



New South Wales

Crimes Legislation Amendment (Existing Life Sentences) Bill 2001

Explanatory note

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

Overview of Bill

The “truth in sentencing” regime established by the *Sentencing Act 1989* (and continued in the *Crimes (Sentencing Procedure) Act 1999* and the *Crimes (Administration of Sentences) Act 1999*) has 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. Under the present regime, the only mechanism by which an offender can be released before his or her sentence expires is by means of a parole order granted by the Parole Board. Unless there are exceptional circumstances (see section 160 of the *Crimes (Administration of Sentences) Act 1999*), a parole order can only be granted to an offender for whose sentence a non-parole period has been set by the sentencing court, and whose non-parole period has expired.

For those offenders who were sentenced to life imprisonment before the present regime was established, the regime replaces the former Governor’s licence provisions with a procedure by which an offender can apply to the Supreme Court

for a redetermination of his or her 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) grant a parole order as referred to above. The procedure does not allow an offender to make such an application until he or she has served at least 8 years of his or her sentence. In the case of a “non-release offender” (that is, an offender who is the subject of a recommendation by the sentencing court that he or she should never be released), the offender cannot make such an application until he or she has served 20 years of his or her sentence and is not eligible for a redetermination of sentence unless the Supreme Court is satisfied that there are special reasons for doing so.

The object of this Bill is to amend the *Crimes (Sentencing Procedure) Act 1999* and the *Crimes (Administration of Sentences) Act 1999* so as:

- (a) to increase, from 20 years to 30 years, the length of time for which a non-release offender must serve his or her sentence before becoming eligible to apply for a redetermination of the sentence, and
- (b) to allow the Supreme Court to set a non-parole period for a non-release offender’s sentence, but to deny the Supreme Court jurisdiction to set a fixed period for the sentence (and so ensure that, unless a parole order is granted, the offender will never be released from custody), and
- (c) to exclude a non-release offender whose sentence has been redetermined (whether before or after the commencement of the proposed Act) from the automatic consideration for parole to which other offenders are entitled, and
- (d) to provide that a non-release offender may be granted parole only if the offender is dying or permanently incapacitated, but that such parole may be revoked if the offender subsequently recovers, and
- (e) to enact other minor provisions, including consequential savings and transitional provisions.

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 a day or days to be appointed by proclamation.

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

Clause 4 is a formal provision giving effect to the amendments to the *Crimes (Administration of Sentences) Act 1999* set out in Schedule 2.

Schedule 1 Amendment of Crimes (Sentencing Procedure) Act 1999

Schedule 1 [1] amends clause 1 of Schedule 1 to the Act so as to insert a definition of *sentencing court* that extends to both the court that originally sentences an offender and any other court that resentsences the offender as a result of a re-trial or other appeal proceedings.

Schedule 1 [2] amends clause 2 of Schedule 1 to the Act so as to increase, from 20 years to 30 years, the length of time for which a non-release offender must serve his or her sentence before being eligible to apply for a redetermination of the sentence.

Schedule 1 [3] amends clause 4 of Schedule 1 to the Act so as to allow the Supreme Court to set a non-parole period for a non-release offender's sentence, but to deny the Supreme Court jurisdiction to set a fixed period for the sentence.

Schedule 1 [4] amends clause 8 of Schedule 1 to the Act so as to enable an appeal to be made to the Court of Criminal Appeal against a determination by the Supreme Court under proposed clause 4 (3).

Schedule 1 [5] amends clause 1 of Schedule 2 to the Act so as to enable the regulations under the Act to make provision of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [6] inserts proposed Part 3 into Schedule 2 to the Act. Proposed clause 38 contains a definition for the purposes of the Part. Proposed clause 39 contains provisions that ensure that the amendments to be made by the proposed Act will not affect any proceedings for redetermination of sentence that have been commenced, or any redetermination of sentence that has been made, before the commencement of the clause.

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

Schedule 2 [1] amends section 3 of the Act as a consequence of the insertion of proposed section 154A.

Schedule 2 [2] inserts proposed section 154A. The proposed section:

- (a) excludes a non-release offender whose sentence has been redetermined from the automatic consideration for parole to which other offenders are entitled, and
- (b) provides that a non-release offender may be granted parole under the proposed section only if:
 - (i) the Chief Executive Officer of the Corrections Health Service has issued a report to the effect that the offender is in imminent danger of dying, or is incapacitated to the extent that he or she no longer has the physical ability to do harm to any person, and
 - (ii) the offender has demonstrated that he or she does not pose a risk to the community.

