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Subject: Submission on the Criminal Procedure Legislation Amendment Bill 2026
Date: Friday, 20 March 2026 10:24:17 PM

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20 March 2026

The Secretary

Legislative Scrutiny Committee
Legislative Assembly of the Northern Territory
GPO Box 3721
DARWIN NT 0801

Dear Secretary

Submission on the Criminal Procedure Legislation Amendment Bill 2026

I make this submission in response to the Legislative Scrutiny Committee's call for submissions on the *Criminal Procedure Legislation Amendment Bill 2026*. I note that the Committee is to consider whether the Assembly should pass the Bill, whether it should amend the Bill, and whether the Bill has sufficient regard to the rights and liberties of individuals and to the institution of Parliament.

I have reviewed the Bill and the accompanying Explanatory Statement. In my view, the Bill broadly achieves its stated purpose of streamlining criminal matters in the Local Court and promoting early resolution, but several provisions go beyond harmless administrative reform and create real and foreseeable risks of misuse, unfairness, overreach, and weaker criminal accountability if left unamended.

The Explanatory Statement expressly frames the Bill as a package aimed at fast-track committals, early resolution, wider audiovisual use, broader Local Court efficiency, police flexibility on warrant arrests, and streamlined domestic violence hearings to deliver "swift justice for victims and the community."

My position is therefore as follows -

The Bill should not be passed in its current form. I believe it should be amended.

Some clauses are sensible administrative reforms and should proceed. Others should proceed only with tighter safeguards, clearer limits, and mandatory reasons to prevent foreseeable misuse.

My General position

The Bill does contain several practical and low-risk measures. These include the repeal of the written readiness notice requirement, the move to approved forms published by the Chief Judge, the clarification that "conduct money" can include equivalent support such as prepaid travel, and some machinery amendments intended to align provisions across related Acts. Those changes are broadly consistent with the provided Explanatory Statement and appear directed at

genuine administrative efficiency rather than coercive expansion of power.

The concern lies elsewhere. Several amendments shift discretion away from formal judicial supervision, reduce procedural friction that currently protects fairness, and make it easier for matters to be aggregated, expedited, or resolved without adequate testing. In a criminal justice system, speed is useful only up to the point where it starts to erode accuracy, accountability, and equal treatment before the law.

Police bail for court-issued warrants

The Clauses affected- Clauses 4, 5, 28, 29 and 30.

What the proposed Bill does -

The Bill allows an authorised police member to grant bail to a person apprehended under a Local Court warrant unless the warrant is endorsed to exclude police bail. The Explanatory Statement says this is intended to give police flexibility in limited and appropriate circumstances, including where a person has failed to appear in accordance with a bail undertaking.

My Concern -

This is one of the clearest areas where efficiency can become overreach. A court-issued warrant is a judicial act. The amendments make police bail the practical default unless the court has specifically endorsed the warrant to exclude it. That changes the centre of gravity from judicial control to executive discretion.

That is open to misuse in at least four ways I can describe.

First, it may and probably will lead to inconsistent outcomes between defendants arrested on similar warrants depending on the officer, shift, region, or workload.

Second, it may weaken the force of warrants issued in serious failure-to-appear matters, intimidation matters, repeat offending matters, or domestic violence contexts where victim safety and court authority are both live issues.

Third, it may reduce the immediacy of judicial scrutiny after apprehension in cases where the original warrant was issued because the Court had already lost confidence in the person's compliance.

Fourth, it creates fertile ground for a later argument about whether a warrant was ever intended to require compulsory presentation before the Court, which in turn can generate more procedural litigation rather than less.

My Recommendation -

The Bill should be amended so that police bail on a court-issued warrant is not available unless -

1. the warrant is for a defined low-risk category of non-violent matter; or
2. the Court expressly authorises police bail on the face of the warrant; and
3. the written reasons are recorded by police whenever bail is granted on a warrant.

At a minimum, the Bill should expressly exclude police bail on warrant apprehension for -

- domestic violence offences and DVO contraventions;
- serious violence matters;

- witness intimidation or interference matters; and
- repeat failure-to-appear matters.

Dispensing with pre-hearing compliance in remote proceedings

Clause affected - Clause 13, inserting section 60ARA.

What the proposed Bill does -

The Bill allows the Court, in proceedings outside Darwin, Alice Springs, Tennant Creek or Katherine, to dispense with compliance with pre-hearing procedural requirements where there is “good reason” to do so. The Explanatory Statement says this is intended to provide flexibility in remote communities where rigid adherence to best practice procedures may not be appropriate.

My Concern -

The phrase “good reason” is broad and undefined. The power may be exercised either before or after the occasion for compliance arises. That creates a serious risk of unequal process depending on geography. A defendant in a remote community should not, in substance, receive a thinner form of justice than a defendant in a major centre simply because administration is harder.

There is a real and foreseeable danger here that administrative difficulty will be used to justify lowering procedural discipline rather than resourcing proper compliance. What begins as flexibility can become routine exception.

