



New South Wales

Criminal Procedure and Other Legislation Amendment (Criminal Proceedings) Bill 2025

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the following Acts in response to the decision of the New South Wales Court of Appeal in *Gamage v Riashi* [2025] NSWCA 84—

- (a) the *Criminal Procedure Act 1986*, to validate certain proceedings commenced by public officers,
- (b) the *Independent Commission Against Corruption Act 1988*, to validate the commencement of certain proceedings by officers of the Independent Commission Against Corruption,
- (c) the *Law Enforcement Conduct Commission Act 2016*, to validate the commencement of certain proceedings by officers of the Law Enforcement Conduct Commission or the former Police Integrity Commission.

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.

Schedule 1 Amendment of Criminal Procedure Act 1986 No 209

Schedule 1 inserts a provision to clarify that if, before the commencement of the proposed Act, a person referred to in the *Criminal Procedure Act 1986*, section 3(1), definition of *public officer*,

paragraphs (a)–(f) commenced proceedings for a prosecution in the person’s role as mentioned in the relevant paragraph, the person is taken to have been acting in the person’s official capacity.

Schedule 2 Amendment of Independent Commission Against Corruption Act 1988 No 35

Schedule 2 provides that if, before the commencement of the schedule, an officer of the Independent Commission Against Corruption (*ICAC*) commenced proceedings against a person for a criminal offence against the law of the State or the Commonwealth in accordance with the written advice of the Director of Public Prosecutions, ICAC’s functions include commencing the prosecution and the commencement of the proceedings is taken to be, and to have always been, valid.

Schedule 3 Amendment of Law Enforcement Conduct Commission Act 2016 No 61

Schedule 3 provides that if, before the commencement of the schedule, an officer of the Law Enforcement Conduct Commission (*LECC*) or the former Police Integrity Commission (*PIC*) commenced proceedings against a person for a criminal offence against the law of the State or the Commonwealth in accordance with the written advice of the Director of Public Prosecutions, the functions of LECC or the former PIC include commencing the prosecution and the commencement of the proceedings is taken to be, and to have always been, valid.



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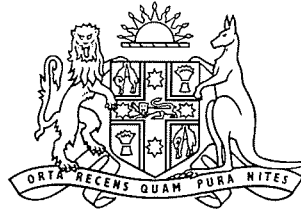
Contents

		Page
	1 Name of Act	2
	2 Commencement	2
Schedule 1	Amendment of Criminal Procedure Act 1986 No 209	3
Schedule 2	Amendment of Independent Commission Against Corruption Act 1988 No 35	4
Schedule 3	Amendment of Law Enforcement Conduct Commission Act 2016 No 61	5

This PUBLIC BILL, originated in the LEGISLATIVE COUNCIL and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.

Legislative Council

Clerk of the Parliaments



New South Wales

Criminal Procedure and Other Legislation Amendment (Criminal Proceedings) Bill 2025

No , 2025

A Bill for

An Act to amend the *Criminal Procedure Act 1986* to validate certain prosecutions commenced by public officers; and to amend the *Independent Commission Against Corruption Act 1988* and the *Law Enforcement Conduct Commission Act 2016* to validate certain prosecutions commenced by officers of the Independent Commission Against Corruption, the Law Enforcement Conduct Commission or former Police Integrity Commission in accordance with the written advice of the Director of Public Prosecutions.

The LEGISLATIVE ASSEMBLY has this day agreed to this Bill with/without amendment.

Legislative Assembly

Clerk of the Legislative Assembly

Tabling copy

The Legislature of New South Wales enacts—	1
1 Name of Act	2
This Act is the <i>Criminal Procedure and Other Legislation Amendment (Criminal Proceedings) Act 2025</i> .	3
	4
2 Commencement	5
This Act commences on the date of assent to this Act.	6

Schedule 1 Amendment of Criminal Procedure Act 1986 No 209

Schedule 2 Savings, transitional and other provisions

Insert at the end of the schedule, with appropriate part and clause numbering—

Part Provision consequent on enactment of Criminal Procedure and Other Legislation Amendment (Criminal Proceedings) Act 2025

Commencement of proceedings by certain persons

- (1) This clause applies if, before the commencement—
 - (a) a person commenced proceedings for a prosecution of another person for a criminal offence, and
 - (b) the person was, when the person commenced the proceedings, a person mentioned in a relevant provision, and
 - (c) the person purported to commence the proceedings in the person's capacity as a person mentioned in the relevant provision rather than in the person's private capacity.

