



CRIMINAL LAW

LOWER COURT REFORMS IN THE NORTHERN TERRITORY

- *Local Court Act 2015*
- Amendments to the *Justices Act* (including change of its name)
- *Local Court (Criminal Procedure) Act*
- Amendments to the *Criminal Code*
- Amendments to the *Sentencing Act*
- *Personal Violence Restraining Orders Act 2016*
- *Local Court (Criminal Procedure) Regulations 2016*

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1 LOWER COURT CRIMINAL LAW REFORMS

The aim of the local court reforms is to modernise and rationalise legislation dealing with the lower courts of the Northern Territory. Lower court criminal law reforms have been implemented for the Local Court and the Court of Summary Jurisdiction, through the *Local Court Act 2015* and related amendments.

The large quantity of legislation which has governed the lower courts to date has resulted in unnecessary complexity in the administration of the courts. The *Local Court Act*, enacted in 1989, provides for the establishment of the Local Court which deals with civil matters. The *Justices Act*, enacted in 1928, provides for the establishment of the Court of Summary Jurisdiction and deals with criminal matters as well as procedural matters relating to the operation of that court. It also contains substantive matters relating to sentencing and jurisdiction. Since its commencement, the *Justices Act* has been amended approximately 88 times. The *Magistrates Act* deals with the appointment and termination of magistrates. The *Records of Depositions Act* deals with the keeping of records for all of the courts.

The new *Local Court Act 2015* removes much of the complexity by providing for a single court that has both civil and criminal jurisdiction. It consolidates provisions in a number of Acts dealing with the functions and administration of the court and rationalises terminology. In addition, it makes a number of substantive reforms.

The Local Court Bill was introduced into Parliament on 26 March 2015 after it was released in draft form in May 2014. The Draft Local Court Bill was published on the website of the Department of the Attorney-General and Justice along with a detailed explanatory document which sought comment on both the Act as a whole and a range of technical and policy issues. Comments were received from the legal profession, legal institutions and judiciary including the Chief Justice and the Chief Magistrate. The Department of the Attorney-General and Justice published a detailed report of the outcomes of the consultation along with its analysis of what changes to the Local Court Bill 2014 might be required (<http://www.nt.gov.au/justice/policycoord/lawmake/reports.shtml>). The Local Court Bill 2015 adopted most, but not all, of the outcomes of the consultation.

2 OVERVIEW OF LOWER COURT REFORMS: Criminal law

The *Local Court Act 2015*, which comes into operation on 1 May 2016, will deal with the jurisdiction of the new Local Court, as well as administrative provisions and officers of the court.

The *Local Court Act 1989* has been amended to remove its jurisdictional provisions. The only provisions that will remain in the *Local Court Act 1989* will be those dealing with civil procedure. As such, it will be renamed as the *Local Court (Civil Procedure) Act*.

The jurisdictional provisions of the *Justices Act* are being removed, and it will be re-named as the *Local Court (Criminal Procedure) Act*. As part of the second stage of reform of the lower courts, it is intended to develop a new *Criminal Procedure Act*, which will deal with criminal procedure from commencement of prosecution in the Local Court to the end of the appeal process in the Court of Appeal and Court of Criminal

Appeal. The *Local Court (Criminal Procedure) Act* would be repealed as part of those longer term reforms.

2.1 Local Court Act 2015

The main purpose of the *Local Court Act 2015* is to consolidate into one Act all of the key provisions regarding the establishment and operation of the Local Court and the Court of Summary Jurisdiction. The Local Court will now have both a civil and a criminal jurisdiction. The Act consolidates reforms and rationalises the legislation that underpins the formal structures of the main lower courts.

In addition, the *Local Court Act 2015* provides for policy changes concerning the classification of offences. The main practical effect of this is that 15 offences in the Criminal Code that are currently “crimes” will become “summary offences” and thus be dealt with in the criminal jurisdiction of the Local Court rather than as indictable offences in the Supreme Court.

Other key features of the Act (relevant to criminal law) are as follows:

- provides for “magistrates” to be called “Local Court judges”;
- resolves inconsistencies between the jurisdictions, for example in the area of contempt;
- rationalises judicial, quasi-judicial and non-judicial offices within the lower courts;
- modernises and creates consistency in terminology; and
- makes transitional arrangements.

Appeal provisions are not contained in the *Local Court Act 2015*. Instead, appeal provisions will be retained in the *Local Court (Criminal Procedure) Act* and the *Local Court (Civil Procedure) Act*.

2.2 Local Court (Repeals and Related Amendments) Act 2016

This Act was enacted on 16 March 2016. It is to commence operation on 1 May 2016. The main intention of the *Local Court (Repeals and Related Amendments) Act 2016* is to make consequential amendments to around 33 Acts and regulations that apply to the lower courts, arising from the enactment of the *Local Court Act 2015*. The Act also provides for a range of rationalisations and minor policy reforms for the lower courts and some related amendments that affect the Supreme Court.

A significant feature of this Act is that it replaces references to “crimes” with references to “offences”. As a general rule, the size of the maximum penalty will determine whether an offence is an indictable offence or a summary offence. With one exception, “crimes” that have penalties of two years or less will be amended so that they become summary offences. Offences currently classified as “regulatory” will remain as summary offences. Further, offences that are currently classified as “crimes” because of their wording rather than penalty level in the Criminal Code and the *Misuse of Drugs Act* will be amended so that it is clear that they are summary offences. Generic references to the word “crime” that might mean “offence” found in the *Coroners Act* and the Criminal Code are being amended by replacing “crime” with “offence” or “indictable offence”.

