

Serial 122
Justice Legislation Amendment (Summary Procedure) Bill 2015
Mr Elferink

A Bill for an Act to amend Acts administered by the Attorney-General and
Minister for Justice to provide for procedures for offences in the Court of
Summary Jurisdiction

NORTHERN TERRITORY OF AUSTRALIA

JUSTICE LEGISLATION AMENDMENT (SUMMARY PROCEDURE)
ACT 2015

Act No. [] of 2015

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2015

An Act to amend Acts administered by the Attorney-General and Minister for Justice to provide for procedures for offences in the Court of Summary Jurisdiction

[Assented to [] 2015]
[Second reading [] 2015]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Justice Legislation Amendment (Summary Procedure) Act 2015*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

Part 2 Amendment of Justices Act

3 Act amended

This Part amends the *Justices Act*.

4 Section 4 amended

Section 4

insert (in alphabetical order)

criminal record, for Part IV, Division 2A, see section 60AA.

directions hearing, for Part IV, Division 2A, see section 60AA.

disclosure requirement, for Part IV, Division 2A, see section 60AA.

document, for Part IV, Division 2A, see section 60AA.

evidence of an alibi, for Part IV, Division 2A, see section 60AA.

expert evidence material, for Part IV, Division 2A, see section 60AA.

later sentence indication, for Part IV, Division 2A, see section 60AA.

original sentence indication, for Part IV, Division 2A, see section 60AA.

sentence indication, for Part IV, Division 2A, see section 60AA.

5 Part IV, Division 2A inserted

After section 60

insert

Division 2A Pre-hearing procedure for offences and sentence indications

Note for Division 2A

Section 5(2)(ha) of the Sentencing Act provides that, in sentencing a defendant, the court must have regard to the conduct of the defendant during the proceedings, including the extent to which the defendant complied with a requirement imposed on the defendant under this Division.

Subdivision 1 General matters

60AA Definitions

In this Division:

criminal record, see section 3(1) of the *Criminal Records (Spent Convictions) Act*.

directions hearing means a directions hearing that is required under section 60AI.

disclosure requirement means a requirement that the defendant do one of the following:

- (a) serve a notice under section 60AG(1);
- (b) indicate something under section 60AJ(2);
- (c) disclose information under an order mentioned in section 60AK(2)(a);
- (d) serve a document or thing under section 60AM(2);
- (e) serve a document, thing or notice under section 60AN(2).

document has the same meaning as in the *Evidence (National Uniform Legislation) Act*.

evidence of an alibi, see section 331(6) of the Criminal Code.

expert evidence material means:

- (a) written notice of the name and, if known, the address of the person whom the defendant intends to call to give expert evidence; and
- (b) a written description of the expert evidence intended to be adduced.

later sentence indication, see section 60AZB(2).

original sentence indication, see section 60AZB(1).

sentence indication means an indication, given by the Court under section 60AT, of a sentence that the Court would likely impose on a defendant.

60AB Object of Division

The object of this Division is to:

- (a) provide for fair, efficient, expeditious and economical case management procedures in the Court of Summary Jurisdiction including by:
 - (i) facilitating, if appropriate, a defendant's guilty plea to an offence at an early stage of the proceeding in relation to a complaint or information before the Court; and
 - (ii) ensuring that, if a complaint or information proceeds to a hearing of a charge, the hearing is focused on the issues that are in dispute; and
 - (iii) minimising the time between the making of a complaint or the laying of an information and the hearing of the charge; and
- (b) minimise the trauma that might be experienced by victims of crime.

60AC Application of this Division

- (1) This Division applies to all matters over which the Court has jurisdiction, except the matters that are subject to a committal in Part V:
 - (a) if the matter is heard and determined in Darwin, Alice Springs or Tennant Creek; or
 - (b) if the matter is heard and determined in any other place – to the extent a practice direction made under section 201A requires.
- (2) Despite section 201A, a practice direction that regulates procedures of the Court when a matter is heard and determined as mentioned in subsection (1)(b) must be consistent with the object of this Division and adopt the provisions of this Division to the extent practicable.

