



New South Wales

## **Justices Amendment (Committals) Bill 1996**

### **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 *Justices Act 1902*:

- to ensure that prosecution witnesses in general (and not just those that are victims of certain offences involving violence) cannot be required to give oral evidence at committal proceedings except when special reasons exist
  - to require that the cross-examination of prosecution witnesses at committal proceedings normally be confined to the subject matter that formed the basis for a Justice's decision to permit the cross-examination
  - to restate (in more direct terms) the test under which a Justice decides to commit a defendant for trial
  - to make it clear that a Justice must not, at a committal hearing, exclude otherwise admissible evidence on discretionary grounds
  - to repeal an obsolete provision permitting a prosecutor or witnesses to be bound over (or witnesses to be held in prison if they refuse to be bound over) to ensure their attendance at a trial.
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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 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 Schedule of amendments to the *Justices Act 1902*.

## Schedule 1 Amendments

### Repeal of section 38

**Schedule 1 [1]** repeals section 38 because it is obsolete. Under section 38, a Justice at committal proceedings can bind over the prosecutor and witnesses in those proceedings (or, if witnesses refuse to be bound over, order them to be held in prison) to ensure their attendance at the following trial. The provision currently applies to witnesses even if they themselves have not been charged with any offence.

**Schedule 1 [2], [10] and [11]** make consequential amendments.

### Restating the committal test

**Schedule 1 [3]** amends section 41 to restate (in more direct terms) the test under which a Justice decides whether to commit a defendant for trial.

At present, the Justice must form an opinion whether, having regard to all the evidence before the Justice, a jury would not be likely to convict the defendant of an indictable offence, and commits the defendant for trial if *not* of that opinion (current section 41 (6)).

Under the proposed amendments, a Justice will decide, on the basis of the evidence before the Justice, whether there is a reasonable prospect that a jury would convict the defendant of an indictable offence.

### Discretionary exclusion of evidence

Under proposed section 41 (8A) (as inserted by **Schedule 1 [4]**) and section 48F (1) (as amended by **Schedule 1 [8]**), a Justice must not exclude otherwise admissible evidence on discretionary grounds (such as unfairness). Instead, the Justice is to leave those decisions for the trial Judge. At present, it is not clear from the *Justices Act 1902* to what extent a Justice at committal proceedings is required to determine questions of discretionary exclusion.

### **Restricting the scope of cross-examination**

**Schedule 1 [5]** amends section 41 to require that when, for special reasons, the cross-examination of prosecution witnesses is permitted at committal proceedings, the Justice must normally ensure that the cross-examination does not stray from the subject matter on which the special reasons were based (proposed section 41 (10)).

### **Restricting further the use of oral examination at committal proceedings**

The tendering of written statements as prosecution evidence at committal proceedings is the normal procedure. However, under section 48E it is still possible for a defendant to give notice that renders a written statement inadmissible and so effectively force the appearance of the witness who made the statement (or the withdrawal of the evidence of that witness). The operation of section 48E is restricted by section 48EA in cases where the witness is a victim of an offence involving violence.

It is also possible under section 48E for a Justice to order the appearance of a witness if there are special reasons why it is in the interests of justice to do so (*even if* the witness is a victim of a violent offence: section 48EA).

**Schedule 1 [6]** replaces section 48E (and **Schedule 1 [7]** omits section 48EA) to extend the restriction so that *no* prosecution witness can be required to attend unless there are special reasons that relate to the interests of justice.

