



Submission cover sheet

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

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ACT Legislative Assembly Standing Committee on Legal Affairs

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

January 2026

Justice and Community Safety Directorate

The ACT Government welcomes the Standing Committee's inquiry into the Magistrates Court (Indicative Sentencing) Amendment Bill 2025 (the Bill). The Bill introduces a new indicative sentencing scheme for the Magistrates Court, which will allow a defendant to request an indication of the likely sentence the court would impose if the defendant was to plead guilty. The court must not impose a sentence more severe than the indicated sentence where the defendant accepts the indicated sentence and pleads guilty to the charge for the offence.

Background

On 6 May 2025, in response to the Assembly Resolution of 19 March 2025 regarding bail reforms, the Government announced that it would be developing an indicative sentencing scheme, which aims to reduce the overall number of people on bail by creating greater transparency regarding sentencing outcomes. The proposed scheme would enable defendants to make a decision more quickly regarding their plea, which may reduce the overall time taken to finalise proceedings.

As at 30 June 2024, 50% of people in custody in ACT were unsentenced (i.e. on remand).¹ In facilitating faster resolution of matters, an indicative sentencing scheme may reduce the number and proportion of unsentenced people in custody many of who may not ultimately receive a custodial sentence.

Indicative sentencing is currently available in Victoria, Tasmania and the Northern Territory. The schemes in Tasmania and the Northern Territory are utilised in their summary court jurisdictions. Victoria has indicative sentencing schemes in both the summary and indictable courts, though they operate differently from each other.

Objectives of the Bill

The main objectives of the indicative sentence scheme established by the Bill are:

- To improve a victim/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 victim 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.
- To 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 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

¹ Australian Bureau of Statistics, [Prisoners in Australia, 2024](#) | [Australian Bureau of Statistics](#).

provides an opportunity for a defendant to make necessary arrangements before serving a custodial sentence.

- To create systemic efficiencies in the Magistrates Court by reducing the number of contested hearings and reducing the time for matters to be concluded. This is intended to 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.

Particulars of the Bill

Under the scheme, a defendant will be able to request a sentence indication in relation to any proceedings the Magistrates Court has jurisdiction to hear and decide, other than proceeding expressly excluded (new section 55). To ensure parties have sufficient time to prepare for the new scheme, including putting appropriate mechanisms, policies, forms and systems in place, commencement of the scheme will be delayed for 6 months (clause 2 of the Bill).

The proceedings excluded from the scheme are proceedings for family violence offences, sexual offences and dangerous driving occasioning death. Additional proceedings can be excluded via prescription in the regulations should it be determined necessary and appropriate to exclude additional offences. The scheme will also only apply to adult defendants. The exclusions reflect the particular vulnerability of either defendants or victims in these matters and the likelihood that a Victim Impact Statement (VIS) 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.

A defendant will be able to make an application for a sentence indication to the court any time during the proceeding for the offence up to and including the first day of the hearing (new section 57(2)). The defendant may withdraw their request any time before the sentence indication is given (new section 57(6)). The defendant's legal representative must give written notice of the defendant's intention to apply for a sentence indication at least five business days before the application is made (section 57(3)). If notice is not given, the court must adjourn proceedings for at least five business days (section 57(4)). As indicated above, the notice period will provide the prosecution time to obtain any VISs that are relevant to the indicated sentenced decision.

Where an application is made for a sentence indication, the prosecution may, within a specified period following the first court appearance, elect whether or not it consents to the court giving a sentence indication (new section 58). If the prosecution consents, the court must consent to the application and proceed to deal with the application. Conversely, if the prosecution elects not to consent, the court must not grant the defendant's application for a sentence indication. Giving the prosecution the authority to elect for a matter not to proceed by way of an indicative sentence for a limited period after the first court appearance 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.

In determining a sentence indication, the court must consider a statement of agreed facts, the defendant's criminal record, a VIS (if any) and any other information the court considers relevant to sentencing the defendant for the offence (new section 59). The court may decide not to give a defendant a sentence

indication if the court believes it does not have sufficient information or otherwise considers that a sentence indication would not be appropriate (new section 60).

