

Legislative Council—No 66

As received from the House of Assembly and read a first time, 9 September 2020

South Australia

**Sentencing (Serious Repeat Offenders)
Amendment Bill 2020**

A BILL FOR

An Act to amend the *Sentencing Act 2017*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

- 5 This Act may be cited as the *Sentencing (Serious Repeat Offenders) Amendment Act 2020*.

2—Commencement

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

3—Amendment provisions

- 10 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 *Sentencing Act 2017*

4—Substitution of sections 52 and 53

Sections 52 and 53—delete the sections and substitute:

52—Interpretation

- 15 In this Division—
community based custodial sentence has the same meaning as in section 25;

serious offence means—

- 20 (a) a serious firearm offence within the meaning of Division 3;
or

(b) any of the following offences if the maximum penalty prescribed for the offence is, or includes, imprisonment for at least 5 years:

(i) an offence under Part 5 Division 2 or 3 of the *Controlled Substances Act 1984*;

(ii) an offence under a law of the Commonwealth dealing with the unlawful importation of drugs into Australia;

(iii) an offence involving a terrorist act (within the meaning of Part 5.3 of the *Criminal Code* of the Commonwealth);

(iv) an offence under Part 3 of the *Criminal Law Consolidation Act 1935*;

(v) an offence under section 137 of the *Criminal Law Consolidation Act 1935*;

(vi) an offence under section 170 of the *Criminal Law Consolidation Act 1935*;

(vii) an aggravated offence under section 170A of the *Criminal Law Consolidation Act 1935*;

(viii) an offence under section 85(1) of the *Criminal Law Consolidation Act 1935*;

(ix) an offence under section 85B of the *Criminal Law Consolidation Act 1935*;

(x) a serious and organised crime offence (within the meaning of the *Criminal Law Consolidation Act 1935*);

(xi) an offence under a corresponding previous enactment substantially similar to an offence referred to in a preceding subparagraph;

(xii) a conspiracy to commit, or an attempt to commit, an offence referred to in a preceding subparagraph;

(xiii) an offence under the law of another State or a Territory involving conduct that would, if committed in this State, be a serious offence,

provided that an offence listed in paragraph (a) or (b) is not a serious offence unless a sentence of imprisonment (other than a wholly suspended sentence or a sentence that consists only of a community based custodial sentence) has been, or is to be, imposed for the offence;

serious repeat offender—see section 53;

serious sexual offence means a serious offence that is—

- (a) an offence under section 48, 48A, 49, 50, 56, 58, 59, 60, 63, 63B, 66, 67, 68 or 72 of the *Criminal Law Consolidation Act 1935* where the victim was under the age of 14 years at the time of the offence; or
- (b) an offence under section 51 of the *Criminal Law Consolidation Act 1935*; or
- (c) an offence under a corresponding previous enactment substantially similar to an offence referred to in a preceding paragraph; or
- (d) an attempt to commit or an assault with intent to commit an offence referred to in a preceding paragraph; or
- (e) an offence under the law of another State or a Territory involving conduct that would, if committed in this State, be a serious sexual offence.

53—Serious repeat offenders

- (1) A person is, by force of this subsection, taken to be a *serious repeat offender* if the person (whether as an adult or as a youth) has committed and been convicted of—
 - (a) at least 3 serious offences committed on separate occasions (whether or not the same offence on each occasion); or
 - (b) at least 2 serious sexual offences committed on separate occasions (whether or not the same offence on each occasion).
- (2) For the purposes of this section, when determining the number of occasions on which a person has committed a particular kind of offence, the offence for which the person is being sentenced is to be included if it is of the relevant kind.

5—Amendment of section 55—Declaration that youth is recidivist young offender

Section 55(1)—delete subsection (1) and substitute:

- (1) A youth is liable to be declared a recidivist young offender if the youth has been convicted of—
 - (a) at least 3 serious offences committed on separate occasions (whether or not the same offence on each occasion); or
 - (b) at least 2 serious sexual offences committed on separate occasions (whether or not the same offence on each occasion).

Schedule 1—Transitional provisions etc

1—Application of amendments

- (1) The *Sentencing Act 2017* as amended by this Act applies in relation to a sentence imposed after the commencement of this Act regardless of whether—
- 5 (a) the offence for which the defendant is being sentenced was committed before or after that commencement; or
- (b) the defendant is being sentenced at first instance or on an appeal.
- (2) To avoid doubt, nothing in this Act affects any sentence imposed before the commencement of this Act.