

2008

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

CRIMES LEGISLATION AMENDMENT BILL 2008

EXPLANATORY STATEMENT

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Crimes Legislation Amendment Bill 2008

Outline

Practical aspects of the criminal justice system have been subject to reform across Australia during the last decade. The results of consultation with the ACT public through the issue of a discussion paper have informed the changes to the practical aspects of the ACT criminal justice system that are contained in this Bill. Those practical aspects include the threshold at which an offence becomes an indictable offence, the manner in which a matter is committed from the Magistrates Court to the Supreme Court, the appeals process, and costs orders.

Thresholds for summary and indictable jurisdiction

The Bill increases the threshold for matters that must be dealt with summarily in the Magistrates Court, to cover offences with a maximum penalty of up to 2 years' imprisonment and property offences involving up to \$30,000 (the current thresholds are 12 months' imprisonment or property up to \$10,000 in value). This will mean that offences such as common assault, failing to answer bail, neglect of children, and threatening to cause property damage that carry a maximum penalty of 2 years' imprisonment can only be determined in the Magistrates Court. These changes will more properly allocate matters to the Magistrates Court that can fall within the range of sentencing expertise of that Court, recognising the professional ability of the Magistrates to deal with an expanded jurisdiction.

In the past there have been instances of defendants having to be tried in the Supreme Court for relatively minor examples of serious offences that, because of their categorisation as indictable-only offences, cannot be dealt with in the Magistrates Court by election of the defendant. An example is aggravated burglary, which carries a maximum penalty of 20 years, but can be committed in relatively minor circumstances, such as where two people together (the aggravating factor) steal a small amount of property or money from a house without violence or damage to property. The Bill includes the offences of aggravated burglary and aggravated robbery in the offences that can be heard by a Magistrate at the election of the defendant, but only if the Magistrates Court, the prosecution and the defence are all of the opinion that the matter can be so dealt with.

Ex parte hearings

The Bill also makes changes to the *Magistrates Court Act 1930*, section 110. That Act currently allows for summary matters to be heard in the absence of the defendant if the defendant has been served with a summons, in what is termed an ex parte hearing. However the provisions for service of a summons do not require the defendant to be personally served with a summons, so there could be cases where a defendant knows nothing about a case that is being heard in his or her absence. This is incompatible with the *Human Rights Act 2004*, section 22(2)(d), that provides the right to be tried in

person. There could also be cases where a defendant may have been personally served with the summons but does not understand the potential consequences of not attending court to have the matter heard.

To remedy this situation the Bill amends the provisions of the *Magistrates Court Act 1930* so that the Magistrate may only proceed to hear a summary charge in the absence of the defendant if the Magistrate is satisfied that the defendant is waiving the right to attend in person, and that the decision to waive the right is a fully informed and made voluntarily.

Sentencing threshold for Magistrates Court

The Bill increases the sentencing threshold for the Magistrates Court from imprisonment for 2 years or a fine of \$10,000, or both, to imprisonment for 5 years, a fine of \$15,000, or both. Adoption of this higher threshold brings the ACT into line with the Northern Territory and Tasmania, which, like the ACT, are jurisdictions with a two-tier court system, and complements the changes to the threshold for summary only matters.

Timing of election

Historically, indictable charges that may be heard summarily have proceeded as a committal in the Magistrates Court until the end of the prosecution evidence. The defendant can then elect whether to have the matter dealt with summarily in the Magistrates Court or proceed to the Supreme Court for trial. The Bill requires defendants to indicate whether they will be consenting to the jurisdiction of the Magistrates Court when the matter is listed for hearing. Full disclosure of the prosecution case will occur through case management processes before hearing, enabling the defendant to make an informed choice about jurisdiction on the basis of the charges and the nature of the evidence to be presented. The defendant will be able to apply to revoke the election for jurisdiction if there has been a significant change in circumstances.

Hand-up Committals

The committal process is the process by which indictable charges are committed to the Supreme Court. It is an administrative procedure where the Magistrate presiding over the case makes a decision, based on the evidence before the court, to commit the defendant to stand trial, or be sentenced, in the Supreme Court. It has been recognised for many years that the practical side of the committal process in the ACT has moved beyond its legislative basis. When committals were initially formulated it was expected that all evidence would be taken orally, with witnesses called and cross-examined. With the development of a culture and practice of full disclosure of prosecution cases the modern committal will normally proceed with the Magistrate accepting written witness statements as evidence upon which to base the decision to commit a matter to the Supreme Court.

