New South Wales

Crimes Legislation Amendment (Existing Life Sentences) Act 2001 No 29

Contents

New South Wales

Crimes Legislation Amendment (Existing Life Sentences) Act 2001 No 29

Act No 29, 2001

An Act to amend the *Crimes (Sentencing Procedure) Act 1999* and the *Crimes (Administration of Sentences) Act 1999* with respect to certain offenders serving life sentences or sentences that have previously been life sentences. [Assented to 27 June 2001]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes Legislation Amendment (Existing Life Sentences) Act 2001*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Crimes (Sentencing Procedure) Act 1999 No 92

The *Crimes (Sentencing Procedure) Act 1999* is amended as set out in Schedule 1.

4 Amendment of Crimes (Administration of Sentences) Act 1999 No 93

The *Crimes (Administration of Sentences) Act 1999* is amended as set out in Schedule 2.

Schedule 1   Amendment of Crimes (Sentencing Procedure) Act 1999

(Section 3)

[1]   Schedule 1 Existing life sentences

Insert in alphabetical order in clause 1:

> *sentencing court*, in relation to an offender who has been resentenced as a result of a re-trial or other appeal proceedings, includes both the court by which a penalty was originally imposed for the offence and the court (whether the same court or a different court) by which a penalty was finally imposed for the offence.

[2]   Schedule 1, clause 2

Omit "20" from clause 2 (2) (b). Insert instead "30".

[3]   Schedule 1, clause 4

Insert after clause 4 (2):

> (3)   In the case of an offender who is the subject of a non-release recommendation, the Supreme Court may dispose of an application in relation to an existing life sentence:
>
> (a)   by setting a non-parole period for the sentence, or
>
> (b)   by declining to set a non-parole period for the sentence,
>
> but does not have jurisdiction to set a specified term for the sentence.

[4]   Schedule 1, clause 8

Insert "or (3)" after "(1)" in clause 8 (1) (a).

[5]   Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

> *Crimes Legislation Amendment (Existing Life Sentences) Act 2001*

[6]　Schedule 2, Part 3

Insert after Part 2 of Schedule 2:

Part 3　Provisions consequent on enactment of Crimes Legislation Amendment (Existing Life Sentences) Act 2001

38　Definition

In this Part, *the 2001 amending Act* means the *Crimes Legislation Amendment (Existing Life Sentences) Act 2001*.

39　Application of amendments

The amendments made to this Act by the 2001 amending Act do not affect:

(a)　any proceedings before the Supreme Court on an application under clause 2 of Schedule 1 to this Act that had been made, but not disposed of, before the commencement of those amendments, or

(b)　any determination made by the Supreme Court under clause 4 of Schedule 1 to this Act before the commencement of those amendments.

Schedule 2 Amendment of Crimes (Administration of Sentences) Act 1999

(Section 4)

[1] Section 3 Interpretation

Insert "154A," after "150," in paragraph (a) of the definition of *parole order* in section 3 (1).

[2] Section 154A

Insert after section 154:

154A Serious offenders the subject of non-release recommendations

(1) Section 143 does not require the Parole Board to give preliminary consideration as to whether or not a serious offender the subject of a non-release recommendation should be released on parole unless an application for that purpose is made to the Parole Board by or on behalf of the offender.

(2) An application under this section must be lodged with the Secretary of the Parole Board.

(3) After considering the application, the Parole Board may make an order directing the release of the offender on parole if, and only if, the Parole Board:

(a) is satisfied (on the basis of a report prepared by the Chief Executive Officer of the Corrections Health Service) that the offender:
   (i) is in imminent danger of dying, or is incapacitated to the extent that he or she no longer has the physical ability to do harm to any person, and
   (ii) has demonstrated that he or she does not pose a risk to the community, and

(b) is further satisfied that, because of those circumstances, the making of such an order is justified.

(4) In this section *serious offender the subject of a non-release recommendation* means a serious offender:

(a) who is serving a sentence for which a determination has been made under clause 4 of Schedule 1 to the *Crimes (Sentencing Procedure) Act 1999*, and

(b) who is the subject of a non-release recommendation within the meaning of that Schedule.

[3] Section 169 Conduct of inquiry into suspected breach of obligations or medical recovery

Insert after section 169 (1):

(1A) In the case of an offender who has been granted parole on the grounds that he or she is in imminent danger of dying or is incapacitated to the extent that he or she no longer has the physical ability to do harm to any person, as referred to in section 154A (3), the Parole Board may also conduct an inquiry if it suspects that those grounds no longer exist.

[4] Section 170 Revocation of parole order

Insert after section 170 (1) (a):

(a1) in the case of an offender who has been granted parole on the grounds that he or she is in imminent danger of dying or is incapacitated to the extent that he or she no longer has the physical ability to do harm to any person, as referred to in section 154A (3), if it is satisfied that those grounds no longer exist, or

[5] Schedule 5 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Crimes Legislation Amendment (Existing Life Sentences) Act 2001

[6]   Schedule 5, Part 3

Insert after Part 2 of Schedule 5:

Part 3   Provisions consequent on enactment of Crimes Legislation Amendment (Existing Life Sentences) Act 2001

60   Definition

In this Part, *the 2001 amending Act* means the *Crimes Legislation Amendment (Existing Life Sentences) Act 2001*.

61   Application of amendments to pending proceedings

The amendments made to this Act by the 2001 amending Act do not affect:

(a)   any proceedings under Subdivision 3 of Division 2 of Part 6 of this Act in respect of which the Parole Board had taken action under section 144 of this Act, but had not made a decision under section 149 or 150 of this Act, before the commencement of those amendments, or

(b)   any parole order made by the Parole Board under section 149, 150 or 160 of this Act before the commencement of those amendments.

62   Application of amendments to offenders the subject of existing determinations

Subject to clause 61, the amendments made to this Act by the 2001 amending Act apply to a serious offender:

(a)   who is serving a sentence for which a determination had been made under clause 4 of Schedule 1 to the *Crimes (Sentencing Procedure) Act 1999* before the commencement of those amendments (including a determination referred to in clause 21 of Schedule 2 to that Act), and

(b)   who is the subject of a non-release recommendation within the meaning of that Schedule,

in the same way as they apply to a serious offender who is serving a sentence for which such a determination is made after that commencement and who is the subject of such a recommendation.

[Minister's second reading speech made in—
     Legislative Assembly on 30 May 2001
     Legislative Council on 6 June 2001]

BY AUTHORITY