DPP submission

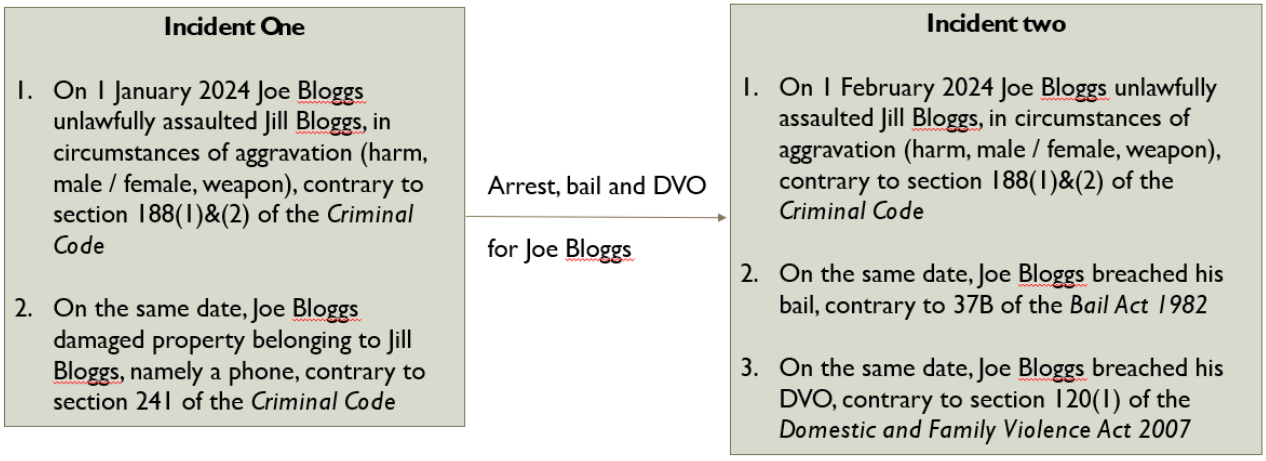
Criminal Procedure Legislation Amendment Bill 2026

1. The Director of Public Prosecutions makes the following submissions to the Legislation Scrutiny Committee in response to its enquiry regarding the *Criminal Procedure Legislation Bill 2026*.

Amendment of the *Local Court (Criminal Procedure) Act 1928*

Sections 51, 101A and 183B – Joinder of charges for domestic violence offences

2. Section 183B creates a presumption of joinder for domestic violence offences. "Domestic violence offences" means both the offence of breaching a domestic violence order and offences that are constituted by or involve domestic violence (as defined in section 5 of the *Domestic and Family Violence Act 2007*).
3. Under the new section 183B, it is presumed that defendants charged with more than one domestic violence offence, alleged to have been committed in relation to the same person, will be heard and determined together.
4. The DPP commends this amendment as a step towards ensuring fairness to complainants and the community in domestic violence matters. Joining domestic charges is important because:
   (a) it reduces trauma for complainants, who will only have to give evidence once at a single hearing;
   (b) it has the potential to expedite the hearing process for a later in time file, if it joins a matter that is already listed for hearing; and
   (c) it facilitates the reliance on cross-admissible evidence, such as relationship or tendency evidence.
5. The nature of domestic violence is such that it is common for defendants to have more than one active domestic violence file before the Court, for example:



6. The charges in relation to those two incidents will be spread across two files, and also across multiple information and complaints. In this example, there are three charges spread across two "informations" as follows:

Information One

1. On 1 January 2024 Joe Bloggs unlawfully assaulted Jill Bloggs, in circumstances of aggravation (harm, male / female, weapon), contrary to section 188(1)&(2) of the *Criminal Code*

2. On the same date, Joe Bloggs damaged property belonging to Jill Bloggs, namely a phone, contrary to section 241 of the *Criminal Code*

Information two

3. On 1 February 2024 Joe Bloggs unlawfully assaulted Jill Bloggs, in circumstances of aggravation (harm, male / female, weapon), contrary to section 188(1)&(2) of the *Criminal Code*

7. Under the current section 101A, for the two domestic violence incidents to be heard and determined together, the charges need to be re-laid so that they are joined in the same information (see *Flynn & Anor v Thompson* [2024] NTSC 3 (at [12])):

Information One

1. On 1 January 2024 Joe Bloggs unlawfully assaulted Jill Bloggs, in circumstances of aggravation (harm, male / female, weapon), contrary to section 188(1)&(2) of the *Criminal Code*

