



New South Wales

# Crimes (Appeal and Review) Amendment Bill 2009

## 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

- (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

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.

**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.

**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.



First print



New South Wales

# Crimes (Appeal and Review) Amendment Bill 2009

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New South Wales

# Crimes (Appeal and Review) Amendment Bill 2009

No. , 2009

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## A Bill for

An Act to amend the *Crimes (Appeal and Review) Act 2001* to make further provision with respect to appeals and applications for annulments; and for other purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Crimes (Appeal and Review) Amendment Act 2009</i> .	3
<b>2 Commencement</b>	4
(1) This Act commences on the date of assent to this Act, except as provided by subsection (2).	5 6
(2) Schedule 1 [15] to this Act commences on a day to be appointed by proclamation.	7 8

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<b>Schedule 1</b>	<b>Amendment of Crimes (Appeal and Review) Act 2001 No 120</b>	1
		2
<b>[1] Section 3 Definitions</b>		3
Insert after section 3 (3):		4
(3A) Without limiting subsection (3), a power conferred on an appeal court under this Act to vary a sentence includes the power to make an order under section 10 of the <i>Crimes (Sentencing Procedure) Act 1999</i> and, for that purpose, to set aside a conviction made by the original Local Court (without setting aside the finding of guilt on which the conviction is based) to enable the order to be made.		5 6 7 8 9 10 11
<b>[2] Section 11 Appeals as of right</b>		12
Insert “(or both)” after “sentence” in section 11 (1).		13
<b>[3] Section 11 (1B)</b>		14
Insert after section 11 (1A):		15
(1B) Any person whose application under section 4 for annulment of a sentence has been refused by the Local Court may appeal to the District Court against the sentence.		16 17 18
<b>[4] Section 11A Appeals as of right against Local Court’s refusal of application for annulment of conviction</b>		19 20
Omit “or sentence” from section 11A (1) and (3), wherever occurring.		21
<b>[5] Section 16A Determination of appeals against Local Court’s refusal of application for annulment of conviction</b>		22 23
Omit “the sentence concerned” from section 16A (2).		24
Insert instead “any sentence relating to the conviction concerned”.		25
<b>[6] Section 18 Appeals against conviction to be by way of rehearing on the evidence</b>		26 27
Omit section 18 (1). Insert instead:		28
(1) An appeal against conviction is to be by way of rehearing on the basis of evidence given in the original Local Court proceedings, except as provided by section 19.		29 30 31
<b>[7] Section 18 (3)</b>		32
Omit “certified”.		33

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<b>[8] Section 20 Determination of appeals</b>	1
Insert at the end of section 20 (1) (b):	2
, or	3
(c) in the case of an appeal made with leave under section 12 (1)—by setting aside the conviction and remitting the matter to the original Local Court for redetermination in accordance with any directions of the District Court.	4 5 6 7
<b>[9] Section 34 Lodgment of appeals and applications for leave to appeal</b>	8
Omit “registrar of any Local Court” from section 34 (1) (a) and (3) (a), wherever occurring.	9 10
Insert instead “Registrar of the Land and Environment Court”.	11
<b>[10] Section 37 Appeals to be by way of rehearing on the evidence</b>	12
Omit section 37 (1). Insert instead:	13
(1) An appeal against conviction is to be by way of rehearing on the basis of evidence given in the original Local Court proceedings, except as provided by section 38.	14 15 16
<b>[11] Section 37 (3)</b>	17
Omit “certified”.	18
<b>[12] Section 39 Determination of appeals</b>	19
Insert at the end of section 39 (1) (b):	20
, or	21
(c) in the case of an appeal made with leave under section 32 (1)—by setting aside the conviction and remitting the matter to the original Local Court for redetermination in accordance with any directions of the Land and Environment Court.	22 23 24 25 26
<b>[13] Section 44 Lodgment of appeals and applications for leave to appeal</b>	27
Omit “any Local Court” from section 44 (1) and (3), wherever occurring.	28
Insert instead “the Land and Environment Court”.	29
<b>[14] Section 48 Determination of appeals</b>	30
Insert after section 48 (2):	31
(3) The Land and Environment Court may determine an appeal against an order referred to in section 42 (2B):	32 33

