

Explanatory note

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

Overview of Bill

The objects of this Bill are as follows:

(a) to amend the Crimes (Appeal and Review) Act 2001 (the principal Act) so as:

(i) to allow an appeal court to set aside a conviction for the purpose of making an order under section 10 of the Crimes (Sentencing Procedure) Act 1999, and

(ii) to make it clear that a person may appeal against both a conviction and sentence, and

(iii) to provide that an appeal against conviction is to be by way of rehearing on the evidence given in the original Local Court proceedings rather than on the basis of certified transcripts, and

(iv) to enable an appeal court to remit certain matters to the original Local Court on an appeal, and

(v) to provide that an appeal against certain suspensions and disqualifications of driver licences does not automatically result in the stay of the suspensions or disqualifications, and

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(vi) to remove the current requirement that an appeal court direct that costs be paid to the registrar of a Local Court, and

(vii) to require appeals made to the Land and Environment Court to be lodged with the Registrar of that Court rather than with the registrar of a Local Court,

(b) to amend the Crimes (Domestic and Personal Violence) Act 2007 so as:

(i) to require the District Court on certain appeals against orders made under that Act to make interim apprehended domestic violence orders or interim apprehended personal violence orders (as the case requires), and

(ii) to allow a person who has had an application for an apprehended violence order dismissed in their absence to apply for the annulment of that dismissal,

(c) to amend the Criminal Procedure Act 1986 to enable certain accused persons to rely on written pleas instead of attending personally at certain Local Court hearings,

(d) to amend the Crimes (Domestic and Personal Violence) Act 2007, the Local Courts Act 1982 and the Local Court Act 2007 to make it clear that the provisions of the principal Act relating to appeals against conviction apply to certain appeals under those Acts.

The amendments described above give effect to recommendations that were made in the report tabled in Parliament in September 2008 as a result of a review of the principal Act carried out under section 120 of that Act.

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.

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

Schedule 1 [1] amends section 3 of the principal Act to provide that, when varying a sentence, an appeal court may set aside a conviction for the purpose of making an order under section 10 of the Crimes (Sentencing Procedure) Act 1999. The setting aside of any such conviction for that purpose does not set aside the finding of guilt that gave rise to that conviction.

Schedule 1 [2] amends section 11 of the principal Act to make it clear that a person may appeal against both a conviction and the sentence imposed in relation to that conviction.

Currently, section 11A of the principal Act allows a person who is sentenced while not present at the Court to apply for the annulment of the sentence and, if the Explanatory note page 3

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annulment is not granted, the person may appeal to the District Court against the refusal to grant the annulment of the sentence.

Schedule 1 [3] amends section 11 of the principal Act to provide that a person who has an application for the annulment of a sentence dismissed by the Local Court may appeal to the District Court against the sentence rather than appealing against the refusal to grant the annulment. Schedule 1 [4] amends section 11A of the principal Act to remove the right to appeal against the Local Court's refusal to grant the annulment of a sentence. Schedule 1 [5] makes a consequential amendment.

Schedule 1 [6] amends section 18 of the principal Act to make it clear that an appeal to the District Court against a conviction is to be by way of rehearing on the evidence that was before the original court rather than on the basis of certified transcripts of the original proceedings. Schedule 1 [10] makes a similar amendment to section 37 of the principal Act in relation to an appeal to the Land and Environment Court against a conviction. Schedule 1 [7] and [11] make consequential amendments.

Currently, section 20 of the principal Act provides that the District Court may determine an appeal against conviction by setting aside the conviction or by dismissing the appeal. Schedule 1 [8] amends that section to allow the District Court to determine such an appeal by remitting the matter back to the original Local Court for redetermination where the conviction was made in the accused person's absence. The amendment also provides that the District Court may issue directions in relation to the redetermination of the matter by the Local Court. Schedule 1 [12] makes a similar amendment to section 39 of the principal Act in relation to the Land and Environment Court's determination of an appeal against conviction.

Schedule 1 [9] and [13] amend sections 34 and 44 of the principal Act, respectively, to provide that an appeal to the Land and Environment Court is to be lodged with the Registrar of the Land and Environment Court rather than the registrar of a Local Court.

