

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

NEW SOUTH WALES



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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

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.

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. 474Q–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“repealed provisions” means the provisions of section 475 of this Act, or section 26 of the Criminal Appeal Act 1912, as in force before the commencement of the Crimes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.

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

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 4745:

- (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.

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