

House of Assembly—No 132

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South Australia

**Sentencing (Serious Child Sex Offenders)
Amendment Bill 2024**

A BILL FOR

An Act to amend the *Sentencing Act 2017*, and to make related amendments to the *Correctional Services Act 1982* and the *Criminal Law Consolidation Act 1935*.

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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 Child Sex Offenders) Amendment Act 2024*.

2—Commencement

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

Part 2—Amendment of *Sentencing Act 2017*

3—Amendment of section 5—Interpretation

(1) Section 5(1)—after the definition of *sentence of indeterminate duration* insert:

10 *serious child sex offender* has the same meaning as in Part 3 Division 2A;

(2) Section 5(1)—after the definition of *therapeutic* insert:

triggering child sex offence has the same meaning as in Part 3 Division 2A;

(3) Section 5—after subsection (4) insert:

15 (5) For the purposes of this Act, a reference to an offence committed by a serious child sex offender, or to the sentencing of a serious child sex offender for an offence, will be taken to include a reference to an offence that resulted in the person being a serious child sex offender.

4—Amendment of section 26—Sentencing for multiple offences

(1) Section 26—after subsection (1) insert:

20 (1a) If—

 (a) the person being sentenced is a serious child sex offender; and

 (b) any of the offences for which the person is being sentenced is a triggering child sex offence; and

25 (c) the person is sentenced to a sentence of indeterminate duration in relation to that triggering child sex offence,

then subsection (1) does not apply to the sentencing of the person for that offence (but nothing in this subsection affects the operation of subsection (1) in respect of the other offences).

30 (2) Section 26(2)—delete "However, if" and substitute:

 If

5—Insertion of Part 3 Division 2A

Part 3—after Division 2 insert:

Division 2A—Sentencing of serious child sex offenders

Subdivision 1—Preliminary

48A—Interpretation

(1) In this Division—

appropriate board—see subsection (3);

child means a person under the age of 18 years;

correctional facility means—

(a) a correctional institution within the meaning of the *Correctional Services Act 1982*; or

(b) a facility for the reception, detention, correction and training of youths who offend against the criminal law established under the *Family and Community Services Act 1972* or the *Youth Justice Administration Act 2016*;

prescribed child sex offence—see section 48C;

senior police officer means a police officer of or above the rank of Inspector;

serious child sex offender means a person taken to be a serious child sex offender under section 48G;

triggering child sex offence—see section 48D.

(2) For the purposes of this Division, a reference to a *sentence of indeterminate duration* will be taken to be a reference to the detention of a person in custody until the sentence of imprisonment is extinguished by order of the Supreme Court under section 48M.

(3) For the purposes of this Division, the *appropriate board*, in relation to proceedings under this section, means—

(a) if the serious child sex offender the subject of the proceedings is being detained in a training centre, or has been released on licence from a training centre—the Training Centre Review Board;

(b) in any other case—the Parole Board.

(4) To avoid doubt, a reference in this Division to a period of imprisonment imposed on a person will be taken not to include a period of imprisonment that is suspended, or is to be served on home detention.

48B—Capable of controlling, and willing to control, sexual instincts

- 5
- (1) For the purposes of this Division, a serious child sex offender will, in the absence of evidence to the contrary, be presumed not to be capable of controlling, or willing to control, their sexual instincts.
- 10
- (2) For the purposes of this Division, a person is only to be regarded as being capable of controlling, and willing to control, their sexual instincts if the Supreme Court is satisfied that, if the person were given an opportunity to commit a triggering child sex offence, the person would be unlikely to commit the offence, or to otherwise fail to exercise appropriate control of their sexual instincts.
- (3) In proceedings under this or any other Act, the onus is on a serious child sex offender to prove that they are capable of controlling, and willing to control, their sexual instincts.

