

FIRST PRINT

**CRIMES LEGISLATION (REVIEW OF CONVICTIONS)  
AMENDMENT BILL 1993**

NEW SOUTH WALES



**EXPLANATORY NOTE**

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

In addition to any rights of appeal that may otherwise exist, criminal convictions are reviewable in accordance with the provisions of section 475 of the Crimes Act 1900 (which provides for the conduct of inquiries into doubtful convictions) and section 26 of the Criminal Appeal Act 1912 (which provides for the referral of doubtful cases to the Court of Criminal Appeal for review or comment).

The object of this Bill is to amend the Crimes Act 1900 and the Criminal Appeal Act 1912 so as to repeal and re-enact those provisions and, in so doing:

- (a) to entitle a person who has been granted a free pardon in respect of a conviction to apply to the Court of Criminal Appeal for a review of the conviction; and
- (b) to enable the Governor and the Supreme Court to refuse to consider vexatious applications for an inquiry into a conviction; and
- (c) to allow persons in respect of whom a special finding of guilt under the Mental Health (Criminal Procedure) Act 1990 has been made to apply for an inquiry into that finding as if it were a conviction; and
- (d) to broaden the powers of a prescribed person (that is, a judicial officer or a justice of the peace) with respect to the conduct of an inquiry; and
- (e) to enable a prescribed person conducting an inquiry to refer a case to the Court of Criminal Appeal if of the opinion that there is a reasonable doubt as to the guilt of the convicted person concerned.

The re-enacted provisions are all contained in the new Part 13A of the Crimes Act 1900, as proposed to be inserted by Schedule 1 (3).

The Bill makes other amendments of a minor, consequential or ancillary nature and also contains certain savings and transitional provisions.

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*Crimes Legislation (Review of Convictions) Amendment 1993*

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**Clause 1** specifies the short title of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day to be appointed by proclamation.

**Clause 3** is a formal provision that gives effect to the amendments to the Crimes Act 1900 set out in Schedule 1.

**Clause 4** is a formal provision that gives effect to the amendments to the Criminal Appeal Act 1912 set out in Schedule 2.

**SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900**

Schedule 1 (3) inserts a new Part 13A. The new Part (proposed sections 474A–474P) contains 6 Divisions.

**Division 1—Preliminary**

**Proposed section 474A** defines various expressions (“conviction”, “prescribed person” and “repealed provisions”) for the purposes of the proposed Part.

**Division 2—Petitions to Governor**

**Proposed section 474B** enables a petition to be made to the Governor for an inquiry into a conviction. The petition may be made by the convicted person or by any other person on behalf of the convicted person. This provision restates some of what is currently contained in existing section 475 (1).

**Proposed section 474C** enables the Governor to direct that an inquiry be conducted into the conviction or the Minister to refer the whole case to the Court of Criminal Appeal to be dealt with as an appeal or a particular point to the Court of Criminal Appeal for advice. These powers are only to be exercised if it appears that there is some doubt as to the convicted person’s guilt or as to some other aspect of the case. The Governor and Minister are authorised to refuse to consider or deal with a petition if it relates to a matter that has already been dealt with under the proposed Part (or under the provisions repealed by the proposed Act) and if there are no special facts or special circumstances to justify the taking of further action. This provision restates some of what is currently contained in existing section 475 (1), and also some of what is currently contained in existing section 26 of the Criminal Appeal Act 1912.

**Division 3—Applications to Supreme Court**

**Proposed section 474D** enables an application to be made to the Supreme Court for an inquiry into a conviction. The application may be made by the convicted person or by any other person on behalf of the convicted person. This provision restates some of what is currently contained in existing section 475 (1).

**Proposed section 474E** enables the Supreme Court to direct that an inquiry be conducted into the conviction, either on an application made by or on behalf of the convicted person or on its own motion. This power is only to be exercised if it appears that there is some doubt as to a convicted person’s guilt or as to some other aspect of the case. The Supreme Court is authorised to refuse to consider or deal with an application if it relates to a matter that has already been dealt with



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under the proposed Part (or under the provisions repealed by the proposed Act) and if there are no special facts or special circumstances to justify the taking of further action. This provision restates some of what is currently contained in existing section 475 (1).

**Division 4—Inquiries**

- Proposed section 474F** requires an inquiry to be conducted as soon as practicable after a direction for it has been given under proposed section 474C or 474E.
- Proposed section 474G** provides for the appointment of a prescribed person to conduct an inquiry and confers on the person conducting an inquiry certain of the powers that are conferred on a person to whom a commission of inquiry has been issued under the Royal Commissions Act 1923. This provision replaces what is currently contained in existing section 475 (2) and (3) and has the effect of broadening the power of a prescribed person to conduct an inquiry.
- Proposed section 474H** requires a prescribed person, on completing an inquiry, to cause a report on the inquiry to be sent to the Governor or the Chief Justice (depending on whether the Governor or the Supreme Court directed that the inquiry be held). Where a report is furnished to the Chief Justice, the Supreme Court must, in turn, forward a report on the matter to the Governor. To this extent, this provision substantially restates what is currently contained in existing section 475 (4). However, the proposed section also allows a prescribed person to refer the case to the Court of Criminal Appeal for a review of the original conviction if of the opinion that there is a reasonable doubt as to the guilt of the convicted person concerned.

