



New South Wales

Criminal Procedure Amendment (Sexual Offence Case Management) Bill 2005

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Criminal Procedure Act 1986* (the ***Principal Act***) to provide that a pre-trial order made by a Judge is binding on the trial Judge if the proceedings relate to a prescribed sexual offence (within the meaning of that Act) that is dealt with on indictment. In circumstances where a new trial is ordered or later trial proceedings commence following the discontinuation of an earlier trial, a pre-trial order will also be binding on the trial Judge hearing the fresh or subsequent proceedings.

The amendments are intended to contribute to the better case management of trials for prescribed sexual offences.

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 the date of assent.

Clause 3 is a formal provision that gives effect to the amendments to the Principal Act set out in Schedule 1.

Schedule 1 Amendments

Schedule 1 [1] inserts proposed section 130A into the Principal Act. This section applies only to proceedings in respect of a prescribed sexual offence that is dealt with on indictment. The section provides that a pre-trial order made by a Judge is binding on the trial Judge unless, in the opinion of the trial Judge, it would not be in the interests of justice for the order to be binding. In circumstances where a new trial is ordered or trial proceedings commence following the discontinuation of an earlier trial, a pre-trial order will also be binding on the trial Judge hearing the fresh or subsequent trial proceedings.

Schedule 1 [2] amends Schedule 2 to the Principal Act to enable the regulations to make provision for matters of a savings and transitional nature consequent on the amendment to the Principal Act. **Schedule 1 [3]** inserts provisions of a savings and transitional nature.

First print



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Criminal Procedure Amendment (Sexual Offence Case Management) Bill 2005

No. , 2005

A Bill for

An Act to amend the *Criminal Procedure Act 1986* to provide that a pre-trial order made in proceedings relating to a prescribed sexual offence is binding on the trial Judge.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Criminal Procedure Amendment (Sexual Offence Case Management) Act 2005</i> .	3 4
2 Commencement	5
This Act commences on the date of assent to this Act.	6
3 Amendment of Criminal Procedure Act 1986 No 209	7
The <i>Criminal Procedure Act 1986</i> is amended as set out in Schedule 1.	8

Schedule 1 Amendments

		1
	(Section 3)	2
[1]	Section 130A	3
	Insert after section 130:	4
130A	Pre-trial orders bind trial Judge in sexual offence proceedings	5
(1)	A pre-trial order made by a Judge in sexual offence proceedings is binding on the trial Judge in those proceedings unless, in the opinion of the trial Judge, it would not be in the interests of justice for the order to be binding.	6 7 8 9
(2)	If, on an appeal against a conviction for a prescribed sexual offence, a new trial is ordered, a pre-trial order made by a Judge in relation to the sexual offence proceedings from which the conviction arose is binding on the trial Judge hearing the fresh trial proceedings unless:	10 11 12 13 14
	(a) the pre-trial order is inconsistent with an order made on appeal, or	15 16
	(b) in the opinion of the trial Judge, it would not be in the interests of justice for the order to be binding.	17 18
(3)	If sexual offence proceedings before a trial Judge are discontinued for any reason, a pre-trial order made by a Judge in respect of those proceedings is binding on a trial Judge hearing any subsequent trial proceedings relating to the same offence as the discontinued proceedings unless, in the opinion of the trial Judge, it would not be in the interests of justice for the order to be binding.	19 20 21 22 23 24 25
(4)	For the purposes of this section: <i>pre-trial order</i> means any order made after the indictment is first presented but before the empanelment of a jury for a trial. <i>sexual offence proceedings</i> means proceedings on indictment in respect of a prescribed sexual offence. <i>trial Judge</i> means the Judge before whom the trial proceedings, following empanelment of a jury, are heard.	26 27 28 29 30 31 32
(5)	For the purposes of this section, a reference to the <i>empanelment of a jury</i> is, in the case of a trial by a Judge alone, taken to be a reference to the point in time when the Judge first assumes the role of the tribunal of fact.	33 34 35 36

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Schedule 1 Amendments

[2] Schedule 2 Savings, transitional and other provisions	1
Insert at the end of clause 1 (1):	2
<i>Criminal Procedure Amendment (Sexual Offence Case Management) Act 2005</i>	3
	4
[3] Schedule 2	5
Insert at the end of the Schedule with appropriate Part and clause numbers:	6
Part Provisions consequent on enactment of Criminal Procedure Amendment (Sexual Offence Case Management) Act 2005	7
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Application of section 130A	10
(1) Section 130A, as inserted by the amending Act, applies only to pre-trial orders made after the commencement of that section (irrespective of when the relevant sexual offence proceedings commenced).	11
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(2) In this clause, <i>amending Act</i> means the <i>Criminal Procedure Amendment (Sexual Offence Case Management) Act 2005</i> .	15
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