

FIRST PRINT

**MISCELLANEOUS ACTS (COMMITTAL PROCEEDINGS)
AMENDMENT BILL 1990**

NEW SOUTH WALES



EXPLANATORY NOTE

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

This Bill is cognate with the Criminal Procedure (Committal Proceedings) Amendment Bill 1990.

The objects of this Bill are:

- (a) to amend various Acts relating to criminal procedure to make the necessary consequential changes as a result of the proposed Criminal Procedure (Committal Proceedings) Amendment Act 1990; and
- (b) to enable a police officer to give evidence in chief for the prosecution by reading from a statement prepared by the officer at the time of or soon after the relevant offence; and
- (c) to require the Director of Public Prosecutions to give reasons (on application) for a no bill or for any other termination of proceedings.

Clause 1 specifies the short title of the proposed Act.

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

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

SCHEDULE 1 - AMENDMENTS

The Schedule contains amendments to the following Acts:

Bail Act 1978. The amendments ensure that a defendant may be granted bail between the end of a pre-trial examination and the committal for trial or discharge of the defendant. Other consequential changes are also made.

Children (Criminal Proceedings) Act 1987. The amendments apply the proposed new pre-trial procedures to proceedings in the Children's Court. The authority of the Children's Court to change summary proceedings for indictable offences to proceedings on indictment if the Court considers that summary disposal is not appropriate has been retained. Other consequential changes are made.

Coroners Act 1980. Contains a minor consequential change.

Crimes Act 1900. Contains consequential repeals and changes. The amendments include a provision (proposed section 418) for police officers to give prosecution evidence by reading a statement made at the time of the alleged offence.

Criminal Appeal Act 1912. The amendments provide a right of appeal to the Court of Criminal Appeal where a Judge in any trial also disposes of related summary offences ("back-up charges") under proposed Part 14 of the Criminal Procedure Act 1986. Other consequential changes are also made.

Defamation Act 1974. The amendment provides a defence of absolute privilege from defamation for reasons given by the Director of Public Prosecutions for a no bill or other termination of proceedings.

Director of Public Prosecutions Act 1986. Item (8) requires the Director to give reasons (on application) for a no bill or other termination of proceedings. Other consequential changes are also made.

Drug Misuse and Trafficking Act 1985. Makes consequential changes relating to the proposed new procedures in Part 9 for dealing with indictable offences summarily.

Firearms Act 1989. Makes a consequential change relating to the proposed new procedures in Part 9 of the Criminal Procedure Act 1986 for dealing with indictable offences summarily.

Industrial Arbitration Act 1940. Makes a consequential change.

Interpretation Act 1987. Provides definitions of "pre-trial proceedings" and "pre-trial examination" for the purpose of the interpretation of legislation. Existing references in legislation to "committal proceedings" will become references to pre-trial proceedings.

Jury Act 1977. Makes consequential changes as a result of the transfer to proposed Part 13 of the Criminal Procedure Act 1986 of provisions relating to the right to jury trial in criminal proceedings.

Justices Act 1902. Makes consequential changes. Repeals provisions in the Act dealing with committal proceedings which have been replaced by proposed Parts 10, 11 and 12 of the Criminal Procedure Act 1986.

Justices (Paper Committals) Amendment Act 1987. Repeals uncommenced provisions to a section of the Justices Act 1900 which is being repealed.

