

First print



New South Wales

# Crimes Amendment (Review of Convictions and Sentences) Bill 1996

## Explanatory note

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

### Overview of Bill

The object of this Bill is to amend Part 13A of the *Crimes Act 1900* so as:

- (a) to enable reviews to be carried out under Part 13A in relation to sentences as well as in relation to convictions, and
  - (b) to enable reviews to be carried out under Part 13A in relation to the proceedings giving rise to convictions and sentences as well as in relation to the convictions and sentences themselves, and
  - (c) to make it clear that consideration of a petition or application for review of a conviction or sentence may be dismissed if it appears that the matter to which it relates has been fully dealt with in the proceedings giving rise to the conviction or sentence, or in any proceedings on appeal from the conviction or sentence, and
  - (d) to make it clear that consideration of a petition or application for review of a conviction or sentence may be deferred while appeal proceedings on the conviction or sentence are yet to be finally determined, or if the petition or application contains inadequate information, and
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Explanatory note

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- (e) to give the Supreme Court the same power as the Governor has to refer a case to the Court of Criminal Appeal to be dealt with as an appeal under the *Criminal Appeal Act 1912*, and
- (f) to enable a person conducting an inquiry under Part 13A to refer questions of sentence to the Court of Criminal Appeal in the same way as the person can currently refer questions of guilt.

The Bill also contains a provision of a transitional nature.

### 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 the date of assent.

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

### Extension of Part 13A to sentences

**Schedule 1 [4]** gives effect to the object referred to in paragraph (a) above (to enable reviews to be carried out under Part 13A in relation to sentences as well as in relation to convictions).

### Extension of Part 13A to proceedings giving rise to conviction or sentence

**Schedule 1 [3]** gives effect to the object referred to in paragraph (b) above (to enable reviews to be carried out under Part 13A in relation to the proceedings giving rise to convictions and sentences as well as in relation to the convictions and sentences themselves).

### Clarification of grounds for refusing consideration of petition or application

**Schedule 1 [5] and [8]** give effect to the object referred to in paragraph (c) above (to make it clear that consideration of a petition or application for review of a conviction or sentence may be dismissed if it appears that the matter to which it relates has been fully dealt with in the proceedings giving rise to the conviction or sentence, or in any proceedings on appeal from the conviction or sentence).

**Clarification of grounds for deferring consideration of petition or application**

**Schedule 1 [6] and [9]** give effect to the object referred to in paragraph (d) above (to make it clear that consideration of a petition or application for review of a conviction or sentence may be deferred while appeal proceedings on the conviction or sentence are yet to be finally determined, or if the petition or application contains inadequate information).

**Reference of cases to the Court of Criminal Appeal by the Supreme Court**

**Schedule 1 [7] and [11]** give effect to the object referred to in paragraph (e) above (to give the Supreme Court the same power as the Governor has to refer a case to the Court of Criminal Appeal to be dealt with as an appeal under the *Criminal Appeal Act 1912*).

