



New South Wales

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

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.

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.



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Contents

	Page
1 Name of Act	2
2 Commencement	2
Schedule 1 Amendment of Crimes (Appeal and Review) Act 2001 No 120	3



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No , 2009

A Bill for

An Act to amend the *Crimes (Appeal and Review) Act 2001* to make further provision in relation to the principle of double jeopardy in criminal proceedings.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes (Appeal and Review) Amendment (Double Jeopardy) Act 2009*.

2 Commencement

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

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

[1] Section 68A

Insert after section 68:

**68A Double jeopardy not to be taken into account in prosecution
appeals against sentence**

- (1) 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.
- (2) This section extends to an appeal under the *Criminal Appeal Act
1912* and accordingly a reference in this section to an appeal
court includes a reference to the Court of Criminal Appeal.

[2] Section 105 Application for retrial—procedure

Omit section 105 (1). Insert instead:

- (1) Not more than one application for the retrial of an acquitted
person may be made under this Division in relation to an
acquittal.
- (1A) An application may be made for a further retrial of a person
acquitted in a retrial under this Part but only if it is made on the
basis that the acquittal at the retrial was tainted.

[3] Schedule 1 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

*Crimes (Appeal and Review) Amendment (Double Jeopardy) Act
2009*

[4] Schedule 1, Part 8	1
Insert after clause 15:	2
 Part 8 Provision consequent on enactment of Crimes (Appeal and Review) Amendment (Double Jeopardy) Act 2009	 3 4 5
 16 Application of amendment	 6
Section 68A, as inserted by the <i>Crimes (Appeal and Review) Amendment (Double Jeopardy) Act 2009</i> , extends to an appeal that was commenced but not finally determined before the insertion of the section.	 7 8 9 10