

Criminal Procedure Act 1986 No 209

[1986-209]



New South Wales

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Criminal Procedure Act 1986 No 209



New South Wales

An Act relating to the prosecution of indictable offences, the listing of criminal proceedings before the Supreme Court and the District Court and the giving of certain indemnities and undertakings; and for other purposes.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Criminal Procedure Act 1986*.

2 Commencement

- (1) Sections 1 and 2 shall commence on the date of assent to this Act.
- (2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

3 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

committal proceedings means a hearing before a Magistrate (or one or more justices) for the purpose of deciding whether a person charged with an indictable offence should be committed for trial or sentence.

indictable offence means an offence (including a common law offence) that may be prosecuted on indictment.

offence means an offence against the laws of the State.

prescribed summary offence has the same meaning as in the *Director of Public Prosecutions Act 1986*.

regulations means regulations under this Act.

summary offence means an offence that is not an indictable offence.

- (2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty, and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

3A Consequences of abolition of office of Clerk of the Peace

- (1) The registry functions of the abolished office of the Clerk of the Peace are the functions of the registrars and other officers of the Supreme Court or the District Court.
- (2) Subsection (1) has effect subject to this Act and any other Act and, in particular, does not affect the functions of the Criminal Listing Director.
- (3) A reference in any other Act, in any instrument made under any Act or in any other instrument of any kind to the Clerk of the Peace shall be read as a reference to such person or persons as may be prescribed.

3B Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Part 2 Indictable offences generally

4 Prosecution of indictable offences

- (1) All offences shall be punishable by information (to be called an indictment) in the Supreme Court or the District Court, on behalf of the Crown, in the name of the Attorney General or the Director of Public Prosecutions.
- (2) Such an indictment may be presented or filed whether or not the person to whom the indictment relates has been committed for trial in respect of an offence specified in the indictment.
- (3) This section does not apply to offences that may be heard and determined in a summary manner only.
- (4) This section does not affect any law or practice that provides for an indictable offence to be heard and determined in a summary manner, whether with or without the consent of the accused.

5 Jurisdiction of courts

- (1) The Supreme Court has jurisdiction in respect of all indictable offences.
- (2) The District Court has jurisdiction in respect of all indictable offences, other than such offences as may be prescribed by the regulations for the purposes of this section.

6 Certain matters not affected

Nothing in this Part affects any law or practice relating to:

- (a) the laying of an information before a justice in respect of an indictable offence, or
- (b) committal proceedings for an indictable offence.

Part 3 Listing

7 Definitions

In this Part:

Criminal Listing Director means the public servant holding or acting in the position of that name, and includes any public servant authorised by the Criminal Listing Director, or in accordance with the regulations, to exercise any functions of the Criminal Listing Director.

criminal proceedings means:

- (a) proceedings relating to the trial of a person before the Supreme Court or the District Court,
- (b) proceedings relating to the sentencing of a person by the Supreme Court or the District Court, or
- (c) proceedings relating to an appeal under the *Justices Act 1902* to the District Court in its criminal jurisdiction.

8 Listing

- (1) The Criminal Listing Director is, subject to the regulations, to make arrangements for the listing of criminal proceedings before the Supreme Court or the District Court.
- (1A) In making such listing arrangements, the Criminal Listing Director is responsible to:
 - (a) the Chief Justice of the Supreme Court, in the case of criminal proceedings before that Court, or
 - (b) the Chief Judge of the District Court, in the case of criminal proceedings before that Court.
- (2) The regulations may make provision for or with respect to the practice and procedure to be adopted for the listing of criminal proceedings that are to be heard and determined before the Supreme Court or the District Court.
- (3) Regulations made under this section prevail over rules of court, or any direction or order of a court, to the extent of any inconsistency.

9 Listing for mention following committal for trial

If, at the end of a period prescribed by the regulations for the purposes of this section (being a period that commenced to run when an accused person was committed for trial):

- (a) the Criminal Listing Director has not received a notice of readiness in respect of the proceedings that is accompanied by a draft indictment, and
- (b) the matter has not been terminated,

the Criminal Listing Director shall arrange for the matter to be listed for mention before the Supreme Court or the District Court as soon as practicable.

