

First print



New South Wales

## **Crimes Amendment (Recorded Interviews) Bill 1997**

### **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 *Crimes Act 1900* to make it an offence to broadcast a tape recording of questioning by an investigating official in connection with the investigation of the commission or possible commission of an offence if the tape recording relates to a person who is suspected, or is or was accused, of that offence unless the broadcast is authorised by a court that is satisfied the broadcast is in the public interest. It will also be an offence to fail to comply with any associated directions given by the court.

The Bill also amends the *Criminal Procedure Act 1986* to require the offence relating to the broadcast of a tape recorded interview to be dealt with summarily unless the prosecuting authority or the person charged with the offence elects to have the offence dealt with on indictment and the offence relating to failure to comply with associated directions to be dealt with summarily unless the prosecuting authority elects otherwise.

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## 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 giving effect to the amendments to the *Crimes Act 1900* set out in Schedule 1.

**Clause 4** is a formal provision giving effect to the amendments to the *Criminal Procedure Act 1986* set out in Schedule 2.

**Schedule 1 [2]** inserts proposed Part 7A (sections 343B–343F) into the *Crimes Act 1900*.

**Proposed section 343B** defines a number of expressions for the purposes of the proposed Part. These include definitions of “broadcast”, “investigating official” and “tape recording”.

**Broadcast** is defined to include any radio or television broadcast and any broadcast on an on-line service (such as a bulletin board or a service providing information through a system connected to the Internet).

**Investigating official** is defined to mean:

- (a) a police officer (other than a police officer who is engaged in covert investigations under the orders of a superior), or
- (b) a person appointed by or under an Act (other than a person who is engaged in covert investigations under the orders of a superior) and whose functions include functions in respect of the prevention or investigation of offences, or
- (c) any other person prescribed by the regulations for the purposes of this definition.

**Tape recording** is defined to include an audio recording, a video recording or a video recording accompanied by a separately but contemporaneously recorded audio recording.

**Proposed section 343C** applies the proposed Part to a tape recording of questioning, of a person suspected or accused of an offence, by an investigating official in connection with the investigation of the commission or possible commission of an offence. The proposed Part will apply whether or not the person questioned is later charged or convicted and whether or not the tape recording is admitted in evidence. It also extends the proposed Part to a tape recording made before the commencement of the Part.

**Proposed section 343D** enables a court to make an order authorising the broadcast of a tape recording to which the proposed Part applies if satisfied the broadcast is in the public interest. The court may authorise the broadcast with or without conditions and may give such directions as the court considers necessary as to the use of the tape recording. In deciding whether to authorise the broadcast the court is required to take into account:

- (a) the danger that broadcast of the tape recording might prejudice any investigation or proceeding (whether civil or criminal) or any anticipated investigation or proceeding, and
- (b) the danger that broadcast of the tape recording might be unfairly prejudicial to a person suspected or accused of an offence to which the tape recording relates, or might be misleading, and
- (c) any harmful consequences that broadcast of the tape recording may have for any alleged victim of the offence to which the tape recording relates or any member of the family of the alleged victim.

The court is required to specify the number of occasions on which the tape recording is allowed to be broadcast unless it considers it inappropriate to do so.

**Proposed section 343E** makes it an offence to broadcast a tape recording or any part of a tape recording to which the proposed Part applies unless the broadcast is authorised by an order that is in force under proposed section 343D and is in accordance with, and complies with any conditions imposed by, the order. The section also makes it an offence to fail to comply with any associated directions given by the court.

The section makes it clear that it is not an offence for an investigating official or any other person to broadcast a tape recording to which the proposed Part applies in the exercise or performance of a power, function or duty conferred or imposed on the investigating official or person by or under any Act or law.