More substantive policy reforms made by this Act include the following:

- amending section 120 of the former *Justices Act* so that a defendant can be tried summarily if the value of property that is the subject of the offence is up to \$50,000 (increased from \$5,000);
- amending section 131A of the former *Justices Act* so that it is clear that the consent of the defendant is not required in order for a section 131A offence to be dealt with summarily;
- amending section 122 of the *Sentencing Act* so that the default maximum penalty is five years imprisonment or 500 penalty units for breach of an indictable offence dealt with in the Local Court under provisions such as sections 120, 121A or 131A of the *Justices Act* (unless the maximum penalty for the indictable offence is less than that period or amount);
- amending section 121A of the *Justices Act* by adding to the list of offences that can be dealt with summarily, the circumstance of offence under section 213(4) and (5) of the Criminal Code, namely burglary of a dwelling house at night-time. The penalty for this offence carries a maximum penalty of 20 years imprisonment if dealt with on indictment. When dealt with summarily the maximum penalty is five years imprisonment (section 122 of the *Sentencing Act*); and
- amending various Acts (eg *Youth Justice Act* and *Supreme Court Act*) so as to spell out the circumstances in which a judicial officer is unable to continue in the hearing of a matter.

2.3 *Local Court (Related Amendments) Act 2016*

This Act was enacted on 17 March 2016. It is to commence operation on 1 May 2016. The main purpose of this Act is to make necessary consequential amendments to about 156 other Acts and regulations that contain cross references to laws affected by the *Local Court Act 2015* and the *Local Court (Repeals and Related Amendments) Act 2016*. The Act makes changes to concepts, definitions and terminology to be consistent with the new *Local Court Act 2015*. A summary of these is provided below:

- changing “Court of Summary Jurisdiction” to “Local Court”;
- changing “magistrate” to “court”, “Judge” or “Local Court Judge”;
- changing “clerk” to “registrar” and where necessary “the Registrar” to “a registrar” and “Registrar” to “registrar”;
- changing “Justice” or “Justice of the Peace” to “justice of the peace” where appropriate;
- changing “Judge” and “Judge of the Supreme Court” to “Supreme Court Judge” where appropriate;
- changing “Justice of the Peace” to “Local Court” where appropriate;
- clarifying where necessary whether an Act confers criminal or civil jurisdiction on the Local Court;
- changing “*Justices Act*” to “*Local Court (Criminal Procedure) Act*”;
- modifying the disqualifying offences in the Schedules to the *Housing Regulations* and *Public Transport (Passenger Safety) Regulations*;
- changing “crime” to “offence”;

- where appropriate when referring to “offence” change to either “indictable offence” or “summary offence”; and
- changing “to be tried summarily” to “to be dealt with summarily” and changing “to be tried on indictment” to “to be dealt with on indictment”.

Offences currently classified as “crimes” that might be re-classified as “summary offences” are found in the *Biological Control Act*, and *Volatile Substance Abuse Prevention Act*. These are being amended so it is clearer that the offences are summary offences. Other generic references to the word “crime” that might mean “offence” are found in the *AustralAsia Railway (Third Party Access) Act*, *Compensation (Fatal Injuries) Act*, *Coroners Act*, *Electricity Networks (Third Party Access) Act*, *Gaming Machine Act*, *Police Administration Act*, *Prostitution Regulation Act*, *Utilities Commission Act*, *Veterinarians Act*, *Veterinarians Regulations*, and *Victims of Crime Assistance Act*.

In addition, section 177 of the *Justices Act* will be amended to provide that section 77C (dealing with costs for failed prosecutions) applies to the Supreme Court when it is making decisions in appeals cases relating to costs incurred in the Local Court. This provision operates subject to a power for the Supreme Court to award higher costs in exceptional circumstances. Regulations are being made under the *Local Court (Criminal Procedure) Act* that will provide new maximum costs payments by the Local Court and the Supreme Court concerning failed prosecutions for summary matters.

2.4 Personal Violence Restraining Orders Bill

The purpose of the Personal Violence Restraining Orders Bill 2015 is to allow for the enactment of a standalone Act dealing specifically with personal violence restraining orders. Currently, provisions with respect to personal violence restraining orders are contained in Part IVA of the *Justices Act*. The Bill makes no changes to the policy with respect to personal violence restraining orders provisions; it merely repeals Part IVA of the *Justices Act* and replicates Part IVA as a standalone Act.

The Personal Violence Restraining Orders Bill 2015 was introduced in the December 2015 Sittings of the Legislative Assembly. The Department of the Attorney-General and Justice sought comments and suggestions with a view to potentially amending the Personal Violence Restraining Orders Bill 2015 by way of Consideration Stage Amendments. Such amendments are currently being drafted for consideration by Cabinet. These are expected to cover the following:

- Provision for interim personal violence restraining orders;
- Definition of ‘personal violence offence’ to include economic abuse, intimidation, harassment, stalking and damage to property;
- Court can hear an application without the need for mediation if it is satisfied mediation would not be appropriate in the circumstances;
- Court can prohibit publication of details of a protected person if it is satisfied there is a risk of harm to the protected person;
- Court can order disclosure of information about the identity or whereabouts of the defendant; and
- Amending section 39(1) of the *Firearms Act* to allow automatic suspension of a firearms licence upon the making of an interim personal violence restraining order.

3 OFFENCE CLASSIFICATIONS AND SUBSTANTIVE CHANGES

3.1 What are the new classifications of Criminal Code offences?

All references to “crimes” will be replaced by references to “offences”. Offences will be classified as either “indictable offences” or “summary offences”. As a general rule, the size of the maximum penalty will determine whether an offence is an indictable offence or a summary offence. The purpose of these amendments is to create consistency across the statute book.

