

TASMANIA

**CRIMINAL CODE AMENDMENT (SECOND OR
SUBSEQUENT APPEAL FOR FRESH AND
COMPELLING EVIDENCE) BILL 2015**

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**CRIMINAL CODE AMENDMENT (SECOND OR
SUBSEQUENT APPEAL FOR FRESH AND
COMPELLING EVIDENCE) BILL 2015**

*(Brought in by the Premier, the Honourable William Edward
Felix Hodgman)*

A BILL FOR

An Act to amend the *Criminal Code Act 1924*

Be it enacted by Her Excellency the Governor of Tasmania, by
and with the advice and consent of the Legislative Council and
House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Criminal Code
Amendment (Second or Subsequent Appeal for
Fresh and Compelling Evidence) Act 2015*.

2. Commencement

This Act commences on the day on which this
Act receives the Royal Assent.

3. Principal Act

In this Act, the *Criminal Code Act 1924** is
referred to as the Principal Act.

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4. Schedule 1 amended (*Criminal Code*)

Schedule 1 to the Principal Act is amended as follows:

- (a) by omitting from section 393(1)(a) “appears to be” and substituting “is”;
- (b) by inserting the following section after section 402:

402A. Second or subsequent appeal by convicted person on fresh and compelling evidence

(1) In this section –

convicted person means a person who, before a court of trial, has been –

- (a) convicted of a serious crime; or
- (b) acquitted of a serious crime on the ground of insanity –

whether that conviction or acquittal occurred before or after the commencement of this section;

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fresh and compelling evidence
has the meaning given by
subsection (10);

serious crime means a crime
punishable upon
indictment listed in
Appendix D.

- (2) The Court may hear a second or subsequent appeal by a convicted person if the person has been granted leave to appeal under this section.
- (3) A convicted person may apply to a single judge for leave to lodge a second or subsequent appeal against the conviction on the ground that there is fresh and compelling evidence.
- (4) At any time after receiving an application for leave to appeal under this section, the single judge may refer the matter to the Court for determination.
- (5) On hearing the application of a convicted person for leave to appeal, the single judge or Court –
 - (a) must grant leave to appeal if satisfied that –

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- (i) the convicted person has a reasonable case to present to the Court in support of the ground of the appeal; and
 - (ii) it is in the interests of justice for the leave to be granted; and
 - (b) must refuse to grant leave to appeal if not so satisfied.
- (6) The Court may uphold the second or subsequent appeal of a convicted person if satisfied that –
- (a) there is fresh and compelling evidence; and
 - (b) after taking into account the fresh and compelling evidence, there has been a substantial miscarriage of justice.
- (7) The Court may dismiss the second or subsequent appeal of a convicted person if not satisfied as specified in subsection (6).

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- (8) If the Court upholds the second or subsequent appeal of a convicted person, the Court may quash the conviction and either –
 - (a) direct that a judgement and verdict of acquittal be entered; or
 - (b) under section 404, order that a new trial be held.
- (9) If the Court orders under subsection (8)(b) that a new trial be held, the Court –
 - (a) may make such other orders as the Court thinks fit for the safe custody of the person who is to be retried or for admitting the person to bail; but
 - (b) may not make any other order directing the court that is to retry the person on the charge to convict or sentence the person.
- (10) Evidence relating to the serious crime of which a convicted person was convicted –
 - (a) is fresh evidence if –

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- (i) it was not adduced at the trial of the convicted person; and
 - (ii) it could not, even with the exercise of reasonable diligence, have been adduced at that trial; and
- (b) is compelling evidence if –
- (i) it is reliable; and
 - (ii) it is substantial; and
 - (iii) in the context of the issues in dispute at the trial of the convicted person, it is highly probative of the case for the convicted person.
- (11) Evidence that would be admissible on an appeal under this section is not precluded from being fresh and compelling evidence merely because it would have been inadmissible in the earlier trial of the convicted

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person for the serious crime of
which he or she was convicted.

(12) Section 407 does not apply to an
appeal, or an application for leave
to appeal, under this section.

(c) by omitting from section 418(2) “section
or section 401,” and substituting
“section, section 401 or
section 402A(5),”.

5. Repeal of Act

This Act is repealed on the three hundred and
sixty fifth day from the day on which it
commences.