

Authorised Version

Criminal Procedure Amendment (Double Jeopardy and Other Matters) Act 2011

No. 81 of 2011

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Authorised Version



Victoria

**Criminal Procedure Amendment
(Double Jeopardy and Other Matters)
Act 2011[†]**

No. 81 of 2011

[Assented to 21 December 2011]

The Parliament of Victoria enacts:

1 Purposes

The purposes of this Act are—

- (a) to amend the **Criminal Procedure Act 2009**—
 - (i) to provide exceptions to the rule against double jeopardy that would permit a person to be tried or re-tried in certain

circumstances despite a previous
acquittal; and

- (ii) to amend the pre-hearing disclosure requirements before a summary hearing; and
 - (iii) to amend the contents of a criminal record to include offences specified in infringement notices that have taken effect as convictions; and
- (b) to amend the **Public Prosecutions Act 1994** in relation to the functions of the Director of Public Prosecutions; and
- (c) to amend the **Appeal Costs Act 1998** to provide for indemnity certificates where the Director of Public Prosecutions applies to continue a prosecution after a previous acquittal; and
- (d) to make minor amendments of a statute law revision nature.

2 Commencement

- (1) Section 1, section 22(1), (2), (3) and (4) and this section come into operation on the day on which this Act receives the Royal Assent.
- (2) Section 22(5) is taken to have come into operation on 12 October 2010.
- (3) Section 22(6) is taken to have come into operation on 27 April 2010.
- (4) Section 22(7) is taken to have come into operation on 21 June 2011.
- (5) The remaining provisions of this Act come into operation on a day or days to be proclaimed.
- (6) If a provision of this Act referred to in subsection (5) does not come into operation before 1 July 2012, it comes into operation on that day.

3 Definitions

- (1) In section 3 of the **Criminal Procedure Act 2009**, in the definition of *criminal record*, in paragraph (a), after "previous convictions" insert "and infringement convictions".
- (2) In section 3 of the **Criminal Procedure Act 2009**, in the definition of *direct indictment*—
 - (a) at the end of paragraph (b)(ii) insert "or";
 - (b) after paragraph (b)(ii) insert—
 - (iii) resulted in an acquittal within the meaning of Chapter 7A and the prosecution of the offence charged in the indictment may only proceed if the Court of Appeal gives authorisation under section 327O;"
- (3) In section 3 of the **Criminal Procedure Act 2009** insert the following definition—

"infringement conviction means an infringement notice that has taken effect as a conviction of the offence specified in the notice;"

See:
Act No.
7/2009,
Reprint No. 1
as at
1 January
2010
and
amending
Act Nos
7/2009,
13/2009 (as
amended by
No. 68/2009),
6/2010 (as
amended by
No. 45/2010),
30/2010,
34/2010,
63/2010,
65/2010,
70/2010 and
29/2011.
LawToday:
www.
legislation.
vic.gov.au

4 Contents of preliminary brief

In section 37(1)(e) of the **Criminal Procedure Act 2009**, after "previous convictions" insert "or infringement convictions".

5 Contents of full brief

In section 41(1)(c) of the **Criminal Procedure Act 2009**, after "previous convictions" insert "or infringement convictions".

6 Mention hearing

After section 53 of the **Criminal Procedure Act 2009 insert—**

"53A Documents to be provided by police at first mention hearing

- (1) This section applies if the informant is a member of the police force.
- (2) At the first mention hearing, the informant must have the following documents available for provision to the accused or the legal practitioner representing the accused—
 - (a) a copy of the preliminary brief (if prepared);
 - (b) a copy of the full brief (if prepared);
 - (c) if neither a preliminary brief nor a full brief has been prepared—
 - (i) a copy of the charge-sheet in respect of the alleged offence; and
 - (ii) a statement of the alleged facts on which the charge is based; and
 - (iii) either—
 - (A) a copy of the criminal record of the accused that is available at the time of the first mention hearing; or
 - (B) a statement that the accused has no previous convictions or infringement convictions known at that time.

