

CRIMES (PUBLIC JUSTICE) AMENDMENT BILL 1990*

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 Crimes Act 1900 to replace Parts 7 (Perjury and like offences) and 8 (Conspiracy to accuse of crime) of that Act with a new Part (Public justice offences) that deals with offences in the following areas:

- * interference with the administration of justice
- * interference with judicial officers, witnesses, jurors etc.
- * perjury, false statements etc.

The proposed new Part will also abolish common law offences made redundant by the new statutory offences or which are now obsolete.

The Bill also makes consequential amendments to other Acts.

Clause 1 specifies the short title of the proposed Act.

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

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the Crimes Act 1900 (Schedule 1).

Clause 4 is a formal provision that gives effect to the Schedule of consequential amendments to other Acts (Schedule 2).

SCHEDULE 1 - AMENDMENT OF CRIMES ACT 1900

Schedule 1 (2) substitutes Parts 7 and 8 of the Act with a new Part dealing with public justice offences. The proposed new Part contains the following provisions:

* Amended in committee - see table at end of volume.

Crimes (Public Justice) Amendment 990

CHAPTER 1 - *Definitions*

Proposed section 311 defines certain expressions used in the proposed Part. An important definition is "serious offence" which means an offence punishable by at least 5 years' imprisonment or penal servitude.

Proposed section 312 defines what is meant by "perverting the course of justice".

Proposed section 313 provides that if it is an element of one of the proposed new offences that a serious offence is involved it is not necessary for the prosecution to establish that the accused knew the offence concerned was a serious offence.

CHAPTER 2 - *Interference with the administration of justice*

Proposed section 314 creates the offence of falsely accusing another person of an offence knowing the person to be innocent (maximum penalty 7 years' penal servitude).

Proposed section 315 creates the offence of doing anything to hinder the investigation of a serious offence, the discovery of evidence of a serious offence or the apprehension of a person for a serious offence (maximum penalty 7 years' penal servitude).

Proposed section 316 creates the offence of failing to bring information concerning a serious offence to the attention of the Police or other appropriate authority (maximum penalty 2 years' imprisonment). If a bribe or other benefit is solicited or accepted for concealing the information, a more serious offence is committed with a maximum penalty of 5 years' imprisonment.

Proposed section 317 creates the offence of suppressing evidence or fabricating or using false evidence (maximum penalty 10 years' penal servitude).

Proposed section 318 creates the offence of making or using a forged official instrument (such as an arrest warrant, a garnishee order or an indemnity from prosecution) intending to pervert the course of justice (maximum penalty 14 years' penal servitude),

Proposed section 319 creates the general offence of perverting the course of justice (maximum penalty 14 years' penal servitude). This offence will apply to conduct not dealt with specifically by another provision of the proposed Chapter.

CHAPTER 3 - *Interference with judicial officers, witnesses, jurors etc.*

Proposed section 320 extends the meaning of "giving evidence" in the proposed Chapter to include producing anything to be used as evidence.

Proposed section 321 creates the offence of corruption involving a witness or juror (maximum penalty 10 years' penal servitude).

Proposed section 322 creates the offence of threatening or intimidating witnesses, jurors, judicial officers or public justice officials (maximum penalty 10 years' penal servitude).

Proposed section 323 creates the offence of trying improperly to influence a witness or juror (maximum penalty 7 years' imprisonment).

Crimes (Public Justice) Amendment 1990

Proposed section 324 provides for an increased maximum penalty of 14 years' penal servitude for an offence under proposed section 321, 322 or 323 if it is committed with the intention of procuring the conviction or acquittal of a person of a serious offence.

Proposed section 325 creates the offence of wilfully preventing, obstructing or dissuading a witness from attending as a witness or producing evidence or from attending as a juror (maximum penalty 5 years' imprisonment).

Proposed section 326 creates the offence of threatening or carrying out reprisals against witnesses, jurors, judicial officers or public justice officials (maximum penalty 10 years' penal servitude).

CHAPTER 4 - Perjury, false statements etc.

Proposed section 327 restates the current offence of perjury (the making of a material false statement on oath) and extends the offence so that it covers statements made in connection with judicial proceedings and not just during judicial proceedings as at present (maximum penalty 10 years' penal servitude).

Proposed section 328 creates a more serious offence (maximum penalty 14 years' penal servitude) if perjury is committed with the intention of procuring the conviction or acquittal of a person of a serious offence.

Proposed section 329 is a procedural provision that allows a jury to convict a person charged with perjury of the lesser offence under proposed section 330.

Proposed section 330 restates the current offence of making a false statement on oath knowing it to be false or not believing it to be true.

Proposed section 331 is a procedural provision that deals with the situation of 2 contradictory statements on oath where the jury cannot say which one is false. The jury can still convict of perjury or of an offence under proposed section 330.

Proposed section 332 provides that certain technical and procedural defects do not entitle an accused to acquittal on a charge of perjury or of an offence under proposed section 330.

Proposed section 333 restates the current offence of subornation of perjury, i.e. of procuring, persuading, inducing or otherwise causing a person to commit perjury (maximum penalty 7 years' imprisonment). A more serious offence is committed (maximum penalty 14 years' penal servitude) if subornation of perjury is committed with intent to procure the conviction or acquittal of a person of a serious offence.

Proposed section 334 lists a number of formal and procedural matters that are not to be taken into account for the purposes of offences under the proposed Chapter.

Proposed section 335 restates the current offence of giving false evidence on commission (not on oath) under the Evidence Act 1898 (maximum penalty 5 years' imprisonment).

Proposed section 336 creates the offence of making a false entry in, or making a statement for the purposes of a false entry in, a public register (maximum penalty 5 years' imprisonment).

Crimes (Public Justice) Amendment 1990

Proposed section 337 creates the offence of a public officer issuing a false official instrument that is potentially prejudicial to a person (maximum penalty 5 years' imprisonment).

Proposed section 338 imposes restrictions on prosecutions for perjury. A prosecution can be taken only by the Director of Public Prosecutions, by any person at the direction of the Attorney General or with leave of the court before which the perjury is alleged to have been committed. Notice of a proposed prosecution is required to be given to the Director of Public Prosecutions.

Proposed section 339 applies the provisions of the proposed Chapter concerning perjury to offences under other Acts that are declared to be perjury.

CHAPTER 5 - *Miscellaneous*

Proposed section 340 makes it clear that the abolition of common law offences by proposed section 341 does not apply to offences committed before their abolition.

Proposed section 341 lists the common law offences that are abolished. The offences will be redundant because of the proposed new offences to be created.

Proposed section 342 makes it clear that the abolition of the common law offence of conspiracy to pervert the course of justice does not prevent the bringing of proceedings for conspiracy to commit an offence under the proposed Part.

Proposed section 343 makes it clear that the common law offences of escaping or assisting an escape from lawful custody are not abolished.

Proposed section 343A makes it clear that the proposed Part does not prevent or affect any other punishment or forfeiture under any Act.

Schedule 1 (1) and (3)–(6) make consequential amendments.

SCHEDULE 2 - CONSEQUENTIAL AMENDMENT OF OTHER ACTS

Schedule 2 makes consequential amendments to the Jury Act 1977, the Bail Act 1978 and the Commercial Arbitration Act 1984. The Oaths Act 1900 is also amended to impose a maximum penalty of 2 years' imprisonment for unlawfully administering an oath.