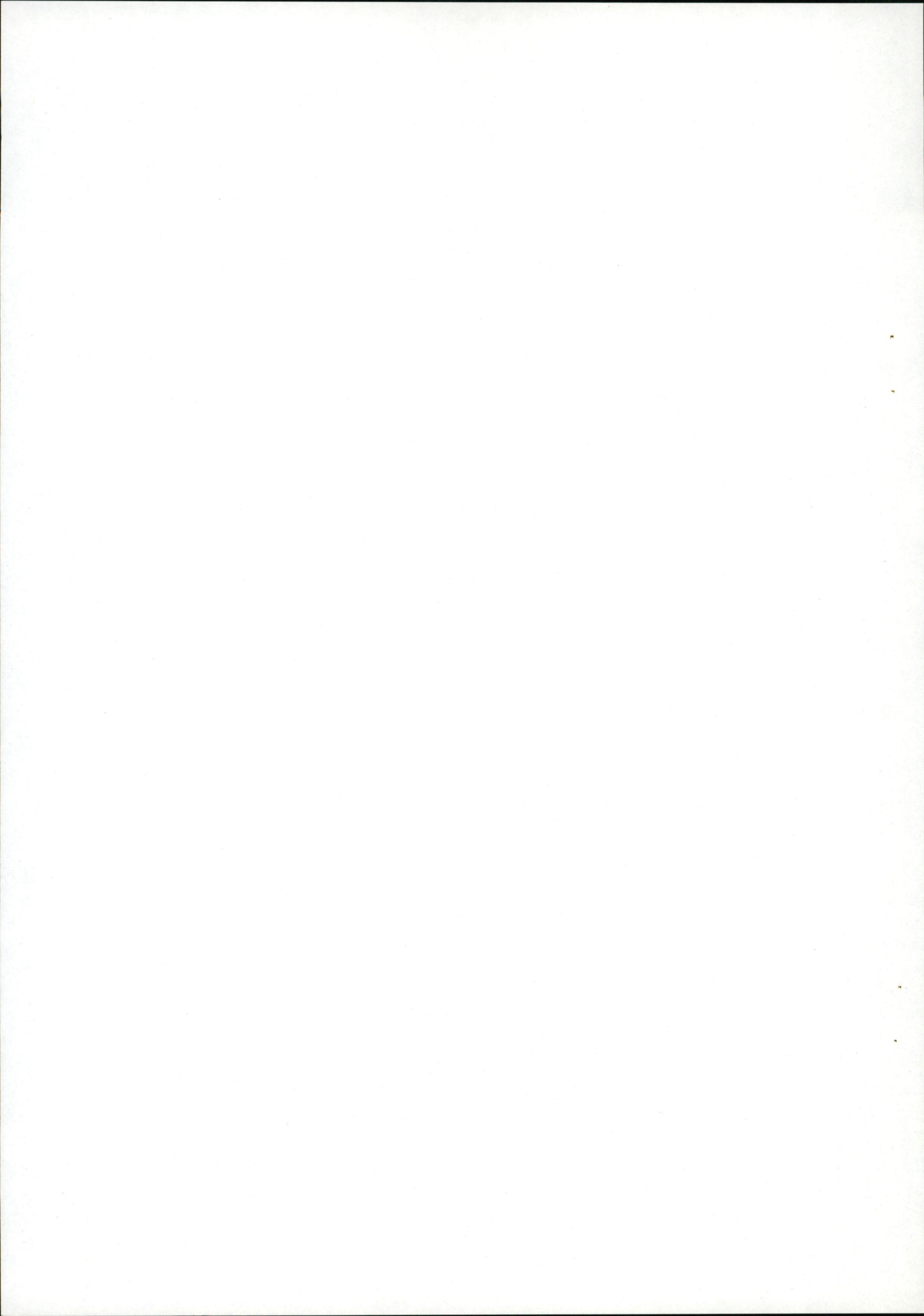
Listening Devices Act 1984. Makes consequential changes relating to the proposed new procedures in Part 9 of the Criminal Procedure Act 1986 for dealing with indictable offences summarily.

Miscellaneous Acts (Committal Proceedings) Amendment 1990

Pre-trial Diversion of Offenders Act 1985. Makes consequential changes.

Prohibited Weapons Act 1989. Makes a consequential change relating to the proposed new procedures in Part 9 of the Criminal Procedure Act 1986 for dealing with indictable offences summarily.

Supreme Court Act 1970. Makes a minor consequential change.



