

South Australia

Criminal Law (Sentencing) (Sentencing Guidelines) 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:

1—Short title

- (1) This Act may be cited as the *Criminal Law (Sentencing) (Sentencing Guidelines) Amendment Act 2003*.
- (2) The *Criminal Law (Sentencing) Act 1988* is referred to in this Act as "the principal Act".

2—Commencement

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

3—Amendment of s. 27—Service on guardian

Section 27 of the principal Act is amended by striking out "section" and substituting "Division".

4—Insertion of Part 2 Division 4

The following Division is inserted in Part 2 of the principal Act after section 29:

Division 4—Sentencing guidelines

29A—Sentencing guidelines

- (1) The Full Court may give a judgment establishing sentencing guidelines.

- (2) A sentencing guideline is to guide a sentencing court in determining sentence for—
 - (a) offences generally or a particular class of offences;
 - (b) offenders generally or a particular class of offenders.
- (3) A sentencing guideline may—
 - (a) indicate an appropriate range of penalties for a particular offence or offences of a particular class; and
 - (b) indicate how particular aggravating or mitigating factors (or aggravating or mitigating factors of a particular kind) should be reflected in sentence.
- (4) In particular, a sentencing guideline may indicate (and give guidance about the extent of) a reduction of sentence below the level that would otherwise be appropriate in any of the following cases:
 - (a) where the defendant has co-operated with authorities in the investigation of an offence;
 - (b) where the defendant has pleaded guilty to the charge;
 - (c) where the defendant has contributed in some other way to reducing the burden on the criminal justice system or the burden of crime on the community.
- (5) A sentencing court—
 - (a) should have regard to relevant sentencing guidelines; but
 - (b) is not bound to follow a particular guideline if, in the circumstances of the case, there are good reasons for not doing so.

29B—Power to establish (or review) sentencing guidelines

- (1) The Full Court may establish (or review) sentencing guidelines—
 - (a) on the Full Court's own initiative; or
 - (b) on application by the Director of Public Prosecutions; or
 - (c) on application by the Attorney-General; or
 - (d) on application by the Legal Services Commission.
- (2) Each of the following is entitled to appear and be heard in proceedings in which the Full Court is asked or proposes to establish or review sentencing guidelines:
 - (a) the Director of Public Prosecutions;
 - (b) the Attorney-General;
 - (c) the Legal Services Commission;
 - (d) the Aboriginal Legal Rights Movement Inc.;

- (e) an organisation representing the interests of offenders or victims of crime that has, in the opinion of the Full Court, a proper interest in the proceedings.

29C—Conduct of proceedings

- (1) The Full Court may, if it thinks appropriate, establish or review sentencing guidelines in the course of an appeal against sentence.
- (2) However, if sentencing guidelines are to be established or reviewed on the application of the Attorney-General, the proceedings must be separate from other proceedings in the Full Court.
- (3) The Full Court may inform itself in any way it thinks fit on any question affecting the formulation or revision of sentencing guidelines and is not bound by the rules of evidence.
- (4) However, if evidence relevant to the formulation or revision of sentencing guidelines is considered by the Full Court in the course of appellate proceedings, that evidence must not be used by the Court as a basis for increasing the sentence imposed on the offender unless the evidence was before the court that imposed the sentence in the first instance.