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48C—Prescribed child sex offences

For the purposes of this Division, the following offences (whether committed before or after the commencement of this section) are *prescribed child sex offences*:

- 20
- (a) an offence referred to in section 48D when committed against or in relation to a child;
- (b) an offence against a law previously in force in this State that corresponds to an offence referred to in section 48D when committed against or in relation to a child;
- 25
- (c) an offence against the law of another State or Territory that corresponds to an offence referred to in a preceding paragraph when committed against or in relation to a child;
- (d) an offence against a following provision of the *Criminal Code* of the Commonwealth when committed against or in relation to a child:
- 30
- (i) section 271.4;
- (ii) section 271.7;
- (iii) section 272.8;
- (iv) section 272.9;
- (v) section 272.10;
- 35
- (vi) section 272.11;
- (vii) section 272.12;
- (viii) section 272.13;
- (ix) section 272.14;
- (x) section 272.15;
- 40
- (xi) section 272.15A;

- (xii) section 272.18;
- (xiii) section 272.19;
- (xiv) section 272.20;
- (xv) section 273.6;
- 5 (xvi) section 273.7;
- (xvii) section 471.16;
- (xviii) section 471.17;
- (xix) section 471.19;
- (xx) section 471.20;
- 10 (xxi) section 471.22;
- (xxii) section 471.24;
- (xxiii) section 471.25;
- (xxiv) section 471.25A;
- (xxv) section 471.26;
- 15 (xxvi) section 474.19;
- (xxvii) section 474.20;
- (xxviii) section 474.22;
- (xxix) section 474.22A;
- (xxx) section 474.23;
- 20 (xxxi) section 474.23A;
- (xxxii) section 474.24A;
- (xxxiii) section 474.25A;
- (xxxiv) section 474.25B;
- (xxxv) section 474.25C (other than paragraph (a)(i));
- 25 (xxxvi) section 474.26;
- (xxxvii) section 474.27;
- (xxxviii) section 474.27A; or
- (xxxix) section 474.27AA;
- 30 (e) an offence against a law of the Commonwealth previously in force that corresponds to an offence referred to in paragraph (d) when committed against or in relation to a child; or
- (f) a conspiracy to commit, or an attempt to commit, an offence referred to in any of the preceding paragraphs; or
- 35 (g) an offence of aiding, abetting, counselling or procuring the commission of an offence referred to in any of the preceding paragraphs; or

- (h) an offence against the law of a foreign jurisdiction that corresponds to an offence referred to in any of the preceding paragraphs,

but does not include an offence of a kind declared by the regulations to be excluded from the ambit of this definition.

48D—Triggering child sex offences

For the purposes of this Division, an offence against the following provisions of the *Criminal Law Consolidation Act 1935* (being an offence committed after the commencement of this section) is, when committed against or in relation to a child, a ***triggering child sex offence***:

- (a) section 48;
- (b) section 48A;
- (c) section 49;
- (d) section 50;
- (e) section 51;
- (f) section 56;
- (g) section 58,
- (h) section 59, if the offender is sentenced on the basis that the offender committed the offence with the intent having sexual intercourse with the child;
- (i) section 60;
- (j) section 63;
- (k) section 63AA;
- (l) section 63AB(1) or (5);
- (m) section 63B;
- (n) section 66;
- (o) section 67;
- (p) section 68;
- (q) section 72;
- (r) a conspiracy to commit, or an attempt to commit, an offence referred to in any of the preceding paragraphs;
- (s) an offence of aiding, abetting, counselling or procuring the commission of an offence referred to in any of the preceding paragraphs.

48E—Application of Division to youths

This Division does not apply in relation to a youth unless the youth is sentenced for a triggering child sex offence as an adult.