Before giving the defendant a sentence indication, the court must explain the process and effect of a sentence indication to the defendant (new section 61). This includes explaining that no inference of guilt will be drawn from a withdrawal of an application for a sentence indication or a decision not to accept the indicated sentence. The court must also recommend that an unrepresented defendant obtain their own legal advice in relation to whether to accept or reject an indicated sentence. An indicated sentence will be taken to have been rejected where the defendant accepts the indicated sentence but the court is not satisfied that the defendant has received or had reasonable opportunity to receive legal advice about the indicated sentence (new section 61A(3)).

Under new section 61A, If the application for a sentence indication is made before the first day of hearing, the defendant will have 7 days after the sentence indication is given to accept or reject the indicated sentence unless the court has specified that the election must be made by a time earlier (which cannot be later than the first day of hearing). Where the defendant requests and is given an indicated sentence on the first day of a scheduled hearing, the defendant will be required to make a decision whether to accept the indication that day at a time determined by the court.

Allowing the court to require a defendant to accept or reject an indicated sentence by or at a specified time on the first day of hearing, where the court has given the defendant a sentence indication, reduces the opportunity for a defendant to request a sentence indication as a mechanism to delay a scheduled hearing. the defendant accepts an indicated sentence within the required timeframe, and pleads guilty to the charge for the offence, the court must not impose a sentence more severe than the indicated sentence (new section 61C(2)).

No additional reductions in a sentence will be applied for a defendant who requests an indicative sentence. The current standard sentence reductions will apply to indicative sentencing procedures. Accordingly, 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 indication on the first day of a scheduled hearing.

The Court can, at any time before the defendant is sentenced, revise an indicated sentence if there has been a change in circumstances, that the Court considers would result in a different sentence than the indicated sentence, being imposed (new section 61D). The Court can only revise the sentence if satisfied that the indicated sentence would not be appropriate given the change in circumstances. The Court must also tell the defendant that the court would likely impose a different sentence than the indicated sentence before revising the indicated sentence. The defendant can withdraw their guilty plea if the court revises an indicated sentence.

If the defendant rejects the indicated sentence or accepts the indicated sentence but does not plead guilty, the court will proceed to hear and decide the charge and is not bound by the sentence indication (new section 61B). Generally, the proceedings will be heard by a magistrate other than the magistrate who gave the sentence indication to ensure that the defendant receives a fair trial where the judicial officer has not considered sentencing factors in advance of a determination of guilt.

Information provided for the purposes of the indicative sentencing process will not be admissible in the primary proceedings or other proceedings or any other criminal or civil proceedings except in specified circumstances (new section 61E). A VIS given as part of the indicative sentencing process will be subject to the same safeguards and protections as a VIS provided in other sentencing procedure. Most significantly, the Bill provides that a VIS prepared for the purpose of a sentence indication is prohibited from use in other proceedings unless the victim consents (new section 61E(3)).

The Bill also creates an offence relating to the publication of specific information related to a sentence indication in circumstances where the courts has not decided whether the defendant is guilty or not guilty, where the court finds the defendant not guilty and where the defendant has been found guilty but not sentenced for the offence (new section 61F). An exemption and defences to the offence are provided for by section 61F(3) and section 61F(4) and (5) respectively. The exemption to the offence applies where the publication is necessary for carrying out a court registry's functions or giving information to the defendant. The defences apply where the defendant can show that they had permission to publish the particular information from a specified individual (either the defendant or complainant depending on the information that is published).

The Minister is required to conduct a review into the operation of the provisions introduced by the Bill within three years of commencement (new section 61G).

Benefits

As outlined above, one of the intentions of the scheme is to facilitate faster resolution of proceedings by addressing a defendant's reluctance to plead guilty based on the uncertainty about the sentence that would be imposed. It also reduces uncertainty for the victim. Earlier resolution of matters affords closure to victims sooner than would otherwise occur, as matters which may have been defended hearings are instead finalised more quickly as sentences without the need for the victim to give evidence.

