

FIRST PRINT

**JUSTICES (PAPER COMMITTALS) AMENDMENT BILL  
1987**

NEW SOUTH WALES



**EXPLANATORY NOTE**

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The District Court (Judges) Amendment Bill 1987 is cognate with this Bill.

The object of this Bill is to amend the Justices Act 1902—

- (a) to make the paper committal system mandatory;
- (b) to restrict the defendant's right in paper committal proceedings to call the victims of sexual assaults or certain other offences involving violence to give oral evidence;
- (c) to expressly authorise a court to terminate unnecessary examinations or cross-examinations in committal proceedings;
- (d) to enable committal proceedings to proceed if the defendant absconds before, as well as during, a listed hearing; and
- (e) to make other minor or ancillary amendments.

Under the paper committal system, the evidence of witnesses for the prosecution in committal proceedings is given by means of written statements that have been served on the defendant beforehand. At present the system is not mandatory and, if used, the defendant has the right to call a prosecution witness for oral examination.

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Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act will commence on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the Schedules of amendments.

Clause 4 ensures that the proposed Act does not affect pending proceedings.

*Justices (Paper Committals) Amendment 1987*

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SCHEDULE 1—AMENDMENTS RELATING TO PAPER COMMITTALS

Schedule 1 (1) makes the use of the paper committal system mandatory. Exceptions are made, in particular, to allow the evidence of the prosecution witnesses to be given orally if a copy of the written statement of the witness could not reasonably be served on the defendant or if it is additional evidence.

Schedule 1 (2) (a) is consequential on the amendment made by Schedule 1 (4).

Schedule 1 (2) (b) and (3) restrict the defendant's right in paper committal proceedings to call and cross-examine the victims of sexual assault and certain other offences involving violence. The victim will not be obliged to attend the proceedings to give evidence and be cross-examined unless the court determines that there are special reasons why the victim should attend.

Schedule 1 (4) imposes time limits on the court when it gives directions for the service of written statements of prosecution witnesses on the defendant or for the service of requests by the defendant for the attendance of those witnesses at the committal proceedings. The court retains its discretion to allow the matter to proceed even though service was not effected within the required time.

SCHEDULE 2—MISCELLANEOUS AMENDMENTS

Schedule 2 (1) (a)–(d) allow committal proceedings to proceed if the defendant absconds before, as well as during, a listed hearing.

Schedule 2 (1) (e) expressly authorises the court to terminate unnecessary examinations or cross-examinations in committal proceedings.

Schedule 2 (2) allows the Attorney General to give a direction, as to the appropriate place for a District Court appeal from a decision of a Magistrate, generally instead of only after a particular appeal has been lodged.

