Bills introduced on motion by Mr Greg Smith, read a first time and printed.

Second Reading

Mr GREG SMITH (Epping—Attorney General, and Minister for Justice) [8.07 p.m.]: I move:

That these bills be now read a second time.

The Government is pleased to introduce the Evidence Amendment (Evidence of Silence) Bill 2013 and the Criminal Procedure Amendment (Mandatory Pre-trial Defence Disclosure) Bill 2013 as cognate bills. The purpose of the Evidence Amendment (Evidence of Silence) Bill is to allow an unfavourable inference to be drawn against certain accused persons who refuse to cooperate with the police during official questioning and who later seek to rely on a fact in their defence at trial that they could reasonably have mentioned during this questioning. The purpose of the Criminal Procedure Amendment (Mandatory Pre-trial Defence Disclosure) Bill is to reform the case management provisions in part 3, division 3 of the Criminal Procedure Act 1986. It expands the scope of mandatory disclosure requirements in criminal trials and allows an unfavourable inference to be drawn by a jury against a defendant who fails to comply with a pre-trial disclosure requirement under the division.

The new provisions will apply to all trials in the District and the Supreme Court. The Criminal Procedure Amendment (Mandatory Pre-trial Defence Disclosure) Bill is intended to complete the reforms in the Evidence Amendment (Evidence of Silence) Bill. The bills provide opportunities for an accused to provide information and thereby facilitate the course of justice, first, when an accused is spoken to by the police and, secondly, at a time when the prosecution will have outlined its case before trial. The bills also allow an unfavourable inference to be drawn against an accused at trial.

I will first deal with the Evidence Amendment (Evidence of Silence) Bill. The provisions in the bill are targeted at seeking information in the first stages of an investigation from a suspect during police questioning. They aim to identify the defences and the facts that the suspect will later rely on at court, if the suspect is charged and contests the matter at trial. Early identification of the issues in the case will later assist in the efficient management of the trial process under the proposed changes to the Criminal Procedure Act. The provisions in the Evidence Amendment (Evidence of Silence) Bill will apply to serious indictable offences. The bill makes it clear that juveniles and people who are incapable of understanding the consequences of remaining silent are exempt from the provisions. It also removes none of the protections afforded to vulnerable people.

For example, the provisions will not prevent a vulnerable person from being provided with the assistance of a support person during any investigative procedure; nor will they apply to Indigenous people who have exercised their right to speak to the Aboriginal Legal Service over the telephone. However, it will apply to suspects who have their lawyer present at the police station. Such people will be given a special caution explaining the consequences of not mentioning a fact during questioning that they later rely on in their defence at trial. They must also be allowed to consult with their lawyer in private about the effect of the special caution. If after doing so they fail to mention something during questioning that they could reasonably have been expected to mention in the circumstances existing at the time and on which they later rely at their trial, then an unfavourable inference can be drawn against them. The Evidence Act currently precludes the making of any unfavourable comment in relation to a defendant who refuses to answer police questions.

I say it is simply a matter of common sense that a jury should be allowed to consider drawing an unfavourable inference against such a defendant who relies on something at trial the defendant could have mentioned during questioning, subject to certain safeguards. This bill represents a targeted and balanced response to community concerns and has been the subject of considerable community, police and Government concern. Before I turn to the detail of the Evidence Amendment (Evidence of Silence) Bill, I thank all the individuals and organisations who provided submissions in response to the Government's exposure draft bill. As a result of the submissions received, changes have been made in the bill to reflect a number of issues raised. In particular, the bill provides more detail regarding what amounts to an opportunity to consult an Australian legal practitioner. It also redefines those persons who are exempt from the provisions by reason of their inability to understand the consequences of failing or refusing to mention a fact later relied on at trial.

