



New South Wales

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

Explanatory note

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

Overview of Bill

The “truth in sentencing” regime established by the now repealed *Sentencing Act 1989* (and continued in the *Crimes (Sentencing Procedure) Act 1999* and the *Crimes (Administration of Sentences) Act 1999*) abolished the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.

For those offenders who were sentenced to life imprisonment before the present regime was established (*existing offenders*), the regime replaces the former Governor’s licence provisions with a procedure by which an offender can apply to the Supreme Court for redetermination of his or her original sentence. The procedure allows 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 State Parole Authority can (but need not) release the offender on parole.

If the Supreme Court determines an application by an existing offender for a redetermination of his or her original life sentence by declining to set a specified term or a non-parole period for the sentence, the Court may direct that the offender who made the application may never re-apply to the Court or may not re-apply for a specified period of time. (If the Court makes no such direction, the offender is

precluded from re-applying for a period of 3 years.) There is currently no other restriction on the number of applications an offender may make for a redetermination of an existing life sentence.

The object of this Bill is to amend the *Crimes (Sentencing Procedure) Act 1999 (the Principal Act)*:

- (a) to restrict to one the number of further applications that an existing offender may make to the Supreme Court for a redetermination of his or her original life sentence, and
- (b) to require the Supreme Court, when considering such an application, to have regard to and give substantial weight to the level of culpability of the offender in the commission of the offence for which the sentence was imposed and the heinousness of the offence, and
- (c) to allow an existing offender to withdraw such an application, and make a further such application, only with leave of the Supreme Court.

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 to the proposed Act.

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

Clause 4 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendments

Schedule 1 [2] inserts new clause 2A into Schedule 1 to the Principal Act to restrict to one the number of further applications that an existing offender may make to the Supreme Court for a redetermination of his or her original life sentence. Applications made on or after 17 June 2008 (being the date of the Minister's announcement of the proposal to enact the amendments made by the proposed Act) are to be counted for the purposes of the restriction. Applications made before that date, and applications that are duly withdrawn, are not to be counted.

The new clause also provides that if, in disposing of an application made on or after 17 June 2008 by an existing offender for a redetermination of his or her original life sentence, the Supreme Court declines to set a specified term or a non-parole period for the sentence, the offender is to serve the existing life sentence for the term of his or her natural life.

Clause 6 of Schedule 1 to the Principal Act allows the Supreme Court, if it declines to set a specified term or a non-parole period in determining an application by an existing offender for a redetermination of his or her original life sentence, to direct that the offender may never re-apply to the Court, or may not re-apply for a specified period. If the Court makes no such direction, the clause precludes the offender from re-applying for a period of 3 years. **Schedule 1 [3]** amends clause 6 to make it clear that the clause applies only in relation to an application referred to in clause 2 (1) that was made but not finally disposed of before 17 June 2008 and that it does not apply in relation to an application made on or after that date.

Schedule 1 [4] inserts new clause 6A into Schedule 1 to the Principal Act to allow an existing offender to withdraw an application to the Supreme Court for a redetermination of his or her original life sentence only with leave of the Court. The Court's decision on an application for leave to withdraw such an application is not appealable. If the Supreme Court grants leave to withdraw an application, the offender who made the application may make a further application for a redetermination of life sentence only with leave of the Court and, if the Court so directs, may not make the further application for a specified period of time. In considering whether to grant leave to withdraw an application or to make a further application, the Supreme Court must have regard to and give substantial weight to the number of times the offender has previously withdrawn an application for a redetermination of the life sentence.

If the Supreme Court refuses to grant leave to an existing offender to make a further application for a redetermination of his or her original life sentence, new clause 6A provides that the offender is to serve the existing life sentence for the term of his or her natural life.

Schedule 1 [1] makes an amendment consequential on that made by Schedule 1 [4].

Schedule 1 [6] amends clause 8 of Schedule 1 to the Principal Act to allow an appeal to the Court of Criminal Appeal in relation to a decision of the Supreme Court on an application for leave to make a further application for a redetermination of a life sentence following the withdrawal of such an application, and a direction by the Supreme Court that an offender may not make a further application for a specified period of time (being a decision and a direction under new clause 6A).

