

**CRIMINAL PROCEDURE LEGISLATION (AMENDMENT) ACT
1990 No. 74**

NEW SOUTH WALES



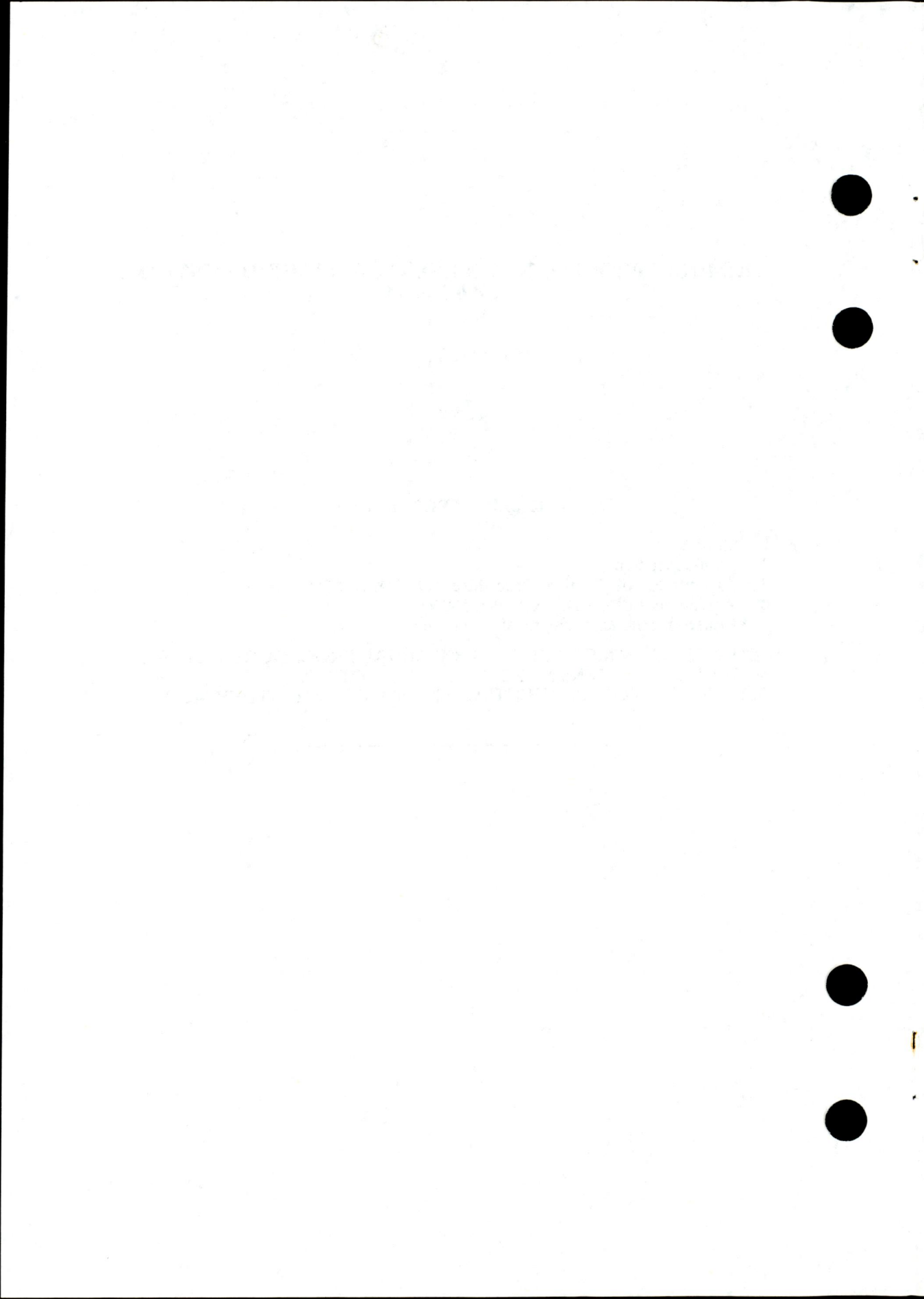
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**CRIMINAL PROCEDURE LEGISLATION (AMENDMENT) ACT
1990 No. 74**

NEW SOUTH WALES



Act No. 74, 1990

An Act to amend the Criminal Procedure Act 1986 and the Crimes Act 1900 with respect to the presentation of indictments, trial by jury, "back-up" charges and summaries of evidence; and to make consequential amendments to other Acts. [Assented to 4 December 1990]

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Criminal Procedure Legislation (Amendment) Act 1990.

