



New South Wales

# Justice Legislation Amendment (Committals and Guilty Pleas) Act 2017 No 55

## Contents

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		Page
	1 Name of Act	2
	2 Commencement	2
<b>Schedule 1</b>	<b>Amendment of Criminal Procedure Act 1986 No 209</b>	<b>3</b>
<b>Schedule 2</b>	<b>Amendment of Crimes (Sentencing Procedure) Act 1999 No 92</b>	<b>25</b>
<b>Schedule 3</b>	<b>Amendment of other Acts</b>	<b>31</b>

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New South Wales

# Justice Legislation Amendment (Committals and Guilty Pleas) Act 2017 No 55

Act No 55, 2017

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An Act to amend the *Criminal Procedure Act 1986*, the *Children (Criminal Proceedings) Act 1987*, the *Crimes (Sentencing Procedure) Act 1999* and other Acts with respect to committal proceedings and sentencing discounts for guilty pleas; and for other purposes. [Assented to 24 October 2017]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Justice Legislation Amendment (Committals and Guilty Pleas) Act 2017*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

## **Schedule 1      Amendment of Criminal Procedure Act 1986 No 209**

### **[1]    Section 3 Definitions**

Insert in alphabetical order in section 3 (1):

*case conference*—means a conference held under Division 5 of Part 2 of Chapter 3.

*case conference certificate* means a case conference certificate required to be completed and filed under Division 5 of Part 2 of Chapter 3.

*case conference material*—see section 78 (5).

*charge certificate*—see section 66 (1).

*plea offer*—see section 77 (1).

### **[2]    Section 3 (1), definition of “committal proceedings”**

Omit the definition. Insert instead:

*committal proceedings* means proceedings before a Magistrate for the purpose of committing a person charged with an indictable offence for trial or sentence.

### **[3]    Chapter 3 Indictable procedure**

Omit Divisions 2–5 of Part 2 of Chapter 3. Insert instead:

## **Division 2      Committal proceedings generally**

### **55    Outline of committal proceedings steps**

Subject to this Part, the steps for committal proceedings are generally as follows:

- (a) committal proceedings are commenced by the issuing and filing of a court attendance notice,
- (b) a brief of evidence is served on the accused person by the prosecutor,
- (c) a charge certificate setting out the offences that are to be proceeded with is filed in the Local Court and served by the prosecutor on the accused person,
- (d) if the accused person is represented, 1 or more case conferences are held by the prosecutor and the legal representative for the accused person,
- (e) if the accused person is represented, a case conference certificate is filed in the Local Court,
- (f) the accused person pleads guilty or not guilty to each offence being proceeded with and the Magistrate commits the accused person for trial (if the accused person pleads not guilty) or for sentence (if the accused person pleads guilty).

### **56    Magistrate to conduct committal proceedings**

- (1) Committal proceedings are to be conducted by a Magistrate.
- (2) A Magistrate may fix days for the purpose of taking steps or doing other things in committal proceedings.

### **57    Committal proceedings to be heard in open court**

- (1) Committal proceedings are to be heard as if in open court.

- (2) This section is subject to any other Act or law.
- (3) For the purpose only of facilitating the use of an electronic case management system established under the *Electronic Transactions Act 2000* in committal proceedings, the hearing of a matter may be conducted in the absence of the public, with the consent of the parties to the proceedings concerned, if the matter:
  - (a) arises after the first appearance of the accused person in committal proceedings, and
  - (b) is of a procedural nature, and
  - (c) does not require the resolution of a disputed issue, and
  - (d) does not involve a person giving oral evidence.

#### **58 Application of other procedural provisions to committal proceedings**

The following provisions of this Act apply, subject to any necessary modifications and to any provision of this Part, to committal proceedings conducted by a Magistrate in the same way as they apply to proceedings for offences before the Local Court:

- (a) sections 30, 36, 37, 38, 39, 40, 41 and 44,
- (b) Part 3 (Attendance of witnesses and production of evidence in lower courts) of Chapter 4,
- (c) Part 4 (Warrants) of Chapter 4.

**Note.** The Chief Magistrate may issue practice notes about the practice or procedure to be followed in criminal proceedings (see sections 26 and 27 of the *Local Court Act 2007*).

#### **59 Explanation of committal process and discount for guilty plea**

- (1) The Magistrate in committal proceedings must give the accused person an oral and written explanation of the following matters:
  - (a) the committal process under this Part, including charge certification, case conferences and committal for trial or sentence,
  - (b) the scheme under Part 3 of the *Crimes (Sentencing Procedure) Act 1999* for the sentence discount that applies in the case of a guilty plea.
- (2) The oral and written explanation must be given:
  - (a) if a case conference is required to be held, after the charge certificate is filed and before the first day on which a case conference is held, or
  - (b) in any other case, after the charge certificate is filed and before the day on which the accused person is committed for trial or sentence.
- (3) The explanations are to include the matters prescribed by the regulations for the purposes of this section.
- (4) The Magistrate is not required to give an explanation of the scheme for the sentence discount in a case concerning an offence under a law of the Commonwealth.
- (5) A failure by a Magistrate to comply with this section does not affect the validity of anything done or omitted to be done by the Magistrate or any other person in or for the purposes of the committal proceedings.

#### **60 Application of Drug Court proceedings**

An accused person may be dealt with under the *Drug Court Act 1998* at any stage of committal proceedings despite any requirement of this Part.

### **Division 3 Disclosure of evidence**

#### **61 Requirement to disclose evidence**

- (1) The prosecutor must, after the commencement of committal proceedings and on or before any day specified by order by the Magistrate for that purpose, serve or cause to be served on the accused person a brief of evidence relating to each offence the subject of the proceedings.
- (2) This Division is subject to, and does not affect the operation of, section 15A of the *Director of Public Prosecutions Act 1986* or any other law or obligation relating to the provision of material to an accused person by a prosecutor.  
**Note.** Examples of such a law are laws about privilege and immunity in relation to evidence.

#### **62 Matters to be disclosed in brief of evidence**

- (1) The brief of evidence must contain the following:
  - (a) copies of all material obtained by the prosecution that forms the basis of the prosecution's case,
  - (b) copies of any other material obtained by the prosecution that is reasonably capable of being relevant to the case for the accused person,
  - (c) copies of any other material obtained by the prosecution that would affect the strength of the prosecution's case.
- (2) The material contained in the brief of evidence may be, but is not required to be, in the form required under Part 3A of Chapter 6 or in any particular form otherwise required for the material to be admissible as evidence.
- (3) The regulations may specify requirements for material included in a brief of evidence.
- (4) The Minister is to consult with the Minister for Police before a regulation is made under subsection (3).

#### **63 Additional material to be disclosed**

- (1) The prosecutor must serve or cause to be served on the accused person copies of material obtained by the prosecutor and not included in the brief of evidence, if the material is of a kind required to be included in the brief of evidence.
- (2) The prosecutor must serve or cause the material to be served as soon as practicable after it is obtained by the prosecutor.

#### **64 Exceptions to requirement to provide copies of material**

- (1) The prosecutor is not required to include a copy of a thing required to be provided under this Division, or to serve or cause it to be served, if:
  - (a) it is impossible or impractical to copy the thing, or
  - (b) the accused person agrees to inspect the thing in accordance with this section.
- (2) However, in that case the prosecutor is:
  - (a) to serve or caused to be served on the accused person a notice specifying a reasonable time and place at which the thing may be inspected or other reasonable means by which the thing is to be provided for inspection, and

- (b) to allow the accused person a reasonable opportunity to inspect each thing referred to in the notice.

## **Division 4 Charge certificates**

### **65 Prosecutors who may exercise charge certificate and case conference functions**

The functions of a prosecutor under this Division and Division 5 (which relates to case conferences) may be exercised only by the following persons:

- (a) the Director of Public Prosecutions or the Attorney General,
- (b) in the case of committal proceedings to which this Division applies because of section 79 of the *Judiciary Act 1903* of the Commonwealth, any of the following:
  - (i) a person holding an equivalent office under the Commonwealth,
  - (ii) a special prosecutor appointed under an Act of the Commonwealth,
  - (iii) a person authorised under Commonwealth legislation to exercise the functions of a person referred to in subparagraph (i) or (ii),
  - (iv) a person authorised by an arrangement made with a person referred to in subparagraph (i) or (ii) to exercise the functions of that person,
- (c) a legal representative of a person referred to in paragraph (a) or (b),
- (d) any other person prescribed by the regulations for the purposes of this section.

**Note.** The effect of this provision is to prevent any other person from being able to complete the steps required to be taken by a prosecutor for the committal proceedings that are set out in Divisions 4 and 5 of this Part.

### **66 Charge certificates**

- (1) A *charge certificate* is a document in the form prescribed by the regulations and signed by the prosecutor that:
  - (a) relates to the offences specified in a court attendance notice for the committal proceedings, and
  - (b) specifies the offences that are to be the subject of the proceedings against the accused person, and
  - (c) sets out the details of each of those offences in a way that is sufficient under this Act for the purposes of an indictment or an averment in an indictment, and
  - (d) specifies any back up or related offences (within the meaning of section 165) that are proposed to be the subject of a certificate under section 166 (1) relating to charges against the accused person, and
  - (e) if applicable, confirms that proceedings against the accused person for other specified offences are no longer being proceeded with, and
  - (f) contains any other matters prescribed by the regulations for the purposes of this section.
- (2) The prosecutor must certify in the certificate that:
  - (a) the evidence available to the prosecutor is capable of establishing each element of the offences that are to be the subject of the proceedings against the accused person, and

- (b) in the case of an offence other than an offence under the law of the Commonwealth, the prosecutor has received and considered a certificate under section 15A of the *Director of Public Prosecutions Act 1986* relating to that offence.
- (3) Subsections (1) and (2) do not limit the matters that may be included by the regulations in the prescribed form of charge certificate.