I now turn to the main detail of the bill. Item [1] of schedule 1 amends section 89 of the Evidence Act so that the general prohibition on drawing an unfavourable inference in relation to silence is subject to proposed new section 89A. This new section allows an unfavourable inference to be drawn against certain defendants. Item [2] of schedule 1 contains new section 89A, which sets out the circumstances in which an unfavourable inference may be drawn against a defendant in criminal proceedings for a serious indictable offence and the threshold criteria that must be met. New subsection (1) of section 89A differs from the exposure draft bill put out for consultation. Under the provisions of this bill, an unfavourable inference may be drawn in relation to the failure or refusal to mention a fact during official questioning. It does not require the failure or refusal to be in relation to a specific question or representation from the investigating official.

This will prevent a defendant from using silence to hide behind the absence of a particular question or representation being put to elicit the fact later relied on. This bill focuses on the defendant being given an opportunity to explain what happened when spoken to by the police. The onus placed on the defendant to mention all relevant facts is balanced by the safeguard that it must have been reasonable to mention the fact during questioning. If it is

reasonable for it to be mentioned, then the defendant should not be permitted to rely on the absence of a particular question being asked in the interview to excuse the failure to mention the information. New subsection (2) specifies the circumstances in which new subsection (1) applies. It also specifies in what circumstances and when a special caution can be given. A special caution is defined in new subsection (9) as a caution to the effect that saying or doing nothing may result in an inference being drawn that may harm the person's defence because of their failure or refusal to mention a fact that is later relied on at trial. It also incorporates the words of the current standard police caution. Proposed subsection (3) provides that the special caution need not be in a particular form of words.

New subsection (2) (a) specifies that for the provisions in new subsection (1) to apply, the special caution is to be given by an investigating official who has reasonable cause to suspect that the person has committed a serious indictable offence. New subsection (2) (b) specifies that it must be given before the suspect fails or refuses to mention the fact later relied on at trial. New subsections (2) (c) and (d) set out what access to legal advice is required at the time of official questioning for an inference to be later drawn against a defendant. The special caution must be given in the presence of the Australian legal practitioner who is acting for the defendant at the time. Presence is not defined, but its everyday interpretation means that the solicitor must be physically present. They are not present if they are simply in contact by telephone or some other electronic means.

The defendant must also be allowed a reasonable opportunity to consult with that legal practitioner in the absence of the investigating official about the general nature and effect of the special caution. The opportunity must be given before the failure or refusal to mention a fact. Through these provisions, the bill targets the higher end of criminal activity where suspects are more likely to bring their lawyers along when they are questioned. There is concern that some of these accused may seek out ways to frustrate the investigation process and later draw out the criminal trial process. Some, given the effect of these provisions, may not bring their lawyer to the police station. This is their choice. However, the new case management provisions in the Criminal Procedure Amendment (Mandatory Pre-trial Defence Disclosure) Bill 2013, which I will discuss in further detail later, will provide a further opportunity to require accused persons in higher courts to provide information.

New subsection (4) makes it clear that the special caution may only be given in circumstances in which the investigating official is satisfied the offence is a serious indictable offence; in other words, an offence that is punishable by five years imprisonment or more. It does not have to be given in all cases in which a serious indictable offence is being investigated and is a matter for police discretion, depending on the circumstances of the investigation. New subsection (5) provides important exemptions from the provisions for defendants who, at the time of official questioning, were under 18 years of age or were incapable of understanding the general nature and effect of the special caution.

After listening carefully to the issues raised in consultation about the cognitive impairment exemption in the exposure draft bill, the provision has been replaced in the bill with an

incapable person test. That is a test that is familiar to the police as it is currently used to assess whether a person is capable of giving informed consent to the carrying out of a forensic procedure. It also reflects the objective behind the exemption, which is to protect those who are unable to understand the nature and effect of the special caution. New subsection (5) provides that the unfavourable inference cannot be drawn when evidence of a failure or refusal to mention a fact is the only evidence that the defendant is guilty of the serious indictable offence.