Commencement

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

(2) If Parts 9 and 10 of the Criminal Procedure Act 1986 (to be inserted by this Act) commence before the commencement of Part 8 of that Act (to be inserted at the end of that Act by the Criminal Procedure (Fines) Amendment Act 1989), Part 8 is to be inserted before Part 9, rather than at the end, of that Act.

Amendment of Criminal Procedure Act 1986 No. 209

3. The Criminal Procedure Act 1986 is amended as set out in Schedule 1.

Amendment of Crimes Act 1900 No. 40

4. The Crimes Act 1900 is amended as set out in Schedule 2.

Consequential amendment of other Acts

5. Each Act mentioned in Schedule 3 is amended as set out in that Schedule.

**SCHEDULE 1 - AMENDMENT OF CRIMINAL PROCEDURE
ACT 1986**

(Sec. 3)

(1) Section 17:

After section 16, insert:

**Supreme Court or District Court may require indictment
to be presented**

17. (1) In this section, "**court**" means the Supreme Court or District Court.

SCHEDULE 1 - AMENDMENT OF CRIMINAL PROCEDURE
ACT 1986 - *continued*

(2) A court may order an indictment to be presented on the date fixed for the trial of a person in the court for an indictable offence, or on or before some other later date.

(3) A court may order the presentation of an indictment whether or not the prosecutor is ready to proceed with the case.

(4) A court may, if an indictment is not presented in accordance with its order, adjourn the proceedings or take such other action as it thinks appropriate in the circumstances of the case.

(5) The prosecutor has no right to an adjournment merely because an indictment has not been presented.

(6) A court must, in exercising any power under this section, have regard to the fact that the Crown does not have a right of appeal if the accused person is acquitted.

(7) This section does not affect the powers of the court under section 365 of the Crimes Act 1900.

(8) This section extends to criminal proceedings commenced, but not concluded, before the commencement of this section.

(2) Parts 9 and 10:

After Part 8 (to be inserted by the Criminal Procedure (Fines) Amendment Act 1989), insert:

PART 9 - TRIAL BY JURY ON INDICTMENT

Definition and application

30. (1) In this Part:

"criminal proceedings" means proceedings for the prosecution of persons on indictment.

(2) This Part extends to criminal proceedings commenced, but not concluded, before the commencement of this Part.

SCHEDULE 1 - AMENDMENT OF CRIMINAL PROCEDURE
ACT 1986 - *continued*

Trial by jury in criminal proceedings

31. Criminal proceedings in the Supreme Court or the District Court are to be tried by a jury, except as otherwise provided by this Part.

Trial by Judge in criminal proceedings

32. (1) An accused person in criminal proceedings in the Supreme Court or District Court must be tried by the Judge alone if:

- (a) the person so elects in accordance with this section; and
- (b) the Judge is satisfied that the person, before making the election, sought and received advice in relation to the election from a barrister or solicitor.

(2) An election may not be made unless:

- (a) all other accused persons in the trial also elect to be tried by the Judge alone; and
- (b) each election is made in respect of all offences with which the accused persons in the trial are charged.

(3) An election may be made only with the consent of the prosecutor.

(4) An election must be made before the date fixed for the person's trial in the Supreme Court or District Court.

(5) An accused person who elects to be tried by the Judge alone may, at any time before the date fixed for the person's trial, subsequently elect to be tried by a jury.

(6) Rules of court may be made with respect to elections under this section.