#### **67 Charge certificate must be filed**

- (1) A charge certificate must be filed by the prosecutor in the registry of the Local Court, and served or caused to be served on the accused person, not later than the day set by order by the Magistrate.
- (2) The day must:
  - (a) be set after the service of the brief of evidence in the committal proceedings, and
  - (b) be not later than 6 months after the first return date for a court attendance notice in the committal proceedings.
- (3) However, the Magistrate may set a day for the filing of a charge certificate that is later than 6 months after the first return date for a court attendance notice in the committal proceedings:
  - (a) with the consent of the accused person, or
  - (b) if it is in the interests of justice to do so.
- (4) In determining whether or not it is in the interests of justice to set a later day, the Magistrate is to consider the complexity of the matters the subject of the proceedings. This subsection does not limit the matters that may be considered by the Magistrate.
- (5) If the prosecutor determines that an offence other than an offence specified in the charge certificate filed by the prosecutor is to be the subject of the proceedings against the accused person, the prosecutor must file in the registry of the Local Court, and serve or cause to be served on the accused person, an amended charge certificate before the accused person is committed for trial or sentence.

#### **68 Failure to file charge certificate**

- (1) This section applies if the prosecutor fails to file and serve, or cause to be served, a charge certificate before:
  - (a) the day that is 6 months after the first return date for a court attendance notice in the committal proceedings, or
  - (b) any later day set by the Magistrate for doing those things.
- (2) The Magistrate must:
  - (a) discharge the accused person as to any offence the subject of the committal proceedings, or
  - (b) if the Magistrate thinks it appropriate in the circumstances of the case, adjourn the committal proceedings to a specified time and place.
- (3) In determining what action to take, the Magistrate is to consider the interests of justice.
- (4) If a warrant has been issued for the arrest of the accused person as a result of a failure to appear at the committal proceedings:



- (a) a Magistrate is not required to take any action under this section until the accused person is brought before the Magistrate, and
- (b) the period of 6 months specified in subsection (1) (a) is taken to be extended by the number of days between the issue of the warrant and the day the accused person is so brought before the Magistrate.

**Note.** The Magistrate may extend the time for filing a charge certificate at any time under section 67.

## **Division 5 Case conferences**

### **69 Exceptions to requirements for case conference procedures**

This Division does not apply to an accused person in committal proceedings if the accused person:

- (a) is not, or ceases to be, represented by an Australian legal practitioner, or
- (b) pleads guilty to each offence that is being proceeded with and the pleas are accepted by the Magistrate before a case conference is held, or
- (c) is committed for trial under Division 7.

### **70 Case conferences to be held**

- (1) A case conference is to be held in accordance with this Division.
- (2) The principal objective of the case conference is to determine whether there are any offences to which the accused person is willing to plead guilty.
- (3) A case conference may also be used to achieve the following objectives:
  - (a) to facilitate the provision of additional material or other information which may be reasonably necessary to enable the accused person to determine whether or not to plead guilty to 1 or more offences,
  - (b) to facilitate the resolution of other issues relating to the proceedings against the accused person, including identifying key issues for the trial of the accused person and any agreed or disputed facts.
- (4) The case conference is to be held after the filing of the charge certificate by the prosecutor.
- (5) More than one case conference may be held.
- (6) A further case conference may be, but is not required to be, held after the filing of an amended charge certificate by the prosecutor.

### **71 Case conference procedures**

- (1) A case conference is to be held between the prosecutor and the accused person's legal representative in the committal proceedings.
- (2) The initial case conference for the purposes of this Division must be held in person or by audio visual link. Any subsequent case conference may also be held by telephone.
- (3) The Magistrate may order that an initial case conference be held by telephone if the Magistrate is satisfied that there are exceptional circumstances that make it impracticable to hold the conference in person or by audio visual link.
- (4) The regulations may make provision for or with respect to case conferences, including the attendance of the accused person at a case conference.

- (5) In this section:  
**audio visual link** means facilities (including closed-circuit television or other electronic means of communication) that enable audio and visual communication between persons at different places.

## **72 Obligations of legal representative of accused**

- (1) The accused person's legal representative is to seek to obtain the accused person's instructions concerning the matters to be dealt with in the case conference before participating in the case conference.
- (2) The accused person's legal representative must explain the following matters to the accused person before the case conference certificate is completed:
  - (a) the effect of the scheme for the sentencing discount applied under Part 3 of the *Crimes (Sentencing Procedure) Act 1999* for a plea of guilty to an offence,
  - (b) the penalties applicable to the offences certified in the charge certificate and to any other offences the subject of offers made by the accused or the prosecutor in the committal proceedings,
  - (c) the effect on the applicable penalty if the accused person were to plead guilty to any offence at different stages of proceedings for the offence.

## **73 Joint accused**

- (1) If the accused person has been charged jointly with any other person with the offence concerned, a separate case conference is to be held for each of the co-accused. However, a joint case conference may be held for 2 or more co-accused with the consent of the prosecutor and each of the co-accused.
- (2) A joint case conference may be held only if a charge certificate has been filed for each of the co-accused.

## **74 Case conference certificate must be completed and filed**

- (1) The Magistrate is to make an order setting the day on or before which the case conference certificate is to be filed.
- (2) If more than 1 case conference is held, the case conference certificate is to be filed after all the case conferences are completed.
- (3) The prosecutor and the legal representative of the accused person must ensure that a case conference certificate that complies with this Division is completed and signed before the day set by the Magistrate for filing the certificate.
- (4) The prosecutor must ensure that the case conference certificate is filed on or before the day set by the Magistrate.

## **75 Contents of case conference certificate**

- (1) The case conference certificate is to be in the form prescribed by the regulations and is to certify as to the following matters:
  - (a) the offence or offences with which the accused person had been charged before the case conference and which the prosecution had specified in the charge certificate as offences that will be proceeding or are the subject of a certificate under section 166,
  - (b) any offers by the accused person to plead guilty to an offence specified in the charge certificate or to different offences,

- (c) any offers by the prosecution to the accused person to accept guilty pleas to an offence specified in the charge certificate or to different offences,
  - (d) whether the accused person or prosecution has accepted or rejected any such offers,
  - (e) the offence or offences for which the prosecution will seek committal for trial or sentence,
  - (f) any back up or related offence or offences (within the meaning of section 165) that are proposed to be the subject of a certificate under section 166 (1) relating to charges against the accused person,
  - (g) if an offer made to or by the accused person to plead guilty to an offence has been accepted—details of the agreed facts on the basis of which the accused person is pleading guilty and details of the facts (if any) in dispute,
  - (h) any offences with which the accused person has been charged to which the accused person has offered to plead guilty and agreed to ask the court to take into account under section 33 of the *Crimes (Sentencing Procedure) Act 1999*,
  - (i) whether or not the prosecutor has notified the accused person of an intention to make a submission to the sentencing court that the discount for a guilty plea should not apply or should be reduced in relation to a particular offence with which the accused person is charged,
  - (j) any other matters prescribed by the regulations for the purposes of this section.
- (2) A case conference certificate must also contain:
- (a) a declaration by the legal representative of the accused person that the legal representative has explained to the accused person the matters specified in section 72 (2), and
  - (b) if the accused person does not intend to plead guilty to an offence, a declaration by the accused person that the legal representative has explained to the accused person the matters specified in section 72 (2).
- (3) A failure by an accused person to make a declaration under this section does not affect the validity of anything done or omitted to be done by any other person in or for the purposes of the committal proceedings.
- (4) A case conference certificate must certify as to all the matters of the kind referred to in subsection (1) that occur before the certificate is filed, including any written offers of a kind referred to in subsection (1) that were made by the accused person or the prosecutor, and served on the prosecutor or accused person, before or after any case conference was held.

## **76 Failure to complete case conference obligations**

- (1) This section applies where the Magistrate is satisfied that a case conference certificate has not been filed by the day set by the Magistrate.
- (2) If a Magistrate is satisfied that the case conference certificate has not been filed because of an unreasonable failure by the prosecutor to participate in a case conference or to complete or file a case conference certificate, the Magistrate may:
  - (a) discharge the accused person as to any offence the subject of the committal proceedings, or
  - (b) adjourn the committal proceedings to a specified time and place.

- (3) If a Magistrate is satisfied that the case conference certificate has not been filed because of an unreasonable failure by the legal representative of the accused person to participate in a case conference or complete a case conference certificate, the Magistrate may:
  - (a) commit the accused person for trial or sentence as if a case conference were not required to be held, or
  - (b) adjourn the committal proceedings to a specified time and place.
- (4) In determining whether to take action under this section, the Magistrate is to consider the interests of justice.

