



New South Wales

Criminal Procedure Amendment (Mandatory Pre-trial Defence Disclosure) Bill 2013

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

This Bill is cognate with the *Evidence Amendment (Evidence of Silence) Bill 2013*.

Overview of Bill

The object of this Bill is to amend the *Criminal Procedure Act 1986*:

- (a) to expand the matters that must be disclosed by the defence and the prosecution before a trial for an indictable offence, and
- (b) to enable the court (and other parties with the leave of the court) to make proper comments in a trial for an indictable offence in circumstances where the accused person fails to comply with certain pre-trial disclosure requirements, and
- (c) to enable the court or the jury in such circumstances to then draw such unfavourable inferences as appear proper.

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 [2], [3] and [5] omit provisions of the Act that currently require the prosecution and the defence to undertake mandatory pre-trial disclosure of specified matters in proceedings for indictable offences (other than indictable offences dealt with summarily) and that enable the court hearing such proceedings to order more intensive pre-trial disclosure.

Instead, provisions are included that expand the mandatory pre-trial disclosure requirements to include the matters that are currently required to be disclosed under the Act and certain additional matters some of which can currently be the subject of court ordered pre-trial disclosure under the Act. Also, the discretion of the court to require specified additional matters in the defence's pre-trial disclosure notice is retained.

Schedule 1 [8] enables the court (and other parties with the leave of the court) to make proper comments in a trial for an indictable offence in circumstances where the accused person fails to comply with the mandatory pre-trial disclosure requirements. The court or the jury may in such circumstances draw such unfavourable inferences as appear proper.

Schedule 1 [9] enables the accused person (with the leave of the court) to amend the defence pre-trial disclosure notice if the prosecution provides additional relevant material to the defence after the notice is given.

Schedule 1 [10] requires the court to be of the opinion that it is in the interests of the administration of justice to do so when deciding whether to waive any of the requirements for pre-trial disclosure.

Schedule 1 [11] requires the court when deciding whether to waive any of the requirements for pre-trial disclosure to take into account whether the accused person is represented by an Australian legal practitioner. Also, the court must give reasons if it makes an order waiving any pre-trial disclosure requirement.

Schedule 1 [13] enables regulations of a savings or transitional nature to be made consequent on the enactment of the proposed Act.

Schedule 1 [14] contains specific transitional provisions consequent on the enactment of the proposed Act and includes a requirement for the review of the operation of the amendments made by the proposed Act after a period of 2 years.

Schedule 1 [1], [4], [6], [7] and [12] make consequential amendments.