

First print



New South Wales

## **Criminal Procedure Amendment (Indictable Offences) Bill 1995**

### **Explanatory note**

This explanatory note relates to this Bill as introduced into Parliament.

#### **Overview of Bill**

The object of this Bill is to amend the *Criminal Procedure Act 1986* to revise the procedure under which certain indictable offences can be dealt with summarily by a Local Court.

An indictable offence is an offence that can go to a trial by jury in either the District or Supreme Court.

The Bill:

- (a) lists the indictable offences that can be dealt with summarily before a Local Court (some additional offences are included), and
  - (b) sets out the general procedures to be followed for these offences, and
  - (c) in particular, provides an opportunity (by an "election") for such an offence to proceed by way of indictment, with the potential for a trial by jury, and
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- (d) provides that such an election can be made:
- by either the prosecuting authority or the accused person, in the case of more serious offences
  - by the prosecuting authority, in the case of other offences.

### Outline of provisions

**Clause 1** sets out the name (also known as the short title) of the proposed Act.

**Clause 2** provides that the proposed Act will commence on a day or days to be proclaimed.

**Clause 3** is a formal provision giving effect to the amendments to the *Criminal Procedure Act 1986* set out in Schedule 1.

**Clause 4** is a formal provision giving effect to the consequential amendments to various Acts set out in Schedule 2.

### **Schedule 1 Amendment of Criminal Procedure Act 1986**

**Schedule 1 (3)** inserts Part 9A into the *Criminal Procedure Act 1986*. The new Part revises the procedure (at present contained in sections 476–500 of the *Crimes Act 1900* and in other Acts) for certain indictable offences to be dealt with summarily by a Local Court. The objects of the Part are set out in proposed section 33A.

The proposed new procedure requires certain indictable offences to be dealt with summarily:

- (a) unless the prosecuting authority or the person charged with the offence elects to have the offence dealt with on indictment (offences listed in Table 1 to Part 9A), or
- (b) unless the prosecuting authority elects to have the offence dealt with on indictment (offences listed in Table 2 to Part 9A).

Any discretion of a Local Court in the matter is removed.

Provision is made for the time for making elections and for the withdrawal of elections (proposed sections 33F and 33G).

Information relating to the right of a person charged to make an election and the consequences of not making an election (in respect of an offence listed in Table 1 to the Part) is to be given to the person by a Local Court when the

Criminal Procedure Amendment (Indictable Offences) Bill 1995

Explanatory note

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person charged first appears before the Court (proposed section 33H (1)). The Local Court is to fix a time within which the brief of evidence relating to such an offence and a copy of the criminal record of the person charged (if any) is to be provided to the person charged (proposed section 33H (2)). A power enabling regulations to be made with respect to elections is also provided (proposed section 33I).

The new Part reproduces the current reduced penalties and provides a maximum penalty that may be imposed when an indictable offence is dealt with summarily if no maximum penalty is otherwise provided by law (proposed sections 33J and 33K).

The new Part adds to the list of indictable offences that at present may be dealt with summarily by adding certain indictable offences that carry a maximum penalty not exceeding 10 years imprisonment or penal servitude. However, the new Part does not apply to such offences under a number of Acts (eg because the relevant Act states that the offence must be dealt with on indictment) such as the following:

Biological Control Act 1985

Confiscation of Proceeds of Crime Act 1989

Financial Transaction Reports Act 1992

Gaming and Betting Act 1912

Guardianship Act 1987

Independent Commission Against Corruption Act 1988

Listening Devices Act 1984

Mental Health Act 1990

Mines Inspection Act 1901

New South Wales Crime Commission Act 1985

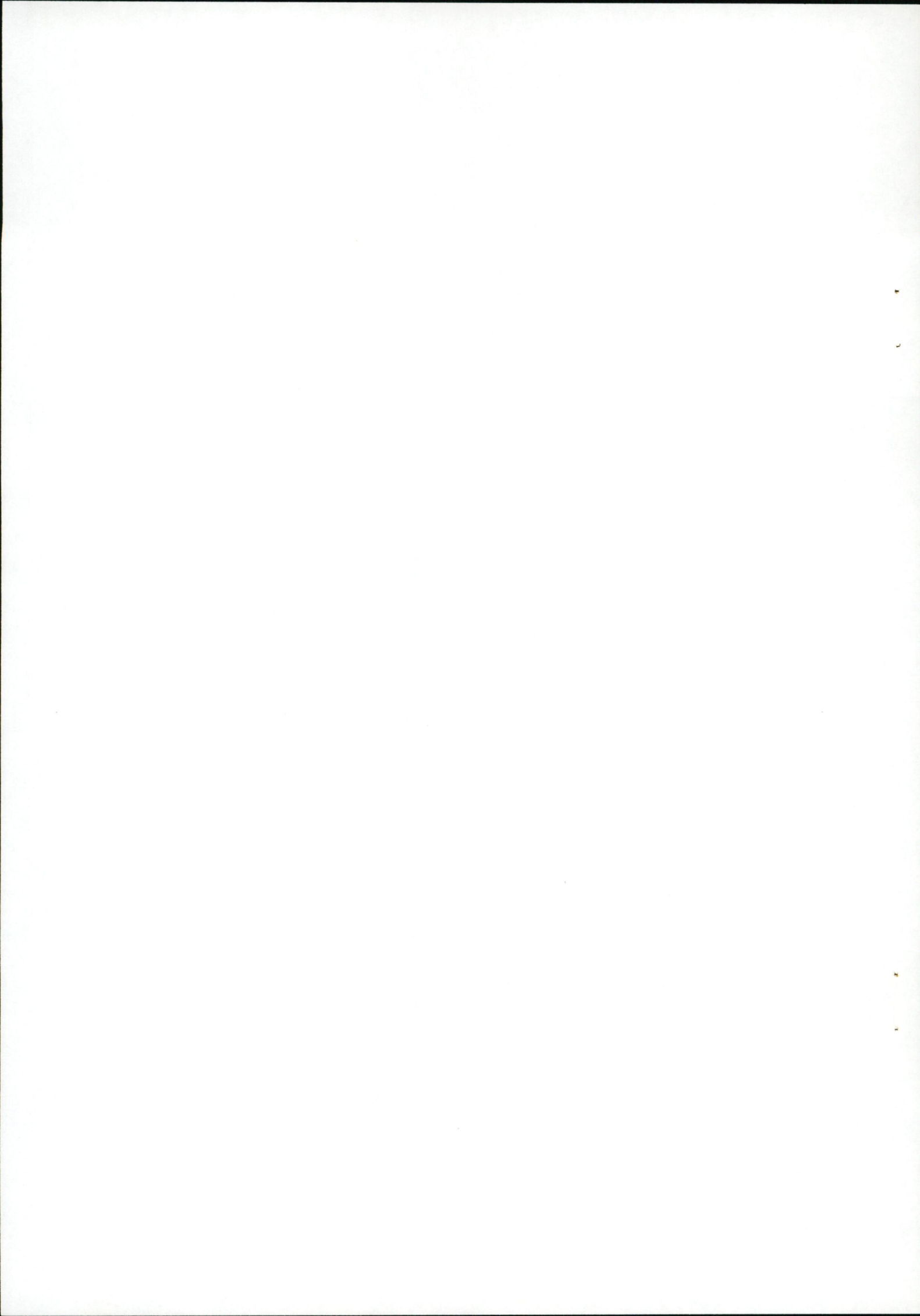
Prevention of Cruelty to Animals Act 1979

Tobacco Advertising Prohibition Act 1991.

**Schedule 1 (1) and (2)** make amendments to the *Criminal Procedure Act 1986* consequential on the insertion of the new Part.

## **Schedule 2 Consequential amendment of other Acts**

The Schedule contains amendments to other Acts. The amendments make consequential changes as a result of the proposed new procedure for the summary disposal of certain indictable offences.



