parties to the proceeding agree. The court that hears and decides the charge is not bound by the indicated sentence if imposing a sentence on the defendant for the offence. Section 61C(4) provides that there is no appeal against an indicated sentence.

Section 61C(5) provides that the giving of an indicative sentence to the defendant does not affect any party's right to appeal against a sentence imposed on the defendant.

Section 61D Court may revise sentence indication

New section 61D provides for the court to revise a sentence indication in light of changing circumstances that the court considers would result in a different sentence than the indication. This would include, for example, where a different or additional charge is laid on the defence for the offence, or where new evidence arises.

Under section 61D(2), the court must be satisfied that the sentence indication would not be appropriate as a result of the change in circumstances and inform the defendant that the court would likely impose a different sentence.

Under section 61D(3), if the defendant has already pleaded guilty to the offence and the court then revises an indicated sentence, the defendant may withdraw their guilty plea. This requirement reduces the risk of 'pleas of convenience' which engages the defendant's right to a fair trial, the right against self-incrimination, and the right to be presumed innocent.

Under section 61D(4), the original magistrate is the magistrate who gave the sentence indication. An indicated sentence may only be revised by the original magistrate.

Under section 61D(5), the indicated sentence may be revised another magistrate only if the original magistrate is unable to revise the indicated sentence because they die, resign, becomes mentally or physically incapacitated, or is otherwise unlikely to be able to constitute the court within a reasonable time. This provision supports and promotes the right to a trial without delay under section 22(2)(c) of the Human Rights Act.

Section 61E Sentence indication information inadmissible etc

New section 61E sets out which information is admissible and inadmissible in a proceeding following a requested sentence indication.

Under section 61E(1), the primary proceeding is the proceeding for an offence where the defendant has requested a sentence indication. The following evidence is inadmissible in any criminal or civil proceeding including the primary proceeding:

- the defendant's application for, or consent to, a sentence indication (section 61E(1)(a)),
- the indicated sentence (section 61E(1)(b)), and
- if there is a complainant for the offence, any victim impact statement prepared by or for the complainant in relation to the offence (section 61E(1)(c)).

However, under section 61E(2)(a), the types of evidence mentioned in section 61E(1)(a) and (b) – which relate to the defendant – are admissible where the primary proceeding for the offence:

- has been finally decided and the defendant has accepted the indicated sentence and has been sentenced, or
- has not been finally decided and both the court considers the evidence is admissible in the proceeding and the defendant consents to the admission of the evidence.

In addition, under section 61E(3), the evidence mentioned in section 61E(1)(c) – which relate to the complainant – is admissible in proceedings whether or not the primary proceeding for the offence has been finally decided where:

- a court hearing the proceeding considers the evidence admissible in the proceeding; and
- the complainant consents to the admission of the evidence.

These requirements provide scope for inadmissible evidence and information and are intended to promote the right to a fair trial under section 21 of the Human Rights Act.

Section 61F Restriction on publication of sentence indication matters

New section 61F creates an offence for publishing certain sentence indication matters. Section 61G applies if the defendant has applied for or consented to a sentence indication and any of the following scenarios apply:

- the court has not decided whether the defendant is guilty or not,
- the court finds the defendant not guilty,
- if the defendant is found guilty but has not been sentenced.

Under section 61F(2), an offence is committed if a person publishes information about any of the following matters:

- the defendant applying for a sentence indication,
- particulars of the defendant's application,
- the indicated sentence,
- any victim impact statement prepared by or for the complainant (if any) in relation to the offence.

The maximum penalty is 50 penalty units, six months imprisonment, or both.

However, under section 61F(3), publication of the matters listed is not an offence if the publication was necessary on reasonable grounds for the preparation of a pre-sentence indication report, for provision of the report to a court, for carrying out a court registry function, or for giving the information to the defendant or the defendant's legal representative.

Under section 61F(4), it is a defence to the prosecution of an offence under section 61F(2)(a), (b) or (c) if the person can prove that the defendant consented to the publication of information about the defendant applying for a sentence indication, particulars of the defendant's application, or the indicated sentence, before it was published.

Under section 61F(5), it is a defence to the prosecution of an offence under section 61F if the person can prove that the complainant consented to the publication of the victim impact statement or information from that statement, before it was published.

Section 61G Review of amendments made by Magistrates Court (Indicative Sentencing) Amendment Act 2025

New section 61G provides that the Minister must review the operation of these amendments within 3 years after the commencement day. The review must be started after 2 years from the commencement day and must consider the effect of the amendments on human rights.

Under section 61G(5), the Minister must present a report of the review to the Legislative Assembly as soon as practicable once completed. These provisions are to ensure the new

sentencing indication scheme is achieving its key policy objectives, promoting and protecting human rights, as well as identifying areas for improvement.

Clause 6 Sections 90AA(9) and 90AB(3)

This clause omits the references to the definition of sexual offence in relation to written statements being admitted in evidence and witnesses not being cross-examined at committal hearings from the Magistrates Court Act.

Clause 7 Dictionary, new definitions

This clause inserts new definitions into the Dictionary of the Magistrates Court Act for the following terms:

- *indicated sentence*
- *sentence indication*
- *sexual offence*
- *victim impact statement*

Schedule 1 Consequential amendments – Crimes (Sentencing) Act 2005

Schedule 1 makes consequential amendments to the Crimes (Sentencing) Act to ensure a victim impact statement can be considered and used for the purposes of sentence indications. These amendments promote the rights of complainants to be heard in indicative sentencing proceedings.

Clause [1.1] New section 52(2A)

This clause inserts new section 51(2A) into the Crimes Sentencing Act.

Existing section 52 provides for the use of victim impact statements in court, and currently limits the use of victim impact statements to circumstances where an offender has been found guilty or convicted of an offence.

New section 52(2A) 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 an offence.

Under new section 52(2A)(a), a victim impact statement prepared by or for a complainant can be tendered to the court for the purposes of determining the indicated sentence when the court considers appropriate.

Under new section 52(2A)(a), a victim impact statement prepared by or for a complainant can be tendered to the court, made orally or read out in court for the purposes of determining the indicated sentence when the court considers appropriate.

Clause [1.2] New section 52(3A)

This clause inserts new section 52(3A) into the Crimes Sentencing Act.

Existing section 52(3) authorises a victim impact statement to be read out in court if the maker of the statement wishes it to be given to the court in that way after the defendant

has accepted the indicted sentence and entered a guilty plea and the court has accepted the plea.

New section 52(3A) makes it clear that a victim impact statement prepared for the purposes of determining the indicated sentence (under new section 52(2A)(a)) is not to be read out in court for the purposes of the court determining an indicative sentence. It would not be appropriate for a victim impact statement to be read out in court until after the defendant had accepted the indicated sentence and entered a guilty plea, and the court had decided to accept the plea.

Clause [1.3] Section 52(6), new definitions

This clause inserts references to the definitions of terms relevant to the above amendments that are contained in the Magistrates Court Act.