NORTHERN TERRITORY OF AUSTRALIA

SENTENCING (CRIME OF MURDER) AND PAROLE REFORM ACT

As in force at 15 May 2008

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NORTHERN TERRITORY OF AUSTRALIA

This reprint shows the Act as in force at 15 May 2008. Any amendments that may come into operation after that date are not included.

SENTENCING (CRIME OF MURDER) AND PAROLE REFORM ACT

An Act to amend the Criminal Code, the *Sentencing Act* and the *Parole of Prisoners Act,* and for related purposes

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Sentencing (Crime of Murder) and Parole Reform Act*.

2. Commencement

This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.

3. Purposes

The purposes of this Act are –

(a) to confirm the crime of murder is punishable by a mandatory penalty of life imprisonment;

(b) to permit the fixing of a non-parole period for the crime of murder;

(c) to expand the composition of the Parole Board; and

(d) to ensure that, when considering the release on parole of a prisoner imprisoned for the crime of murder, the Parole Board has regard to the principle that the public interest is of primary importance and, in doing so, gives substantial weight to the protection of the community as the paramount consideration, the likely effect of release on the victim's family and, if the prisoner is an Aboriginal or Torres Strait Islander who identifies with a particular community of Aboriginal or Torres Strait Islanders, the likely effect of release on that community.

PART 2 – AMENDMENT OF CRIMINAL CODE

4. Repeal and substitution

Section 164 of the Criminal Code is repealed and the following substituted:

"**164. Punishment of murder**

"(1) Any person who commits the crime of murder is liable to imprisonment for life, which penalty is mandatory.

"(2) Subsection (1) does not prevent a court fixing a non-parole period in accordance with section 53A of the *Sentencing Act* as part of a sentence for the crime of murder.

"(3) Subsection (1) applies subject to section 39(2) of the *Juvenile Justice Act*.".

PART 3 – AMENDMENTS OF *SENTENCING ACT*

5. Principal Act

The *Sentencing Act* is in this Part referred to as the Principal Act.

6. Fixing of non-parole period by sentencing court

Section 53 of the Principal Act is amended –

(a) by omitting from subsection (1) "sections 54, 55 and 55A" and substituting "sections 53A, 54, 55 and 55A"; and

(b) by omitting subsection (3).

7. New section

The Principal Act is amended by inserting after section 53 the following:

"**53A. Non-parole periods for crime of murder**

"(1) Subject to this section, where a court ('the sentencing court') sentences an offender to be imprisoned for life for the crime of murder, the court must fix under section 53(1) –

(a) a standard non-parole period of 20 years; or

(b) if any of the circumstances in subsection (3) apply – a non-parole period of 25 years.

"(2) The standard non-parole period of 20 years referred to in subsection (1)(a) represents the non-parole period for an offence in the middle of the range of objective seriousness for offences to which the standard non-parole period applies.

"(3) The circumstances referred to in subsection (1)(b) are any of the following:

(a) the victim's occupation was police officer, emergency services worker, correctional services officer, judicial officer, health professional, teacher, community worker or other occupation involving the performance of a public function or the provision of a community service and the act or omission that caused the victim's death occurred while the victim was carrying out the duties of his or her occupation or for a reason otherwise connected with his or her occupation;

(b) the act or omission that caused the victim's death was part of a course of conduct by the offender that included conduct, either before or after the victim's death, that would have constituted a sexual offence against the victim;

(c) the victim was under 18 years of age at the time of the act or omission that caused the victim's death;

(d) if the offender is being sentenced for 2 or more convictions for unlawful homicide;

(e) if the offender is being sentenced for one conviction for murder and one or more other unlawful homicides are being taken into account;

(f) at the time the offender was convicted of the offence, the offender had one or more previous convictions for unlawful homicide.

"(4) The sentencing court may fix a non-parole period that is longer than a non-parole period referred to in subsection (1)(a) or (b) if satisfied that, because of any objective or subjective factors affecting the relative seriousness of the offence, a longer non-parole period is warranted.

"(5) The sentencing court may refuse to fix a non-parole period if satisfied the level of culpability in the commission of the offence is so extreme the community interest in retribution, punishment, protection and deterrence can only be met if the offender is imprisoned for the term of his or her natural life without the possibility of release on parole.

"(6) The sentencing court may fix a non-parole period that is shorter than the standard non-parole period of 20 years referred to in subsection (1)(a) if satisfied there are exceptional circumstances that justify fixing a shorter non-parole period.

"(7) For there to be exceptional circumstances sufficient to justify fixing a shorter non-parole period under subsection (6), the sentencing court must be satisfied of the following matters and must not have regard to any other matters:

(a) the offender is –

(i) otherwise a person of good character; and

(ii) unlikely to re-offend;

(b) the victim's conduct, or conduct and condition, substantially mitigate the conduct of the offender.