Proposed subsection (6) confirms that the provisions in the section are in addition to any other provisions requiring a person to be cautioned. For example, the Law Enforcement (Powers and Responsibilities) Act requires a custody manager to give the standard police caution to all persons when they arrive in detention at a police station. Additionally, the Evidence Act requires the standard caution to be given to a person before they are questioned, otherwise any evidence gained during questioning will be deemed to have been obtained improperly. The special caution can be given after or in conjunction with the standard caution. Proposed subsection (7) confirms that the provisions in the section do not prevent the drawing of any inference that could be drawn from silence apart from this section. Proposed subsection (8) deals with an issue raised during consultation concerning the admissibility of evidence gained in response to the giving of the special caution where the offence later changes.

For example, a charge may be changed from an assault occasioning actual bodily harm to the less serious offence of common assault. In such a case, an unfavourable inference could not be drawn against the defendant, as the criminal proceeding is no longer for the serious indictable offence. However, it is appropriate that any evidence obtained during questioning may still be used. The proposed subsection therefore provides that the giving of the special caution in accordance with the section does not, of itself, make the evidence inadmissible. However, its use will be subject to the ordinary safeguards found in the Evidence Act. I have previously referred to the definitions found in proposed subsection (9). They differ from the exposure draft bill in that reference to cognitive impairment has been removed, with the incapable person test replacing it in proposed subsection (5). The bill also removes the definition as to what an inference may include. The nature of an inference will be decided at trial on ordinary legal principles and will not be constrained or dictated by the bill.

Items [3] and [4] of schedule 1 deal with savings, transitional and other provisions in the Evidence Act and the Evidence Regulation 2010, consequent to the amendments to the Evidence Act in proposed section 89A. The provisions in proposed section 89A will apply to offences committed prior to the commencement of the section. However, they will not apply to hearings that have already commenced, or to a failure or a refusal to mention a fact which occurred before the commencement of the section. The new provisions must be reviewed after a period of five years from their commencement.

I now turn to the changes proposed to the Criminal Procedure Act in the Pre-trial Defence Disclosure Bill. This bill provides consequences for choosing to remain silent once criminal

proceedings have been committed for trial. Its provisions operate independently of the amendments to the Evidence Act. However, they will complement those changes as they represent a second opportunity for an accused to provide information and thereby facilitate the course of justice. The primary purpose of the new case management regime is to narrow the contested issues at trial. This will lead to shorter trials and will prevent inconvenience to those witnesses whose evidence can be agreed beforehand. Importantly, however, the provisions will also provide a consequence for accused persons who frustrate the criminal justice process by not engaging with the court and the prosecution in identifying the issues in dispute before their trial.

The trial efficiency working group was reconvened at the end of last year to develop the legislative model, which forms the basis of the new case management provisions in the bill. The working group was first formed in 2008 by the previous Government in response to an increase in the average length of trials conducted in the District Court, which hears the overwhelming majority of the State's criminal trials. In the Sydney District Court, for example, the average length of trial increased from 8.3 days in 2002 to 9.03 days in 2008. Today I saw figures that showed it was more than 11 days, on average, in 2011. The working group's 2009 report concluded that the case management provisions in the Criminal Procedure Act been little used since their introduction in 2001. It identified ineffective management and the failure to identify the issues early in the trial process as the major problems affecting trial efficiency, and recommended changes to the Act that commenced in February 2010.

Notably, mandatory disclosure for the prosecution and the defence was introduced for the first time in all District Court and Supreme Court criminal trials, where previously they had been applied at the discretion of the court and only in complex cases. Provisions for discretionary pre-trial conferences and hearings were also introduced. There is little evidence to suggest that the provisions are being used, especially in the District Court. The average length of trials has continued to increase in that court, rising to 11.62 days for trials conducted in Sydney in 2011. I recall in the late 1980s when I became a Crown Prosecutor the average trial was about four days and in the 1970s when I first got involved in prosecution work in criminal law it was about 2.5 days, so times have changed and the trials have become longer.

