

**CRIMES (PUBLIC JUSTICE) AMENDMENT ACT 1990 No. 51**

**NEW SOUTH WALES**



**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Amendment of Crimes Act 1900 No. 40
4. Consequential amendment of other Acts

SCHEDULE 1 - AMENDMENT OF CRIMES ACT 1900

SCHEDULE 2 - CONSEQUENTIAL AMENDMENT OF OTHER ACTS

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**CRIMES (PUBLIC JUSTICE) AMENDMENT ACT 1990 No. 51**

NEW SOUTH WALES



**Act No. 51, 1990**

An Act to amend the Crimes Act 1900 to make further provision with respect to public justice offences; and for other purposes. [Assented to 18 September 1990]

**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Crimes (Public Justice) Amendment Act 1990.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

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

3. The Crimes Act 1900 is amended as set out in Schedule 1.

**Consequential amendment of other Acts**

4. Each Act specified in Schedule 2 is amended as set out in that Schedule.

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**SCHEDULE 1 - AMENDMENT OF CRIMES ACT 1900**

(Sec. 3)

(1) Section 1 (**Short title and contents of Act**):

Omit the matter relating to Parts 7 and 8, insert instead:

**PART 7 - PUBLIC JUSTICE OFFENCES:**

CHAPTER 1 - *Definitions* - ss. 311-313

CHAPTER 2 - *Interference with the administration of justice*  
- ss. 314-319

CHAPTER 3 - *Interference with judicial officers, witnesses,  
jurors etc.* - ss. 320-326

CHAPTER 4 - *Perjury, false statements etc.* - ss. 327-339

CHAPTER 5 - *Miscellaneous* - ss. 340-343A

(2) Parts 7 and 8:

Omit the Parts, insert instead:

SCHEDULE 1 - AMENDMENT OF CRIMES ACT 1900 - *continued*

**PART 7 - PUBLIC JUSTICE OFFENCES**

**CHAPTER 1 - Definitions**

**Definitions**

311. (1) In this Part:

"**benefit**" means any benefit or advantage whether or not in money or money's worth;

"**judicial officer**" means a person who is, or who alone or with others constitutes, a judicial tribunal;

"**judicial proceeding**" means a proceeding in or before a judicial tribunal in which evidence may be taken on oath;

"**judicial tribunal**" means a person (including an arbitrator), court or body authorised by law, or by consent of parties, to conduct a hearing for the purpose of the determination of any matter or thing and includes a person, court or body authorised to conduct a committal proceeding;

"**public justice official**" means a person who is a public officer employed in any capacity (other than as a judicial officer) for the investigation, detection or prosecution of offenders;

"**serious offence**" means an offence punishable by imprisonment or penal servitude for 5 years or more or for life.

(2) In this Part, a reference to the making of a statement on oath includes a reference to the verification of a statement on oath.

**Meaning of "pervert the course of justice"**

312. A reference in this Part to perverting the course of justice is a reference to obstructing, preventing, perverting or defeating the course of justice or the administration of the law.

**Knowledge that offence is a serious offence is unnecessary**

313. If it is an element of an offence under this Part that an offence is a serious offence, it is not necessary for the

SCHEDULE 1 - AMENDMENT OF CRIMES ACT 1900 - *continued*

prosecution to establish that the accused knew that the offence was a serious offence.

**CHAPTER 2 - *Interference with the administration of justice***

**False accusations etc.**

314. A person who makes an accusation intending a person to be the subject of an investigation of an offence, knowing that other person to be innocent of the offence, is liable to penal servitude for 7 years.

**Hindering investigation etc.**

315. (1) A person who does anything intending in any way to hinder:

- (a) the investigation of a serious offence committed by another person; or
- (b) the discovery of evidence concerning a serious offence committed by another person; or
- (c) the apprehension of another person who has committed a serious offence,

is liable to penal servitude for 7 years.

(2) For the purposes of subsection (1), a person is to be considered to have committed a serious offence if a public officer engaged in the detection or investigation of offenders suspects on reasonable grounds that a person has committed the offence.

(3) It is not an offence against this section merely to refuse or fail to divulge information or produce evidence.

**Concealing serious offence for benefit**

316. (1) If a person has committed a serious offence and another person who knows or believes that the offence has been committed and that he or she has information which might be of material assistance in securing the apprehension of the offender or the prosecution or conviction of the offender for it fails without reasonable excuse to bring that information to the attention of a member of the Police Force or other appropriate

SCHEDULE 1 - AMENDMENT OF CRIMES ACT 1900 - *continued*

authority, that other person is liable to imprisonment for 2 years.

(2) A person who solicits, accepts or agrees to accept any benefit for himself or herself or any other person in consideration for doing anything that would be an offence under subsection (1) is liable to imprisonment for 5 years.

(3) It is not an offence against subsection (2) merely to solicit, accept or agree to accept the making good of loss or injury caused by an offence or the making of reasonable compensation for that loss or injury.

**Tampering etc. with evidence**

317. A person who, with intent to mislead any judicial tribunal in any judicial proceeding:

- (a) suppresses, conceals, destroys, alters or falsifies anything knowing that it is or may be required as evidence in any judicial proceeding; or
- (b) fabricates false evidence (other than by perjury or suborning perjury); or
- (c) knowingly makes use of fabricated false evidence, is liable to penal servitude for 10 years.

**Making or using false official instrument to pervert the course of justice**

318. (1) In this section:

"official instrument" means an instrument of a kind that is made or issued by a person in his or her capacity as a public officer or by a judicial tribunal.

(2) A person who makes a false official instrument, or who makes a copy of an instrument which the person knows to be a false official instrument, with the intention that:

- (a) he or she or another person will use it to induce another person to accept the instrument as genuine or to accept the copy as a copy of a genuine official instrument; and

SCHEDULE 1 - AMENDMENT OF CRIMES ACT 1900 - *continued*

(b) that acceptance will pervert the course of justice, is liable to penal servitude for 14 years.

(3) A person who uses an instrument which the person knows to be a false official instrument, or who uses a copy of an instrument which the person knows to be a false official instrument, with the intention:

(a) of inducing another person to accept the instrument as genuine or to accept the copy as a copy of a genuine official instrument; and

(b) of thereby perverting the course of justice, is liable to penal servitude for 14 years.

(4) Chapter 2 of Part 5 applies to the interpretation of this section as if this section formed part of that Chapter.

