



New South Wales

# Sentencing Legislation Further Amendment Act 1997 No 6

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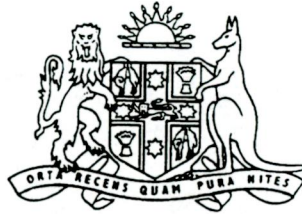
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New South Wales

# **Sentencing Legislation Further Amendment Act 1997 No 6**

Act No 6, 1997

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An Act to amend the *Sentencing Act 1989* and the *Correctional Centres Act 1952* in relation to persons who are serving sentences of penal servitude or imprisonment for life; and for other purposes. [Assented to 9 May 1997]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Sentencing Legislation Further Amendment Act 1997*.

**2 Commencement**

This Act commences on the date of assent.

**3 Amendment of Sentencing Act 1989 No 87**

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

**4 Amendment of Correctional Centres Act 1952 No 9**

The *Correctional Centres Act 1952* is amended as set out in Schedule 2.

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## Schedule 1    Amendment of Sentencing Act 1989

(Section 3)

### [1]    Section 13A Existing life sentences

Insert in section 13A (1) in alphabetical order:

*non-release recommendation*, in relation to a person serving an existing life sentence, means a recommendation or observation, or an expression of opinion, by the original sentencing court that (or to the effect that) the person should never be released from imprisonment.

### [2]    Section 13A (3) and (3A)

Omit section 13A (3). Insert instead:

(3)    A person is not eligible to make such an application unless the person has served:

- (a)    at least 8 years of the sentence concerned, except where paragraph (b) applies, or
- (b)    at least 20 years of the sentence concerned, if the person was the subject of a non-release recommendation.

(3A)   A person who is the subject of a non-release recommendation is not eligible for the determination of a minimum term and an additional term under this section, unless the Supreme Court, when considering the person's application under this section, is satisfied that special reasons exist that justify making the determination.

### [3]    Section 13A (4A)

Insert after section 13A (4):

(4A)   In considering such an application, the Supreme Court is to have regard to all the circumstances surrounding the offence for which the life sentence was imposed, and all offences, wherever committed, of which the person has been convicted at any time (so far as this information is reasonably available to the Supreme Court).

**[4]      Section 13A (8B)**

Omit "2 years". Insert instead "3 years".

**[5]      Section 13A (8C)**

Omit "2 years". Insert instead "3 years".

**[6]      Section 13A (9) (c)**

Omit the paragraph. Insert instead:

- (c)    the need to preserve the safety of the community,  
         and

**[7]      Section 13A (10A)**

Insert after section 13A (10):

(10A) The Supreme Court, in exercising its functions under this section:

- (a)    must have regard to and give substantial weight to any relevant recommendations, observations and comments made by the original sentencing court when imposing the sentence concerned, and
- (b)    must give consideration to adopting or giving effect to their substance and the intention of the original sentencing court when making them, and
- (c)    must, to the extent that it declines to adopt or give effect to those matters, state its reasons for doing so.

**[8]      Section 13A (12) (c)**

Omit "2 years". Insert instead "3 years".

**[9]      Section 13A (13)**

Insert after section 13A (12):

(13) The reference in subsection (4A) to an offence of which a person has been convicted:

- (a)    includes:
  - (i)    a finding that an offence has been proved without proceeding to a conviction against the person, or



- 
- (ii) any offence taken into account when sentence was passed against the person, but
  - (b) does not include:
    - (i) an offence that has been quashed or set aside within the meaning of Part 4 of the *Criminal Records Act 1991*, or
    - (ii) an offence of a class or description prescribed by the regulations for the purposes of this paragraph.