I now turn to the main detail of the bill. Item [1] of schedule 1 amends section 136 of the Criminal Procedure Act to remove the requirement for the presiding judge, at the first mention of proceedings before the trial court, to make a direction as to the time by which the prosecution and defence must comply with their mandatory disclosure requirements. In practice, the courts have not applied this part of section 136, as standard directions in practice notes issued in the District Court and the Supreme Court dictate the time frames for service. The amended section 141 in item [5] of schedule 1 includes a note to this effect. Items [2] and [3] of schedule 1 omit the current mandatory requirements for disclosure in the Criminal Procedure Act. They are replaced by the amended and expanded sections 141, 142 and 143 in item [5] of schedule 1. Item [4] of schedule 1 amends section 139 (3) (c) to reflect the change

in the bill from discretionary to mandatory disclosure. Previously at a pre-trial hearing the court had the discretion to make orders for disclosure. Given the expansion of the mandatory obligation under this bill, the court now only sets a timetable, if required, under section 141.

Item [5] of schedule 1 replaces sections 141, 142 and 143 with new provisions containing the mandatory disclosure requirements and the new procedures for both the prosecution and the defence. Subsection (1) of the amended section 141 sets out the sequence of disclosure. The prosecution is first required to provide a notice of the prosecution case to the accused person, and in response the accused must provide a notice of defence response to the prosecution. The prosecution must then provide its notice of response to the defence response. Section 149 of the current Act remains unchanged. It makes it clear that all notices given under the division on behalf of the accused person are taken to be with their authority, and all notices must be filed with the court. This is an important requirement that remains in the division, as the intent of the provisions is to put the parties and the court in the best position to understand the issues to be debated at trial.

Subsection (2) of the amended section 141 confirms that disclosure must take place before the date set for trial and in accordance with a timetable determined by the court. In practice, the relevant timetable is set out in court practice notes. It is intended that this practice continue, with a period out from trial being nominated. These time frames have been set because it is anticipated that trial counsel for the prosecution and the defence will have been briefed by that stage, and will be able to undertake the tasks of drafting and settling the notices, as well as identifying and hopefully resolving issues in dispute between the parties. Subsection (3) of the amended section 141 allows the court to vary the timetable where it is in the interests of justice to do so. Subsection (4) of the amended section 141 allows regulations to be made providing for the timetable for service.

Subsection (1) of the amended section 142 sets out what is required in the prosecution's notice. It includes the material that is currently required to be served under both the mandatory and court-ordered discretionary provisions. It has been expanded to reflect the extended coverage of mandatory defence disclosure, for example, in now requiring the prosecution to include a copy of any information that is adverse to the credit or the credibility of the accused. Subsection (2) of the amended section 142 allows for regulations to provide for the form and content of the statement of facts required to be included in the prosecution's notice. The statement of facts is a summary of the prosecution allegations and evidence.

Subsection (3) provides a definition of the term "law enforcement officer" used in subsection 1 (i). This amendment is required as the duty of disclosure found in section 15A of the Director of Public Prosecutions Act was recently amended to apply to officers of the Police Integrity Commission, New South Wales Crime Commission and the Independent Commission Against Corruption, as well as police officers, all described in that Act as law enforcement officers. The definition in subsection 3 matches the definition of "law enforcement officer" now found in the Director of Public Prosecutions Act.

The amended section 143 sets out the mandatory and discretionary disclosure requirements for the defence. Subsection 1 requires the notice of the defence response to include the current mandatory material, such as the name of the accused's legal representative and a notice in relation to any evidence that can be agreed. However, it also requires disclosure of the nature of the accused's defence, including particular defences to be relied on, the facts, matters or circumstances on which the prosecution intends to rely to prove guilt—as indicated in the prosecution's notice—and with which the accused intends to take issue, and points of law that the accused intends to raise. These additional mandatory requirements draw on what the court can currently require the defence to disclose on a discretionary basis in the existing version of section 143. Drawing on the language of the existing provisions may assist practitioners in understanding and complying with the new defence requirements.

As I have already set out, this information is not required to be disclosed until after the prosecution notice has been served, and a number of weeks out from trial. This will likely be some months after committal from the Local Court, by which time it is expected that the prosecution will have served all of the evidence it seeks to rely on at trial and disclosed all material that would reasonably be regarded as relevant to the defence case. In such circumstances, it is reasonable to expect the defence to disclose the matters set out in the amended section 143. It will enable the parties to focus on the real issues that will be in dispute at trial, with the result that trials are likely to be shorter in length and witnesses will not be called unnecessarily to give evidence from the witness box that can be reduced to writing or tendered in a statement.

