



Northern  
Territory  
Government

DEPARTMENT OF  
THE ATTORNEY-GENERAL AND JUSTICE

# NT Justice Criminal Law Reform – August 2014

Presentation by Ms Ros Chenoweth  
Legal Policy, SFNT August 2014



# Legislation Recently Commenced

- *Criminal Code Amendment (Identify Crime) Act 2014;*
- *Justice and Other Legislation Amendment Act 2014;*
- *Criminal Code Amendment (Presumption of Joint Trials) Act 2014.*



# Criminal Code Amendment (Identity Crime) Act 2014

- This Act inserts a number of specific identity theft offences into the Criminal Code:
  - *section 228C – dealing in identification information;*
  - *section 228D – possessing identification information; and*
  - *section 228E – possessing equipment used to deal in identification information or identification documentation*
- To assist victims in remedying the effects of identity crime the Act also amends the *Local Court Act* and *Sentencing Act* to provide for a court to issue a certificate to a victim of identity theft confirming that certain transactions were in fact carried out by another person. The certificate may be issued to the victim by either the Local Court or a sentencing court.
- The certificate will not restore the victim's credit rating but may be used by the victim to prove that certain transactions were fraudulent.



## Application by victim:

- New section 28C of the *Local Court Act* allows a victim of identity crime to apply to the Local Court for a certificate at any time, irrespective of the prosecution for an identity crime offence or the identity of a perpetrator.
- The Local Court Amendment Rules 2014 prescribe the application form for a certificate, to be used by the victim in addition to the certificate itself.

## Issue by sentencing court:

- If a certificate has not been issued prior to sentencing, Part 5, Division 1AA of the *Sentencing Act* provides for the sentencing court to issue a certificate to the victim, whether on their own initiative or on application by the prosecution, when sentencing an offender for one of the new identity theft offences.
- The Sentencing Amendment (Identity Crime) Regulations 2014 prescribe the form for the victims certificate to be issued by the sentencing court.

# Justice and Other Legislation Amendment Act 2014

- This Act addresses a number of issues with the interpretation or application of the *Sentencing Act* by:
  - amending section 64 of the *Sentencing Act* to ensure that every parolee is required to serve any unexpired term of imprisonment, upon sentencing for a new offence, whether their parole has been revoked by a court or the Parole Board;
  - amending section 131 of the *Youth Justice Act* to mirror the amendments to section 64, but with application to youth offenders;
  - amending section 107 of the *Sentencing Act* to allow the Supreme Court to take into account summary offences when sentencing an offender for indictable offences; and
  - introducing new sections 388, 389, 390 and 391 into the Criminal Code to allow the Supreme Court to finalise and dispose of summary charges when sentencing an offender for indictable offences.



# Operation and Application Criminal Code provisions

- AGD is aware the Chief Magistrate intends to release a Practice Direction outlining providing the procedure and application form for the transfer of summary charges under new section 390 of the Criminal Code, in late August 2014.
- It is not intended that all summary offences laid against the defendant will be transferrable under the new provisions, rather those offences which are connected to the indictable matter. For example:
  - an indictable assault which also constitutes a breach of domestic violence order;
  - dangerous driving cause death committed while driving unlicensed;
  - where an offender resists police during apprehension for an indictable offence;
  - in the course of committing an indictable drug offence (i.e production or supply), the offender has committed simple offences (i.e possession of a drug or 'thing')
  - serious harm and a firearm offence relating to the weapon used to inflict the injury;
  - there is a substantive period of remand in custody that could not otherwise be taken into account.

# Criminal Code Amendment (Presumption Against Joint Trials) Act 2014

- This Bill amends the Criminal Code to introduce a presumption of joint trials in sexual offence cases involving multiple complainants;
- The presumption will be modelled on s194 of the Victorian *Criminal Procedure Act 2009*;
- Applies to offences where indictment presented after commencement ie 1 July 2014;
- The reform is consistent with the Pillars of Justice principles to assist victims of crime, particularly victims of domestic violence or sexual offences, so that they do not have to give evidence multiple times where this can be avoided.



