



New South Wales

# Criminal Procedure Amendment (Summary Proceedings Case Management) Bill 2011

## 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 *Criminal Procedure Act 1986* (the *principal Act*) to make provision for case management procedures to reduce delays in trial and sentencing proceedings before the Supreme Court and the Land and Environment Court in their summary jurisdiction. This is achieved by granting those courts the discretion to make orders requiring that certain disclosures be made by the prosecution and the defence before a trial or sentencing hearing. The Bill also provides for pre-hearing mechanisms (for example, preliminary hearings and preliminary conferences) which are aimed at achieving a more efficient management and conduct of the proceedings.

## 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.

## **Schedule 1      Amendment of Criminal Procedure Act 1986 No 209**

### **Case management in proceedings before the court in its summary jurisdiction**

Currently, the principal Act only provides for case management procedures in respect of proceedings on indictment. This Bill introduces similar provisions for the case management of trial and sentencing proceedings before each relevant court in its summary jurisdiction.

**Schedule 1 [3]** introduces the new Division setting out the scheme for pre-hearing case management procedures.

**Proposed sections 247A–247C** specify the proceedings to which the Division applies, state the purpose of the proposed Division (which is principally to reduce delays in trial and sentencing proceedings before the court in its summary jurisdiction) and set out relevant definitions.

**Proposed sections 247D–247F** require the court to give directions as to the conduct of proceedings and specify the notices required to be given by the prosecution of its case and the defence of its response.

**Proposed section 247G** enables the court to order the prosecutor and the defendant to attend one or more preliminary hearings. The court may make various orders and rulings during those hearings (for example, as to the admissibility of evidence or on questions of law that might arise at the trial or sentencing proceedings) that will be binding on the presiding Judge except in certain circumstances. The proposed section also prevents certain matters being raised at a trial or sentencing hearing without the leave of the court if those matters were not raised at the preliminary hearing or were dealt with at the preliminary hearing.

**Proposed section 247H** enables the court to order that the prosecutor and the defendant's legal representative attend a preliminary conference for the purpose of reaching agreement regarding the evidence to be admitted at a hearing. The court may make such an order only if the defendant is represented by an Australian legal practitioner.

**Proposed sections 247I–247L** make provision relating to further disclosures that the court may order under **proposed section 247I**. **Proposed sections 247J–247L** set out the requirements for the contents of disclosure notices.

**Proposed section 247M** enables the court to dispense with formal proof of certain matters in proceedings where the matters were not disputed in the course of making preliminary disclosures.

**Proposed section 247N** provides for sanctions for any failure to comply with preliminary disclosure requirements, such as the exclusion of evidence (including expert evidence) where that evidence has not been disclosed in accordance with preliminary disclosure requirements. The regulations may make further provision for sanctions under the proposed section.

**Proposed section 247O** provides that the obligation to make preliminary disclosures continues for the duration of the relevant trial proceedings or until the defendant is acquitted of or sentenced for the offence. **Proposed section 247P** allows the court to waive any of the requirements that apply under the proposed Division as it thinks fit.

**Proposed sections 247Q–247U** make provision relating to notices given under the proposed Division, including setting out the matters or documents that are required to accompany the notices.

**Proposed section 247V** generally empowers the court to make such orders, determinations, findings, directions or rulings as it thinks appropriate for the efficient management and conduct of the trial, including ordering any of the parties to proceedings to make disclosures that were, or could have been, required to be disclosed before the commencement of the relevant hearing.

**Proposed section 247W** provides that a preliminary order made in proceedings by a presiding Judge is binding on another presiding Judge. Accordingly, if a new hearing is ordered or the proceedings are discontinued, the orders of the original presiding Judge will bind the Judge presiding at the fresh hearing.

**Proposed section 247X** contains miscellaneous provisions in relation to the proposed Division, including provisions giving the court power to resolve disputes arising from the matters dealt with under the proposed Division and stating the relationship of the proposed Division to other Acts and laws.

**Proposed section 247Y** provides for a review of the proposed Division to be undertaken by the Attorney General as soon as possible after the period of 2 years from the commencement of proposed section 247A.

### **Other amendments**

**Schedule 1 [1], [2] and [4]** make consequential amendments. **Schedule 1 [5]** enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act. **Schedule 1 [6]** contains a transitional provision.



