

Researching South Australian Legislation

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The following article is a practical guide to researching South Australian legislation, with an emphasis on traps for the unwary and some major reasons why not to depend on the Internet for all of your South Australian legislative needs. The article has borrowed heavily from the *Practical Legal Training Handbook* produced by the South Australian Division of the Australian Law Librarians' Group

For those of you interested in the legality of Parliamentary process and the intricacies of legislative power rather than the nuts and bolts of finding and updating legislation, we can recommend that you refer to the following invaluable book:

- Selway, Bradley, *The Constitution of South Australia*, Sydney, Federation Press, 1997

The other major texts we refer to are probably the same for all states and the Commonwealth, namely:

- Pearce, DC & Geddes, RS. *Statutory Interpretation in Australia*, 4th ed., Sydney, Butterworths, 1996, and;
- Pearce, DC. *Delegated Legislation in Australia*, 2nd ed. Sydney, Butterworths, 1999.

BILLS AND EXPLANATORY NOTES

Where to obtain bills

- A bill in draft form may be made available by the government department responsible for its administration. This can only be ascertained by contacting either an Information Officer or Legal Officer within the relevant department. There is no obligation to release the bill until after it has been introduced in Parliament.
- After the second reading, a bill may be obtained from the government bookshop, Information SA.¹ Copies of the bills are also available for a short time from the South Australian Parliamentary Bills and Papers Office²
- Bills may be obtained by subscription through Information SA
- South Australian bills are not currently available in electronic form on the Internet or on CD-ROM.
- Copies of old bills may be difficult to obtain as publishers are directed to destroy them once they become acts. The Supreme Court and university libraries maintain collections of old bills.

¹ Ph: (08) 8204 1900

² Ph: (08) 8237 9100

Hansard (Parliamentary Debates)

When researching South Australian legislation, Hansard is particularly useful for interpreting the original intention of the legislation. There are no explanatory memoranda for South Australian legislation, so Hansard is the main interpretative aid.

Second reading and committee debates can be found in Hansard. Second reading speeches apply to sessional legislation. If you are working with consolidated legislation you will need to determine when the relevant section was first introduced into Parliament to locate the second reading speech for the Act that introduced or amended that section. You can locate the necessary information by following the legislative history provided at the back of the reprint.

Hansard is available in two formats: individual issues and bound sessional volumes. Bound volumes include a comprehensive index, individual issues contain an alphabetical index of bills and topics covered in that issue.

Hansard may be obtained by subscription through Information SA. South Australian Hansard from 1993 onwards is accessible on the Internet.³

Use of extrinsic material in court

South Australia is the only jurisdiction that does not allow for the use of extrinsic material in courts. There have been a number of attempts to change this situation but each has been defeated in the South Australian Parliament.⁴ The basic premise is that such legislation “promotes laziness”. It also explains why there are no explanatory memoranda for South Australian legislation and that the only extrinsic material readily available is Hansard.

THE MAJOR TOOLS FOR SOUTH AUSTRALIAN LEGISLATION

When checking details of South Australian legislation the major tools are:

- *Index to South Australian Legislation*. Published annually by the Government Printer.
- *South Australian Legislation Update*. Published fortnightly by the Attorney-General’s Department (South Australia) as an updating service to the main index.
- *South Australian Statutes 1989*. Published by the Government Printer. Although rather dated this volume contains a Table of Public General Acts which includes some rudimentary subject indexing and cross referencing, the Table of Public Acts which are obsolete or superseded or of local or restricted application and the Table of Private Acts. It is important to note that for private acts and acts of restricted application this is the only reference point as they are not reproduced in either the reprint series or in electronic form on the Internet or on CD-ROM. If however they are amended or new they may appear in the current indexes with an * to indicate they are private acts.
- *South Australian Statutes 1837-1975 Index Volume 13*. This volume contains notes on reported cases back to State proclamation. Case references in the current index only start from 1976.

³ www.pics.sa.gov.au/index.htm

⁴ A brief explanation of why the Attorney-General does not support such clause can be found in Hansard for the Legislative Council Tuesday 25 February 1997 p946-947

- *South Australian Government Gazette* Published weekly by the Government Printer.
- *Legislative Council and House of Assembly Notice Papers* Published by the South Australian Parliament and freely available.