Verdict of single Judge

33. (1) A Judge who tries criminal proceedings without a jury may make any finding that could have been made by a jury on the question of the guilt of the accused person. Any such finding has, for all purposes, the same effect as a verdict of a jury.

SCHEDULE 1 - AMENDMENT OF CRIMINAL PROCEDURE
ACT 1986 - *continued*

(2) A judgment by a Judge in any such case must include the principles of law applied by the Judge and the findings of fact on which the Judge relied.

(3) If any Act or law requires a warning to be given to a jury in any such case, the Judge is to take the warning into account in dealing with the matter.

**PART 10 - SUPREME OR DISTRICT COURT
MAY DEAL WITH SUMMARY OFFENCES
RELATED TO INDICTABLE OFFENCES**

Definitions and application

34. (1) In this Part:

"court" means the Supreme Court or District Court;

"related summary offence", in relation to an indictable offence, means a summary offence capable of being dealt with by a Local Court that arises from substantially the same circumstances as those from which the indictable offence has arisen.

(2) This Part extends to proceedings commenced, but not concluded, before the commencement of this Part.

Supreme or District Court may deal with certain summary offences related to indictable offences

35. (1) A court may, at the conclusion of the trial of an accused person for an indictable offence, deal with any related summary offence with which the accused person has been charged.

(2) A court may deal with a related summary offence on its own motion, or on the application of the accused person or the prosecutor, but may not do so unless both the accused person and the prosecutor have consented to the offence being dealt with under this Part.

(3) Nothing in this section requires a court to deal with a related summary offence under this Part.

(4) A court may deal with a related summary offence with which an accused person has been charged even

**SCHEDULE 1 - AMENDMENT OF CRIMINAL PROCEDURE
ACT 1986 - *continued***

though it is not doing so in relation to a related summary offence with which another accused person in the same proceedings is charged.

Procedures for dealing with related summary offences

36. (1) The court is to deal with a related summary offence under this Part without a jury and on the basis only of evidence given during the trial of the accused person for any indictable offence in the same proceedings and additional evidence given under this section.

(2) The prosecutor or accused person may, with the leave of the court, call additional evidence in relation to the related summary offence.

(3) In sentencing or otherwise dealing with a person for a related summary offence, the court has the same functions, and is subject to the same restrictions and procedures, as a Local Court constituted by a Magistrate.

(4) Rules of court may be made with respect to related summary offences dealt with under this Part.

Remission of related summary offences to Local Courts

37. A court which is dealing with a related summary offence under this Part may, at any time, remit the matter to a Local Court.

SCHEDULE 2 - AMENDMENT OF CRIMES ACT 1900

(Sec. 4)

After section 405, insert:

Summary by Judge

405AA. (1) A Judge of the Supreme Court or District Court need not summarise, at the end of a criminal trial before a jury, the evidence given in the trial if the Judge is of the opinion that, in all the circumstances of the trial, the summary is not necessary.

SCHEDULE 2 - AMENDMENT OF CRIMES ACT 1900 - *continued*

(2) This section applies despite any rule of law or practice to the contrary.

(3) Nothing in this section affects any aspect of a Judge's summing up function other than the summary of evidence in a trial.

(4) This section extends to trials commenced, but not concluded, before the commencement of this section.

SCHEDULE 3 - CONSEQUENTIAL AMENDMENT OF OTHER ACTS

(Sec. 5)

Criminal Appeal Act 1912 No. 16

(1) After section 5AC, insert:

Appeals as to related summary offences in criminal cases dealt with by the Supreme Court or the District Court

5AD. (1) Section 5AA applies to and in respect of a person convicted of an offence by the Supreme Court or District Court in the exercise of its jurisdiction under Part 10 of the Criminal Procedure Act 1986 in the same way as it applies to a person referred to in section 5AA (1).

(2) For the purposes of this section, a reference in section 5AA to the Supreme Court is to be construed as including a reference to the District Court.

(3) The power of the Court of Criminal Appeal to hear and determine an appeal under this section is to be exercised by such single judge of the Supreme Court as the Chief Justice may direct unless:

- (a) the judge considers that the appeal should be dealt with by the full court and notifies the Chief Justice accordingly; or
- (b) an appeal is lodged under this Act in relation to the related indictable offence.

