



New South Wales

Criminal Procedure Amendment (Briefs of Evidence) Regulation 2007

under the

Criminal Procedure Act 1986

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Criminal Procedure Act 1986*.

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Attorney General

Explanatory note

Section 183 of the *Criminal Procedure Act 1986* requires briefs of evidence to be given by prosecutors to defendants in proceedings for certain offences and specifies what is to be included in those briefs. An amendment made by the *Criminal Procedure Amendment (Local Court Process Reforms) Act 2007* enables the regulations to make other provision for the content of briefs of evidence required under section 183.

The object of this Regulation is to amend the *Criminal Procedure Regulation 2005* to prescribe a 12-month trial scheme allowing prosecutors to give short briefs of evidence to defendants. The trial scheme will apply to proceedings for summary offences and for indictable offences specified in Table 2 in Schedule 1 to the *Criminal Procedure Act 1986* that are dealt with summarily, but only in cases where a brief of evidence is required to be served.

This Regulation is made under the *Criminal Procedure Act 1986*, including sections 4 (the general regulation-making power) and 183.

2007 No 535

Clause 1 Criminal Procedure Amendment (Briefs of Evidence) Regulation 2007

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1 Name of Regulation

This Regulation is the *Criminal Procedure Amendment (Briefs of Evidence) Regulation 2007*.

2 Amendment of Criminal Procedure Regulation 2005

The *Criminal Procedure Regulation 2005* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Clause 2)

[1] Clause 24A

Insert after clause 24:

24A Requirements for short briefs of evidence in certain circumstances**(1) Object of clause**

The object of this clause is to reduce the time spent by police officers in producing statements of non-material witnesses for inclusion in certain briefs of evidence and, accordingly, a court is to have regard to that object when exercising its functions under this clause.

(2) Proceedings to which clause applies

This clause applies only to proceedings for summary offences (including proceedings for indictable offences specified in Table 2 of Schedule 1 to the Act that are being dealt with summarily) for which a brief of evidence is required to be served under section 183 of the Act.

(3) Definition of “prescribed statement”

In this clause, *prescribed statement* means, in relation to a brief of evidence required to be served under section 183 of the Act in proceedings, a statement of a non-material witness, including the following:

- (a) a police officer who provides evidence that the preconditions of the exercise of a power have been satisfied or establishes that the evidence on which the prosecutor relies was obtained in accordance with the law (for example, the custody manager who cautions the accused person under Part 9 of the *Law Enforcement (Powers and Responsibilities) Act 2002*),
- (b) a police officer who was responsible for the movement of, or recording the movement of, a thing connected with the offence or the investigation of the offence (for example, a police officer who conveys DNA or a drug sample to the Division of Analytical Laboratories),
- (c) a police officer who operated a device that produced or caused the production of a document, photograph, video or any other thing relied on by the prosecutor to prove the prosecution’s case,

2007 No 535

Criminal Procedure Amendment (Briefs of Evidence) Regulation 2007

Schedule 1 Amendments

- (d) any other police officer who provides evidence that merely corroborates evidence of another police officer whose statement relates to a process or procedure and is included in the brief of evidence (for example, a police officer, other than the investigating police officer, who was present when the accused person was interviewed),
- (e) a person who is a medical practitioner, nurse, paramedic or other health care professional if all the notes of the person (for example, doctor's treatment notes or ambulance officer's checklists) have been included in the brief of evidence.

Note. Requirements relating to the time at which a brief of evidence under section 183 is to be served are set out in section 183 (3) and (4).

(4) **Documents not required to be included in brief of evidence relating to proceedings to which this clause applies**

Despite section 183 (2) (a) of the Act, a brief of evidence required to be served under that section in proceedings need not include the following:

- (a) any prescribed statement so long as the brief includes a list of each prescribed statement that, but for this clause, would need to be included in the brief and a summary of what each such statement would include,
- (b) any document that was served on the accused person or the accused person's legal representative by or on behalf of the prosecutor after the court attendance notice in relation to the offence concerned was served.

(5) **Court may order service of document not previously included in brief of evidence**

On application by the accused person in proceedings, the court may order that any prescribed statement, or any document referred to in subclause (4) (b), be served on the accused person by the prosecutor within a specified time before the hearing if the statement or document was not included in the brief of evidence. The court is to give reasons for the making of such an order.

(6) **Circumstances in which Court may order service of those documents**

The court may make an order under subclause (5) only if satisfied that:

- (a) in the case of a prescribed statement, the making of the order would assist the defendant responding to the charge or assist the court in determining the matter, or

(b) in the case of a document referred to in subclause (4) (b), the application for the order has been made in good faith.

(7) This clause to operate for trial period only

This clause has effect in respect of proceedings only if the accused person in the proceedings was charged with the offence to which the proceedings relate on or after 12 November 2007 and before 12 November 2008.