

Passed by both Houses



New South Wales

Crimes (Appeal and Review) Amendment (Double Jeopardy) 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 (Double Jeopardy) Bill 2009

Act No , 2009

An Act to amend the *Crimes (Appeal and Review) Act 2001* to make further provision in relation to the principle of double jeopardy in criminal proceedings.

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 (Double Jeopardy) Act 2009*.

2 Commencement

This Act commences on the date of assent to this Act.

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

[1] Section 68A

Insert after section 68:

68A Double jeopardy not to be taken into account in prosecution appeals against sentence

- (1) An appeal court must not:
 - (a) dismiss a prosecution appeal against sentence, or
 - (b) impose a less severe sentence on any such appeal than the court would otherwise consider appropriate,because of any element of double jeopardy involved in the respondent being sentenced again.
- (2) This section extends to an appeal under the *Criminal Appeal Act 1912* and accordingly a reference in this section to an appeal court includes a reference to the Court of Criminal Appeal.

[2] Section 105 Application for retrial—procedure

Omit section 105 (1). Insert instead:

- (1) Not more than one application for the retrial of an acquitted person may be made under this Division in relation to an acquittal.
- (1A) An application may be made for a further retrial of a person acquitted in a retrial under this Part but only if it is made on the basis that the acquittal at the retrial was tainted.

[3] Schedule 1 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Crimes (Appeal and Review) Amendment (Double Jeopardy) Act 2009

[4] Schedule 1, Part 8

Insert after clause 15:

**Part 8 Provision consequent on enactment of
Crimes (Appeal and Review) Amendment
(Double Jeopardy) Act 2009**

16 Application of amendment

Section 68A, as inserted by the *Crimes (Appeal and Review) Amendment (Double Jeopardy) Act 2009*, extends to an appeal that was commenced but not finally determined before the insertion of the section.