48F—Disapplication of certain provisions of Act

- (1) Subject to subsection (2), the following provisions of this Act do not apply in relation to the sentencing of a serious child sex offender for a triggering child sex offence:
- (a) section 10;
 - (b) section 29;
 - (c) Part 2 Division 2 Subdivision 4;
 - (d) Part 3 Division 2;
 - (e) section 54;
 - (f) Part 3 Division 6;
 - (g) Part 3 Division 7;
 - (h) Part 4.
- (2) Section 10 and Part 3 Division 6 continue to apply to a determination of a court under section 48I(1)(a).

Subdivision 2—Serious child sex offenders

48G—Serious child sex offenders

- (1) A person is, by force of this subsection, taken to be a serious child sex offender if—
- (a) the person has been found guilty of, and a period of imprisonment imposed in relation to, a prescribed child sex offence; and
 - (b) the person served all or part of the period of imprisonment in relation to the prescribed child sex offence in a correctional facility; and
 - (c) the person is found guilty of a triggering child sex offence committed after the person is released from the correctional facility after serving the period of imprisonment.
- (2) A person ceases to be a serious child sex offender if a finding of guilt in respect of a prescribed child sex offence or a triggering child sex offence is quashed or set aside by a court (being an offence or offences without which the person would not be a serious child sex offender).

48H—Effect of spent convictions

- (1) The fact that a prescribed child sex offence or a triggering child sex offence in respect of which a person becomes a serious child sex offender becomes spent does not affect the status of the offence in determining whether a person is a serious child sex offender.
- (2) For the purposes of this section, an offence becomes spent if, under a law in any jurisdiction, the offender is permitted to not disclose the fact that they were convicted or found guilty of the offence.

Subdivision 3—Sentencing of serious child sex offenders for triggering child sex offences

48I—Sentencing of serious child sex offenders for triggering child sex offences

- 5 (1) Subject to this Division, the following provisions apply in relation to the sentencing of a serious child sex offender for a triggering child sex offence:
- (a) the court sentencing the serious child sex offender must first determine whether—
- 10 (i) a sentence of imprisonment is to be imposed in relation to the triggering child sex offence; and
- (ii) that sentence of imprisonment is to be wholly or partly served in a correctional facility,
- (and in doing so, the court must not have regard to the fact that a mandatory penalty of indeterminate duration may be imposed in relation to the triggering child sex offence);
- 15 (b) if the court determines that a sentence of imprisonment is to be imposed in relation to the triggering child sex offence, and that sentence of imprisonment is to be wholly or partly served in a correctional facility, then—
- 20 (i) the mandatory penalty for offence pursuant to section 5AB(1) of the *Criminal Law Consolidation Act 1935* must be imposed; and
- Note—**
- 25 This is a sentence of indeterminate duration.
- (ii) that sentence of imprisonment—
- (A) must not be suspended; and
- (B) must not be served on home detention; and
- (C) must be served in a correctional facility.
- 30 (c) if the court determines that a sentence of imprisonment is not to be imposed in relation to the triggering child sex offence, then the court is to sentence the serious child sex offender in accordance with this Act as it applies generally in relation to an offence of the relevant kind.
- 35 (2) If a court sentences a serious child sex offender to a sentence of indeterminate duration for a triggering child sex offence, the court—
- (a) must not fix a non-parole period; and
- (b) must not reduce, substitute or mitigate the sentence in any way; and

(c) must specify the term of imprisonment that would, but for this section, have been imposed on the serious child sex offender for the triggering child sex offence; and

(d) must fix a minimum period of imprisonment (being a period not less than four-fifths the length of the sentence referred to in paragraph (c)) that must be served before the serious child sex offender can apply for release on licence under section 48K; and

(e) must fix a minimum period (being not less than 5 years or one-fifth of the length of the sentence referred to in paragraph (c), whichever is the greater) that the serious child sex offender must spend on release on licence before the serious child sex offender can apply for extinguishment of a sentence under section 48M.

(3) In determining a period of imprisonment under subsection (2) the court must not have regard to the matters set out in section 11(4), nor to the fact that the serious child sex offender will be sentenced to a sentence of indeterminate duration.