Currently, section 3 of the Criminal Code provides for the classification of offences as being “crimes”, “simple offences” and “regulatory offences”. The main purpose of the classification under the current legislation is that determining which offences are, as a general principle, dealt with by the Supreme Court (namely “crimes”) and which offences are dealt with by the lower court (namely “simple offences” and “regulatory offences”). Section 3 is read with section 38E of the *Interpretation Act* which provides that offences for which the maximum imprisonment penalty is more than two years are “crimes”. However, the statute book also uses the term “summary offence” to describe “simple offences” and “indictable offence” to describe “crimes”. In some cases, the word “crime” is used for offences that have maximum penalties of two years or less. Additionally, the word “crime” is sometimes used in the sense of “offence” / “breach of the law”.

Finally, current section 3 does not make much sense in respect of Part IIAA offences. Under Part IIAA “regulatory offences” no longer exist. Under Part IIAA, offences that might under Part II be “regulatory offences” are drafted so that the relevant fault provisions are identified as being “strict liability” or “absolute liability” (and they are not necessarily summary offences).

3.2 Do the amendments to section 3 affect “regulatory offences”?

The current definition of “regulatory offence” in section 17(1) of the *Interpretation Act* is being retained. It provides that an offence is a “regulatory offence” if the legislation under which it is made states that it is a regulatory offence.

The main purpose of section 3(3) of the Criminal Code was to provide that in the absence of provisions in an Act to the contrary all regulatory offences were to be dealt with summarily. With the exception of one offence under section 18(1) of the *Fisheries Act*, all current regulatory offences are, in fact, summary offences because the maximum penalty for them is two years or less imprisonment. Section 38 of the *Fisheries Act* is being amended so that it states that all offences under the *Fisheries Act* are summary offences.

3.3 What provisions are affected by the replacement of the word “crime” with “offence”?

The only sections of the Criminal Code and *Misuse of Drugs Act* practically affected are those that currently provide for offences called “crimes” despite the fact that they have maximum penalties of two years or less. With one exception they will become summary offences.

The Act amends the following provisions of the Criminal Code so that in the future they will be summary offences dealt with in the Local Court rather than indictable offences dealt with in the Supreme Court:

- Section 71: interfering with political liberty (maximum penalty two years);
- Section 80(1): false claims by officials (maximum penalty one year);
- Section 82(1): abuse of office (maximum penalty two years);
- Section 105: compounding penal actions (maximum penalty one year);
- Section 106: delay in taking a person arrested before the court (maximum penalty two years);
- Section 107: bringing fictitious action on penal statute (maximum penalty two years);
- Section 108: inserting advertisement without authority of the court (maximum penalty two years);
- Section 114: harbouring escaped prisoners (maximum penalty two years);
- Section 121: resisting public officers (maximum penalty two years);
- Section 122: refusal by public officer to perform duty (maximum penalty two years);
- Section 123: neglect to aid in suppressing riot (maximum penalty one year);
- Section 124: neglect to aid in arresting offenders (maximum penalty one year);
- Section 133: gross indecency in public (maximum penalty two years); and
- Section 140: misconduct with regard to corpses (maximum penalty two years).

The only known exception is section 294(2) of the Criminal Code. It deals with “accessories after the fact”. It is considered that it is so interconnected with the commission of indictable offences that it should retain the same status as them.

The Act also makes similar amendments to sections 7(1)(c) (cultivation) and 9(2)(c)(ii) and (f) of the *Misuse of Drugs Act*. These provisions deal with the more minor drug offences. However section 22 of the *Misuse of Drugs Act* already provides that most drug offences that have maximum penalties of 14 years or less can be dealt with summarily. Proposed amendments to the *Misuse of Drugs Act* will provide that the maximum penalty for indictable drug offences tried summarily will be the penalty contained in section 122 of the *Sentencing Act*.

It is not expected that this will have little effect on the workload of the respective courts.

3.4 What are “summarily-triable” offences?

The new section 388 of the Criminal Code (section 72 of the Act) defines the term “summarily-triable offence”. The definition exists for the purposes of section 389 of the Criminal Code. Section 389 provides a jurisdiction for the Supreme Court to deal with summarily-triable offences at the same time that it is dealing with indictable offences.

For the purposes of that function the term "summarily-triable offence" is defined so as to include summary offences, indictable offences that may be dealt with by the Local Court under provisions such as section 121A and 131A of the *Local Court (Civil Procedure) Act* and section 22 of the *Misuse of Drugs Act*.

3.5 Why does the Act repeal section 53 of the *Justices Act*?

Section 53 provides a penalty for persons convicted of aiding or abetting an offence. Section 53 is unnecessary because there are generic provisions contained in the Criminal Code (eg sections 12, 13, 43GB and 294).

3.6 What are the changes to section 120 (property offences for small amounts)?

Section 120 of the *Justices Act* provides for the circumstances in which specified indictable offences dealing with the theft of property and related matters can be dealt with by the lower court in a summary manner rather than by way of indictment in the Supreme Court. The basic monetary limit will be raised from \$5,000 (as set in 1997) to \$50,000 for any one set of proceedings against an individual.

The offences covered by section 120 under both the current *Justices Act* and the *Justices Act* being amended (and renamed) as the *Local Court (Criminal Procedure) Act* are:

- Section 210: general offence of stealing (maximum penalty seven years);
 - Section 219: removal (without stealing) of property on display to the public (maximum penalty three years);
 - Section 221: unlawful appropriation of electrical power (maximum penalty three years);
 - Section 224: making things movable with intent to steal (maximum penalty – three years);
 - Section 227: criminal deception (maximum penalty seven years); and
 - Section 229: receiving stolen property (maximum penalty seven years).

