



New South Wales

Justices (General) Amendment Regulation 1997

under the
Justices Act 1902

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Justices Act 1902*.

J W Shaw
Attorney General

Explanatory note

The objects of this Regulation are:

- (a) to amend the prescribed form of words that a magistrate has to use in informing an unrepresented defendant about the use of written statements in committal proceedings, and
- (b) to amend the prescribed form of written notice to be served by an informant on a defendant about the use of those statements.

The amendments are consequential on the replacement of section 48E and repeal of section 48EA of the *Justices Act 1902* by the *Justices Amendment (Committals) Act 1996*.

This Regulation is made under the Justices Act 1902, including sections 48D and 154 (the general regulation-making power).

1997 No 28

Clause 1 Justices (General) Amendment Regulation 1997

Justices (General) Amendment Regulation 1997

1 Name of Regulation

This Regulation is the *Justices (General) Amendment Regulation 1997*.

2 Commencement

This Regulation commences on 24 February 1997.

3 Amendment of Justices (General) Regulation 1993

The *Justices (General) Regulation 1993* is amended as set out in Schedule 1.

4 Notes

The explanatory note does not form part of this Regulation.

Schedule 1 Amendments

(Clause 3)

[7] Clause 11

Omit the clause. Insert instead:

11 Information where defendant unrepresented (sec 48D)

(1) For the purposes of section 48D (2) (a) of the Act, the prescribed form of words is as follows (omitting the words marked * that do not apply):

The informant has served you with copies of one or more written statements of witnesses. You have also been given a notice outlining your rights regarding those statements.

You *have/*have not applied to me for a direction requiring *one/*some/*all/*any of the persons who made those statements to appear in person to give evidence.

I have to decide whether to commit you for trial or sentence in a higher court or to discharge you. I will make that decision on the basis of all the evidence, whether contained in written statements or given from the witness box in person.

I will now consider any application you may wish to make for an adjournment to obtain legal advice. Do you wish to apply for an adjournment?

(2) If the proceedings are to continue, the prescribed form of words is to include also the following words:

Do you consent to the written statements of witnesses being tendered as evidence or do you wish to apply for a direction requiring one or more witnesses to be called to give evidence in person?

and, after the defendant has been given an opportunity to respond to those words, the following words:

Do you wish to ask me any questions about this procedure?

[2] Schedule 2, Form 1

Omit "At this stage" and all the words following those words.

Insert instead:

This has been given to you because you are facing criminal charges at a committal hearing. The purpose of the committal hearing is to allow a magistrate to decide whether or not you should be committed for trial or sentence in a higher court or whether you should be discharged. The magistrate will make that decision after considering all the evidence at the committal hearing.

The written statements and other documents attached to this form contain material that the prosecution will try to put in evidence against you at the committal hearing.

You may apply to the magistrate for a direction that one or more of the witnesses who have made written statements should attend court to give oral evidence at the committal hearing.

- *If you do not apply for such a direction regarding a particular witness, that witness's evidence will be given at the hearing by the tendering of the written statement of that witness which is attached to this form. The witness will not be present.*
- *If you do apply to the magistrate for such a direction, the magistrate must consider your application. If the magistrate directs a witness to attend to give oral evidence, you will be able to question that witness about what he or she says.*

1997 No 28

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Schedule 1 Amendments

If the witness is the alleged victim of an offence involving violence, the magistrate may only give the direction if he or she believes that there are special reasons why, in the interests of justice, the witness should attend. The term "offence involving violence" is defined in section 48E (9) of the Justices Act 1902.

In the case of any other witness, the magistrate may only give the direction if he or she believes that there are substantial reasons why, in the interests of justice, the witness should attend.

If the magistrate refuses to give the direction, the magistrate must give reasons for the refusal.

If you do decide to apply for a direction for a witness or witnesses to attend, you must first deliver a notice to that effect to the prosecution. You may deliver the notice either in person or by post. The magistrate will tell you the date by which the notice must be delivered. After the notice has been delivered, the magistrate will decide whether your application should be granted.