HOW IS SOUTH AUSTRALIAN LEGISLATION PUBLISHED?

Acts as passed or sessional acts are published in pamphlet form and then in bound volumes at the end of each year. Acts as passed are not currently available in electronic form.

In South Australia, there is a looseleaf reprint service which covers all principal public acts. Acts are reprinted every time there is an amendment. This service commenced in 1990. Prior to that the last comprehensive reprint of South Australian public Acts in bound form was in 1975.

These reprints are often referred to as consolidations or as the *South Australian Statutes Compendium*. However, there is a technical difference between consolidations and a reprint. A consolidated act is passed by Parliament with the aim of bringing the statute law dealing with a particular subject together in a single piece of legislation. Once it is in operation, the act repeals all previous enactments dealing with the same subject. Reprinted acts, on the other hand are prepared by executive government and do not pass through any parliamentary process.⁵ If there is a discrepancy between the reprinted version and the original legislation with its amendments, then the court will have recourse to the original and its amendments.

Only principal public acts are published in the *South Australian Statutes Compendium*, and available on the Internet and on CD-ROM. For private acts and acts of limited application please refer to the 1989 Statutes Index to determine in which sessional series they were published.

South Australian legislation in electronic form

Both South Australian reprinted acts and reprinted regulations are available in electronic form both on the Internet and on CD-ROM. Currently the major suppliers are:

- AustLII⁶
- SCALEplus⁷
- Parliament of South Australia⁸
- Timebase available on CD-ROM and Internet by subscription.⁹

The quality and the timeliness of each of these products could be the topic of a paper in itself and it currently varies on a week by week basis. At this stage we would suggest that none of the above should be depended on as the sole source for South Australian legislation. However, we would like to recommend SCALEplus for being the most consistently up-to-date source for South Australian legislation and for the maintenance of the superseded reprints.

⁵ Harrington, M. *The Guide to Government Publications in Australia*, Canberra: AGPS, 1990

⁶ www.austlii.edu.au

⁷ scaleplus.law.gov.au

⁸ www.pics.sa.gov.au/acts-list.htm

⁹ www.timebase.com.au

COMMENCEMENT OF SOUTH AUSTRALIAN LEGISLATION – ASSENT AND DATE OF OPERATION

Assent – when a bill becomes an act

After a bill has been read for the third time and approved by both houses of Parliament, it is checked for correctness by the Clerk. It then passes on to the State Governor for royal assent after which the bill is known as an act. Notice is placed in the *South Australian Government Gazette* announcing the name and number of the act and date of assent. The act is sent to the government printer for printing and distribution. In South Australia most Government Gazettes are produced on Thursdays and most assents and proclamations take place on Wednesday morning to coincide with publishing.

Date of operation

Most acts contain a commencement section which states when or how the particular act will commence, or come into operation. The operation of an act may be on a prescribed date as set out in the commencement section of the act; a date to be announced by proclamation; on royal assent; or on a date that depends upon another event, usually the commencement of another act. The commencement section may prescribe that certain sections of the act will commence before other sections. Proclamations are made by the Premier and Cabinet Office and published in the *South Australian Government Gazette*.

If the commencement section prescribes that the act will come into force on proclamation but a proclamation date has not been made before a certain time has elapsed, the act will come into force automatically. For South Australia the period is two years after assent. (*Acts Interpretation Act 1915 (SA) s 7*). This is known as a forced commencement. If an act does not contain a commencement section it comes into operation on the date of assent.

How to find out if and when an act has been proclaimed or when it is likely

When determining if an act has been proclaimed the most accurate source is the *South Australian Legislation Update* and the *South Australian Government Gazette* for the period since the last update. Information on South Australian legislation is also published in *Australian Current Law* and the *Australian Legal Monthly Digest*.

When trying to determine when an act is likely to be proclaimed the simplest thing to do is to contact the Attorney-General's Department or the government department responsible for administering the legislation. You may not get an accurate answer but sometimes it does pay off. Information SA can provide you with the details of the relevant department and will advise over the phone if an act has been proclaimed.

Currency and South Australia legislation – tips for the unwary

Those of us who were in law librarianship before the days of the *South Australian Statutes Compendium* will remember well the horrors of trying to find the law when the task involved finding the original sessional act, or with any luck a reprint, and then applying the amendments to the original act.

