

CLAUSE NOTES

Criminal Code Amendment (Second or Subsequent Appeal for Fresh and Compelling Evidence) Bill 2015

Clause 1: Short title

This clause provides that the Bill will be cited as the *Criminal Code Amendment (Second or Subsequent Appeal for Fresh and Compelling Evidence) Bill 2015*.

Clause 2: Commencement

This clause provides for the Bill to commence on the day on which it receives the Royal Assent.

Clause 3: Principal Act

This clause provides that the Principal Act to which the amendments apply is the *Criminal Code Act 1924*.

Clause 4: Schedule 1 amended (Criminal Code)

This clause amends section 393 of the Principal Act by requiring that the Court find that there is fresh and compelling evidence.

The clause inserts new section 402A.

The new section 402A(1) provides definitions for –

- a “**convicted person**” as a person who has been convicted or acquitted on the ground of insanity of a serious crime whether prior or after the commencement of the amendment;
- “**fresh and compelling evidence**” as defined in new section 402A(10); and
- “**serious crime**” as a crime punishable by indictment and listed in Appendix D of the Criminal Code.

The clause provides that the Court of Criminal Appeal may hear the second or subsequent appeal of a convicted person if leave to appeal is granted (new section 402A(2)).

The clause provides that a single judge may determine an application for grant of leave to appeal (new section 402A(3)) and may refer the matter to the Court of Criminal Appeal for determination (section 402A(4)).

Under new section 402A(5) a single judge or Court of Criminal Appeal must grant leave to appeal if satisfied that –

- the convicted person has a reasonable case to present to the Court in support of the ground of appeal (new section 402A(5)(a)(i)); and
- it is in the interests of justice for leave to be granted (new section 402A(5)(a)(ii)).

The clause provides that a single judge or Court of Criminal Appeal must refuse the grant of leave if not satisfied on the matters in new section 402A(5)(a).

The clause provides that the Court of Criminal Appeal may uphold the second or subsequent appeal of a convicted person if satisfied that –

- there is fresh and compelling evidence (new section 402A(6)(a)); and
- after taking into account the fresh and compelling evidence there has been a substantial miscarriage of justice (new section 402A(6)(b)).

The new section 402A(7) provides that an appeal may be dismissed if the Criminal Court of Appeal is not satisfied of the matters in the new section 402A(6).

The clause provides that if a second or subsequent appeal is upheld the Court of Criminal Appeal may quash the conviction and either –

- direct an acquittal (new section 402A(8)(a)); or
- order a retrial under section 404 of the Criminal Code (new section 402A(8)(b)).

Under new section 402A(9) the Court of Appeal may make orders in relation to the safe custody or bail of the person to be retried (new section 402A(9)(a)) but may not make any other order directing the court that is to retry the person on the charge to convict or sentence the person (new section 402A(9)(a)(b)).

The clause provides definitions in relation to –

- “fresh evidence” as evidence that –
 - was not adduced at the trial (new section 402A(10)(a)(i)) and
 - evidence that could not have been adduced at trial with the exercise of reasonable diligence (new section 402A(10)(a)(ii))
- “compelling evidence” as evidence that –
 - is reliable (new section 402A(10)(b)(i)); and
 - is substantial (new section 402A(10)(b)(ii)); and

- o highly probative of the case for the convicted person in the context of the issues in dispute at the trial of the convicted person (new section 402A(10)(b)(iii)).

This clause provides that evidence that was not admissible at the original trial of the convicted person is not precluded from being considered as “fresh and compelling” evidence (new section 402A(11)).

This clause provides that the existing time limits applicable to criminal appeals do not apply to a second or subsequent appeal on fresh and compelling evidence (new section 402A(12)).

This clause amends section 418(2) of the Principal Act and provides that an applicant refused leave to appeal by a single judge the right to appeal that refusal to the Court of Criminal Appeal as constituted in section 400(1) of the Principal Act.

Clause 5: Repeal of Act

This clause provides for the repeal of this amending Act after the amendments have been incorporated into the Principal Act.