

2011

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**COURTS LEGISLATION AMENDMENT BILL 2010
AMENDMENTS TO BE MOVED BY VICKI DUNNE MLA**

SUPPLEMENTARY EXPLANATORY STATEMENT

Presented by
Vicki Dunne MLA
Shadow Attorney-General

Courts Legislation Amendment Bill 2010

Amendments to be moved by Vicki Dunne MLA

Outline

The Attorney-General introduced the *Courts Legislation Amendment Bill 2010*, to address, in the main, the backlog of cases in the ACT Supreme Court. This has been a persistent problem for a number of years and is confirmed by data from the Productivity Commission's *Review of Government Services 2011*. There have been a number of cases where defendants have been remanded in custody for more than two years. The ACT Government has sought to address this problem through its *Access to Justice* discussion paper released in May 2010; its failed attempt to introduce a virtual district court; and amendments to the *Bail Act 1992*.

The proposal brought forward by the Attorney-General in the *Courts Legislation Amendment Bill 2010* seeks to redefine "indictable offence" to one that attracts a penalty of more than 5 years imprisonment, up from the current 2 years. The Standing Committee on Justice and Community Safety (performing the duties of a Scrutiny of Bills & Subordinate Legislation Committee) in its Report No 32 raised concerns about the human rights implications of this proposal.

The amendments proposed by Vicki Dunne MLA to the *Courts Legislation Amendment Bill 2010* would remove the Government's redefinition of "indictable offence" and create, as an alternative, a simple process to enable certain criminal matters to be dealt with summarily in the Magistrates Court. That process would largely be contained within one section to be added to the *Crimes Act 1900* and would not require the extensive amendments to the definition of "indictable offence" as is provided in the Government's Bill.

That section would provide that the prosecutor, within a prescribed timeframe, would be required to make an election as to whether an indictable offence carrying a penalty of longer than two years but not longer than five years imprisonment is to be dealt with summarily in the Magistrates Court. In the event the prosecutor does not make an election, the case would be dealt with in accordance with section 375(4) to (14) of the *Crimes Act 1900*.

In the event the Magistrates Court records a conviction in such matters, it would be limited to handing down sentences of not longer than two years imprisonment or a fine of up to \$5,000 or both. Where a matter would, under indictment, carry a maximum fine of less than \$5,000, the Magistrates Court would be prevented from imposing a fine greater than that maximum amount.

A transition provision would provide that any matters on foot under the current system would proceed as if that system had continued unchanged.

A further provision would require the government to review the operation of the new provision after two years and report to the Assembly within three months after the review is started.

Human Rights Compliance

Note is taken of the comments of the Standing Committee on Justice and Community Safety (performing the duties of a Scrutiny of Bills & Subordinate Legislation Committee) in its Reports numbered 32 (in relation to the government's Bill), the Attorney-General's response (reported in the Committee's Report number 34) and the Committee's comments on amendments proposed by Shane Rattenbury MLA (Report number 35).

Like Mr Rattenbury's proposed amendments, Mrs Dunne's proposed amendments also derogate the right of an accused to a trial by jury; however this is to a lesser extent than the Government's proposal. Unlike Mr Rattenbury's proposal, these amendments are proposed to operate for a short while. It is hoped that a review after two years would result in removing the provisions once the backlog issues in the Supreme Court are addressed. The amendment has been constructed so as, firstly, to require the review to be conducted; and, secondly, to enable easy repeal.

This derogation of the right to a trial by jury is ameliorated to some extent by three factors:

- The "middle-ground" approach provided by the amendments, which are far less a derogation of the right to a trial by jury than proposed in the government's Bill;
- The restriction on the sentencing provisions lying with the Magistrates Court; and
- The review mechanism provided in the amendments.

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Detail

Amendment 1 — Commencement

Omits clause 2 of the Bill and inserts a new clause providing for commencement on a day to be fixed by the Minister by written notice, subject to it commencing after six months if the Minister has not given that written notification.

Amendments 2 and 3

These amendments omit Parts 1.1 and 1.2 of Schedule 1 to the Bill. Those parts redefine indictable offences. They are not required under the proposed amendments.

Amendment 4

This amendment replaces Part 1.3 of Schedule 1 to the Bill. It creates an exception to the definition of “serious offence” for the purpose of the *Bail Act 1992*, to exclude a matter for which an election has been made to deal with it summarily.

Amendments 5 to 8

These amendments omit Parts 1.4 to 1.7 of Schedule 1 to the Bill. Those parts redefine indictable offences. They are not required under the proposed amendments.

Amendment 9

This amendment replaces Part 1.10 in the Bill and inserts a new section 374 into the *Crimes Act 1900*.

Paragraph (1) provides that the section applies if a person is before the Magistrates Court charged with an offence carrying a penalty of longer than two years but not longer than five years imprisonment.

Paragraph (2) requires the prosecutor to elect whether to have the matter dealt with summarily.

Paragraph (3) requires that the defendant must not be required to enter a plea if the prosecutor has not made the election to have the case disposed of summarily.

Paragraph (4) prescribes a time limit within which the prosecutor must make the election as to whether to have the matter dealt with summarily.

Paragraph (5) provides that, if the prosecutor does not make an election to have the matter dealt with summarily within the prescribed timeframe, then the court must deal with the matter in accordance with section 375(4) to (14) of the *Crimes Act 1900*.

Paragraph (6) requires the court to hear and determine the charge summarily if the prosecutor makes the election for the matter to be dealt with summarily.

Paragraph (7) limits the scope of sentencing by the Magistrates Court on conviction of the defendant to a fine of no more than \$5,000 or imprisonment for not longer than two years, or both. It also provides that, where a law creates a maximum fine of less than \$5,000, then the court must not impose a fine greater than that maximum amount.

Paragraph (8) includes the Children's Court in the definition of Magistrates Court for the purpose of this section.

Paragraph (9) sets out the requirement of the Minister to review the operation of this section after two years and to report to the Assembly within three months of the review starting.

Paragraph (10) provides for sunset of three years for Paragraphs (9) and (10).

The amendment also makes a number of consequential amendments.

The amendment also inserts new Part 31, providing transition arrangements such that matters on foot prior to commencement of new section 374 will continue as though the new section 374 did not apply, subject to a sunset provision of one year after commencement.

Amendments 10 to 15

These amendments omit parts 1.11 to 1.16 (amendment 1.35) of Schedule 1 to the Bill. Those parts redefine indictable offences. They are not required under the proposed amendments.

Amendment 16

This amendment inserts a number of consequential amendments to the *Magistrates Court Act 1930*, including a new section 92A(4), which disapplies the operation of Section 92A (Committal for sentence for indictable offence tried summarily) for a matter for which an election has been made that it be dealt with summarily.

Amendments 17 to 18

These amendments insert a number of consequential amendments.

Amendment 19

This amendment omits part 1.17 (amendment 1.42) of Schedule 1 to the Bill. That amendment relates to transition provisions. The proposed amendments contain transition arrangements elsewhere.

Amendments 20 to 24

These amendments omit parts 1.18 to 1.22 of Schedule 1 to the Bill. These parts relate variously to amendments to the definition of “indictable offence” and transition provisions.