The Bill recognises this transition and changes the legislation so that hand-up, or paper, committals are the rule. The use of hand-up committals will reduce stress to victims of crimes, avoid unnecessary examination of witnesses, and save time and costs for the court, the witnesses and counsel as, in the

majority of cases, witnesses will not be required to attend court for cross-examination during the committal.

However, the Bill allows a witness to be called at the committal to be cross-examined in very limited circumstances, when the court decides that is in the interests of justice for that witness to be called. The Bill does not provide for applications to be made for witnesses to be called to give oral evidence as evidence in chief as it is contemplated that this evidence will always be given through the tendering of written statements.

Committal Tests

The Bill also changes the test that a Magistrate applies in determining whether a matter should be committed to the Supreme Court from a two stage test to a one step process where the question is decided on the basis of whether there is a reasonable prospect of conviction based on the evidence before the court. This broad test is intended to allow Magistrates to take such matters as credibility of witnesses into account in addition to the facts as set out in the witness statements.

Terminology

Committals are referred to as 'preliminary examinations' in the current legislation. The Bill replaces these references in the legislation with the term 'committal hearing' to bring the legislation into line with common terminology used by the legal profession in the ACT and throughout Australia.

Appeals process

The Bill abolishes the current two-stage process for appeal by way of order to review where an application for an order nisi is made before a decision from the Magistrates Court can be reviewed by the Supreme Court and replaces it with a one step process where an appeal is instituted by lodging a notice of appeal. It preserves the nature of the appeal for a review of a decision, but changes the process by which that appeal occurs. The new appeal process is referred to as a 'review appeal' to refer to the distinction between the grounds of appeal for an appeal under *Magistrates Court Act 1930*, Division 3.10.3 and those under Division 3.10.2.

Costs

The Bill introduces a scale of costs in summary criminal cases to regulate the awards of costs made in the Magistrates Courts. It is envisaged that a scale of costs will provide more certainty in awards, encourage defence practitioners to improve the management of costs and charges, and reduce the current, sometimes large, discrepancies in awards.

Criminal Legislation Amendment Bill 2008

Detail

Part 1 — Preliminary

Clause 1 — Name of Act

This is a technical clause that names the short title of the Act. The name of the Act would be the *Crimes Legislation Amendment Act 2008*.

Clause 2— Commencement

This clause enables the Act to commence the day after it is notified on the Legislation Register.

Clause 3— Legislation amended – sch 1

This is a technical clause that notes that this Act amends the legislation set out in schedule 1.

The amendments made to the *Confiscation of Criminal Assets Act 2003*, *Corrections Management Act 2007*, *Crimes (Forensic Procedures) Act 2000*, *Crimes (Sentencing) Act 2005*, *Criminal Code 2002*, *Domestic Violence and Protection Orders Act 2001*, *Domestic Violence and Protection Orders Act 2008*, *Prostitution Act 1992*, and *Witness Protection Act 1996* are consequential on the amendment made in Part 1.10 of the Schedule that changes the definition of an indictable offence in the *Legislation Act 2001*. It is not intended that the operation of any of these pieces of legislation should be altered by this amendment. Instead they are amended so that references to an indictable offence are changed to refer to offences that are punishable by imprisonment for longer than 12 months, or redefined as relevant offences, depending on the context. This means that this is no change to the range of offences that are subject to the operation of these Acts.

Schedule 1 – Amendments

Part 1.1 — Confiscation of Criminal Assets Act 2003

Clause 1.1 - Part 3, note 1, dot point

This is a technical amendment to remove references to an ‘indictable offence’.

Clause 1.2 - Part 3, note 1, dot point

This is a technical amendment to remove references to an ‘ordinary indictable offence’.

Clause 1.3 - Part 3, note 1, new dot point

This is a technical amendment to insert a reference to the new definition of ‘relevant offence’.