Schedule 1 [3] amends section 169 of the Act so as to enable the Parole Board to conduct an inquiry as to whether a non-release offender who has been granted parole because he or she is dying or incapacitated has subsequently recovered.

Schedule 1 [4] amends section 170 of the Act so as to enable the Parole Board to revoke the parole of a non-release offender who has been granted parole because he or she is dying or incapacitated if it is satisfied that he or she has subsequently recovered.

Schedule 1 [5] amends clause 1 of Schedule 5 to the Act so as to enable the regulations under the Act to make provision of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [6] inserts proposed Part 3 into Schedule 5 to the Act. Proposed clause 60 contains a definition for the purposes of the Part. Proposed clause 61 contains provisions that ensure that the amendments to be made by the proposed Act will not affect any proceedings for parole that have been commenced, or any parole order that has been made, before the commencement of the clause. Proposed clause 62 ensures that (subject to proposed clause 61) the amendments to be made by the proposed Act will apply to non-release offenders whose sentences have been redetermined before the commencement of the clause.



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Crimes Legislation Amendment (Existing Life Sentences) Bill 2001

No. , 2001

A Bill for

An Act to amend the *Crimes (Sentencing Procedure) Act 1999* and the *Crimes (Administration of Sentences) Act 1999* with respect to certain offenders serving life sentences or sentences that have previously been life sentences.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Crimes Legislation Amendment (Existing Life Sentences) Act 2001</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6 7
3 Amendment of Crimes (Sentencing Procedure) Act 1999 No 92	8
The <i>Crimes (Sentencing Procedure) Act 1999</i> is amended as set out in Schedule 1.	9 10
4 Amendment of Crimes (Administration of Sentences) Act 1999 No 93	11
The <i>Crimes (Administration of Sentences) Act 1999</i> is amended as set out in Schedule 2.	12 13

Schedule 1	Amendment of Crimes (Sentencing Procedure) Act 1999	1
		2
	(Section 3)	3
[1]	Schedule 1 Existing life sentences	4
	Insert in alphabetical order in clause 1:	5
	<i>sentencing court</i> , in relation to an offender who has been resentenced as a result of a re-trial or other appeal proceedings, includes both the court by which a penalty was originally imposed for the offence and the court (whether the same court or a different court) by which a penalty was finally imposed for the offence.	6 7 8 9 10 11
[2]	Schedule 1, clause 2	12
	Omit “20” from clause 2 (2) (b). Insert instead “30”.	13
[3]	Schedule 1, clause 4	14
	Insert after clause 4 (2):	15
	(3) In the case of an offender who is the subject of a non-release recommendation, the Supreme Court may dispose of an application in relation to an existing life sentence:	16 17 18
	(a) by setting a non-parole period for the sentence, or	19
	(b) by declining to set a non-parole period for the sentence, but does not have jurisdiction to set a specified term for the sentence.	20 21 22
[4]	Schedule 1, clause 8	23
	Insert “or (3)” after “(1)” in clause 8 (1) (a).	24
[5]	Schedule 2 Savings, transitional and other provisions	25
	Insert at the end of clause 1 (1):	26
	<i>Crimes Legislation Amendment (Existing Life Sentences) Act 2001</i>	27 28

[6] Schedule 2, Part 3	1
Insert after Part 2 of Schedule 2:	2
Part 3 Provisions consequent on enactment of Crimes Legislation Amendment (Existing Life Sentences) Act 2001	3 4 5
38 Definition	6
In this Part, <i>the 2001 amending Act</i> means the <i>Crimes Legislation Amendment (Existing Life Sentences) Act 2001</i> .	7 8
39 Application of amendments	9
The amendments made to this Act by the 2001 amending Act do not affect:	10 11
(a) any proceedings before the Supreme Court on an application under clause 2 of Schedule 1 to this Act that had been made, but not disposed of, before the commencement of those amendments, or	12 13 14 15
(b) any determination made by the Supreme Court under clause 4 of Schedule 1 to this Act before the commencement of those amendments.	16 17 18