**Proposed section 343F** enables regulations and rules of court to be made for the purposes of the proposed Part.

**Schedule 1 [1]** makes a consequential amendment.

**Schedule 2** amends the *Criminal Procedure Act 1986* as described in the Overview of the Bill above to include the offences under proposed section 343E (1) and (2) of the *Crimes Act 1900* in Tables 1 and 2, respectively, of Part 9A of the Act. An amendment is also made to section 33K of the Act to limit the maximum penalty that may be imposed by a Local Court for an offence under proposed section 343E (2). (Existing section 33J of the Act will limit the maximum penalty that may be imposed by a Local Court for an offence under proposed section 343E (1) to 2 years imprisonment or 100 penalty units (currently, \$10,000), or both.)





New South Wales

# Crimes Amendment (Recorded Interviews) Bill 1997

## Contents

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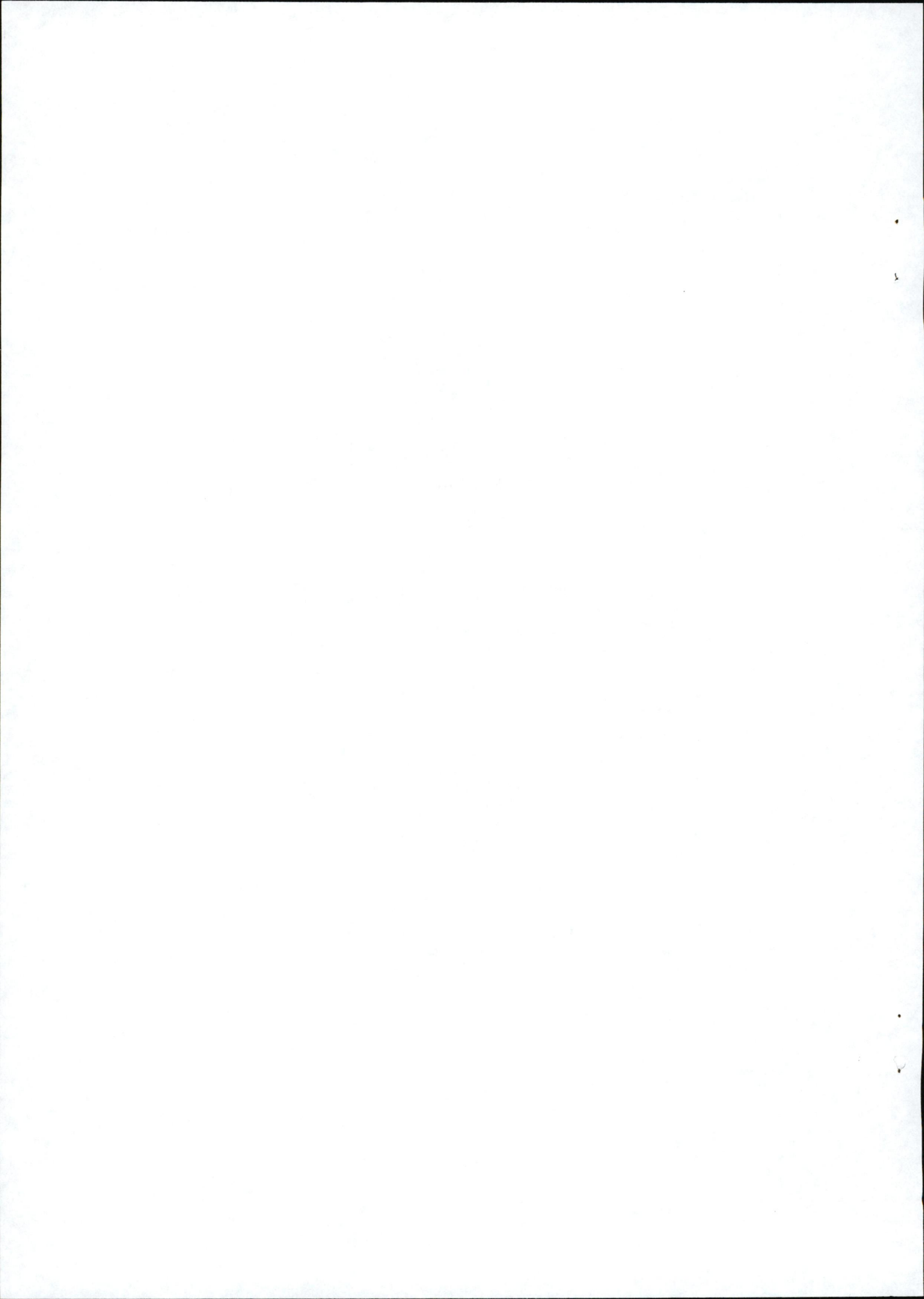
	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Crimes Act 1900 No 40	2
4 Amendment of Criminal Procedure Act 1986 No 209	2

