



Submission cover sheet

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

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Justice Reform Initiative submission to the Standing Committee on Legal Affairs' Inquiry into the *Magistrates Court (Indicative Sentencing)* *Amendment Bill 2025*

30 January 2026

About the Justice Reform Initiative

The Justice Reform Initiative (JRI) is a national justice advocacy organisation, working to reduce over-incarceration in Australia, and promote a community in which disadvantage is no longer met with a default criminal justice system response. The JRI's patrons include people who share long-standing professional experience, lived experience and/or expert knowledge of the justice system. The JRI is committed to reducing Australia's harmful and costly reliance on incarceration. We seek to shift public discourse and policy away from building more prisons as the primary response of the criminal justice system and move instead to proven alternative evidence-based approaches that break the cycle of incarceration.

Our patrons include more than 140 eminent Australians, including two former Governors-General, former Members of Parliament from all sides of politics, academics, respected Aboriginal and Torres Strait Islander leaders, senior former judges including High Court judges, and many other community leaders who have added their voices to end the cycle of overincarceration in Australia.

The JRI's patrons in the Australian Capital Territory (ACT) are:

- **Professor Lorana Bartels (co-chair).** Professor of Criminology, Australian National University. Adjunct Professor of Law, University of Canberra and University of Tasmania.
- **Professor Tom Calma AO.** Former Chancellor, University of Canberra. Co-Chair, Reconciliation Australia. Former Aboriginal and Torres Strait Islander Commissioner and Race Discrimination Commissioner. 2023 Senior Australian of the Year.
- **Kate Carnell AO.** Former ACT Chief Minister. Deputy Chair, BeyondBlue. Former Australian Small Business and Family Enterprise Ombudsman.
- **Simon Corbell.** Former ACT Deputy Chief Minister, Attorney-General, Minister for Police and Emergency Services. Adjunct Professor, University of Canberra.

- **Dr Ken Crispin KC.** Former ACT Director of Public Prosecutions, Justice of the ACT Supreme Court and President of the ACT Court of Appeal.
- **Karen Fryar AM.** President of ACT Legal Aid Commission. Former ACT Magistrate, ACT Children’s Court Magistrate and Coroner of the ACT.
- **Neil Gaughan APM.** Former Deputy Commissioner of the AFP and former ACT Chief Police Officer.
- **Jodie Griffiths-Cook.** ACT Public Advocate and Children and Young People Commissioner, ACT Human Rights Commission.
- **Gary Humphries AO (co-chair).** Former ACT Chief Minister and Attorney-General, and Senator representing the ACT in the Australian Parliament.
- **Rudi Lammers APM.** Former ACT Chief Police Officer.
- **Dr Michael Levy AM.** Public health physician with 24 years’ experience as a clinician for adult and youth detainees in New South Wales (NSW) and the ACT.
- **Dr Michael Moore AM PhD.** Former independent ACT Minister for Health and Community Care. Past President, World Federation of Public Health Associations. Distinguished Fellow, The George Institute, University of NSW. Adjunct Professor, University of Canberra.
- **The Honourable Richard Refshauge AM.** Former Justice of the ACT Supreme Court and ACT Director of Public Prosecutions.
- **Dr Helen Watchirs OAM.** Former President, ACT Human Rights Commission.

We are supported by our ACT Advocacy and Campaign Coordinator, Indra Esguerra.

Thank you for the opportunity to raise some issues in relation to the **Magistrates Court (Indicative Sentencing) Amendment Bill 2025** (the Bill).

The JRI is pleased that the ACT Government is considering how sentencing factors and processes can be improved in the Magistrates Court process and whether early indicative sentencing would improve outcomes – for the courts and the participants in the justice process.

