LEGISLATIVE SCRUTINY COMMITTEE
Response to Written Questions – Attorney-General's Department

Inquiry into the Criminal Procedure Legislation Amendment Bill 2026 (Serial 58)

Preliminary statement

As noted at the time the Criminal Procedure Legislation Amendment Bill 2026 (the Bill) was introduced, and at the public briefing, the Bill was developed through consultation with an expert working group who considered and provided input towards the development of proposed amendments and the drafting of the Bill.

The primary intent in the proposed amendments is to streamline and improve court processes to reduce timeframes and allow for expeditious resolution of matters to alleviate demand pressures on the court system.

The consultation with the working group informed the drafting of the Bill considered by Government for introduction.

Police to grant bail

1. Clauses 4, 5, 28 and 31 seek to amend the *Local Court (Criminal Procedure) Act 1928* and the *Bail Act 1982* to provide the Northern Territory Police Force (NTPF) with flexibility to manage arrest outcomes for court-ordered warrants, including providing for police discretion to grant or refuse bail when a person is arrested on a warrant of apprehension unless bail has been specifically excluded by the Court.

   a. *How will this discretionary power work with the existing workflows and standard operating procedures of NTPF, and are there plans to review workflows and standard operating procedures in consideration of these amendments?*

   b. *The Northern Territory Anti-Discrimination Commission submitted that increasing NTPF discretion to grant bail may disproportionately impact Aboriginal and Torres Strait Islander people (Submission 4, p. 2). How does the Department respond this concern?*

Answer:

a. This is an operational consideration which has been raised with NTPF and is currently being considered within NTPF. As this relates to operational matters, and are discretionary in nature, the specific details of workflows are not within the scope of the Bill and the Attorney-General's Department (AGD) is not in position to provide further details at this time.

b. The amendment is intended to provide police discretion to grant bail where a warrant for apprehension has been issued by the Local Court. Warrants of this nature are primarily issued in circumstances where a defendant fails to appear in Court for an appointed mention or hearing date.

   The amendment provides police with discretion to grant bail, notwithstanding that the defendant has failed to appear in Court. At this stage of proceedings, the granting or refusal of bail does not interfere with a defendant's opportunity for legal representation, nor cause a delay in the ability to re-apply for bail in the Court. In comparison with the current process (where police have a lack of power to grant bail), where police refuse to grant bail, the defendant must be brought before the Court. The amendment allows police to grant bail, which if granted, means that the defendant is not held on remand pending being brought before the Court.

Inquiry into the Criminal Procedure Legislation Amendment Bill 2026 (Serial 58)

Directions hearing

2. Clause 10 repeals and replaces section 60AI(8) of the *Local Court (Criminal Procedure) Act 1928* to provide that the Court may appoint a date and a time for a further mention prior to the directions hearing, or application or by its own initiative.

   a. *The Director of Public Prosecutions submitted: "The effect of the new section 60AI(8) seems to be to remove the previous section 60AI(8)(a), which made it clear the listing of a directions hearing did not prevent a defendant from pleading guilty after the first mention. There is no explanation for the removal of the section in the explanatory memorandum and it might be thought, by implication, that the removal of the section means the power no longer exists. Such an interpretation would be undesirable" (Submission 6, p. 4). What is the effect of repealing section 60AI(8)(a)?*

Answer:

a. The Bill removes section 60AI(8)(a) and (b) as these subsections are unnecessary noting both provisions referred to "nothing in this section" preventing the Court from taking certain action. As a matter of interpretation, it was considered that nothing in section 60AI directly or impliedly suggested that a defendant could not plead guilty any time after the first mention, nor that the Court could not appoint a date and time for a further mention prior to the directions hearing.

   New section 60AI(8) was inserted (replacing current section 60AI(8)(b)) to clarify that the Court may appoint a date and time for a further mention prior to a directions hearing, rather than merely referencing that nothing in the section prevented this from occurring.

   The repealing of section 60AI(8)(a) does not intend to remove the right of defendants to plead guilty at any point after a first mention. AGD does not consider any further clarification is required.

