



New South Wales

Crimes Legislation Amendment (Procedure) Bill 1997

Explanatory note

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

Overview of Bill

The objects of this Bill are to amend the *Crimes Act 1900*, the *Criminal Procedure Act 1986* and the *District Court Act 1973*:

- (a) to change the procedure for dealing with a change to a plea of guilty that is made during the course of criminal proceedings being heard by a jury, by authorising the Judge to discharge the jury and to find the accused guilty (instead of directing the jury to do so), and
 - (b) to allow the defence to make a limited opening address on trial issues immediately after the prosecution has made its opening address (without affecting the right of the defence to make an opening address at the end of the prosecution case and before calling evidence for the defence), and
 - (c) to enable the Chief Justice of the Supreme Court to issue a practice note directing that certain types of indictments are to be presented in the District Court rather than the Supreme Court, and
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- (d) to give the Supreme Court and District Court clear authority to conduct trial proceedings in respect of indictable offences after the presentation of the indictment and before the jury is empanelled for the trial, and
- (e) to remove the provision that certain classes of criminal procedure rules made by the District Court Rule Committee do not have effect until approved by the Attorney General.

Outline of provisions

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

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Crimes Act 1900* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Criminal Procedure Act 1986* set out in Schedule 2.

Clause 5 is a formal provision giving effect to the amendments to the *District Court Act 1973* set out in Schedule 3.

Schedule 1 Amendment of Crimes Act 1900

Change in plea during criminal proceedings

At present, if a person charged with an offence on indictment has been put into the charge of a jury, the person can only be discharged by the verdict of the jury. Accordingly, if the person changes his or her plea in the course of the proceedings to a plea of guilty, and the trial judge accepts that plea, the trial judge must direct the jury to find the accused guilty. This procedure is changed so that if an accused person pleads guilty to any offence during the course of the proceedings, and the trial judge accepts that plea, the trial judge can discharge the jury from giving a verdict and find the accused guilty. The finding has effect as if it were the verdict of the jury. (See **Schedule 1 [1]**)

Opening address to jury by accused on trial issues

The accused (or counsel for the accused) is to be specifically permitted to make an opening address on trial issues immediately after the prosecution's opening address. At present, an opening address by the accused may be made

at the end of the prosecution case and before the commencement of evidence in the defence case. If the accused elects to make an opening address on trial issues immediately after the prosecution's opening address:

- (a) the address is to be limited generally to an address on all or any of the matters disclosed in the prosecution's opening address that are or are not in dispute and the matters to be raised by the defence, and
- (b) the accused is not precluded from also addressing the jury at the end of the prosecution case and before the commencement of evidence in the defence case. The opportunity has been taken to consolidate the relevant provisions relating to addresses by the accused.
(See **Schedule 1 [2]** and **[3]**)

Schedule 2 Amendment of Criminal Procedure Act 1986

The amendment to the *Criminal Procedure Act 1986* inserts section 16A which allows the Chief Justice of the Supreme Court to issue a practice note directing that indictments of a particular class are to be presented in the District Court rather than the Supreme Court, unless the Chief Justice approves of a particular indictment of that class being presented to the Supreme Court. The Supreme Court may reject an indictment that is presented in the Supreme Court in contravention of such a direction.

The amendment to the *Criminal Procedure Act 1986* also inserts section 19 which gives the Supreme Court and District Court clear authority to conduct trial proceedings for indictable offences after the presentation of the indictment and before the jury is empanelled for the trial. A criminal court is not authorised to make orders in connection with proceedings for indictable offences (including orders relating to the admissibility of evidence) until an indictment is presented. The amendment enables an indictment to be presented without the immediate impanelling of a jury so that the court can make any necessary orders in connection with the trial that may be made in the absence of the jury.

Schedule 3 Amendment of District Court Act 1973

At present certain classes of criminal procedure rules made by the District Court Rule Committee do not have effect until they are approved in writing by the Attorney General. This requirement is removed.

First print



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New South Wales

Crimes Legislation Amendment (Procedure) Bill 1997

No. , 1997

A Bill for

An Act to amend the *Crimes Act 1900*, the *Criminal Procedure Act 1986* and the *District Court Act 1973* to make miscellaneous changes to procedure relating to the conduct of criminal trials; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes Legislation Amendment (Procedure) Act 1997*.