Subdivision 2 Pre-hearing procedure for offences**60AD Prosecution's obligations after first mention**

- (1) This section applies once the information has been laid or the complaint has been made in relation to a charge.

- (2) The prosecution must, within 7 days after the matter is first mentioned in Court:
 - (a) serve a preliminary brief of evidence on the defendant; and
 - (b) file with the Court a copy of the statement of the alleged facts on which the charge is founded, mentioned in section 60AF(1)(a).
- (3) The purpose of filing the statement with the Court is to assist the Court to facilitate the conduct of the directions hearing.

60AE Contents of preliminary brief of evidence

- (1) A preliminary brief of evidence mentioned in section 60AD must include the following:
 - (a) a copy of the information or complaint in relation to the charge;
 - (b) a statement in relation to the charge made by an informant or the prosecution that complies with section 60AF;
 - (c) any certificate of evidence that is issued under an Act, likely to be relevant to the charge, and available to the prosecution at the time the preliminary brief is served;
 - (d) a copy of the defendant's criminal record or a written statement made by the prosecution that the defendant does not have a criminal record;
 - (e) any written statement made by the informant or prosecution that the informant or prosecution will not disclose any document or thing that would otherwise be included in the preliminary brief but that the informant or prosecution is not required by law to disclose;
 - (f) if there is any information recorded by audio-visual, audio or visual means (including closed-circuit television) in relation to the charge:
 - (i) a copy of the recording, if it is available to the prosecution at the time the preliminary brief is served; or
 - (ii) if the recording is not available to the prosecution at the time the preliminary brief is served – a written statement made by the prosecution that there is information recorded that the prosecution intends to obtain;

- (g) subject to subsection (2), any other document or thing that may assist the defendant in understanding the evidence against the defendant that is available to the prosecution at the time the preliminary brief is served;
 - (h) any other document or thing prescribed by the regulations.
- (2) The prosecution is not required to include, in the preliminary brief, a transcript of a recording of an interview conducted with the defendant in relation to the charge.

60AF Statement made by informant or prosecution

- (1) For section 60AE(1)(b), a statement made by an informant or the prosecution must be a complete and accurate statement of the material available to the informant or prosecution at the time the statement is made and must include the following:
- (a) a statement of the alleged facts on which the charge is founded, including reference to any evidence available to the prosecution to support the alleged facts;
 - (b) a copy of any document or thing containing an admission made by the defendant, and a written summary of any oral statements made by the defendant, in relation to the charge;
 - (c) in relation to persons who may be called as witnesses at the hearing in relation to the charge:
 - (i) a list that contains:
 - (A) the name of each witness; or
 - (B) a description of each witness; or
 - (C) a description of each class of witness; and
 - (ii) an outline of the evidence that each witness is expected to give at the hearing; and
 - (iii) an indication of whether any of those persons have made a statement;
 - (d) a list of any documents or things the prosecution might tender as exhibits at the hearing in relation to the charge and an indication of whether the documents or things are in the possession of the prosecution at the time the statement is made.

(2) In this section:

admission has the same meaning as in the *Evidence (National Uniform Legislation) Act*.

60AG Defendant's disclosure requirements for evidence of an alibi

(1) If the defendant intends to adduce evidence of an alibi in relation to the charge, the defendant must serve the prosecution with a notice of the following:

- (a) the defendant's intention to adduce evidence of an alibi;
- (b) the particulars of the alibi;
- (c) a list of the names of the persons whom the defendant intends to call as witnesses to give the evidence and the address for, or other information that would help locate, each person.

(2) The defendant must comply with subsection (1):

- (a) not less than 7 days before the date and time appointed for a directions hearing for the matter; or
- (b) if the defendant decides to adduce evidence of an alibi within the period that begins 7 days before the date appointed for a directions hearing – as soon as practicable after the defendant makes the decision.

(3) The Court may dispense with the disclosure requirements under this section if the Court is satisfied that there is good reason to do so.

