

South Australia

Statutes Amendment (Child Sex Offences) Act 2022

An Act to amend the *Child Sex Offenders Registration Act 2006*, the *Criminal Law Consolidation Act 1935* and 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 (Child Sex Offences) Act 2022*.

2—Commencement

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

Part 2—Amendment of *Child Sex Offenders Registration Act 2006*

3—Amendment of section 4—Interpretation

Section 4(1), definition of *reportable contact*—delete "section 13(4)" and substitute:
section 4A

4—Insertion of section 4A

After section 4 insert:

4A—Meaning of *reportable contact*

- (1) For the purposes of this Act, a person has *reportable contact* with a child—
 - (a) if—
 - (i) the person has contact with the child consisting of—
 - (A) any form of physical contact or close physical proximity with the child; or
 - (B) any form of communication with the child (whether in person, in writing, by telephone or other electronic device); and
 - (ii) the contact with the child—
 - (A) occurs in the course of—
 - the person or the child visiting or residing at a dwelling (whether the person and the child are alone or with others); or
 - the person (whether alone or with others) supervising or caring for the child; or

- (B) involves the person providing contact details to the child or obtaining contact details from the child or otherwise inviting (in any manner) further contact or communication between the person and the child; or
- (b) if the person has contact of a kind, or occurring in circumstances, prescribed by the regulations.
- (2) For the purposes of subsection (1), a reference to a *child* includes—
 - (a) a person who the registrable offender believes, at the time the contact occurs, is under the age of 18 years; and
 - (b) a fictitious person represented to the registrable offender at the time the contact occurs as being a real person under the age of 18 years.
- (3) A reference to a *dwelling* in subsection (1)(a)(ii)(A) includes any form of accommodation (including temporary accommodation).
- (4) To avoid doubt, reportable contact includes contact that is supervised.

5—Amendment of section 13—Initial report by registrable offender of personal details

Section 13(4), (5) and (6)—delete subsections (4), (5) and (6)

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

- (1) Schedule 1, clause 2(e)—delete paragraph (e) and substitute:
 - (e) an offence against section 49(1), (3) or (5) of the *Criminal Law Consolidation Act 1935* (offences relating to unlawful sexual intercourse) other than an offence that occurred in prescribed circumstances;
 - (eaa) an offence against section 49(6) of the *Criminal Law Consolidation Act 1935* (unlawful sexual intercourse with a person with an intellectual disability) if the victim was a child other than an offence that occurred in prescribed circumstances;
- (2) Schedule 1, clause 2(k)—after "*Sentencing Act 2017*" insert:

as in force before the commencement of the *Sentencing (Serious Repeat Offenders) Amendment Act 2020*
- (3) Schedule 1, clause 2—after paragraph (k) insert:
 - (ka) an offence resulting in the person being sentenced as a serious repeat offender under section 53(1)(b) of the *Sentencing Act 2017* if, in at least 2 of the relevant serious sexual offences, the victim was a child;

- (4) Schedule 1, clause 2(q)—after "Commonwealth" insert:
as in force before the commencement of the *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013* of the Commonwealth
- (5) Schedule 1, clause 3—after paragraph (a) insert:
(ab) an offence against section 23 of the *Criminal Law Consolidation Act 1935* (causing serious harm) if—
(i) the victim was a child; and
(ii) the offence arises from the same incident as a sexual offence;
- (6) Schedule 1, clause 3—after paragraph (f) insert:
(fa) an offence against section 63AA of the *Criminal Law Consolidation Act 1935* (production or dissemination of child-like sex dolls);
- (7) Schedule 1, clause 3—after paragraph (g) insert:
(gaa) an offence against section 63AAB of the *Criminal Law Consolidation Act 1935* (possession of child-like sex dolls);
- (8) Schedule 1, clause 3(ja)—delete paragraph (ja)
- (9) Schedule 1, clause 3—after paragraph (k) insert:
(ka) an offence against section 139A of the *Criminal Law Consolidation Act 1935* (dishonest communication with children) if the person was sentenced on the basis that the communication was made with the intention of committing a sexual offence against a child;
- (10) Schedule 1, clause 3—after paragraph (sa) insert:
(sab) an offence against section 272.15A of the *Criminal Code* of the Commonwealth;
- (11) Schedule 1, clause 3—after paragraph (sbc) insert:
(sbd) an offence against section 273A.1 of the *Criminal Code* of the Commonwealth;
- (12) Schedule 1, clause 3—after paragraph (si) insert:
(sia) an offence against section 471.25A of the *Criminal Code* of the Commonwealth;
- (13) Schedule 1, clause 3—after paragraph (v) insert:
(va) an offence against section 474.22A of the *Criminal Code* of the Commonwealth;
- (14) Schedule 1, clause 3—after paragraph (w) insert:
(waa) an offence against section 474.23A of the *Criminal Code* of the Commonwealth;

