



**CRIMINAL CODE AMENDMENT (LIFE PRISONERS
AND DANGEROUS CRIMINALS) ACT 1994**

No. 96 of 1994

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**CRIMINAL CODE AMENDMENT (LIFE PRISONERS
AND DANGEROUS CRIMINALS) ACT 1994**

No. 96 of 1994

AN ACT to amend the *Criminal Code* in relation to sentences of life imprisonment and the sentencing of persons declared to be dangerous criminals, to provide for the resentencing of existing life prisoners and for related purposes

[Royal Assent 16 December 1994]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

**PART 1
PRELIMINARY**

Short title

1—This Act may be cited as the *Criminal Code Amendment (Life Prisoners and Dangerous Criminals) Act 1994*.

Commencement

2—This Act commences on a day to be proclaimed.

PART 2**CRIMINAL CODE* AMENDED****Section 56 amended (Treason)**

3—Section 56 of the *Criminal Code* is amended by omitting “shall be sentenced to imprisonment for the term of his natural life” and substituting “is liable to imprisonment for the term of the person’s natural life or for such other term as the Court determines”.

Section 158 amended (Murder)

4—Section 158 of the *Criminal Code* is amended by omitting “shall be sentenced to imprisonment for the term of his natural life” and substituting “is liable to imprisonment for the term of the person’s natural life or for such other term as the Court determines”.

Section 392 amended (Power to declare dangerous criminals)

5—Section 392 of the *Criminal Code* is amended by omitting subsection (2) and substituting the following subsections:—

(2) A judge who declares that a person is a dangerous criminal must, in addition to making that declaration, sentence that person to a term of imprisonment for the crime referred to in subsection (1) (a).

* Schedule 1 to 14 Geo. V No. 69. For the *Criminal Code Act 1924* and the *Criminal Code*, as amended to 1 March 1980, see the continuing Reprint of Statutes. Subsequently amended by No. 19 of 1980, No. 52 of 1981, Nos. 33 and 99 of 1982, No. 77 of 1983, No. 3 of 1984, No. 17 of 1985, Nos. 77, 86 and 93 of 1986, Nos. 26, 71, 81 and 83 of 1987, Nos. 14 and 29 of 1988, Nos. 7, 9 and 33 of 1989, No. 13 of 1990, Nos. 3, 43 and 46 of 1991, No. 21 of 1992, Nos. 9, 72 and 89 of 1993 and Nos. 4, 7, 10, 21, 61, 68 and 72 of 1994.

(2A) A person in respect of whom a declaration under subsection (1) has been made is not eligible to be released from custody until that declaration is discharged.

(2B) Subsection (2A) has effect whether or not the sentence of imprisonment imposed on that person under subsection (2) has expired.

Sections 393, 394, 395 and 396 inserted

6—After section 392 of the *Criminal Code*, the following sections are inserted in Chapter XLIV:—

Dangerous criminals may apply for discharge of status

393—(1) In this section and in sections 394, 395 and 396—

“**applicant**” means a dangerous criminal who applies to have the declaration by which he or she acquired the status of a dangerous criminal discharged;

“**commencement day**” means the day on which the *Criminal Code Amendment (Life Prisoners and Dangerous Criminals) Act 1994* commences;

“**dangerous criminal**” means a person in respect of whom a declaration under section 392 (1) is in force;

“**non-parole period**” means the non-parole period under the *Parole Act 1975*;

“**sentence**” means—

(a) in the case of a person declared to be a dangerous criminal before the commencement day—the sentence of imprisonment, if any, imposed on that person in respect of the offence by reason of which he or she was declared to be a dangerous criminal; or

(b) in the case of a person declared to be a dangerous criminal after the commencement day—the sentence of imprisonment imposed on that person under section 392 (2).

(2) A dangerous criminal who has served a term of imprisonment equal to the non-parole period applicable to his or her sentence may apply to the Supreme Court to have the declaration by which he or she acquired the status of a dangerous criminal discharged.

(3) On an application under subsection (2) the Supreme Court must make an order discharging the relevant declaration if the court is satisfied that the declaration is no longer warranted for the protection of the public.

