

FIRST PRINT

CRIMINAL APPEAL (AMENDMENT) BILL 1987

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

This Bill is cognate with the Supreme Court (Appeals) Amendment Bill 1987.

The object of this Bill is to confer certain rights of appeal to the Court of Criminal Appeal against an interlocutory judgment or order (such as on an application for a stay of proceedings)—

- (a) in criminal proceedings in the Supreme Court or the District Court; or
- (b) in proceedings in the Supreme Court or the District Court on a committal for sentence under section 51A of the Justices Act 1902 following a plea of guilty.

The Bill also proposes to enable the Court of Criminal Appeal to remit particular matters or issues for determination of the Court of first instance.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the proposed Act to commence on 18 December 1987.

Clause 3 provides for the Criminal Appeal Act 1912 to be amended in accordance with Schedule 1.

Schedule 1 (1) makes an amendment consequential on that proposed by Schedule 1 (2).

Schedule 1 (2) provides for an appeal to the Court of Criminal Appeal against an interlocutory judgment or order (such as a stay of proceedings or a refusal of such a stay) in proceedings (including committal proceedings) for the prosecution of offenders on indictment in the Supreme Court or the District Court. The Attorney General or the Director of Public Prosecutions would be able to appeal as of right (this is the present position on a stay of proceedings). Any other appeal would be by leave of the Court of Criminal Appeal or on a certificate by the trial judge and would replace the present right of appeal from the District Court (but not the Supreme Court) to the Court of Appeal.

Criminal Appeal (Amendment) 1987

Schedule 1 (3) adds to the supplementary powers of the Court of Criminal Appeal by enabling it to remit matters or issues for determination by the Court of first instance.

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TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Act No. 16, 1912

SCHEDULE 1—AMENDMENTS

CRIMINAL APPEAL (AMENDMENT) BILL 1987

NEW SOUTH WALES



No. , 1987

A BILL FOR

An Act to amend the Criminal Appeal Act 1912 to provide for an appeal to the Court of Criminal Appeal against an interlocutory judgment or order in criminal proceedings in the Supreme Court or District Court; and for other purposes.

Criminal Appeal (Amendment) 1987

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Criminal Appeal (Amendment) Act 1987.

5 Commencement

2. This Act shall commence on 18 December 1987.

Amendment of Act No. 16, 1912

3. The Criminal Appeal Act 1912 is amended as set out in Schedule 1.

SCHEDULE 1—AMENDMENTS

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(Sec. 3)

(1) Section 5C (**Appeal against quashing of indictment**)—

Omit "or stayed".

(2) Section 5F—

After section 5E, insert:

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Appeal against interlocutory judgment or order

5F. (1) This section applies to—

(a) proceedings (including committal proceedings) for the prosecution of offenders on indictment in the Supreme Court or in the District Court; and

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(b) proceedings under section 51A of the Justices Act 1902.

(2) The Attorney General or the Director of Public Prosecutions may appeal to the Court of Criminal Appeal against an interlocutory judgment or order given or made in proceedings to which this section applies and to which the Crown is a party.

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(3) Any other party to proceedings to which this section applies may appeal to the Court of Criminal Appeal against an interlocutory judgment or order given or made in the proceedings—

(a) if the Court of Criminal Appeal gives leave to appeal; or

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(b) if the judge of the court of trial certifies that the judgment or order is a proper one for determination on appeal.

(4) An appeal under this section shall, unless the Court of Criminal Appeal gives leave to adduce fresh, additional or substituted evidence, be determined on the evidence (if any) given in the proceedings to which the appeal relates.

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(5) The Court of Criminal Appeal may—