Schedule 2	Amendment of Crimes (Administration of Sentences) Act 1999	1
		2
	(Section 4)	3
[1]	Section 3 Interpretation	4
	Insert “154A,” after “150,” in paragraph (a) of the definition of <i>parole order</i> in section 3 (1).	5 6
[2]	Section 154A	7
	Insert after section 154:	8
154A	Serious offenders the subject of non-release recommendations	9
	(1) Section 143 does not require the Parole Board to give preliminary consideration as to whether or not a serious offender the subject of a non-release recommendation should be released on parole unless an application for that purpose is made to the Parole Board by or on behalf of the offender.	10 11 12 13 14
	(2) An application under this section must be lodged with the Secretary of the Parole Board.	15 16
	(3) After considering the application, the Parole Board may make an order directing the release of the offender on parole if, and only if, the Parole Board:	17 18 19
	(a) is satisfied (on the basis of a report prepared by the Chief Executive Officer of the Corrections Health Service) that the offender:	20 21 22
	(i) is in imminent danger of dying, or is incapacitated to the extent that he or she no longer has the physical ability to do harm to any person, and	23 24 25 26
	(ii) has demonstrated that he or she does not pose a risk to the community, and	27 28
	(b) is further satisfied that, because of those circumstances, the making of such an order is justified.	29 30
	(4) In this section <i>serious offender the subject of a non-release recommendation</i> means a serious offender:	31 32

(a)	who is serving a sentence for which a determination has been made under clause 4 of Schedule 1 to the <i>Crimes (Sentencing Procedure) Act 1999</i> , and	1 2 3
(b)	who is the subject of a non-release recommendation within the meaning of that Schedule.	4 5
[3]	Section 169 Conduct of inquiry into suspected breach of obligations or medical recovery	6 7
	Insert after section 169 (1):	8
(1A)	In the case of an offender who has been granted parole on the grounds that he or she is in imminent danger of dying or is incapacitated to the extent that he or she no longer has the physical ability to do harm to any person, as referred to in section 154A (3), the Parole Board may also conduct an inquiry if it suspects that those grounds no longer exist.	9 10 11 12 13 14
[4]	Section 170 Revocation of parole order	15
	Insert after section 170 (1) (a):	16
(a1)	in the case of an offender who has been granted parole on the grounds that he or she is in imminent danger of dying or is incapacitated to the extent that he or she no longer has the physical ability to do harm to any person, as referred to in section 154A (3), if it is satisfied that those grounds no longer exist, or	17 18 19 20 21 22
[5]	Schedule 5 Savings, transitional and other provisions	23
	Insert at the end of clause 1 (1):	24
	<i>Crimes Legislation Amendment (Existing Life Sentences) Act 2001</i>	25 26

[6] Schedule 5, Part 3	1
Insert after Part 2 of Schedule 5:	2
Part 3 Provisions consequent on enactment of Crimes Legislation Amendment (Existing Life Sentences) Act 2001	3
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	5
60 Definition	6
In this Part, <i>the 2001 amending Act</i> means the <i>Crimes Legislation Amendment (Existing Life Sentences) Act 2001</i> .	7
	8
61 Application of amendments to pending proceedings	9
The amendments made to this Act by the 2001 amending Act do not affect:	10
	11
(a) any proceedings under Subdivision 3 of Division 2 of Part 6 of this Act in respect of which the Parole Board had taken action under section 144 of this Act, but had not made a decision under section 149 or 150 of this Act, before the commencement of those amendments, or	12
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(b) any parole order made by the Parole Board under section 149, 150 or 160 of this Act before the commencement of those amendments.	18
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62 Application of amendments to offenders the subject of existing determinations	21
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Subject to clause 61, the amendments made to this Act by the 2001 amending Act apply to a serious offender:	23
	24
(a) who is serving a sentence for which a determination had been made under clause 4 of Schedule 1 to the <i>Crimes (Sentencing Procedure) Act 1999</i> before the commencement of those amendments (including a determination referred to in clause 21 of Schedule 2 to that Act), and	25
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(b) who is the subject of a non-release recommendation within the meaning of that Schedule,	31
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Schedule 2 Amendment of Crimes (Administration of Sentences) Act 1999

in the same way as they apply to a serious offender who is
serving a sentence for which such a determination is made after
that commencement and who is the subject of such a
recommendation.

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