My Recommendation -

The Bill should define “good reason” narrowly and require the Court to record reasons whenever section 60ARA is used. The section should also state that the power must not be exercised where dispensing with compliance would materially prejudice -

- disclosure;
- access to representation;
- interpreter access;
- case preparation;
- reasonable time to respond; or
- the fairness of the proceeding as a whole.

Sentence indications, late plea pressure and the same judge determining the charge

Clauses affected - Clauses 14, 15, 16 and 48.

What the Bill does -

The Bill expands the time in which a sentence indication can be given, allows the Court to consider party submissions on sentence, removes the former prohibition on the same judge later determining the charge after giving a sentence indication, and repeals section 123A of the *Sentencing Act 1995* as a consequential step. The Explanatory Statement says this is intended to promote early resolution, encourage appropriate guilty pleas, and remove obstacles to resolution.

My Concern -

There is nothing inherently wrong with sentence indication schemes. The problem

is always the same, that they save time by increasing pressure. That pressure may be acceptable only if strong separation remains between indication and adjudication.

This Bill weakens that separation. The same judge may give the indication and later determine the charge. That creates a foreseeable perception, and in some cases a reality, of prejudgement. This risk is not merely academic. The examples of judicial activism in the NT could fill several books. Once a defendant has heard the likely sentence on a plea, the system begins leaning on them to capitulate. When the same judge may later decide the matter after the indication is not accepted, the appearance of neutrality is now weakened.

The repeal of the late-guilty-plea restriction may also create last-minute inducements that reward tactical pressure rather than clear and early responsibility.

My Recommendation -

Clause 16 should be amended so that the same judge cannot finally determine a contested charge after giving a sentence indication, unless -

- the defendant personally consents on the record; and
- the Court is satisfied that consent is informed and voluntary.

A stronger position would be to restore the separation entirely and require a different judge for final determination where an indication was given and not accepted.

Look, I get it we have a shortage of judges, so you source more or reform the ones you have, that you obviously don't trust, you don't give them even more power. You don't reward bad behaviour, you deter it.

Pleas entered by legal practitioners on behalf of defendants

Clause affected - Clause 17.

What the Bill does -

The Bill inserts a provision allowing a legal practitioner appearing for a defendant to enter a plea on the defendant's behalf to summary charges, including indictable charges being dealt with summarily. The Explanatory Statement says this is intended to enhance efficiency and operates on the basis that defendants provide instructions.

My Concern -

That assumption is precisely the problem. In criminal practice, instructions are not always clean, current, informed, or reliable. This is especially true where the defendant is vulnerable, cognitively limited, poorly educated, remotely connected, language challenged, under pressure, or simply absent from court. These are very real consistent issues in the NT.

A plea is not a filing convenience. It is a decisive act with major legal consequence. The more distance there is between the defendant and the plea, the more risk there is of later dispute, confusion, appeal, or injustice.

My Recommendation -

Clause 17 should be amended so that a legal practitioner may enter a plea on behalf of a defendant only where:

- the defendant has given express instructions;
- those instructions have been confirmed in writing or orally on the record; and
- the Court is satisfied, where necessary, that the defendant understands the plea and its consequences.

For guilty pleas, the preferable rule is personal confirmation by the defendant unless excused for clearly stated reasons.

Dispensing with preliminary examination

Clause affected - Clause 24, inserting section 106B.

What the Bill does -

A legally represented defendant may apply to dispense with preliminary examination after service of the committal brief if the defendant concedes that the evidence would be sufficient to put the defendant on trial and the prosecutor consents. The Explanatory Statement says this is intended to streamline committal procedure.

My Concern -

This clause fits the Bill's fast-track narrative, but it also creates a path by which serious indictable matters can move forward without early testing in open court. A preliminary examination is not mere delay. It is one of the few early pressure points at which weak evidence, thin briefs, or defective prosecution theory can be exposed before the Supreme Court stage.

Used carefully, the clause may save time in straightforward matters. Used aggressively, it risks becoming a conveyor belt.

The idea may be to expose or dissuade judicial activism, however, it also can reduce judicial fairness.

My Recommendation -

Clause 24 should be amended to require the Court to be satisfied, on the record, that -

- the defendant has received legal advice on the consequences of dispensing with preliminary examination;
- the defendant personally understands that the evidence will not be tested at that stage; and
- dispensing with the examination will not prejudice the fairness of the proceeding.

The Court should also retain an express discretion to refuse the application where the interests of justice require early testing.

Presumption that domestic violence offences be heard together

Clauses affected - Clauses 6, 20 and 26.

What the Bill does -

The Bill creates a presumption that multiple domestic violence offences involving the same defendant and same person will be heard and determined together. It

also provides that the presumption is not rebutted merely because evidence on one charge is not admissible on another, or because there is a possibility that evidence may be the result of collusion or suggestion. The Explanatory Statement says this is intended to reduce repeat appearances and potentially reduce re-traumatisation of victims.

My Concern -

The aim is understandable. Victims should not be dragged through multiple appearances where one fair hearing can do the work. But the clause overshoots. It does not merely permit joinder. It builds a presumption in favour of it and then weakens two of the obvious rebuttal points: lack of cross-admissibility and possible collusion or suggestion.

