

**CRIMINAL APPEAL (AMENDMENT) ACT 1994 No. 15**

**NEW SOUTH WALES**



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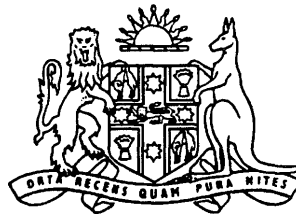
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SCHEDULE 1—AMENDMENTS

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**CRIMINAL APPEAL (AMENDMENT) ACT 1994 No. 15**

NEW SOUTH WALES



**Act No. 15, 1994**

An Act to amend the Criminal Appeal Act 1912 to make further provision with respect to the composition of the Court of Criminal Appeal for appeals against sentences, the evidence which may be given on appeal and the delivery of judgments of that court; and for other purposes. [Assented to 10 May 1994]

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

1. This Act may be cited as the Criminal Appeal (Amendment) Act 1994.

**Commencement**

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

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

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

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**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

(1) Section 3 (**Constitution of court**):

At the end of section 3, insert:

(2) More than one sitting of the court may be held at the same time.

(2) Section 5AA (**Appeal in criminal cases dealt with by Supreme Court in its summary jurisdiction**):

(a) Omit section 5AA (3), insert instead:

(3) Any such appeal is to be by way of rehearing on the evidence (“**the original evidence**”), if any, given in the proceedings before the Supreme Court in its summary jurisdiction.

(3A) The Court of Criminal Appeal may however give leave to adduce fresh, additional or substituted evidence but only if the court is satisfied that there are special grounds for doing so. If the court does give leave, the appeal is to be by way of rehearing on the original evidence and on any fresh, additional or substituted evidence so adduced.

(b) From section 5AA (4), omit “referred to in subsection (3)”, insert instead “heard on appeal”.

SCHEDULE 1—AMENDMENTS— *continued*

## (3) Section 6AA:

After section 6, insert:

**Appeal against sentence may be heard by 2 judges**

6AA. (1) The Chief Justice may direct that proceedings under this Act on an appeal (including proceedings on an application for leave to appeal) against a sentence be heard and determined by such 2 judges of the Supreme Court as the Chief Justice directs.

(2) Such a direction may only be given if the Chief Justice is of the opinion that the appeal is not likely to require the resolution of a disputed issue of general principle.

(3) For the purposes of proceedings the subject of a direction under this section, the Court of Criminal Appeal is constituted by the 2 judges directed by the Chief Justice.

(4) The decision of the court when constituted by 2 judges is to be in accordance with the opinion of those judges.

(5) If the judges are divided in opinion:

(a) as to the decision determining the proceedings, the proceedings” are to be reheard and determined by the court constituted by such 3 judges as the Chief Justice directs (including, if practicable, the 2 judges who first heard the proceedings on appeal); or

(b) as to any other decision, the decision of the court is to be in accordance with the opinion of the senior judge present.

(6) Proceedings heard by the court constituted by 2 judges under this section are rendered abortive for the purposes of section 6A (1) (a1) of the Suitors’ Fund Act 1951 if they are required to be reheard because the judges were divided in opinion as to the decision determining the proceedings. The rehearing of the proceedings is considered to be a new trial for the purposes of that Act.

**SCHEDULE 1—AMENDMENTS—*continued***

## (4) Section 22A:

After section 22, insert:

**Judgment of the court may be delivered by a single judge of the court**

22A. (1) When judgment in a proceeding in the court is delivered it is not necessary for any of the judges before whom it was heard to be present in court to state their opinions.

(2) The opinion of any of the judges may be reduced to writing and made public by any judge of the court when judgment in the proceeding is delivered.

(3) The judgment of the court has the same effect as if each judge of the court whose opinion is so made public had been present in court and declared his or her opinion in person.

(4) For the purpose of delivering judgment the court may be constituted by one or more judges of the court.

## (5) Section 30, Schedule 1:

After section 29, insert:

**Savings and transitional provisions**

30. Schedule 1 has effect.

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**SCHEDULE 1—SAVINGS AND TRANSITIONAL PROVISIONS**

(Sec. 30)

**Criminal Appeal (Amendment) Act 1994**

1. (1) The amendment made to this Act by Schedule 1 (2) to the Criminal Appeal (Amendment) Act 1994 does not apply to any appeal from a decision made in proceedings commenced before the commencement of the amendment.

SCHEDULE 1—AMENDMENTS—*continued*

(2) The amendment made to this Act by Schedule 1 (3) to the Criminal Appeal (Amendment) Act 1994 applies to any appeal, or application for leave to appeal, made to the Court of Criminal Appeal whether before, on or after the commencement of the amendment, but not to proceedings commenced to be heard by the Court of Criminal Appeal before that commencement.

(3) The amendment made to this Act by Schedule 1 (4) to the Criminal Appeal (Amendment) Act 1994 applies to proceedings for judgment in the Court of Criminal Appeal whether the proceedings were commenced before, on or after the commencement of the amendment.

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*[Minister's second reading speech made in—  
Legislative Assembly on 17 March 1994  
Legislative Council on 20 April 1994]*