#### **77 Further offers**

- (1) This section applies to an offer (a *plea offer*) if:
  - (a) the offer is made by the accused person or the prosecutor after the filing of the case conference certificate in committal proceedings, and before the accused person is committed for trial or sentence, and
  - (b) the offer is an offer of a kind that would have been required to be included in a case conference certificate if it had been made before the filing of the certificate, and
  - (c) the offer is made in writing and served on the other party, and
  - (d) the offer is filed in the registry of the Local Court.
- (2) A plea offer is, for all purposes, to be treated as if it formed part of the case conference certificate.
- (3) A plea offer is to be annexed to the case conference certificate in the committal proceedings.

#### **78 Case conference certificate and other evidence not admissible in other proceedings**

- (1) Case conference material is not admissible in any proceedings before a court, tribunal or body.
- (2) However, a case conference certificate is not inadmissible in the following proceedings:
  - (a) in relevant sentencing proceedings in accordance with Part 3 of the *Crimes (Sentencing Procedure) Act 1999*,
  - (b) in relevant sentencing proceedings for an offence under Commonwealth law,
  - (c) in proceedings for an appeal against a sentence under the *Criminal Appeal Act 1912*,
  - (d) in proceedings for an appeal under the *Crimes (Appeal and Review) Act 2001* on a question of law arising from an order made by a Magistrate in committal proceedings or an appeal under section 5 or Division 2 or 3 of Part 7 of that Act,
  - (e) in proceedings after committal for sentence relating to an application by the accused person to reverse the person's plea to not guilty,
  - (f) in proceedings brought by a designated local regulatory authority against a lawyer under section 300 of the *Legal Profession Uniform Law (NSW)*.

- (3) Any part of a case conference certificate cannot be required to be produced under a subpoena or request issued in any proceedings before any court, tribunal or body (other than in proceedings referred to in subsection (2)).
- (4) A sentencing court or a court determining an appeal against a sentence must refuse to admit evidence of any case conference certificate if any provisions of this Part with respect to the holding of the conference or the preparation of the certificate have not been complied with, unless it is satisfied that it is in the interests of justice to admit the evidence.
- (5) In this section:  
**case conference material** means:
  - (a) a case conference certificate, or
  - (b) evidence of anything said between the parties, or of any admission made, during a case conference, or
  - (c) evidence of anything said between the parties, or of any admission made, during negotiations after a case conference concerning a plea to be made by, or offers made to or by, an accused person.

#### **79 Confidentiality of case conference certificate matters**

The matters that are specified in a case conference certificate are to be treated as confidential.

**Note.** Matters in a plea offer are taken to be part of a case conference certificate (see section 77).

#### **80 Prohibition on publication of case conference material**

- (1) A person must not publish, or permit a person to publish, any case conference material.  
Maximum penalty:
  - (a) in the case of an individual—20 penalty units, or
  - (b) in the case of a body corporate—100 penalty units.
- (2) In this section:  
**publish** means disseminate or provide public access to one or more persons by means of the internet, radio, television or other media.

#### **81 Certain matters not taken to be pre-trial disclosures**

The disclosure of any information during or in relation to a case conference held for the purposes of this Division or a plea offer is not, for the purposes of section 22A of the *Crimes (Sentencing Procedure) Act 1999*, a pre-trial disclosure.

**Note.** Section 22A of the *Crimes (Sentencing Procedure) Act 1999* enables a court to impose a lesser penalty than it would otherwise impose on an offender who was tried on indictment, having regard to the degree to which the defence made pre-trial disclosures.

### **Division 6 Examination of prosecution witnesses**

#### **82 Magistrate may direct witness to attend**

- (1) The Magistrate may, on the application of the prosecutor or the accused person, direct the attendance at the committal proceedings of a person whose evidence is referred to in the brief of evidence provided under Division 3 or who has been referred to in other material provided by the prosecution to the accused person.

- (2) The Magistrate may hold a hearing to determine an application under this section and may require the prosecutor or the accused person to make submissions in relation to the application.
- (3) An application may be made only after the charge certificate has been filed in the committal proceedings.
- (4) The Magistrate must give the direction if an application is made by the accused person or the prosecutor and the other party consents to the direction being given.
- (5) In the case of any other application, the Magistrate may give a direction only if satisfied that there are substantial reasons why, in the interests of justice, the witness should attend to give oral evidence. The regulations may make provision for or with respect to the determination of substantial reasons under this subsection.
- (6) For the purposes of determining whether to give a direction, the Magistrate may consider any material (whether or not it is in a form required for the material to be admissible as evidence).
- (7) A direction may be withdrawn only:
  - (a) on the application, or with the consent, of the accused person, or
  - (b) on the application of the prosecutor, if the accused person fails to appear on a day at which a person has been directed to appear to give evidence.

### **83 Witnesses who cannot be directed to attend**

- (1) A direction may not be given so as to require the attendance of the complainant in committal proceedings for a prescribed sexual offence if the complainant is a cognitively impaired person (within the meaning of Part 6 of Chapter 6).
- (2) A direction may not be given so as to require the attendance of the complainant in committal proceedings for a child sexual assault offence if the complainant:
  - (a) was under the age of 16 years:
    - (i) on the earliest date on which, or
    - (ii) at the beginning of the earliest period during which, any child sexual assault offence to which the proceedings relate was allegedly committed, and
  - (b) is currently under the age of 18 years.
- (3) For the purposes of subsection (2):

***child sexual assault offence*** means:

  - (a) a prescribed sexual offence, or
  - (b) an offence that, at the time it was committed, was a child sexual assault offence for the purposes of subsection (2), or
  - (c) an offence of attempting, or of conspiracy or incitement, to commit an offence referred to in paragraph (a) or (b).

***complainant***, in relation to any proceedings, means the person, or any of the persons, against whom a prescribed sexual offence with which the accused person stands charged in those proceedings is alleged to have been committed, and includes:

- (a) in relation to an offence under section 80E of the *Crimes Act 1900*, the person who is alleged to have been the subject of sexual servitude, and

- (b) in relation to an offence under section 91D, 91E or 91F of the *Crimes Act 1900*, the person under the age of 18 years who is alleged to have participated in an act of child prostitution, and
- (c) in relation to an offence under section 91G of the *Crimes Act 1900*, the person under the age of 18 years who is alleged to have been used for the production of child abuse material.

#### **84 Victim witnesses generally not to be directed to attend**

- (1) A direction may not be given so as to direct the attendance of an alleged victim of an offence involving violence that is the subject of the committal proceedings (even if the parties to the proceedings consent to the attendance) unless the Magistrate is satisfied that there are special reasons why the alleged victim should, in the interests of justice, attend to give oral evidence.
- (2) The regulations may make provision for or with respect to the determination of special reasons under this section.
- (3) The following offences are *offences involving violence* for the purposes of this section:
  - (a) a prescribed sexual offence,
  - (b) an offence under sections 27–30 of the *Crimes Act 1900* (attempts to murder),
  - (c) an offence under section 33 of the *Crimes Act 1900* (wounding etc with intent to do grievous bodily harm or resist arrest),
  - (d) an offence under section 35 (1) or (2) of the *Crimes Act 1900* (infliction of grievous bodily harm),
  - (e) an offence under sections 86–91 of the *Crimes Act 1900* (abduction or kidnapping),
  - (f) an offence under sections 94–98 of the *Crimes Act 1900* (robbery),
  - (g) an offence the elements of which include the commission of, or an intention to commit, an offence referred to in any of the above paragraphs,
  - (h) an offence that, at the time it was committed, was an offence involving violence for the purposes of this section,
  - (i) any other offence that involves an act of actual or threatened violence and that is prescribed by the regulations for the purposes of this section.
- (4) An offence that may be dealt with summarily under Chapter 5 is not an offence involving violence for the purposes of this section.

#### **85 Evidence of prosecution witness**

- (1) The evidence of a person who is directed to attend committal proceedings under this Division is to be given orally.
- (2) The person may be examined by the prosecutor.
- (3) The person may be cross-examined by the accused person and by the prosecutor.
- (4) The Magistrate must not allow the person to be cross-examined in respect of matters that were not the basis of the reasons for giving the direction, unless the Magistrate is satisfied that there are substantial reasons why, in the interests of justice, the person should be examined in respect of those matters.

## **86 Exceptions to oral evidence**

- (1) The evidence of a person who is directed to attend committal proceedings under this Division may be given by a written statement, or another kind of statement permitted to be tendered under Part 3A of Chapter 6, if:
  - (a) the accused person and the prosecutor consent to the statement being admitted, or
  - (b) the Magistrate is satisfied that there are substantial reasons why, in the interests of justice, the evidence should be given by a statement.

**Note.** Sections 283C and 283D enable the use of recordings instead of written statements in the cases of witnesses who are vulnerable persons or in the case of domestic violence offences. Section 283G enables certain transcripts of evidence in other proceedings to be used instead of written statements.

- (2) The evidence of a person who is directed to attend committal proceedings under this Division may be given by a recorded statement in the circumstances permitted under Part 4B of Chapter 6.
- (3) This section has effect despite section 85.

## **87 Evidence to be taken in presence of accused person**

- (1) The accused person must be present when evidence is taken under this Division, unless this Act or any other law permits the evidence to be taken in the accused person's absence.
- (2) The Magistrate may excuse the accused person from attending during the taking of evidence if satisfied that the accused person will be represented by an Australian legal practitioner while the evidence is taken or if satisfied that the evidence is not applicable to the accused person.
- (3) A period during which the accused person is so excused is taken to be an adjournment for the purposes of dealing with the accused person.
- (4) Evidence may commence or continue to be taken in the absence of an accused person who has not been excused from attending if:
  - (a) no good and proper reason is shown for the absence of the accused person, and
  - (b) a copy of all relevant written statements, and copies of any proposed exhibits identified in the statements (or a notice relating to inspection of them), have been served on the accused person in accordance with this Part and the accused person has been informed of the time set by the Magistrate for taking of the evidence.

