

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

The Crimes (Appeal and Review) Amendment (DNA Review Panel) Bill 2006 is cognate with this Bill.

Overview of Bill

The objects of this Bill are:

- (a) to enable a person acquitted of an offence to be retried (in the case of a life sentence offence) if there is fresh and compelling evidence of guilt, and
- (b) to enable a person acquitted of an offence to be retried (in the case of a 15 years or more sentence offence) if the acquittal was tainted by the commission of an administration of justice offence, and
- (c) to provide that the Crown may appeal against the acquittal of a person on a question of law where the acquittal was directed by the trial Judge or made at trial by a Judge without a jury.

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 a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the principal amendments to the Crimes (Local Courts Appeal and Review) Act 2001 set out in Schedule 1. That Act (referred to in this explanatory note as the Principal Act) is to be renamed the Crimes (Appeal and Review) Act 2001 as a consequence of the inclusion of the proposed amendments relating to the review of acquittals in any court.

Clause 4 is a formal provision giving effect to consequential, ancillary and minor amendments to the Principal Act and the Criminal Appeal Act 1912 set out in

Schedule 2.

Clause 5 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the Interpretation Act 1987 provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Principal amendments

Schedule 1 [1] inserts a definition of acquittal into the Principal Act in connection with the provisions relating to the retrial of acquitted persons. The definition makes it clear that “acquittal” extends to acquittals in appeal proceedings or at the direction of a court.

Schedule 1 [2] inserts a new Part 8 into the Principal Act dealing with acquittals (including the retrial of persons who have been acquitted and appeals on questions of law).

The new Part 8 contains the following provisions:

Division 1 Preliminary (proposed section 98).

Proposed section 98 defines words and expressions used in the Part. For the purposes of the Part, life sentence offence will, on the enactment of the Part, include the following offences:

- (a) murder (section 19A of the Crimes Act 1900),
- (b) an offence under section 61JA (1) of the Crimes Act 1900 (Aggravated sexual assault in company),
- (c) an offence under section 23 (2), 24 (2), 25 (2), 25 (2A), 26, 27 or 28 of the Drug Misuse and Trafficking Act 1985, being an offence that relates to a large commercial quantity of certain prohibited plants or drugs.

Division 2 Retrial after acquittal for very serious offence (proposed sections 99–106).

Proposed section 99 provides that the Division applies where a person is acquitted of an offence and according to the rules on double jeopardy the person is thereby precluded from being retried for the same offence. The Division applies to persons acquitted before the commencement of the Division.

Proposed section 100 enables the Court of Criminal Appeal to order an acquitted person to be retried for a life sentence offence if satisfied that:

- (a) there is fresh and compelling evidence against the acquitted person in relation to the offence, and
- (b) in all the circumstances it is in the interests of justice for the order to be made.

Proposed section 101 enables the Court of Criminal Appeal to order an acquitted person to be retried for an offence punishable for 15 years or more if satisfied that:

- (a) the acquittal is a tainted acquittal, and
- (b) in all the circumstances it is in the interests of justice for the order to be made.

Proposed section 102 defines fresh and compelling evidence. The evidence must be evidence that was not adduced at the earlier trial (and could not have been adduced with the exercise of reasonable diligence) and the evidence must be reliable, substantial and highly probative of the case against the acquitted person.

Proposed section 103 defines a tainted acquittal. The acquittal is tainted if there has been an administration of justice offence (eg bribery) committed in connection with the acquittal, and it is more likely than not that the accused person would have been convicted but for the commission of that offence.

Proposed section 104 sets out the matters to be considered by the Court of Criminal Appeal in determining whether it is in the interests of justice to order the retrial of an acquitted person (including whether it is likely the person will receive a fair retrial, the length of time since the acquittal and whether police or prosecutors have failed to act with reasonable diligence).

Proposed section 105 sets out the procedure to be followed on an application for a retrial. Not more than one application for a retrial may be made in respect of an acquittal.

Proposed section 106 deals with a retrial of an acquitted person ordered under the Division.

Division 3 Appeals on questions of law (proposed sections 107 and 108).

Proposed section 107 enables the Crown to appeal against an acquittal on a question of law if the jury was directed to acquit by the trial Judge or if the proceedings were tried by a Judge without a jury. If the Court of Criminal Appeal upholds the appeal, it may order a new trial, but cannot proceed to a conviction or order the court conducting a new trial to enter a conviction.

Proposed section 108 transfers to the Principal Act provisions of section 5A of the Criminal Appeal Act 1912 that allow the Crown to appeal to the Court of Criminal Appeal against an acquittal on a point of law without affecting the acquittal if the appeal is upheld.

Division 4 Miscellaneous (proposed sections 109–112).

Proposed section 109 requires the authorisation by the Director of Public Prosecutions of a police investigation into the commission of an offence by an acquitted person for the purposes of an application for a retrial under the Part.

Proposed section 110 provides a presumption in favour of bail if an acquitted person is arrested for the purposes of an application for retrial under the Part.

Proposed section 111 prohibits (without court approval) the publication of information about police investigations, applications for retrial and retrials under the Part.

Proposed section 112 provides that the Part does not affect other appeal and review rights.

Schedule 1 [3] requires the proposed new Part 8 to be reviewed after 5 years.

Schedule 2 Other amendments

Schedule 2.1 further amends the Crimes (Local Courts Appeal and Review) Act 2001.

Schedule 2.1 [2] renames the Crimes (Local Courts Appeal and Review) Act 2001 as the Crimes (Appeal and Review) Act 2001 as a consequence of the inclusion of the proposed amendments relating to the review of acquittals in any court. Provisions relating to ordinary appeals against sentence or conviction to

the Court of Criminal Appeal remain in the Criminal Appeal Act 1912.

Schedule 2.1 [1] makes a consequential amendment.

Schedule 2.1 [3] renumbers a Part and sections of the Principal Act to facilitate the inclusion of the additional provisions into the Principal Act.

Schedule 2.1 [4] enables regulations of a savings and transitional nature to be made consequent on the enactment of the proposed Act.

Schedule 2.2 amends the Criminal Appeal Act 1912.

Schedule 2.2 [1] repeals section 5A (2) and (3) of the Act as a consequence of the transfer of those provisions to Part 8 of the Principal Act. Schedule 2.2 [2] amends section 5B of the Act to enable the Court of Criminal Appeal to set aside a conviction or acquittal entered by the District Court on appeal from a Local Court as a result of the determination of a question of law referred by the District Court to the Court of Criminal Appeal after the District Court has dealt with a matter. Schedule 2.2 [3] makes a consequential amendment.