60AH Purpose of directions hearing

A directions hearing is a hearing conducted by the Court in relation to a matter in order to identify the following:

- (a) the issues that are in dispute and the issues that are not in dispute;
- (b) the steps required to progress the matter.

60AI Directions hearing

(1) This section applies if a defendant has not pleaded guilty to a charge at the first mention in Court in relation to the charge.

(2) The Court must appoint a date and time for a directions hearing that is at least 4 weeks after the first mention.

- (3) Subject to subsection (4), the defendant must attend the directions hearing.
- (4) The Court may order, if the Court is satisfied that there is good reason to do so, that:
 - (a) the defendant may appear by counsel or solicitor at the directions hearing; and
 - (b) the defendant is not required to attend the directions hearing.
- (5) The defendant may apply to the Court to appoint a date and time for the directions hearing that is earlier than 4 weeks after the first mention.
- (6) Unless the parties to the directions hearing agree otherwise, evidence of anything said or done in the course of the directions hearing, or any document prepared for the directions hearing, is not admissible in any proceedings in any court or tribunal or before any person acting judicially.
- (7) Nothing in this section:
 - (a) prevents the defendant from pleading guilty to a charge after the first mention but before the date and time appointed for the directions hearing; or
 - (b) prevents the Court from appointing a date and time for another mention of the matter before the date and time appointed for the directions hearing.

60AJ Procedure for directions hearing

- (1) At the directions hearing, the prosecution must indicate:
 - (a) if any document or thing that is required to be provided to the defendant has not been provided to the defendant; and
 - (b) the prosecution's estimate of the length of the hearing if the matter should proceed to a hearing; and
 - (c) any orders the prosecution is likely to seek in relation to the matter.
- (2) At the directions hearing, the defendant must indicate:
 - (a) the issues that are in dispute and the issues that are not in dispute; and
 - (b) whether the defendant intends to plead guilty or not guilty; and

- (c) if the defendant intends to adduce any evidence of an alibi in relation to the charge; and
- (d) if the defendant intends to call any witnesses to give evidence of an alibi in relation to the charge or any expert witnesses; and
- (e) the defendant's estimate of the length of the hearing if the matter should proceed to a hearing; and
- (f) any orders the defendant is likely to seek in relation to the matter.

60AK Orders at directions hearing

- (1) The Court may, at a directions hearing, make orders to progress a matter.
- (2) Without limiting subsection (1), the Court may make orders for:
 - (a) a defendant to disclose information to the prosecution; or
 - (b) the prosecution to disclose information to the defendant.
- (3) If, at the directions hearing, the defendant pleads guilty to the charge, the Court may:
 - (a) accept the plea of guilty; and
 - (b) do one of the following:
 - (i) pass sentence on the defendant for the charge;
 - (ii) appoint a date and time to pass sentence on the defendant for the charge.
- (4) At the conclusion of the directions hearing, the Court must appoint a date and time for one or both of the following:
 - (a) if the Court considers another directions hearing is required – another directions hearing;
 - (b) a hearing in relation to the charge.

60AL Prosecution or defendant may apply for matter to be considered

Section 60AK does not prevent the prosecution or defendant from making an application to the Court, before the matter is next before the Court under section 60AK(4), to appoint a date and time for the matter for:

- (a) another directions hearing; or
- (b) if the defendant indicates after a directions hearing that the defendant intends to plead guilty to the charge – sentencing the defendant for the charge.

60AM Defendant's disclosure requirements for expert evidence and objections

- (1) This section applies in relation to a matter for which a date and time have been appointed for a hearing in relation to the charge.
- (2) The defendant must serve the prosecution with the following:
 - (a) a document or thing in relation to any expert evidence that the defendant intends to adduce at the hearing;
 - (b) written notice of an objection, and the grounds for the objection, by the defendant to:
 - (i) a document or thing that the prosecution intends to tender as evidence at the hearing; or
 - (ii) evidence to be given by a witness whom the prosecution intends to call at the hearing.
- (3) The defendant must comply with subsection (2) not less than 21 days before the date and time appointed for the hearing.
- (4) This section applies to a defendant in addition to the requirements under section 177 of the *Evidence (National Uniform Legislation) Act*.