First print



New South Wales

# **Criminal Procedure Amendment (Summary Proceedings Case Management) Bill 2011**

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New South Wales

# **Criminal Procedure Amendment (Summary Proceedings Case Management) Bill 2011**

No. , 2011

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**A Bill for**

An Act to amend the *Criminal Procedure Act 1986* to make provision for case management in respect of summary proceedings dealt with by superior courts.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Criminal Procedure Amendment (Summary Proceedings Case Management) Act 2011</i> .	3 4
<b>2 Commencement</b>	5
This Act commences on a day or days to be appointed by proclamation.	6



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<b>Schedule 1</b>	<b>Amendment of Criminal Procedure Act 1986 No 209</b>	1
		2
<b>[1]</b>	<b>Section 170 Application</b>	3
	Insert “(except Division 2A)” after “Part 5” in section 170 (3).	4
<b>[2]</b>	<b>Section 170 (4)</b>	5
	Insert after section 170 (3):	6
	(4) Division 2A of Part 5 applies to the following proceedings:	7
	(a) proceedings before the Supreme Court,	8
	(b) proceedings before the Land and Environment Court.	9
<b>[3]</b>	<b>Chapter 4, Part 5, Division 2A</b>	10
	Insert after Division 2:	11
	<b>Division 2A Case management provisions and other provisions to reduce delays in proceedings</b>	12
		13
<b>247A</b>	<b>Application</b>	14
	This Division applies to proceedings before the Supreme Court, or the Land and Environment Court, in its summary jurisdiction.	15
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<b>247B</b>	<b>Purpose</b>	17
	(1) The purpose of this Division is to reduce delays in proceedings before the court in its summary jurisdiction by:	18
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	(a) requiring certain preliminary disclosures to be made by the prosecution and the defence before the proceedings are heard, and	20
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	(b) enabling the court to undertake case management where suitable in those proceedings, whether on its own motion or on application by a party to the proceedings.	23
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	(2) Case management measures that are available to the court under this Division include the ordering of preliminary hearings, preliminary conferences and further preliminary disclosure. The court has a discretion in determining which (if any) of those measures are suitable in the proceedings concerned.	26
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<b>247C</b>	<b>Definitions</b>	1
(1)	In this Division:	2
	<i>appearance order</i> means an order for the appearance or apprehension of a person made under section 246.	3
	<i>court</i> means the Supreme Court or the Land and Environment Court.	4
	<i>preliminary conference</i> means a conference held under section 247H.	5
	<i>preliminary hearing</i> means a hearing held under section 247G.	6
	<i>presiding Judge</i> means the judge presiding at the hearing of the proceedings.	7
(2)	In this Division, a reference to the defendant is to be read as including a reference to the Australian legal practitioner representing the defendant.	8
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<b>247D</b>	<b>Directions for conduct of proceedings</b>	15
	At the first mention of proceedings, the court is to give directions with respect to the future conduct of the proceedings, including a direction as to the time by which notice of the prosecution case is to be given under section 247E and notice of the defence response is to be given under section 247F.	16
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<b>247E</b>	<b>Notice of prosecution case to be given to defendant</b>	21
(1)	The prosecutor is to give to the defendant notice of the prosecution case that includes the following:	22
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(a)	a copy of the application for any appearance order relating to the defendant,	24
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(b)	a statement of facts,	26
(c)	a copy of the affidavit or statement (whichever is applicable) of each witness whose evidence the prosecutor proposes to adduce at the hearing of the proceedings,	27
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(d)	a copy of each document, evidence of the contents of which the prosecutor proposes to adduce at the hearing of the proceedings,	30
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(e)	if the prosecutor proposes to adduce evidence at the hearing of the proceedings in the form of a summary, a copy of the summary or, where the summary has not yet been prepared, an outline of the summary,	33
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(f)	a copy of any exhibit that the prosecutor proposes to adduce at the hearing of the proceedings,	37
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(g)	a copy of any chart or explanatory material that the prosecutor proposes to adduce at the hearing of the proceedings,	1 2 3
(h)	if any expert witness is proposed to be called at the hearing by the prosecutor, a copy of each report by the witness that is relevant to the case,	4 5 6
(i)	a copy of any information, document or other thing provided by authorised officers to the prosecutor, or otherwise in the possession of the prosecutor, that may reasonably be regarded as relevant to the prosecution case or the defence case, and that has not otherwise been disclosed to the defendant,	7 8 9 10 11 12
(j)	a list identifying:	13
	(i) any information, document or other thing of which the prosecutor is aware and that would reasonably be regarded as relevant to the case but that is not in the prosecutor's possession and is not in the defendant's possession, and	14 15 16 17 18
	(ii) the place at which the prosecutor believes the information, document or other thing is situated,	19 20
(k)	a copy of any information in the possession of the prosecutor that is relevant to the reliability or credibility of a prosecution witness.	21 22 23
(2)	The regulations may make provision for or with respect to the form and content of a statement of facts for the purposes of subsection (1) (b).	24 25 26
(3)	In this section, an <i>authorised officer</i> includes the following:	27
	(a) a police officer,	28
	(b) any person authorised by an Act in respect of which proceedings may be brought before the Supreme Court or the Land and Environment Court in its summary jurisdiction to investigate any contravention, or suspected contravention, of that Act.	29 30 31 32 33
<b>247F</b>	<b>Notice of defence response to be given to prosecutor</b>	34
	The defendant is to give the prosecutor notice of the defence response that includes the following:	35 36
	(a) the name of any Australian legal practitioner proposed to appear on behalf of the defendant at the hearing of the proceedings,	37 38 39