Shortening the overall time to finalise proceedings is likely to reduce the overall number of people on bail and people who are remanded in custody. It is likely to streamline proceedings and create efficiencies for courts, as well as for the Director of Public Prosecutions (DPP), defence counsel and ACT Corrective Services. The earlier a sentence can be handed down the sooner the defendant is able to access supports, such as rehabilitation and other community services.

Given the unique nature of the scheme created by the Bill (for example, the limited types of proceeding the scheme applies to and the safeguards built into the scheme) it is difficult to estimate the likely utilisation of the scheme. Even if only a very small number of matters are resolved through indicative sentencing, this is expected to result in reduced activity for the range of criminal justice entities in relation to those matters. For example, assuming only one matter is resolved through indicative sentencing each week (a very low estimate), assuming the defendant makes the same number of appearances before requesting a sentence indication, the expected savings associated with avoiding one hearing each week will be equivalent to the number of days the hearing would otherwise have taken. Where a sentence indication provides that the person will not be required to serve a sentence of imprisonment, as is likely to be the case for many of the proceedings for which a sentence indication can be given, it is anticipated that a defendant will be more likely to accept the sentence indication.

These anticipated efficiency gains may increase the ability of the Magistrates Courts and agencies, including the DPP, Legal Aid and ACT Policing to undertake more cases within existing resources. Reallocating those resources to other matters may allow other matters to be resolved earlier.

The statutory review will provide an opportunity to assess the actual savings and efficiencies resulting from the scheme. As part of the review, consideration will be given to the number of sentence indications requested and the proportion of sentence indications that are accepted.

Safeguards

As can be seen from the outline of the Bill above, a number of safeguards have been included in the scheme to protect the rights of complainants/victims and defendants and to ensure that a sentence indication is not given in circumstances where it is not appropriate. These safeguards include:

- Exclusion of certain proceedings from the scheme based on the vulnerability of the victims or defendants in those proceedings;
- No requirements for a defendant to request a sentence indication and, absent a request, providing that an indicated sentence cannot be given. Additionally, by not providing a further sentence discount for requesting a sentence indication, a defendant is not pressured to request a sentence indication;
- Allowing a defendant to withdraw their request for a sentence indication at any time prior to the sentence indication being given;
- Requiring the Court to explain to the defendant the process for an effect of sentence indications, including advising an unrepresented defendant to obtain legal advice, before a sentence indication is given;
- Deeming an acceptance of a sentence indication to be a rejection if the court is not satisfied the defendant has received, or had a reasonable opportunity to receive, legal advice about the indicated sentence;
- Allowing a judge to decline to give a sentence indication if they do not consider they have sufficient information or giving a sentence indication would otherwise be inappropriate;
- Allowing the court to revise a sentence indication where circumstances have changed in a way that renders the indicated sentence inappropriate;
- Where the defendant declines an indicated sentence, the court that hears the matter will be constituted by a different Magistrate unless the matter had already been scheduled for hearing when the indicative sentence was requested, or if all parties agree otherwise.;
- Prohibiting the use of sentence indication information in other proceedings including proceedings for the offence the indicated sentence was sought in respect of;
- Restricting the publication of sentence indication information;

- Requiring consideration and facilitating the use of VISs in determining the indicative sentence.

Response to Scrutiny Report

The Committee, in its Legislative Scrutiny Role, made comments on the Bill in its Scrutiny Report 13 released on 26 November 2025. The Committee recommended revisions to the explanatory statement to include analysis on additional human rights limitations as well as a correction to the clause note for clause 7.

A revised Explanatory Statement has been prepared in response to the recommendations and will be tabled in the Legislative Assembly during debate of the Bill.

Concluding Remarks

The ACT Government welcomes the Inquiry into the Magistrates Court (Indicative Sentencing) Amendment Bill 2025. The ACT Government is committed to improving the experience for all involved in the criminal justice system and an indicative sentencing scheme will provide an additional mechanism for resolving matters.