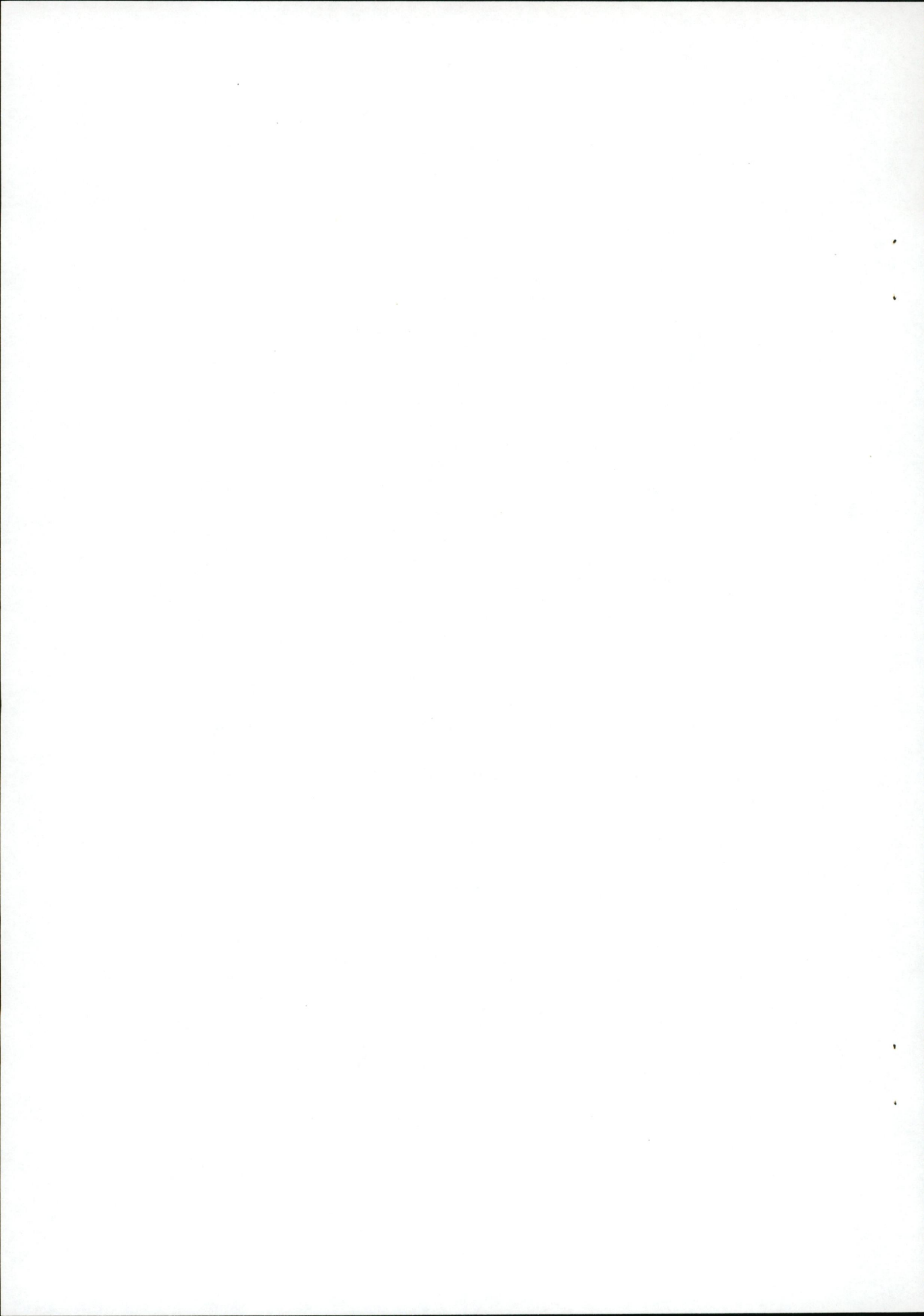
**Schedule 1 [9]** makes a consequential amendment.

### **Savings, transitional and other provisions**

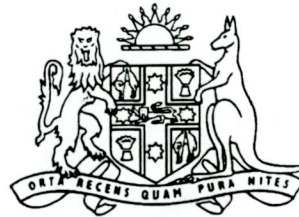
**Schedule 1 [12]** amends the Second Schedule to the *Justices Act 1902* to insert a savings and transitional provision as a consequence of the above amendments. This provision continues the application of the existing provisions (so far as they relate to the attendance of prosecution witnesses at committals) to any case in which an information was laid before that amendment took effect.

However, the provision applies each of the amendments relating to other matters to all cases immediately when the amendment takes effect.





First print



New South Wales

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New South Wales

## **Justices Amendment (Committals) Bill 1996**

No. , 1996

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### **A Bill for**

An Act to amend the *Justices Act 1902* with respect to committal procedure;  
and for other purposes.

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

**1 Name of Act**

This Act is the *Justices Amendment (Committals) Act 1996*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.            5

**3 Amendment of Justices Act 1902 No 27**

The *Justices Act 1902* is amended as set out in Schedule 1.



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## Schedule 1 Amendments

(Section 3)

**[1] Section 38 Witnesses to be bound over to give evidence at trial**

Omit the section.

**[2] Section 39 Documents to be transmitted for trial** 5

Omit "the recognizances entered into by the prosecutor and witnesses, the certificate mentioned in section 38 (1) (b) (ii) (if any)," from section 39 (1).

