

South Australia



**STATUTES AMENDMENT (ATTORNEY-GENERAL'S PORTFOLIO)
ACT 1996**

No. 67 of 1996

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ANNO QUADRAGESIMO QUINTO

ELIZABETHAE II REGINAE

A.D. 1996

No. 67 of 1996

An Act to amend the Bail Act 1985, the Bills of Sale Act 1886, the Classification (Publications, Films and Computer Games) Act 1995, the Criminal Law Consolidation Act 1935, the Development Act 1993, the Domestic Violence Act 1994, the Enforcement of Judgements Act 1991, the Environment, Resources and Development Court Act 1993, the Juries Act 1927, the Law of Property Act 1936, the Oaths Act 1936, the Prisoners (Interstate Transfer) Act 1982, the Second Hand Vehicle Dealers Act 1995, the Sheriff's Act 1978, the Summary Procedure Act 1921 and the Supreme Court Act 1935.

[Assented to 15 August 1996]

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Statutes Amendment (Attorney-General's Portfolio) Act 1996*.

Commencement

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

Interpretation

3. A reference in this Act to the principal Act is a reference to the Act referred to in the heading to the Part in which the reference occurs.

**PART 2
AMENDMENT OF BAIL ACT 1985**

Amendment of s. 5—Bail authorities

4. Section 5 of the principal Act is amended—

(a) by striking out paragraph (e) of subsection (1) and substituting the following paragraph:

- (e) where the eligible person—
- (i) has been arrested on a warrant (other than a warrant endorsed by the court or justice issuing the warrant with a statement excluding the granting of bail by a member of the police force); or
 - (ii) has not appeared before a court charged with the offence in respect of which he or she has been taken into custody,
- a member of the police force who is of or above the rank of sergeant or who is in charge of a police station;;

(b) by striking out subsection (2) and substituting the following subsection:

(2) If a warrant for the arrest of a person is issued, the court or justice issuing the warrant may, by endorsement on the warrant—

- (a) authorise or require a specified person, or a person of a specified class, to release the arrested person on bail; or
- (b) exclude the granting of bail to the arrested person by a member of the police force.

Amendment of s. 13—Procedure on arrest

5. Section 13 of the principal Act is amended by inserting in subsection (3) "who has been arrested on a charge of an offence" after "person".

**PART 3
AMENDMENT OF BILLS OF SALE ACT 1886**

Amendment of s. 28—Bills of sale to be void in certain circumstances

6. Section 28 of the principal Act is amended by inserting in subsection (2) "or a goods mortgage to which the *Consumer Credit (South Australia) Code* applies" after "*Consumer Transactions Act 1972*".

**PART 4
AMENDMENT OF CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER
GAMES) ACT 1995**

Insertion of s. 19A

7. The following section is inserted in the principal Act after section 19:

Classification of publication forming part of a series

19A. Where a publication under consideration by the Council or the Minister consists of an issue or instalment of a series of publications that are issued periodically or by instalment, the Council or the Minister (as the case may be) may classify future publications of the same series on the basis of the publication presently under consideration.

**PART 5
AMENDMENT OF CRIMINAL LAW CONSOLIDATION ACT 1935**

Amendment of s. 348—Interpretation

8. Section 348 of the principal Act is amended by striking out the definition of "question of law".

Amendment of s. 350—Reservation of relevant questions

9. Section 350 of the principal Act is amended—

(a) by inserting before subsection (1) the following subsection:

(a1) In this section—

"relevant question" means—

(a) a question of law; or

(b) to the extent that it does not constitute a question of law—a question about how a judicial discretion should be exercised or whether a judicial discretion has been properly exercised.;

(b) by striking out from subsection (1) "question of law" and substituting "relevant question";

(c) by striking out from subsection (2) "question of law" and substituting "relevant question";

(d) by striking out from subsection (3) "of law";

(e) by striking out from subsection (4) "of law".

Amendment of s. 351—Case to be stated by trial judge

10. Section 351 of the principal Act is amended by striking out from subsection (1) "of law" (twice occurring).

Amendment of s. 351A—Powers of Full Court on reservation of question

11. Section 351A of the principal Act is amended by striking out from subsection (1) "of law".

Amendment of s. 351B—Costs

12. Section 351B of the principal Act is amended by striking out from subsection (1) "of law" (twice occurring).

**PART 6
AMENDMENT OF DEVELOPMENT ACT 1993**

Amendment of s. 84—Enforcement notices

13. Section 84 of the principal Act is amended by inserting after subsection (10) the following subsection:

(10a) In an appeal against a notice issued by a relevant authority under this section, the Court may make such orders as to costs as it thinks fit.

Amendment of s. 85—Applications to the Court

14. Section 85 of the principal Act is amended by inserting after subsection (17) the following subsection:

(17a) The Court may make such orders in relation to costs of proceedings under this section as it thinks fit.

