Northern Territory Government

DEPARTMENT OF
THE ATTORNEY-GENERAL AND JUSTICE

NT Justice Criminal Law Reform – October 2013

Northern Territory Government

Overview

Legislation passed in the August and October 2013 Sittings:

- *Criminal Code Amendment (Cheating at Gambling) Act 2013* (commenced 7 October 2013);
- *Criminal Code Amendment (Female Genital Mutilation) Act 2013*; and
- *Misuse of Drugs Amendment (Methamphetamine) Act 2013*.

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Overview

Legislation awaiting passage in the November/December 2013 and future Sittings:

- Criminal Code Amendment (Child Abuse Material) Bill 2013;
- Criminal Code Amendment (Expert Psychiatric or Medical Evidence) Bill 2013;
- Misuse of Drugs Amendment Bill 2013;
- Criminal Code Amendment (Hit and Run) Bill 2013;
- Mental Health and Related Services Amendment Bill 2013;
- Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) (National Uniform Legislation) Bill 2013;

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Overview

Other legislation and projects

- Pillars of Justice;
- *Summary Offences Act* Final Report;
- Reform of Criminal procedures in lower courts; and
- Criminal Code – Part IIAA conversion.

Reviews

- Local Court Reform;
- *Bail Act* Review
- Review of *Victims of Crime Assistance Act;*
- Review of the 2010 committals reforms

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Bills passed in the August and October 2013 Sittings

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Criminal Code Amendment (Cheating at Gambling) Act 2013

- This Act was passed by the Legislative Assembly on 21 August 2013 and commenced by Gazette Notice on 7 October 2013. This Act contains five new offences directed at identified match-fixing behaviours and is modelled on the New South Wales legislation.

- The offences are:

  - section 237H creates the offence of engaging in conduct that corrupts the betting outcome of an event. It requires proof that a person engaged in conduct that corrupts a betting outcome of an event and does so with the intention of obtaining a financial advantage or causing a financial disadvantage in connection with any betting on the event.

  - section 237J creates the offence of facilitating conduct that corrupts the betting outcome of an event. It is similar to the previous offence but covers scenarios where a person facilitates conduct by offering to engage in conduct, encouraging another to engage in conduct, or entering an agreement about conduct that corrupts a betting outcome rather than actually having engaged in that conduct themselves.

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Criminal Code Amendment (Cheating at Gambling) Act 2013

- section 237K creates the offence of concealing conduct or an agreement about conduct that corrupts the betting outcome of an event from the appropriate authorities. All of these offences carry a maximum penalty of seven years' imprisonment.

- Sections 237L and 237M create offences relating to the use of corrupt conduct information and inside information. Each of these terms is defined within the respective sections. Corrupt conduct information is information about conduct or proposed conduct that corrupts the betting outcome of an event. Inside information is defined as information about an event that is not generally available and would be likely to influence the betting on the event. The use of corrupt conduct information for betting purposes carries a maximum penalty of seven years, whilst the use of inside information for betting purposes carries a maximum penalty of two years.

- New South Wales has enacted the *Crimes Amendment Cheating and Gambling Act* 2012.

- The South Australian parliament has enacted the Criminal Law Consolidation Cheating and Gambling Amendment Bill 2012; and

- The Victorian Parliament recently passed the Crimes Amendment Integrity In Sports Bill 2013.

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Criminal Code Amendment (Female Genital Mutilation) Act 2013

- This Act amends section 186C of the Criminal Code by removing the term ‘child’ and inserting the term ‘person’.
- This means the offence will now relate to removing a person from the Territory with the intention of having female genital mutilation performed.
- The Act contains a detailed transitional provision which states that the amendment only applies to offences committed after commencement of this Bill.

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Misuse of Drugs Amendment (Methamphetamine) Act 2013

- This Act moves the reference to methamphetamine, currently in Schedule 2, to Schedule 1 of the Act.

- The Act also prescribes a trafficable quantity of 2.00 grams and a commercial quantity of 40.00 grams for the new Schedule 1 reference (noting the current Schedule 2 reference prescribes 2.00 grams and 100.00 grams respectively). The Act removes the references to levomethamphetamine and methylamphetamine, as these compounds were duplicate references of methamphetamine and were superfluous.

