



New South Wales

Criminal Procedure Amendment (Pre-trial Disclosure) Bill 2000

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This PUBLIC BILL, originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

*Clerk of the Legislative Assembly.
Legislative Assembly,*



New South Wales

Criminal Procedure Amendment (Pre-trial Disclosure) Bill 2000

Act No , 2000

An Act to amend the *Criminal Procedure Act 1986* with respect to pre-trial disclosure by the prosecution and the defence; to make related amendments to the *Crimes (Sentencing Procedure) Act 1999* and the *Director of Public Prosecutions Act 1986*; and for other purposes.

EXAMINED

Chairman of Committees

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Criminal Procedure Amendment (Pre-trial Disclosure) Act 2000</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6 7
3 Amendment of Criminal Procedure Act 1986 No 209	8
The <i>Criminal Procedure Act 1986</i> is amended as set out in Schedule 1.	9
4 Amendment of Director of Public Prosecutions Act 1986 No 207	10
The <i>Director of Public Prosecutions Act 1986</i> is amended as set out in Schedule 2.	11 12
5 Amendment of Crimes (Sentencing Procedure) Act 1999 No 92	13
The <i>Crimes (Sentencing Procedure) Act 1999</i> is amended as set out in Schedule 3.	14 15
6 Review of pre-trial disclosure provisions enacted by this Act	16
(1) The Attorney General is to review the pre-trial disclosure procedures enacted by this Act to determine:	17 18
(a) whether they are utilised by the courts and whether they have been effective in reducing delays in complex criminal trials, and	19 20
(b) the cost impacts of the procedures.	21
(2) The review is to be undertaken as soon as possible after the period of 18 months after the commencement of this section.	22 23
(3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of that 18-month period.	24 25

Schedule 1	Amendment of Criminal Procedure Act 1986	1
		2
	(Section 3)	3
[1]	Section 42 Listing for mention following committal for trial	4
	Omit the section.	5
[2]	Part 3, Division 2A	6
	Insert after Division 2 of Part 3:	7
Division 2A	Pre-trial disclosure—case management	8
47A	Purpose	9
	The purpose of this Division is to enable the court, on a case by case basis, to impose pre-trial disclosure requirements on both the prosecution and the defence in order to reduce delays in complex criminal trials.	10 11 12 13
47B	Definitions	14
	In this Division:	15
	<i>court</i> means the Supreme Court or District Court.	16
	<i>criminal proceedings</i> means proceedings before the Supreme Court or District Court relating to the trial of a person on indictment.	17 18 19
	<i>pre-trial disclosure requirements</i> means requirements for pre-trial disclosure imposed by the court in accordance with this Division.	20 21 22
47C	Court may order pre-trial disclosure in particular case	23
	(1) After the indictment is presented in any criminal proceedings, the court may order both the prosecuting authority and the accused person to undertake pre-trial disclosure in accordance with this Division.	24 25 26 27

- (2) The court may order pre-trial disclosure only if the court is satisfied that it will be a complex criminal trial having regard to:
 - (a) the likely length of the trial, and
 - (b) the nature of the evidence to be adduced at the trial, and
 - (c) the legal issues likely to arise at the trial.
 - (3) The court may order pre-trial disclosure on application of any party or on the court's own initiative.
 - (4) The court may order pre-trial disclosure only if the court is satisfied that the accused person will be represented by a legal practitioner.
 - (5) The court may limit pre-trial disclosure to any specified aspect of the proceedings.
- 47D Requirements with respect to pre-trial disclosures**
- (1) The regulations may make provision for or with respect to pre-trial disclosure requirements under this Division.
 - (2) Without limiting subsection (1), the regulations may make provision for or with respect to the following:
 - (a) pre-trial disclosure of the case for the prosecution,
 - (b) pre-trial disclosure of the defence's response to the case for the prosecution,
 - (c) pre-trial disclosure of the prosecution's response to the response by the defence,
 - (d) the matters required to be disclosed,
 - (e) the times at which the pre-trial disclosures are to be made.
 - (3) The regulations may:
 - (a) authorise any matter with respect to pre-trial disclosure, and any exemption from pre-trial disclosure, to be determined or granted by the court in any particular case, and
 - (b) require pre-trial disclosures to be made during the period from the presentation of the indictment until the end of the trial.

