

[Act 1996 No 123]



Justices Amendment (Committals) Bill 1996

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.*

Overview of Bill

The object of this Bill is to amend the *Justices Act 1902*:

- to ensure that prosecution witnesses in general (and not just those that are victims of certain offences involving violence) cannot be required to give oral evidence at committal proceedings except when special reasons exist
- to require that the cross-examination of prosecution witnesses at committal proceedings normally be confined to the subject matter that formed the basis for a Justice's decision to permit the cross-examination
- to restate (in more direct terms) the test under which a Justice decides to commit a defendant for trial

* Amended in committee—settable at end of volume.

- to make it clear that a Justice must not, at a committal hearing, exclude otherwise admissible evidence on discretionary grounds
- to repeal an obsolete provision permitting a prosecutor or witnesses to be bound over (or witnesses to be held in prison if they refuse to be bound over) to ensure their attendance at a trial.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides that the proposed Act will commence on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the *Justices Act 1902*.

Schedule 1 Amendments

Repeal of section 38

Schedule 1 [1] repeals section 38 because it is obsolete. Under section 38, a Justice at committal proceedings can bind over the prosecutor and witnesses in those proceedings (or, if witnesses refuse to be bound over, order them to be held in prison) to ensure their attendance at the following trial. The provision currently applies to witnesses even if they themselves have not been charged with any offence.

Schedule 1 [2], [10] and [11] make consequential amendments.

Restating the committal test

Schedule 1 [3] amends section 41 to restate (in more direct terms) the test under which a Justice decides whether to commit a defendant for trial.

At present, the Justice must form an opinion whether, having regard to all the evidence before the Justice, a jury would not be likely to convict the defendant of an indictable offence, and commits the defendant for trial if not of that opinion (current section 41 (6)).

Under the proposed amendments, a Justice will decide, on the basis of the evidence before the Justice, whether there is a reasonable prospect that a jury would convict the defendant of an indictable offence.

Discretionary exclusion of evidence

Under proposed section 41 (8A) (as inserted by Schedule 1 [4]) and section 48F (1) (as amended by Schedule 1 [8]), a Justice must not exclude otherwise admissible evidence on discretionary grounds (such as unfairness). Instead, the Justice is to leave those decisions for the trial Judge. At present, it is not clear from the *Justices Act 1902* to what extent a Justice at committal proceedings is required to determine questions of discretionary exclusion.

Restricting the scope of cross-examination

Schedule 1 [5] amends section 41 to require that when, for special reasons, the cross-examination of prosecution witnesses is permitted at committal proceedings, the Justice must normally ensure that the cross-examination does not stray from the subject matter on which the special reasons were based (proposed section 41 (10)).

Restricting further the use of oral examination at committal proceedings

The tendering of written statements as prosecution evidence at committal proceedings is the normal procedure. However, under section 48E it is still possible for a defendant to give notice that renders a written statement inadmissible and so effectively force the appearance of the witness who made the statement (or the withdrawal of the evidence of that witness). The operation of section 48E is restricted by section 48EA in cases where the witness is a victim of an offence involving violence.

It is also possible under section 48E for a Justice to order the appearance of a witness if there are special reasons why it is in the interests of justice to do so (*even if* the witness is a victim of a violent offence: section 48EA).

Schedule 1 [6] replaces section 48E (and Schedule 1 [7] omits section 48EA) to extend the restriction so that *no* prosecution witness can be required to attend unless there are special reasons that relate to the interests of justice.

Schedule 1 [9] makes a consequential amendment.

Savings, transitional and ether provisions

Schedule 1 [12] amends the Second Schedule to the *Justices Act 1902* to insert a savings and transitional provision as a consequence of the above

amendments. This provision continues the application of the existing provisions (so far as they relate to the attendance of prosecution witnesses at committals) to any case in which an information was laid before that amendment took effect.

However, the provision applies each of the amendments relating to other matters to all cases immediately when the amendment takes effect.