**Division 5—Court of Criminal Appeal**

- Proposed section 474I** defines certain expressions (“Court” and “pardon”) for the purposes of the proposed Division.
- Proposed section 474J** enables the Court of Criminal Appeal to quash a conviction in respect of which a free pardon has been granted. The granting of a free pardon does not, however, give rise to an entitlement to have the conviction quashed. The proposed section enables an application for the quashing of such a conviction to be made to the Court. The application may be made by the convicted person or by any other person on behalf of the convicted person. However, such an application may not be made in respect of a matter that has previously been dealt with under the proposed Part as a result of a reference under proposed section 474H.
- Proposed section 474K** sets out the procedure to be followed in any proceedings under the proposed Part. The Crown has a right of appearance. The Court of Criminal Appeal is to consider the submissions made by the Crown and the convicted person on any relevant report under proposed section 474H, but may refuse to consider any other evidence.
- Proposed section 474L** requires the Court of Criminal Appeal to deal with a case that is referred to it under proposed section 474C (1) (b) as if it were an appeal under the Criminal Appeal Act 1912. The amendment restates some of what is currently contained in existing section 26 of the Criminal Appeal Act 1912.

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**Proposed section 474M** requires the Court of Criminal Appeal to consider, and furnish the Governor with its opinion on, any point the subject of a request under proposed section 474C (1) (c) of the Crimes Act 1900. The amendment restates some of what is currently contained in existing section 26 of the Criminal Appeal Act 1912.

**Proposed section 474N** provides that a case that is referred to the Court of Criminal Appeal under proposed section 474H is to be dealt with in the same way as an application under proposed section 474J.

**Division 6—General**

**Proposed section 474O** provides that the jurisdiction of the Supreme Court under the proposed Part is to be exercised by the Chief Justice or by a Judge of the Supreme Court who is authorised by the Chief Justice to exercise that jurisdiction.

**Proposed section 474P** makes it clear that nothing in the new Part affects the prerogative of mercy.

Schedule 1 (1), (2), (4) and (5) contain amendments of a minor, consequential or ancillary nature.

Schedule 1 (6) inserts a new Part 4 into the Eleventh Schedule. The new Part contains provisions of a savings or transitional nature.

**SCHEDULE 2—AMENDMENT OF CRIMINAL APPEAL ACT 1912**

Schedule 2 (1) omits Part 6. The provisions of that Part are to be contained in the new Part 13A of the Crimes Act 1900, as proposed to be inserted by Schedule 1 (3).

Schedule 2 (2) repeals section 27 (which has ceased to have any relevance) and replaces it with a new section 27 that preserves the prerogative of mercy. This provision restates some of what is currently contained in section 26.

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FIRST PRINT

**CRIMES LEGISLATION (REVIEW OF CONVICTIONS)  
AMENDMENT BILL 1993**

NEW SOUTH WALES



**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Amendment of Crimes Act 1900 No. 40
4. Amendment of Criminal Appeal Act 1912 No. 16

SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900

SCHEDULE 2—AMENDMENT OF CRIMINAL APPEAL ACT 1912

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**CRIMES LEGISLATION (REVIEW OF CONVICTIONS)  
AMENDMENT BILL 1993**

NEW SOUTH WALES



No.           , 1993

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**A BILL FOR**

An Act to amend the Crimes Act 1900 and the Criminal Appeal Act 1912  
in relation to the review of certain convictions.

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*Crimes Legislation (Review of Convictions) Amendment 1993*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Crimes Legislation (Review of Convictions) Amendment Act 1993.

**5 Commencement**

2. This Act commences on a day to be appointed by proclamation.

**Amendment of Crimes Act 1900 No. 40**

3. The Crimes Act 1900 is amended as set out in Schedule 1.

**Amendment of Criminal Appeal Act 1912 No. 16**

10 4. The Criminal Appeal Act 1912 is amended as set out in Schedule 2.

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**SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900**

(Sec. 3)

(1) Section 1 (**Short title and contents of Act**):

(a) Omit item (E) of the matter relating to Part 13.

15 (b) After the matter relating to Part 13, insert:

**PART 13A—REVIEW OF CONVICTIONS**

(1) *Preliminary*—s. 474A

(2) *Petitions to Governor*—ss. 474B, 474C

(3) *Applications to Supreme Court*—ss. 474D, 474E

20 (4) *Inquiries*—ss. 474F–474H

(5) *Court of Criminal Appeal*—ss. 474I–474N

(6) *General*—ss. 474O, 474P

(c) From the matter relating to Part 13A, omit “13A”, insert instead “13B”.

