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DEPARTMENT OF  
THE ATTORNEY-GENERAL AND JUSTICE

# NT Justice Law Reform Update

Alice Springs, 20 May 2015

Darwin, 10 June 2015

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# Overview of today's session

Today we will be covering these main areas:

- Recently passed legislation
- Bills currently before the Legislative Assembly
- Update on NTCAT transfer of jurisdiction
- Future legislation and reform projects
- Current legislative reviews



# Overview of Today's Session

Legislation passed in recent Sittings (since about August 2014):

- Local Court Bill 2015
- Justice Legislation Amendment Bill 2015
- Bail Amendment Act 2015
- Termination of Unit Plans and Unit Titles Schemes Act 2015
- Information Amendment Act 2015
- Criminal Code Amendment (Remission for Resentencing) Act 2015
- Anti-Discrimination Amendment Act 2014
- Criminal Property Forfeiture Amendment Act 2014
- Criminal Code Amendment (Dangerous Driving During Pursuit) Act 2014



## Legislation awaiting passage in the June and future Sittings:

- Justice Legislation Amendment (Summary Procedure) Bill 2015
- Sentencing Amendment Bill 2015
- OPCAT Bill 2013



# Overview of today's session

- Update on NTCAT recent transfer, and upcoming transfer of jurisdiction
  - Recent transfer of jurisdiction
  - Planned legislation conferring further jurisdiction



# Overview of today's session

## Upcoming legislation projects

- Pillars of Justice- update (final);
- Summary Offences Bill;
- Evidence (National Uniform Legislation) Amendment Bill
- 'Daniel's Law'- Sex Offender Website
- Domestic and Family Violence Amendment Bill
- Criminal Code Amendment (Sexual Offences) Bill
- Statute Law Amendment (Directors Liability) Bill
- Residential Tenancies Act – Central Bond Board and Residential Tenancies Databases
- Fines and Penalties (Recovery) Act amendments
- Criminal Code Part IIAA conversion/modernisation project



# Overview of today's session

## Reviews

- *Domestic and Family Violence Act* Review
- National Recognition of DVOs working group
- *Community Justice Centre Act* Review;
- Implementation of results of the Vulnerable Witnesses Legislation Review



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# Bills passed in recent Sittings





# Local Court Bill 2015

- The Local Court Bill 2015 was passed in the April 2015 Sittings -not yet commenced
- The Bill:
  - Modernises legislation dealing with lower court
  - consolidates the Local Court and the Court of Summary Jurisdiction (not the Youth Justice Court of the Work Health Court);
  - resolves inconsistencies between the jurisdictions, for example in the area of contempt;
  - rationalises judicial, quasi-judicial and non-judicial offices within the lower courts;
  - changes the title of magistrates to Local Court Judges; and
  - increases the size of the civil jurisdiction of the Local Court from \$100,000 to \$250,000.



# Local Court Bill 2015

- Process of modernising jurisdictional and procedural legislation to achieve:
  - Local Court Act;
  - Supreme Court Act;
  - Criminal Law and Procedure Act (this will replace the current procedural provisions in the Criminal Code and the Justices Act); and
  - Civil Law Procedure Act (this will cover procedural issues for the Local Court and may deal with Supreme Court procedure).
- Consequential Amendments Bill for intro +/- November 2015
- Local Court Act to commence operation in early 2016



# Justice Legislation Amendment Bill 2015

- Commenced 1 June 2015 .
- Amends the *Anti-Discrimination Act* to reflect best practice in complaints handling ensuring a more efficient and accessible process for parties.
- Transfers jurisdiction for hearings of anti-discrimination complaints to the NTCAT.
- Amends the *Information Act* to provide that matters handled by the Anti-Discrimination Commissioner are exempt from the FOI process under section 44 of the *Information Act* on the grounds of public interest.
- Amends the *Northern Territory Civil and Administrative Tribunal Act* to provide for enforcement measures for orders made by the NTCAT and to clarify matters with respect to the review process.
- Makes various other minor amendments, including addressing typographical errors in the *Fences Act* and the *Residential Tenancies Act*.



