

# Crimes (Criminal Appeals) Amendment Bill

Government Bill

## Explanatory note

### General policy statement

This Bill amends the Crimes Act 1961. The aim of the Bill is to reform and clarify the case management procedure for dealing with criminal appeals in the Court of Appeal. Amongst other things, changes implemented in the Legal Services Act 2000 will remove the processing of legal aid applications from the Court of Appeal. This will change the way that cases are handled by the Court.

In addition, the *Taito* and *Bennett* cases, currently before the Privy Council and the High Court, respectively, have pointed to ambiguities in the legislation governing the procedure for dealing with criminal appeals on the papers. These ambiguities need to be clarified urgently to ensure certainty around the procedure for dealing with criminal appeals in the Court of Appeal.

In summary, the clauses in *Part 1* of the Bill—

- resolve ambiguities in the legislation governing the procedure for dealing with criminal appeals on the papers, by specifically empowering the Court of Appeal to hear and determine criminal appeals on the basis of the written material before it;
- clarify the duty of the Solicitor-General to appear for the Crown on appeals before the Court of Appeal;
- impose a duty on the Court of Appeal to provide reasons for judgments given on every appeal and application under Part XIII of the Crimes Act 1961;
- clarify the right of appellants and their counsel to be present at criminal appeals before the Court of Appeal by confirming—

- the right of appellants to be represented by legal counsel at all hearings before the Court of Appeal:
- the right of appellants and their legal counsel to appear before the Court at hearings involving oral submissions.

Part 2 of the Bill proposes to validate decisions made by the Court of Appeal under the previous legislative framework. The *Taito* and *Bennett* cases are excluded from the validation, in order to be consistent with constitutional principle.

### Clause by clause analysis

*Clause 1* is the Title clause. The Bill amends the Crimes Act 1961 (“the principal Act”).

*Clause 2* provides for the commencement of the Bill on the day after the date of Royal assent.

## Part 1

### Amendments to principal Act

*Clause 3* amends section 388(1) of the principal Act by omitting the last 2 sentences. That part of the subsection is inconsistent with the procedures provided for in the Bill.

*Clause 4* substitutes a *new section 390* of the principal Act. The section clarifies that the Solicitor-General’s duty to appear at a hearing only applies to hearings involving oral submissions. The rest of the section has been rewritten to make it easier to understand.

*Clause 5* repeals subsection (2) of section 392 of the principal Act, which provides for the “summary determination” of certain frivolous or vexatious appeals. This provision is anomalous, given the procedures in the Bill.

*Clause 6* inserts 2 new sections.

*New section 392A* provides that appeals and applications for leave to appeal must be disposed of either by way of a hearing on the papers, or by way of a hearing involving oral submissions. The initial decision about the mode of disposition may be made by a Judge of the Court of Appeal, but the Court may subsequently revise that decision. In either case, the decision must be made as the interests of justice require.

*New section 392B* sets out the features of a hearing on the papers that distinguish it from a hearing involving oral submissions. The main

points are that at a hearing on the papers neither the parties nor their representatives may appear before the Court or make oral submissions, and the appeal or application is determined solely on the basis of the written material before the Court.

*Clause 7* amends section 395 of the principal Act. It restates the right of an appellant to be represented at hearings, and clarifies the existing provisions about the rights of appellants in custody to be present at a hearing involving oral submissions.

*Clause 8* adds a new subsection (2) to section 398 of the principal Act. The subsection makes explicit the obligation on the Court of Appeal to provide reasons with every judgment relating to an appeal or application under Part XIII of the principal Act (except judgments relating to preliminary or incidental matters).

*Clause 9* makes 3 consequential amendments to the Court of Appeal (Criminal) Rules 1997.

## **Part 2**

### **Validation of determinations**

*Clause 10* provides that determinations of appeals or applications made under Part XIII of the principal Act before the Bill comes into force are not invalid by reason only of a failure to comply with the principal Act, the Court of Appeal (Criminal) Rules 1997, or the Criminal Appeal Rules 1946, nor for a failure to give reasons for the determination or judgment. *Subclause (2)* provides that the validation provision does not apply to determinations that are the subject of the *Taito* and *Bennett* proceedings, since these proceedings were commenced before the introduction of the Bill.

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*Hon Phil Goff*

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**The Parliament of New Zealand enacts as follows:**

### **1 Title**

(1) This Act is the Crimes (Criminal Appeals) Amendment Act **2000**.

(2) In this Act, the Crimes Act 1961<sup>1</sup> is called “the principal Act”.