## **88 Evidentiary effect of statements**

- (1) A written statement, or any other kind of statement permitted to be tendered under Part 3A of Chapter 6, is, if tendered by the prosecutor in accordance with this Division, admissible as evidence for the purposes of this Division to the same extent as if it were oral evidence to the like effect given under this Division by the same person.
- (2) Any document or other thing identified in any statement admitted as evidence under this Division is, if the document or other thing is produced as an exhibit in the committal proceedings, to be treated as if it had been identified before the Magistrate by the person who made the statement.
- (3) This section does not operate to make a statement admissible if it is not admissible because of another provision made by or under this Division.



**89 Statements must comply with requirements**

- (1) A written statement, or another kind of statement permitted to be tendered under Part 3A of Chapter 6, is not admissible as evidence for the purposes of this Division unless this Division, and any applicable requirements specified by or under that Part, are complied with in relation to the statement and any associated exhibits or documents.
- (2) A statement that is not admissible as evidence under this section may nevertheless be admitted as evidence if otherwise admissible in accordance with any rule or law of evidence.
- (3) A statement sought to be admitted for the purposes of this Division must be served on the accused person on or before the day set by the Magistrate for that purpose.

**90 Evidence not to be admitted**

- (1) The Magistrate must refuse to admit evidence sought to be adduced by the prosecutor under this Division if, in relation to that evidence, this Division or any applicable requirements specified by or under Part 3A of Chapter 6, have not been complied with by the prosecutor.
- (2) Despite subsection (1), the Magistrate may admit the evidence sought to be adduced if the Magistrate is satisfied that:
  - (a) the non-compliance is trivial in nature, or
  - (b) there are other good reasons to excuse the non-compliance, and admit the evidence, in the circumstances of the case.

**91 Magistrate may set aside requirements for statements**

- (1) In any committal proceedings, the Magistrate may dispense with all or any of the following requirements relating to statements or exhibits:
  - (a) service of documents on the accused person,
  - (b) provision to the accused person of a reasonable opportunity to inspect proposed exhibits,
  - (c) specification of the age of the person who made a statement,
  - (d) any requirement specified by the regulations under this Division or Part 3A of Chapter 6, if the regulations do not prohibit the Magistrate from dispensing with the requirement.
- (2) A requirement may be dispensed with under this section only on an application by the accused person or with the consent of the accused person.

**Note.** Some of these requirements are made by or under Part 3A of Chapter 6.

**92 False statements or representations**

- (1) A person who made a written statement tendered in committal proceedings under this Division is guilty of an offence if the statement contains any matter:
  - (a) that, at the time the statement was made, the person knew to be false, or did not believe to be true, in any material respect, and
  - (b) that was inserted or caused to be inserted by the person in the statement.Maximum penalty: 100 penalty units or imprisonment for 5 years, or both.
- (2) A person who made a representation given in evidence under this Division in the form of a recorded statement is guilty of an offence if the representation

contains any matter that, at the time the representation was made, the person knew to be false, or did not believe to be true, in any material respect.

Maximum penalty: 100 penalty units or imprisonment for 5 years, or both.

## **Division 7 Committal for trial where unfitness to be tried raised**

### **93 Committal for trial where unfitness to be tried raised**

- (1) The Magistrate may commit an accused person for trial for an offence if:
  - (a) the question of the person's unfitness to be tried for the offence is raised by the accused person, the prosecutor or the Magistrate, and
  - (b) if the question is raised by the accused person or the prosecutor, the Magistrate is satisfied that it has been raised in good faith.
- (2) The question of the person's unfitness to be tried for an offence may be raised at any time in the committal proceedings.
- (3) The Magistrate may require a psychiatric or other report relating to the accused person to be supplied to the Magistrate by the accused person or the prosecutor before committing a person for trial under this section.

### **94 Committal may take place after charge certification**

The Magistrate may commit an accused person for trial under this Division only:

- (a) if the charge certificate has been filed under Division 4 and a case conference is not required to be held in the committal proceedings, or
- (b) if the charge certificate has been filed under Division 4 and a case conference has not yet been held in the committal proceedings, or
- (c) if the case conference certificate for the proceedings has been filed in the committal proceedings.

## **Division 8 Committal for trial or sentence**

### **95 Committal timing generally**

- (1) The Magistrate in committal proceedings is to commit the accused person for trial or sentence:
  - (a) after the case conference certificate is filed under Division 5, or
  - (b) if a case conference is not required to be held in the proceedings, after the charge certificate is filed under Division 4.

**Note.** The Magistrate may, at any time, adjourn the proceedings where it appears to the Magistrate to be necessary or advisable to do so (see sections 40 and 58 (a)).
- (2) Despite subsection (1), a Magistrate may commit an accused person for sentence:
  - (a) before a charge certificate is filed, if the prosecutor required to file the charge certificate advises the Magistrate that the prosecutor consents to the accused person being committed for sentence for that offence, or
  - (b) if a charge certificate has been filed but no case conference has yet been held.
- (3) This section does not prevent the Magistrate from committing an accused person for trial under Division 7.

- (4) Before committing an accused person under this section, the Magistrate must ascertain whether or not the accused person pleads guilty to the offences that are being proceeded with.

**96 Committal for trial**

- (1) The Magistrate must commit an accused person for trial for an offence unless the Magistrate accepts a plea of guilty to the offence by the accused person.
- (2) In the case of an accused person that is a corporation that is to be committed for trial, the Magistrate is to make an order authorising an indictment to be filed for the offence named in the order or for such other offence as the Attorney General or the Director of Public Prosecutions considers proper.

**97 Guilty pleas and committal for sentence**

- (1) An accused person may at any time in committal proceedings plead guilty to an offence.
- (2) The Magistrate may accept or reject a guilty plea.
- (3) The Magistrate must not accept a guilty plea before the time at which an accused person may be committed for sentence under section 95.
- (4) Rejection of a guilty plea does not prevent an accused person from pleading guilty at a later stage in the committal proceedings.
- (5) If the guilty plea is rejected by the Magistrate, the committal proceedings continue as if the accused person had not pleaded guilty.
- (6) If the guilty plea is accepted, the Magistrate must commit the accused person to the District Court or the Supreme Court for sentence.

**98 Committal of unrepresented persons**

If an accused person is not represented by an Australian legal practitioner, the Magistrate must not commit the accused person for trial or sentence unless the Magistrate is satisfied that the accused person has had a reasonable opportunity to obtain legal representation for, or legal advice about, the committal proceedings.

**99 Attorney General or Director of Public Prosecutions may direct that no further proceedings be taken**

- (1) If a guilty plea is accepted under this Part, the Attorney General or the Director of Public Prosecutions may, at their discretion, direct in writing that no further proceedings be taken against the accused person under this Part for the offence concerned.
- (2) No further proceedings may be taken against the accused person under this Part for the offence if a direction is given.

**Note.** Section 44 requires the release of the accused person once a certificate is delivered to the Supreme Court after a direction is given.

**Division 9 Procedure on committal**

**100 Procedure applicable after committal for sentence**

- (1) All proceedings (whether under this or any other Act) relating to a committal for trial apply, so far as practicable, to a committal of an accused person after a guilty plea is accepted.

- (2) For the purposes of the venue or change of venue of consequent proceedings, a committal is taken to be a committal for trial.

**101 Higher court may refer accused person back to Magistrate**

- (1) A Judge of the District Court or the Supreme Court before whom an accused person is brought under section 97 (6) may order that the committal proceedings be continued before a Magistrate if:
- (a) it appears to the Judge from the information or evidence given to or before the Judge that the facts in respect of which a court attendance notice was issued do not support the offence to which the accused person pleaded guilty, or
  - (b) the prosecutor requests the order be made, or
  - (c) for any other reason, the Judge thinks fit to do so.
- (2) On the resumption of the committal proceedings, the proceedings continue as if the person had not pleaded guilty.

**102 Disposal of proceedings by higher court**

- (1) The District Court or the Supreme Court may proceed to sentence or otherwise deal with an accused person brought before the Court under section 97 as if the accused person had on arraignment at any sittings of the Court pleaded guilty to the offence on an indictment filed or presented by the Attorney General or the Director of Public Prosecutions.
- (2) An accused person who is sentenced or otherwise dealt with under this section is for the purposes of any Act or law (whether enacted before or after the commencement of this section) taken to be convicted on indictment of the offence concerned.

**103 Change to not guilty plea in higher court**

- (1) If an accused person brought before the District Court or the Supreme Court under section 97 or this Division changes to not guilty the plea to the offence on which the accused person was committed to the Court, the Judge must direct that the accused person be put on trial for the offence.
- (2) On the direction being given, the accused person is taken to have been committed for trial for the offence. The Judge may make the same orders and do the same things (including dealing with the accused person) as a Magistrate can on committing an accused person for trial.
- (3) The Judge may give directions as to matters preliminary to the trial as the Judge thinks just.
- (4) A direction may not be given under subsection (1) if the offence is punishable by imprisonment for life, but the Judge may make an order under section 101.
- (5) Despite subsection (1), the Judge may make an order under section 101 instead of giving a direction under subsection (1), if of the opinion that such an order should be made.