10 Authority of Criminal Listing Director

It is the duty of all persons involved in criminal proceedings to abide, as far as practicable, by the arrangements made by the Criminal Listing Director in exercising functions under this Act.

11 Liaison

For the purpose of exercising the functions conferred on the Criminal Listing Director, the Criminal Listing Director may liaise with the Judges and officers of the Supreme Court and the District Court, prosecuting authorities, accused persons and their lawyers, and other persons involved in criminal proceedings.

12 Certain matters not affected

- (1) This Part does not authorise the Criminal Listing Director:
 - (a) to fix or change the venue of proceedings, except with the consent of the accused person and the prosecuting authority, or
 - (b) to determine when or where a court is to exercise its jurisdiction.
- (2) Nothing in this Part relating to the Criminal Listing Director affects:
 - (a) the power of the Attorney General to fix or change the venue of any matter,
 - (b) the power of a court to regulate proceedings before it,
 - (c) the power of a court to adjourn any matter,
 - (d) proceedings in the Court of Criminal Appeal,
 - (e) proceedings in the Supreme Court in its summary jurisdiction, or
 - (f) proceedings under the *Bail Act 1978*.

Part 4 Indemnities and undertakings

13 Indemnities

- (1) The Attorney General may, if of the opinion that it is appropriate to do so, grant a person an indemnity from prosecution (whether on indictment or summarily):
 - (a) for a specified offence, or
 - (b) in respect of specified acts or omissions.
- (2) If the Attorney General grants such an indemnity, no proceedings may thereafter be instituted or continued against the person in respect of the offence or the acts or omissions.
- (3) Such an indemnity may be granted conditionally or unconditionally.
- (4) Such an indemnity may not be granted in respect of a summary offence that is not a prescribed summary offence, unless the Attorney General has consulted the Minister administering the enactment or instrument under which the offence is created.

14 Undertakings

- (1) The Attorney General may, if of the opinion that it is appropriate to do so, give to a person an undertaking that:
 - (a) an answer that is given, or a statement or disclosure that is made, by the person in the course of giving evidence in specified proceedings, or
 - (b) the fact that the person discloses or produces a document or other thing in specified proceedings,being proceedings for an offence against a law of the State (whether an indictable offence or a summary offence), will not be used in evidence against the person.
- (2) If the Attorney General gives such an undertaking:
 - (a) an answer that is given, or a statement or disclosure that is made, by the person in the course of giving evidence in the specified proceedings, or
 - (b) the fact that the person discloses or produces a document or other thing in the specified proceedings,is not admissible in evidence against the person in any civil or criminal proceedings, other than proceedings in respect of the falsity of evidence given by the person.
- (3) Such an undertaking may be given conditionally or unconditionally.
- (4) Such an undertaking may not be given in respect of a summary offence that is not a prescribed summary offence, unless the Attorney General has consulted the Minister

administering the enactment or instrument under which the offence is created.

Part 5 Institution of proceedings

15 Signing of indictments

- (1) An indictment shall be signed:
 - (a) by the Attorney General, the Solicitor General or the Director of Public Prosecutions, or
 - (b) for and on behalf of the Attorney General or the Director of Public Prosecutions by:
 - (i) a Crown Prosecutor,
 - (ii) a Deputy Director of Public Prosecutions, or
 - (iii) a person authorised under subsection (2) to sign indictments.
- (2) The Director of Public Prosecutions may, by order in writing, authorise a person to sign indictments for and on behalf of the Director.
- (3) It shall be presumed, in the absence of evidence to the contrary, that an indictment signed by a person for and on behalf of the Attorney General or the Director of Public Prosecutions was signed by a person authorised to do so.
- (4) A certificate signed by the Director of Public Prosecutions to the effect that a specified person was authorised during a specified period to sign indictments for and on behalf of the Director is admissible in evidence in any legal proceedings and is evidence of the matters certified.

16 Name in which prosecutions may be instituted

Any prosecution or proceedings instituted by the Attorney General or the Director of Public Prosecutions in respect of any offence (whether an indictable offence or a summary offence) may be instituted in either the official name or the personal name of the Attorney General or the Director of Public Prosecutions.