# Bail Amendment Act 2015

- passed in the February 2015 Sittings and commenced on 15 April 2015.
- removes the 'neutral' presumption
- inserts those offences/circumstances that were neutral presumption into the provision relating to presumption against bail (ie matters in section 7A(1))
- The offences of terrorism, arson and sabotage have also been included in the presumption against bail section
- The Bill also inserts three criteria that a court may take into account when assessing suitability for bail namely: the fact the accused was a youth, suffered a cognitive/mental impairment ; and cultural obligations (such as the accused is Indigenous)
- The offences at sections 44 and 45 have been redrafted so they comply with Part IIAA of the Criminal Code
- If breach bail and they are on bail for serious violence offence or offence which has presumption against section 38(2A) requires court to revoke the bail agreement (new bail or remand)



# Termination of Unit Plans and Unit Titles Schemes Act 2015

- The Termination of Units Plans and Unit Title Schemes Act 2014 commenced on 1 January 2015
- Repealed provisions of the *Unit Title Schemes Act* and *Unit Titles Act* that deal with terminations of schemes and units plans
- Provides for the termination of developments by unanimous agreement of all of the owners of units in the development;
- for developments having less than 10 units, for the NTCAT to have jurisdiction to terminate the development;
- for developments comprising 10 or more units, a process by which the prescribed majority can decide that the development be terminated
- that process provides objecting owners with the options of selling their unit to a third party, selling the unit to the proponent (under the processes laid out in the Act) or appealing to the NTCAT



# Information Amendment Act 2015

- passed in the February 2015 Sittings and commenced on 6 May 2015
- Purpose to establish a clear legal basis for the collection, use and disclosure of personal information in the event of a disaster or an emergency that might occur inside or outside of the Territory.
- Definition of ‘emergency situation’ by reference to section 18(1) of the *Emergency Management Act*.
- extends the definition of ‘law enforcement agency’ to the Northern Territory Emergency Service and the Fire and Rescue Service.
- new section 81A enables public sector organisations to collect, use and disclose personal information during an emergency situation for a purpose that directly relates to the response to, management of or recovery from the emergency situation.



## Criminal Code Amendment (Remission for Resentencing) Act 2015

- The Criminal Code Amendment (Remission for Resentencing) Act 2015 commenced on 6 May 2015.
- Amends section 411(4) Criminal Code to give the Court of Criminal Appeal the power to remit matters back to the original sentencing court for re-sentence upon a successful appeal.
- The power to remit is an additional power and does not preclude the Court of Criminal Appeal from resentencing the appellant, if appropriate.



# Criminal Property Forfeiture Amendment Act 2014

- This Act amended 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 sections cannot be circumvented through an agreement with an innocent third party.
- Requires Court to make substitution declaration if matters in s81(2) made out
- Clarifies crime-used property not available if legal or equitable interest or right to occupy created by agreement with innocent person; or if the person did not have effective control of the property (and if made out the substitution provisions can be used)
- This Act was passed in the October 2014 Sittings of the Legislative Assembly and commenced on 26 November 2014.





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

- Gave effect to a recommendation made by Coroner - Inquest into the deaths of Clifford Norman and Kwementyaye Taylor [2013] NTMC 001. This recommendation was reiterated recently in the Findings relating to the Inquest into the deaths of Kumintji Abbott, Kumintji Oliver and Kumintji McNamara.
- Coroner recommended the NT Government consider amending the Criminal Code to insert of offence of dangerous or reckless driving whilst being pursued by police.
- New s174FB of the Criminal Code - 'dangerous driving while pursued by Police'. The offence has a maximum penalty of five years imprisonment and is structured in a manner similar to the dangerous driving causing death offence (max penalty = 5 yrs imprisonment)
- This Bill was passed by the Legislative Assembly in the August 2014 Sittings and commenced on 29 October 2014.