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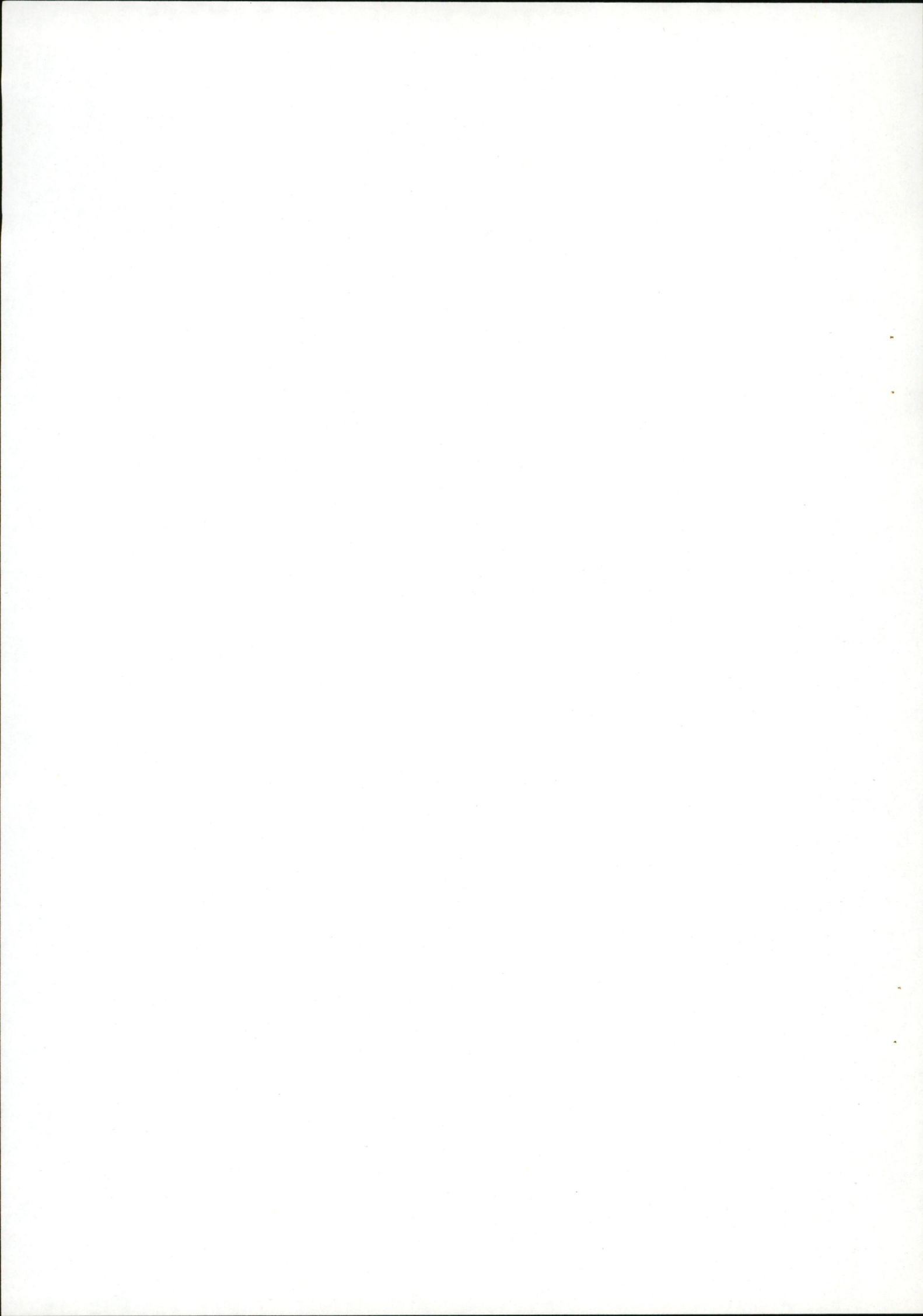
NEW SOUTH WALES



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SCHEDULE 1 - AMENDMENTS



**MISCELLANEOUS ACTS (COMMITTAL PROCEEDINGS)
AMENDMENT BILL 1990**

NEW SOUTH WALES



No. , 1990

A BILL FOR

An Act to amend certain Acts with respect to criminal procedure and in connection with the enactment of the Criminal Procedure (Committal Proceedings) Amendment Act 1990.