(4) An order under subsection (3) does not take effect until—

(a) if no appeal is lodged pursuant to section 396 (1)—the end of the appeal period or, in a case to which section 394 (10) applies, such later date as may be specified by the court; or

(b) if an appeal is lodged pursuant to section 396 (1)—the dismissal of the appeal.

(5) An application under subsection (2) may be withdrawn or discontinued by leave of the court.

(6) An applicant whose application under subsection (2) is unsuccessful may submit a further application under that subsection after the expiration of a period of 2 years, or such lesser period as the court may allow, from the date on which the unsuccessful application was filed with the court.

(7) The discharge of a declaration under section 392 (1) does not affect a sentence of imprisonment imposed on the person to whom the declaration related.

Procedure

394—(1) An application under section 393 (2) is to be in writing.

(2) A copy of the application is to be served on the Director of Public Prosecutions.

(3) The Director of Public Prosecutions, or Counsel on the Director of Public Prosecutions' behalf, must appear for the Crown at the hearing of the application.

(4) The applicant is entitled to be present at the hearing of his or her application unless the court hearing the application, in its discretion, makes an order to the contrary.

(5) The court, in its discretion, may order the Director of Corrective Services or any other person or body to prepare a report in respect of the applicant addressing such matters as the court specifies in the order.

(6) A copy of a report prepared pursuant to an order of the court under subsection (5) is to be provided to the Director of Public Prosecutions and the applicant.

(7) The Director of Public Prosecutions or the applicant may adduce evidence in relation to the application.

(8) If the Director of Public Prosecutions or the applicant causes a report to be prepared in relation to the application, a copy of the report is to be provided to the other party to the application.

(9) If either party to the application puts a report in evidence—

- (a) the other party to the application is entitled to cross-examine the author of the report; and
- (b) if the author of the report is cross-examined—
the party which put the report in evidence is entitled to examine the author of the report by way of reply.

(10) If the discharge of the declaration would result in the immediate release of the applicant from custody, the court may order that the discharge is not to take effect for such time as it considers necessary for the purpose of enabling the applicant to undergo a pre-release program under the supervision of the Director of Corrective Services.

Preliminary procedure

395—(1) At any time after an application is made under section 393 (2) but before the hearing of the application, a judge may require the parties to attend a conference for the purpose of ensuring a proper consideration of the application.

- (2) At a conference under subsection (1) the judge may—
- (a) give any directions to either or both of the parties to the application as the judge considers necessary or expedient for a proper consideration of the application; and
 - (b) determine any question of law or procedure that has arisen or is expected to arise in the hearing; and
 - (c) give such directions as the judge thinks fit in order to resolve any issue or matter that the judge considers necessary or convenient to resolve before the hearing.

Appeals

396—(1) Subject to subsection (2)—

- (a) the Attorney-General may, under section 401, appeal against an order of the court under section 393 (3) as if that order were a sentence imposed on conviction; and

(b) an applicant may, under section 401, appeal against the refusal of the court to make an order under section 393 (3) as if that refusal were a sentence imposed on conviction.

(2) For the purposes of subsection (1), it is not necessary to obtain the leave of the Court of Criminal Appeal for the appeal.

PART 3

RESENTENCING OF EXISTING LIFE PRISONERS

Interpretation: Part 3

7—In this Part—

“**applicant**” means an existing life prisoner who has applied to the Supreme Court to be resentenced under this Part;

“**existing life prisoner**” means a person who—

(a) is serving a life sentence and in respect of whom an order has not been made under section 12BA (1) of the *Parole Act 1975*; and

(b) is not on parole;

“**life sentence**” means a sentence of imprisonment for the term of a person’s natural life and “**life imprisonment**” has a corresponding meaning;

“**original sentence**”, in relation to an existing life prisoner, means the life sentence that the prisoner is serving at the time the prisoner applies to be resentenced under this Part and “**originally sentenced**” has a corresponding meaning.

Right to apply for resentencing

8—(1) An existing life prisoner may apply to the Supreme Court to be resentenced.

(2) An existing life prisoner who applies to be resentenced under this Part remains under the prisoner's original sentence until—

- (a) if no appeal is lodged against the sentence imposed by way of resentencing—the end of the appeal period; or
- (b) if an appeal is lodged against the sentence imposed by way of resentencing—the determination of the appeal.