- The amendment was required as the NT was the only jurisdiction in Australia where the highest available maximum penalties prescribed in drugs legislation did not apply to methamphetamine.

- As a result of this Act, the maximum penalties for offences involving methamphetamine, namely those involving basic and trafficable possession (section 9), commercial possession (section 9), supply and commercial supply (section 5(2)), non-commercial and commercial manufacture or production (section 8(2)) and theft of a dangerous drug (section 11(2)), will increase.

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Misuse of Drugs Amendment (Methamphetamine) Act 2013

- The maximum penalty for use in section 13 will not change as the maximum penalty is not dependent upon which Schedule a drug is prescribed in.

- The Act will also affect the operation of section 122A of the *Justices Act* (matters that can be finalised in the Court of Summary Jurisdiction) and will affect the operation of the mandatory actual imprisonment provisions in the *Misuse of Drugs Act*, as they relate to methamphetamine.

- This Act contains a detailed transitional provision which states that:
  - Schedules 1 and 2, as in force prior to commencement of this Bill, continue to apply to offences committed before commencement;
  - the Bill only applies to offences committed after commencement; and
  - an offence is taken to have been committed after commencement only if all the conduct constituting the offence occurred after commencement. This is of particular important where an indictment alleges conduct that occurred between dates.

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Bills currently before the Legislative Assembly

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Criminal Code Amendment (Child Abuse Material) Bill 2013

- The Bill seeks to ensure that all child abuse material seized by police can be forfeited and destroyed, either on order of a court of on order an officer of senior rank, regardless of whether charges are laid.

- Clause 6 of the Bill amends section 125B(6) of the Criminal Code by omitting the wording 'convicts a person of a crime' and inserting the wording 'finds a person guilty of an offence'. This means a court can exercise the powers in section 125B(6)(a) and (b) when there is any finding of guilt for a crime against the section and will cure any issue regarding the term 'convicts'.

- Clause 5 of the Bill will insert sections 125AB and 125AC into the Criminal Code.

- Section 125AB is based upon section 19B of the *Misuse of Drugs Act* and empowers a police officer of senior rank, Commander or above, to authorise the forfeiture and destruction of child abuse material, an article containing child abuse material or an article the officer reasonably believes contains child abuse material. This power can be exercised whether or not a person has been charged or is to be charged in relation to the material.

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Criminal Code Amendment (Child Abuse Material) Bill 2013

- Section 125AC empowers the officer of senior rank to return an article forfeited under section 125AB to the owner of property, but only if the officer of senior rank is satisfied that the child abuse material has been deleted from the item (completely and permanently).

- The discretion in section 125AC will be rarely used, however it will be available in circumstances where an electronic device is stolen and then used to download child abuse material.

- The Bill contains a transitional provision similar to the methamphetamine and female genital mutilation Acts.

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Criminal Code Amendment (Expert Psychiatric or Medical Evidence) Bill 2013

- This Bill implements the Northern Territory Law Reform Committee's recommendations contained in the 'Report on Defendants Submitting to Psychiatric or Other Medical Examination – Report No. 36 – June 2012'.

- The Bill inserts a new section 331B and empowers a court, upon application by the prosecution and at the court's discretion, to order an accused person to submit to a psychiatric or other medical examination where the accused person intends to adduce expert psychiatric or medical evidence relating to a state of mind, or medical condition, that may have existed at the time of the alleged offence.

- This power can only be exercised upon indictment.

- Section 331B will apply regardless of whether the notice requirements under section 331A have been met and the prosecution will pay the costs of the examination.

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Criminal Code Amendment (Expert Psychiatric or Medical Evidence) Bill 2013

- The Bill provides that the court may, on application, allow the expert to be called to give evidence in chief relating to any opinions or findings made as a result of the examination.

- The Bill further states that if the accused refuses to be examined, the prosecution may cross examine the accused (if they give evidence) and/or any expert called by the accused as to the possible reasons behind the refusal. The court or prosecution may also comment on this matter to the jury.

- However, the court or prosecution cannot suggest that, as a result of the refusal, the accused is therefore guilty of the crime. This provision mirrors section 331A(7)(b) of the Criminal Code and is necessary as the comment should relate to the credibility of the defence rather than being used as a consciousness of guilt for the substantive offence.

- The Bill makes it clear that section 331B does not affect the operation of Part IIA of the Criminal Code.