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# **Bills currently before the Legislative Assembly**



# Justice Legislation Amendment (Summary Procedure) Bill 2015

- Introduced 30 April. Expected to be debated/passed in June 2015
- Commence later in the year (Sept/ Oct)
- Seeks to reform summary criminal procedure
- Key elements:
  - Preliminary briefs of evidence
  - Mandated court directed Directions Hearings
  - Defence disclosure requirements (including alibi, expert evidence, issues in dispute)
  - Sentence Indication scheme
  - Amendments to the Sentencing Act
  - To apply in Darwin, Alice Springs, Tennant Creek; otherwise by Practice Direction



# Sentencing Legislation Amendment Bill 2015

- Resolves anomaly identified by Hiley J in *Waters v James NTSC 37 -s 57* of the *Sentencing Act* may preclude the fixing of a new single non-parole period for offenders sentenced to a term of imprisonment of less than 12 months while already serving a non-parole period for a previously imposed prison sentence.
- Amends s 53 to make clear that a court, subject to s 57, cannot fix a non-parole period where it imposes a prison sentence of less than 12 months, or a term of imprisonment suspended in whole or part.
- Amends s 57 to allow fixing a new single non-parole period where an offender is serving a term of imprisonment for which a non-parole period has been fixed, and is subsequently sentenced to any further term of imprisonment for other offending.
- Makes virtually identical amendments to the equivalent provisions in the *Youth Justice Act*.
- Expected to be debated in June 2015



# Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) (National Uniform Legislation) Bill 2013

- to enable the ratification by the Commonwealth government of the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- The Convention provides for governments to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any Territory under its jurisdiction.
- The Treaties Committee recommended establishing an effective monitoring framework, as required under the Protocol.
- The Bill provides for the United Nations subcommittee to access places of detention, access information and interview detainees and other people.
- ‘place of detention’ is defined as any place under the NT government’s jurisdiction and control in which people are, or may be, involuntarily deprived of their liberty.
- Not passed pending Commonwealth Government ratifying Op Protocol and establishing the framework



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# NTCAT Update



# Recent Jurisdictional Transfer

- Jurisdictional Transfers already complete:
  - Poppy Regulation Act -review;
  - Births, Deaths and Marriages Act - review;
  - Fences Act – original;
  - Victims of Crime Assistance Act – review;
  - Former Lands, Planning and Mining Tribunal jurisdiction – review and original;
  - Termination of Unit Titles;
  - Licensing matters – including former NT Licensing Commission matters – mostly review jurisdiction;
  - Local Government Tribunal matters;
  - Residential Tenancies/Caravan Parks – original and review – 1 June 2015;
  - Anti-Discrimination matters – original – 1 July 2015;
  - Health Practitioner matters – original and review - 1 June 2015.



# Upcoming and Proposed Transfers

- Upcoming – proposed transfer dates:
  - Ports Management/Marine Appeals Tribunal – 1 July 2015;
  - Superannuation Review Board – mid-2015.
- Proposed in 2015
  - Small claims jurisdiction – original - second half 2015
    - Proposed increase in jurisdiction to \$25,000
  - Information Act – original – second half 2015;
  - Mental Health review jurisdiction – still under consideration.





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# Other Legislation and projects

# 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



# Evidence (National Uniform Legislation Amendment) Bill

- AGD working on a proposal to amend section 19 of the *Evidence (National Uniform Legislation) Act* to
  - ensure that a victim of an offence involving domestic violence is compellable as a witness; and
  - cannot object to giving evidence under section 18 because they are a spouse or defacto partner etc
- A consultation draft Evidence (National Uniform Legislation) Amendment Bill 2015 and Paper was placed on the AGD website.
- Comments were sought on both the Consultation Bill and the proposed risk management strategy
- **Submissions closed 4 June 2015**



# Summary Offences Amendment Bill

- The *Summary Offences Act* Draft Report was released for public consultation in 2012 and again in 2013
- The *Summary Offences Act* will be repealed and replaced with a more up to date Act.
- The offences will be drafted according to criminal responsibility provisions in Part IIAA Criminal Code
- 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
- In particular new offences
  - tattooing and body piercing of children; and
  - a new shop steal offence (<\$200).
- An Exposure Draft of the Bill is expected to be released for public consultation by the middle of 2015



# Daniel's Law- Sex Offender Website

- On 15 October 2014 the NT Govt announced proposal for a publicly accessible website featuring details and locations of convicted serious sex offenders.
- The proposed NT Sex Offender Public Website legislation is will be named 'Daniel's Law' in memory of child sex offender victim Daniel Morcombe.
- The website will include:
  - an image;
  - physical description; and
  - regional whereabouts of convicted serious sex offenders
- any information published on the website will be freely available to the public
- Safeguards will be in place to protect victims' privacy



