



New South Wales

Crimes (Sentencing Procedure) Amendment (Provisional Sentencing for Children) Bill 2013

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 *Crimes (Sentencing Procedure) Act 1999* to enable the provisional sentencing of children who are convicted of murder.

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.

Schedule 1 Amendment of Crimes (Sentencing Procedure) Act 1999 No 92

Schedule 1 [1] provides for a new scheme for the provisional sentencing of children who are convicted of murder.

The new scheme allows a court that imposes a sentence on an offender for the offence of murder to impose the sentence as a provisional sentence if:

- (a) the offender was less than 16 years of age when the offence was committed, and
- (b) the offender is less than 18 years of age when the provisional sentence is imposed, and
- (c) the sentence proposed to be imposed for the offence is or includes a term of imprisonment, and
- (d) the court is of the opinion that it is not appropriate to impose an ordinary sentence on the offender because the information presently available does not permit a satisfactory assessment of whether the offender has or is likely to develop a serious personality or psychiatric disorder, or a serious cognitive impairment, such that the court cannot satisfactorily assess either or both of the following matters:
 - (i) whether the offender is likely to re-offend,
 - (ii) the offender's prospects of rehabilitation.

The court may have regard to a case plan or proposed case plan for the offender in deciding whether or not it is appropriate to impose a provisional sentence.

A provisional sentence is subject to periodic review and redetermination. That is, the provisional sentence is not the final sentence of the offender.

A court that imposes a provisional sentence is to conduct progress reviews of the offender's case, at least once every 2 years, for the purpose of deciding whether it is appropriate to impose a final sentence on the offender.

A court may, after conducting a progress review:

- (a) impose a final sentence on the offender, or
- (b) decline to impose a final sentence on the offender.

A final sentence must be imposed no later than 5 years after the date the provisional sentence is imposed and at least one year before the end of the non-parole period for the provisional sentence.

Any term of imprisonment imposed under the final sentence is not to exceed the term of imprisonment imposed under the provisional sentence.

Both provisional sentences and final sentences are subject to appeal under the *Criminal Appeal Act 1912*. On appeal against a provisional sentence, a court may substitute a new provisional sentence or substitute a final sentence.

Schedule 1 [2] enables savings and transitional regulations to be made as a consequence of any Act that amends the *Crimes (Sentencing Procedure) Act 1999*.

Schedule 1 [3] extends the new provisional sentencing scheme to offences committed before the commencement of the scheme.

**Schedule 2 Amendment of Criminal Appeal Act 1912
 No 16**

Schedule 2 makes a consequential amendment that ensures that both provisional and final sentences imposed under the new scheme can be appealed as a sentence under the *Criminal Appeal Act 1912*.