

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

This Bill is cognate with the Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2006.

#### Overview of Bill

The objects of this Bill are:

- (a) to establish a DNA Review Panel to deal with an application from a person who was convicted of an offence before the introduction of this Bill into Parliament and whose claim of innocence may be affected by DNA information obtained from biological material, and to refer appropriate cases to the Court of Criminal Appeal for review, and
- (b) to impose a duty on members of NSW Police and other State authorities to retain, in certain circumstances, evidence containing biological material in connection with the investigation or prosecution of serious offences in respect of which convicted persons may make applications to the DNA Review Panel, and
- (c) to transfer from the Crimes Act 1900 some related provisions dealing with the review of convictions.

#### 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 by the cognate Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2006.

**Clause 4** is a formal provision giving effect to the amendments to the other Acts 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 new Part 7 into the Principal Act to deal with the proposed DNA Review Panel. The new Part will also deal with related provisions dealing with the review of convictions and sentences following a petition to the Governor or application to the Supreme Court (transferred from Part 13A of the Crimes Act 1900 by Schedule 2.1 to this Bill—the transferred provisions).

The new Part 7 contains the following provisions:

##### Division 1 Preliminary

**Proposed section 74** defines words and expressions used in the Part.

**Proposed section 75** transfers from Part 13A of the Crimes Act 1900 the provisions of section 474O that provide for the jurisdiction of the Supreme Court under the transferred provisions to be exercised by the Chief Justice or a Judge of that Court authorised by the Chief Justice.

**Divisions 2–5** contain the transferred provisions.

##### Division 6 Applications to DNA Review Panel

**Proposed section 89** deals with applications to the DNA Review Panel by eligible convicted persons. A convicted person is eligible to make an application if:

- (a) the person was convicted before the introduction of this Bill into Parliament of an offence punishable

by imprisonment for life or for 20 years or more or punishable by a lesser period if the Panel considers that there are special circumstances, and

(b) the person is still in custody or released on parole (or subject to detention or supervision under the Crimes (Serious Sex Offenders) Act 2006) in connection with the offence.

The convicted person is eligible to make an application only if the claim of innocence may be affected by DNA information obtained from biological material specified in the application.

**Proposed section 90** establishes the proposed DNA Review Panel, consisting of 6 members appointed by the Governor with qualifications or nominated as specified in the proposed section.

**Proposed section 91** sets out the functions and powers of the DNA Review Panel. Generally, the Panel will consider applications from eligible convicted persons whose claim of innocence may be affected by DNA information obtained from biological material, arrange searches for biological material specified in the application and its DNA testing and refer cases to the Court of Criminal Appeal for a review of conviction following the receipt of DNA test results. The Panel may also report to the Minister on systems, policies and strategies for using DNA technology to assist in the assessment of claims of innocence.

**Proposed section 92** deals with applications to the DNA Review Panel by eligible convicted persons. If the Panel is satisfied that the applicant is an eligible convicted person, it may arrange for appropriate searches of specified biological material and DNA testing and prepare a report on its findings.

**Proposed section 93** enables the DNA Review Panel to refuse to deal with an application, and in particular requires it to do so, if the matter has already been dealt with or if the biological material specified in the application does not exist or cannot be found. In addition, an application may be deferred if relevant proceedings are pending or the application does not provide sufficient information.

**Proposed section 94** authorises the DNA Review Panel to refer a case to the Court of Criminal Appeal for consideration of whether the conviction should be set aside if the Panel is of the opinion that there is reasonable doubt as to the guilt of the convicted person.

**Proposed section 95** requires the DNA Review Panel to inform the applicant and registered victims of the offence of a decision to search for and DNA test biological material and its determination of the application, and permits the Panel to provide information about the application to certain public officials. The proposed section also makes it an offence if a person discloses information acquired as a member of the Panel (or to assist the Panel) except in connection with the official functions of the Panel or in other authorised circumstances.

**Proposed section 96** imposes a duty on members of NSW Police and other State authorities to retain physical evidence comprising or containing biological material obtained in connection with the investigation or prosecution of the offences for which eligible convicted persons were convicted (being offences punishable by imprisonment for life or for 20 years or more). Provision is made for exceptions from the duty (eg a court requires the material to be returned to the owner; the size and nature of the material make it impracticable to retain (so long as a sample is taken); the material has already been subject to DNA testing; the sentence of the convicted person expires). The destruction of or tampering with any such material that is required to be retained will be an offence (Maximum penalty: Imprisonment for 10 years).

**Proposed section 97** is a sunset provision with respect to the DNA Review Panel (and related provisions). The Panel will cease to operate 7 years after its establishment (with the option for the Panel to be extended for a further 3 years following a statutory review of the operation of the Panel to be conducted after 5 years of operation).

**Schedule 1 [2]** inserts a new section 117A to provide that offences against the Principal Act are to be dealt with by a Local Court as summary offences.

**Schedule 1 [3]** enables regulations of a savings and transitional nature to be made consequent on the enactment of the proposed Act.

**Schedule 1 [4]** inserts savings and transitional provisions consequent on the enactment of the proposed Act.

**Schedule 1 [5]** inserts Schedule 2, which contains standard provisions relating to the members and procedure of the proposed DNA Review Panel.

**Schedule 2** Amendment of other Acts

**Schedule 2.1** amends the Crimes Act 1900 for the purpose of transferring, and consequentially amending, Part 13A (relating to the review of convictions and sentences) to Part 7 of the Principal Act.

**Schedule 2.2** amends the Crimes (Forensic Procedures) Act 2000 to make consequential amendments relating to that transfer.