- The Bill inserts a transitional provision which states that section 331B applies to any offence where an accused person is committed to stand trial for that offence after the commencement of the Act.

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Misuse of Drugs Amendment Bill 2013

- This Bill was introduced on 16 October 2013.

- The Bill omits the words 'to a person' in section 5(2)(a)(iv). The Supreme Court in the unreported case of *Nunggarrgalu v Millar* (11 January 2013, Justice Barr) ruled the wording 'to a person' means physical supply of the drug must occur for the circumstance to be proven and ruled the definition of supply that relies on acts done in preparation to supply is not relevant for the section 5(2)(a)(iv) offence. A similar observation on the wording of this section was made by Justice Blokland in *Williams v Balchin* [2012] NTSC 15.

- Removing the words 'to a person' will allow the full definition of supply, including steps done in preparation, to apply to the section 5(2)(a)(iv) offence and will allow for the purpose of aggravating circumstance to be fully realised, namely '*to increase the maximum penalty for supplying Schedule 2 dangerous drugs in Indigenous communitie*s' (taken from the Second Reading Speech for the *Misuse of Drugs Amendment Act 2008*).

- The Bill omits section 5(3) and replaces it with a provision that allows a statement to be used as evidence of the fact that the offence occurred in, or was to occur, in an Indigenous community. The current wording of section 5(3) allows the statement to be provided only when supply to a person is alleged.)

Northern Territory Government

Misuse of Drugs Amendment Bill 2013

- The Bill amends the penalty guideline provisions in section 37(1) of the Act by inserting the wording ‘an offence against section 5 that was committed in an Indigenous community’ as a circumstance of aggravation for sentencing purposes. This means the mandatory actual imprisonment provisions of section 37(2) will apply to the section 5(2)(iv) offence of ‘supply in an Indigenous community’ regardless of what maximum penalty is applicable to the sentencing court.

- The Bill amends section 43, the regulation making power of the Act by inserting a new subsection that allows for regulations to be made to move a dangerous drug reference, and the applicable trafficable and commercial quantities, from Schedule 2 to Schedule 1 by regulation. Currently, only drugs that are not already listed in the Schedules, can be added by regulation.

- The Bill inserts a transitional provision for this Bill. This transitional provision is identical to the transitional provision contained in the Misuse of Drugs Amendment (Methamphetamine) Bill 2013 and is necessary to preserve the current provisions of the Act for any offences committed prior to the commencement of this Bill. The Bill also clarifies what is meant by ‘committed after commencement’.

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Misuse of Drugs Amendment Bill 2013

- Finally, the Bill omits the current Schedule 2 and replaces it with an updated and more concise Schedule 2. No dangerous drug compounds have been legalised as a result of the amendments. The amendments resolve the following issues:

  - unnecessary duplication of drug references in Schedule 2. For example, the references to Dexamphetamine and Levamphetamine have been removed as they are duplicate references to amphetamine which is already listed in the Schedule;

  - unnecessary reference to positional forms in Schedule 2. For example, the reference to the positional forms 3-Methylfentanyl and a-Methylfentanyl have been replaced with Methylfentanyl (the base compound for both entries); and

  - unnecessary reference to hallucinogenic effects of substances. For example, the reference to 'N,N-Dimethyltryptamine and its derivatives having hallucinogenic properties' has been removed as N,N-Dimethyltryptamine is already listed in the Schedule.

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Criminal Code Amendment (Hit and Run) Bill 2013

- This Bill amends section 174FA of the Criminal Code, the offence known as hit and run, to insert an additional requirement to report to Police an incident involving a vehicle where death or serious harm is caused.
- The offence of hit and run requires a driver of a vehicle involved in an incident where another person dies or is seriously injured to stop and render reasonable assistance.
- There is no current requirement in the Criminal Code to notify police. If the other person dies and assistance is futile, the driver can simply drive off and not notify police.
- Regulation 19 of the Traffic Regulations requires any driver involved in a crash where property damage or personal injury is caused to report the incident to police. However this is a summary offence and does not reflect the seriousness of the situation where a person is seriously injured or has died.
- The Bill amends section 174FA to inserts a new requirement that, in addition to stopping and rendering assistance, a driver must, as soon as reasonably practicable after the incident or after giving assistance, notify a representative of the Police Force.