Subsection (2) of the amended section 143 sets out what material the court can order the defence to disclose in the same notice, in addition to the mandatory requirements. It includes the same material provided for in the current discretionary defence disclosure provisions, excluding that material captured by the three additional mandatory requirements in paragraphs (b), (c) and (d) of proposed section 143 (1). Keeping certain elements of defence disclosure discretionary is suited to the practicalities of the conduct of trials in New South Wales's higher courts, which can range from simple single-issue cases with one accused, to highly complex cases involving many months of evidence and with multiple accused. Any mandatory model must reflect this reality and be capable of adapting to the circumstances of each case. The new discretionary defence provisions in the bill will allow the courts to tailor requirements on a case-by-case basis to avoid unnecessarily causing delays in the management of trials.

Proposed subsection (2) (b), for example, requires the defence to confirm whether the prosecution is required to call witnesses to corroborate any surveillance on which it is intended to rely. Surveillance evidence within the meaning of the subsection is intended to have a broad meaning. It can include traditional surveillance evidence, such as physical observations of suspects recorded in logs by the police, as well as that obtained under warrant, such as evidence resulting from the placing of a listening device in a particular location. This evidence may not be relevant in some cases, and allowing the court to make an order means that the judge can tailor its terms to fit the type of evidence in question.

Item [6] of schedule 1 amends section 144 to remove a reference to "court-ordered pre-trial disclosure". Currently a prosecution response is required only to a court-ordered defence response, and not to a mandatory defence response. A prosecution response will now be required in all cases where the accused person has given a defence response under the amended section 143, irrespective of whether that response includes mandatory or discretionary material. Item [7] of schedule 1 amends subsection (2) of section 145 so that it now refers to the new mandatory defence requirement to set out the prosecution facts, matters or circumstances with which the accused takes issue. This is instead of the current discretionary requirement to give notice as to whether the accused proposes to dispute the admissibility of any evidence, as that requirement will now be captured by the requirement in the bill to set out the prosecution facts, matters or circumstances with which the accused takes issue.

If the accused fails to identify any issue with prosecution evidence of a fact, matter or circumstance, then the prosecution may be permitted by the court to dispense with formal proof in accordance with subsections (1) and (2) of section 145. For example, the prosecution may be allowed to ask leading questions of a prosecution witness where the accused has failed to take issue with that evidence in the defence response, or the prosecution may be allowed to adduce evidence impugning the credibility of a defence witness, which would otherwise be excluded by the Evidence Act, where the accused has failed to take issue with that evidence.

Item [8] of schedule 1 introduces a new section 146A into the Criminal Procedure Act that sets out the circumstances in which comment can be made and an unfavourable inference drawn against an accused at trial. Proposed subsection (1) (a) confirms that the section will only apply when the accused person has failed to comply with a disclosure requirement imposed on them by the division. This may happen where the accused simply fails to serve a response to the prosecution case. Alternatively, the accused may serve a response, but then seek to rely at trial on a defence that was not mentioned in that response, or take issue with a prosecution fact, matter or circumstance that was not addressed in the response.

Proposed subsection (1) (b) specifically states that the new section 146A also applies if the accused fails to serve a notice of alibi, as required by section 150 of the Criminal Procedure Act. Section 150 requires a notice to be served in the period after committal and 42 days before the trial is listed for hearing. This means it should have been served before the defence response is due. The response itself requires the accused to state whether they intend to serve an alibi notice, or to state that a notice has already been given under section 150. These provisions do not alter the existing time frame in section 150, or the limitations that can be placed on the adducing of alibi evidence if the notice is not served in time.

