

# CRIMINAL PROCEDURE (AMENDMENT) ACT 1988 No. 96

NEW SOUTH WALES



## TABLE OF PROVISIONS

1. Short title
  2. Commencement
  3. Amendment of Criminal Procedure Act 1986 No. 209
  4. Consequential amendment of Justices Act 1902 No. 27
-



**CRIMINAL PROCEDURE (AMENDMENT) ACT 1988 No. 96**

NEW SOUTH WALES



**Act No. 96, 1988**

An Act to amend the Criminal Procedure Act 1986 to enable a court to correct sentencing errors in criminal proceedings; and to make a consequential amendment of the Justices Act 1902. [Assented to 19 December 1988]

*Criminal Procedure (Amendment) 1988*

---

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

**Short title**

1. This Act may be cited as the Criminal Procedure (Amendment) Act 1988.

**Commencement**

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

**Amendment of Criminal Procedure Act 1986 No. 209**

3. The Criminal Procedure Act 1986 is amended by inserting after section 18 the following section:

**Court may reopen proceedings to correct sentencing errors**

19. (1) If a court has, in or in connection with any criminal proceedings (including proceedings on appeal)—

(a) imposed a penalty that is contrary to law; or

(b) failed to impose a penalty that is required to be imposed by law, the court (whether or not differently constituted) may reopen the proceedings and, after giving the parties an opportunity of being heard, impose a penalty that is in accordance with the law (and, if necessary, amend any relevant conviction or order).

(2) The court may reopen the proceedings on its own motion or on the application of a party to the proceedings.

(3) This section applies to criminal proceedings whether or not a person has been convicted of an offence in those proceedings.

(4) Subject to subsection (5), nothing in this section affects any right of appeal.

(5) For the purposes of an appeal under any Act in respect of a penalty imposed in exercise of the powers conferred by this section, the time within which such an appeal is required to be made shall commence from the date on which the penalty is so imposed.

(6) This section applies to a penalty imposed, or required to be imposed, whether before or after the commencement of this section.

(7) In this section—

“court” means—

(a) the Court of Criminal Appeal;

(b) the Supreme Court;

(c) the Land and Environment Court;

(d) the District Court;

(e) a Local Court; or

*Criminal Procedure (Amendment) 1988*

---

(f) any other court which, or person who, exercises criminal jurisdiction;

“penalty” includes a sentence of imprisonment, an order for periodic detention, a fine, a community service order, a forfeiture, a disqualification, a loss or suspension of a licence or privilege and an order to pay costs or compensation.

