



New South Wales

Criminal Procedure Legislation Amendment (Prosecution of Indictable Offences) Bill 2022

Explanatory note

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

Overview of Bill

The objects of this Bill are—

- (a) to amend the *Criminal Procedure Act 1986*—
 - (i) to require certain law enforcement or investigating officers to make disclosures concerning alleged offences to prosecutors other than the Director of Public Prosecutions, and
 - (ii) to clarify what prosecutors must certify in a charge certificate about compliance with duties of disclosure about alleged offences being prosecuted, and
 - (iii) to require certain trial papers about a person committed for trial or sentence in the court to be given to prosecutors as soon as practicable after the papers are received by the registrar of the court, and
- (b) to amend the *Director of Public Prosecutions Act 1986* to include additional persons involved in investigating certain alleged offences among the persons with duties to make disclosures to the Director of Public Prosecutions concerning the alleged offences, and
- (c) to make other minor or consequential amendments to the *Criminal Procedure Regulation 2017* and the *Director of Public Prosecutions Regulation 2020*.

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 to the proposed Act.

Schedule 1 Amendments

1.1 Criminal Procedure Act 1986 No 209

Schedule 1.1[2] imposes duties on law enforcement or investigating officers involved in investigating alleged offences to disclose certain matters to prosecutors other than the Director of Public Prosecutions. The duties largely mirror the duties to make disclosures to the Director of Public Prosecutions imposed by the *Director of Public Prosecutions Act 1986*, section 15A, as amended by Schedule 1.4. **Schedule 1.1[1]** defines *law enforcement or investigating officer* to mean a police officer, or another officer or a member of staff of an agency created by or under an Act, who is responsible for an investigation into a matter involving the suspected commission of an offence. **Schedule 1.1[7] and [8]** make consequential amendments.

Schedule 1.1[3] requires a prosecutor to certify the following matters in a charge certificate signed by the prosecutor—

- (a) for an alleged offence for which there are duties of disclosure under the *Director of Public Prosecutions Act 1986*, section 15A—that the prosecutor has received and considered verification of compliance about the duties,
- (b) for an alleged offence for which there are duties of disclosure under the provision inserted by Schedule 1.1[2]—that the prosecutor has received and considered verification of compliance about the duties.

Schedule 1.1[4] makes an amendment consequential on the amendment made by 1.1[3].

Schedule 1.1[6] requires certain trial papers about a person committed for trial or sentence to be given to prosecutors as soon as practicable after the papers are received by the registrar of the court. **Schedule 1.1[5]** makes a consequential amendment.

Schedule 1.1[9] provides for savings and transitional matters.

1.2 Criminal Procedure Regulation 2017

Schedule 1.2[2] imposes on prosecutors certain obligations currently imposed on the Director of Public Prosecutions concerning the listing of criminal proceedings. **Schedule 1.2[1]** updates a term.

Schedule 1.2[3] and [4] make amendments concerning charge certificates consequential on the amendment made by Schedule 1.1[2].

1.3 Director of Public Prosecutions Act 1986 No 207

Currently, the duties of disclosure imposed by the *Director of Public Prosecutions Act 1986*, section 15A about certain alleged offences are limited to—

- (a) police officers responsible for investigating the alleged offences, or
- (b) officers or staff members of the following agencies investigating the alleged offences—
 - (i) the Law Enforcement Conduct Commission,
 - (ii) the New South Wales Crime Commission,
 - (iii) the Independent Commission Against Corruption.

Schedule 1.3 makes amendments to extend the duties of disclosure to officers or staff members of any agency created by or under an Act who are responsible for investigating the alleged offences.

1.4 Director of Public Prosecutions Regulation 2020

Schedule 1.4 makes amendments consequential on the amendments made by Schedule 1.3.



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New South Wales

Criminal Procedure Legislation Amendment (Prosecution of Indictable Offences) Bill 2022

No. _____, 2022

A Bill for

An Act to make amendments to certain legislation about the procedure for the prosecution of indictable offences.

The Legislature of New South Wales enacts—

1

1 Name of Act

2

This Act is the *Criminal Procedure Legislation Amendment (Prosecution of Indictable Offences) Act 2022*.

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4

2 Commencement

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This Act commences on the date of assent to this Act.