Today it is so much easier with the Compendium of constantly updated reprinted consolidations of South Australian legislation. Or perhaps you rely on the electronic media for consolidation. It is not however quite so easy to be certain about what is happening with legislation.

There are traps for the unwary. Firstly, there are often transitional provisions from amending acts which are not incorporated into the body of the reprint. These are listed in full in the appendix of the current reprint and can be very important to the full understanding of the act. They can also be quite extensive – see for example the *Workers Rehabilitation and Compensation Act 1986* (SA).

Secondly, acts are often assented to and not proclaimed, and so are not considered to be law. It is essential to check the currency of the latest reprint through the *South Australian Legislative Update* to ensure you have the latest amendment incorporated. But there are still further traps for the unwary.

Amending acts are not incorporated into the Compendium until they are proclaimed. Whilst this may seem obvious, it can be tricky given section 7(5) of the *Acts Interpretation Act 1915* (SA). As mentioned earlier, this provides that the amending act, if not proclaimed beforehand, will commence on the second anniversary of its assent. For example, the *Goods Securities (Motor Vehicle) Amendment Act 1997* (SA) will commence on the 27th March 1999, under this provision. This amending Act is NOT listed in the *South Australian Legislation Update*, and will not be until it has commenced its second anniversary. Effectively this means that we should be checking the last annual bound index of the *South Australian Statutes Index* to ensure there is no pending amendment Act which could become law “tomorrow”.

Section 7(5) became law on the 16th April 1992. Before this date acts could be assented to and not proclaimed for many years. An example of this type of act is the *Environmental Protection (Sea Dumping) (Coastal Waters and Radioactive Material) Amendment Act 1991* (SA). This act was assented to on the 28th November 1991, and has still not been proclaimed. Once again this amending act is not listed in the *South Australian Legislation Update*, but in the 1998 bound index.

To recap, there are two ways that an act that seems current could suddenly be profoundly changed – by the proclamation of a pre-April 1992 amending act, or by commencement under section 7(5) of the *Acts Interpretation Act 1915* (SA). These amendments and potential commencements need not always be in the *South Australian Legislative Update*.

How would we be able to track these potentialities if we relied solely on the Internet or CD-ROM? It would not be possible without the sessional index, or possibly hounding relevant departments. This is another argument for maintaining hard copy as well as electronic collections.

FINDING AN ACT

South Australian legislation is available in a number of forms:

- South Australian act reprint service which includes principal public acts.
- Annual volumes and current year sessional pamphlet series.
- Looseleaf services covering an area will usually have unofficial reprints of relevant legislation.
- CD-ROMs – TimeBase publish the South Australian legislation and some South Australian legislation can be found on subject specific CD-ROMs, for example a *CCH Workers Compensation Library* – generally these are electronic versions of looseleaf services but there are a number of services being published as CD-ROM only.
- Internet – AustLII and SCALEplus.

With all of these sources remember to check that the legislation has not been further amended since the publication of the version you are using

Finding recent acts

If the act is very recent, it may not be found in any of the sources listed above. It may be obtained from a number of sources:

- Contact Information SA to obtain a copy of the act.
- Contact the relevant South Australian government department to determine its status
- Check the *South Australian Legislation Update* and the *South Australian Government Gazette* for the period since the last update for assent or proclamation information

Finding acts by subject – name of act not known

- There is no true subject index for South Australian legislation. There is some limited cross referencing in the 1989 *South Australian Statutes* volume commencing on page 471.
- Search by subject across South Australian legislation on the Internet or on CD-ROM.
- Looseleaf services covering the area (including CD-ROM versions)
- *Halsbury's Laws of Australia* or *The Laws of Australia* under the relevant subject will reference legislation from all jurisdictions.
- *Words and Phrases Legally Defined* (Butterworths) in both CD-ROM and hardcopy provides a quick method of ascertaining in which Act a particular term is defined.

