

FIRST PRINT

**CRIMES (UNRELIABLE TESTIMONY) AMENDMENT  
BILL 1994**

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 (“**the Principal Act**”) so as to prevent accused persons from being convicted on the basis of uncorroborated confessions, to reduce the incidence of accused persons being convicted on the basis of false testimony and to facilitate the initiation of judicial inquiries into doubtful convictions.

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

**Clause 2** provides that the proposed Act is to commence on its date of assent.

**Clause 3** is a formal provision that gives effect to the Schedule of amendments to the Principal Act.

**Clause 4** is a transitional provision that ensures that the amendments made by the proposed Act to the Principal Act do not affect any proceedings that commence before the date of assent to the proposed Act.

**SCHEDULE 1—AMENDMENTS**

Schedule 1 (1) inserts proposed sections 405AB and 405AC into the Principal Act.

Proposed section 405AB provides that, in a criminal trial in which a prison witness (that is, a person who is on remand, in prison or on parole) gives evidence on behalf of the prosecution, consideration must be given by the Judge or jury to the possibility that the witness may have been induced to give evidence by the prospect of receiving a benefit, to any evidence that the witness may have

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previously given evidence in other proceedings while a prison witness and to any evidence that the witness may have previously given false or misleading evidence in other proceedings while a prison witness.

Proposed section 405AC provides that a court may not convict an accused person of a summary or indictable offence on the basis only of oral evidence alleging that the accused person has confessed to committing the offence, being evidence for which there is no independent evidence to support the allegation. Examples of independent evidence include evidence in the form of a statement signed by the accused person and evidence in the form of a video or tape recording of the making of the confession by the accused person.

Schedule 1 (2) inserts a proposed section 418A into the Principal Act.

Proposed section 418A requires the prosecution to give an accused person at least 14 days' notice of its intention to call a prison witness to give evidence at the person's trial and allows the accused person to bring the prison witness's character into question at the trial without (as would otherwise be the case) thereby enabling the prosecution to bring the accused person's character into question.

Schedule 1 (3)–(5) amend Part 13A of the Principal Act (Review of Convictions) so as to provide that a doubt or question as to the guilt of a convicted person is taken to exist if evidence at the person's trial was given on behalf of the prosecution by a prison witness who had previously, or has subsequently, given false or misleading evidence in other proceedings.

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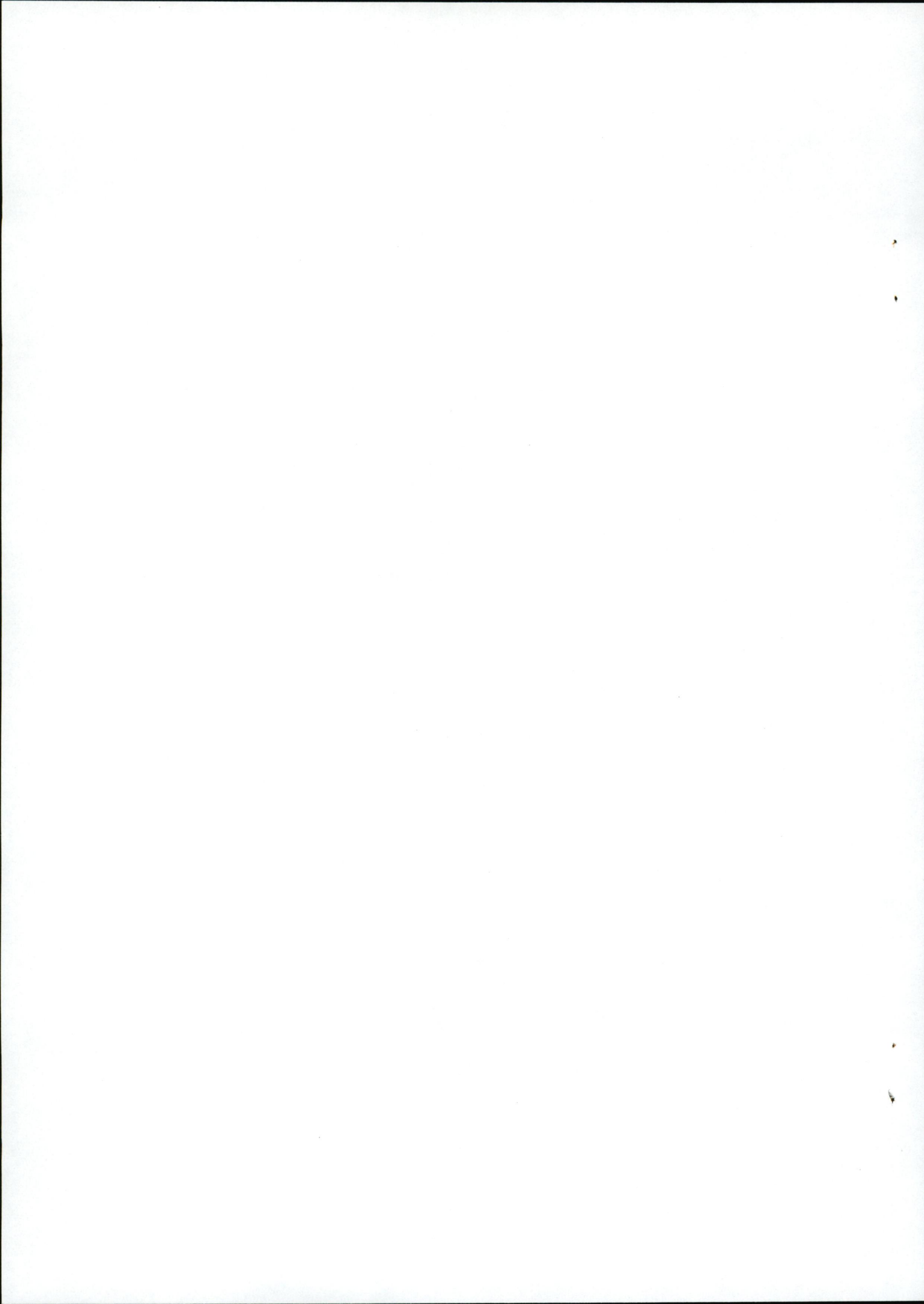


