



New South Wales

Crimes (Sentencing Procedure) Amendment (Existing Life Sentences) Bill 2005

Explanatory note

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

Overview of Bill

The *Crimes (Life Sentences) Amendment Act 1989* and the *Sentencing (Life Sentences) Amendment Act 1989* provided, as part of the “truth in sentencing” regime, that persons sentenced to life imprisonment are to serve that sentence and are not eligible for early release. Offenders sentenced to life imprisonment before the present regime was established were eligible to be released on licence.

For existing offenders, the regime establishes a procedure by which an offender can apply to the Supreme Court for a redetermination of his or her original 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) release the offender on parole. For those existing offenders who were subject to a recommendation by the sentencing court that he or she should never be released, the legislation, as subsequently amended, provides:

- (a) that the earliest time at which an existing offender can apply for a redetermination is 30 years after the original sentence commenced (at first a period of 8 years applied), and
- (b) that, on a redetermination, the Supreme Court cannot set a fixed term after which the offender would be eligible for automatic release, and

- (c) that if a non-parole period is fixed on a redetermination, parole cannot be granted after the expiry of that non-parole period except in limited circumstances.

In 1997, the *Sentencing Amendment (Transitional) Act 1997* was enacted to apply changes to the rules for redetermination of existing life sentences to pending applications that had not been determined at that time. In a recent decision of the Supreme Court (*Regina v Bronson Mathew Blessington* [2005] NSWSC 340), it has been held that the current rules for redetermination do not apply to applications for redetermination that were made before 8 May 1997 and are still pending before the Court. The decision also canvassed the possibility that those applicants (and any others who have not yet had their application determined) might now be able to appeal the sentencing court's recommendation that they never be released and thereby be excluded from the application of the current regime for redetermination of those "never to be released" offenders.

The object of this Bill is to amend the *Crimes (Sentencing Procedure) Act 1999* and the *Crimes (Administration of Sentences) Act 1999* so as to ensure that the current regime for redetermination of existing life sentences of "never to be released" offenders:

- (a) extends to all of those offenders whose original sentences have not yet been redetermined (including the future determination of the application the subject of the above Supreme Court decision), and
- (b) applies to those offenders even if the original non-release recommendations are now appealed.

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 that gives effect to Schedule 1 (Amendment of *Crimes (Sentencing Procedure) Act 1999*).

Clause 4 is a formal provision that gives effect to Schedule 2 (Amendment of *Crimes (Administration of Sentences) Act 1999*).

Schedule 1 **Amendment of Crimes (Sentencing Procedure) Act 1999**

Schedule 1 [1] amends the definition of *non-release recommendation* in clause 1 of Schedule 1 to the Act so as to ensure that an existing life sentence within the meaning of that Schedule does not cease to be the subject of a non-release recommendation because the recommendation is, or has at any time been, quashed, set aside or called into question.

Schedule 1 [2] effects minor law revision.

Schedule 1 [3] amends transitional arrangements in clause 21 of Schedule 2 to the Act to give effect to the object set out in the Overview relating to pending applications for redetermination.

Schedule 1 [4] is a consequential amendment.

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

Schedule 2 [1] amends section 154A of the Act so as to ensure that the references in that section to a non-release recommendation pick up the amendments that are from time to time made to the definition of that expression in Schedule 1 to the *Crimes (Sentencing Procedure) Act 1999*, including in particular the amendment made to that definition by Schedule 1 [1] to the proposed Act.

Schedule 2 [2] is a consequential amendment.

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Explanatory note



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No. , 2005

A Bill for

An Act to amend the *Crimes (Sentencing Procedure) Act 1999* with respect to existing life sentences the subject of non-release recommendations; and for other purposes.

| | |
|---|----------|
| The Legislature of New South Wales enacts: | 1 |
| 1 Name of Act | 2 |
| This Act is the <i>Crimes (Sentencing Procedure) Amendment (Existing Life Sentences) Act 2005</i> . | 3 4 |
| 2 Commencement | 5 |
| This Act commences on the date of assent. | 6 |
| 3 Amendment of Crimes (Sentencing Procedure) Act 1999 No 92 | 7 |
| The <i>Crimes (Sentencing Procedure) Act 1999</i> is amended as set out in Schedule 1. | 8 9 |
| 4 Amendment of Crimes (Administration of Sentences) Act 1999 No 93 | 10 |
| The <i>Crimes (Administration of Sentences) Act 1999</i> is amended as set out in Schedule 2. | 11 12 |

| | | |
|-------------------|--|----------------------------------|
| Schedule 1 | Amendment of Crimes (Sentencing Procedure) Act 1999 | 1 |
| | | 2 |
| | (Section 3) | 3 |
| [1] | Schedule 1 Existing life sentences | 4 |
| | Insert “, and includes any such recommendation, observation or expression of opinion that (before, on or after the date of assent to the <i>Crimes (Sentencing Procedure) Amendment (Existing Life Sentences) Act 2005</i>) has been quashed, set aside or called into question” after “imprisonment” in the definition of <i>non-release recommendation</i> in clause 1. | 5 6 7 8 9 |
| [2] | Schedule 1, clause 5 | 10 |
| | Insert “or (3)” after “4 (1)” in clause 5 (1). | 11 |
| [3] | Schedule 2 Savings, transitional and other provisions | 12 |
| | Omit clause 21 (2). Insert instead: | 13 |
| | (2) In particular, any such application that had been made before 8 May 1997 under section 13A of the 1989 Act but had not been determined as at the date of assent to the <i>Crimes (Sentencing Procedure) Amendment (Existing Life Sentences) Act 2005</i> , being an application made by an offender who is the subject of a non-release recommendation: | 14 15 16 17 18 19 |
| | (a) is not to be determined until the offender has served at least 30 years of the existing life sentence to which the application relates, and | 20 21 22 |
| | (b) is to be disposed of in accordance with clause 4 (3) of Schedule 1 to this Act, and not otherwise. | 23 24 |
| [4] | Schedule 2, clause 39 | 25 |
| | Omit the clause. | 26 |

| | | |
|-------------------|---|---|
| Schedule 2 | Amendment of Crimes (Administration of Sentences) Act 1999 | 1 |
| | | 2 |
| | (Section 4) | 3 |
| [1] | Section 154A Serious offenders the subject of non-release recommendations | 4 |
| | | 5 |
| | Insert “, as in force from time to time” after “Schedule” in section 154A (4) (b). | 6 |
| | | 7 |
| [2] | Schedule 5 Savings, transitional and other provisions | 8 |
| | Insert “, as in force from time to time” after “Schedule” in clause 62 (b). | 9 |