**104 Meaning of “accused person”**

In this Division:

*accused person* includes a person who has been committed for sentence to the District Court or Supreme Court.

**[4] Chapter 3, Part 2, Division 6, heading**

Omit the heading to the Division. Insert instead:

**Division 10 General procedures after committal**

**[5] Section 114 Copies of transcripts of evidence**

Omit section 114 (1). Insert instead:

- (1) An accused person who is committed for trial or sentence is entitled to obtain 1 copy of the transcript of any evidence taken at the committal proceedings, and any written statements tendered at the proceedings.

**[6] Chapter 3, Part 2, Division 7, heading**

Omit the heading to the Division. Insert instead:

**Division 11 Costs**

**[7] Section 262 Procedure for dealing with offences if election made**

Omit “Division 5 of Part 2 of Chapter 3 as if the person charged had pleaded guilty under that Division to the offence” from section 262 (2).

Insert instead “Part 2 of Chapter 3 as if the person charged had pleaded guilty under that Part to the offence”.

**[8] Section 264 Election may be withdrawn**

Omit section 264 (2) (a). Insert instead:

- (a) in the case of a plea of not guilty—the committal of the person charged for trial,

**[9] Section 274 Application**

Omit “This Chapter”. Insert instead “Except as provided by this Chapter, this Chapter”.

**[10] Chapter 6, Part 3A**

Insert after Part 3:

## **Part 3A Statements**

### **283A Application of Part**

- (1) This Part applies to statements:
  - (a) for the purposes of giving evidence under Division 6 of Part 2 of Chapter 3, and
  - (b) for any other purposes prescribed by the regulations.

**Note.** Material that is included in a brief of evidence for committal proceedings under Division 3 of Part 2 of Chapter 3 may be, but is not required to be, in the form required under this Part (see section 62 (2)).

This Part also applies to statements provided in committal proceedings under Division 3A of Part 3 of the *Children (Criminal Proceedings) Act 1987* (see section 31D of that Act).

- (2) This Part does not apply to a recorded statement provided under Part 4B of this Chapter.

### **283B Form and requirements for written statements**

- (1) A written statement may be in the form of questions and answers.
- (2) A written statement must specify the age of the person who made the statement.
- (3) A written statement must be endorsed in accordance with the regulations by the maker of the statement as to the truth of the statement and any other matter required by the regulations.
- (4) A written statement or such an endorsement on a statement must be written in a language of which the person who made the statement has a reasonable understanding.
- (5) If the written statement, or part of it, is in a language other than English, a document purporting to contain an English translation of the statement or part must be annexed to the statement.

### **283C Recordings of interviews with vulnerable persons**

- (1) A written statement may be in the form of a transcript of a recording made by an investigating official of an interview with a vulnerable person, during which the vulnerable person was questioned by the investigating official in connection with the investigation of the commission or possible commission of the offence (as referred to in section 306R), but only if this section is complied with.
- (2) The copy of the transcript of the recording must be certified by an investigating official as an accurate transcript of the recording.
- (3) The accused person must be given, in accordance with the regulations under section 306V (2), a reasonable opportunity to listen to and, in the case of a video recording, to view, the recording.
- (4) However, if the requirements of the regulations under section 306V (2) have not been complied with, the recording may be admitted if the Magistrate is satisfied that:
  - (a) the parties consent to the recording being so used, or

- (b) the accused person and his or her Australian legal practitioner (if any) have been given a reasonable opportunity otherwise than in accordance with those regulations to listen to or view the recording and it would be in the interests of justice to so use the recording.
- (5) Nothing in this Part requires the prosecutor to serve or cause to be served on the accused person a copy of the actual recording made by an investigating official of an interview with the vulnerable person (other than a transcript of the recording).
- (6) This section does not affect section 306V (2).
- (7) In this section:  
*investigating official* has the same meaning as it has in Part 6 of this Chapter.  
**Note.** Part 6 of this Chapter allows vulnerable persons (children and cognitively impaired persons) to give evidence of a previous representation in the form of a recording made by an investigating official of an interview with the vulnerable person. Section 306V (2) (which is contained in that Part) provides that such evidence is not to be admitted unless the accused person and his or her Australian legal practitioner have been given a reasonable opportunity to listen to or view the recording.

**283D Recordings of interviews with domestic violence complainants**

- (1) Evidence may be given in the form of a recorded statement instead of a written statement, if the offence is a domestic violence offence.
- (2) The requirements of Division 3 of Part 4B in relation to service of, and access to, a recorded statement must be complied with in relation to any recorded statement used instead of a written statement.
- (3) However, if the requirements of Division 3 of Part 4B have not been complied with, the recorded statement may be admitted if the court is satisfied that:
  - (a) the parties consent to the recorded statement being admitted, or
  - (b) the accused person or his or her Australian legal practitioner (if any) have been given a reasonable opportunity otherwise than in accordance with that Division to listen to or view and listen to, the recorded statement and it would be in the interests of justice to admit the recorded statement.
- (4) This section does not affect section 289I (2).

**283E Form and requirements for recorded statements**

- (1) A representation contained in a recorded statement where the offence is a domestic violence offence may be in the form of questions and answers.
- (2) A recorded statement must contain the following statements by the domestic violence complainant:
  - (a) a statement as to the complainant's age,
  - (b) a statement as to the truth of the representation,
  - (c) any other matter required by the regulations.
- (3) If the representation contained in a recorded statement, or part of it, is in a language other than English:
  - (a) the recorded statement must contain an English translation of the representation or part, or
  - (b) a separate written English translation of the representation or part must accompany the recorded statement.

**283F Death of person who made statement**

- (1) A written or recorded statement, or a transcript of a recording of an interview with a vulnerable person, is not admissible if, on evidence produced during proceedings, the Magistrate is satisfied that the person who made the statement is dead.
- (2) If it is found after a statement is admitted in evidence in proceedings that the person who made the statement died before the statement was admitted, the statement is taken not to have been admitted in evidence.
- (3) This section does not apply to a deposition that is admissible under section 284.

**283G Use of previous statements in cases involving prescribed sexual offences**

- (1) In proceedings in relation to a prescribed sexual offence, if:
  - (a) the offence is alleged to have been committed in the course of a connected set of circumstances in which another prescribed sexual offence is alleged to have been committed, and
  - (b) the accused person has been committed for trial in respect of, or has been convicted of, the other offence, and
  - (c) each of the offences is alleged to have been committed against the same person,transcripts of evidence of the person against whom the offence is alleged to have been committed at the proceedings in which the accused person was committed or tried in respect of the other offence may, in so far as they are relevant to the offence the subject of the committal proceedings, be given as evidence instead of a written statement.
- (2) A copy of the transcript must be certified by a registrar in accordance with the rules.

**283H Regulations relating to requirements for statements**

- (1) The regulations may make provision for or with respect to the use of statements to which this Part applies.
- (2) Without limiting subsection (1), regulations may be made for or with respect to the following:
  - (a) the form of statements,
  - (b) the signing of and endorsements on written statements by statement makers or other persons,
  - (c) the rejection of statements, or parts of statements, that do not comply with provisions made by or under this Part,
  - (d) other requirements for written or other statements,
  - (e) the giving of notice of the use of written or other statements,
  - (f) evidentiary presumptions about the stated age and signature of a person making a statement and other matters relating to any such statement,
  - (g) service of a written or other statement and copies of proposed exhibits identified in the statement (or a notice relating to inspection of them) on the accused person by the prosecutor.



**[11] Section 289 Written statements admitted in committal proceedings**

Omit section 289 (1). Insert instead:

- (1) This section applies to a written statement (a *prescribed written statement*) the whole or any part of which has been admitted as evidence under Division 6 of Part 2 of Chapter 3 or under Division 3A of Part 3 of the *Children (Criminal Proceedings) Act 1987*, including any part of the statement that has been rejected for the purposes of that Division.

**[12] Schedule 1 Indictable offences triable summarily**

Insert in appropriate order in Part 4 of Table 1:

**18AAA Children (Criminal Proceedings) Act 1987**

An offence under section 31K of the *Children (Criminal Proceedings) Act 1987*.

**18C Criminal Procedure Act 1986**

An offence under section 92 of the *Criminal Procedure Act 1986*.

**[13] Schedule 2 Savings, transitional and other provisions**

Insert at the end of the Schedule, with appropriate Part and clause numbering:

**Part Provisions consequent on enactment of Justice Legislation Amendment (Committals and Guilty Pleas) Act 2017**

**Definitions**

In this Part:

*amending Act* means the *Justice Legislation Amendment (Committals and Guilty Pleas) Act 2017*.

*existing proceedings* means committal proceedings for an offence commenced before the substitution of the former committal provisions by the amending Act.

*former committal provisions* means Divisions 2–5 of Part 2 of Chapter 3 of this Act, as in force before their substitution by the amending Act.

**Existing proceedings**

The former committal provisions continue to apply to existing proceedings as if those provisions had not been substituted by the amending Act.

**Previous offences**

This Act, as amended by the amending Act, extends to proceedings for an offence committed before the substitution of the former committal provisions by the amending Act, if proceedings for the offence commence on or after the substitution of the former committal provisions.

