

Act No. 40 of 1989

## CRIMINAL PROCEDURE (SENTENCING) AMENDMENT BILL 1989

NEW SOUTH WALES



### EXPLANATORY NOTE

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The object of this Bill is to amend the Criminal Procedure Act 1986 so as to empower any court, when sentencing a person for any offence, to take into account certain other offences with which the person has been charged and which are admitted by the person, but of which the person has not been convicted. Section 447B of the Crimes Act 1900, which is intended to be repealed by the proposed Act, contains a similar power, but it is available only when a court sentences a person for an indictable offence.

The Bill also amends the Crimes Act 1900 and certain other Acts consequentially.

---

**Clause 1** specifies the short title of the proposed Act.

**Clause 2** provides that the proposed Act is to commence on a day appointed by proclamation.

**Clause 3** is a formal provision that gives effect to the Schedule containing the amendment to the Criminal Procedure Act 1986.

**Clause 4** is a formal provision that gives effect to the Schedule containing consequential amendments to other Acts.

---

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

Schedule 1 inserts proposed Part 6 (**Sentencing by Reference to Outstanding Charges**) into the Criminal Procedure Act 1986 consisting of proposed sections 20–23. Of the proposed sections:

Section 20 (**Definitions**) defines the terms “court” and “penalty” used in the proposed Part. It is also made clear that offences may be taken into account not only when courts are sentencing to imprisonment or imposing fines but also when dealing with criminal offences in other specified ways.

*Criminal Procedure (Sentencing) Amendment 1989*

---

Section 21 (**Outstanding charges may be taken into account**) empowers the Court of Criminal Appeal, the Supreme Court, the Land and Environment Court, the District Court, a Local Court or any other court exercising criminal jurisdiction, when sentencing a person who has been found guilty of any offence, to take into account certain other offences (not being offences punishable by penal servitude for life) with which the person has been charged and which are admitted by the person. The court cannot impose a greater penalty than the maximum for the offence of which the person has been found guilty.

Section 22 (**Orders and directions relating to offences taken into account**) declares that orders or directions providing for restitution, compensation, costs, forfeiture, disqualification or loss or suspension of a licence or privilege may be made as if the person had been convicted of each other offence taken into account. Any right to appeal against such an order or direction is preserved, and the order or direction lapses if the finding of guilt concerned is overturned.

Section 23 (**Consequences of taking offences into account**) prevents further proceedings from being taken for an offence taken into account unless the decision concerned is overturned. A person is not to be taken to have been convicted of any such offence.

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

Schedule 2 amends—

- (a) the **Crimes Act 1900**, so as to repeal the less comprehensive existing provisions in section 447B of that Act that empower courts, when sentencing, to take into account offences of which an accused has not been convicted; and
  - (b) the **Crimes (Confiscation of Profits) Act 1985** and the **Victims Compensation Act 1987**, to add to references to section 447B of the Crimes Act 1900 references to proposed section 21 of the Criminal Procedure Act 1986 so as to allow offences taken into account under the proposed section to be also taken into account for the purposes of the schemes provided by those Acts.
-