(b)	notice of any consent that the defendant proposes to give at the hearing of the proceedings under section 190 of the <i>Evidence Act 1995</i> in relation to each of the following:	1 2 3
(i)	a statement of a witness that the prosecutor proposes to adduce at the hearing of the proceedings,	4 5
(ii)	a summary of evidence that the prosecutor proposes to adduce at the hearing of the proceedings.	6 7
<b>247G</b>	<b>Preliminary hearings</b>	8
(1)	At the first mention of proceedings or at any other time, the court may order the prosecutor and the defendant to attend one or more preliminary hearings before the court.	9 10 11
(2)	During a preliminary hearing, the court may make such orders, determinations or findings, or give such directions or rulings, as it thinks appropriate for the efficient management and conduct of the proceedings.	12 13 14 15
(3)	Without limiting subsection (2), the court may take any or all of the following action under that subsection:	16 17
(a)	hear and determine an objection to any application for an appearance order prior to the commencement of a trial,	18 19
(b)	order the holding of a preliminary conference under section 247H,	20 21
(c)	order preliminary disclosure by the prosecutor or the defendant under section 247I,	22 23
(d)	give a direction under section 247M (3),	24
(e)	give a ruling or make a finding under section 192A of the <i>Evidence Act 1995</i> as if the trial or sentencing hearing had commenced,	25 26 27
(f)	hear and determine a submission that the case should not proceed to trial prior to the commencement of the trial,	28 29
(g)	give a ruling on any question of law that might arise at the trial or sentencing hearing.	30 31
(4)	Despite any other provision of this Act, the court may make any order, determination or finding, or give any ruling, under this section on application by a party to the proceedings or on the court's own initiative.	32 33 34 35
(5)	Any order, determination or finding made, or ruling given, by the court under this section is binding on the presiding Judge in the proceedings unless, in the opinion of the presiding Judge, it	36 37 38

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would not be in the interests of justice for the order, determination, finding or ruling to be binding.	1 2
(6) Except with the leave of the court, a party to proceedings may not raise a relevant preliminary hearing matter if a preliminary hearing was held in the proceedings and:	3 4 5
(a) the matter was not raised at the preliminary hearing, or	6
(b) the matter was dealt with at the preliminary hearing.	7
(7) A <i>relevant preliminary hearing matter</i> means:	8
(a) an objection to an application for an appearance order, or	9
(b) a question that was the subject of a ruling or finding under subsection (3) (e).	10 11
(8) Except with the leave of the court, a party to proceedings may not raise a question of law that was the subject of a ruling under subsection (3) (g) if a preliminary hearing was held in the proceedings and the matter was dealt with at the preliminary hearing.	12 13 14 15 16
(9) Leave is not to be granted under subsection (6) or (8) unless the court is of the opinion that it would be contrary to the interests of justice to refuse leave to raise the matter concerned.	17 18 19
<b>247H Preliminary conferences</b>	20
(1) At the first mention of proceedings or at any other time, the court may order that a preliminary conference is to be held so long as the time appointed for any such conference occurs after the proceedings have commenced.	21 22 23 24
(2) The court may order the holding of a preliminary conference under this section on application of any party or on the court's own initiative.	25 26 27
(3) The court may make such an order only if the defendant will be represented by an Australian legal practitioner at the preliminary conference.	28 29 30
(4) The purpose of the preliminary conference is to determine whether the defendant and the prosecutor are able to reach agreement regarding the evidence to be admitted at the trial or sentencing hearing.	31 32 33 34

