

South Australia

# **Sentencing (First Principles) Bill 2016**

A BILL FOR

An Act to make provision for matters in the criminal justice system associated with sentencing offenders; and for other purposes.

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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 (First Principles) Act 2016*.

### **5 2—Commencement**

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

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### 3—Interpretation

(1) In this Act, unless the contrary intention appears—

*cognitive impairment* includes—

- (a) a developmental disability (including, for example, an intellectual disability, Down syndrome, cerebral palsy or an autistic spectrum disorder);
- (b) an acquired disability as a result of illness or injury (including, for example, dementia, a traumatic brain injury or a neurological disorder);
- (c) a mental illness;

*court*—

- (a) means any court of criminal jurisdiction; and
- (b) in relation to the exercise of powers under this Act with respect to the variation, revocation or enforcement of an order of court or other related matters—means the court that made the order or a court of coordinate jurisdiction;

*sentence* means—

- (a) the imposition of a penalty; or
- (b) the decision of a court to offer a defendant an opportunity to enter into a bond; or
- (c) the fixing, extending or negating of a non-parole period; or
- (d) the making of any other order or direction affecting penalty, including the decision of a court to discharge a defendant—
  - (i) without imposing a penalty; or
  - (ii) without recording a conviction.

(2) For the purposes of this Act, a person who pleads guilty to a charge of an offence will be taken to have been found guilty of the offence unless—

- (a) the plea is subsequently withdrawn; or
- (b) the person is adjudged incompetent to have made the plea.

(3) Subject to this Act, the powers conferred on a court by this Act are in addition to, and do not derogate from, the powers conferred by any other Act or law to impose a penalty on, or make an order or give a direction in relation to, a person found guilty of an offence.

## Part 2—Purposes and principles of sentencing and sentencing factors

### Division 1—Purposes of sentencing

#### 4—Purposes of sentencing

(1) The purposes for which a court may impose a sentence for an offence, are as follows:

- (a) to protect the community from the defendant;

- (b) to ensure that the defendant—
- (i) is punished for the offending behaviour; and
  - (ii) is held accountable to the community for the offending behaviour;
- (c) to publicly denounce the offending behaviour;
- 5 (d) to publicly recognise the harm done to the community and to any victim of the offending behaviour;
- (e) to deter the defendant and others in the community from committing offences;
- (f) to promote the rehabilitation of the defendant;
- 10 (g) to reduce crime.
- (2) The protection of the community from the defendant is the primary purpose for which a court may impose a sentence.
- (3) Subject to subsection (2), nothing about the order in which the purposes appear in subsection (1) implies that any of those purposes is to be given greater weight than
- 15 any other purpose.

## **Division 2—Principles of sentencing**

### **5—Procedural principles relating to determination of sentence**

For the purpose of determining sentence, a court—

- (a) is not bound by the rules of evidence; and
- 20 (b) may inform itself on matters relevant to the determination as it thinks fit; and
- (c) must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.

### **6—Principles of sentencing**

- (1) In determining a sentence for an offence, a court must apply (although not to the
- 25 exclusion of any other relevant principle) the common law concepts reflected in the following principles:
- (a) proportionality;
  - (b) parity;
  - (c) totality;
  - 30 (d) the rule that a defendant may not be sentenced on the basis of having committed an offence in respect of which the defendant was not convicted.
- (2) A court must not impose a sentence of imprisonment on a defendant unless the court decides that—
- 35 (a) the seriousness of the offence is such that the only penalty that can be justified is imprisonment; or
  - (b) it is required for the purpose of protecting the community.

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Part 2—Purposes and principles of sentencing and sentencing factors

Division 2—Principles of sentencing

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- (3) A court must, on sentencing a defendant who is present in court (whether in person or by video or audio link) for an offence or offences, state the sentence that it is imposing for the offence or offences and its reasons for imposing that sentence, including (for example) any reason why a sentence that would otherwise have been imposed for the offence or offences has been reduced.
- (4) The validity of a sentence is not affected by non-compliance or insufficient compliance with subsection (3).

**Division 3—Sentencing factors****7—Sentencing factors**

- (1) In determining a sentence for an offence, a court must take into account such of the factors as are known to the court that relate to the following matters as may be relevant:
- (a) the nature, circumstances and seriousness of the offence;
  - (b) the personal circumstances and vulnerability of any victim of the offence whether because of the victim's age, occupation, relationship to the defendant, disability or otherwise;
  - (c) the extent of any injury, emotional harm, loss or damage resulting from the offence or any significant risk or danger created by the offence, including any risk to national security;
  - (d) the defendant's character, general background and offending history;
  - (e) the defendant's age, and physical and mental condition (including any cognitive impairment);
  - (f) the extent of the defendant's remorse for the offence, having regard in particular as to whether—
    - (i) the defendant has provided evidence that the defendant has accepted responsibility for the defendant's actions; and
    - (ii) the defendant has acknowledged any injury, loss or damage caused by the defendant's actions, or voluntarily made reparation for any such injury, loss or damage, or both;
  - (g) the defendant's prospects of rehabilitation.
- (2) The matters referred to in subsection (1) are in addition to any other matter the court is required or permitted to take into account under this Act or any other Act or law.
- (3) The court must not have regard to any of the factors in sentencing if it would be contrary to an Act or law to do so (and the fact that any such factor is relevant and known to the court does not require the court to increase or reduce the sentence for the offence).
- (4) In determining the sentence for an offence—
- (a) a court must not have regard to either of the following:
    - (i) the fact that a mandatory minimum non-parole period is prescribed in respect of the sentence for the offence under this Act or another Act;

- (ii) any consequences that may arise under the *Child Sex Offenders Registration Act 2006*; and
  - (b) if a court is satisfied that the defendant's previous alleged good character, general background or offending history was of assistance in or otherwise connected to the commission of the offence—the court may have regard to those factors (but only as aggravating and not as mitigating factors).
- (5) In assessing the nature, circumstances and seriousness of the offence, the court must have regard to the matters personal to the defendant that the court is satisfied are causally connected with, or have materially contributed to, the commission of the offence, including (for example) the defendant's motivation in committing the offence and the degree to which the defendant participated in its commission.