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# JUSTICES (PAPER COMMITTALS) AMENDMENT BILL 1987

NEW SOUTH WALES



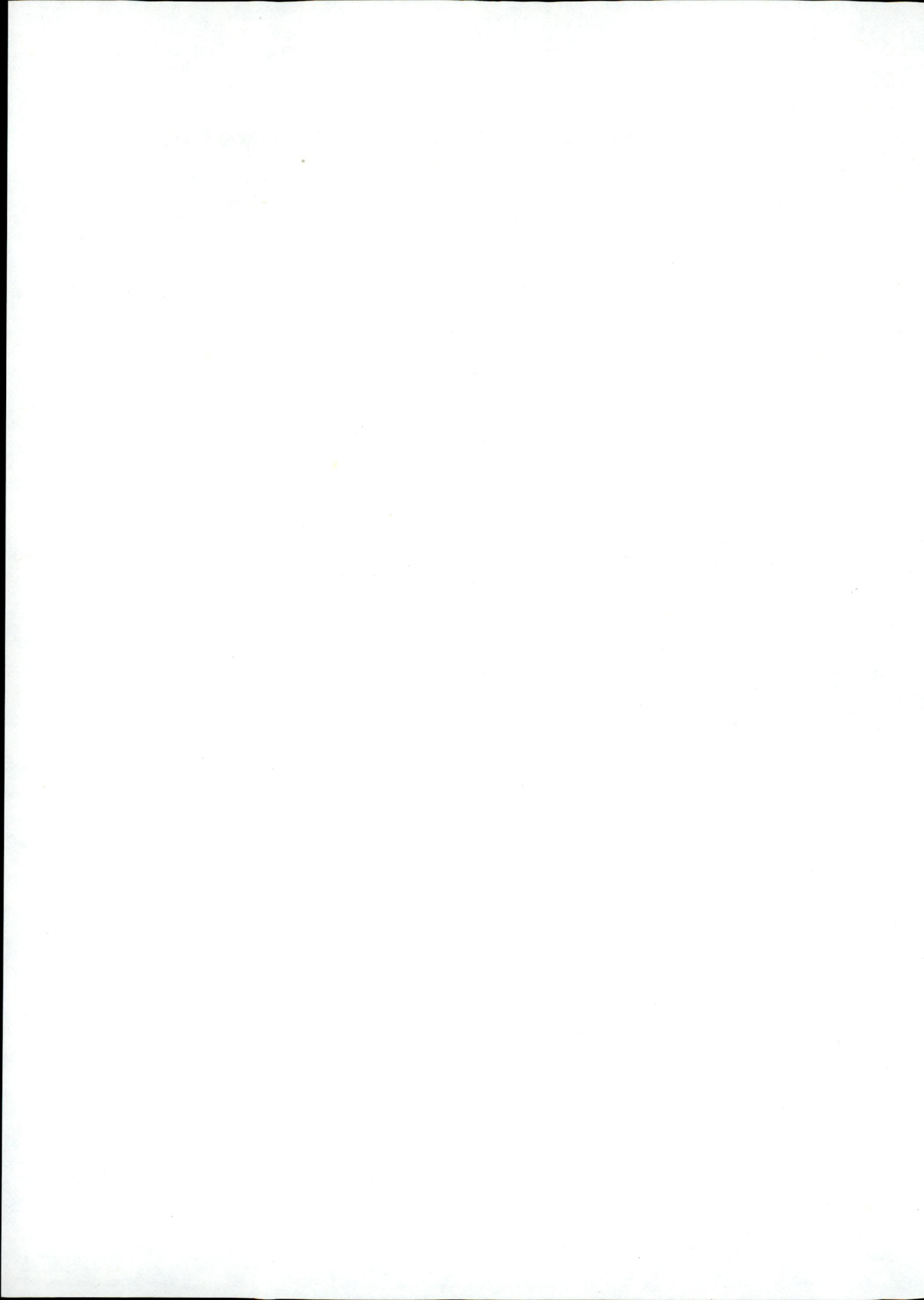
## TABLE OF PROVISIONS

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3. Amendment of Act No. 27, 1902
4. Pending proceedings not affected

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SCHEDULE 2—MISCELLANEOUS AMENDMENTS

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**JUSTICES (PAPER COMMITTALS) AMENDMENT BILL  
1987**

NEW SOUTH WALES



No. , 1987

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**A BILL FOR**

An Act to amend the Justices Act 1902 with respect to written statements in committal proceedings, and for other purposes.

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See also District Court (Judges) Amendment Bill 1987.



*Justices (Paper Committals) Amendment 1987***The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the Justices (Paper Committals) Amendment Act 1987.

**5 Commencement**

2. This Act shall commence on a day or days to be appointed by proclamation.

**Amendment of Act No. 27, 1902**

3. The Justices Act 1902 is amended as set out in Schedules 1 and 2.

**10 Pending proceedings not affected**

4. The amendments made by Schedule 1 do not apply to any proceedings instituted before the commencement of the amendments.

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**SCHEDULE 1—AMENDMENTS RELATING TO PAPER  
COMMITTALS**

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(Sec. 3)

(1) Section 48AA—

After section 48, insert:

**Mandatory use of written statements in committal proceedings**

20 48AA. (1) Evidence for the prosecution in any committal proceedings must (subject to this section) be given by means of written statements which are admissible as evidence under section 48A.

25 (2) The evidence of a person need not be given by means of such a statement if the Justice or Justices is or are satisfied, on the application of the informant, that—

- 30 (a) the statement was prepared but a copy of the statement could not reasonably be served on the defendant;
- (b) any other requirement of this Subdivision relating to the statement could not reasonably be complied with; or
- (c) the evidence is additional evidence of a person whose statement has already been admitted in evidence and a further written statement is not appropriate.

