

First print



New South Wales

Crimes Amendment (Mandatory Life Sentences) Bill 1996

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 Act 1900* to specify the circumstances in which it will be mandatory for a court to impose a life sentence on a person found guilty of murder or of trafficking in large commercial quantities of heroin or cocaine.

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 to be appointed by proclamation.

Clause 3 gives effect to the Schedule of amendments to the *Crimes Act 1900*.

Schedule 1 Amendments

Mandatory life sentences for certain offences

Schedule 1 amends the *Crimes Act 1900* to achieve the object of this Bill.

By section 431A of the *Crimes Act 1900* the punishment of penal servitude for the term of a person's natural life may be imposed only for the offence of murder and certain offences under the *Drug Misuse and Trafficking Act 1985* involving large commercial quantities of prohibited drugs or prohibited plants (but not cannabis plant or cannabis leaf). Section 431B is being inserted into the *Crimes Act 1900* to specify the circumstances that, if satisfied, will result in the imposition of that punishment.

In the case of murder, a life sentence is to be imposed if "the level of culpability in the commission of the offence is so extreme that the community interest in retribution, punishment, community protection and deterrence can only be met through the imposition of that sentence."

In the case of the drug offences involving large commercial quantities of heroin or cocaine, a life sentence is to be imposed if the level of culpability in the commission of the offence is so extreme that the community interest in retribution, punishment, community protection and deterrence can only be met through the imposition of that sentence and:

- the offence involved a high degree of planning and organisation and the use of other people acting at the direction of the person convicted of the offence, and
- the defendant was solely or principally responsible for planning, organising and financing the offence, and
- the heroin or cocaine was of a high degree of purity, and
- the defendant committed the offence solely for financial reward.

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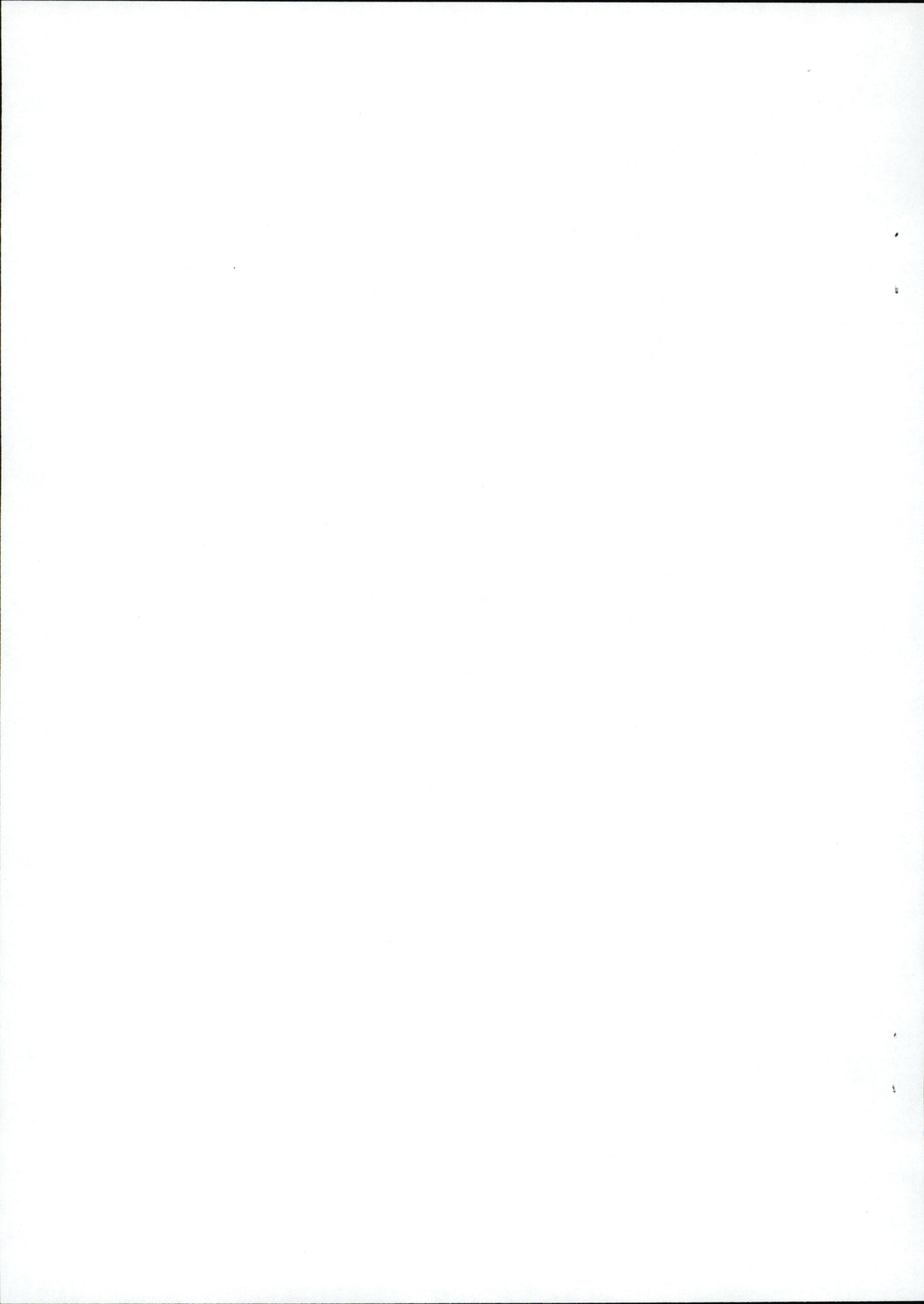
Explanatory note