3.7 Why does the Act repeal and replace section 121A?

Section 121A permits burglary related offences to be dealt with summarily. However, a burglary cannot be dealt with summarily if the burglary involves unlawful entry during night-time (between 9pm and 6am). The maximum penalty for this kind of offending is 20 years imprisonment. Since at least 2000 the Office of the Director of Public Prosecutions has sought that section 121A be amended so the offence can be dealt with summarily even if the offence occurs at night-time. The section will be amended to allow for burglary offences occurring at night-time to be dealt with summarily.

3.8 Why does the Act repeal and replace section 131A?

Section 131A has been amended so that it is clear that the Local Court has the discretion on whether section 131A matters can be dealt with summarily.

The current section 131A provides that specified indictable offences of violence may be tried summarily in the Court of Summary Jurisdiction. The section states that this can occur unless the Court is of the view that the matter should be tried on indictment (that is before a jury in the Supreme Court).

The operation of section 131A is the subject of differing approaches between the Supreme Court and the Court of Summary Jurisdiction. The leading Supreme Court decision in *Birkeland-Corro v Tudor-Stack*¹ takes the view that the consent of the defendant is required. More recently, Magistrates have taken a different view. The amendment ensures that the Local Court can exercise discretion with there being no need for the consent of the defendant.

3.9 Why has section 38E of the *Interpretation Act* been repealed?

Section 38E defines what offences are “crimes”. The section is no longer necessary given that the word “crime” is no longer used. It is replaced by:

- a definition of “indictable offence” in the *Interpretation Act*;
- the use of that term throughout the statute book; and
- the new classification of offences in section 3 of the Criminal Code.

3.10 Why has section 38(1) of the *Fisheries Act* been amended?

All offences in the *Fisheries Act* are “regulatory offences”. Section 18, which makes it an offence to use an unregistered vessel that should be registered as a foreign vessel, has a maximum penalty of three years imprisonment. Currently section 3(3) of the Criminal Code operates so that the offence is a summary offence. With the repeal of section 3, section 38 of that Act is being amended so that it states that all offences under the *Fisheries Act* are summary offences. Accordingly, this amendment (in section 109 of the Act) maintains the status quo.

3.11 Why has section 148 of the *Mineral Titles Act* been amended?

Section 145(1) of the *Mineral Titles Act* provides that all offences under the Act are to be prosecuted by way of summary prosecution. Provisions such as this one are unnecessary because provisions of the *Justices Act* (eg section 49), the definitions in the *Interpretation Act* of “summary offence” and “indictable offence,” and new section 3 of the *Criminal Code* operate so as to establish which court has jurisdiction. Accordingly, section 145(1) is being repealed.

The offence in section 148 is the only offence in the *Mineral Titles Act* that has a penalty greater than two years imprisonment. This section will be amended to state that the offence is a summary offence. The amendments maintain the status quo but structure the Act to maintain uniformity.

¹ (2005) 15 NTLR 208.

3.12 What is the purpose and effect of the amendments to the Misuse of Drugs Act?

Most of the amendments to the *Misuse of Drugs Act* relate to changes of terminology. The only substantive amendments are the amendments that change certain offences (eg in sections 7(1), 9, 11 and 24 from indictable offences to summary offences (as per schedule 8 to the Act).

3.13 What is the purpose and effect of the amendments to section 122 of the Sentencing Act?

Section 122 of the *Sentencing Act* is being amended so that the default maximum penalty is five years imprisonment or 500 penalty units for breach of an indictable offence dealt with in the Local Court under provisions such as sections 120, 121A or 131A of the *Sentencing Act*.

This amendment should be read with other amendments that remove a summary offence penalty for specified indictable offences that can be dealt with summarily. These sections include sections 186, 188(2), 188A(2)(a) and (b) and 189A(2) of the Criminal Code and section 22 of the *Misuse of Drugs Act*. The general effect is to increase the maximum penalty that can be imposed where these indictable offences are dealt with summarily.

The section should also be read with section 38DA of the *Interpretation Act*² which provides that for each offence for which imprisonment is a possible penalty there is also the option of a fine. In such cases the maximum fine is proportional around the equation of 100 penalty units for each year of the imprisonment penalty. Thus, for example, if an offence has a two year imprisonment penalty, the maximum fine for an individual instead of or additional to any imprisonment is 200 penalty units. If an offence has a six month imprisonment penalty the relevant fine is 50 penalty units. This section needs to be taken into account in assessing the application of a recent NT Supreme Court of Appeal decision³ that dealt with the maximum fine that can be imposed when a court decides to impose a fine rather than or in addition to imprisonment.

² **38DA Fine in addition to or instead of imprisonment**

- (1) An offence against an Act that is punishable by a term of imprisonment only (other than life) is punishable in addition to or instead of imprisonment by a maximum fine worked out under subsection (2).
- (2) The maximum fine is worked out by multiplying 100 penalty units by the term of imprisonment expressed in years or a fraction of a year if the term is less than 12 months.

³ Ostoic v Threlfo [2016] NTCA 1

4 OTHER CHANGES TO THE *JUSTICES ACT*

4.1 Why have sections 138 and 156 - 160 been repealed?

A number of sections of the *Justices Act* are redundant, and in the main relate to the repealed *Criminal Law Consolidation Act*. Accordingly, the following sections will be repealed:

- Section 138 of the *Justices Act*, which deals with the attendance of witnesses is redundant as it deals with recognizances in respect of prosecutors and witnesses;
- Sections 156: manner of payment to prosecutor or witness;
- Section 157: Court may allow expenses to witnesses for the defence;
- Section 158: power to award payment of expenses of prosecution of a minor offence;
- Section 159: power to award costs of prosecution although charge dismissed; and
- Section 160: manner of payment under sections 158 and 159.

