

FIRST PRINT

SENTENCING (LIFE SENTENCES) AMENDMENT BILL 1993

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Sentencing Act 1989 with respect to the release on parole of prisoners sentenced to imprisonment for life before life sentences were changed in 1989 to sentences for the term of the person's natural life and the Government's power to release them on licence was removed.

Section 13A of the Sentencing Act 1989 gave the existing prisoners concerned the right to apply to the Supreme Court to replace their life sentence with a minimum term and additional term of imprisonment (being the style of sentence introduced by that Act under which the prisoner was not eligible to be considered for release on parole until the end of the minimum term). The Court must have regard to the fact that the original sentencing court knew that prisoners sentenced to life could be released on licence. Under the existing provision, if the Court decides to reject the application and not to replace the life sentence with a minimum term, the prisoner may re-apply every 2 years (or a shorter period specified by the Court).

The amendments proposed to section 13A will enable the Court, when rejecting an application, to direct that the prisoner should not be given any further opportunity to be considered for parole and must therefore serve the sentence for the term of the person's natural life. Such a direction may be given only if it is a most serious case involving the crime of murder and it is in the public interest. As an alternative, the Court will be able to extend the present 2-year limitation on further applications under section 13A (the power of the Court to reduce the 2-year limitation is retained). The amendments require the Court to have regard to the prisoner's age when making decisions about applications under section 13A. The amendments will also make it clear that an appeal lies to the Court of Criminal Appeal against any decision under section 13A, including the proposed directions about the right to make further applications.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act commences on a day to be proclaimed.

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Clause 3 is a formal provision that gives effect to the Schedule of amendments to section 13A of the Sentencing Act 1989.

Clause 4 provides that the proposed Act will not affect any applications pending on the commencement of the proposed Act.

Schedule 1 contains the amendments to section 13A outlined above. The section (as proposed to be amended) will read as follows:

[NOTE: Words proposed to be omitted are shown in italics and words proposed to be inserted are shown in bold.]

Existing life sentences

13A. (1) In this section:

“existing life sentence” means a sentence of imprisonment for life imposed before or after the commencement of this section, but does not include a sentence for the term of a person’s natural life under section 19A of the Crimes Act 1900 or section 33A of the Drug Misuse and Trafficking Act 1985.

(2) A person serving an existing life sentence may apply to the Supreme Court for the determination of a minimum term and an additional term for the sentence.

(3) Any such person is not eligible to make an application unless the person has served at least 8 years of the sentence concerned.

(4) The Supreme Court may, on application duly made for the determination of a minimum term and an additional term for a sentence:

(a) set both:

(i) a minimum term of imprisonment that the person must serve for the offence for which the sentence was originally imposed; and

(ii) an additional term during which the person may be released on parole (being either an additional term for a specified period or for the remainder of the person’s natural life); or

(b) decline to determine a minimum term and an additional term.

(5) A minimum term set under this section is to commence on the date on which the original sentence commenced or, if the person was remanded in custody for the offence, the date on which the first such remand commenced.

(6) If the Supreme Court sets a minimum term and an additional term under this section, the sentence comprising those terms replaces the original sentence of imprisonment for life.

(7) A minimum term and an additional term set under this section are to be taken to have been set under this Part but are not required to comply with the other provisions of this Part.

(8) If the Supreme Court declines to determine a minimum term and an additional term, the person who made the application may not re-apply to the Court within the period of 2 years from the date of the Court’s decision, or such shorter period as the Court specifies when making that decision.

(8) If the Supreme Court declines to determine a minimum term and an additional term, the Court may (when making that decision) direct that the person who made the application:

(a) never re-apply to the Court under this section; or

(b) not re-apply to the Court under this section for a specified period.

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(8A) If the Court gives a direction under subsection (8) that a person may never re-apply to the Court under this section, the person is to serve the existing life sentence for the term of the person's natural life.

(8B) If the Court does not give a direction under subsection (8), the person may not re-apply within the period of 2 years from the date of the Court's decision to decline to determine a minimum term and an additional term.

(8C) A direction under subsection (8) that a person may never re-apply to the Court under this section or not re-apply for a period exceeding 2 years may be given only if:

- (a) the person was sentenced for the crime of murder; and**
- (b) it is a most serious case of murder and it is in the public interest that the determination be made.**

(9) The Supreme Court, in setting a minimum term and an additional term under this section, in exercising its functions under this section, is to have regard to:

- (a) the knowledge of the original sentencing court that a person sentenced to imprisonment for life was eligible to be released on licence under section 463 of the Crimes Act 1900 and of the practice relating to the issue of such licences; and**
- (b) any report on the person made by the Serious Offenders Review Board and any other relevant reports prepared after sentence (including, for example, reports on the person's rehabilitation), being in either case reports made available to the Supreme Court; and**
- (c) any relevant comments made by the original sentencing court when imposing the sentence; and**
- (d) the age of the person (at the time the person committed the offence and also at the time the Supreme Court deals with the application),**

and may have regard to any other relevant matter.

(10) The regulations may make provisions for or with respect to reports referred to in subsection (9), including provisions relating to the matters to be dealt with in reports and the making of reports available to the Supreme Court.