(4) Nothing in this section limits Part 8A of the *Criminal Law Consolidation Act 1935*.

Subdivision 4—Court may declare that Subdivision 3 does not apply to certain serious child sex offenders

48J—Court may declare that Subdivision 3 does not apply to certain serious child sex offenders

(1) A court that is sentencing a serious child sex offender for a triggering child sex offence may declare that Subdivision 3 does not apply to the sentencing of the serious child sex offender for the offence if the court is satisfied that—

(a) exceptional circumstances exist for doing so; and

(b) it is not, in all the circumstances, appropriate that the person be sentenced in accordance with that Subdivision.

(2) If a court makes a declaration under subsection (1) in relation to the sentencing of a serious child sex offender for a triggering child sex offence, this Act will be taken to apply in relation to the sentencing of the serious child sex offender for the offence as if the person were not, in fact, a serious child sex offender.

Subdivision 5—Release of serious child sex offenders on licence

48K—Release on licence

(1) The Supreme Court may, on application by the DPP or the serious child sex offender, authorise the release on licence of a serious child sex offender serving a sentence of indeterminate duration for a triggering child sex offence.

- 5
- (2) However, an application may only be made under this section by a serious child sex offender if the serious child sex offender has served the minimum period of imprisonment fixed under section 48I(2)(d).
- (3) The Supreme Court must not authorise the release on licence of a serious child sex offender unless the serious child sex offender satisfies the Supreme Court that—
- 10
- (a) they are capable of controlling, and willing to control, their sexual instincts; or
- (b) they no longer present an appreciable risk to the safety of the community (whether as individuals or in general).
- (4) The Supreme Court must, before authorising the release on licence of a serious child sex offender, direct that at least 2 legally qualified medical practitioners (to be nominated by the Supreme Court for the purpose) inquire into the mental condition of the serious child sex offender and report to the Supreme Court on whether the serious child sex offender is, or is not, capable of controlling, and willing to control, their sexual instincts.
- 15
- (5) The appropriate board must, at the request of the Supreme Court, make a report to the Supreme Court on the serious child sex offender addressing the matters specified by the Supreme Court.
- 20
- (6) The Supreme Court must also take the following matters into consideration when determining an application under this section for the release on licence of a serious child sex offender:
- 25
- (a) the reports of the medical practitioners (as directed and nominated under subsection (4)) provided to the Court;
- (b) any relevant evidence or representations that the serious child sex offender may desire to put to the Court;
- (c) a report provided to the Court by the appropriate board in accordance with the direction of the Court for the purposes of assisting the Court to determine the application, including—
- 30
- (i) any opinion of the appropriate board on the effect that the release on licence of the serious child sex offender would have on the safety of the community; and
- 35
- (ii) a report as to the probable circumstances of the serious child sex offender if they are released on licence; and
- (iii) the recommendation of the appropriate board as to whether the serious child sex offender should be released on licence;
- 40
- (d) evidence tendered to the Court of the estimated costs directly related to the release of the person on licence;

(e) the reports resulting from the periodic reviews under section 57(15) on the progress and circumstances of the serious child sex offender tendered to the Court;

(f) any other matter that the Court thinks relevant.