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Criminal Code Amendment (Hit and Run) Bill 2013

- The matters the driver must notify are that the incident occurred, the location of the incident, that the driver was the driver of the vehicle involved in the incident and the driver's name.

- The driver must also comply with any reasonable direction given by a representative of the Police Force in relation to the incident.

- An example of a reasonable direction might be to remain at the scene of the incident until a Police officer arrives, or to undertake a breath test.

- A 'representative of the Police Force' includes a police officer, or a public sector employee working in a communications centre operated by the Police Force.

- The general provisions of Part IIAA of the Criminal Code will determine the circumstances in which failures to comply with the Act might not constitute an offence,

Northern Territory Government

Mental Health and Related Services Amendment Bill 2013

- The Mental Health Review Tribunal is established under Part 15 of the *Mental Health and Related Services Act*. The Tribunal is an independent statutory body that has the power to make decisions about the care and treatment of people with mental illness.

- Part 15 of the Act is the responsibility of the Attorney-General and Minister for Justice. The rest of the Act is the responsibility of the Minister for Health.

- The purpose of the Bill is to amend the *Mental Health and Related Services Act* to clarify that the rules of evidence do not apply to proceedings of the Mental Health Review Tribunal.

- The Bill makes a small amendment to insert new sub-section (3) into section 133 entitled “Evidence”.

- This amendment will ensure the Tribunal can continue to make efficiently and timely decisions in a way that is not intimidating for the vulnerable people it deals with.

Northern Territory Government

Mental Health and Related Services Amendment Bill 2013

- New sub-section 133(3) clarifies that the Mental Health Review Tribunal is not required to comply with the rules of evidence. The Tribunal may inform itself of any relevant matter in any way it considers appropriate.

- Until recently, it was generally accepted that the procedures of the Tribunal were to be as informal as practicable and that the rules of evidence do not apply to proceedings before it. Recent comments made by Justice Kelly of the Supreme Court have cast doubt on that assumptions.

- The ability to exclude the rules of evidence in proceedings before the Mental Health Review Tribunal is consistent with its role and its aim of ensuring therapeutic justice.

- This amendment will ensure the Tribunal can continue to make efficiently and timely decisions in a way that is not intimidating for the vulnerable people it deals with.

- The exclusion of the rules of evidence will not operate to exclude the common law presumption of procedural fairness/natural justice. The Tribunal will still be bound to observe procedural fairness in its proceedings, such as the right of parties to put one's case and be heard.

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

- The purpose of the Bill is for the Northern Territory parliament to play its part in the various processes necessary 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 against torture provides for governments to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any Territory under its jurisdiction.

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

- The Treaties Committee also recommended that the Commonwealth government work with all states and territories to establish an effective monitoring framework, as required under the protocol. The Commonwealth government has been doing this through the Standing Council on Law and Justice.

- The Bill provides for the United Nations subcommittee to access places of detention, access information and interview detainees and other people. For the purposes of these visits the term 'place of detention' is defined as any place under the Northern Territory government's jurisdiction and control in which people are, or may be, involuntarily deprived of their liberty. The bill provides a very broad definition. However, it also lists the common places of detention, such as a correctional or detention centre, hospital, police station or court cell complex, or a vehicle used to transport detainees.

- The key obligation under the protocol is that the Northern Territory government is obliged to ensure unrestricted access of the United Nations subcommittee to the Northern Territory government places of detention within the Northern Territory. The government will also be obliged to provide relevant information to the United Nations subcommittee. Such information includes conditions of detention. We will also be obliged to provide the opportunity to conduct private interviews with detainees and the other relevant people, like medical personnel.

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DEPARTMENT OF
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Other Legislation and projects

Northern Territory Government

Pillars of Justice

What is the Pillars of Justice project?

The Pillars of Justice is a policing, justice and corrections strategy aimed at tackling repeat offending, youth crime, court processes/delays and violence.

The strategy 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 Pillars of Justice is an integrated policy initiative involving AGD, Corrections, NT Police, Health, liquor, licencing and other agencies (for example the Crimes Victims Advisory Committee). The five fundamental components of the package are:

- Police powers reform;
- Court law reform;
- Corrections reform;
- Youth justice reform; and
- Victims.

Northern Territory Government

Pillars of Justice

- The sixth component is statute reform and covers legislation under the control of AGD, Corrections and Police.

