



New South Wales

Criminal Procedure Amendment (Prosecutions) Act 2005 No 75

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Criminal Procedure Amendment (Prosecutions) Act 2005 No 75

Act No 75, 2005

An Act to amend the *Criminal Procedure Act 1986* to validate certain indictments issued on behalf of the Director of Public Prosecutions and criminal proceedings based on such indictments; and for other purposes. [Assented to 26 October 2005]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Criminal Procedure Amendment (Prosecutions) Act 2005*.

2 Commencement

This Act is taken to have commenced on the day on which the Bill for this Act was first introduced into Parliament.

3 Amendment of Criminal Procedure Act 1986 No 209

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

Schedule 1 Amendments

(Section 3)

[1] Section 16 Certain defects do not affect indictment

Insert after section 16 (1) (h):

- (i) if the indictment was signed by a legal practitioner who has been instructed to prosecute the proceedings to which the indictment relates on behalf of the Director of Public Prosecutions—for failure by the Director to authorise the legal practitioner by order in writing under section 126 (2) to sign indictments for and on behalf of the Director.

[2] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Criminal Procedure Amendment (Prosecutions) Act 2005

[3] Schedule 2, Part 9

Insert after Part 8:

Part 9 Provisions consequent on enactment of Criminal Procedure Amendment (Prosecutions) Act 2005

46 Definitions

In this Part:

applicable signing provision means section 126 or any corresponding provisions of this Act previously in force that applied to the signing of indictments at the time concerned.

introduction day means the day on which the Bill for the *Criminal Procedure Amendment (Prosecutions) Act 2005* was first introduced into Parliament.

relevant period means the period commencing on 13 July 1987 and ending immediately before the introduction day.

47 Validation of certain indictments

- (1) This clause applies to an indictment signed by a legal practitioner during the relevant period that purports to be signed for and on behalf of the Director of Public Prosecutions in circumstances where:

- (a) the legal practitioner was instructed to prosecute the criminal proceedings to which the indictment related on behalf of the Director of Public Prosecutions, and
 - (b) the legal practitioner was not authorised by or under the applicable signing provision to sign the indictment for and on behalf of the Director of Public Prosecutions.
- (2) Any indictment to which this clause applies that, but for this subclause, would have been invalid only because it had not been signed by a person authorised to sign it under the applicable signing provision, is taken at the time it was signed and at all relevant times after it was signed to have been a valid indictment.
- (3) Without limiting subclause (2), any criminal proceedings (including any conviction or acquittal of the defendant or sentence imposed on the defendant) that would otherwise have been invalid or a nullity only because the proceedings related to an indictment validated by subclause (2) are taken to be, and always to have been, valid.
- (4) However, nothing in this clause affects the validity of a particular indictment to which this clause applies or criminal proceedings relating to such an indictment if the indictment or proceedings (or both) were held to be invalid or a nullity before the introduction day in a judgment, order or other decision of a court.

[Second reading speech made in—
Legislative Assembly on 21 September 2005
Legislative Council on 18 October 2005]

BY AUTHORITY