First print



New South Wales

# **Criminal Procedure Amendment (Indictable Offences) Bill 1995**

## **Contents**

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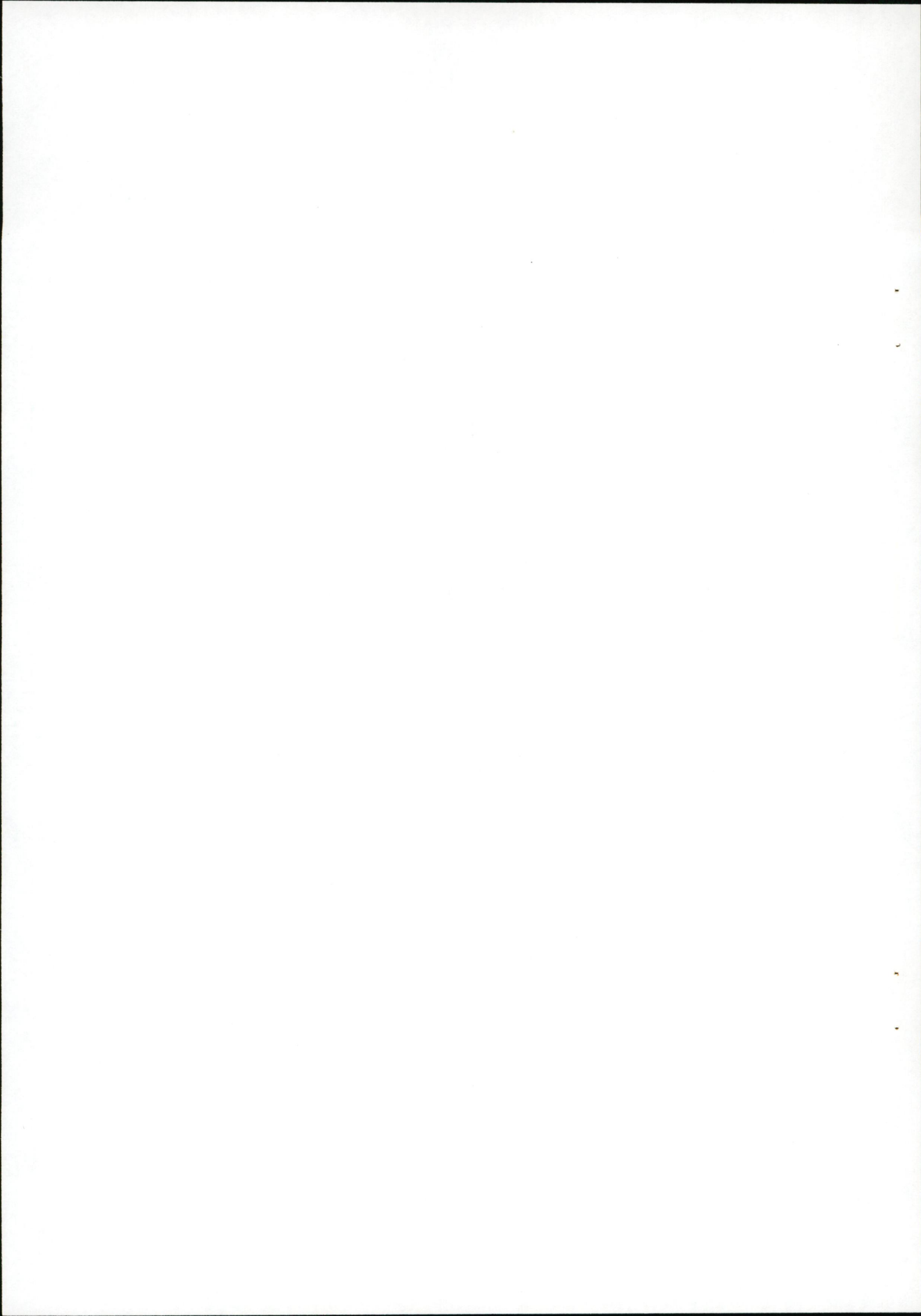
	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Criminal Procedure Act 1986 No 209	2
4 Consequential amendment of other Acts	2

---

### **Schedules**

1 Amendment of Criminal Procedure Act 1986	3
2 Consequential amendment of other Acts	18

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New South Wales

## **Criminal Procedure Amendment (Indictable Offences) Bill 1995**

No. , 1995

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### **A Bill for**

An Act to amend the *Criminal Procedure Act 1986* with respect to the summary disposal of indictable offences by Local Courts, and to amend other Acts consequentially.

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

**1 Name of Act**

This Act is the *Criminal Procedure Amendment (Indictable Offences) Act 1995*.

**2 Commencement**

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

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

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

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**4 Consequential amendment of other Acts**

The Acts specified in Schedule 2 are amended as set out in that Schedule.



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**Schedule 1 Amendment of Criminal Procedure Act 1986**

(Section 3)

**[1] Section 3 Definitions**

Insert in alphabetical order in section 3 (1): 5

*prosecuting authority* means the Director of Public Prosecutions or other person responsible for the conduct of a prosecution.

**[2] Section 4 Prosecution of indictable offences**

Omit “, whether with or without the consent of the accused” from section 4 (4). 10

**[3] Part 9A**

Insert after Part 9:

**Part 9A Summary disposal of indictable offences by Local Courts** 15

**33A Objects of this Part**

The objects of this Part are:

- (a) to require the indictable offences listed in Table 1 to this Part to be dealt with summarily unless the prosecuting authority or the person charged with the offence concerned elects to have the offence dealt with on indictment, and 20
- (b) to require the indictable offences listed in Table 2 to this Part to be dealt with summarily unless the prosecuting authority elects to have the offence concerned dealt with on indictment. 25

**33B Indictable offences to which this Part applies**

This Part applies to the indictable offences listed in Tables 1 and 2 to this Part.

**33C Offences to be dealt with summarily unless election made to proceed on indictment**

- (1) An indictable offence listed in Table 1 to this Part is to be dealt with summarily by a Local Court unless the prosecuting authority or the person charged with the offence elects in accordance with this Part to have the offence dealt with on indictment. 5
- (2) An indictable offence listed in Table 2 to this Part is to be dealt with summarily by a Local Court unless the prosecuting authority elects in accordance with this Part to have the offence dealt with on indictment. 10

**33D Procedure for dealing with offences summarily if no election made**

An indictable offence listed in Table 1 or 2 to this Part is, if no election is made in accordance with this Part, to be dealt with summarily in accordance with the relevant provisions of this Act, the relevant provisions of the *Justices Act 1902* and any other relevant law as if it were a summary offence. 15

**33E Procedure for dealing with offences if election made** 20

- (1) An indictable offence listed in Table 1 or 2 to this Part is, if an election is made in accordance with this Part, to be dealt with on indictment in accordance with the relevant provisions of this Act, the relevant provisions of the *Justices Act 1902* and any other relevant law. 25
- (2) If an election is made in accordance with this Part and the person charged with the offence pleads guilty to the offence before a Local Court and the Court accepts the plea, the offence is to be dealt with in accordance with section 51A of the *Justices Act 1902* as if the person charged had pleaded guilty under that section to the offence. 30

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**33F Time for making election**

- (1) An election to have an offence dealt with on indictment must be made within the time fixed by the Local Court.
- (2) An election may, with the leave of the Local Court, be made after the time so fixed if the Court is satisfied that special circumstances exist. 5
- (3) However, an election may not be made after the following events:
  - (a) in the case of a plea of not guilty—the commencement of the taking of evidence for the prosecution in the summary trial, 10
  - (b) in the case of a plea of guilty—the presentation of the facts relied on by the prosecution to prove the offence.

