

Passed by both Houses



New South Wales

Crimes (Appeal and Review) Amendment Bill 2009

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2009*



New South Wales

Crimes (Appeal and Review) Amendment Bill 2009

Act No , 2009

An Act to amend the *Crimes (Appeal and Review) Act 2001* to make further provision with respect to appeals and applications for annulments; and for other purposes.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes (Appeal and Review) Amendment Act 2009*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by subsection (2).
- (2) Schedule 1 [15] to this Act commences on a day to be appointed by proclamation.

Schedule 1 Amendment of Crimes (Appeal and Review) Act 2001 No 120

[1] Section 3 Definitions

Insert after section 3 (3):

- (3A) Without limiting subsection (3), a power conferred on an appeal court under this Act to vary a sentence includes the power to make an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999* and, for that purpose, to set aside a conviction made by the original Local Court (without setting aside the finding of guilt on which the conviction is based) to enable the order to be made.

[2] Section 11 Appeals as of right

Insert “(or both)” after “sentence” in section 11 (1).

[3] Section 11 (1B)

Insert after section 11 (1A):

- (1B) Any person whose application under section 4 for annulment of a sentence has been refused by the Local Court may appeal to the District Court against the sentence.

[4] Section 11A Appeals as of right against Local Court’s refusal of application for annulment of conviction

Omit “or sentence” from section 11A (1) and (3), wherever occurring.

[5] Section 16A Determination of appeals against Local Court’s refusal of application for annulment of conviction

Omit “the sentence concerned” from section 16A (2).

Insert instead “any sentence relating to the conviction concerned”.

[6] Section 18 Appeals against conviction to be by way of rehearing on the evidence

Omit section 18 (1). Insert instead:

- (1) An appeal against conviction is to be by way of rehearing on the basis of evidence given in the original Local Court proceedings, except as provided by section 19.

[7] Section 18 (3)

Omit “certified”.

[8] Section 20 Determination of appeals

Insert at the end of section 20 (1) (b):

, or

- (c) in the case of an appeal made with leave under section 12 (1)—by setting aside the conviction and remitting the matter to the original Local Court for redetermination in accordance with any directions of the District Court.

[9] Section 34 Lodgment of appeals and applications for leave to appeal

Omit “registrar of any Local Court” from section 34 (1) (a) and (3) (a), wherever occurring.

Insert instead “Registrar of the Land and Environment Court”.

[10] Section 37 Appeals to be by way of rehearing on the evidence

Omit section 37 (1). Insert instead:

- (1) An appeal against conviction is to be by way of rehearing on the basis of evidence given in the original Local Court proceedings, except as provided by section 38.

[11] Section 37 (3)

Omit “certified”.

[12] Section 39 Determination of appeals

Insert at the end of section 39 (1) (b):

, or

- (c) in the case of an appeal made with leave under section 32 (1)—by setting aside the conviction and remitting the matter to the original Local Court for redetermination in accordance with any directions of the Land and Environment Court.

[13] Section 44 Lodgment of appeals and applications for leave to appeal

Omit “any Local Court” from section 44 (1) and (3), wherever occurring.

Insert instead “the Land and Environment Court”.

[14] Section 48 Determination of appeals

Insert after section 48 (2):

- (3) The Land and Environment Court may determine an appeal against an order referred to in section 42 (2B):

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- (a) by setting aside the order and making such other order as it thinks just, or
 - (b) by setting aside the order and remitting the matter to the original Local Court for redetermination in accordance with any directions of the Land and Environment Court, or
 - (c) by dismissing the appeal.

[15] Section 63 Stay of execution of sentence pending determination of appeal

Insert after section 63 (2):

- (2A) Subsection (2) does not operate to stay a suspension or disqualification of a driver licence that arose as the consequence of a conviction if, immediately before the proceedings giving rise to the conviction, a suspension was in force under Division 4 of Part 5.4 of the *Road Transport (General) Act 2005* for the offence to which the conviction relates.
- (2B) However, an appeal court may order that a suspension or disqualification referred to in subsection (2A) be stayed if the court considers a stay to be appropriate in the circumstances.

[16] Section 72 Orders for costs

Omit section 72 (a).

[17] Schedule 1 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Crimes (Appeal and Review) Amendment Act 2009

[18] Schedule 1, Part 7

Insert after Part 6:

Part 7 Provision consequent on enactment of Crimes (Appeal and Review) Amendment Act 2009

15 Application of amendments

Any amendment made by the *Crimes (Appeal and Review) Amendment Act 2009* applies only in respect of appeals, applications for leave to appeal and applications for annulment made after the commencement of the amendment.

Schedule 2 Amendment of other Acts

2.1 Crimes (Domestic and Personal Violence) Act 2007 No 80

[1] Section 84 Review and appeal provisions concerning making etc of apprehended violence orders

Omit “or sentence” from section 84 (1) and (3) (a), wherever occurring.

[2] Section 84 (1A) and (1B)

Insert after section 84 (1):

(1A) A person who applied to a Local Court or the Children’s Court for an apprehended violence order may apply to the Court for the annulment of the dismissal of the application for the order by the Court, but only if the person was not in attendance before the Court when the application was dismissed.

(1B) A Local Court or the Children’s Court may grant an application for an annulment made under subsection (1A) if it is satisfied that, having regard to the circumstances of the case, there is just cause for doing so. If such an application is granted, the Court may deal with the application for the apprehended violence order as if the application for the order had not been dismissed.

[3] Section 84 (5B)

Insert after section 84 (5A):

(5B) If the District Court allows an appeal made under this section against the refusal to annul an apprehended violence order and remits the matter to the Local Court, the District Court must, unless the District Court is satisfied that it is not necessary to do so, make an interim court order under Part 6 as if an application for such an order had been duly made.

2.2 Criminal Procedure Act 1986 No 209

Section 182 Written pleas

Omit section 182 (3). Insert instead:

- (3) An accused person who lodges a notice under this section with the registrar not later than 7 days before the date on which the person is required to first attend before a Local Court:
- (a) is not required to attend the Court on that date, and
 - (b) is taken to have attended the Court on that date.

2.3 Local Court Act 2007 No 93

Section 70 Appeals

Omit “sentence” from section 70 (1), (3) and (4), wherever occurring.

Insert instead “conviction”.

2.4 Local Courts Act 1982 No 164

Section 64 Appeals

Omit “sentence” from section 64 (1), (2) and (3), wherever occurring.

Insert instead “conviction”.