

Legislative Council—No 260

As received from the House of Assembly and read a first time, 18 October 2017

South Australia

Statutes Amendment (Sentencing) Bill 2017

A BILL FOR

An Act to amend various Acts to update obsolete references to the *Criminal Law (Sentencing) Act 1988*; and for various other purposes consequential on, or related to, the enactment of 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 *Statutes Amendment (Sentencing) Act 2017*.

2—Commencement

- 5 (1) This Act will come into operation on a day to be fixed by proclamation.
- (2) Section 7(5) of the *Acts Interpretation Act 1915* does not apply to this Act or a provision of this Act.

3—Amendment provisions

- 10 (1) In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.
- (2) If an Act sought to be amended by this Act is, before the commencement of the relevant Part, amended in a manner that renders an amendment contained in that Part ineffective, that amendment will be taken to have been struck out from that Part.

Part 2—Amendment of *Bail Act 1985*

4—Amendment of section 10A—Presumption against bail in certain cases

Section 10A(2), definition of *prescribed applicant*, (e)—delete "Part 2 Division 2AA of the *Criminal Law (Sentencing) Act 1988*" and substitute:

Part 3 Division 3 of the *Sentencing Act 2017*

Part 3—Amendment of *Births, Deaths and Marriages Registration Act 1996*

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5—Amendment of section 29B—Interpretation

Section 29B, definition of *restricted person*, (d)—delete "section 24 of the *Criminal Law (Sentencing) Act 1988*" and substitute:

the *Sentencing Act 2017*

Part 4—Amendment of *Child Sex Offenders Registration Act 2006*

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6—Amendment of section 4—Interpretation

- (1) Section 4(1), definition of *good behaviour bond*—delete "Part 5 of the *Criminal Law (Sentencing) Act 1988*" and substitute:

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the *Sentencing Act 2017*

- (2) Section 4(5)—delete "section 19A of the *Criminal Law (Sentencing) Act 1988*" and substitute:

the *Sentencing Act 2017*

7—Amendment of Schedule 1—Class 1 and 2 offences

- 5 (1) Schedule 1, clause 2(k)—delete "section 20B(1)(b) of the *Criminal Law (Sentencing) Act 1988*" and substitute:

section 53(1)(c) of the *Sentencing Act 2017*

- (2) Schedule 1, clause 2(l)—delete "section 23 of the *Criminal Law (Sentencing) Act 1988*" and substitute:

10 section 57 of the *Sentencing Act 2017*

Part 5—Amendment of *Community Based Sentences (Interstate Transfer) Act 2015*

8—Amendment of section 3—Interpretation

- 15 Section 3, definition of *community based sentence*, (a) to (c)—delete paragraphs (a) to (c) (inclusive) and substitute:

(a) any of the following sentences imposed under the *Sentencing Act 2017*:

- 20 (i) a sentence to be served in the community while subject to intensive correction;
- (ii) a sentence of community service;
- (iii) a sentence of imprisonment suspended on entering into a bond under the Act;
- (iv) a bond to be of good behaviour; or

Part 6—Amendment of *Correctional Services Act 1982*

9—Amendment of section 4—Interpretation

25 Section 4(1), definition of *home detention order*—delete "Part 3 Division 3A of the *Criminal Law (Sentencing) Act 1988*" and substitute:

the *Sentencing Act 2017*

10—Amendment of section 37CA—Home detention officers

- 30 Section 37CA(1)—delete "Part 3 Division 3A of the *Criminal Law (Sentencing) Act 1988*" and substitute:

the *Sentencing Act 2017*

11—Amendment of section 38—Release of prisoner from prison or home detention

Section 38(4), definition of *pecuniary sum*—delete "*Criminal Law (Sentencing) Act 1988*" and substitute:

5 *Sentencing Act 2017*

12—Amendment of section 66—Automatic release on parole for certain prisoners

Section 66(2)(aca)—delete "Part 2 Division 2AA of the *Criminal Law (Sentencing) Act 1988*" and substitute:

10 Part 3 Division 3 of the *Sentencing Act 2017*

Part 7—Amendment of *Criminal Assets Confiscation Act 2005*

13—Amendment of section 224—Effect of confiscation scheme on sentencing

Section 224—delete "*Criminal Law (Sentencing) Act 1988*" and substitute:

Sentencing Act 2017

15 **Part 8—Amendment of *Criminal Law Consolidation Act 1935***

14—Amendment of section 83GF—Sentencing

Section 83GF(1)(c) and (d)—delete paragraphs (c) and (d) and substitute:

(c) section 25 of the *Sentencing Act 2017* does not apply;

20 (d) section 26 of the *Sentencing Act 2017* does not apply (but nothing in this subsection affects the operation of that section in respect of other offences for which the person is being sentenced).