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Miscellaneous Acts (Committal Proceedings) Amendment Act 1990.

Commencement

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

Amendments

3. Each Act specified in Schedule 1 is amended as set out in that Schedule.

SCHEDULE 1 - AMENDMENTS

(Sec. 3)

Bail Act 1978 No. 161

- (1) Section 16 (**Extension of meaning of adjournment in sec. 6**):
Omit section 16 (a) and (b), insert instead:
- (a) any period during which a defendant is excused from attending a pre-trial examination;
 - (a1) any period after a pre-trial examination and before the end of the pre-trial proceedings;
 - (b) the period between the making of an order under section 82 of the Criminal Procedure Act 1986 and the continuation of the pre-trial proceedings consequent on the making of the order;
- (2) Section 24 (**Limitations on power of magistrates and justices**):
From section 24 (2), omit "section 51 A (3) of the Justices Act 1902", insert instead "section 82 of the Criminal Procedure Act 1986".
- (3) Section 26 (**Power of District Court to grant bail**):
From section 26 (1) (f), omit "section 51 A (1) (d) (i) of the Justices Act 1902", insert instead "section 82 of the Criminal Procedure Act 1986".

SCHEDULE 1 - AMENDMENTS - *continued*

Children (Criminal Proceedings) Act 1987 No. 55

(1) Section 13 (**Admissibility of certain statements etc.**):

(a) From section 13 (2) (a), omit "committal proceedings", insert instead "a pre-trial examination".

(b) After section 13 (3), insert:

(4) Nothing in this section limits or affects the admissibility in evidence in a pre-trial examination of any statement or information that the defendant agrees to be admitted in evidence.

(2) Section 27 (**Application of Justices Act 1902 etc.**):

From section 27 (2), omit "Justices Act 1902 applies", insert instead "Justices Act 1902 and the Criminal Procedure Act 1986 apply".

(3) Section 31 (**Hearing of charges in the Children's Court**):

Omit section 31 (2)-(5), insert instead:

(2) Despite subsection (1):

(a) if a person is charged before the Children's Court with an indictable offence (other than an offence that is punishable summarily without the consent of the accused); and

(b) if the person informs the Children's Court (at any time during, or at the close of, the case for the prosecution) that the person wishes to take his or her trial according to law,

the proceedings for the offence are to be dealt with on indictment in accordance with the Criminal Procedure Act 1986 as if an information had been laid before the Children's Court in accordance with section 21 of the Justices Act 1902.

(3) Despite subsection (1):

(a) if a person is charged before the Children's Court with an indictable offence; and

SCHEDULE 1 - AMENDMENTS - *continued*

- (b) if the Children's Court states (after all the evidence for the prosecution has been taken) that it is of the opinion, having regard to the evidence before it, that the charge may not properly be disposed of in a summary manner,

the proceedings for the offence are to be dealt with on indictment in accordance with the Criminal Procedure Act 1986 as if an information had been laid before the Children's Court in accordance with section 21 of the Justices Act 1902.

(4) For the purposes of the continuation of proceedings under subsection (3), the evidence for the prosecution is to be taken to be part of the pre-trial examination.

(5) Despite subsection (1):

- (a) if a person is charged before the Children's Court with an indictable offence; and
- (b) if, at any stage of the proceedings, the person pleads guilty to the charge; and
- (c) if the Children's Court states that it is of the opinion that, having regard to all the evidence before it, the charge may not be properly disposed of in a summary manner,

the proceedings for the offence are to be dealt with on indictment in accordance with Part 12 of the Criminal Procedure Act 1986 as if the person had pleaded guilty to the offence as referred to in that Part.