**[3] Section 41 (6) (a) and (b)**

Omit the paragraphs. Insert instead: 10

(a) if of the opinion that, on the basis of all the evidence before the Justice or Justices, there is a reasonable prospect that a jury would convict the defendant of an indictable offence—commit the defendant for trial, or

(b) if not of that opinion—forthwith order the defendant to be discharged as to the information then under inquiry. 15

**[4] Section 41 (8A)**

Insert after section 41 (8):

(8A) For the purposes of committal proceedings, the Justice or Justices must not exclude evidence on any of the grounds set out in Part 3.11 (Discretions to exclude evidence) of the *Evidence Act 1995*. 20

**[5] Section 41 (10)**

Insert after section 41 (9):

(10) If a person attends at committal proceedings because the person has been directed under section 48E to attend, the Justice or Justices must not allow the person to be cross-examined in respect of matters that were not the basis of the special reasons for giving the direction, unless the Justice or Justices are satisfied that there are special reasons why, in the interests of justice, the person should be cross-examined in respect of those matters. 25  
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**[6] Section 48E**

Omit the section. Insert instead:

**48E Direction to witness to attend**

- (1) For the purposes of committal proceedings, the Justice or Justices may give a direction requiring the attendance at the proceedings of a person who has made a written statement for the purposes of this Subdivision. The direction may be given on the application of the defendant or informant or on the motion of the Justice or Justices. 5  
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- (2) The Justice or Justices may give the direction only if:
  - (a) the statement has not already been admitted as evidence, and
  - (b) the Justice or Justices are of the opinion that there are special reasons why, in the interests of justice, the witness should attend to give oral evidence. 15
- (3) A defendant may apply for a direction under subsection (1) only if the defendant has served on the informant, within such period as the Justice or Justices may direct, a notice that the defendant wishes the person who made the statement to attend at the proceedings. 20
- (4) If a direction has been given under subsection (1), the statement is not admissible as evidence under section 48A in the proceedings, unless the direction has been withdrawn. 25
- (5) A direction given under subsection (1) on the application of a defendant or informant may be withdrawn only on the application, or with the consent, of the applicant.
- (6) The regulations may make provision for or with respect to the determination of special reasons under subsection (2) (b). 30

**[7] Section 48EA Prohibition on cross-examination of victim witness without special reasons**

Omit the section.

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- [8] Section 48F Rejection of whole or part of statement**
- Insert "However, the Justice or Justices must not exclude evidence on any of the grounds set out in Part 3.11 (Discretions to exclude evidence) of the *Evidence Act 1995*." at the end of section 48F (1).
- [9] Section 48GA Time and manner requirements for service of statements and notices** 5
- Omit "section 48E (1) (a)" from section 48GA (2).  
Insert instead "section 48E (3)".
- [10] Section 51A Effect of plea of guilty in committal proceedings** 10
- Omit "(including orders binding persons by recognizance in the same way as they may be bound under section 38)" from section 51A (1) (e) (iii).
- [11] Section 51A (2)** 15
- Omit "; but no person shall be bound over to give evidence on any committal under that paragraph unless the committing Justice or Justices otherwise order".
- [12] Second Schedule Savings, transitional and other provisions**
- Insert after Part 7:
- Part 8 Provisions consequent on enactment of Justices Amendment (Committals) Act 1996** 20
- 24 Committal proceedings already started**
- (1) An amendment made by Schedule 1 [1], [2], [3], [4], [8], [10] or [11] of the *Justices Amendment (Committals) Act 1996* applies from the commencement of the amendment to, or for the purposes of, all committal proceedings (including committal proceedings pending at that commencement). 25

Justices Amendment (Committals) Bill 1996

Schedule 1      Amendments

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- (2) The amendments made by Schedule 1 [5], [6], [7] and [9] of the *Justices Amendment (Committals) Act 1996* apply to, or for the purposes of, only those committal proceedings in respect of which an information is laid after the commencement of those amendments.

