



Northern  
Territory  
Government

DEPARTMENT OF  
THE ATTORNEY-GENERAL AND JUSTICE

# Justice Legislation Amendment (Summary Procedure) Bill 2015

CPD

Alice Springs and Darwin  
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# Introduction

- Bill introduced 30 April 2015
- Expected to be debated/passed June Sittings
- expected to commence September /October 2015
- Expect that there will be further CPDs following passage
- Potentially a PD to be made by the Chief Magistrate (content determined by Chief Magistrate)



# Purpose of Today's Session

- To inform you of the changes made to the Bill since the 2 consultations (May 2014 and October 2014)
- To outline the main features of the introduced Bill
- To take comments and suggestions on technical or operational issues or problems
- To take feedback for the Minister



# Main Policy Changes Since Consultation

- Application provision- not mandatory application to whole of Territory (ie no 'one size fits all');
- Graduated sentence discount regime removed- except section new 123A *Sentencing Act* ;
- Summary case conferences replaced with Court directed Directions Hearing;
- No exclusions to requirement for Directions Hearing whereas previously there were some exemptions from Summary Case conferences;
- Defence disclosure requirements now comprise: alibi, expert evidence, notice of objection to evidence, and issues in dispute/not in dispute - removed requirement to point out what could not be proven on prosecution's evidence;
- More detail on sentence indications.



# New Procedures in Justices Act

- **New- Application provision- section 60AC:**
  - Darwin, Alice Springs, Tennant Creek
  - Otherwise by PD which is applies the Division as closely as possible and is consistent with the objects
- **New - Objects clause for new procedures- section 60AB**
  - (a) provide for fair, efficient, expeditious and economical case management procedures in the Court of Summary Jurisdiction including by:
    - (i) facilitating, if appropriate, a defendant's guilty plea to an offence at an early stage of the proceeding in relation to a complaint or information before the Court; and
    - (ii) ensuring that, if a complaint or information proceeds to a hearing of a charge, the hearing is focused on the issues that are in dispute; and
    - (iii) minimising the time between the making of a complaint or the laying of an information and the hearing of the charge; and
  - (b) minimise the trauma that might be experienced by victims of crime.



# New Procedures in Justices Act

- Kept - Preliminary briefs – New sections 60AD, AE, AF
  - changes to:
    - Make clear what's included eg any available CCTV
    - 'catch all' provision
    - Categories or descriptions of witnesses
    - Make clear it is what is available at the time
- Kept - Defence disclosure – alibi evidence
  - Timeframe now 7 days before directions hearing or ASAP thereafter



# New Procedures in Justices Act

- New- Directions Hearing – sections 60AH- AK
  - Directions Hearing is court directed.
  - Generally 4 weeks after the 1<sup>st</sup> mention
  - Purpose: identify issues in dispute and steps required to progress the matter- see section 60AH
  - Defendant to attend unless excused and represented
- Prosecution to:
  - Indicate what further evidence outstanding
  - Estimate of hearing length
  - Any orders to be sought



# New Procedures in Justices Act

- Defence to:
  - Identify issues in dispute / not in dispute
  - Indicate plea
  - Indicate whether alibi or expert
  - Estimate hearing length
  - Any orders will seek
- At the end of the DH
  - court must set matter down for hearing, set a further DH, or both
  - Make orders for progress- which may include disclosure by prosecution or defence





# New Procedures in Justices Act

- Kept -Defence Disclosure expert evidence or Objections
  - Timeframe now within 21 days of hearing or ASAP thereafter
- Kept- Consequences of non-disclosure defence-60AQ
  - Adjourn a hearing to require defendant to comply
  - Allow prosecution to make investigations
  - Allow prosecution to call further evidence resulting from disclosure
  - (note section 60AS retains common law re prosecution's duty of disclosure and consequences of non-disclosure)



# New Procedures in Justices Act

## In-built flexibility

- Directions Hearing (DH) at least 4 weeks after 1<sup>st</sup> mention & can be listed for further mention in between if needed (s60AI)
- Def can apply to list DH earlier than 4 weeks (s60AI(5))
- Def or Pros can apply for further DH (s60AL) or court can list for further DH (s60AK)
- Def can plead G at any time
- Court can dispense with defence disclosure requirements (s 60AO)
- Court can extend or truncate requirement to do anything under Division (s60AR)



# New Procedures in Justices Act

- New – common law re Prosecution’s duty of disclosure retained– section 60AS
- New – parties to confirm hearing 7 days before–section 60AP



# Sentence Indications

- Located in the *Justices Act*
- Sections 60AT to 60AZC
- Key Changes:
  - What info the court takes into account
  - When a Court may withdraw a sentence indication
  - When can apply for a 2<sup>nd</sup> indication
  - How mandatory minimum sentences treated



# Sentence Indications

- Def may apply at any time
- Court cannot give indication within 7 days of hearing
- Court has discretion to give or refuse to give a sentence indication
- Court can indicate- section 60AT:
  - Sentence of actual imprisonment to commence at a specified time
  - Another sentence type
  - If Mandatory Minimum Sentencing Applies:
    - Minimum term applies or
    - Exceptional circumstances applies



# Sentence Indications

- What court to have regard to when considering indication- section 60AU:
  - Must -Statement of agreed facts
  - Must- Criminal history
  - Must- victim impact statement if available
  - May- Anything relevant and available



# Sentence Indications

- What happens If def pleads guilty as a result of indication? (section 60AZ)
  - Only Magistrate who gives the indication is bound by it (and can withdraw it)
  - The sentencing hearing which might result needs to be before the same Magistrate
  - Court/Magistrate cannot sentence higher than sentence indicated



# Sentence Indications

- What happens if def does not plead guilty as a result of indication? (section 60AZA)
  - Magistrate who gave the indication cannot further hear the matter unless parties agree
  - Can ask for another indication but from same Magistrate, and if material change in circumstances that would affect sentence indicated





# Sentence Indications

- Court may withdraw a sentence indication-  
section 60AW:
  - If defendant does not plead guilty within a reasonable time.
  - Either before or after the defendant has pleaded guilty if further information comes to light that would cause the court to give a more severe sentence than indicated
  - If defendant has pleaded guilty already- the court to allow defendant to withdraw his or her plea if has entered it before court withdrew indication
  - Only Magistrate who gave the indication can withdraw the indication



# Sentence Indications

- Application for sentence indication and indication not admissible- section 60AX
- Sentence indication does not affect appeal rights – section 60AY
- if Magistrate becomes unavailable for unreasonable time can be substituted by a different Magistrate (replicates similar provision in the Local Court Bill)- section 60AZC



# Amendments to Sentencing Act

- Same but changed- sentencing consideration – s 5(2)(ha)
  - Court can take into account compliance with the provisions in Div 2A of Justices Act in sentencing
- Same but in different context- s108A- Court to state and record discount
  - If court gives a discount because of a guilty plea must state and record it
  - Not an error of law not to comply
- New - s123A - no discount within 7 days of hearing
  - If def pleads guilty within 7 days of hearing date court not to give a discount on account of the guilty plea.
  - The court may do so if defendant could not have pleaded guilty earlier



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# Questions and Comments?

*Thank you*

*Please email*

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