

CRIMINAL PROCEDURE AMENDMENT (TRIAL BY JUDGE ALONE) BILL 2017

EXPLANATORY MEMORANDUM

BACKGROUND

All jurisdictions in Australia with the exception of Victoria, Tasmania and the Northern Territory currently provide for criminal trials by judge alone under certain circumstances.

In Western Australia, under s. 118 of the Criminal Procedures Act 2004, an accused may apply to the court for an order that the trial of a charge be by judge alone, without a jury. When such an application is lodged, the court presently has an overriding discretion as to whether or not the request is granted.

The purpose of this Bill is to amend the Criminal Procedure Act in such a way as to shift the onus of proof away from the defendant (who must currently argue why the case should be tried by a judge alone) and towards the Crown and the court (who must now argue why it is not in the best interests of justice to grant such an application). It therefore removes a level of discretion currently granted to the court, in that it replaces "may" with "must" unless the interests of justice dictate otherwise.

This amendment will:

- (a) Increase individual liberty by allowing the accused and his or her defence team the option of trial by judge alone;
- (b) Increase transparency, given that judges are required to set down their reasoning, whereas juries are not;
- (c) Reduce average trial times, by removing the need to empanel and instruct juries;
- (d) Reduce the impost on the public purse, given that shorter trials are generally less expensive.

What this amendment will not do is reduce in any way the right of an accused to be tried by a jury of his or her peers, if such is their choice. As presently, the Crown will not be able to compel an accused to accept trial by judge alone.

PART 1 – PRELIMINARY

1. Short Title

Provides for the short title of the Act, which will be the Criminal Procedure Amendment (Trial by Judge Alone) Act 2017.

2. Commencement

Allows for sections 1 and 2 of the Act to come into operation on the day on which the Act receives the Royal Assent, while the remainder of the Act comes into operation on a day or days to be fixed by proclamation.

3. Act amended

This clause provides that this Act will amend the *Criminal Procedure Act 2004*.

4. Section 118 amended

This clause deletes the following:

s. 118(4)	On such an application the court may make the order it is considers it is in the interests of justice to do so but, on an application by the prosecutor, must not do so unless the accused consents.
s. 118(5)	Without limiting subsection (4), the court may make the order if it considers – (a) that the trial, due to its complexity or length or both, is likely to be unreasonably burdensome to a jury; or (b) that it is likely that acts that may constitute an offence under The Criminal Code section 123 would be committed in respect of a member of a jury.
s. 118 (6)	Without limiting subsection (4), the court may refuse to make the order if it considers the trial would involve a factual issue that requires the application of objective community standards such as an issue of reasonableness, negligence, indecency, obscenity or dangerousness.

It then replaces the above with the following:

s. 118 (4)	Except as provided in subsections (5), (7) and (8), the court must make the order unless the court is satisfied that the order is not in the interests of justice.
s. 118 (5)	If the application is made by the prosecutor, the court must not make the order without the consent of the accused.