-
- (3) This section does not apply to a proceeding for—
- (a) an offence under the **Road Safety Act 1986** or regulations or rules under that Act that is detected by a road safety camera, a speed detector or a process prescribed for the purposes of that Act; or
 - (b) an offence under the **Melbourne City Link Act 1995** that is detected by a tolling device or a process prescribed for the purposes of Part 4 of that Act; or
 - (c) an offence under the **EastLink Project Act 2004** that is detected by a tolling device or a process prescribed for the purposes of Part 9 of that Act."

7 Chapter 3—Criminal record

- (1) At the foot of section 77(1) of the **Criminal Procedure Act 2009** insert—

"Note

Previous conviction is defined by section 3 to refer only to a conviction or finding of guilt made by a court and does not include an infringement conviction."

- (2) After section 77(2) of the **Criminal Procedure Act 2009** insert—

- "(2A) A criminal record must contain, in relation to each infringement conviction—
- (a) the date on which the infringement notice took effect as a conviction; and
 - (b) the offence specified in the notice; and
 - (c) the amount specified in the notice as the penalty for the infringement; and

- (d) any other penalty that results from the operation of the notice.

Example

A period of cancellation, disqualification or suspension of a licence or permit."

8 Chapter 3—Proof of previous convictions by criminal record

- (1) In the heading to section 78 of the **Criminal Procedure Act 2009**, after "previous convictions" insert "and infringement convictions".
- (2) In section 78(2) of the **Criminal Procedure Act 2009**, after "previous convictions" insert "and infringement convictions".
- (3) In section 78(3) of the **Criminal Procedure Act 2009**, after "previous conviction" insert "or infringement conviction".
- (4) In section 78(4) of the **Criminal Procedure Act 2009**, after "previous conviction" (where twice occurring) insert "or infringement conviction".
- (5) In section 78(5) of the **Criminal Procedure Act 2009**, after "previous conviction" insert "or infringement conviction".

9 Admissibility of evidence in absence of accused where full brief served

In section 83(3) of the **Criminal Procedure Act 2009**, after "previous convictions" insert "or infringement convictions".

10 Admissibility of evidence in absence of accused where preliminary brief served

In section 84(5) of the **Criminal Procedure Act 2009**, after "previous convictions" insert "or infringement convictions".

11 Proof of criminal record in absence of accused

- (1) In section 86(1)(b) of the **Criminal Procedure Act 2009**, after "previous convictions" **insert** "or infringement convictions".
- (2) In section 86(2)(c) of the **Criminal Procedure Act 2009**, after "previous convictions" **insert** "and infringement convictions".

12 Informant must serve hand-up brief

In section 107(3) of the **Criminal Procedure Act 2009**, after "previous convictions" **insert** "or infringement convictions".

13 Note inserted

At the foot of section 165 of the **Criminal Procedure Act 2009 insert—**

"Note

Section 327Q provides a limitation on amendments in the case of direct indictments under Chapter 7A."

14 Plea of previous acquittal

In section 220(3) of the **Criminal Procedure Act 2009**, for "The rules" **substitute** "Subject to Chapter 7A, the rules".

15 Chapter 5—Criminal record

- (1) At the foot of section 244(1) of the **Criminal Procedure Act 2009 insert—**

"Note

Previous conviction is defined by section 3 to refer only to a conviction or finding of guilt made by a court and does not include an infringement conviction."

(2) After section 244(2) of the **Criminal Procedure Act 2009** insert—

"(2A) A criminal record must contain, in relation to an infringement conviction—

- (a) the date on which the infringement notice took effect as a conviction; and
- (b) the offence specified in the notice; and
- (c) the amount specified in the notice as the penalty for the infringement; and
- (d) any other penalty that results from the operation of the notice.

Example

A period of cancellation, disqualification or suspension of a licence or permit."

16 Chapter 5—Proof of previous convictions by criminal record

- (1) In the heading to section 245 of the **Criminal Procedure Act 2009**, after "previous convictions" insert "and infringement convictions".
- (2) In section 245(1) of the **Criminal Procedure Act 2009**, after "previous convictions" insert "or infringement convictions".
- (3) In section 245(3) of the **Criminal Procedure Act 2009**, after "previous convictions" insert "and infringement convictions".
- (4) In section 245(4) of the **Criminal Procedure Act 2009**, after "previous convictions" insert "or infringement convictions".
- (5) In section 245(5) of the **Criminal Procedure Act 2009**, after "previous conviction" insert "or infringement conviction".

