

CRIMINAL PROCEDURE AND OTHER LEGISLATION AMENDMENT (CRIMINAL
PROCEEDINGS) BILL 2025

STATEMENT OF PUBLIC INTEREST

Need: Why is the policy needed based on factual evidence and stakeholder input?

On 30 April 2025, the Court of Appeal handed down its decision in *Gamage v Riashi* [2025] NSWCA 84 (***Gamage***). Mr Gamage was convicted in the Local Court of NSW of nine offences contrary to the *Crimes Act 1900*. The offences arose from the investigation into corrupt conduct carried out by the Independent Commission Against Corruption (**the ICAC**). An officer of the ICAC (Mr Riashi) was named as the prosecutor on the Court Attendance Notices (**CANs**) commencing the proceedings. The Court of Appeal held that an ICAC officer could not validly rely on the 'common informer' power provided by sections 14 and 173 of the *Criminal Procedure Act 1986* (***Criminal Procedure Act***) to commence a prosecution as a 'public officer'. The Court's decision hinged on the conclusion that the ICAC officer was not 'acting in an official capacity' as required under the *Criminal Procedure Act*, as the ICAC does not have an express or implied prosecutorial function. The Court set aside Mr Gamage's convictions and sentences.

The reasoning of the Court has implications for prosecutions commenced by the ICAC until at least 2016 when the Solicitor for Public Prosecutions started to be named as the prosecutor commencing proceedings. The reasoning of the Court may also have implications for prosecutions commenced by other agencies and statutory bodies such as the Law Enforcement Conduct Commission (**the LECC**) and the Royal Society for the Prevention of Cruelty to Animals.

The Bill is required to retrospectively validate any prosecutions which may be subject to doubt based on the reasoning of the Court in *Gamage*. Officers from the ICAC and other bodies/agencies have been commencing prosecutions based on a good faith understanding that they were empowered to do so as 'public officials' relying on section 3(1) of the *Criminal Procedure Act*, clause 113 of the *Criminal Procedure Regulation 2017*, earlier court decisions, and earlier formal reports/reviews detailing the understood powers and functions of those agencies.¹

Objectives: What is the policy's objective couched in terms of the public interest?

The Bill aims to ensure that prosecutions of public significance are not subject to doubt where they were commenced by officers acting in good faith. In the case of the ICAC and the LECC, they are important integrity agencies with a central role in investigating and exposing corrupt conduct within the public sector (in the case of the ICAC) and serious misconduct and maladministration within the NSW Police Force (in the case of the LECC). Prosecutions for offences identified in the course of those investigations are of significant public interest both in punishing the individual and deterring others from engaging in similar conduct in the future.

Options: What alternative policies and mechanisms were considered in advance of the bill?

¹ See, for example in relation to the ICAC, *Lazarus v Independent Commission Against Corruption* [2019] NSWCA 100; and The Hon. Murray Gleeson AC and Bruce McClintock SC. (2015). *Independent Panel – Review of the Jurisdiction of the Independent Commission Against Corruption*. NSW Department of Premier and Cabinet

Retrospective legislative reform is the only mechanism which will ensure that prior convictions and sentences are not subject to doubt and potential challenge based on the reasoning in *Garage*.

The other option would be to not progress these amendments. This would likely result in convictions and sentences being challenged on technical grounds, not on the basis that there was any issue with the evidence underpinning the convictions or the integrity of the proceedings.

Analysis: What were the pros/cons and benefits/costs of each option considered?

Not progressing these reforms will likely result in convictions and sentences being challenged on technical grounds, many of which are for serious offences. This would result in a significant resource burden for agencies, prosecutors and the courts, and is not in the interests of justice.

Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

The Bill will commence on assent.

Consultation: Were the views of affected stakeholders sought and considered in making the policy?

The purpose of this Bill is remedial in nature and internal Government stakeholders were consulted.