



New South Wales

Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2018

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Crimes (Appeal and Review) Act 2001* to extend an exception to the rule against double jeopardy in relation to an acquitted person where previously inadmissible evidence becomes admissible.

The Bill provides that, when the Director of Public Prosecutions applies to the Court of Criminal Appeal for an order that an acquitted person be retried for an offence punishable by life imprisonment, evidence against the acquitted person is to be considered fresh (for the purpose of determining whether it is “fresh and compelling” in the sense required for a retrial) if it was inadmissible in the proceedings in which the person was acquitted but, as a result of a substantive legislative change in the law of evidence since the acquittal, would now be admissible if the acquitted person were to be retried.

The Bill also amends the *Crimes (Appeal and Review) Act 2001* to allow for a second application for the retrial of an acquitted person to be made in exceptional circumstances.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Clause 3 amends the *Crimes (Appeal and Review) Act 2001* for the purposes described in the above overview.



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No. , 2018

A Bill for

An Act to amend the *Crimes (Appeal and Review) Act 2001* to extend an exception to the rule against double jeopardy in relation to an acquitted person where previously inadmissible evidence becomes admissible; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Crimes (Appeal and Review) Amendment (Double Jeopardy) Act 2018</i> .	3 4
2 Commencement	5
This Act commences on the date of assent to this Act.	6
3 Amendment of Crimes (Appeal and Review) Act 2001 No 120	7
(1) Section 102 Fresh and compelling evidence—meaning	8
Insert after section 102 (2):	9
(2A) Evidence is also <i>fresh</i> if:	10
(a) it was inadmissible in the proceedings in which the person was acquitted, and	11 12
(b) as a result of a substantive legislative change in the law of evidence since the acquittal, it would now be admissible if the acquitted person were to be retried.	13 14 15
(2B) Subsection (2A) extends to a person acquitted before the commencement of that subsection.	16 17
(2) Section 102 (4)	18
Omit the subsection.	19
(3) Section 105 Application for retrial—procedure	20
Insert after section 105 (1):	21
(1AA) Despite subsection (1), the Court of Criminal Appeal may allow a second application for the retrial of an acquitted person to be made under this Division in relation to an acquittal if the Court is satisfied that exceptional circumstances apply.	22 23 24 25
(1AB) For that purpose, exceptional circumstances are taken to include any substantive legislative change to this Division made since the previous application.	26 27 28