2. On the same date, Joe Bloggs damaged property belonging to Jill Bloggs, namely a phone, contrary to section 241 of the *Criminal Code*

3. On 1 February 2024 Joe Bloggs unlawfully assaulted Jill Bloggs, in circumstances of aggravation (harm, male / female, weapon), contrary to section 188(1)&(2) of the *Criminal Code*

8. To hear the complaint charges with the matters on the information, then, they too must be re-laid so that they are on one file and the charges look like this:

Information

1. On 1 January 2024 Joe Bloggs unlawfully assaulted Jill Bloggs, in circumstances of aggravation (harm, male / female, weapon), contrary to section 188(1)&(2) of the *Criminal Code*

2. On the same date, Joe Bloggs damaged property belonging to Jill Bloggs, namely a phone, contrary to section 241 of the *Criminal Code*

3. On 1 February 2024 Joe Bloggs unlawfully assaulted Jill Bloggs, in circumstances of aggravation (harm, male / female, weapon), contrary to section 188(1)&(2) of the *Criminal Code*

Complaint

4. On the same date, Joe Bloggs breached his bail, contrary to 37B of the *Bail Act 1982*

5. On the same date, Joe Bloggs breached his DVO, contrary to section 120(1) of the *Domestic and Family Violence Act 2007*

9. There is a time limit on the laying of complaints (6 months) which can create issues when needing to re-lay charges on different file numbers.

10. This process of re-laying charges is time intensive and relies on the police and prosecution to be able to identify in a timely manner the need to join the charges on a single file. Practically that is often difficult as the files come before the court at different times, sometimes months apart.

11. The new section 183B creates a presumption that the matters are heard together and removes the requirement that there be a single complaint or information for domestic violence matters to run together. That will be of significant practical assistance to police and the prosecution in circumstances where the physical joinder of the charges was a burdensome additional administrative step.

Sections 51A and 101B – Joinder of charges

12. The proposed sections 51A and 101B are intended to allow matters on separate complaints and informations to be heard together (in a similar way to section 183B). It is not clear why different language is used in sections 51A, 101B and 183B(1) – "dealt with together" for section 101B as distinct from "heard and determined together" for sections 51A and 183B(1). Assuming they are intended to mean the same thing, the language should be consistent.

13. Guidance is required on the matters the court might consider when dealing with an application under sections 51A and 101B. For example, section 101A states that offences can be joined on the same information where they are founded on the same facts or are a part of a series of offences of the same or similar character. Under the new section 101B, applications can be made to deal with separate informations together, but there is no guidance about the circumstances in which the Court might accede to an application. The test in section 101A can have no application to the exercise of discretion under section 101B, because it applies only to join charges on a single information. This leaves open the question of when it will be appropriate for matters on separate informations that don't meet the test for joinder in section 101A, to be dealt with together.

14. Consideration could also be given to extending sections 51A and 101B to allow separate informations and complaints to be dealt with together for co-accused. That is a relatively common occurrence as a result of co-accused being arrested or given notices to appear at different times. Police will produce single charges for the first accused's court date and then, having already filed those charges, place the charges for the co-accused on a separate information for a later court date. Where a statement of facts makes it clear that the defendants have committed the offence together, an application could be made that the court dealt with them together, without having to relay the charges.

Section 52 – Limitation of time for making a complaint

15. The proposed section 52 is intended to formalise the common law position that statutory time limitations create a complete defence to a charge, which an accused person may choose not to raise. The express power to charge a person with a complaint out of time will assist in the resolution of matters, such that the parties are able to negotiate a plea to a less serious offence, regardless of the 6-month time limitation.

Section 59, 60, 65 and 115 – Remand

16. The explanatory memorandum indicates that section 59 no longer mandates the defendant be bought before the court. That does not seem to be reflected in the bill, noting that the amended s59 only applies where the defendant is apprehended under a warrant and brought before the court.

17. The amendments to section 60 remove the ability to extend the remand period in the absence of the defendant where he is unable to personally appear due to illness or accident. It is understood this may be a removal suggested because the power to adjourn and extend remand is provided for

elsewhere in s65(3). However, s65(3) only has application where a hearing is being adjourned. While rarely utilised, s60(1) in its present form does permit the court to adjourn and extend remand in circumstances where it would not be practical for an accused to come before the court and the matter is not yet at hearing stage. In our view that power should be preserved.