47E Sanctions for non-compliance with pre-trial disclosure requirements	1 2
(1) Exclusion of evidence	3
The court may refuse to admit evidence in any criminal proceedings that is sought to be adduced by a party who failed to disclose the evidence to the other party in accordance with pre-trial disclosure requirements.	4 5 6 7
(2) Dispensing with formal proof	8
The court may allow evidence to be adduced by a party to criminal proceedings without formal proof of a matter if the evidence was disclosed to the other party and the other party did not disclose an intention to dispute or require proof of the matter as required by the pre-trial disclosure requirements.	9 10 11 12 13
(3) Adjournment	14
The court may grant an adjournment to a party if the other party seeks to adduce evidence in the criminal proceedings that the other party failed to disclose in accordance with pre-trial disclosure requirements and that would prejudice the case of the party.	15 16 17 18 19
(4) Comment to jury	20
The judge or, with the leave of the court, any party may comment on a failure by a party to comply with pre-trial disclosure requirements in any criminal proceedings. However, the comment must not suggest that an accused person failed to comply because the accused person was, or believed that he or she was, guilty of the offence concerned.	21 22 23 24 25 26
(5) Application of sanctions	27
Without limiting subsection (6), the powers of the court may not be exercised under this section to prevent an accused person adducing evidence or to comment on any non-compliance by the accused person unless the prosecuting authority has complied with the pre-trial disclosure requirements.	28 29 30 31 32 33
(6) Regulations	34
The regulations may make provision for or with respect to the exercise of the powers of a court under this section (including the circumstances in which the powers may not be exercised).	35 36 37

47F	Miscellaneous provisions	1
(1)	A statement about any matter that is made by or on behalf of the accused person for the purposes of complying with the pre-trial disclosure requirements does not constitute an admission of that matter by the accused.	2 3 4 5
(2)	The court may make orders to resolve any dispute between the parties to criminal proceedings about:	6 7
(a)	pre-trial disclosure requirements, or	8
(b)	the use of anything disclosed under this Division (including restrictions on publication or further disclosure).	9 10 11
(3)	This Division does not affect the obligations or powers under Division 3 (Pre-trial disclosure—general).	12 13
(4)	Nothing in this Division prevents any voluntary pre-trial disclosure by the accused person to the prosecuting authority of any information, document or other thing that the accused person proposes to adduce in evidence in the proceedings.	14 15 16 17
(5)	This Division does not limit any obligation (apart from this Division) for pre-trial disclosure, but this Division prevails to the extent of any inconsistency with any such obligation. Any such obligation extends to obligations imposed by the common law, the rules of court, the rules of practice of barristers or solicitors and prosecution guidelines issued by the Director of Public Prosecutions.	18 19 20 21 22 23 24
(6)	However, this Division does not affect any immunity that applies by law to the disclosure of any information, document or other thing, including, for example, legal professional or client legal privilege, public interest immunity and sexual assault communications privilege under Part 7.	25 26 27 28 29
[3]	Part 3, Division 3, heading	30
	Omit the heading. Insert instead:	31
	Division 3	
	Pre-trial disclosure—general	32

[4] Section 48 Notice of alibi	1
Omit “the period of 10 days commencing at the time of the accused person’s committal for trial” from the definition of <i>prescribed period</i> in section 48 (8).	2 3 4
Insert instead “the period commencing at the time of the accused person’s committal for trial and ending 21 days before the trial is listed for hearing”.	5 6
[5] Section 53A	7
Insert after section 53:	8
53A Manner of presenting indictments	9
The regulations and (subject to the regulations) the rules of court may make provision for or with respect to the manner of presenting indictments (including by the filing of the indictment in a court registry).	10 11 12 13
[6] Section 54	14
Omit the section. Insert instead:	15
54 Time within which indictment to be presented	16
(1) In this section, <i>relevant court</i> , in relation to a matter, means the Supreme Court or the District Court before which the matter has been listed for trial or mention.	17 18 19
(2) An indictment is to be presented within 4 weeks after the committal of the accused person for trial, except as provided by this section.	20 21 22
(3) The time within which the indictment is to be presented may be extended:	23 24
(a) by the regulations or (subject to the regulations) the rules of the relevant court, or	25 26
(b) by order of the relevant court.	27
(4) If an indictment is not presented within the time required by this section, the relevant court may:	28 29
(a) proceed with the trial if an indictment has been presented, or	30 31
(b) adjourn the proceedings, or	32