4.2 Why are sections 167 and 169 being repealed and replaced?

Section 167 provides for recognizances on repeal. Recognizances are no longer used and are considered by Courts Administration to be an ineffective nuisance.

The new section 169(1) provides a general duty on an appellant to prosecute an appeal. This replaces the generality of current section 167(1).

The new section 169(2) provides that the Local Court may revoke bail of a bailed appellant who has not prosecuted the appeal.

4.3 Why is section 188 (habeas corpus) being repealed?

Section 188 is unnecessary and will be repealed. It provides that after a summary finding of guilt, no writ of habeas corpus will be issued unless the person states in an affidavit the ground of objection to the finding of guilt. Matters concerning habeas corpus are dealt with in accordance with Order 57 of the Supreme Court Rules.

5 TRANSITIONAL PROVISIONS

5.1 What are the general transitional provisions?

Part 8 of the *Local Court Act 2015* contains the main transitional provisions. These are designed to ensure the smooth transition from the existing Local Court and Court of Summary Jurisdiction to the new Local Court. For example, all proceedings already commenced will continue uninterrupted, judgments and orders made and processes issued will remain valid, and all existing appointments of judiciary and other court officers will continue.

Section 85 of the Act is intended to save the effect of various administrative actions, for example swearing in of officers, done under the repealed Acts so that they remain effective for the purposes of the new legislation. Section 85 provides that proceedings

in place before 1 May 2016 will continue after 1 May 2016 in accordance with the new legislation, but with the court having the option of applying the procedures in place before 1 May 2016 if the new procedures would operate unfairly for a party.

5.2 What are the transitional arrangements relating to amendments to the *Justices Act*?

Transitional arrangements for matters relating to sections 120 and 121A of the *Justices Act* apply to offences committed after the commencement of section 21 of the *Local Court (Repeals and Related Amendments) Act 2016* (ie 1 May 2016). The sections in their pre-amendment form apply to offences committed prior to the commencement of section 21 of that Act.

Transitional arrangements for matters relating to 131A of the *Justices Act* (as amended) apply to offences committed prior to the commencement of section 21. This approach has been adopted on the basis that the amendments to section 131A are designed to clarify the operation of the law rather than change it.

6 COMMONWEALTH JURISDICTIONAL ISSUES

6.1 What steps have been taken to ensure that the operation of Commonwealth legislation is not affected by the changes?

On 3 March 2016 the Commonwealth Government introduced into the Commonwealth Parliament the Law and Justice Legislation Amendment (Northern Territory Local Court) Bill 2016. This Bill amends various Commonwealth laws so that references to Northern Territory magistrates or the Court of Summary Jurisdiction are read as references to Local Court Judges and the Local Court. This legislation was passed by the Commonwealth Parliament on 18 March 2016.

7 COURT ADMINISTRATION AND PROCEDURE

7.1 What is the purpose of the court of record provisions?

Section 5(1) provides that the Court is a court of record. In relation to the exercise of civil jurisdiction, this is a continuation of the current position, where section 4 of the *Local Court Act 1989* establishes the Local Court as a court of record. There is no equivalent provision in the *Justices Act* so the Court of Summary Jurisdiction, being a creature of statute, is not a court of record. The other current courts of record in the Northern Territory are the Supreme Court, the Youth Justice Court and the Work Health Court.

Characterisation as a court of record gives a court certain inherent powers, such as the power to punish contempt. This establishes equal status on the exercise of the Court's civil and criminal jurisdictions.

7.2 What are the provisions regarding access to the records of the court?

Part 4, Division 2 of the *Local Court Act* regulates how court records are kept and accessed. Parties will be entitled to inspect and copy most of the contents of the court file.

Regulations may prescribe fees to do so (section 32), as is the current position under the Justices Regulations, the Local Court Regulations and the *Record of Depositions Act*. The *Interpretation Act* (section 65C) implies into all regulation making powers concerning fees a power to also provide for waiver or refund of fees. For this reason, the Act contains no explicit provisions dealing with waivers and refunds. It is proposed that regulations provide the principal registrar with a general power to waive fees.

Parties will need to seek leave of the court to access an audio or audio-visual recording of any part of a proceeding. This reflects current practice and facilitates the efficient operation of the Court's registry, so that arrangements can be made for listening/viewing or obtaining copies of such material.

Under section 29(2), non-parties will require leave of the court to have access to any record other than judgments and orders. Sub-section 29(3) provides that the Court may grant access on any conditions it thinks fit. It is anticipated the guidelines for the exercise of this discretion will be included in Practice Directions, as currently, or in Rules. As with access by parties, regulations under section 30 may prescribe fees for access.

Reflecting the current law, access to judgments and orders is available equally to parties and non-parties unless the Court makes an order in a specific case, under sub-section 30(2), restricting access.

Exhibits are not part of the case file or the records of the court. Accordingly, a separate provision regarding access to them has been included in the Act. However, section 31 mirrors section 29, distinguishing in the same way between parties and non-parties. As with access to case files, it is anticipated the guidelines for the exercise of this discretion will be included in Practice Directions, as currently, or in Rules. Regulations under section 32 may prescribe fees for access.