# Fines and Penalties (Recovery) Amendments

- Currently \$millions in unpaid fines and penalties owing to the Northern Territory (2013/14 FY over \$49 million outstanding)
- relate to court ordered fines, restitution and compensation orders and unpaid infringement notice penalties.
- On 1 May 2014, the Attorney-General announced a 'crack down' & proposed to introduce a number of new enforcement measures by amendment to the *Fines and Penalties (Recovery) Act*, including:
  - naming and shaming of serious fine defaulters on a public website;
  - wheel clamping of motor vehicles owned by people who continue to avoid paying their debts; and
  - cessation of business for individuals with the Motor Vehicles Registry to prevent long-term fine defaulters from conducting business with the registry such as registering a vehicle or renewing a licence.



# Fines and Penalties (Recovery) Amendments

- AGD is developing a Bill to amend the *Fines and Penalties (Recovery) Act* to provide for and support the new enforcement measures
- will also address a number of other administrative matters including
  - allowing for persons, other than bailiffs, to serve community work orders, and
  - to ensure offences are consistent with Part IIAA of the Criminal Code.



# Domestic and Family Violence Amendment Bill

- Section 42 of *Domestic and Family Violence Act* sets out the matters an ‘authorised officer’ must record on a police DVO (reasons for making DVO, date of return)
- Proposed to amend section 42(1) to make it clear the authorised officer does not have to *personally* record these matters on a police DVO





# Directors' Liability Reforms

- COAG's Seamless National Economy National Partnership Agreement
- A directors' liability provision imposes personal criminal liability on directors for breaches of laws by corporations.
- Reforms aim to ensure that a director is not liable for corporate fault unless they have personally assisted in the commission of an offence or been reckless in relation to the corporation's offending.



# Directors' Liability Reforms

- The proposed Bill amends +/- 39 Acts and 2 Regulations using COAG principles and guidelines:
- **Type 1 provision-** failure to take reasonable steps to prevent the corporation's offending is element of offence and must be proved by the prosecution beyond reasonable doubt.
- **Type 2 provision-** deemed to be liable with reasonable steps defence – evidential burden on director
- **Type 3 provision-** deemed to be liable with reasonable steps defence – legal burden on director



# Residential Tenancies Act

## Residential Tenancy Databases

- Residential tenancy databases are privately operated electronic databases containing information about an individual's tenancy history
- Increased use of databases and concerns about the effects of inappropriate or inaccurate information listed led to a national review by the former Standing Committee of Attorneys-General (now the Law, Crime and Community Safety Council) and the former Ministerial Council on Consumer Affairs (now the Consumer Affairs Forum).
- The review led to the development of national Residential Tenancy Databases Model Provisions
- all jurisdictions other than NT have enacted the model provisions or provisions similar to the model provisions
- AGD is developing a proposal to implement the Model Laws



# Residential Tenancies Act

## Central Bond Holding Scheme in the NT

- Proposing a centralised rental deposit system like all other jurisdictions
- Issues paper on AGD website:
  - Suggests that the establishment of a centralised bond holding scheme is the most efficient and equitable vehicle to promote fair dealing between property owners and tenants in the disbursement of the rental deposit.
  - The issues paper also suggests that given the size of the Territory's rental accommodation pool, the most cost effective way to manage such a scheme would be to deliver the scheme via another established state or territory scheme.
  - **Submissions closed 31 May 2015**

# Criminal Code Amendment (Sexual Offences) Bill

- The Criminal Code Amendment (Sexual Offences) Bill continues the process of converting the Code
- Draft Consultation Bill published and comments by end Jan 2015.
- Finalising the Bill for introduction mid to late 2015

# Criminal Code Amendment (Sexual Offences) Bill

- Bill will provide:
  - for the repeal of current sexual offences and replacing them with offences that are modernised to comply with Part IIAA of the Criminal Code;
  - new offence categories: misconduct with human remains, sexual acts without consent, sexual acts against or with children, sexual acts against 16-17 year old children by persons in positions of authority, sexual acts against or with mentally impaired persons by carers, incest, bestiality, and gross indecency in public.
  - Re-enacting some existing Part IIAA compliant offences (eg sexual intercourse without consent)
  - Placing all sexual offences together in the Code