Sections 60AC and 60ARA – Application of Division 2A in bush courts

18. While the new section 60ARA provides some flexibility for the Court, it gives no certainty to the parties. In particular, the Court may dispense with compliance with a requirement before or after the occasion for compliance arises. Dispensing with compliance *after* the occasion for compliance practically means the parties will need to do what they can to comply then ask (in effect) for forgiveness if they cannot. This is resource intensive and not in keeping with the intention behind the amendment.

19. In our view, it would be preferable for the legislation to remove the necessity for compliance with Division 2A unless otherwise ordered by the Court

Sections 60AI and 60AL – Ability to list mentions

20. The new section 60AI(8) permits the court to appoint a further date for mention before the directions hearing date, which had also been open to the court under the old section 60AI(8). 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.

21. Otherwise, the ability to list mentions (as distinct to directions hearings) is a commendable amendment. Substantive progress is often made outside the directions list, and flexibility in the Court's listing powers promotes faster finalisation of matters.

Section 60AP – Certificate of readiness

22. The DPP is supportive of the repeal of section 60AP and the reduction of the administrative burden it causes on the court and practitioners. In practice, it is a provision rarely complied with.

Sections 60AT, 60AU and 60AZA – Sentencing indications

23. The current proposal is to amend section 60AT(3) and (4), such that a sentencing indication may be given at any time before the date appointed for the commencement of the hearing of the charge. Previously, a sentencing indication could not be given within 7 days of a listing for hearing. This amendment is supported.

24. The amendment to section 60AU is supported, noting that the effect of section 60AZ is that the court (constituted by the same judge) must not impose a more severe sentence than the sentence indicated. It is important, in those circumstances, that the court has the benefit of considering all of the material relevant to sentence and has the benefit of submissions by both parties about what can be made of the material. The DPP agrees that the amendment is necessary to remain consistent with general sentencing principles.

25. The amendment to section 60AZA is also supported, allowing the judge who gave the sentencing indication to also sit on the determination of the hearing. It is noted, however, that the explanatory memorandum refers to a requirement that the parties agree, which is not a requirement under the proposed section 60AZA. Such a requirement is in our view unnecessary.

Section 64 – The entering of pleas for the defendant

26. The proposed section 64(2) will allow practitioners to enter pleas on behalf of the defendant to charges on complaint. The DPP is supportive of this as a time saving measure. However, to avoid any miscarriages of justice, or subsequent disputes in later proceedings about whether a defendant did intend 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 before this occurs.

Section 68 – Procedure for the hearing of a complaint

27. Section 68(3) is being removed as redundant as the court follows the rules in the *Evidence (National Uniform Legislation) Act 2011*. While that might be true insofar as section 68(3) relates to examination, cross-examination and re-examination of witnesses, the *Evidence (National Uniform Legislation) Act 2011* does not cover the additional aspects of section 68(3), namely the right of address. Those matters are covered in Part IX, Division 4 of the *Criminal Code* and apply only in relation to jury trials. The provisions of the *Criminal Code* are amended in part by the practice of the Supreme Court, for example in relation to the order of speeches. There remains some practical utility in having those parts of the *Criminal Code*, as modified by the Supreme Court practice, applicable to hearings in the Local Court.

Section 120 – Property offences

28. The amendment has the effect of increasing the Local Court's jurisdiction to $100,000. That will be subject to section 122A and there will still be a power to decline summary jurisdiction where the matter is too complex to be properly dealt with in the Local Court. This is supported by the DPP.

Transitional provisions

29. It is noted there are no transitional provisions. 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.

Amendment of the *Evidence Act 1939*

Section 49EA – Witness appearance in court

30. The DPP strongly supports any amendment which will facilitate witness evidence being given by AVL. The tyranny of distance has long been a bar to the efficient administration of criminal justice in the Northern Territory, both in terms of cost but also in relation to the ability of witnesses to travel. The improvement of AVL systems, in particular Teams, should be fully taken advantage of by the courts.

31. That said, while the proposed section 49EA provides legislative support in the hearing of the application under section 49E, it is not the most efficient model that could be adopted. Applications will still need to be made under section 49E, in advance of a hearing date, regardless of whether it is opposed. That requires there to be an additional court listing, which the Local Court often cannot accommodate. Some judges are also reluctant to give a direction on AVL use in advance where they will not necessarily be the judge at the hearing. The result being that the application for AVL is made on the day of the hearing and if refused, the prosecution either needs to apply for an adjournment to have the witness travel or is forced to try to proceed another way (without the witness altogether or make an application under section 65 of the *Evidence (National Uniform Legislation) Act 2011*). Either way the result is a poor outcome for the administration of justice.

