



ANNO TRICESIMO QUINTO

ELIZABETHAE II REGINAE

A.D. 1986

No. 90 of 1986

An Act to amend the Criminal Law Consolidation Act, 1935; and to make related amendments to the Justices Act, 1921, and the Summary Offences Act, 1953.

[Assented to 4 December 1986]

The Parliament of South Australia enacts as follows:

Short title.

1. (1) This Act may be cited as the "Criminal Law Consolidation Act Amendment Act, 1986".

(2) The Criminal Law Consolidation Act, 1935, is in this Act referred to as "the principal Act".

Commencement.

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

Amendment of
s. 5—
Interpretation.

3. Section 5 of the principal Act is amended—

(a) by striking out the definition of "property" and substituting the following definition:

"property" means real or personal property whether tangible or intangible and includes a wild animal that is in captivity or ordinarily kept in captivity;

and

(b) by inserting after its present contents as amended by this section (now to be designated as subsection (1)) the following subsection:

(2) A reference in this Act to a felony extends to an indictable offence (not being an offence described in this Act as a misdemeanour) for which a maximum penalty of imprisonment for 3 years or more is prescribed by this Act.

Repeal of s. 19
and heading and
substitution of
new section and
heading.

4. Section 19 of the principal Act and the heading immediately preceding that section are repealed and the following section and heading are enacted:

Unlawful Threats

19. (1) Where—

Unlawful threats.

(a) a person, without lawful excuse, threatens to kill or endanger the life of another;

and

(b) the person making the threat intends to arouse a fear that the threat will be, or is likely to be, carried out, or is recklessly indifferent as to whether such a fear is aroused,

that person shall be guilty of an indictable offence and liable to be imprisoned for a term not exceeding 10 years or, where the person whose life was threatened was at the time of the commission of the offence under the age of 12 years, for a term not exceeding 12 years.

(2) Where—

(a) a person, without lawful excuse, threatens to cause harm to the person or property of another;

and

(b) the person making the threat intends to arouse a fear that the threat will be, or is likely to be, carried out, or is recklessly indifferent as to whether such a fear is aroused,

that person shall be guilty of an indictable offence and liable to be imprisoned for a term not exceeding 5 years.

(3) This section applies to a threat directly or indirectly communicated by words (written or spoken) or by conduct, or partially by words and partially by conduct.

5. Sections 29 to 37 (inclusive) of the principal Act are repealed and the following sections are substituted:

Repeal of ss. 29 to 37 (inclusive) and substitution of new sections.

29. (1) Where a person, without lawful excuse, does an act or makes an omission—

Acts endangering life or creating risk of grievous bodily harm.

(a) knowing that the act or omission is likely to endanger the life of another;

and

(b) intending to endanger the life of another or being recklessly indifferent as to whether the life of another is endangered,

that person shall be guilty of an indictable offence and liable to be imprisoned for a term not exceeding 15 years.

(2) Where a person, without lawful excuse, does an act or makes an omission—

(a) knowing that the act or omission is likely to cause grievous bodily harm to another;

and

(b) intending to cause such harm or being recklessly indifferent as to whether such harm is caused,

that person shall be guilty of an indictable offence and liable to be imprisoned for a term not exceeding 10 years.

(3) Where a person, without lawful excuse, does an act or makes an omission—

(a) knowing that the act or omission is likely to cause harm to the person of another,

and

(b) intending to cause such harm or being recklessly indifferent as to whether such harm is caused,

the person shall be guilty of an indictable offence and liable to be imprisoned for a term not exceeding 5 years.

Failing to provide food etc. in certain circumstances.

30. Where—

(a) a person is liable to provide necessary food, clothing or accommodation to another person who is—

(i) a minor;

(ii) suffering from an illness;

or

(iii) disabled;

and

(b) the person, without lawful excuse, fails to provide that food, clothing or accommodation,

that person shall be guilty of an indictable offence and liable to be imprisoned for a term not exceeding 3 years.

Possession of object with intent to kill or cause grievous bodily injury.

31. (1) A person who, without lawful excuse, has the custody or control of an object that the person intends to use, or to cause or permit another to use—

(a) to kill, or to endanger the life of, another;

or

(b) to cause grievous bodily harm to another,

shall be guilty of an indictable offence and liable to be imprisoned for a term not exceeding 10 years.

(2) A person who, without lawful excuse, has the custody or control of an object that the person intends to use, or to cause or permit another to use, to cause harm to the person of another, shall be guilty of an indictable offence and liable to be imprisoned for a term not exceeding 5 years.

Amendment of s. 47—
Power to commit for trial.

6. Section 47 of the principal Act is amended by striking out subsection (3).

Repeal of Part IV and substitution of new Part.

7. Part IV of the principal Act is repealed and the following Part is substituted:

PART IV

OFFENCES WITH RESPECT TO PROPERTY

Preliminary.

84. (1) In this Part—

“to damage” in relation to property includes—

(a) to destroy the property;

(b) to make an alteration to the property that depreciates its value;

(c) to render the property useless or inoperative;

(d) in relation to an animal—to injure, wound or kill the animal,

and “damage” has a corresponding meaning:

“owner” of property means a person wholly entitled to the property both at law and in equity.

