



## NSW Legislative Council Hansard (Proof) Criminal Procedure Amendment (Prosecutions) Bill

Extract from NSW Legislative Council Hansard and Papers Tuesday 18 October 2005 (Proof).

### Second Reading

**The Hon. JOHN DELLA BOSCA** (Special Minister of State, Minister for Commerce, Minister for Industrial Relations, Minister for Ageing, Minister for Disability Services, Assistant Treasurer, and Vice-President of the Executive Council) [5.06 p.m.]: I move:

That this bill be now read a second time.

As the second reading speech is lengthy and has already been delivered in the other place I seek leave to incorporate it in *Hansard*.

#### Leave granted.

The Government is pleased to introduce the Criminal Procedure Amendment (Prosecutions) Bill 2005.

The Bill proposes amendments to the Criminal Procedure Act 1986 to ensure that all prosecutions conducted on behalf of the Director of Public Prosecutions are recognised as valid, and that the signing of an indictment by a private barrister who is acting on behalf of the DPP, does not make invalid the proceedings based on that indictment.

The Bill is brought forward as the result of the Court of Criminal Appeal's decisions in the cases of *The Queen v Halmi* and *The Queen v Janceski*. Those decisions were handed down in February and August 2005. Those cases decided that, where a private barrister was retained by the Director of Public Prosecutions (DPP) to conduct a prosecution on the DPP's behalf, and that private barrister signed an indictment upon which a trial was then held, the indictment was invalid and so the trial was a nullity. The reason for the invalidity was that the indictments did not comply with the technical requirements of s 126 of the Criminal Procedure Act which regulates who may sign indictments.

This technical invalidity arose even though the defendants and their legal representatives were well aware that the DPP had retained a private barrister to prosecute on his behalf, and they were well aware of the actual case against the defendants. Both trials were fair.

This Bill corrects any difficulties that might arise from the technical invalidity that was found in the decisions of *Halmi* and *Janceski*. It does so in two ways.

Firstly, the Bill amends section 16 of the Criminal Procedure Act. Section 16 is the section of the Criminal Procedure Act which provides that indictments are not void or invalid for certain technical defects—for example, for mis-stating any co-accused's name, for failing to specify the exact value of any property, and things of that nature. The Bill adds to the existing list in section 16 a further item: that an indictment is not invalid merely because a legal practitioner who signed the indictment did not have an authorisation in writing from the DPP to sign indictments on his behalf, provided that the legal practitioner was instructed by the DPP to conduct those criminal proceedings.

Secondly, the Bill contains transitional provisions that clarify that all indictments signed and laid before the Court on behalf of the DPP in the past, and all proceedings conducted on those indictments, are valid. However, the Bill does not improperly interfere with decided cases of the Courts. It does not interfere with the decisions of the Court of Criminal Appeal that Mr *Halmi* and Mr *Janceski* should have a re-trial.

I will now turn to the detail of the Bill.

Proposed section 2 provides that once passed and proclaimed, the Bill is deemed to have commenced on the day that the Bill was first introduced into Parliament. This provision is consistent with the intention of the Bill that all indictments signed by a legal practitioner on behalf of the DPP should be validated, but that existing Court decisions should not be interfered with. Section 2 prevents any further decisions from being made from this day forward, that would invalidate any indictment presented on behalf of the DPP merely because of the signature that appears on the indictment.

Schedule 1 of the Bill inserts a new paragraph (i) into section 16(1) of the Criminal Procedure Act. That new paragraph provides that no indictment is bad, insufficient, void, erroneous or defective for failure of the DPP to

authorise a legal practitioner in writing to sign any indictment that is presented on his behalf, provided that the legal practitioner was instructed to prosecute the case on behalf of the DPP.

The transitional provisions of the Bill, which are also contained in Schedule 1 of the Bill, insert new clauses 46 and 47 into Schedule 2 of the Criminal Procedure Act. Those clauses provide that all indictments presented at any point in the past—from the date of creation of the office of the DPP, up until the date that this Bill was introduced into Parliament—are validated, where they were presented in the circumstances set out in the new section 16(1)(i) of the Criminal Procedure Act. Those circumstances are where the indictment was signed by a legal practitioner who had been instructed to conduct proceedings on behalf of the DPP, but the legal practitioner was not authorised under section 126 of the Criminal Procedure Act to sign indictments.

The proposed clauses 47(2) and 47(3), make clear that such indictments are valid, and all proceedings related to such indictments are valid.

Clause 47(4) contains the rule that nothing in the transitional provisions, does anything to overrule any existing judgment or order of a court. Put simply, the decisions of the Court of Criminal Appeal in Halmi and Janceski stand, but the gate will be closed. No more appeals will be able to be brought forward on the technical grounds argued in those cases.

This Bill will preclude, once and for all, any appeal against conviction following successful prosecution by the DPP, based on the purely technical ground that the indictment was not signed by a person with the proper authority to sign indictments.

I commend the Bill to the House.