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Schedule 1 Amendment of Criminal Procedure Act 1986 No 209

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- (5) The following persons must be present during the preliminary conference: 1  
2  
(a) the prosecutor, 3  
(b) the Australian legal practitioner representing the defendant. 4  
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- (6) A joint preliminary conference may be held in respect of 2 or more co-defendants, but only if: 6  
7  
(a) in the case of a preliminary conference held before trial— 8  
the prosecution and each of the co-defendants concerned 9  
consent to the joint preliminary conference, or 10  
(b) in the case of a preliminary conference held before 11  
sentencing: 12  
(i) the defendant and each co-defendant have pleaded 13  
guilty to the offence or have been found guilty of the 14  
offence by the court, and 15  
(ii) the prosecution and each of the co-defendants 16  
concerned consent to the joint preliminary 17  
conference. 18
- (7) A requirement under this section that a person be present for the purposes of a preliminary conference is taken to be satisfied if the person is present or available by way of an audio visual link or audio link. 19  
20  
21  
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- (8) Within 7 days after the holding of a preliminary conference: 23  
(a) the prosecutor and the Australian legal practitioner who represented the defendant at the preliminary conference must complete a preliminary conference form, and 24  
25  
26  
(b) the prosecutor must file the preliminary conference form with the court. 27  
28
- (9) The preliminary conference form: 29  
(a) is to indicate the areas of agreement and disagreement between the defendant and the prosecutor regarding the evidence to be admitted at the trial or sentencing hearing, and 30  
31  
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33  
(b) is to be signed by the prosecutor and the Australian legal practitioner representing the defendant. 34  
35
- (10) Except with the leave of the court, a party to proceedings may not object to the admission of any evidence at the hearing of the proceedings if the preliminary conference form indicates that the parties have agreed that the evidence is not in dispute. 36  
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(11)	Leave is not to be granted under subsection (10) unless the court is of the opinion that it would be contrary to the interests of justice to refuse leave.	1 2 3
<b>247I</b>	<b>Court may order preliminary disclosure in particular case</b>	4
(1)	After proceedings have been commenced, the court may make any or all of the following orders, but only if the court is of the opinion that it would be in the interests of justice to do so:	5 6 7
(a)	order that the prosecutor is to give to the defendant notice in accordance with section 247J,	8 9
(b)	order that the defendant is to give to the prosecutor notice of the defence response to the prosecution's notice in accordance with section 247K,	10 11 12
(c)	order that the prosecution is to give to the defendant notice of the prosecution response to the defence response in accordance with section 247L.	13 14 15
(2)	The court may order preliminary disclosure under this section on the application of any party or on the court's own initiative.	16 17
(3)	The court may order preliminary disclosure by the defendant only if the court is satisfied that the defendant will be represented by an Australian legal practitioner.	18 19 20
(4)	The court may limit preliminary disclosure to any specified aspect of the proceedings.	21 22
(5)	Preliminary disclosure required by an order under this section is to be made in accordance with a timetable determined by the court.	23 24 25
<b>247J</b>	<b>Prosecution notice—court-ordered preliminary disclosure</b>	26
	For the purposes of section 247I (1) (a), the prosecution's notice is to contain the following:	27 28
(a)	the matters required to be included in the notice of the prosecution case under section 247E,	29 30
(b)	a copy of any information, document or other thing in the possession of the prosecutor that would reasonably be regarded as adverse to the credit or credibility of the defendant,	31 32 33 34
(c)	a list identifying the affidavits or statements of those witnesses who are proposed to be called at the hearing of the proceedings by the prosecutor.	35 36 37
	<b>Note.</b> The prosecutor is not required to include in a notice anything that has already been included in a brief of evidence in relation to the matter	38 39

served on the defendant or that has otherwise been provided or disclosed to the defendant (see section 247U (1)). 1  
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**247K Defence response—court-ordered preliminary disclosure 3**

