Criminal Lawyers Association of the Northern Territory (CLANT)

Patron: The Hon Justice Virginia Bell • PO Box 969 ALICE SPRINGS NT 0871 • ABN: 64 391 168 310•

31 May 2015

By e-mail

Dear Ms Swart,

Thank you for providing the opportunity to make further comment in relation to the above Bill, both by way of the consultation you conducted in Alice Springs on 19 May 2015 (and the similar exercise in Darwin), and in writing.

CLANT acknowledges that some of the significant matters we raised in our submission of 14 May 2014 have now been incorporated into the current draft Bill. In particular, we welcome s60AC, which regulates the application of the new Division in a manner that recognises that the proposed reforms would not be workable in bush courts. Similarly, we welcome the abandonment of the sentencing discount scheme set out in the previously proposed Division 3A, which would have been unworkably rigid.

We also accept that some of the proposals in our submission have not been adopted by government. CLANT does not resile from our 2014 proposals, but the focus of the following comments is in relation to two matters of detail which we submit can be readily accommodated within the framework of the Bill in its current form.

Firstly, it is submitted that s60AK(2)(a) is, in its current form, too broad. It provides that "the Court [at a directions hearing] may make orders for a defendant to disclose information to the prosecution". On its face, this provision is inconsistent with fundamental features of the accusatorial system, including the accused's right to silence. It appears, however, that the intent of the provision is simply to give effective teeth to the defence disclosure requirements set out in s60AJ(2). If so, then it is submitted that s60AK be worded accordingly, for example by amending s60AK(2) to read:

> Without limiting subsection (1), and to the extent required to effect compliance with s60AJ, the Court may make orders for:

Secondly, while CLANT maintains its support for sentence indications (Subdivision 3), we also maintain our submission that in conjunction with this the *Sentencing Act* should be amended to allow sentencing discounts of up to 40% for an early plea, as is provided in s10B of the *Criminal Law (Sentencing) Act 1988* (SA), the provision on which the previously proposed Division 3A was originally based. Although it is now common ground that the SA model is too rigid to be effective in the NT, in our submission, for the new sentence indication scheme to be effective, magistrates' sentencing powers and discretion should be broadened so as to give them both the carrots and the sticks they require to encourage parties to settle at an early stage. It is particularly disappointing

that the only proposed amendment to the *Sentencing Act* in this regard is s123A, which actually erodes the existing power of magistrates to impose what they consider to be a just sentence. Furthermore, it is anomalous to impose this sentencing restriction on one class of judicial officers (magistrates), but not another (Supreme Court judges). (Section 123A, we note, is in the nature of a "stick" rather than a "carrot".) A fundamental feature of these reforms is that they substantially enlarge the powers of magistrates in managing and disposing of criminal cases. CLANT submits that it is inconsistent with the scheme of the amending Act that to further restrict magistrates' sentencing powers.

Thank you for your consideration of the above submissions,

Yours faithfully,

Russell Goldflam
PRESIDENT, CLANT