

SENTENCING (LIFE SENTENCES) AMENDMENT ACT 1989
No. 220

NEW SOUTH WALES



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SENTENCING (LIFE SENTENCES) AMENDMENT ACT 1989
No. 220

NEW SOUTH WALES



Act No. 220, 1989

An Act to amend the Sentencing Act 1989 in relation to convicted prisoners serving life sentences; and for other purposes. [Assented to 21 December 1989]

Sentencing (Life Sentences) Amendment 1989

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Sentencing (Life Sentences) Amendment Act 1989.

Commencement

2. This Act commences on a day or days 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.

SCHEDULE 1 - AMENDMENTS

(Sec. 3)

(1) Section 13A:

After section 13, insert:

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:

Sentencing (Life Sentences) Amendment 1989

SCHEDULE 1 - AMENDMENTS - *continued*

- (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.

(9) The Supreme Court, in setting a minimum term and an additional term 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

SCHEDULE 1 - AMENDMENTS - *continued*

(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 may have regard to any other relevant matter.

(10) The regulations may make provision 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. The Criminal Appeal Act 1912 applies to such an appeal in the same way as it applies to an appeal against a sentence.

(2) Part 3, Division 3A:

After Division 3 of Part 3, insert:

**Division 3A - Parole orders -
exceptional circumstances**

Parole orders in exceptional circumstances

25A. (1) The Board may make a parole order directing the release of a prisoner on parole who (but for this section) is not otherwise eligible for release on parole, but only if the prisoner is dying or if the Board is satisfied that it is necessary to release the prisoner on parole because of exceptional extenuating circumstances.

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SCHEDULE 1 - AMENDMENTS - *continued*

(2) If a parole order is made under this section in respect of a sentence with a minimum term, the remaining period of the minimum term is to be added to and becomes part of the additional term for the sentence.

(3) If a parole order is made under this section in respect of a sentence with a fixed term, the sentence is to be taken to comprise a minimum term for the period until release and an additional term for the balance of the sentence.

(4) The Board is not required to consider an application for a parole order under this section, nor to conduct a hearing if it decides not to grant such an application.

(5) Divisions 2 and 3 do not apply to a parole order under this section.

(6) This section does not apply in respect of a person serving a sentence of imprisonment for life.

- (3) Schedule 1 (**Provisions relating to the members of the Board, Divisions of the Board and procedure**):

After clause 11, insert:

Representation of Serious Offenders Review Board

11A. A member of the Serious Offenders Review Board (being a member other than a judicial member chosen by the Chairperson of that Board) is entitled to attend and be heard at a meeting of the Board or a Division of the Board at which any matter relating to a prisoner referred to in section 61 (c) of the Prisons Act 1952 is being considered.

[*Minister's second reading speech made in -
Legislative Assembly on 30 November 1989
Legislative Council on 7 December 1989*]