

CRIMINAL PROCEDURE (AMENDMENT) ACT 1988 No. 96

NEW SOUTH WALES



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CRIMINAL PROCEDURE (AMENDMENT) ACT 1988 No. 96

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Act No. 96, 1988

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

Criminal Procedure (Amendment) 1988

The Legislature of New South Wales enacts:

Short title

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

Commencement

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

Amendment of Criminal Procedure Act 1986 No. 209

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

Court may reopen proceedings to correct sentencing errors

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

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

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

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

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

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

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

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

(7) In this section—

“court” means—

(a) the Court of Criminal Appeal;

(b) the Supreme Court;

(c) the Land and Environment Court;

(d) the District Court;

(e) a Local Court; or

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

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

Consequential amendment of Justices Act 1902 No. 27

4. The Justices Act 1902 is amended—

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

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