

## CLAUSE NOTES

### *Sentencing Amendment (Mandatory Sentencing for Serious Sexual Offences Against Children) Bill 2018*

#### Clause 1: Short title

Cites the Act as the *Sentencing Amendment (Mandatory Sentencing for Serious Sexual Offences Against Children) Act 2018*.

#### Clause 2: Commencement

Clause 2 provides for the provisions of the Act to commence on Royal Assent.

#### Clause 3: Principal Act

Clause 3 provides that the Principal Act to which the amendments apply is the *Sentencing Act 1997*.

#### Clause 4: Section 16AA inserted

Clause 4 inserts sections 16AA into the *Sentencing Act 1997*.

Section 16AA provides for the matters the court is to have regard to in determining whether exceptional circumstances exist for the purposes of sections 16A and 16B of the *Sentencing Act 1997*.

#### Clause 5: Sections 16B and 16C inserted

Clause 5 inserts sections 16B and 16C, defines 'aggravating circumstance', and defines 'minimum period' for the purposes of sections 124 (Sexual intercourse with a young person), 125A (Maintaining sexual relationship with a young person) and 185 (Rape) of the *Criminal Code*.

Section 16B provides that:

- the minimum term of imprisonment for an offence under section 124 of the *Criminal Code* committed in relation to a victim under 17 years in a circumstance of aggravation is 2 years' imprisonment;
- the minimum term of imprisonment for an offence under section 125A of the *Criminal Code* committed in relation to a victim under 17 years in a circumstance of aggravation is 3 years' imprisonment if none of the unlawful sexual acts is a crime of rape;
- the minimum term of imprisonment for an offence under section 125A of the *Criminal Code* committed in relation to a victim under 17 years is 4 years' imprisonment where one of the unlawful sexual acts is a crime of rape;
- the minimum term of imprisonment for an offence under section 185 of the *Criminal Code* committed in relation to a victim under 17 years is 4 years' imprisonment; and

- a mandatory minimum sentence does not apply to offenders who are under the age of 18 years at the time of the commission of the offence, or to offenders with impaired mental functioning that is causally linked to the offence, or where there are exceptional circumstances.

Section 16C provides that:

- section 10(2)(b)(v) of the *Sentencing Act 1997* does not apply in relation to an offence to which new section 16B applies, to the extent that section 10(2)(b)(v) might otherwise require sections 16B or 16C to apply to an offence in relation to which a finding of guilt has been made but a conviction has not been recorded;
- the court must not make or amend an order (with the exception of a parole order) if the effect is that the offender is not imprisoned for the mandatory minimum period;
- section 11 of the *Sentencing Act 1997* applies to an offence to which section 16B applies, such that the court may make a single, general or mixed sentence;
- courts may impose in respect of an offence to which section 16B applies a term of imprisonment of more than the mandatory minimum period set out in section 16B;
- sentences are to operate as a 'floor' for offences rather than increasing all sentences;
- section 12 of the *Sentencing Act 1997* does not apply in relation to an offence to which section 16B applies, that is, the court may not impose a non-custodial sentence as an alternative; and
- the court may make additional sentencing orders that do not impact the operation of the sentence of imprisonment.

#### **Clause 6: Repeal of Act**

Clause 6 inserts a repeal provision to remove the empty shell of the Bill after its provisions have come into effect.