**[10] Section 22P**

Insert after section 22O:

**22P Matters to be considered concerning certain serious offenders**

- (1) This section applies to a person whose sentence of imprisonment for life has been the subject of a determination under section 13A (4).
- (2) The Board, in exercising its functions under this Part in relation to a person to whom this section applies:
  - (a) must have regard to and give substantial weight to any relevant recommendations, observations and comments made by the original sentencing court when imposing the sentence concerned, and
  - (b) must give consideration to adopting or giving effect to their substance and the intention of the original sentencing court when making them, and
  - (c) must, to the extent that it declines to adopt or give effect to those matters, state its reasons for doing so.
- (3) The Board, in exercising its functions under this Part in relation to a person to whom this section applies, must in particular have regard to the need to preserve the safety of the community.

**[11]    Schedule 2A Savings and transitional provisions relating to amending Acts**

Insert "*Sentencing Legislation Further Amendment Act 1997.*" at the end of clause 1 (1).

**[12]    Schedule 2A, Part 3**

Insert after Part 2:

**Part 3      Provisions consequent on Sentencing  
Legislation Further Amendment Act 1997**

**7 Definition**

In this Part:

*amending Act* means the *Sentencing Legislation Further Amendment Act 1997*.

**8 Time limit on re-applications regarding existing life sentences**

- (1) The amendments made by the amending Act to section 13A do not apply to an application made by any person under that section that was pending immediately before the day on which the Bill for the amending Act was introduced into Parliament. However, they apply to any application made by such a person under section 13A on or after that day.
- (2) The amendment made to section 13A (8B) by the amending Act does not apply to a person to whom a period of 2 years referred to in that subsection is applicable immediately before the commencement of that amendment. However, it does apply to such a person in respect of any decision of the Supreme Court made after that commencement to decline to determine a minimum term and an additional term.



- (3) The amendment made to section 13A (12) (c) by the amending Act does not apply to a person in respect of whom a direction that the person not re-apply for a period exceeding 2 years but not exceeding 3 years was in force immediately before the commencement of that amendment. However, it does apply to such a person in respect of a direction given in relation to the person after that commencement.
- (4) Section 22P of this Act, and section 62AA of the *Correctional Centres Act 1952*, do not apply in the case of any review process that had commenced before the day on which the Bill for the amending Act was introduced into Parliament.

## **Schedule 2      Amendment of Correctional Centres Act 1952**

(Section 4)

### **Section 62AA**

Insert after section 62:

#### **62AA Matters to be considered concerning certain serious offenders**

- (1) This section applies to a person serving an existing life sentence (as referred to in section 13A of the *Sentencing Act 1989*) or a sentence in respect of which a determination has been made under section 13A (4) of that Act.
- (2) The Review Council, in exercising its functions under section 62 (1) (b) and (c), and under any other prescribed provisions of this Act or the regulations, in relation to a person to whom this section applies:
  - (a) must have regard to and give substantial weight to any relevant recommendations, observations and comments made by the original sentencing court when imposing the sentence concerned, and
  - (b) must give consideration to adopting or giving effect to their substance and the intention of the original sentencing court when making them, and
  - (c) must, to the extent that it declines to adopt or give effect to those matters, state its reasons for doing so.

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- (3) The Review Council, in exercising its functions under section 62 (1) (b) and (c), and under any other prescribed provisions of this Act or the regulation, in relation to a person to whom this section applies, must in particular have regard to the need to preserve the safety of the community.

[Minister's second reading speech made in—  
Legislative Assembly on 8 May 1997  
Legislative Council on 8 May 1997]





New South Wales

# **Sentencing Legislation Further Amendment Bill 1997**

## **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 *Sentencing Act 1989* and the *Correctional Centres Act 1952* so as:

- (a) to increase the extent to which the recommendations, observations and comments of the court that originally imposed a life sentence on a person have influence on:
    - (i) the consideration by the Supreme Court of an application for redetermination of the person's sentence under section 13A of the *Sentencing Act 1989*, and
    - (ii) the exercise by the Parole Board of its functions under Part 3 of that Act in respect of the person, and
    - (iii) the exercise by the Serious Offenders Review Council of certain of its functions under Part 10 of the *Correctional Centres Act 1952* in respect of the person, and
-



