

CRIMINAL APPEALS BILL 2004

EXPLANATORY MEMORANDUM

In addition to collating the various provisions relating to appeals from *The Criminal Code* and the *Justices Act* 1902 in particular, this Act specifies the limitations on appeals and the procedure to be followed on appeals, as recommended by Recommendation 345 of the Law Reform Commission of Western Australia (“LRCWA”) Final Report, Project 92: *Review of the Civil and Criminal Justice System in Western Australia*, September 1999 (“Project 92 Report”)

PART 1 - PRELIMINARY

This part contains the title of the Act and the commencement provisions.

1 Short Title

Citation of the Act.

2. Commencement

Provides for the commencement of the Act on a day fixed by proclamation.

3. This Act to be read with *Criminal Procedure Act 2004*

Provides that the Act is to be read with the *Criminal Procedure Act 2004*

4. Interpretation

Defines terms to be used in the Act.

5. Appeal against sentence of superior court after conviction by lower court, commencement of

This section applies if an accused is sentenced for an offence by a superior court having been convicted of the offence by a court of summary jurisdiction and committed to the superior court for sentence. It provides that appeals against both the conviction and the sentence are to be dealt with under Part 3 of this Act.

PART 2 – APPEALS FROM COURTS OF SUMMARY JURISDICTION

Division 1 – Preliminary

6. Interpretation

Defines terms to be used within Part 1, Division 1 of the Act

Division 2 – Appeals to a single judge

7. Right of appeal

Sets out who can appeal and the decisions that can be the subject of an appeal. This provision is based on sections 184 and 185 of the *Justices Act 1902*.

8. Grounds for appealing

Provides the basis on which an appeal can be made. This provision is based on sections 186 and 201 of the *Justices Act 1902*.

9. Leave to appeal required in all cases

Provides that leave to appeal is required in all cases. This provision is based on sections 184, 185 and 190 of the *Justices Act 1902*.

This section also gives the Supreme Court the power to decide whether to give leave with or without written or oral submissions, and before or at the hearing of the appeal.

This addresses in part Recommendation 350 of the LRCWA Project 92 Report and the recommendation made in *The Murray Report: the Review of the Criminal Code prepared for the Attorney-General* issued in June 1983 by the Hon. Justice Murray (“The Murray Report”), in relation to section 695 of *The Criminal Code*.

10. Commencing an appeal

Provides the procedure for commencing an appeal. This provision is based in part on section 191 of the *Justices Act 1902*.

This addresses in part Recommendation 369 of the LRCWA Project 92 Report and of the recommendation made in *The Murray Report* in relation to section 695 of *The Criminal Code*.

11. Sentences etc, effect of appeal on

Provides that the section applies when the Supreme Court gives leave to appeal, subject to any order made under section 12. It provides that certain sentences or other orders made in a court of summary jurisdiction are suspended until any appeal relating to those sentences or orders is concluded. This provision is based on sections 194 and 195 of the *Justices Act 1902*

12. Sentences etc., Supreme Court may suspend etc.

Provides that once an appeal has been commenced, the Supreme Court has the power to make any order relating to the sentence or other order imposed by the court of summary jurisdiction, except where a fine has been imposed. This provision is based on sections 193 and 195 of the *Justices Act 1902*.

13. Supreme Court may refer appeal to Court of Appeal

Provides that a single judge of the Supreme Court must deal with an appeal under this Division, but that a single judge may instead refer an appeal to the Court of Appeal. Part of this provision is based on section 195A of the *Justices Act 1902*.

14. Supreme Court’s powers on an appeal

Sets out the Supreme Court’s powers in determining the appeal. This provision is based on section 199 of the *Justices Act 1902*.

15. Conclusion of appeal, consequences

Sets out the consequences that flow from the conclusion of an appeal, including that the Supreme Court’s appeal decision has effect as if it were the decision of the court of summary jurisdiction. This provision is based on section 200 of the *Justices Act 1902*.

Division 3 – Appeals from a single judge to the Court of Appeal

16. Right of appeal to Court of Appeal

Provides that a person can appeal from a single judge’s decision to refuse an extension of time, or to refuse leave to appeal, or on the appeal itself to the Court of Appeal. . This provision is based in part on sections 189 and 206A of the *Justices Act 1902*

17. Commencing an appeal

Sets out the requirements for commencing an appeal under this Division.

18. Provisions applicable to appeals to Court of Appeal

Provides that, subject to this Division, sections of Division 2 apply to appeals under this Division, with any necessary changes.