Clause 1.4 - Section 13 (2)

This section replaces the definitions of ‘indictable offence’ and ‘ordinary indictable offence’ and ‘serious offence’ with the phrases ‘ordinary offence’, ‘relevant offence’ and ‘serious offence’ to reflect that the offences are not dependant on the definition of ‘indictable offence’ but are connected to the period of imprisonment that an offence has as the maximum penalty.

Clause 1.5 - Section 83 (1), note 2

This is a technical amendment to remove references to an ‘indictable offence’.

Clause 1.6 - Section 129 (2), note

This is a technical amendment to remove references to an ‘indictable offence’.

Clause 1.7 - Section 157, note 3

This is a technical amendment to remove references to an ‘indictable offence’.

Clause 1.8 - Section 190 (4), note

This is a technical amendment to remove references to an ‘indictable offence’.

Clause 1.9 - Dictionary, note 2, dot point

This is a technical amendment to remove references to an ‘indictable offence’.

Clause 1.10 - Dictionary, definition of *indictable offence*

This is a technical amendment to remove references to an ‘indictable offence’.

Clause 1.11 - Dictionary, definition of *ordinary indictable offence*

This is a technical amendment to remove references to an ‘ordinary indictable offence’.

Clause 1.12 – Dictionary, new definition of *relevant offence*

This clause sets out the new definition of ‘relevant offence’ to take into account the removal of references to ‘indictable offence’.

Clause 1.13 – Further amendments, mentions of *indictable offence* and *ordinary indictable offence*

This table changes all remaining references to ‘indictable offence’ and ‘ordinary indictable offence’ in the *Confiscation of Criminal Assets Act 2003* to reflect the new definitions of ‘ordinary offence’ and ‘relevant offence’.

Part 1.2 - Corrections Management Act 2007**Clause 1.14 - Section 31A, note**

This is a technical clause that removes the reference to ‘indictable offences against ACT laws’.

Part 1.3 Crimes Act 1900

Clause 1.15 - Section 22 heading

This is a technical clause that removes the reference to an 'indictable offence'.

Clause 1.16 - Section 26A

This clause removes the summary offence of common assault as the amendment in Part 1.10 means that the offence of common assault set out in section 26 is now a summary offence, rendering section 26A superfluous.

Clause 1.17 - Section 49, table 49, item 6, column 2

This is a technical clause that removes the reference to an 'indictable offence'.

Clause 1.18 - Section 114A, definition of *proceeds of crime*, paragraphs (a) and (b) (ii)

This is a technical clause that removes the reference to an 'indictable offence'.

Clause 1.19 - Section 185, definition of *evidential material*

This is a technical clause that removes the reference to an 'indictable offence'.

Clause 1.20 - Section 185, new definition of *serious offence*

This is a technical clause that removes the reference to an 'indictable offence' and replaces it with a definition of a 'serious offence'.

Clause 1.21 - Section 185, definitions of *thing relevant to an indictable offence* and *thing relevant to a summary offence*

This is a technical clause that removes the references to indictable and summary offences.

Clause 1.22 - Section 187 (1) and note

This is a technical clause that removes the reference to an 'indictable offence'.

Clause 1.23 - Section 187 (3)

This is a technical clause that removes the reference to a 'summary offence', consequential to the change in definition of an indictable offence.

Clause 1.24 - Section 194 (6) (ii) and (7) (ii)

This is a technical clause that removes the reference to an 'indictable offence'.

Clause 1.25 - Section 195 (1) (d) (ii) and (2) (c) (ii)

This is a technical clause that removes the reference to an 'indictable offence'.

Clause 1.26 – Section 207 (1) (a)

This is a technical clause that removes the reference to an 'indictable offence'.

Clause 1.27 – Section 209 (1) (a)

This is a technical clause that removes the reference to an 'indictable offence'.

Clause 1.28 – Section 217 (1)

This is a technical clause that removes the reference to an ‘indictable offence’.

Clause 1.29 – Section 220 (2) (b)

This is a technical clause that removes the reference to an ‘indictable offence’.

Clause 1.30 – Section 220 (4), definition of *relevant summary offence*

This is a technical clause that removes the reference to a ‘summary offence’.

Clause 1.31 – Section 253 (1) definition of *offence to which this Act applies*

This is a technical clause that removes the reference to an ‘indictable offence’.

