



New South Wales

Criminal Procedure Amendment (Local Court Process Reforms) Bill 2007

Explanatory note

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

Overview of Bill

The objects of this Bill are to:

- (a) amend the *Criminal Procedure Act 1986* (the *Principal Act*) to remove the requirement that a brief of evidence in proceedings for an indictable offence listed in Table 1 to Schedule 1 (Indictable offences triable summarily) be served prior to the time fixed for making an election in respect of whether the offence is to be tried on indictment, and
- (b) amend the *Criminal Procedure Regulation 2005* (the *Principal Regulation*) to expand (on a 12 month trial basis) the prescribed list of proceedings for which a brief of evidence does not need to be served.

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 that gives effect to the amendments to the *Criminal Procedure Act 1986* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendment to the *Criminal Procedure Regulation 2005* set out in Schedule 2.

Clause 5 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Criminal Procedure Act 1986

Schedule 1 [1] omits section 265 (2)–(4) from the Principal Act and inserts proposed new subsections (2) and (3). Section 265 (2) of the Principal Act currently provides that a person charged with an indictable offence listed in Table 1 to Schedule 1 must be served with a copy of the brief of evidence and a copy of their criminal record before the time fixed by the Local Court for the making of an election in respect of the offence. The election that a person charged with an indictable offence may make is to have the offence dealt with on indictment by a jury, rather than summarily by a Magistrate. Section 265 (2A)–(4) of the Principal Act currently provide the detail of what documents must be served and what powers the Court has to adjourn proceedings where there has been a failure to serve the necessary documents. The amendment to section 265 removes the requirement that a person charged with an indictable offence listed in Table 1 to Schedule 1 must be served with a brief of evidence before the time fixed by the Court for the making of an election. Current section 183 will still (subject to section 187, When brief of evidence need not be served) require the service of briefs of evidence in proceedings for offences that are to be dealt with summarily, but only if the defendant has pleaded not guilty. Current section 75 will still require the service of briefs of evidence in all proceedings for offences that are to be tried on indictment.

Schedule 1 [2] amends Schedule 2 to the Principal Act to enable regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act.

Schedule 1 [3] amends Schedule 2 to the Principal Act to make it clear that the proposed amendment made by Schedule 1 [1] does not extend to any proceedings commenced prior to the commencement of the amendments.

Schedule 2 Amendment of Criminal Procedure Regulation 2005

Section 187 (5) of the Principal Act provides that proceedings of a kind prescribed by the regulations do not require a prosecutor to serve a brief of evidence. **Schedule 2** amends the Principal Regulation by replacing clause 24. Proposed clause 24 (1) expands the list of prescribed proceedings under section 187 (5) of the Principal Act. Proposed clause 24 (2) makes it clear that the prescription of the additional proceedings in clause 24 (1) has effect for 12 months only and do not extend to any proceedings commenced prior to the commencement of the subclause.

First print



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Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Criminal Procedure Act 1986 No 209	2
4 Amendment of Criminal Procedure Regulation 2005	2
5 Repeal of Act	2
Schedule 1 Amendment of Criminal Procedure Act 1986	3
Schedule 2 Amendment of Criminal Procedure Regulation 2005	4



New South Wales

Criminal Procedure Amendment (Local Court Process Reforms) Bill 2007

No. , 2007

A Bill for

An Act to amend the *Criminal Procedure Act 1986* in relation to the service of briefs of evidence by prosecutors; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Criminal Procedure Amendment (Local Court Process Reforms) Act 2007</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6
3 Amendment of Criminal Procedure Act 1986 No 209	7
The <i>Criminal Procedure Act 1986</i> is amended as set out in Schedule 1.	8
4 Amendment of Criminal Procedure Regulation 2005	9
The <i>Criminal Procedure Regulation 2005</i> is amended as set out in Schedule 2.	10 11
5 Repeal of Act	12
(1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.	13 14
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	15 16

Schedule 1	Amendment of Criminal Procedure Act 1986	1
		2
	(Section 3)	3
[1]	Section 265 Criminal record to be given to person charged (Table 1 offences)	4
		5
	Omit section 265 (2)–(4). Insert instead:	6
	(2) 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 a copy of the person’s criminal record (if any) known to the prosecutor, 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.	7
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	(3) Without limiting the powers of a Local Court to adjourn proceedings, the Local Court is to grant such adjournments as appear to be just and reasonable if a criminal record is not served in accordance with this section, and the Court is to extend accordingly the time fixed for the making of an election in respect of the offence.	13
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[2]	Schedule 2 Savings, transitional and other provisions	19
	Insert at the end of clause 1 (1):	20
	<i>Criminal Procedure Amendment (Local Court Process Reforms) Act 2007</i>	21
		22
[3]	Schedule 2	23
	Insert at the end of the Schedule with appropriate Part and clause number:	24
Part	Provisions consequent on enactment of Criminal Procedure Amendment (Local Court Process Reforms) Act 2007	25
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		27
	Pending proceedings	28
	The amendment made to section 265 by the <i>Criminal Procedure Amendment (Local Court Process Reforms) Act 2007</i> does not extend to proceedings commenced before the commencement of the amendment and such proceedings may continue as if that amendment had not been enacted.	29
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Schedule 2	Amendment of Criminal Procedure Regulation 2005	1
		2
	(Section 4)	3
Clause 24		4
Omit the clause. Insert instead:		5
24 Offences for which briefs of evidence not required		6
(1) For the purposes of section 187 (5) of the Act, the following proceedings are prescribed as proceedings of a kind in which a prosecutor is not required to serve a brief of evidence:		7
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(a) proceedings for an offence for which a penalty notice may be issued (other than an offence that is set out in Schedule 2 and that is not referred to below),		10
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(b) proceedings for an offence under section 4 of the <i>Summary Offences Act 1988</i> ,		13
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(c) proceedings for an offence under section 9 or 12 of the <i>Road Transport (Safety and Traffic Management) Act 1999</i> ,		15
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(d) proceedings for a summary offence for which there is a monetary penalty only.		18
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(2) Subclause (1) has effect in relation to proceedings referred to in subclause (1) (b), (c) or (d) only if the proceedings are commenced on or after the commencement of this subclause and before the end of the period of 12 months after the commencement of this subclause.		20
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