

[Act 1995 No 22]



New South Wales

Criminal Procedure Amendment (Indictable Offences) Bill 1995

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Criminal Procedure Act 1986* to revise the procedure under which certain indictable offences can be dealt with summarily by a Local Court.

An indictable offence is an offence that can go to a trial by jury in either the District or Supreme Court.

The Bill:

- (a) lists the indictable offences that can be dealt with summarily before a Local Court (some additional offences are included), and
 - (b) sets out the general procedures to be followed for these offences, and
 - (c) in particular, provides an opportunity (by an “election”) for such an offence to proceed by way of indictment, with the potential for a trial by jury, and
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- (d) provides that such an election can be made:
- by either the prosecuting authority or the accused person, in the case of more serious offences
 - by the prosecuting authority, in the case of other offences.

Outline of provisions

Clause 1 sets out the name (also known as the short title) of the proposed Act.

Clause 2 provides that the proposed Act will commence on a day or days to be proclaimed.

Clause 3 is a formal provision giving effect to the amendments to the *Criminal Procedure Act 1986* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the consequential amendments to various Acts set out in Schedule 2.

Schedule 1 Amendment of Criminal Procedure Act 1986

Schedule 1 (3) inserts Part 9A into the *Criminal Procedure Act 1986*. The new Part revises the procedure (at present contained in sections 476–500 of the *Crimes Act 1900* and in other Acts) for certain indictable offences to be dealt with summarily by a Local Court. The objects of the Part are set out in proposed section 33A.

The proposed new procedure requires certain indictable offences to be dealt with summarily:

- (a) unless the prosecuting authority or the person charged with the offence elects to have the offence dealt with on indictment (offences listed in Table 1 to Part 9A), or
- (b) unless the prosecuting authority elects to have the offence dealt with on indictment (offences listed in Table 2 to Part 9A).

Any discretion of a Local Court in the matter is removed.

Provision is made for the time for making elections and for the withdrawal of elections (proposed sections 33F and 33G).

Information relating to the right of a person charged to make an election and the consequences of not making an election (in respect of an offence listed in Table 1 to the Part) is to be given to the person by a Local Court when the person charged first appears before the Court (proposed section 33H (1)).

The Local Court is to fix a time within which the brief of evidence relating to such an offence and a copy of the criminal record of the person charged (if any) is to be provided to the person charged (proposed section 33H (2)). A power enabling regulations to be made with respect to elections is also provided (proposed section 33I).

The new Part reproduces the current reduced penalties and provides a maximum penalty that may be imposed when an indictable offence is dealt with summarily if no maximum penalty is otherwise provided by law (proposed sections 33J and 33K).

The new Part adds to the list of indictable offences that at present may be dealt with summarily by adding certain indictable offences that carry a maximum penalty not exceeding 10 years imprisonment or penal servitude. However, the new Part does not apply to such offences under a number of Acts (eg because the relevant Act states that the offence must be dealt with on indictment) such as the following:

Biological Control Act 1985

Confiscation of Proceeds of Crime Act 1989

Financial Transaction Reports Act 1992

Gaming and Betting Act 1912

Guardianship Act 1987

Independent Commission Against Corruption Act 1988

Listening Devices Act 1984

Mental Health Act 1990

Mines Inspection Act 1901

New South Wales Crime Commission Act 1985

Prevention of Cruelty to Animals Act 1979

Tobacco Advertising Prohibition Act 1991.

Schedule 1 (1) and (2) make amendments to the *Criminal Procedure Act 1986* consequential on the insertion of the new Part.

Schedule 2 Consequential amendment of other Acts

The Schedule contains amendments to other Acts. The amendments make consequential changes as a result of the proposed new procedure for the summary disposal of certain indictable offences.