



MEDIA RELEASE

Hon. John Hatzistergos MLC
Attorney General
Minister for Industrial Relations

EMBARGOED **Saturday, July 11, 2009**

COURTS GIVEN GREATER SAY IN SENTENCES ON APPEAL

NSW Courts will no longer be bound by a sentencing principle which has limited their discretion in imposing different sentences on appeal, under laws to be introduced by the NSW Government.

Attorney General John Hatzistergos said the laws will withdraw the principle of 'double jeopardy' as it applies to sentencing in Crown appeals.

"The reform will have the effect of giving judges of higher courts, such as the Court of Criminal Appeal, greater discretion in determining sentences on appeal where an original sentence may have been inadequate," he said.

Under the existing principle, when an appeal court increases a sentence imposed by the lower court, they must restrict the increase to the lower end of the scale.

This principle, known as 'sentencing double jeopardy', will be overturned in an amendment to crimes legislation.

"Our reform will remove the principle of double jeopardy in sentencing to help ensure courts are empowered to see justice is more fully served in sentences on appeal," the Attorney said.

The reform is part of a national approach recommended by the Council Of Australian Governments (COAG) Working Group on Double Jeopardy.

Mr Hatzistergos said the laws will also be amended to allow a third or subsequent retrial in the rare instance that an acquittal in a double jeopardy retrial is 'tainted'.

A 'tainted' acquittal is one where an accused person interferes with a juror or a witness or evidence in an attempt to escape justice.

In 2006, the NSW Government passed laws abolishing the rule against double jeopardy for life sentence offences where there is 'fresh and compelling evidence', or for offences with sentences over 15 years where there is a tainted acquittal.

"NSW was the first state to reform double jeopardy laws and our leadership on this issue has seen other states follow," Mr Hatzistergos said.

"We have carefully monitored the operation of the new laws and have decided to bring forward further reforms to this significant area of criminal law."