(3) If an application under subsection (2) is not granted, the Justice or Justices may—

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SCHEDULE 1—AMENDMENTS RELATING TO PAPER  
COMMITTALS—*continued*

- (a) adjourn the committal proceedings in order to enable the appropriate written statement to be prepared and served on the defendant; or
- 5 (b) proceed with the committal proceedings without taking that evidence.
- (2) Section 48E (**Witness may be called**)—
- (a) Section 48E (1) (b)—
- After “Justices”, insert “(if satisfied that it is in the interests of justice to do so)”.
- 10 (b) Section 48E (4)—
- After section 48E (3), insert:
- (4) This section is subject to section 48EA.
- (3) Section 48EA—
- After section 48E, insert:
- 15 **Prohibition on cross-examination of victim witness without special reasons etc.**
- 48EA. (1) In this section—
- “offence involving violence” means—
- 20 (a) a prescribed sexual offence within the meaning of the Crimes Act 1900;
- (b) an offence under sections 27–30 of the Crimes Act 1900 (attempts to murder);
- 25 (c) an offence under section 33 of the Crimes Act 1900 (wounding etc. with intent to do grievous bodily harm or resist arrest);
- (d) an offence under section 35 (b) of the Crimes Act 1900 (infliction of grievous bodily harm);
- (e) an offence under sections 86–91 of the Crimes Act 1900 (abduction or kidnapping);
- 30 (f) an offence under sections 94–98 of the Crimes Act 1900 (robbery); or
- (g) any other offence that involves an act of actual or threatened violence that is prescribed by the regulations for the purposes of this section,
- 35 but does not include an offence to which section 476 of the Crimes Act 1900 applies;

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SCHEDULE 1—AMENDMENTS RELATING TO PAPER  
COMMITTALS—*continued*

“victim”, in relation to an offence involving violence, means a person against whom the offence was committed.

(2) Where in any committal proceedings the Justice or Justices is or are satisfied that—

- 5           (a) the defendant has been charged with an offence involving violence; and
- (b) the person who made a written statement tendered as evidence under this Subdivision is an alleged victim of that offence,

10           the Justice or Justices shall not give a direction under section 48E requiring the attendance at those proceedings of the alleged victim or otherwise reject the statement because the defendant has requested the attendance at those proceedings of the alleged victim unless the Justice or Justices is or are satisfied that there are

15           special reasons why the alleged victim should, in the interests of justice, attend at those proceedings to give oral evidence.

(3) The regulations may make provision for or with respect to the determination of such special reasons.

(4) Section 48GA—

20           After section 48G, insert:

**Time for, and manner of, service of written statements or requests to call witnesses etc.**

25           48GA. (1) The Justice or Justices shall, when giving a direction under section 48B or 48D for the service of a written statement or notice on the defendant, direct that the statement or notice be served at least 28 days before the committal hearing unless the defendant consents to a shorter period or the circumstances of the case otherwise require.

30           (2) The Justice or Justices shall, when giving a direction under section 48E (1) (a) for the service of a notice on the informant, direct that the notice be served at least 14 days before the committal hearing unless the informant consents to a shorter period or the circumstances of the case otherwise require.

35           (3) A written statement or other notice under this Subdivision shall be served in such manner as may be prescribed by the regulations or (subject to the regulations) in such manner as may be determined by the Justice or Justices.

(4) In this section—



*Justices (Paper Committals) Amendment 1987*


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**SCHEDULE 1—AMENDMENTS RELATING TO PAPER  
COMMITTALS—*continued***

“committal hearing” means the time set by the Justice or Justices for taking the evidence for the prosecution in committal proceedings.

**SCHEDULE 2—MISCELLANEOUS AMENDMENTS**

5

(Sec. 3)

**(1) Section 41 (Procedure on hearing of charge of indictable offence)—****(a) Section 41 (1B) (d)—**

Omit “, after the commencement of the taking of evidence for the prosecution,”.

10 **(b) Section 41 (1B) (d)—**

Before “continue”, insert “commence or”.