## **Schedule 2      Amendment of Crimes (Sentencing Procedure) Act 1999 No 92**

### **[1] Section 21A Aggravating, mitigating and other factors in sentencing**

Insert “or Division 1A” after “section 22” in section 21A (3) (k).

### **[2] Section 21A (3) (n)**

Insert after section 21A (3) (m):

- (n) an offer to plead guilty to a different offence where the offer is not accepted, the offender did not plead guilty to the offence and the offender is subsequently found guilty of that offence or a reasonably equivalent offence (this circumstance, among others, is provided for by section 25E (1)).

### **[3] Section 22 Guilty plea to be taken into account for offences not dealt with on indictment**

Insert after section 22 (4):

- (5) This section applies only to a sentence for an offence that is dealt with summarily or to a sentence for an offence dealt with on indictment to which Division 1A does not apply.

**Note.** Discounts for the utilitarian value of a guilty plea to other offences are provided for by Division 1A.

### **[4] Part 3, Division 1A**

Insert after Division 1:

#### **Division 1A      Sentencing discounts for guilty pleas to indictable offences**

##### **25A Application of Division**

- (1) This Division applies to a sentence for an offence that is dealt with on indictment, other than:
  - (a) an offence under a law of the Commonwealth, unless the regulations otherwise provide in the case of a particular offence or class of offences, or
  - (b) an offence committed by a person who was under the age of 18 years when the offence was committed and under the age of 21 years when charged before the court with the offence.
- (2) A court must not apply any other discount for the utilitarian value of a guilty plea to an offence to which this Division applies other than the discount provided for by this Division.

##### **25B Definitions**

In this Division:

***negotiations document*** means:

- (a) if an offender was represented by an Australian legal practitioner in proceedings:
  - (i) a case conference certificate (including any later plea offer) filed in committal proceedings for the offence concerned under the *Criminal Procedure Act 1986*, or

- (ii) any other document, served on the prosecutor in proceedings for the offence following committal for trial or sentence, that records an offer made by the offender to plead guilty to an offence specified in the document, or
- (b) if an offender was not represented in proceedings, any document served on the prosecutor in the proceedings that records an offer made by the offender to plead guilty to an offence specified in the document.

***new count offence*** means:

- (a) an offence the subject of an ex officio indictment, or
- (b) an offence for which the count is inserted in an indictment by amending the indictment (the ***original indictment***).

***sentence*** means a term of imprisonment, fine, number of hours of community service work or term of a good behaviour bond.

## **25C Timing of pleas and notice requirements**

- (1) In this Division:

***first day of the trial of an offender*** means the first day fixed for the trial of the offender or, if that day is vacated, the next day fixed for the trial that is not vacated.

- (2) For the purposes of this Division, an offender ***complies with the pre-trial notice requirements*** if the offender serves a notice on the prosecutor at least 14 days before the first day of the trial of the offender accepting an offer by the prosecutor to plead guilty to the offence or offering to plead guilty to the offence.

## **25D Sentencing discounts for guilty plea for offences dealt with on indictment**

- (1) **Mandatory nature of sentencing discount**

In determining the sentence for an offence, the court is to apply a sentencing discount for the utilitarian value of a guilty plea in accordance with this section if the offender pleaded guilty to the offence at any time before being sentenced.

- (2) **Amounts of sentencing discounts**

The discount for a guilty plea by an offender (other than an offender referred to in subsection (3) or (5) or section 25E) is as follows:

- (a) a reduction of 25% in any sentence that would otherwise have been imposed, if the plea was accepted by the Magistrate in committal proceedings for the offence,
- (b) a reduction of 10% in any sentence that would otherwise have been imposed, if the offender was committed for trial and the offender:
  - (i) pleaded guilty at least 14 days before the first day of the trial of the offender, or
  - (ii) complied with the pre-trial notice requirements and pleaded guilty at the first available opportunity able to be obtained by the offender,
- (c) a reduction of 5% in any sentence that would otherwise have been imposed, if paragraph (a) or (b) does not apply.

- (3) **Discount variations—new count offences**

The discount for a guilty plea by an offender in respect of a new count offence is as follows:

- (a) a reduction of 25% in any sentence that would otherwise have been imposed, if an offer to plead guilty was made by the offender and recorded in a negotiations document as soon as practicable after the ex officio indictment was filed or the indictment was amended to include the new count,
  - (b) a reduction of 10% in any sentence that would otherwise have been imposed, if paragraph (a) does not apply and the offender:
    - (i) pleaded guilty at least 14 days before the first day of the trial of the offender, or
    - (ii) complied with the pre-trial notice requirements and pleaded guilty to the offence at the first available opportunity able to be obtained by the offender,
  - (c) a reduction of 5% in any sentence that would otherwise have been imposed, if paragraph (a) or (b) does not apply.
- (4) However, the discount in subsection (3) (a) does not apply if:
- (a) the facts or evidence that establish the elements of the new count offence are substantially the same as those contained in the brief of evidence or other material served on the offender by the prosecutor in committal proceedings relating to the original indictment and the penalty for the new count offence is the same as, or less than, the offence set out in the original indictment, or
  - (b) the offender refused an offer to plead guilty to the new count offence that was made by the prosecutor in the committal proceedings relating to the original indictment and the offer was recorded in a negotiations document.
- (5) **Discount variations—person found fit to be tried after committal for trial**
- The discount for a guilty plea by an offender who is found fit to be tried after the offender is committed for trial, and whose matter was not remitted to a Magistrate for continued committal proceedings, is as follows:
- (a) a reduction of 25% in any sentence that would otherwise have been imposed, if the offender pleaded guilty as soon as practicable after the offender was found fit to be tried,
  - (b) a reduction of 10% in any sentence that would otherwise have been imposed, if paragraph (a) does not apply and the offender:
    - (i) pleaded guilty at least 14 days before the first day of the trial of the offender, or
    - (ii) complied with the pre-trial notice requirements and pleaded guilty at the first available opportunity able to be obtained by the offender,
  - (c) a reduction of 5% in any sentence that would otherwise have been imposed, if paragraph (a) or (b) does not apply.
- (6) **Opportunities for legal help to be taken into account**
- For the purpose of determining under subsection (3) or (5) whether the offender pleaded guilty as soon as practicable after an ex officio indictment was filed or the original indictment was amended or after a finding of fitness to be tried, the court is to take into account whether the offender had a reasonable opportunity to obtain legal advice and give instructions to his or her legal representative (if any).

**25E Sentencing discounts to apply in certain cases where guilty plea offer made for different offences and refused when made**

**(1) Discount where offer not accepted**

In determining the sentence for an offence, the court is to apply a sentencing discount in accordance with this section if:

- (a) the offender made an offer recorded in a negotiations document to plead guilty to an offence, and
- (b) that offence (the *different offence*) was not the offence the subject of the proceedings when the offer was made, and
- (c) the offer was not accepted by the prosecutor, and
- (d) the offer was not subsequently withdrawn, and
- (e) the offender was found guilty of the different offence or an offence that is reasonably equivalent to the different offence.

For the purposes of this subsection, an *offence is reasonably equivalent to a different offence* if:

- (a) the facts of the offence are capable of constituting the different offence, and
- (b) the maximum penalty for the offence is the same or less than the different offence.

**(2) Discount where offer later accepted**

In determining the sentence for an offence, the court is to apply a sentencing discount for the utilitarian value of a guilty plea in accordance with this section if:

- (a) the offender made an offer recorded in a negotiations document to plead guilty to an offence, and
- (b) that offence (the *different offence*) was not the offence the subject of the proceedings when the offer was made, and
- (c) the offer was refused but accepted by the prosecutor after the offender was committed for trial, and
- (d) the offender pleaded guilty to the different offence at the first available opportunity able to be obtained by the offender.

**(3) Discount variation—offer to plead guilty to different offence**

The discount to be applied by the court is as follows:

- (a) a reduction of 25% in any sentence that would otherwise have been imposed, if the offer was made before the offender was committed for trial,
- (b) a reduction of 10% in any sentence that would otherwise have been imposed, if the offer was made after the offender was committed for trial and at least 14 days before the first day of the trial of the offender,
- (c) a reduction of 5% in any sentence that would otherwise have been imposed, if the offer was made less than 14 days before or on or after the first day of the trial of the offender.

**25F Other provisions applying to sentencing discount**

**(1) Application**

This section applies to a sentencing discount under this Division.

(2) **Exception to application of discount—level of culpability**

The court may determine not to apply the sentencing discount, or to apply a reduced sentencing discount, if the court determines, on its own motion or on the application of the prosecution, that the discount should not be applied or should be reduced because the level of culpability in the commission of the offence is so extreme that the community interest in retribution, punishment, community protection and deterrence can be met only by imposition of a penalty with no allowance for, or a reduction of, that discount.

- (3) If a case conference certificate was filed in committal proceedings for the offence, a prosecutor is not entitled to apply to the court for a determination that the discount should not be applied or should be reduced unless the certificate records that the prosecutor notified the offender's legal representative, at or before the conference, of the intention to make the application.

(4) **Exception to application of discount—disputed facts**

The court may determine not to apply the sentencing discount, or to apply a reduced sentencing discount, if the court determines that the discount should not be applied or should be reduced because the utilitarian value of the plea of guilty has been eroded by a dispute as to facts that was not determined in favour of the offender.

