

**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.

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**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. 3)

**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.



*Criminal Procedure Legislation (Amendment) 1990*

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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.

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