**(c) Section 41 (1B) (e)—**

After section 41 (1B) (d), insert:

15 **(e) The evidence for the prosecution shall not be taken in the absence of the defendant unless—**

(i) the defendant has been served under section 48B with a copy of any written statement to be tendered as evidence in the proceedings; or

20 **(ii) the absence occurs after a time has been set by the Justice or Justices for taking the evidence for the prosecution.****(d) Section 41 (7)—**

Omit “that occurred during the taking of the evidence for the prosecution”, insert instead “and the Magistrate or Judge is satisfied that it is in the interests of justice to do so”.

25 **(e) Section 41 (9)—**

After section 41 (8), insert:

30 **(9) The Justice or Justices may at any stage during the examination or cross-examination of any witness giving evidence for the prosecution or the defence terminate the examination or cross-examination on any particular matter if satisfied that any further examination or cross-examination on the matter will not assist the Justice or Justices in forming any opinion referred to in subsection (2) or (6).**35 **(2) Section 122 (Appeal allowed in every case of conviction or order made by Justices)—**

Section 122 (2AB)—

*Justices (Paper Committals) Amendment 1987*

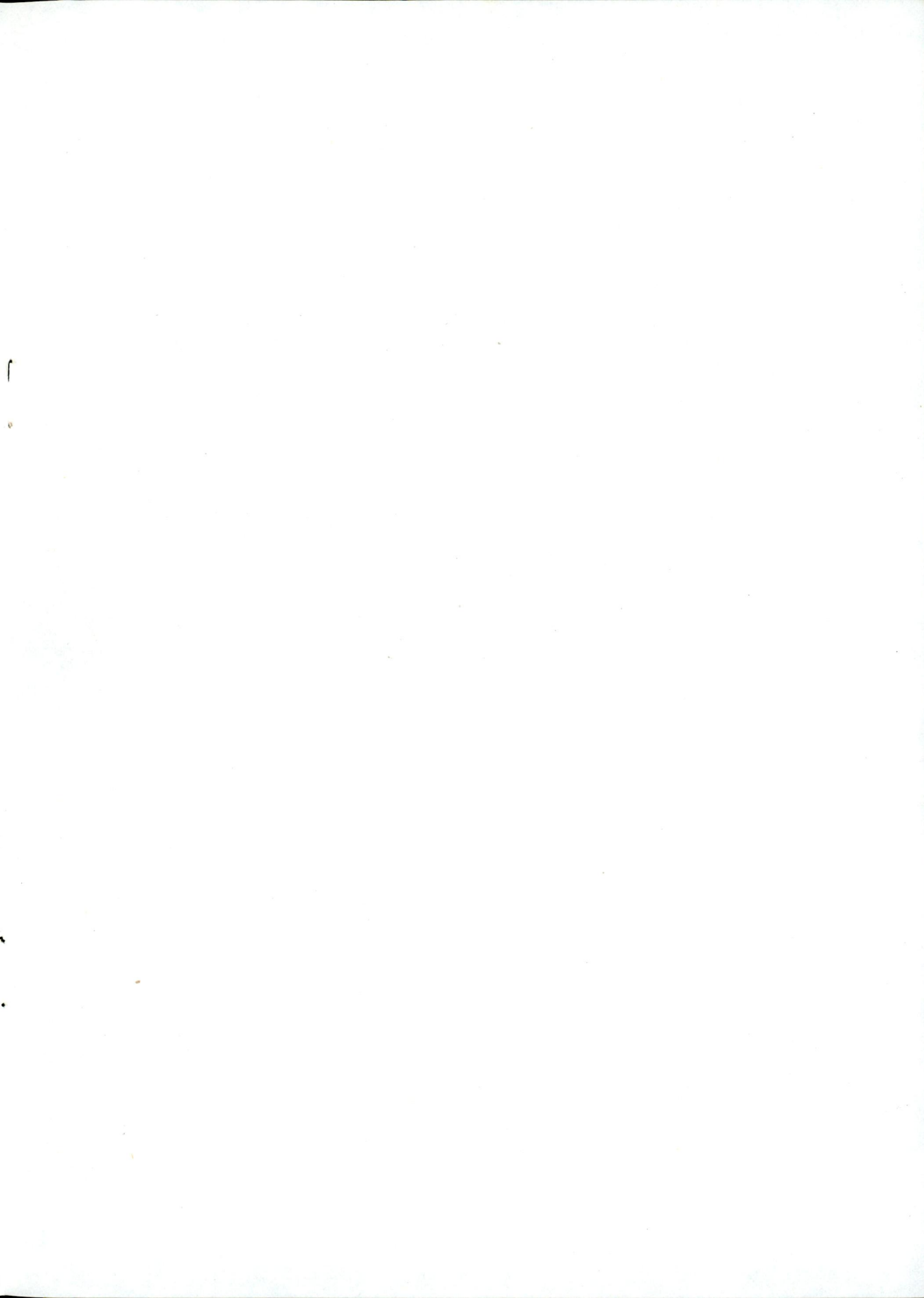
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SCHEDULE 2—MISCELLANEOUS AMENDMENTS—*continued*

