



New South Wales

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.

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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.

First print



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No. , 2005

A Bill for

An Act to amend the *Criminal Procedure Act 1986* to validate certain indictments issued on behalf of the Director of Public Prosecutions and criminal proceedings based on such indictments; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Criminal Procedure Amendment (Prosecutions) Act 2005</i> .	3 4
2 Commencement	5
This Act is taken to have commenced on the day on which the Bill for this Act was first introduced into Parliament.	6 7
3 Amendment of Criminal Procedure Act 1986 No 209	8
The <i>Criminal Procedure Act 1986</i> is amended as set out in Schedule 1.	9

Schedule 1	Amendments	1
	(Section 3)	2
[1]	Section 16 Certain defects do not affect indictment	3
	Insert after section 16 (1) (h):	4
	(i) if the indictment was signed by a legal practitioner who has been instructed to prosecute the proceedings to which the indictment relates on behalf of the Director of Public Prosecutions—for failure by the Director to authorise the legal practitioner by order in writing under section 126 (2) to sign indictments for and on behalf of the Director.	5 6 7 8 9 10
[2]	Schedule 2 Savings, transitional and other provisions	11
	Insert at the end of clause 1 (1):	12
	<i>Criminal Procedure Amendment (Prosecutions) Act 2005</i>	13
[3]	Schedule 2, Part 9	14
	Insert after Part 8:	15
	Part 9 Provisions consequent on enactment of Criminal Procedure Amendment (Prosecutions) Act 2005	16 17 18
46	Definitions	19
	In this Part:	20
	<i>applicable signing provision</i> means section 126 or any corresponding provisions of this Act previously in force that applied to the signing of indictments at the time concerned.	21 22 23
	<i>introduction day</i> means the day on which the Bill for the <i>Criminal Procedure Amendment (Prosecutions) Act 2005</i> was first introduced into Parliament.	24 25 26
	<i>relevant period</i> means the period commencing on 13 July 1987 and ending immediately before the introduction day.	27 28
47	Validation of certain indictments	29
	(1) This clause applies to an indictment signed by a legal practitioner during the relevant period that purports to be signed for and on behalf of the Director of Public Prosecutions in circumstances where:	30 31 32 33

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Schedule 1 Amendments

- (a) the legal practitioner was instructed to prosecute the criminal proceedings to which the indictment related on behalf of the Director of Public Prosecutions, and
 - (b) the legal practitioner was not authorised by or under the applicable signing provision to sign the indictment for and on behalf of the Director of Public Prosecutions.
- (2) Any indictment to which this clause applies that, but for this subclause, would have been invalid only because it had not been signed by a person authorised to sign it under the applicable signing provision, is taken at the time it was signed and at all relevant times after it was signed to have been a valid indictment.
- (3) Without limiting subclause (2), any criminal proceedings (including any conviction or acquittal of the defendant or sentence imposed on the defendant) that would otherwise have been invalid or a nullity only because the proceedings related to an indictment validated by subclause (2) are taken to be, and always to have been, valid.
- (4) However, nothing in this clause affects the validity of a particular indictment to which this clause applies or criminal proceedings relating to such an indictment if the indictment or proceedings (or both) were held to be invalid or a nullity before the introduction day in a judgment, order or other decision of a court.