For the purposes of section 247I (1) (b), the notice of the defence response is to contain the following: 4  
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(a) the matters required to be included in a notice under section 247F, 6  
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(b) a statement, in relation to each fact set out in the statement of facts provided by the prosecutor, as to whether the defendant considers the fact is an agreed fact (within the meaning of section 191 of the *Evidence Act 1995*) or the defendant disputes the fact, 8  
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(c) a statement, in relation to each matter and circumstance set out in the statement of facts provided by the prosecutor, as to whether the defendant takes issue with the matter or circumstance as set out, 13  
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(d) notice as to whether the defendant proposes to dispute the admissibility of any proposed evidence disclosed by the prosecutor and the basis for the objection, 17  
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(e) if the prosecutor disclosed an intention to adduce expert evidence at the hearing of the proceedings, notice as to whether the defendant disputes any of the expert evidence and which evidence is disputed, 20  
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(f) a copy of any report, relevant to the proceedings, that has been prepared by a person whom the defendant intends to call as an expert witness at the hearing of the proceedings, 24  
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(g) if the prosecutor disclosed an intention to adduce evidence at the hearing of the proceedings that has been obtained by means of surveillance, notice as to whether the defendant proposes to require the prosecutor to call any witnesses to corroborate that evidence and, if so, which witnesses will be required, 27  
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(h) notice as to whether the defendant proposes to raise any issue with respect to the continuity of custody of any proposed exhibit disclosed by the prosecutor, 33  
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(i) if the prosecutor disclosed an intention to tender at the hearing of the proceedings any transcript, notice as to whether the defendant accepts the transcript as accurate and, if not, in what respect the transcript is disputed, 36  
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(j)	notice as to whether the defendant proposes to dispute the authenticity or accuracy of any proposed documentary evidence or other exhibit disclosed by the prosecutor,	1 2 3
(k)	notice of any significant issue the defendant proposes to raise regarding an application for an appearance order, severability of the charges or separate trials or sentencing proceedings for the charges,	4 5 6 7
(l)	notice of any consent the defendant proposes to give under section 184 of the <i>Evidence Act 1995</i> .	8 9
	<b>Note.</b> The defendant is not required to include in a notice anything that has already been provided or disclosed to the prosecutor (see section 247U (2)).	10 11 12
<b>247L</b>	<b>Prosecution response to defence response—court-ordered preliminary disclosure</b>	13 14
	For the purposes of section 247I (1) (c), the notice of the prosecution response to the defence response is to contain the following:	15 16 17
(a)	if the defendant has disclosed an intention to adduce expert evidence at the hearing of the proceedings, notice as to whether the prosecutor disputes any of the expert evidence and, if so, in what respect,	18 19 20 21
(b)	if the defendant has disclosed an intention to tender any exhibit at the hearing of the proceedings, notice as to whether the prosecutor proposes to raise any issue with respect to the continuity of custody of the exhibit,	22 23 24 25
(c)	if the defendant has disclosed an intention to tender any documentary evidence or other exhibit at the hearing of the proceedings, notice as to whether the prosecutor proposes to dispute the accuracy or admissibility of the documentary evidence or other exhibit,	26 27 28 29 30
(d)	notice as to whether the prosecutor proposes to dispute the admissibility of any other proposed evidence disclosed by the defendant, and the basis for the objection,	31 32 33
(e)	a copy of any information, document or other thing in the possession of the prosecutor, not already disclosed to the defendant, that might reasonably be expected to assist the case for the defence,	34 35 36 37
(f)	a copy of any information, document or other thing that has not already been disclosed to the defendant and that is required to be contained in the notice of the case for the prosecution.	38 39 40 41

