

**CRIMINAL APPEAL (CRIMES) AMENDMENT
ACT, 1979, No. 97**

New South Wales



ANNO VICESIMO OCTAVO

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Act No. 97, 1979.

An Act to amend the Criminal Appeal Act, 1912, so as to confer on the Court of Criminal Appeal jurisdiction to hear and determine appeals from certain determinations made by the Supreme Court in its summary jurisdiction; and for other purposes [Assented to, 17th May, 1979.]

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BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

1. This Act may be cited as the "Criminal Appeal (Crimes) Amendment Act, 1979". Short title.

2. (1) This section and sections 1 and 3 shall commence on the date of assent to this Act. Commencement.

(2) Section 5 shall commence on the day appointed and notified under section 2 (2) of the Bail Act, 1978.

(3) Except as provided in subsections (1) and (2), this Act shall commence on the day appointed and notified under section 2 (2) of the Crimes (Amendment) Act, 1979.

3. The Criminal Appeal Act, 1912, is referred to in this Act as the Principal Act. Principal Act.

4. The Principal Act is amended in the manner set forth in Schedule 1. Amendment of Act No. 16, 1912.

5. The Criminal Appeal (Bail) Amendment Act, 1978, is amended— Amendment of Act No. 165, 1978.
 - (a) by inserting after Schedule 1 (1) the following item :— Sch. 1.
 - (1A) Section 5AA (6)—

Omit “, or for liberating him upon such conditions as to bail or recognizances as the Court of Criminal Appeal, or any judge thereof appointed for that purpose by the Chief Justice, shall deem fit”.

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- (b) by inserting in section 29 of the Principal Act, as proposed to be inserted by Schedule 1 (9), before the matter "8 (2)" the matter "5AA (6),".

Sec 4.

SCHEDULE 1.

AMENDMENTS TO THE PRINCIPAL ACT.

- (1) (a) Section 2, definition of "Court of trial"—

After "sentence,", insert "order,".

- (b) Section 2, definition of "Sentence"—

After "convicted" where secondly occurring, insert "and also includes any order to pay costs made by the court of trial under section 14 of the Supreme Court (Summary Jurisdiction) Act, 1967".

- (c) Section 2 (2)—

At the end of section 2, insert :—

(2) Without limiting the definition of "Sentence" in subsection (1), for the purposes only of this Act, unless the context or subject-matter otherwise requires or indicates—

- (a) an order made under section 556A (1) of the Crimes Act, 1900, with respect to a person tried for an offence;
- (b) a decision to defer passing sentence referred to in section 558 (1) of that Act or an order made under that subsection upon or with respect to a person tried for an offence; or

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (c) any other decision or order of any kind whatsoever, being a decision or order to defer passing sentence on a person tried for an offence, to remand such a person in custody or to remand such a person and to release him upon his compliance with any condition or otherwise, whether or not in any such case the person has been convicted of an offence,

shall be deemed to be a sentence passed or pronounced upon the conviction of that person for the offence for which he was tried and that person shall be deemed to have been convicted of that offence.

(2) Section 5AA—

After section 5, insert :—

5AA. (1) A person—

(a) convicted of an offence; or

(b) against whom an order to pay any costs is made, by the Supreme Court in its summary jurisdiction may appeal under this Act to the Court of Criminal Appeal against the conviction (including any sentence imposed) or order.

Appeal in criminal cases dealt with by the Supreme Court in its summary jurisdiction.

(2) For the purpose of this Act, a person acquitted on the ground of mental illness, where mental illness was not set up as a defence by him, shall be deemed to be a person convicted, and any order to keep him in custody shall be deemed to be a sentence.

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(3) Any such appeal shall be by way of rehearing on the evidence, if any, given in the proceedings before the Supreme Court in its summary jurisdiction and on any evidence in addition to or in substitution for the evidence so given.

(4) The Court of Criminal Appeal, in proceedings before it on an appeal under this section, may confirm the determination made by the Supreme Court in its summary jurisdiction or may order that the determination made by the Supreme Court in its summary jurisdiction be vacated and make any determination that the Supreme Court in its summary jurisdiction could have made on the evidence referred to in subsection (3).

(5) Section 7 (4) applies to an appellant on an appeal under subsection (1) in the same way as it applies to an appellant on an appeal under section 5 (1).

(6) Provision shall be made by rules of court for detaining an appellant on an appeal under subsection (1) who has been sentenced to penal servitude or imprisonment until the appeal has been determined, or for ordering him into any former custody, or for liberating him upon such conditions as to bail or recognizances as the Court of Criminal Appeal, or any judge thereof appointed for that purpose by the Chief Justice, shall deem fit.

(3) (a) Section 5A (1)—

After “convicted”, insert “on indictment”.

(b) Section 5A (1)—

Omit “under this Act”, insert instead “under section 5”.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(c) Section 5A (1A)—

After section 5A (1), insert :—

(1A) At any time before the completion of proceedings before the Supreme Court in its summary jurisdiction, the judge hearing the proceedings may, or if requested by the Crown shall, submit any question of law arising at or in reference to the proceedings to the Court of Criminal Appeal for determination and the submission shall be dealt with as if it were an appeal under section 5AA (1).

(d) Section 5A (3)—

After section 5A (2), insert :—

(3) Subsection (2) applies in respect of a person tried in the Supreme Court in its summary jurisdiction in proceedings to which the Crown was a party in the same way as it applies in respect of a person tried on indictment.

(4) Section 5c—

After “thereof”, insert “or the Supreme Court in its summary jurisdiction, in any proceedings to which the Crown was a party, has quashed any application made under section 4 (1) of the Supreme Court (Summary Jurisdiction) Act, 1967, or any charge specified in such an application,”.

(5) Section 5D—

Omit “Supreme Court or the District Court”, insert instead “court of trial in any proceedings to which the Crown was a party”.

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(6) (a) Section 6 (1)—

Omit “such appeal”, insert instead “appeal under section 5 (1)”.

(b). Section 6 (2)—

After “appeal”, insert “under section 5 (1)”.

(c) Section 6 (3)—

After “appeal” where firstly occurring, insert “under section 5 (1)”.

(7) Section 7 (1)—

After “appellant” where firstly occurring, insert “on an appeal under section 5 (1)”.

(8) (a) Section 10 (1)—

After “convicted”, insert “on indictment”.

(b) Section 10 (2), (3)—

After “conviction” wherever occurring, insert “on indictment”.

(c) Section 10 (4)—

After section 10 (3), insert :—

(4) Any person entitled under section 5AA (1) to appeal against a sentence shall give notice of appeal, in such manner as may be prescribed, within 10 days of the date of the sentence or within such extended time as may, in any case, be allowed by the court.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(9) Section 11—

After “trial” where firstly occurring, insert “may, and, if requested to do so by the Chief Justice,”.