25 (2) Section 475, and heading:

Omit section 475 and the heading appearing before section 475.



*Crimes Legislation (Review of Convictions) Amendment 1993*

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SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900—*continued*

(3) Part 13A:

After Part 13, insert:

**PART 13A—REVIEW OF CONVICTIONS**

**Division 1—Preliminary**

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**Definitions**

474A. (1) In this Part:

“**conviction**” includes:

(a) a verdict of the kind referred to in section 22 (1) (c) or (d) of the Mental Health (Criminal Procedure) Act 1990, being a verdict that the accused person:

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(i) committed the offence charged; or

(ii) committed an offence available as an alternative to the offence charged; or

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(b) an acquittal on the ground of mental illness, where mental illness was not set up as a defence by the person acquitted;

“**prescribed person**” means a judicial officer within the meaning of the Judicial Officers Act 1986 or a Justice;

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“**repealed provisions**” means the provisions of section 475 of this Act, or section 26 of the Criminal Appeal Act 1912, as in force before the commencement of the Crimes Legislation (Review of Convictions) Amendment Act 1993.

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(2) In this Part, a reference to a finding of guilt includes a reference to a qualified finding of the kind referred to in section 22 (3) of the Mental Health (Criminal Procedure) Act 1990.

**Division 2—Petitions to Governor**

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**Petitions to Governor**

474B. A petition for a review of a conviction or the exercise of the Governor’s pardoning power may be made to the Governor by the convicted person or by another person on behalf of the convicted person.

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SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900—*continued*

**Consideration of petitions**

474C. (1) After the consideration of a petition:

- 5 (a) the Governor may direct that an inquiry be conducted by a prescribed person into the conviction; or
- (b) the Minister may refer the whole case to the Court of Criminal Appeal, to be dealt with as an appeal under the Criminal Appeal Act 1912; or
- 10 (c) the Minister may request the Court of Criminal Appeal to give an opinion on any point arising in the case.

(2) Action under subsection (1) may only be taken if it appears that there is a doubt or question as to the convicted person's guilt, as to any mitigating circumstances in the case or as to any part of the evidence in the case.

15 (3) The Governor or the Minister may refuse to consider or otherwise deal with a petition. Without limiting the foregoing, the Governor or the Minister may refuse to consider or otherwise deal with a petition if:

- 20 (a) it appears that the matter is the same as a matter that has previously been dealt with under this Part or under the repealed provisions; and
- (b) the Minister is not satisfied that there are special facts or special circumstances that justify the taking of further action.

25 (4) The Minister must cause a report to be given to the registrar of the Criminal Division of the Supreme Court as to any action taken by the Governor or the Minister under this section (including a refusal to consider or otherwise deal with a petition).

30 (5) A petition (however described) that does not expressly seek a review of a conviction or the exercise of the Governor's pardoning power may be dealt with as if it did if the Minister is of the opinion that it should be so dealt with.

**Division 3—Applications to Supreme Court**

35 **Applications to Supreme Court**

474D. (1) An application for an inquiry into a conviction may be made to the Supreme Court by the convicted person or by another person on behalf of the convicted person.



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SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900—*continued*

(2) The registrar of the Criminal Division of the Supreme Court must cause a copy of any application made under this section to be given to the Minister.

**Consideration of applications**

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474E. (1) The Supreme Court may direct that an inquiry be conducted by a prescribed person into a conviction:

- (a) on considering an application under section 474D; or
- (b) on its own motion.

(2) Action under subsection (1) may only be taken if it appears that there is a doubt or question as to the convicted person's guilt, as to any mitigating circumstances in the case or as to any part of the evidence in the case.

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(3) The Supreme Court may refuse to consider or otherwise deal with an application. Without limiting the foregoing, the Supreme Court may refuse to consider or otherwise deal with an application if:

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- (a) it appears that the matter is the same as a matter that has previously been dealt with under this Part or under the repealed provisions; and
- (b) the Supreme Court is not satisfied that there are special facts or special circumstances that justify the taking of further action.

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(4) Proceedings under this section are not judicial proceedings. However, the Supreme Court may consider any written submissions made by the Crown with respect to an application.

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(5) The registrar of the Criminal Division of the Supreme Court must report to the Minister as to any action taken by the Supreme Court under this section (including a refusal to consider or otherwise deal with an application).

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**Division 4—Inquiries**

**Inquiries**

474F. An inquiry is to be conducted as soon as practicable after a direction for it has been given under section 474C or 474E.

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SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900—*continued***Procedure for conducting inquiry**

474G. (1) An inquiry under this Division is to be conducted by:

- 5 (a) a prescribed person appointed by the Governor, if the conduct of an inquiry was directed by the Governor; or  
 (b) a prescribed person appointed by the Chief Justice, if the conduct of an inquiry was directed by the Supreme Court.