60AN Defendant's disclosure requirements for subsequent evidence

- (1) This section applies:
 - (a) in relation to a matter for which a date and time have been appointed for a hearing in relation to the charge; and

(b) if the defendant obtains a document or thing in relation to any expert evidence material or decides to make an objection within 21 days of the date and time appointed for the hearing for the matter.

(2) The defendant must serve the prosecution, as soon as practicable after obtaining the document or thing or deciding to make the objection, with the document or thing or a written notice of the objection under section 60AM(2).

60AO Defendant's disclosure requirements – Court may make orders

The Court may dispense with the disclosure requirements under section 60AM or 60AN if the Court is satisfied that there is good reason to do so.

60AP Prosecution and defendant to confirm hearing of complaint or information

(1) This section applies in relation to a matter for which a date and time have been appointed for a hearing in relation to the charge.

(2) Each of the prosecution and the defendant must give a written notice to the Court that they are ready to proceed with the hearing 7 days before the date appointed for the hearing.

60AQ Consequences of non-disclosure

(1) If, at the hearing in relation to a matter, the Court is satisfied that the defendant has not complied with a disclosure requirement, the Court, on the application of the prosecution, may adjourn the hearing to a time that would allow enough time:

(a) for the defendant to do what is required by the provision that imposes the disclosure requirement; and

(b) for the prosecution to further prepare its case and to obtain any further evidence that may be necessary as a result of the disclosure.

(2) On the resumption of the hearing adjourned under subsection (1), the Court may permit the prosecution to adduce any evidence obtained as a result of the disclosure.

60AR Court may shorten or extend time

The Court may, at any time, shorten or extend the time required for doing anything under this Division if the Court is satisfied that there is good reason to do so.

60AS Prosecution's obligations in relation to disclosure not affected

This Division does not affect the prosecution's obligations in relation to disclosure and the consequences for any failure in relation to those obligations under this Act, any other Act, or a law of the Commonwealth, or at common law.

Subdivision 3 Sentence indications**60AT Sentence indication**

- (1) The defendant may apply for a sentence indication from the Court during the proceeding.
- (2) The Court may indicate that, if the defendant pleads guilty to a charge at the time of the application, the Court would be likely to impose on the defendant:
 - (a) a sentence of actual imprisonment to commence at a specified time; or
 - (b) a sentence of another specified type; or
 - (c) if Part 3, Division 6A of the *Sentencing Act* applies to the offence:
 - (i) a sentence that is the minimum sentence of actual imprisonment that the Court is required to impose; or
 - (ii) if an exceptional circumstances exemption under section 78DI of that Act applies to the charge – a sentence that takes into account those exceptional circumstances.
- (3) Subject to subsection (4), the Court may give a sentence indication at any time during a proceeding.
- (4) If the Court has appointed a date and time for a hearing in relation to the charge, the Court must not give a sentence indication within 7 days before the date appointed for the hearing.
- (5) The Court may refuse to give a sentence indication if the Court is satisfied that there is good reason to do so.
- (6) A decision to give or not to give a sentence indication is final.

60AU Court to have regard to material for sentence indication

- (1) If the Court gives a sentence indication, the Court must have regard to the following:
 - (a) a statement of the agreed facts on which the offence is based;
 - (b) the defendant's criminal record;
 - (c) a victim impact statement within the meaning of the *Sentencing Act*, if available at the time of the sentence indication;
 - (d) a victim report within the meaning the *Sentencing Act*, if available at the time of the sentence indication.
- (2) The Court may have regard to any other material that is relevant to the offence and available at the time of the sentence indication.

60AV Court not bound by sentence indication

The Court is not bound by a sentence indication when imposing a sentence on the defendant if the Court that imposes the sentence is constituted by a different Magistrate to the Magistrate that gave the sentence indication.

