

Criminal Procedure Amendment (Evidence) Bill 2005

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* so as to permit the admission of a record of evidence given by a complainant in a sexual assault proceeding in any new trial that is ordered following an appeal.

If a person is convicted of a sexual offence and, on an appeal, a new trial is ordered, the amendments will permit the prosecutor to tender as evidence in the new trial proceedings a record of the evidence of the complainant given in the proceedings that gave rise to the conviction. This will include the evidence given by the complainant on examination in chief and any further evidence given on cross-examination or re-examination.

The record will be admissible only if the prosecutor gives the court and the accused person notice of the prosecutor's intention to tender the record. The hearsay rule under the *Evidence Act 1995* will not prevent the admission or use of the record as evidence.

If a record of the evidence of a complainant is admitted in the new trial proceedings, the complainant will not be compellable to provide any further evidence, but may elect to do so (with leave of the court hearing the new trial proceedings) if the complainant so chooses.

The amendments also make provision for the form in which a record of the original evidence given by a complainant is to be tendered in new trial proceedings.

The amendments extend to new trials ordered before the commencement of the amendments.

The Bill also amends the *Criminal Procedure Regulation 2000* consequentially to make provision for:

- (a) the matters to be specified in the notice required to be given by the prosecutor before tendering a record of the original evidence of a complainant, and
- (b) the arrangements that are to be made for giving an accused person access to that record if it is an audio visual recording or audio recording.

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 the date of assent.

Clause 3 is a formal provision that gives effect to the amendments to the *Criminal Procedure Act 1986* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendment to the *Criminal Procedure Regulation 2000* set out in Schedule 2.

Schedule 1 Amendment of Criminal Procedure Act 1986

Schedule 1 [1] contains the amendments to the *Criminal Procedure Act 1986* described in the overview above.

Schedule 1 [2] provides for the making of savings and transitional regulations.

Schedule 2 Amendment of Criminal Procedure Regulation 2000

Schedule 2 contains the amendment to the *Criminal Procedure Regulation 2000* described in the overview above.