

CRIMINAL PROCEDURE (AMENDMENT) BILL 1988

NEW SOUTH WALES



EXPLANATORY NOTE

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

The objects of this Bill are—

- (a) to amend the Criminal Procedure Act 1986 to enable a court to correct sentencing errors in criminal proceedings; and
- (b) to make a consequential amendment of the Justices Act 1902.

Clause 1 specifies the short title of the proposed Act.

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

Clause 3 amends the Criminal Procedure Act 1986 by inserting proposed section 19. The proposed section enables errors in sentencing to be corrected, without the necessity of an appeal.

Under the proposed section any court may reopen criminal proceedings (including proceedings on appeal) if it has made an error of law in sentencing a person and, after the parties have been heard, the court may impose a sentence that is in accordance with the law. The parties may apply to the court to have proceedings reopened, or the court may on its own motion reopen proceedings. The power to reopen proceedings does not affect rights of appeal, except that the time within which an appeal in respect of a penalty imposed under the new provision may be lodged will run from the date on which that penalty is so imposed.

Clause 4 repeals section 100^{HA} of the Justices Act 1902, which allows a Magistrate to correct sentencing errors and is in similar terms to proposed section 19 of the Criminal Procedure Act 1986. Section 100^{HA} will be redundant on the enactment of the proposed section which extends to criminal proceedings in Local Courts.