The *Records of Depositions Act* will be repealed by the *Justice and Other Legislation (Records of Depositions and Other Matters) Bill 2016*⁴. Part 4, Division 2 of the *Local Court Act* will also apply to the Youth Justice Court, Work Health Court and Coroners jurisdiction, to reflect the current application of the *Records of Depositions Act*. The Bill also amends the *Local Court Act* to require that mandatory transcriptions are provided where a person lodges an appeal to the Supreme Court, is committed for trial or sentence for an indictable offence, or where the court reserves a question of law for the consideration of the Supreme Court.

7.3 Is the Local Court always an “open” court?

Section 36 of the *Local Court Act 2015* provides that, as a general rule, the Court is to be open to the public. There is currently power under section 61(2) of the *Justices Act* and section 28 of the *Local Court Act* for the Court to order witnesses to leave the courtroom until called to give evidence, and this power is retained in the Act.

⁴ The drafting of this Bill has not yet been finalised and thus is not available for release. It is expected to be introduced in the May 2016 sittings of Parliament.

Under the current Acts, there is no general power to close either the Local Court or the Court of Summary Jurisdiction. Section 37 provides this power. The general rule will still be that proceedings take place in open court, unless there is an express statutory requirement that they do not. The new power places the Court on the same basis as the Supreme Court, where the exercise of its inherent jurisdiction would allow for the making of such an order.

7.4 Can persons be excluded from the courtroom?

In an extreme case, a defendant in criminal proceedings may need to be removed from court as a consequence of constant and repeated misbehaviour, and the trial continued in that person's absence. Similarly, in a very extreme case, a lawyer could by their misbehaviour so disrupt the proceedings as to prevent them from coming to a proper conclusion.

Section 361(2) of the Criminal Code provides that an accused person may, in Supreme Court proceedings, be removed and the trial proceed in the defendant's absence if the accused person has conducted themselves so as to render the continuance of proceedings in his or her presence impracticable. This section is now replicated, for the Local Court, as section 38 of the Act.

7.5 Does the Act change the law concerning "frivolous" documents?

Yes. There is currently no express power in either the *Justices Act* or the *Local Court Act* to enable administrative staff in the court registries to refuse to accept lodgement of a document on the basis that it is frivolous, vexatious or otherwise an abuse of the court's process. The purpose of this provision is to prevent wasting resources. It is based on a similar provision in section 17 of the *Magistrates Court Act* (WA). The exercise of this power by a registrar is reviewable by a judge, so anyone aggrieved by a registrar's refusal can apply to a judge for leave to lodge the document.

7.6 Can process be cancelled?

Yes.

Section 41(2) resolves current uncertainty about the power to cancel process, as there is no express statutory provision to do so in the *Justices Act*. Process may, for example, need to be cancelled when it has been issued in error or when a particular summons or warrant is no longer required.

7.7 Does the Act change the law regarding representation of parties before the Local Court?

No.

Section 44 reflects section 29 of the *Justices Act*. It provides that the general position is that a party must either appear for themselves or be represented by a legal practitioner. It does not prevent another person appearing for a party if the Rules or another Act so permits. For example, section 101 of the *Care and Protection of Children Act* allows for a

legal practitioner or ‘any other person’ to represent a party in proceedings in the Local Court’s family matters jurisdiction.

7.8 What changes does the Act make to the law regarding rules and practice directions?

The main change is that a committee of local Judges is responsible for the making of the rules. In the other Australian lower courts, jurisdiction to make rules is not vested in the Chief Magistrate alone. Section 48 provides that rules are made by the Chief Judge and at least four other judges. As with all other subordinate legislation, the rules are subject to the disallowance provisions contained in the *Interpretation Act*.

Division 5 of Part 4 replicates the current power of the Chief Magistrate to make practice directions under section 21 of the *Local Court Act* and section 201A of the *Justices Act*. Practice directions are made by the Chief Judge and operate subject to any rules made under section 48 and the other provisions of the Act.

7.9 What changes does the Act make to the law regarding “contempt” before the Local Court?

The new provisions in Part 4, Division 4 (sections 45-47) of the *Local Court Act 2015* are largely based on sections 33 and 34 of the *Local Court Act 1989*. It is also made clear that failure to comply with a court order is contempt, as is failure to comply with an undertaking (such as a promise in court by a lawyer to do something).

Section 45 sets out all the ways in which a contempt of court can be committed, whether it is in the face of the court or not. It covers the existing situations under the *Local Court Act* and the *Justices Act* and also includes failure to comply with an order (sub-section (3)) and failure to comply with an undertaking (sub-section (4)).

7.10 What is the maximum penalty for contempt of court?

The maximum penalty for contempt has been reviewed and increased to six months imprisonment or 50 penalty units. Currently it is \$20 or imprisonment for one month under the *Justices Act*, or 15 penalty units (\$2,235) under the *Local Court Act*. It is considered that the current penalties under both Acts are insufficient. The new penalties are the same as those which apply to NTCAT. The power to punish for contempt is confined to judges only.

7.11 What are the changes to “contempt” provisions under the Work Health Administration Act?

The *Work Health Administration Act* contempt provisions under sections 19 and 20 will be repealed and replaced with new sections 19-20A, which mirror sections 45-47 of the *Local Court Act 2015*. The purpose is that of achieving uniformity of both the processes and the penalties in all of the courts for which Local Court Judges are the presiding judicial officers. The maximum penalties will reflect those in the *Local Court Act 2015*.

8 APPEALS AND JUDICIAL REVIEW

8.1 Where are the provisions for appeals?

Appeals provisions will be retained as part of the *Local Court (Civil Procedure) Act* and the *Local Court (Criminal Procedure) Act*. These Acts will, at least for the short term, be renamed versions of the current *Local Court Act* and the *Justices Act* (following the repeal of those parts of them that will be covered by the *Local Court Act 2015*).