**PART 7
AMENDMENT OF DOMESTIC VIOLENCE ACT 1994**

Amendment of s. 3—Interpretation

15. Section 3 of the principal Act is amended by inserting after the definition of "Principal Registrar" the following definition:

"relevant family contact order", in relation to a domestic violence restraining order or an application for a domestic violence restraining order, means a Division 11 contact order within the meaning of Part 7 of the *Family Law Act 1975* of the Commonwealth, as amended from time to time, that relates to contact between—

- (a) the person for whose benefit, or against whom, the domestic violence restraining order is made or sought; and
- (b) a child of, or in the care of, either of those persons;.

Amendment of s. 6—Factors to be considered by Court

16. Section 6 of the principal Act is amended by inserting after paragraph (c) of subsection (1) the following paragraphs:

- (ca) any relevant family contact order of which the Court has been informed; and
- (cb) how the domestic violence restraining order would be likely to affect contact (in accordance with a relevant family contact order or otherwise) between—
 - (i) the person for whose benefit, or against whom, the order is sought; and
 - (ii) any child of, or in the care of, either of those persons;.

Amendment of s. 7—Complaints

17. Section 7 of the principal Act is amended by inserting after its present contents (now to be designated as subsection (1)) the following subsection:

(2) The complainant must inform the Court of any relevant family contact order, or any pending application for a relevant family contact order, of which the complainant is aware (but a domestic violence restraining order is not invalid merely because the complainant fails to so inform the Court).

Amendment of s. 12—Variation or revocation of domestic violence restraining order

18. Section 12 of the principal Act is amended by striking out subsection (3) and substituting the following subsection:

(3) The Court must, before varying or revoking a domestic violence restraining order—

- (a) allow all parties a reasonable opportunity to be heard on the matter; and
- (b) have regard to the same factors that the Court is required to have regard to in considering whether or not to make a domestic violence restraining order and in considering the terms of a domestic violence restraining order (see section 6).

**PART 8
AMENDMENT OF ENFORCEMENT OF JUDGEMENTS ACT 1991**

Amendment of s. 5—Order for payment of instalments, etc.

19. Section 5 of the principal Act is amended by striking out from subsection (8) "instalments" and substituting "all arrears of instalments".

**PART 9
AMENDMENT OF ENVIRONMENT, RESOURCES AND DEVELOPMENT COURT
ACT 1993**

Insertion of s. 38A

20. The following section is inserted in the principal Act after section 38:

Costs where contempt proved

38A. Where a person is found guilty of contempt arising from non-compliance with an order, direction, summons or other process of the Court, the Court may make such orders as to costs as it thinks fit.

**PART 10
AMENDMENT OF JURIES ACT 1927**

Amendment of s. 8—Jury districts

21. Section 8 of the principal Act is amended by striking out subsection (3).

**PART 11
AMENDMENT OF LAW OF PROPERTY ACT 1936**

Substitution of s. 41A

22. Section 41A of the principal Act is repealed and the following section is substituted:

Easements without dominant land to be validly created

41A. (1) It is lawful and it is to be taken to have been always lawful for—

- (a) an easement to be created or operate in favour of—
 - (i) the Crown; or
 - (ii) a public or local authority; or
 - (iii) a body declared under this section,despite the fact that the easement is not appurtenant to any other land;
- (b) an easement to be made appurtenant or annexed to another easement.

- (2) The Governor may, by proclamation—
- (a) declare a body for the purposes of subsection (1)(a)(iii);
 - (b) vary or revoke a proclamation under this subsection.

PART 12
AMENDMENT OF OATHS ACT 1936

Amendment of s. 7—Oaths to be taken by judicial officers

23. Section 7 of the principal Act is amended—

- (a) by striking out from subsection (1) "as soon as practicable after his acceptance of office" and substituting "before proceeding to discharge any official duties";
- (b) by striking out subsections (2) and (3) and substituting the following subsections:

(2) The oaths to be taken under this section by the Chief Justice must be taken before the Governor or the most senior puisne judge of the Supreme Court that is available at the time that the oath is to be taken, as the Governor may determine (however, in the absence of a determination by the Governor, the oaths must be taken before the most senior puisne judge of the Supreme Court that is available).

(3) Subject to subsection (3a)—

- (a) the oaths to be taken under this section by the puisne judges of the Supreme Court must be taken before the Governor or the Chief Justice, as the Governor may determine (however, in the absence of a determination by the Governor, the oaths must be taken before the Chief Justice);
- (b) the oaths to be taken under this section by any other judicial officer to whom this section applies (other than a justice of the peace) must be taken before the Chief Justice.