17 Supreme Court or District Court may require indictment to be presented

- (1) In this section, **court** means the Supreme Court or District Court.
- (2) A court may order an indictment to be presented on the date fixed for the trial of a person in the court for an indictable offence, or on or before some other later date.
- (3) A court may order the presentation of an indictment whether or not the prosecutor is ready to proceed with the case.
- (4) A court may, if an indictment is not presented in accordance with its order, adjourn the proceedings or take such other action as it thinks appropriate in the circumstances

of the case.

- (5) The prosecutor has no right to an adjournment merely because an indictment has not been presented.
- (6) A court must, in exercising any power under this section, have regard to the fact that the Crown does not have a right of appeal if the accused person is acquitted.
- (7) This section does not affect the powers of the court under section 365 of the *Crimes Act 1900*.
- (8) This section extends to criminal proceedings commenced, but not concluded, before the commencement of this section.

18 (Repealed)

19 (Renumbered as sec 24)

Part 6 Sentencing by reference to outstanding charges

20 Definitions

(1) In this Part:

court means:

- (a) the Court of Criminal Appeal,
- (b) the Supreme Court,
- (c) the Land and Environment Court,
- (d) the District Court,
- (e) a Local Court, or
- (f) any other court which, or person who, exercises criminal jurisdiction.

penalty includes a sentence of imprisonment, an order for periodic detention, a fine and a community service order, but does not include an order or direction referred to in section 22.

(2) In this Part, a reference to imposing a penalty on a person includes a reference:

- (a) to making an order under section 556A of the *Crimes Act 1900* relating to the person, and
- (b) to deferring the imposition of a penalty on the person, and
- (c) to making a decision or an order requiring or permitting the person to enter into a recognizance, and

- (d) to making a decision or an order to remand the person in custody or to remand or release the person (whether or not on conditions), and
- (e) if the court concerned is the Children's Court—to dealing with the person under section 33 of the *Children (Criminal Proceedings) Act 1987*.

(3) This Part applies:

- (a) to a person who is found guilty of an offence committed before or after the commencement of this Part, and
- (b) so as to allow an offence committed before or after that commencement to be taken into account under this Part.

21 Outstanding charges may be taken into account

(1) If a person is found guilty of an offence and the court is satisfied that:

- (a) a document in the form prescribed for the purposes of this section is filed in the court, and
- (b) the document contains a list of one or more other offences with which the person has been charged but of which the person has not been convicted, and
- (c) the document has been signed by the person and:
 - (i) by the Director of Public Prosecutions, or
 - (ii) for and on behalf of the Director of Public Prosecutions, by a specified person, or a person of a specified class, authorised by order in writing by the Director of Public Prosecutions to sign documents under this section, or
 - (iii) by a prescribed person or a person of a prescribed class, and
- (d) a copy of the document has been given to the person found guilty, and
- (e) in all the circumstances it is proper to do so,

the court may, with the consent of the prosecutor and before dealing with the person for the offence of which the person has been found guilty, ask the person whether the person admits guilt in respect of all or any of the offences specified in the list and wishes them to be taken into account by the court in so dealing with the person.

(2) If the person:

- (a) admits guilt in respect of all or any of the offences specified in the list, and
- (b) wishes to have them taken into account by the court in dealing with the person for the offence of which the person has been found guilty,

the court may, if it thinks fit, in imposing a penalty on the person for the offence of which the person has been found guilty, take into account all or any of the offences in respect of which the person has admitted guilt.

- (3) If the court takes into account under this section all or any of the offences in respect of which the person has admitted guilt, the penalty imposed on the person for the offence of which the person has been found guilty shall not exceed the maximum penalty that the court would have been empowered to impose on the person for the offence if no offence had been so taken into account.
- (4) A court may take any offence into account under this section if it is of a kind for which the court has jurisdiction to impose a penalty, whether or not that jurisdiction requires the consent of the accused.
- (5) Despite subsection (4):
 - (a) an indictable offence punishable with penal servitude for life cannot be taken into account under this section, and
 - (b) the Court of Criminal Appeal, Supreme Court or District Court may take any summary offence into account under this section.
- (6) This section applies in relation to a document:
 - (a) that is in or to the effect of the form contained, before the commencement of this Part, in the Ninth Schedule to the *Crimes Act 1900*, and
 - (b) that was, before that commencement, filed in a court in accordance with section 447B of the *Crimes Act 1900*,

in the same way as it applies to a document in the form prescribed for the purposes of this section and signed in accordance with subsection (1) (c) that has been filed in the court.

