

**CRIMINAL PROCEDURE (SENTENCING) AMENDMENT
ACT 1989 No. 40**

NEW SOUTH WALES

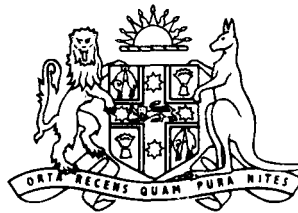


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CRIMINAL PROCEDURE (SENTENCING) AMENDMENT ACT 1989
No. 40

NEW SOUTH WALES



Act No. 40, 1989

An Act to amend the Criminal Procedure Act 1986 so as to allow outstanding charges to be taken into account by certain courts when sentencing; to amend certain other Acts consequentially; and for related purposes. [Assented to 11 May 1989]

Criminal Procedure (Sentencing) Amendment 1989

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Criminal Procedure (Sentencing) Amendment Act 1989.

Commencement

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

Amendment of Criminal Procedure Act 1986 No. 209

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

Consequential amendment of other Acts

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

**SCHEDULE 1—AMENDMENT OF CRIMINAL PROCEDURE ACT
1986**

(Sec. 3)

Part 6—

After Part 5, insert:

**PART 6—SENTENCING BY REFERENCE TO
OUTSTANDING CHARGES**

Definitions

20. (1) In this Part—

“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
- (f) any other court which, or person who, exercises criminal jurisdiction;

“penalty” includes a sentence of imprisonment, an order for periodic detention, a fine and a community service order, but does not include an order or direction referred to in section 22.

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 SCHEDULE 1—AMENDMENT OF CRIMINAL PROCEDURE ACT
 1986—*continued*

(2) In this Part, a reference to imposing a penalty on a person includes a reference—

- (a) to making an order under section 556A of the Crimes Act 1900 relating to the person; and
- (b) to deferring the imposition of a penalty on the person; and
- (c) to making a decision or an order requiring or permitting the person to enter into a recognizance; and
- (d) to making a decision or an order to remand the person in custody or to remand or release the person (whether or not on conditions); and
- (e) if the court concerned is the Children's Court—to dealing with the person under section 33 of the Children (Criminal Proceedings) Act 1987.

(3) This Part applies—

- (a) to a person who is found guilty of an offence committed before or after the commencement of this Part; and
- (b) so as to allow an offence committed before or after that commencement to be taken into account under this Part.

Outstanding charges may be taken into account

21. (1) If a person is found guilty of an offence and the court is satisfied that—

- (a) a document in the form prescribed for the purposes of this section is filed in the court; and
- (b) the document contains a list of one or more other offences with which the person has been charged but of which the person has not been convicted; and
- (c) the document has been signed by the person and—
 - (i) by the Director of Public Prosecutions; or
 - (ii) for and on behalf of the Director of Public Prosecutions, by a specified person, or a person of a specified class, authorised by order in writing by the Director of Public Prosecutions to sign documents under this section; or
 - (iii) by a prescribed person or a person of a prescribed class; and
- (d) a copy of the document has been given to the person found guilty; and
- (e) in all the circumstances it is proper to do so,

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1986—*continued*

the court may, with the consent of the prosecutor and before dealing with the person for the offence of which the person has been found guilty, ask the person whether the person admits guilt in respect of all or any of the offences specified in the list and wishes them to be taken into account by the court in so dealing with the person.

(2) If the person—

- (a) admits guilt in respect of all or any of the offences specified in the list; and
- (b) wishes to have them taken into account by the court in dealing with the person for the offence of which the person has been found guilty,

the court may, if it thinks fit, in imposing a penalty on the person for the offence of which the person has been found guilty, take into account all or any of the offences in respect of which the person has admitted guilt.

(3) If the court takes into account under this section all or any of the offences in respect of which the person has admitted guilt, the penalty imposed on the person for the offence of which the person has been found guilty shall not exceed the maximum penalty that the court would have been empowered to impose on the person for the offence if no offence had been so taken into account.

(4) A court may take any offence into account under this section if it is of a kind for which the court has jurisdiction to impose a penalty, whether or not that jurisdiction requires the consent of the accused.

(5) Despite subsection (4)—

- (a) an indictable offence punishable with penal servitude for life cannot be taken into account under this section; and
- (b) the Court of Criminal Appeal, Supreme Court or District Court may take any summary offence into account under this section.