2 Commencement

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This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Crimes Act 1900 No 40

The *Crimes Act 1900* is amended as set out in Schedule 1.

4 Amendment of Criminal Procedure Act 1986 No 209

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The *Criminal Procedure Act 1986* is amended as set out in Schedule 2.

5 Amendment of District Court Act 1973 No 9

The *District Court Act 1973* is amended as set out in Schedule 3.

Schedule 1 Amendment of Crimes Act 1900

(Section 3)

[1] Section 399A

Insert after section 399:

399A Change to guilty plea during trial

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- (1) If the accused pleads guilty to an offence during a trial on indictment at any time after the accused has been given into the charge of a jury, and the Court accepts the plea, the Court is to discharge the jury from giving a verdict in the matter and is to find the accused guilty of the offence. 10
- (2) Such a finding has effect as if it were the verdict of the jury and the accused is liable to punishment accordingly.
- (3) This section extends to any proceedings on indictment commenced, but not concluded, before the commencement of this section. 15

[2] Section 402 Accused may be defended by counsel

Omit “, and in every case may reserve his address until the close of the evidence for the defence, and in the latter case, all evidence in reply for the Crown and any address by the prosecutor shall be given before such address for the defence”. 20

[3] Section 405

Omit the section. Insert instead:

405 Addresses to jury by accused

- (1) **Opening address on trial issues** 25
The accused or the accused’s counsel may address the jury immediately after the opening address of the prosecutor. Any such opening address is to be limited generally to an address on all or any of the matters disclosed in the opening address of the prosecutor that are or are not in dispute and the matters to be raised by the accused. 30

Crimes Legislation Amendment (Procedure) Bill 1997

Schedule 1 Amendment of Crimes Act 1900

- (2) **Opening address before evidence for accused**
If the accused intends to give evidence or to call any witness in support of the defence, the accused or the accused's counsel is entitled to open the case for the defence before calling evidence, whether or not an address was made to the jury under subsection (1). 5
- (3) **Closing address**
The accused or the accused's counsel may address the jury after the close of the evidence for the defence and any evidence in reply by the Crown and after the prosecutor has made a closing address to the jury or declined to make a closing address to the jury. 10
- (4) **Supplementary address by Crown**
If, in the closing address under subsection (3), relevant facts are asserted which are not supported by any evidence that is before the jury, the Court may grant leave for the Crown to make a supplementary address to the jury replying to any such assertion. 15

Schedule 2 Amendment of Criminal Procedure Act 1986

(Section 4)

[1] Section 16A

Insert after section 16: 5

16A Directions as to indictments to be presented in the District Court

- (1) The Chief Justice of the Supreme Court may issue a practice note on behalf of the Supreme Court giving directions to prosecuting authorities with respect to the classes of indictments that are to be presented to the District Court rather than the Supreme Court. 10
- (2) The Chief Justice may exempt a particular indictment from any such direction.
- (3) The Supreme Court may reject an indictment: 15
 - (a) that is of a class to which any such direction applies, and
 - (b) that was presented after the direction was given, and
 - (c) that has not been exempted from the direction by the Chief Justice. 20
- (4) The rejection of an indictment does not preclude the presentation of a further indictment in accordance with any such direction.

[2] Section 19 25

Insert at the end of Part 5:

19 Trial proceedings after presentation of indictment and before empanelment of jury

- (1) In this section, *court* means the Supreme Court or District Court. 30

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Schedule 2 Amendment of Criminal Procedure Act 1986

- (2) The court has jurisdiction with respect to the conduct of proceedings on indictment as soon as the indictment is presented and the accused is arraigned, and any orders that may be made by the court for the purposes of the trial in the absence of a jury may be made before a jury is empanelled for the trial. 5
- (3) If proceedings are held for the purpose of making any such orders after the indictment is presented to commence the trial and before the jury is empanelled:
 - (a) the proceedings are part of the trial of the accused, and 10
 - (b) the accused is to be arraigned again on the indictment when the jury is empanelled for the continuation of the trial.
- (4) Nothing in this section requires a jury to be empanelled if the accused pleads guilty to an offence during proceedings to which this section applies. 15
- (5) This section applies to proceedings in respect of indictments presented after the commencement of this section. 20

Schedule 3 Amendment of District Court Act 1973

(Section 5)

Section 171 Criminal procedure rules

Omit section 171 (4).