Resentencing

9—(1) On an application under section 8 (1) the Supreme Court must resentence the applicant for the crime for which the applicant was originally sentenced to life imprisonment.

(2) Notwithstanding subsection (1), an application under section 8 (1) may be withdrawn or discontinued by leave of the court.

(3) For the purposes of subsection (1), the court has the same powers and duties it would have had if the applicant had been convicted by that court of the crime referred to in that subsection after the commencement of this Act.

(4) In resentencing an existing life prisoner under this Part the court must not take into account the applicant's conduct as a life prisoner.

Effect of resentencing

10—(1) When an existing life prisoner is resentenced, either pursuant to an application under this Part or upon the determination of an appeal in respect of that application—

- (a) the prisoner's original sentence is annulled; and
- (b) subject to paragraph (c), the sentence imposed on the prisoner by way of resentencing replaces that original sentence for all purposes; and
- (c) for the purposes of calculating, under the *Prison Act 1977*, the prisoner's entitlement to a remission of the sentence imposed by way of resentencing, that sentence is taken to have been imposed on the date on which the prisoner was resentenced.

(2) Nothing in subsection (1) is to be taken as impugning the lawfulness of the prisoner's original sentence.

Procedure

11—(1) An application under section 8 (1) is to be in writing.

(2) A copy of an application under section 8 (1) is to be served on the Director of Public Prosecutions.

(3) The Director of Public Prosecutions, or Counsel on the Director of Public Prosecutions' behalf, must appear for the Crown at the hearing of an application under section 8 (1).

(4) A court hearing an application under section 8 (1) is to proceed as if it were sentencing the applicant for the first time for the offence for which the applicant was originally sentenced.

Appeals

12—An applicant or the Attorney-General may, under section 401 of the *Criminal Code*, appeal against the sentence imposed under section 9 (1) as if that sentence were the applicant's original sentence.

PART 4

DANGEROUS CRIMINALS: TRANSITIONAL PROVISIONS

Interpretation: Part 4

13—In this Part—

“**dangerous criminal**” means a person in respect of whom a declaration under section 392 (1) of the *Criminal Code* is in force;

“**unsentenced dangerous criminal**” means a dangerous criminal who—

- (a) has not been sentenced to a term of imprisonment for the crime by reason of which he or she was declared to be a dangerous criminal; and
- (b) is not on release on parole under the *Parole Act 1975*.

Right of unsentenced dangerous criminal to apply for sentencing

14—An unsentenced dangerous criminal may apply to the Supreme Court to be sentenced to a term of imprisonment for the crime for which he or she was declared to be a dangerous criminal.

Sentencing of unsentenced dangerous criminals

15—(1) On an application under section 14 the Supreme Court must sentence the applicant for the crime for which the applicant was declared to be a dangerous criminal.

(2) Notwithstanding subsection (1), an application under section 14 may be withdrawn or discontinued by leave of the court.

(3) For the purposes of subsection (1), the court has the same powers and duties it would have had if the applicant had been convicted by that court of the crime referred to in that subsection after the commencement of this Act.

(4) In sentencing an applicant under this Part the court must not take into account the applicant's conduct as a prisoner during the period that the applicant has been a dangerous criminal.

(5) Sections 11 and 12 apply to an application under this Part as if it were an application under Part 3.

Effect of unsentenced dangerous criminal remaining unsentenced

16—Until an unsentenced dangerous criminal is sentenced under this Part, the eligibility of that dangerous criminal to be—

(a) considered for release on parole; or

(b) released on parole—

is to be determined in accordance with the *Parole Act 1975* as in force immediately before the commencement of this Act.

Provision relating to dangerous criminals on parole

17—(1) This section applies to a person who, on the commencement of this Act, is a dangerous criminal in respect of whom an order has been made under section 14 of the *Parole Act 1975* as in force immediately before that commencement.

(2) The *Parole Act 1975* as in force immediately before the commencement of this Act continues to apply to a person to whom this section applies until the declaration by which the person acquired the status of a dangerous criminal is discharged under section 393 (3) of the *Criminal Code*.

[Second reading presentation speech made in:—
House of Assembly on 19 October 1994
Legislative Council on 30 November 1994]