**General offence of perverting the course of justice**

319. A person who does any act, or makes any omission, intending in any way to pervert the course of justice, is liable to penal servitude for 14 years.

**CHAPTER 3 - *Interference with judicial officers, witnesses, jurors etc.***

**Extended meaning of "giving evidence"**

320. In this Chapter, a reference to the giving of evidence includes a reference to the production of anything to be used as evidence.

**Corruption of witnesses and jurors**

321. (1) A person who confers or procures or offers to confer or procure or attempt to procure any benefit on or for any person:

(a) intending to influence any person called or to be called as a witness in any judicial proceeding to give false evidence or withhold true evidence or to not attend as a witness or not produce anything in evidence pursuant to a summons or subpoena; or



SCHEDULE 1 - AMENDMENT OF CRIMES ACT 1900 - *continued*

- (b) intending to influence any person (whether or not a particular person) in the person's conduct as a juror in any judicial proceeding or to not attend as a juror in any judicial proceeding, whether he or she has been sworn as a juror or not, and intending to pervert the course of justice,

is liable to penal servitude for 10 years.

(2) A person who solicits, accepts or agrees to accept any benefit for himself or herself or any other person:

- (a) in consideration for any agreement or undertaking that any person will as a witness in any judicial proceeding give false evidence or withhold true evidence or not attend as a witness or not produce anything in evidence pursuant to a summons or subpoena; or
- (b) on account of anything to be done or omitted to be done by him or her or another person as a juror in any judicial proceeding, or on account of his or her or another person's not attending as a juror in any judicial proceeding, intending to pervert the course of justice,

is liable to penal servitude for 10 years.

**Threatening or intimidating judges, witnesses, jurors etc.**

322. A person who threatens to do or cause, or who does or causes, any injury or detriment to any person:

- (a) intending to influence a person called or to be called as a witness in any judicial proceeding to give false evidence or withhold true evidence or to not attend as a witness or not produce anything in evidence pursuant to a summons or subpoena; or
- (b) intending to influence any person (whether or not a particular person) in the person's conduct as a juror in any judicial proceeding or to not attend as a juror in any judicial proceeding, whether he or she has been sworn as a juror or not; or

SCHEDULE 1 - AMENDMENT OF CRIMES ACT 1900 - *continued*

- (c) intending to influence any person in the person's conduct as a judicial officer; or
- (d) intending to influence any person in the person's conduct as a public justice official in or in connection with any judicial proceeding,

is liable to penal servitude for 10 years.

**Influencing witnesses and jurors**

323. A person who does any act:

- (a) intending to procure, persuade, induce or otherwise cause any person called or to be called as a witness in any judicial proceeding to give false evidence or withhold true evidence or to not attend as a witness or not produce any thing in evidence pursuant to a summons or subpoena; or
- (b) intending, other than by the production of evidence and argument in open court, to influence any person (whether or not a particular person) in the person's conduct as a juror in any judicial proceeding, whether he or she has been sworn as a juror or not,

is liable to imprisonment for 7 years.

**Increased penalty if serious offence involved**

324. A person who commits an offence against section 321, 322 or 323 (offences concerning interference with witnesses, jurors, judicial officers and public justice officials) intending to procure the conviction or acquittal of any person of any serious offence is liable to penal servitude for 14 years.

**Preventing, obstructing or dissuading witness or juror from attending etc.**

325. (1) A person who without lawful excuse wilfully prevents, obstructs or dissuades a person called as a witness in any judicial proceeding from attending as a witness or from producing anything in evidence pursuant to

SCHEDULE 1 - AMENDMENT OF CRIMES ACT 1900 - *continued*

a summons or subpoena is liable to imprisonment for 5 years.

(2) A person who without lawful excuse wilfully prevents, obstructs or dissuades a person summoned as a juror in any judicial proceeding from attending as a juror is liable to imprisonment for 5 years.

**Reprisals against judges, witnesses, jurors etc.**

326. A person who threatens to do or cause, or who does or causes, any injury or detriment to any person on account of anything lawfully done by a person:

- (a) as a witness or juror in any judicial proceeding; or
- (b) as a judicial officer; or
- (c) as a public justice official in or in connection with any judicial proceeding,

is liable to penal servitude for 10 years.

**CHAPTER 4 - *Perjury, false statements etc.***

**Offence of perjury**

327. (1) Any person who in or in connection with any judicial proceeding makes any false statement on oath concerning any matter which is material to the proceeding, knowing the statement to be false or not believing it to be true, is guilty of perjury and liable to penal servitude for 10 years.

(2) A statement can be considered to have been made in connection with a judicial proceeding whether or not a judicial proceeding has commenced, or ever commences, in connection with it.

(3) The determination of whether a statement is material to a judicial proceeding that has not commenced is to be made on the basis of any judicial proceeding likely to arise in connection with the statement.

(4) The question of whether any matter is material to a proceeding is a question of law.

SCHEDULE 1 - AMENDMENT OF CRIMES ACT 1900 - *continued*

**Perjury with intent to procure conviction or acquittal**

328. Any person who commits perjury intending to procure the conviction or acquittal of any person of any serious offence is liable to penal servitude for 14 years.

**Conviction for false swearing on indictment for perjury**

329. If on the trial of a person for perjury the jury is not satisfied that the accused is guilty of perjury but is satisfied on the evidence that the accused is guilty of an offence under section 330 (False statement on oath not amounting to perjury) it may find the accused not guilty of the offence charged but guilty of the latter offence and the accused is liable to punishment accordingly.

**False statement on oath not amounting to perjury**

330. A person who makes on oath any false statement knowing the statement to be false or not believing it to be true, if it is not perjury, is liable to imprisonment for 5 years.

**Contradictory statements on oath**

331. If on the trial of a person for perjury or for an offence under section 330 (False statement on oath not amounting to perjury):

- (a) the jury is satisfied that the accused has made 2 statements on oath and one is irreconcilably in conflict with the other; and
- (b) the jury is satisfied that one of the statements was made by the accused knowing it was false or not believing it was true but the jury cannot say which statement was so made,

the jury may make a special finding to that effect and find the accused guilty of perjury or of an offence under section 330, as appropriate, and the accused is liable to punishment accordingly.

SCHEDULE 1 - AMENDMENT OF CRIMES ACT 1900 - *continued*

**Certain technical defects provided for**

332. If on the trial of a person for perjury or for an offence under section 330 (False statement on oath not amounting to perjury):

- (a) any affidavit, deposition, examination or declaration offered in evidence is wrongly entitled or otherwise informal or defective; or
- (b) the jurat to any such instrument is informal or defective,

the accused is not entitled to an acquittal because of the omission, defect or informality but the instrument (if otherwise admissible) may be given in evidence and used for all purposes of the trial.