If the new section 146A applies, then two steps are set out under proposed subsection (2). First, the court, or any other party with the leave of the court, may make such comment at the trial as appears proper. "Any other party" is likely to mean prosecution counsel, who may

wish to bring the accused's failure to raise relevant matters in their response to the prosecution case to the attention of the jury during his or her closing. It could also refer to counsel for a co-accused. The party seeking to make comment will not be allowed to invite the jury to draw an unfavourable inference. They are only permitted to highlight the failures of the accused, and will need to seek the judge's permission in the absence of the jury before doing so. Only the trial judge will be permitted to comment to the jury about the availability of the unfavourable inference. It is intended that the Judicial Commission's Bench Book Committee will prepare material for judges giving guidance on how to make such comment to the jury.

Secondly, once comment has been made, the court—if it is sitting as a judge-alone trial without a jury—or the jury may then draw such unfavourable inferences as appear proper. In considering what inferences appear proper, the court or the jury will take into account the circumstances of the particular case in which they are being asked to give a verdict. New subsection (3) of the new section 146A states that an accused cannot be found guilty solely on an inference drawn under the section. This is an important safeguard for accused persons, as it ensures that there must be other evidence of the accused's guilt, besides the unfavourable inference, before the jury can be satisfied beyond a reasonable doubt and return a guilty verdict.

The ASSISTANT-SPEAKER (Mr Andrew Fraser): Order! The member for Heffron will have an opportunity to make a contribution to the debate. It is customary for members to listen intently, without interjection, when the Attorney General is giving a second reading speech. The Attorney General will be heard in silence.

Mr GREG SMITH: A further safeguard for defendants is found in new subsection (4), which confirms that comment cannot be made, or an unfavourable inference drawn, if the prosecution has not complied with its disclosure requirements under the Act. This is only fair. If the prosecution has not outlined its case properly to the accused in the notice of its case then it would not be fair to allow an inference to be drawn. An example of such a failure would be if the notice of the prosecution case did not include information that is relevant to the reliability or credibility of a prosecution witness. However, it should be pointed out that the prosecution can only include in its notice the information and material that it has in its possession at the time the notice is served.

If, for example, any information that is relevant to the reliability or credibility of a prosecution witness came into the possession of the prosecution after it had given its notice to the accused, then the prosecution will not have failed to comply with its disclosure requirements under the division if it gives the information to the accused as soon as practicable after receiving it. In this circumstance, the prosecution would be complying with its ongoing duty of disclosure under section 147 of the Act. Also, existing provisions make it clear that the prosecution or the defence are not required to include in a notice material that has been previously served. It is sufficient, for example, to provide a list of statements held. Neither is either party required to include in a notice a copy of material that is impracticable

to copy, as long as details are provided of where and when it can be inspected.

These amendments, read in conjunction with the existing division, take a practical approach to the exchange of notices. They have been drafted with reference to the existing practices of prosecution and defence agencies in mind, and reflect the operational demands of the trials seen day in, day out in our courts. It is not the intention of the bill to clutter the courts with technical disputes. It is not expected that these notices will be lacking if, say, a line of a statement is lost. These notices are about setting out the respective parties' cases and what is in dispute. It does not remove the professional responsibility placed on a lawyer to make sensible inquiries for a full or clearer copy of a statement.

New subsection (5) of section 146A confirms that new section 146A does not affect the operation of section 146, which sets out existing sanctions for failures to comply with disclosure requirements. By way of example, section 146 may operate to prevent a party from adducing evidence at trial that the party failed to disclose to the other party in accordance with the Act's disclosure requirements. It also allows the other party to apply for an adjournment of the trial listing date in order to consider that evidence. Those sanctions will remain in the current form of section 146 and will continue to apply equally to the defence and the prosecution.

Item [9] of schedule 1 amends section 147 of the Act to include a new subsection (3), which allows the accused, with the court's leave, to amend the defence response given under the new section 143 if new material is later obtained from the prosecution that would affect the content of the defence response. As I have said already, if as a result of its ongoing duty of disclosure the prosecution serves new material after it has given its notice to the accused, then that will not be a failure under subsection (4) of new section 146A. However, it is only fair in such circumstances to allow the defence an opportunity to seek leave to amend its notice of response where the material affects its contents.