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### Schedules

1 Amendment of Crimes Act 1900	3
2 Amendment of Criminal Procedure Act 1986	8

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New South Wales

## **Crimes Amendment (Recorded Interviews) Bill 1997**

No. , 1997

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### **A Bill for**

An Act to amend the *Crimes Act 1900* in relation to the broadcast of tape recorded interviews with suspects and to make related amendments to the *Criminal Procedure Act 1986*.

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

**1 Name of Act**

This Act is the *Crimes Amendment (Recorded Interviews) Act 1997*.

**2 Commencement**

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

**3 Amendment of Crimes Act 1900 No 40**

The *Crimes Act 1900* is amended as set out in Schedule 1.

**4 Amendment of Criminal Procedure Act 1986 No 209**

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The *Criminal Procedure Act 1986* is amended as set out in Schedule 2.



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**Schedule 1 Amendment of Crimes Act 1900**

(Section 3)

**[1] Section 1 Short title and content of Act**

Insert after the matter relating to Part 7:

Part 7A—Broadcasts of tape recorded interviews—ss 5  
343B–343F

**[2] Part 7A (sections 343B–343F)**

Insert after Part 7:

**Part 7A Broadcasts of tape recorded interviews**

**343B Definitions 10**

In this Part:

*accused person* or *person accused of an offence* has the same meaning as in the *Bail Act 1978*.

*appropriate court*, in relation to a tape recording to which this Part applies of the questioning of a person, means: 15

- (a) if the person is suspected, but has not been accused, of having committed an offence to which the tape recording relates—a Local Court, or
- (b) if the person is a person accused of an offence to which the tape recording relates and proceedings against the person are yet to be finally determined—the court before which the person is appearing, or, if not currently before a court, before which proceedings are pending, in connection with the offence, or 20
- (c) if the person was accused of an offence to which the tape recording relates and proceedings against the person have been finally determined—the court before which the person last appeared in connection with the offence. 25 30

**broadcast** includes any radio or television broadcast and any broadcast by means of an on-line service.

**investigating official** means:

- (a) a police officer (other than a police officer who is engaged in covert investigations under the orders of a superior), or 5
- (b) a person appointed by or under an Act (other than a person who is engaged in covert investigations under the orders of a superior) and whose functions include functions in respect of the prevention or investigation of offences, or 10
- (c) any other person prescribed by the regulations for the purposes of this definition.

**member of the family** of a person means:

- (a) a spouse, or 15
- (b) a de facto spouse, or partner of the same sex, who has cohabited with the person for at least 2 years, or
- (c) a parent, guardian or step-parent of the person, or
- (d) a child or step-child of the person or some other child of whom the person is the guardian, or 20
- (e) a brother, sister, step-brother or step-sister of the person.

**on-line service** means a service provided by or through the facilities of a computer communication system and accessed through a telecommunications network that allows for: 25

- (a) the input, output or examination of computer data or computer programs, or
- (b) the transmission of computer data or computer programs from one computer to another, or 30
- (c) the transmission of computer data or computer programs from a computer to a terminal service.

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*tape recording* includes:

- (a) an audio recording, or
- (b) a video recording, or
- (c) a video recording accompanied by a separately but contemporaneously recorded audio recording.

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**343C Application of Part**

- (1) This Part applies to a tape recording of questioning, of a person suspected or accused of an offence, by an investigating official in connection with the investigation of the commission or possible commission of an offence.
- (2) This Part extends to a tape recording made before the commencement of this Part.
- (3) An application under this Part, which is made to a court before which a person accused of an offence to which the tape recording relates has already appeared, may be dealt with by the court whether or not the court is constituted in the same way as it was when the person last appeared before it.