Clause 1.32 – Section 300, definition of *serious offence*, paragraph (a)

This is a technical clause that removes the reference to an ‘indictable offence’.

Clause 1.33 – Section 374

This amendment removes the definition of summary offence as the definitions contained in section 190 of the *Legislation Act 2001* cover this definition.

Clause 1.34 – New section 375 (1) (c)

This clause adds two offences to the types of indictable offences that a Magistrate may deal with summarily if the requirements of the provision are met. These are the offences of aggravated robbery and aggravated burglary. Although these are both very serious offences, there are some minor examples of each offence that could be appropriately dealt with by a Magistrate, particularly with the increased sentencing threshold set out in clause 1.40. Given the potential seriousness of each of these offences, clause 1.37 provides that these two offences may only be disposed of summarily if the prosecution consents.

A minor example may be where there is no violence, or damage to property and the aggravating feature is where the offence is carried out in the company of another individual.

Clause 1.35 - Section 375 (3) (b)

The threshold value of property that determines whether a Magistrate can determine an offence involving property is raised from \$10,000 to \$30,000 by this clause. This is done in recognition of the increased sentencing power granted by clause 1.40 and as part of a number of amendments that increase the matters that can be properly dealt with in the Magistrates Court.

Clause 1.36 - New section 375 (6A)

This clause requires the Magistrate to ask the defendant, at the time the matter is ready to be listed for hearing, whether the defendant consents to the case being disposed of summarily. This is a change from the previous common law position where a defendant could elect jurisdiction at any time up until the end of the prosecution case, i.e. at the end of the prosecution case the defendant could indicate his or her consent to having the matter proceed

as a summary hearing, or request that the Magistrate treat the proceedings as a committal.

The change is a recognition of both the change in practice so that a defendant now has the prosecution case at the time that the matter is listed for hearing, and of the amendments in this Bill that place prohibitions and restrictions on witnesses being called at committal hearings. The election for jurisdiction before the matter has commenced a hearing avoids the situation where a witness who ought not be giving evidence in a committal, gives evidence in a hearing only to find that it has become a committal. The amendment is also designed to avoid forum shopping for magistrates who are perceived to be more favourable to one party or the other.

Clause 1.37 - Section 375 (7) (c)

This clause amends the provision governing whether a magistrate can hear and determine an indictable matter summarily so that it takes into account the requirement for the defendant to indicate his or her consent at the time at which a matter is listed for hearing. It also provides that the offences of aggravated burglary and aggravated robbery can only be dealt with summarily if both the defendant and the prosecutor consent to the jurisdiction. This is intended to reflect that these are serious offences and that real consideration needs to be given to whether they are appropriate cases to be dealt with in the Magistrates Court.

Clause 1.38 - Section 375 (8) (c)

This clause amends the provision that allows a Magistrate to sentence a defendant for an indictable offence so that it takes into account the requirement for the defendant to indicate his or her consent at the time at which a matter is listed for hearing. It also provides that the offences of aggravated burglary and aggravated robbery can only be dealt with summarily if both the defendant and the prosecutor consent to the jurisdiction. This is intended to reflect that these are serious offences and that real consideration needs to be given to whether they are appropriate cases to be dealt with in the Magistrates Court.

Clause 1.39 - Section 375 (11) (b)

The amendment is consistent with the requirement for the defendant to consent to jurisdiction before proceedings have commenced.

Clause 1.40 – New Section 375 (11A)

This clause increases the sentencing power of the Magistrates Court when dealing with indictable matters so that the range of sentences imposed are raised from a fine of \$5,000, imprisonment for 2 years or both, to a fine of \$15,000, imprisonment for 5 years or both. This is designed to reflect the increase in the number of matters that may be dealt with in this court, and the professional ability of the Magistrates to deal with these matters.

Clause 1.41 - Section 375 (12)

This clause ensures that the sentencing threshold of the Childrens Court remains at 2 years or a fine of \$5,000 or both. It is appropriate at this stage to keep the maximum sentence for children at a lower threshold given the lack of parole provisions available for children.