- 5 (7) The Supreme Court, when determining an application under this section, must not have regard to the length of time that the serious child sex offender has spent in custody or may spend in custody if the serious child sex offender is not released on licence.
- 10 (8) The paramount consideration of the Supreme Court when determining an application under this section for the release on licence of a serious child sex offender must be to protect the safety of the community (whether as individuals or in general).
- 15 (9) On the Supreme Court authorising the release of a serious child sex offender under subsection (1), the appropriate board must order the release of the serious child sex offender on licence on the day specified by the Court.
- (10) Subject to this Act, every release of a serious child sex offender on licence under this section is subject to the following conditions:
- 20 (a) a condition that the serious child sex offender wear or carry a tracking device for the purpose of monitoring the serious child sex offender's whereabouts at all times;
- (b) a condition prohibiting the serious child sex offender from possessing a firearm or ammunition or any part of a firearm;
- 25 (c) a condition requiring the serious child sex offender to submit to such tests (including testing without notice) for gunshot residue as may be reasonably required by a person or class of persons or body specified by the appropriate board.
- 30 (11) Without limiting subsection (10), the release of a serious child sex offender on licence under this section will be subject to such conditions as the appropriate board thinks fit and specifies in the licence.
- 35 (12) If the Supreme Court has refused a serious child sex offender's application for release on licence, the serious child sex offender may not further apply for release for a period of 6 months, or such lesser or greater period as may be specified by the Court.
- (13) The appropriate board may—
- 40 (a) on application by the DPP or the serious child sex offender, or on its own initiative, vary or revoke a condition of a licence (other than the condition imposed by subsection (10)(a)) or impose further conditions; or

- (b) on application by the DPP, or on its own initiative, cancel the release of a serious child sex offender on licence, if satisfied that the serious child sex offender has contravened, or is likely to contravene, a condition of the licence.
- 5 (14) A board cannot exercise its powers under subsection (13) on its own initiative in relation to a serious child sex offender released on licence unless the serious child sex offender and the Crown have been afforded a reasonable opportunity to make submissions to the board on the matter, and the board has considered any submissions so made.
- 10 (15) The appropriate board may only vary or revoke the conditions imposed by subsection (10)(b) or (c) on the release of a serious child sex offender on licence if the board is satisfied that—
- 15 (a) there are cogent reasons to do so; and
- (b) the possession of a firearm, ammunition or part of a firearm by the serious child sex offender does not represent an undue risk to the safety of the public.
- (16) For the purposes of proceedings under subsection (13), a member of the appropriate board may—
- 20 (a) summon the serious child sex offender the subject of the proceedings to appear before the board; or
- (b) in the case of proceedings for cancellation of release—
- 25 (i) with the concurrence of a second member of the board—issue a warrant for the apprehension and detention of the serious child sex offender pending determination of the proceedings; or
- (ii) apply to a magistrate for a warrant for the apprehension and detention of the serious child sex offender pending determination of the proceedings.
- 30 (17) If a serious child sex offender who has been summoned to appear before the appropriate board fails to attend in compliance with the summons, the board may—
- 35 (a) determine the proceedings in the serious child sex offender's absence; or
- (b) direct a member of the board to—
- 40 (i) issue a warrant; or
- (ii) apply to a magistrate for a warrant, for the apprehension and detention of the offender for the purpose of bringing the serious child sex offender before the board.

(18) A member of the appropriate board may apply to a magistrate for a warrant for the apprehension and return to custody of a serious child sex offender whose release on licence has been cancelled by the board.

5 (19) A magistrate must, on application under this section, issue a warrant for the apprehension and detention of a serious child sex offender or for the apprehension and return to custody of a serious child sex offender, as the case may require, unless it is apparent, on the face of
10 the application, that no reasonable grounds exist for the issue of the warrant.

(20) The appropriate board may, if it thinks good reason exists for doing so, cancel a warrant issued under this section at any time before its execution.

15 (21) If a serious child sex offender who has been released on licence commits an offence while subject to that licence and is sentenced to imprisonment for the offence, the release on licence is, by virtue of this subsection, cancelled.

48L—Arrest and detention of serious child sex offender released on licence without warrant

20 (1) A police officer may, on the authorisation of a senior police officer, without warrant, arrest a serious child sex offender released on licence under section 48K if the police officer suspects on reasonable grounds that the serious child sex offender has breached a condition of the release on licence.