Coroners Act 1980 No. 27

Section 20 (Further inquest or inquiry after previous inquest or inquiry terminated under section 19):

From section 20 (1) (a) (i), omit "section 51A of the Justices Act 1902", insert instead "Part 12 of the Criminal Procedure Act 1986".

SCHEDULE 1 - AMENDMENTS - *continued*

Crimes Act 1900 No. 40

- (1) Section 1 (**Short title and contents of Act**):
 - (a) Omit from the matter relating to Part 10 the words "AND DISCHARGE OF PERSONS IN CUSTODY".
 - (b) Omit the matter relating to Chapter 1 of Part 14.
 - (c) Omit the matter relating to item (A) of Chapter 3 of Part 14.
- (2) Part 10, heading:

Omit "AND DISCHARGE OF PERSONS IN CUSTODY".
- (3) Section 358 and heading (**Discharge of persons in custody**):

Omit the section and the heading to the section.
- (4) Section 360A (**Indictment etc. of corporations**):

Omit section 360A (2), insert instead:

(2) A corporation which is charged with an indictable offence may be committed for trial or sentence in the same way as a natural person charged with any such offence may be so committed. For the purposes of any pre-trial proceedings, the corporation may appear by its representative.
- (5) Section 405A (**Notice of alibi**):

Omit section 405A (3), insert instead:

(3) The Court may not refuse leave under this section if it appears to the Court that, on or before the committal for trial of the defendant, the defendant was not informed of the requirements of subsections (1), (2) and (5). A written statement by a Magistrate that the defendant was so informed is evidence that the defendant was so informed.

SCHEDULE 1 - AMENDMENTS - *continued*

(6) Section 409 (**Depositions may be read as evidence for prosecution etc.**):

(a) From section 409 (1) (b) (i) and (ii), (1) (c) and (5), omit "having been discharged under section 41 (1B) of the Justices Act 1902" wherever occurring, insert instead "having been excused from being present".

(b) Omit section 409 (2) (b), insert instead:

(b) the Justice or coroner certifies before the trial that the evidence of the witness is material, and that the Justice or coroner believes that the witness is willing to attend the trial but is unable to bear the expense of attendance.

(c) Omit section 409 (11), insert instead:

(11) In this section, "**prescribed statement**" means any written statement admitted in evidence in a pre-trial examination.

(12) Despite anything to the contrary in this section, the trial Judge may exclude all or any depositions or prescribed statements of witnesses in the pre-trial examination relating to the proceedings being read as evidence at the trial. The trial Judge must have regard to whether the defendant was entitled to cross-examine the witness with respect to any evidence which the trial Judge is requested to exclude under this subsection.

(7) Section 409A (**Depositions of previous connected proceedings may be read as evidence in pre-trial examinations**):

From section 409A (2), omit "hearing referred to in section 41 of the Justices Act 1902", insert instead "pre-trial examination".

(8) After section 417, insert:

Evidence by Police

418. (1) A member of the Police Force may give evidence in chief for the prosecution in the trial in any

SCHEDULE 1 - AMENDMENTS - *continued*

court of a person charged with a summary or an indictable offence by reading or being led through a written statement previously made by the member of the Police Force.

(2) A statement may only be used as referred to in this section if:

- (a) a copy of the statement has been given to the person charged or his or her counsel or attorney; and
 - (b) the statement was made by a member of the Police Force at the time of or soon after the occurrence or existence of the facts to which it refers; and
 - (c) the member of the Police Force signed the statement at the time it was made.
- (9) Section 420 (**Receivers - evidence of guilty knowledge**):
From paragraph (1) of the proviso to section 420, omit "on his committal", insert instead "at the pre-trial examination".
- (10) Omit Chapter 1 (**Indictable offences punishable summarily only by consent of the accused**) of Part 14.
- (11) Omit item (A) (**Indictable offences punishable summarily without consent**) of Chapter 3 of Part 14.
- (12) Section 552 (**Jurisdiction of Magistrates in respect of offences arising under Chapter 2 of Part 4**):
Omit the section and the heading to the section.
- (13) Third Schedule:
Omit the Schedule.