The court's discretion under section 442 of the *Crimes Act 1900* to consider the imposition of a lesser punishment is not affected in the case of murder but that discretion, as well as a corresponding discretion under section 33A (2) of the *Drug Misuse and Trafficking Act 1985*, are displaced in the case of the drug offences if the requisite criteria are established.

The enumeration, in subsection (2) of the proposed section, of the circumstances in which a court is to impose a life sentence on a person convicted of a drug offence involving large commercial quantities of heroin or cocaine is not intended to limit the imposition of the sentence to those circumstances.

The proposed section will not apply to persons who were under 18 years of age when the offences were committed.

The proposed section will not apply to offences committed before the section commences.



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New South Wales

Crimes Amendment (Mandatory Life Sentences) Bill 1996

No. , 1996

A Bill for

An Act to amend the *Crimes Act 1900* with respect to the imposition of mandatory life sentences for certain offences.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes Amendment (Mandatory Life Sentences) Act 1996*.

2 Commencement

5

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

3 Amendment of Crimes Act 1900 No 40

The *Crimes Act 1900* is amended as set out in Schedule 1.

Schedule 1 Amendment

(Section 3)

Section 431B

Insert after section 431A:

431B Mandatory life sentences for certain offences

5

(1) A court is to impose a sentence of penal servitude for life on a person who is convicted of murder, if the court is satisfied that the level of culpability in the commission of the offence is so extreme that the community interest in retribution, punishment, community protection and deterrence can only be met through the imposition of that sentence. 10

(2) A court is to impose a sentence of imprisonment for life on a person who is convicted of an offence under section 25 (2) or (2A) of the *Drug Misuse and Trafficking Act 1985* to which section 33 (subsection (2) excepted) of that Act applies involving heroin or cocaine if the court is satisfied that the level of culpability in the commission of the offence is so extreme that the community interest in retribution, punishment, community protection and deterrence can only be met through the imposition of that sentence and the court is also satisfied that: 15

(a) the offence involved: 20

(i) a high degree of planning and organisation, and 25

(ii) the use of other people acting at the direction of the person convicted of the offence in the commission of the offence, and 30

(b) the person was solely or principally responsible for planning, organising and financing the offence, and