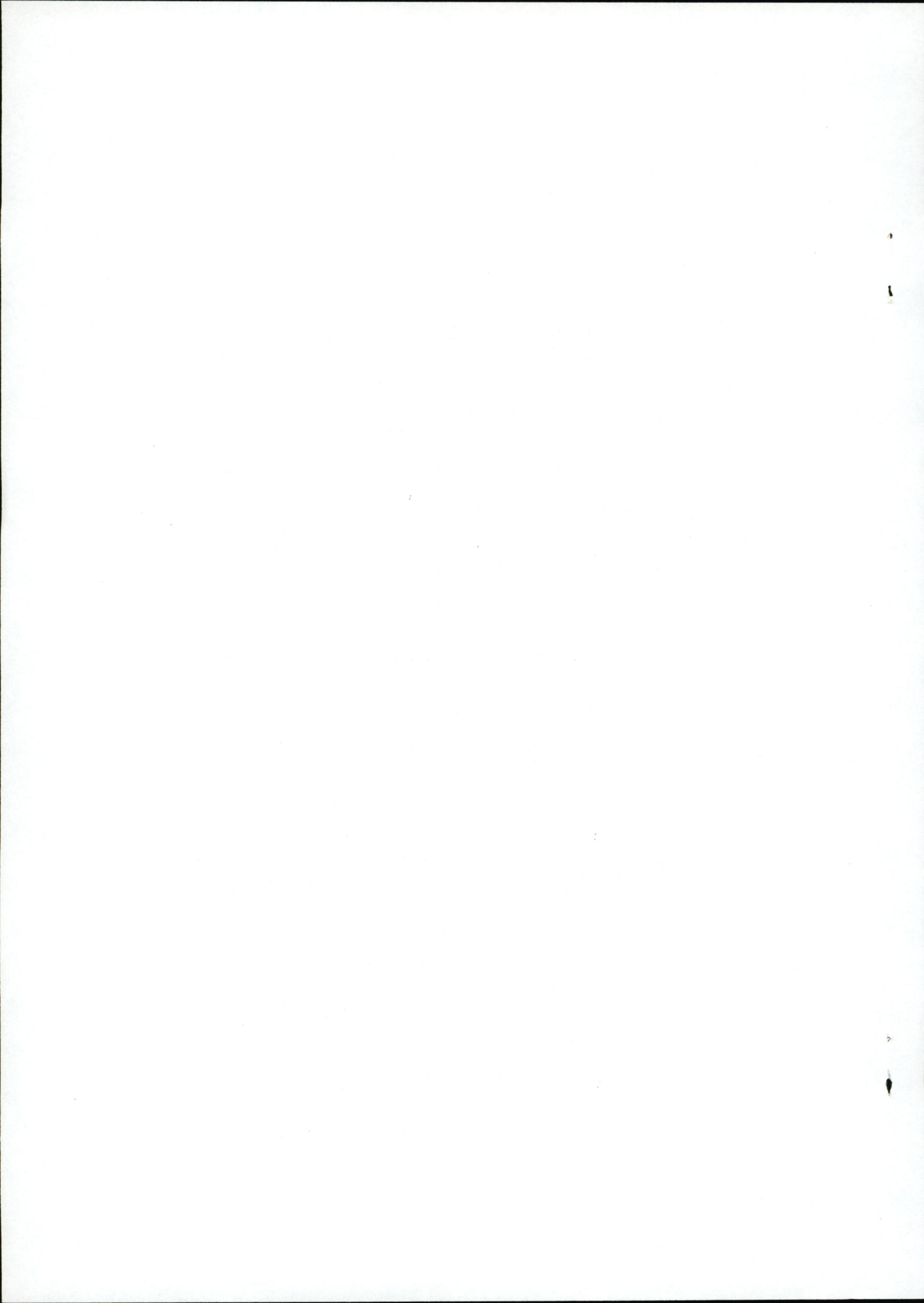
(11) The Supreme Court may make a determination for a minimum term and an additional term for a sentence even though the Court was not the sentencing court, or the Court is not constituted in the same way as it was when the applicant was sentenced.

(12) An appeal lies to the Court of Criminal Appeal in relation to a determination under this section or a decision to decline to make such a determination.

An appeal lies to the Court of Criminal Appeal in relation to:

- (a) the determination of a minimum term and an additional term under this section; or**
- (b) a decision to decline to make such a determination; or**
- (c) a direction that a person may never re-apply for such a determination or not re-apply for a period exceeding 2 years.**

The Criminal Appeal Act 1912 applies to such an appeal in the same way as it applies to an appeal against a sentence.



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NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Sentencing Act 1989 No. 87
4. Transitional provision

SCHEDULE 1—AMENDMENTS

SENTENCING (LIFE SENTENCES) AMENDMENT BILL 1993

NEW SOUTH WALES



No. , 1993

A BILL FOR

An Act to amend section 13A of the Sentencing Act 1989 with respect to prisoners serving sentences of imprisonment for life.

Sentencing (Life Sentences) Amendment 1993

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Sentencing (Life Sentences) Amendment Act 1993.

5 Commencement

2. This Act commences on a day to be appointed by proclamation.

Amendment of Sentencing Act 1989 No. 87

3. The Sentencing Act 1989 is amended as set out in Schedule 1.

Transitional provision

10 4. The amendments made by this Act do not apply to an application made to the Supreme Court under section 13A of the Sentencing Act 1989 before the commencement of this Act.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

15 (1) Section 13A (8)–(8B):

Omit section 13A (8), insert instead:

(8) If the Supreme Court declines to determine a minimum term and an additional term, the Court may (when making that decision) direct that the person who made the application:

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- (a) never re-apply to the Court under this section; or
- (b) not re-apply to the Court under this section for a specified period.

