

## House of Assembly

As passed all stages and awaiting assent.

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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

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

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

In this Division—

*community based custodial sentence* has the same meaning as in section 25;

*serious offence* means—

- (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—
  - (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.