

CRIMINAL JUSTICE AMENDMENT BILL (NO. 6)

EXPLANATORY NOTE

General Policy Statement

This Bill, which amends the Criminal Justice Act 1985, is a companion measure to the Crimes (Home Invasion) Amendment Bill.

The Criminal Justice Act 1985 provides that offenders who are subject to life sentences of imprisonment must serve a minimum period of 10 years before becoming eligible for parole. Since 1993, the courts have had power to impose an even longer minimum non-parole period in exceptional circumstances. There is no upper limit on the duration of the non-parole period that may be imposed, with the longest period imposed for murder to date being 17 years. In 1996, the Court of Appeal (in *R v Parsons* [1996] 3 NZLR 129) reviewed the use of the power, which was at that time being applied in about 20% of murder cases. It concluded that the power should be reserved for truly exceptional cases, for instance, where there is an unusual level of premeditation, extraordinary brutality, depravity, or callousness, and in multiple killings.

In order to deal with home invasion murders it would be possible for the relevant section in the Act to be amended to spell out that home invasion is one of these truly exceptional circumstances and, therefore, within the scope of the section. However, because murder is a very serious crime and occurs in a wide range of circumstances, it is preferable to make a more general change to the relevant power. The Bill therefore lowers the threshold for imposing non-parole periods, and, as a result, the courts will be able to impose them in a wider range of cases than at present, including, but not limited to, those involving home invasion.

The existing power in the Criminal Justice Act 1985 can also be used in relation to the sentence of preventive detention, the second type of indeterminate sentence, which can be imposed instead of a finite sentence for certain sexual and violent offences if there is a significant risk of reoffending. The change would also apply to this sentence. In addition, the court is currently able to impose extended non-parole periods, not exceeding 10 years, for serious violent offences (as defined in the Criminal Justice Act 1985). The lower threshold would also apply to those offences.

Clause by Clause Analysis

Clause 1 relates to the Short Title and commencement.

Clause 2 amends section 80 of the principal Act, which relates to minimum periods of imprisonment. At present, if a court sentences an offender to an indeterminate sentence, it may also order the offender to serve a minimum period of imprisonment of more than 10 years if satisfied that the circumstances of the offence are so exceptional that a minimum period of imprisonment of more than 10 years is justified.

This amendment lowers the threshold from the “so exceptional” cases to those where the offending is such that more than the usual non-parole period is appropriate. There must therefore be something in the circumstances of the offending that takes it out of the ordinary and justifies what is in effect a more severe penalty.

This amendment is of general application and complements the proposals relating to home invasion set out in the Crimes (Home Invasion) Amendment Bill.

Hon Tony Ryall

CRIMINAL JUSTICE AMENDMENT (NO. 6)

ANALYSIS

Title	2. Minimum periods of imprisonment
1. Short Title and commencement	

A BILL INTITULED

An Act to amend the Criminal Justice Act 1985 to lower the threshold for imposing non-parole periods

BE IT ENACTED by the Parliament of New Zealand as follows:

5 **1. Short Title and commencement**—(1) This Act may be cited as the Criminal Justice Amendment Act (No. 6) 1999, and is part of the Criminal Justice Act 1985* (“the principal Act”).

(2) This Act comes into force on the day after the date on which it receives the Royal assent.

10 **2. Minimum periods of imprisonment**—(1) Section 80 of the principal Act is amended by repealing subsection (2), and substituting the following subsection:

15 “(2) The court may impose a minimum period of imprisonment under subsection (1) if satisfied that the circumstances of the offence are such that a minimum period of imprisonment of more than 10 years is justified.”

(2) Section 80 of the principal Act is amended by repealing subsection (5), and substituting the following subsection:

20 “(5) The court may impose a minimum period of imprisonment under subsection (4) if satisfied that the circumstances of the offence are such that a minimum period of imprisonment that is longer than the period otherwise

*1985, No. 120

Amendments: 1986, No. 83; 1987, Nos. 25, 95, 168; 1989, Nos. 20, 91; 1993, Nos. 43, 93; 1994, No. 28; 1995, No. 69; 1996, No. 81; 1997, Nos. 40, 94; 1998, Nos. 37, 78

applicable under section 89 or section 90, as the case may be, is justified.”