Dispending with prehearing procedures

3. Clauses 9 and 13 seek to amend section 60AC and insert proposed section 60ARA into the *Local Court (Criminal Procedure) Act 1928* to enable circuit courts to dispense with the prehearing procedure requirements in Part IV, Division 2A, Subdivision 2 where there is a good reason to do so.

   a. *What would constitute a 'good reason' for the purpose of proposed section 60ARA?*

   b. *Has consideration been given to including examples of a 'good reason' on the face of the Bill, in the Explanatory Statement or in policy guidance? If not, why not?*

Answer:

a. Not defining 'good reason' leaves it to the discretion of the Court, as a matter for the Court to interpret based on the circumstances of a particular matter.

b. Examples have not been included to ensure the discretion of the Court is not fettered in considering all relevant matters when determining if there is good reason to dispense with the pre-hearing requirements set out in Part IV, Division 2A, Subdivision 2, and as noted above, potential for injustice arising.

Inquiry into the Criminal Procedure Legislation Amendment Bill 2026 (Serial 58)

Sentence indication

4. The proposed amendments to section 60AZA(2) of the *Local Court (Criminal* Procedure*) Act 1928* remove the prohibition against the Court finally determining a charge where they also provided a sentence indication which was not accepted, if the parties agree, and allow the Court that finally determines a charge to be constituted by the same Judge who gave the sentencing indication.

   a. *Law Society NT submitted that the proposed amendments may affect due process, "noting that a Judge who has formed a view on sentence may, even unconsciously, approach the determination of the matter with a predisposition of guilt" (Submission 3, p. 2). How does the Department respond to this comment and how will any risk be managed?*

   b. *Why was it not considered necessary to require parties to agree to allow the Court that finally determines a charge to be constituted by the same Judge who gave the sentencing indication?*

Answer:

a. It is the primary role of a Judge to remain impartial and ensure that any decision made is based solely on the law and evidence provided. In providing a sentencing indication, the Court is not determining a finding of guilt but rather considering a possible sentence based on the available facts.

   If a sentencing indication is not accepted, it is the role of the Judge to ensure that, consciously or unconsciously, they are not influenced by any outside factors when determining the matter. If a Judge believes they are unable to do this, they may remove themself from the case.

b. It was not considered necessary for parties to agree given the amendment responds to listing conflicts in remote communities where a limited number of Judges may be available. For example, where a Judge has been scheduled to attend a remote community for circuit court for a week and provides a sentencing indication, if that indication is not accepted and parties were to then not agree for the same Judge to finally determine the matter, there are limited (if any) options available for determining the matter in a timely manner. Requiring parties to agree would result in further delays contrary to the objectives of the Bill.

Entering a plea

5. Clause 17 seeks to amend section 64 of the *Local Court (Criminal Procedure) Act 1928* to expressly allow legal practitioners, appearing on behalf of a defendant, to enter a plea on the defendant's behalf to all summary charges, including indictable charges being dealt with summarily. Whilst noting these amendments will provide a time-saving measure, the Director of Public Prosecutions submitted that, to avoid any miscarriages of justice or subsequent disputes about whether the defendant intended to plead guilty, it should be necessary for it to be confirmed on the record that defence counsel is instructed to enter the relevant guilty pleas (Submission 6, p. 5).

   a. *Was consideration given to requiring a defendant to confirm on the record their intention to plead guilty and, if not, why not?*

Answer:

a. The working group considered the amendment and discussed construction of the amendment. The issue identified by the Director of Public Prosecutions in their submission to the Committee was not raised as an issue during the discussions of the working group. It is however noted that legal representatives entering a plea on behalf of their client cannot do so without instructions from their client as a matter of rules of practice.

Fast-track committal pathway

6. Proposed section 106B provides that, in appropriate cases, the committal process may be streamlined by dispensing with the preliminary examination.

   a. *What is the anticipated outcome of dispensing with preliminary examinations (for example, will this reduce listing burdens on the Court)?*

Answer:

a. The amendment is intended to reduce the Court time and resources expended on preliminary examination hearings, in appropriate cases. The purpose of a preliminary examination is to test that there is sufficient evidence to proceed to trial in the Supreme Court, and avoid wasting time and resources of that Court. In certain cases the preliminary examination is not necessary. This may include where it is acknowledged that the evidence is sufficient or where the accused intends to plead guilty.