**33G Election may be withdrawn** 15

- (1) An election for an offence to be dealt with on indictment may be withdrawn by the party who made the election.
- (2) However, an election may not be withdrawn after the following events:
  - (a) in the case of a plea of not guilty—the commencement of the taking of evidence for the prosecution in the committal for trial proceedings, 20
  - (b) in the case of a plea of guilty—the committal of the person charged for sentence.
- (3) An offence is to be dealt with summarily in accordance with this Part if an election is withdrawn in accordance with this section. 25

**33H Information to be given to person charged (Table 1 offences)**

- (1) When a person charged with an indictable offence listed in Table 1 to this Part first appears before a Local Court in respect of the offence, the Court: 30
  - (a) is to address the person about the person's right to make an election and the consequences of not making an election, and 35

- (b) is to give to the person a statement about the person's right to make an election and the consequences of not making an election that is in the form of words prescribed by the regulations.
- (2) The prosecuting authority is to serve, or cause to be served, on the person charged with an indictable offence listed in Table 1 to this Part: 5
- (a) the brief of evidence relating to the offence, and
- (b) a copy of the person's criminal record (if any) known to the prosecuting authority, 10
- within the time fixed by the Local Court. The time so fixed must be before the time fixed by the Court for the making of an election in respect of the offence.
- (3) Without limiting the powers of a Local Court to adjourn proceedings, the Local Court is to grant such adjournments as appear to be just and reasonable if a brief of evidence or a criminal record, or both, are not served in accordance with this section, and the Court is to extend accordingly the time fixed for the making of an election in respect of the offence. 15 20

### 33I Regulations

- (1) Regulations may be made for or with respect to elections under this Part.
- (2) In particular, regulations may be made for or with respect to the following: 25
- (a) the form and manner in which an election is to be made,
- (b) the form and manner in which the withdrawal of an election is to be made,
- (c) the notification of the making or withdrawal of an election, 30
- (d) the form and contents, and the service, of briefs of evidence and criminal records.

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**33J Maximum penalties for Table 1 offences**

- (1) This section prescribes the maximum penalty that may be imposed for an indictable offence listed in Table 1 to this Part dealt with summarily under this Part in any case where the maximum penalty (when the offence is dealt with summarily) is not provided by law. 5
- (2) The maximum term of imprisonment that a Local Court may impose for an offence is, subject to this section, 2 years or the maximum term of imprisonment provided by law for the offence, whichever is the shorter term. 10
- (3) The maximum fine that a Local Court may impose for an offence is 100 penalty units or the maximum fine provided by law for the offence, whichever is the smaller fine.
- (4) The maximum term of imprisonment that a Local Court may impose for the following offences (including an attempt to commit the offence concerned) is: 15
- (a) for an offence under section 52A or 52B of the *Crimes Act 1900*—18 months,
- (b) for an offence under section 53 or 54 of the *Crimes Act 1900*—12 months. 20
- (5) A Local Court may, instead of imposing a term of imprisonment, impose a fine not exceeding 100 penalty units for an offence listed in Table 1 to this Part in any case where a fine is not otherwise provided by law for the offence. 25
- (6) Nothing in this section affects an option provided by law to impose either a term of imprisonment, or a fine, or both.
- (7) Nothing in this section affects section 444 of the *Crimes Act 1900*. 30
- (8) In this section, *imprisonment* includes penal servitude.

**33K Maximum penalties for Table 2 offences**

- (1) This section prescribes the maximum penalty that may be imposed for an indictable offence listed in Table 2 to this Part dealt with summarily under this Part in any case where the maximum penalty (when the offence is dealt with summarily) is not provided by law. 5
- (2) The maximum penalty that a Local Court may impose for the following offences (including an attempt to commit the offence concerned) is:
- (a) for an offence under section 35A (2), 58, 59, 61L or 61O (1) of the *Crimes Act 1900*—imprisonment for 2 years, or a fine of 50 penalty units, or both, 10
  - (b) for an offence under section 56, 61 or 61N of the *Crimes Act 1900*—imprisonment for 12 months, or a fine of 20 penalty units, or both, 15
  - (c) for an offence listed in Part 2 of Table 2 to this Part (other than an offence under section 154A of the *Crimes Act 1900*)—imprisonment for 12 months, or a fine of 50 penalty units, or both, however, the maximum fine that a Local Court may impose if the value of the property, amount of money or reward concerned does not exceed \$2,000 is 20 penalty units, 20
  - (d) for an offence under section 154A of the *Crimes Act 1900*—imprisonment for 2 years, or a fine of 50 penalty units, or both, 25
  - (e) for an offence under section 93G or 93H of the *Crimes Act 1900*—imprisonment for 2 years, or a fine of 50 penalty units, or both. 30
- (3) Nothing in this section affects section 444 of the *Crimes Act 1900* .

**33L Constitution of Local Court**

The jurisdiction of a Local Court under this Part may be exercised only by a Local Court constituted by a Magistrate sitting alone. 35

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**33M Offences by children**

Nothing in this Part confers jurisdiction on a Local Court to deal with an offence if the Children's Court has exclusive jurisdiction to hear and determine the matter.

**33N No time limit for offences dealt with summarily under this Part** 5

Section 56 of the *Justices Act 1902*, and the provisions of any other Act limiting the time within which proceedings for summary offences may be instituted, do not apply to offences dealt with summarily under this Part. 10

**33O Effect of conviction**

The conviction of a person of an offence dealt with summarily under this Part has the same effect as a conviction on indictment for the offence. 15

**33P Application of Part and continued application of certain provisions**

- (1) This Part applies to proceedings for an offence with which a person is charged after (but not before) the commencement of this section irrespective of when the offence was committed. 20
- (2) Despite section 475C of the *Crimes Act 1900*, sections 476, 480, 481, 495, 496, 496A, 497 and 500 of that Act, and the provisions of any other Act or instrument referring to any of those sections, continue to apply to proceedings for offences with which a person was charged before the commencement of this section (irrespective of when the person is dealt with under those sections or provisions). 25
- (3) However, if a person is charged with more than one offence and proceedings for those offences are to be dealt with together, this Part applies to the proceedings despite the fact that the person was charged with one or more (but not all) of those offences before the commencement of this section. 30  
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<b>Table 1</b>	<b>Indictable offences that are to be dealt with summarily unless prosecuting authority or person charged elects otherwise</b>	
<b>Part 1</b>	<b>Offences against the person under Crimes Act 1900</b>	5
<b>1</b>	<b>Offences against the person where victim 14 years of age or over</b>	
	An offence under section 61E, 66C (1), 66D, 71, 72, 76, 76A or 81 of the <i>Crimes Act 1900</i> where the person against whom the offence was committed was at the time of the commission of the offence of or above the age of 14 years.	10
<b>2</b>	<b>Other offences against the person</b>	
	An offence under section 31, 31C, 35, 35A (1), 39, 41, 41A, 43, 44, 49, 52A (other than an offence by which death was occasioned), 52B (other than an offence by which death was occasioned), 53, 54, 55, 57, 61M, 61O (2), 78Q, 80, 81A, 81B, 81C, 82, 83, 84, 85 (where the person charged is the mother of the child and is not charged with any other person), 90, 91, 91A, 91B, 92 or 93 of the <i>Crimes Act 1900</i> .	15 20
<b>Part 2</b>	<b>Offences relating to property under Crimes Act 1900 or common law</b>	
<b>3</b>	<b>Larceny and other offences exceeding \$5,000</b>	
	Any of the following offences where the value of the property, matter or thing, or the damage, or the amount of money or reward, in respect of which the offence is charged exceeds \$5,000:	25
(a)	larceny, or	
(b)	an offence of stealing any chattel, money or valuable security from another person (eg section 94 of the <i>Crimes Act 1900</i> ), or	30



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- (c) an offence under section 125, 126, 131, 132, 133, 139, 140, 144, 148, 150, 151, 152, 156, 157, 158, 159, 160, 178A, 178B, 178BA, 178BB, 178C, 179, 184, 185, 185A, 186, 188, 189, 189A, 190, 192 or 195 of the *Crimes Act 1900*.

5

**4 Offences taken to be, or punishable as, larceny or stealing**

Any offence that under the *Crimes Act 1900* is taken to be, or is made punishable as, larceny or stealing (other than an offence under section 125, 139, 140, 144 or 154A of that Act).

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**5 Breaking and entering place of Divine worship with intent to commit felony**

An offence under section 107 (1) of the *Crimes Act 1900*.

15

**6 Entering with intent to commit felony, or commit felony, in dwelling-house and breaking out**

An offence under section 109 (1) of the *Crimes Act 1900* where:

- (a) the felony intended is stealing, or
- (b) the felony alleged is stealing and the value of the property stolen does not exceed \$15,000.

20

**7 Entering dwelling-house in the night or breaking and entering any house or other building with intent to commit felony**

25

An offence under section 111 (1) or 113 (1) of the *Crimes Act 1900* where the felony intended is stealing.

**8 Breaking and entering into, or being in, any house or other building and committing felony**

An offence under section 112 (1) of the *Crimes Act 1900* where:

- (a) the felony alleged is stealing, and 5
- (b) the value of the property stolen does not exceed \$15,000.

