

Criminal Appeals Amendment Bill 2019

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**Part 3 — Consequential amendments
to other Acts**

Division 1 — *Bail Act 1982* amended

- | | | |
|----|---------------------|---|
| 6. | Act amended | 9 |
| 7. | Section 15A amended | 9 |

**Division 2 — *Criminal Procedure Act 2004*
amended**

- | | | |
|----|---------------------|---|
| 8. | Act amended | 9 |
| 9. | Section 121 amended | 9 |

**Division 3 — *Fines, Penalties and Infringement
Notices Enforcement Act 1994* amended**

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|-----|----------------------|----|
| 10. | Act amended | 10 |
| 11. | Section 101B amended | 10 |

Division 4 — *Supreme Court Act 1935* amended

- | | | |
|-----|--------------------|----|
| 12. | Act amended | 10 |
| 13. | Section 57 amended | 10 |
| 14. | Section 58 amended | 10 |

Western Australia

LEGISLATIVE ASSEMBLY

Criminal Appeals Amendment Bill 2019

A Bill for

An Act to amend the *Criminal Appeals Act 2004* to introduce rights of further appeal against conviction, and to make consequential amendments to —

- **the *Bail Act 1982*; and**
- **the *Criminal Procedure Act 2004*; and**
- **the *Fines, Penalties and Infringement Notices Enforcement Act 1994*; and**
- **the *Supreme Court Act 1935*.**

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

This is the *Criminal Appeals Amendment Act 2019*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

1 **Part 2 — *Criminal Appeals Act 2004* amended**

2 **3. Act amended**

3 This Part amends the *Criminal Appeals Act 2004*.

4 **4. Part 3A inserted**

5 After section 35A insert:

6

7 **Part 3A — Further appeals against conviction**

8 **Division 1 — Preliminary**

9 **35B. Application of Part 3A**

10 This Part applies to an offender whether the offender
11 was convicted of the offence to which an appeal under
12 this Part relates before or after the *Criminal Appeals*
13 *Amendment Act 2019* came into operation.

14 **35C. Term used: offender**

15 In this Part —
16 *offender* has the meaning given in section 22.

17 **35D. Meaning of fresh and compelling evidence**

18 For the purposes of this Part, evidence relating to the
19 offence against which an offender was convicted is —

- 20 (a) *fresh* if, despite the exercise of reasonable
21 diligence, it was not and could not have been
22 made available at the trial of the offence or any
23 previous appeal; and
24 (b) *compelling* if it is highly probative in the
25 context of the issues in dispute at the trial of the
26 offence.

1 **Division 3 — Commencing and deciding appeals**

2 **35G. Special leave to appeal required in all cases**

- 3 (1) Special leave of the Court of Appeal is required for
4 each ground of appeal in an appeal brought under this
5 Part.
- 6 (2) The Court of Appeal may decide whether to give
7 special leave to appeal —
- 8 (a) with or without written or oral submissions
9 from the parties to the appeal; and
- 10 (b) except as provided in subsection (3), before the
11 hearing of the appeal.
- 12 (3) If the Court of Appeal is satisfied that there are special
13 circumstances, it may give special leave to appeal at
14 the hearing of, or when giving judgment on, the appeal.
- 15 (4) After an appeal has commenced, the Court of Appeal
16 must not give special leave to appeal on a ground of
17 appeal unless it is satisfied —
- 18 (a) the ground identifies fresh and compelling
19 evidence or new and compelling evidence that
20 should, in the interests of justice, be considered
21 on an appeal; and
- 22 (b) the ground has a reasonable prospect of
23 succeeding.
- 24 (5) Unless the Court of Appeal gives special leave to
25 appeal on at least one ground of appeal, the appeal is
26 taken to have been dismissed.
- 27 (6) No appeal lies against —
- 28 (a) a decision of the Court of Appeal made under
29 this section; or

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- 1 (b) a decision of a single judge of appeal made
2 under the *Supreme Court Act 1935* section 61
3 for the purposes of this section.

4 **35H. Commencing appeal**

- 5 (1) An appeal under this Part must be commenced and
6 conducted in accordance with this Part and rules of
7 court.
- 8 (2) An appeal under this Part must be commenced by
9 lodging with the Court of Appeal an application for
10 special leave to appeal that sets out the grounds for
11 appeal.
- 12 (3) On commencing an appeal, the appellant must serve a
13 copy of the application for special leave to appeal on
14 the other party or parties to the proceedings before the
15 trial court.
- 16 (4) The Court of Appeal may at any time order the
17 appellant to serve a copy of the application for special
18 leave to appeal on any other person that the court
19 thinks fit.