- 10 (2) The prescribed person conducting the inquiry has:  
 (a) the powers, authorities, protections and immunities conferred on a commissioner by Division 1 of Part 2 of the Royal Commissions Act 1923; and  
 15 (b) in the case of a person who is a Judge of the Supreme Court or whose instrument of appointment as a prescribed person expressly so provides, the powers and authorities conferred on a commissioner by Division 2 of Part 2 of the Royal Commissions Act 1923 (except for section 17).

- 20 (3) The Royal Commissions Act 1923 applies to any witness summoned by or before the prescribed person conducting the inquiry (except for sections 13 and 17 and, subject to subsection (2) (b), Division 2 of Part 2).

- 25 (4) If it appears that the character of any person (being a person who was a witness at the proceedings from which the conviction arose) may be affected by the inquiry, the prescribed person must permit the person to be present at the inquiry and to examine any witness who attends the inquiry.

**Action to be taken on completion of inquiry**

- 30 474H. (1) On completing an inquiry under this Division, the prescribed person must cause a report on the results of the inquiry (incorporating a transcript of the depositions given in the course of the inquiry) to be sent to:

- 35 (a) the Governor, in the case of an inquiry held on the direction of the Governor; or  
 (b) the Chief Justice, in the case of an inquiry held on the direction of the Supreme Court.



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SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900—*continued*

(2) If of the opinion that there is a reasonable doubt as to the guilt of the convicted person, the prescribed person may also refer the matter to the Court of Criminal Appeal (together with a copy of the report) for consideration of the question of whether the conviction should be quashed. 5

(3) After considering a report furnished to the Chief Justice under this section, the Supreme Court must cause its own report on the matter (together with a copy of the prescribed person's report) to be sent to the Governor. 10

(4) The Governor may then dispose of the matter in such manner as to the Governor appears just.

**Division 5—Court of Criminal Appeal**

**Definitions**

474I. In this Division: 15

“**Court**” means the Court of Criminal Appeal;

“**pardon**” means a pardon granted under the prerogative of mercy.

**Quashing of conviction following pardon**

474J. (1) The Court may quash a conviction in respect of which a free pardon has been granted. 20

(2) However, the mere fact that a free pardon has been granted does not entitle the person to whom the pardon has been granted to a quashing of the conviction.

(3) An application for the quashing of the conviction may be made to the Court by the person to whom the pardon has been granted or by another person on behalf of that person. 25

(4) However, such an application may not be made in respect of a free pardon arising from an inquiry under Division 4 if the matter has previously been dealt with under this Division as a consequence of a reference to the Court, under section 474H (2), by the prescribed person conducting the inquiry. 30

(5) The registrar of the Court must cause a copy of any application made under this section to be given to the Minister. 35

SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900—*continued***Procedure on application for quashing of conviction**

474K. (1) In any proceedings on an application under section 474J:

- 5 (a) the Crown has the right of appearance; and  
 (b) the Court is to consider:
- 10 (i) the report on the matter that is prepared by the prescribed person under section 474H; and  
 (ii) any report on the matter that is prepared by the Supreme Court under section 474H; and  
 (iii) any submissions on any such report that are made by the Crown or by the convicted person to whom the proceedings relate; and
- 15 (c) no other evidence is to be admitted or considered except with the leave of the Court.

(2) The rules governing the admissibility of evidence do not apply to any such proceedings.

20 (3) For the purpose of enabling the convicted person to make submissions with respect to a report referred to in subsection (1), the convicted person is entitled to receive a copy of the report.

25 (4) The provisions of Parts 3 and 4 of the Criminal Appeal Act 1912 relating to proceedings on an appeal under section 5 (1) of that Act apply to proceedings on an application under section 474J, as if:

- (a) any reference to an appeal were a reference to proceedings on such an application; and  
 (b) any reference to an appellant were a reference to the convicted person.

30 **Reference to Court under sec. 474C (1) (b) following petition to Governor**

35 474L. On receiving a reference under section 474C (1) (b), the Court is to deal with the case so referred in the same way as if the convicted person had appealed against the conviction under the Criminal Appeal Act 1912, and that Act applies accordingly.

*Crimes Legislation (Review of Convictions) Amendment 1993*

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SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900—*continued*

**Request to Court under sec. 474C (1) (c) following petition to Governor**

474M. (1) On receiving a request under section 474C (1) (c), the Court is to consider, and furnish the Minister with its opinion on, the point raised by the request. 5

(2) The Governor may then dispose of the matter in such manner as to the Governor appears just.

**Reference to Court under sec. 474H (2) following inquiry**

474N. On receiving a reference under section 474H (2), the Court is to deal with the matter so referred in the same way as if an application had been made to the Court under section 474J (3), and sections 474J and 474K apply accordingly. 10

**Division 6—General** 15

**Exercise of Supreme Court's jurisdiction**

474O. The jurisdiction of the Supreme Court under this Part is to be exercised by the Chief Justice or by a Judge of the Supreme Court who is authorised by the Chief Justice to exercise that jurisdiction. References in this Part to the Supreme Court are to be construed accordingly. 20

**Prerogative of mercy preserved**

474P. Nothing in this Part limits or affects in any manner the prerogative of mercy.