**Subornation of perjury**

333. (1) A person who procures, persuades, induces or otherwise causes a person to give false testimony the giving of which is perjury is guilty of subornation of perjury and liable to imprisonment for 7 years.

(2) A person who commits subornation of perjury intending to procure the conviction or acquittal of any person of any serious offence is liable to penal servitude for 14 years.

**General provisions applicable to perjury and false statement offences**

334. It is immaterial for the purposes of this Chapter:

- (a) whether a statement on oath is given orally or in writing; or
- (b) which forms and ceremonies are used in administering the oath (or otherwise binding the person giving the testimony to speak the truth) so long as the person assents to the forms and ceremonies actually used; or
- (c) whether (in the case of a statement made in a judicial proceeding) the judicial tribunal concerned is properly constituted or held in the proper place

SCHEDULE 1 - AMENDMENT OF CRIMES ACT 1900 - *continued*

or not, so long as it actually acts as a judicial tribunal in the proceeding in which the statement is made; or

- (d) whether the person who makes the statement is a competent witness or not, or whether the statement is admissible in the proceeding or not; or
- (e) in the case of judicial proceedings in an arbitration, whether the law governing the arbitration agreement or the proceedings, or any other relevant law, is or is not the law of New South Wales.

**False statements in evidence on commission**

335. If a person, in giving any testimony (either orally or in writing) otherwise than on oath, when required to do so by an order under section 79 of the Evidence Act 1898, makes any statement that is false in a material particular, knowing the statement to be false or not believing it to be true, is liable to imprisonment for 5 years.

**False entry on public register**

336. (1) A person who for an improper purpose makes a statement for the making of an entry in any register kept by a public officer for a public purpose, knowing the statement to be false or misleading in a material particular, is liable to imprisonment for 5 years.

(2) A person who for an improper purpose makes an entry in any register kept by a public officer for a public purpose, knowing the entry to be false or misleading in a material particular, is liable to imprisonment for 5 years.

**False instruments issued by public officers**

337. A public officer who, being authorised or required to issue an instrument whereby any person may be prejudicially affected, issues the instrument for an improper purpose knowing it to be false in a material particular is liable to imprisonment for 5 years.

SCHEDULE 1 - AMENDMENT OF CRIMES ACT 1900 - *continued*

**Restrictions on prosecutions for perjury**

338. (1) A person is not to be prosecuted for perjury except:

- (a) by the Director of Public Prosecutions; or
- (b) at the direction of the Attorney General; or
- (c) by any other person with leave of the judicial officer who constituted the judicial tribunal before which the perjury is alleged to have been committed.

(2) If it is impossible or impracticable to apply for leave to prosecute in accordance with subsection (1) (c), the prosecution may be instituted with leave of the Supreme Court.

(3) A person is not to be prosecuted for perjury (except by the Director of Public Prosecutions or at the direction of the Attorney General) unless notice of the proposed prosecution has been given to the Director of Public Prosecutions.

**Application of Chapter to perjury under other Acts**

339. Any false oath declared by any Act to be perjury or made punishable as perjury by any Act is to be considered to be perjury for the purposes of this Act.

CHAPTER 5 - *Miscellaneous*

**Extent of abolition of offences**

340. The offences at common law abolished by this Chapter are abolished for all purposes not relating to offences committed before the commencement of this Part (as substituted by the Crimes (Public Justice) Amendment Act 1990).

**Certain common law offences abolished**

341. The following offences at common law are abolished:

- \* the offence of perverting the course of justice;
- \* the offence of attempting or conspiring to pervert the course of justice;

SCHEDULE 1 - AMENDMENT OF CRIMES ACT 1900 - *continued*

- \* the offence of falsely accusing a person of a crime or of procuring a person to falsely accuse a person of a crime;
- \* the offence of concealing evidence so that a person is falsely accused of a crime;
- \* the offence of attempting to pervert the course of justice by assisting a person to avoid arrest;
- \* the offence of persuading a person to make a false statement to police to mislead them in their investigation;
- \* the offence of procuring a person to make a false accusation;
- \* the offence of misprision of felony;
- \* the offence of compounding a felony;
- \* the offence of dissuading, intimidating or preventing, or attempting to dissuade, intimidate or prevent, a person who is bound to give evidence in a criminal matter from doing so;
- \* the offence of using threats or persuasion to witnesses to induce them not to appear or give evidence in courts of justice;
- \* the offence of perjury;
- \* the offence of embracery (attempting to corrupt, influence or instruct a jury or to induce a jury to favour one side more than the other);
- \* personating a juror.

**Certain conspiracy offences not affected**

342. The abolition of the common law offence of conspiring to pervert the course of justice does not prevent a prosecution for an offence of conspiring to commit an offence against this Part.

**Certain common law offences not abolished**

343. To remove any doubt, it is declared that the following offences at common law are not abolished by this Chapter:



SCHEDULE 1 - AMENDMENT OF CRIMES ACT 1900 - *continued*

- (a) the offence of escaping from lawful custody;
- (b) the offence of assisting a person to escape from lawful custody;
- (c) the offence of refusing to assist a peace officer in the execution of his or her duty in preventing a breach of the peace.

**Saving of other punishments**

343A. Nothing in this Part prevents or affects any other punishment, or any forfeiture, provided under any Act.

- (3) Section 476 (**Indictable offences punishable summarily with consent of accused**):
  - (a) After section 476 (6) (d), insert:
    - (da) any offence mentioned in section 316, 325, 335, 336 or 337;
  - (b) In section 476 (6) (i), after "(d)", insert "(da)".
- (4) Section 546C (**Resisting etc. police**):

Omit "imprisonment for 3 months, or to a fine of \$200", insert instead "imprisonment for 12 months or to a fine of \$1,000, or both".
- (5) Section 547B (**Public mischief**):

From section 547B (1), omit "imprisonment for six months, or to a fine of \$500, or both", insert instead "imprisonment for 12 months, or to a fine of \$5,000, or both".
- (6) Tenth Schedule (**Offences punishable by the Supreme Court in its summary jurisdiction**):

From paragraph (f) (i), omit "327, 330, 338 or 339", insert instead "327, 330 or 335".