Example— The proceedings related to or arose out of an investigation conducted by the agency of which the person was an officer or employee and the person commenced the proceedings in the person's capacity as an officer or employee of that agency, not in the person's capacity as a member of the community.
- (2) The person is taken to have been acting in an official capacity in commencing the proceedings.
- (3) This clause applies—
 - (a) whether or not the person, or a person, agency, statutory body or other body of which the person was an officer or employee, had an express or implied function of commencing proceedings for prosecutions, other than by the operation of this clause, and
 - (b) whether the proceedings had been finalised, or were yet to be finalised, before the commencement.
- (4) In this clause—

commencement means the commencement of the *Criminal Procedure and Other Legislation Amendment (Criminal Proceedings) Act 2025*, Schedule 1.

private capacity, for a person, means acting in a personal capacity as a member of the community rather than acting in the person's capacity as a person mentioned in a relevant provision.

relevant provision means section 3(1), definition of **public officer**, paragraphs (a)–(f).

Schedule 2	Amendment of Independent Commission Against Corruption Act 1988 No 35	1
		2
Schedule 4 Savings, transitional and other provisions		3
Insert at the end of the schedule, with appropriate part and clause numbering—		4
Part	Provision consequent on enactment of Criminal Procedure and Other Legislation Amendment (Criminal Proceedings) Act 2025	5
		6
		7
	Proceedings for criminal offences	8
(1)	This clause applies if, before the commencement—	9
(a)	an officer of the Commission commenced proceedings against a person for a criminal offence against the law of the State or the Commonwealth, and	10 11 12
(b)	the commencement of the proceedings was in accordance with written advice given by the Director of Public Prosecutions.	13 14
(2)	The Commission’s functions are taken to have included commencing the proceedings and the commencement of the proceedings is taken to be, and to have always been, valid.	15 16 17
(3)	This clause applies whether the proceedings had been finalised, or were yet to be finalised, before the commencement.	18 19
(4)	In this clause—	20
	<i>commencement</i> means the commencement of the <i>Criminal Procedure and Other Legislation Amendment (Criminal Proceedings) Act 2025</i> , Schedule 2.	21 22

Schedule 3	Amendment of Law Enforcement Conduct Commission Act 2016 No 61	1
		2
Schedule 3 Savings, transitional and other provisions		3
Insert at the end of the schedule, with appropriate part and clause numbering—		4
Part	Provision consequent on enactment of Criminal Procedure and Other Legislation Amendment (Criminal Proceedings) Act 2025	5
		6
		7
Proceedings for criminal offences		8
(1) This clause applies if, before the commencement—		9
(a) either of the following commenced proceedings against a person for a criminal offence against the law of the State or the Commonwealth—		10
(i) an officer of the Commission,		11
(ii) an officer of the former Police Integrity Commission, and		12
(b) the commencement of the proceedings was in accordance with written advice given by the Director of Public Prosecutions.		13
(2) The functions of the Commission and former Police Integrity Commission are taken to have included commencing the proceedings and the commencement of the proceedings is taken to be, and to have always been, valid.		14
(3) This clause applies whether the proceedings had been finalised, or were yet to be finalised, before the commencement.		15
(4) In this clause—		16
commencement means the commencement of the <i>Criminal Procedure and Other Legislation Amendment (Criminal Proceedings) Act 2025</i> , Schedule 3.		17
former Police Integrity Commission means the Police Integrity Commission constituted under the <i>Police Integrity Commission Act 1996</i> before its repeal.		18
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