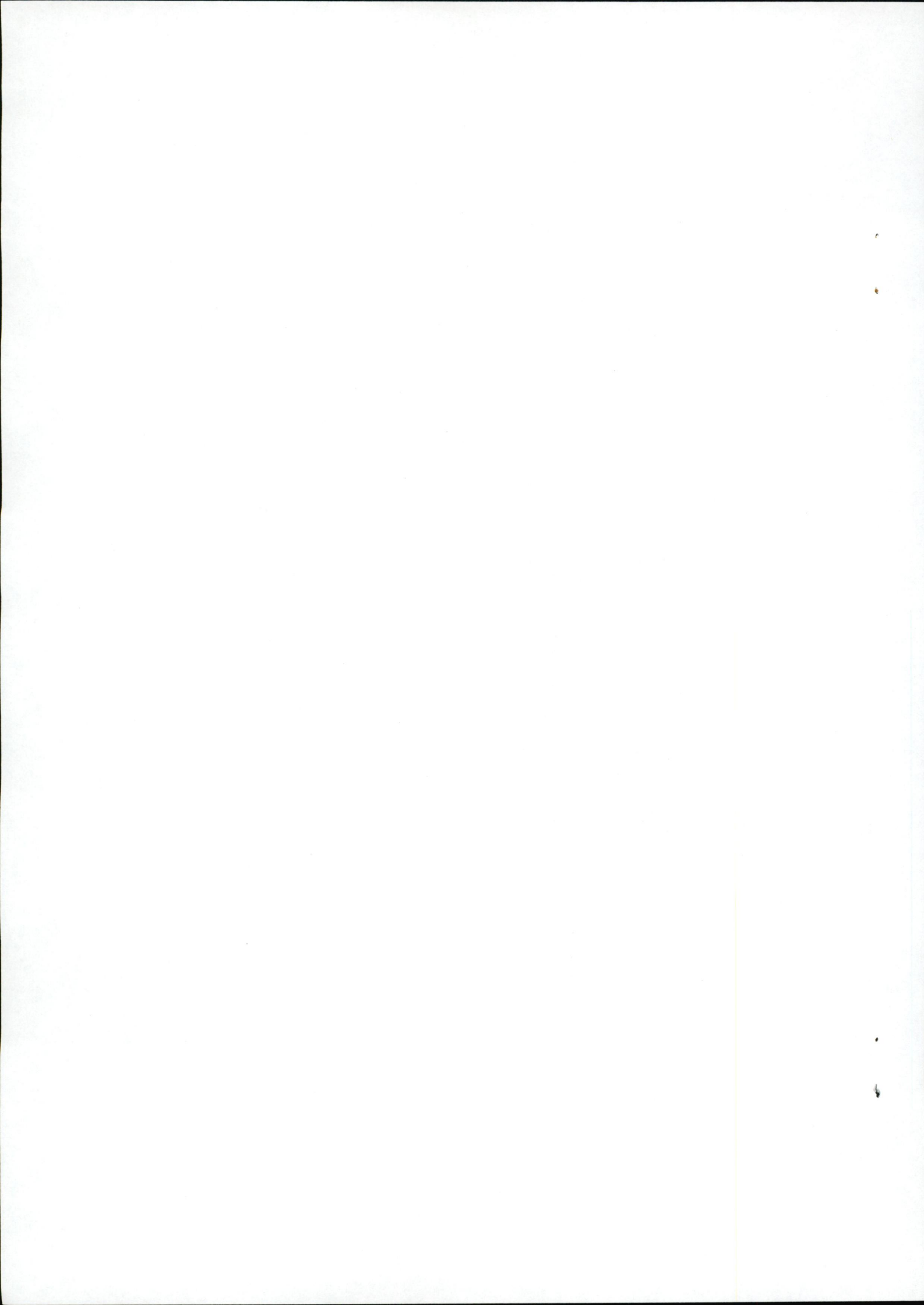
**Reference of cases to the Court of Criminal Appeal by persons conducting inquiries**

**Schedule 1 [10], [12] and [13]** give effect to the object referred to in paragraph (f) above (to enable a person conducting an inquiry under Part 13A to refer questions of sentence to the Court of Criminal Appeal in the same way as the person can currently refer questions of guilt).

**Miscellaneous matters**

**Schedule 1 [1] and [2]** amend the table of contents in section 1, and the heading to Part 13A, so as to reflect the extension of Part 13A to sentences as well as convictions.

**Schedule 1 [14]** amends the Eleventh Schedule so as to provide for the application of the amendments made by the proposed Act to convictions and sentences arising before the commencement of that Act.