Criminal Appeal (Amendment) 1987

SCHEDULE 1—AMENDMENTS—*continued*

(a) affirm or vacate the judgment or order appealed against;
or

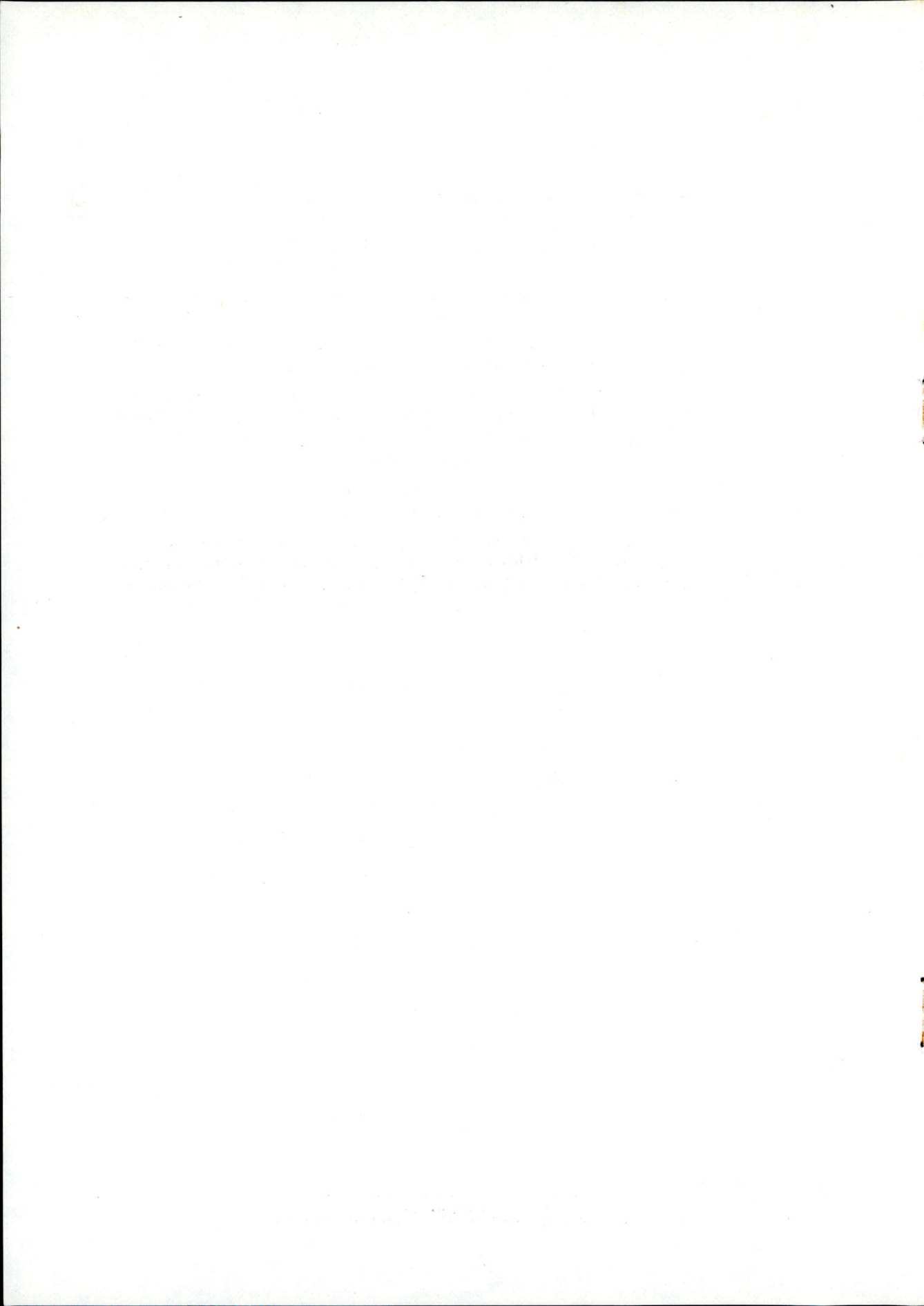
(b) give or make an interlocutory judgment or order instead
of the judgment or order appealed against.

5 (6) If leave to appeal under this section is refused by the Court
of Criminal Appeal, the refusal does not preclude any other appeal
following a conviction on the matter to which the refused
application for leave to appeal related.

(3) Section 12 (**Supplemental powers of the court**)—

10 At the end of the section, insert:

(2) The Court of Criminal Appeal may remit a matter or issue
to a court of trial for determination and may, in doing so, give
any directions subject to which the determination is to be made.



CRIMINAL APPEAL (AMENDMENT) ACT 1987 No. 251

NEW SOUTH WALES



TABLE OF PROVISIONS

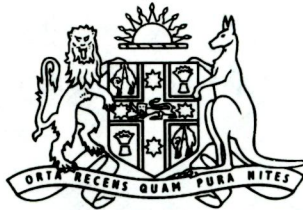
1. Short title
2. Commencement
3. Amendment of Act No. 16, 1912

SCHEDULE 1—AMENDMENTS



CRIMINAL APPEAL (AMENDMENT) ACT 1987 No. 251

NEW SOUTH WALES



Act No. 251, 1987

An Act to amend the Criminal Appeal Act 1912 to provide for an appeal to the Court of Criminal Appeal against an interlocutory judgment or order in criminal proceedings in the Supreme Court or District Court; and for other purposes. [Assented to 16 December 1987]

Criminal Appeal (Amendment) 1987

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Criminal Appeal (Amendment) Act 1987.

Commencement

2. This Act shall commence on 18 December 1987.

Amendment of Act No. 16, 1912

3. The Criminal Appeal Act 1912 is amended as set out in Schedule 1.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Section 5C (**Appeal against quashing of indictment**)—

Omit "or stayed".

(2) Section 5F—

After section 5E, insert:

Appeal against interlocutory judgment or order

5F. (1) This section applies to—

- (a) proceedings (including committal proceedings) for the prosecution of offenders on indictment in the Supreme Court or in the District Court; and
- (b) proceedings under section 51A of the Justices Act 1902.

(2) The Attorney General or the Director of Public Prosecutions may appeal to the Court of Criminal Appeal against an interlocutory judgment or order given or made in proceedings to which this section applies and to which the Crown is a party.

(3) Any other party to proceedings to which this section applies may appeal to the Court of Criminal Appeal against an interlocutory judgment or order given or made in the proceedings—

- (a) if the Court of Criminal Appeal gives leave to appeal; or
- (b) if the judge of the court of trial certifies that the judgment or order is a proper one for determination on appeal.

(4) An appeal under this section shall, unless the Court of Criminal Appeal gives leave to adduce fresh, additional or substituted evidence, be determined on the evidence (if any) given in the Supreme Court or District Court.

(5) The Court of Criminal Appeal may—

Criminal Appeal (Amendment) 1987

SCHEDULE 1—AMENDMENTS—*continued*

- (a) affirm or vacate the judgment or order appealed against;
or
 - (b) give or make an interlocutory judgment or order instead
of the judgment or order appealed against.
 - (6) If leave to appeal under this section is refused by the Court
of Criminal Appeal, the refusal does not preclude any other appeal
following a conviction on the matter to which the refused
application for leave to appeal related.
- (3) Section 12 (**Supplemental powers of the court**)—
At the end of the section, insert:
- (2) The Court of Criminal Appeal may remit a matter or issue
to a court of trial for determination and may, in doing so, give
any directions subject to which the determination is to be made.