<sup>1</sup> 1961 No 43

### **2 Commencement**

This Act comes into force on the day after the date on which it receives the Royal assent. 10

## **Part 1**

### **Amendments to principal Act**

### **3 Time for appealing**

Section 388(1) of the principal Act is amended by omitting the second and third sentences. 15

**4 New section 390 substituted**

The principal Act is amended by repealing section 390, and substituting the following section:

**“390 Duty of Solicitor-General**

“(1) It is the duty of the Solicitor-General to appear at every hearing involving oral submissions on an appeal or application for leave to appeal under this Part. 5

“(2) The Solicitor-General’s duty under **subsection (1)** may be performed by any other counsel employed or engaged by the Crown. 10

“(3) The rules of Court must provide for the transmission to the Solicitor-General of all relevant documents, exhibits, and other things connected with the proceedings.

“(4) **Subsections (1) and (3)** do not apply in the case of a private prosecution.” 15

**5 Duties of Registrar with respect to notices of appeal, etc**

Section 392(2) of the principal Act is repealed.

**6 New sections 392A and 392B inserted**

The principal Act is amended by inserting, immediately before section 393, the following sections: 20

**“392A Mode of disposition of appeals and applications**

“(1) Every appeal or application for leave to appeal under this Part must be disposed of by the Court of Appeal by way of—

“(a) a hearing on the papers; or

“(b) a hearing involving oral submissions. 25

“(2) The initial decision about the mode of disposition of a particular appeal or application may be made by a Judge of the Court of Appeal acting alone.

“(3) Despite **subsection (2)**, the Court of Appeal may at any time change the mode of disposition of a particular appeal or application. 30

“(4) Every decision about how an appeal or application is to be disposed of must be made as the interests of justice require.

**“392B Hearings on the papers**

- “(1) This section applies to appeals and applications for leave to appeal that are disposed of by the Court of Appeal by way of a hearing on the papers.
- “(2) The appeal or application must be determined by the Court on the basis of the written material before it. 5
- “(3) Consideration of the written material may be undertaken in whatever manner the Court thinks fit.
- “(4) Neither the parties, nor their representatives, may appear before the Court. 10
- “(5) The parties to the appeal or application may make written, but not oral, submissions to the Court.
- “(6) Paragraphs (b), (c), (d), and (e) of section 389 do not apply.”

**7 Right of appellant to be represented**

- (1) The heading to section 395 of the principal Act is amended by adding the words “**and be present**”. 15
- (2) Section 395 of the principal Act is amended by repealing subsection (1), and substituting the following subsections:
- “(1) At the hearing of an appeal, or an application for leave to appeal, or on any proceedings preliminary or incidental to an appeal or application, the appellant may be represented by counsel. 20
- “(1A) If an appellant is in custody, he or she is not entitled to be present at a hearing involving oral submissions unless—
- “(a) the rules of Court provide that he or she has the right to be present; or 25
- “(b) the Court of Appeal gives leave for him or her to be present.”

**8 Judgment of Court of Appeal**

- Section 398 of the principal Act is amended by adding, as subsection (2), the following subsection: 30
- “(2) Every judgment of the Court of Appeal on an appeal or application under this Part (other than one relating to a preliminary or incidental matter) must be accompanied by reasons.”

## 9 Consequential amendments to Court of Appeal (Criminal) Rules 1997

- (1) Rule 10 of the Court of Appeal (Criminal) Rules 1997 (SR 1997/168) is amended by revoking subclause (1), and substituting the following subclause:

“(1) The Registrar must, for each appeal, allocate a fixture date and, if the hearing is to involve oral submissions, prepare a case on appeal.”

- (2) The Schedule of the Court of Appeal (Criminal) Rules 1997 is amended by—

- (a) omitting from form 1 all the words appearing in parentheses after item 5; and  
 (b) omitting from form 3 all the words appearing in parentheses after item 7.

## Part 2

### Validation of determinations

#### 10 Validation of determinations made before Act commences

- (1) No determination of an appeal or application for leave to appeal that was made under Part XIII of the Crimes Act 1961 before the date on which this Act commences is invalid by reason only of any 1 or more of the following:

- (a) a failure to comply with Part XIII of the Crimes Act 1961 or the Court of Appeal (Criminal) Rules 1997 (as the Act and Rules were at any time before their amendment by this Act);  
 (b) a failure to comply with the Criminal Appeal Rules 1946;  
 (c) a failure to give reasons for the determination or judgment.

- (2) **Subsection (1)** does not apply to any determination that is the subject, as at **6 November 2000**, of either of the following proceedings:

- (a) *Fa’afete Taito v The Queen* (petition for special leave to appeal, CA 4/96);  
 (b) *James McLeod Bennett and 11 Others v Attorney-General and 2 Others* (CP 108/00).