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	(a) by setting aside the order and making such other order as it thinks just, or	1 2
	(b) by setting aside the order and remitting the matter to the original Local Court for redetermination in accordance with any directions of the Land and Environment Court, or	3 4 5
	(c) by dismissing the appeal.	6
<b>[15]</b>	<b>Section 63 Stay of execution of sentence pending determination of appeal</b>	7 8
	Insert after section 63 (2):	9
	(2A) Subsection (2) does not operate to stay a suspension or disqualification of a driver licence that arose as the consequence of a conviction if, immediately before the proceedings giving rise to the conviction, a suspension was in force under Division 4 of Part 5.4 of the <i>Road Transport (General) Act 2005</i> for the offence to which the conviction relates.	10 11 12 13 14 15
	(2B) However, an appeal court may order that a suspension or disqualification referred to in subsection (2A) be stayed if the court considers a stay to be appropriate in the circumstances.	16 17 18
<b>[16]</b>	<b>Section 72 Orders for costs</b>	19
	Omit section 72 (a).	20
<b>[17]</b>	<b>Schedule 1 Savings, transitional and other provisions</b>	21
	Insert at the end of clause 1 (1):	22
	<i>Crimes (Appeal and Review) Amendment Act 2009</i>	23
<b>[18]</b>	<b>Schedule 1, Part 7</b>	24
	Insert after Part 6:	25
	<b>Part 7 Provision consequent on enactment of Crimes (Appeal and Review) Amendment Act 2009</b>	26 27 28
	<b>15 Application of amendments</b>	29
	Any amendment made by the <i>Crimes (Appeal and Review) Amendment Act 2009</i> applies only in respect of appeals, applications for leave to appeal and applications for annulment made after the commencement of the amendment.	30 31 32 33

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<b>Schedule 2</b>	<b>Amendment of other Acts</b>	1
<b>2.1</b>	<b>Crimes (Domestic and Personal Violence) Act 2007 No 80</b>	2
<b>[1]</b>	<b>Section 84 Review and appeal provisions concerning making etc of apprehended violence orders</b>	3 4
	Omit “or sentence” from section 84 (1) and (3) (a), wherever occurring.	5
<b>[2]</b>	<b>Section 84 (1A) and (1B)</b>	6
	Insert after section 84 (1):	7
	(1A) A person who applied to a Local Court or the Children’s Court for an apprehended violence order may apply to the Court for the annulment of the dismissal of the application for the order by the Court, but only if the person was not in attendance before the Court when the application was dismissed.	8 9 10 11 12
	(1B) A Local Court or the Children’s Court may grant an application for an annulment made under subsection (1A) if it is satisfied that, having regard to the circumstances of the case, there is just cause for doing so. If such an application is granted, the Court may deal with the application for the apprehended violence order as if the application for the order had not been dismissed.	13 14 15 16 17 18
<b>[3]</b>	<b>Section 84 (5B)</b>	19
	Insert after section 84 (5A):	20
	(5B) If the District Court allows an appeal made under this section against the refusal to annul an apprehended violence order and remits the matter to the Local Court, the District Court must, unless the District Court is satisfied that it is not necessary to do so, make an interim court order under Part 6 as if an application for such an order had been duly made.	21 22 23 24 25 26
<b>2.2</b>	<b>Criminal Procedure Act 1986 No 209</b>	27
	<b>Section 182 Written pleas</b>	28
	Omit section 182 (3). Insert instead:	29
	(3) An accused person who lodges a notice under this section with the registrar not later than 7 days before the date on which the person is required to first attend before a Local Court:	30 31 32
	(a) is not required to attend the Court on that date, and	33
	(b) is taken to have attended the Court on that date.	34

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<b>2.3 Local Court Act 2007 No 93</b>	1
<b>Section 70 Appeals</b>	2
Omit “sentence” from section 70 (1), (3) and (4), wherever occurring.	3
Insert instead “conviction”.	4
<b>2.4 Local Courts Act 1982 No 164</b>	5
<b>Section 64 Appeals</b>	6
Omit “sentence” from section 64 (1), (2) and (3), wherever occurring.	7
Insert instead “conviction”.	8