



New South Wales

Criminal Procedure Legislation Amendment (Prosecution of Indictable Offences) Act 2022 No 49

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New South Wales

Criminal Procedure Legislation Amendment (Prosecution of Indictable Offences) Act 2022 No 49

Act No 49, 2022

An Act to make amendments to certain legislation about the procedure for the prosecution of indictable offences. [Assented to 18 October 2022]

The Legislature of New South Wales enacts—

1 Name of Act

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

2 Commencement

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

Schedule 1 Amendments

1.1 Criminal Procedure Act 1986 No 209

[1] Section 3 Definitions

Insert in alphabetical order in section 3(1)—

law enforcement or investigating officer, 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.

[2] Section 36B

Insert after section 36A—

36B Disclosures by law enforcement or investigating officers

- (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.
- (2) The duty of disclosure continues until one of the following happens—
 - (a) the prosecutor decides the accused person will not be prosecuted for the alleged offence,
 - (b) the prosecution is terminated,
 - (c) the accused person is convicted or acquitted.
- (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.
- (4) Subsection (3) does not affect any other legal obligation about the possession of the documents or other things.
- (5) The regulations may make provision about the duties of law enforcement or investigating officers under this section, including about—
 - (a) the recording of information, documents or other things, and
 - (b) verification of compliance with a duty imposed by this section.
- (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.
- (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 (*protected material*) that—
 - (a) is the subject of a claim of privilege, public interest immunity or statutory immunity, or
 - (b) would contravene a statutory publication restriction if provided.
- (8) The duty of a law enforcement or investigating officer in relation to protected material is to inform the prosecutor of—
 - (a) the existence of the material, and

- (b) the nature of the material and the claim or publication restriction relating to it.
- (9) However, a law enforcement or investigating officer must provide the prosecutor with protected material if the prosecutor requests it be provided.
- (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.

Note—The *Director of Public Prosecutions Act 1986*, section 15A imposes comparable disclosure requirements on law enforcement or investigating officers in relation to the Director of Public Prosecutions.

[3] Section 66 Charge certificates

Omit section 66(2)(b). Insert instead—

- (b) for an alleged offence for which there are duties of disclosure under the *Director of Public Prosecutions Act 1986*, section 15A—the prosecutor has received and considered verification of compliance about the duties, and
- (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.

[4] Section 66(2A)

Omit the subsection.

[5] Section 113, heading

Omit “**Director of Public Prosecutions**”. Insert instead “**prosecutor**”.

[6] Section 113(1)

Omit “Director of Public Prosecutions”. Insert instead “prosecutor”.

[7] Section 142 Prosecution’s notice

Omit “law enforcement officers” from section 142(1)(i).

Insert instead “law enforcement or investigating officers”.

[8] Section 142(3)

Omit the subsection.

[9] Schedule 2 Savings, transitional and other provisions

Insert at the end of the Schedule, with appropriate Part and clause numbering—

Part Provision consequent on enactment of Criminal Procedure Legislation Amendment (Prosecution of Indictable Offences) Act 2022

Application of amendments

- (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.

- (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.
- (3) In this clause—
amending Act means the *Criminal Procedure Legislation Amendment (Prosecution of Indictable Offences) Act 2022*.
commencement day, for an amendment made to another provision of this Act or the regulations under this Act, means the day on which the amendment commences.
existing DPP disclosure certificate 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.

1.2 Criminal Procedure Regulation 2017

[1] Clause 4 Information for Criminal Listing Director

Omit “prosecuting authority” wherever occurring in clause 4(1)(a), (3) and (4).
Insert instead “prosecutor”.

[2] Clauses 6(1), 7(1) and (4) and 9(2)

Omit “Director of Public Prosecutions” wherever occurring. Insert instead “prosecutor”.

[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.

[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.

1.3 Director of Public Prosecutions Act 1986 No 207

[1] Section 3 Definitions

Insert in alphabetical order in section 3(1)—

law enforcement or investigating officer, for an alleged offence, has the same meaning as in the *Criminal Procedure Act 1986*.

[2] Section 15A, heading

Insert “or investigating” after “law enforcement”.

[3] Section 15A(1) and (3)

Omit “Law enforcement officers” wherever occurring.

Insert instead “Law enforcement or investigating officers”.

[4] Section 15A(1A) and (7)

Omit “law enforcement officer” wherever occurring.

Insert instead “law enforcement or investigating officer”.

[5] Section 15A(4)–(6)

Omit “law enforcement officers” wherever occurring.

Insert instead “law enforcement or investigating officers”.

[6] Section 15A(1) and (3)

Omit “investigating” wherever occurring. Insert instead “for”.

[7] Section 15A(9), definition of “law enforcement officer”

Omit the definition.

1.4 Director of Public Prosecutions Regulation 2020

[1] Clause 5, heading

Insert “or investigating” after “law enforcement”.

[2] Clause 5(a) and (b)

Insert “or investigating” after “law enforcement” wherever occurring.

[3] Clause 5(c)

Omit “be signed and dated by the law enforcement officer’s”.

Insert instead “if the law enforcement or investigating officer is a law enforcement officer—be signed and dated by the law enforcement officer’s”.

[4] Clause 5(2)

Insert at the end of clause 5—

(2) In this clause—

law enforcement officer means a law enforcement or investigating officer who is—

- (a) a police officer, or
- (b) an officer of the New South Wales Crime Commission, or
- (c) an officer of the Law Enforcement Conduct Commission, or
- (d) an officer of the Independent Commission Against Corruption.

[5] Schedule 1 Disclosure certificate (for prosecutions and advisings)

Omit “law enforcement officer investigating”.

Insert instead “law enforcement or investigating officer investigating”.

[6] Schedule 1

Omit “I am aware that such claims”.

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”.

[7] Schedule 1

Omit the following—

*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.

Insert instead—

*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.

[Second reading speech made in—
Legislative Assembly on 21 September 2022
Legislative Council on 13 October 2022]