(4) Renumber Part 13A as Part 13B. 25

(5) Second Schedule:

Omit "Parts 10 to 13 inclusive," insert instead "Parts 10 to 13A inclusive,".

(6) Eleventh Schedule (**Savings and transitional provisions**):

After Part 3, insert: 30

**Part 4—Crimes Legislation (Review of Convictions) Amendment Act 1993**

**Definition**

9. In this Part, "**appointed day**" means the day appointed under section 2 of the Crimes Legislation (Review of Convictions) Amendment Act 1993. 35



*Crimes Legislation (Review of Convictions) Amendment 1993*

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SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900—*continued*

**Matters arising under section 475**

5 10. (1) Any matter that was pending, immediately before the appointed day, under section 475 (as in force before the appointed day) is to be finally disposed of in accordance with that section as if that section were still in force.

10 (2) However, section 474H (2) (which enables a prescribed person to refer matters to the Court of Criminal Appeal) extends to a prescribed person conducting an inquiry under section 475.

**Matters arising under section 26 of Criminal Appeal Act 1912**

15 11. Any matter that was pending, immediately before the appointed day, under section 26 of the Criminal Appeal Act 1912 (as in force before the appointed day) is to be finally disposed of in accordance with that section as if that section were still in force.

**Application of Part 13A to past convictions**

20 12. (1) Part 13A extends to convictions recorded before the appointed day.

(2) Section 474J extends to free pardons granted before the appointed day and to free pardons granted on or after the appointed day as a consequence of an inquiry that is disposed of under section 475, as referred to in clause 10.

25 **SCHEDULE 2—AMENDMENT OF CRIMINAL APPEAL ACT 1912**

(Sec. 4)

(1) Part 6 (**Petitions for leniency**) (s. 26):

Omit the Part.

30 (2) Omit section 27, insert instead:

**Prerogative of mercy preserved**

27. Nothing in this Act limits or affects in any manner the prerogative of mercy.

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**CRIMES LEGISLATION (REVIEW OF CONVICTIONS)  
AMENDMENT ACT 1993 No. 64**

NEW SOUTH WALES



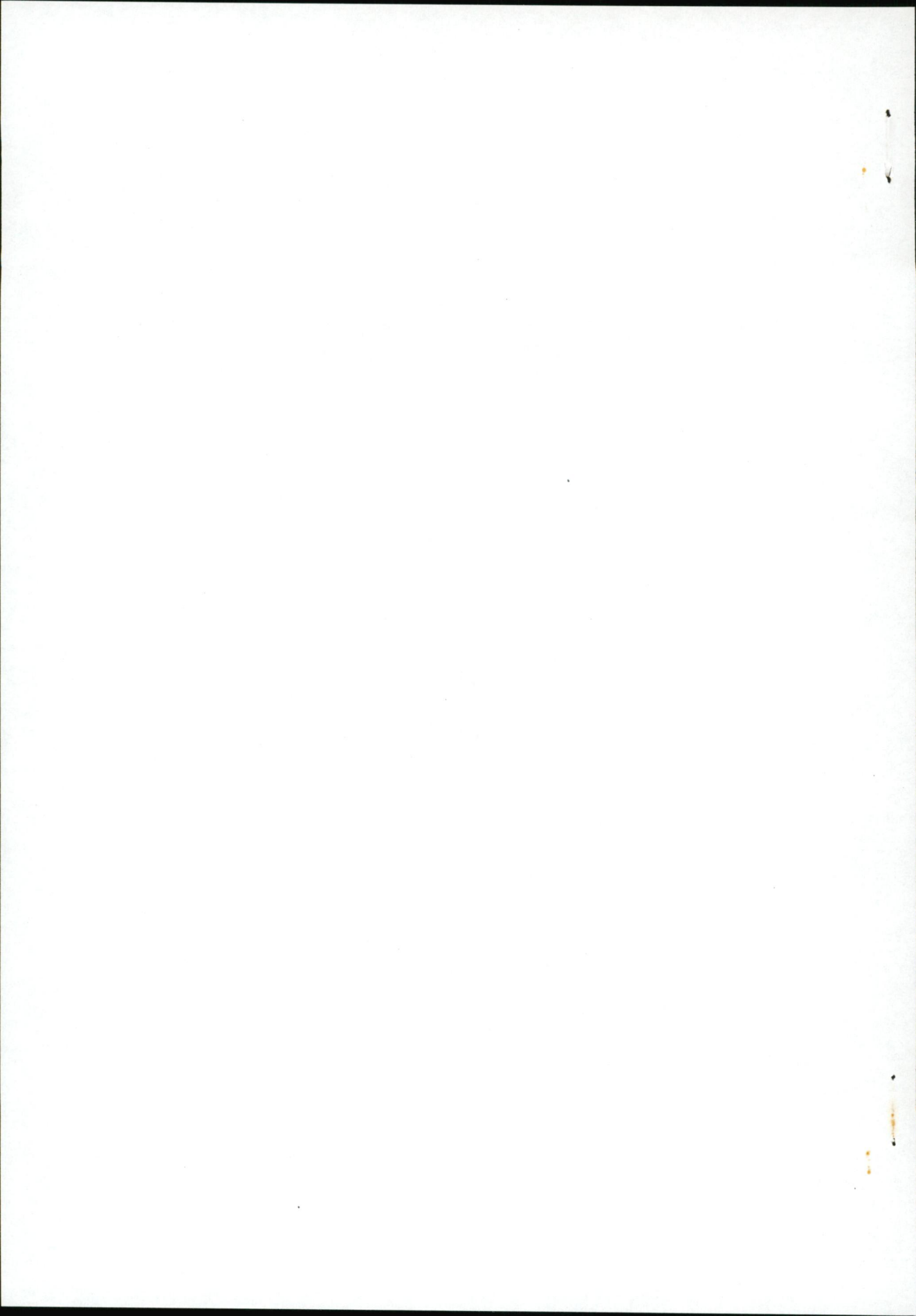
**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Amendment of Crimes Act 1900 No. 40
4. Amendment of Criminal Appeal Act 1912 No. 16

SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900

SCHEDULE 2—AMENDMENT OF CRIMINAL APPEAL ACT 1912

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**CRIMES LEGISLATION (REVIEW OF CONVICTIONS)  
AMENDMENT ACT 1993 No. 64**

**NEW SOUTH WALES**



**Act No. 64, 1993**

An Act to amend the Crimes Act 1900 and the Criminal Appeal Act 1912 in relation to the review of certain convictions. [Assented to 9 November 1993]

*Crimes Legislation (Review of Convictions) Amendment Act 1993 No. 64*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Crimes Legislation (Review of Convictions) Amendment Act 1993.

**Commencement**

2. This Act commences on a day to be appointed by proclamation.

**Amendment of Crimes Act 1900 No. 40**

3. The Crimes Act 1900 is amended as set out in Schedule 1.

**Amendment of Criminal Appeal Act 1912 No. 16**

4. The Criminal Appeal Act 1912 is amended as set out in Schedule 2.

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**SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900**

(Sec. 3)

(1) Section 1 (**Short title and contents of Act**):

- (a) Omit item (E) of the matter relating to Part 13.
- (b) After the matter relating to Part 13, insert:

**PART 13A—REVIEW OF CONVICTIONS**

- (1) *Preliminary*—s. 474A
  - (2) *Petitions to Governor*—ss. 474B, 474C
  - (3) *Applications to Supreme Court*—ss. 474D, 474E
  - (4) *Inquiries*—ss. 474F–474H
  - (5) *Court of Criminal Appeal*—ss. 474I–474N
  - (6) *General*—ss. 474O, 474P
- (c) From the matter relating to Part 13A, omit “13A”, insert instead “13B”.



SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900—*continued*

## (2) Section 475, and heading:

Omit section 475 and the heading appearing before section 475.

## (3) Part 13A:

After Part 13, insert:

**PART 13A—REVIEW OF CONVICTIONS****Division 1—Preliminary****Definitions**

474A. (1) In this Part:

“**conviction**” includes:

- (a) a verdict of the kind referred to in section 22 (1) (c) or (d) of the Mental Health (Criminal Procedure) Act 1990, being a verdict that the accused person:
  - (i) committed the offence charged; or
  - (ii) committed an offence available as an alternative to the offence charged; or
- (b) an acquittal on the ground of mental illness, where mental illness was not set up as a defence by the person acquitted;

“**prescribed person**” means a judicial officer within the meaning of the Judicial Officers Act 1986 or a Justice;

“**repealed provisions**” means the provisions of section 475 of this Act, or section 26 of the Criminal Appeal Act 1912, as in force before the commencement of the Crimes Legislation (Review of Convictions) Amendment Act 1993.

(2) In this Part, a reference to a finding of guilt includes a reference to a qualified finding of the kind referred to in section 22 (3) of the Mental Health (Criminal Procedure) Act 1990.

SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900—*continued*

**Division 2—Petitions to Governor**

**Petitions to Governor**

474B. A petition for a review of a conviction or the exercise of the Governor's pardoning power may be made to the Governor by the convicted person or by another person on behalf of the convicted person.

**Consideration of petitions**

474C. (1) After the consideration of a petition:

- (a) the Governor may direct that an inquiry be conducted by a prescribed person into the conviction; or
- (b) the Minister may refer the whole case to the Court of Criminal Appeal, to be dealt with as an appeal under the Criminal Appeal Act 1912; or
- (c) the Minister may request the Court of Criminal Appeal to give an opinion on any point arising in the case.