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(8A) If the Court gives a direction under subsection (8) that a person may never re-apply to the Court under this section, the person is to serve the existing life sentence for the term of the person's natural life.

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(8B) If the Court does not give a direction under subsection (8), the person may not re-apply within the period of 2 years from the date of the Court's decision to decline to determine a minimum term and an additional term.

Sentencing (Life Sentences) Amendment 1993

SCHEDULE 1—AMENDMENTS—*continued*

- (8C) A direction under subsection (8) that a person may never re-apply to the Court under this section or not re-apply for a period exceeding 2 years may be given only if:
- (a) the person was sentenced for the crime of murder; and 5
 - (b) it is a most serious case of murder and it is in the public interest that the determination be made.
- (2) Section 13A (9):
- Omit “in setting a minimum term and an additional term under this section”, insert instead “in exercising its functions under this section”. 10
- (3) Section 13A (9):
- At the end of section 13A (9) (c), insert:
- ; and
- (d) the age of the person (at the time the person committed the offence and also at the time the Supreme Court deals with the application), 15
- (4) Section 13A (12):
- Omit the first sentence, insert instead:
- An appeal lies to the Court of Criminal Appeal in relation to: 20
- (a) the determination of a minimum term and an additional term under this section; or
 - (b) a decision to decline to make such a determination; or
 - (c) a direction that a person may never re-apply for such a determination or not re-apply for a period exceeding 2 years. 25
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SENTENCING (LIFE SENTENCES) AMENDMENT BILL 1993

SECOND READING SPEECH

LEGISLATIVE COUNCIL

(MR PRESIDENT CALLS NOTICE OF MOTION IN NAME OF MINISTER)

THE ATTORNEY GENERAL TO SAY:

MR PRESIDENT,

I MOVE THAT LEAVE BE GIVEN TO BRING IN A BILL TO AMEND SECTION 13A OF THE SENTENCING ACT 1989 WITH RESPECT TO PRISONERS SERVING SENTENCES OF IMPRISONMENT FOR LIFE.

(MR PRESIDENT PUTS QUESTION THAT LEAVE BE GIVEN - NO DEBATE ALLOWED)

(WHEN AGREED TO)

THE ATTORNEY GENERAL TO SAY:

