

Act 1993 No. 64

**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.

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 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, 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.