- The lead Minister for this project is the Attorney-General and Minister for Correctional Services, the Hon John Elferink MLA.

- AGD is the lead agency for this project and is providing briefings to the Minister, briefings to the Steering Committee and chairs the Pillars of Justice Working Group.

- The Steering Committee includes the CE of AGD, the Commissioner for Correctional Services and the Commissioner for Police and the Working Group consists of members of AGD, Correctional Service and NT Police. The Working Group has briefed a number of advisory bodies on the Pillars of Justice and has received briefings from these bodies.

Northern Territory Government

Pillars of Justice

Strategies under Pillar One (Police Powers reform) include:

- Creation of Alcohol Protection Orders that will enable Police to prevent a person from possessing or consuming alcohol or attending a licensed premise, other than for work or place of residence.
- Streamlining simple arrest processes through alternatives to summary offence resolution post-arrest that will allow Police officers to focus on policing rather than paperwork.
- An extra 120 Police officers on the beat.
- Pursuing innovative technological solutions to target serious and repeat offenders, such as Electronic Monitoring devices.
- Increased call centre grades of services to the community through improvements to operating processes, staffing and infrastructure of the Joint Emergency Services Communication Centre.
- Local Government Community Safety Action Plans. creation of the Public Safety division to ensure an integrated community engagement focus on key programs including the Junior Police Rangers, Neighbourhood Watch and Youth Diversion.

Northern Territory Government

Pillars of Justice

Strategies under Pillar Two (Court reform) include:

- Introduction of minimum mandatory sentencing for violent offenders.
- Improved public access to justice through enhanced use of technology such as live web streaming of Court processes.
- $350 000 provided in the 2013-14 Budget for the creation of separate youth justice holding cells in Alice Springs.
- Enhanced options for community based sentencing under the *Sentencing Act* and targeted sentencing options for traffic offenders.
- Swift justice through the reform of summary criminal procedures to make procedures more efficient and to encourage earlier resolution of matters where appropriate, and agreed by both parties.
- Review of the 2010 committals reforms.

Northern Territory Government

Pillars of Justice

Strategies under Pillar Three (youth justice reform) include:

- Develop a Youth Justice Framework that will coordinate comprehensive cross agency and non-government organisation responses, program and service delivery to young people at risk of entering or in the youth justice system so as to reduce offending and reoffending.

- Enhance family and individual responsibility through education, training and community engagement.

- Intervention camps - therapeutic, ten day camps for young people at risk of entering the criminal justice system. Intervention camps are designed to challenge the young person emotionally and physically and teach team building skills.

- A contemporary detention centre model is under development and will be available as an alternative to existing detention centres for young offenders.

Northern Territory Government

Pillars of Justice

Strategies under Pillar Four (corrections reform) include:

- Provide inmates with a pathway to reintegration and supporting industry development through Sentenced to a Job that has a target of 200 inmates in employment placements in Territory businesses, by the end of 2013.
- Regional work camps that enable inmates to serve their sentence 'in community' while learning trade skills and undertaking work placements.
- Foster strong community partnerships and enhance engagement with the service sector by developing a Community Engagement Strategy. Establish a mentoring program and expand the Elders Visiting Program.
- Build a thriving commercial industry within NT correctional centres through quality manufacturing and horticultural enterprise.
- Introduce Electronic Monitoring to enable Corrections to monitor the movements of offenders being supervised in the community, whilst also serving as a deterrent against further crime.
- Implement the Serious Sex Offender Management Framework.
- Improve rehabilitative outcomes for inmates and offenders by providing a pre and post-release supported accommodation service.

Northern Territory Government

Pillars of Justice

Strategies under Pillar Five (victims) include:

- $2m from 2014-15 for the Safe Homes policy that will assist victims of property crime to be safe in their homes.
- Completion of the Safe Streets Audit in 2013 that will examine and report on the safety status of NT major urban communities to inform crime prevention strategies.
- Development of a whole of government strategic framework for domestic and family violence that will include the Northern Territory's implementation plan for the National Plan for Violence against Women and their Children 2010-2022.
- Community services to support victims of crime and options to expand the availability of victims' services in remote and regional parts of the Northern Territory.
- Enhanced use of victim-offender conferencing.
- Enhanced use of court orders to protect victims.
- Targeted financial support to victims of crime.
- Promoting the rights of victims of crime at all points of the criminal justice spectrum.