Schedule 1 [14] amends section 48 of the principal Act to provide that the Land and Environment Court may determine an appeal against an order referred to in section 42 (2B) of the principal Act by setting aside the order and making some other order, by setting aside the order and remitting the matter to the Local Court or by dismissing the appeal.

Section 63 of the principal Act provides that, on the lodgment of an appeal, certain sentences and penalties are automatically stayed until the appeal is finally determined. Schedule 1 [15] amends that section to provide that the automatic stay does not apply in respect of the suspension or disqualification of a driver licence if the licence was, immediately before the suspension or disqualification, suspended under Division 4 of Part 5.4 of the Road Transport (General) Act 2005 for the offence to which the appeal relates. The proposed amendment to section 63 of the principal Act also provides that the appeal court may order that any such suspension or disqualification be stayed if the court considers it appropriate in the circumstances.

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Schedule 1 [16] amends section 72 of the principal Act to remove the requirement that, on making an order for costs, an appeal court must direct that the costs be paid

to the registrar of the original Local Court to allow the Court to direct that costs are to be paid directly to the other party to the proceedings.

Schedule 1 [17] amends clause 1 of Schedule 1 to the principal Act to enable the Governor to make regulations of a savings and transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [18] inserts a new Part in Schedule 1 to the principal Act containing a provision of a transitional nature consequent on the enactment of the proposed Act.

Schedule 2 Amendment of other Acts

Schedule 2.1 Crimes (Domestic and Personal Violence) Act 2007 No 80

Currently, section 84 of the Crimes (Domestic and Personal Violence) Act 2007 provides that an application for the annulment of an apprehended violence order made by the Local Court or Children's Court, or an appeal against a conviction or sentence, is to be made in the same way as an application for the annulment of a conviction or sentence, or appeal against a conviction or sentence, is made under the Crimes (Appeal and Review) Act 2001.

Schedule 2.1 [1] amends section 84 of the Crimes (Domestic and Personal Violence) Act 2007 to make it clear that such an application or appeal is to be made in the same way as an application for the annulment of a conviction, or appeal against a conviction, is made under the Crimes (Appeal and Review) Act 2001, rather than in the same way as an application for the annulment of a sentence, or appeal against a sentence, under that Act.

Schedule 2.1 [2] amends section 84 of the Crimes (Domestic and Personal Violence) Act 2007 to allow a person who has had an application for an apprehended violence order dismissed to apply for the annulment of the dismissal, but only if the person was not in attendance when the application was dismissed.

Schedule 2.1 [3] amends section 84 of the Crimes (Domestic and Personal Violence) Act 2007 to provide that, if the District Court allows an appeal against the refusal to annul an apprehended violence order and remits the matter to the Local Court, the District Court is to make an interim apprehended domestic violence order or interim apprehended personal violence order unless the Court is satisfied that it is not necessary to do so.

Schedule 2.2 Criminal Procedure Act 1986 No 209

Schedule 2.2 amends section 182 of the Criminal Procedure Act 1986 to provide that a person who submits a written plea under that section not later than 7 days before the date that the person is required to attend a Local Court is not required to attend the Court on that date and is taken to have attended the Court on that date.

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Schedule 2.3 Local Court Act 2007 No 93

Schedule 2.3 amends section 70 of the Local Court Act 2007 to provide that an application for an annulment in relation to an order, or an appeal against an order, is to be made in the same way as an application for the annulment of a conviction, or appeal against a conviction, is made under the Crimes (Appeal and Review) Act 2001. Currently, such an application or appeal is to be made in the same way as an application for the annulment of a sentence, or an appeal against a sentence.

Schedule 2.4 Local Courts Act 1982 No 164

Schedule 2.4 amends section 64 of the Local Courts Act 1982 to provide that an application for an annulment in relation to an order, or an appeal against an order, is to be made in the same way as an application for the annulment of a conviction, or appeal against a conviction, is made under the Crimes (Appeal and Review) Act 2001. Currently, such an application or appeal is to be made in the same way as an application for the annulment of a sentence, or an appeal against a sentence.