**SCHEDULE 2 - CONSEQUENTIAL AMENDMENT OF OTHER ACTS**

(Sec. 4)

**Bail Act 1978 No. 161**

Section 63 (**Perjury**):  
Omit the section.

**Commercial Arbitration Act 1984 No. 160**

Section 61 (**Perjury**):  
Omit the section.

**Jury Act 1977 No. 18**

Section 67:  
Omit the section, insert instead:  
**Personation of jurors**  
67. Any person who personates a juror is guilty of an offence.  
Penalty: 50 penalty units.

**Oaths Act 1900 No. 20**

Section 20 (**Abolition of extra judicial oaths**):  
In section 20 (1), after "at the time being", insert ", and any person who does so without lawful authority is liable to imprisonment for 2 years".

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[*Minister's second reading speech made in -  
Legislative Assembly on 17 May 1990  
Legislative Council on 12 June 1990*]





FIRST PRINT

## CRIMES (PUBLIC JUSTICE) AMENDMENT BILL 1990

NEW SOUTH WALES



### EXPLANATORY NOTE

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

The object of this Bill is to amend the Crimes Act 1900 to replace Parts 7 (Perjury and like offences) and 8 (Conspiracy to accuse of crime) of that Act with a new Part (Public justice offences) that deals with offences in the following areas:

- \* interference with the administration of justice
- \* interference with judicial officers, witnesses, jurors etc.
- \* perjury, false statements etc.

The proposed new Part will also abolish common law offences made redundant by the new statutory offences or which are now obsolete.

The Bill also makes consequential amendments to other Acts.

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Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the proposed Act to commence on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the Crimes Act 1900 (Schedule 1).

Clause 4 is a formal provision that gives effect to the Schedule of consequential amendments to other Acts (Schedule 2).

### SCHEDULE 1 - AMENDMENT OF CRIMES ACT 1900

Schedule 1 (2) substitutes Parts 7 and 8 of the Act with a new Part dealing with public justice offences. The proposed new Part contains the following provisions:

## *Crimes (Public Justice) Amendment 1990*

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### CHAPTER 1 - *Definitions*

Proposed section 311 defines certain expressions used in the proposed Part. An important definition is "serious offence" which means an offence punishable by at least 5 years' imprisonment or penal servitude.

Proposed section 312 defines what is meant by "perverting the course of justice".

Proposed section 313 provides that if it is an element of one of the proposed new offences that a serious offence is involved it is not necessary for the prosecution to establish that the accused knew the offence concerned was a serious offence.

### CHAPTER 2 - *Interference with the administration of justice*

Proposed section 314 creates the offence of falsely accusing another person of an offence knowing the person to be innocent (maximum penalty 7 years' penal servitude).

Proposed section 315 creates the offence of doing anything to hinder the investigation of a serious offence, the discovery of evidence of a serious offence or the apprehension of a person for a serious offence (maximum penalty 7 years' penal servitude).

Proposed section 316 creates the offence of failing to bring information concerning a serious offence to the attention of the Police or other appropriate authority (maximum penalty 2 years' imprisonment). If a bribe or other benefit is solicited or accepted for concealing the information, a more serious offence is committed with a maximum penalty of 5 years' imprisonment.

Proposed section 317 creates the offence of suppressing evidence or fabricating or using false evidence (maximum penalty 10 years' penal servitude).

Proposed section 318 creates the offence of making or using a forged official instrument (such as an arrest warrant, a garnishee order or an indemnity from prosecution) intending to pervert the course of justice (maximum penalty 14 years' penal servitude).

Proposed section 319 creates the general offence of perverting the course of justice (maximum penalty 14 years' penal servitude). This offence will apply to conduct not dealt with specifically by another provision of the proposed Chapter.

### CHAPTER 3 - *Interference with judicial officers, witnesses, jurors etc.*

Proposed section 320 extends the meaning of "giving evidence" in the proposed Chapter to include producing anything to be used as evidence.

Proposed section 321 creates the offence of corruption involving a witness or juror (maximum penalty 10 years' penal servitude).

Proposed section 322 creates the offence of threatening or intimidating witnesses, jurors, judicial officers or public justice officials (maximum penalty 10 years' penal servitude).

Proposed section 323 creates the offence of trying to improperly influence a witness or juror (maximum penalty 7 years' imprisonment).

## *Crimes (Public Justice) Amendment 1990*

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Proposed section 324 provides for an increased maximum penalty of 14 years' penal servitude for an offence under proposed section 321, 322 or 323 if it is committed with the intention of procuring the conviction or acquittal of a person of a serious offence.

Proposed section 325 creates the offence of wilfully preventing, obstructing or dissuading a witness from attending as a witness or producing evidence or from attending as a juror (maximum penalty 5 years' imprisonment).

Proposed section 326 creates the offence of threatening or carrying out reprisals against witnesses, jurors, judicial officers or public justice officials (maximum penalty 10 years' penal servitude).

### *CHAPTER 4 - Perjury, false statements etc.*

Proposed section 327 restates the current offence of perjury (the making of a material false statement on oath) and extends the offence so that it covers statements made in connection with judicial proceedings and not just during judicial proceedings as at present (maximum penalty 10 years' penal servitude).

Proposed section 328 creates a more serious offence (maximum penalty 14 years' penal servitude) if perjury is committed with the intention of procuring the conviction or acquittal of a person of a serious offence.

Proposed section 329 is a procedural provision that allows a jury to convict a person charged with perjury of the lesser offence under proposed section 330.

Proposed section 330 restates the current offence of making a false statement on oath knowing it to be false or not believing it to be true.

Proposed section 331 is a procedural provision that deals with the situation of 2 contradictory statements on oath where the jury cannot say which one is false. The jury can still convict of perjury or of an offence under proposed section 330.

Proposed section 332 provides that certain technical and procedural defects do not entitle an accused to acquittal on a charge of perjury or of an offence under proposed section 330.

Proposed section 333 restates the current offence of subornation of perjury, i.e. of procuring, persuading, inducing or otherwise causing a person to commit perjury (maximum penalty 7 years' imprisonment). A more serious offence is committed (maximum penalty 14 years' penal servitude) if subornation of perjury is committed with intent to procure the conviction or acquittal of a person of a serious offence.

Proposed section 334 lists a number of formal and procedural matters that are not to be taken into account for the purposes of offences under the proposed Chapter.

Proposed section 335 restates the current offence of giving false evidence on commission (not on oath) under the Evidence Act 1898 (maximum penalty 5 years' imprisonment).

