



# NSW Legislative Council Hansard

## Criminal Procedure Amendment (Sexual Offence Case Management) Bill

Extract from NSW Legislative Council Hansard and Papers Tuesday 29 November 2005.

---

### Second Reading

**The Hon. HENRY TSANG** (Parliamentary Secretary) [5.53 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

#### Leave granted.

The Government is pleased to introduce the Criminal Procedure Amendment (Sexual Offence Case Management) Bill 2005.

This Bill proposes amendments to the Criminal Procedure Act 1986 to provide that a pre-trial order made by a Judge is binding on the trial Judge if the proceedings relate to a prescribed sexual offence that is dealt with on indictment.

In circumstances where a new trial is ordered or later trial proceedings commence following the discontinuation of an earlier trial, a pre-trial order will also be binding on the trial Judge hearing the fresh or later trial proceedings.

Delay in criminal proceedings, in particular sexual assault trials, is always a concern. Delay can cause secondary traumatisation of complainants, who prepare themselves to give evidence on each occasion the matter is fixed for trial.

The delay may be caused by legal and procedural issues not determined prior to the hearing date. This is particularly traumatic in sexual assault cases where there may be multiple offenders, or multiple victims.

The proposed legislation will serve to minimise the stress and trauma of giving evidence for these witnesses, and is part of the ongoing process of reform in relation to improving the process surrounding sexual assault prosecutions for complainants.

Rulings on the admissibility of evidence by a judge other than the trial judge are not currently binding and it is not possible to ensure that the same judge will deal with both the pre-trial hearing and the trial. Therefore, in order for rulings made by one judge to be binding on a subsequent trial judge, there must be legislative amendment.

One of the key issues in sexual offence trials is effective case management to ensure all preliminary matters are resolved in advance of the commencement of the trial and to avoid unnecessary legal argument.

Effective case management of sexual assault trials would require the court to resolve issues such as the admissibility of evidence and the use and availability of technology, prior to the trial commencing. Delay due to adjournment or legal argument on the first day of trial may result in complainant dissatisfaction and trauma.

Schedule 1 inserts proposed section 130A into the Criminal Procedure Act.

This section applies only to proceedings in respect of a prescribed sexual offence that is dealt with on indictment. A prescribed sexual offence is defined elsewhere in the Principal Act at section 3.

Section 130A (1) provides that a pre-trial order made by a Judge is binding on the trial Judge unless, in the opinion of the trial Judge, it would not be in the interests of justice for the order to be binding.

Section 130A (2) relates to situations where a matter was appealed against successfully and a new trial ordered. It provides that a ruling made at a listing prior to the trial also apply in a retrial, unless to do so would be inconsistent with a ruling or order given on appeal, or it would not be in the interests of justice.

Where for example, a ruling was made to admit the police electronic recorded interview with a child as their evidence in chief, this earlier ruling will bind the judge hearing the retrial, unless the Court of Criminal Appeal ordered that the ruling was in error. This provision avoids all of the pre-trial rulings in the earlier trial being revisited where a conviction has been set aside.

Section 130A (3) provides that in circumstances where a new trial is ordered or trial proceedings commence following the discontinuation of an earlier trial, a pre-trial order will also be binding on the trial Judge hearing the fresh or subsequent trial proceedings.

A "pre-trial order" is defined as any order made after the indictment is first presented but before the empanelment of a jury for the trial.

Schedule 2 is a consequential amendment that makes it clear that section 130A does not apply to any pre-trial orders made prior to commencement of the section. The section will, however, apply to offences where criminal proceedings have already commenced, but where proceedings before the trial judge have not yet begun.

I know that all members of the House wish to see delays in sexual offence proceedings reduced, and to allow complainants to be satisfied that a trial will proceed on the day on which it is fixed.

I am sure that this amendment will therefore be welcomed by all members.

I commend the Bill to the House.