20 **35I. Decision on appeal**

- 21 (1) Unless, under subsection (2) or (4), the Court of
22 Appeal allows an appeal, it must dismiss the appeal.
- 23 (2) The Court of Appeal must allow an appeal based on
24 fresh and compelling evidence if it is satisfied there
25 was a miscarriage of justice.
- 26 (3) Despite subsection (2), even if one or more grounds
27 might be decided in favour of the offender, the Court of
28 Appeal may dismiss the appeal if it considers that no
29 substantial miscarriage of justice has occurred.
- 30 (4) The Court of Appeal must allow an appeal based on
31 new and compelling evidence if it is satisfied that in

- 1 light of all the evidence, the evidence establishes that
2 the offender is innocent.
- 3 (5) If the Court of Appeal allows the appeal, it must set
4 aside the conviction of the offence and must —
- 5 (a) order a new trial; or
6 (b) enter a judgment, and deal with the offender in
7 a manner, referred to in section 30(5)(b) to (e).
- 8 (6) If the Court of Appeal orders a new trial under
9 subsection (5)(a), section 34 applies, with any
10 necessary modifications, as if the appeal had been
11 brought under Part 3.
- 12 (7) If the Court of Appeal enters a judgment under
13 subsection (5)(b), section 30(6) applies, with any
14 necessary modifications, as if the appeal had been
15 brought under Part 3.

16 **Division 4 — Fees and costs**

17 **35J. No fees**

18 A party to an appeal under this Part must not be
19 charged a fee by a court for, or in respect of, any act or
20 proceeding that relates to the appeal or its
21 commencement.

22 **35K. Costs against appellant**

- 23 (1) This section applies if an application for special leave
24 to appeal under this Part is dismissed under
25 section 35G(5).
- 26 (2) The Court of Appeal may order the appellant to pay
27 another party's costs of, or relating to, the appeal.
- 28 (3) If the Court of Appeal orders the appellant to pay any
29 costs under subsection (2), section 21 applies, with any

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1 necessary modifications, as if the order were made
2 under that section.
3

4 **5. Section 53 inserted**

5 After section 52 insert:
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7 **53. Review of amendments made by the *Criminal***
8 ***Appeals Amendment Act 2019***

- 9 (1) The Minister must review the operation and
10 effectiveness of the amendments made to this Act by
11 the *Criminal Appeals Amendment Act 2019*, and
12 prepare a report based on the review, as soon as
13 practicable after the 5th anniversary of the day on which
14 the *Criminal Appeals Amendment Act 2019* section 4
15 comes into operation.
- 16 (2) The Minister must cause the report to be laid before
17 each House of Parliament as soon as practicable after it
18 is prepared, but not later than 12 months after the
19 5th anniversary.
20

1 **Part 3 — Consequential amendments to other Acts**

2 **Division 1 — *Bail Act 1982* amended**

3 **6. Act amended**

4 This Division amends the *Bail Act 1982*.

5 **7. Section 15A amended**

6 In section 15A(2):

7 (a) in paragraph (c) delete “Supreme Court.” and insert:

8

9 Supreme Court; or

10

11 (b) after paragraph (c) insert:

12

13 (d) a single judge of appeal.

14

15 **Division 2 — *Criminal Procedure Act 2004* amended**

16 **8. Act amended**

17 This Division amends the *Criminal Procedure Act 2004*.

18 **9. Section 121 amended**

19 In section 121(2) and (4)(a) delete “Part 3” and insert:

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21 Part 3 or 3A

22

Criminal Appeals Amendment Bill 2019

Part 3 Consequential amendments to other Acts

Division 3 Fines, Penalties and Infringement Notices Enforcement Act
1994 amended

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1 **Division 3 — *Fines, Penalties and Infringement Notices***
2 ***Enforcement Act 1994* amended**

3 **10. Act amended**

4 This Division amends the *Fines, Penalties and Infringement*
5 *Notices Enforcement Act 1994*.

6 **11. Section 101B amended**

7 In section 101B(1)(b) delete “Part 2 or 3” and insert:

8
9 Part 2, 3 or 3A
10

11 **Division 4 — *Supreme Court Act 1935* amended**

12 **12. Act amended**

13 This Division amends the *Supreme Court Act 1935*.

14 **13. Section 57 amended**

15 In section 57(2) and (4)(a) delete “Part 3” and insert:

16
17 Part 3 or 3A
18

19 **14. Section 58 amended**

20 In section 58(1)(f) delete “Part 3” and insert:

21
22 Part 3 or 3A
23

24