8.2 What are the provisions for judicial review of decisions made by the Local Court?

The Supreme Court will have the power to review any decision made by the Local Court. The prohibition of judicial review of decisions of the Local Court in the civil jurisdiction will be repealed. There is no similar prohibition regarding review for the Court of Summary Jurisdiction. Consolidation of the criminal and civil jurisdictions requires consistency and the preferable policy position is to extend the power of review to the civil jurisdiction rather than remove it regarding exercise of the criminal jurisdiction.

8.3 What are the provisions dealing with bail decision appeals?

Provisions dealing with appeals from bail decisions are contained in the *Bail Act* and in the *Bail Regulations*. They are being consolidated into the one set of provisions in the *Bail Act*. This amendment aims to improve accessibility to the law. The substance of the policy of the provisions has not changed.

9 OFFICES OF THE COURT

9.1 Why is the title of “Magistrate” changing to “Judge”?

The term “Judge” is the appropriate terminology to describe the activities of the current magistrates of the Local Court. It reflects the current levels of professionalism and responsibility of the judicial officers of the lower court. However, its use is not intended to indicate any change to the level of responsibility of lower court judicial officers.

9.2 Changes to judicial officer in the course of proceedings

Section 7 sets out the circumstances in which the court may be constituted by a judicial officer other than a judicial officer who was involved in another part of the proceedings. This section addresses problems identified in the *Justices Act* regarding when a magistrate becomes ‘seized’ of a matter. It spells out that, as a general rule, until the taking of evidence commences, the court need not be constituted by the same judicial officer. However, for pleas of guilty, a different magistrate from the one who heard the plea may impose the penalty.

A new judicial officer may take over if the original judicial officer is unable to continue after the taking of evidence has commenced. The *Local Court Act 2015*, *Youth Justice Act*, *Supreme Court Act* and *Work Health Administration Act* have been amended so that each Act spells out the circumstances in which the senior judicial officer for the relevant court can appoint another judge to take over from a judge who is unable to continue.

The amendments will provide that a judge is unable to continue if he or she dies, vacates office in such a way as not to be able to finalise proceedings or is by reason of illness, injury or other cause unable to continue the proceedings without unreasonable delay. Under other provisions of each of the Acts, the senior judicial officer of the court can appoint another Judge to take over from a Judge who is unable to continue. A decision by the senior judicial officer cannot be challenged.

9.3 What is the role of the Chief Judge for the Local Court?

Sections 20 – 22 of the *Local Court Act 2015* define the position of the Chief Judge as the head of the Local Court and ensure that the holder of that office has the requisite powers to ensure the efficient administration of the Court’s business.

The Chief Judge of the Local Court is given the power to give directions regarding matters such as the place of work of other magistrates and matters incidental to the performance of judicial duties (section 22). The section does not diminish judicial independence as the Chief Judge cannot direct how a judicial officer will perform his or her duties.

9.4 What happens if a Local Court Judge's appointment ends prior to the completion of a matter?

Section 58 facilitates the completion of proceedings by a judge even if their appointment has been terminated or office vacated. For example, if a judge turned 70 in the course of a summary hearing, he or she would be able to continue to hear and determine the proceedings, including making judgment and imposing sentence (if applicable). It is based on section 20A of the *Magistrates Act*. It does not apply if termination occurs under section 57(2) and (3).

9.5 What is the role of the principal registrar?

Section 72 provides that the functions of the registrars are:

- to exercise the powers delegated to them under rules of court;
- to perform administrative functions conferred on them by rules of court or by any legislation;
- to perform other functions conferred by the Act or any other Act; and
- to perform administrative functions as directed by the Chief Judge.

The principal registrar will also be responsible for keeping court records under section 27(1).

Section 74 is based on sections 9(2), 11 and 21(3) of the *Local Court Act* and sections 201A(3) of the *Justices Act* and section 28 of the *WA Magistrates Court Act*.

9.6 What are the roles of registrars?

Section 72(b) provides that the rules of court may delegate to registrars some of the court's jurisdiction. The rules of court cannot delegate the power to hear or determine civil claims. Nor can the rules delegate the power to conduct a preliminary examination (ie committals) or to hear and determine a charge for an offence nor can they delegate the power to punish for contempt. Section 75 provides that a judge can hear appeals from decisions of registrars.

9.7 What is the role of Justices of the Peace?

The legislation maintains the current role of Justices of the Peace. Under current law, the Chief Magistrate in practice decides whether or not to allocate matters to Justices of the Peace. In recent times, Chief Magistrates have ceased allocating criminal work to Justices of the Peace.

In relation to criminal proceedings, the provisions in the *Justices Act* regarding the judicial powers of Justices of the Peace are complex and do not reflect current practice. The Act, in section 6(4), provides that the Local Court may be comprised by one or more Justices of the Peace for purposes to be prescribed in the regulations. These will be the only circumstances where Justices of the Peace can function as the Local Court.

It is proposed that the regulations replicate the current role for Justices of the Peace. The regulations will provide that the Chief Judge may allocate any matter, other than those matters referred to in section 6(5), to a Justice of the Peace. This is a matter that is still being considered (ie the extent to which justices of the peace may exercise the powers of the Local Court).

Other changes relate to some functions which currently are potentially carried out under the *Justices Act*. These relate to matters such as the issuing by the Court of warrants for arrest. This change was made at the request of the Chief Magistrate. The affected provisions include sections 25, 58, 59 and 60. The judicial functions of Justices of the Peace will be provided for in regulations to be made for the purposes of section 6(4) of the *Local Court Act 2015*. The intention is to retain the current functions.