22 Orders and directions relating to offences taken into account

- (1) If an offence is taken into account under section 21 in a case in which a document in the form prescribed for the purposes of that section is filed in a court, the court may make such orders or give such directions under any Act or law with respect to:
 - (a) restitution, and
 - (b) compensation, and
 - (c) costs, and
 - (d) forfeiture, and
 - (e) disqualification, and

(f) loss or suspension of a licence or privilege,

as it would have been empowered to make or give if the person had been convicted by the court of the offence when the offence was taken into account, but shall not otherwise impose any separate punishment for the offence.

- (2) If the court makes any such order or gives any such direction in respect of an offence taken into account, there shall be such rights of appeal in respect of the order or direction as there would have been if the order or direction had been made or given on the conviction of the person for that offence.
- (3) Any such order or direction in respect of an offence taken into account lapses, by force of this subsection, if the decision in respect of which the offence was taken into account is quashed or set aside.

23 Consequences of taking offences into account

- (1) If an offence is taken into account under section 21, the court shall certify, on the document filed under that section, that the offence was so taken into account.
- (2) Subsequently, no proceedings shall be taken or continued in respect of the offence unless the decision in respect of which the offence has been taken into account is quashed or set aside.
- (3) This section does not prevent offences taken into account under section 21 in deferring the imposition of a penalty from being taken into account under that section when imposing the penalty the imposition of which was deferred.
- (4) An admission of guilt made for the purposes of section 21 is not admissible in evidence in any proceedings relating:
 - (a) to the offence in respect of which the admission was made, or
 - (b) to any other offence specified in the list contained in the document filed in the court.
- (5) An offence taken into account under section 21 shall not, because of its being so taken into account, be regarded for any purpose as an offence of which a person has been convicted.
- (6) In or in relation to any criminal proceedings, reference may lawfully be made to, or evidence may lawfully be given of, the fact that an offence was taken into account under section 21 in imposing a penalty for an offence of which a person was found guilty if, in or in relation to those proceedings:
 - (a) reference may lawfully be made to, or evidence may lawfully be given of, the fact that the person was found guilty or convicted of the lastmentioned offence, and

- (b) had the person been found guilty or convicted of the offence so taken into account, reference could lawfully have been made to, or evidence could lawfully have been given of, the fact that the person had been found guilty or convicted of that offence.
- (7) The fact that an offence was taken into account under section 21 may be proved in the same manner as the decision in respect of which it was taken into account may be proved.
- (8) This section applies in relation to an offence certified under section 447B of the *Crimes Act 1900* as having been taken into account in the same way as it applies in relation to an offence certified under this section as having been taken into account.

Part 7 Correction of sentencing errors

24 Correction of sentencing errors

- (1) If a court has, in or in connection with any criminal proceedings (including proceedings on appeal):
 - (a) imposed a penalty that is contrary to law, or
 - (b) failed to impose a penalty that is required to be imposed by law,the court (whether or not differently constituted) may reopen the proceedings and, after giving the parties an opportunity of being heard, impose a penalty that is in accordance with the law (and, if necessary, amend any relevant conviction or order).
- (2) The court may reopen the proceedings on its own motion or on the application of a party to the proceedings.
- (3) This section applies to criminal proceedings whether or not a person has been convicted of an offence in those proceedings.
- (4) Subject to subsection (5), nothing in this section affects any right of appeal.
- (5) For the purposes of an appeal under any Act in respect of a penalty imposed in exercise of the powers conferred by this section, the time within which such an appeal is required to be made shall commence from the date on which the penalty is so imposed.
- (6) This section applies to a penalty imposed, or required to be imposed, whether before or after the commencement of this section.
- (7) In this section:
 - court** means:
 - (a) the Court of Criminal Appeal,

- (b) the Supreme Court,
- (c) the Land and Environment Court,
- (d) the District Court,
- (e) a Local Court, or
- (f) any other court which, or person who, exercises criminal jurisdiction.

penalty includes a sentence of imprisonment, an order for periodic detention, a fine, a community service order, a forfeiture, a disqualification, a loss or suspension of a licence or privilege and an order to pay costs or compensation.