MR PRESIDENT,

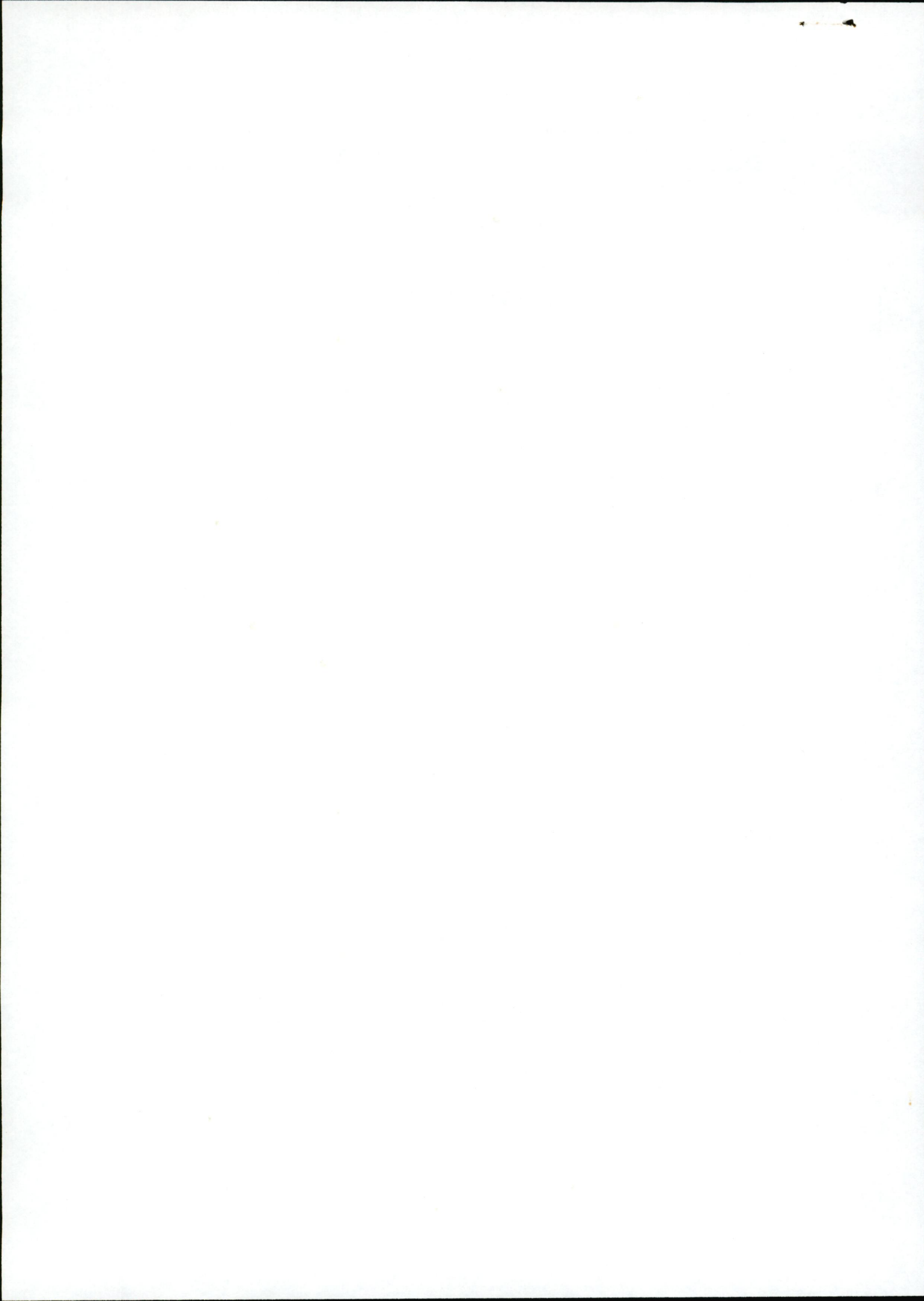
I BRING UP THE BILL

(MINISTER HANDS TWO COPIES OF THE BILL TO CLERK WHO READS IT A FIRST TIME)

THE ATTORNEY GENERAL TO SAY:

MR PRESIDENT,

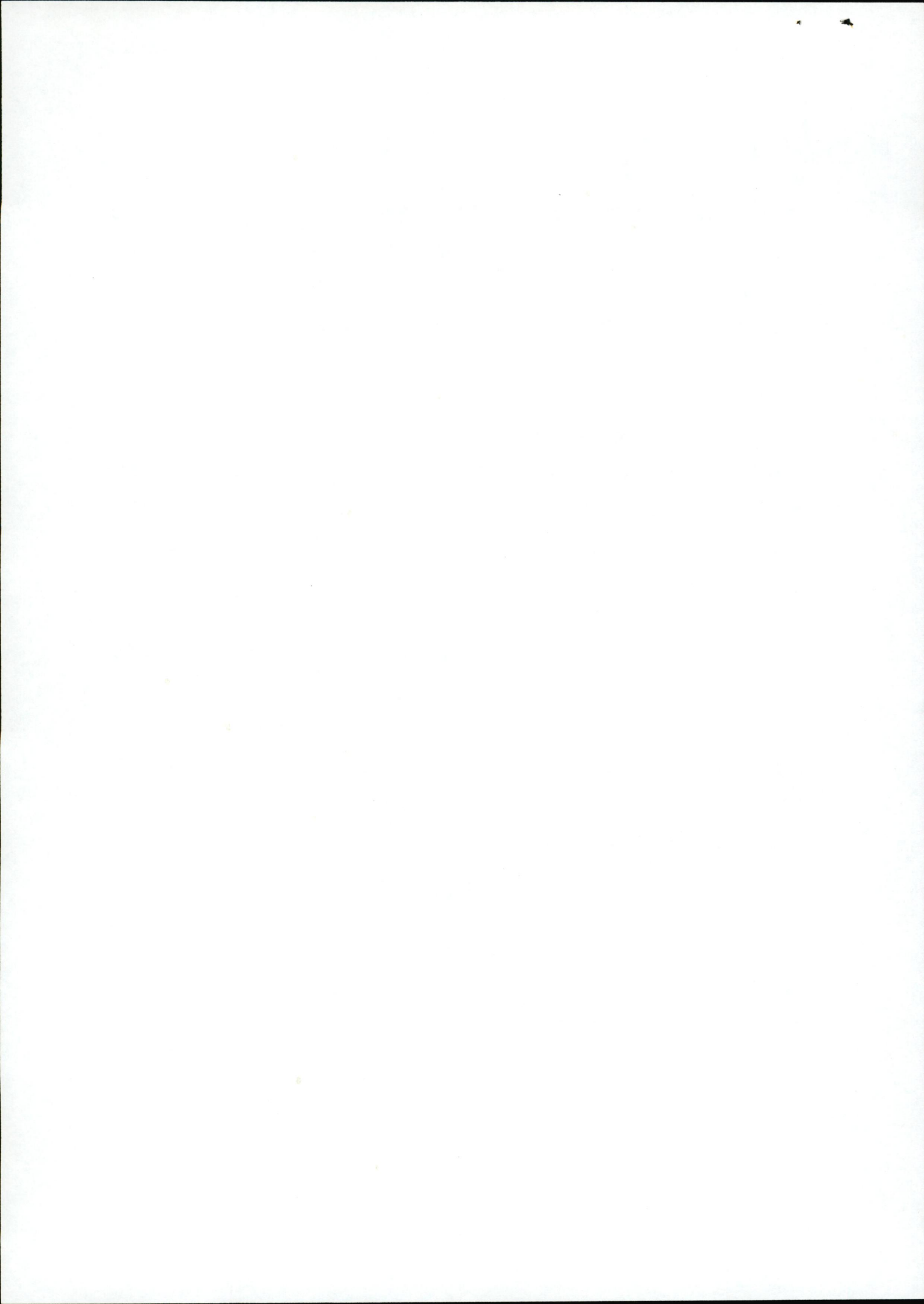
I MOVE THAT THIS BILL BE READ A SECOND TIME



THE GOVERNMENT HAS BEEN MOST CONSCIOUS OF THE GROWING CONCERN IN THE COMMUNITY OVER THE POSSIBLE RELEASE OF SOME PRISONERS SENTENCED TO LIFE IMPRISONMENT PRIOR TO INTRODUCTION OF THE TRUTH-IN-SENTENCING LEGISLATION IN 1989.

