



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

No. 238

WRITTEN QUESTION

J Davis to the Attorney-General, Hon Marie-Clare Boothby MLA:

Unrepresented Defendants and Court Stays

1. In *Fairweather v Harrison* [2026] NTSCFC 1, delivered on 3 June 2026, the Full Court of the Supreme Court held that the Local Court has an implied power to grant a stay or an adjournment where the conditions in *Dietrich v The Queen* are satisfied, and overruled *Highway v Tudor-Stack* (2006) 163 A Crim R 178 to the extent it stated otherwise. In response the Attorney-General stated that the decision would be applied accordingly by the Local Court.
 - a. What advice has the Attorney-General's Department provided to the Attorney-General on the operational effect of the decision, and on what date?
 - b. What does the Government understand "applied accordingly" to require of the Local Court in practice, and what steps has the Department taken to give effect to it?
 - c. The Court declined to answer the second question reserved, holding that what restrictions apply "This is not a question properly raised under s 162(1) of the Local Court (Criminal Procedure) Act 1928 (NT)". In the absence of that guidance, has the Department issued any advice or guidance to prosecutors on when a stay application should be opposed?
 - d. How many criminal defendants have been refused a grant of legal aid on funding or capacity grounds since 17 November 2025?
 - e. If the Department does not hold that figure, has it requested it from the Northern Territory Legal Aid Commission?
 - f. Since 3 June 2026, how many matters have been adjourned or stayed on the ground that the defendant is unrepresented? Please provide by court and by month.

- g. If that is not recorded as a distinct ground, in which system and in which field is the reason for each adjournment recorded?
- 2. The judgment records at paragraph [1] that “On 2 March 2026, the grant of legal aid was withdrawn because the respondent was not in custody”, three days before a summary trial listed on charges each punishable by not more than 10 years’ imprisonment.
 - a. Is whether an applicant is in custody a criterion in the Northern Territory Legal Aid Commission’s means, merit or eligibility guidelines; if so, in which guideline and from what date?
 - b. In each of 2024–25 and 2025–26, in how many matters was a grant of legal aid withdrawn after it had been made, and on what grounds? Please provide by ground.
 - c. In how many of those was the withdrawal within 14 days of a listed hearing or trial date?
 - d. If withdrawals are not recorded by ground or by proximity to listing, in which system are they recorded and in what format?
 - e. Has the Department sought advice on whether an in-custody criterion is consistent with the decision in *Fairweather v Harrison*?
- 3. Has the Government modelled the impact of the decision on court backlogs, victims awaiting justice, and the overall operation of the criminal justice system?
 - a. If so, can that modelling be tabled?
 - b. If no modelling has been undertaken, has the Department sought advice from the courts on the expected effect?
- 4. Before the ruling, how many people were appearing in the Local Court without legal representation because Legal Aid NT had exhausted its monthly funding allocation?
 - a. Please provide a breakdown of adults and children affected, or, if either number is too small to report, the combined total.
 - b. If unrepresented appearances are not counted, in which system is the presence or absence of representation recorded at each appearance?
- 5. The Court held at paragraphs [15] to [19] that the Dietrich principle applies only where the proceeding is a trial on a criminal charge, the charge is a serious offence, the accused lacks the means to engage representation, the accused is unrepresented through no fault of their

own, and a fair trial is not possible without representation — and that even then a stay may be refused in exceptional circumstances.

- a. On the Government's understanding, what proportion of defendants currently appearing unrepresented in the Local Court would satisfy all five conditions?
 - b. What is the Government's plan for defendants who appear unrepresented but do not satisfy them?
 - c. Does the Department accept that the decision leaves the position of unrepresented defendants charged with offences that are not "serious offences" unchanged?
6. The Federal Attorney-General wrote to the Northern Territory Government in May 2026 expressing concern about access to legal assistance services and reminding the Territory of its obligations to adequately fund legal services. In light of the Supreme Court ruling and the growing number of people being denied representation, will the Government now provide additional funding to Legal Aid NT?
 - a. If not, how does the Government intend to ensure Territorians can access a fair trial?
7. If the Government believes current funding is adequate, can the Minister explain why Legal Aid NT has been unable to accept new criminal law matters for many defendants since November 2025 and has stated there is no prospect of restoring services without additional funding or reduced demand?