



New South Wales

# Criminal Procedure Amendment (Local Court Process Reforms) Regulation 2010

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*.

JOHN HATZISTERGOS, MLC  
Attorney General

## Explanatory note

The objects of this Regulation are:

- (a) to extend the list of offences in respect of which a prosecutor is not required to serve a brief of evidence, and
- (b) to facilitate the evaluation of the Local Court process reforms made by the *Criminal Procedure Amendment (Local Court Process Reforms) Act 2007* by reinstating, for a limited period and in one court only, the rules relating to the service of briefs of evidence that had effect before the Local Court process reforms were made (the rules being reinstated are more onerous for the prosecution).

The Regulation provides that a brief of evidence will no longer be required to be served in proceedings for the following offences:

- (a) offences under the *Road Transport (Driver Licensing) Act 1998* relating to driving while a licence is cancelled, suspended or disqualified, driving when a licence has been refused or driving having never been licensed,
- (b) an offence under the *Drug Misuse and Trafficking Act 1985* relating to possession of a prohibited drug,
- (c) an offence under the *Poisons and Therapeutic Goods Act 1966* relating to possession of a prescribed restricted substance.

The above amendment applies for a trial period only, until 1 July 2011.

To facilitate the evaluation of the Local Court process reforms, the Regulation requires the service of a brief of evidence in certain proceedings in accordance with rules that are substantially the same as the rules that applied before those reforms were made. The

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#### **Explanatory note**

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proceedings concerned are proceedings conducted by a police prosecutor that are commenced in the Local Court sitting at Manly, and are commenced on or after 1 July 2010 and before 1 October 2010. The amendments will require the police prosecutor in those proceedings:

- (a) to serve a brief of evidence on a person who pleads not guilty to any offence other than an offence that may be dealt with by issue of a penalty notice, and
- (b) to serve on a person charged with an indictable offence, and who is entitled to make an election to have the offence prosecuted summarily, a brief of evidence in relation to the offence.

In addition, the Local Court process reforms which allow a short brief of evidence to be served in particular cases will not apply to those proceedings.

The changes will enable information gathered in respect of the proceedings to be compared with information gathered in respect of other proceedings in which the Local Court process reforms are being applied.

This Regulation is made under the *Criminal Procedure Act 1986*, including sections 4 (the general regulation-making power), 187 and 266 and clause 1 (1) of Schedule 2 (the power to make regulations of a savings or transitional nature consequent on the enactment of the *Criminal Procedure Amendment (Local Court Process Reforms) Act 2007*).

## **Criminal Procedure Amendment (Local Court Process Reforms) Regulation 2010**

under the

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### **1 Name of Regulation**

This Regulation is the *Criminal Procedure Amendment (Local Court Process Reforms) Regulation 2010*.

### **2 Commencement**

This Regulation commences on 1 February 2010 and is required to be published on the NSW legislation website.

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Schedule 1 Amendment of Criminal Procedure Regulation 2005

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**Schedule 1 Amendment of Criminal Procedure  
Regulation 2005**

**[1] Clause 24 Offences for which briefs of evidence not required**

Insert after clause 24 (1) (d):

- (e) proceedings for an offence under section 25 (2) or 25A (1) (a), (2) (a), (3) (a), (3A) (a) (i) or (3A) (b) (i) of the *Road Transport (Driver Licensing) Act 1998*,
- (f) proceedings for an offence under section 10 of the *Drug Misuse and Trafficking Act 1985*,
- (g) proceedings for an offence under section 16 (1) of the *Poisons and Therapeutic Goods Act 1966*.

**[2] Clause 24 (3)**

Insert after clause 24 (2):

- (3) Subclause (1) has effect in relation to proceedings referred to in subclause (1) (e), (f) or (g) only if the proceedings are commenced on or after 1 February 2010 and before 1 July 2011.

**[3] Clause 24B**

Insert after clause 24A:

**24B Evaluation of Local Court process reforms—transitional**

**(1) Object of clause**

The object of this clause is to facilitate the evaluation of the Local Court process reforms.

**Note.** For that purpose, this clause requires the service of a brief of evidence in proceedings to which this clause applies in accordance with rules that are substantially the same as the rules that applied before the Local Court process reforms were made.

**(2) Proceedings to which clause applies**

This clause applies to proceedings for an offence in which the prosecution is conducted by a police prosecutor and which:

- (a) are heard in the Local Court sitting at Manly, Sydney, and
- (b) are commenced on or after 1 July 2010 and before 1 October 2010.

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(3) **Briefs of evidence**

Clause 24 (1) (b)–(g) does not apply to proceedings to which this clause applies. That is, in proceedings to which this clause applies a brief of evidence must be served under section 183 of the Act in relation to offences referred to in clause 24 (1) (b)–(g).

**Note.** Section 183 of the Act requires a brief of evidence to be served on an accused person who pleads not guilty to an offence.

(4) **Short briefs of evidence**

Clause 24A does not apply to proceedings to which this clause applies.

(5) **Table 1 offences**

In proceedings to which this clause applies, the prosecutor is to serve, or cause to be served, on a person charged with an indictable offence listed in Table 1 to Schedule 1 to the Act a copy of the brief of evidence relating to the offence that complies with section 186 of the Act within the time fixed by the Local Court. The time so fixed must be before the time fixed by the Court for the making of an election in respect of the offence.

(6) The prosecutor is not required to include a copy of a proposed exhibit identified in a brief of evidence if it is impossible or impractical to copy the exhibit. However, the prosecutor must in that case comply with section 184 (2) of the Act.

(7) The Local Court is to grant such adjournments as appear to be just and reasonable if a brief of evidence is not served in accordance with subclause (5), and the Court is to extend accordingly the time fixed for the making of an election in respect of the offence.

(8) The jurisdiction of the Local Court under this clause may also be exercised by a registrar of the Court.

(9) This clause does not affect the requirement under section 265 (2) of the Act that the prosecutor also serve on the person charged a copy of the person's criminal record.

(10) In this clause:

**brief of evidence** means a brief of evidence within the meaning of section 183 (2) of the Act.

**Local Court process reforms** means the changes to the Act and this Regulation made by the *Criminal Procedure Amendment (Local Court Process Reforms) Act 2007*.