HONOURABLE MEMBERS WOULD BE AWARE THAT PRIOR TO 1989 MOST PRISONERS SENTENCED TO LIFE IMPRISONMENT DID NOT SERVE OUT THEIR FULL TERMS. IN REALITY, THE AVERAGE PERIOD OF IMPRISONMENT WAS APPROXIMATELY 11 TO 12 YEARS.

THE JUDICIARY HAD THE DISCRETION UNDER THE OLD SYSTEM TO RECOMMEND THAT A PRISONER NEVER BE RELEASED DUE TO THE GRAVITY OF THE CRIME AND THE DANGER TO THE COMMUNITY. THIS WAS HOWEVER, A RECOMMENDATION ONLY AND COULD BE OVERRIDDEN BY THE OLD SYSTEM OF REMISSIONS AND EXECUTIVE EARLY RELEASE ON LICENCE ABUSED BY THE FORMER LABOR GOVERNMENT. THE TRUTH-IN-SENTENCING LEGISLATION NOW PROVIDES THAT OFFENDERS SENTENCED UNDER THE NEW SYSTEM, MUST ACTUALLY SERVE THE TERM OF IMPRISONMENT SET BY THE JUDICIARY. LIFE NOW MEANS LIFE.

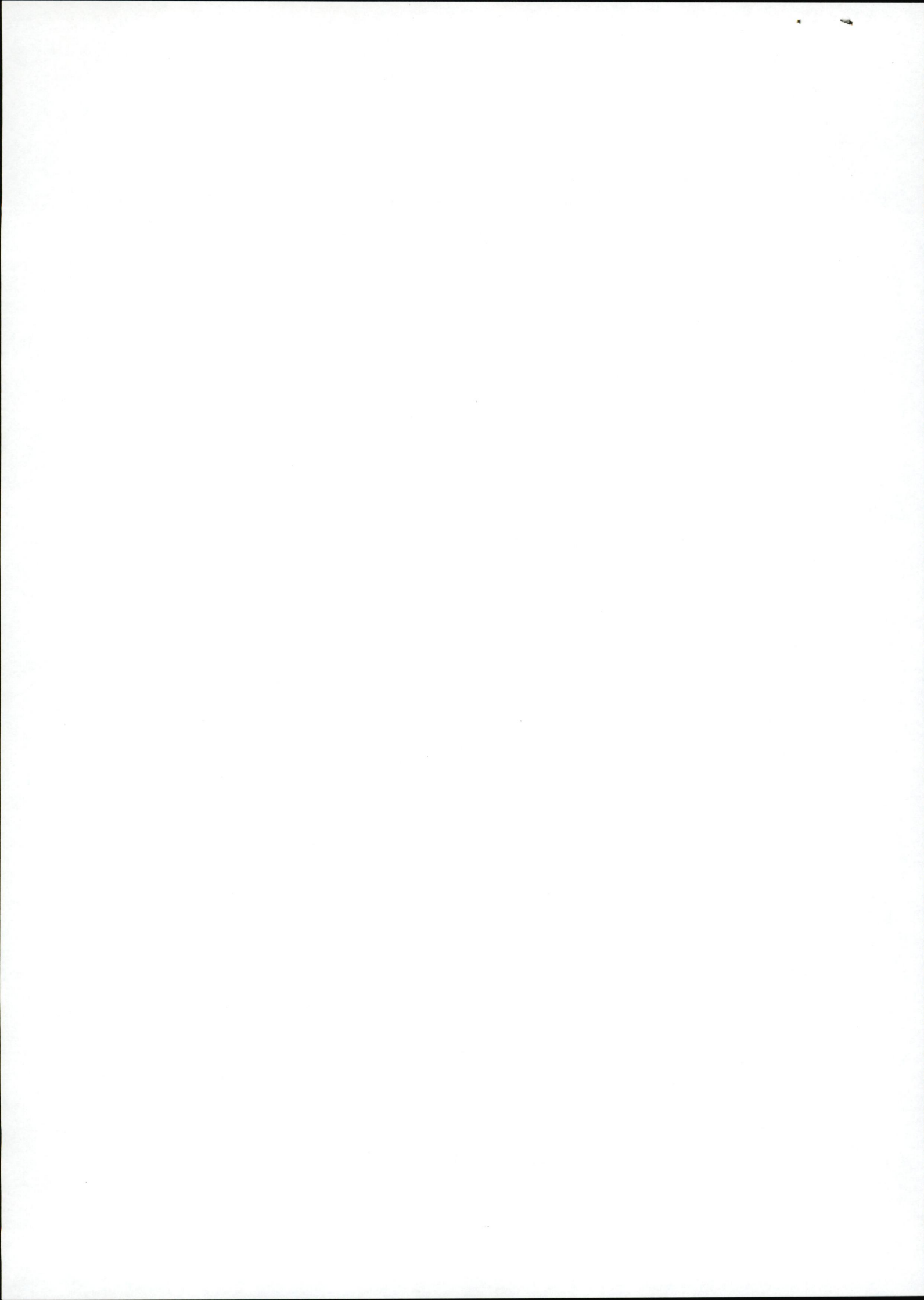


THE BILL BEFORE THE HOUSE SEEKS TO AMEND SECTION 13A OF THE SENTENCING ACT. THIS PROVISION WAS INTRODUCED IN 1990 TO DEAL WITH THE RE-DETERMINATION OF OLD LIFE SENTENCES IN LINE WITH TRUTH-IN-SENTENCING.