After section 122 (2A), insert:

(2AB) A direction by the Attorney General under subsection (2A) may be given in respect of a particular appeal or application that has been lodged or in respect of appeals or applications of a particular class that are lodged after the direction is given.

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**JUSTICES (PAPER COMMITTALS) AMENDMENT ACT  
1987 No. 235**

NEW SOUTH WALES



**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Amendment of Act No. 27, 1902
4. Pending proceedings not affected

**SCHEDULE 1—AMENDMENTS RELATING TO PAPER COMMITTALS**  
**SCHEDULE 2—MISCELLANEOUS AMENDMENTS**

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**JUSTICES (PAPER COMMITTALS) AMENDMENT ACT 1987**  
**No. 235**

NEW SOUTH WALES



**Act No. 235, 1987**

An Act to amend the Justices Act 1902 with respect to written statements in committal proceedings, and for other purposes. [Assented to 16 December 1987]

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See also District Court (Judges) Amendment Act 1987.

*Justices (Paper Committals) Amendment 1987*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Justices (Paper Committals) Amendment Act 1987.

**Commencement**

2. This Act shall commence on a day or days to be appointed by proclamation.

**Amendment of Act No. 27, 1902**

3. The Justices Act 1902 is amended as set out in Schedules 1 and 2.

**Pending proceedings not affected**

4. The amendments made by Schedule 1 do not apply to any proceedings instituted before the commencement of the amendments.

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**SCHEDULE 1—AMENDMENTS RELATING TO PAPER  
COMMITTALS**

(Sec. 3)

(1) Section 48AA—

After section 48, insert:

**Mandatory use of written statements in committal proceedings**

48AA. (1) Evidence for the prosecution in any committal proceedings must (subject to this section) be given by means of written statements which are admissible as evidence under section 48A.

(2) The evidence of a person need not be given by means of such a statement if the Justice or Justices is or are satisfied, on the application of the informant, that—

- (a) the statement was prepared but a copy of the statement could not reasonably be served on the defendant;
- (b) any other requirement of this Subdivision relating to the statement could not reasonably be complied with; or
- (c) the evidence is additional evidence of a person whose statement has already been admitted in evidence and a further written statement is not appropriate.

(3) If an application under subsection (2) is not granted, the Justice or Justices may—



*Justices (Paper Committals) Amendment 1987*


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SCHEDULE 1—AMENDMENTS RELATING TO PAPER  
COMMITTALS—*continued*

- (a) adjourn the committal proceedings in order to enable the appropriate written statement to be prepared and served on the defendant; or
  - (b) proceed with the committal proceedings without taking that evidence.
- (2) Section 48E (**Witness may be called**)—
- (a) Section 48E (1) (b)—  
After “Justices”, insert “(if satisfied that it is in the interests of justice to do so)”.
  - (b) Section 48E (4)—  
After section 48E (3), insert:  
(4) This section is subject to section 48EA.
- (3) Section 48EA—  
After section 48E, insert:  
**Prohibition on cross-examination of victim witness without special reasons etc.**
- 48EA. (1) In this section—  
“offence involving violence” means—
- (a) a prescribed sexual offence within the meaning of the Crimes Act 1900;
  - (b) an offence under sections 27–30 of the Crimes Act 1900 (attempts to murder);
  - (c) an offence under section 33 of the Crimes Act 1900 (wounding etc. with intent to do grievous bodily harm or resist arrest);
  - (d) an offence under section 35 (b) of the Crimes Act 1900 (infliction of grievous bodily harm);
  - (e) an offence under sections 86–91 of the Crimes Act 1900 (abduction or kidnapping);
  - (f) an offence under sections 94–98 of the Crimes Act 1900 (robbery); or
  - (g) any other offence that involves an act of actual or threatened violence that is prescribed by the regulations for the purposes of this section,
- but does not include an offence to which section 476 of the Crimes Act 1900 applies;

