

CRIMINAL PROCEDURE BILL 1986

NEW SOUTH WALES



TABLE OF PROVISIONS

PART 1—PRELIMINARY

1. Short title
2. Commencement
3. Interpretation

PART 2—INDICTABLE OFFENCES GENERALLY

4. Prosecution of indictable offences
5. Jurisdiction of courts
6. Certain matters not affected

PART 3—LISTING

7. Definitions
8. Listing
9. Listing for mention following committal for trial
10. Authority of Criminal Listing Director
11. Liaison
12. Certain matters not affected

PART 4—INDEMNITIES AND UNDERTAKINGS

13. Indemnities
14. Undertakings

PART 5—MISCELLANEOUS

15. Signing of indictments
16. Name in which prosecutions may be instituted
17. Abolition of office of Clerk of the Peace
18. Regulations

CRIMINAL PROCEDURE BILL 1986

NEW SOUTH WALES



No. , 1986

A BILL FOR

An Act relating to the prosecution of indictable offences, the listing of criminal proceedings before the Supreme Court and the District Court and the giving of certain indemnities and undertakings; and for other purposes.

Criminal Procedure 1986

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

5

PART 1**PRELIMINARY****Short title**

1. This Act may be cited as the "Criminal Procedure Act 1986".

Commencement

- 10 2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

Interpretation

- 15 3. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

"committal proceedings" means a hearing before a Magistrate (or one or more justices) for the purpose of deciding whether a person charged with an indictable offence should be committed for trial or sentence;

- 20 "indictable offence" means an offence (including a common law offence) that may be prosecuted on indictment;

"offence" means an offence against the laws of the State;

"prescribed summary offence" has the same meaning as in the Director of Public Prosecutions Act 1986;

- 25 "regulations" means regulations under this Act;

"summary offence" means an offence that is not an indictable offence.

(2) In this Act—

- (a) a reference to a function includes a reference to a power, authority and duty; and

- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.
-

PART 2

INDICTABLE OFFENCES GENERALLY

5 Prosecution of indictable offences

4. (1) All offences shall be punishable by information (to be called an indictment) in the Supreme Court or the District Court, on behalf of the Crown, in the name of the Attorney General or the Director of Public Prosecutions.

- 10 (2) Such an indictment may be presented or filed whether or not the person to whom the indictment relates has been committed for trial in respect of an offence specified in the indictment.

(3) This section does not apply to offences that may be heard and determined in a summary manner only.

- 15 (4) This section does not affect any law or practice that provides for an indictable offence to be heard and determined in a summary manner, whether with or without the consent of the accused.

Jurisdiction of courts

- 20 5. (1) The Supreme Court has jurisdiction in respect of all indictable offences.

(2) The District Court has jurisdiction in respect of all indictable offences, other than such offences as may be prescribed by the regulations for the purposes of this section.

Certain matters not affected

- 25 6. Nothing in this Part affects any law or practice relating to—
(a) the laying of an information before a justice in respect of an indictable offence; or

Criminal Procedure 1986

- (b) committal proceedings for an indictable offence.
-

PART 3

LISTING

Definitions

- 5 7. In this Part—

“Criminal Listing Director” means the public servant holding or acting in the position of that name, and includes any public servant authorised by the Criminal Listing Director, or in accordance with the regulations, to exercise any functions of the Criminal Listing Director;

- 10 “criminal proceedings” means—

(a) proceedings relating to the trial of a person before the Supreme Court or the District Court;

(b) proceedings relating to the sentencing of a person by the Supreme Court or the District Court; or

- 15 (c) proceedings relating to an appeal under the Justices Act 1902 to the District Court in its criminal jurisdiction.

Listing

8. (1) The Criminal Listing Director is, subject to the regulations, responsible for making arrangements for the listing of criminal proceedings
20 before the Supreme Court or the District Court.

(2) The regulations may make provision for or with respect to the practice and procedure to be adopted for the listing of criminal proceedings that are to be heard and determined before the Supreme Court or the District Court.

- 25 (3) Regulations made under this section prevail over rules of court, or any direction or order of a court, to the extent of any inconsistency.

Listing for mention following committal for trial

9. If the period prescribed by the regulations for the purposes of this section has passed since an accused person was committed for trial without the matter having been—

- 5 (a) brought before the Supreme Court or the District Court in relation to the matter; or
 (b) terminated,

the Criminal Listing Director shall arrange for the matter to be listed for mention before the court as soon as practicable.

10 Authority of Criminal Listing Director

10. It is the duty of all persons involved in criminal proceedings to abide, as far as practicable, by the arrangements made by the Criminal Listing Director in exercising functions under this Act.

