



New South Wales

Crimes (Sentencing Procedure) Amendment (Life Sentences) Act 2008 No 57

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Crimes (Sentencing Procedure) Amendment (Life Sentences) Act 2008 No 57

Act No 57, 2008

An Act to amend the *Crimes (Sentencing Procedure) Act 1999* with respect to applications for redeterminations of existing life sentences. [Assented to 1 July 2008]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes (Sentencing Procedure) Amendment (Life Sentences) Act 2008*.

2 Commencement

This Act commences on the date of assent to this Act.

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 Repeal of Act

- (1) This Act is repealed on the day following the day on which this Act commences.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendments

(Section 3)

[1] Schedule 1 Existing life sentences

Omit “any direction under clause 6” from clause 2 (1).

Insert instead “clauses 6 and 6A (2)”.

[2] Schedule 1, clause 2A

Insert after clause 2:

2A Restriction on number of further applications by offender for determination of non-parole periods

- (1) This clause applies only in relation to an application referred to in clause 2 (1) made by an offender on or after 17 June 2008. It does not apply in relation to any such application made by an offender before that date (including an application that was made but not finally disposed of before that date).
- (2) An offender may not make more than one application referred to in clause 2 (1).
- (3) If, in disposing under clause 4 of an application referred to in clause 2 (1), the Supreme Court declines to set a specified term for an existing life sentence or to set a non-parole period for the sentence, the offender who made the application is to serve the existing life sentence for the term of his or her natural life.
- (4) An application referred to in clause 2 (1) that is made by an offender and duly withdrawn is not to be counted as an application made by the offender for the purposes of subclause (2).
- (5) This clause has effect despite any other provision of this Schedule.

[3] Schedule 1, clause 6 (1A)

Insert before clause 6 (1):

- (1A) This clause applies only in relation to an application referred to in clause 2 (1) that was made by an offender but not finally disposed of before 17 June 2008. It does not apply in relation to an application referred to in clause 2 (1) that was made by an offender on or after that date.

[4] Schedule 1, clause 6A

Insert after clause 6:

6A Leave required for withdrawal of application and re-application

- (1) An application referred to in clause 2 (1) may be withdrawn by the offender who made the application, but only with the leave of the Supreme Court.
- (2) If the Supreme Court grants leave to withdraw an application referred to in clause 2 (1):
 - (a) the offender who made the application may not make a further application referred to in clause 2 (1) without the leave of the Court, and
 - (b) if the Court so directs, the offender may not make the further application for a specified period of time.
- (3) In considering whether to grant leave to withdraw an application, or to make a further application, referred to in clause 2 (1), the Supreme Court must have regard to and give substantial weight to the number of times the offender has previously withdrawn any application referred to in clause 2 (1).
- (4) Subclause (3) does not limit the matters to which the Supreme Court may have regard in deciding whether or not to grant leave to withdraw an application, or to make a further application, referred to in clause 2 (1).
- (5) No appeal lies against the decision of the Supreme Court on an application for leave under subclause (1).
- (6) An application referred to in clause 2 (1) that is withdrawn cannot be restored.
- (7) If the Supreme Court declines to grant an application for leave under subclause (2) (a), the offender is to serve the existing life sentence the subject of the application for the term of his or her natural life.

[5] Schedule 1, clause 7 (5)

Insert after clause 7 (4):

- (5) In considering an application referred to in clause 2 (1) that is made on or after 17 June 2008, or that was made before that date but not finally disposed of before the commencement of the *Crimes (Sentencing Procedure) Amendment (Life Sentences) Act 2008*, the Supreme Court must have regard to and give substantial weight to the following:

- (a) the level of culpability of the offender in the commission of the offence for which the sentence was imposed,
- (b) the heinousness of the offence.

[6] Schedule 1, clause 8 (1) (b) and (c)

Omit clause 8 (1) (b). Insert instead:

- (b) a direction by the Supreme Court under clause 6 (1) or 6A (2) (b), or
- (c) a decision of the Supreme Court on an application for leave under clause 6A (2) (a).

[7] Schedule 1, clause 8 (2) and (3)

Omit clause 8 (2). Insert instead:

- (2) The *Criminal Appeal Act 1912* applies:
 - (a) to an appeal referred to in subclause (1) (a) or (b), in the same way as it applies to an appeal against a sentence, and
 - (b) to an appeal referred to in subclause (1) (c), in the same way as it applies to an appeal against an interlocutory judgment or order.
- (3) If the Court of Criminal Appeal allows an appeal against the decision of the Supreme Court to refuse an application for leave under clause 6A (2) (a), the Court of Criminal Appeal may exercise the jurisdiction of the Supreme Court to determine the further application referred to in clause 2 (1).

[8] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Crimes (Sentencing Procedure) Amendment (Life Sentences) Act 2008

[Agreement in principle speech made in Legislative Assembly on 18 June 2008
Second reading speech made in Legislative Council on 25 June 2008]

BY AUTHORITY