Part 8 Reciprocal enforcement of fines against bodies corporate

25 Definitions

In this Part:

conviction means a conviction or order entered or made (before or after the commencement of this Part) in the exercise of summary jurisdiction in proceedings for an offence.

fine includes:

- (a) a pecuniary penalty, pecuniary forfeiture and pecuniary compensation, and
- (b) fees, charges and costs payable by a body corporate under an order made in proceedings in which a conviction was entered in respect of the body corporate.

New South Wales fine means a fine payable under a conviction of a New South Wales court.

reciprocating court means a court, or a court included in a class of courts, declared under section 26 to be a reciprocating court or a class of reciprocating courts.

relevant officer, in relation to a reciprocating court, means the registrar or other corresponding officer of the court.

State does not include the State of New South Wales, but includes a Territory.

26 Declaration of reciprocating court

Where a State has laws providing for enforcement in the State of a New South Wales fine against a body corporate, the Minister may, by notice in the Gazette:

- (a) declare a court which exercises summary jurisdiction in that State to be a reciprocating court, or

- (b) declare a class of courts which exercise summary jurisdiction in that State to be a class of reciprocating courts.

Editorial note—

See notice published in Gazette No 52 of 28.3.1991, p 2462.

27 Enforcement of fine

- (1) Where, under a conviction of a reciprocating court, a fine is payable by a body corporate having or appearing to have property in New South Wales and the registrar of the Local Court held for the district in which the body corporate has or appears to have property receives a request in writing from the relevant officer of the reciprocating court for the enforcement of the conviction, accompanied by:
 - (a) a copy, certified by the relevant officer to be correct, of the conviction, and
 - (b) a certificate under the hand of the relevant officer specifying the amount of the fine that remains unpaid,the registrar is required:
 - (c) to register the conviction by filing in the court the certified copy of the conviction, and
 - (d) to note, on the certified copy, the date of registration.
- (2) A conviction may be registered even though the amount of the fine that remains unpaid is greater than the amount which may be claimed in an action in a Local Court pursuant to the *Local Courts (Civil Claims) Act 1970*.
- (3) On registration of a conviction:
 - (a) the conviction is, for the purposes of this Part, to be taken to be a civil judgment of the Local Court entered up against the body corporate in the amount specified as unpaid in the certificate relating to the conviction, and
 - (b) the registrar is required to issue a writ of execution for the purpose of recovering the amount, and
 - (c) subject to this section, this Part applies to and in relation to the writ of execution, and the execution of the writ, as if the writ had been issued under section 58 of the *Local Courts (Civil Claims) Act 1970* in connection with a judgment of the court.
- (4) Where a request is made under this section in respect of a fine payable under a conviction of a reciprocating court and the registrar, after the request, receives a notification from the relevant officer of the reciprocating court of payment of an amount in satisfaction in whole or in part of the amount of the fine, the registrar must

note the particulars of the payment on the certified copy of the conviction filed in accordance with subsection (1) (c).

(5) Where:

(a) a writ of execution is issued as referred to in subsection (3) (b) in respect of a fine, and

(b) before execution of the writ, the registrar receives a notification of payment referred to in subsection (4) relating to the fine,

the registrar is required to notify the sheriff of the amount of the payment.

(6) If the amount of the fine and any costs and expenses relating to the issue and execution of the writ are paid in full, the registrar is required to withdraw the writ.

(7) If part of the amount of the fine remains unpaid, the writ has effect only in relation to the amount unpaid (and any costs and expenses relating to the issue and execution of the writ).

(8) If a sum of money is paid to the registrar in satisfaction of the whole or part of a fine payable under a conviction registered under subsection (1) (c), the registrar is required to remit the sum of money to the relevant officer of the reciprocating court concerned.