Proposed section 336 creates the offence of making a false entry in, or making a statement for the purposes of a false entry in, a public register (maximum penalty 5 years' imprisonment).

## *Crimes (Public Justice) Amendment 1990*

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Proposed section 337 creates the offence of a public officer issuing a false official instrument that is potentially prejudicial to a person (maximum penalty 5 years' imprisonment).

Proposed section 338 imposes restrictions on prosecutions for perjury. A prosecution can be taken only by the Director of Public Prosecutions, by any person at the direction of the Attorney General or with leave of the court before which the perjury is alleged to have been committed. Notice of a proposed prosecution is required to be given to the Director of Public Prosecutions.

Proposed section 339 applies the provisions of the proposed Chapter concerning perjury to offences under other Acts that are declared to be perjury.

### **CHAPTER 5 - *Miscellaneous***

Proposed section 340 makes it clear that the abolition of common law offences by proposed section 341 does not apply to offences committed before their abolition.

Proposed section 341 lists the common law offences that are abolished. The offences will be redundant because of the proposed new offences to be created.

Proposed section 342 makes it clear that the abolition of the common law offence of conspiracy to pervert the course of justice does not prevent the bringing of proceedings for conspiracy to commit an offence under the proposed Part.

Proposed section 343 makes it clear that the common law offences of escaping or assisting an escape from lawful custody are not abolished.

Proposed section 343A makes it clear that the proposed Part does not prevent or affect any other punishment or forfeiture under any Act.

Schedule 1 (1) and (3)-(6) make consequential amendments.

### **SCHEDULE 2 - CONSEQUENTIAL AMENDMENT OF OTHER ACTS**

Schedule 2 makes consequential amendments to the Jury Act 1977, the Bail Act 1978 and the Commercial Arbitration Act 1984. The Oaths Act 1900 is also amended to impose a maximum penalty of 2 years' imprisonment for unlawfully administering an oath.

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FIRST PRINT

**CRIMES (PUBLIC JUSTICE) AMENDMENT BILL 1990**

NEW SOUTH WALES



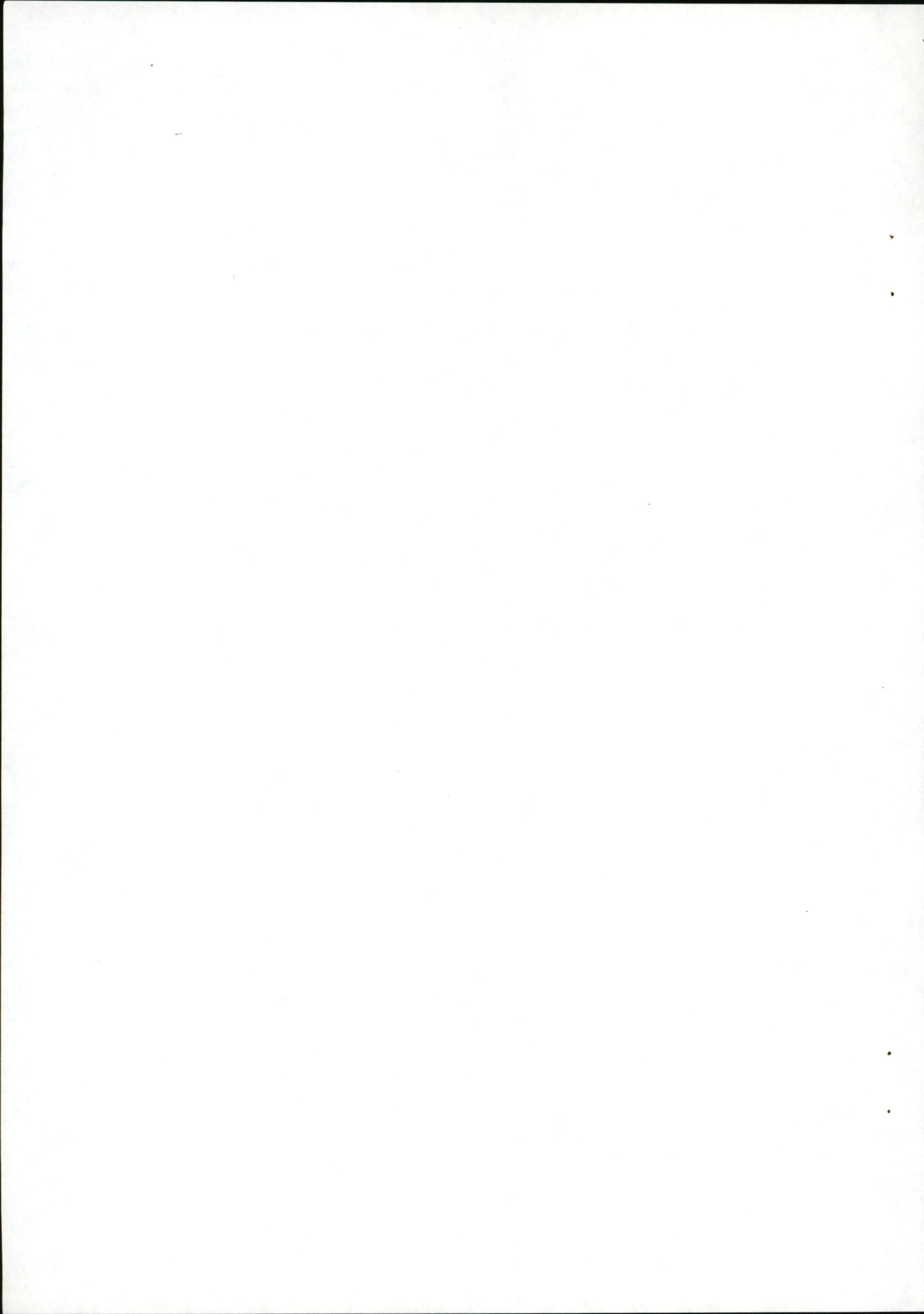
**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Amendment of Crimes Act 1900 No. 40
4. Consequential amendment of other Acts

**SCHEDULE 1 - AMENDMENT OF CRIMES ACT 1900**

**SCHEDULE 2 - CONSEQUENTIAL AMENDMENT OF OTHER ACTS**

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**CRIMES (PUBLIC JUSTICE) AMENDMENT BILL 1990**

NEW SOUTH WALES



No. , 1990

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**A BILL FOR**

An Act to amend the Crimes Act 1900 to make further provision with respect to public justice offences; and for other purposes.

