

Explanatory note

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

Overview of Bill

The objects of this Bill are to:

(a) amend the *Criminal Procedure Act 1986* (the **Principal Act**) to remove the requirement that a brief of evidence in proceedings for an indictable offence listed in Table 1 to Schedule 1 (Indictable offences triable summarily) be served prior to the time fixed for making an election in respect of whether the offence is to be tried on indictment, and

(b) amend the *Criminal Procedure Regulation 2005* (the **Principal Regulation**) to expand (on a 12 month trial basis) the prescribed list of proceedings for which a brief of evidence does not need to be served.

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.

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 2005* set out in Schedule 2.

Clause 5 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Criminal Procedure Act 1986

Schedule 1 [1] omits section 265 (2)–(4) from the Principal Act and inserts proposed new subsections (2) and (3). Section 265 (2) of the Principal Act currently provides that a person charged with an indictable offence listed in Table 1 to Schedule 1 must be served with a copy of the brief of evidence and a copy of their criminal record before the time fixed by the Local Court for the making of an election in respect of the offence. The election that a person charged with an indictable offence may make is to have the offence dealt with on indictment by a jury, rather than summarily by a Magistrate. Section 265 (2A)–(4) of the Principal Act currently provide the detail of what documents must be served and what powers the Court has to adjourn proceedings where there has been a failure to serve the necessary documents. The amendment to section 265 removes the requirement that a person charged with an indictable offence listed in Table 1 to Schedule 1 must be served with a brief of evidence before the time fixed by the Court for the making of an election. Current section 183 will still (subject to section 187, When brief of evidence need not be served) require the service of briefs of evidence in proceedings for offences that are to be dealt with summarily, but only if the defendant has pleaded not guilty. Current section 75 will still require the service of briefs of evidence in all proceedings for offences that are to be tried on indictment.

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

Schedule 1 [3] amends Schedule 2 to the Principal Act to make it clear that the proposed amendment made by Schedule 1 [1] does not extend to any proceedings commenced prior to the commencement of the amendments.

Schedule 2 Amendment of Criminal Procedure Regulation 2005

Section 187 (5) of the Principal Act provides that proceedings of a kind prescribed by the regulations do not require a prosecutor to serve a brief of evidence. **Schedule**

2 amends the Principal Regulation by replacing clause 24. Proposed clause 24 (1) expands the list of prescribed proceedings under section 187 (5) of the Principal Act. Proposed clause 24 (2) makes it clear that the prescription of the additional proceedings in clause 24 (1) has effect for 12 months only and do not extend to any proceedings commenced prior to the commencement of the subclause.