

# CONCURRENCE COPY

## CRIMES (PROCEDURE) AMENDMENT BILL, 1983

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### EXPLANATORY NOTE

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

This Bill is cognate with the Justices (Procedure) Further Amendment Bill, 1983.

The objects of this Bill are to amend the Crimes Act, 1900, so as—

- (a) to permit, in certain circumstances, a written statement admitted in evidence in committal proceedings to be admitted at the trial (Schedule 1 (1) (b));
  - (b) to permit, in certain circumstances, a written statement admitted in evidence in committal proceedings to continue to be evidence when the charge is dealt with summarily by a magistrate with the consent of the accused (Schedule 1 (2));
  - (c) to permit the deposition of a witness to be read as evidence for the defence when the witness is absent from Australia (Schedule 1 (1) (a)); and
  - (d) to make amendments by way of statute law revision, including amendments for the purpose of correcting incorrect cross-references (Schedule 2),
- and to make other provisions of a minor, consequential or ancillary nature.



# **CRIMES (PROCEDURE) AMENDMENT BILL, 1983**

No.      , 1983.

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## **A BILL FOR**

An Act to amend the Crimes Act, 1900, so as to make further provisions with respect to the procedure in criminal proceedings; and for other purposes.

[MR WALKER—1 *December*, 1983.]

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*Crimes (Procedure) Amendment.*

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**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**5 Short title.**

**1.** This Act may be cited as the "Crimes (Procedure) Amendment Act, 1983".

**Commencement.**

**2. (1)** Except as provided by this section, this Act shall commence on 10 the date of assent to this Act.

**(2)** Section 4, in its application to Schedule 1 or 2, shall commence on the day on which that Schedule commences.

**(3)** Schedule 1 shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation 15 published in the Gazette.

**Schedules.**

**3.** This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO THE CRIMES ACT, 1900.

SCHEDULE 2.—AMENDMENTS TO THE CRIMES ACT, 1900, BY  
20 WAY OF STATUTE LAW REVISION.

SCHEDULE 3.—TRANSITIONAL PROVISIONS.

**Amendment of Act No. 40, 1900.**

**4.** The Crimes Act, 1900, is amended in the manner set forth in Schedules 1 and 2.

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*Crimes (Procedure) Amendment.*

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**Transitional provisions.**

5. Schedule 3 has effect.

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**SCHEDULE 1.**

(Sec. 4.)

5 **AMENDMENTS TO THE CRIMES ACT, 1900.**

- (1) (a) Section 409 (2) (a)—

Omit "evidence; or," insert instead "evidence, or is absent from Australia; or".

- (b) Section 409 (7)–(11)—

10 After section 409 (6), insert:—

(7) Except in so far as the Judge otherwise orders, a prescribed statement may be read as evidence for the prosecution at the trial of the accused upon proof on oath that the person who made the statement is dead, or so ill as not to be able to travel or to give evidence, or is absent from Australia.

(8) A prescribed statement may, if the accused so requires, be read as evidence in the accused's defence at the trial of the accused whenever—

20 (a) the person who made the statement is dead, or so ill as not to be able to travel or to give evidence, or is absent from Australia; or

25 (b) the Justice who committed the accused or held the accused to bail has certified before the committal or holding to bail that the evidence of the person who made the statement is material, and that that person is, in the belief of the Justice, willing to attend the trial, but is unable to bear the expense of attendance,

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*Crimes (Procedure) Amendment.*

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SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

but no statement may be so read on the ground mentioned in paragraph (b) if the person who made the statement has, in due time before the trial, been subpoenaed by the Crown.

(9) A prescribed statement made in respect of any charge of felony or misdemeanour may be read as evidence on the trial of the accused for any other offence, although of a higher or different nature, if the contents of the statement would be admissible on the trial of the accused for the offence in respect of which it was made.

(10) Where at a trial it appears to the Judge that the whole or any part of a prescribed statement is inadmissible, the Judge may reject the statement or that part, as the case may be, as evidence.

(11) In this section, "prescribed statement" means a written statement the whole or a part of which was admitted as evidence under section 48A of the Justices Act, 1902, and includes a part thereof rejected under section 48F of that Act.

## 20 (2) Section 476 (10)–(12)—

After section 476 (9), insert:—

(10) Where, pursuant to this section, a magistrate decides to hear and determine a charge in a summary manner after written statements have been admitted as evidence under section 48A of the Justices Act, 1902—

(a) the magistrate shall enquire of the parties if any of them wish to have any person who made a statement admitted as evidence called to give evidence in the proceedings;

(b) if a party requires the attendance of any person referred to in paragraph (a), or if the magistrate is of the opinion that any such person should be called—

(i) the magistrate shall direct the attendance of that person to give evidence; and

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*Crimes (Procedure) Amendment.*

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SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

5 (ii) the statement shall, as soon as the direction is given,  
be thereafter treated as not being admitted as  
evidence in the proceedings, unless that party, after  
requiring the attendance of that person, consents to  
the re-admission in evidence of the statement or the  
magistrate, after giving the direction, withdraws the  
direction; and

10 (c) if the attendance of any person referred to in paragraph (a)  
is not required, the statement made by the person shall  
continue to be evidence in the proceedings.