SCHEDULE 3 - CONSEQUENTIAL AMENDMENT OF
OTHER ACTS - *continued*

(2) Section 10 (**Time for appealing**):

From section 10 (4), omit "or 5AC", insert instead ", 5AC or 5AD".

Jury Act 1977 No. 18

Omit section 19, insert instead:

Number of jurors in criminal proceedings

19. The jury in any criminal proceedings in the Supreme Court or the District Court is to consist of 12 persons returned and selected in accordance with this Act.

[*Minister's second reading speech made in -
Legislative Assembly on 24 October 1990
Legislative Council on 26 November 1990*]





FIRST PRINT

**CRIMINAL PROCEDURE LEGISLATION (AMENDMENT) BILL
1990**

NEW SOUTH WALES



EXPLANATORY NOTE

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

The objects of this Bill are:

- (a) to remove the right of the prosecutor to force an adjournment of a trial by failing to present an indictment on the date fixed for the trial; and
- (b) to enable a person who is accused of an indictable offence to elect to be tried by a Judge alone rather than by a jury; and
- (c) to enable the Supreme Court or District Court, at the end of the trial of a person accused of an indictable offence, to deal with related summary offences; and
- (d) to allow a Judge of the Supreme Court or District Court to dispense with the requirement to summarise evidence given in a trial.

Clause 1 specifies the short title of the proposed Act.

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

Clause 3 gives effect to the Schedule of amendments to the Criminal Procedure Act 1986.

Clause 4 gives effect to the Schedule of amendments to the Crimes Act 1900.

Clause 5 gives effect to the Schedule of consequential amendments to the Criminal Appeal Act 1912 and the Jury Act 1977.

Criminal Procedure Legislation (Amendment) 1990

SCHEDULE 1 - AMENDMENT OF CRIMINAL PROCEDURE ACT 1986

Presentation of indictments
(Proposed section 17)

The proposed section enables the Supreme Court or District Court to require the presentation of an indictment of an accused person who has been committed for trial, and consequently removes the right of the prosecutor to force an adjournment of the trial by failing to present the indictment on the date fixed for the start of the trial.

Trial by jury on indictment
(Proposed Part 9 - proposed sections 30-33)

The proposed Part sets out the right to jury trial for criminal proceedings in the Supreme Court or District Court in which the accused is prosecuted on indictment. The right to jury trial is at present contained in section 19 of the Jury Act 1977. However, provision has been included to enable an accused person to elect to be tried by a Judge alone. Such an election must be supported by the prosecutor, and by all other accused persons in the proceedings, and may be changed at any time before the date fixed for the start of the trial.

**Supreme or District Court may deal with summary offences
related to indictable offences**
(Proposed Part 10 - proposed sections 34-37)

The proposed Part applies when the Supreme Court or District Court is dealing with an indictable offence.

Accused persons who are charged with indictable offences may also be charged with summary offences relating to the same matter. Such charges are commonly called "back-up" charges and may be proceeded with after the indictable offence has been dealt with.

The proposed Part enables the Supreme Court or District Court, at the end of the trial for the indictable offence, to dispose of any related summary offence without the jury (but only if both the prosecutor and the accused person consent). The Supreme Court or District Court is to deal with such a related summary offence as if it were a Local Court.

SCHEDULE 2 - AMENDMENT OF CRIMES ACT 1900

Summary of evidence
(Proposed section 405AA)

