

Act No. 74 of 1990

**CRIMINAL PROCEDURE LEGISLATION (AMENDMENT) BILL
1990***

NEW SOUTH WALES



EXPLANATORY NOTE

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

The objects of this Bill are:

- (a) to remove the right of the prosecutor to force an adjournment of a trial by failing to present an indictment on the date fixed for the trial; and
- (b) to enable a person who is accused of an indictable offence to elect to be tried by a Judge alone rather than by a jury, and
- (c) to enable the Supreme Court or District Court, at the end of the trial of a person accused of an indictable offence, to deal with related summary offences; and
- (d) to allow a Judge of the Supreme Court or District Court to dispense with the requirement to summarise evidence given in a trial.

Clause 1 specifies 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 gives effect to the Schedule of amendments to the Criminal Procedure Act 1986.

Clause 4 gives effect to the Schedule of amendments to the Crimes Act 1900.

Clause 5 gives effect to the Schedule of consequential amendments to the Criminal Appeal Act 1912 and the Jury Act 1977.

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

Criminal Procedure Legislation (Amendment) 1990

SCHEDULE 1 — AMENDMENT OF CRIMINAL PROCEDURE ACT 1986

Presentation of indictments

(Proposed section 17)

The proposed section enables the Supreme Court or District Court to require the presentation of an indictment of an accused person who has been committed for trial, and consequently removes the right of the prosecutor to force an adjournment of the trial by failing to present the indictment on the date fixed for the start of the trial.

Trial by jury on indictment

(Proposed Part 9 — proposed sections 30-33)

The proposed Part sets out the right to jury trial for criminal proceedings in the Supreme Court or District Court in which the accused is prosecuted on indictment. The right to jury trial is at present contained in section 19 of the Jury Act 1977. However, provision has been included to enable an accused person to elect to be tried by a Judge alone. Such an election must be supported by the prosecutor, and by all other accused persons in the proceedings, and may be changed at any time before the date fixed for the start of the trial.

**Supreme or District Court may deal with summary offences
related to indictable offences**

(Proposed Part 10 — proposed sections 34-37)

The proposed Part applies when the Supreme Court or District Court is dealing with an indictable offence.

Accused persons who are charged with indictable offences may also be charged with summary offences relating to the same matter. Such charges are commonly called "back-up" charges and may be proceeded with after the indictable offence has been dealt with.

The proposed Part enables the Supreme Court or District Court, at the end of the trial for the indictable offence, to dispose of any related summary offence without the jury (but only if both the prosecutor and the accused person consent). The Supreme Court or District Court is to deal with such a related summary offence as if it were a Local Court.

SCHEDULE 2 — AMENDMENT OF CRIMES ACT 1900

Summary of evidence

(Proposed section 405AA)

The proposed section declares that a Judge is not required to summarise the evidence given in a criminal trial before a jury if the Judge is of the opinion that it is unnecessary to do so.

Criminal Procedure Legislation (Amendment) 1990

SCHEDULE 3 — CONSEQUENTIAL AMENDMENT OF OTHER ACTS

Criminal Appeal Act 1912. The amendments provide a right of appeal to the Court of Criminal Appeal where a Judge in any trial also disposes of related summary offences (“back-up” charges) under proposed Part 10 of the Criminal Procedure Act 1986.

Jury Act 1977. The amendment makes consequential changes as a result of the transfer to proposed Part 9 of the Criminal Procedure Act 1986 of provisions relating to the right to jury trial in criminal proceedings.