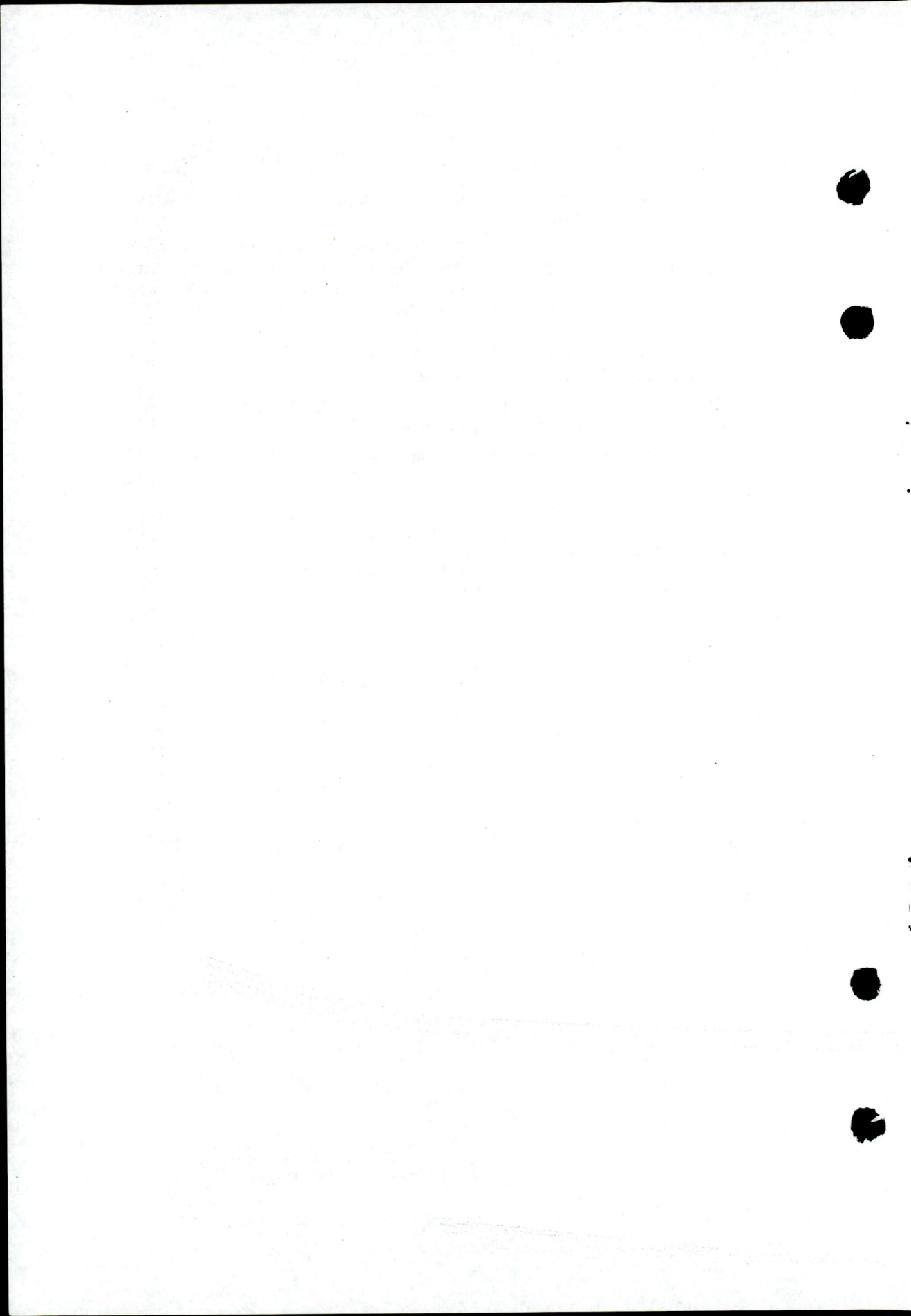
**Consequential amendment of Justices Act 1902 No. 27**

4. The Justices Act 1902 is amended—

- (a) by omitting from the heading to Part 4A the words “AND REOPENING OF PROCEEDINGS”;
- (b) by omitting section 100HA (Magistrate may reopen proceedings).

---

*[Minister's second reading speech made in—  
Legislative Assembly on 21 September 1988  
Legislative Council on 7 December 1988]*









## CRIMINAL PROCEDURE (AMENDMENT) BILL 1988

NEW SOUTH WALES



### EXPLANATORY NOTE

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

The objects of this Bill are—

- (a) to amend the Criminal Procedure Act 1986 to enable a court to correct sentencing errors in criminal proceedings; and
- (b) to make a consequential amendment of the Justices Act 1902.

---

**Clause 1** specifies the short title of the proposed Act.

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

**Clause 3** amends the Criminal Procedure Act 1986 by inserting proposed section 19. The proposed section enables errors in sentencing to be corrected, without the necessity of an appeal.

Under the proposed section any court may reopen criminal proceedings (including proceedings on appeal) if it has made an error of law in sentencing a person and, after the parties have been heard, the court may impose a sentence that is in accordance with the law. The parties may apply to the court to have proceedings reopened, or the court may on its own motion reopen proceedings. The power to reopen proceedings does not affect rights of appeal, except that the time within which an appeal in respect of a penalty imposed under the new provision may be lodged will run from the date on which that penalty is so imposed.

**Clause 4** repeals section 100<sub>HA</sub> of the Justices Act 1902, which allows a Magistrate to correct sentencing errors and is in similar terms to proposed section 19 of the Criminal Procedure Act 1986. Section 100<sub>HA</sub> will be redundant on the enactment of the proposed section which extends to criminal proceedings in Local Courts.