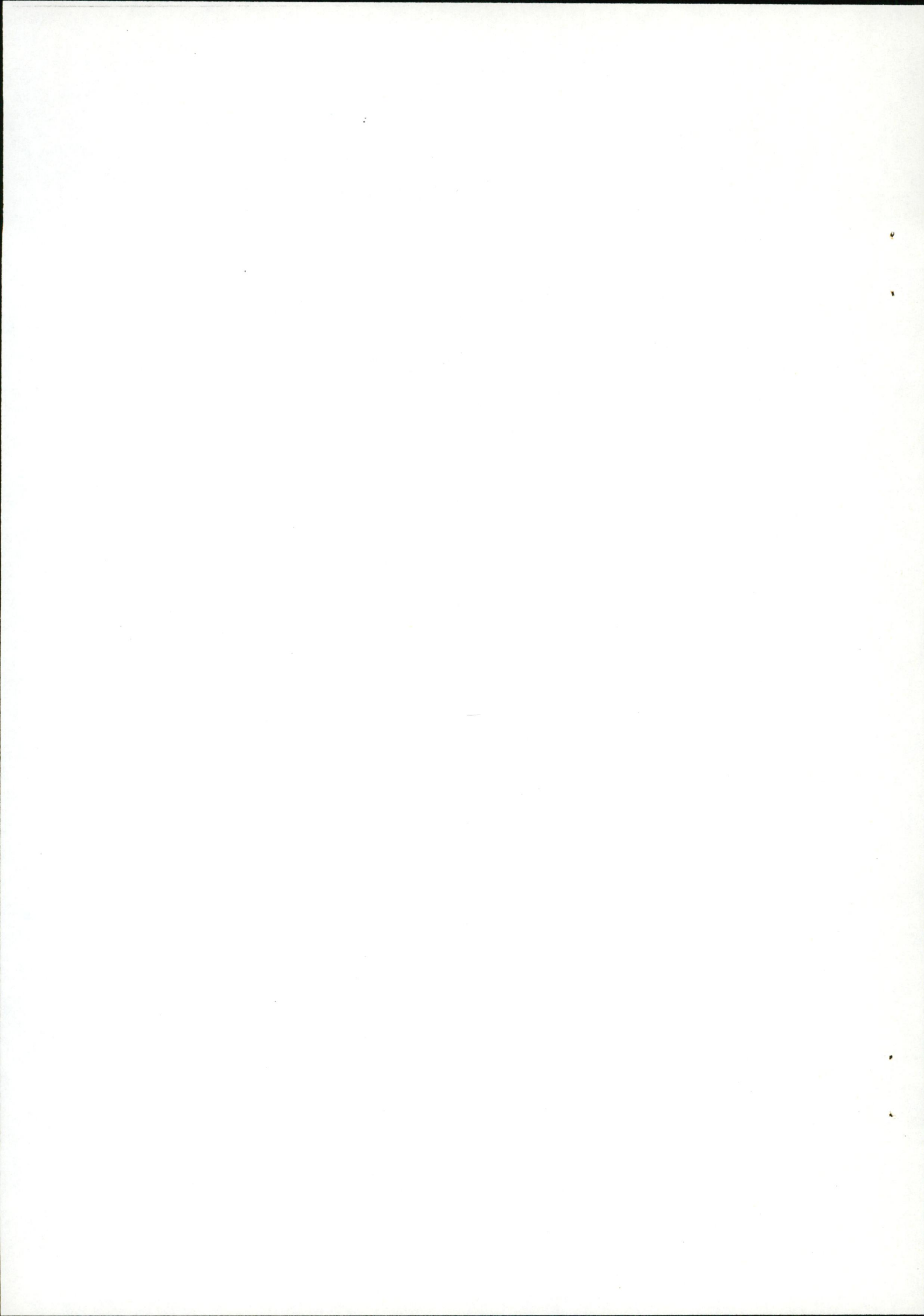
The proposed section declares that a Judge is not required to summarise the evidence given in a criminal trial before a jury if the Judge is of the opinion that it is unnecessary to do so.

Criminal Procedure Legislation (Amendment) 1990

SCHEDULE 3 - CONSEQUENTIAL AMENDMENT OF OTHER ACTS

Criminal Appeal Act 1912. The amendments provide a right of appeal to the Court of Criminal Appeal where a Judge in any trial also disposes of related summary offences ("back-up" charges) under proposed Part 10 of the Criminal Procedure Act 1986.