We note that the Bill, as proposed, “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”. It also “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)”.¹

The proposed indicative sentencing scheme would enable defendants to request or consent to a preliminary indication of their likely sentence, if they pleaded guilty. This

¹ Magistrates Court (Indicative Sentencing) Amendment Bill 2025, Explanatory Statement, p.3.
https://www.legislation.act.gov.au/View/es/db_73595/current/html/db_73595.html

process could resolve cases much sooner than a full trial, especially for minor non-violent offences. Defendants charged with more serious offences would also benefit, as early indication would encourage informed guilty pleas, offer clarity about possible penalties, and allow them time to prepare for any custodial sentence. In addition, the scheme has the potential to improve experiences for complainants - by reducing the need to give traumatic evidence and providing closure sooner. Furthermore, the scheme could enhance court efficiency, reduce delays, free up resources for other cases, and decrease the number and wait times for contested hearings, ultimately benefiting all participants in the justice system.

The JRI would like to draw the Committee's attention to the outcomes of previous relevant pilot schemes and evaluations in Victoria and New South Wales. We note that the Victorian Government undertook a pilot sentence indication scheme from 2008 to 2010 in their higher courts (County and Supreme Courts). The overall objective of the scheme was to promote earlier guilty pleas to streamline court processes and minimise delays, while ensuring sentencing decisions remained open to scrutiny and public understanding. The Victorian Sentencing Advisory Council (VSAC) evaluated the outcomes of the pilot in 2010.² The findings of the evaluation included:

- significant debate about discretionary vs rigid framework models of sentence reduction for the judiciary; and
- the importance of decisions about sentencing being transparent and reviewable. This includes providing sufficient information, so that people understand what factors were considered in influencing sentence reductions and determining the sentence.

Based on the evidence, the VSAC recommended that the Victorian Government enact provisions requiring relevant sentencing information to be disclosed, including what role the guilty plea played in any sentence reduction, but did not recommend a prescribed or codified set of discounts based on plea timing.

The Council also recommended that the scheme be continued.

However, Flynn analysed the Victorian sentence indication scheme in 2010, and considered the VSAC recommendation that the scheme continue was flawed, suggesting that the discretion is best left with the judiciary.³

² Victorian Sentencing Advisory Council, *Sentence Indication and Specified Sentence Discounts: Final Report Summary and Recommendations*, 2007. <https://www.sentencingcouncil.vic.gov.au/publications/sentence-indication-and-specified-sentence-discounts-final-report>

³ Flynn, A, An Indication of Injustice: An Analysis of the Problems inherent to maintaining the Sentence Indication Scheme in Victoria's Higher Courts, *Flinders Law Journal*, 2010, 12: 41-78; Flynn, A, *Jeopardising Justice for What? Keeping Sentence Indications in Victoria*, Paper presented at the Australian and New Zealand Critical Criminology Conference 2010, Sydney, 2011.

Going back further, the NSW Bureau of Crime Statistics and Research (BOCSAR) did a review of the NSW pilot scheme back in 1995.

The NSW scheme generally aimed to encourage people charged with offences to plead guilty at an earlier stage, and thereby reduce court delays. The NSW evaluation found that the scheme “had no effect on the proportion of defendants proceeding to trial”⁴, was not “generally effective in encouraging either earlier or more frequent guilty pleas”⁵, and the introduction of the sentence indication scheme did not reduce the delays between committal and case finalisation. Unfortunately, the evaluators also found that the scheme created a situation, where those who plead guilty did not get a greater discount than defendants who deferred pleading, until they could access the sentence indication hearing. Furthermore,

the lack of clear differentiation in penalty between those who plead guilty under Section 51A and those who plead guilty after a sentence indication hearing is in clear violation of the principles laid down by the NSW Court of Criminal Appeal.⁶

Further discussion of the NSW scheme by Weatherburn and Lind⁷ indicated that, on the whole, the scheme did not reduce the proportion of people proceeding to trial.

New Zealand has also had a clear and codified sentence indication scheme in place since 2011, with very structured rules, as well as prior relevant sentencing reforms in the preceding decade or two. Their sentence indication scheme aims to increase efficiency and certainty in the justice process,⁸ and of course has the same issues to balance as were found in NSW and Victoria. It seems that “the sentence indication hearings are to some extent effective in speeding earlier resolutions”⁹ in New Zealand; however, it should be noted that they sit in a framework with several other court processes that reduce court delay.

