

RECOMMENDATIONS

Recommendation 1

3.43 The Committee recommends that Subclauses 23(4), 25(5) and 26(5) of the Bill, which require the court to hold closed hearings, be removed so that the court retains its discretion to determine whether its proceedings are open or closed.

Recommendation 2

3.44 The Committee recommends that the Bill be amended to include a provision requiring the court to provide a written statement of reasons outlining the reasons for holding proceedings in-camera.

Recommendation 3

3.45 If Recommendations 1 and 2 are not supported, the Committee recommends that, as a commitment to the right of a defendant to a fair, public trial, the Bill should be amended to include a provision requiring the Attorney-General to publish a statement of reasons for any decision to hold a closed hearing.

Recommendation 4

3.46 The Committee recommends that Subclause 27(4) of the Bill be amended to allow the courts the discretion to determine to what extent a court transcript or parts of it should be sealed or distributed more widely and any undertakings required for people to have access to the transcript.

Recommendation 5

3.47 The Committee recommends that the Bill be amended to include a provision requiring a court to provide a statement of reasons for any restriction placed on the distribution of all or part of a court transcript.

Recommendation 6

3.64 The Committee recommends that Clause 27 of the Bill be amended to provide that defendants and their legal representatives can only be excluded from hearings in limited specified circumstances, and courts will retain the power to stay proceedings if the defendant cannot be assured of a fair trial.

Recommendation 7

3.75 The Committee recommends that the Bill be amended to include a provision that requires the court, when making an order allowing information to be disclosed as being subject to the Attorney-General's non-disclosure certificate, to be satisfied that the amended document and/or substitution documentation to be adduced as evidence would provide the defendant with substantially the same ability to make his or her defence as would disclosure of the source document.

Recommendation 8

3.82 The Committee recommends that the Bill be amended to include a provision that requires the court, when making an order to exclude a witness from the proceedings, to be satisfied that the exclusion of the witness would not impair the ability of the defendant to make his or her defence.

Recommendation 9

3.89 The Committee recommends that the Bill be amended to allow the court to make decisions about the use of information before the commencement of the trial.

Recommendation 10

3.120 The Committee recommends that the court assume a more active role in determining whether a defendant's legal representative requires a security clearance before he or she can access information. The Committee recommends that the Bill adopt the recommendation by the ALRC that 'the court may order that specified material not be disclosed to a lawyer unless he or she holds a security clearance at a specified level'.

Recommendation 11

3.126 The Committee recommends that Subclause 29(6) be amended to allow the court the discretion to make decisions in relation to the admissibility of evidence containing classified or sensitive national security information at such time as the court considers appropriate.

Recommendation 12

3.137 The Committee recommends that the term 'substantial' be removed from paragraph 29(8)(b) of the Bill.

Recommendation 13

3.138 The Committee recommends that Subclause 29(9) of the Bill be removed from the Bill, or at the least, amended to reflect the response received from the Attorney-General's Department.

Recommendation 14

3.147 The Committee recommends that, subject to Recommendations 1-13, the Bill proceed.