Jury Act 1977. The amendment makes consequential changes as a result of the transfer to proposed Part 9 of the Criminal Procedure Act 1986 of provisions relating to the right to jury trial in criminal proceedings.



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1990**

NEW SOUTH WALES



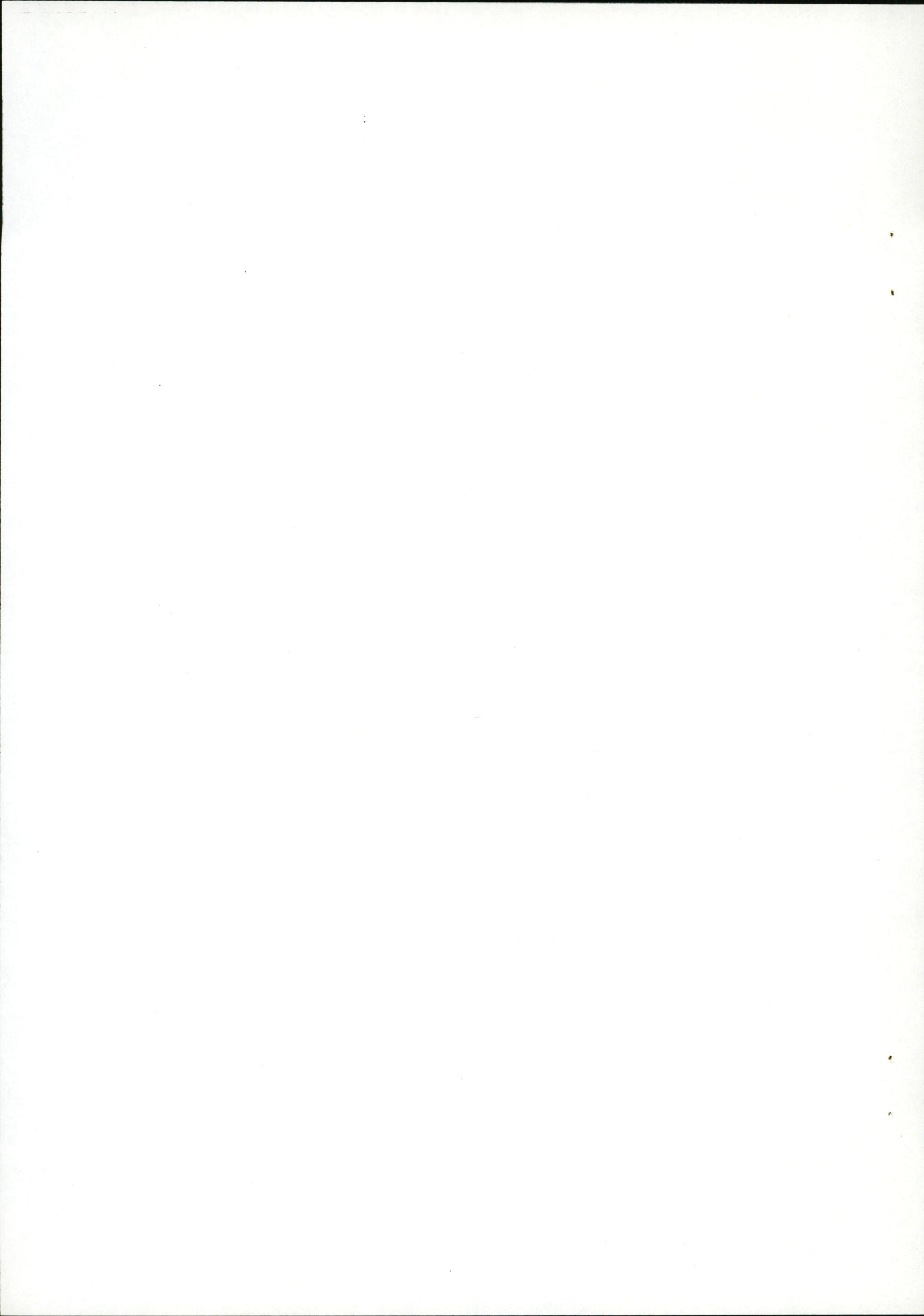
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SCHEDULE 2 - AMENDMENT OF CRIMES ACT 1900

