

[Act 2001 No 119]



New South Wales

Criminal Procedure Amendment (Justices and Local Courts) Bill 2001

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament. The *Crimes (Local Courts Appeal and Review) Bill 2001* and the *Justices Legislation Repeal and Amendment Bill 2001* are cognate with this Bill.

Overview of Bill

The object of this Bill is to amend the *Criminal Procedure Act 1986* for the following purposes:

- (a) to re-enact, with modifications, provisions formerly contained in the *Justices Act 1902* relating to the jurisdiction of Local Courts and Magistrates with respect to criminal proceedings and the conduct of such criminal proceedings,
 - (b) to re-enact, with modifications, provisions formerly contained in the *Supreme Court (Summary Jurisdiction) Act 1967* and the *Land and Environment Court Act 1979* relating to the jurisdiction of the Supreme Court and the Land and Environment Court with respect to summary criminal proceedings and the conduct of such criminal proceedings,
 - (c) to apply the re-enacted provisions directly to other courts to which they currently apply,
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- (d) to consequentially re-number and rearrange existing provisions of the *Criminal Procedure Act 1986*,
- (e) to include in the *Criminal Procedure Act 1986* other miscellaneous provisions formerly contained in the *Justices Act 1902*,
- (f) to make other consequential amendments,
- (g) to make provision of a savings or transitional nature.

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 *Criminal Procedure Act 1986* set out in Schedule 1.

Schedule 1 Amendments

Amendments relating to criminal law generally

The proposed Schedule amends the *Criminal Procedure Act 1986* (the **Principal Act**) so as to group provisions applying generally to the criminal law, offences and criminal proceedings.

The amendments do this by re-numbering existing provisions of the Principal Act and by re-enacting provisions of the *Justices Act 1902* (the **Justices Act**). In cases where provisions of the Principal Act and Justices Act currently have the same or a similar effect, the provisions of the Principal Act have been retained and applied in respect of criminal proceedings to which the Justices Act currently applies. The regrouped provisions are to be contained in proposed Chapter 2 of the Principal Act as re-numbered.

Amendments relating to committal proceedings and trials of indictable offences

The proposed Schedule inserts a new Chapter 3 into the Principal Act. Part 2 of that proposed Chapter relates to the conduct and determination of committal proceedings. The provisions in the proposed Part re-enact the provisions of the Justices Act relating to committal proceedings, with the following modifications:

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- (a) committal proceedings are to be conducted by Magistrates and may no longer be conducted by Justices,
- (b) committal proceedings are to be commenced by the issue, and the filing, of a court attendance notice by a registrar of a Local Court or by a police officer or a public officer rather than by the laying of an information, although provision is made for the arrest of an accused person if there are substantial reasons to do so and it is in the interests of justice to do so,
- (c) provisions relating generally to criminal proceedings (including provisions relating to the attendance of witnesses and the production of evidence and to warrants for arrest and warrants of commitment) are applied to committal proceedings.

The amendments also group provisions (in proposed Part 3 of proposed Chapter 3 of the Principal Act) currently contained in the Principal Act and the Justices Act relating to trial procedure for indictable offences. These provisions are re-enacted without modification and include provisions relating to pre-trial disclosure.

Amendments relating to summary offences in lower courts

The proposed Schedule inserts a new Chapter 4 into the Principal Act. Parts 2–4 of that proposed Chapter relate to the conduct and determination of proceedings for summary offences before Local Courts, Licensing Courts, Industrial Magistrates and Wardens' Courts. The provisions in the proposed Parts re-enact the provisions of the Justices Act relating to such proceedings, with the following modifications:

- (a) summary proceedings are to be commenced by the issue, and the filing, of a court attendance notice by a registrar of a Local Court or by a police officer or a public officer rather than by the laying of an information or the issuing of a summons or an attendance notice, although provision is made for the arrest of an accused person if there are substantial reasons to do so and it is in the interests of justice to do so,
- (b) the provisions are to apply directly to courts other than Local Courts, as referred to above,
- (c) the court may adjourn proceedings generally for up to 2 years,
- (d) rule-making powers with respect to procedure have been inserted, as matters formerly dealt with by Regulations under the Justices Act are now to be dealt with by Rules of Court,
- (e) some matters previously specified in the Justices Act, being matters of detail, are now to be dealt with by Rules of Court,
- (f) provisions relating to warrants of arrest and warrants of commitment have been grouped so as to avoid duplication and provide clear procedures,

- (g) Magistrates are given the power to award costs against a prosecutor when proceedings are withdrawn or adjourned, in addition to the circumstances in which costs may currently be awarded,
- (h) Magistrates are given power to dispense with requirements of the Rules.

Amendments relating to summary offences in higher courts

The proposed Schedule inserts new Part 5 of Chapter 4 into the Principal Act. Part 5 relates to the conduct and determination of proceedings for summary offences before the Supreme Court, the District Court, the Industrial Relations Commission in Court Session, the Land and Environment Court and the Court of Coal Mines Regulation. The provisions in the proposed Part re-enact the provisions of the *Supreme Court (Summary Jurisdiction) Act 1967* and the *Land and Environment Court Act 1979* relating to such proceedings, without any significant modifications, other than to apply the provisions directly to courts other than the Supreme Court, as referred to above, and to update and clarify the language of existing provisions. The provisions of the *Land and Environment Court Act 1979* relating to costs have been adopted.

Amendments relating to the summary disposal of indictable offences

The amendments move provisions currently contained in Division 3 of Part 2 of the Principal Act to a new Chapter 5.

Amendments relating to evidentiary provisions

The amendments group and re-number provisions currently contained in the Principal Act so as to create a new Chapter 6 which is to contain all the provisions relating to evidentiary matters.

Amendments relating to miscellaneous matters

The amendments group and re-number provisions currently contained in the Principal Act and the Justices Act so as to create a new Chapter 7 which is to contain provisions relating to miscellaneous matters and also a Part relating to police custody of property.

The proposed Chapter also gives effect to proposed Schedule 3 which is to contain provisions relating to particular indictments and indictable offences, being provisions that were previously contained in the *Crimes Act 1900*.

Amendments relating to authorised officers

The proposed Schedule inserts a definition of *authorised officer*, being a registrar of a court or an employee of the Attorney General's Department authorised by the Attorney General for the purposes of the Principal Act. An authorised officer will generally have the functions previously conferred on authorised justices or Justices of the Peace.

Other amendments

The proposed Schedule also makes consequential amendments and makes provisions of a savings and transitional nature consequent on the amendments made by the proposed Act and the repeals and amendments made by the proposed *Justices Legislation Repeal and Amendment Act 2001*.

Note

The following note sets out a table of contents for the *Criminal Procedure Act 1986* following the commencement of the proposed Act, indicating the origin of provisions ("CP" refers to the *Criminal Procedure Act 1986*, "J" refers to the *Justices Act 1902* and "SC (SJ)" refers to the *Supreme Court (Summary Jurisdiction) Act 1967*).

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