Liaison

- 15 11. For the purpose of exercising the functions conferred on the Criminal Listing Director, the Criminal Listing Director may liaise with the Judges and officers of the Supreme Court and the District Court, prosecuting authorities, accused persons and their lawyers, and other persons involved in criminal proceedings.

20 Certain matters not affected

12. (1) This Part does not authorise the Criminal Listing Director—
- (a) to fix or change the venue of proceedings, except with the consent of the accused person and the prosecuting authority; or
- (b) to determine when or where a court is to exercise its jurisdiction.
- 25 (2) Nothing in this Part relating to the Criminal Listing Director affects—
- (a) the power of the Attorney General to fix or change the venue of any matter;
- (b) the power of a court to regulate proceedings before it;
- (c) the power of a court to adjourn any matter;
- 30 (d) proceedings in the Court of Criminal Appeal;

- (e) proceedings in the Supreme Court in its summary jurisdiction; or
- (f) proceedings under the Bail Act 1978.

PART 4

INDEMNITIES AND UNDERTAKINGS

5 Indemnities

13. (1) The Attorney General may, if of the opinion that it is appropriate to do so, grant a person an indemnity from prosecution (whether on indictment or summarily)—

- (a) for a specified offence; or
- 10 (b) in respect of specified acts or omissions.

(2) If the Attorney General grants such an indemnity, no proceedings may thereafter be instituted or continued against the person in respect of the offence or the acts or omissions.

(3) Such an indemnity may be granted conditionally or unconditionally.

- 15 (4) Such an indemnity may not be granted in respect of a summary offence that is not a prescribed summary offence, unless the Attorney General has consulted the Minister administering the enactment or instrument under which the offence is created.

Undertakings

- 20 14. (1) The Attorney General may, if of the opinion that it is appropriate to do so, give to a person an undertaking that—

- (a) an answer that is given, or a statement or disclosure that is made, by the person in the course of giving evidence in specified proceedings; or
- 25 (b) the fact that the person discloses or produces a document or other thing in specified proceedings,

being proceedings for an offence against a law of the State (whether an indictable offence or a summary offence), will not be used in evidence against the person.

Criminal Procedure 1986

(2) If the Attorney General gives such an undertaking—

(a) an answer that is given, or a statement or disclosure that is made, by the person in the course of giving evidence in the specified proceedings; or

5 (b) the fact that the person discloses or produces a document or other thing in the specified proceedings,

is not admissible in evidence against the person in any civil or criminal proceedings, other than proceedings in respect of the falsity of evidence given by the person.

10 (3) Such an undertaking may be given conditionally or unconditionally.

(4) Such an undertaking may not be given in respect of a summary offence that is not a prescribed summary offence, unless the Attorney General has consulted the Minister administering the enactment or instrument under which the offence is created.

15

PART 5

MISCELLANEOUS

Signing of indictments

15. (1) An indictment shall be signed—

20 (a) by the Attorney General, the Solicitor General or the Director of Public Prosecutions; or

(b) for and on behalf of the Attorney General or the Director of Public Prosecutions by—

(i) a Crown Prosecutor; or

(ii) a person authorised under subsection (2) to sign indictments.

25 (2) The Director of Public Prosecutions may, by order in writing, authorise a person to sign indictments for and on behalf of the Director.

30 (3) It shall be presumed, in the absence of evidence to the contrary, that an indictment signed by a person for and on behalf of the Attorney General or the Director of Public Prosecutions was signed by a person authorised to do so.

(4) A certificate signed by the Director of Public Prosecutions to the effect that a specified person was authorised during a specified period to sign indictments for and on behalf of the Director is admissible in evidence in any legal proceedings and is evidence of the matters certified.

5 Name in which prosecutions may be instituted

16. Any prosecution or proceedings instituted by the Attorney General or the Director of Public Prosecutions in respect of any offence (whether an indictable offence or a summary offence) may be instituted in either the official name or the personal name of the Attorney General or the Director
10 of Public Prosecutions.

Abolition of office of Clerk of the Peace

17. (1) The office of Clerk of the Peace is abolished.

(2) The registry functions of the abolished office generally become functions of the registrars and other officers of the Supreme Court and
15 District Court, as appropriate.

(3) Subsection (2) has effect subject to this Act and any other Act and, in particular, does not affect the functions of the Criminal Listing Director.

(4) A reference in any other Act, in any instrument made under any Act or in any other instrument of any kind to the Clerk of the Peace shall be
20 read as a reference to such person or persons as may be prescribed.

Regulations

18. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be
25 prescribed for carrying out or giving effect to this Act.

(2) A provision of a regulation may—

(a) apply generally or be limited in its application by reference to specified exceptions or factors;

(b) apply differently according to different factors of a specified kind; or

Criminal Procedure 1986

(c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body, or may do any combination of those things.

