

Criminal Appeals Amendment Bill 2021

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

Division 1 — *Bail Act 1982* amended

- | | | |
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| 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

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

Western Australia

LEGISLATIVE ASSEMBLY

Criminal Appeals Amendment Bill 2021

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:

1

Part 1 — Preliminary

2

1. Short title

3

This is the *Criminal Appeals Amendment Act 2021*.

4

2. Commencement

5

This Act comes into operation as follows —

6

(a) Part 1 — on the day on which this Act receives the
Royal Assent;

7

8

(b) the rest of the Act — on a day fixed by proclamation,
and different days may be fixed for different provisions.

9

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 this Part**

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 2021* came into operation.

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

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

17 **35D. Fresh, new and compelling evidence**

- 18 (1) For the purposes of this Part, evidence relating to an
19 offence of which an offender was convicted is *fresh* —
- 20 (a) if, despite the exercise of reasonable diligence,
21 the evidence was not and could not have been
22 tendered at the trial of the offence or any
23 previous appeal; or
- 24 (b) if —
- 25 (i) the evidence was not tendered at the
26 trial of the offence or any previous

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- 1 appeal but, with the exercise of
2 reasonable diligence, could have been
3 tendered at the trial of the offence or
4 any previous appeal; and
- 5 (ii) the failure to tender the evidence was
6 due to the incompetence or negligence
7 of a lawyer representing the offender.
- 8 (2) For the purposes of this Part, evidence relating to an
9 offence of which an offender was convicted is *new* if
10 the evidence was not tendered at the trial of the offence
11 or any previous appeal but, with the exercise of
12 reasonable diligence, could have been tendered at the
13 trial of the offence or any previous appeal.
- 14 (3) Despite subsection (2), evidence is not new evidence if
15 it is fresh evidence under subsection (1)(b).
- 16 (4) For the purposes of this Part, evidence relating to an
17 offence of which an offender was convicted is
18 *compelling* if it is highly probative in the context of the
19 issues in dispute at the trial of the offence.

20 **Division 2 — Rights of appeal**

21 **35E. Second or subsequent appeal against conviction**

- 22 (1) Subject to this Part, an offender convicted of an
23 offence on indictment may bring a 2nd or subsequent
24 appeal to the Court of Appeal against conviction if —
- 25 (a) there is fresh and compelling evidence relating
26 to the offence; or
- 27 (b) there is new and compelling evidence relating
28 to the offence.

- 1 (2) Evidence is not precluded from being admissible on an
2 appeal brought under this Part just because it would not
3 have been admissible in the earlier trial of the offence
4 resulting in the relevant conviction.

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

6 **35F. Leave to appeal required in all cases**

- 7 (1) Leave of the Court of Appeal is required for each
8 ground of appeal in an appeal brought under this Part.
- 9 (2) Except as provided in subsection (3), the Court of
10 Appeal must decide whether to give leave to appeal on
11 a ground of the appeal before the hearing of the appeal.
- 12 (3) If the Court of Appeal considers it necessary or
13 desirable, it may give leave to appeal at the hearing of,
14 or when giving judgment on, the appeal.
- 15 (4) After an appeal has commenced, the Court of Appeal
16 must not give leave to appeal on a ground of appeal
17 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 leave to appeal on at
25 least 1 ground of appeal, the appeal is taken to have
26 been dismissed.

27 **35G. Commencing appeal**

- 28 (1) An appeal under this Part must be commenced and
29 conducted in accordance with this Part and rules of
30 court.

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- 1 (2) An appeal under this Part must be commenced by
2 lodging with the Court of Appeal an application for
3 leave to appeal that sets out the grounds for appeal.
- 4 (3) On commencing an appeal, the appellant must serve a
5 copy of the application for leave to appeal on the other
6 party or parties to the proceedings before the trial
7 court.
- 8 (4) The Court of Appeal may at any time order the
9 appellant to serve a copy of the application for leave to
10 appeal on any other person that the court thinks fit.
- 11 **35H. Decision on appeal**
- 12 (1) Unless, under subsection (2) or (4), the Court of
13 Appeal allows an appeal, it must dismiss the appeal.
- 14 (2) The Court of Appeal must allow an appeal based on
15 fresh and compelling evidence if it is satisfied there
16 was a miscarriage of justice.
- 17 (3) Despite subsection (2), even if 1 or more grounds
18 might be decided in favour of the offender, the Court of
19 Appeal may dismiss the appeal if it considers that no
20 substantial miscarriage of justice has occurred.
- 21 (4) The Court of Appeal must allow an appeal based on
22 new and compelling evidence if it is satisfied on the
23 balance of probabilities that, in light of all the
24 evidence, the evidence establishes that the offender is
25 innocent.
- 26 (5) If the Court of Appeal allows the appeal, it must set
27 aside the conviction of the offence and must —
- 28 (a) order a new trial; or
- 29 (b) enter a judgment, and deal with the offender in
30 a manner, referred to in section 30(5)(b) to (e).

- 1 (6) If the Court of Appeal orders a new trial under
2 subsection (5)(a), section 34 applies, with any
3 necessary modifications, as if the appeal had been
4 brought under Part 3.
- 5 (7) If the Court of Appeal enters a judgment under
6 subsection (5)(b), section 30(6) applies, with any
7 necessary modifications, as if the appeal had been
8 brought under Part 3.

Division 4 — Fees and costs

9

10 **35I. No fees**

11 A party to an appeal under this Part must not be
12 charged a fee by a court for, or in respect of, any act or
13 proceeding that relates to the appeal or its
14 commencement.

15 **35J. Costs against appellant**

- 16 (1) This section applies if an application for leave to
17 appeal under this Part is dismissed under
18 section 35F(5).
- 19 (2) The Court of Appeal may order the appellant to pay
20 another party's costs of, or relating to, the appeal.
- 21 (3) If the Court of Appeal orders the appellant to pay any
22 costs under subsection (2), section 21 applies, with any
23 necessary modifications, as if the order were made
24 under Part 2.
25

1 **5. Section 53 inserted**

2 After section 52 insert:

3

4 **53. Review of amendments made by *Criminal Appeals***
5 ***Amendment Act 2021***

- 6 (1) The Minister must review the operation and
7 effectiveness of the amendments made to this Act by
8 the *Criminal Appeals Amendment Act 2021*, and
9 prepare a report based on the review, as soon as
10 practicable after the 5th anniversary of the day on which
11 the *Criminal Appeals Amendment Act 2021* section 4
12 comes into operation.
- 13 (2) The Minister must cause the report to be laid before
14 each House of Parliament as soon as practicable after it
15 is prepared, but not later than 12 months after the
16 5th anniversary.
17

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:

20

21 Part 3 or 3A

22

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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

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