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**343D Broadcasting of tape recordings**

- (1) An appropriate court may, by order, authorise the broadcast by a person specified in the order of a tape recording to which this Part applies if the court is satisfied that broadcast of the tape recording is in the public interest.
- (2) The court is to specify the number of occasions on which the tape recording is authorised to be broadcast unless it considers it inappropriate to do so.
- (3) The court may authorise the broadcast with or without conditions and may make such directions as the court considers appropriate in respect of the tape recording (including but not limited to conditions as to the supply, copying, editing, erasure, playing, return or disposal of the tape recording).

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- (4) Without limiting the matters that the court may take into account for the purposes of determining whether or not to make an order under this section, the court is to take into account:
- (a) the danger that broadcast of the tape recording might prejudice any investigation or proceeding (whether civil or criminal) or any anticipated investigation or proceeding, and 5
  - (b) the danger that broadcast of the tape recording might be unfairly prejudicial to a person suspected or accused of an offence to which the tape recording relates, or might be misleading, and 10
  - (c) any harmful consequences that broadcast of the tape recording may have for any alleged victim of an offence to which the tape recording relates or any member of the family of the alleged victim. 15
- (5) A court may at any time vary or revoke an order (whether made by that or another court) under this section.
- (6) A court may make, vary or revoke an order under this section on its own initiative or on application made by any person. 20
- (7) An application to make, vary or revoke an order under this section is to be made in such manner as is prescribed by rules of court or, in the absence of rules of court, the regulations. 25
- (8) Nothing in this section enables a court to make an order authorising the taking of any action that would contravene this Act or any other law. In particular, and without limiting this subsection, a court may not make an order authorising the broadcast of any matter contrary to section 11 of the *Children (Criminal Proceedings) Act 1987* or section 578 or 578A of this Act. 30
- (9) A court must not make an order under this section unless the court has sought the views of any person suspected or accused of an offence to which the tape recording relates and of such other persons as may be prescribed by the regulations. 35

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**343E Unauthorised broadcasting of tape recordings**

- (1) A person must not broadcast a tape recording, or any part of a tape recording, to which this Part applies unless the broadcast is authorised:
- (a) by an order that is in force under section 343D, and is in accordance with, and complies with any conditions imposed by, the order, or
  - (b) by or under any other Act or law.
- Maximum penalty: 5 years imprisonment or 1,000 penalty units, or both. 10
- (2) A person must not fail to comply with any direction, given by a court under section 343D (3), that is in force.
- Maximum penalty: 2 years imprisonment or 250 penalty units, or both.
- (3) Nothing in this section makes it an offence for an investigating official or any other person to broadcast, in the exercise or performance of a power, function or duty conferred or imposed on the investigating official or person by or under any Act or law, a tape recording to which this Part applies. 15 20
- (4) Nothing in this section affects any power to punish a contempt of court.

**343F Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Part is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Part. 25
- (2) In particular, regulations may make provision for or with respect to orders under this Part. 30
- (3) Rules of court may (subject to the regulations) also make provision for or with respect to orders under this Part.

**Schedule 2 Amendment of Criminal Procedure Act 1986**

(Section 4)

**[1] Section 33K Maximum penalties for Table 2 offences**

Insert at the end of section 33K (2): 5

- (g) for an offence under section 343E (2) of the *Crimes Act 1900*—imprisonment for 12 months, or a fine of 50 penalty units, or both.

**[2] Part 9A, Table 1 Indictable offences that are to be dealt with summarily unless prosecuting authority or person charged elects otherwise** 10

Insert at the end of Part 3 in Table 1:

**16A Unauthorised broadcast of tape recording**

An offence under section 343E (1) of the *Crimes Act 1900*. 15

**[3] Part 9A, Table 2 Indictable offences that are to be dealt with summarily unless prosecuting authority elects otherwise**

Insert after Part 2 in Table 2:

**Part 2A Other offences under Crimes Act 1900**

**4A Failure to comply with direction authorising broadcast of tape recording** 20

An offence under section 343E (2) of the *Crimes Act 1900*.