Clause 1.42 - New section 375A

This clause provides for the revocation of consent to summary jurisdiction by a defendant in a number of circumstances. It is intended that consent may not be withdrawn once witnesses have started giving evidence, as this would allow the newly introduced protections for witnesses and complainants to be avoided. Instead, if there is a significant change in circumstances for the defendant such as new legal representation, the prosecution adding or changing charges or the prosecution providing a relevant piece of new evidence, the defendant may apply for leave to withdraw their consent. This provision is intended to overcome attempts at forum shopping, while still allowing procedural fairness to defendants.

Clause 1.43 - New part 30

This clause provides for the transitional arrangements when the legislation commences. It is intended that the new amendments will apply to all cases that are on foot, unless a hearing has already commenced. It will not be relevant when the charges were laid, or the offence occurred, but if a hearing or sentencing proceeding has commenced, then the new provisions will not apply.

Part 1.4 Crimes (Forensic Procedures) Act 2000**Clause 1.44 – Meaning of serious offence and serious offender Section 9 (1) (a)**

This is a technical clause that removes the reference to an ‘indictable offence’.

Part 1.5 Crimes (Sentencing) Act 2005**Clause 1.45 – Section 48 (b)**

This clause recognises that with the amendment to the definition of indictable offence provided in clause 1.62, there are some previously indictable offences, that are now summary offences, which are required to be specifically mentioned in order that the provisions regarding victim impact statements apply.

Clause 1.46 – Section 48, note

This is a technical clause that removes the reference to an ‘indictable offence’.

Part 1.6 Criminal Code 2002

Clause 1.47 - Section 317

This is a technical amendment to reflect that this offence is now a summary offence following the amendment to the definition of indictable offence in clause 1.62.

Clause 1.48 - Division 3.2.3 heading

This is a technical amendment to move the heading of the division to reflect that the offences now captured are now summary offences following the amendment of the definition of indictable offence in clause 1.62.

Clause 1.49 - Division 3.8.1 heading

This is a technical amendment to remove the heading of the division to reflect that the offences in Part 3.8 are now all summary offences following the amendment of the definition of indictable offence in clause 1.62.

Clause 1.50 - Division 3.8.2 heading

This is a technical amendment to remove the heading of the division to reflect that the offences in Part 3.8 are now all summary offences following the amendment of the definition of indictable offence in clause 1.62.

Clause 1.51 - Section 363 heading

This amendment reflects that this offence is a minor example of the offence, as the offence of Obstructing a territory official under section 361 is now also a summary offence.

Part 1.7 Domestic Violence and Protection Orders Act 2001

Clause 1.52 – Schedule 1, item 6

This is a technical clause that removes the reference to an ‘indictable offence’.

Clause 1.53 – Schedule 1, item 10A

This is a technical clause that removes the reference to the summary offence if common assault.

Part 1.8 Domestic Violence and Protection Orders Act 2008

Clause 1.54 – Schedule 1, item 6

This is a technical clause that removes the reference to an ‘indictable offence’.

Clause 1.55 – Schedule 1, item 11

This is a technical clause that removes the reference to an ‘indictable offence’.

Part 1.9 Evidence (Miscellaneous Provisions) Act 1991

Clause 1.56 - Section 38 (4)

This is a technical amendment to create consistent terminology in referring to committals.

Clause 1.57 - Section 38 (4), note

This is a technical amendment to reflect the amendments in clause 1.76.

Clause 1.58 - Section 38A (3)

This is a technical amendment to create consistent terminology in referring to committals.

Clause 1.59 - Section 41 (4)

This is a technical amendment to create consistent terminology in referring to committals.

Clause 1.60 - Section 41 (4), note

This is a technical amendment to reflect the amendments in clause 1.76.

Clause 1.61 - Section 41A (3)

This is a technical amendment to create consistent terminology in referring to committals.

Part 1.10 Legislation Act 2001

Clause 1.62- Section 190 (1)

This clause amends the definition of indictable offence so that it now refers to an offence carrying more than 2 years' imprisonment. The purpose of this amendment is to increase the jurisdiction of the Magistrates Court by increasing the number of matters that are summary offences. It is intended that this reflect the ability of Magistrates to deal professionally with such matters, and that it reduce the number of minor matters that are committed to the Supreme Court to be dealt with.

Part 1.11 Magistrates Court Act 1930

Clause 1.63 – Section 17B

This section is removed to reflect the change in the appeal process for review orders outlined in clause 1.88 onwards.