SCHEDULE 3 - CONSEQUENTIAL AMENDMENT OF OTHER ACTS



**CRIMINAL PROCEDURE LEGISLATION (AMENDMENT) BILL
1990**

NEW SOUTH WALES



No. , 1990

A BILL FOR

An Act to amend the Criminal Procedure Act 1986 and the Crimes Act 1900 with respect to the presentation of indictments, trial by jury, "back-up" charges and summaries of evidence; and to make consequential amendments to other Acts.

Criminal Procedure Legislation (Amendment) 1990

The Legislature of New South Wales enacts:

Short title

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Commencement

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3. The Criminal Procedure Act 1986 is amended as set out in Schedule 1.

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4. The Crimes Act 1900 is amended as set out in Schedule 2.

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SCHEDULE 1 - AMENDMENT OF CRIMINAL PROCEDURE
ACT 1986 - *continued*

(2) A court may order an indictment to be presented on the date fixed for the trial of a person in the court for an indictable offence, or on or before some other later date.

(3) A court may order the presentation of an indictment whether or not the prosecutor is ready to proceed with the case.

(4) A court may, if an indictment is not presented in accordance with its order, adjourn the proceedings or take such other action as it thinks appropriate in the circumstances of the case.

(5) The prosecutor has no right to an adjournment merely because an indictment has not been presented.

(6) A court must, in exercising any power under this section, have regard to the fact that the Crown does not have a right of appeal if the accused person is acquitted.

(7) This section does not affect the powers of the court under section 365 of the Crimes Act 1900.

(8) This section extends to criminal proceedings commenced, but not concluded, before the commencement of this section.

(2) Parts 9 and 10:

After Part 8 (to be inserted by the Criminal Procedure (Fines) Amendment Act 1989), insert:

PART 9 - TRIAL BY JURY ON INDICTMENT

Definition and application

30. (1) In this Part:

"criminal proceedings" means proceedings for the prosecution of persons on indictment.

(2) This Part extends to criminal proceedings commenced, but not concluded, before the commencement of this Part.

**SCHEDULE 1 - AMENDMENT OF CRIMINAL PROCEDURE
ACT 1986 - *continued***

Trial by jury in criminal proceedings

31. Criminal proceedings in the Supreme Court or the District Court are to be tried by a jury, except as otherwise provided by this Part.

Trial by Judge in criminal proceedings

32. (1) An accused person in criminal proceedings in the Supreme Court or District Court must be tried by the Judge alone if the person so elects in accordance with this section.

(2) An election may not be made unless:

- (a) all other accused persons in the trial also elect to be tried by the Judge alone; and
- (b) each election is made in respect of all offences with which the accused persons in the trial are charged.

(3) An election may be made only with the consent of the prosecutor.

(4) An election must be made before the date fixed for the person's trial in the Supreme Court or District Court.

(5) An accused person who elects to be tried by the Judge alone may, at any time before the date fixed for the person's trial, subsequently elect to be tried by a jury.

(6) Rules of court may be made with respect to elections under this section.

Verdict of single Judge

33. (1) A Judge who tries criminal proceedings without a jury may make any finding that could have been made by a jury on the question of the guilt of the accused person. Any such finding has, for all purposes, the same effect as a verdict of a jury.

(2) A judgment by a Judge in any such case must include the principles of law applied by the Judge and the findings of fact on which the Judge relied.

**SCHEDULE 1 - AMENDMENT OF CRIMINAL PROCEDURE
ACT 1986 - *continued***

(3) If any Act or law requires a warning to be given to a jury in any such case, the Judge is to take the warning into account in dealing with the matter.

**PART 10 - SUPREME OR DISTRICT COURT
MAY DEAL WITH SUMMARY OFFENCES
RELATED TO INDICTABLE OFFENCES**

Definitions and application

34. (1) In this Part:

"court" means the Supreme Court or District Court;

"related summary offence", in relation to an indictable offence, means a summary offence capable of being dealt with by a Local Court that arises from substantially the same circumstances as those from which the indictable offence has arisen.