Section 147 is also amended with new subsection (4), which confirms that any amended response must be given to the prosecution. This reinforces subsection (5) of section 149, which states that a copy of all notices required to be given by a party under the Act's disclosure requirements must also be filed with the court. Such a requirement is necessary to the effective management of cases, as it allows the court to be kept informed of the parties' compliance—or lack of—with the Act's provisions, and for any remedial action to be taken by the court. Item [12] of schedule 1 amends section 149 to include a reference to amended notices under the provisions.

In keeping with the theme of the giving and filing of notices, the Trial Efficiency Working Group considered during its discussions the issue of the cross service of defence responses between co-accused in multi-defendant cases. The group's report concluded that court practice notes would be the more effective way of regulating such conduct, and that practice notes should be developed in both the District Court and Supreme Court. The practice notes should give guidance as to how cross service will take place and allow for directions to be

made to reflect the particular circumstances of each case.

Item [10] of schedule 1 amends section 148 of the Act, which allows the court to waive any of the pre-trial disclosure requirements. The court can make an order on its own initiative, or it can be sought by the prosecution or defence. As I have discussed previously, there are mandatory as well as discretionary elements to defence disclosure requirements, which necessarily allow for flexibility in applying the provisions to the circumstances of each case. However, in order to reflect that compliance with the mandatory disclosure requirements should always be the starting point, the bill amends the existing section 148 (1) by introducing an "interests of the administration of justice" test. This test must be applied to any possibility of waiver. Furthermore, the court will also be required to give its reasons when it makes such an order, pursuant to section 148 (5).

New subsection (4) requires the court to take into account whether the accused is legally represented when considering a waiver order. Currently, the court can only order further defence disclosure where the accused is represented. That requirement is now removed from the provisions. This will ensure that the Act's provisions are not automatically avoided by an unrepresented defendant, as instead it will be a factor to be taken into account when the court considers waiving the provisions. It will also ensure that there is no impediment to the accused engaging and instructing counsel at the earliest opportunity.

The ASSISTANT-SPEAKER (Mr Andrew Fraser): Order! The member for Mount Druitt has been in this place long enough to know that he should be seated whilst in the Chamber and not interject on the Attorney General while he is delivering his second reading speech. Even though the member's past occupation required him to pace around certain places in Sydney I would ask him to remain seated during the Attorney General's speech.

Mr GREG SMITH: Items [13] and [14] deal with savings, and transitional and other provisions in the Criminal Procedure Act. The new provisions in the amending Act will apply only in respect of proceedings in which the indictment has been presented or filed on or after the amending Act has commenced. The new provisions must be reviewed after a period of two years from their commencement. The changes to the Evidence Act and the Criminal Procedure Act will assist in breaking down the wall of silence put up by accused persons seeking to frustrate the criminal justice process and cause delay. Such people wait until their trial to inform the court and the prosecution of the defences they seek to rely on, evidence that is in dispute and the witnesses that the prosecution is required to call in order to prove its case.

The changes to the case management provisions in the Criminal Procedure Act will also help to ensure the smooth running of criminal cases in the higher courts through effective and efficient case management, as well as complementing the Evidence Act changes by offering a second opportunity for the accused to provide information to the prosecution by way of disclosure obligations, or run the risk of an unfavourable inference. It is a long-held truism that justice delayed is justice denied. All accused persons are entitled to a fair trial. Equally,

the prosecution is entitled to an opportunity to present its case against the accused properly and fairly. These reforms will help to reduce delays in the criminal justice process and therefore promote fairness to both prosecution and the accused. For too long, criminals have sought to hide behind a wall of silence in criminal proceedings. These bills break down that wall. I commend the bills to the House.

The ASSISTANT-SPEAKER (Mr Andrew Fraser): Order! I remind the member for Mount Druitt of Standing Order 54. I suggest that he read it. It relates to movement around the Chamber and being seated when debate is taking place.

Debate adjourned on motion by Mr Ron Hoenig and set down as an order of the day for a future day.