

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 Crimes (Appeal and Review) Act 2001:

(a) to enable a person acquitted of a serious offence in a retrial under the exception to the rule against double jeopardy to be again retried if the acquittal was tainted because of an administration of justice offence, and

(b) to provide that an appeal court must not dismiss a prosecution appeal against sentence, or impose a less severe sentence than it would otherwise consider appropriate, because of any element of double jeopardy involved in the respondent being sentenced again.

The Bill gives effect to proposals included in recommendations of the Double Jeopardy Law Reform Working Group that were agreed to by the Council of Australian Governments.

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.

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Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2009

Explanatory note

Schedule 1 Amendment of Crimes (Appeal and Review) Act 2001 No 120

Division 2 of Part 8 of the Crimes (Appeal and Review) Act 2001 allows an acquitted person to be retried if there is fresh and compelling evidence against the person or if the acquittal was tainted. An acquittal is tainted if the accused person or another person has been convicted of an administration of justice offence (such as perversion of the course of justice or perjury) in connection with the proceedings in which the person was acquitted. Schedule 1 [2] enables an application to be made for a further retrial of a person who was acquitted at a retrial if the acquittal was tainted.

Schedule 1 [1] provides that an appeal court must not:

(a) dismiss a prosecution appeal against sentence, or

(b) impose a less severe sentence on any such appeal than the court would otherwise consider appropriate,

because of any element of double jeopardy involved in the respondent being sentenced again. The existing law requires a court hearing a prosecution appeal against sentence to impose a sentence at the lower end of the range that could properly have been imposed by the sentencing judge.

Schedule 1 [3] enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

Schedule 1 [4] provides that the amendment in Schedule 1 [1] extends to appeals that are commenced but not finalised before the amendment.