UPDATING SOUTH AUSTRALIAN ACTS

Identifying recent amendments

- The reprint service published by Information SA is updated within a fortnight of new amendments with the republication of entire acts in amended form or, if the act is a large one, by reprinting the affected parts.
- The South Australian legislation on the Internet claims to be updated within the month as is the case with the TimeBase CD-ROM.
- To ensure that the reprint or Internet version is totally up-to-date check in the fortnightly *Attorney-General's South Australian Legislation Update* and the *South Australian Government Gazette* for any further amendments

- If the *SA Legislation Update* and/or the *South Australian Government Gazette* are unavailable, check *Australian Current Law (ACL)* and the *Australian Legal Monthly Digest (ALMD)*. These contain tables of recent legislation from all jurisdictions indicating the status of that legislation
- If using ACL or ALMD also check with Information SA or the relevant government department for information on the status of any relevant bills or acts not yet in force – these may have been assented to or proclaimed since the updating service was prepared

Retrieving an act in force at a certain date

Entire Act

- A listing of amending acts and their dates of operation can be found:
 - in the latest *South Australian Statutes Index*. For repealed acts check previous editions of the index or the 1989 *South Australian Statutes* volume (the latter requires looking in the Table of Public General Acts for the amendment title, then in the Table of Regulations, Rules, Proclamations, etc to find the operation dates of the acts). Only amendments since 1 January 1976 are listed. For previous amendments consult the 1975 *South Australian Statutes Consolidation*. Update this with the *South Australian Legislation Update*; or
 - at the front of any reprint of the act.
- Once a list of the amendments has been compiled, retrieve the necessary acts from the annual volumes
- If a reprint produced prior to or at the relevant date is available, use this plus the annual volumes for the later amendments if necessary. SCALEplus has a database of historical South Australian acts. This database contains the various reprinted versions of the South Australian acts since 1991. Note that when looking for a particular version of an act that the list is only in rough chronological order – check the entire listing

Certain Sections

- A legislative history, detailing which and how sections have been amended can be found in:
 - the latest *South Australian Statutes Index*. For repealed acts check previous editions of the index or the 1989 *South Australian Statutes* volume (use the Table of Amendments and Cases). Only amendments since 1 January 1976 are listed. For previous amendments consult the 1975 *South Australian Statute Volume*. Act numbers and sections of the amending act will be listed; or
 - in the legislative history section at the back of any reprint of the act. Check the table of amendments at the beginning of the act for operation dates of the amendments. Act numbers and sections of the amending act will be listed.
- Once a list of the amendments has been compiled, retrieve the necessary acts from the annual sessional volumes
- If a reprint produced prior to or at the relevant date is available, use this plus the annual volumes for the later amendments. SCALEplus has a database of historical Acts – reprints at various dates. There is no statement as to when the database commenced

Note that when looking for a particular version of an act that the list is only in rough chronological order – check the entire listing for the desired act.

REGULATIONS OR STATUTORY RULES

Subordinate legislation is legislation which is made by a person or group of persons, to whom Parliament has delegated some legislative power. The Parliament provides such power through acts of Parliament. Those acts which have a section relating to the making of regulations are known as empowering acts. Subordinate legislation often deals with types of legal material that changes frequently. This can include standard forms and fees. There are several types of subordinate legislation or delegated legislation.

How are regulations published?

- Regulations can only be made pursuant to an empowering act.
- Regulations are published in the *South Australian Government Gazette* as well as in pamphlet form in a numerical sequence.
- Guidelines for publishing regulations are set out in the *Subordinate Legislation Act 1978* (SA).
- A growing number of the more commonly used regulations, for example, the *Development Regulations 1993* (SA), are reprinted in pamphlet form when there are significant amendments.
- Consolidated regulations can be accessed on the Internet via AustLII and SCALEplus and on TimeBase's CD-ROM.

How do regulations come into force?

- Regulations are published or notified in the *South Australian Government Gazette* before they are tabled in Parliament.
- When published, the regulations have a commencement section which notes when the regulation comes into force. It is usually the day it was made or notified in the gazette.
- They must be tabled for approval in Parliament within the next parliamentary sitting. They will appear on the Notice Paper of the relevant House.
- If Parliament disallows a regulation, such disallowance must be published in the Gazette. It will also be noted in the indexes.
- In South Australia, regulations only remain in force for ten years (*Subordinate Legislation Act 1978* (SA) s.16). The ten year period can be extended. Expired regulations are not necessarily republished immediately or replaced with another regulation of the same title.