(9) For the purposes of this section, a document that purports to have been signed by the relevant officer of a reciprocating court is to be taken to have been so signed unless the contrary is proved.

28 Effect of enforcement by reciprocating court

A sum of money received by the registrar of a court from a reciprocating court in satisfaction of the whole or part of a New South Wales fine is to be applied by the registrar as if the sum had been paid to the registrar by the body corporate by which the fine was payable in satisfaction of the whole or part of the fine.

29 Registrar to notify payment of New South Wales fine

If:

(a) a conviction of a court under which a New South Wales fine is payable is registered by the relevant officer of a reciprocating court, and

(b) a sum of money is received by the registrar of the court (otherwise than from the relevant officer) in satisfaction of the whole or part of the fine,

the registrar is required, as soon as practicable, to notify the relevant officer of the amount of the payment.

Part 9 Trial by jury on indictment

30 Definition and application

(1) In this Part:

criminal proceedings means proceedings for the prosecution of persons on indictment.

(2) This Part extends to criminal proceedings commenced, but not concluded, before the commencement of this Part.

31 Trial by jury in criminal proceedings

Criminal proceedings in the Supreme Court or the District Court are to be tried by a jury, except as otherwise provided by this Part.

32 Trial by Judge in criminal proceedings

(1) An accused person in criminal proceedings in the Supreme Court or District Court must be tried by the Judge alone if:

- (a) the person so elects in accordance with this section, and
- (b) the Judge is satisfied that the person, before making the election, sought and received advice in relation to the election from a barrister or solicitor.

(2) An election may not be made unless:

- (a) all other accused persons in the trial also elect to be tried by the Judge alone, and
- (b) each election is made in respect of all offences with which the accused persons in the trial are charged.

(3) An election may be made only with the consent of the prosecutor.

(4) An election must be made before the date fixed for the person's trial in the Supreme Court or District Court.

(5) An accused person who elects to be tried by the Judge alone may, at any time before the date fixed for the person's trial, subsequently elect to be tried by a jury.

(6) Rules of court may be made with respect to elections under this section.

33 Verdict of single Judge

(1) A Judge who tries criminal proceedings without a jury may make any finding that could have been made by a jury on the question of the guilt of the accused person. Any such finding has, for all purposes, the same effect as a verdict of a jury.

- (2) A judgment by a Judge in any such case must include the principles of law applied by the Judge and the findings of fact on which the Judge relied.
- (3) If any Act or law requires a warning to be given to a jury in any such case, the Judge is to take the warning into account in dealing with the matter.

Part 10 Supreme or District Court may deal with summary offences related to indictable offences

34 Definitions and application

- (1) In this Part:

court means the Supreme Court or District Court.

related summary offence, in relation to an indictable offence, means a summary offence capable of being dealt with by a Local Court that arises from substantially the same circumstances as those from which the indictable offence has arisen.

- (2) This Part extends to proceedings commenced, but not concluded, before the commencement of this Part.

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

- (1) A court may, at the conclusion of the trial of an accused person for an indictable offence, deal with any related summary offence with which the accused person has been charged.
- (2) A court may deal with a related summary offence on its own motion, or on the application of the accused person or the prosecutor, but may not do so unless both the accused person and the prosecutor have consented to the offence being dealt with under this Part.
- (3) Nothing in this section requires a court to deal with a related summary offence under this Part.
- (4) A court may deal with a related summary offence with which an accused person has been charged even though it is not doing so in relation to a related summary offence with which another accused person in the same proceedings is charged.

36 Procedures for dealing with related summary offences

- (1) The court is to deal with a related summary offence under this Part without a jury and on the basis only of evidence given during the trial of the accused person for any indictable offence in the same proceedings and additional evidence given under this section.

- (2) The prosecutor or accused person may, with the leave of the court, call additional evidence in relation to the related summary offence.
- (3) In sentencing or otherwise dealing with a person for a related summary offence, the court has the same functions, and is subject to the same restrictions and procedures, as a Local Court constituted by a Magistrate.
- (4) Rules of court may be made with respect to related summary offences dealt with under this Part.

37 Remission of related summary offences to Local Courts

A court which is dealing with a related summary offence under this Part may, at any time, remit the matter to a Local Court.