"(8) In considering whether the offender is unlikely to re-offend, the matters the sentencing court may have regard to include the following:

(a) whether the offender has a significant record of previous convictions;

(b) any expressions of remorse by the offender;

(c) any other matters referred to in section 5(2) that are relevant.

"(9) The sentencing court must give reasons for fixing, or refusing to fix, a non-parole period and must identify in those reasons each of the factors it took into account in making that decision.

"(10) The failure of the sentencing court to comply with this section when fixing, or refusing to fix, a non-parole period does not invalidate the sentence imposed on the offender.

"(11) This section applies only in relation to an offence committed –

(a) after the commencement of the *Sentencing (Crime of Murder) and Parole Reform Act 2003*; or

(b) before the commencement of that Act if, at that commencement, the offender has not been sentenced for the offence.

"(12) In subsection (3) –

'unlawful homicide' means the crime of murder or manslaughter.".

8. Fixing of non-parole period otherwise than by sentencing court

Section 56 of the Principal Act is amended by omitting subsection (4) and substituting the following:

"(4) Subsection (2) does not apply to a sentence of imprisonment imposed for the crime of murder if the sentence was imposed before the commencement of the *Sentencing (Crime of Murder) and Parole Reform Act 2003*.".

9. Fixing of new non-parole period in respect of multiple sentences

Section 57 of the Principal Act is amended by omitting from subsection (2)(c) "under section 54, 55 or 55A" and substituting "in accordance with section 53A, 54, 55 or 55A".

PART 4 – AMENDMENTS OF PAROLE OF PRISONERS ACT

10. Principal Act

The *Parole of Prisoners Act* is in this Part referred to as the Principal Act.

11. Interpretation

Section 3 of the Principal Act is amended –

(a) by inserting before the definition of "constable" in subsection (1) the following:

" 'appointed member' means a member of the Board appointed under section 3B(2);

'Chairman' means the Chairman of the Board under section 3C;"; and

(b) by omitting from subsection (1) the definition of "the Chairman".

12. Repeal and substitution

Sections 3B, 3C and 3E of the Principal Act are repealed and the following substituted:

"**3B. Membership of Board**

"(1) The Board must have 10 members who are to be –

(a) the Chief Justice or another Judge of the Supreme Court nominated by the Chief Justice;

(b) the Director of Correctional Services;

(c) a member of the Police Force nominated by the Commissioner of Police;

(d) a person who is –

(i) a medical practitioner registered under the *Medical Act*; or

(ii) a psychologist registered under the *Health Practitioners and Allied Professionals Registration Act*;

(e) a person who represents the interests of victims of crime; and

(f) 5 persons who reflect, as closely as possible, the composition of the community at large and include women and Aboriginals and Torres Strait Islanders.

"(2) A member referred to in subsection (1)(d), (e) or (f) –

(a) is to be appointed in writing by the Administrator;

(b) holds office for 3 years commencing on the date of appointment; and

(c) is eligible for re-appointment.

"(3) The validity of a decision or direction of the Board is not affected by a vacancy in the membership of the Board.".

"**3C. Chairman of Board**

"The member referred to in section 3B(1)(a) is the Chairman of the Board.

"**3D. Appointment of persons to act as appointed members**

"(1) The Minister may appoint a person to act as an appointed member –

(a) during a vacancy in the office of the member, whether or not an appointment has previously been made to the office; or

(b) during any period, or during all periods, when the member is for any reason unable to perform the functions of the office.

"(2) A person appointed to act under subsection (1) during a vacancy in an office must not act in that office continuously for more than 12 months.

"(3) A person is not to be appointed to act under subsection (1) as an appointed member referred to in section 3B(1)(d), (e) or (f) unless the person is eligible to be appointed as such a member.

"(4) Anything done by or in relation to a person purporting to act in pursuance of an appointment under subsection (1) is not invalid on the ground –

(a) the appointment was ineffective or had ceased to have effect; or

(b) the occasion to act had not arisen or had ceased.

"**3E. Resignation of appointed members**

"An appointed member may resign his or her office by writing signed by the member and given to the Minister.

"**3EA. Removal from office of appointed members**

"(1) The Administrator must terminate the appointment of an appointed member referred to in section 3B(1)(d), (e) or (f) if the member ceases to be eligible for appointment as such a member.

"(2) The Administrator may terminate the appointment of an appointed member for inability, inefficiency, misconduct, or physical or mental incapacity.

"**3EB. Constitution of Board for different matters**

"(1) For a matter relating to a prisoner who is serving a term of imprisonment for life for the crime of murder, the Board is constituted by all of the members of the Board referred to in section 3B(1).