Finding and updating regulations

As regulations are subordinate legislation, it is necessary to determine which act the regulations are subordinate to, in order to find out the details of the regulation. Indexes generally list the regulations and their amendments under the name of the principal empowering act.

- Use the latest *South Australian Statutes Index* and update this with the Attorney-General's *South Australian Legislation Update*.

- *Australian Legal Monthly Digest* and *Australian Current Law Legislation* in hard copy and on CD-ROM detail regulations and their amendments. Unfortunately these indexes do not cumulate so you need to check entries for each year
- Obtain copies of the regulations from the *South Australian Government Gazette* or from Information SA. There may be an official reprinted version available – this can only be obtained from Information SA.
- Most regulations are available in consolidated form on the Internet on the AustLII and SCALEplus sites
- Looseleaf services in the subject area may contain reprinted versions of the regulations associated with the Acts covered by the service.

Bylaws and local laws

- Bylaws and local laws are like statutory rules except that their operation is restricted to a particular area or group.
- Bylaws and local laws generally set down the rules for the use of services and the conduct of staff within an organisation or the laws which apply in a local government area.
- Common examples of groups which use bylaws are local government, ETSA and the SA Milk Board.
- Bylaws and local laws will not usually be included in indexes to legislation. Some may be gazetted as notices under particular sections of legislation, it is therefore important to know what the section of the act is that makes provision for the notice to be made as the indexes do refer to proclamations under particular sections of legislation. In some cases it is easier to contact the governing body such as the particular local council to obtain the gazette date in which the law was published.

Rules of court

Rules of court are also a form of subordinate legislation however in South Australian they are not given sessional numbers like the regulations.

- In South Australia, rules of court are issued by the judges of the court and are published in the *South Australian Government Gazette*.
- Details of amendments to rules of court will be listed in the indexes under the principal act e.g. *Supreme Court Act 1935* (SA).
- The best source for rules of court are the looseleaf services such as Lunn, *J Civil Procedure South Australia* (Butterworths) for Supreme and District Court rules, Cannon, AJ and Kleinig *Magistrates Court South Australia* (LBC) for Magistrates Court rules
- Internet sources such as AustLII and SCALEplus do not include court rules for South Australia, nor does the TimeBase CD-ROM

STATUTES JUDICIALLY CONSIDERED

When looking for cases where a particular section of legislation has been judicially considered, the following can be used:

- *South Australian Statutes Index* (latest annual volume) updated with the fortnightly Attorney-General's *South Australian Legislation Update* for cases after 1976. Case summaries of reported cases will be provided under each section of the act

or regulation. For acts that have been repealed use older versions of the index and the 1976 index for older citations. These case notes are not comprehensive and cite SASR and SAIR reports only

- *CaseBase* has a statutes search field.
- *Australian Legal Monthly Digest* on CD-ROM and hardcopy includes indices sorted by jurisdiction, act title and section. More recent case summaries in the *Australian Digest* include legislative provisions but older cases are not noted by statute.
- *Australian Current Law Reporter* includes a cumulative table of statutes considered for the year. These are arranged under jurisdiction and by sections of the acts. When searching electronically it is possible to search by legislative section.
- Law report indexes include indexes of legislation judicially considered. Please note that the *South Australian State Reports* cumulative index has only included a legislation index since 1988. *The Law Society Judgment Scheme* does not include such an index.
- Looseleaf services on particular subjects such as torts and workers compensation provide case summaries and references under each section of the relevant act or statutory rule.
- AustLII, SCALEplus allow you to search across case law databases for legislative section references, however they will not distinguish when a section has been considered as opposed to when it has simply been noted. In SCALEplus the search can be limited to the catchwords section to overcome this.

CONCLUSION

We hope that we have outlined some of the major intricacies that make researching South Australian legislation unique. Some of the major points to remember are:

- There are no explanatory memoranda and the use of extrinsic material is not sanctioned
- Hard copy indexes are essential in research
- Private acts and acts of restricted application are not available in electronic form.
- Commencement and operation of legislation can be tricky.
- There is no subject index for South Australian legislation
- Court rules are not available in electronic form.

If in doubt, please feel free to ring or email a South Australian colleague. We are happy to assist!