**9 Other property offences**

An offence under section 99, 100, 100A, 102, 114, 115, 135, 138, 145, 146, 153, 154AA, 154B (1), 165, 166, 168, 169, 170, 172, 173, 174, 175, 176, 176A, 181, 184A, 196, 197, 199, 200, 201, 202 or 203 of the *Crimes Act 1900*. 10

**Part 3 Other offences under Crimes Act 1900 or the common law** 15

**10 Offences relating to public order**

An offence under section 93B or 93C of the *Crimes Act 1900*.

**11 Offences relating to transport services**

An offence under section 207, 208 (4), 209, 210, 212 or 213 of the *Crimes Act 1900*. 20

**12 Corrupt practices**

- (1) An offence under section 249B, 249D or 249E of the *Crimes Act 1900*, or an offence under section 249F of that Act of aiding, abetting, counselling, procuring, soliciting or inciting such an offence, where the benefit in respect of which the offence is charged exceeds \$5,000. 25

- 
- (2) An offence under section 249C of the *Crimes Act 1900* or an offence under section 249F of that Act of aiding, abetting, counselling, procuring, soliciting or inciting such an offence.

**13 False instruments**

5

An offence under section 300, 301 or 302 of the *Crimes Act 1900*.

**14 Offences relating to computers**

An offence under section 309 (2), (3) or (4) or 310 of the *Crimes Act 1900*.

10

**15 Public justice offences**

- (1) **Public justice offences not involving intent to procure conviction or acquittal**

An offence under section 321, 322, 323 or 333 (1) of the *Crimes Act 1900* unless the person charged intended to procure the conviction or acquittal of any person of any serious offence.

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- (2) **Other public justice offences**

An offence under section 314, 315, 316, 317, 325, 326, 327, 330, 335, 336 or 337 of the *Crimes Act 1900*.

20

**16 Escape from lawful custody**

Escape from lawful custody.

**Part 4 Offences under certain other Acts**

**17 Bail Act 1978**

An offence under section 58 of the *Bail Act 1978*.

25

**18 Children (Care and Protection) Act 1987**

An offence under section 20B (1) of the *Children (Care and Protection) Act 1987*.

**19 Electricity Commission Act 1950**

An offence under section 76 or 81 of the *Electricity Commission Act 1950*.

**20 Financial Institutions Commission Act 1992**

An offence under section 21 of the *Financial Institutions Commission Act 1992*. 5

**21 Justices Act 1902**

An offence under section 48H of the *Justices Act 1902*.

**22 Oaths Act 1900**

An offence under section 13 (2), 20, 25, 29, 30 or 35 of the *Oaths Act 1900*. 10

**23 Petroleum (Submerged Lands) Act 1982**

An offence under section 120 of the *Petroleum (Submerged Lands) Act 1982*.

**24 Prisons Act 1952**

15

An offence under the *Prisons Act 1952* (other than an offence under section 32) for which a sentence of penal servitude may be imposed.

**25 Water Act 1912**

An offence under section 21 of the *Water Act 1912*. 20

**Part 5 Attempts, accessories and abettors**

**26 Attempts**

Attempting to commit any offence mentioned in a preceding Part of this Table.

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**27 Accessories**

Being an accessory before or after the fact to any offence mentioned in a preceding Part of this Table (if the offence is a felony).

**28 Abettors**

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Aiding, abetting, counselling or procuring the commission of any offence mentioned in a preceding Part of this Table (if the offence is a misdemeanour).

**Part 6 Offences under Drug Misuse and Trafficking Act 1985**

10

**29 Offences involving more than small quantity but not more than indictable quantity**

An offence to which section 31 (1) of the *Drug Misuse and Trafficking Act 1985* applies where the number or amount of the prohibited plant or prohibited drug concerned is more than the applicable small quantity but not more than the applicable indictable quantity.

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**30 Offences involving more than indictable quantity but less than commercial quantity (cannabis plant and cannabis leaf)**

20

An offence referred to in section 32 (a)–(f) of the *Drug Misuse and Trafficking Act 1985* where the offence relates to cannabis plant or cannabis leaf and the quantity of cannabis plant or cannabis leaf concerned is more than the applicable indictable quantity but less than the applicable commercial quantity.

25

<b>Table 2</b>	<b>Indictable offences that are to be dealt with summarily unless prosecuting authority elects otherwise</b>	
<b>Part 1</b>	<b>Offences against the person under Crimes Act 1900</b>	5
<b>1</b>	<b>Offences against the person</b>	
	An offence under section 35A (2), 56, 58, 59, 61, 61L, 61N or 61O (1) of the <i>Crimes Act 1900</i> or an attempt to commit any such offence.	
<b>2</b>	<b>Stalking and intimidation</b>	10
	An offence under section 562AB of the <i>Crimes Act 1900</i> .	
<b>Part 2</b>	<b>Offences relating to property under Crimes Act 1900 or common law</b>	
<b>3</b>	<b>Larceny and certain other property offences</b>	15
	Any of the following offences where the value of the property, or the amount of money or reward, in respect of which the offence is charged does not exceed \$5,000:	
	(a) larceny,	
	(b) an offence of stealing any chattel, money or valuable security from another person (eg section 94 of the <i>Crimes Act 1900</i> ),	20
	(c) an offence under section 125, 126, 131, 132, 133, 139, 140, 144, 148, 150, 151, 152, 156, 157, 158, 159, 160, 178A, 178B, 178BA, 178BB, 178C, 179, 184, 185, 185A, 186, 188, 189, 189A, 190, 192, 195, 249B, 249D or 249E of the <i>Crimes Act 1900</i> ,	25
	(d) an offence under section 249F of the <i>Crimes Act 1900</i> of aiding, abetting, counselling, procuring, soliciting or inciting an offence under section 249B, 249D or 249E of that Act,	30
	or an attempt to commit any such offence.	

**4 Taking conveyance without consent of owner**

An offence under section 154A of the *Crimes Act 1900* or an attempt to commit any such offence.

**Part 3 Offences relating to drugs**

**5 Drug Misuse and Trafficking Act 1985**

5

An offence to which section 30 (1) of the *Drug Misuse and Trafficking Act 1985* applies where the number or amount of the prohibited plant or prohibited drug concerned is not more than the applicable small quantity.

**Part 4 Offences relating to firearms and dangerous weapons**

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**6 Crimes Act 1900**

An offence under section 93G or 93H of the *Crimes Act 1900* or an attempt to commit any such offence.

**7 Firearms Act 1989**

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An offence under section 5, 6, 8, 14, 15, 16, 18, 40 or 44 of the *Firearms Act 1989*.

**8 Prohibited Weapons Act 1989**

An offence under section 6 or 10 of the *Prohibited Weapons Act 1989*.

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## **Schedule 2 Consequential amendment of other Acts**

(Section 4)

### **2.1 Bail Act 1978 No 161**

#### **Section 58 Indemnification of agreeing parties**

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Omit section 58 (4). Insert instead:

- (4) Part 9A of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of an offence under this section. 10

### **2.2 Children (Care and Protection) Act 1987 No 54**

#### **Section 121 Proceedings for offences**

Omit section 121 (2). Insert instead:

- (2) Part 9A of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of an offence under section 20B (1). 15

### **2.3 Crimes Act 1900 No 40**

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#### **[1] Section 1 Short title and contents of Act**

Omit the matter relating to Chapter 1 of Part 14.

#### **[2] Section 1**

Omit the matter relating to item (A) of Chapter 3 of Part 14.



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**[3] Section 475C**

Insert after the heading to Part 14:

**475C Effect of certain provisions**

On the commencement of this section, sections 476, 480, 481, 495, 496, 496A, 497 and 500 cease to have effect (except as provided by section 33P of the *Criminal Procedure Act 1986*).

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**[4] Section 475C**

Omit section 475C (as inserted by the preceding item).

**[5] Part 14, Chapter 1 (sections 476, 480 and 481)**

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Omit the Chapter.

**[6] Part 14, Chapter 3, item (A) (sections 495, 496, 496A, 497 and 500)**

Omit item (A).