32. There would be greater utility in there being a right for witnesses to appear by AVL, unless the Court otherwise directs. Where there is no opposition to the use of the AVL, no application need be made to the court and arrangements can simply be made by the prosecution. If there is to be opposition, that *smaller number* of applications can be made to the court in advance, such that if the court disallows the AVL, travel arrangements can be made instead without interrupting the hearing dates. It would allow for much greater efficiency in the court process, in circumstances where it is now readily accepted that evidence given by AVL is just as good as in person evidence. In that regard, it is noted that in even the most serious of sexual and domestic violence offences there is a statutory right of a vulnerable witness to give their evidence by AVL.

Section 49EB – Defendants appearance in court

33. Section 49EB relates to detained defendants and creates a requirement that their appearances be by AVL in most circumstances. The exceptions to the requirement to appear by AVL are set out in section 49EB(5). It is noted that this section reflects the current practices of the Local Court.

34. As drafted, on one view section 49EB(5)(c) would require in-court appearances for all steps in the committal process. "Preliminary examination" is defined in the *Local Court (Criminal Procedure) Act 1928* to mean an examination under section 105A. Section 105A of the *Local Court (Criminal Procedure) Act 1928* requires a preliminary examination to be conducted but does not separate the committal process into its constituent parts. On one view, a "preliminary examination mention" (or **PEM**), "preliminary examination argument" (or **PEA**), "preliminary examination on the papers" (or **PEP**) and a "preliminary examination oral" (or **PEO**) are all part of the "preliminary examination" and would require in-person attendance for each listing. Both a PEP and a PEO are listings during which a matter will be committed to the Supreme Court – a PEP on the basis of the committal brief and a PEO on the basis of oral evidence that has been called.

35. In practice, at the current time, defendants are generally only required to be physically present for PEOs, where oral evidence is being called. For all other listings (either a PEM, PEA or PEP), defendants routinely appear by AVL. In the DPP's view, where a defendant is represented, physical attendance would only be preferrable during a PEO. Where a defendant is self-represented, physical attendance would be preferable for both a PEP and a PEO. Physical attendance is important for a PEP not only to ensure the accused is properly appraised of the charges and the evidence to be relied on, but also so that they can physically receive a copy of the alibi notice required to be given by the court under section 331(3) of the *Criminal Code*. Section 49EB(5) ought to be amended accordingly.

Amendment of the *Evidence (National Uniform Legislation) Act 2011*

36. While caution should be exercised before amending uniform legislation, the DPP supports the amendment to section 194(1)(c) to better reflect the realities of witness attendance at court. The effect of the amendment is to remove the requirement to pay conduct money to witnesses and replace it with the option to pay conduct money or its equivalent in order to meet reasonable expenses of attending court.

37. The amendments refer specifically to "prepaid" travel, but the DPP asks that consideration be given to recognising other forms of travel arrangements. It is common both in the main centres and in communities, that witness attendance at court is facilitated by police picking the witnesses up and bringing them in. Once at Court, the DPP provides food vouchers and then similar arrangements are made with police to take witnesses home. There is no "prepayment" of travel, nor is there payment of conduct money. That is particularly the case in community where there is often no other means of arranging travel as there are no services available.

38. Accordingly, the amendment to section 194(1)(c) ought to include the ability to enforce an order where arrangements have been made for travel, whether or not they have been "prepaid."

Amendment of the *Sentencing Act 1995*

Section 123A – Relevance of late guilty plea in sentencing

39. Section 123A is to be repealed, purportedly as a consequential amendment to removing the prohibition on getting a sentencing indication less than 7 days from a hearing under the *Local Court (Criminal Procedure) Act 1928*.

40. Section 123A is not tied to sentencing indications under the former sections 60AT(3) and (4). It is a stand-alone provision designed to promote early resolution of the matters where it was possible for a defendant to plead guilty at an earlier time. It is designed to reduce the resources being spent on having matters prepared for hearing where the accused pleads guilty regardless.

41. Removal of section 123A does not have the effect of removing obstacles to an "early" plea, rather it permits a defendant to enter a late plea without adverse consequences. It allows defendants to, without consequence, adopt a position where they can wait to see if the witnesses attend court before pleading guilty. This is an undesirable position and contrary to the spirit of the legislative amendments more generally.