(5) **Offender to establish grounds for discount**

The burden of establishing that grounds exist for the sentencing discount lies on the offender and must be proved on the balance of probabilities.

(6) **Application to Drug Court proceedings**

The sentencing discount applicable to a person who is sentenced for an offence under the *Drug Court Act 1998* applies to a person who indicates an intention to plead guilty to an offence before being referred to the Drug Court, and who subsequently pleads guilty to the offence before the Drug Court, as if the person had pleaded guilty to the offence before being committed for sentence in committal proceedings for the offence.

(7) **Discount information to be given to offender by court**

The court must indicate the following to the offender when passing sentence for an offence and must record the matters indicated:

- (a) if the sentencing discount is applied, how the sentence imposed was calculated,
- (b) if the court determines in accordance with this section not to apply or to reduce the discount, the reasons for the determination.

(8) **Sentence not invalidated by failure to comply**

The failure by a court to comply with this Division does not invalidate any sentence imposed by the court.

(9) **No discount where life sentence**

A sentencing court must not allow any discount under this Division for a guilty plea if the court determines a sentence of life imprisonment.

**[5] Schedule 2 Savings, transitional and other provisions**

Insert at the end of the Schedule, with appropriate Part and clause numbering:

**Part Provisions consequent on enactment of Justice Legislation Amendment (Committals and Guilty Pleas) Act 2017**

**Definitions**

In this Part:

*amending Act* means the *Justice Legislation Amendment (Committals and Guilty Pleas) Act 2017*.

*existing proceedings* means proceedings for an offence commenced before the amendment of the former sentencing provisions by the amending Act.

*former sentencing provisions* means Part 3 of this Act, as in force before its amendment by the amending Act.

**Existing proceedings**

The former sentencing provisions continue to apply to existing proceedings as if those provisions had not been amended by the amending Act.

**Previous offences**

This Act, as amended by the amending Act, extends to proceedings for an offence committed before the amendment of the former sentencing provisions by the amending Act, if proceedings for the offence commenced on or after that amendment.

## **Schedule 3 Amendment of other Acts**

### **3.1 Children (Criminal Proceedings) Act 1987 No 55**

#### **[1] Section 27 Application of Criminal Procedure Act 1986 and other Acts**

Insert after section 27 (2A):

- (2B) Despite subsection (2) (and subject to Divisions 3 and 3A), Part 2 of Chapter 3 of the *Criminal Procedure Act 1986* does not apply to indictable offences that are not serious children's indictable offences.

#### **[2] Section 31 Hearing of charges in the Children's Court**

Omit "shall not be dealt with summarily but shall be dealt with in accordance with Divisions 2–4 (other than sections 60 and 61) of Part 2 of Chapter 3 of the *Criminal Procedure Act 1986* in the same way as if a court attendance notice had been issued in accordance with that Act" from section 31 (2).

Insert instead "must not be dealt with summarily but are to be dealt with as committal proceedings in accordance with Division 3A".

#### **[3] Section 31 (2A) and (2B)**

Insert after section 31 (2):

- (2A) If a person makes a request under subsection (2) before the close of the case for the prosecution, the proceedings are to continue as summary proceedings for the purpose only of completing all of the evidence for the prosecution.
- (2B) The Children's Court must discharge a person who makes a request under subsection (2) in relation to an offence if it is of the opinion, after all the evidence for the prosecution has been taken, and having regard to all the evidence before the Court, that the evidence is not capable of satisfying a reasonable jury beyond reasonable doubt that the person has committed an indictable offence.

#### **[4] Section 31 (3)**

Omit "shall not be dealt with summarily but shall be dealt with in accordance with Divisions 2–4 (other than sections 60 and 61) of Part 2 of Chapter 3 of the *Criminal Procedure Act 1986* in the same way as if a court attendance notice had been issued in accordance with that Act and as if the Children's Court had formed the opinion referred to in section 62 of that Act".

Insert instead "must not be dealt with summarily but are to be dealt with as committal proceedings in accordance with Division 3A".

#### **[5] Section 31 (5)**

Omit "shall not be dealt with summarily but shall be dealt with in accordance with Division 5 of Part 2 of Chapter 3 of the *Criminal Procedure Act 1986* as if the offence were a serious children's indictable offence in respect of which the person had pleaded guilty as referred to in that section".

Insert instead "must not be dealt with summarily but are to be dealt with as committal proceedings in accordance with section 31H".



[6] **Part 3, Division 3A**

Insert after Division 3:

**Division 3A Committal proceedings**

**31A Committal proceedings for offences**

- (1) This Division applies to an offence with which a person (an *accused person*) is charged if:
  - (a) the accused person made a request under section 31 (2) and the Children's Court did not discharge the person under section 31 (2B) after all the prosecution evidence was taken, or
  - (b) the Children's Court forms an opinion about the accused person under section 31 (3) (b).
- (2) The Children's Court must conduct committal proceedings in respect of the offence in accordance with this Division.

**Note.** Section 31H applies to a person about whom the Children's Court forms an opinion under section 31 (5).

**31B Evidence in committal proceedings**

- (1) The Children's Court must give the accused person an opportunity to give evidence in the committal proceedings or to call any witness on the accused person's behalf.
- (2) The Children's Court must give an accused person a warning before giving the accused person an opportunity to answer the charge.
- (3) An accused person may make full answer and defence. An accused person may give evidence and may examine and cross-examine the witnesses giving evidence for the accused person or for the prosecution, respectively.
- (4) The Children's Court may end the examination or cross-examination on any particular matter of any witness giving evidence in the committal proceedings if the Court is satisfied that further examination or cross-examination on the matter will not help the Court to make a determination under subsection (6).
- (5) If the accused person is not present, the Children's Court may make a decision under subsection (6) without complying with subsection (3).
- (6) The Children's Court must consider all the prosecution evidence given under section 31 or 31C and any defence evidence and determine whether or not in its opinion, having regard to all the evidence before the Court, there is a reasonable prospect that a reasonable jury, properly instructed, would convict the accused person of an indictable offence.

**Note.** A matter is not referred for dealing with under this Division until after all prosecution evidence has been taken (see section 31 (2A) and (3)).

- (7) The Children's Court may not exclude evidence on any of the grounds set out in section 90 (Discretion to exclude admissions) or Part 3.11 (Discretionary and mandatory exclusions) of the *Evidence Act 1995*.

**31C Statements may be admitted as evidence**

- (1) For the purposes of section 31B (6), the Children's Court may, on the application of the prosecutor, consider additional evidence for the prosecution that is tendered in the form of a statement if:

- (a) the statement was included in the brief of evidence provided by the prosecutor for the purposes of Division 2 of Part 2 of Chapter 4 of the *Criminal Procedure Act 1986* (as applied by section 27 of this Act), or
  - (b) the statement is tendered by the prosecutor after the conclusion of the prosecution's case under section 31 and is a written statement or a statement of another kind that is permitted to be tendered in committal proceedings under Division 6 of Part 2 of Chapter 3 of the *Criminal Procedure Act 1986*.
- (2) A statement that is so tendered is admissible as evidence for the purposes of this section to the same extent as if it were oral evidence to the like effect given under this Division by the same person.
  - (3) Any document or other thing identified in any statement admitted as evidence under this Division is, if the document or other thing is produced as an exhibit in the committal proceedings, to be treated as if it had been identified before the Children's Court by the person who made the statement.
  - (4) This section does not operate to make a statement admissible if it is not admissible because of another provision made by or under this Division.

**31D Statements must comply with requirements**

- (1) A statement is not admissible as evidence for the purposes of this Division unless any requirements specified for the statement by or under this Division, or under subsection (2), are complied with in relation to the statement and any associated exhibits or documents.
- (2) Part 3A of Chapter 6 of the *Criminal Procedure Act 1986* applies to or in respect of a statement tendered for the purposes of this Division under section 31C (1) (b).
- (3) A statement that is not admissible as evidence under this section may nevertheless be admitted as evidence if otherwise admissible in accordance with any rule or law of evidence.
- (4) A statement sought to be admitted for the purposes of this Division must be served on the accused person on or before the day set by the Children's Court for that purpose.
- (5) The Children's Court must refuse to admit a statement sought to be tendered under this Part if any requirement specified for the statement by or under this Division, or under subsection (2), has not been complied with by the prosecutor.
- (6) Despite subsection (5), the Children's Court may admit the statement sought to be tendered if the Court is satisfied that:
  - (a) the non-compliance is trivial in nature, or
  - (b) there are other good reasons to excuse the non-compliance, and admit the statement, in the circumstances of the case.

**31E Children's Court may set aside requirements for statements**

- (1) In any committal proceedings, the Children's Court may dispense with all or any of the following requirements relating to statements or exhibits:
  - (a) service of documents on the accused person,
  - (b) provision to the accused person of a reasonable opportunity to inspect proposed exhibits,
  - (c) specification of the age of the person who made a statement,

- (d) any requirement specified by the regulations under this Division or Part 3A of Chapter 6 of the *Criminal Procedure Act 1986*, if the regulations do not prohibit the Court from dispensing with the requirement.
- (2) A requirement may be dispensed with under this section only on an application by the accused person or with the consent of the accused person.

**Note.** Some of these requirements are imposed because of the application of Part 3A of Chapter 6 of the *Criminal Procedure Act 1986* to certain statements.