- (b) to increase (from 8 to 20 years), in the case of persons who were the subject of a non-release recommendation by the original sentencing court, the length of sentence that a person who desires to have his or her sentence redetermined under section 13A of the *Sentencing Act 1989* must have served before a redetermination application can be made, and
- (c) to provide that redetermination of sentence is not available to a person who was the subject of a non-release recommendation, except where there are special reasons that justify a redetermination, and
- (d) to require the Supreme Court, in considering a redetermination of a life sentence under section 13A of the *Sentencing Act 1989*, to take into account all the circumstances surrounding the offence for which the life sentence was imposed and all convictions of the person serving the sentence, and
- (e) to require the Supreme Court, the Parole Board and the Serious Offenders Review Council, in the exercise of their respective functions, to have regard to the safety of the community in connection with redetermined life sentences, and
- (f) to adjust, from 2 years to 3 years, the “default” period (that is, the period that is applicable if the Court does not specify another period) for which a person whose sentence the Court has declined to redetermine is barred from making further application for redetermination.

## 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.

**Clause 3** is a formal provision giving effect to the amendments to the *Sentencing Act 1989* set out in Schedule 1.

**Clause 4** is a formal provision giving effect to the amendments to the *Correctional Centres Act 1952* set out in Schedule 2.

## Schedule 1      Amendment of Sentencing Act 1989

**Schedule 1 [1]** amends section 13A of the Act to include a definition of *non-release recommendation* for the purposes of the section.

**Schedule 1 [2]** amends section 13A of the Act so as to extend, in certain cases, the usual waiting period before an application may be made under the section for redetermination of a sentence. The usual waiting period is 8 years. As a consequence of the amendment, it will be 20 years in the case of a person who was the subject of a non-release recommendation. Furthermore, in the case of such a person, the amendment provides that the person is not eligible for a redetermination of sentence unless the Supreme Court is satisfied that special reasons exist that justify doing so.

**Schedule 1 [3]** amends section 13A of the Act so as to require the Supreme Court, when considering an application to redetermine a sentence under that section, to have regard to all the circumstances of the offence for which the life sentence under consideration was imposed and all convictions of the person serving the sentence. The amendment made by **Schedule 1 [9]** is consequential.

**Schedule 1 [4]** amends section 13A of the Act so as to provide that, unless otherwise specified by the Court, a person whose application for redetermination has been refused by the Supreme Court under that section may not make further application for a period of 3 years. (The current period is 2 years.) The amendments made by **Schedule 1 [5]** and **[8]** are consequential.

**Schedule 1 [6]** amends section 13A of the Act so as to require the Supreme Court, in exercising its functions under that section in connection with persons serving life sentences, to have regard to the need to maintain the safety of the community.

**Schedule 1 [7]** amends section 13A of the Act so as to provide that the Supreme Court, in exercising its functions under that section, must have regard to and give substantial weight to any relevant recommendations, observations and comments made by the original sentencing court when imposing the sentence then under consideration, and must give consideration to adopting them or putting them into effect, giving reasons when it declines to do so.

**Schedule 1 [10]** inserts a new section 22P which requires the Parole Board, when exercising its functions under Part 3 of the Act in relation to a person whose life sentence has been redetermined under section 13A, to have regard to and give substantial weight to any relevant recommendations, observations and comments made by the original sentencing court when imposing the life sentence, and to give consideration to adopting them or putting them into effect, giving reasons when it declines to do so. It also requires the Board to have particular regard to community safety in its dealings with such a person.

**Schedule 1 [11] and [12]** amend Schedule 2A to the Act to enact certain savings and to enable any further savings or transitional provisions necessary as a consequence of the amendments made by the proposed Act to be effected by regulation.