- (6) In section 245(6) of the **Criminal Procedure Act 2009**, after "previous conviction" (where twice occurring) **insert** "or infringement conviction".

17 New Chapter 7A inserted

After Chapter 7 of the **Criminal Procedure Act 2009 insert—**

**"CHAPTER 7A—LIMITATIONS ON
RULES RELATING TO DOUBLE
JEOPARDY**

327A Application of Chapter

- (1) This Chapter extends to an acquittal in a place outside Victoria if the law of that place permits the acquitted person to be retried.
- (2) Subject to subsection (3), this Chapter does not apply if a person is acquitted of the offence charged but is convicted of a lesser offence arising out of the same set of circumstances that gave rise to the charge.
- (3) This Chapter applies in the circumstances set out in subsection (2) if the acquittal was tainted.

327B Definitions

In this Chapter—

acquittal includes—

- (a) a verdict of not guilty (other than a verdict of not guilty because of mental impairment); and
- (b) an entry of not guilty made on the record on the direction of the trial judge; and
- (c) a judgment of acquittal entered by the Court of Appeal on an appeal;

administration of justice offence means—

- (a) perjury or subornation of perjury;
or
- (b) perverting, or attempting to
pervert, the course of justice or
conspiracy to pervert the course of
justice; or
- (c) bribery of a public official, being
a judge of the County Court or the
Supreme Court; or
- (d) a substantially similar offence
against the law of a place outside
Victoria corresponding to an
offence referred to in paragraph
(a), (b) or (c).

327C Meaning of *fresh and compelling evidence*

- (1) For the purposes of this Chapter, evidence
relating to an offence of which a person is
acquitted is—
 - (a) ***fresh*** if—
 - (i) it was not adduced at the trial of
the offence; and
 - (ii) it could not, even with the
exercise of reasonable diligence,
have been adduced at the trial; and
 - (b) ***compelling*** if—
 - (i) it is reliable; and
 - (ii) it is substantial; and
 - (iii) it is highly probative in the
context of the issues in dispute at
the trial of the offence.

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- (2) Evidence that would be admissible on a new trial under this Chapter is not precluded from being fresh or compelling only because it would not have been admissible in the earlier trial of the offence that resulted in the acquittal.

327D Meaning of *tainted acquittal*

For the purposes of this Chapter, if at the trial of an offence a person is acquitted of the offence, the acquittal will be *tainted* if—

- (a) the person or another person has been convicted (whether or not in Victoria) of an administration of justice offence in connection with the trial resulting in the acquittal; and
- (b) it is more likely than not that, had it not been for the commission of the administration of justice offence, the person would have been convicted of the firstmentioned offence at the trial.

327E Circumstances in which police may reinvestigate offence after acquittal

- (1) In this section—

an offence of which a person has previously been acquitted includes—

- (a) any other offence charged against the person in the same indictment as the charge for the offence of which the person was acquitted; and
- (b) any other offence of which the person could have been convicted at the trial of the offence of which the person was acquitted;

reinvestigation, in relation to an offence of which a person has previously been acquitted, means—

- (a) the questioning and search of the person; or
- (b) the conduct of a forensic procedure on the person and the taking of the person's fingerprints in accordance with the **Crimes Act 1958**; or
- (c) the search of property or premises owned or occupied by the person and the seizure of any thing found in or on the property or premises, including any vehicle; or
- (d) the use of surveillance devices in accordance with the **Surveillance Devices Act 1999**; or
- (e) the doing of anything authorised by a warrant issued under Part 2-5 of the Telecommunications (Interception and Access) Act 1979 of the Commonwealth;

senior member means a member of the police force of or above the rank of superintendent.

- (2) Subject to subsections (5), (6) and (7), a member of the police force must not conduct, or authorise the conduct of, a reinvestigation of an offence of which a person has previously been acquitted unless the DPP has given written authorisation.
- (3) Only the Chief Commissioner of Police, a Deputy Commissioner or an Assistant Commissioner may apply to the DPP for an authorisation under subsection (2).