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*Crimes (Public Justice) Amendment 1990*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Crimes (Public Justice) Amendment Act 1990.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

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

3. The Crimes Act 1900 is amended as set out in Schedule 1.

**Consequential amendment of other Acts**

4. Each Act specified in Schedule 2 is amended as set out in that Schedule.

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**SCHEDULE 1 - AMENDMENT OF CRIMES ACT 1900**

(Sec. 3)

(1) Section 1 (**Short title and contents of Act**):

Omit the matter relating to Parts 7 and 8, insert instead:

**PART 7 - PUBLIC JUSTICE OFFENCES:**

CHAPTER 1 - *Definitions* - ss. 311-313

CHAPTER 2 - *Interference with the administration of justice*  
- ss. 314-319

CHAPTER 3 - *Interference with judicial officers, witnesses,  
jurors etc.* - ss. 320-326

CHAPTER 4 - *Perjury, false statements etc.* - ss. 327-339

CHAPTER 5 - *Miscellaneous* - ss. 340-343A

(2) Parts 7 and 8:

Omit the Parts, insert instead:

SCHEDULE 1 - AMENDMENT OF CRIMES ACT 1900 - *continued*

**PART 7 - PUBLIC JUSTICE OFFENCES**

**CHAPTER 1 - *Definitions***

**Definitions**

311. (1) In this Part:

"**benefit**" means any benefit or advantage whether or not in money or money's worth;

"**judicial officer**" means a person who is, or who alone or with others constitutes, a judicial tribunal;

"**judicial proceeding**" means a proceeding in or before a judicial tribunal in which evidence may be taken on oath;

"**judicial tribunal**" means a person (including an arbitrator), court or body authorised by law, or by consent of parties, to conduct a hearing for the purpose of the determination of any matter or thing and includes a person, court or body authorised to conduct a committal proceeding;

"**public justice official**" means a person who is a public officer employed in any capacity (other than as a judicial officer) for the investigation, detection or prosecution of offenders;

"**serious offence**" means an offence punishable by imprisonment or penal servitude for 5 years or more or for life.

(2) In this Part, a reference to the making of a statement on oath includes a reference to the verification of a statement on oath.

**Meaning of "pervert the course of justice"**

312. A reference in this Part to perverting the course of justice is a reference to obstructing, preventing, perverting or defeating the course of justice or the administration of the law.

**Knowledge that offence is a serious offence is unnecessary**

313. If it is an element of an offence under this Part that an offence is a serious offence, it is not necessary for the

SCHEDULE 1 - AMENDMENT OF CRIMES ACT 1900 - *continued*

prosecution to establish that the accused knew that the offence was a serious offence.

CHAPTER 2 - *Interference with the administration of justice*

**False accusations etc.**

314. A person who makes an accusation intending a person to be the subject of an investigation of an offence, knowing that other person to be innocent of the offence, is liable to penal servitude for 7 years.

**Hindering investigation etc.**

315. (1) A person who does anything intending in any way to hinder:

- (a) the investigation of a serious offence committed by another person; or
- (b) the discovery of evidence concerning a serious offence committed by another person; or
- (c) the apprehension of another person who has committed a serious offence,

is liable to penal servitude for 7 years.

(2) For the purposes of subsection (1), a person is to be considered to have committed a serious offence if a public officer engaged in the detection or investigation of offenders suspects on reasonable grounds that a person has committed the offence.

(3) It is not an offence against this section merely to refuse or fail to divulge information or produce evidence.

**Concealing serious offence for benefit**

316. (1) If a person has committed a serious offence and another person who knows or believes that the offence has been committed and that he or she has information which might be of material assistance in securing the apprehension of the offender or the prosecution or conviction of the offender for it fails without reasonable excuse to bring that information to the attention of a member of the Police Force or other appropriate

SCHEDULE 1 - AMENDMENT OF CRIMES ACT 1900 - *continued*

authority, that other person is liable to imprisonment for 2 years.

(2) A person who solicits, accepts or agrees to accept any benefit for himself or herself or any other person in consideration for doing anything that would be an offence under subsection (1) is liable to imprisonment for 5 years.

(3) It is not an offence against subsection (2) merely to solicit, accept or agree to accept the making good of loss or injury caused by an offence or the making of reasonable compensation for that loss or injury.

**Tampering etc. with evidence**

317. A person who, with intent to mislead any judicial tribunal in any judicial proceeding:

- (a) suppresses, conceals, destroys, alters or falsifies anything knowing that it is or may be required as evidence in any judicial proceeding; or
- (b) fabricates false evidence (other than by perjury or suborning perjury); or
- (c) knowingly makes use of fabricated false evidence,

is liable to penal servitude for 10 years.

**Making or using false official instrument to pervert the course of justice**

318. (1) In this section:

"official instrument" means an instrument of a kind that is made or issued by a person in his or her capacity as a public officer or by a judicial tribunal.

(2) A person who makes a false official instrument, or who makes a copy of an instrument which the person knows to be a false official instrument, with the intention that:

- (a) he or she or another person will use it to induce another person to accept the instrument as genuine or to accept the copy as a copy of a genuine official instrument; and

SCHEDULE 1 - AMENDMENT OF CRIMES ACT 1900 - *continued*

(b) that acceptance will pervert the course of justice, is liable to penal servitude for 14 years.

(3) A person who uses an instrument which the person knows to be a false official instrument, or who uses a copy of an instrument which the person knows to be a false official instrument, with the intention:

(a) of inducing another person to accept the instrument as genuine or to accept the copy as a copy of a genuine official instrument; and

(b) of thereby perverting the course of justice, is liable to penal servitude for 14 years.

(4) Chapter 2 of Part 5 applies to the interpretation of this section as if this section formed part of that Chapter.

**General offence of perverting the course of justice**

319. A person who does any act, or makes any omission, intending in any way to pervert the course of justice, is liable to penal servitude for 14 years.

**CHAPTER 3 - *Interference with judicial officers, witnesses, jurors etc.***

**Extended meaning of "giving evidence"**

320. In this Chapter, a reference to the giving of evidence includes a reference to the production of anything to be used as evidence.

**Corruption of witnesses and jurors**

321. (1) A person who confers or procures or offers to confer or procure or attempt to procure any benefit on or for any person:

(a) intending to influence any person called or to be called as a witness in any judicial proceeding to give false evidence or withhold true evidence or to not attend as a witness or not produce anything in evidence pursuant to a summons or subpoena; or



SCHEDULE 1 - AMENDMENT OF CRIMES ACT 1900 - *continued*

- (b) intending to influence any person (whether or not a particular person) in the person's conduct as a juror in any judicial proceeding or to not attend as a juror in any judicial proceeding, whether he or she has been sworn as a juror or not, and intending to pervert the course of justice,

is liable to penal servitude for 10 years.

