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DEPARTMENT OF
THE ATTORNEY-GENERAL AND JUSTICE

Law Reform Issues Consultation

July 2013

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Overview of today's session

Legislation recently passed in March, May and June 2013 sittings

- Supreme Court Amendment Act 2013 (Serial 20) (March 2013)
- Serious Sex Offenders Bill 2013 (Serial 18) (March 2013)
- Penalty Units Amendment Bill 2013 (Serial 24) (May 2013)
- Sentencing Amendment Bill 2013 (Serial 34)
- Penalties Amendment (Miscellaneous) Bill 2013 (Serial 32)
- Repeal of the Alcohol Reform (Prevention of Alcohol-related Crime and Substance Misuse) Act and Alcohol Reform (Substance Misuse Assessment and Referral for Treatment Court) Act (by the Alcohol Mandatory Treatment Act 2013)

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Overview of today's session

Recently awaiting passage

- Criminal Code Amendment (Cheating at Gambling) Bill 2013 (Serial 29)

Legislation or reforms being developed – for 2013/2014

- Criminal Procedure (Lower Courts) 2013
- Monitoring of Places of Detention (Optional Protocol to the Convention against Torture) (National Uniform Legislation) Bill 2013
- Pillars of Justice

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Overview of today's session

Other projects

- Criminal Code – Part IIAA conversion
- Bail Act - presumptions
- Review of Victims of Crime Assistance Act

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Supreme Court Amendment Act 2013

Current position

- This Supreme Court Amendment Bill was introduced on 21 February 2013.
- The Bill was passed by the Legislative Assembly on 28 March 2013.
- The legislation removes any doubt that may have existed concerning the capacity of the Judges to make rules of court for the purposes of functions of the Supreme Court that arise from Commonwealth laws.
- The legislation commenced operation on 29 May 2013.

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Serious Sex Offenders Act 2013

General objective of the legislation

- The Bill for this Act was introduced into Parliament on 14 February 2013. The Bill was debated and passed by Parliament on 26 March 2013. The Bill received assent on 3 May 2013 and commenced operation on 1 July 2013.

- The *Serious Sex Offenders Act 2013* provides for the continued detention or supervised release of serious sex offenders who are deemed to be such a serious danger to the community that continued management of the offender is warranted post-sentence.

- This Act reflects similar regimes in four other Australian jurisdictions.

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Serious Sex Offenders Act 2013

- The legislation sets out two main objects which must be taken into account by the Court when making orders under the Act.
  - primary object - to enhance the protection and safety of victims of serious sex offences and the community generally by allowing for the control of serious sex offenders who pose a serious danger to the community; and
  - secondary object - to provide for the continuing rehabilitation, care or treatment of those offenders.

Day to day administration of the legislation is the responsibility of the Department of Correctional Services

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Serious Sex Offenders Act 2013

General objective of the legislation (continued)

- The Bill will allow for the Attorney-General to make an application to the Supreme Court in relation to a serious sex offender who is nearing the end of his or her sentence for either –

  (a) a continuing detention order; or

  (b) a supervision order.

- For the court to make either of these orders, it must be satisfied that the offender is a 'serious danger to the community', that is, there is an unacceptable risk that the prisoner will commit a serious sexual offence if the prisoner is not detained in custody or subject to a supervision order

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Serious Sex Offenders Act 2013

Main provisions of the legislation

The Supreme Court must consider the following when deciding whether to make a continuing detention order or supervision order:

- The likelihood of the person committing another serious sex offence;
- The impact of serious sex offences that have already been committed, or are likely to be committed, by the offender on;
  - Victims and their families;
  - The community generally.
- And the need to protect people from those impacts – i.e. nature of the risk.
- To assist Court also make this assessment – medical reports, victim submissions and supervision report by the Director of Correctional Services.

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Sentencing Amendment Bill 2013

The Sentencing Amendment Bill 2013 was introduced into Parliament on and passed on 27 June 2013.

It will comment on assent.

Assent was given on 12 July 2013.

The Sentencing Amendment Act 2013 amends the *Sentencing Act* so that it is clear that convictions that occurred prior to 1 May 2013 are counted/taken into account for the purposes of the mandatory sentencing provisions enacted by the Sentencing Amendment Act 2013.

Under those provisions a person found guilty of various violence offences receives mandatory terms of imprisonment if they have been previously convicted of a violent offence.

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Penalty Units Amendment Act (Serial 24)

- The Bill for this Act was introduced on 27 March 2013, debated/passed on 14 May 2013 and received assent on 29 May 2013. It also commenced operation on assent.