15—Amendment of section 83K—Enforcement of order for compensation etc

(1) Section 83K(a)—delete "*Criminal Law (Sentencing) Act 1988*" and substitute:

Sentencing Act 2017

25 (2) Section 83K(b)—delete "section 53" and substitute:

section 124

16—Amendment of section 269R—Reports and statements to be provided to court

30 (1) Section 269R(3)—delete "section 7A of the *Criminal Law (Sentencing) Act 1988*" and substitute:

section 14 of the *Sentencing Act 2017*

(2) Section 269R(4)—delete "section 7A(3b) and (3c) of the *Criminal Law (Sentencing) Act 1988*" and substitute:

section 14(4) and (5) of the *Sentencing Act 2017*

- (3) Section 269R(5)—delete "section 7B of the *Criminal Law (Sentencing) Act 1988*" and substitute:

section 15 of the *Sentencing Act 2017*

- (4) Section 269R(6), definition of *prescribed summary offence*—delete "section 7A of the *Criminal Law (Sentencing) Act 1988*" and substitute:

section 14 of the *Sentencing Act 2017*

Part 9—Amendment of *Criminal Law (High Risk Offenders) Act 2015*

17—Amendment of section 4—Interpretation

Section 4, definition of *serious sexual offence*—delete the definition and substitute:

serious sexual offence means any of the following offences where the maximum penalty prescribed for the offence is, or includes, imprisonment for at least 5 years:

(a) —

(i) an offence under section 48, 48A, 49, 50, 51, 56, 58, 59, 60, 63, 63B, 66, 67, 68 or 72 of the *Criminal Law Consolidation Act 1935*;

(ii) an offence against a corresponding previous enactment substantially similar to an offence referred to in subparagraph (i);

(iii) an attempt to commit or an assault with intent to commit any of the offences referred to in either of the preceding subparagraphs;

(b) an offence against the law of another State or a Territory corresponding to an offence referred to in paragraph (a);

Part 10—Amendment of *District Court Act 1991*

18—Amendment of section 54—Accessibility to Court records

Section 54(2)(fa)—delete "*Criminal Law (Sentencing) Act 1988*" and substitute:

Sentencing Act 2017

Part 11—Amendment of *Environment, Resources and Development Court Act 1993*

19—Insertion of sections 28D and 28E

After section 28C insert:

28D—Sentencing conferences

- (1) Before sentencing a defendant in criminal proceedings, the Court may, if the defendant expresses contrition for the offence and consents to the convening of a sentencing conference, convene a sentencing conference.
- (2) A sentencing conference is to comprise—
 - (a) the defendant; and
 - (b) the defendant's legal representative (if any); and
 - (c) the prosecutor; and
 - (d) such representatives of persons affected by the commission of the offence as the Court thinks appropriate; and
 - (e) such other persons as the Court thinks may contribute usefully to the sentencing process.
- (3) The primary purpose of a sentencing conference is to negotiate action that the defendant is to take to make reparation for any injury, loss or damage resulting from the offence, or to otherwise show contrition for the offence.

28E—Deferral of sentence following sentencing conference

- (1) The Court may, on finding a person guilty of an offence (whether or not it proceeds to conviction), make an order adjourning proceedings to a specified date for the purpose of allowing the defendant to take action as agreed at a sentencing conference convened by the Court.
- (2) As a general rule, proceedings should not be adjourned under this section (whether by a single adjournment or a series of adjournments) for more than 3 months from the date of the agreement reached at the sentencing conference.
- (3) This section does not limit any power that the Court has, apart from this section, to adjourn proceedings or to grant bail in relation to any period of adjournment.

20—Amendment of section 47—Accessibility of evidence

Section 47(2)(c)—delete "furnished under section 7 of the Criminal Law (Sentencing) Act 1988" and substitute:

provided under section 13 of the *Sentencing Act 2017*

Part 12—Amendment of *Firearms Act 2015*

21—Amendment of section 57—Power to inspect or seize firearms etc

- (1) Section 57(5)(c)—delete "*Criminal Law (Sentencing) Act 1988*" and substitute:

Sentencing Act 2017

- 5 (2) Section 57(5)(d)—delete "*Criminal Law (Sentencing) Act 1988*" and substitute:

Sentencing Act 2017

Part 13—Amendment of *Intervention Orders (Prevention of Abuse) Act 2009*

22—Amendment of section 31—Contravention of intervention order

- 10 Section 31(4)—delete "Section 10(5) of the *Criminal Law (Sentencing) Act 1988*" and substitute:

Section 11(7) of the *Sentencing Act 2017*

Part 14—Amendment of *Magistrates Court Act 1991*

23—Amendment of section 9—Criminal jurisdiction

- 15 (1) Section 9—delete "*Summary Procedure Act 1921*" and substitute:

Criminal Procedure Act 1921

- (2) Section 9—after its present contents as amended by this section (now to be designated as subsection (1)) insert:

- 20 (2) The Court does not, unless it is constituted of a Magistrate, have the power to impose a sentence of imprisonment.

- (3) If the Court, constituted otherwise than by a Magistrate, is of the opinion that a sentence of imprisonment should be imposed in any particular case, it may remand the defendant to appear for sentence before the Court constituted of a Magistrate.