(2) A person who solicits, accepts or agrees to accept any benefit for himself or herself or any other person:

- (a) in consideration for any agreement or undertaking that any person will as a witness in any judicial proceeding give false evidence or withhold true evidence or not attend as a witness or not produce anything in evidence pursuant to a summons or subpoena; or
- (b) on account of anything to be done or omitted to be done by him or her or another person as a juror in any judicial proceeding, or on account of his or her or another person's not attending as a juror in any judicial proceeding, intending to pervert the course of justice,

is liable to penal servitude for 10 years.

**Threatening or intimidating judges, witnesses, jurors etc.**

322. A person who threatens to do or cause, or who does or causes, any injury or detriment to any person:

- (a) intending to influence a person called or to be called as a witness in any judicial proceeding to give false evidence or withhold true evidence or to not attend as a witness or not produce anything in evidence pursuant to a summons or subpoena; or
- (b) intending to influence any person (whether or not a particular person) in the person's conduct as a juror in any judicial proceeding or to not attend as a juror in any judicial proceeding, whether he or she has been sworn as a juror or not; or

SCHEDULE 1 - AMENDMENT OF CRIMES ACT 1900 - *continued*

- (c) intending to influence any person in the person's conduct as a judicial officer; or
  - (d) intending to influence any person in the person's conduct as a public justice official in or in connection with any judicial proceeding,
- is liable to penal servitude for 10 years.

**Influencing witnesses and jurors**

323. A person who does any act:

- (a) intending to procure, persuade, induce or otherwise cause any person called or to be called as a witness in any judicial proceeding to give false evidence or withhold true evidence or to not attend as a witness or not produce any thing in evidence pursuant to a summons or subpoena; or
- (b) intending, other than by the production of evidence and argument in open court, to influence any person (whether or not a particular person) in the person's conduct as a juror in any judicial proceeding, whether he or she has been sworn as a juror or not,

is liable to imprisonment for 7 years.

**Increased penalty if serious offence involved**

324. A person who commits an offence against section 321, 322 or 323 (offences concerning interference with witnesses, jurors, judicial officers and public justice officials) intending to procure the conviction or acquittal of any person of any serious offence is liable to penal servitude for 14 years.

**Preventing, obstructing or dissuading witness or juror from attending etc.**

325. (1) A person who without lawful excuse wilfully prevents, obstructs or dissuades a person called as a witness in any judicial proceeding from attending as a witness or from producing anything in evidence pursuant to

SCHEDULE 1 - AMENDMENT OF CRIMES ACT 1900 - *continued*

a summons or subpoena is liable to imprisonment for 5 years.

(2) A person who without lawful excuse wilfully prevents, obstructs or dissuades a person summoned as a juror in any judicial proceeding from attending as a juror is liable to imprisonment for 5 years.

**Reprisals against judges, witnesses, jurors etc.**

326. A person who threatens to do or cause, or who does or causes, any injury or detriment to any person on account of anything lawfully done by a person:

- (a) as a witness or juror in any judicial proceeding; or
- (b) as a judicial officer; or
- (c) as a public justice official in or in connection with any judicial proceeding,

is liable to penal servitude for 10 years.

**CHAPTER 4 - *Perjury, false statements etc.***

**Offence of perjury**

327. (1) Any person who in or in connection with any judicial proceeding makes any false statement on oath concerning any matter which is material to the proceeding, knowing the statement to be false or not believing it to be true, is guilty of perjury and liable to penal servitude for 10 years.

(2) A statement can be considered to have been made in connection with a judicial proceeding whether or not a judicial proceeding has commenced, or ever commences, in connection with it.

(3) The determination of whether a statement is material to a judicial proceeding that has not commenced is to be made on the basis of any judicial proceeding likely to arise in connection with the statement.

(4) The question of whether any matter is material to a proceeding is a question of law.

SCHEDULE 1 - AMENDMENT OF CRIMES ACT 1900 - *continued*

**Perjury with intent to procure conviction or acquittal**

328. Any person who commits perjury intending to procure the conviction or acquittal of any person of any serious offence is liable to penal servitude for 14 years.

**Conviction for false swearing on indictment for perjury**

329. If on the trial of a person for perjury the jury is not satisfied that the accused is guilty of perjury but is satisfied on the evidence that the accused is guilty of an offence under section 330 (False statement on oath not amounting to perjury) it may find the accused not guilty of the offence charged but guilty of the latter offence and the accused is liable to punishment accordingly.

**False statement on oath not amounting to perjury**

330. A person who makes on oath any false statement knowing the statement to be false or not believing it to be true, if it is not perjury, is liable to imprisonment for 5 years.

**Contradictory statements on oath**

331. If on the trial of a person for perjury or for an offence under section 330 (False statement on oath not amounting to perjury):

- (a) the jury is satisfied that the accused has made 2 statements on oath and one is irreconcilably in conflict with the other; and
- (b) the jury is satisfied that one of the statements was made by the accused knowing it was false or not believing it was true but the jury cannot say which statement was so made,

the jury may make a special finding to that effect and find the accused guilty of perjury or of an offence under section 330, as appropriate, and the accused is liable to punishment accordingly.

SCHEDULE 1 - AMENDMENT OF CRIMES ACT 1900 - *continued*

**Certain technical defects provided for**

332. If on the trial of a person for perjury or for an offence under section 330 (False statement on oath not amounting to perjury):

- (a) any affidavit, deposition, examination or declaration offered in evidence is wrongly entitled or otherwise informal or defective; or
- (b) the jurat to any such instrument is informal or defective,

the accused is not entitled to an acquittal because of the omission, defect or informality but the instrument (if otherwise admissible) may be given in evidence and used for all purposes of the trial.

**Subornation of perjury**

333. (1) A person who procures, persuades, induces or otherwise causes a person to give false testimony the giving of which is perjury is guilty of subornation of perjury and liable to imprisonment for 7 years.

(2) A person who commits subornation of perjury intending to procure the conviction or acquittal of any person of any serious offence is liable to penal servitude for 14 years.