- The Act makes technical corrections arising from changes made by the Australian Statistician concerning CPI. Without the Penalty Units Act being amended the formula in the Act concerning the calculation of the value of a penalty unit would have remained static for many years at $141.

- The amendments mean that the revised formula will result in the value of a penalty unit increasing on 1 July 2013 to $144 in accordance with the Darwin CPI increase for the year ending 31 December 2012.

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Penalties Amendment (Miscellaneous) Bill 2013

- This Bill was introduced into Parliament on 15 May 2013 and was passed on 27 June 2013. It will commence operation in the next few weeks.
- The *Penalty Units Act* provides for a formula whereby the value of the penalty unit can be increased if the Darwin CPI increases. The new penalty unit value is then made by Regulation on 1 July of that year.
- On 1 July 2013 the penalty unit value went up to $144.
- This Act completes the process of converting penalties in most NT Legislation from dollar amounts to penalty units. This process applies to all penalties except those where the dollar amount is very low. There are also some exceptions for infringement notice penalties.

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Penalties Amendment (Miscellaneous) Bill 2013

Overview

•The concept of using penalty units commenced in 1999. This specific project was started by the former government, through the introduction of the following Bills converting monetary penalties to penalty units under specific portfolios:

- *Justice Legislation Amendment (Penalties) Act 2010*;
- *Penalties Amendment (Justice and Treasury Legislation) Act 2010*;
- *Penalties Amendment (Chief Minister's and Other Portfolios) Act 2011*; and
- *Penalties Amendment (Children and Families, Health and Primary Industry, Fisheries and Resources) Act 2011*.

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Penalties Amendment (Miscellaneous) Bill 2013

- Like previous Penalties Amendment Bills, this Bill converts existing monetary penalties in offences into penalty units so that they can be automatically indexed to the Darwin CPI each year in accordance with a formula in the *Penalty Units Act*.
- Previous Penalties Amendment Bills attempted to make old monetary penalties more modern by increasing the monetary penalties by no more than 15% and then converting the increased amount to a penalty unit value using the then current penalty unit value.
- This Bill instead increases penalties by no more than 25% to account for the changes to the penalty unit value between 2010 and 2013 so that there is a degree of parity between the amendments made to penalties in the previous Penalties Amendment Bills and the current Bill.

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Penalties Amendment (Miscellaneous) Bill 2013

- The Bill also inserts the words ‘maximum penalty’ to penalties to modernise and standardise the expression of offences.

- The Bill also makes a number of other statute law revision type amendments to offences to make it clearer which parts of an offence section is intended to be an offence.

- The Bill amends a total of 60 Acts and 28 Subordinate Legislation across 17 government portfolios.

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Alcohol Mandatory Treatment Act 2013

- The *Alcohol Mandatory Treatment Act 2013* is the responsibility of the Department of Health. Accordingly, the generality of its contents will not be discussed today.

- However, it did repeal two Acts formerly administered by the Department of the Attorney-General and Justice – namely: Alcohol-related Crime and Substance Misuse) Act and Alcohol Reform (Substance Misuse Assessment and Referral for Treatment Court) Act (by the Alcohol Mandatory Treatment Act 2013).

- Alcohol Mandatory Treatment Act 2013 commenced operation on 1 July 2013. The savings and transitional provisions for the two repealed Acts are contained in sections 143-149

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DEPARTMENT OF THE ATTORNEY-GENERAL AND JUSTICE

Bills Currently Before House – Debate for August 2013

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Criminal Code Amendment (Cheating at Gambling) Bill 2013

Current position

- National Agreement developed through the Standing Council on Law and Justice that states and territories would progress specific match-fixing offences;
- Fill gaps in legislation and provide sufficient penalties to reflect seriousness of offences;
- SCLJ identified 6 match-fixing behaviours that are to be proscribed;
- At this stage, NSW has enacted its legislation and SA and Victoria have introduced the new offences into their respective Parliaments;
- Legislation based on recommendations made by the NSW Law Reform Commission.
- The Bill was introduced into Parliament on 16 May 2013 and is due to be debated in the August 2013 sittings of Parliament.