- (15) Schedule 1, clause 3—after paragraph (wc) insert:
- (wd) an offence against section 474.25C of the *Criminal Code* of the Commonwealth if the person was sentenced on the basis that the act was done with the intention of committing a sexual offence against a child;
- (16) Schedule 1, clause 3—after paragraph (y) insert:
- (ya) an offence against section 474.27AA of the *Criminal Code* of the Commonwealth;

7—Transitional provisions

- (1) Despite section 6(1)(a) of the *Child Sex Offenders Registration Act 2006*, a person is not, and is taken never to have been, a registrable offender for the purposes of that Act if, before the commencement of section 6(1) of this Act, the person was a registrable offender only because—
- (a) the person was sentenced for an offence against section 49(6) of the *Criminal Law Consolidation Act 1935* (unlawful sexual intercourse with a person with an intellectual disability); and
 - (b) the victim was, at the time of the relevant offence, of or above the age of 18 years.
- (2) Despite section 6(1)(a) of the *Child Sex Offenders Registration Act 2006*, a person is not, and is taken never to have been, a registrable offender for the purposes of that Act if, before the commencement of section 6(8) of this Act, the person was a registrable offender only because the person was sentenced for an offence against section 69 of the *Criminal Law Consolidation Act 1935* (bestiality).
- (3) Despite section 34(2) of the *Child Sex Offenders Registration Act 2006*, a reference to an offence in section 34 of that Act does not extend to the following offences committed before the commencement of this subsection or for which a person was sentenced before the commencement of this subsection:
- (a) an offence against section 49(6) of the *Criminal Law Consolidation Act 1935* (unlawful sexual intercourse with a person with an intellectual disability) where the victim was, at the time of the relevant offence, of or above the age of 18 years;
 - (b) an offence against section 69 of the *Criminal Law Consolidation Act 1935* (bestiality).

Part 3—Amendment of *Criminal Law Consolidation Act 1935*

8—Amendment of section 5AA—Aggravated offences

Section 5AA(1)(e)—delete paragraph (e) and substitute:

- (e) the offender committed the offence—
 - (i) in the case of an offence against section 63B(3)—believing that the victim of the offence was, at the time of the offence, under the age of 14 years; or

- (ii) in the case of an offence against Part 3 Division 8A or section 63B(1)—knowing that the victim of the offence was, at the time of the offence, under the age of 14 years; or
- (iii) in any other case—knowing that the victim of the offence was, at the time of the offence, under the age of 12 years;

9—Amendment of section 49—Unlawful sexual intercourse

Section 49(3), penalty provision—delete "10 years" and substitute:

15 years

10—Amendment of section 56—Indecent assault

- (1) Section 56(1), penalty provision, (b)—after "offence" insert:
 - (other than an offence of a kind described in paragraph (c) or (d))
- (2) Section 56(1), penalty provision—after paragraph (b) insert:
 - (c) if the victim of the offence was at the time of the offence under the age of 17 years—imprisonment for 10 years;
 - (d) if the victim of the offence was at the time of the offence under the age of 14 years—imprisonment for 15 years.
- (3) Section 56(2)—delete subsection (2)

11—Amendment of section 58—Acts of gross indecency

- (1) Section 58(1)—delete "and liable for a first offence to be imprisoned for a term not exceeding three years and for any subsequent offence to be imprisoned for a term not exceeding five years"
- (2) Section 58(1)—at the foot of the subsection insert:

Maximum penalty: Imprisonment for 15 years.