# Legislation for passage August 2014 Sittings

- *Criminal Code Amendment (Dangerous Driving During Pursuit) Bill 2014;*

# Criminal Code Amendment (Dangerous Driving During Pursuit) Bill 2014

- The Bill gives effect to a recommendation made by the Territory Coroner resulting from a coronial - Inquest into the deaths of Clifford Norman and Kwementyaye (Jennifer) Taylor [2013] NTMC 001. This recommendation was reiterated recently in the Findings relating to the Inquest into the deaths of Kumintji (Pauline) Abbott, Kumintji (Kendrick) Oliver and Kumintji (Joy) McNamara.
- The NT Coroner recommended the NT Government consider amending the Criminal Code to insert of offence of dangerous or reckless driving whilst being pursued by police. Similar offences have been included in justice legislation is NSW, WA and Victoria.
- The Criminal Code will be amended to include an offence of 'dangerous driving while pursued by Police'. The offence will have a maximum penalty of five years imprisonment and will be structured in a manner similar to the dangerous driving causing death offence.



# Legislation for proposed for introduction in August 2014 Sittings

- *Criminal Property Forfeiture Amendment Bill 2014;*



# Criminal Property Forfeiture Amendment Bill 2014

- This Bill contains amendments to the criminal property forfeiture substitution provisions of the Act resulting from the Full Court of the Supreme Court decision in the DPP v Green [2010] NTSC 16.
- The amendments ensure the aims of the crime-used property and the crime-used property substitution declaration sections of the Act cannot be circumvented by criminals or criminal syndicates gaining legal interests in property through an agreement with an innocent third party.
- The amendments ensure that when a criminal enters into an agreement regarding property they crime-use, they will be subject to the crime-used property substitution declaration.

- Criminal Code Amendment (Remittance of Sentences) Bill 2014;
- Anti-Discrimination Amendment Bill 2014;
- Information Amendment Bill 2014;
- Bail Amendment Bill 2014.

- It is proposed to amend the *Anti-Discrimination Act* to:
  - confer jurisdiction for hearings to the NT Civil and Administrative Tribunal;
  - reform the complaint process to ensure expedition of complaints and reduce internal processes; and
  - bring the criminal responsibility of offences into line with Part IIAA of the Criminal Code.

- It is proposed to amend the *Information Act* to:
  - enable public sector organisations to not comply with the Information Privacy Principles in emergency situations;
  - extend the scope of Grants of Authorisation to all IPPs rather than limiting to IPP 1, IPP 2 and IPP 10;
  - provide that the Commissioner approves and gazettes a code of practice rather than requiring the Commissioner to obtain the approval of the Minister and for the Minister to then submit to the Administrator to final approval.



# Bail Amendment Bill 2014

- The draft Bill is currently circulating for public comment and submissions are due by 29 September 2014.
- The proposed Bill removes the 'neutral' presumption matters in section 8(1) and inserts new matters in section 7A(1) – presumptions against bail.
- The Bill also inserts three criteria that a court may take into account when assessing suitability for bail namely youth, cognitive/mental impairment and cultural obligations.
- The offences at sections 44 and 45 will be redrafted.
- Section 38(2A) will be amended to include any offence to which section 7A was applicable. This will ensure that where a court is satisfied a breach of bail occurred, the court must revoke bail if the offence is a serious violence offence or an offence to which section 7A applied.



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# **Pillars of Justice Report Card**



## What is the Pillars of Justice project?

The Pillars of Justice is an integrated policy initiative involving AGD, Corrections, NT Police and other agencies (for example the Crimes Victims Advisory Committee). It is criminal law reform package aimed at tackling repeat offending, youth crime, court processes/delays and violence. AGD is the lead Agency and the Attorney-General is the lead Minister.

This framework is a reassessment of the way certain laws and policies are administered, seeks to streamline court procedures, seeks to provide for the early assessment of at risk youths and seeks to ensure that justice legislation in the Territory is robust.

The six pillars of the package are:

- Police powers reform;
- Swift Justice - Court law reform;
- Youth Turn – Youth Justice;
- Future Corrections - Corrections reform; and
- Victims First;
- Statutes for a Safer Future.