---

1871

THE STATE OF NEW YORK

IN SENATE,  
January 15, 1871.

REPORT  
OF THE  
COMMISSIONERS OF THE LAND OFFICE,  
IN ANSWER TO A RESOLUTION PASSED  
BY THE SENATE, APRIL 18, 1870.

ALBANY:  
PUBLISHED BY  
J. B. WHITTAKER,  
1871.

# CRIMINAL PROCEDURE (AMENDMENT) BILL 1988

NEW SOUTH WALES



## TABLE OF PROVISIONS

1. Short title
  2. Commencement
  3. Amendment of Criminal Procedure Act 1986 No. 209
  4. Consequential amendment of Justices Act 1902 No. 27
-

THE UNIVERSITY OF CHICAGO LIBRARY

1950



1950

THE UNIVERSITY OF CHICAGO LIBRARY

1950

# CRIMINAL PROCEDURE (AMENDMENT) BILL 1988

NEW SOUTH WALES



No. , 1988

---

---

## A BILL FOR

An Act to amend the Criminal Procedure Act 1986 to enable a court to correct sentencing errors in criminal proceedings; and to make a consequential amendment of the Justices Act 1902.

---

---

*Criminal Procedure (Amendment) 1988*

---

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

**Short title**

1. This Act may be cited as the Criminal Procedure (Amendment) Act 1988.

**5 Commencement**

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

**Amendment of Criminal Procedure Act 1986 No. 209**

3. The Criminal Procedure Act 1986 is amended by inserting after  
10 section 18 the following section:

**Court may reopen proceedings to correct sentencing errors**

19. (1) If a court has, in or in connection with any criminal proceedings (including proceedings on appeal)—

(a) imposed a penalty that is contrary to law; or

15 (b) failed to impose a penalty that is required to be imposed by law, the court (whether or not differently constituted) may reopen the proceedings and, after giving the parties an opportunity of being heard, impose a penalty that is in accordance with the law (and, if necessary, amend any relevant conviction or order).

20 (2) The court may reopen the proceedings on its own motion or on the application of a party to the proceedings.

(3) This section applies to criminal proceedings whether or not a person has been convicted of an offence in those proceedings.

25 (4) Subject to subsection (5), nothing in this section affects any right of appeal.

(5) For the purposes of an appeal under any Act in respect of a penalty imposed in exercise of the powers conferred by this section, the time within which such an appeal is required to be made shall commence from the date on which the penalty is so imposed.

30 (6) This section applies to a penalty imposed, or required to be imposed, whether before or after the commencement of this section.

(7) In this section—

“court” means—

- 35 (a) the Court of Criminal Appeal;  
(b) the Supreme Court;  
(c) the Land and Environment Court;  
(d) the District Court;  
(e) a Local Court; or



*Criminal Procedure (Amendment) 1988*

---

(f) any other court which, or person who, exercises criminal jurisdiction;

5 “penalty” includes a sentence of imprisonment, an order for periodic detention, a fine, a community service order, a forfeiture, a disqualification, a loss or suspension of a licence or privilege and an order to pay costs or compensation.

**Consequential amendment of Justices Act 1902 No. 27**

4. The Justices Act 1902 is amended—

10 (a) by omitting from the heading to Part 4A the words “AND REOPENING OF PROCEEDINGS”;

(b) by omitting section 100HA (Magistrate may reopen proceedings).

1870  
The first of the year  
was a very cold one  
and the snow lay  
on the ground for  
many days. The  
frost was very  
severe and the  
wind was very  
strong. The  
people were  
very much  
concerned  
for the  
crops. The  
government  
sent out  
troops to  
protect the  
crops. The  
people were  
very much  
satisfied  
with the  
result.

1871  
The second of the year  
was a very warm one  
and the snow melted  
very soon. The  
frost was very  
light and the  
wind was very  
gentle. The  
people were  
very much  
satisfied  
with the  
result.