12—Amendment of section 63—Production or dissemination of child exploitation material

Section 63, penalty provision—delete the penalty provision and substitute:

Maximum penalty: Imprisonment for 15 years.

13—Amendment of section 63AA—Production or dissemination of child-like sex dolls

Section 63AA, penalty provision—delete "10 years" and substitute:

15 years

14—Amendment of section 63A—Possession of child exploitation material

Section 63A(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty: Imprisonment for 12 years.

15—Amendment of section 63AAB—Possession of child-like sex dolls

Section 63AAB, penalty provision—delete "10 years" and substitute:

15 years

16—Amendment of section 63B—Procuring child to commit indecent act etc

(1) Section 63B(1), penalty provision, (a)—delete "10 years" and substitute:

12 years

(2) Section 63B(1), penalty provision, (b)—delete "12 years" and substitute:

15 years

(3) Section 63B(3), penalty provision, (a)—delete "10 years" and substitute:

12 years

(4) Section 63B(3), penalty provision, (b)—delete "12 years" and substitute:

15 years

(5) Section 63B—after subsection (3) insert:

(3a) For the purposes of subsection (3), it does not matter if the victim is a fictitious person represented to the defendant as a real person.

17—Amendment of section 68—Use of children in commercial sexual services

(1) Section 68(1), penalty provision, (b)—delete "9 years" and substitute:

15 years

(2) Section 68(2), penalty provision, (a)—delete "9 years" and substitute:

15 years

(3) Section 68(2), penalty provision, (b)—delete "3 years" and substitute:

12 years

(4) Section 68(3), penalty provision, (a)—delete "5 years" and substitute:

10 years

(5) Section 68(3), penalty provision, (b)—delete "2 years" and substitute:

4 years

18—Amendment of section 139A—Dishonest communications with children

(1) Section 139A(1)(a)—delete "child" and substitute:

person under the age of 17 years or a person they believe is under the age of 17 years (the *victim*)

(2) Section 139A(1)(c)—delete "child" and substitute:

victim

(3) Section 139A(2)(a)—delete "child" and substitute:

person under the age of 17 years or a person they believe is under the age of 17 years (the *victim*)

- (4) Section 139A(2)—delete "child" and substitute:

victim

- (5) Section 139A(3)—delete subsection (3) and substitute:

- (3) For the purposes of this section, it does not matter that the victim is a fictitious person represented to the defendant as a real person.

Part 4—Amendment of *Sentencing Act 2017*

19—Amendment of section 52—Interpretation

- (1) Section 52, definition of *serious sexual offence*, (a)—after "63B" insert:

(1)

- (2) Section 52, definition of *serious sexual offence*—after paragraph (a) insert:

(ab) an offence under section 63B(3) of the *Criminal Law Consolidation Act 1935* where—

- (i) the victim was under the age of 14 years at the time of the offence; or
- (ii) the victim was a fictitious person represented to the defendant as a real person whom the defendant believed to be under the age of 14 years at the time of the offence; or

20—Amendment of section 71—Home detention orders

Section 71—after subsection (6) insert:

(6a) If—

- (a) the defendant commits an offence under section 63B(3) of the *Criminal Law Consolidation Act 1935*; and
- (b) by reason of that offence, the defendant is taken to have committed a serious sexual offence or a prescribed serious sexual offence for the purposes of this section; and
- (c) the victim of the offence is a fictitious person represented to the defendant as a real person,

the court may, in considering the circumstances of the offending for the purposes of subsection (6)(b) in relation to the victim's age and the age difference between the defendant and the victim, take into consideration the age that the defendant believed the victim to be at the time of the offence.

21—Amendment of section 96—Suspension of imprisonment on defendant entering into bond

Section 96—after subsection (10) insert:

(10a) If—

- (a) the defendant commits an offence under section 63B(3) of the *Criminal Law Consolidation Act 1935*; and

- (b) by reason of that offence, the defendant is taken to have committed a serious sexual offence for the purposes of this section; and
- (c) the victim of the offence is a fictitious person represented to the defendant as a real person,

the court may, in considering the circumstances of the offending for the purposes of subsection (10)(b) in relation to the victim's age and the age difference between the defendant and the victim, take into consideration the age that the defendant believed the victim to be at the time of the offence.