

[Act 2001 No 7]



New South Wales

Criminal Procedure Amendment (Pre-trial Disclosure) Bill 2000

Explanatory note

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

Overview of Bill

The principal object of this Bill is to enable a court, on a case by case basis, to impose pre-trial disclosure requirements on both the prosecution and the defence in order to reduce delays in complex criminal trials.

The Bill also inserts other general provisions relating to pre-trial disclosure, including:

- (a) voluntary pre-trial disclosures, and
- (b) a prohibition on the prosecutor amending an indictment that has been presented at a trial without the leave of the court or the consent of the accused person, and
- (c) a general duty of disclosure by investigating police officers, and

* Amended in committee—see table at end of volume.

- (d) a discretion for a sentencing court to reduce the sentence imposed on a convicted person having regard to the degree of pre-trial disclosures made by the defence.

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 *Criminal Procedure Act 1986* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Director of Public Prosecutions Act 1986* set out in Schedule 2.

Clause 5 is a formal provision giving effect to the amendments to the *Crimes (Sentencing Procedure) Act 1999* set out in Schedule 3.

Clause 6 requires the Attorney General to review the pre-trial procedures enacted by the proposed Act after a period of 18 months and report the results of the review to Parliament.

Schedule 1 Amendment of Criminal Procedure Act 1986

Schedule 1 [1] enacts provisions to enable a court, on a case by case basis, to impose pre-trial disclosure requirements on both the prosecution and the defence in order to reduce delays in complex criminal trials. The matters to be disclosed will be prescribed by the regulations and will comprise the case for the prosecution, the response of the defence to that case and the response of the prosecution to that response. The court will be able to impose a number of sanctions for non-compliance, including the rejection of evidence, dispensing with formal proof, the grant of an adjournment or comment to the jury. The obligations relating to pre-trial disclosure will not affect any legal immunity, such as client legal privilege, public interest immunity and sexual assault communications privilege.

Schedule 1 [2] makes a consequential amendment.

Schedule 1 [3] alters the period after committal for trial within which the defence is required to disclose any alibi on which the accused intends to rely from the period of 10 days after committal to the period from committal until 21 days before the trial.

Schedule 1 [4] provides for voluntary pre-trial disclosures and the sanctions that may be imposed by the court if notice of objection to disclosed evidence is not given before the hearing.

Schedule 1 [5] prevents the prosecutor from amending an indictment that has been presented for the purposes of a trial without the leave of the court or the consent of the accused person.

Schedule 1 [6] and [7] make provisions of a savings and transitional nature consequent on the enactment of the proposed Act.

Schedule 2 Amendment of Director of Public Prosecutions Act 1986

The Schedule imposes a general duty on investigating police officers to disclose to prosecuting authorities dealing with the matter all relevant information, documents or other things obtained during the investigation of an indictable offence that might reasonably be expected to assist the case for the prosecution or the case for the accused person.

Schedule 3 Amendment of Crimes (Sentencing Procedure) Act 1999

The Schedule gives the court a discretion to impose a lesser penalty than it would otherwise impose on an offender, having regard to the degree to which the defence has made pre-trial disclosures for the purposes of the trial.