

**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.

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*Sentencing (Life Sentences) Amendment 1993 [Act 1993 No. 74]*

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**Clause 1** specifies the short title of the proposed Act.

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

**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.

(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 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**

*Sentencing (Life Sentences) Amendment 1993 [Act 1993 No. 74]*

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- (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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