- 25 (4) The Court does not have the power to impose—

- (a) a sentence of imprisonment that exceeds—

- (i) if the penalty is for 1 offence—5 years; and
(ii) if the penalty is for more than 1 offence—10 years;
or

- 30 (b) a fine that exceeds—

- (i) in the case of an offence under the *Work Health and Safety Act 2012* being heard by an industrial magistrate—\$300 000; or
(ii) in any other case—\$150 000.

- (5) The limits imposed by subsection (4)(b) apply regardless of whether the relevant offence was committed before or after the commencement of that paragraph.
- (6) Subsection (4) applies whether the offence to which the sentence relates is a summary offence or an indictable offence.
- (7) If the Court is of the opinion in any particular case that a sentence should be imposed that exceeds the limits prescribed by subsection (4), the Court may remand the defendant to appear for sentence before a superior court.

24—Amendment of section 51—Accessibility to Court records

Section 51(2)(fa)—delete "*Criminal Law (Sentencing) Act 1988*" and substitute:
Sentencing Act 2017

Part 15—Amendment of *Parliamentary Committees Act 1991*

25—Amendment of section 150—Functions of Committee

- (1) Section 150(1)(b)(iii)—delete "*Criminal Law (Sentencing) Act 1988*" and substitute:
Sentencing Act 2017
- (2) Section 150(1)(b)(iii)—delete "*Summary Procedure Act 1921*" and substitute:
Criminal Procedure Act 1921

Part 16—Amendment of *Prisoners (Interstate Transfer) Act 1982*

26—Amendment of section 28—Ancillary provisions relating to translated sentences

Section 28(4)—delete "*Criminal Law (Sentencing) Act 1988*" and substitute:
Sentencing Act 2017

Part 17—Amendment of *Road Traffic Act 1961*

27—Amendment of 44B—Misuse of motor vehicle

Section 44B(6)—delete "*Criminal Law (Sentencing) Act 1988*" and substitute:
Sentencing Act 2017

Part 18—Amendment of *Shop Theft (Alternative Enforcement) Act 2000*

28—Amendment of section 3—Interpretation

Section 3(1), definition of *community corrections officer*—delete "*Criminal Law (Sentencing) Act 1988*" and substitute:
Sentencing Act 2017

29—Amendment of Schedule 3—Provisions relating to community service

Schedule 3, clause 1, definitions of *Chief Executive* and *Minister*—delete the definitions and substitute:

Chief Executive means the CE within the meaning of the *Sentencing Act 2017*;

Minister means the Minister performing functions under Part 4 of the *Sentencing Act 2017*.

Part 19—Amendment of *Spent Convictions Act 2009*

30—Amendment of section 3—Preliminary

Section 3(3)(c)—delete "section 23 of the *Criminal Law (Sentencing) Act 1988*" and substitute:

section 57 of the *Sentencing Act 2017*

Part 20—Amendment of *Summary Offences Act 1953*

31—Amendment of section 17AA—Misuse of a motor vehicle on private land

Section 17AA(5)—delete "*Criminal Law (Sentencing) Act 1988*" and substitute:

Sentencing Act 2017

Part 21—Amendment of *Supreme Court Act 1935*

32—Amendment of section 131—Accessibility to Court records

Section 131(2)(fa)—delete "*Criminal Law (Sentencing) Act 1988*" and substitute:

Sentencing Act 2017

Part 22—Amendment of *Victims of Crime Act 2001*

33—Amendment of section 10—Victim entitled to have impact of offence considered by sentencing court and to make submissions on parole

Section 10, Note 1—delete Note 1 and substitute:

1 The *Sentencing Act 2017* provides a mechanism for exercising this right. See also that, under that Act, the prosecutor is obliged to place before the sentencing court details of injury, loss or damage resulting from the offence.

34—Amendment of section 32—Imposition of levy

Section 32(7)(c)—delete "*Criminal Law (Sentencing) Act 1988*" and substitute:

Sentencing Act 2017

35—Amendment of section 32A—Victim may exercise rights through an appropriate representative

Section 32A(1), Note—delete "*Criminal Law (Sentencing) Act 1988*" and substitute:

Sentencing Act 2017

5 **Part 23—Amendment of *Young Offenders Act 1993***

36—Amendment of section 4—Interpretation

- (1) Section 4(1), definition of *recidivist young offender*—delete "Part 2 Division 2A of the *Criminal Law (Sentencing) Act 1988*" and substitute:

Part 3 Division 4 of the *Sentencing Act 2017*

- 10 (2) Section 4(1), definition of *serious firearm offender*—delete "section 20AAB of the *Criminal Law (Sentencing) Act 1988*" and substitute:

Part 3 Division 3 of the *Sentencing Act 2017*

37—Amendment of section 22—Power to sentence

Section 22(2)—delete "*Criminal Law (Sentencing) Act 1988*" and substitute:

15 *Sentencing Act 2017*