When read with section 9, this addresses in part Recommendation 347 of the LRCWA Project 92 Report

19. Court of Appeal’s additional powers on an appeal

Provides additional powers to the Court of Appeal under this Division, including the power to remit the matter to the court of summary jurisdiction.

Division 4 – Costs

20. Costs against Attorney General, JPs or police officers

Provides that the Supreme Court cannot order costs to be paid by the Attorney General, JPs or police, but may, in certain circumstances, order that costs be paid to a respondent, recoverable as a debt due by the State. Part of this provision is based on sections 206D and 219 of the *Justices Act 1902*.

21. Costs orders, enforcement of

Provides how a costs order made by the Supreme Court is to be enforced. Part of this provision is based on section 206E of the *Justices Act 1902*.

PART 3 – APPEALS FROM SUPERIOR COURTS

Division 1 – Preliminary

22. Interpretation

Defines terms to be used within Part 3 of the Act.

Division 2 – Rights of Appeal

23. Rights of appeal of offender

Sets out the circumstances in which an offender convicted on indictment, or sentenced by a superior court after being convicted by a court of summary jurisdiction, can commence an appeal. This provision is based on section 688 of *The Criminal Code*.

This addresses in part the recommendation made in The Murray Report in relation to section of section 695 of *The Criminal Code*.

24. Rights of appeal of prosecutor

Sets out the decisions that the prosecutor can appeal. This provision is based on section 688 of *The Criminal Code*. This addresses in part The Murray Report recommendations in relation to that section and section 695 of *The Criminal Code*.

25. Rights of appeal if acquittal on account of unsoundness of mind

Sets out the decisions that the accused and the prosecutor can appeal. This provision is based on section 688 and 692 of *The Criminal Code*.

26. Separate trial decision, interlocutory appeal against

Provides the procedure for appealing against a decision to grant or refuse a separate trial application.

Division 3 – Commencing and deciding appeals

27. Leave to appeal required in all cases

Provides that leave to appeal is required in all cases. This provision is based in part on section 688 and 692 of *The Criminal Code*.

As with section 9, this section also gives the Supreme Court the power to decide whether to give leave with or without written or oral submissions, and before or at the hearing of the appeal.

This addresses in part Recommendation 350 of the LRCWA Project 92 Report and the recommendations made in The Murray Report in relation to sections 688 and 695 of *The Criminal Code*.

28. Commencing an appeal

Provides the procedure for commencing an appeal. This provision is based on section 695 of *The Criminal Code*.

This addresses in part Recommendation 369 of the LRCWA Project 92 Report and the recommendations made in The Murray Report in relation to section 695 of *The Criminal Code*.

29. Sentences etc., Court of Appeal may stay etc.

Provides that once an appeal under this Part has been commenced, the Court of Appeal can make any order that a superior court can make under the *Criminal Procedure Act 2004* section 120 or amend or cancel any such order.

This addresses the recommendation made in The Murray Report in relation to a proposed new subsection of section 694 of *The Criminal Code*.

30. Appeal against conviction, decision on

Sets out the Court of Appeal's powers in relation to determining appeals against conviction by an offender. This provision is based on sections 689 and 693 of *The Criminal Code* and addresses in part the recommendation made in The Murray Report in relation to section 693 of *The Criminal Code*. With other sections, this addresses in part Recommendation 349 of the LRCWA Project 92 Report

31. Appeal against sentence etc., decision on

Sets out the Court of Appeal's powers in relation to determining appeals against sentence. This provision is based on section 689 of *The Criminal Code*. With other sections, this addresses in part Recommendation 349 of the LRCWA Project 92 Report

32. Appeal under s.25, decision on

Sets out the Court of Appeal's powers in relation to determining appeals against a verdict of acquittal on account of unsoundness of mind. This provision is based on section 689 and 692 of the *Criminal Code* and addresses in part the recommendation made in The Murray Report in relation to section 692 of *The Criminal Code*. In addition, with other sections, this addresses in part Recommendation 349 of the LRCWA Project 92 Report

33. Other appeals by prosecutor, decision on

Sets out the Court of Appeal’s powers in relation to determining appeals by prosecutors under section 24(2). This provision is based on section 690 of *The Criminal Code* and addresses in part the recommendation made in The Murray Report in relation to that section. In addition, with other sections, this addresses in part Recommendation 349 of the LRCWA Project 92 Report

34. New trial etc., procedure if ordered

Provides the procedure where a Court of Appeal orders that a charge or issue needs to be determined or re-determined. This provision is based on section 691 of *The Criminal Code* and addresses in part the recommendation made in The Murray Report in relation to that section. In addition, with other sections, this addresses in part Recommendation 349 of the LRCWA Project 92 Report

Division 4 – Miscellaneous

35. No fees or costs

Provides that parties to an appeal under this Part cannot be charged a fee or ordered to pay costs.