(3a) If, in accordance with this section, an oath is to be taken before the Chief Justice, that oath may, if the Chief Justice is not available at the time that the oath is to be taken, be taken before the most senior puisne judge of the Supreme Court that is available at that time.;

(c) by inserting after subsection (4) the following subsection:

(5) This section does not apply to a person appointed to act in a judicial office on an auxiliary basis under the *Judicial Administration (Auxiliary Appointments and Powers) Act 1988* if that person has previously taken the oath of allegiance and the judicial oath in accordance with this Act.

Amendment of s. 28—Commissioners for taking affidavits

24. Section 28 of the principal Act is amended by inserting after paragraph (c) of subsection (1) the following paragraph:

- (ca) all Registrars and Deputy Registrars of the Supreme Court, the District Court, the Environment, Resources and Development Court, the Industrial Relations Court, the Youth Court and the Magistrates Court; and.

PART 13
AMENDMENT OF PRISONERS (INTERSTATE TRANSFER) ACT 1982

Amendment of s. 5—Interpretation

25. Section 5 of the principal Act is amended—

- (a) by striking out from subsection (1) the definition of "Australian Capital Territory";
- (b) by striking out from subsection (1) the definition of "corresponding Minister" and substituting the following definition:

"corresponding Minister", in relation to a participating State, means the Minister of that State who is responsible for the administration of the interstate law of that State;;

- (c) by striking out from subsection (1) the definition of "joint prisoner" and substituting the following definition:

"joint prisoner" means a person on whom both—

- (a) any of the following—
- (i) a State sentence of imprisonment; or
 - (ii) a State sentence of imprisonment as defined by an interstate law; or
 - (iii) an ACT sentence of imprisonment as defined by the *Prisoners (Interstate Transfer) Act 1993* of the Australian Capital Territory; or
 - (iv) a Territory sentence of imprisonment as defined by the *Prisoners (Interstate Transfer) Act 1983* of the Northern Territory;

and

- (b) a Commonwealth sentence of imprisonment,

have been imposed;;

- (d) by inserting in the definition of "order of transfer" in subsection (1) "section" after "issued under";
- (e) by striking out from subsection (1) the definition of "participating State" and substituting the following definition:

"participating State" means a State in which an interstate law is in force;;

- (f) by striking out from subsection (1) the definition of "sentence of imprisonment" and substituting the following definition:

"sentence of imprisonment" means—

- (a) a State sentence of imprisonment; or
 - (b) a State sentence of imprisonment as defined by an interstate law; or
 - (c) an ACT sentence of imprisonment as defined by the *Prisoners (Interstate Transfer) Act 1993* of the Australian Capital Territory; or
 - (d) a Territory sentence of imprisonment as defined by the *Prisoners (Interstate Transfer) Act 1983* of the Northern Territory; or
 - (e) where relevant, a Commonwealth sentence of imprisonment;
- (g) by inserting in the definition of "State" in subsection (1) "the Australian Capital Territory and" after "includes";
- (h) by striking out from subsection (1) the definition of "Territory" and substituting the following definition:

"Territory" means the Territory of Norfolk Island, the Territory of Christmas Island, the Territory of the Cocos (Keeling) Islands or the Jervis Bay Territory;

- (i) by striking out subsection (5) and substituting the following subsections:

(5) In the case of a State other than the Australian Capital Territory or the Northern Territory, a reference in this Act to the Governor of a participating State includes a reference to any person exercising and performing all the powers and functions of the Governor of that State.

(5A) In the case of the Australian Capital Territory—

- (a) the reference in section 28(4) to the Governor of a participating State is a reference to the Governor-General; and
- (b) the references in section 28(5)(b) to the Governor of a participating State are references to the Governor-General or to the Executive within the meaning of the *Australian Capital Territory (Self-Government) Act 1988* of the Commonwealth.

(5B) In the case of the Northern Territory, a reference in this Act to the Governor of a participating State is a reference to the Administrator of the Northern Territory and includes a reference to any person exercising and performing all the powers and functions of the Administrator.

(5C) A reference in this Act to the Governor-General includes a reference to any person exercising and performing all the powers and functions of the Governor-General.

PART 14
AMENDMENT OF SECOND HAND VEHICLE DEALERS ACT 1995

Amendment of schedule 4

26. Schedule 4 of the principal Act is amended by inserting after clause 5 the following clause:

Effect of disqualification

5A.(1) If a person—

(a) who was disqualified from holding a licence as a dealer under the repealed Act immediately before the commencement of this Act; and

(b) who remains disqualified at the commencement of this clause,

is employed or otherwise engaged in the business of a dealer during the period of that disqualification, both that person and the dealer are guilty of an offence.

Penalty: Division 6 fine.

(2) Subclause (1) applies after the commencement of this clause, whether the contract of employment or other engagement was entered into before or after the commencement of this clause.