### **31F Decision about committal or discharge**

- (1) If the Children's Court is of the opinion that there is a reasonable prospect that a reasonable jury, properly instructed, would convict the accused person of an indictable offence, the Court must commit the accused person for trial.
- (2) If the Children's Court is not of the opinion that there is a reasonable prospect that a reasonable jury, properly instructed, would convict the accused person of an indictable offence, the Court must immediately order the accused person to be discharged in relation to the offence.
- (3) Despite any requirement of section 31B, the Children's Court may, at any time, on the application of the accused person, and with the consent of the prosecutor, commit the accused person for trial.

### **31G Guilty pleas**

- (1) An accused person may at any time in committal proceedings under this Division plead guilty to the offence concerned.
- (2) The Children's Court may accept or reject the guilty plea.
- (3) Rejection of a guilty plea does not prevent an accused person from pleading guilty at a later stage in the proceedings.
- (4) If the guilty plea is rejected, the committal proceedings continue as if the accused person had not pleaded guilty.

### **31H Guilty pleas and committal for sentence**

- (1) This section applies to:
  - (a) an accused person whose guilty plea is accepted under section 31G, and
  - (b) a person charged with an offence who pleads guilty to an offence and about whom the Children's Court forms an opinion under section 31 (5) (c).
- (2) The Children's Court must commit the person to the District Court or the Supreme Court for sentence.

### **31I Committal may be set aside by Children's Court**

- (1) An accused person who was not present and, if not present, was not represented when committed for trial may apply to the Children's Court to have an order for the accused person's committal for trial set aside.
- (2) The application must be made before the presentation or filing of an indictment against the accused person.
- (3) The Children's Court may set aside the order for committal for trial and any associated warrant to commit the accused person if the Court is satisfied that good and proper reason is shown for the absence of the accused person or a

representative of the accused person and that it is in the interests of justice to do so.

**31J Application of procedural provisions**

Section 58 and Divisions 8–10 of Part 2 of Chapter 3 of the *Criminal Procedure Act 1986* apply to or in respect of proceedings under this Division in the same way as they apply to or in respect of proceedings under that Part.

**31K False statements or representations**

- (1) A person who made a written statement tendered in evidence in proceedings under this Division is guilty of an offence if the statement contains any matter:
  - (a) that, at the time the statement was made, the person knew to be false, or did not believe to be true, in any material respect, and
  - (b) that was inserted or caused to be inserted by the person in the statement.Maximum penalty: 100 penalty units or imprisonment for 5 years, or both.
- (2) A person who made a representation given in evidence under this Division in the form of a recorded statement is guilty of an offence if the representation contains any matter that, at the time the representation was made, the person knew to be false, or did not believe to be true, in any material respect.  
Maximum penalty: 100 penalty units or imprisonment for 5 years, or both.

**31L Regulations**

Regulations may be made for or with respect to the following matters:

- (a) requiring the Children’s Court to give an explanation to an accused person of any matter under this Division,
- (b) without limiting paragraph (a), requirements for statements or warnings where the accused person is not represented by a legal practitioner,
- (c) requirements for statements used for the purposes of this Division,
- (d) the form of any warning required to be given under this Division,
- (e) service of a written or other statement and copies of proposed exhibits identified in the statement (or a notice relating to inspection of them) on the accused person by the prosecutor.

**[7] Schedule 2 Savings and transitional provisions**

Insert at the end of the Schedule, with appropriate Part and clause numbering:

**Part Provisions consequent on enactment of Justice Legislation Amendment (Committals and Guilty Pleas) Act 2017**

**Definitions**

In this Part:

**amending Act** means the *Justice Legislation Amendment (Committals and Guilty Pleas) Act 2017*.

**existing proceedings** means proceedings for an indictable offence commenced under this Act before the amendment of the former committal provisions by the amending Act.

**former committal provisions** means Divisions 2–5 of Part 2 of Chapter 3 of the *Criminal Procedure Act 1986* and Division 3 of Part 3 of this Act, as in

force before the substitution or amendment of those provisions by the amending Act.

#### **Existing proceedings**

The former committal provisions continue to apply to existing proceedings as if those provisions had not been amended by the amending Act.

#### **Previous offences**

This Act, as amended by the amending Act, extends to proceedings for an offence committed before the amendment of Division 3 of Part 3 of this Act by the amending Act, if proceedings for the offence commenced on or after that amendment.

### **3.2 Children's Court Act 1987 No 53**

#### **Section 23 Rules**

Omit the section. Insert instead:

#### **23 Rules**

- (1) The Governor may make rules, not inconsistent with this Act, for or with respect to any matter that is required or permitted to be prescribed by rules, or that is necessary or convenient to be prescribed by rules, in relation to the practice or procedure of the Court.
- (2) In particular, the rules may make provision for or with respect to the following matters:
  - (a) the practice or procedure to be followed in criminal proceedings,
  - (b) the functions of Children's Registrars and other officers of the Court,
  - (c) the review of orders or decisions of Children's Registrars, other registrars and other officers of the Court,
  - (d) the practice or procedure to be followed in any proceedings under any other law under which jurisdiction or any function is conferred on the Court,
  - (e) any matter incidental to, or relating to, any practice or procedure referred to in this section,
  - (f) courses of training to be attended by Children's Magistrates and persons proposed to be appointed as Children's Magistrates.
- (3) A rule may be made under this Act in relation to any matter for which a rule-making power is conferred on the Court by or under any other Act or law.

### **3.3 Criminal Appeal Act 1912 No 16**

#### **Section 5F Appeal against interlocutory judgment or order**

Omit "Division 5 of Part 2 of Chapter 3" from section 5F (1) (b).

Insert instead "sections 97 and 99 and Division 9 of Part 2 of Chapter 3".

### **3.4 Director of Public Prosecutions Act 1986 No 207**

#### **[1] Section 3 Definitions**

Omit the definition of *committal proceedings* from section 3 (1). Insert instead:

*committal proceedings* means proceedings before a Magistrate for the purpose of committing an accused person for trial or sentence.

#### **[2] Section 15A Disclosures by law enforcement officers**

Insert “or Part 2 of Chapter 3 of the *Criminal Procedure Act 1986*” after “this Act” in section 15A (1A).

### **3.5 Independent Commission Against Corruption Act 1988 No 35**

#### **Section 18 Court proceedings**

Omit “that is, the commencement of the taking of the evidence for the prosecution in the committal proceedings,” from section 18 (2A) (a).

### **3.6 Interpretation Act 1987 No 15**

#### **Section 21 Meanings of commonly used words and expressions**

Omit the definition of *committal proceedings* from section 21 (1). Insert instead:

*committal proceedings* means proceedings before a Magistrate for the purpose of committing an accused person for trial or sentence.

### **3.7 Mental Health (Forensic Provisions) Act 1990 No 10**

#### **[1] Section 13A**

Insert after section 13:

#### **13A Committal proceedings following finding of fit to be tried**

- (1) This section applies to an accused person who was committed for trial for an offence under Division 7 of Part 2 of Chapter 3 of the *Criminal Procedure Act 1986*.
- (2) The Court may, on the application of the accused person or on its own motion, make an order remitting the matter to a Magistrate for the holding of a case conference under Division 5 of Part 2 of Chapter 3 of the *Criminal Procedure Act 1986*, if the accused person has, following an inquiry, been found fit to be tried for an offence.
- (3) The Court must make the order on the application of the accused person unless it is satisfied that it is not in the interests of justice to do so or that the offence is not an offence in relation to which a case conference is required to be held under that Division.
- (4) The Court may, on its own motion, make an order remitting the matter to a Magistrate for the holding of a case conference under Division 5 of Part 2 of Chapter 3 of the *Criminal Procedure Act 1986* at any time, if it is satisfied that the question of the accused person’s unfitness to be tried for an offence is not going to be raised in proceedings for the offence.
- (5) If a matter is remitted to a Magistrate, the matter is to be dealt with as if the accused person had not been committed for trial and the proceedings are taken to be a continuation of the original committal proceedings.

- (6) If no application is made or the matter is not remitted to a Magistrate, the matter is to be dealt with in accordance with section 13.

**[2] Schedule 3 Savings and transitional provisions**

Insert at the end of the Schedule, with appropriate Part and clause numbering:

**Part Provisions consequent on enactment of Justice Legislation Amendment (Committals and Guilty Pleas) Act 2017**

**Definition**

In this Part:

*amending Act* means the *Justice Legislation Amendment (Committals and Guilty Pleas) Act 2017*.

**Existing proceedings**

Section 13A, as inserted by the amending Act, does not apply to proceedings for an indictable offence commenced before the insertion of section 13A by the amending Act.

**Previous offences**

This Act, as amended by the amending Act, extends to proceedings for an offence committed before the insertion of section 13A by the amending Act, if proceedings for the offence commenced on or after the commencement of that section.

**3.8 Supreme Court Act 1970 No 52**

**Third Schedule Criminal Proceedings**

Omit “Division 5 of Part 2 of Chapter 3” from item (a2).

Insert instead “sections 97 and 99 and Division 9 of Part 2 of Chapter 3”.

**3.9 Victims Rights and Support Act 2013 No 37**

**Section 106 Imposition of victims support levy**

Omit “Division 5 of Part 2 of Chapter 3” from section 106 (1) (a).

Insert instead “section 97”.

[Second reading speech made in—

Legislative Assembly on 11 October 2017

Legislative Council on 18 October 2017]