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Criminal Code Amendment (Cheating at Gambling) Bill 2013

- Proposed to introduce the following offences to ensure that NT legislation covers all agreed behaviours:
  - Engaging in conduct that corrupts a betting outcome of an event;
  - Facilitating conduct that corrupts a betting outcome of an event;
  - Concealing conduct or agreement about conduct that corrupts a betting outcome of an event; and
  - Use of corrupt conduct information or inside information for betting purposes.
- Maximum penalty for the offences are proposed to be 7 years imprisonment;
- However, maximum penalty for the offence of using inside information, is to be 2 years imprisonment.
- Fines can also be imposed – for individuals, up to 700 penalty units for the 7 years offences and 200 penalty units for the 2 years offence and, for corporations, 3500 penalty units and 1000 penalty units respectively.

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DEPARTMENT OF
THE ATTORNEY-GENERAL AND JUSTICE

Legislation and projects currently being developed

Possible Introduction 2013 and 2014

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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 possibly other agencies (VOC NT for example).

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Pillars of Justice

Essentially the Pillars focus on the criminal justice system from:

- before arrest (early intervention),
- to parole/end of parole
- (and matters in between).

The five fundamental components of the package are:

- policing,
- courts,
- corrections,
- youth justice and
- victims.

The sixth component is statute reform (majority of which involve AGD).

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Pillars of Justice

The lead Minister for this project is the Attorney-General and Minister for Corrections, the Hon John Elferink MLA and the Department of the Attorney-General and Justice is the lead agency (will provide briefings to the Minister, will provide briefings to the Steering Committee and will chair the Pillars of Justice Working Group).

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Pillars of Justice

- The Steering Committee is made up of the Chief Executive of Attorney-General and Justice (AGD), the Chief Executive of Correctional Services and the Commissioner of Police. The CE of AGD is also a member of the Community Safety Sub Committee of the Coordination Committee and will update the Committee when they meet.
- The Working Group consists of action officers from AGD, Correctional Services and NT Police (police and operational) is chaired by Will McNeil (Legal Policy).

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OPCAT

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

The structure and material in this summary is largely drawn from the Explanatory Statement for the ACT's *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2013.* I acknowledge that document.

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OPCAT

Background

The Optional Protocol to the Convention Against Torture (usually referred to as OPCAT) was adopted by the United Nations in 2002 with the aim of "establishing a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty in order to prevent torture and other cruel, inhuman or degrading treatment or punishment" (article 1 OPCAT).

On 8 June 2011, the Commonwealth Government accepted six recommendations from the United Nations Human Rights Council's Universal Periodic Review of Australia's human rights performance.

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OPCAT

In April 2012, the Standing Council on Law and Justice agreed to:

"work towards ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and, in particular, to prioritise the preparation of jurisdictional legislation to provide for visits to Australia by the United Nations Subcommittee on the Prevention of Torture."

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OPCAT

On 21 June 2012, the Australian Parliament Joint Standing Committee on Treaties tabled its review of OPCAT recommending that Australia take "binding treaty action" (recommendation 6); and that the Australian Government work with the states and territories to implement a national preventative mechanism fully compliant with the OPCAT as quickly as possible on ratification.

Once ratified, Australia's immediate obligation under OPCAT will be to allow the United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the subcommittee) to conduct periodic visits to places of detention in Australia.

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OPCAT

- The purpose of this Bill is to establish the necessary legislative arrangements for the subcommittee to inspect places of detention in the NT, following Australia's ratification of OPCAT.

- The Bill is based on a national model Bill drafted by the Parliamentary Counsel's Committee and developed with the collaboration of all Australian States and Territories.

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Reforms of criminal procedures in the lower courts

ISSUE:

•Concerns have been expressed by police, the office of the Director of 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 the 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;

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Reforms of criminal procedures in the lower courts

- 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.
- 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".

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Reforms of criminal procedures in the lower courts

BACKGROUND:

Facts

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.

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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.

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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".

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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.*

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Reforms of criminal procedures in the lower courts

- 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.
- 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.

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Reforms of criminal procedures in the lower courts

What might be the ambit of the reforms

- The broad principal aims of the reforms relate to:
  1. preliminary briefs,
  2. case conferencing,
  3. sentence indications

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).

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Reforms of criminal procedures in the lower courts

Consideration is being given to the following:

1. in sections 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)).
5. section 187(5) of the *Criminal Procedure Act 1986* (NSW) to exclude certain minor matters (similar to those listed in regulation 21 of the Criminal Procedure Regulations (NSW)) from the requirement to serve a full brief of evidence.

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On the Horizon

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 by the end of July 2013

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On the Horizon

Bail Reforms

- Bail presumptions - Seeking views on how presumptions should work.
- 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.

Victims of Crime Assistance Act Review

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

Vulnerable Victims – Crofts Direction

- Submissions due 31 March 2013.