**[7] Section 552 Jurisdiction of Magistrates in respect of offences arising under Chapter 2 of Part 4**

15

Omit "section 476 or 501".

Insert instead "Part 9A of the *Criminal Procedure Act 1986*".

**[8] Section 562AB Stalking, intimidation with intent to cause fear for personal safety**

20

Omit ", on conviction before a Magistrate," from section 562AB (1).

**2.4 Drug Misuse and Trafficking Act 1985 No 226**

**[1] Section 30 Indictable offences—summary disposal of unless prosecution elects otherwise**

Omit section 30 (2) and (3). Insert instead:

- (2) Part 9A of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of an offence to which this section applies. 5
- (3) If such an offence is dealt with summarily, the maximum penalty for the offence is a fine of 50 penalty units or imprisonment for 2 years, or both. 10

**[2] Section 31 Indictable offences—summary disposal of unless prosecution or accused elects otherwise**

Omit section 31 (2) and (3). Insert instead:

- (2) Part 9A of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of an offence to which this section applies. 15  
20
- (3) If such an offence is dealt with summarily, the maximum penalty for the offence is a fine of 100 penalty units or imprisonment for 2 years, or both. 25

**[3] Section 32 Penalty for offences dealt with on indictment not involving commercial quantities**

Insert at the end of section 32:

- (2) Part 9A of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of an offence referred to in subsection (1) where the offence relates to cannabis plant or cannabis leaf. If such an offence is dealt with summarily, the maximum penalty for the offence is a fine of 100 penalty units or imprisonment for 2 years, or both. 30  
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**2.5 Electricity Commission Act 1950 No 22**

**Section 95 Recovery of penalty**

Insert after section 95 (2):

- (3) Part 9A of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of an offence under section 76 or 81.

5

**2.6 Financial Institutions Commission Act 1992 No 47**

**Section 38 Proceedings for offences**

10

Omit section 38 (2) and (3). Insert instead:

- (2) Despite subsection (1), Part 9A of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of an offence under section 21.

15

**2.7 Firearms Act 1989 No 25**

**Section 52 Proceedings for offences**

Omit section 52 (2) and (3). Insert instead:

- (2) Despite subsection (1), Part 9A of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of an offence under section 5, 6, 8, 14, 15, 16, 18, 40 or 44.

20

25

**2.8 Indecent Articles and Classified Publications Act 1975  
No 32**

**Section 6 Offence relating to publication of an indecent article**

Omit section 6 (3). Insert instead:

- (3) Section 330 of the *Criminal Procedure Act 1986* applies to and in respect of a case disposed of in accordance with subsection (2) in the same way as it applies to and in respect of a case disposed of summarily in accordance with Part 9A of that Act. 5

**2.9 Justices Act 1902 No 27 10**

**[1] Section 48EA Prohibition on cross-examination of victim witness without special reasons**

Omit "to which section 476 of the Crimes Act 1900 applies" from the definition of *offence involving violence* in section 48EA (1). Insert instead "listed in Table 1 to Part 9A of the *Criminal Procedure Act 1986*". 15

**[2] Section 48H False statements**

Omit section 48H (2). Insert instead:

- (2) Part 9A of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of an offence under this section. 20

**[3] Section 48H**

Omit section 48H (4). 25

- 
- [4] Section 51A Effect of plea of guilty in committal proceedings**
- Omit section 51A (6). Insert instead:
- (6) This section does not apply if the indictable offence with which the person is charged:
    - (a) is being dealt with summarily in accordance with Part 9A of the *Criminal Procedure Act 1986*, or 5
    - (b) may otherwise be dealt with summarily without the consent of the accused and is being so dealt with.
- [5] Section 51B Application of Division 2 to indictable offences** 10
- Omit section 51B (1). Insert instead:
- (1) This section applies to indictable offences disposed of summarily by a Magistrate.
- [6] Section 125 Powers of Court appealed to**
- Omit "Magistrate under section 476 of the *Crimes Act 1900*" from section 125 (1A). 15
- Insert instead "Local Court under Part 9A of the *Criminal Procedure Act 1986*".
- [7] Section 125 (1A)**
- Omit "Magistrate under that section" from section 125 (1A). 20
- Insert instead "Local Court under that Part".
- 2.10 Oaths Act 1900 No 20**
- Section 2A**
- Insert after section 2:
- 2A Proceedings for offences** 25
- Part 9A of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of an offence under section 13 (2), 20, 25, 29, 30 or 35. 30

**2.11 Petroleum (Submerged Lands) Act 1982 No 23**

**[1] Section 132 Prosecution of offences**

Omit "in subsection (3)" from section 132 (2).  
Insert instead "by subsections (3) and (3A)".

**[2] Section 132 (3) and (3A)**

5

Omit section 132 (3). Insert instead:

(3) A court of summary jurisdiction may hear and determine proceedings for a prescribed offence (other than an offence under section 120) summarily if the court is satisfied that it is appropriate to do so and the defendant and the prosecutor consent. 10

(3A) Part 9A of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of an offence under section 120. 15

**[3] Section 132 (4)**

Insert "or (3A)" after "subsection (3)".

**2.12 Pre-Trial Diversion of Offenders Act 1985 No 153**

**Section 19**

20

Omit the section. Insert instead:

**19 Certain child sexual assault cases may not be disposed of summarily**

If this Act applies to a person charged with a child sexual assault offence, the offence must not be dealt with summarily under Part 9A of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment). 25

**2.13 Prisons Act 1952 No 9**

**Section 47 Proceedings for offences**

Insert at the end of the section:

- (2) Part 9A of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of an offence against this Act (other than an offence under section 32) for which a sentence of penal servitude may be imposed. 5

**2.14 Prohibited Weapons Act 1989 No 26** 10

**[1] Section 17 Proceedings for offences**

Omit "an offence against this Act for which a penalty is provided if a conviction is obtained on indictment" from section 17 (2).  
Insert instead "an offence under section 5".

**[2] Section 17 (3)** 15

Omit "an offence resulting from any such contravention".  
Insert instead "an offence under section 5".

**[3] Section 17 (4)**

Insert after section 17 (3):

- (4) Despite subsection (1), Part 9A of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of an offence under section 6 or 10. 20

**2.15 Water Act 1912 No 44**

**Section 4G Proceedings for offences**

Insert after section 4G (5):

- (6) Part 9A of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of an offence under section 21.

5





New South Wales

# Criminal Procedure Amendment (Indictable Offences) Act 1995 No 22

## Contents

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	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Criminal Procedure Act 1986 No 209	2
4 Consequential amendment of other Acts	2

---

### Schedules

1 Amendment of Criminal Procedure Act 1986	3
2 Consequential amendment of other Acts	18





New South Wales

# **Criminal Procedure Amendment (Indictable Offences) Act 1995 No 22**

Act No 22, 1995

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An Act to amend the *Criminal Procedure Act 1986* with respect to the summary disposal of indictable offences by Local Courts, and to amend other Acts consequentially. [Assented to 19 June 1995]

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

**1 Name of Act**

This Act is the *Criminal Procedure Amendment (Indictable Offences) Act 1995*.

**2 Commencement**

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

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

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

**4 Consequential amendment of other Acts**

The Acts specified in Schedule 2 are amended as set out in that Schedule.

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## **Schedule 1 Amendment of Criminal Procedure Act 1986**

(Section 3)

### **[1] Section 3 Definitions**

Insert in alphabetical order in section 3 (1):

*prosecuting authority* means the Director of Public Prosecutions or other person responsible for the conduct of a prosecution.

### **[2] Section 4 Prosecution of indictable offences**

Omit “, whether with or without the consent of the accused” from section 4 (4).

### **[3] Part 9A**

Insert after Part 9:

#### **Part 9A Summary disposal of indictable offences by Local Courts**

##### **33A Objects of this Part**

The objects of this Part are:

- (a) to require the indictable offences listed in Table 1 to this Part to be dealt with summarily unless the prosecuting authority or the person charged with the offence concerned elects to have the offence dealt with on indictment, and
- (b) to require the indictable offences listed in Table 2 to this Part to be dealt with summarily unless the prosecuting authority elects to have the offence concerned dealt with on indictment.

##### **33B Indictable offences to which this Part applies**

This Part applies to the indictable offences listed in Tables 1 and 2 to this Part.