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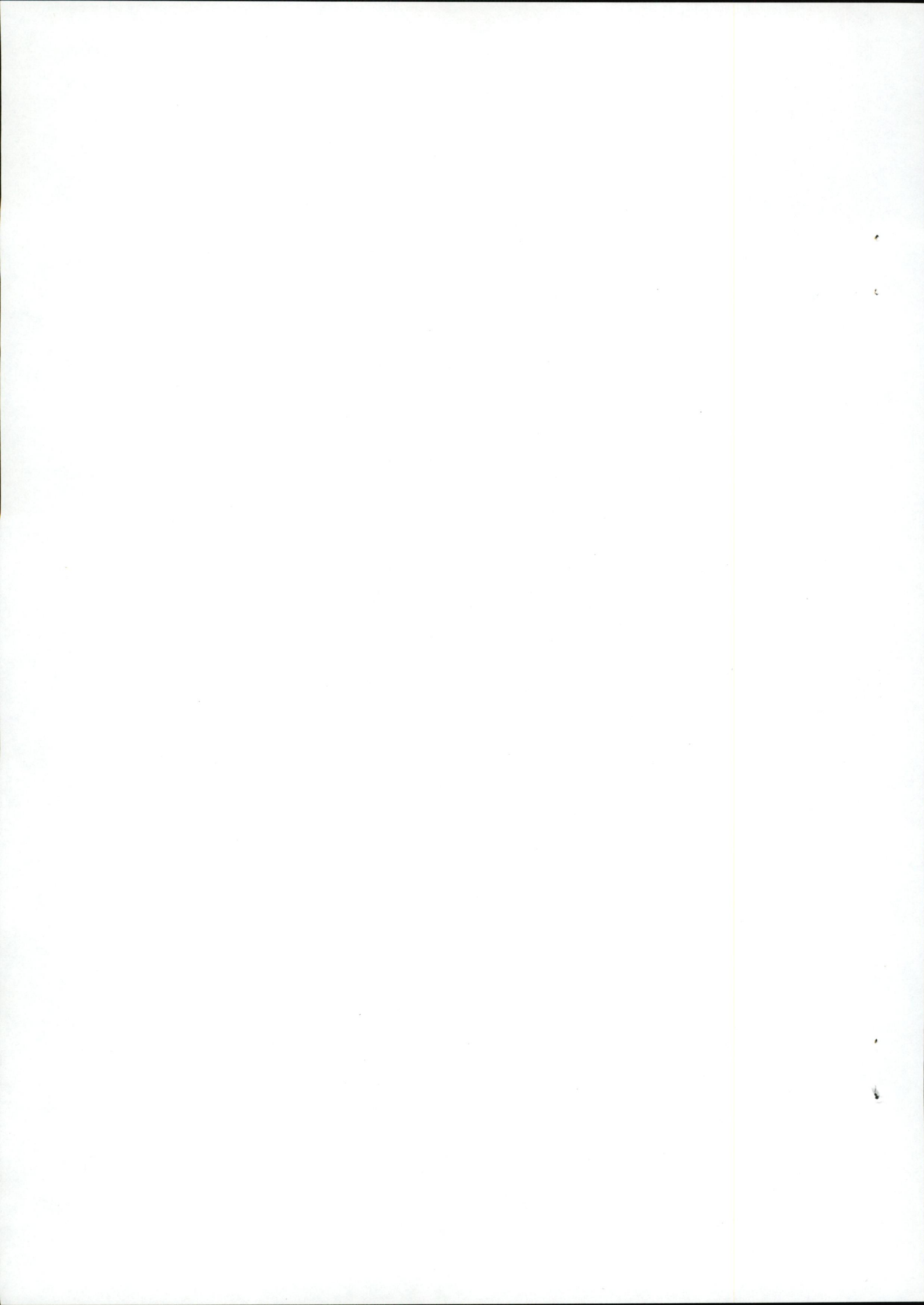
# Crimes Amendment (Review of Convictions and Sentences) Bill 1996

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New South Wales

# Crimes Amendment (Review of Convictions and Sentences) Bill 1996

No. , 1996

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## **A Bill for**

An Act to amend Part 13A of the *Crimes Act 1900* with respect to reviews and inquiries under that Part, and for other purposes.

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

**1 Name of Act**

This Act is the *Crimes Amendment (Review of Convictions and Sentences) Act 1996*.

**2 Commencement**

This Act commences on the date of assent.

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

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



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## Schedule 1 Amendments

(Section 3)

**[1] Section 1 Short title and contents of Act**

Insert "AND SENTENCES" after "CONVICTIONS" in the matter relating to Part 13A.

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**[2] Part 13A, heading**

Insert "AND SENTENCES" after "CONVICTIONS".

**[3] Section 474A Definitions**

Insert after section 474A (2):

- (3) In this Part, a reference to a review of, or an inquiry into, a conviction or sentence includes a reference to a review of, or an inquiry into, any aspect of the proceedings giving rise to the conviction or sentence.

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**[4] Sections 474B, 474C (1) (a) and (5), 474D (1), 474G (4), 474L**

Insert "or sentence" after "conviction" wherever occurring.