## **Schedule 2      Amendment of Correctional Centres Act 1952**

The Schedule inserts a new section 62AA which requires the Serious Offenders Review Council, when exercising certain functions under Part 10 of the Act in relation to a person whose life sentence has been redetermined, to have regard to and give substantial weight to any relevant recommendations, observations and comments made by the original sentencing court when imposing the sentence then under consideration, and to give consideration to adopting them or putting them into effect, giving reasons when it declines to do so. It also requires the Review Council to have particular regard to community safety in its dealings with such a person.



First print



New South Wales

# **Sentencing Legislation Further Amendment Bill 1997**

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New South Wales

## **Sentencing Legislation Further Amendment Bill 1997**

No , 1997

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### **A Bill for**

An Act to amend the *Sentencing Act 1989* and the *Correctional Centres Act 1952* in relation to persons who are serving sentences of penal servitude or imprisonment for life; and for other purposes.

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**The Legislature of New South Wales enacts:**

**1    Name of Act**

This Act is the *Sentencing Legislation Further Amendment Act 1997*.

**2    Commencement**

5

This Act commences on the date of assent.

**3    Amendment of Sentencing Act 1989 No 87**

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

**4    Amendment of Correctional Centres Act 1952 No 9**

The *Correctional Centres Act 1952* is amended as set out in Schedule 2.    10

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## Schedule 1 Amendment of Sentencing Act 1989

(Section 3)

### [1] Section 13A Existing life sentences

Insert in section 13A (1) in alphabetical order:

*non-release recommendation*, in relation to a person  
serving an existing life sentence, means a  
recommendation or observation, or an expression of  
opinion, by the original sentencing court that (or to the  
effect that) the person should never be released from  
imprisonment. 5  
10

### [2] Section 13A (3) and (3A)

Omit section 13A (3). Insert instead:

- (3) A person is not eligible to make such an application  
unless the person has served: 15
- (a) at least 8 years of the sentence concerned, except  
where paragraph (b) applies, or
- (b) at least 20 years of the sentence concerned, if the  
person was the subject of a non-release  
recommendation.
- (3A) A person who is the subject of a non-release  
recommendation is not eligible for the determination of a  
minimum term and an additional term under this section,  
unless the Supreme Court, when considering the person's  
application under this section, is satisfied that special  
reasons exist that justify making the determination. 20  
25

### [3] Section 13A (4A)

Insert after section 13A (4):

- (4A) In considering such an application, the Supreme Court is  
to have regard to all the circumstances surrounding the  
offence for which the life sentence was imposed, and all  
offences, wherever committed, of which the person has  
been convicted at any time (so far as this information is  
reasonably available to the Supreme Court). 30

Sentencing Legislation Further Amendment Bill 1997

Schedule 1      Amendment of Sentencing Act 1989

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- [4]      Section 13A (8B)**  
Omit "2 years". Insert instead "3 years".
- [5]      Section 13A (8C)**  
Omit "2 years". Insert instead "3 years".
- [6]      Section 13A (9) (c)** 5  
Omit the paragraph. Insert instead:  
    (c)    the need to preserve the safety of the community,  
            and
- [7]      Section 13A (10A)**  
Insert after section 13A (10): 10  
    (10A) The Supreme Court, in exercising its functions under this  
            section:  
        (a)    must have regard to and give substantial weight to  
                any relevant recommendations, observations and  
                comments made by the original sentencing court 15  
                when imposing the sentence concerned, and  
        (b)    must give consideration to adopting or giving  
                effect to their substance and the intention of the  
                original sentencing court when making them, and  
        (c)    must, to the extent that it declines to adopt or give 20  
                effect to those matters, state its reasons for doing  
                so.
- [8]      Section 13A (12) (c)**  
Omit "2 years". Insert instead "3 years".
- [9]      Section 13A (13)** 25  
Insert after section 13A (12):  
    (13)    The reference in subsection (4A) to an offence of which  
            a person has been convicted:  
        (a)    includes:  
            (i)    a finding that an offence has been proved 30  
                    without proceeding to a conviction against  
                    the person, or



- (ii) any offence taken into account when sentence was passed against the person, but
- (b) does not include:
  - (i) an offence that has been quashed or set aside within the meaning of Part 4 of the *Criminal Records Act 1991*, or 5
  - (ii) an offence of a class or description prescribed by the regulations for the purposes of this paragraph.