**33C Offences to be dealt with summarily unless election made to proceed on indictment**

- (1) An indictable offence listed in Table 1 to this Part is to be dealt with summarily by a Local Court unless the prosecuting authority or the person charged with the offence elects in accordance with this Part to have the offence dealt with on indictment.
- (2) An indictable offence listed in Table 2 to this Part is to be dealt with summarily by a Local Court unless the prosecuting authority elects in accordance with this Part to have the offence dealt with on indictment.

**33D Procedure for dealing with offences summarily if no election made**

An indictable offence listed in Table 1 or 2 to this Part is, if no election is made in accordance with this Part, to be dealt with summarily in accordance with the relevant provisions of this Act, the relevant provisions of the *Justices Act 1902* and any other relevant law as if it were a summary offence.

**33E Procedure for dealing with offences if election made**

- (1) An indictable offence listed in Table 1 or 2 to this Part is, if an election is made in accordance with this Part, to be dealt with on indictment in accordance with the relevant provisions of this Act, the relevant provisions of the *Justices Act 1902* and any other relevant law.
- (2) If an election is made in accordance with this Part and the person charged with the offence pleads guilty to the offence before a Local Court and the Court accepts the plea, the offence is to be dealt with in accordance with section 51A of the *Justices Act 1902* as if the person charged had pleaded guilty under that section to the offence.

**33F Time for making election**

- (1) An election to have an offence dealt with on indictment must be made within the time fixed by the Local Court.
- (2) An election may, with the leave of the Local Court, be made after the time so fixed if the Court is satisfied that special circumstances exist.
- (3) However, an election may not be made after the following events:
  - (a) in the case of a plea of not guilty—the commencement of the taking of evidence for the prosecution in the summary trial,
  - (b) in the case of a plea of guilty—the presentation of the facts relied on by the prosecution to prove the offence.

**33G Election may be withdrawn**

- (1) An election for an offence to be dealt with on indictment may be withdrawn by the party who made the election.
- (2) However, an election may not be withdrawn after the following events:
  - (a) in the case of a plea of not guilty—the commencement of the taking of evidence for the prosecution in the committal for trial proceedings,
  - (b) in the case of a plea of guilty—the committal of the person charged for sentence.
- (3) An offence is to be dealt with summarily in accordance with this Part if an election is withdrawn in accordance with this section.

**33H Information to be given to person charged (Table 1 offences)**

- (1) When a person charged with an indictable offence listed in Table 1 to this Part first appears before a Local Court in respect of the offence, the Court:
  - (a) is to address the person about the person's right to make an election and the consequences of not making an election, and

- (b) is to give to the person a statement about the person's right to make an election and the consequences of not making an election that is in the form of words prescribed by the regulations.
- (2) The prosecuting authority is to serve, or cause to be served, on the person charged with an indictable offence listed in Table 1 to this Part:
  - (a) the brief of evidence relating to the offence, and
  - (b) a copy of the person's criminal record (if any) known to the prosecuting authority,within the time fixed by the Local Court. The time so fixed must be before the time fixed by the Court for the making of an election in respect of the offence.
- (3) Without limiting the powers of a Local Court to adjourn proceedings, the Local Court is to grant such adjournments as appear to be just and reasonable if a brief of evidence or a criminal record, or both, are not served in accordance with this section, and the Court is to extend accordingly the time fixed for the making of an election in respect of the offence.

### **331 Regulations**

- (1) Regulations may be made for or with respect to elections under this Part.
- (2) In particular, regulations may be made for or with respect to the following:
  - (a) the form and manner in which an election is to be made,
  - (b) the form and manner in which the withdrawal of an election is to be made,
  - (c) the notification of the making or withdrawal of an election,
  - (d) the form and contents, and the service, of briefs of evidence and criminal records.



### 33J Maximum penalties for Table 1 offences

- (1) This section prescribes the maximum penalty that may be imposed for an indictable offence listed in Table 1 to this Part dealt with summarily under this Part in any case where the maximum penalty (when the offence is dealt with summarily) is not provided by law.
- (2) The maximum term of imprisonment that a Local Court may impose for an offence is, subject to this section, 2 years or the maximum term of imprisonment provided by law for the offence, whichever is the shorter term.
- (3) The maximum fine that a Local Court may impose for an offence is 100 penalty units or the maximum fine provided by law for the offence, whichever is the smaller fine.
- (4) The maximum term of imprisonment that a Local Court may impose for the following offences (including an attempt to commit the offence concerned) is:
  - (a) for an offence under section 52A or 52B of the *Crimes Act 1900*—18 months,
  - (b) for an offence under section 53 or 54 of the *Crimes Act 1900*—12 months.
- (5) A Local Court may, instead of imposing a term of imprisonment, impose a fine not exceeding 100 penalty units for an offence listed in Table 1 to this Part in any case where a fine is not otherwise provided by law for the offence.
- (6) Nothing in this section affects an option provided by law to impose either a term of imprisonment, or a fine, or both.
- (7) Nothing in this section affects section 444 of the *Crimes Act 1900*.
- (8) In this section, *imprisonment* includes penal servitude.

### **33K Maximum penalties for Table 2 offences**

- (1) This section prescribes the maximum penalty that may be imposed for an indictable offence listed in Table 2 to this Part dealt with summarily under this Part in any case where the maximum penalty (when the offence is dealt with summarily) is not provided by law.
- (2) The maximum penalty that a Local Court may impose for the following offences (including an attempt to commit the offence concerned) is:
  - (a) for an offence under section 35A (2), 58, 59, 61L or 61O (1) of the *Crimes Act 1900*—imprisonment for 2 years, or a fine of 50 penalty units, or both,
  - (b) for an offence under section 56, 61 or 61N of the *Crimes Act 1900*—imprisonment for 12 months, or a fine of 20 penalty units, or both,
  - (c) for an offence listed in Part 2 of Table 2 to this Part (other than an offence under section 154A of the *Crimes Act 1900*)—imprisonment for 12 months, or a fine of 50 penalty units, or both, however, the maximum fine that a Local Court may impose if the value of the property, amount of money or reward concerned does not exceed \$2,000 is 20 penalty units,
  - (d) for an offence under section 154A of the *Crimes Act 1900*—imprisonment for 2 years, or a fine of 50 penalty units, or both,
  - (e) for an offence under section 93G or 93H of the *Crimes Act 1900*—imprisonment for 2 years, or a fine of 50 penalty units, or both.
- (3) Nothing in this section affects section 444 of the *Crimes Act 1900*.

### **33L Constitution of Local Court**

The jurisdiction of a Local Court under this Part may be exercised only by a Local Court constituted by a Magistrate sitting alone.

### **33M Offences by children**

Nothing in this Part confers jurisdiction on a Local Court to deal with an offence if the Children's Court has exclusive jurisdiction to hear and determine the matter.

### **33N No time limit for offences dealt with summarily under this Part**

Section 56 of the *Justices Act 1902*, and the provisions of any other Act limiting the time within which proceedings for summary offences may be instituted, do not apply to offences dealt with summarily under this Part.

### **33O Effect of conviction**

The conviction of a person of an offence dealt with summarily under this Part has the same effect as a conviction on indictment for the offence.

### **33P Application of Part and continued application of certain provisions**

- (1) This Part applies to proceedings for an offence with which a person is charged after (but not before) the commencement of this section irrespective of when the offence was committed.
- (2) Despite section 475C of the *Crimes Act 1900*, sections 476, 480, 481, 495, 496, 496A, 497 and 500 of that Act, and the provisions of any other Act or instrument referring to any of those sections, continue to apply to proceedings for offences with which a person was charged before the commencement of this section (irrespective of when the person is dealt with under those sections or provisions).
- (3) However, if a person is charged with more than one offence and proceedings for those offences are to be dealt with together, this Part applies to the proceedings despite the fact that the person was charged with one or more (but not all) of those offences before the commencement of this section.

**Table 1 Indictable offences that are to be dealt with summarily unless prosecuting authority or person charged elects otherwise**

**Part 1 Offences against the person under Crimes Act 1900**

**1 Offences against the person where victim 14 years of age or over**

An offence under section 61E, 66C (1), 66D, 71, 72, 76, 76A or 81 of the *Crimes Act 1900* where the person against whom the offence was committed was at the time of the commission of the offence of or above the age of 14 years.