25 (2) If a serious child sex offender is arrested under subsection (1)—
(a) the serious child sex offender must be taken to the nearest police station; and
(b) within 12 hours of the arrest—the presiding member or deputy presiding member of the appropriate board (or, if
30 neither of those members is available, a magistrate) must be notified of the arrest; and
(c) as soon as is reasonably practicable after being so notified—the presiding member or deputy presiding member of the appropriate board, or the magistrate, (as the case
35 requires) must, by order, direct that the serious child sex offender—
(i) be detained in custody pending attendance before the appropriate board; or
(ii) be released and summoned to attend before the
40 appropriate board; or
(iii) be released from custody.

Subdivision 6—Extinguishment of sentence

48M—Extinguishment of sentence

- 5 (1) Subject to this Division and the *Correctional Services Act 1982*, a serious child sex offender serving a sentence of indeterminate duration for a triggering child sex offence will not be released from detention until the Supreme Court, on application by the DPP or the serious child sex offender, orders that the sentence be wholly extinguished.
- 10 (2) However, an application may only be made under this section by a serious child sex offender if the serious child sex offender—
- (a) has served the minimum period of imprisonment fixed under section 48I(2)(d); and
 - (b) has been released on licence for at least the minimum period fixed under section 48I(2)(e); and
 - 15 (c) has not, during the period referred to in paragraph (b), breached a condition of the release on licence.
- (3) The Supreme Court must not make an order under subsection (1) extinguishing a sentence unless the serious child sex offender satisfies the Supreme Court that—
- 20 (a) they are capable of controlling, and willing to control, their sexual instincts; or
 - (b) they no longer present an appreciable risk to the safety of the community (whether as individuals or in general).
- 25 (4) The Supreme Court must, before making an order under subsection (1) extinguishing a sentence, direct that at least 2 legally qualified medical practitioners (to be nominated by the Supreme Court for the purpose) inquire into the mental condition of the serious child sex offender and report to the Supreme Court on whether the serious child sex offender is, or is not, capable of controlling, and willing to control, their sexual instincts.
- 30 (5) The appropriate board must, at the request of the Supreme Court, make a report to the Supreme Court on the serious child sex offender addressing the matters specified by the Supreme Court.
- 35 (6) The Supreme Court must, before making an order under subsection (1) extinguishing a sentence, also take the following matters into consideration:
- (a) the reports of the medical practitioners (as directed and nominated under subsection (4)) provided to the Court;
 - 40 (b) any relevant evidence or representations that the serious child sex offender may desire to put to the Court;

(c) a report provided to the Court by the appropriate board in accordance with the direction of the Court for the purposes of assisting the Court to determine the application, including—

5 (i) any opinion of the appropriate board on the effect that the release on licence of the serious child sex offender would have on the safety of the community; and

10 (ii) a report as to the probable circumstances of the serious child sex offender if they are released on licence; and

(iii) the recommendation of the appropriate board as to whether the serious child sex offender should be released on licence;

15 (d) the reports resulting from the periodic reviews under section 57(15) on the progress and circumstances of the serious child sex offender tendered to the Court;

(e) any other matter that the Court thinks relevant.

20 (7) The paramount consideration of the Supreme Court in determining whether to make an order under subsection (1) extinguishing a sentence of imprisonment must be to protect the safety of the community (whether as individuals or in general).

25 (8) The Supreme Court, when determining an application under this section, must not have regard to the length of time that the serious child sex offender has spent in custody or may spend in custody if the sentence is not extinguished.

(9) A copy of a report provided to the Supreme Court under subsection (4) must be given to each party to the proceedings or to counsel for those parties.

30 (10) The Supreme Court may order that the release of a serious child sex offender from detention is not to take effect for such time as it considers necessary for the purpose of enabling the serious child sex offender to undergo a suitable pre-release program.