Northern Territory Government

Summary Offences Act Final Report

- The Department of the Attorney-General and Justice recently released the final Report on the *Summary Offences Act* .

- The report recommended the Act be repealed and replaced with modern legislation with most of the provisions to be located in other legislation such as the Criminal Code. The report also recommended that a number of offences be repealed and not replaced.

- The report also provided for a review of the maximum penalties that can be imposed. This report follows an issues paper that was released in late 2010.

- Comments were sought by 1 October 2013 and a number of stakeholders made submissions, including the Chief Magistrate, NT Police, the DPP, NAAJA and CAALAS.

- AGD is in the process of briefing the Attorney-General on these responses and the way forward for this project.

Northern Territory Government

Reforms of criminal procedures in the lower courts

ISSUE:

- Concerns have been expressed by police, the office of the Director of Public Prosecutions, defence lawyers and the judiciary about the processes followed in the lower courts between the time when a person is charged with an offence and the time when the matter comes to court for finalisation. The concerns include:

    - From police investigation officers – they are required, for the purpose of a contest mention, to produce too detailed a brief of evidence for the purposes dealing with the issue of placing the defendant in a position to make a decision to plead guilty or not guilty;

    - From the judiciary (of the lower courts) – that too many matters fall over at or after the contest mention stage;

    - From Director of Public Prosecutions and defence lawyers – that the detailed brief of evidence provided by police investigations is provided too late in the process for defence lawyers to be able to accurately assess what is the case against their client – ie that they are not in a position to provide advice until at least the contest mention stage in the process.

Northern Territory Government

Reforms of criminal procedures in the lower courts

- From the administrative and legal perspectives there are two main issues to sort out. They are:
  - What is the "best practice" that might be adopted in the NT's lower courts;
  - Whether there is a need for legislation for the purpose of implementing "best practice".

BACKGROUND:

The factual background is that between 2009-10 and 2011-12, the number of contest mentions had increased disproportionately compared to summary hearings, suggesting that a number of the contest mentions resolved in a plea of guilty following the contest mention. The number of contest mentions has increased from 1073 to 2845. During this period the number of contested hearings dropped.

Most summary matters don't proceed to a hearing – only 4.4% in 2011-2012. After excluding matters withdrawn by the prosecution about 85% of matters adjudicated by a court resulted in pleas of guilty.

Northern Territory Government

Reforms of criminal procedures in the lower courts

What is the current process?

2010 Practice direction

- The current practice is described in Practice Direction issued by the Chief Magistrate on 4 October 2010. It took effect on that day.
- In summary the Practice Direction provides:
  - It only applies to that part of the process that occurs after a defendant has indicated a plea of not guilty.
  - Once a plea of not guilty is "indicated" the Court makes an order (on the Police) that a brief of evidence is to be prepared and served within four weeks.
  - The date for the actual hearing is not set at this time. Instead the Court orders that there be a "contest mention" for a day two weeks after the time when the police brief of evidence is to be provided.

Northern Territory Government

Reforms of criminal procedures in the lower courts

- At the contest mention the Court expects that both parties are to “fully conversant” with the matter and to be in a position to estimate a time for the hearing. They are also expected to witness and defendant availability dates.

- At the contest mention hearing a guilty plea can be entered.

- At the contest mention hearing the Court will, “for longer matters” also set down a day for a “case management Inquiry”. Such an inquiry would occur 10 days prior to the proposed hearing day. A guilty plea can also be entered at that inquiry. From the Practice Direction the purpose of the inquiry is not obvious – but the prosecutor and the defence lawyer are expected to be able to provide the Court with “all relevant information”.

Northern Territory Government

Reforms of criminal procedures in the lower courts

What is the current legislation?

- Section 201A of the *Justices Act* gives the Chief Magistrate the power to make rules and practice directions regarding the practices and the procedures of the Court and for all matters incidental or relating to court procedure. If the Chief Magistrate makes rules the processes are governed by section 65 of the *Interpretation Act.* This means that they only take effect when notice of them is published by the Minister administering the *Justices Act*.
- Practice directions appear to have no particular status under the Act. Section 201A(4) provides:
  - *201(4) Subject to this Act and the Regulations, the practice and procedures of the Court in relation to a proceeding within its jurisdiction are in the discretion of the Court.*

- Aside from the provisions relating to committals, the *Justices Act* appears to contain no provisions that regulate processes to be followed prior to a hearing. In fact, it seems somewhat doubtful that the rules, practice directions or regulations can be made for this part of the process.