9.1 Personal Violence Restraining Orders

9.2 Personal Violence Restraining Orders Act 2016

- The *Personal Violence Restraining Orders Act 2016* provides standalone personal violence restraining orders legislation developed consequential to the earlier enactments of the *Local Court Act 2015* and consequential amendments in the *Local Court (Repeals and Related Amendments) Act 2016*. The current *Justices Act* will, from 1 May 2016, be known as the *Local Court (Criminal Procedure) Act*. It will deal with criminal procedure matters only.
- Part IVA of the *Justices Act*, which dealt with personal violence restraining orders is being repealed and replaced by the *Personal Violence Restraining Orders Act 2016*.
- A personal violence restraining order allows a person who experiences violence in a relationship, but is not in a domestic relationship, to seek a civil remedy called a ‘Personal Violence Restraining Order’.
- The primary purpose of the order is to secure the safety of a victim, with the grounds of the finding of the order being, on the balance of probabilities, that the defendant committed a ‘personal violence offence’ that caused harm to the victim.
- The circumstances under which a person can apply for a Personal Violence Restraining Order include if a person has committed a ‘personal violence offence’, defined as including a personal violence offence (being an offence against any of the following provisions of the Criminal Code: Part V, Division 2; Part VI, Divisions 3 to 6A; and section 211 or 212), or it is likely a personal violence offence is going to be committed against a person by another person.
- A ‘Personal Violence Offence’ generally includes any offences of assault, indecent assault, reckless behaviour which may cause personal injury, etc.

9.3 What are the main differences between Part IVA of the *Justices Act* and the *Personal Violence Restraining Orders Act*?

- There is a more comprehensive definition of ‘personal violence offence’. See new definitions of ‘economic abuse’, ‘intimidation’; and ‘stalking’. The result is a definition similar to the definition of ‘domestic violence’ as outlined in the *Domestic and Family Violence Act* (section 6). Such conduct includes economic abuse, intimidation, harassment, stalking and damage to property.
- Includes a new ‘interim personal violence restraining order’.
- Changes concerning making an ‘application for order’ so that applications for ‘interim personal violence restraining orders’ to also be made; Changes concerning mediation have been made so as to enable the Court to hear an application without the need for mediation if the Court is satisfied ‘that a referral is not appropriate in the circumstances’.
- New sections provide that a personal violence restraining order and an interim personal violence restraining order may include an order prohibiting the publication of personal details of a protected person or witness in a proceeding if satisfied publication would expose the person to the risk of harm.
- New sections assist applicants to obtain information pertinent to an application, such as the identity and address of a defendant, for the purposes of making an application for a personal violence restraining order. They enable the Court to

- make an order where the person seeking protection has made reasonable inquiries but is unable to ascertain the identity or whereabouts of the defendant and another person may have information or a document or thing that will assist in ascertaining the identity or whereabouts of the defendant.
- The court may order the other person to attend court to be examined as to the identity or whereabouts of the defendant or to disclose the information or document or thing that relates to the identity or whereabouts of the defendant to the protected person.
 - An offence is created regarding the publication of a person's personal details is inserted. It provides that a person commits a strict liability offence if a 'personal violence restraining order' or an 'interim personal violence restraining order' prohibits the publication of a person's personal details and the person engages in conduct that results in contravention of the order. The maximum penalty for a breach is 200 penalty units (currently \$30,600) or imprisonment for one year. This is consistent with sections 26 and 124 of the *Domestic and Family Violence Act*.

10 Subordinate legislation - regulations

10.1 Justices Amendment Regulations 2016

.Section 89(2) of the *Local Court Act 2015* provides that, on the commencement of that Act, the Justices Regulations as in force on that day become rules of court under section 48 of the *Local Court Act 2015*.

These are technical regulations providing for the removal from the current *Justices Regulations* of the regulations that should not, from 1 May 2016, be in Rules. The main such regulation is regulation 14 (dealing with costs for a failed prosecution). See below, part 12.3, for the regulations that replace regulation 14.

10.2 Local Court Regulations 2016

These provide for:

- The circumstances in which justices of the peace may exercise the jurisdiction of the court (as referred to in section 6(4) of the *Local Court Act* ;
- The fees payable for proceedings and related matters. They cover both civil and criminal fees.
- One change is that no fees are payable for matters commenced under the *Personal Violence Restraining Orders Act 2016*;
- Regulation 12 provides for the waiver by fee in civil matters by a registrar. This power operates subject to any directions from the principal registrar;

10.3 Local Court (Criminal Procedure) Regulations 2016

These replace regulation 14 of the *Justices Regulations* (which is being repealed by the *Justices Amendment Regulations*) 2016. They provide for a new limit on the amount of costs that are payable for failed prosecutions as provided for in section 77C of the *Local Court (Criminal Procedure) Act*. The basic amounts are \$1500 for the first day and \$850 following days. These amounts are in place until 30 June 2017. From that day they will be adjusted in accordance with any CPI changes that occurred in the previous calendar year. This review will occur for each subsequent year.

Higher amounts can be ordered in exceptional circumstances.

Regulation 5(2) provides a list of factors a court may take into account in deciding what amount to order.

These principles apply to the Supreme Court when it is dealing with a costs order for matters that took place in the lower court. See section 177(2A) and (2B) of the *Local Court (Criminal Procedure) Act*⁵.

The new scale does not apply to matters that were commenced prior to the commencement of these regulations.

11 Subordinate legislation – rules of court

11.1 Various rules

Various rules of court are expected to be made by the Local Court judges on 4 May 2016 (being the first business day of the operation of the new Local Court).

⁵ Amendment made by the *Local Court (Related Amendments) Act 2016*