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**[5] Section 474C Consideration of petitions**

Omit section 474C (3) (a). Insert instead:

(a) it appears that the matter:

- (i) has been fully dealt with in the proceedings giving rise to the conviction or sentence (or in any proceedings on appeal from the conviction or sentence), or
- (ii) has previously been dealt with under this Part or under the repealed provisions, and

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**[6] Section 474C (3A)**

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Insert after section 474C (3):

- (3A) The Governor or the Minister may defer consideration of a petition if:

- (a) the time within which an appeal may be made against the conviction or sentence (including an application for leave to appeal) is yet to expire, or
- (b) the conviction or sentence is the subject of appeal proceedings (including proceedings on an application for leave to appeal) that are yet to be finally determined, or 5
- (c) the petition fails to disclose sufficient information to enable the conviction or sentence to be properly considered. 10

**[7] Section 474E Consideration of applications**

Omit section 474E (1). Insert instead:

- (1) After considering an application under section 474D or on its own motion:
  - (a) the Supreme Court may direct that an inquiry be conducted by a prescribed person into the conviction or sentence, or 15
  - (b) the Supreme Court may refer the whole case to the Court of Criminal Appeal, to be dealt with as an appeal under the *Criminal Appeal Act 1912*. 20

**[8] Section 474E (3)**

Omit section 474E (3) (a). Insert instead:

- (a) it appears that the matter:
  - (i) has been fully dealt with in the proceedings giving rise to the conviction or sentence (or in any proceedings on appeal from the conviction or sentence), or 25
  - (ii) has previously been dealt with under this Part or under the repealed provisions, and

**[9] Section 474E (3A)** 30

Insert after section 474E (3):

- (3A) The Supreme Court may defer consideration of an application under section 474D if:

- 
- (a) the time within which an appeal may be made against the conviction or sentence (including an application for leave to appeal) is yet to expire, or
  - (b) the conviction or sentence is the subject of appeal proceedings (including proceedings on an application for leave to appeal) that are yet to be finally determined, or 5
  - (c) the application fails to disclose sufficient information to enable the conviction or sentence to be properly considered. 10

**[10] Section 474H Action to be taken on completion of inquiry**

Omit section 474H (2). Insert instead:

- (2) The prescribed person may also refer the matter (together with a copy of the report) to the Court of Criminal Appeal: 15
  - (a) for consideration of the question of whether the conviction should be quashed (in any case in which the prescribed person is of the opinion that there is a reasonable doubt as to the guilt of the convicted person), or 20
  - (b) for review of the sentence imposed on the convicted person (in any case in which the prescribed person is of the opinion that there is a reasonable doubt as to any matter that may have affected the nature or severity of the sentence). 25

**[11] Section 474L Reference to Court under sec 474C (1) (b) or 474E (1) (b) following petition to Governor or application to Supreme Court**

Insert "or 474E (1) (b)" after "474C (1) (b)".

**[12] Section 474N Reference to Court under sec 474H (2) following inquiry 30**

Omit "474H (2)". Insert instead "474H (2) (a)".

**[13] Section 474N (2)**

Insert at the end of section 474N:

- (2) On receiving a reference under section 474H (2) (b), the Court is to deal with the matter so referred in the same way as it is required to deal with matter the subject of an application under section 474J (3), and section 474K applies to proceedings on the matter so referred as if the references in that section to an application under section 474J were references to a reference under section 474H (2) (b).

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**[14] Eleventh Schedule Savings and transitional provisions**

Insert after clause 12:

**12A Application of further amendments made by Crimes Amendment (Review of Convictions and Sentences) Act 1996**

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Part 13A, as amended by the *Crimes Amendment (Review of Convictions and Sentences) Act 1996*, extends to convictions recorded and sentences imposed before the commencement of that Act.