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<b>247M</b>	<b>Dispensing with formal proof</b>	1
(1)	If a fact, matter or circumstance was alleged in a notice required to be given to the defendant by the prosecutor in accordance with this Division and the defendant was required to give a defence response under section 247K but did not disclose in the response an intention to dispute or require proof of the fact, matter or circumstance, the court may order that:	2 3 4 5 6 7
(a)	a document asserting the alleged fact, matter or circumstance may be admitted at the hearing of the proceedings as evidence of the fact, matter or circumstance, and	8 9 10 11
(b)	evidence may not, without the leave of the court, be adduced to contradict or qualify the alleged fact, matter or circumstance.	12 13 14
(2)	If evidence was disclosed by the prosecution to the defendant in accordance with this Division and the defendant was required to give a defence response under section 247K but did not disclose in the response an intention to dispute the admissibility of the evidence and the basis for the objection, the court may, by order, dispense with the application of any one or more of the following provisions of the <i>Evidence Act 1995</i> in relation to the adducing of the evidence at the hearing of the proceedings:	15 16 17 18 19 20 21 22
(a)	Division 3, 4 or 5 of Part 2.1,	23
(b)	Part 2.2 or 2.3,	24
(c)	Parts 3.2–3.8.	25
(3)	The court may, on the application of a party, direct that the party may adduce evidence of 2 or more witnesses in the form of a summary if the court is satisfied that:	26 27 28
(a)	the summary is not misleading or confusing, and	29
(b)	admission of the summary instead of evidence from the witnesses will not result in unfair prejudice to any party to the proceedings.	30 31 32
(4)	The court may, in a direction under subsection (3), require that one or more of the witnesses whose evidence is to be adduced in the form of a summary are to be available for cross-examination.	33 34 35
(5)	The opinion rule (within the meaning of the <i>Evidence Act 1995</i> ) does not apply to evidence adduced in accordance with a direction under subsection (3).	36 37 38
(6)	The provisions of this section are in addition to the provisions of the <i>Evidence Act 1995</i> , in particular, section 190.	39 40

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(7)	This section does not affect section 4 (2) of the <i>Evidence Act 1995</i> .	1 2
	<b>Note.</b> Section 4 (2) of the <i>Evidence Act 1995</i> provides that the Act applies in proceedings relating to sentencing only if the court directs that the law of evidence apply in the proceedings.	3 4 5
<b>247N</b>	<b>Sanctions for non-compliance with preliminary disclosure requirements</b>	6 7
(1)	<b>Exclusion of evidence not disclosed</b>	8
	The court may refuse to admit evidence in proceedings that is sought to be adduced by a party who failed to disclose the evidence to the other party in accordance with requirements for preliminary disclosure imposed by or under this Division.	9 10 11 12
	<b>Note.</b> The only evidence required from a defendant in the context of a preliminary disclosure is expert evidence (see section 247K (f)). Accordingly, such evidence may also be dealt with by the court under subsection (2).	13 14 15 16
(2)	<b>Exclusion of expert evidence where report not provided</b>	17
	The court may refuse to admit evidence from an expert witness in proceedings that is sought to be adduced by a party if the party failed to give the other party a copy of a report by the expert witness in accordance with requirements for preliminary disclosure imposed by or under this Division.	18 19 20 21 22
(3)	<b>Adjournment</b>	23
	The court may grant an adjournment to a party if the other party seeks to adduce evidence in the proceedings that the other party failed to disclose in accordance with requirements for preliminary disclosure imposed by or under this Division and that would prejudice the case of the party seeking the adjournment.	24 25 26 27 28
(4)	<b>Application of sanctions</b>	29
	Without limiting the regulations that may be made under subsection (5), the powers of the court may not be exercised under this section to prevent a defendant adducing evidence unless the prosecutor has complied with the requirements for preliminary disclosure imposed on the prosecution by or under this Division.	30 31 32 33 34 35
(5)	<b>Regulations</b>	36
	The regulations may make provision for or with respect to the exercise of the powers of a court under this section (including the circumstances in which the powers may not be exercised).	37 38 39