Clause 1.64 - Section 90 heading

This is a technical amendment to change the heading of the section to reflect the change in the Act so that all committal hearings are now conducted as paper or hand up committals.

Clause 1.65 - Section 90 (1)

This is a technical amendment to create consistent terminology in referring to committals.

Clause 1.66 - Section 90 (1) (a)

This is a technical amendment to create consistent terminology in referring to committals.

Clause 1.67 – Section 90 (1)(c)

This clause is a technical amendment to refer to the new procedures set out in section 90AB of the Act, which will cover whether witnesses are called for cross examination during a committal hearing, as amended in clause 1.76.

Clause 1.68 – Section 90 (2) (b)

This amendment shows the change in the committal process to hand-up committals by removing reference to the informant. As the committal will be proceeding on the papers, or statements, it will no longer be necessary for the informant to be called as a witness to identify the statements and tender them. Instead the prosecution will tender the statements from the bar table.

Clause 1.69 – Section 90 (2) (d)

This amendment removes references to the informant and replaces them with the prosecution as further indication that the informant will not be called as a witness to tender the brief during a committal.

Clause 1.70 – Section 90 (5) and (6)

This is a technical amendment to create consistent terminology in referring to committals.

Clause 1.71 - Section 90 (7)

This is a technical amendment to create consistent terminology in referring to committals.

Clause 1.72 - Section 90AA (4) to (8)

This amendment reflects the intention that all committals are to proceed as paper committals, with written statements tendered as the evidence for the prosecution.

Clause 1.73 - Section 90AA (10)

This clause amends the section to remove references to calling witnesses to be cross examined on their written statement. The new provisions to cover this process are contained in clause 1.77.

Clause 1.74 - Section 90A heading

This is a technical amendment to create consistent terminology in referring to committals.

Clause 1.75 - Section 90A (11)

This is a technical amendment as the provision is incorporated into clause 1.77.

Clause 1.76 - Section 90A (12), definitions of *proceeding for a sexual offence* and *sexual offence*

This is a technical amendment as the provision is incorporated into clause 1.77.

Clause 1.77 - Section 90AB

This amendment provides the circumstances in which a witness may be called to be cross examined during a committal hearing. Complainants in sexual offence cases cannot be cross examined at a committal hearing under any circumstances.

Other witnesses may only be cross examined if a Magistrate, after hearing an application, decides that it is in the interests of justice for that witness to be called, and requires the witness to be available for cross examination. The purpose of the legislation is to avoid lengthy court delays, to protect witnesses from giving evidence twice, to encourage defendants to focus their minds on what the issues in the case are, and to enable defendants access to cross examine witnesses if the prosecution evidence does not adequately disclose the case or the details of a relevant issue.

Clause 1.78 - Section 90ABA

This is a technical amendment to reflect the change in committal hearings to paper committals.

Clause 1.79 - Section 91

This amendment removes the first stage of the previous two stage committal test. It is replaced by the test in clause 1.82.

Clause 1.80 - Section 92 heading

This is a technical amendment to remove the reference to the previous committal test.

Clause 1.81 - Section 92 (1)

This is a technical amendment to remove the reference to the previous committal test

Clause 1.82- Section 94 (a) and (b)

This amendment inserts the new test to be applied by a Magistrate in determining whether a matter should be committed to the Supreme Court. It is intended that the Magistrate is able to take the prosecution evidence and any evidence put by the defendant into account in applying the test. This

means that the Magistrate may also take the credibility of any witness who has given evidence into account in making the assessment of whether there is a reasonable prospect of conviction.

Clause 1.83 - Section 97 (a)

This is a technical amendment to reflect the change in the committal test outlined in clause 1.82.

Clause 1.84 - New section 110 (1A)

This clause is an amendment to recognise the need to comply with the *Human Rights Act 2004*, which provides that a defendant has a right to be tried in person. Under the previous provision a matter could be heard ex parte, or in the absence of the defendant, in circumstances where the defendant may not have known of the existence of the proceedings. This provision requires that the Magistrate can only proceed to hear a matter in the absence of the defendant if satisfied that the defendant is aware of the proceedings and has knowingly decided not to attend, in full appreciation of the consequences of not attending. If a Magistrate is not satisfied of these requirements, then the Magistrate may follow the other provisions of the Act that allow a warrant to issue if a defendant does not attend in answer to a summons.