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New South Wales

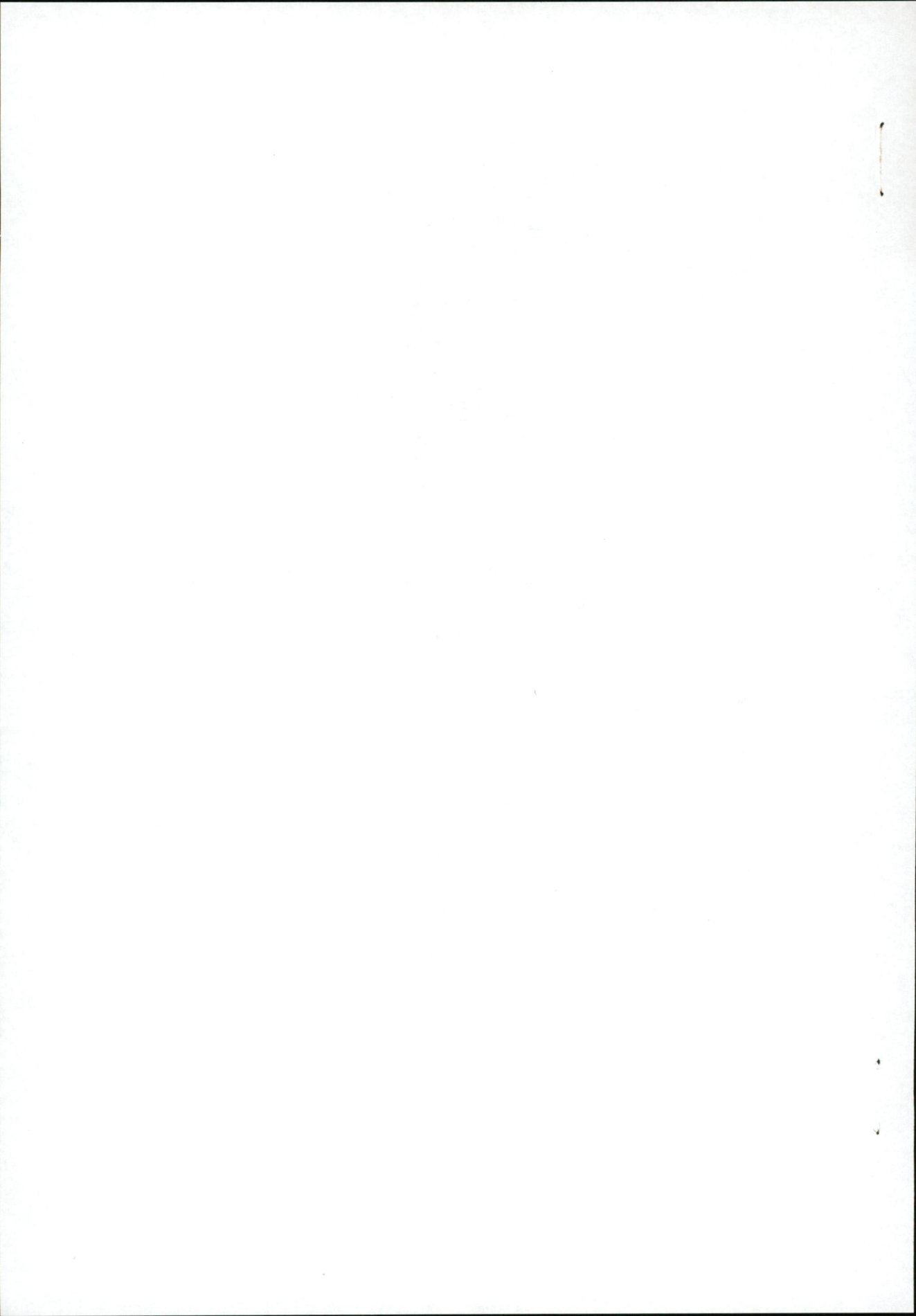
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New South Wales

## **Justices Amendment (Committals) Act 1996 No 123**

Act No 123, 1996

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An Act to amend the *Justices Act 1902* with respect to committal procedure;  
and for other purposes. [Assented to 3 December 1996]

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

**1 Name of Act**

This Act is the *Justices Amendment (Committals) Act 1996*.

**2 Commencement**

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

**3 Amendment of Justices Act 1902 No 27**

The *Justices Act 1902* is amended as set out in Schedule 1.

## Schedule 1 Amendments

(Section 3)

**[1] Section 38 Witnesses to be bound over to give evidence at trial**

Omit the section.

**[2] Section 39 Documents to be transmitted for trial**

Omit "the recognizances entered into by the prosecutor and witnesses, the certificate mentioned in section 38 (1) (b) (ii) (if any)," from section 39 (1).

**[3] Section 41 (6) (a) and (b)**

Omit the paragraphs. Insert instead:

- (a) if of the opinion that, on the basis of all the evidence before the Justice or Justices, there is a reasonable prospect that a jury would convict the defendant of an indictable offence—commit the defendant for trial, or
- (b) if not of that opinion—forthwith order the defendant to be discharged as to the information then under inquiry.

**[4] Section 41 (8A)**

Insert after section 41 (8):

- (8A) For the purposes of committal proceedings, the Justice or Justices must not exclude evidence on any of the grounds set out in Part 3.11 (Discretions to exclude evidence) of the *Evidence Act 1995*.

