

South Australia

Criminal Law (Sentencing) (Serious Repeat Offenders) Amendment Act 2003

An Act to amend the Criminal Law (Sentencing) Act 1988.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Criminal Law (Sentencing) (Serious Repeat Offenders) Amendment Act 2003*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Criminal Law (Sentencing) Act 1988*

4—Insertion of Part 2 Division 2A

Part 2—after Division 2 insert:

Division 2A—Serious repeat offenders

20A—Interpretation

(1) In this Division—

home invasion means a criminal trespass committed in a place of residence while a person is lawfully present in the place and the trespasser knows of the person's presence or is reckless about whether anyone is in the place;

serious drug offence means—

- (a) an offence against section 32 of the *Controlled Substances Act 1984*; or
- (b) a conspiracy to commit, or an attempt to commit, such an offence; or
- (c) an offence of acting as an accessory to the commission of such an offence¹;

Note—

- 1 See section 41 of the *Controlled Substances Act 1984*.

serious offence means—

- (a) a serious drug offence; or
- (b) one of the following offences:
 - (i) an offence against the person under Part 3 of the *Criminal Law Consolidation Act 1935*;
 - (ii) an offence of robbery or robbery with violence;
 - (iii) home invasion;
 - (iv) an offence of damage to property by fire or explosives;
 - (v) an offence of causing a bushfire;
 - (vi) a conspiracy to commit, or an attempt to commit, an offence referred to in subparagraph (i), (ii), (iii), (iv) or (v)²; or

Note—

2 A person who acts as an accessory to the commission of an offence described in paragraph (b) is, by virtue of section 267 of the *Criminal Law Consolidation Act 1935*, guilty of the principal offence and has, therefore, committed a "serious offence".

- (c) an offence that is committed in circumstances in which the offender uses violence or a threat of violence for the purpose of committing the offence, in the course of committing the offence, or for the purpose of escaping from the scene of the offence.
- (2) However, this Division is to be read subject to the following qualifications:
- (a) it does not apply to, or in relation to, an offence committed by a youth;
 - (b) an offence is not to be regarded as a serious offence unless the maximum penalty prescribed for the offence is, or includes, imprisonment for at least 5 years.

20B—Declaration that person is a serious repeat offender

- (1) A person is liable to be declared a serious repeat offender if the following conditions apply:
- (a) the person has been convicted of at least three offences to which this section applies; and
 - (b) there were at least three separate occasions on which an offence to which this section applies was committed.
- (2) An offence is one to which this section applies if—
- (a) the offence is—
 - (i) a serious offence; or
 - (ii) an offence against the law of another State or Territory that would, if committed in this State, be a serious offence; or
 - (iii) an offence against a law of the Commonwealth dealing with the unlawful importation of drugs into Australia; and
 - (b) either—
 - (i) a sentence of imprisonment (other than a suspended sentence) has been imposed for the offence; or
 - (ii) if a penalty is yet to be imposed—a sentence of imprisonment (other than a suspended sentence) is, in the circumstances, the appropriate penalty.

- (3) If a court convicts a person of a serious offence, and the person is liable, or becomes liable as a result of the conviction, to a declaration that he or she is a serious repeat offender, the court—
 - (a) must consider whether to make such a declaration; and
 - (b) if of the opinion that the person's history of offending warrants a particularly severe sentence in order to protect the community—should make such a declaration.
- (4) If a court convicts a person of a serious offence, and the person is declared (or has previously been declared) to be a serious repeat offender—
 - (a) the court is not bound to ensure that the sentence it imposes for the offence is proportional to the offence; and
 - (b) any non-parole period fixed in relation to the sentence must be at least four-fifths the length of the sentence.

5—Repeal of section 22

Section 22—delete the section