

# CRIMINAL LAW (PROCEDURE) AMENDMENT BILL 2002

## CLAUSE NOTES

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### Part 1 – Preliminary

**Clause 1. Short title**

Provides for the Act to be cited as the *Criminal Law (Procedure) Amendment Act 2002*.

**Clause 2. Commencement**

The Act comes into operation on a day to be fixed by proclamation. (Transitional and savings provisions are set out Clause 14 of the Bill. These set out the application of the Act to matters already in progress but not completed before the commencement of the Act.)

### Part 2 – *Justices Act 1902* amended

**Clause 3. The Act amended**

Amendments in this Part are to the *Justices Act 1902*.

**Clause 4. Section 4 amended**

Definition of “preliminary hearing” (committal hearing) deleted because preliminary (committal) hearings are abolished by this Bill.

**Clause 5. Section 69 amended**

Sections 69(2) and (3) are repealed because they relate to the procedure for preliminary (committal) hearings which are abolished by this Bill.

Substituted sections provide that written statements of evidence may be tendered by the prosecution to a court of summary jurisdiction for use in any resulting trial or sentencing of the defendant, and removes reference to their use at preliminary (committal) hearings.

Subsection 69(7a) is inserted to clarify that a deposition under this section does not have to be signed by the judicial officer constituting the court.

**Clause 6. Section 73 amended**

Repeals section 73(2) – 73(5) which set out procedure to be followed at preliminary (committal) hearings which are abolished by this Bill.

**Clause 7. Section 97B inserted**

Inserts new definitions of “committal mention” and “contempt offence” relevant to new committal procedure established by this Bill.

**Clause 8. Section 101 amended**

Words “On the resumption of the hearing of the complaint following” are substituted for the word “Following” in section 101(1) to reflect new committal procedure established by this Bill.

**Clause 9. Section 101A amended**

Paragraph (e) of section 101A is deleted because of new procedure for disclosure by the prosecution set out in clause 11 of the Bill.

Wording of paragraph (g) of section 101A is amended consistent with new committal procedure established by this Bill.

Heading to section 101A is amended consistent with amended content of the section.

**Clause 10. Sections 101B to 108 replaced by sections 102 to 106**

Replacement sections set out committal procedures established by this Bill to replace preliminary (committal) hearings.

*Section 102 Compulsory examination by the prosecution:* Preserves one of the beneficial functions of preliminary (committal) hearings and is based on the model in operation in Victoria (section 56A of the *Magistrates’ Court Act 1989* (Vic)). The purpose of the procedure is to allow the prosecution to call and examine certain witnesses to obtain depositions at an earlier stage (than the trial) when the interests of justice require it. The defendant may not address the Court on an application for the invoking of the compulsory examination procedure, nor on a proceeding held as part of the examination procedure. Further, the defendant may not call witnesses, nor cross-examine witnesses called by the prosecution as part of the compulsory examination procedure. Apart from these stated differences, witnesses called under a compulsory examination order are under the same degree of compulsion, must still testify on oath, and are subject to the same rules as to competency and compellability as they would have been for a preliminary (committal) hearing.

*Section 103 Disclosure by the prosecution:* Forms part of the ongoing statutory disclosure requirement for the prosecution following initial disclosure by the prosecution (section 100(1)). If the defendant does not plead guilty after the initial disclosure, the prosecution is required to disclose its case in-chief, including complete details of witness statements and expert reports. This must be done not later than 14 days before the day of the committal mention date set by the court. Without notice to the defendant, and in the absence of the defendant, a particular requirement of prosecution disclosure may be dispensed with by the court, provided the court is satisfied that there is good reason for doing so and that no miscarriage of justice will result.

*Section 104 Procedure on committal mention:* Sets out the procedure to be followed at the committal mention. Defendant is required to plead to the charge but may not give or tender evidence or submit that the evidence is insufficient to sustain an indictment. Written statements and any video-taped evidence are to be tendered. If the defendant pleads guilty to the charge the Court is to commit the defendant to a Higher Court for sentence. If the

defendant does not plead guilty to the charge, the Court is to commit the defendant to a Higher Court for trial.

*Section 105 Liability of body corporate for contempt offences:* Replaces repealed section 101E in similar terms.

*Section 106 Saving:* Publication of information described in paragraphs (a) and (b) of the section is excluded from the restrictions on publication imposed by sections 102(4) and 104(5).

**Clause 11. Section 124 amended**

The words “against or for the defendant” are deleted because they are unnecessary under the new committal procedure since only the prosecution can examine witnesses.

**Clause 12. Section 127 amended**

References to sections 101C, 107 and 108 which are repealed by this Bill are removed and references to relevant new sections (104(3) and 104(4)) inserted.

**Clause 13. Ninth Schedule replaced**

The wording of the Ninth Schedule is changed to reflect the new committal procedure.

**Clause 14. Transitional and savings**

Inserts definitions of "commencement", "new provisions" and "old provisions". The effect of the amendments contained in this clause is that a committal (preliminary) hearing that has already commenced at the time of the commencement of this Act is dealt with under the "old provisions" of the *Justices Act 1902*, whereas a committal hearing that has not commenced but merely been elected is dealt with under the "new provisions".

Specifically, if immediately before commencement of this Act -

- a complaint against a defendant has been adjourned and the defendant has not made an election for or against a preliminary hearing, or the defendant has made an election for a preliminary hearing but the proceedings in respect of the election have not been completed or have been adjourned, then the "new provisions" apply;
- a date has been set of a preliminary hearing under the "old provisions" but the hearing has not commenced, then the "new provisions" apply except that, if both the prosecution and the defendant consent to the committal hearing being conducted on the date which had been set for the preliminary hearing, the new requirements for prosecution disclosure under section 103 do not apply;
- a preliminary hearing has commenced but not been completed under the "old provisions" then the hearing is to be completed and the complaint dealt with under the old provisions.