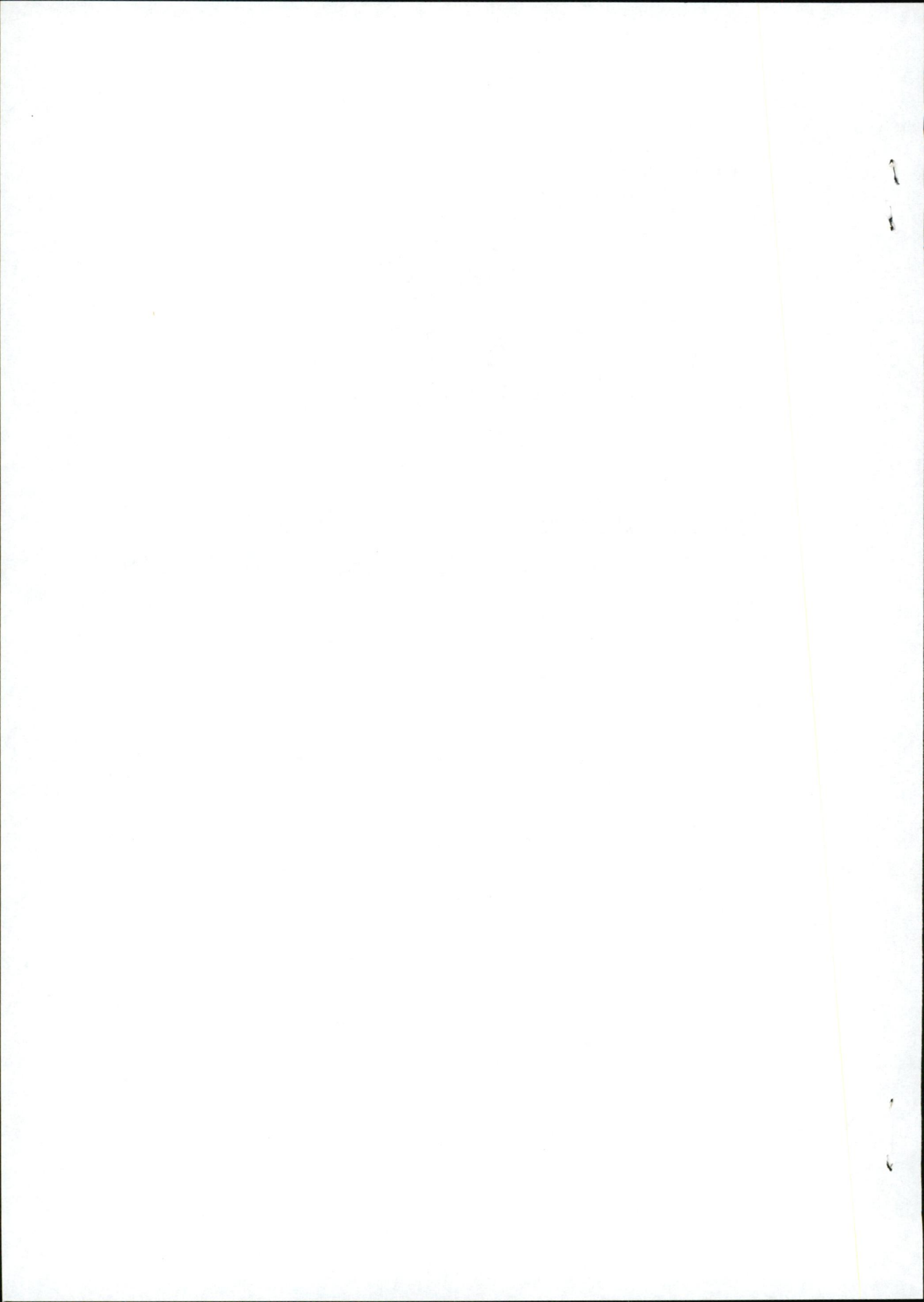
New South Wales

# Crimes Amendment (Review of Convictions and Sentences) Act 1996 No 65

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New South Wales

# **Crimes Amendment (Review of Convictions and Sentences) Act 1996 No 65**

Act No 65, 1996

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An Act to amend Part 13A of the *Crimes Act 1900* with respect to reviews and inquiries under that Part, and for other purposes. [Assented to 27 September 1996]

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

**1 Name of Act**

This Act is the *Crimes Amendment (Review of Convictions and Sentences) Act 1996*.

**2 Commencement**

This Act commences on the date of assent.

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

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



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## Schedule 1 Amendments

(Section 3)

**[1] Section 1 Short title and contents of Act**

Insert "AND SENTENCES" after "CONVICTIONS" in the matter relating to Part 13A.

**[2] Part 13A, heading**

Insert "AND SENTENCES" after "CONVICTIONS".