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Schedule 1	Amendments	1
1.1	Criminal Procedure Act 1986 No 209	2
[1]	Section 3 Definitions	3
	Insert in alphabetical order in section 3(1)—	4
	<i>law enforcement or investigating officer</i> , for an alleged offence, means a police officer, or another officer or a member of staff of an agency created by or under an Act, who is responsible for an investigation into a matter involving the suspected commission of the alleged offence.	5 6 7 8
[2]	Section 36B	9
	Insert after section 36A—	10
36B	Disclosures by law enforcement or investigating officers	11
(1)	Law enforcement or investigating officers for alleged offences have a duty to disclose to prosecutors of the alleged offences all relevant information, documents or other things obtained during the investigation that might reasonably be expected to assist the case for the prosecution or the case for the accused person.	12 13 14 15 16
(2)	The duty of disclosure continues until one of the following happens—	17
(a)	the prosecutor decides the accused person will not be prosecuted for the alleged offence,	18
(b)	the prosecution is terminated,	20
(c)	the accused person is convicted or acquitted.	21
(3)	Law enforcement or investigating officers for alleged offences also have a duty to keep the documents or other things referred to in subsection (1) for as long as the duty to disclose them continues under this section.	22 23 24
(4)	Subsection (3) does not affect any other legal obligation about the possession of the documents or other things.	25 26
(5)	The regulations may make provision about the duties of law enforcement or investigating officers under this section, including about—	27 28
(a)	the recording of information, documents or other things, and	29
(b)	verification of compliance with a duty imposed by this section.	30
(6)	The duty imposed by this section is in addition to any other duties of law enforcement or investigating officers in connection with the investigation and prosecution of offences.	31 32 33
(7)	The duty imposed by this section does not require law enforcement or investigating officers to provide the prosecutor with any information, document or other thing (<i>protected material</i>) that—	34 35 36
(a)	is the subject of a claim of privilege, public interest immunity or statutory immunity, or	37 38
(b)	would contravene a statutory publication restriction if provided.	39
(8)	The duty of a law enforcement or investigating officer in relation to protected material is to inform the prosecutor of—	40 41
(a)	the existence of the material, and	42

(b)	the nature of the material and the claim or publication restriction relating to it.	1 2
(9)	However, a law enforcement or investigating officer must provide the prosecutor with protected material if the prosecutor requests it be provided.	3 4
(10)	This section does not impose a duty on a law enforcement or investigating officer to provide information, documents or other things if the prosecutor is the Director of Public Prosecutions.	5 6 7
	Note —The <i>Director of Public Prosecutions Act 1986</i> , section 15A imposes comparable disclosure requirements on law enforcement or investigating officers in relation to the Director of Public Prosecutions.	8 9 10
[3]	Section 66 Charge certificates	11
	Omit section 66(2)(b). Insert instead—	12
(b)	for an alleged offence for which there are duties of disclosure under the <i>Director of Public Prosecutions Act 1986</i> , section 15A—the prosecutor has received and considered verification of compliance about the duties, and	13 14 15 16
(c)	for an alleged offence for which there are duties of disclosure under section 36B—the prosecutor has received and considered verification of compliance about the duties.	17 18 19
[4]	Section 66(2A)	20
	Omit the subsection.	21
[5]	Section 113, heading	22
	Omit “ Director of Public Prosecutions ”. Insert instead “ prosecutor ”.	23
[6]	Section 113(1)	24
	Omit “Director of Public Prosecutions”. Insert instead “prosecutor”.	25
[7]	Section 142 Prosecution’s notice	26
	Omit “law enforcement officers” from section 142(1)(i).	27
	Insert instead “law enforcement or investigating officers”.	28
[8]	Section 142(3)	29
	Omit the subsection.	30
[9]	Schedule 2 Savings, transitional and other provisions	31
	Insert at the end of the Schedule, with appropriate Part and clause numbering—	32
Part	Provision consequent on enactment of Criminal Procedure Legislation Amendment (Prosecution of Indictable Offences) Act 2022	33 34 35
	Application of amendments	36
(1)	Subject to subclause (2), an amendment made by the amending Act to another provision of this Act or the regulations under this Act extends to proceedings commenced, but not yet committed for trial or sentence, before the commencement day for the amendment.	37 38 39 40