**[5] Section 41 (10)**

Insert after section 41 (9):

- (10) If a person attends at committal proceedings because the person has been directed under section 48E to attend, the Justice or Justices must not allow the person to be cross-examined in respect of matters that were not the basis of the reasons for giving the direction, unless the Justice or Justices are satisfied that there are substantial reasons why, in the interests of justice, the person should be cross-examined in respect of those matters.

**[6] Section 48E**

Omit the section. Insert instead:

**48E Direction to witness to attend**

- (1) For the purposes of committal proceedings, the Justice or Justices may give a direction requiring the attendance at the proceedings of a person who has made a written statement for the purposes of this Subdivision. The direction may be given on the application of the defendant or informant or on the motion of the Justice or Justices.
- (2) The Justice or Justices may give the direction only if:
  - (a) in the case of a witness in proceedings that relate to an offence involving violence who is the alleged victim of the offence—the Justice or Justices are of the opinion that there are special reasons why, in the interests of justice, the witness should attend to give oral evidence, or
  - (b) in any other case—the Justice or Justices are of the opinion that there are substantial reasons why, in the interests of justice, the witness should attend to give oral evidence.
- (3) The Justice or Justices must not give the direction if the written statement has already been admitted as evidence.



- (4) A defendant may apply for a direction under subsection (1) only if the defendant has served on the informant, within such period as the Justice or Justices may direct, a notice that the defendant wishes the person who made the statement to attend at the proceedings.
- (5) If a direction has been given under subsection (1), the statement is not admissible as evidence under section 48A in the proceedings, unless the direction has been withdrawn.
- (6) A direction given under subsection (1) on the application of a defendant or informant may be withdrawn only on the application, or with the consent, of the applicant.
- (7) If the Justice refuses or Justices refuse to give a direction under subsection (1), the Justice or Justices must give reasons for doing so.
- (8) The regulations may make provision for or with respect to the determination of special reasons under subsection (2) (a) and the determination of substantial reasons under subsection (2) (b).
- (9) In this section:

***offence involving violence*** means any of the following offences (except an offence to the extent that it is listed in Table 1 to Part 9A of the *Criminal Procedure Act 1986*):

- (a) a prescribed sexual offence within the meaning of the *Crimes Act 1900*,
- (b) an offence under sections 27–30 of that Act (attempts to murder),
- (c) an offence under section 33 of that Act (wounding etc with intent to do grievous bodily harm or resist arrest),
- (d) an offence under section 35 (b) of that Act (infliction of grievous bodily harm),
- (e) an offence under sections 86–91 of that Act (abduction or kidnapping),

- (f) an offence under sections 94–98 of that Act (robbery),
- (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.

**[7] Section 48EA Prohibition on cross-examination of victim witness without special reasons**

Omit the section.

**[8] Section 48F Rejection of whole or part of statement**

Insert “However, the Justice or Justices must not exclude evidence on any of the grounds set out in Part 3.11 (Discretions to exclude evidence) of the *Evidence Act 1995*.” at the end of section 48F (1).

**[9] Section 48GA Time and manner requirements for service of statements and notices**

Omit “section 48E (1) (a)” from section 48GA (2).  
Insert instead “section 48E (4)”.

**[10] Section 51A Effect of plea of guilty in committal proceedings**

Omit “(including orders binding persons by recognizance in the same way as they may be bound under section 38)” from section 51A (1) (e) (iii).

**[11] Section 51A (2)**

Omit “; but no person shall be bound over to give evidence on any committal under that paragraph unless the committing Justice or Justices otherwise order”.

**[12] Second Schedule Savings, transitional and other provisions**

Insert after Part 7:

**Part 8 Provisions consequent on enactment of  
Justices Amendment (Committals) Act 1996**

**24 Committal proceedings already started**

- (1) An amendment made by Schedule 1 [1], [2], [3], [4], [8], [10] or [11] of the *Justices Amendment (Committals) Act 1996* applies from the commencement of the amendment to, or for the purposes of, all committal proceedings (including committal proceedings pending at that commencement).
- (2) The amendments made by Schedule 1 [5], [6], [7] and [9] of the *Justices Amendment (Committals) Act 1996* apply to, or for the purposes of, only those committal proceedings in respect of which an information is laid after the commencement of those amendments.

[Minister's second reading speech made in—  
Legislative Assembly on 1 May 1996  
Legislative Council on 26 September 1996]