AT PRESENT, SECTION 13A PROVIDES THAT ANY PRISONER SENTENCED TO LIFE IMPRISONMENT UNDER THE OLD SYSTEM MAY APPLY TO THE SUPREME COURT AFTER SERVING AT LEAST 8 YEARS OF THAT SENTENCE FOR RE-DETERMINATION OF THAT SENTENCE.

WHEN ANY APPLICATION IS NOW MADE, THE SUPREME COURT HAS AVAILABLE TO IT ONLY TWO OPTIONS, EITHER TO REPLACE THE LIFE SENTENCE WITH A STIPULATED MINIMUM AND ADDITIONAL TERM OR TO DECLINE TO SPECIFY ANY SUCH TERMS. WHERE THE SUPREME COURT DECLINES AN APPLICATION, THE PRISONER MAY CONTINUE TO APPLY EVERY TWO YEARS THEREAFTER FOR RE-DETERMINATION OF THE LIFE SENTENCE.

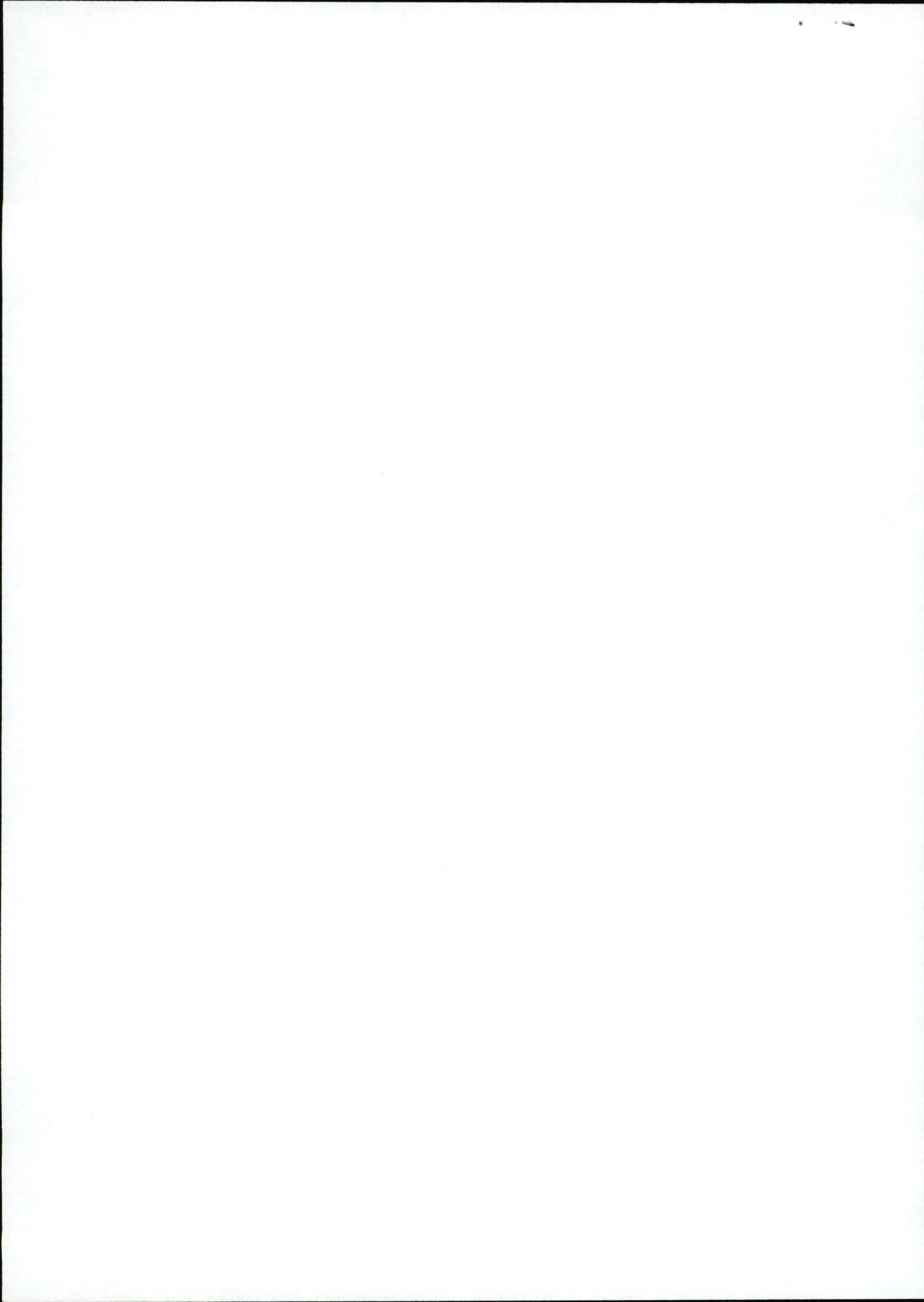
EVEN WHERE THE JUDGE REACHES THE CONCLUSION THAT A SENTENCE OF PENAL SERVITUDE FOR LIFE IS JUSTIFIED IN ALL THE CIRCUMSTANCES, THIS SENTENCING OPTION IS NOT OPEN TO THE COURT. THE JUDGE HAS NO POWER TO, IN EFFECT, CONFIRM THE LIFE SENTENCE OR TO BAR FUTURE APPLICATIONS FOR THE PROTECTION OF THE COMMUNITY.



