

[Act 1997 No 96]



## Justices Amendment (Briefs of Evidence) Bill 1997

### 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 require a prosecuting authority to serve a brief of evidence on a defendant in summary matters before the hearing of the matter. The requirement extends to:

- (a) summary offences (with certain exceptions), and
- (b) indictable offences dealt with summarily.

The Bill also contains amendments to the *Criminal Procedure Act 1986* to ensure that briefs of evidence under section 33H of that Act (namely, those that are currently required to be served in connection with certain indictable offences before the defendant decides whether to allow the matter to be dealt with summarily) will be served consistently with the proposed requirements under the *Justices Act 1902*.

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## Outline of provisions

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

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision giving effect to the amendments to the *Justices Act 1902* set out in Schedule 1.

**Clause 4** is a formal provision giving effect to the amendments to the *Criminal Procedure Act 1986* and the *Criminal Procedure Regulation 1995* set out in Schedule 2.

**Schedule 1 [1]** amends section 5 1 B of the Principal Act as a consequence of proposed section 66H (which is to be inserted by Schedule 1 [2]).

**Schedule 1 [2]** inserts Subdivision 6A (proposed sections 66A-66H) into Division 2 of Part 4 of the Principal Act.

Proposed section 66A defines terms used in the Subdivision, including *brief of evidence*, *penalty notice*, *prescribed summary offence* and *prosecuting authority*.

A *brief of evidence*, in relation to a prescribed summary offence, means documents regarding the evidence that the prosecution intends to adduce in order to prove the commission of the offence and includes:

- (a) written statements taken from the persons the prosecution intends to call to give evidence in proceedings for the offence, and
- (b) any document, or other thing, identified in such a written statement as a proposed exhibit.

A *prescribed summary offence* is a summary offence other than a summary offence for which a penalty notice may be issued or a summary offence excluded by the regulations.

Proposed section 66B requires a prosecuting authority to serve a copy of the brief of evidence in respect of a prescribed summary offence on a defendant who pleads not guilty to the offence. The copy is to be served at least 14 days before the hearing of the evidence for the prosecution, unless the defendant agrees to a shorter time period, or if, in the opinion of the Justice or Justices, the circumstances of the case otherwise require.

Proposed section 66C provides that a prosecuting authority is not required to include a copy of any proposed exhibits identified in the brief of evidence if it is impossible or impractical to do so. However, the prosecuting authority is to serve a notice on the defendant specifying where and when the proposed

Explanatory note

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exhibits may reasonably be inspected and must allow the defendant a reasonable opportunity to inspect the proposed exhibits referred to in the notice.

Proposed section 66D requires a copy of the brief of evidence to comply with any requirement applicable to it prescribed by the regulations.

Proposed section 66E enables the Justice or Justices to order that all or part of the copy of the brief of evidence need not be served if there are compelling reasons not to require service or if a copy of all or part of it could not reasonably be served on the defendant. Such an order may be made subject to conditions.

Proposed section 66F (1) provides that evidence sought to be adduced by the prosecuting authority is not to be admitted if the prosecuting authority has not complied with all or any of the requirements of the Subdivision or any regulations made for the purposes of the proposed Subdivision in relation to the evidence. Proposed section 66F (2) provides that a Justice or Justices may, and on the application of the defendant must, dispense with the requirements of proposed section 66F (1). However, proposed section 66F (3) provides that proposed section 66F (2) does not apply to a requirement that is declared by the regulations to be a requirement that may not be dispensed with.

Proposed section 66G requires the Justice or Justices to grant adjournments in relation to proceedings to which proposed Subdivision 6A applies as appear just and reasonable if the copy of the brief of evidence is not served in accordance with the Subdivision.

Proposed section 66H provides that proposed Subdivision 6A, as well as any regulations made for the purposes of the Subdivision, apply to indictable offences that are dealt with summarily in accordance with Part 9A of the *Criminal Procedure Act 1986*. However, the requirement to serve the brief of evidence is satisfied by:

- (a) service of a brief of evidence under section 33H of the *Criminal Procedure Act 1986*, for indictable offences listed in Table 1 to Part 9A of that Act, before the defendant decides whether to allow the matter to be dealt with summarily, or
- (b) service of a copy of a written statement in respect of committal proceedings for the offence under Subdivision 7A of Division 1 of Part 4 of the *Justices Act 1902* in a case where the election to proceed on indictment is subsequently withdrawn.

**Schedule 2.1** amends the *Criminal Procedure Act 1986* so that a copy of the brief of evidence served under section 33H is to comply with proposed section 66D as inserted into the *Justices Act 1902* by Schedule 1. The prosecuting authority 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 prosecuting authority must then comply with proposed section 66C (2) of the *Justices Act 1902*.

**Schedule 2.2** makes a consequential amendment to the *Criminal Procedure Regulation 1995*.