# Pillars of Justice

*From before arrest to beyond parole*

## Police Powers Reform

- Alcohol Protection Orders
- 120 extra Police
- Alternatives to Summary Offence resolution post arrest
- Electronic Monitoring of offenders on bail
- Better grades of service for calls for assistance
- Local Government Community Safety Action Plans

## Swift Justice (Court Law Reform)

- Mandatory minimum sentencing for violent offenders
- Public access to justice
- Improving Court facilities
- Community sentencing options including for traffic offenders
- Summary procedure reforms
- Committal hearings reforms

## Youth Turn (Youth Justice)

- Youth Justice Framework
- Youth Boot Camps
- Review of Detention Centre Operations
- Community-based Youth Supervision Model

## Future Corrections (Corrections Reform)

- Sentenced to a Job
- Regional partnerships including regional work camps
- Strong community partnerships
- Electronic Monitoring for management of offenders
- Through care model
- Serious Sex Offender implementation
- Pre and post release supported accommodation
- Training, education and programs
- Custody management

## Victims First

- Safe Homes policy
- Safe Streets Audit
- Cross government strategy to reduce domestic and family violence
- Community services to victims of crime including remote and regional support
- Enhanced use of victim-offender conferencing and court orders to protect victims
- Witness Assistance Service
- Financial support to victims of crime
- Promoting the rights of victims of crime

## Statutes for a Safer Future

- Reform of the *Police Administration Act*
- Review of the *Bail Act*
- Review of the *Summary Offences Act*
- Reform of the *Sentencing Act* and the Criminal Code
- Review of the *Victims of Crime Assistance Act*
- Sexual Assault Framework

# Swift Justice – Summary Procedure

- Announced on 28 August 2013 and the broad aims of the legislative reforms relate to:
  - Early disclosure of the prosecution case by way of preliminary briefs of evidence;
  - Summary case conferencing;
  - Obligations on defendants to disclose alibi evidence, expert witnesses and factual matters that the defendant considers cannot be proved ;
  - Sentence indications; and
  - Specified graduated maximum discounts applicable for early pleas.
- The Chief Magistrate implemented some of these reforms by way of Practice Direction
- The Department consulted with stakeholders in Alice Springs and Darwin and reported back to the Attorney-General.
- There was a wide range of competing views expressed by stakeholders
- The Attorney-General is currently considering the best way forward for the reforms.



# Summary Offences and Criminal Code – Part IIA

- The *Summary Offences Act* Draft Report was released for public consultation in 2012 and again in 2013. A number of submissions were received from stakeholders.
- The *Summary Offences Act* will be repealed and replaced with a more up to date Act. The offences will be drafted according to Part IIAA, a number of new offences will be included, some offences will be moved to more appropriate Acts (for example the *Liquor Act* and *Trespass Act*), and a number of offences will be repealed.
- An Exposure Draft of the Bill will be released for public consultation toward the end of 2014 and includes offences relating to tattooing and body piercing – introducing child restrictions.
- Proposed introduction of Bill in first half of 2015;
- Criminal Code (Sexual Offences) - A bill providing for the application of Part IIAA to sexual offences is currently being prepared. It should be released later in 2014. It is largely based on the Model Criminal Code.

# NT Whole of Government Domestic and Family Violence Reduction Strategy

## Background

On 20 September 2013, the Government authorised the Department of the Attorney-General and Justice to take the role of lead agency for the cross-government coordination of a strategy to reduce domestic and family violence under the Pillars of Justice Framework.

Under the Framing the Future blueprint, the Government has committed to implementing the National Plan to Reduce Violence Against Women and Children 2010-2022. The Northern Territory Domestic and Family Violence Reduction Strategy will provide the vehicle through which the National Plan will be implemented.

A thorough consultation process was undertaken between October 2013 and February 2014 to inform the development of the strategy

# NT Whole of Government Domestic and Family Violence Reduction Strategy

## Strategy - Aims

The Strategy aims to increase the safety of victim-survivors and their children, reduce rates of intergenerational trauma caused by exposure to domestic and family violence, increase accountability of perpetrators and establish integrated service delivery systems that are sustainable and adaptable

The Strategy will be launched shortly.

Likely to result in review of legislation – *Domestic Violence Act*, as well as *Sentencing Act*, *Evidence Act* and Criminal Code

For more information please call Ms Jo Sangster Director of the Domestic and Family Violence Unit on ph 8935 7675.



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# Other Reviews

2014/15



- Vulnerable witnesses – current reports
  - First - relating to possible extension of section 21B of Evidence Act to lower courts;
  - Second – Crofts Directions