60AW Court may withdraw sentence indication

- (1) The Court may withdraw a sentence indication if:
 - (a) the defendant does not plead guilty to the offence as a result of the sentence indication within a reasonable time after the sentence indication was given; or
 - (b) there has been a change in circumstances that would likely cause the Court to impose a more severe sentence than the sentence indicated:
 - (i) before the defendant pleads or does not plead guilty to the offence; or
 - (ii) after the defendant pleads guilty to the offence, if the defendant has pleaded guilty as a result of the sentence indication.

- (2) Before withdrawing a sentence indication under subsection (1)(b), the Court must:
 - (a) be satisfied that the sentence that the Court has indicated it is likely to impose would not, as a result of the change in circumstances, be an appropriate sentence; and
 - (b) inform the defendant that the Court would likely impose a more severe sentence than the sentence indicated.
- (3) If the Court withdraws a sentence indication under subsection (1)(b)(ii), the defendant may withdraw the plea of guilty.
- (4) A sentence indication may be withdrawn under this section only if the Court is constituted in one of the following ways:
 - (a) the Court is constituted by the same Magistrate as the one who gave the sentence indication;
 - (b) if section 60AZC applies, the Court is constituted by another Magistrate.

60AX Sentence indication not admissible

An application for a sentence indication, or a sentence indication, is not admissible in any proceedings in any court or tribunal or before any person acting judicially.

60AY Sentence indication does not affect appeal rights

A sentence indication does not affect the defendant's or prosecution's right to appeal against a sentence imposed on the defendant for the offence.

60AZ Sentence indication and plea of guilty

- (1) This section applies if:
 - (a) the Court gives a sentence indication; and
 - (b) the defendant pleads guilty to the offence as a result of the sentence indication.
- (2) Subject to section 60AZC(1), the Court, when imposing a sentence on the defendant for the offence:
 - (a) must be constituted by the same Magistrate as the one who gave the sentence indication; and
 - (b) must not impose a more severe sentence than the sentence indicated.

60AZA Sentence indication and no plea of guilty

- (1) This section applies if:
 - (a) the Court gives a sentence indication; and
 - (b) the defendant does not plead guilty to the offence as a result of the sentence indication.
- (2) Unless the parties agree, the Court that finally determines the charge must not be constituted by the same Magistrate who gave the sentence indication.

60AZB Sentence indication from one Magistrate only

- (1) This section applies if:
 - (a) the Court gives a sentence indication (the ***original sentence indication***); and
 - (b) the defendant does not plead guilty to the offence as a result of the original sentence indication.
- (2) Subject to section 60AZC(2), the defendant may apply for another sentence indication (the ***later sentence indication***) only if:
 - (a) the Court is constituted by the same Magistrate as the one who gave the original sentence indication; and
 - (b) there has been a change in circumstances that is likely to materially affect the appropriateness of the original sentence indicated.
- (3) This Subdivision applies to a later sentence indication in the same way as it applies to a sentence indication.

60AZC Constitution of Court for sentence indication and sentence

- (1) The Court may be constituted otherwise than as required by section 60AZ(2)(a) if the Magistrate who constituted the Court that gave the sentence indication is unable to impose the sentence.
- (2) The Court may be constituted otherwise than as mentioned in section 60AZB(2)(a) if the Magistrate who constituted the Court that gave the original sentence indication is unable to give the later sentence indication.
- (3) For this section, a Magistrate is ***unable*** to impose the sentence or give the later sentence indication if the Magistrate:
 - (a) dies; or

- (b) ceases to hold office as a Magistrate; or
- (c) is, by reason of illness, injury or other cause, unlikely to be able to impose the sentence or give the later sentence indication within a reasonable time.

6 Part VIII heading replaced

Part VIII, heading

omit, insert

Part VIII Transitional matters

Division 1 Justice Legislation Amendment (Committals Reform) Act 2010

7 Part IX heading replaced

Part IX, heading

omit, insert

Division 2 Criminal Code Amendment (Criminal Damage) Act 2011

8 Part VIII, Division 3 inserted

After section 205

insert

Division 3 Justice Legislation Amendment (Summary Procedure) Act 2015

206 Definitions

In this Division:

amending Act means the *Justice Legislation Amendment (Summary Procedure) Act 2015*.

commencement means the commencement of the amending Act.