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- (4) The DPP must not authorise a reinvestigation referred to in subsection (2) unless—
- (a) the DPP is satisfied that—
 - (i) there is, or as a result of the reinvestigation there is likely to be, sufficient new evidence of the commission of the offence by a person to warrant the conduct of the reinvestigation; and
 - (ii) it is in the public interest for the reinvestigation to proceed; and
 - (b) in the DPP's opinion, the previous acquittal would not be a bar to the trial of the person for an offence that may be charged as a result of the reinvestigation.
- (5) A member of the police force may apply to a senior member for written authorisation to conduct, or authorise the conduct of, a reinvestigation referred to in subsection (2) if the applicant reasonably believes that—
- (a) urgent action is required to prevent the reinvestigation being substantially and irrevocably prejudiced; and
 - (b) it is not reasonably practicable in the circumstances to obtain the DPP's authorisation before taking the action.
- (6) On an application under subsection (5), a senior member may give written authorisation for a reinvestigation referred to in subsection (2) if the senior member reasonably believes that—
- (a) urgent action is required to prevent the reinvestigation being substantially and irrevocably prejudiced; and

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- (b) it is not reasonably practicable in the circumstances to obtain the DPP's authorisation before taking the action.
- (7) A member of the police force may conduct, or authorise the conduct of, a reinvestigation referred to in subsection (2) without the written authorisation of the DPP or a senior member if the member reasonably believes that—
- (a) urgent action is required to prevent the reinvestigation being substantially and irrevocably prejudiced; and
- (b) it is not reasonably practicable in the circumstances to obtain the authorisation of the DPP or a senior member before taking the action.
- (8) The DPP must be informed as soon as practicable of—
- (a) an authorisation given under subsection (6) and the action, if any, taken under the authorisation; or
- (b) any action taken under subsection (7)—
- and the reinvestigation must not proceed further without the DPP's written authorisation.
- (9) The DPP may, by instrument, delegate any function or power of the DPP under this section (other than this power of delegation) to the Chief Crown Prosecutor or a Senior Crown Prosecutor appointed under the **Public Prosecutions Act 1994**.

327F DPP may file indictment

- (1) The DPP may file a direct indictment (in accordance with Chapter 5) charging an offence the prosecution of which may only

proceed if the Court of Appeal gives
authorisation under section 327O.

- (2) Any circumstances referred to in section
327M(2)—
- (a) need not be specified in a charge for an
offence referred to in that subsection;
and
 - (b) are not elements of the offence.

327G Bail following filing of direct indictment

If an accused is in custody following the
filing of a direct indictment under this
Chapter, it is to be presumed that the accused
is to be released on bail, regardless of the
offence charged, pending determination of
the DPP's application under section 327H or
discontinuance of the prosecution under
section 327K.

Note

Sections 331(2) and 411(4) provide further for bail.

327H DPP may apply to Court of Appeal

- (1) The DPP may apply to the Court of Appeal
for an order—
- (a) setting aside the previous acquittal of
the accused or removing the previous
acquittal as a bar to the accused being
tried on the direct indictment (as the
case requires); and
 - (b) authorising the continuation of the
prosecution of the charge in the
indictment.
- (2) An application must specify whether it is
based on—
- (a) a tainted acquittal; or

-
- (b) fresh and compelling evidence; or
 - (c) an administration of justice offence.
- (3) An application based on fresh and compelling evidence cannot be made in relation to an acquittal resulting from a new trial authorised under this Chapter.
 - (4) An application under subsection (1) is commenced by filing a notice of application in accordance with the rules of court within 28 days after the day on which a direct indictment is filed under section 327F.
 - (5) A notice of application under subsection (4) must be signed by the DPP personally.
 - (6) A copy of the notice of application must be served personally on the accused in accordance with section 391 within 7 days after the day on which the notice of application is filed.
 - (7) The DPP must provide a copy of the notice of application to the legal practitioner who last represented the accused in the criminal proceeding which resulted in the previous acquittal, if that legal practitioner can reasonably be identified.
 - (8) An accused is entitled to appear at the hearing of an application under this section and may be represented by a legal practitioner.

