



New South Wales

Criminal Procedure Amendment (Pre-trial Disclosure) Bill 2018

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* to give effect to recommendations of the statutory review of the Act with respect to the mandatory pre-trial disclosure by the prosecutor and the accused person of certain evidence and other matters in proceedings for indictable offences. The amendments made by this Bill:

- (a) require the prosecutor to disclose certain material relating to audio or visual evidence in the notice that the prosecutor is required to give the accused person, and
- (b) require the notice that the accused person then gives to the prosecutor:
 - (i) to disclose material relating to expert evidence, and
 - (ii) to give notice of any proposal to raise any issues relating to the continuity of custody of exhibits and any significant issues relating to the form of the indictment and the prosecution of the counts on the indictment, and
 - (iii) to include any request to edit any audio or visual recording, or the transcript of any audio or visual recording, that the prosecutor has disclosed an intention to adduce at the trial and details of the edits required, and
- (c) require the prosecutor to respond to any request by the accused person to edit audio or visual recordings or transcripts of them.

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] requires the prosecutor to provide the accused person with a copy of a transcript of an audio or visual recording if the prosecutor proposes to adduce that transcript at the trial.

Schedule 1 [2] requires notice of the defence response to the notice of the prosecution's case to include certain matters. These matters are:

- (a) copies of reports of any expert witness that the accused person proposes calling at the trial that are relevant to the case and on which the accused person intends to rely, and
- (b) notice as to whether the accused person proposes to raise any issue with respect to the continuity of custody of any proposed exhibit disclosed by the prosecutor, and
- (c) notice of any significant issue that the accused person proposes to raise regarding the form of the indictment, severability of the charges or separate trials for the charges, and
- (d) any requests for the editing of any recording or transcript of a recording that the prosecutor proposes to adduce at the trial, and particulars of the edits requested.

The defence response is currently only required to contain the matters in paragraphs (a)–(c) if the court so orders.

Schedule 1 [3] makes a consequential amendment.

Schedule 1 [4] requires the prosecution response to the defence response to contain notice as to whether the prosecutor disputes the editing of recordings or transcripts of recordings that the defence response requested and, if so, which requested edits are disputed.

Schedule 1 [5] inserts a savings and transitional provision to exclude the application of the proposed amendments to the *Criminal Procedure Act 1986* to proceedings in which the indictment was presented or filed before the commencement of the proposed amendments.