Schedule 1 [7] amends clause 8 of Schedule 1 to the Principal Act to allow the Court of Criminal Appeal, in allowing an appeal against a decision of the Supreme Court to refuse an application for leave to make a further application for a redetermination of a life sentence following the withdrawal of such an application, to exercise the jurisdiction of the Supreme Court to determine the further application. The amendment also makes a consequential change in relation to the application of the *Criminal Appeal Act 1912*.

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

Explanatory note

Schedule 1 [5] amends clause 7 of Schedule 1 to the Principal Act to require the Supreme Court, when considering an application by an existing offender for a redetermination of his or her original life sentence, to have regard to and give substantial weight to the level of culpability of the offender in the commission of the offence for which the sentence was imposed and the heinousness of the offence.

Schedule 1 [8] inserts a provision that enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

First print



New South Wales

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

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Crimes (Sentencing Procedure) Act 1999 No 92	2
4 Repeal of Act	2
Schedule 1 Amendments	3



New South Wales

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

No. , 2008

A Bill for

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

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Crimes (Sentencing Procedure) Amendment (Life Sentences) Act 2008</i> .	3 4
2 Commencement	5
This Act commences on the date of assent to this Act.	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 Repeal of Act	10
(1) This Act is repealed on the day following the day on which this Act commences.	11 12
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	13 14

Schedule 1	Amendments	1
	(Section 3)	2
[1]	Schedule 1 Existing life sentences	3
	Omit “any direction under clause 6” from clause 2 (1).	4
	Insert instead “clauses 6 and 6A (2)”.	5
[2]	Schedule 1, clause 2A	6
	Insert after clause 2:	7
	2A Restriction on number of further applications by offender for determination of non-parole periods	8
		9
	(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).	10 11 12 13 14
	(2) An offender may not make more than one application referred to in clause 2 (1).	15 16
	(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.	17 18 19 20 21
	(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).	22 23 24 25
	(5) This clause has effect despite any other provision of this Schedule.	26 27
[3]	Schedule 1, clause 6 (1A)	28
	Insert before clause 6 (1):	29
	(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.	30 31 32 33 34

[4] Schedule 1, clause 6A	1
Insert after clause 6:	2
6A Leave required for withdrawal of application and re-application	3
(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.	4 5 6
(2) If the Supreme Court grants leave to withdraw an application referred to in clause 2 (1):	7 8
(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	9 10 11
(b) if the Court so directs, the offender may not make the further application for a specified period of time.	12 13
(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).	14 15 16 17 18
(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).	19 20 21 22
(5) No appeal lies against the decision of the Supreme Court on an application for leave under subclause (1).	23 24
(6) An application referred to in clause 2 (1) that is withdrawn cannot be restored.	25 26
(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.	27 28 29 30
[5] Schedule 1, clause 7 (5)	31
Insert after clause 7 (4):	32
(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 <i>Crimes (Sentencing Procedure) Amendment (Life Sentences) Act 2008</i> , the Supreme Court must have regard to and give substantial weight to the following:	33 34 35 36 37 38

(a)	the level of culpability of the offender in the commission of the offence for which the sentence was imposed,	1
(b)	the heinousness of the offence.	2
[6]	Schedule 1, clause 8 (1) (b) and (c)	3
	Omit clause 8 (1) (b). Insert instead:	4
(b)	a direction by the Supreme Court under clause 6 (1) or 6A (2) (b), or	5
(c)	a decision of the Supreme Court on an application for leave under clause 6A (2) (a).	6
[7]	Schedule 1, clause 8 (2) and (3)	7
	Omit clause 8 (2). Insert instead:	8
(2)	The <i>Criminal Appeal Act 1912</i> applies:	9
(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	10
(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.	11
(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).	12
[8]	Schedule 2 Savings, transitional and other provisions	13
	Insert at the end of clause 1 (1):	14
	<i>Crimes (Sentencing Procedure) Amendment (Life Sentences) Act 2008</i>	15
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