Subdivision 7—Miscellaneous

42N—Inquiries by medical practitioners

35 If, for the purposes of this Division, the Supreme Court directs that at least 2 legally qualified medical practitioners inquire into the mental condition of a person and report to the Court on whether the person is incapable of controlling, or unwilling to control, the person's
40 sexual instincts, each medical practitioner so nominated—

(a) must carry out an independent personal examination of the person; and

- (b) may have access to any evidence before the court by which the person was convicted; and
- (c) may obtain the assistance of a psychologist, social worker, community corrections officer or any other person.

5 **6—Amendment of section 55—Declaration that youth is recidivist young offender**

Section 55—after subsection (3) insert:

- (4) Subsection (3) does not apply in relation to a youth if—
 - (a) Part 3 Division 2A applies to the youth; and
 - 10 (b) the youth being sentenced is a serious child sex offender; and
 - (c) the youth is being sentenced for a triggering child sex offence.

15 **7—Amendment of section 57—Offenders incapable of controlling, or unwilling to control, sexual instincts**

Section 57—after subsection (2) insert:

- (2a) Subsection (2) does not apply in relation to a serious child sex offender being sentenced for a triggering child sex offence.

20 **8—Insertion of section 59A**

After section 59 insert:

59A—Arrest and detention of person released on licence without warrant

- (1) A police officer may, on the authorisation of a senior police officer, without warrant, arrest a person released on licence under section 59 if the police officer suspects on reasonable grounds that the person has breached a condition of the release on licence.
 - (2) If a person is arrested under subsection (1)—
 - (a) the person must be taken to the nearest police station; and
 - (b) within 12 hours of the arrest—the presiding member or deputy presiding member of the appropriate board (or, if neither of those members is available, a magistrate) must be notified of the arrest; and
 - (c) as soon as is reasonably practicable after being so notified—the presiding member or deputy presiding member of the appropriate board, or the magistrate, (as the case requires) must, by order, direct that the person—
 - (i) be detained in custody pending attendance before the appropriate board; or
 - (ii) be released and summoned to attend before the appropriate board; or
- 40

(iii) be released from custody.

(3) In this section—

appropriate board has the same meaning as in section 59;

senior police officer means a police officer of or above the rank of Inspector.

5

Schedule 1—Related amendments

Part 1—Amendment of *Correctional Services Act 1982*

1—Amendment of section 64—Reports by Board

Section 64—after subsection (2) insert:

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(2a) However, subsection (2) does not apply in relation to a prisoner who is a serious child sex offender serving a sentence of indeterminate duration for a triggering child sex offence imposed in accordance with Part 3 Division 2A of the *Sentencing Act 2017* until the prisoner has served the minimum period of imprisonment fixed under section 48I(2)(c) of that Act in respect of the triggering child sex offence.

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Part 2—Amendment of *Criminal Law Consolidation Act 1935*

2—Insertion of section 5AB

After section 5AA insert:

5AB—Mandatory penalty for certain child sex offences committed by serious child sex offenders

20

(1) Despite section 53 of the *Legislation Interpretation Act 2021*, the mandatory penalty for a triggering child sex offence committed by a serious child sex offender is a sentence of indeterminate duration.

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(2) However, subsection (1) does not apply if the court sentencing a serious child sex offender for a triggering child sex offence—

(a) determines under section 48I(1)(a) of the *Sentencing Act 2017* that a sentence of imprisonment to be served in a correctional facility is not to be imposed in relation to the offence; or

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(b) makes a declaration under section 48J of the *Sentencing Act 2017*,

(in which case the maximum penalty for the triggering child sex offence is the maximum penalty for the relevant offence had it not been committed by a serious child sex offender).

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(3) For the purposes of this section, a reference to a sentence of indeterminate duration will be taken to be a reference to the detention of a person in custody until the sentence of imprisonment is extinguished by order of the Supreme Court under section 48M of the *Sentencing Act 2017*.

(4) In this section—

serious child sex offender has the same meaning as in the
Sentencing Act 2017;

triggering child sex offence has the same meaning as in the
Sentencing Act 2017.

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