Guide to Indictable Offences

27 October 2009

Teacher Registration (Northern Territory) Act

Background

The *Teacher Registration (Northern Territory) Act* (the TRA) requires that teachers charged with an indictable offence must notify the Teacher Registration Board within 28 days of being committed for trial or being found guilty of that offence (s. 53). The TRA also obliges the Teacher Registration Board to hold an inquiry in respect of teachers who are successfully prosecuted for an indictable offence (s. 57). Indictable offence includes an offence committed outside of the Territory that could be prosecuted on indictment if committed in the Territory (s. 48).

There is no all-inclusive definition of 'indictable offence' in the TRA. This guide and the accompanying flowchart have therefore been prepared as an aid to identifying whether a given offence is 'indictable'.

Indictment

An indictment is a document which commences criminal proceedings in the Supreme Court (as opposed to a complaint used to commence proceedings in the Court of Summary Jurisdiction).

Types of offences and indictable offences

Section 3 of the *Criminal Code* provides:

> *(1) Offences are of 3 kinds, namely, crimes, simple offences and regulatory offences.*
>
> *(2) A person charged with a crime cannot, unless otherwise stated, be prosecuted or found guilty except upon indictment.*

There is no definition of a crime in either the *Criminal Code* or the *Justices Act* (NT). However, s38E of the *Interpretation Act* (NT) states that where an Act provides for a term of imprisonment exceeding two years, the offence is a crime unless otherwise specified. Accordingly, if a person has been charged with an offence that carries a term of imprisonment over two years they must, unless otherwise stated, be prosecuted or found guilty by indictment.

It should be noted that there are a significant number of offences in the *Criminal Code* that provide for a term of imprisonment of two years or less, yet are stated to be crimes. As a result these offences will be indictable offences.

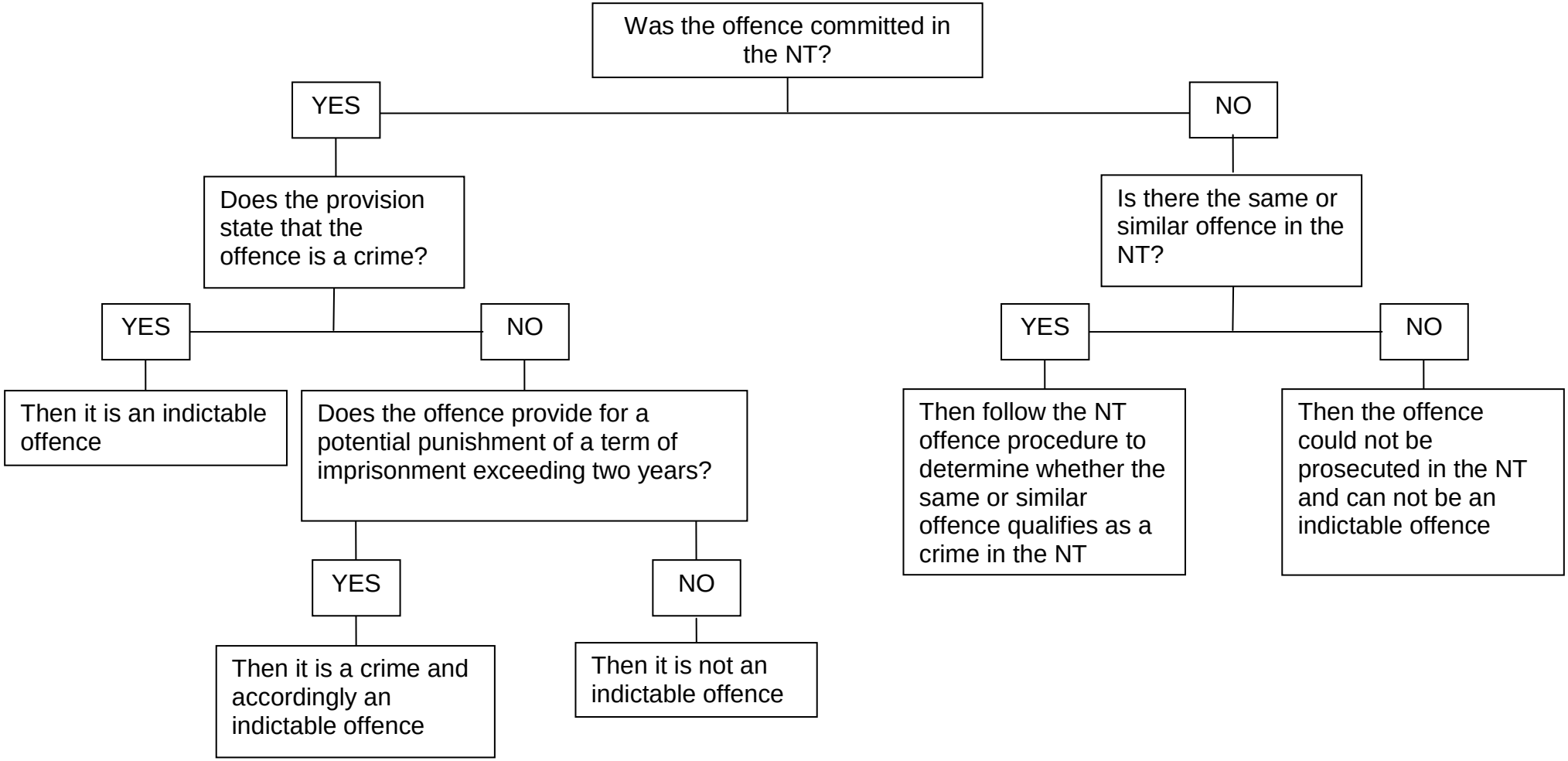
Indictable offences need not be heard in the Supreme Court

Although proceedings on indictment must be heard in the Supreme Court, the *Justices Act* (NT) (see Part V, Division 2) provides that certain indictable offences may be heard before the Court of Summary Jurisdiction. For example, the Court of Summary Jurisdiction may choose to deal with an offence punishable by not more than 10 years imprisonment where the prosecution and defence consent to that course (s. 121A(1)). Although such an offence would be heard on a complaint, it would remain an indictable offence for the purposes of the TRA.

Summary

- An offence which is a crime is an indictable offence. A crime is either an offence that carries a term of imprisonment exceeding two years or an offence that is stated to be a crime.
- Whilst some crimes may be tried in the Court of Summary Jurisdiction, this will not alter their classification as an indictable offence.
- Section 48 of the TRA defines indictable offence as including 'an offence committed outside of the Territory that could be prosecuted on indictment if committed in the Territory'. To determine if the offence could be prosecuted on indictment if committed in the Territory, it would be necessary to examine whether there is the same or similar offence in the Territory and, if so, then to determine whether that same or similar offence qualifies as a crime in the Territory.
- The attached flowchart will assist in identifying whether an offence is indictable for the purposes of the TRA.

Disclaimer

This document and the attached flowchart have been prepared as a guide only. If you remain in doubt about your particular circumstances you should seek independent advice.

Flowchart Guide to an Indictable Offence