**[10] Section 22P** 10

Insert after section 22O:

**22P Matters to be considered concerning certain serious offenders**

- (1) This section applies to a person whose sentence of imprisonment for life has been the subject of a determination under section 13A (4). 15
- (2) The Board, in exercising its functions under this Part in relation to a person to whom this section applies:
  - (a) must have regard to and give substantial weight to any relevant recommendations, observations and comments made by the original sentencing court when imposing the sentence concerned, and 20
  - (b) must give consideration to adopting or giving effect to their substance and the intention of the original sentencing court when making them, and 25
  - (c) must, to the extent that it declines to adopt or give effect to those matters, state its reasons for doing so.
- (3) The Board, in exercising its functions under this Part in relation to a person to whom this section applies, must in particular have regard to the need to preserve the safety of the community. 30



Sentencing Legislation Further Amendment Bill 1997

Schedule 1      Amendment of Sentencing Act 1989

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**[11]    Schedule 2A Savings and transitional provisions relating to amending Acts**

Insert "*Sentencing Legislation Further Amendment Act 1997*." at the end of clause 1 (1).

**[12]    Schedule 2A, Part 3**

5

Insert after Part 2:

**Part 3      Provisions consequent on Sentencing  
Legislation Further Amendment Act 1997**

**7 Definition**

In this Part:

10

*amending Act* means the *Sentencing Legislation Further Amendment Act 1997*.

**8 Time limit on re-applications regarding existing life sentences**

- (1)    The amendments made by the amending Act to section 13A do not apply to an application made by any person under that section that was pending immediately before the day on which the Bill for the amending Act was introduced into Parliament. However, they apply to any application made by such a person under section 13A on or after that day.      15  
20
- (2)    The amendment made to section 13A (8B) by the amending Act does not apply to a person to whom a period of 2 years referred to in that subsection is applicable immediately before the commencement of that amendment. However, it does apply to such a person in respect of any decision of the Supreme Court made after that commencement to decline to determine a minimum term and an additional term.      25

- 
- (3) The amendment made to section 13A (12) (c) by the amending Act does not apply to a person in respect of whom a direction that the person not re-apply for a period exceeding 2 years but not exceeding 3 years was in force immediately before the commencement of that amendment. However, it does apply to such a person in respect of a direction given in relation to the person after that commencement. 5
- (4) Section 22P of this Act, and section 62AA of the *Correctional Centres Act 1952*, do not apply in the case of any review process that had commenced before the day on which the Bill for the amending Act was introduced into Parliament. 10

## **Schedule 2      Amendment of Correctional Centres Act 1952**

(Section 4)

### **Section 62AA**

Insert after section 62:

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#### **62AA Matters to be considered concerning certain serious offenders**

- (1) This section applies to a person serving an existing life sentence (as referred to in section 13A of the *Sentencing Act 1989*) or a sentence in respect of which a determination has been made under section 13A (4) of that Act. 10
- (2) The Review Council, in exercising its functions under section 62 (1) (b) and (c), and under any other prescribed provisions of this Act or the regulations, in relation to a person to whom this section applies: 15
  - (a) must have regard to and give substantial weight to any relevant recommendations, observations and comments made by the original sentencing court when imposing the sentence concerned, and 20
  - (b) must give consideration to adopting or giving effect to their substance and the intention of the original sentencing court when making them, and
  - (c) must, to the extent that it declines to adopt or give effect to those matters, state its reasons for doing so. 25
- (3) The Review Council, in exercising its functions under section 62 (1) (b) and (c), and under any other prescribed provisions of this Act or the regulation, in relation to a person to whom this section applies, must in particular have regard to the need to preserve the safety of the community. 30