



New South Wales

Sentencing Legislation Further Amendment Act 1997 No 6

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Sentencing Legislation Further Amendment Act 1997 No 6

Act No 6, 1997

*An Act to amend the *Sentencing Act 1989* and the *Correctional Centres Act 1952* in relation to persons who are serving sentences of penal servitude or imprisonment for life; and for other purposes. [Assented to 9 May 1997]*

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Sentencing Legislation Further Amendment Act 1997*.

2 Commencement

This Act commences on the date of assent.

3 Amendment of Sentencing Act 1989 No 87

The *Sentencing Act 1989* is amended as set out in Schedule 1.

4 Amendment of Correctional Centres Act 1952 No 9

The *Correctional Centres Act 1952* is amended as set out in Schedule 2.

Schedule 1 Amendment of Sentencing Act 1989

(Section 3)

[1] Section 13A Existing life sentences

Insert in section 13A (1) in alphabetical order:

non-release recommendation, in relation to a person serving an existing life sentence, means a recommendation or observation, or an expression of opinion, by the original sentencing court that (or to the effect that) the person should never be released from imprisonment.

[2] Section 13A (3) and (3A)

Omit section 13A (3). Insert instead:

- (3) A person is not eligible to make such an application unless the person has served:
 - (a) at least 8 years of the sentence concerned, except where paragraph (b) applies, or
 - (b) at least 20 years of the sentence concerned, if the person was the subject of a non-release recommendation.
- (3A) A person who is the subject of a non-release recommendation is not eligible for the determination of a minimum term and an additional term under this section, unless the Supreme Court, when considering the person's application under this section, is satisfied that special reasons exist that justify making the determination.

[3] Section 13A (4A)

Insert after section 13A (4):

- (4A) In considering such an application, the Supreme Court is to have regard to all the circumstances surrounding the offence for which the life sentence was imposed, and all offences, wherever committed, of which the person has been convicted at any time (so far as this information is reasonably available to the Supreme Court).

[4] Section 13A (88)

Omit “2 years”. Insert instead “3 years”.

[5] Section 13A (8C)

Omit “2 years”. Insert instead “3 years”.

[6] Section 13A (9) (c)

Omit the paragraph. Insert instead:

- (c) the need to preserve the safety of the community,
and

[7] Section 13A (10A)

Insert after section 13A (10):

(10A) The Supreme Court, in exercising its functions under this section:

- (a) must have regard to and give substantial weight to any relevant recommendations, observations and comments made by the original sentencing court when imposing the sentence concerned, and
- (b) must give consideration to adopting or giving effect to their substance and the intention of the original ‘sentencing court when making them, and
- (c) must, to the extent that it declines to adopt or give effect to those matters, state its reasons for doing so.

[8] Section 13A (12) (c)

Omit “2 years”. Insert instead “3 years”.

[9] Section 13A (13)

Insert after section 13A (12):

(13) The reference in subsection (4A) to an offence of which a person has been convicted:

- (a) includes:
 - (i) a finding that an offence has been proved without proceeding to a conviction against the person, or

- (ii) any offence taken into account when sentence was passed against the person, but
- (b) does not include:
 - (i) an offence that has been quashed or set aside within the meaning of Part 4 of the *Criminal Records Act 1991*, or
 - (ii) an offence of a class or description prescribed by the regulations for the purposes of this paragraph.

[10] Section 22P

Insert after section 22O:

22P Matters to be considered concerning certain serious offenders

- (1) This section applies to a person whose sentence of imprisonment for life has been the subject of a determination under section 13A (4).
- (2) The Board, in exercising its functions under this Part in relation to a person to whom this section applies:
 - (a) must have regard to and give substantial weight to any relevant recommendations, observations and comments made by the original sentencing court when imposing the sentence concerned, and
 - (b) must give consideration to adopting or giving effect to their substance and the intention of the original sentencing court when making them, and
 - (c) must, to the extent that it declines to adopt or give effect to those matters, state its reasons for doing so.
- (3) The Board, in exercising its functions under this Part in relation to a person to whom this section applies, must in particular have regard to the need to preserve the safety of the community.

[11] Schedule 2A Savings and transitional provisions relating to amending Acts

Insert "*Sentencing Legislation Further Amendment Act 1997*." at the end of clause 1 (1).

[12] Schedule 2A, Part 3

Insert after Part 2:

Part 3 Provisions consequent on Sentencing Legislation Further Amendment Act 1997

7 Definition

In this Part:

amending Act means the *Sentencing Legislation Further Amendment Act 1997*.

8 Time limit on re-applications regarding existing life sentences

- (1) The amendments made by the amending Act to section 13A do not apply to an application made by any person under that section that was pending immediately before the day on which the Bill for the amending Act was introduced into Parliament. However, they apply to any application made by such a person under section 13A on or after that day.
- (2) The amendment made to section 13A (8B) by the amending Act does not apply to a person to whom a period of 2 years referred to in that subsection is applicable immediately before the commencement of that amendment. However, it does apply to such a person in respect of any decision of the Supreme Court made after that commencement to decline to determine a minimum term and an additional term.

- (3) The amendment made to section 13A (12) (c) by the amending Act does not apply to a person in respect of whom a direction that the person not re-apply for a period exceeding 2 years but not exceeding 3 years was in force immediately before the commencement of that amendment. However, it does apply to such a person in respect of a direction given in relation to the person after that commencement.
- (4) Section 22P of this Act, and section 62AA of the *Correctional Centres Act 1952*, do not apply in the case of any review process that had commenced before the day on which the Bill for the amending Act was introduced into Parliament.

Schedule 2 Amendment of Correctional Centres Act 1952

(Section 4)

Section 62AA

Insert after section 62:

62AA Matters to be considered concerning certain serious offenders

- (1) This section applies to a person serving an existing life sentence (as referred to in section 13A of the *Sentencing Act 1989*) or a sentence in respect of which a determination has been made under section 13A (4) of that Act.
- (2) The Review Council, in exercising its functions under section 62 (1) (b) and (c), and under any other prescribed provisions of this Act or the regulations, in relation to a person to whom this section applies:
 - (a) must have regard to and give substantial weight to any relevant recommendations, observations and comments made by the original sentencing court when imposing the sentence concerned, and
 - (b) must give consideration to adopting or giving effect to their substance and the intention of the original sentencing court when making them, and
 - (c) must, to the extent that it declines to adopt or give effect to those matters, state its reasons for doing so.

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- (3) The Review Council, in exercising its functions under section 62 (1) (b) and (c), and under any other prescribed provisions of this Act or the regulation, in relation to a person to whom this section applies, must in particular have regard to the need to preserve the safety of the community.

[Minister's second reading speech made in—
Legislative Assembly on 8 May 1997
Legislative Council on 8 May 1997]