SCHEDULE 1 - AMENDMENTS - *continued*

Criminal Appeal Act 1912 No. 16

- (1) After section 5AC, insert:

Appeals as to related summary offences in criminal cases dealt with by the Supreme Court or the District Court

5AD. (1) Section 5AA applies to and in respect of a person convicted of an offence by the Supreme Court or District Court in the exercise of its jurisdiction under Part 14 of the Criminal Procedure Act 1986 in the same way as it applies to a person referred to in section 5AA (1).

(2) For the purpose of this section, a reference in section 5AA to the Supreme Court is to be read and construed as including a reference to the District Court.

(3) The power of the Court of Criminal Appeal to hear and determine an appeal under this section is to be exercised by such single judge of the Supreme Court as the Chief Justice may direct unless:

- (a) the judge considers that the appeal should be dealt with by the full court and notifies the Chief Justice accordingly; or
- (b) an appeal is lodged under this Act in relation to the related indictable offence.

- (2) **Section 8A (Power of court to order pre-trial proceedings to be continued in certain cases):**

- (a) Omit "subsection (7) of section 51A of the Justices Act 1902, as amended by subsequent Acts", insert instead "Part 12 of the Criminal Procedure Act 1986".
- (b) Omit "under section 34 of the Justices Act 1902 as amended by subsequent Acts," and "; and the provisions of the said section 34 apply to and in respect of the appellant".

- (3) **Section 10 (Time for appealing):**

From section 10 (4), omit "or 5AC", insert instead ", 5AC or 5AD".

SCHEDULE 1 - AMENDMENTS - *continued*

Defamation Act 1974 No. 18

After section 17K, insert:

Matters relating to the Director of Public Prosecutions

17L. There is a defence of absolute privilege for a publication by the Director of Public Prosecutions in complying with section 33A of the Director of Public Prosecutions Act 1986.

Director of Public Prosecutions Act 1986 No. 207

(1) Section 3 (**Definitions**):

From section 3 (1), omit the definition of "committal proceedings".

(2) Section 7 (**Principal functions**):

Omit section 7 (2), insert instead:

(2) The Director has the same functions as the Attorney General in relation to:

- (a) finding a bill of indictment, or determining that no bill of indictment be found, in respect of an indictable offence (whether or not the person concerned has been committed for trial or has been charged before a Local Court); and
- (b) directing that no further proceedings be taken against a person who has been committed for trial or sentence.

(3) Section 8 (**Instituting other proceedings**):

From section 8 (1) (a), omit "committal proceedings", insert instead "pre-trial proceedings".

(4) Section 17 (**Provision of information to Director**):

Omit section 17 (2) (c), insert instead:

- (c) each material document in the possession of the person, including copies of any documents disclosed

SCHEDULE 1 - AMENDMENTS - *continued*

or to be disclosed to the defendant under Part 10 of the Criminal Procedure Act 1986; and

- (5) Section 21 (**Appearances by and on behalf of Director**):
After "solicitor", insert "or a police prosecutor".
- (6) Section 27 (**Attorney General to notify Director of bills and no bills**):
- (a) Omit section 27 (1) (a), insert instead:
 - (a) finding a bill of indictment, or determining that no bill of indictment be found, in respect of an indictable offence (whether or not the person concerned has been committed for trial or has been charged before a Local Court);
 - (b) Omit section 27 (1) (c).
 - (7) Section 33 (**Delegation**):
Omit section 33 (2), insert instead:
 - (2) The Director may not delegate the exercise of any of the following functions, except to a Deputy Director:
 - (a) determining that no bill of indictment be found in respect of an indictable offence;
 - (b) directing that no further proceedings be taken against a person who has been committed for trial or sentence;
 - (c) appealing under section 5D of the Criminal Appeal Act 1912 to the Court of Criminal Appeal against a sentence.
 - (8) Section 33A:
After section 33, insert:
DPP must give reasons for decisions
33A. The Director of Public Prosecutions must, on written request by any person, give written reasons for any decision by the Director not to find a bill of indictment or

SCHEDULE 1 - AMENDMENTS - *continued*

to discontinue proceedings against a person in relation to an indictable offence.