15 (11) Where in any proceedings in which a magistrate decides to  
hear and determine a charge in a summary manner there are 2 or  
more defendants, the provisions of subsection (10)—

(a) apply in relation to each such defendant to the extent only  
that a written statement referred to in that subsection has  
been admitted as evidence against that defendant under  
section 48A of the Justices Act, 1902; and

20 (b) so apply in relation to each such defendant as if that  
defendant were the only defendant,

and references in that subsection to a party shall be construed  
accordingly.

25 (12) Without limiting the powers of the magistrate to adjourn  
proceedings, the magistrate shall grant such adjournments as appear  
to be just and reasonable as a consequence of any of the provisions of  
subsection (10).

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*Crimes (Procedure) Amendment.*

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SCHEDULE 2.

(Sec. 4.)

AMENDMENTS TO THE CRIMES ACT, 1900, BY WAY OF STATUTE LAW  
REVISION.

5 (1) Section 352A (6)—

Omit “or he is discharged or admitted to bail as referred to in paragraph (b), to be released from the bail to which he was admitted under subsection (3) (b) (ii)”, insert instead “to be released from that bail”.

10 (2) (a) Section 409 (1)—

Omit “in the prosecution”, insert instead “for the prosecution”.

(b) Section 409 (1) (a)—

Omit “the Commonwealth of”.

(3) Section 476 (6) (d)—

15 Omit “176BA, 176BB”, insert instead “178BA, 178BB”.

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SCHEDULE 3.

(Sec. 5.)

TRANSITIONAL PROVISIONS.

**Interpretation.**

20 1. In this Schedule, “appointed day” means the day appointed and notified under section 2 (3).

**Depositions of witnesses.**

25 2. The provisions of section 409 (2) of the Crimes Act, 1900, as amended by this Act, apply to and in respect of alleged offences committed before, on or after the appointed day, whether or not proceedings for those offences have been commenced, and also apply to and in respect of depositions recorded before, on or after that day.

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*Crimes (Procedure) Amendment.*

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SCHEDULE 3—*continued.*

TRANSITIONAL PROVISIONS—*continued.*

**Written statements by witnesses.**

3. The provisions of section 409 (7)–(11) of the Crimes Act, 1900, as amended  
5 by this Act, apply to and in respect of alleged offences committed before, on or after  
the appointed day, whether or not proceedings for those offences have been com-  
menced, but do not apply to or in respect of written statements referred to in  
those provisions made before that day.

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BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1983

(40c)



**CRIMES (PROCEDURE) AMENDMENT ACT, 1983, No. 170**

**New South Wales**



ANNO TRICESIMO SECUNDO

**ELIZABETHÆ II REGINÆ**

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**Act No. 170, 1983.**

An Act to amend the Crimes Act, 1900, so as to make further provisions with respect to the procedure in criminal proceedings; and for other purposes. [Assented to, 31st December, 1983.]

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*Crimes (Procedure) Amendment.*

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**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**Short title.**

1. This Act may be cited as the "Crimes (Procedure) Amendment Act, 1983".

**Commencement.**

2. (1) Except as provided by this section, this Act shall commence on the date of assent to this Act.

(2) Section 4, in its application to Schedule 1 or 2, shall commence on the day on which that Schedule commences.

(3) Schedule 1 shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

**Schedules.**

3. This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO THE CRIMES ACT, 1900.

SCHEDULE 2.—AMENDMENTS TO THE CRIMES ACT, 1900, BY WAY OF STATUTE LAW REVISION.

SCHEDULE 3.—TRANSITIONAL PROVISIONS.

**Amendment of Act No. 40, 1900.**

4. The Crimes Act, 1900, is amended in the manner set forth in Schedules 1 and 2.

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*Crimes (Procedure) Amendment.*

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**Transitional provisions.**

5. Schedule 3 has effect.

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**SCHEDULE 1.**

(Sec. 4.)

**AMENDMENTS TO THE CRIMES ACT, 1900.**

- (1) (a) Section 409 (2) (a)—

Omit “evidence; or,” insert instead “evidence, or is absent from Australia; or”.

- (b) Section 409 (7)–(11)—

After section 409 (6), insert:—

(7) Except in so far as the Judge otherwise orders, a prescribed statement may be read as evidence for the prosecution at the trial of the accused upon proof on oath that the person who made the statement is dead, or so ill as not to be able to travel or to give evidence, or is absent from Australia.

