



New South Wales

Crimes Legislation Amendment (Procedure) Act 1997 No 86

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Crimes Legislation Amendment (Procedure) Act 1997 No 86

Act No 86, 1997

An Act to amend the *Crimes Act 1900*, the *Criminal Procedure Act 1986* and the *District Court Act 1973* to make miscellaneous changes to procedure relating to the conduct of criminal trials; and for other purposes. [Assented to 30 September 1997]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes Legislation Amendment (Procedure) Act 1997*.

2 Commencement

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

3 Amendment of Crimes Act 1900 No 40

The *Crimes Act 1900* is amended as set out in Schedule 1.

4 Amendment of Criminal Procedure Act 1986 No 209

The *Criminal Procedure Act 1986* is amended as set out in Schedule 2.

5 Amendment of District Court Act 1973 No 9

The *District Court Act 1973* is amended as set out in Schedule 3.

Schedule 1 Amendment of Crimes Act 1900

(Section 3)

[1] Section 399A

Insert after section 399:

399A Change to guilty plea during trial

- (1) If the accused pleads guilty to an offence during a trial on indictment at any time after the accused has been given into the charge of a jury, and the Court accepts the plea, the Court is to discharge the jury from giving a verdict in the matter and is to find the accused guilty of the offence.
- (2) Such a finding has effect as if it were the verdict of the jury and the accused is liable to punishment accordingly.
- (3) This section extends to any proceedings on indictment commenced, but not concluded, before the commencement of this section.

[2] Section 402 Accused may be defended by counsel

Omit “, and in every case may reserve his address until the close of the evidence for the defence, and in the latter case, all evidence in reply for the Crown and any address by the prosecutor shall be given before such address for the defence”.

[3] Section 405

Omit the section. Insert instead:

405 Addresses to jury by accused

- (1) **Opening address on trial issues**
The accused or the accused’s counsel may address the jury immediately after the opening address of the prosecutor. Any such opening address is to be limited generally to an address on all or any of the matters disclosed in the opening address of the prosecutor that are or are not in dispute and the matters to be raised by the accused.

- (2) **Opening address before evidence for accused**
If the accused intends to give evidence or to call any witness in support of the defence, the accused or the accused's counsel is entitled to open the case for the defence before calling evidence, whether or not an address was made to the jury under subsection (1).
- (3) **Closing address**
The accused or the accused's counsel may address the jury after the close of the evidence for the defence and any evidence in reply by the Crown and after the prosecutor has made a closing address to the jury or declined to make a closing address to the jury.
- (4) **Supplementary address by Crown**
If, in the closing address under subsection (3), relevant facts are asserted which are not supported by any evidence that is before the jury, the Court may grant leave for the Crown to make a supplementary address to the jury replying to any such assertion.

Schedule 2 Amendment of Criminal Procedure Act 1986

(Section 4)

[1] Section 16A

Insert after section 16:

16A Directions as to indictments to be presented in the District Court

- (1) The Chief Justice of the Supreme Court may issue a practice note on behalf of the Supreme Court giving directions to prosecuting authorities with respect to the classes of indictments that are to be presented to the District Court rather than the Supreme Court.
- (2) The Chief Justice may exempt a particular indictment from any such direction.
- (3) The Supreme Court may reject an indictment:
 - (a) that is of a class to which any such direction applies, and
 - (b) that was presented after the direction was given, and
 - (c) that has not been exempted from the direction by the Chief Justice.
- (4) The rejection of an indictment does not preclude the presentation of a further indictment in accordance with any such direction.

[2] Section 19

Insert at the end of Part 5:

19 Trial proceedings after presentation of indictment and before empanelment of jury

- (1) In this section, *court* means the Supreme Court or District Court.

- (2) The court has jurisdiction with respect to the conduct of proceedings on indictment as soon as the indictment is presented and the accused is arraigned, and any orders that may be made by the court for the purposes of the trial in the absence of a jury may be made before a jury is empanelled for the trial.
- (3) If proceedings are held for the purpose of making any such orders after the indictment is presented to commence the trial and before the jury is empanelled:
 - (a) the proceedings are part of the trial of the accused, and
 - (b) the accused is to be arraigned again on the indictment when the jury is empanelled for the continuation of the trial.
- (4) Nothing in this section requires a jury to be empanelled if the accused pleads guilty to an offence during proceedings to which this section applies.
- (5) This section applies to proceedings in respect of indictments presented after the commencement of this section.

Schedule 3 Amendment of District Court Act 1973

(Section 5)

Section 171 Criminal procedure rules

Omit section 171 (4).

[Minister's second reading speech made in—
Legislative Assembly on 14 May 1997
Legislative Council on 24 September 1997]