

# Crimes (Fraud) Bill

## EXPLANATORY MEMORANDUM

### Outline

The main objects of the Bill are:

- to provide an alternative procedure to committals for matters involving serious and complex fraud;
- to simplify the prosecution of serious and complex frauds through the use of a preparatory hearing to resolve issues of law and evidence before trial;
- to amend the **Evidence Act 1958** to simplify the presentation of evidence to juries.

### NOTES ON CLAUSES

#### PART 1—PRELIMINARY

*Clause 1* states the purpose of the Act.

*Clause 2* provides that the Act comes into operation on a day to be proclaimed.

*Clause 3* sets out the definitions that apply to the Act.

#### PART 2—TRANSFER TO THE TRIAL COURT

*Clause 4* provides that the State or Commonwealth DPP may give a notice of transfer in relation to a charge if he believes that the evidence reveals a case of serious and complex fraud such that the matter should be taken over by the Supreme Court or County Court and the evidence is of sufficient weight to support a conviction.

*Clause 5* provides that on the giving of the notice the matter is transferred immediately from the Magistrates' Court to the Supreme Court or the County Court.

*Clause 6* provides that a notice of transfer is given by filing it with the Magistrates' Court and the County or Supreme Court and by serving it on the defendant.

*Clause 7* sets out the information which must accompany a notice of transfer including specification of the charges and a statement of the evidence.

#### PART 3—APPLICATION FOR DISCHARGE

*Clause 8* provides that the defendant may apply to the transferee court to be discharged on the ground that the evidence is not of sufficient weight to support a conviction. At the hearing of the application, oral evidence may only be heard with the leave of the Court.

#### PART 4—PREPARATORY HEARING

*Clause 9* provides that the Court may order a preparatory hearing to identify material issues, assist the jury's comprehension of the issues, expedite the proceedings before the jury or assist the judge's management of the trial.

*Clause 10* provides that the Court may make determinations of law and as to the admissibility of evidence at a preparatory hearing.

*Clause 11* provides that the beginning of the preparatory hearing is the beginning of the trial and that the arraignment of the defendant takes place at that point.

*Clause 12* provides that that the Court can order the prosecution to serve a case statement containing details of the prosecution's case including an account of the facts, witness statements, exhibit lists and a statement of the propositions of law upon which the prosecution proposes to reply.

*Clause 13* sets out requirements relating to witness statements.

*Clause 14* sets out requirements relating to exhibits.

*Clause 15* provides that the prosecution can introduce further evidence after service of the case statement by notifying the defence and serving a copy of the further evidence.

*Clause 16* provides that the court may order the defendant to file and serve on the prosecution a notice stating objections to the prosecution case statement on the ground that the statement does not disclose the prosecution case with sufficient particularity. The Court may order the prosecution to amend its statement.

*Clause 17* provides that the prosecution may amend its case statement but requires leave to do so if the defence has already served and filed its response. The defendant may withdraw any admission made before the service of the amended case statement.

*Clause 18* provides that the Court may order the defendant to serve and file a notice indicating any evidence in the case statement to which it objects. The Court must then determine the admissibility of such evidence.

*Clause 19* provides that where matters under clauses 16 and 18 have been dealt with, the court may order the defendant to serve and file a statement (known as the defence response) indicating the facts and inferences in the case statement with which the defendant takes issue, propositions of law in reply to those stated by the prosecution, and copies of statements made by expert witnesses.

*Clause 20* provides that at the preparatory hearing the Court may order the prosecution to file and serve explanatory material in a form likely to help the jury understand the case.

*Clause 21* provides that at the preparatory hearing, the Court can order the prosecution to file a notice of documents and matters which ought to be agreed. The defendant must then file and serve a reply stating its reasons for refusing to admit to any of the matters listed by the prosecution. Any documents or matters so agreed are treated as admissions and are admissible in evidence.

*Clause 22* provides that witnesses may give their evidence at the preparatory hearing in certain circumstances.

*Clause 23* provides that the Court may adjourn a preparatory hearing from time to time.

*Clause 24* provides that at the end of the preparatory hearing the court must order that the jury be empanelled. The trial then proceeds before the presiding judge.

## **PART 5—TRIAL AFTER EMPANELLING OF THE JURY**

*Clause 25* provides that a party may introduce evidence at a trial which departs from their case disclosed at the preparatory hearing, but that a judge, or a party with leave, may comment on the departure and the jury may draw inferences from that departure. The prosecution has the right to reopen its case in the event of such a departure where it was not reasonably foreseeable.

*Clause 26* provides for the giving of evidence by satellite or landline facilities.

*Clause 27* provides a list of documents which can be given to the jury for the purpose of helping the jury understand the issues.

## **PART 6—GENERAL**

*Clause 28* gives the Court the power to extend any time limit fixed by or under the Act.

*Clause 29* gives the Court the power to order costs personally against practitioners.

*Clause 30* preserves the operation of existing pre-hearing procedures.

*Clause 31* notifies an intention to alter or vary section 85 of the **Constitution Act 1975** in that certain decisions made under clauses 4 and 9 are not appealable.

*Clause 32* contains the regulation-making power.

*Clause 33* provides for consequential amendments. These are set out in the Schedule.

## **PART 7—RESTRICTIONS ON REPORTS OF PROCEEDINGS**

*Clause 34* provides for reporting restrictions at the preparatory hearing.

## **PART 8—CHANGES TO RULES OF EVIDENCE**

*Clause 35* amends the **Evidence Act 1958** to relax the hearsay rule in respect of business records.

*Clause 36* amends the **Evidence Act 1958** to allow for the giving of evidence in the form of charts, summaries or other explanatory material.

*Clause 37* abolishes the best evidence rule.

*Clause 38* contains statute law revision amendments.