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SCHEDULE 1—AMENDMENTS

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**CRIMES (UNRELIABLE TESTIMONY) AMENDMENT  
BILL 1994**

NEW SOUTH WALES



No.      , 1994

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**A BILL FOR**

An Act to amend the Crimes Act 1900 so as to prevent accused persons from being convicted on the basis of uncorroborated confessions, to reduce the incidence of accused persons being convicted on the basis of false testimony and to facilitate the initiation of judicial inquiries into doubtful convictions.

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

**Short title**

1. This Act may be cited as the Crimes (Unreliable Testimony) Amendment Act 1994.

5 **Commencement**

2. This Act commences on the date of assent.

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

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

**Transitional**

10 4. The amendments to the Crimes Act 1900 made by this Act do not affect any proceedings that commenced before the date of assent.

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**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

(1) Sections 405AB, 405AC:

15 After section 405AA, insert:

**Jury to be warned concerning testimony of prison informers**

20 405AB. (1) In any trial of a person charged with an indictable offence in which evidence is given on behalf of the prosecution by a prison witness, the Judge must give, or (in the case of a trial before a jury) must warn the jury that it must give, due consideration to:

- 25 (a) the possibility that the witness may have been induced to give evidence by the prospect of receiving a benefit; and
- (b) any evidence that has been given as to the fact that the witness may previously have given evidence in other proceedings while a prison witness; and

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SCHEDULE 1—AMENDMENTS—*continued*

- (c) any evidence that has been given that the witness may previously have given false or misleading evidence in other proceedings while a prison witness. 5
- (2) In this section:
- “**benefit**” includes any monetary reward, any proposed withdrawal of criminal charges, any proposed request for lenient sentencing and any proposed recommendation for the granting of parole; 10
- “**prison witness**” means a person who is a witness in any legal proceedings while:
- (a) on remand pending the determination of criminal proceedings against the person; or
- (b) serving a sentence of imprisonment or penal servitude; or 15
- (c) on release on parole during the term of a sentence of imprisonment or penal servitude.
- Court may not convict on uncorroborated confessions by accused** 20
- 405AC. A court may not convict an accused person of a summary or indictable offence on the basis only of oral evidence alleging that the accused person has confessed to committing the offence, being evidence for which there is no independent evidence to support the allegation. 25
- Examples of independent evidence include evidence in the form of a statement signed by the accused person and evidence in the form of a video or tape recording of the making of the confession by the accused person.
- (2) Section 418A: 30
- After section 418, insert:
- Evidence by prison informers**
- 418A. (1) In any proceedings against a person charged with a summary or indictable offence, evidence may not be given on behalf of the prosecution by a prison witness unless at least 14 days’ notice of the prosecution’s intention to call the witness, and of the fact that the 35

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SCHEDULE 1—AMENDMENTS—*continued*

witness is a prison witness, has been given to the person charged or to his or her counsel or attorney.

5 (2) An accused person may not be cross-examined as to character, and evidence as to an accused person's character may not be given on behalf of the prosecution, merely because the accused person, or his or her counsel or attorney, has cross-examined a prison witness as to character.

10 (3) In this section:

**“prison witness”** means a person who is a witness in any legal proceedings while:

- 15 (a) on remand pending the determination of criminal proceedings against the witness; or
- (b) serving a sentence of imprisonment or penal servitude; or
- (c) on release on parole during the term of a sentence of imprisonment or penal servitude.

20 (3) Section 474A (**Definitions**):

In section 474A (1), insert in alphabetical order:

**“prison witness”** means a person who is a witness in any legal proceedings while:

- 25 (a) on remand pending the determination of criminal proceedings against the witness; or
- (b) serving a sentence of imprisonment or penal servitude; or
- (c) on release on parole during the term of a sentence of imprisonment or penal servitude;

30 (4) Section 474C (**Consideration of petitions**):

After section 474C (5), insert:

(6) For the purposes of this section, a doubt or question as to the guilt of a person is taken to exist if:

- 35 (a) evidence at his or her trial was given on behalf of the prosecution by a person who, at the time of the trial, was a prison witness; and



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SCHEDULE 1—AMENDMENTS—*continued*

- (b) it has been established, whether before or after the trial, that the person has given false or misleading evidence in other proceedings (whether civil or criminal) either before or after the trial. 5
- (5) Section 474E (**Consideration of applications**):  
After section 474E (5), insert:
- (6) For the purposes of this section, a doubt or question as to the guilt of a person is taken to exist if:
- (a) evidence at his or her trial was given on behalf of the prosecution by a person who, at the time of the trial, was a prison witness; and 10
- (b) it has been established, whether before or after the trial, that the person has given false or misleading evidence in other proceedings (whether civil or criminal) either before or after the trial. 15
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