(8) A prescribed statement may, if the accused so requires, be read as evidence in the accused’s defence at the trial of the accused whenever—

- (a) the person who made the statement is dead, or so ill as not to be able to travel or to give evidence, or is absent from Australia; or
- (b) the Justice who committed the accused or held the accused to bail has certified before the committal or holding to bail that the evidence of the person who made the statement is material, and that that person is, in the belief of the Justice, willing to attend the trial, but is unable to bear the expense of attendance,

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*Crimes (Procedure) Amendment.*

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SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

but no statement may be so read on the ground mentioned in paragraph (b) if the person who made the statement has, in due time before the trial, been subpoenaed by the Crown.

(9) A prescribed statement made in respect of any charge of felony or misdemeanour may be read as evidence on the trial of the accused for any other offence, although of a higher or different nature, if the contents of the statement would be admissible on the trial of the accused for the offence in respect of which it was made.

(10) Where at a trial it appears to the Judge that the whole or any part of a prescribed statement is inadmissible, the Judge may reject the statement or that part, as the case may be, as evidence.

(11) In this section, "prescribed statement" means a written statement the whole or a part of which was admitted as evidence under section 48A of the Justices Act, 1902, and includes a part thereof rejected under section 48F of that Act.

(2) Section 476 (10)–(12)—

After section 476 (9), insert:—

(10) Where, pursuant to this section, a magistrate decides to hear and determine a charge in a summary manner after written statements have been admitted as evidence under section 48A of the Justices Act, 1902—

- (a) the magistrate shall enquire of the parties if any of them wish to have any person who made a statement admitted as evidence called to give evidence in the proceedings;
- (b) if a party requires the attendance of any person referred to in paragraph (a), or if the magistrate is of the opinion that any such person should be called—
  - (i) the magistrate shall direct the attendance of that person to give evidence; and

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*Crimes (Procedure) Amendment.*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

- (ii) the statement shall, as soon as the direction is given, be thereafter treated as not being admitted as evidence in the proceedings, unless that party, after requiring the attendance of that person, consents to the re-admission in evidence of the statement or the magistrate, after giving the direction, withdraws the direction; and
- (c) if the attendance of any person referred to in paragraph (a) is not required, the statement made by the person shall continue to be evidence in the proceedings.

(11) Where in any proceedings in which a magistrate decides to hear and determine a charge in a summary manner there are 2 or more defendants, the provisions of subsection (10)—

- (a) apply in relation to each such defendant to the extent only that a written statement referred to in that subsection has been admitted as evidence against that defendant under section 48A of the Justices Act, 1902; and
- (b) so apply in relation to each such defendant as if that defendant were the only defendant,

and references in that subsection to a party shall be construed accordingly.

(12) Without limiting the powers of the magistrate to adjourn proceedings, the magistrate shall grant such adjournments as appear to be just and reasonable as a consequence of any of the provisions of subsection (10).

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*Crimes (Procedure) Amendment.*

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## SCHEDULE 2.

(Sec. 4.)

AMENDMENTS TO THE CRIMES ACT, 1900, BY WAY OF STATUTE LAW  
REVISION.

## (1) Section 352A (6)—

Omit “or he is discharged or admitted to bail as referred to in paragraph (b), to be released from the bail to which he was admitted under subsection (3) (b) (ii)”, insert instead “to be released from that bail”.

## (2) (a) Section 409 (1)—

Omit “in the prosecution”, insert instead “for the prosecution”.

## (b) Section 409 (1) (a)—

Omit “the Commonwealth of”.

## (3) Section 476 (6) (d)—

Omit “176BA, 176BB”, insert instead “178BA, 178BB”.

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SCHEDULE 3.

(Sec. 5.)

## TRANSITIONAL PROVISIONS.

**Interpretation.**

1. In this Schedule, “appointed day” means the day appointed and notified under section 2 (3).

**Depositions of witnesses.**

2. The provisions of section 409 (2) of the Crimes Act, 1900, as amended by this Act, apply to and in respect of alleged offences committed before, on or after the appointed day, whether or not proceedings for those offences have been commenced, and also apply to and in respect of depositions recorded before, on or after that day.

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*Crimes (Procedure) Amendment.*

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SCHEDULE 3—*continued.*

TRANSITIONAL PROVISIONS—*continued.*

**Written statements by witnesses.**

3. The provisions of section 409 (7)–(11) of the Crimes Act, 1900, as amended by this Act, apply to and in respect of alleged offences committed before, on or after the appointed day, whether or not proceedings for those offences have been commenced, but do not apply to or in respect of written statements referred to in those provisions made before that day.

*In the name and on behalf of Her Majesty I assent to this Act.*

L. W. STREET,  
*By Deputation from*  
*His Excellency the Governor.*

*Government House,*  
*Sydney, 31st December, 1983.*