## Part 3 – The Criminal Code amended

### Clause 15. The Act amended

Clause is self-explanatory.

### Clause 16. Section 611B and 611C inserted

*Section 611B Disclosure by the prosecution:* Forms part of the ongoing statutory disclosure requirement for the prosecution (see also, section 100 of the Act and 103 of the Bill). If an indictment has been presented to a Court against a person, the prosecution must file and serve on the defendant its case in-chief including every witness statement, expert report, notice of any person whom the prosecution proposes to call as a witness at trial, copies of every document or exhibit that the prosecution proposes to adduce at trial, etc. The prosecution must comply with this requirement as soon as practicable after the prosecution has obtained the document. The requirement for prosecution disclosure may be dispensed with if the Court is satisfied that there is good reason for doing so and no miscarriage of justice will result.

*Section 611C Disclosure by the accused person:* A defendant committed for trial is required to file and serve on the prosecution information in respect of the defence case including: copies of every statement of expert witnesses; notice of the names of others who may be able to give relevant expert evidence at trial and a description of that evidence; any factual elements of the offence which the accused may contend cannot be proved; documents and statements disclosed by the prosecution to which objection will be taken, with the grounds; and a notice of any alibi evidence. These requirements must be complied with not later than 10 days before the date set for the commencement of the trial, or, if evidence is obtained after that time, as soon as practicable. With the exception of alibi evidence, these requirements for defence disclosure may be dispensed with if the Court is satisfied that there is good reason for doing so and no miscarriage of justice will result.

### Clause 17. Section 617A amended

The words “without a preliminary hearing” are deleted because preliminary (committal) hearings are abolished by this Bill.

### Clause 18. Section 636A replaced

The substituted section sets out procedures to be followed in the event of a failure by either the prosecution or the defence to comply with a “disclosure requirement”. “Disclosure requirement” is defined to mean any requirement imposed by or under *The Criminal Code* or the *Justices Act 1902* to file and serve a document. Section 636A(5) sets out sanctions which may be applied in the event of a failure to comply with a disclosure requirement (specifically, such a failure may result in adjournment of the trial, or be the subject of adverse comment to the jury by the Court, counsel for the accused person, or the prosecution).

## **Part 4 – Consequential amendments**

### **Division 1 – *Bail Act 1982* amended**

#### **Clause 19. Section 31 amended**

Section 31(2)(d)(ii) of the *Bail Act 1982* is deleted because it relates to adjournment of a preliminary hearing or proceedings prior to the commencement of a preliminary hearing, and preliminary (committal) proceedings are abolished by this Bill.

### **Division 2 – *Children’s Court of Western Australia Act 1988* amended**

#### **Clause 20. The Act amended**

The clause is self explanatory.

#### **Clause 21. Section 19C amended**

Paragraph (c) of section 19C(1) of the *Children’s Court of Western Australia Act 1988* is deleted because it relates to procedure in the Children’s Court if an adult co-accused is to have a preliminary hearing, and preliminary (committal) proceedings are abolished by this Bill.

The words “if there is no preliminary hearing” are deleted from paragraph (d) of section 19C(1) of the *Children’s Court of Western Australia Act 1988* because preliminary (committal) proceedings are abolished by this Bill.

Section 19C(2) of the *Children’s Court of Western Australia Act 1988* is deleted because the section relates to procedure in the event that “it becomes expedient or undesirable to conduct a preliminary hearing of the adult [co-accused] jointly with that of the child”, and preliminary (committal) proceedings are abolished by this Bill.

#### **Clause 22. Section 30 amended**

Section 30 of the *Children’s Court of Western Australia Act 1988* relates to transfer of a complaint to a Court of Petty Sessions. Section 30(3) is deleted because it refers to decisions made on a preliminary hearing, and preliminary (committal) proceedings are abolished by this Bill.

### **Division 3 – *Criminal Law (Mentally Impaired Defendants) Act 1996* amended**

#### **Clause 23. Section 17 amended**

Section 17(2)(c) of the *Criminal Law (Mentally Impaired Defendants) Act 1996* is deleted because it deals with election of a preliminary hearing, and preliminary (committal) proceedings are abolished by this Bill.

### **Division 4 – *Director of Public Prosecutions Act 1991* amended**

#### **Clause 24. Section 11 amended**

The substitution of the new section 11(2) of the *Director of Public Prosecutions Act 1991* removes reference to a preliminary hearing (which is

abolished by this Bill) and includes reference to a committal mention which is established by this Bill.

### **Division 5 – *Evidence Act 1906* amended**

#### **Clause 25. The Act amended**

The clause is self explanatory.

#### **Clause 26. Section 8 amended**

The amendments to section 8(1) of the *Evidence Act 1906* remove reference to section 102 of the *Justices Act 1902* which is repealed (and replaced) by this Bill.

#### **Clause 27. Section 9 amended**

The repeal of section 9(3) of the *Evidence Act 1906* removes the application of this section to preliminary (committal) hearings which are abolished by this Bill.

#### **Clause 28. Section 106A amended**

The reference to preliminary hearings in the definition of “proceeding” is removed because preliminary (committal) hearings are abolished by this Bill.

#### **Clause 29. Section 106T amended**

Reference in this section to preliminary hearings in the definition of “hearing” is removed because preliminary (committal) hearings are abolished by this Bill.