327I Extension of time for filing or serving notice of application

- (1) The Court of Appeal or, in accordance with the rules of court, the Registrar of Criminal Appeals of the Supreme Court at any time may extend the time within which—

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- (a) a notice of application under section 327H may be filed; or
- (b) a notice referred to in paragraph (a) may be served—
- if the court or Registrar considers that it is in the interests of justice to do so.
- (2) The power of the Court of Appeal to extend time under this section may be exercised by a single Judge of Appeal in the same manner as it may be exercised by the Court of Appeal.
- (3) If a Judge of Appeal or the Registrar of Criminal Appeals of the Supreme Court refuses an application to extend time under subsection (1), the DPP is entitled to have the Court of Appeal determine the application.

327J DPP may apply only once in relation to particular acquittal

The DPP may make an application to the Court of Appeal under section 327H only once in relation to a particular acquittal.

327K DPP must discontinue prosecution if fails to make application

If the DPP fails to make an application under section 327H within 28 days after filing a direct indictment under section 327F, or any extension of that period granted under section 327I, the DPP must discontinue the prosecution (in accordance with Part 5.4) within 14 days after the expiry of the 28 days or the extension (as the case requires).

**327L Determination of application where
acquittal tainted**

On an application under section 327H, the Court of Appeal may make any order referred to in section 327O in relation to a person who has been acquitted of an offence if the court is satisfied that—

- (a) at the time the offence is alleged to have been committed, the offence was punishable by level 4 imprisonment (15 years maximum) or more (however the penalty is described); and
- (b) the acquittal was tainted; and
- (c) it is likely that a new trial for that offence would be fair, having regard to—
 - (i) the length of time since the offence is alleged to have been committed; and
 - (ii) whether there has been a failure on the part of the police or the prosecution to act with reasonable diligence or expedition with respect to the making of the application; and
 - (iii) any other matter that the court considers relevant.

**327M Determination of application where fresh
and compelling evidence**

- (1) On an application under section 327H, the Court of Appeal may make any order referred to in section 327O in relation to a person who has been acquitted of an offence if the court is satisfied that—

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- (a) the offence is referred to in subsection (2); and
 - (b) any circumstances referred to in subsection (2) in respect of the offence were present in the commission of the offence; and
 - (c) there is fresh and compelling evidence against the person in relation to the offence; and
 - (d) it is likely that a new trial for that offence would be fair, having regard to—
 - (i) the length of time since the offence is alleged to have been committed; and
 - (ii) whether there has been a failure on the part of the police or the prosecution to act with reasonable diligence or expedition with respect to the making of the application; and
 - (iii) any other matter that the court considers relevant.
- (2) Subsection (1) applies to the following offences—
- (a) murder;
 - (b) murder contrary to section 3A of the **Crimes Act 1958** (unintentional killing in the course or furtherance of a crime of violence);
 - (c) conspiracy to commit murder (section 321 of the **Crimes Act 1958**);
 - (d) incitement to commit murder (section 321G of the **Crimes Act 1958**);

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- (e) attempting to commit murder (section 321M of the **Crimes Act 1958**);
 - (f) manslaughter;
 - (g) child homicide (section 5A of the **Crimes Act 1958**);
 - (h) arson causing death (section 197A of the **Crimes Act 1958**);
 - (i) trafficking in a drug or drugs of dependence—large commercial quantity (section 71 of the **Drugs, Poisons and Controlled Substances Act 1981**);
 - (j) cultivation of narcotic plants—large commercial quantity (section 72 of the **Drugs, Poisons and Controlled Substances Act 1981**);
 - (k) rape (section 38 of the **Crimes Act 1958**), compelling sexual penetration (section 38A of the **Crimes Act 1958**) or armed robbery (section 75A of the **Crimes Act 1958**) if the offence is committed in circumstances where—
 - (i) torture (being the deliberate and systematic infliction over a period of time of severe pain on the victim) was involved in the commission of the offence; or
 - (ii) the offender caused really serious injury to the victim; or
 - (iii) the offender threatened to cause death or really serious injury to the victim;

-
- (l) a substantially similar offence against a previous enactment or the law of a place outside Victoria corresponding to an offence referred to in this subsection.