(2)	An existing DPP disclosure certificate relating to an offence in proceedings to which subclause (1) applies may be used as verification of compliance disclosure for section 66(2)(b), as inserted by the amending Act, relating to the offence in the proceedings.	1 2 3 4
(3)	In this clause— <i>amending Act</i> means the <i>Criminal Procedure Legislation Amendment (Prosecution of Indictable Offences) Act 2022</i> . <i>commencement day</i> , for an amendment made to another provision of this Act or the regulations under this Act, means the day on which the amendment commences. <i>existing DPP disclosure certificate</i> means a certificate mentioned in section 66(2)(b), as in force immediately before its substitution by the amending Act, that was issued before the commencement of the substitution.	5 6 7 8 9 10 11 12 13
1.2	Criminal Procedure Regulation 2017	14
[1]	Clause 4 Information for Criminal Listing Director Omit “prosecuting authority” wherever occurring in clause 4(1)(a), (3) and (4). Insert instead “prosecutor”.	15 16 17
[2]	Clauses 6(1), 7(1) and (4) and 9(2) Omit “Director of Public Prosecutions” wherever occurring. Insert instead “prosecutor”.	18 19
[3]	Clause 9C Prosecutors who may exercise charge certificate and case conference functions Insert after clause 9C(c)— (d) a person who— (i) is the prosecutor in the committal proceedings for an indictable offence, and (ii) would be prosecuting the offence in the name of the Attorney General if the offence is committed for trial.	20 21 22 23 24 25 26 27
[4]	Schedule 1 Forms Omit paragraph (b) from Form 1A, Part 2. Insert instead— (b) [for an alleged offence for which there are duties of disclosure under the Director of Public Prosecutions Act 1986, section 15A] verification of compliance about the duties of disclosure under the Director of Public Prosecutions Act 1986, section 15A has been received and considered. —or— (b) [for an alleged offence for which there are duties of disclosure under the Criminal Procedure Act 1986, section 36B] verification of compliance about the duties of disclosure under the Criminal Procedure Act 1986, section 36B has been received and considered.	28 29 30 31 32 33 34 35 36 37 38
1.3	Director of Public Prosecutions Act 1986 No 207	39
[1]	Section 3 Definitions Insert in alphabetical order in section 3(1)— <i>law enforcement or investigating officer</i> , for an alleged offence, has the same meaning as in the <i>Criminal Procedure Act 1986</i> .	40 41 42 43

[2] Section 15A, heading	1
Insert “or investigating” after “law enforcement”.	2
[3] Section 15A(1) and (3)	3
Omit “Law enforcement officers” wherever occurring.	4
Insert instead “Law enforcement or investigating officers”.	5
[4] Section 15A(1A) and (7)	6
Omit “law enforcement officer” wherever occurring.	7
Insert instead “law enforcement or investigating officer”.	8
[5] Section 15A(4)–(6)	9
Omit “law enforcement officers” wherever occurring.	10
Insert instead “law enforcement or investigating officers”.	11
[6] Section 15A(1) and (3)	12
Omit “investigating” wherever occurring. Insert instead “for”.	13
[7] Section 15A(9), definition of “law enforcement officer”	14
Omit the definition.	15
1.4 Director of Public Prosecutions Regulation 2020	16
[1] Clause 5, heading	17
Insert “or investigating” after “law enforcement”.	18
[2] Clause 5(a) and (b)	19
Insert “or investigating” after “law enforcement” wherever occurring.	20
[3] Clause 5(c)	21
Omit “be signed and dated by the law enforcement officer’s”.	22
Insert instead “if the law enforcement or investigating officer is a law enforcement officer—be signed and dated by the law enforcement officer’s”.	23
	24
[4] Clause 5(2)	25
Insert at the end of clause 5—	26
(2) In this clause—	27
<i>law enforcement officer</i> means a law enforcement or investigating officer	28
who is—	29
(a) a police officer, or	30
(b) an officer of the New South Wales Crime Commission, or	31
(c) an officer of the Law Enforcement Conduct Commission, or	32
(d) an officer of the Independent Commission Against Corruption.	33
[5] Schedule 1 Disclosure certificate (for prosecutions and advisings)	34
Omit “law enforcement officer investigating”.	35
Insert instead “law enforcement or investigating officer investigating”.	36

[6] Schedule 1	1
Omit “I am aware that such claims”.	2
Insert instead “I am aware that if I am a police officer, or an officer of the NSW Crime Commission, the Law Enforcement Conduct Commission or the Independent Commission Against Corruption, these kinds of claims”.	3 4 5
[7] Schedule 1	6
Omit the following—	7
*If the disclosing law enforcement officer is a police officer, this form must be signed by a police officer who holds a rank in the NSW Police Force senior to the law enforcement officer. If the disclosing law enforcement officer is an officer of the NSW Crime Commission, the Independent Commission Against Corruption or the Police Integrity Commission, this form must be signed by the Commissioner or an Assistant Commissioner of that agency.	8 9 10 11 12 13
Insert instead—	14
*This form needs to be signed by a superior officer only if the disclosing law enforcement or investigating officer is a police officer or an officer of the NSW Crime Commission, the Law Enforcement Conduct Commission or the Independent Commission Against Corruption. For a police officer, it must be signed by a police officer who holds a rank in the NSW Police Force senior to the law enforcement officer. For other officers, it must be signed by the Commissioner or an Assistant Commissioner of the agency.	15 16 17 18 19 20 21