**General provisions applicable to perjury and false statement offences**

334. It is immaterial for the purposes of this Chapter:

- (a) whether a statement on oath is given orally or in writing; or
- (b) which forms and ceremonies are used in administering the oath (or otherwise binding the person giving the testimony to speak the truth) so long as the person assents to the forms and ceremonies actually used; or
- (c) whether (in the case of a statement made in a judicial proceeding) the judicial tribunal concerned is properly constituted or held in the proper place

SCHEDULE 1 - AMENDMENT OF CRIMES ACT 1900 - *continued*

or not, so long as it actually acts as a judicial tribunal in the proceeding in which the statement is made; or

- (d) whether the person who makes the statement is a competent witness or not, or whether the statement is admissible in the proceeding or not; or
- (e) in the case of judicial proceedings in an arbitration, whether the law governing the arbitration agreement or the proceedings, or any other relevant law, is or is not the law of New South Wales.

**False statements in evidence on commission**

335. If a person, in giving any testimony (either orally or in writing) otherwise than on oath, when required to do so by an order under section 79 of the Evidence Act 1898, makes any statement that is false in a material particular, knowing the statement to be false or not believing it to be true, is liable to imprisonment for 5 years.

**False entry on public register**

336. (1) A person who for an improper purpose makes a statement for the making of an entry in any register kept by a public officer for a public purpose, knowing the statement to be false or misleading in a material particular, is liable to imprisonment for 5 years.

(2) A person who for an improper purpose makes an entry in any register kept by a public officer for a public purpose, knowing the entry to be false or misleading in a material particular, is liable to imprisonment for 5 years.

**False instruments issued by public officers**

337. A public officer who, being authorised or required to issue an instrument whereby any person may be prejudicially affected, issues the instrument for an improper purpose knowing it to be false in a material particular is liable to imprisonment for 5 years.

SCHEDULE 1 - AMENDMENT OF CRIMES ACT 1900 - *continued*

**Restrictions on prosecutions for perjury**

338. (1) A person is not to be prosecuted for perjury except:

- (a) by the Director of Public Prosecutions; or
- (b) at the direction of the Attorney General; or
- (c) by any other person with leave of the judicial officer who constituted the judicial tribunal before which the perjury is alleged to have been committed.

(2) If it is impossible or impracticable to apply for leave to prosecute in accordance with subsection (1) (c), the prosecution may be instituted with leave of the Supreme Court.

(3) A person is not to be prosecuted for perjury (except by the Director of Public Prosecutions or at the direction of the Attorney General) unless notice of the proposed prosecution has been given to the Director of Public Prosecutions.

**Application of Chapter to perjury under other Acts**

339. Any false oath declared by any Act to be perjury or made punishable as perjury by any Act is to be considered to be perjury for the purposes of this Act.

**CHAPTER 5 - *Miscellaneous***

**Extent of abolition of offences**

340. The offences at common law abolished by this Chapter are abolished for all purposes not relating to offences committed before the commencement of this Part (as substituted by the Crimes (Public Justice) Amendment Act 1990).

**Certain common law offences abolished**

341. The following offences at common law are abolished:

- \* the offence of perverting the course of justice;
- \* the offence of attempting or conspiring to pervert the course of justice;

SCHEDULE 1 - AMENDMENT OF CRIMES ACT 1900 - *continued*

- \* the offence of falsely accusing a person of a crime or of procuring a person to falsely accuse a person of a crime;
- \* the offence of concealing evidence so that a person is falsely accused of a crime;
- \* the offence of attempting to pervert the course of justice by assisting a person to avoid arrest;
- \* the offence of persuading a person to make a false statement to police to mislead them in their investigation;
- \* the offence of procuring a person to make a false accusation;
- \* the offence of refusing to assist a peace officer in the execution of his or her duty in preventing a breach of the peace;
- \* the offence of misprision of felony;
- \* the offence of compounding a felony;
- \* the offence of dissuading, intimidating or preventing, or attempting to dissuade, intimidate or prevent, a person who is bound to give evidence in a criminal matter from doing so;
- \* the offence of using threats or persuasion to witnesses to induce them not to appear or give evidence in courts of justice;
- \* the offence of perjury;
- \* the offence of embracery (attempting to corrupt, influence or instruct a jury or to induce a jury to favour one side more than the other);
- \* personating a juror.

**Certain conspiracy offences not affected**

342. The abolition of the common law offence of conspiring to pervert the course of justice does not prevent a prosecution for an offence of conspiring to commit an offence against this Part.



SCHEDULE 1 - AMENDMENT OF CRIMES ACT 1900 - *continued*

**Certain common law offences not abolished**

343. To remove any doubt, it is declared that the following offences at common law are not abolished by this Chapter:

- (a) the offence of escaping from lawful custody;
- (b) the offence of assisting a person to escape from lawful custody.

**Saving of other punishments**

343A. Nothing in this Part prevents or affects any other punishment, or any forfeiture, provided under any Act.

- (3) **Section 476 (Indictable offences punishable summarily with consent of accused):**
  - (a) After section 476 (6) (d), insert:
    - (da) any offence mentioned in section 316, 325, 335, 336 or 337;
  - (b) In section 476 (6) (i), after "(d)", insert "(da)".
- (4) **Section 546C (Resisting etc. police):**

Omit "imprisonment for 3 months, or to a fine of \$200", insert instead "imprisonment for 12 months or to a fine of \$1,000, or both".
- (5) **Section 547B (Public mischief):**

From section 547B (1), omit "imprisonment for six months, or to a fine of \$500, or both", insert instead "imprisonment for 12 months, or to a fine of \$5,000, or both".
- (6) **Tenth Schedule (Offences punishable by the Supreme Court in its summary jurisdiction):**

From paragraph (f) (i), omit "327, 330, 338 or 339", insert instead "327, 330 or 335".

**SCHEDULE 2 - CONSEQUENTIAL AMENDMENT OF OTHER ACTS**

(Sec. 4)

**Bail Act 1978 No. 161**

Section 63 (**Perjury**):  
Omit the section.

**Commercial Arbitration Act 1984 No. 160**

Section 61 (**Perjury**):  
Omit the section.

**Jury Act 1977 No. 18**

Section 67:  
Omit the section, insert instead:  
**Personation of jurors**  
67. Any person who personates a juror is guilty of an offence.  
Penalty. 50 penalty units.

**Oaths Act 1900 No. 20**

Section 20 (**Abolition of extra judicial oaths**):  
In section 20 (1), after "at the time being", insert ", and any person who does so without lawful authority is liable to imprisonment for 2 years".

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