Presumption of joinder of chargers

7. Clauses 6, 20 and 26 seek to provide a presumption that charges against a defendant for multiple domestic violence offences in relation to the same person will be heard and determined together.

   a. *Legal Aid NT and the Northern Territory Anti-Discrimination Commission submitted that these amendments may have negative effects on victim-survivors, including extending the time for domestic violence allegations being heard, leading to more successful appeals resulting in complainants having to give evidence again, and increasing risk of retraumatising victim-survivors (Submission 2, pp. 3-4; Submission 4, p. 2). How does the Department respond these concerns?*

   b. *Submitters to the Committee's Inquiry raised concerns about the potential pressure these amendments may place on court listings. How will these additional pressures on the Court be managed in the implementation of the Bill?*

Answer:

a. The amendment provides for a rebuttable presumption which, if there are concerns such as unnecessary delays or increased complexity, allows the Court to deal with the matters separately. This does not remove the necessity for the Court to consider whether it is appropriate to deal with the joined charges separately as required by sections 51(3) and 101A(2) of the *Local Court (Criminal Procedure) Act 1928*, only that it is subject to this new presumption.

   The intention of this amendment is to avoid circumstances where victim-survivors are

retraumatised by being required to attend court on multiple occasions for multiple different hearings by enabling the matters to be considered together, rather than through separate proceedings. There is already the ability for indictable domestic violence matters to be dealt with together in the Supreme Court. This amendment will allow summary matters to also be dealt with together in the Local Court.

b. This is an operational consideration which the Court will address. It is outside of the scope of this Bill. Additionally, there is already capacity for indictable matters to be considered together in the Supreme Court, with this amendment allowing for summary matters to be considered together, this should reduce pressures on the Court in having multiple listings.

Charges on separate complaints may be heard together

8. Clause 7 inserts new section 51A into the *Local Court (Criminal Procedure) Act 1928* to provide the Court may, on application, order that charges contained in separate complaints against the same person be heard and determined together.

   a. *Has consideration been given to developing policy guidance on applications made under section 51A?*

Answer:

a. This provision was inserted as a technical amendment to give the Courts the power to join separate complaints, as required by the presumption in new section 183B of the Bill relating to the joining of domestic violence matters.

Use of audiovisual link

9. Clauses 36 and 37 seek to amend section 49 and insert sections 49EA and 49EB into the *Evidence Act 1939* to create a presumption of audiovisual link (AVL) in certain circumstances unless the necessary facilities are not available or the Court directs the defendant to appear physically.

   a. *What will constitute 'necessary facilities' for the purposes of proposed sections 49EA and 49EB? Will this be a matter left to the discretion of the Court, and will there be any guidance published?*

   b. *Legal Aid NT, Law Society NT, Northern Territory Anti-Discrimination Commission, and North Australian Aboriginal Justice Agency submitted that the use of AVL may disproportionately impact certain people with communication difficulties, for example due to language, hearing or cognition (Submissions 2, 3, 4, and 5). How will these risks be managed in the operation of the provisions?*

   c. *Will any additional resources be invested to ensure there are sufficient 'necessary facilities' to support the implementation of the Bill?*

   d. *Why is providing for a presumption of AVL preferred to providing for a right to appear via AVL (unless the Court directs otherwise)?*

Answer:

a. This will be a matter for the Court to determine, as an operational and technical matter, noting that guidance is not proposed to be published so as to avoid fettering the discretion of the

Court especially given the wide-ranging circumstances that may arise impacting what constitutes 'necessary facilities'.

b. The use of AVL is already part of Court practice. The amendment is intended to help facilitate appropriate use and will be managed by the discretionary provisions which allow the Court to direct that a person appear in person:

- For remote witnesses: where a party opposes the use of audiovisual links and it is not in the administration of justice to require the person appear via audiovisual link:
- For defendants in custody: the court directs otherwise, giving consideration to any risks to the defendant, risk of escape, past behaviour while appearing or in custody, the efficient use of judicial and administrative resources, and any other appropriate matter (including, as examples, the ability of the defendant to comprehend the proceedings or access legal advice or representation or the assistance of an interpreter, and any special needs of the defendant).

