

[Act 2001 No 29]



New South Wales

Crimes Legislation Amendment (Existing Life Sentences) Bill 2001

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The “truth in sentencing” regime established by the *Sentencing Act 1989* (and continued in the *Crimes (Sentencing Procedure) Act 1999* and the *Crimes (Administration of Sentences) Act 1999*) has abolished the former “Governor’s licence” provisions of the *Crimes Act 1900* under which an offender could be released from custody before his or her sentence had expired without the need for a parole order. Under the present regime, the only mechanism by which an offender can be released before his or her sentence expires is by means of a parole order granted by the Parole Board. Unless there are exceptional circumstances (see section 160 of the *Crimes (Administration of Sentences) Act 1999*), a parole order can only be granted to an offender for whose sentence a non-parole period has been set by the sentencing court, and whose non-parole period has expired.

For those offenders who were sentenced to life imprisonment before the present regime was established, the regime replaces the former Governor’s licence provisions with a procedure by which an offender can apply to the Supreme Court

Explanatory note

for a redetermination of his or her sentence, allowing the Supreme Court to replace the life sentence with a sentence for a fixed term and, in particular, to set a non-parole period after the expiry of which the Parole Board can (but need not) grant a parole order as referred to above. The procedure does not allow an offender to make such an application until he or she has served at least 8 years of his or her sentence. In the case of a “non-release offender” (that is, an offender who is the subject of a recommendation by the sentencing court that he or she should never be released), the offender cannot make such an application until he or she has served 20 years of his or her sentence and is not eligible for a redetermination of sentence unless the Supreme Court is satisfied that there are special reasons for doing so.

The object of this Bill is to amend the *Crimes (Sentencing Procedure) Act 1999* and the *Crimes (Administration of Sentences) Act 1999* so as:

- (a) to increase, from 20 years to 30 years, the length of time for which a non-release offender must serve his or her sentence before becoming eligible to apply for a redetermination of the sentence, and
- (b) to allow the Supreme Court to set a non-parole period for a non-release offender’s sentence, but to deny the Supreme Court jurisdiction to set a fixed period for the sentence (and so ensure that, unless a parole order is granted, the offender will never be released from custody), and
- (c) to exclude a non-release offender whose sentence has been redetermined (whether before or after the commencement of the proposed Act) from the automatic consideration for parole to which other offenders are entitled, and
- (d) to provide that a non-release offender may be granted parole only if the offender is dying or permanently incapacitated, but that such parole may be revoked if the offender subsequently recovers, and
- (e) to enact other minor provisions, including consequential savings and transitional provisions.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Crimes (Sentencing Procedure) Act 1999* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Crimes (Administration of Sentences) Act 1999* set out in Schedule 2.

Schedule 1 Amendment of Crimes (Sentencing Procedure) Act 1999

Schedule 1 [1] amends clause 1 of Schedule 1 to the Act so as to insert a definition of *sentencing court* that extends to both the court that originally sentences an offender and any other court that resentsences the offender as a result of a re-trial or other appeal proceedings.

Schedule 1 [2] amends clause 2 of Schedule 1 to the Act so as to increase, from 20 years to 30 years, the length of time for which a non-release offender must serve his or her sentence before being eligible to apply for a redetermination of the sentence.

Schedule 1 [3] amends clause 4 of Schedule 1 to the Act so as to allow the Supreme Court to set a non-parole period for a non-release offender's sentence, but to deny the Supreme Court jurisdiction to set a fixed period for the sentence.

Schedule 1 [4] amends clause 8 of Schedule 1 to the Act so as to enable an appeal to be made to the Court of Criminal Appeal against a determination by the Supreme Court under proposed clause 4 (3).

Schedule 1 [5] amends clause 1 of Schedule 2 to the Act so as to enable the regulations under the Act to make provision of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [6] inserts proposed Part 3 into Schedule 2 to the Act. Proposed clause 38 contains a definition for the purposes of the Part. Proposed clause 39 contains provisions that ensure that the amendments to be made by the proposed Act will not affect any proceedings for redetermination of sentence that have been commenced, or any redetermination of sentence that has been made, before the commencement of the clause.

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

Schedule 2 [1] amends section 3 of the Act as a consequence of the insertion of proposed section 154A.

Schedule 2 [2] inserts proposed section 154A. The proposed section:

- (a) excludes a non-release offender whose sentence has been redetermined from the automatic consideration for parole to which other offenders are entitled, and
- (b) provides that a non-release offender may be granted parole under the proposed section only if:
 - (i) the Chief Executive Officer of the Corrections Health Service has issued a report to the effect that the offender 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) the offender has demonstrated that he or she does not pose a risk to the community.

Schedule 1 [3] amends section 169 of the Act so as to enable the Parole Board to conduct an inquiry as to whether a non-release offender who has been granted parole because he or she is dying or incapacitated has subsequently recovered.

Schedule 1 [4] amends section 170 of the Act so as to enable the Parole Board to revoke the parole of a non-release offender who has been granted parole because he or she is dying or incapacitated if it is satisfied that he or she has subsequently recovered.

Schedule 1 [5] amends clause 1 of Schedule 5 to the Act so as to enable the regulations under the Act to make provision of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [6] inserts proposed Part 3 into Schedule 5 to the Act. Proposed clause 60 contains a definition for the purposes of the Part. Proposed clause 61 contains provisions that ensure that the amendments to be made by the proposed Act will not affect any proceedings for parole that have been commenced, or any parole order that has been made, before the commencement of the clause. Proposed clause 62 ensures that (subject to proposed clause 61) the amendments to be made by the proposed Act will apply to non-release offenders whose sentences have been redetermined before the commencement of the clause.