**2 Other offences against the person**

An offence under section 31, 31C, 35, 35A (1), 39, 41, 41A, 43, 44, 49, 52A (other than an offence by which death was occasioned), 52B (other than an offence by which death was occasioned), 53, 54, 55, 57, 61M, 61O (2), 78Q, 80, 81A, 81B, 81C, 82, 83, 84, 85 (where the person charged is the mother of the child and is not charged with any other person), 90, 91, 91A, 91B, 92 or 93 of the *Crimes Act 1900*.

**Part 2 Offences relating to property under Crimes Act 1900 or common law**

**3 Larceny and other offences exceeding \$5,000**

Any of the following offences where the value of the property, matter or thing, or the damage, or the amount of money or reward, in respect of which the offence is charged exceeds \$5,000:

- (a) larceny, or
- (b) an offence of stealing any chattel, money or valuable security from another person (eg section 94 of the *Crimes Act 1900*), or

- (c) an offence under section 125, 126, 131, 132, 133, 139, 140, 144, 148, 150, 151, 152, 156, 157, 158, 159, 160, 178A, 178B, 178BA, 178BB, 178C, 179, 184, 185, 185A, 186, 188, 189, 189A, 190, 192 or 195 of the *Crimes Act 1900*.

**4 Offences taken to be, or punishable as, larceny or stealing**

Any offence that under the *Crimes Act 1900* is taken to be, or is made punishable as, larceny or stealing (other than an offence under section 125, 139, 140, 144 or 154A of that Act).

**5 Breaking and entering place of Divine worship with intent to commit felony**

An offence under section 107 (1) of the *Crimes Act 1900*.

**6 Entering with intent to commit felony, or commit felony, in dwelling-house and breaking out**

An offence under section 109 (1) of the *Crimes Act 1900* where:

- (a) the felony intended is stealing, or
- (b) the felony alleged is stealing and the value of the property stolen does not exceed \$15,000.

**7 Entering dwelling-house in the night or breaking and entering any house or other building with intent to commit felony**

An offence under section 111 (1) or 113 (1) of the *Crimes Act 1900* where the felony intended is stealing.

**8 Breaking and entering into, or being in, any house or other building and committing felony**

An offence under section 112 (1) of the *Crimes Act 1900* where:

- (a) the felony alleged is stealing, and
- (b) the value of the property stolen does not exceed \$15,000.

**9 Other property offences**

An offence under section 99, 100, 100A, 102, 114, 115, 135, 138, 145, 146, 153, 154AA, 154B (1), 165, 166, 168, 169, 170, 172, 173, 174, 175, 176, 176A, 181, 184A, 196, 197, 199, 200, 201, 202 or 203 of the *Crimes Act 1900*.

**Part 3 Other offences under Crimes Act 1900 or the common law**

**10 Offences relating to public order**

An offence under section 93B or 93C of the *Crimes Act 1900*.

**11 Offences relating to transport services**

An offence under section 207, 208 (4), 209, 210, 212 or 213 of the *Crimes Act 1900*.

**12 Corrupt practices**

- (1) An offence under section 249B, 249D or 249E of the *Crimes Act 1900*, or an offence under section 249F of that Act of aiding, abetting, counselling, procuring, soliciting or inciting such an offence, where the benefit in respect of which the offence is charged exceeds \$5,000.

- (2) An offence under section 249C of the *Crimes Act 1900* or an offence under section 249F of that Act of aiding, abetting, counselling, procuring, soliciting or inciting such an offence.

**13 False instruments**

An offence under section 300, 301 or 302 of the *Crimes Act 1900*.

**14 Offences relating to computers**

An offence under section 309 (2), (3) or (4) or 310 of the *Crimes Act 1900*.

**15 Public justice offences**

- (1) **Public justice offences not involving intent to procure conviction or acquittal**

An offence under section 321, 322, 323 or 333 (1) of the *Crimes Act 1900* unless the person charged intended to procure the conviction or acquittal of any person of any serious offence.

- (2) **Other public justice offences**

An offence under section 314, 315, 316, 317, 325, 326, 327, 330, 335, 336 or 337 of the *Crimes Act 1900*.

**16 Escape from lawful custody**

Escape from lawful custody.

**Part 4 Offences under certain other Acts**

**17 Bail Act 1978**

An offence under section 58 of the *Bail Act 1978*.

**18 Children (Care and Protection) Act 1987**

An offence under section 20B (1) of the *Children (Care and Protection) Act 1987*.

**19 Electricity Commission Act 1950**

An offence under section 76 or 81 of the *Electricity Commission Act 1950*.

**20 Financial Institutions Commission Act 1992**

An offence under section 21 of the *Financial Institutions Commission Act 1992*.

**21 Justices Act 1902**

An offence under section 48H of the *Justices Act 1902*.

**22 Oaths Act 1900**

An offence under section 13 (2), 20, 25, 29, 30 or 35 of the *Oaths Act 1900*.

**23 Petroleum (Submerged Lands) Act 1982**

An offence under section 120 of the *Petroleum (Submerged Lands) Act 1982*.

**24 Prisons Act 1952**

An offence under the *Prisons Act 1952* (other than an offence under section 32) for which a sentence of penal servitude may be imposed.

**25 Water Act 1912**

An offence under section 21 of the *Water Act 1912*.

**Part 5 Attempts, accessories and abettors**

**26 Attempts**

Attempting to commit any offence mentioned in a preceding Part of this Table.



**27 Accessories**

Being an accessory before or after the fact to any offence mentioned in a preceding Part of this Table (if the offence is a felony).

**28 Abettors**

Aiding, abetting, counselling or procuring the commission of any offence mentioned in a preceding Part of this Table (if the offence is a misdemeanour).

**Part 6 Offences under Drug Misuse and Trafficking Act 1985**

**29 Offences involving more than small quantity but not more than indictable quantity**

An offence to which section 31 (1) of the *Drug Misuse and Trafficking Act 1985* applies where the number or amount of the prohibited plant or prohibited drug concerned is more than the applicable small quantity but not more than the applicable indictable quantity.

**30 Offences involving more than indictable quantity but less than commercial quantity (cannabis plant and cannabis leaf)**

An offence referred to in section 32 (a)–(f) of the *Drug Misuse and Trafficking Act 1985* where the offence relates to cannabis plant or cannabis leaf and the quantity of cannabis plant or cannabis leaf concerned is more than the applicable indictable quantity but less than the applicable commercial quantity.

**Table 2 Indictable offences that are to be dealt with summarily unless prosecuting authority elects otherwise**

**Part 1 Offences against the person under Crimes Act 1900**

**1 Offences against the person**

An offence under section 35A (2), 56, 58, 59, 61, 61L, 61N or 61O (1) of the *Crimes Act 1900* or an attempt to commit any such offence.

**2 Stalking and intimidation**

An offence under section 562AB of the *Crimes Act 1900*.

**Part 2 Offences relating to property under Crimes Act 1900 or common law**

**3 Larceny and certain other property offences**

Any of the following offences where the value of the property, or the amount of money or reward, in respect of which the offence is charged does not exceed \$5,000:

- (a) larceny,
- (b) an offence of stealing any chattel, money or valuable security from another person (eg section 94 of the *Crimes Act 1900*),
- (c) an offence under section 125, 126, 131, 132, 133, 139, 140, 144, 148, 150, 151, 152, 156, 157, 158, 159, 160, 178A, 178B, 178BA, 178BB, 178C, 179, 184, 185, 185A, 186, 188, 189, 189A, 190, 192, 195, 249B, 249D or 249E of the *Crimes Act 1900*,
- (d) an offence under section 249F of the *Crimes Act 1900* of aiding, abetting, counselling, procuring, soliciting or inciting an offence under section 249B, 249D or 249E of that Act,

or an attempt to commit any such offence.

**4 Taking conveyance without consent of owner**

An offence under section 154A of the *Crimes Act 1900* or an attempt to commit any such offence.

**Part 3 Offences relating to drugs**

**5 Drug Misuse and Trafficking Act 1985**

An offence to which section 30 (1) of the *Drug Misuse and Trafficking Act 1985* applies where the number or amount of the prohibited plant or prohibited drug concerned is not more than the applicable small quantity.

