

[Act 1997 No 6]



New South Wales

# Sentencing Legislation Further Amendment Bill 1997

## Explanatory note

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

### Overview of Bill

The object of this Bill is to amend the *Sentencing Act 1989* and the *Correctional Centres Act 1952* so as:

- (a) to increase the extent to which the recommendations, observations and comments of the court that originally imposed a life sentence on a person have influence on:
    - (i) the consideration by the Supreme Court of an application for redetermination of the person's sentence under section 13A of the *Sentencing Act 1989*, and
    - (ii) the exercise by the Parole Board of its functions under Part 3 of that Act in respect of the person, and
    - (iii) the exercise by the Serious Offenders Review Council of certain of its functions under Part 10 of the *Correctional Centres Act 1952* in respect of the person, and
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- (b) to increase (from 8 to 20 years), in the case of persons who were the subject of a non-release recommendation by the original sentencing court, the length of sentence that a person who desires to have his or her sentence redetermined under section 13A of the *Sentencing Act 1989* must have served before a redetermination application can be made, and
- (c) to provide that redetermination of sentence is not available to a person who was the subject of a non-release recommendation, except where there are special reasons that justify a redetermination, and
- (d) to require the Supreme Court, in considering a redetermination of a life sentence under section 13A of the *Sentencing Act 1989*, to take into account all the circumstances surrounding the offence for which the life sentence was imposed and all convictions of the person serving the sentence, and
- (e) to require the Supreme Court, the Parole Board and the Serious Offenders Review Council, in the exercise of their respective functions, to have regard to the safety of the community in connection with redetermined life sentences, and
- (f) to adjust, from 2 years to 3 years, the “default” period (that is, the period that is applicable if the Court does not specify another period) for which a person whose sentence the Court has declined to redetermine is barred from making further application for redetermination.

## 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 the date of assent.

**Clause 3** is a formal provision giving effect to the amendments to the *Sentencing Act 1989* set out in Schedule 1.

**Clause 4** is a formal provision giving effect to the amendments to the *Correctional Centres Act 1952* set out in Schedule 2.

## Schedule 1 Amendment of Sentencing Act 1989

**Schedule 1 [1]** amends section 13A of the Act to include a definition of *non-release recommendation* for the purposes of the section.

**Schedule 1 [2]** amends section 13A of the Act so as to extend, in certain cases, the usual waiting period before an application may be made under the section for redetermination of a sentence. The usual waiting period is 8 years. As a consequence of the amendment, it will be 20 years in the case of a person who was the subject of a non-release recommendation. Furthermore, in the case of such a person, the amendment provides that the person is not eligible for a redetermination of sentence unless the Supreme Court is satisfied that special reasons exist that justify doing so.

**Schedule 1 [3]** amends section 13A of the Act so as to require the Supreme Court, when considering an application to redetermine a sentence under that section, to have regard to all the circumstances of the offence for which the life sentence under consideration was imposed and all convictions of the person serving the sentence. The amendment made by **Schedule 1 [9]** is consequential.

**Schedule 1 [4]** amends section 13A of the Act so as to provide that, unless otherwise specified by the Court, a person whose application for redetermination has been refused by the Supreme Court under that section may not make further application for a period of 3 years. (The current period is 2 years.) The amendments made by **Schedule 1 [5] and [8]** are consequential.

**Schedule 1 [6]** amends section 13A of the Act so as to require the Supreme Court, in exercising its functions under that section in connection with persons serving life sentences, to have regard to the need to maintain the safety of the community.

**Schedule 1 [7]** amends section 13A of the Act so as to provide that the Supreme Court, in exercising its functions under that section, 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 then under consideration, and must give consideration to adopting them or putting them into effect, giving reasons when it declines to do so.

**Schedule [10]** inserts a new section 22P which requires the Parole Board, when exercising its functions under Part 3 of the Act in relation to a person whose life sentence has been redetermined under section 13A, to have regard to and give substantial weight to any relevant recommendations, observations and comments made by the original sentencing court when imposing the life sentence, and to give consideration to adopting them or putting them into effect, giving reasons when it declines to do so. It also requires the Board to have particular regard to community safety in its dealings with such a person.

**Schedule 1 [11] and [12]** amend Schedule 2A to the Act to enact certain savings and to enable any further savings or transitional provisions necessary as a consequence of the amendments made by the proposed Act to be effected by regulation.

## **Schedule 2      Amendment of Correctional Centres Act 1952**

The Schedule inserts a new section 62AA which requires the Serious Offenders Review Council, when exercising certain functions under Part 10 of the Act in relation to a person whose life sentence has been redetermined, to have regard to and give substantial weight to any relevant recommendations, observations and comments made by the original sentencing court when imposing the sentence then under consideration, and to give consideration to adopting them or putting them into effect, giving reasons when it declines to do so. It also requires the Review Council to have particular regard to community safety in its dealings with such a person.