PART 15
AMENDMENT OF SHERIFF'S ACT 1978

Amendment of s. 4—Interpretation

27. Section 4 of the principal Act is amended by inserting after paragraph (b) of the definition of "court" the following paragraph:

(ba) the Environment, Resources and Development Court; or.

Amendment of s. 11—Offences

28. Section 11 of the principal Act is amended—

(a) by striking out from subsection (1) "and liable to a penalty not exceeding one thousand dollars or imprisonment for three months";

(b) by inserting at the foot of subsection (1) the following:

Maximum penalty: \$2 500 or 6 months imprisonment.;

(c) by inserting after subsection (4) the following subsection:

(5) A person who falsely represents himself or herself by word or conduct to be the sheriff, a deputy sheriff or a sheriff's officer is guilty of an offence.

Maximum penalty: \$2 500 or 6 months imprisonment.

Amendment of s. 16—Regulations

29. Section 16 of the principal Act is amended by striking out paragraph (b) and substituting the following paragraph:

- (b) prescribe, and provide for the recovery of, fees and expenses payable to the sheriff in relation to the execution of process, the service of documents and any other duty of the sheriff under this Act or any other Act; and.

PART 16
AMENDMENT OF SUMMARY PROCEDURE ACT 1921

Amendment of s. 4—Interpretation

30. Section 4 of the principal Act is amended by inserting after the definition of "Registrar" in subsection (1) the following definition:

"relevant family contact order", in relation to a restraining order, means a Division 11 contact order within the meaning of Part 7 of the *Family Law Act 1975* of the Commonwealth, as amended from time to time, that relates to contact between—

- (a) the person for whose benefit, or against whom, the restraining order is made or sought; and
- (b) a child of, or in the care of, either of those persons;

Repeal of s. 53

31. Section 53 of the principal Act is repealed.

Amendment of s. 99—Restraining orders

32. Section 99 of the principal Act is amended by striking out subsection (4) and substituting the following subsections:

(4) The Court may make a restraining order restraining the defendant from entering premises, or limiting the defendant's access to premises, whether or not the defendant has a legal or equitable interest in the premises.

(5) In considering whether or not to make a restraining order and in considering the terms of the order, the Court must have regard to—

- (a) the welfare of any children who may be affected by the order; and
- (b) the accommodation needs of any person who may be affected by the order; and
- (c) any relevant family contact order of which the Court has been informed; and
- (d) how the restraining order would be likely to affect contact (in accordance with a relevant family contact order or otherwise) between—
 - (i) the person for whose benefit, or against whom, the order is sought; and
 - (ii) any child of, or in the care of, either of those persons.

(6) The complainant must inform the Court of any relevant family contact order, or any pending application for a relevant family contact order, of which the complainant is aware (but a restraining order is not invalid merely because the complainant fails to so inform the Court).

Amendment of s. 99F—Variation or revocation of restraining order

33. Section 99F of the principal Act is amended by striking out subsection (3) and substituting the following subsection:

- (3) The Court must, before varying or revoking a restraining order—
- (a) allow all parties a reasonable opportunity to be heard on the matter; and
 - (b) have regard to the same factors that the Court is required to have regard to in considering whether or not to make a restraining order and in considering the terms of a restraining order.

**PART 17
AMENDMENT OF SUPREME COURT ACT 1935**

Insertion of s. 9A

34. The following section is inserted in the principal Act after section 9:

The Chief Justice

- 9A. (1) The Chief Justice is the principal judicial officer of the court.
- (2) The Chief Justice is responsible for the administration of the court.

Substitution of ss. 45 and 46

35. Sections 45 and 46 of the principal Act are repealed and the following sections are substituted:

Time and place of sittings

45. (1) The court may sit at any time (including a Sunday).
- (2) The court may sit at any place (either within or outside the State).
- (3) The court will sit at such times and places as the Chief Justice may direct.
- (4) Registries of the court will be maintained at such places as the Governor may determine.

Adjournment from time to time and place to place

46. The court may—
- (a) adjourn proceedings from time to time and from place to place; or
 - (b) adjourn proceedings to a time, or a time and place, to be fixed; or
 - (c) order the transfer of proceedings from place to place.

**Statutes Amendment (Attorney-General's Portfolio)
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Sittings in open court or in chambers

46A. Subject to any provision of an Act or any rule to the contrary, the court's proceedings must be open to the public.

Sittings required by proclamation

46B. The Governor may, by proclamation, require that sittings of the court (other than civil sittings) be held with a specified frequency in specified parts of the State.

Repeal of ss. 52 to 62

36. Sections 52, 53, 53A, 54, 55, 56, 57, 59, 60 and 62 of the principal Act and the heading to those sections are repealed.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

E. J. NEAL Governor