Drug Misuse and Trafficking Act 1985 No. 226

- (1) Section 30 (**Indictable offences which may be disposed of summarily without any election by accused**):

Omit section 30 (2) and (3), insert instead:

(2) An offence to which this section applies may, in accordance with Part 9 of the Criminal Procedure Act 1986, be dealt with on indictment or summarily by a Local Court.

(3) If any such offence is dealt with summarily, the maximum penalty for the offence is a fine of 50 penalty units or imprisonment for 2 years, or both.

- (2) Section 31 (**Indictable offences which may be disposed of summarily unless accused otherwise elects**):

Omit section 31 (2) and (3), insert instead:

(2) An offence to which this section applies may, in accordance with Part 9 of the Criminal Procedure Act 1986, be dealt with on indictment or summarily before a Local Court.

(3) If any such offence is dealt with summarily, the maximum penalty for the offence is a fine of 100 penalty units or imprisonment for 2 years, or both.

Firearms Act 1989 No. 25

Section 52 (**Proceedings for offences**):

Omit section 52 (2) and (3), insert instead:

(2) Despite subsection (1), an offence against this Act for which a penalty is provided if a conviction is obtained on indictment may, in accordance with Part 9 of the Criminal Procedure Act 1986, be dealt with on indictment or dealt with summarily before a Local Court.

SCHEDULE 1 - AMENDMENTS - *continued*

Industrial Arbitration Act 1940 No. 2

Section 93 (**Penalty for breach of award etc.**):

From section 93 (3), omit "Such person may be committed for trial for such offence by any justice or justices acting under and in pursuance of the Justices Act 1902, and any Acts amending the same, or by the commission. For the purposes of such committal the commission shall have the powers of a justice or justices under the said Acts."

Interpretation Act 1987 No. 15

Section 21 (**Meaning of commonly used words and expressions**):

- (a) From section 21 (1), omit the definition of "committal proceedings", insert instead:

"**committal proceedings**" means pre-trial proceedings for an indictable offence (including any pre-trial examination);

- (b) Insert in section 21 (1), in alphabetical order, the following definitions:

"**pre-trial examination**", in relation to proceedings for an indictable offence, means a pre-trial examination under Part 11 of the Criminal Procedure Act 1986;

"**pre-trial proceedings**" means proceedings (including any pre-trial examination) for an offence to be dealt with on indictment, being proceedings:

- (a) after the laying of an information before a justice in respect of the offence; and
(b) before the transfer of the proceedings to the Supreme Court or District Court for the trial or sentencing of the defendant or before the discharge of the defendant;

SCHEDULE 1 - AMENDMENTS - *continued*

Jury Act 1977 No. 18

Section 19:

Omit the section, insert instead:

Number of jurors in criminal proceedings

19. The jury in any criminal proceedings in the Supreme Court or the District Court is to consist of 12 persons returned and selected in accordance with this Act.

Justices Act 1902 No. 27

(1) Section 3 (**Definitions**):

(a) From section 3 (1), omit the definition of "Committal proceedings".

(b) Omit section 3 (2) (c).

(c) After section 3 (3), insert:

(4) In Division 1 of Part 4 (Indictable offences), a reference to the hearing of an information or case is a reference to a pre-trial examination or any examination or hearing required for the exercise of a function of the Justice or Justices in connection with any information under that Division.

(2) Section 25 (**Issue of warrant where indictment filed**):

Omit the section.

(3) Section 34 (**How defendant to be dealt with during period of adjournment**):

From section 34 (1), omit ", section 33, or section 41", insert instead "or section 33".

