

CRIMINAL PROCEDURE LEGISLATION AMENDMENT (PROSECUTION OF INDICTABLE OFFENCES) BILL 2022

STATEMENT OF PUBLIC INTEREST

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

The *Criminal Procedure Legislation (Prosecution of Indictable Offences) Bill 2022* (the **Bill**) is required to address a procedural bar preventing the prosecution of indictable regulatory offences.

In April 2018, amendments to the *Criminal Procedure Act 1986* were made to implement the Early Appropriate Guilty Plea (EAGP) reforms. These amendments inserted a pre-condition to commit an individual to trial requiring that a prosecutor certify they have received and considered a disclosure certificate. The disclosure certificate can only be provided to the Director of Public Prosecutions (DPP) by a 'law enforcement officer', that is, a police officer or an officer of the Law Enforcement Conduct Commission, the NSW Crime Commission or the Independent Commission Against Corruption.

This pre-condition cannot be satisfied where a regulatory agency has investigated an offence and seeks to refer the offence to the DPP, or the regulatory agency intends to prosecute the matter in the name of the Attorney General. This means such matters cannot proceed on indictment.

Stakeholder views were sought to inform the development of the Bill. An Issues Paper was developed and provided to relevant stakeholders for feedback, with all comments reviewed and considered. This included advice from the Supreme Court, the District Court, Chief Magistrate, Children's Court, Commonwealth Director of Public Prosecutions, the Public Defenders, NSW Treasury, Australian Health Practitioner Regulation Agency, NSW Department of Education, National Heavy Vehicle Regulator, NSW Minerals Council, the Bar Association, Legal Aid, NSW DPP, SafeWork NSW and the NSW Resources Regulator.

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

The objective of the Bill is to remove the procedural bar that is currently preventing the prosecution of indictable regulatory offences by regulatory agencies. This is due to a pre-condition necessary to commit an individual to trial that cannot be satisfied in circumstances either where a regulatory agency has investigated an offence and seeks to refer the offence to the DPP, or where the agency intends to prosecute the matter in the name of the Attorney General.

This recognises that, in line with intended practice, in some cases it is best for regulators with specialised expertise to prosecute serious offences against regulatory legislation, whereas in other cases it will be appropriate for the Office of the Director of Public Prosecutions to conduct the prosecution.

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

The procedural bar is an unintended consequence of the EAGP legislative reforms and can only be addressed by legislative amendment.

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

No other options can address the issue as the Bill is necessary to allow existing laws to operate as intended. That is, for regulatory agencies to be able to prosecute indictable offences against individuals.

The benefit of this option is to appropriately empower regulatory agencies to enforce their legislation and undertake prosecutions. The enforcement of existing regulatory regimes protects workers, consumers and the public in NSW.

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

It is expected that the Bill will commence on assent. The legislation is administered by the Attorney General.

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

The Department of Communities and Justice released an Issues Paper which sought feedback on proposed amendments. During this consultation, the Department received 20 submissions which were reviewed and considered.

Amendments were made to the Bill to incorporate the feedback that was received.

Most stakeholders were broadly supportive of the reforms to remove the procedural bar preventing regulatory prosecutors from conducting the prosecution of indictable matters in the higher courts. Some stakeholders raised concerns about broadening the scope of the power for regulatory bodies to prosecute offences. However, these minor amendments only intend to return the legislation to the pre-EAGP status quo.

Some stakeholders raised concerns about the introduction of the disclosure provisions indicating that there are other mechanisms, both statutorily and through common law, that adequately govern disclosure. However, relevant and timely disclosure is an important aspect of criminal proceedings, and ensuring that a uniform set of rules applies across the jurisdictions falls above the concerns raised by the stakeholders.