That is dangerous. It increases the risk that multiple allegations will be heard as a single combined narrative in which stronger allegations prop up weaker ones. In practice, that can distort fact-finding. It can also increase appeal risk, which in turn can produce delay, possible retrials, and further burden on victims. A clause sold as victim-protective will end up doing the opposite if it is too blunt.

My Recommendation -

Clause 26 should be amended so that the presumption is displaced where joinder would cause substantial unfair prejudice. The Bill should expressly preserve a fairness override where:

- evidence on one charge is not cross-admissible on another and the prejudice is material;
- there is a genuine and significant risk of narrative contamination;
- the number or character of charges would make compartmentalised fact-finding unrealistic; or
- separate hearings are necessary in the interests of justice.

The present language in section 183B(3) is too dismissive of exactly the kinds of prejudice courts should treat seriously and that the Family Law courts and the Supreme court has been criticised over in the past.

Increased audiovisual use for witnesses and detained defendants

Clauses affected - Clauses 36 and 37.

What the Bill does -

The Bill increases the use of audiovisual links in Local Court criminal proceedings. It makes audiovisual appearance the expected approach for certain remote witnesses where facilities exist and it is not contrary to the interests of justice. It also provides that detained defendants in summary criminal proceedings must appear by audiovisual link unless facilities are unavailable or the Court directs otherwise, while preserving in-person appearance for first appearances, contested hearings and preliminary examinations.

My Concern -

There is value in using technology where it genuinely saves cost and travel without harming fairness. But screen-based process is not neutral. It affects communication, credibility assessment, client-lawyer contact, interpretation, and the defendant's capacity to meaningfully participate. These effects are even more acute in remote, culturally complex, or vulnerable-person matters.

The Explanatory Statement says this is “to streamline court processes where appropriate.” The risk is that “appropriate” will, over time, be defined by convenience rather than justice.

The very government that has consistently stated are working to “bridge the gap” will only further widen the gap between class, experience and opportunity. I won’t argue here discrimination, a more learned person would have a field day and substantial media, special interest and political support in making that case.

My Recommendation -

The Bill should be amended to make clear that audiovisual use must not be directed where it would materially impair -

- legal communication;
- the defendant’s capacity to participate;
- interpreter quality;
- the assessment of disputed evidence; or
- overall fairness.

Where a detained defendant objects, reasons should be recorded for overruling that objection. Clarity is needed on this one.

Expansion of summary jurisdiction

Clauses affected - Clause 25 and Clauses 45–46.

What the Bill does -

The Bill increases the property threshold for certain indictable property offences that may be dealt with summarily from \$50,000 to \$100,000 and expands the Local Court’s ability to hear certain drug-related matters summarily, with consent in some instances. The Explanatory Statement says this is intended to increase the scope of matters capable of resolution in the Local Court.

My Concern -

This is efficient, but not consequence-free. Raising the threshold for summary disposal can quietly reclassify the practical seriousness of offending without openly debating that shift. More matters will move through a faster and less elaborate forum. That may be defensible in some cases, but it should not occur simply because the system is under pressure. Let’s not forget that drug prohibitions are still under both public and political reviews, the prohibition, criminalisation and de-criminalisation of Marijuana, and Kava just some examples.

My Recommendation -

The Committee should seek a fuller justification for the jump from \$50,000 to \$100,000 and should consider whether a lower increase, or a staged threshold, would better balance efficiency with proportionality. At minimum, the Court should retain an express power to refuse summary disposition where the seriousness, complexity, victim impact, or public interest requires indictment.

Clauses that may proceed with little concern

For completeness, I note that several amendments appear unobjectionable or broadly beneficial, namely -

- repeal of the seven-day readiness notice requirement;

- approved forms published by the Chief Judge;
- clarification of conduct money to include equivalent support such as prepaid travel; and
- technical alignment provisions across related legislation.

Those provisions are more obviously administrative than coercive and do not raise the same rights-and-liberties concerns.

My Personal Conclusion

The Bill does broadly fulfill the efficiency narrative stated in the Explanatory Statement. That much in my opinion is true. But that is not the same as saying the Bill is safe as drafted. Several clauses create real and foreseeable avenues for lawfare, unfair pressure, weakened judicial oversight, procedural inconsistency, and reduced clarity in the testing of evidence.

In some areas, the likely burden will not fall on the system alone. It will foreseeably fall on victims, defendants, witnesses, and the already stretched courts through appeals, contested procedural arguments, and avoidable disputes about fairness.

For those reasons, I respectfully submit that the Assembly should amend the Bill before passing it. The most important amendments I believe are those that -

- constrain police bail on court-issued warrants;
- narrow and define remote-proceedings dispensations;
- preserve impartiality around sentence indications;
- require reliable confirmation of plea instructions;
- ensure preliminary examination is not dispensed with casually;
- restore a stronger fairness safeguard against prejudicial domestic violence joinder; and
- place clearer fairness limits on expanded audiovisual use.

Thank you for considering this submission.

Kind Regards,

Sam Wilks

HS, ADIP GOV, CIVSM, CIVTAE CIVRE

"Safety and Security for your assets"

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