

CLAUSE NOTES

Sentencing Amendment (Mandatory Sentencing for Serious Sexual Offences Against Children) Bill 2017

- Clause 1: Short title of the Bill.
- Clause 2: The Act commences on Royal Assent.
- Clause 3: Principal Act is the *Sentencing Act 1997*.
- Clause 4: Inserts section 16AA which provides the matters the court is to have regard to in relation to exceptional circumstances for the purposes of sections 16A and 16B of the Principal Act.
- Clause 5: Inserts section 16B and defines 'aggravating circumstance' and '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*.

This new section 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;
- that 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;
- that 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 the unlawful sexual acts is a crime of rape;
- that 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
- that 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; and offenders with impaired mental functioning that is causally linked to the offence or where there are exceptional circumstances.

Inserts Section 16C in relation to the application of the Principal Act.

This new section provides:

- that section 10(2)(b)(v) of the Principal Act does not apply in relation to the new section 16B;
- the court must not make or amend an order (with the exception of a parole order) that the offender serve a term of mandatory minimum imprisonment so that the effect is that the person is not imprisoned for the minimum term;
- section 11 of the Principal Act applies to mandatory minimum sentences such that the court may make a single, general or mixed sentence;
- courts may impose sentences greater than the mandatory minimum sentence;
- sentences are to operate as a 'floor' for offences rather than increasing all sentences;
- section 12 of the Principal Act does not apply to mandatory minimum sentences, 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: Provides that this Act is repealed a year after it commences.