

Criminal Procedure Amendment (Prosecutions) Bill 2005

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

Section 126 of the *Criminal Procedure Act 1986* provides that an indictment must be signed:

(a) by the Attorney General, the Solicitor General or the Director of Public Prosecutions (the **DPP**), or

(b) for and on behalf of the Attorney General or the DPP by:

(i) a Crown Prosecutor, or

(ii) a Deputy Director of Public Prosecutions, or

(iii) a person authorised by order in writing by the DPP to sign indictments for and on behalf of the DPP.

Similar provision has been made with respect to the signing of indictments in the *Criminal Procedure Act 1986* under various provisions of that Act since it commenced on 13 July 1987.

In both *R v Halmi* [2005] NSWCCA 2 and *R v Janceski* [2005] NSWCCA 281, the Court of Criminal Appeal held that indictments signed by barristers at the private bar instructed to prosecute offences on behalf of the DPP were invalid unless the DPP has also expressly authorised the barristers by order in writing under section 126 to sign the indictments.

The object of this Bill is to amend the *Criminal Procedure Act 1986*:

(a) to validate both indictments of the kind that were held invalid in these cases and the criminal proceedings that related to such indictments, and

(b) to provide that a failure by the DPP to authorise a private legal practitioner prosecuting a matter on the DPP's behalf to sign indictments does not make an indictment signed by the practitioner bad, insufficient, void, erroneous or defective.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides that the proposed Act is taken to have commenced on the day on which this Bill was first introduced into Parliament.

Clause 3 is a formal provision that gives effect to the amendments to the *Criminal Procedure Act 1986* set out in Schedule 1.

Schedule 1 Amendments

Schedule 1 [1] amends section 16 (Certain defects do not affect indictment) of the *Criminal Procedure Act 1986* (**the Act**) to make it clear that a failure by the DPP to authorise a private legal practitioner prosecuting a matter on the DPP's behalf to sign an indictment does not make an indictment signed by the practitioner bad, insufficient, void, erroneous or defective.

Schedule 1 [2] amends clause 1 of Schedule 2 to the Act to enable the Governor to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [3] inserts a new Part 9 in Schedule 2 to the Act. The provisions of the Part validate the following:

(a) indictments that would otherwise be invalid only because they were signed during the relevant period by a prosecutor instructed to prosecute an offence on the DPP's behalf who was not authorised by order in writing to do so by the DPP under section 126 or any corresponding provision of the Act previously in force,

(b) criminal proceedings (including the acquittal or conviction of the defendant or

a sentence imposed on the defendant) based on such indictments.

The relevant period for the purposes of these provisions is the period commencing on 13 July 1987 (which is the day on which the Act commenced) and ending immediately before the day on which this Bill was first introduced into Parliament.

The new Part, however, makes it clear that these provisions will not operate to validate any indictments or criminal proceedings that have been held to be invalid or a nullity in a judgment, order or other decision of a court before the day on which this Bill was first introduced into Parliament.