(6) This section applies in relation to a document—

- (a) that is in or to the effect of the form contained, before the commencement of this Part, in the Ninth Schedule to the Crimes Act 1900; and
- (b) that was, before that commencement, filed in a court in accordance with section 447B of the Crimes Act 1900,

**SCHEDULE 1—AMENDMENT OF CRIMINAL PROCEDURE ACT
1986—continued**

in the same way as it applies to a document in the form prescribed for the purposes of this section and signed in accordance with subsection (1) (c) that has been filed in the court.

Orders and directions relating to offences taken into account

22. (1) If an offence is taken into account under section 21 in a case in which a document in the form prescribed for the purposes of that section is filed in a court, the court may make such orders or give such directions under any Act or law with respect to—

- (a) restitution; and
- (b) compensation; and
- (c) costs; and
- (d) forfeiture; and
- (e) disqualification; and
- (f) loss or suspension of a licence or privilege,

as it would have been empowered to make or give if the person had been convicted by the court of the offence when the offence was taken into account, but shall not otherwise impose any separate punishment for the offence.

(2) If the court makes any such order or gives any such direction in respect of an offence taken into account, there shall be such rights of appeal in respect of the order or direction as there would have been if the order or direction had been made or given on the conviction of the person for that offence.

(3) Any such order or direction in respect of an offence taken into account lapses, by force of this subsection, if the decision in respect of which the offence was taken into account is quashed or set aside.

Consequences of taking offences into account

23. (1) If an offence is taken into account under section 21, the court shall certify, on the document filed under that section, that the offence was so taken into account.

(2) Subsequently, no proceedings shall be taken or continued in respect of the offence unless the decision in respect of which the offence has been taken into account is quashed or set aside.

(3) This section does not prevent offences taken into account under section 21 in deferring the imposition of a penalty from being taken into account under that section when imposing the penalty the imposition of which was deferred.

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1986—continued**

(4) An admission of guilt made for the purposes of section 21 is not admissible in evidence in any proceedings relating—

- (a) to the offence in respect of which the admission was made; or
- (b) to any other offence specified in the list contained in the document filed in the court.

(5) An offence taken into account under section 21 shall not, because of its being so taken into account, be regarded for any purpose as an offence of which a person has been convicted.

(6) In or in relation to any criminal proceedings, reference may lawfully be made to, or evidence may lawfully be given of, the fact that an offence was taken into account under section 21 in imposing a penalty for an offence of which a person was found guilty if, in or in relation to those proceedings—

- (a) reference may lawfully be made to, or evidence may lawfully be given of, the fact that the person was found guilty or convicted of the lastmentioned offence; and
- (b) had the person been found guilty or convicted of the offence so taken into account, reference could lawfully have been made to, or evidence could lawfully have been given of, the fact that the person had been found guilty or convicted of that offence.

(7) The fact that an offence was taken into account under section 21 may be proved in the same manner as the decision in respect which it was taken into account may be proved.

(8) This section applies in relation to an offence certified under section 447B of the Crimes Act 1900 as having been taken into account in the same way as it applies in relation to an offence certified under this section as having been taken into account.

**SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF OTHER
ACTS**

(Sec. 4)

Crimes Act 1900 No. 40—

- (1) Section 1 (**Short title and contents of Act**)—
Omit the matter relating to section 447B.
- (2) Section 447B (**Outstanding charges may be taken into account in passing sentence**)—
Omit the section and the heading before the section.

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SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF OTHER
ACTS—*continued*

- (3) Ninth Schedule (**Form of list of other offences charged**)—
Omit the Schedule.

Crimes (Confiscation of Profits) Act 1985 No. 181—

Section 3 (Definitions)—

- (a) Section 3 (1), definition of “relevant period”, paragraph (c)—
After “1900”, insert “or section 21 of the Criminal Procedure Act 1986”.
- (b) Section 3 (2) (c), (3) (b) (iii)—
After “1900” wherever occurring, insert “or section 21 of the Criminal Procedure Act 1986”.

Victims Compensation Act 1987 No. 237—

(1) Section 52 (**Definitions**)—

Definition of “aggrieved person”, paragraph (a) (ii)—
After “1900”, insert “or section 21 of the Criminal Procedure Act 1986”.

(2) Section 53 (**Directions for compensation**)—

Section 53 (1)—
After “1900”, insert “or section 21 of the Criminal Procedure Act 1986”.

[*Minister’s second reading speech made in—
Legislative Assembly on 5 April 1989
Legislative Council on 3 May 1989*]