"(2) For a matter relating to any other prisoner, the Board is constituted by –

(a) the Chairman;

(b) the members of the Board referred to in section 3B(1)(b), (c) and (e); and

(c) 2 of the members of the Board referred to in section 3B(1)(f).".

13. Meetings of Board

Section 3F of the Principal Act is amended by omitting subsections (4), (5) and (6) and substituting the following:

"(4) At a meeting of the Board, a quorum is constituted by –

(a) for a matter relating to a prisoner who is serving a term of imprisonment for life for the crime of murder – the Chairman and 7 other members; or

(b) for a matter relating to any other prisoner – the Chairman and 3 other members.

"(5) At a meeting of the Board –

(a) questions of law are to be determined by the Chairman;

(b) questions (other than questions of law) concerning the release on parole of a prisoner who is serving a term of imprisonment for life for the crime of murder are to be determined by a unanimity of votes; and

(c) all other questions are to be determined by a majority of votes.

"(6) The Chairman has a deliberative vote and, in the event of an equality of votes on a question to be determined by a majority of votes, also has a casting vote.".

14. New sections

The Principal Act is amended by inserting after section 3G the following:

"**3GA. Expert advice or opinion**

"In considering a matter, the Board may seek the advice or opinion of an expert on the matter.

"**3GB. Release on parole of prisoner serving life imprisonment for murder**

"(1) This section applies if the Board is considering the release on parole of a prisoner who is serving a term of imprisonment for life for the crime of murder.

"(2) The Board may invite persons to make submissions on the matter to the Board, including the following persons:

(a) members of the victim's family;

(b) if the prisoner is an Aboriginal or Torres Strait Islander who identifies with a particular community of Aboriginals or Torres Strait Islanders – representatives of that community.

"(3) In considering the matter, the Board must have regard to the principle that the public interest is of primary importance and, in doing so, must give substantial weight to the following matters:

(a) the protection of the community as the paramount consideration;

(b) the likely effect of the prisoner's release on the victim's family;

(c) if the prisoner is an Aboriginal or Torres Strait Islander who identifies with a particular community of Aboriginals or Torres

Strait Islanders – the likely effect of the prisoner's release on that community.

"(4) The Board must give reasons for any decision or direction of the Board on the matter and those reasons must be included in the record of its proceedings kept under section 3F(7).".

15. Exclusion of rules of natural justice

Section 3HA of the Principal Act is amended by omitting "The rules" and substituting "Subject to this Act, the rules".

16. Release of offenders on parole

Section 5 of the Principal Act is amended by omitting from subsection (2) "Subject to this section" and substituting "Subject to this Act,".

PART 5 – TRANSITIONAL PROVISIONS

Division 1 – Prisoners currently serving life imprisonment for murder

17. Application of Division

This Division applies in relation to a prisoner who, at the commencement of this Act, is serving a sentence of imprisonment for life for the crime of murder.

18. Sentence includes non-parole period

Subject to this Division –

(a) the prisoner's sentence is taken to include a non-parole period of 20 years; or

(b) if the prisoner is serving sentences for 2 or more convictions for murder – each of the prisoner's sentences is taken to include a non-parole period of 25 years,

commencing on the date on which the sentence commenced.

19. Application to extend or exclude non-parole period

(1) Subject to this section, the Supreme Court may, on the application of the Director of Public Prosecutions –

(a) revoke the non-parole period fixed by section 18 in respect of the prisoner and do one of the following:

(i) fix a longer non-parole period in accordance with subsection (3) or (4);

(ii) refuse to fix a non-parole period in accordance with subsection (5); or

(b) dismiss the application.

(2) The Director of Public Prosecutions must make the application –

(a) not earlier than 12 months before the first 20 years of the prisoner's sentence is due to expire; or

(b) if, at the commencement of this Act, that period has expired – within 6 months after that commencement.

(3) Subject to subsections (4) and (5), the Supreme Court must fix a non-parole period of 25 years if any of the following circumstances (the ***prescribed circumstances of aggravation***) apply in relation to the crime of murder for which the prisoner is imprisoned:

(a) the victim's occupation was police officer, emergency services worker, correctional services officer, judicial officer, health professional, teacher, community worker or other occupation involving the performance of a public function or the provision of a community service and the act or omission that caused the victim's death occurred while the victim was carrying out the duties of his or her occupation or for a reason otherwise connected with his or her occupation;

(b) the act or omission that caused the victim's death was part of a course of conduct by the prisoner that included conduct, either before or after the victim's death, that would have constituted a sexual offence against the victim;

(c) the victim was under 18 years of age at the time of the act or omission that caused the victim's death;

(d) at the time the prisoner was convicted of the offence, the prisoner had one or more previous convictions for the crime of murder or manslaughter.