<b>247O</b>	<b>Disclosure requirements are ongoing</b>	1
(1)	The obligation to comply with the requirements for preliminary disclosure imposed by or under this Division continues until any of the following happens:	2
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(a)	the defendant is acquitted of the charges to which the proceedings relate,	5
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(b)	the prosecution is terminated,	7
(c)	the defendant is sentenced for the offence to which the proceedings relate.	8
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(2)	Accordingly, if any information, document or other thing is obtained or anything else occurs after preliminary disclosure is made by a party to the proceedings that would have affected that preliminary disclosure had the information, document or thing been obtained or the thing occurred before preliminary disclosure was made, the information, document, thing or occurrence is to be disclosed to the other party to the proceedings as soon as practicable.	10
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<b>247P</b>	<b>Court may waive requirements</b>	18
(1)	A court may, by order, waive any of the requirements that apply under this Division.	19
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(2)	The court may make such an order on its own initiative or on the application of the prosecutor or the defendant.	21
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(3)	An order may be made subject to such conditions (if any) as the court thinks fit.	23
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<b>247Q</b>	<b>Requirements as to notices</b>	25
(1)	A notice under this Division is to be in writing.	26
(2)	Any notice purporting to be given under this Division on behalf of the defendant by his or her Australian legal practitioner is, unless the contrary is proved, taken to have been given with the authority of the defendant.	27
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(3)	A notice under this Division that is required to be given to a prosecutor may be given to the prosecutor in the following manner, or as otherwise directed by the court:	31
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(a)	by delivering it to the prosecutor,	34
(b)	by leaving it at the office of the prosecutor,	35
(c)	by sending it by post or facsimile to the prosecutor at the office of the prosecutor,	36
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(d)	by sending it by electronic mail to the prosecutor, but only if the prosecutor has agreed to notice being given in that manner.	1 2 3
(4)	A notice under this Division that is required to be given to a defendant may be given to the defendant in the following manner, or as otherwise directed by the court:	4 5 6
(a)	by delivering it to the defendant,	7
(b)	by leaving it at the office of the Australian legal practitioner representing the defendant,	8 9
(c)	by sending it by post or facsimile to the Australian legal practitioner representing the defendant at the office of the Australian legal practitioner,	10 11 12
(d)	by sending it by electronic mail to the Australian legal practitioner, but only if the Australian legal practitioner has agreed to notice being given in that manner.	13 14 15
(5)	A party required to give a notice under this Division must file a copy of the notice with the court as soon as practicable after giving it, or as otherwise required by the court.	16 17 18
<b>247R</b>	<b>Copies of exhibits and other things not to be provided if impracticable</b>	19 20
(1)	A copy of a proposed exhibit, document or thing is not required to be included in a notice under this Division if it is impossible or impractical to provide a copy.	21 22 23
(2)	However, the party required to give the notice:	24
(a)	is to specify in the notice a reasonable time and place at which the proposed exhibit, document or thing may be inspected, and	25 26 27
(b)	is to allow the other party to the proceedings a reasonable opportunity to inspect the proposed exhibit, document or thing referred to in the notice.	28 29 30
<b>247S</b>	<b>Personal details not to be provided</b>	31
(1)	The prosecutor is not to disclose in any notice under this Division the address or telephone number of any witness proposed to be called by the prosecutor, or of any other living person, unless:	32 33 34
(a)	the address or telephone number is a materially relevant part of the evidence, or	35 36
(b)	the court makes an order permitting the disclosure.	37

(2)	An application for such an order may be made by the defendant or the prosecutor.	1 2
(3)	The court must not make such an order unless satisfied that the disclosure is not likely to present a reasonably ascertainable risk to the welfare or protection of any person or that the interests of justice (including the defendant's right to prepare properly for the hearing of the evidence for the prosecution) outweigh any such risk.	3 4 5 6 7 8
(4)	This section does not prevent the disclosure of an address if the disclosure does not identify it as a particular person's address, or it could not reasonably be inferred from the matters disclosed that it is a particular person's address.	9 10 11 12
(5)	An address or telephone number that must not be disclosed may, without reference to the person who made the affidavit or statement being disclosed, be deleted from that affidavit or statement, or rendered illegible, before the affidavit or statement is given to the defendant.	13 14 15 16 17
<b>247T</b>	<b>Requirements as to statements of witnesses</b>	18
(1)	A statement of a witness that is included in a notice under this Division may be in the form of questions and answers.	19 20
(2)	If a notice includes a statement that is, wholly or in part, in a language other than English, there must be annexed to it a document purporting to contain a translation of the statement, or so much of it as is not in the English language, into the English language.	21 22 23 24 25
<b>247U</b>	<b>Exemption for matters previously disclosed</b>	26
(1)	The prosecutor is not required to include in a notice under this Division anything that has already been included in a brief of evidence in relation to the matter served on the defendant in accordance with this or any other Act or that has otherwise been provided or disclosed to the defendant.	27 28 29 30 31
(2)	The defendant is not required to include in a notice under this Division anything that has already been provided or disclosed to the prosecutor.	32 33 34
<b>247V</b>	<b>Court powers to ensure efficient management and conduct of trial or sentencing hearing</b>	35 36
(1)	On or after the commencement of the trial or sentencing hearing, the court may make such orders, determinations or findings, or give such directions or rulings, as it thinks appropriate for the	37 38 39

