

South Australia

# **Criminal Law (Sentencing) (Supergrass) Amendment Act 2012**

An Act to amend the *Criminal Law (Sentencing) Act 1988*.

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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 *Criminal Law (Sentencing) (Supergrass) Amendment Act 2012*.

### **2—Commencement**

This Act will come 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 *Criminal Law (Sentencing) Act 1988*

### 4—Insertion of section 10A

After section 10 insert:

#### **10A—Reduction of sentences for cooperation etc with law enforcement agency**

- (1) A court may declare a defendant to be a defendant to whom this section applies if the court is satisfied that the defendant has cooperated or undertaken to cooperate with a law enforcement agency and the cooperation—
  - (a) relates directly to combating serious and organised criminal activity; and
  - (b) is provided in exceptional circumstances; and
  - (c) contributes significantly to the public interest.
- (2) In determining sentence for an offence or offences to which a defendant has pleaded guilty or in respect of which a defendant has been found guilty, the court may, if the defendant is the subject of a declaration under subsection (1), reduce the sentence that it would otherwise have imposed by such percentage as the court thinks appropriate in the circumstances.
- (3) In determining the percentage by which a sentence is to be reduced under this section, the court must have regard to such of the following as may be relevant:
  - (a) if the defendant has pleaded guilty to the offence or offences—that fact and the circumstances of the plea;
  - (b) the nature and extent of the defendant's cooperation or undertaking;
  - (c) the timeliness of the cooperation or undertaking;
  - (d) the truthfulness, completeness and reliability of any information or evidence provided by the defendant;
  - (e) the evaluation (if any) by the authorities of the significance and usefulness of the defendant's cooperation or undertaking;
  - (f) any benefit that the defendant has gained or is likely to gain by reason of the cooperation or undertaking;
  - (g) the degree to which the safety of the defendant (or some other person) has been put at risk of violent retribution as a result of the defendant's cooperation or undertaking;

- (h) whether the cooperation or undertaking concerns an offence for which the defendant is being sentenced or some other offence, whether related or unrelated (and, if related, whether the offence forms part of a criminal enterprise);
- (i) whether, as a consequence of the defendant's cooperation or undertaking, the defendant would be likely to suffer violent retribution while serving any term of imprisonment, or be compelled to serve any such term in particularly severe conditions;
- (j) the nature of any steps that would be likely to be necessary to protect the defendant on his or her release from prison;
- (k) the likelihood that the defendant will commit further offences,

and may have regard to any other factor or principle the court thinks relevant.

- (4) Nothing in this section affects the operation of sections 15, 16 and 17.
- (5) In this section—

*serious and organised criminal activity* includes any activity that may constitute a serious and organised crime offence within the meaning of the *Criminal Law Consolidation Act 1935*.

## 5—Substitution of heading to Part 2 Division 6

Heading to Part 2 Division 6—delete the heading to Division 6 and substitute:

### **Division 6—Re-sentencing**

## 6—Insertion of section 29DA

Before section 29E insert:

### **29DA—Re-sentencing for failure to cooperate in accordance with undertaking under section 10A**

- (1) This section applies if—
  - (a) a person is currently serving a sentence of imprisonment for an offence or offences that was reduced by the sentencing court under section 10A (the *relevant sentence*); and
  - (b) the person has failed to cooperate with a law enforcement agency in accordance with the terms of an undertaking given by the person under that section.
- (2) The Director of Public Prosecutions may, with the permission of the court that imposed the relevant sentence on the person, apply to the court to have the sentence quashed and a new sentence imposed, taking into account the person's failure to cooperate with the law enforcement agency in accordance with the terms of an undertaking given by the person under section 10A.

- (3) The Director of Public Prosecutions, the chief officer of the law enforcement agency and the person are parties to the proceedings on the application.
- (4) Nothing in this section authorises a court to impose a new sentence that would exceed the sentence that would, but for the reduction given under section 10A, have been imposed by the sentencing court under that section.

## **7—Amendment of Schedule 1—Review of reduction of sentences**

- (1) Schedule 1, clause 1(1)(a)—after "as amended by the *Criminal Law (Sentencing) (Guilty Pleas) Amendment Act 2012*" insert:

and the *Criminal Law (Sentencing) (Supergrass) Amendment Act 2012*
- (2) Schedule 1, clause 1—after subclause (2) insert:
  - (3) Nothing in this clause requires a person conducting an inquiry to disclose information in the report that identifies, or could tend to identify, a person if, in the opinion of the person conducting the inquiry, disclosure of the information would put at risk the safety of any person or would otherwise not be in the public interest.

## **Schedule 1—Transitional provision**

### **1—Transitional provision**

The amendments made by this Act to the *Criminal Law (Sentencing) Act 1988* apply to proceedings relating to an offence instituted after the commencement of this Act, regardless of when the offence occurred.