

[Act 1997 No 86]



New South Wales

Crimes Legislation Amendment (Procedure) Bill 1997

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are to amend the *Crimes Act 1900*, the *Criminal Procedure Act 1986* and the *District Court Act 1973*:

- (a) to change the procedure for dealing with a change to a plea of guilty that is made during the course of criminal proceedings being heard by a jury, by authorising the Judge to discharge the jury and to find the accused guilty (instead of directing the jury to do so), and
 - (b) to allow the defence to make a limited opening address on trial issues immediately after the prosecution has made its opening address (without affecting the right of the defence to make an opening address at the end of the prosecution case and before calling evidence for the defence), and
 - (c) to enable the Chief Justice of the Supreme Court to issue a practice note directing that certain types of indictments are to be presented in the District Court rather than the Supreme Court, and
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- (d) to give the Supreme Court and District Court clear authority to conduct trial proceedings in respect of indictable offences after the presentation of the indictment and before the jury is empanelled for the trial, and
- (e) to remove the provision that certain classes of criminal procedure rules made by the District Court Rule Committee do not have effect until approved by the Attorney General.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Crimes Act 1900* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Criminal Procedure Act 1986* set out in Schedule 2.

Clause 5 is a formal provision giving effect to the amendments to the *District Court Act 1973* set out in Schedule 3.

Schedule 1 Amendment of Crimes Act 1908

Change in plea during criminal proceedings

At present, if a person charged with an offence on indictment has been put into the charge of a jury, the person can only be discharged by the verdict of the jury. Accordingly, if the person changes his or her plea in the course of the proceedings to a plea of guilty, and the trial judge accepts that plea, the trial judge must direct the jury to find the accused guilty. This procedure is changed so that if an accused person pleads guilty to any offence during the course of the proceedings, and the trial judge accepts that plea, the trial judge can discharge the jury from giving a verdict and find the accused guilty. The finding has effect as if it were the verdict of the jury. (See Schedule 1 [1])

Opening address to jury by accused on trial issues

The accused (or counsel for the accused) is to be specifically permitted to make an opening address on trial issues immediately after the prosecution's opening address. At present, an opening address by the accused may be made

at the end of the prosecution case and before the commencement of evidence in the defence case. If the accused elects to make an opening address on trial issues immediately after the prosecution's opening address:

- (a) the address is to be limited generally to an address on all or any of the matters disclosed in the prosecution's opening address that are or are not in dispute and the matters to be raised by the defence, and
- (b) the accused is not precluded from also addressing the jury at the end of the prosecution case and before the commencement of evidence in the defence case. The opportunity has been taken to consolidate the relevant provisions relating to addresses by the accused.
(See **Schedule 1 [2]** and **[3]**)

Schedule 2 Amendment of Criminal Procedure Act 1986

The amendment to the *Criminal Procedure Act 1986* inserts section 16A which allows the Chief Justice of the Supreme Court to issue a practice note directing that indictments of a particular class are to be presented in the District Court rather than the Supreme Court, unless the Chief Justice approves of a particular indictment of that class being presented to the Supreme Court. The Supreme Court may reject an indictment that is presented in the Supreme Court in contravention of such a direction.

The amendment to the *Criminal Procedure Act 1986* also inserts section 19 which gives the Supreme Court and District Court clear authority to conduct trial proceedings for indictable offences after the presentation of the indictment and before the jury is empanelled for the trial. A criminal court is not authorised to make orders in connection with proceedings for indictable offences (including orders relating to the admissibility of evidence) until an indictment is presented. The amendment enables an indictment to be presented without the immediate impanelling of a jury so that the court can make any necessary orders in connection with the trial that may be made in the absence of the jury.

Schedule 3 Amendment of District Court Act 1973

At present certain classes of criminal procedure rules made by the District Court Rule Committee do not have effect until they are approved in writing by the Attorney General. This requirement is removed.