Crimes Amendment (Mandatory Life Sentences) Bill 1996

Schedule 1 Amendment

- (c) the heroin or cocaine was of a high degree of purity, and
 - (d) the person committed the offence solely for financial reward.
- (3) Nothing in subsection (1) affects section 442. 5
- (4) Section 442 of this Act and section 33A (2) of the *Drug Misuse and Trafficking Act 1985* do not apply if the court is satisfied that the circumstances referred to in subsection (2) exist.
- (5) Nothing in subsection (2) limits or derogates from the discretion of a court to impose a sentence of imprisonment for life on a person who is convicted of an offence under section 25 (2) or (2A) of the *Drug Misuse and Trafficking Act 1985* to which section 33 (subsection (2) excepted) of that Act applies involving heroin or cocaine. 10 15
- (6) This section does not apply to a person who was less than 18 years of age at the date of commission of the offence.
- (7) This section does not apply to offences committed before the commencement of this section. 20
- (8) In this section, *heroin* has the same meaning as in the *Drug Misuse and Trafficking Act 1985*.

C-003
IND (RJ)

LEGISLATIVE COUNCIL

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Amendments to be moved in Committee

- No 1 Page 3, Schedule 1, line 8. After "satisfied", insert "beyond reasonable doubt".
- No 2 Page 3, Schedule 1, line 18. After "satisfied", insert "beyond reasonable doubt".
- No 3 Page 3, Schedule 1, line 23. After "satisfied", insert "beyond reasonable doubt".
- No 4 Page 4, Schedule 1. After line 16, insert:
- (6) Despite any other law, a court must not impose a sentence of penal servitude, or imprisonment, for life on a person unless the court is satisfied beyond reasonable doubt that there is no prospect of the person's rehabilitation.
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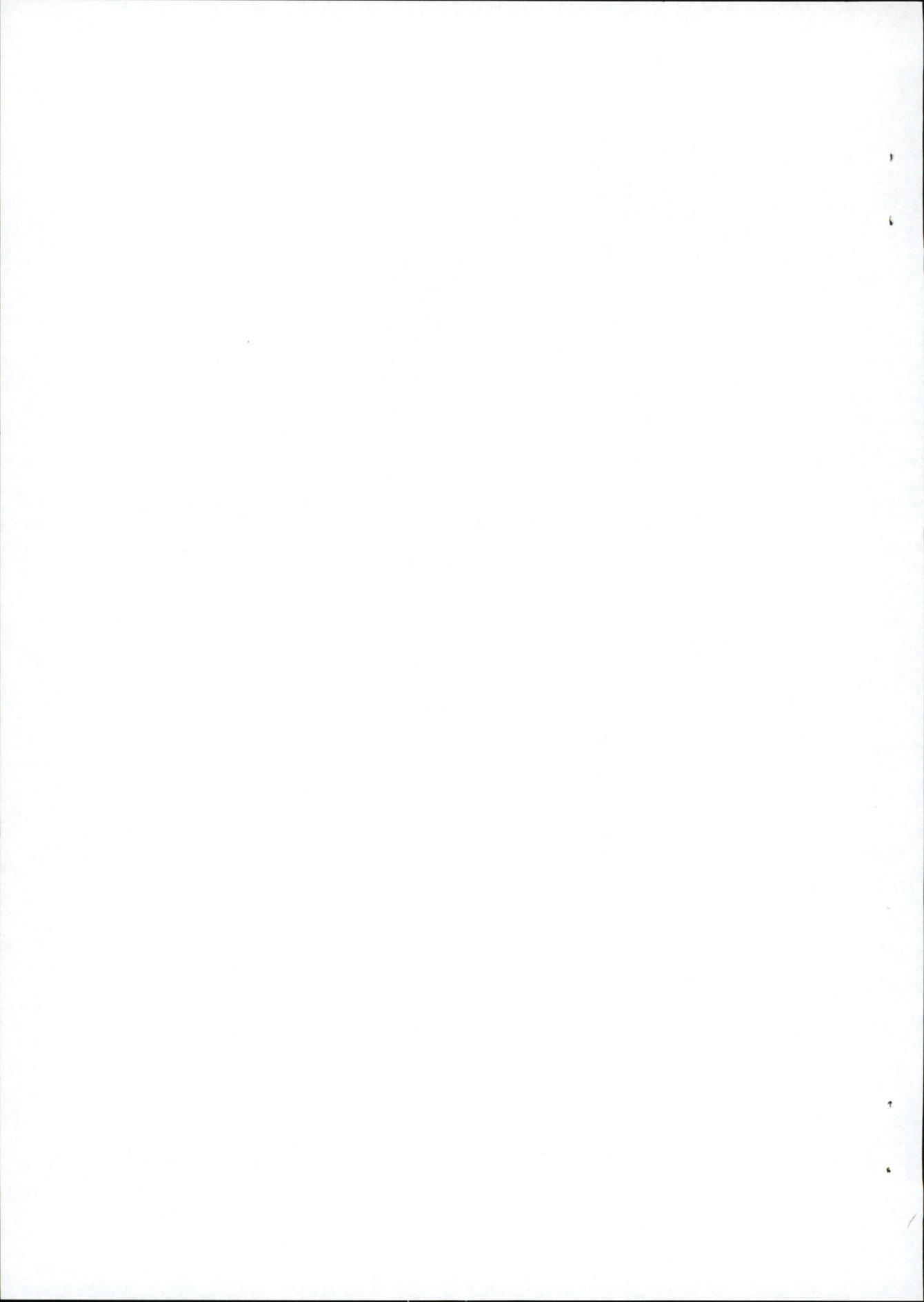