THE BILL WILL OVERCOME THIS SHORTCOMING BY GIVING THE SUPREME COURT TWO ADDITIONAL POWERS IN SUCH CASES. FIRST, THE COURT MAY DIRECT THAT THE PRISONER MAY NEVER RE-APPLY TO THE COURT AND MUST SERVE THE EXISTING LIFE SENTENCE FOR THE TERM OF THE PRISONER'S NATURAL LIFE. THIS AVOIDS THE COURT BEING PLACED IN THE POSITION OF REPEATEDLY DECLINING AN UNMERITORIOUS APPLICATION.

THE EFFECT IS THAT THOSE RELATIVELY FEW PRISONERS SERVING LIFE SENTENCES UNDER THE OLD SYSTEM WHO DESERVE NEVER TO BE RELEASED WILL NOT, IN FACT, BE RELEASED INTO THE COMMUNITY.

SECOND, THE COURT MAY DIRECT THAT A PERIOD LONGER THAN THE PRESENT STATUTORY TWO YEARS MUST ELAPSE BEFORE A FURTHER APPLICATION MAY BE MADE BY THE LIFE PRISONER. THIS WILL COVER THE SITUATION WHERE THE COURT DOES NOT WISH TO IMPOSE A SENTENCE FOR THE TERM OF THE PRISONER'S NATURAL LIFE, BUT NEVERTHELESS CONSIDERS THAT THE PRISONER SHOULD SERVE A CONSIDERABLE FURTHER PERIOD BEFORE RE-APPLYING FOR A DETERMINATION OF THE ORIGINAL LIFE SENTENCE.

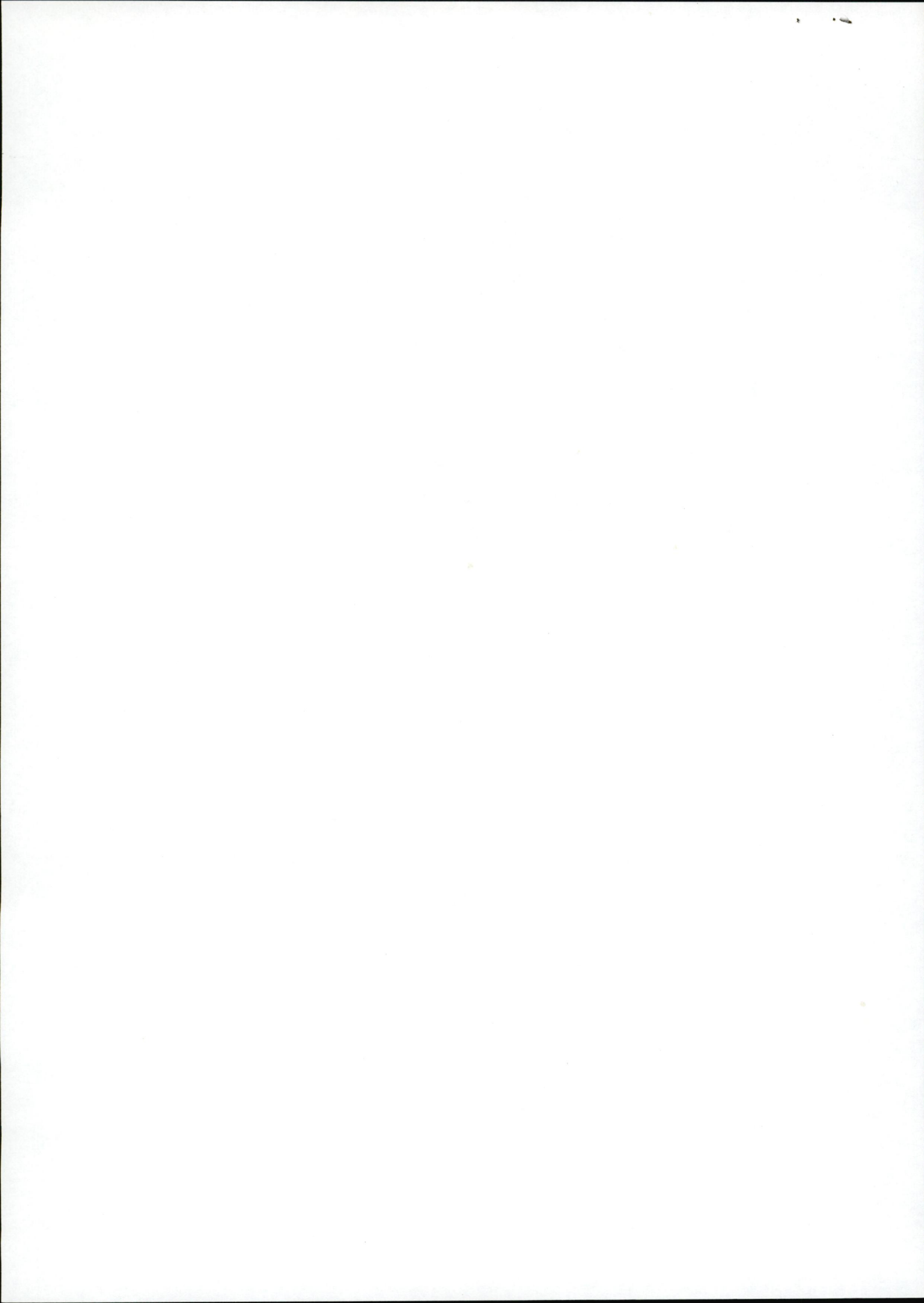


THIS ADDITIONAL POWER WILL PROVIDE GREATER FLEXIBILITY TO THE COURT WHERE IT DOES NOT WISH TO FORECLOSE THE POSSIBILITY OF FUTURE RELEASE OF THE PRISONER, BUT IS SATISFIED THAT A FURTHER APPLICATION SHOULD NOT BE AGAIN ENTERTAINED IN 2 YEAR'S TIME.