(c)	take such other action as it thinks appropriate in the circumstances of the case.	1 2
(5)	The prosecutor has no right to an adjournment merely because an indictment has not been presented.	3 4
(6)	The relevant court must, in exercising any power under this section, have regard to the fact that the Crown does not have a right of appeal if the accused person is acquitted.	5 6 7
(7)	This section does not affect the powers of the relevant court under section 64.	8 9
[7]	Section 63A	10
	Insert after section 63:	11
	63A Amendment of indictment	12
(1)	An indictment may not be amended after it is presented, except by the prosecuting authority:	13 14
(a)	with the leave of the court, or	15
(b)	with the consent of the accused.	16
(2)	This section does not affect the powers of the court under section 64.	17 18
(3)	For the purposes of this section, an amendment of an indictment includes the substitution of an indictment.	19 20
[8]	Schedule 2 Savings, transitional and other provisions	21
	Insert at the end of clause 1 (1):	22
	<i>Criminal Procedure Amendment (Pre-trial Disclosure) Act 2000</i>	23 24

[9] Schedule 2	1
Insert at the end of the Schedule with appropriate Part and clause numbers:	2
Part Provisions consequent on enactment of Criminal Procedure Amendment (Pre-trial Disclosure) Act 2000	3
	4
	5
Application of Division 2A of Part 3 (Pre-trial disclosure—case management)	6
	7
Division 2A of Part 3 extends to proceedings for an offence that were instituted before the commencement of that Division, but does not apply to any such proceedings if the accused person was committed for trial before that commencement.	8
	9
	10
	11
Application of amendments to section 48 (Notice of alibi)	12
The amendment made to section 48 by the <i>Criminal Procedure Amendment (Pre-trial Disclosure) Act 2000</i> applies to proceedings in which the accused person is committed for trial after the commencement of the amendment.	13
	14
	15
	16
Application of substituted section 54 (Time within which indictment to be presented)	17
	18
Section 54, as substituted by the <i>Criminal Procedure Amendment (Pre-trial Disclosure) Act 2000</i> , does not apply to proceedings in which the accused person was committed for trial before the substitution of that section.	19
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	21
	22
Application of section 63A (Amendment of indictment)	23
Section 63A applies to indictments presented after the commencement of that section.	24
	25

Schedule 2	Amendment of Director of Public Prosecutions Act 1986	1
		2
	(Section 4)	3
Section 15A		4
Insert after section 15:		5
15A	Disclosures by investigating police officers	6
(1)	Police officers investigating alleged indictable offences have a duty to disclose to the Director all relevant information, documents or other things obtained during the investigation that might reasonably be expected to assist the case for the prosecution or the case for the accused person.	7 8 9 10 11
(2)	The duty of disclosure continues until one of the following happens:	12
(a)	the Director decides that the accused person will not be prosecuted for the alleged offence,	13 14 15
(b)	the prosecution is terminated,	16
(c)	the accused person is convicted or acquitted.	17
(3)	The regulations may make provision for or with respect to the duty of disclosure, including for or with respect to:	18
(a)	the recording and retention of any such information, documents or other things, and	19 20 21
(b)	verification of compliance with the duty of disclosure.	22
(4)	The duty imposed by this section is in addition to any other duties of police officers in connection with the investigation and prosecution of offences.	23 24 25

Schedule 3	Amendment of Crimes (Sentencing Procedure) Act 1999	1
		2
	(Section 5)	3
[1]	Section 22A	4
	Insert after section 22:	5
	22A Power to reduce penalties for pre-trial disclosure	6
	(1) A court may impose a lesser penalty than it would otherwise impose on an offender who was tried on indictment, having regard to the degree to which the defence has made pre-trial disclosures for the purposes of the trial.	7 8 9 10
	(2) A lesser penalty that is imposed under this section in relation to an offence must not be unreasonably disproportionate to the nature and circumstances of the offence.	11 12 13
[2]	Schedule 2 Savings, transitional and other provisions	14
	Insert at the end of the Schedule with appropriate Part and clause numbers:	15
	Part Provisions consequent on enactment of Criminal Procedure Amendment (Pre-trial Disclosure) Act 2000	16 17 18
	Application of section 22A (Power to reduce penalties for pre-trial disclosure)	19 20
	Section 22A extends to proceedings for an offence that were instituted (but not finally determined) before the commencement of that section.	21 22 23