c. This Bill is part of broader justice system reforms to address demand pressures. The Department maintains and updates equipment for AVL. The question of additional financial resourcing is a matter for Budgetary processes.

d. Currently for the Court to direct a person to appear, give evidence or make a submission via AVL, an application by a party to the proceeding (including a witness or defendant) to appear via AVL is generally required. The presumption in favour of AVL removes this requirement, saving time and resources. It is a practicable approach allowing appearance by AVL where appropriate, noting that a right to appear by AVL would not be practicable if necessary facilities are not available or unable to be made available in the circumstances. A right to appear would remove the flexibility that the presumption provides and would likely impact the safeguards to ensure AVL is only used where appropriate for the specific circumstances of the matter before the Court.

Witnesses failing to attend proceedings

10. Clause 39 seeks to amend section 194 of the *Evidence (National Uniform Legislation) Act 2011* to allow the Court to consider the provision of travel and/or accommodation instead of solely just whether a reasonable sum of money has been provided to a witness who has failed to attend court when determining whether to issue a warrant to bring them before the Court.

    a. *The Committee notes that, as currently drafted, amended section 194(1)(c) refers to 'prepaid travel'. The Director of Public Prosecutions submitted that travel to court is often not 'prepaid', particularly in remote communities where such services are not available (Submission 6, pp. 6-7). How do the amendments to section 194 account for travel that is not 'prepaid' (such as police pickup and transit)?*

    b. *Was consideration given to including the ability to enforce an order where arrangements have been made for travel that is not 'prepaid'?*

Answer:

a. The amendment was discussed with the Working Group and no concern with the drafting was raised. The reference to pre-paid travel is just an example which provides illustration of the effect of a provision when interpreting statute. It avoids the need to provide a specific list of

approved expenses or travel methods. The current provision only recognises "a reasonable sum of money" being provided. The purpose of the amendment is to enable the court to recognise expense towards costs of a witness attending may be more than through the provision of a sum of money and may be through travel arrangements being made on the witness' behalf.

Any other travel arrangements provided to ensure the attendance of a witness in Court is intended to be encompassed by this provision.

b. Further examples were not included noting that pre-paid travel was primarily included for the purpose of referring to the arrangement of flights or otherwise from remote communities, where necessary. The example was discussed by the Working Group.

Transitional provisions

11. It is noted that the Bill does not contain any transitional provisions in relation to the amendments made to the *Local Court (Criminal Procedure) Act 1928*. The Director of Public Prosecutions submitted: "it would be of utility to have clear transitional provisions in relation to all of the amendments to confirm whether they apply to proceedings on foot prior to commencement" (Submission 6, p. 5).

    a. Will the Bill apply to any proceedings prior to the Bill's commencement, or otherwise have any retrospective effect?

    b. Was consideration given to including transitional provisions?

Answer:

a. It is a common law presumption that legislative amendments do not apply retrospectively with legislation intended to apply only to future, not past acts or rights. The power to enact retrospective law requires use of clear and unambiguous language to overcome the presumption. However, there is an exception to this in matters of procedural law. This Bill, as a Bill primarily making amendments to procedural legislation, is intended to apply to proceedings underway at the time of the commencement of this Bill. There are no vested rights in particular court procedures that offend the presumption against retrospectivity or infringe on rule of law.

b. Given that the amendments within this Bill are primarily of a procedural nature, transitional provisions are unnecessary as the Court would apply the procedures outlined in the Act as in force on that day, as is the general practice.

However, a transitional provision was included for the amendments to the *Bail Act 1982*. This was done on the basis that there are likely to be warrants which have been issued and are in force prior to the commencement of the Bill, requiring a transitional provision to allow for continuity of those warrants to remain valid and effective. The Bill therefore expressly states these amendments are not to apply to those warrants. It maintains the warrant as a lawful action and authorisation that does not lapse simply because there has been a change to the provision. In practice it means there will be two systems operating simultaneously for police (the current and amended provisions) until such time as relevant warrants issued under the current scheme have been dealt with.