Northern Territory Government

Reforms of criminal procedures in the lower courts

- It seems to follow that an amendment to the legislation is necessary if a policy option is developed that might require police to provide any kind of précis of evidence prior to the first hearing of any aspect of the case.

What might be the ambit of the reforms:

- The broad principal aims of the reforms relate to:
  1. Early disclosure of the prosecution case by way of preliminary briefs of evidence;
  2. Summary case conferencing prior to the service of a full brief of evidence (subject to exceptions concerning certain classes of prosecutions (eg traffic);
  3. Obligations on defendants to disclose alibi evidence, expert witnesses and factual matters that the defendant considers cannot be providence and evidence that the defendant objects to being adduced;
  4. sentence indications; and
  5. Disclosure of sentence discounts for early pleas – with the legislation to specify graduate maximum discounts applicable for early pleas.

with the intent of shifting meaningful negotiations to the front end of the process rather than discussions occurring on the steps of the court on the hearing date).

Northern Territory Government

Reforms of criminal procedures in the lower courts

Consideration is being given to the following:

1.section section 37 of the *Criminal Procedure Act 2009* (Vic);

2.sections 331 and 331A of the Criminal Code which apply to indictable matters;

3.section 62(4)(c) and (d) of the *Criminal Procedure Act 2004* (WA);

4.sentence indications from the Court (similar to sections 60 and 61 of the *Criminal Procedure Act 2009* (Vic)); and

5.section 187(5) of the *Criminal Procedure Act 1986* (NSW) to exclude certain minor matters from the requirement to serve a full brief of evidence.

6.Sentence discount legislation as in place in South Australia

Northern Territory Government

Part IIAA conversion

- The project to continue the conversion of offences in the Criminal Code to Part IIAA will be continued.

- The remaining offences in the *Summary Offences Act* will be redrafted according to Part IIAA and the Department will continue to advise all agencies that any new offences should be drafted according to Part IIAA.

Northern Territory Government

DEPARTMENT OF
THE ATTORNEY-GENERAL AND JUSTICE

Reviews

2013

Northern Territory Government

Local Court Reform

Court Reforms

- Government is currently developing a consultation Bill to combine the civil and criminal jurisdictions of the Local Court and Magistrates Court. This Bill seeks to rationalise the jurisdiction, time limits, the maximum penalties for crimes triable summarily and terminology generally.

- Second court reform project will see a review of criminal procedure across both lower and higher courts – staged review.

- The Department of the Attorney-General and Justice hopes to release a draft of the Local Court Bill along with a discussion paper in the near future.

Northern Territory Government

Bail Act and *Victims of Crime Assistance Act* reviews

***Bail Act* Reforms**

- Review of the *Bail Act* presumptions – AGD invited submissions from a number of stakeholders on various aspects of the *Bail Act*, including the presumption provisions, the breach of bail offence and the Act's application to youth.

- The presumptions for, against and neutral in regards to the granting of bail are getting more and more complex; are confusing and in some cases inconsistent.

- Submissions were received from a number of stakeholders and the Attorney-General is currently considering a number of options to progress reforms in this area.

***Victims of Crime Assistance Act* Review**

- Statutory Review.
- Comments sought by 31 March 2013.

Northern Territory Government

Committals Reform

Draft Report – Committals Reform – Justice Legislation Amendment (Committals Reform) Act 2010

- The *Justice Legislation Amendment (Committals Reform) Act 2010* amended the *Justices Act* for the purposes of streamlining committal proceedings, avoiding unnecessary requirements for witnesses and relieving stress for some key witnesses.

- This draft report contains statistics regarding the first 2 years of operation of the legislation (to 31 March 2013) and qualitative feedback from stakeholder concerning the first year of operation.

- A Draft Report has now been released for discussion purposes and to elicit comment on the operation of the legislation. Any views expressed are not to be taken to represent the final views of the Northern Territory Government, the Northern Territory Attorney-General and Minister for Justice or the Department of the Attorney-General and Justice.

- The closing date for submissions was 31 August 2013.