**[3] Section 474A Definitions**

Insert after section 474A (2):

- (3) In this Part, a reference to a review of, or an inquiry into, a conviction or sentence includes a reference to a review of, or an inquiry into, any aspect of the proceedings giving rise to the conviction or sentence.

**[4] Sections 474B, 474C (1) (a) and (5), 474D (1), 474G (4), 474L**

Insert "or sentence" after "conviction" wherever occurring.

**[5] Section 474C Consideration of petitions**

Omit section 474C (3) (a). Insert instead:

- (a) it appears that the matter:
- (i) has been fully dealt with in the proceedings giving rise to the conviction or sentence (or in any proceedings on appeal from the conviction or sentence), or
  - (ii) has previously been dealt with under this Part or under the repealed provisions, and

**[6] Section 474C (3A)**

Insert after section 474C (3):

- (3A) The Governor or the Minister may defer consideration of a petition if:

- (a) the time within which an appeal may be made against the conviction or sentence (including an application for leave to appeal) is yet to expire, or
- (b) the conviction or sentence is the subject of appeal proceedings (including proceedings on an application for leave to appeal) that are yet to be finally determined, or
- (c) the petition fails to disclose sufficient information to enable the conviction or sentence to be properly considered.

**[7] Section 474E Consideration of applications**

Omit section 474E (1). Insert instead:

- (1) After considering an application under section 474D or on its own motion:
  - (a) the Supreme Court may direct that an inquiry be conducted by a prescribed person into the conviction or sentence, or
  - (b) the Supreme Court may refer the whole case to the Court of Criminal Appeal, to be dealt with as an appeal under the *Criminal Appeal Act 1912*.

**[8] Section 474E (3)**

Omit section 474E (3) (a). Insert instead:

- (a) it appears that the matter:
  - (i) has been fully dealt with in the proceedings giving rise to the conviction or sentence (or in any proceedings on appeal from the conviction or sentence), or
  - (ii) has previously been dealt with under this Part or under the repealed provisions, and

**[9] Section 474E (3A)**

Insert after section 474E (3):

- (3A) The Supreme Court may defer consideration of an application under section 474D if:

- (a) the time within which an appeal may be made against the conviction or sentence (including an application for leave to appeal) is yet to expire, or
- (b) the conviction or sentence is the subject of appeal proceedings (including proceedings on an application for leave to appeal) that are yet to be finally determined, or
- (c) the application fails to disclose sufficient information to enable the conviction or sentence to be properly considered.

**[10] Section 474H Action to be taken on completion of inquiry**

Omit section 474H (2). Insert instead:

- (2) The prescribed person may also refer the matter (together with a copy of the report) to the Court of Criminal Appeal:
  - (a) for consideration of the question of whether the conviction should be quashed (in any case in which the prescribed person is of the opinion that there is a reasonable doubt as to the guilt of the convicted person), or
  - (b) for review of the sentence imposed on the convicted person (in any case in which the prescribed person is of the opinion that there is a reasonable doubt as to any matter that may have affected the nature or severity of the sentence).

**[11] Section 474L Reference to Court under sec 474C (1) (b) or 474E (1) (b) following petition to Governor or application to Supreme Court**

Insert "or 474E (1) (b)" after "474C (1) (b)".

**[12] Section 474N Reference to Court under sec 474H (2) following inquiry**

Omit "474H (2)". Insert instead "474H (2) (a)".

**[13] Section 474N (2)**

Insert at the end of section 474N:

- (2) On receiving a reference under section 474H (2) (b), the Court is to deal with the matter so referred in the same way as it is required to deal with matter the subject of an application under section 474J (3), and section 474K applies to proceedings on the matter so referred as if the references in that section to an application under section 474J were references to a reference under section 474H (2) (b).

**[14] Eleventh Schedule Savings and transitional provisions**

Insert after clause 12:

**12A Application of further amendments made by Crimes Amendment (Review of Convictions and Sentences) Act 1996**

Part 13A, as amended by the *Crimes Amendment (Review of Convictions and Sentences) Act 1996*, extends to convictions recorded and sentences imposed before the commencement of that Act.

[Minister's second reading speech made in—  
Legislative Assembly on 13 June 1996  
Legislative Council on 12 September 1996]

BY AUTHORITY