(2) Action under subsection (1) may only be taken if it appears that there is a doubt or question as to the convicted person's guilt, as to any mitigating circumstances in the case or as to any part of the evidence in the case.

(3) The Governor or the Minister may refuse to consider or otherwise deal with a petition. Without limiting the foregoing, the Governor or the Minister may refuse to consider or otherwise deal with a petition if:

- (a) it appears that the matter is the same as a matter that has previously been dealt with under this Part or under the repealed provisions; and
- (b) the Minister is not satisfied that there are special facts or special circumstances that justify the taking of further action.

(4) The Minister must cause a report to be given to the registrar of the Criminal Division of the Supreme Court as to any action taken by the Governor or the Minister under this section (including a refusal to consider or otherwise deal with a petition).

SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900—*continued*

(5) A petition (however described) that does not expressly seek a review of a conviction or the exercise of the Governor's pardoning power may be dealt with as if it did if the Minister is of the opinion that it should be so dealt with.

**Division 3—Applications to Supreme Court**

**Applications to Supreme Court**

474D. (1) An application for an inquiry into a conviction may be made to the Supreme Court by the convicted person or by another person on behalf of the convicted person.

(2) The registrar of the Criminal Division of the Supreme Court must cause a copy of any application made under this section to be given to the Minister.

**Consideration of applications**

474E. (1) The Supreme Court may direct that an inquiry be conducted by a prescribed person into a conviction:

- (a) on considering an application under section 474D; or
- (b) on its own motion.

(2) Action under subsection (1) may only be taken if it appears that there is a doubt or question as to the convicted person's guilt, as to any mitigating circumstances in the case or as to any part of the evidence in the case.

(3) The Supreme Court may refuse to consider or otherwise deal with an application. Without limiting the foregoing, the Supreme Court may refuse to consider or otherwise deal with an application if:

- (a) it appears that the matter is the same as a matter that has previously been dealt with under this Part or under the repealed provisions; and
- (b) the Supreme Court is not satisfied that there are special facts or special circumstances that justify the taking of further action.

(4) Proceedings under this section are not judicial proceedings. However, the Supreme Court may consider any written submissions made by the Crown with respect to an application.



SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900—*continued*

(5) The registrar of the Criminal Division of the Supreme Court must report to the Minister as to any action taken by the Supreme Court under this section (including a refusal to consider or otherwise deal with an application).

**Division 4—Inquiries****Inquiries**

474F. An inquiry is to be conducted as soon as practicable after a direction for it has been given under section 474C or 474E.

**Procedure for conducting inquiry**

474G. (1) An inquiry under this Division is to be conducted by:

- (a) a prescribed person appointed by the Governor, if the conduct of an inquiry was directed by the Governor; or
- (b) a prescribed person appointed by the Chief Justice, if the conduct of an inquiry was directed by the Supreme Court.

(2) The prescribed person conducting the inquiry has:

- (a) the powers, authorities, protections and immunities conferred on a commissioner by Division 1 of Part 2 of the Royal Commissions Act 1923; and
- (b) in the case of a person who is a Judge of the Supreme Court or whose instrument of appointment as a prescribed person expressly so provides, the powers and authorities conferred on a commissioner by Division 2 of Part 2 of the Royal Commissions Act 1923 (except for section 17).

(3) The Royal Commissions Act 1923 applies to any witness summoned by or before the prescribed person conducting the inquiry (except for sections 13 and 17 and, subject to subsection (2) (b), Division 2 of Part 2).

(4) If it appears that the character of any person (being a person who was a witness at the proceedings from which the conviction arose) may be affected by the inquiry, the prescribed person must permit the person to be present at the inquiry and to examine any witness who attends the inquiry.

SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900—*continued***Action to be taken on completion of inquiry**

474H. (1) On completing an inquiry under this Division, the prescribed person must cause a report on the results of the inquiry (incorporating a transcript of the depositions given in the course of the inquiry) to be sent to:

- (a) the Governor, in the case of an inquiry held on the direction of the Governor; or
- (b) the Chief Justice, in the case of an inquiry held on the direction of the Supreme Court.

(2) If of the opinion that there is a reasonable doubt as to the guilt of the convicted person, the prescribed person may also refer the matter to the Court of Criminal Appeal (together with a copy of the report) for consideration of the question of whether the conviction should be quashed.

(3) After considering a report furnished to the Chief Justice under this section, the Supreme Court must cause its own report on the matter (together with a copy of the prescribed person's report) to be sent to the Governor.

(4) The Governor may then dispose of the matter in such manner as to the Governor appears just.

**Division 5—Court of Criminal Appeal****Definitions**

474I. In this Division:

“**Court**” means the Court of Criminal Appeal;

“**pardon**” means a pardon granted under the prerogative of mercy.

**Quashing of conviction following pardon**

474J. (1) The Court may quash a conviction in respect of which a free pardon has been granted.