In Canada, exploration of options to improve court outcomes and reduce delays has occurred over decades. Options such as resolution discussions, as well as consideration of individual circumstances (such as the use of *Gladue* reports) have been key outcomes. They have also

⁴ Weatherburn, D, Matka, E and Lind, B, *Sentence Indication Scheme Evaluation – Final Report*, NSW Bureau of Crime Statistics and Research, 1995, p.34. <https://bocsar.nsw.gov.au/documents/publications/legislative/l10.pdf>

⁵ Cole, D, Sentence Indication Hearings: Time For A Canadian Version, *Criminal Law Quarterly*, 2018: 65, 319-349, p.332.

⁶ Ibid.

⁷ Weatherburn, D and Lind, B, The Impact of the New South Wales Sentence Indication Scheme on Plea Rates and Case Delay, *University of NSW Law Journal*, 1995, 18: 211-231. <https://www.unsw.edu.au/content/dam/pdfs/law/unsw-law-journal/1990-1999/Vol-No-18-1-1.pdf>

⁸ Information about the NZ Sentence Indication application process is found on the NZ Justice Department website here: <https://www.justice.govt.nz/courts/going-to-court/without-a-lawyer/representing-yourself-criminal-high-court/sentence-indication/>

⁹ Cole, above, p.342.

considered sentence indication, and their journey on this issue over decades is outlined in the Canadian *Criminal Law Quarterly*¹⁰, which also neatly summarises, *inter alia*, the Australian (Victoria and NSW), New Zealand and UK histories of pilot schemes and recommendations.

The JRI notes that indicative sentencing has the potential to support earlier resolution of matters, reduce delay, and improve the experience of complainants, witnesses, and defendants. 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. Whilst there are potential improvements from introducing sentence indication in the ACT, there are also a range of potential negative consequences that must be carefully considered and - if implemented - closely monitored. Critically, the potential for innocent defendants pleading guilty to avoid higher sentences after trial is a real risk. Other identified risks include: sentence indication hearings leading to disproportionate and unduly lenient sentencing; overvaluations of guilty pleas; and concerns about its application in sexual assault matters,¹¹ although restricting the model to the Magistrates Court mitigates against this to some extent.

One particular concern the JRI has is about the discrimination and/or impacts that such a scheme may have on marginalised groups, such as Indigenous people, people with disability, people with low literacy and others, especially if they feel pressured to plead guilty to receive a discount. A scheme that allows for these considerations would be preferable in the ACT.

This review may also be an excellent opportunity to introduce a more formal system for sentencing discounts based on the *Bugmy* principles,¹² which take into account vulnerable people's backgrounds.

To ensure the ACT's model achieves these aims while upholding public confidence in sentencing, the JRI recommends that the ACT model, if adopted:

1. **Expressly preserves judicial discretion** to give or refuse to give an indication and to sentence according to law;
2. **Requires an agreed written basis of facts**, before any indication is given, and permits the court to decline an application where information — including victim impact material — is insufficient;
3. **Mandates transparent reasoning**, including giving indications in open court (subject to suppression, if necessary), and clearly stating the effect of any early guilty plea on the indicated sentence;

¹⁰ For discussion, see Cole, above, pp. 319-350. This includes summary of the Australian (Victorian and NSW), New Zealand and UK histories of similar pilot schemes and recommendations.

¹¹ Ibid, p.348.

¹² *Bugmy v The Queen* [2013] HCA 37.

4. **Codifies voluntariness safeguards**, ensuring that defendants are protected from improper pressure, and enabling a plea to be vacated, where the court proposes to depart materially from an accepted indication;
5. **Provides for a binding effect**, such that once an indication is accepted and a guilty plea entered, the indicated sentence operates as an upper boundary, unless new, material information emerges; and
6. **Embeds data collection and statutory review**, requiring analysis of plea timing, case duration, sentencing outcomes, effects on victims, and any unintended impacts, ideally within a 24-month review period.

Adopting these recommendations will help ensure the ACT's indicative sentencing framework is principled, evidence-based, and effective. With appropriate safeguards, transparency, and review mechanisms, the Bill can deliver meaningful reductions in delay and improve procedural fairness, without compromising judicial independence or the integrity of sentencing.

For further information, please contact:

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