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	efficient management and conduct of the trial or sentencing hearing.	1 2
(2)	Without limiting subsection (1), the court may order that any of the parties to the proceedings disclose any matter that was, or could have been, required to be disclosed under this Division before the commencement of the trial or sentencing hearing.	3 4 5 6
<b>247W</b>	<b>Preliminary orders and other orders bind presiding Judge</b>	7
(1)	A preliminary order made in proceedings is binding on the presiding Judge in those proceedings unless, in the opinion of the presiding Judge, it would not be in the interests of justice for the order to be binding.	8 9 10 11
(2)	If, on an appeal against conviction or sentence, a new trial or sentencing hearing is ordered, a preliminary order, or an order made by the presiding Judge, in relation to the proceedings from which the conviction or sentence arose, is binding on the presiding Judge who is presiding at the fresh hearing unless:	12 13 14 15 16
(a)	in the opinion of the presiding Judge who is presiding at the fresh hearing, it would not be in the interests of justice for that order to be binding, or	17 18 19
(b)	that order is inconsistent with an order made on appeal.	20
(3)	If proceedings before a presiding Judge are discontinued for any reason, a preliminary order, or an order made by the presiding Judge, in relation to those proceedings is binding on a presiding Judge presiding at any subsequent hearing relating to the same offence as the discontinued proceedings unless, in the opinion of the presiding Judge presiding at the subsequent hearing, it would not be in the interests of justice for the order to be binding.	21 22 23 24 25 26 27
(4)	In this section: <i>preliminary order</i> means any order made by a Judge, before the commencement of a trial or sentencing hearing, in proceedings to which this Division applies.	28 29 30 31
<b>247X</b>	<b>Miscellaneous provisions</b>	32
(1)	A statement about any matter that is made by or on behalf of the defendant for the purposes of complying with requirements for preliminary disclosure imposed by or under this Division does not constitute an admission of that matter by the defendant.	33 34 35 36

- (2) The court may make orders to resolve any dispute between the parties to criminal proceedings about:
- (a) the requirements for preliminary disclosure imposed by or under this Division, or
  - (b) the use of anything disclosed under this Division (including restrictions on publication or further disclosure).
- (3) Nothing in this Division prevents any voluntary preliminary disclosure by the defendant to the prosecutor of any information, document or other thing that the defendant proposes to adduce in evidence in the proceedings.
- (4) This Division does not limit any obligation (arising otherwise than under this Division) for preliminary or pre-trial disclosure that is capable of being complied with concurrently with requirements imposed by or under this Division, but this Division prevails to the extent of any inconsistency with any such obligation. Any such obligation extends to obligations imposed by the common law, the rules of court, the legal profession rules made under Part 7.5 of the *Legal Profession Act 2004* and prosecution guidelines issued by the Director of Public Prosecutions or any other prosecuting authority.
- (5) However, this Division does not affect any immunity that applies by law to the disclosure of any information, document or other thing, including, for example, legal professional or client legal privilege, public interest immunity and sexual assault communications privilege under Division 2 of Part 5 of Chapter 6.
- (6) Nothing in this Division limits any powers that a court has apart from this Division in relation to proceedings.
- (7) The provisions of this Division prevail over the provisions of the *Evidence Act 1995* to the extent of any inconsistency with those provisions.
- 247Y Review of Division**
- (1) The Minister is to review this Division to determine whether the policy objectives of the Division remain valid and whether the terms of the Division remain appropriate for securing those objectives.
  - (2) The review is to be undertaken as soon as possible after the period of 2 years from the commencement of section 247A.



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(3)	A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 2 years.	1 2 3
<b>[4]</b>	<b>Section 248 Pre-trial procedure</b>	4
	Insert “Division 2A or by” after “required by”.	5
<b>[5]</b>	<b>Schedule 2 Savings, transitional and other provisions</b>	6
	Insert at the end of clause 1 (1):	7
	<i>Criminal Procedure Amendment (Summary Proceedings Case Management) Act 2011</i>	8 9
<b>[6]</b>	<b>Schedule 2</b>	10
	Insert at the end of the Schedule with appropriate Part and clause numbers:	11
<b>Part</b>	<b>Provision consequent on enactment of Criminal Procedure Amendment (Summary Proceedings Case Management) Act 2011</b>	12 13 14
	<b>Case management provisions</b>	15
	A provision of Division 2A of Part 5 of Chapter 4 applies only in respect of proceedings that commence on or after the commencement of that provision.	16 17 18