Clause 1.85 - Section 207 (1) (c)

This is a technical clause to reflect the change in the name of the appeals instituted under Division 3.10.3.

Clause 1.86 – Section 219

This clause removes references to the order nisi process and introduces references to the review appeal process. It is intended that a person cannot have an appeal on foot under both division 3.10.2 and division 3.10.03 at the same time. This clause ensures that only one appeal can be underway at any one time.

Clause 1.87 - Division 3.10.3 heading

The heading of this division is amended to reflect the change in the process for lodging appeals for review of a Magistrates Court decision.

The Division is changed to remove the previous process where an application for an order nisi was heard before the decision of the Magistrates Court could be reviewed. The new process preserves the nature of the appeal, but removes the first step of the process.

Clause 1.88 – Section 219B heading

The heading of this section is amended to reflect the change in the process for lodging appeals for review of a Magistrates Court decision.

Clause 1.89 – Section 219B (1)

This amendment introduces the term 'review appeal' as the name of the new process for lodging appeals, to signify that it has different grounds from the appeals covered by Division 3.10.2.

Clause 1.90 - Section 219C

This amendment removes the process of applying for an order nisi before a Court could consider an appeal to review an order of the Magistrates Court. It replaces it with a one step process where the appellant institutes an appeal by filing a notice and serving that notice of appeal. The grounds on which a decision of the Magistrates Court may be reviewed by the Supreme Court are set out in new section 219D. The ability for the Supreme Court to make an order requiring a magistrate to provide a report is preserved in new section 219E.

Clause 1.91 – Section 219F (1)

This is a technical amendment to remove references to the order nisi process. It establishes that the Supreme Court may consider evidence to review a decision of the Magistrates Court after an appeal is lodged.

Clause 1.92 – Section 219F (2) (b)

This is a technical amendment to create consistent terminology in referring to committals.

Clause 1.93 – Section 219F (5) and (6)

This is a technical amendment to remove references to the order nisi process.

Clause 1.94 - Section 219F (9)

This is a technical amendment to remove references to the order nisi process.

Clause 1.95 - Section 244

The amendment to section 244 contained in this clause introduces a scale of costs, so that in cases where the court determines that costs should be paid to a defendant or an informant, the amount of the costs will be determined by reference to a scale of costs, to be set out in regulations.

Clause 1.96 - Section 289 (2)

This is a technical amendment to create consistent terminology in referring to committals.

Clause 1.97 - New chapter 11

This clause provides for the transitional arrangements when the legislation commences. It is intended that the changes to the definition of 'indictable offence' in clause 1.62 will not apply to cases where an offence that was indictable prior to the commencement of the Bill, has already been committed to the Supreme Court, although under the Bill the offence may now be considered to be a summary offence.

It is intended that the new amendments will apply to all cases that are on foot in the Magistrates Court, unless a hearing has already commenced. It will not

be relevant when the charges were laid, or the offence occurred, but if a hearing or sentencing proceeding has commenced, then the new provisions will not apply.

Clause 1.98 - Dictionary, new definition of *review appeal*

This amendment inserts a definition of 'review appeal' to reflect the removal of the order nisi process in appeals for review of a Magistrates Court decision.

Part 1.12 Prostitution Act 1992

Clause 1.99 – Schedule 1, item 4

This is a technical amendment to create consistent terminology in referring to committals.

Part 1.13 Supreme Court Act 1933

Clause 1.100 – Section 58A (1)

This is a technical amendment to create consistent terminology in referring to committals.

Clause 1.101 - Section 58A (1) (b) and (c)

This clause is a technical amendment to reflect the amendments to the committal process contained in clause 1.77.

Clause 1.102 – New part 10

This clause inserts transition provisions to cover the commencement of the Bill. It is intended that the changes to the definition of 'indictable offence' in clause 1.62 will not apply to cases where an offence that was indictable prior to the commencement of the Bill, has already been committed to the Supreme Court, although under the Bill the offence may now be considered to be a summary offence.

Part 1.14 Witness Protection Act 1996

Clause 1.103 – Section 8 (1) (a) (i)

This is a technical amendment to create consistent terminology in referring to committals.