THE GOVERNMENT IS CONSCIOUS THAT THESE ADDITIONAL POWERS GIVEN TO THE SUPREME COURT SHOULD BE RESERVED FOR ONLY THE MOST SERIOUS OF CASES INVOLVING THE CRIME OF MURDER, AND WHERE THE PUBLIC INTEREST SO DEMANDS. THESE CRITERIA ARE SPECIFICALLY STATED IN THE BILL.

THE GOVERNMENT HAS ALSO TAKEN THE OPPORTUNITY IN THE BILL TO ENSURE THAT IN ANY APPLICATION UNDER SECTION 13A, THE COURT MUST TAKE INTO CONSIDERATION BOTH THE EXISTING CRITERIA IN SECTION 13A, AS WELL AS THE AGE OF THE PRISONER AT THE TIME OF COMMITTING THE OFFENCE AND AT THE TIME OF THE HEARING OF THE APPLICATION.

PRISONERS HAVE A RIGHT OF APPEAL FROM ANY DECISION OF A SINGLE JUDGE UNDER SECTION 13A.



IN SUMMARY, THE BILL NOW BEFORE THE HOUSE REFLECTS THE GOVERNMENT'S COMMITMENT TO ENSURE THAT ANY DECISION TO NEVER RELEASE AN OLD LIFE PRISONER WILL REMAIN WITH THE JUDICIARY WHERE IT PROPERLY RESIDES, FREE OF EXECUTIVE INTERFERENCE. THOSE CASES DESERVING LIFE IMPRISONMENT UNDER THE OLD SYSTEM WILL NOW TRULY RECEIVE "LIFE" UNDER THE ACT. TRUTH-IN-SENTENCING WILL THEREBY BE FULLY ACHIEVED IN THESE CASES.

THROUGH THIS IMPORTANT GOVERNMENT INITIATIVE, PUBLIC CONFIDENCE IN THE CRIMINAL JUSTICE SYSTEM AND THE PROTECTION OF THE COMMUNITY WILL BE FURTHER ENHANCED. VICTIMS AND THEIR FAMILIES WILL BE FULLY PROTECTED IN THE KNOWLEDGE THAT THESE PRISONERS WILL NEVER BE RELEASED.

I COMMEND THE BILL TO THE HOUSE.

SENTENCING (LIFE SENTENCES) AMENDMENT ACT 1993
No. 74

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Sentencing Act 1989 No. 87
4. Transitional provision

SCHEDULE 1—AMENDMENTS

SENTENCING (LIFE SENTENCES) AMENDMENT ACT 1993
No. 74

NEW SOUTH WALES



Act No. 74, 1993

An Act to amend section 13A of the Sentencing Act 1989 with respect to prisoners serving sentences of imprisonment for life. [Assented to 18 November 1993]

Sentencing (Life Sentences) Amendment Act 1993 No. 74

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Sentencing (Life Sentences) Amendment Act 1993.

Commencement

2. This Act commences on a day to be appointed by proclamation.

Amendment of Sentencing Act 1989 No. 87

3. The Sentencing Act 1989 is amended as set out in Schedule 1.

Transitional provision

4. The amendments made by this Act do not apply to an application made to the Supreme Court under section 13A of the Sentencing Act 1989 before the commencement of this Act.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Section 13A (8)–(8B):

Omit section 13A (8), insert instead:

(8) If the Supreme Court declines to determine a minimum term and an additional term, the Court may (when making that decision) direct that the person who made the application:

- (a) never re-apply to the Court under this section; or
- (b) not re-apply to the Court under this section for a specified period.

(8A) If the Court gives a direction under subsection (8) that a person may never re-apply to the Court under this section, the person is to serve the existing life sentence for the term of the person's natural life.

(8B) If the Court does not give a direction under subsection (8), the person may not re-apply within the period of 2 years from the date of the Court's decision to decline to determine a minimum term and an additional term.

Sentencing (Life Sentences) Amendment Act 1993 No. 74

SCHEDULE 1—AMENDMENTS—*continued*

(8C) A direction under subsection (8) that a person may never re-apply to the Court under this section or not re-apply for a period exceeding 2 years may be given only if:

- (a) the person was sentenced for the crime of murder; and
- (b) it is a most serious case of murder and it is in the public interest that the determination be made.

(2) Section 13A (9):

Omit “in setting a minimum term and an additional term under this section”, insert instead “in exercising its functions under this section”.

(3) Section 13A (9):

At the end of section 13A (9) (c), insert:

; and

- (d) the age of the person (at the time the person committed the offence and also at the time the Supreme Court deals with the application),

(4) Section 13A (12):

Omit the first sentence, insert instead:

An appeal lies to the Court of Criminal Appeal in relation to:

- (a) the determination of a minimum term and an additional term under this section; or
- (b) a decision to decline to make such a determination; or
- (c) a direction that a person may never re-apply for such a determination or not re-apply for a period exceeding 2 years.

[Minister's second reading speech made in—
Legislative Assembly on 14 October 1993
Legislative Council on 9 November 1993]

BY AUTHORITY