PART 4 – PROVISIONS APPLICABLE TO ANY APPEAL

36. Interpretation

Defines terms to be used in this Part.

37. Application of this Part

Provides that this Part applies to any appeal under this Act.

38. Multiple appeals, consolidation etc.

Provides that the Supreme Court can decide to hear two related appeals the same time. Part of this provision is based on sections 185 and 188(2) of the *Justices Act 1902*.

39. Material to be considered on appeal

Provides the material that can be considered by the Supreme Court in determining an appeal. This provision is based on in part on section 196 of the *Justices Act 1902*.

40. General powers to deal with appeals

Sets out the Court of Appeal’s powers in determining appeals. This provision is based on sections 696 and 697 of *The Criminal Code* and section 192 of the *Justices Act 1902*.

This addresses in part the recommendation made in The Murray Report in relation to section of sections 696 and 697 of *The Criminal Code*. In addition, with other sections, this addresses in part Recommendation 349 of the LRCWA Project 92 Report

41. Sentencing or re-sentencing on appeal

Sets out the Court of Appeal's powers in sentencing or re-sentencing on appeals. This provision is based on section 693 of *The Criminal Code*.

This addresses in part the recommendations made in The Murray Report in relation to sections 689 and 697 of *The Criminal Code*. In addition, with other sections, this addresses in part Recommendation 349 of the LRCWA Project 92 Report

42. Result of appeal to be given to other court

Provides that the Supreme Court must notify the lower court of the result of the appeal. This provision is based on section 202 of the *Justices Act 190*.

43. Party in custody, entitlement to be present at appeal

Sets out the entitlement of parties to be present, whether in person or by video link, and provides that a self-represented party to an appeal who is in custody is entitled to be present at any proceedings in respect of the appeal. This provision is based on section 198 of the *Justices Act 1902* and section 699 of *The Criminal Code*.

44. Appellant in custody, treatment of in custody

Provides that if a convicted appellant is in custody, he or she is to be treated as if he or she was a remand prisoner, upon request. This provision is based on section 700 of *The Criminal Code*.

45. Exhibits

Provides for retention, transfer and return of exhibits. This provision is based on section 206B of the *Justices Act 1902*.

PART 5 – REFERRALS OF QUESTIONS OF LAW TO THE COURT OF APPEAL

46. Referrals by superior courts

Provides the procedure in which a superior court can refer a question of law to the Court of Appeal for determination. This provision is based in part on section 49 of the *District Court of Western Australia Act 1969* and section 43 of the *Supreme Court Act 1935*. It also address in part the recommendation made in The Murray Report in relation to a proposed new section 693AA of *The Criminal Code*.

47. Referrals by Attorney General

Provides the procedure in which the Attorney General can refer a question of law to the Court of Appeal for determination. This provision is based on section 693A of *The Criminal Code* and addresses in part the recommendation made in The Murray Report in relation to that section.

48. Referrals, general provisions about

Provides that the Court of Appeal may exercise any power in section 40, and prohibits publication. This provision is based on section 693A of *The Criminal Code* and addresses in part the recommendation made in The Murray Report in relation to that section.

PART 6 - MISCELLANEOUS

49. Sentences may be varied etc. in specific cases

Provides that sentences may be varied in specific cases. This provision is based on section 693(1a) of *The Criminal Code*.

50. Rules of court

Provides that the Supreme Court may make rules prescribing any matter that is required or permitted by this Act to be prescribed, or that is necessary or convenient to be prescribed for giving effect to the purposes of this Act.

Includes the power to make rules of court that provide for:

- the dismissal or re-instatement of appeals(see sections 204, 205, 206 of the *Justices Act 1902*),
- allowing or requiring a party to present the party's case in writing (see section 197 of the *Justices Act 1902*. This addresses in part the recommendation made in The Murray Report in relation to section of section 695 of *The Criminal Code*.
- the discontinuance of appeals (see section 204of the *Justices Act 1902*).
- references. This addresses part of The Murray Report recommendation in relation to that section and section 747 of *The Criminal Code*...