



New South Wales

Criminal Procedure Amendment (Domestic Violence Complainants) Bill 2014

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* as follows:

- (a) to enable the use of recorded interviews with complainants in proceedings for domestic violence offences, instead of written statements or oral evidence,
- (b) to make other consequential and minor amendments.

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] inserts definitions of *domestic violence complainant*, *domestic violence offence*, *recorded statement* and *vulnerable person*. **Schedule 1 [3], [9], [20]–[22] and [24]** make consequential amendments.

Schedule 1 [4] enables a *recorded statement* (that is, a recording made by a police officer, with a complainant's informed consent, of a representation made by the complainant during questioning in connection with the investigation of a domestic violence offence) to be used in committal proceedings for the domestic violence offence instead of a written statement by the complainant.

The general requirements for service of copies of the recording, and access for viewing by defendants who are not represented by an Australian legal practitioner, that will apply to a recorded statement used in evidence in chief will apply to its use for this purpose. Provisions that apply to written statements such as those relating to inadmissibility, admissibility as if it were oral evidence, death of the witness, notices of rights, the attendance of the witness and later use of written statements are also applied to the recording and the complainant whose representation was recorded. **Schedule 1 [2]** makes a consequential amendment.

Schedule 1 [5] inserts requirements for recorded statements used in committal proceedings, including that they must contain statements about the complainant's age and as to the truth of the representation.

Schedule 1 [6] makes a person guilty of an offence if a representation made by the person that is contained in a recorded statement used in committal proceedings contains matter that the person knew to be false, or did not believe to be true, in a material respect when the representation was made.

Schedule 1 [7] requires a copy of a recorded statement used in committal proceedings for a domestic violence offence to be given to an accused person who is committed for trial.

Schedule 1 [8] requires the notice given by a prosecutor to the accused person of the prosecution's case in pre-trial disclosure for a domestic violence offence to include a copy of any recorded statement that the prosecutor intends to adduce at the trial.

Schedule 1 [10] provides for a brief of evidence in proceedings for a domestic violence offence to include a recorded statement relating to the offence instead of a written statement from the complainant.

Schedule 1 [11] makes it an offence for a person to include in a representation contained in a recorded statement matter that the person, at the time the representation was made, knew to be false, or did not believe to be true, in any material respect.

Schedule 1 [12] requires a court to consider any recorded statement given to it by the prosecutor before determining a matter on the basis of the court attendance notice in the absence of the accused person and without hearing witnesses.

Schedule 1 [13] enables additional evidence, in the form of a recorded statement, to be required by the court in summary proceedings heard in the absence of the accused person if the proceedings are for a domestic violence offence. **Schedule 1 [14]–[16]** make consequential amendments.

Schedule 1 [17] requires a copy of any recorded statement that is to be adduced as evidence in summary proceedings for a domestic violence offence in the Supreme Court to be included as part of the notice of the prosecution's case given by the prosecutor to the defendant.

Schedule 1 [18] makes it clear that any requirements relating to the giving of notice of a recorded statement to a defendant in summary proceedings for a domestic violence offence in the Supreme Court must not be inconsistent with the new requirements for service of, and access to, recorded statements.

Schedule 1 [19] inserts provisions enabling the use of recorded statements in proceedings for domestic violence offences, instead of requiring a complainant to give evidence in chief orally. The provisions:

- (a) define terms used, including *recorded statement*, and
- (b) apply in addition to the *Evidence Act 1995*, and
- (c) enable a complainant in proceedings for a domestic violence offence to give evidence wholly or partly in the form of a recorded statement that is viewed or heard by the court, and
- (d) provide that the complainant must be subsequently available for cross-examination or re-examination either orally in the courtroom or in accordance with other existing permitted alternative arrangements for the particular kind of witness, and

- (e) set out matters a prosecutor must take into account, including the complainant's wishes, in determining whether to adduce evidence in the form of a recorded statement, and
- (f) enable a recorded statement that has been adduced in proceedings for an offence to also be adduced in concurrent, or related, proceedings for an order under the *Crimes (Domestic and Personal Violence) Act 2007*, and
- (g) make it clear that the hearsay rule and the opinion rule do not prevent the admission or use of evidence of a representation in the form of a recorded statement and make its admissibility subject to compliance with requirements for access and service, and
- (h) require the judge, in a case where there is a jury, to warn that no inference adverse to the accused should be drawn, or greater or lesser weight given to evidence because evidence is given in the form of a recorded statement, and
- (i) enable a court to order a transcript of a recorded statement to aid comprehension of the evidence by a jury, and
- (j) require a copy of a recorded statement to be served on an accused person in proceedings for a domestic violence offence as soon as practicable after the proceedings are commenced or the prosecutor determines that evidence will be given in that form, whichever is the later, and
- (k) if the accused is not represented by an Australian legal practitioner, permit only an audio copy to be served but require viewing access to be given at a police station on one or more occasions, being when the accused is being questioned, if the accused requests or on another notified day (or if that is not reasonably practicable on a day when proceedings are being held), and
- (l) make it clear that the validity of proceedings is not affected by failures to comply with procedural provisions relating to recorded statements, and
- (m) enable the court, on the application of the prosecutor, to order an accused person to return a copy of a recorded statement to the prosecutor at the completion of the proceedings, and
- (n) make it an offence to copy or publish, or give possession of a copy of a recording of a recorded statement except for the legitimate purposes of a criminal investigation or criminal proceedings or in the proper exercise by a public official of the public official's functions, and
- (o) enable a court to make, vary or revoke an order under the proposed provisions on its own motion or on application by a party or complainant giving evidence and to adjourn proceedings in certain circumstances, and
- (p) provide for the making of rules of court or regulations relating to the making and use of recorded statements in proceedings for domestic violence offences.

Schedule 1 [23] makes it clear that the existing provisions that enable complainants to give evidence from places other than court, and that provide for alternative arrangements to protect complainants in proceedings in respect of certain sexual offences, continue to apply to domestic violence complainants in proceedings where those provisions and the new provisions for the use of recorded statements both apply.

Schedule 1 [25] enables regulations to be made containing savings or transitional provisions consequent on the enactment of the proposed Act.