207 Application of amending Act for charges

Part IV, Division 2A, as inserted by the amending Act, applies to a proceeding in relation to a complaint or information:

- (a) if the complaint is made or the information is laid after the commencement; and
- (b) whether or not an offence charged in the complaint or information is alleged to have been committed before the commencement.

208 Application of amending Act for joined charges

- (1) This section applies if:
 - (a) a complaint is made or an information is laid before the commencement (the ***first complaint***); and
 - (b) another complaint is made or information is laid charging one or more offences against the same defendant after the commencement but before the proceeding in relation to the first complaint begins (the ***other complaint***); and
 - (c) the first complaint and the other complaint are dealt with together.
- (2) A proceeding mentioned in subsection (1)(c) is dealt with as if the amending Act had not commenced.

Part 3 Amendment of Sentencing Act**9 Act amended**

This Part amends the *Sentencing Act*.

10 Section 5 amended

After section 5(2)(h)

insert

- (ha) the conduct of the offender during the proceedings, including the extent to which the offender complied with a requirement imposed on the offender under Part IV, Division 2A of the *Justices Act*.

11 Section 108A inserted

After section 108

insert

108A Stating and recording requirement for sentence after guilty plea

- (1) This section applies if:
 - (a) an offender has pleaded guilty to and been found guilty of an offence in the Court of Summary Jurisdiction; and
 - (b) in sentencing the offender the magistrate has:
 - (i) had regard to the plea of guilty and the stage in the proceedings at which the offender pleaded guilty; and
 - (ii) imposed a sentence that is less severe than the sentence that the magistrate would have imposed but for the plea of guilty.
- (2) In imposing the sentence, the magistrate must also state and record the sentence that the magistrate would have imposed but for the plea of guilty.
- (3) However, it is not an error of law if a magistrate does not state and record the sentence mentioned in subsection (2).

12 Section 123A inserted

After section 123

insert

123A Late guilty plea not relevant for sentencing for offence

- (1) This section applies if:
 - (a) an offender is charged with an offence in the Court of Summary Jurisdiction; and
 - (b) the offence is listed for a trial; and
 - (c) a plea of guilty is received from the offender within 7 days before the date appointed for the trial.

- (2) Despite section 5(2)(j), the court, in sentencing the offender, must not:
- (a) have regard to the plea of guilty and the stage in the proceedings at which the offender pleaded guilty; and
 - (b) impose a sentence that is less severe than the sentence that the magistrate would have imposed but for the plea of guilty.
- (3) Subsection (2) does not apply if the court is satisfied that the offender could not have pleaded guilty any earlier.

13 Part 12, Division 8 inserted

At the end of the Act

insert

Division 8 Justice Legislation Amendment (Summary Procedure) Act 2015

138 Definitions

In this Division:

amending Act means the *Justice Legislation Amendment (Summary Procedure) Act 2015*.

commencement means the commencement of the amending Act.

139 Application of sections 5(2)(ha) and 123A

- (1) Sections 5(2)(ha) and 123A, as inserted by the amending Act, apply only in relation to offences committed after the commencement.
- (2) For this section, if any of the conduct constituting an offence occurred on or before the commencement, the offence is taken to have been committed on or before the commencement.

140 Application of section 108A

Section 108A, as inserted by the amending Act, applies in relation to proceedings for an offence committed before the commencement only if a court starts hearing sentencing submissions after the commencement.

Part 4 Amendment of Youth Justice Act

14 Act amended

This Part amends the *Youth Justice Act*.

15 Section 53 amended

Section 53(1), after "Act"

insert

, except for Part IV, Division 2A of that Act,

Part 5 Expiry

16 Expiry of Act

This Act expires on the day after it commences.