(2) However, the mere fact that a free pardon has been granted does not entitle the person to whom the pardon has been granted to a quashing of the conviction.

(3) An application for the quashing of the conviction may be made to the Court by the person to whom the pardon has been granted or by another person on behalf of that person.

SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900—*continued*

(4) However, such an application may not be made in respect of a free pardon arising from an inquiry under Division 4 if the matter has previously been dealt with under this Division as a consequence of a reference to the Court, under section 474H (2), by the prescribed person conducting the inquiry.

(5) The registrar of the Court must cause a copy of any application made under this section to be given to the Minister.

**Procedure on application for quashing of conviction**

474K. (1) In any proceedings on an application under section 474J:

- (a) the Crown has the right of appearance; and
- (b) the Court is to consider:
  - (i) the report on the matter that is prepared by the prescribed person under section 474H; and
  - (ii) any report on the matter that is prepared by the Supreme Court under section 474H; and
  - (iii) any submissions on any such report that are made by the Crown or by the convicted person to whom the proceedings relate; and
- (c) no other evidence is to be admitted or considered except with the leave of the Court.

(2) The rules governing the admissibility of evidence do not apply to any such proceedings.

(3) For the purpose of enabling the convicted person to make submissions with respect to a report referred to in subsection (1), the convicted person is entitled to receive a copy of the report.

(4) The provisions of Parts 3 and 4 of the Criminal Appeal Act 1912 relating to proceedings on an appeal under section 5 (1) of that Act apply to proceedings on an application under section 474J, as if:

- (a) any reference to an appeal were a reference to proceedings on such an application; and
- (b) any reference to an appellant were a reference to the convicted person.



SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900—*continued***Reference to Court under sec. 474C (1) (b) following petition to Governor**

474L. On receiving a reference under section 474C (1) (b), the Court is to deal with the case so referred in the same way as if the convicted person had appealed against the conviction under the Criminal Appeal Act 1912, and that Act applies accordingly.

**Request to Court under sec. 474C (1) (c) following petition to Governor**

474M. (1) On receiving a request under section 474C (1) (c), the Court is to consider, and furnish the Minister with its opinion on, the point raised by the request.

(2) The Governor may then dispose of the matter in such manner as to the Governor appears just.

**Reference to Court under sec. 474H (2) following inquiry**

474N. On receiving a reference under section 474H (2), the Court is to deal with the matter so referred in the same way as if an application had been made to the Court under section 474J (3), and sections 474J and 474K apply accordingly.

**Division 6—General****Exercise of Supreme Court's jurisdiction**

474O. The jurisdiction of the Supreme Court under this Part is to be exercised by the Chief Justice or by a Judge of the Supreme Court who is authorised by the Chief Justice to exercise that jurisdiction. References in this Part to the Supreme Court are to be construed accordingly.

**Prerogative of mercy preserved**

474P. Nothing in this Part limits or affects in any manner the prerogative of mercy.

(4) Renumber Part 13A as Part 13B.

(5) Second Schedule:

Omit "Parts 10 to 13 inclusive," insert instead "Parts 10 to 13A inclusive,".

SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900—*continued*

(6) Eleventh Schedule (**Savings and transitional provisions**):

After Part 3, insert:

**Part 4—Crimes Legislation (Review of Convictions)  
Amendment Act 1993**

**Definition**

9. In this Part, “**appointed day**” means the day appointed under section 2 of the Crimes Legislation (Review of Convictions) Amendment Act 1993.

**Matters arising under section 475**

10. (1) Any matter that was pending, immediately before the appointed day, under section 475 (as in force before the appointed day) is to be finally disposed of in accordance with that section as if that section were still in force.

(2) However, section 474H (2) (which enables a prescribed person to refer matters to the Court of Criminal Appeal) extends to a prescribed person conducting an inquiry under section 475.

**Matters arising under section 26 of Criminal Appeal Act 1912**

11. Any matter that was pending, immediately before the appointed day, under section 26 of the Criminal Appeal Act 1912 (as in force before the appointed day) is to be finally disposed of in accordance with that section as if that section were still in force.

**Application of Part 13A to past convictions**

12. (1) Part 13A extends to convictions recorded before the appointed day.

(2) Section 474J extends to free pardons granted before the appointed day and to free pardons granted on or after the appointed day as a consequence of an inquiry that is disposed of under section 475, as referred to in clause 10.

**SCHEDULE 2—AMENDMENT OF CRIMINAL APPEAL  
ACT 1912**

(Sec. 4)

- (1) Part 6 (**Petitions for leniency**) (s. 26):

Omit the Part.

- (2) Omit section 27, insert instead:

**Prerogative of mercy preserved**

27. Nothing in this Act limits or affects in any manner the prerogative of mercy.

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[*Minister's second reading speech made in—  
Legislative Council on 27 October 1993  
Legislative Assembly on 27 October 1993*]