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New South Wales

Crimes Amendment (Mandatory Life Sentences) Act 1996 No 5

Act No 5, 1996

An Act to amend the *Crimes Act 1900* with respect to the imposition of mandatory life sentences for certain offences. [Assented to 21 May 1996]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes Amendment (Mandatory Life Sentences) Act 1996*.

2 Commencement

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

3 Amendment of Crimes Act 1900 No 40

The *Crimes Act 1900* is amended as set out in Schedule 1.

Schedule 1 Amendment

(Section 3)

Section 431B

Insert after section 431A:

431B Mandatory life sentences for certain offences

- (1) A court is to impose a sentence of penal servitude for life on a person who is convicted of murder, if the court is satisfied that the level of culpability in the commission of the offence is so extreme that the community interest in retribution, punishment, community protection and deterrence can only be met through the imposition of that sentence.
- (2) A court is to impose a sentence of imprisonment for life on a person who is convicted of an offence under section 25 (2) or (2A) of the *Drug Misuse and Trafficking Act 1985* to which section 33 (subsection (2) excepted) of that Act applies involving heroin or cocaine if the court is satisfied that the level of culpability in the commission of the offence is so extreme that the community interest in retribution, punishment, community protection and deterrence can only be met through the imposition of that sentence and the court is also satisfied that:
 - (a) the offence involved:
 - (i) a high degree of planning and organisation, and
 - (ii) the use of other people acting at the direction of the person convicted of the offence in the commission of the offence, and
 - (b) the person was solely or principally responsible for planning, organising and financing the offence, and

- (c) the heroin or cocaine was of a high degree of purity, and
 - (d) the person committed the offence solely for financial reward.
- (3) Nothing in subsection (1) affects section 442.
- (4) Section 442 of this Act and section 33A (2) of the *Drug Misuse and Trafficking Act 1985* do not apply if the court is satisfied that the circumstances referred to in subsection (2) exist.
- (5) Nothing in subsection (2) limits or derogates from the discretion of a court to impose a sentence of imprisonment for life on a person who is convicted of an offence under section 25 (2) or (2A) of the *Drug Misuse and Trafficking Act 1985* to which section 33 (subsection (2) excepted) of that Act applies involving heroin or cocaine.
- (6) This section does not apply to a person who was less than 18 years of age at the date of commission of the offence.
- (7) This section does not apply to offences committed before the commencement of this section.
- (8) In this section, *heroin* has the same meaning as in the *Drug Misuse and Trafficking Act 1985*.

[Minister's second reading speech made in—
Legislative Council on 17 April 1996
Legislative Assembly on 1 May 1996]

BY AUTHORITY