



New South Wales

# Criminal Procedure Amendment (Pre-trial Disclosure) Bill 2018

## 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* to give effect to recommendations of the statutory review of the Act with respect to the mandatory pre-trial disclosure by the prosecutor and the accused person of certain evidence and other matters in proceedings for indictable offences. The amendments made by this Bill:

- (a) require the prosecutor to disclose certain material relating to audio or visual evidence in the notice that the prosecutor is required to give the accused person, and
- (b) require the notice that the accused person then gives to the prosecutor:
  - (i) to disclose material relating to expert evidence, and
  - (ii) to give notice of any proposal to raise any issues relating to the continuity of custody of exhibits and any significant issues relating to the form of the indictment and the prosecution of the counts on the indictment, and
  - (iii) to include any request to edit any audio or visual recording, or the transcript of any audio or visual recording, that the prosecutor has disclosed an intention to adduce at the trial and details of the edits required, and
- (c) require the prosecutor to respond to any request by the accused person to edit audio or visual recordings or transcripts of them.

## 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**

**Schedule 1 [1]** requires the prosecutor to provide the accused person with a copy of a transcript of an audio or visual recording if the prosecutor proposes to adduce that transcript at the trial.

**Schedule 1 [2]** requires notice of the defence response to the notice of the prosecution's case to include certain matters. These matters are:

- (a) copies of reports of any expert witness that the accused person proposes calling at the trial that are relevant to the case and on which the accused person intends to rely, and
- (b) notice as to whether the accused person proposes to raise any issue with respect to the continuity of custody of any proposed exhibit disclosed by the prosecutor, and
- (c) notice of any significant issue that the accused person proposes to raise regarding the form of the indictment, severability of the charges or separate trials for the charges, and
- (d) any requests for the editing of any recording or transcript of a recording that the prosecutor proposes to adduce at the trial, and particulars of the edits requested.

The defence response is currently only required to contain the matters in paragraphs (a)–(c) if the court so orders.

**Schedule 1 [3]** makes a consequential amendment.

**Schedule 1 [4]** requires the prosecution response to the defence response to contain notice as to whether the prosecutor disputes the editing of recordings or transcripts of recordings that the defence response requested and, if so, which requested edits are disputed.

**Schedule 1 [5]** inserts a savings and transitional provision to exclude the application of the proposed amendments to the *Criminal Procedure Act 1986* to proceedings in which the indictment was presented or filed before the commencement of the proposed amendments.



New South Wales

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New South Wales

# Criminal Procedure Amendment (Pre-trial Disclosure) Bill 2018

No. , 2018

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## A Bill for

An Act to amend the *Criminal Procedure Act 1986* to give effect to recommendations of the statutory review of the Act with respect to the mandatory pre-trial disclosure of certain evidence and other matters in proceedings for indictable offences; and for other purposes.

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**The Legislature of New South Wales enacts:**

1

**1 Name of Act**

2

This Act is the *Criminal Procedure Amendment (Pre-trial Disclosure) Act 2018*.

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**2 Commencement**

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This Act commences on a day or days to be appointed by proclamation.

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<b>Schedule 1</b>	<b>Amendment of Criminal Procedure Act 1986</b>	1
	<b>No 209</b>	2
<b>[1] Section 142 Prosecution's notice</b>		3
Insert after section 142 (1) (c1):		4
(c2) if the prosecutor proposes to adduce at the trial the transcript of an audio or a visual recording, a copy of that transcript,		5
<b>Note.</b> This paragraph does not require the prosecution's notice to contain copies of transcripts of recorded statements (within the meaning of section 289D) unless the prosecutor proposes to adduce such transcripts at the trial.		6
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<b>[2] Section 143 Defence response</b>		11
Insert after section 143 (1) (g):		12
(h) if any expert witness is proposed to be called at the trial by the accused person, a copy of each report by that witness that is relevant to the case and on which the accused person intends to rely,		13
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(i) notice as to whether the accused person proposes to raise any issue with respect to the continuity of custody of any proposed exhibit disclosed by the prosecutor,		16
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(j) notice of any significant issue that the accused person proposes to raise regarding the form of the indictment, severability of the charges or separate trials for the charges,		19
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(k) if the prosecutor disclosed an intention to adduce at the trial any audio or visual recording or the transcript of any audio or visual recording:		22
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(i) any request that the accused person has that the recording or transcript be edited (other than in circumstances to which subsection (2) (d) relates), and		24
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(ii) particulars sufficient to clearly identify the edits that the accused person requests.		27
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<b>[3] Section 143 (2) (a), (c) and (f)</b>		29
Omit the paragraphs.		30
<b>[4] Section 144 Prosecution response to defence response</b>		31
Insert after section 144 (d):		32
(d1) if the accused person has requested any editing of any audio or visual recording, or the transcript of any audio or visual recording, that the prosecutor intends to adduce at the trial, notice as to:		33
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(i) whether the prosecutor disputes any of the requested editing, and		36
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(ii) which requested edits are disputed, if any,		37

<b>[5] Schedule 2 Savings, transitional and other provisions</b>	1
Insert at the end of the Schedule, with appropriate Part and clause numbering:	2
<b>Part Provisions consequent on enactment of Criminal Procedure Amendment (Pre-trial Disclosure) Act 2018</b>	3
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<b>Case management provisions</b>	6
(1) An amendment made by the amending Act applies only in respect of proceedings in which the indictment was presented or filed after the commencement of the relevant amendment.	7
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(2) Accordingly, a provision of Division 3 of Part 3 of Chapter 3, as in force before its amendment by the amending Act, continues to apply in respect of proceedings in which the indictment was presented or filed before the commencement of the relevant amendment.	10
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(3) In this clause:	14
<i>amending Act</i> means the <i>Criminal Procedure Amendment (Pre-trial Disclosure) Act 2018</i> .	15
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