

## CLAUSE NOTES

### *Sentencing Amendment (Presumption of Mandatory Sentencing) Bill 2024*

- Clause 1      Short title
- The short title will be the *Sentencing Amendment (Presumption of Mandatory Sentencing) Act 2024*.
- Clause 2      Commencement
- The Amendment Act will commence on the day on which it receives Royal Assent.
- Clause 3      Principal Act
- Provides that the *Sentencing Act 1997* is the Principal Act referred to in the amendments.
- Clause 4      Section 16AA inserted
- Inserts a new section into the Act.
- New section 16AA 'Presumption of mandatory imprisonment for certain sexual offences against children'.
- This new section defines 'aggravating circumstance', 'minimum period' and 'relevant offence' and sets out a presumption of minimum sentences of imprisonment for certain sexual offences against children. It provides the minimum terms of imprisonment for each offence, in subsection (1) and (2).
- New subsection 16AA(3) provides that despite the presumption in new subsection (2) of minimum terms of imprisonment for relevant offences, the court must not impose a term of imprisonment in accordance with that subsection, in respect of a relevant offence if subclauses (a), (b), or (c) apply. These subclauses relate to where the offender is under the age of 18 years at the time the offence was committed; the offender has impaired mental functioning that is causally linked to the offence; or it would be unjust when considering the circumstances of the offence or the offender.
- New subsection (4) provides that if a court does not impose a term of imprisonment in accordance with subsection (3), the court must specify which exemption paragraph applies, and if relevant, give the reasons why the court is satisfied the paragraph applies to the offender.

New subsection (5) provides that section 11 of the Principal Act continues to apply. Section 11 of the Principal Act provides that the court may impose single, general or a mixed sentence when an offender has been convicted of more than one offence.

New subsection (6) is an avoidance of doubt provision, clarifying the intended operation of subsection (2) with other provisions in the Principal Act. Subclause (a) provides that for the purposes of section 10(2)(b)(v) of the Principal Act, subsection (2) does not provide for a mandatory penalty on conviction; and subclause (b) provides that a court is not prevented for making any other order, in addition to an order imposing a term of imprisonment in respect of the relevant offence.

#### Clause 5

#### Repeal of Act

The *Sentencing Amendment (Presumption of Mandatory Sentencing) Act 2024* will be automatically repealed after the first anniversary of this Act commencing.