(2) This Part extends to proceedings commenced, but not concluded, before the commencement of this Part.

Supreme or District Court may deal with certain summary offences related to indictable offences

35. (1) A court may, at the conclusion of the trial of an accused person for an indictable offence, deal with any related summary offence with which the accused person has been charged.

(2) A court may deal with a related summary offence on its own motion, or on the application of the accused person or the prosecutor, but may not do so unless both the accused person and the prosecutor have consented to the offence being dealt with under this Part.

(3) Nothing in this section requires a court to deal with a related summary offence under this Part.

(4) A court may deal with a related summary offence with which an accused person has been charged even though it is not doing so in relation to a related summary offence with which another accused person in the same proceedings is charged.

**SCHEDULE 1 - AMENDMENT OF CRIMINAL PROCEDURE
ACT 1986 - *continued***

Procedures for dealing with related summary offences

36. (1) The court is to deal with a related summary offence under this Part without a jury and on the basis only of evidence given during the trial of the accused person for any indictable offence in the same proceedings and additional evidence given under this section.

(2) The prosecutor or accused person may, with the leave of the court, call additional evidence in relation to the related summary offence.

(3) In sentencing or otherwise dealing with a person for a related summary offence, the court has the same functions, and is subject to the same restrictions and procedures, as a Local Court constituted by a Magistrate.

(4) Rules of court may be made with respect to related summary offences dealt with under this Part.

Remission of related summary offences to Local Courts

37. A court which is dealing with a related summary offence under this Part may, at any time, remit the matter to a Local Court.

SCHEDULE 2 - AMENDMENT OF CRIMES ACT 1900

(Sec. 4)

After section 405, insert:

Summary by Judge

405AA. (1) A Judge of the Supreme Court or District Court need not summarise, at the end of a criminal trial before a jury, the evidence given in the trial if the Judge is of the opinion that, in all the circumstances of the trial, the summary is not necessary.

(2) This section applies despite any rule of law or practice to the contrary.

Criminal Procedure Legislation (Amendment) 1990

SCHEDULE 2 - AMENDMENT OF CRIMES ACT 1900 - *continued*

(3) Nothing in this section affects any aspect of a Judge's summing up function other than the summary of evidence in a trial.

(4) This section extends to trials commenced, but not concluded, before the commencement of this section.

SCHEDULE 3 - CONSEQUENTIAL AMENDMENT OF OTHER ACTS

(Sec. 5)

Criminal Appeal Act 1912 No. 16

(1) After section 5AC, insert:

Appeals as to related summary offences in criminal cases dealt with by the Supreme Court or the District Court

5AD. (1) Section 5AA applies to and in respect of a person convicted of an offence by the Supreme Court or District Court in the exercise of its jurisdiction under Part 10 of the Criminal Procedure Act 1986 in the same way as it applies to a person referred to in section 5AA (1).

(2) For the purposes of this section, a reference in section 5AA to the Supreme Court is to be construed as including a reference to the District Court.

(3) The power of the Court of Criminal Appeal to hear and determine an appeal under this section is to be exercised by such single judge of the Supreme Court as the Chief Justice may direct unless:

- (a) the judge considers that the appeal should be dealt with by the full court and notifies the Chief Justice accordingly; or
- (b) an appeal is lodged under this Act in relation to the related indictable offence.

(2) Section 10 (**Time for appealing**):

From section 10 (4), omit "or 5AC", insert instead ", 5AC or 5AD".

Criminal Procedure Legislation (Amendment) 1990

SCHEDULE 3 - CONSEQUENTIAL AMENDMENT OF
OTHER ACTS - *continued*

Jury Act 1977 No. 18

Omit section 19, insert instead:

Number of jurors in criminal proceedings

19. The jury in any criminal proceedings in the Supreme Court or the District Court is to consist of 12 persons returned and selected in accordance with this Act.