(4) The Supreme Court may fix a non-parole period that is longer than a non-parole period referred to in section 18 or subsection (3) if satisfied that, because of any objective or subjective factors affecting the relative seriousness of the offence, a longer non-parole period is warranted.

(5) The Supreme Court may refuse to fix a non-parole period if satisfied the level of culpability in the commission of the offence is so extreme the community interest in retribution, punishment, protection and deterrence can

only be met if the offender is imprisoned for the term of his or her natural life without the possibility of release on parole.

(6) The Director of Public Prosecutions:

(a) must make an application under this section in the case of a particular prisoner if of the opinion that one or more of the prescribed circumstances of aggravation can be established; and

(b) may make an application under this section in the case of any other prisoner to whom this Division applies.

(7) If any of the prescribed circumstances of aggravation is established on an application under this section:

(a) the Supreme Court's power to dismiss the application under subsection (1)(b) is excluded; and

(b) the Court must exercise its power under subsection (1)(a) to revoke the non-parole period fixed by section 18; and

(c) the Court must exercise one of the following powers:

(i) fix a non-parole period of 25 years in accordance with subsection (3);

(ii) fix a longer non-parole period in accordance with subsection (4);

(iii) refuse to fix a non-parole period in accordance with subsection (5).

(8) However, if no prescribed circumstance of aggravation is established on an application under this section, the Supreme Court may (as formerly):

(a) dismiss the application under subsection (1)(b); or

(b) exercise its power under subsection (1)(a) to revoke the non-parole period fixed by section 18 and:

(i) fix a longer non-parole period in accordance with subsection (4); or

(ii) refuse to fix a non-parole period in accordance with subsection (5).

(9) If, before the commencement of this subsection, an application under this section had been dismissed in a case in which a prescribed circumstance of aggravation was, or could have been, established, a further application may be made under this section within 6 months after that commencement.

(10) The further application may be made either by the Director of Public Prosecutions or by the Attorney-General and, if made by the Attorney-General, references in this Division to the Director of Public Prosecutions will, in relation to that application, be read as references to the Attorney-General.

20. Appeals

(1) For Part X of the Criminal Code, a decision of the Supreme Court under section 19(1)(a)(i) or (ii) fixing or refusing to fix a non-parole period is taken to be a sentence passed by the Court.

(2) The Director of Public Prosecutions may appeal to the Court of Criminal Appeal under Part X of the Criminal Code against a decision of the Supreme Court under section 19(1)(b) dismissing an application as if the decision were a sentence passed by the Court fixing a non-parole period of 20 or 25 years (as the case may be).

(3) On an appeal under subsection (2), the Court of Criminal Appeal may confirm the decision of the Supreme Court or substitute another decision that would have been available to the Supreme Court.

21. Effect of decisions

(1) The failure of the Supreme Court to comply with section 19(3), (4) or (5) when fixing or refusing to fix a non-parole period does not invalidate the prisoner's sentence.

(2) For section 5 of the *Parole of Prisoners Act*, a non-parole period fixed by or under this section is taken to be a non-parole period fixed in pursuance of the *Sentencing Act*.

Division 2 – Matters part-heard by former Board

22. Completion by new Board

(1) A matter that was part-heard by the former Board must be completed by the new Board and, for that purpose, the new Board may have regard to the record of proceedings of the former Board kept under section 3F(7) of the *Parole of Prisoners Act* and any submissions and other material relating to the matter that was before the former Board.

(2) In subsection (1) –

"former Board" means the Parole Board of the Northern Territory as constituted before the commencement of this Act;

"new Board" means the Parole Board of the Northern Territory as constituted after the commencement of this Act.

ALTERATION TO SECTION HEADING

On the day on which the *Sentencing Act* is amended by this Act, in addition to any alteration to section headings indicated in the text of this Act, the heading to section 54 of the *Sentencing Act* is altered by omitting the whole heading and substituting "**Minimum non-parole period for offences other than murder**".

ENDNOTES

1 KEY

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz* = *Gazette
hdg = heading
ins = inserted
lt = long title
nc = not commenced
od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

2 LIST OF LEGISLATION

***Sentencing (Crime of Murder) and Parole Reform Act 2003* (Act No. 3, 2004)**

Assent date	7 January 2004
Commenced	11 Feb 2004 (s 2 and *Gaz* G6, 11 February 2004, p 2)

***Sentencing (Crime of Murder) and Parole Reform Amendment Act 2008* (Act No. 8, 2008)**

Assent date	15 May 2008
Commenced	15 May 2008

3 LIST OF AMENDMENTS

s 19 amd No. 8, 2008, s 3