(2) Where a person damages, or attempts to damage, property of which the person is not the owner, that property shall (whether or not that person has some legal or equitable interest in it) be regarded as property of another for the purposes of this Part.

(3) In proceedings for an offence against this Part in which it is necessary to quantify damage or potential damage in terms of a monetary amount—

(a) no regard shall be had to any reduction or possible reduction of the damage through the intervention of some person other than the accused;

and

(b) where actual damage occurred and was in fact reduced by such intervention, the damage shall be deemed to include the potential damage that was prevented by that intervention.

85. (1) Where a person—

(a) intending to damage property of another, or being recklessly indifferent as to whether property of another is damaged;

and

(b) without lawful authority to do so, and knowing that no such lawful authority exists,

damages, or attempts to damage, property of another by fire or explosives, the person shall be guilty of an offence.

Penalty—

(a) for a completed offence—

(i) where the damage exceeds \$2 000—imprisonment for life;

(ii) where the damage does not exceed \$2 000—imprisonment for 5 years;

(b) for an attempt—

(i) where the damage would, if the offence had been completed, have exceeded \$2 000—imprisonment for 12 years;

(ii) where the damage would not, if the offence had been completed, have exceeded \$2 000—imprisonment for 3 years.

(2) The offence of damaging property by fire in contravention of subsection (1) is arson.

Damaging
property.

(3) Where a person—

(a) intending to damage property of another, or being recklessly indifferent as to whether property of another is damaged;

and

(b) without lawful authority to do so, and knowing that no such lawful authority exists,

damages, or attempts to damage, property of another, the person shall be guilty of an offence.

Penalty—

(a) for a completed offence—

(i) where the damage exceeds \$2 000—imprisonment for 10 years;

(ii) where the damage does not exceed \$2 000—imprisonment for 3 years;

(b) for an attempt—

(i) where the damage would, if the offence had been completed, have exceeded \$2 000—imprisonment for 6 years;

(ii) where the damage would not, if the offence had been completed, have exceeded \$2 000—imprisonment for 2 years.

(4) It is a defence to a charge of an offence against this section for the accused to prove an honest belief that the act constituting the charge was reasonable and necessary for the protection of life or property.

Possession of
object with intent
to damage
property.

86. (1) A person who has the custody or control of an object that the person intends to use, or to cause or permit another person to use, to damage property of another without lawful authority to do so, shall be guilty of an offence.

Penalty: Imprisonment for 3 years.

(2) It is a defence to a charge of an offence against this section for the accused to prove an honest belief that the intended damage to property was reasonable and necessary for the protection of life or property.

Offences against
this Part.

87. (1) Subject to subsection (2), offences against this Part are indictable offences.

(2) Proceedings for an offence against this Part, that does not involve damage to property exceeding \$800, may be disposed of summarily.

(3) Where proceedings for an offence against this Part are commenced on complaint, it shall be conclusively presumed that the offence is one that may be dealt with summarily under subsection (2).

Amendment of
s. 285c—
Notice of certain
evidence to be
given.

8. Section 285c of the principal Act is amended by striking out from subsection (8) the definition of "evidence".

9. Section 319 of the principal Act is amended by striking out from subsection (3) the item—

Class VI—Sections 84 to 86 inclusive—Arson

and substituting the item—

Class VI—Section 85 (1)—Arson.

Amendment of
s. 319—
Judge may
declare convicted
person an
habitual criminal.

10. (1) The Justices Act, 1921, is amended as indicated in the first part of the schedule to this Act.

Amendment of
certain Acts.

(2) The Summary Offences Act, 1953, is amended as indicated in the second part of the schedule to this Act.

Section 9.

SCHEDULE

PART I

The Justices Act, 1921, is amended as follows:

New section—

The following section is inserted after section 7:

7a. The rule of law preventing a court of summary jurisdiction from trying an offence where a dispute of title to property exists is abolished.

Abolition of rule relating to dispute of title to property.

PART II

The Summary Offences Act, 1953, is amended as follows:

Section 43—

This section is repealed and the following section is substituted:

43. (1) A person shall not, without lawful authority to do so, and knowing that no such lawful authority exists—

Interference with railways and similar tracks.

(a) interfere with any part of a railway, tramway or track designed for the passage of a vehicle;

(b) interfere with any signal or machinery used in connection with any such railway, tramway or track;

(c) place any obstruction on any such railway, tramway or track or in any other manner obstruct or cause the obstruction of a vehicle using any such railway, tramway or track;

or

(d) do anything else that is likely to result in damage to a vehicle using any such railway, tramway or track.

Penalty: \$8 000 or imprisonment for 2 years.

(2) For the purposes of subsection (1), a reference to a railway, tramway or track includes a rail, sleeper, support or other related structure.

Section 46 (1)—

This subsection is struck out and the following subsection is substituted:

(1) A person who, without lawful authority to do so, and knowing that no such lawful authority exists, casts away or uses any boat or uses any equipment or article in, upon, or forming part of a boat shall be guilty of an offence.

Penalty: \$4 000 or imprisonment for 1 year.

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

D. B. DUNSTAN, Governor