(4) Section 35 (**Where principal witnesses reside at some other place, Justice may transfer proceedings**):

From section 35 (1), omit "to prove the offence with which the defendant is charged", insert instead "to be called in the pre-trial examination".

SCHEDULE 1 - AMENDMENTS - *continued*

- (5) Section 36 (**How evidence is taken**):
Omit section 36 (2) and (3).
- (6) Section 38 (**Witnesses to be bound over to give evidence at trial**):
Omit the section.
- (7) Section 39 (**On committal for trial papers to be transmitted**):
Omit "the committing Justice or Justices", insert instead "the Justice or Justices concerned".
- (8) Section 41 (**Procedure on hearing of charge of indictable offence**):
Omit the section.
- (9) Section 41 A (**Payment of costs by informant**):
From section 41 A (1) (b), omit "when committing a defendant for trial", insert instead "when transferring proceedings on the committal of the defendant for trial".
- (10) Section 42 (**Person committed for trial to be committed to prison**); section 43 (**Conveying person committed for trial to gaol**):
Omit the sections.
- (11) Section 47 (**Transmission of bail undertaking etc. of person in prison**):
Omit "committing", insert instead "appropriate".
- (12) Part 4, Division 1, Subdivision 7A (**Written statements in committal proceedings**):
Omit the Subdivision.

SCHEDULE 1 - AMENDMENTS - *continued*

- (13) Part 4, Division 1, Subdivision 8 (**Recognizances**):
Omit the Subdivision.
- (14) Part 4, Division 1, Subdivision 9 (**Plea of guilty in committal proceedings**):
Omit the Subdivision.
- (15) Section 51B (**Application of Division 2 to indictable offences**):
Omit section 51B (1), insert instead:
(1) This section applies to indictable offences disposed of summarily by a Magistrate.
- (16) Section 125 (**Powers of Court appealed to**):
- (a) From section 125 (1A), omit "section 476 of the Crimes Act 1900", insert instead "Part 9 of the Criminal Procedure Act 1986".
 - (b) From section 125 (1A), omit "that section", insert instead "that Part".

Justices (Paper Committals) Amendment Act 1987 No. 235

Schedule 1 (**Amendments Relating to Paper Committals**):

Omit items (2) (b) and (3).

Listening Devices Act 1984 No. 69

- (1) Section 25:

Omit the section, insert instead:

Offences punishable either on indictment or summarily

25. Despite section 24, an offence against Part 2 may, in accordance with Part 9 of the Criminal Procedure Act 1986, be dealt with on indictment or summarily before a Local Court.

SCHEDULE 1 - AMENDMENTS - *continued*

- (2) Section 26 (**Certain summary proceedings to become committal proceedings**):

Omit the section.

Pre-Trial Diversion of Offenders Act 1985 No. 153

- (1) Section 5 (**Justices Act 1902 to apply**):

After "Justices Act 1902", insert "and the Criminal Procedure Act 1986".

- (2) Section 18 (**Act ceases to apply if plea of guilty rejected**):

From section 18 (1), omit "under section 51A of the Justices Act 1902".

- (3) Section 19 (**Justice may not dispose of certain child sexual assault cases summarily**):

Omit "section 476 of the Crimes Act 1900", insert instead "Part 12 of the Criminal Procedure Act 1986".

Prohibited Weapons Act 1989 No. 26

Section 17 (**Proceedings for offences**):

Omit section 17 (2) and (3), insert instead:

(2) Despite subsection (1), an offence against this Act for which a penalty is provided if a conviction is obtained on indictment may, in accordance with Part 9 of the Criminal Procedure Act 1986, be dealt with on indictment or dealt with summarily before a Local Court.

Supreme Court Act 1970 No. 52

Third Schedule (**Criminal Proceedings**):

From item (a2), omit "section 51A of the Justices Act 1902", insert instead "Part 12 of the Criminal Procedure Act 1986".