327N Determination of application where administration of justice offence

On an application under section 327H, the Court of Appeal may make any order referred to in section 327O in relation to a person who has been acquitted of an offence if the court is satisfied that—

- (a) at the time the offence is alleged to have been committed, the offence was an indictable offence; and
- (b) there is fresh evidence against the acquitted person of the commission of an administration of justice offence in relation to the previous acquittal; and
- (c) it is likely that a trial for the administration of justice offence would be fair, having regard to—
- (i) the length of time since the administration of justice offence is alleged to have been committed; and
- (ii) whether there has been a failure on the part of the police or the prosecution to act with reasonable diligence or expedition with respect to the making of the application; and
- (iii) any other matter that the court considers relevant.

327O Orders on determination of application

- (1) On an application under section 327H, if the Court of Appeal is satisfied of the matters in section 327L or 327M, the court may order that—
 - (a) the previous acquittal of the accused of an offence charged in the direct indictment be set aside or removed as a bar to the accused being tried on the direct indictment (as the case requires); and
 - (b) the prosecution of the charge in the direct indictment may continue.
- (2) On an application under section 327H, if the Court of Appeal is satisfied of the matters in section 327N, the court may order that—
 - (a) the previous acquittal of the accused be removed as a bar to the accused being tried for the administration of justice offence alleged to have been committed in relation to the previous acquittal; and
 - (b) the prosecution of the charge in the direct indictment may continue.
- (3) In addition to subsections (1) and (2), the Court of Appeal may make any other order that it considers appropriate.
- (4) If the Court of Appeal is not satisfied that section 327L, 327M or 327N applies or that a fair trial is likely, the court must order that the charge in the direct indictment is permanently stayed.

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- (5) If more than one offence is charged in the direct indictment, the Court of Appeal must make an order under subsection (1), (2) or (4) in relation to each charge.
- (6) If the Court of Appeal makes an order under subsection (1) or (2), the court may make any order for or in relation to the bail of the accused that the court considers appropriate.

327P DPP must elect which offence to prosecute

If the DPP satisfies the Court of Appeal under sections 327L, 327M and 327N, or any 2 of those sections, the DPP must elect to prosecute either—

- (a) the administration of justice offence; or
- (b) the offence of which the accused has been acquitted or a related offence—

and may proceed only on that basis.

327Q Amendment of indictment

If the Court of Appeal makes an order under section 327O(1) or (2) in relation to an offence charged in a direct indictment, the trial court must not amend the indictment to significantly change the offence charged.

327R Prohibition on making certain references in new trial

At a new trial that has been authorised under this Chapter, the prosecution must not refer to the fact that the Court of Appeal has been satisfied that—

- (a) there is fresh evidence, or fresh and compelling evidence, against the accused in relation to the offence charged; or

- (b) it is more likely than not that, had it not been for the commission of an administration of justice offence, the accused would have been convicted of the offence charged at the earlier trial.

Note

Section 18 of the **Supreme Court Act 1986** permits the court to make an order prohibiting the publication of the whole or part of a proceeding.

327S Appeal and review rights unaffected

This Chapter does not affect any right to appeal or review the acquittal of a person.

_____".

18 New section 441 inserted

After section 440 of the **Criminal Procedure Act 2009** insert—

"441 Transitional provisions—Criminal Procedure Amendment (Double Jeopardy and Other Matters) Act 2011

- (1) Section 53A as inserted by section 6 of the **Criminal Procedure Amendment (Double Jeopardy and Other Matters) Act 2011** applies to a proceeding in which the first mention hearing is held on or after the commencement of section 6 of that Act.
- (2) Section 77 as amended by section 7 of the **Criminal Procedure Amendment (Double Jeopardy and Other Matters) Act 2011** applies to a criminal record that is provided to a court on or after the commencement of section 7 of that Act.

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- (3) Section 244 as amended by section 15 of the **Criminal Procedure Amendment (Double Jeopardy and Other Matters) Act 2011** applies to a criminal record that is filed in a court on or after the commencement of section 15 of that Act.
- (4) Chapter 7A as inserted by section 17 of the **Criminal Procedure Amendment (Double Jeopardy and Other Matters) Act 2011** applies on and from the commencement of that section to an acquittal, irrespective of whether the acquittal occurred before, on or after the commencement of section 17 of that Act."