*Justices (Paper Committals) Amendment 1987*


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**SCHEDULE 1—AMENDMENTS RELATING TO PAPER  
COMMITTALS—*continued***

“victim”, in relation to an offence involving violence, means a person against whom the offence was committed.

(2) Where in any committal proceedings the Justice or Justices is or are satisfied that—

- (a) the defendant has been charged with an offence involving violence; and
- (b) the person who made a written statement tendered as evidence under this Subdivision is an alleged victim of that offence,

the Justice or Justices shall not give a direction under section 48E requiring the attendance at those proceedings of the alleged victim or otherwise reject the statement because the defendant has requested the attendance at those proceedings of the alleged victim unless the Justice or Justices is or are satisfied that there are special reasons why the alleged victim should, in the interests of justice, attend at those proceedings to give oral evidence.

(3) The regulations may make provision for or with respect to the determination of such special reasons.

(4) Section 48GA—

After section 48G, insert:

**Time for, and manner of, service of written statements or requests to call witnesses etc.**

48GA. (1) The Justice or Justices shall, when giving a direction under section 48B or 48D for the service of a written statement or notice on the defendant, direct that the statement or notice be served at least 28 days before the committal hearing unless the defendant consents to a shorter period or the circumstances of the case otherwise require.

(2) The Justice or Justices shall, when giving a direction under section 48E (1) (a) for the service of a notice on the informant, direct that the notice be served at least 14 days before the committal hearing unless the informant consents to a shorter period or the circumstances of the case otherwise require.

(3) A written statement or other notice under this Subdivision shall be served in such manner as may be prescribed by the regulations or (subject to the regulations) in such manner as may be determined by the Justice or Justices.

(4) In this section—

*Justices (Paper Committals) Amendment 1987*


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**SCHEDULE 1—AMENDMENTS RELATING TO PAPER  
COMMITTALS—*continued***

“committal hearing” means the time set by the Justice or Justices for taking the evidence for the prosecution in committal proceedings.

**SCHEDULE 2—MISCELLANEOUS AMENDMENTS**

(Sec. 3)

- (1) **Section 41 (Procedure on hearing of charge of indictable offence)—**
- (a) Section 41 (1B) (d)—  
Omit “, after the commencement of the taking of evidence for the prosecution,”.
  - (b) Section 41 (1B) (d)—  
Before “continue”, insert “commence or”.
  - (c) Section 41 (1B) (e)—  
After section 41 (1B) (d), insert:
    - (e) The evidence for the prosecution shall not be taken in the absence of the defendant unless—
      - (i) the defendant has been served under section 48B with a copy of any written statement to be tendered as evidence in the proceedings; or
      - (ii) the absence occurs after a time has been set by the Justice or Justices for taking the evidence for the prosecution.
  - (d) Section 41 (7)—  
Omit “that occurred during the taking of the evidence for the prosecution”, insert instead “and the Magistrate or Judge is satisfied that it is in the interests of justice to do so”.
  - (e) Section 41 (9)—  
After section 41 (8), insert:
    - (9) The Justice or Justices may at any stage during the examination or cross-examination of any witness giving evidence for the prosecution or the defence terminate the examination or cross-examination on any particular matter if satisfied that any further examination or cross-examination on the matter will not assist the Justice or Justices in forming any opinion referred to in subsection (2) or (6).
- (2) **Section 122 (Appeal allowed in every case of conviction or order made by Justices)—**
- Section 122 (2AB)—



SCHEDULE 2—MISCELLANEOUS AMENDMENTS—*continued*

After section 122 (2A), insert:

(2AB) A direction by the Attorney General under subsection (2A) may be given in respect of a particular appeal or application that has been lodged or in respect of appeals or applications of a particular class that are lodged after the direction is given.