**Part 4 Offences relating to firearms and dangerous weapons**

**6 Crimes Act 1900**

An offence under section 93G or 93H of the *Crimes Act 1900* or an attempt to commit any such offence.

**7 Firearms Act 1989**

An offence under section 5, 6, 8, 14, 15, 16, 18, 40 or 44 of the *Firearms Act 1989*.

**8 Prohibited Weapons Act 1989**

An offence under section 6 or 10 of the *Prohibited Weapons Act 1989*.

## **Schedule 2 Consequential amendment of other Acts**

(Section 4)

### **2.1 Bail Act 1978 No 161**

#### **Section 58 Indemnification of agreeing parties**

Omit section 58 (4). Insert instead:

- (4) Part 9A of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of an offence under this section.

### **2.2 Children (Care and Protection) Act 1987 No 54**

#### **Section 121 Proceedings for offences**

Omit section 121 (2). Insert instead:

- (2) Part 9A of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of an offence under section 20B (1).

### **2.3 Crimes Act 1900 No 40**

#### **[1] Section 1 Short title and contents of Act**

Omit the matter relating to Chapter 1 of Part 14.

#### **[2] Section 1**

Omit the matter relating to item (A) of Chapter 3 of Part 14.

**[3] Section 475C**

Insert after the heading to Part 14:

**475C Effect of certain provisions**

On the commencement of this section, sections 476, 480, 481, 495, 496, 496A, 497 and 500 cease to have effect (except as provided by section 33P of the *Criminal Procedure Act 1986*).

**[4] Section 475C**

Omit section 475C (as inserted by the preceding item).

**[5] Part 14, Chapter 1 (sections 476, 480 and 481)**

Omit the Chapter.

**[6] Part 14, Chapter 3, item (A) (sections 495, 496, 496A, 497 and 500)**

Omit item (A).

**[7] Section 552 Jurisdiction of Magistrates in respect of offences arising under Chapter 2 of Part 4**

Omit "section 476 or 501".

Insert instead "Part 9A of the *Criminal Procedure Act 1986*".

**[8] Section 562AB Stalking, intimidation with intent to cause fear for personal safety**

Omit ", on conviction before a Magistrate." from section 562AB (1).

## **2.4 Drug Misuse and Trafficking Act 1985 No 226**

### **[1] Section 30 Indictable offences—summary disposal of unless prosecution elects otherwise**

Omit section 30 (2) and (3). Insert instead:

- (2) Part 9A of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of an offence to which this section applies.
- (3) If such an offence is dealt with summarily, the maximum penalty for the offence is a fine of 50 penalty units or imprisonment for 2 years, or both.

### **[2] Section 31 Indictable offences—summary disposal of unless prosecution or accused elects otherwise**

Omit section 31 (2) and (3). Insert instead:

- (2) Part 9A of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of an offence to which this section applies.
- (3) If such an offence is dealt with summarily, the maximum penalty for the offence is a fine of 100 penalty units or imprisonment for 2 years, or both.

### **[3] Section 32 Penalty for offences dealt with on indictment not involving commercial quantities**

Insert at the end of section 32:

- (2) Part 9A of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of an offence referred to in subsection (1) where the offence relates to cannabis plant or cannabis leaf. If such an offence is dealt with summarily, the maximum penalty for the offence is a fine of 100 penalty units or imprisonment for 2 years, or both.

## **2.5 Electricity Commission Act 1950 No 22**

### **Section 95 Recovery of penalty**

Insert after section 95 (2):

- (3) Part 9A of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of an offence under section 76 or 81.

## **2.6 Financial Institutions Commission Act 1992 No 47**

### **Section 38 Proceedings for offences**

Omit section 38 (2) and (3). Insert instead:

- (2) Despite subsection (1), Part 9A of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of an offence under section 21.

## **2.7 Firearms Act 1989 No 25**

### **Section 52 Proceedings for offences**

Omit section 52 (2) and (3). Insert instead:

- (2) Despite subsection (1), Part 9A of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of an offence under section 5, 6, 8, 14, 15, 16, 18, 40 or 44.

**2.8 Indecent Articles and Classified Publications Act 1975  
No 32**

**Section 6 Offence relating to publication of an indecent article**

Omit section 6 (3). Insert instead:

- (3) Section 330 of the *Criminal Procedure Act 1986* applies to and in respect of a case disposed of in accordance with subsection (2) in the same way as it applies to and in respect of a case disposed of summarily in accordance with Part 9A of that Act.

**2.9 Justices Act 1902 No 27**

**[1] Section 48EA Prohibition on cross-examination of victim witness without special reasons**

Omit "to which section 476 of the Crimes Act 1900 applies" from the definition of *offence involving violence* in section 48EA (1). Insert instead "listed in Table 1 to Part 9A of the *Criminal Procedure Act 1986*".

**[2] Section 48H False statements**

Omit section 48H (2). Insert instead:

- (2) Part 9A of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of an offence under this section.

**[3] Section 48H**

Omit section 48H (4).



**[4] Section 51A Effect of plea of guilty in committal proceedings**

Omit section 51A (6). Insert instead:

- (6) This section does not apply if the indictable offence with which the person is charged:
  - (a) is being dealt with summarily in accordance with Part 9A of the *Criminal Procedure Act 1986*, or
  - (b) may otherwise be dealt with summarily without the consent of the accused and is being so dealt with.

**[5] Section 51B Application of Division 2 to indictable offences**

Omit section 51B (1). Insert instead:

- (1) This section applies to indictable offences disposed of summarily by a Magistrate.

**[6] Section 125 Powers of Court appealed to**

Omit "Magistrate under section 476 of the *Crimes Act 1900*" from section 125 (1A).

Insert instead "Local Court under Part 9A of the *Criminal Procedure Act 1986*".

**[7] Section 125 (1A)**

Omit "Magistrate under that section" from section 125 (1A).

Insert instead "Local Court under that Part".

**2.10 Oaths Act 1900 No 20**

**Section 2A**

Insert after section 2:

**2A Proceedings for offences**

Part 9A of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of an offence under section 13 (2), 20, 25, 29, 30 or 35.

## **2.11 Petroleum (Submerged Lands) Act 1982 No 23**

### **[1] Section 132 Prosecution of offences**

Omit "in subsection (3)" from section 132 (2).  
Insert instead "by subsections (3) and (3A)".

### **[2] Section 132 (3) and (3A)**

Omit section 132 (3). Insert instead:

(3) A court of summary jurisdiction may hear and determine proceedings for a prescribed offence (other than an offence under section 120) summarily if the court is satisfied that it is appropriate to do so and the defendant and the prosecutor consent.

(3A) Part 9A of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of an offence under section 120.

### **[3] Section 132 (4)**

Insert "or (3A)" after "subsection (3)".

## **2.12 Pre-Trial Diversion of Offenders Act 1985 No 153**

### **Section 19**

Omit the section. Insert instead:

#### **19 Certain child sexual assault cases may not be disposed of summarily**

If this Act applies to a person charged with a child sexual assault offence, the offence must not be dealt with summarily under Part 9A of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment).

## **2.13 Prisons Act 1952 No 9**

### **Section 47 Proceedings for offences**

Insert at the end of the section:

- (2) Part 9A of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of an offence against this Act (other than an offence under section 32) for which a sentence of penal servitude may be imposed.

## **2.14 Prohibited Weapons Act 1989 No 26**

### **[1] Section 17 Proceedings for offences**

Omit "an offence against this Act for which a penalty is provided if a conviction is obtained on indictment" from section 17 (2).

Insert instead "an offence under section 5".

### **[2] Section 17 (3)**

Omit "an offence resulting from any such contravention".

Insert instead "an offence under section 5".

### **[3] Section 17 (4)**

Insert after section 17 (3):

- (4) Despite subsection (1), Part 9A of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of an offence under section 6 or 10.

## 2.15 Water Act 1912 No 44

### Section 4G Proceedings for offences

Insert after section 4G (5):

- (6) Part 9A of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of an offence under section 21.

[Minister's second reading speech made in—  
Legislative Council on 24 May 1995  
Legislative Assembly on 31 May 1995]