19 Schedule 1 amended

In Schedule 1 to the **Criminal Procedure Act 2009**, after clause 13 insert—

"14 Additional information to be included on indictment charging offence to which Chapter 7A applies

The following information must be included on a direct indictment charging an offence the prosecution of which may only proceed if the Court of Appeal gives authorisation under section 327O—

- (a) a statement that the DPP will apply to the Court of Appeal to set aside the previous acquittal of the accused or to remove the previous acquittal as a bar to the accused being tried on the direct indictment (as the case requires); and
- (b) identification of each charge on the indictment to which the statement is relevant."

20 Amendment of Public Prosecutions Act 1994

Before section 22(1)(d) of the **Public Prosecutions Act 1994** insert—

"(ce) if the Director considers it desirable to do so, to provide advice to an agency, body or person that has a power to investigate or prosecute criminal offences, or a class of criminal offences, in relation to an investigation (including a reinvestigation of an offence of which a person has previously been acquitted) or a prosecution;"

21 Amendment of Appeal Costs Act 1998

After section 17 of the **Appeal Costs Act 1998** insert—

"17A Application for indemnity certificate if DPP applies for continuation of prosecution of person previously acquitted

- (1) If an application is made to the Court of Appeal under section 327H of the **Criminal Procedure Act 2009**, the accused may apply to the Court of Appeal for, and, if it is in the interests of justice to do so, the Court of Appeal may grant, an indemnity certificate in respect of—
 - (a) the accused's own costs of the application; and
 - (b) if the Court of Appeal orders that the prosecution of the charge in the direct indictment against the accused may continue, any additional costs that the accused will pay, or will be ordered to pay, as a consequence of the order for the continuation of the prosecution.

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- (2) In determining whether it is in the interests of justice to grant an indemnity certificate under subsection (1), the Court of Appeal may have regard to—
- (a) whether the Court of Appeal orders that the prosecution of the charge in the direct indictment against the accused may continue; and
 - (b) whether the previous acquittal was attributable in any way to the act, neglect or fault of the accused; and
 - (c) any other matter that the Court of Appeal considers relevant.
- (3) An accused granted an indemnity certificate under subsection (1) is entitled to be paid by the Board, on an application made to it by the accused in the approved form—
- (a) an amount equal to the accused's own costs of the application; and
 - (b) any additional costs that the accused pays, or is ordered to pay, as a consequence of the order for the continuation of the prosecution—
- that the Board considers to have been reasonably incurred."

22 Statute law revision amendments

- (1) In section 313(1) of the **Criminal Procedure Act 2009**, for "Rules" substitute "rules of court".
- (2) In the note at the foot of section 411(2) of the **Criminal Procedure Act 2009**, for "Evidence Act 1958" substitute "Evidence (Miscellaneous Provisions) Act 1958".
- (3) Section 420(1)(b) of the **Criminal Procedure Act 2009** is repealed.

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- (4) In section 76C(1) of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**, for "Rules" **substitute** "rules of court".
- (5) In section 14(2) of the **Confiscation Amendment Act 2010**—
- (a) for "section 22(a)(ii) and (c)(iiia)" **substitute** "section 22(1)(a)(ii) and (1)(c)(iiia)";
 - (b) after "property" **insert** "(where secondly occurring)".
- (6) In the **Equal Opportunity Act 2010**—
- (a) in section 4(1), in the definition of *owners corporation*, for "**Owners Corporation Act 2006**" **substitute** "**Owners Corporations Act 2006**";
 - (b) in section 56(5), for "**Owners Corporation Act 2006**" **substitute** "**Owners Corporations Act 2006**".
- (7) In item 3.26 of the Schedule to the **Equal Opportunity Amendment Act 2011**—
- (a) **omit** "an";
 - (b) **omit** "a".

23 Repeal of amending Act

This Act is **repealed** on 1 July 2013.

Note

The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

ENDNOTES

† *Minister's second reading speech—*

Legislative Assembly: 9 November 2011

Legislative Council: 24 November 2011

The long title for the Bill for this Act was "A Bill for an Act to amend the **Criminal Procedure Act 2009**, the **Public Prosecutions Act 1994** and the **Appeal Costs Act 1998** and for other purposes."