

Passed by both Houses



New South Wales

# Crimes (Sentencing Procedure) Amendment (Life Sentences) Bill 2008

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*I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,  
Sydney, , 2008*



New South Wales

## **Crimes (Sentencing Procedure) Amendment (Life Sentences) Bill 2008**

Act No , 2008

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An Act to amend the *Crimes (Sentencing Procedure) Act 1999* with respect to applications for redeterminations of existing life sentences.

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*I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.*

*Assistant Speaker of the Legislative Assembly.*

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**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- (1) This Act is repealed on the day following the day on which this Act commences.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.

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## 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*