## Part IIAA of the Criminal Code conversion of offences

- The project to continue the conversion of offences in the Criminal Code to Part IIAA is continuing
- As discussed previously, this includes imminent *Summary Offences Act* redraft, and Criminal Code Amendment (Sexual Offences) Bill
- Coming up : *Misuse of Drugs Act*, some time in the future Criminal Code (non-sexual non-fatal offences against the person) and Criminal Code (Property).
- More distant future: remainder of Criminal Code
- Other NTG Acts including AGD portfolio are converted as and when we amend the legislation



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# Reviews

2015





# Vulnerable Witnesses

- Arising from ‘Little Children Are Sacred’ Report and in turn AGDs ‘Review of Vulnerable Witness Legislation Report’ - 16 March 2012
- Recommendations focused on ways to reduce the impact of Court proceedings on vulnerable witnesses.
- Recommendations 1 (monitoring the effectiveness of the vulnerable witness legislation), 3 (use of screens at the Alice Springs Magistrates’ Court) and 4 (issue of judicial dress) implemented by non-legislative means.
- In 2013 AGD further consulted on Recommendations 7 and 8.



# Vulnerable Witnesses

- **Rec 7** -when 'serious violence offences' and 'sexual offences' proceed to hearing in the lower court, a witness's evidence in chief can be admitted by way of their police interview and a special sitting may be held for any cross-examination
- **Rec 8** whether section 4(5) of the *Sexual Offences (Evidence) Act* should be amended to give judges further guidance as to the directions if any the judge should give re timing of complaint (ie *Crofts*)
- In 2014 AGD reported on the outcome of consultation- on AGD website:
  - Rec 7- 21B should apply in lower court at the discretion of the Court, noting operational issues;
  - Rec 8 – no change to law to overcome *Crofts* (Courts have been dealing with the issue since *Crofts* +/- 14 years)



# Vulnerable Witnesses

- AGD developing a proposal to implement recommendations 2, 5, 6, 7 and 9 of the Review of Vulnerable Witness Legislation Report and the 2 addendum issues:
- Rec 2 = amend section 21B *Evidence Act* to clarify that a vulnerable witness does not need to be present when recorded stmt being played
- Rec 5 = amend child witness principles in 21D *Evidence Act* to add that all efforts should be made to ensure matters that could delay or interrupt child's evidence determined pre-trial
- Rec 6 = amend 21A *Evidence Act* and 104 DFV Act to clarify circumstances in which appropriate to determine a person is under a 'special disability'
- Rec 7= amend 21B *Evidence Act* to make clear applies in lower court
- Rec 9 = amend definition of 'recorded statement' in DFV Act to ensure it is taken by an appropriately qualified person, including a police officer



# Domestic and Family Violence Act Review

- Part of the Domestic and Family Violence Reduction Strategy- Safety Every One's Right 2014-17 involves reviewing the *Domestic and Family Violence Act*
- The *Domestic and Family Violence Act* has not been the subject of a review since it commenced.
- April 2015, AGD released an issues paper to a number of stakeholders. The issues paper called for submissions on any aspect of the *Domestic and Family Violence Act*.
- No particular issues raised in the paper, but attached some of the 2010 ALRC and NSWLRC recommendations in Report on Family Violence.
- **Submissions are due by 13 July 2015**



# National DVO Recognition Working Group

- Reducing violence against women is a priority item on COAG agenda.
- Model legislation is being developed by a National working group to underpin a National Domestic Violence Order Scheme to enable automatic recognition and enforcement of domestic violence orders across jurisdictions.
- A National Domestic Violence Order Information Sharing System prototype is being developed by the CrimTrac Agency to improve national coordination and information sharing of domestic violence orders and related court orders across systems and between jurisdictions



# Community Justice Centre Act Review

- Section 32(1) of the *Community Justice Centre Act* (the Act) requires that the Act be reviewed
- The purpose of the review is to review the following:
  - the operation and effectiveness of the Act;
  - the operation and effectiveness of the Community Justice Centre (the Centre);
  - the operation and effectiveness of the Community Justice Consultative Council (the Council); and
  - any other matters arising from the operation of any provision in the Act that the Chief Executive thinks should be subject to a review.
- September 2014, a Discussion Paper was released to the public
- Evaluation of the operation and effectiveness of the Act was also undertaken.
- The Department of the Attorney-General and Justice is currently preparing a report



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**Thank you.**

**Any questions?**

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