

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):

(a) to make further provision in relation to the management of cases to reduce delays in proceedings on indictment, including provision in respect of pre-trial disclosure, pre-trial hearings and pre-trial conferences, and

(b) to extend section 130A of that Act to all proceedings on indictment and to orders whether or not they are pre-trial orders (currently, that section provides for pre-trial orders by Judges in sexual offence proceedings to be binding on trial Judges, except in certain circumstances).

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.

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Schedule 1 Amendment of Criminal Procedure Act 1986 No 209

Case management in proceedings on indictment

Currently, Division 3 of Part 3 of Chapter 3 of the Principal Act enables the Supreme Court or District Court to order pre-trial disclosure by the prosecutor and the accused person in proceedings on indictment, but only if satisfied that the trial will be a complex trial having regard to the likely length of the trial, the nature of the evidence to be adduced at the trial and the legal issues likely to arise at the trial.

Schedule 1 [4] substitutes Division 3 of Part 3 of Chapter 3 of the Principal Act to set out a new scheme for the management of proceedings on indictment. The proposed Division contains the following provisions:

Proposed section 134 sets out the purpose of the proposed Division which is principally to reduce delays in proceedings on indictment.

Proposed section 135 defines certain terms for the purposes of the proposed Division.

Proposed section 136 requires the presiding Judge, at the first mention of proceedings in the court before which the trial is proposed to be heard, to give directions for the conduct of the trial and, in particular, to give directions as to the time by which the notices under proposed sections 137 and 138 are to be given by the prosecution and the defence.

Proposed section 137 requires the prosecutor to give the accused person notice of the prosecution case and sets out the matters that are to be included in the notice.

Proposed section 138 requires the accused person to give a response to the notice of the prosecution case and sets out the matters to be included in the response.

Proposed section 139 enables the court to order the prosecutor and the accused person to attend one or more pre-trial 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) that will be binding on the trial Judge except in certain circumstances.

The proposed section also prevents certain matters being raised at trial without the leave of the court if a pre-trial hearing was held and those matters were not raised at the pre-trial hearing.

Proposed section 140 enables the court to order that the prosecutor and the accused person's legal representative attend a pre-trial conference for the purpose of reaching agreement regarding the evidence to be admitted at trial. The court may make such

an order only if the accused person is represented by an Australian legal practitioner. Proposed section 141 enables the court to order further pre-trial disclosure on application of a party to the proceedings or on the court's own initiative. The court must be of the opinion that it is in the interests of the administration of justice to do so. The pre-trial disclosure requirements for the prosecutor are to provide a notice of certain matters and to respond to the defence response to the notice. The pre-trial Explanatory note page 3

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disclosure requirement for the accused person is to provide a defence response in accordance with proposed section 143.

Proposed section 142 sets out the matters to be included in the prosecution's notice to the accused person for the purposes of proposed section 141.

Proposed section 143 sets out the court-ordered pre-trial disclosure requirements for the accused person. Those requirements include the giving of a more detailed defence response to the prosecution's case than the requirements for a defence response under proposed section 138. The proposed section 143 requirements for a defence response include statements as to the facts, matters or circumstances alleged by the prosecution that the defence intends to dispute and notice of certain matters that the defence intends to raise in relation to the evidence proposed to be adduced by the prosecution.

Proposed section 144 requires the prosecutor to provide specified information to the accused person in response to the defence response given under proposed section 143.

Proposed section 145 enables the court to dispense with formal proof of certain matters in proceedings where the matters were not disputed in the course of pre-trial disclosure. The proposed section also enables the court to allow evidence of 2 or more witnesses to be adduced in the form of a summary in certain circumstances.

Proposed section 146 enables the court to refuse to admit evidence that was not disclosed in accordance with the pre-trial disclosure requirements of the proposed Division and to exclude expert evidence where a copy of the report of the evidence was not provided to the other party in accordance with those requirements. The court may also grant an adjournment if a party to proceedings seeks to adduce evidence not previously disclosed that would prejudice the case of the other party to the proceedings. The court cannot use its powers under the proposed section to prevent the accused person adducing evidence unless the prosecutor has complied with the pre-trial disclosure requirements.

Proposed section 147 provides that the obligation to undertake pre-trial disclosure under the proposed Division continues during the proceedings concerned.

Proposed section 148 enables the court to waive any of the pre-trial disclosure requirements under the proposed Division.

Proposed section 149 deals with the manner in which notices are to be given under the proposed Division.

Proposed section 149A provides that copies of proposed documents, exhibits and other things need not be included in a notice under the proposed Division if it is impractical to do so. However, they are to be made available for inspection at a reasonable time and place.

Proposed section 149B prevents the prosecutor in proceedings disclosing the address or the telephone number of proposed witnesses and other persons in a notice under the proposed Division, except in specified circumstances.

Proposed section 149C deals with the form in which statements of witnesses are to be provided in notices under the proposed Division.

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Proposed section 149D provides that the prosecutor is not required to disclose anything in a notice under the proposed Division if it has already been included in the brief of evidence or otherwise provided or disclosed to the accused person.

Similarly, the accused person is not required to include anything in a notice that has been previously disclosed to the prosecution.

Proposed section 149E makes it clear that, on or after the commencement of the trial in proceedings, the court may make orders, determinations or findings, or give directions or rulings, for the efficient management and conduct of the trial, including ordering any of the parties to proceedings to make disclosures that could have been required under the proposed Division before the commencement of the trial.

Proposed section 149F contains miscellaneous provisions in relation to the proposed Division, including provisions giving the court power to resolve disputes arising from the matters dealt with in the proposed Division and stating the relationship of the proposed Division to other Acts and laws.

Orders in proceedings on indictment

Currently, section 130A of the Principal Act provides that a pre-trial order made by a Judge in certain sexual offence proceedings is generally binding on the trial Judge in the proceedings unless it would not be in the interests of justice for the order to be binding.

Schedule 1 [3] substitutes section 130A of the Principal Act to extend its application to all proceedings on indictment. The amendment also extends the application of the section to orders of the trial Judge in the proceedings so that where there is a new hearing ordered or the proceedings are discontinued the orders of the original trial Judge are generally binding on another trial Judge hearing fresh proceedings.

Schedule 1 [1] and [2] make consequential amendments.

Other amendments

Schedule 1 [5] inserts proposed section 314A into the Principal Act to require the Attorney General to review the provisions of proposed Division 3 of Part 3 of Chapter 3 of the Principal Act as soon as possible after 24 months after the commencement of the proposed section.

Schedule 1 [6] amends Schedule 2 to the Principal Act to enable regulations to be made of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [7] amends Schedule 2 to the Principal Act to include specific savings and transitional provisions in relation to the proposed amendments to the Principal Act.