



ANNO DUODECIMO

ELIZABETHAE II REGINAE

A.D. 1963

No. 19 of 1963

An Act to amend the Offenders Probation Act, 1913-1953.

[Assented to 7th November, 1963.]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. This Act may be cited as the "Offenders Probation Act Amendment Act, 1963". Short titles.

(2) The Offenders Probation Act, 1913-1953, as amended by this Act, may be cited as the "Offenders Probation Act, 1913-1963".

(3) The Offenders Probation Act, 1913-1953, is hereinafter referred to as "the principal Act".

2. This Act is incorporated with the principal Act and that Act and this Act shall be read as one Act. Incorporation.

3. Section 2 of the principal Act is amended—

(a) by striking out paragraph (b) in the definition of "court" and substituting in lieu thereof the following paragraph—

(b) a court of summary jurisdiction,

and

(b) by striking out the word "the" in the first line of the definition of "probative court" and substituting in lieu thereof the word "any".

Amendment of
principal Act,
s. 2.

Amendment of
principal Act,
s. 4.

4. Section 4 of the principal Act is amended—

(a) by inserting after subsection (1) of that section the following subsection :—

(1a) Where, in relation to an offence with which he was charged, a probationer is bound by his recognizance under this Act to appear before a court of summary jurisdiction for conviction and sentence, or for sentence, as the case may be, when called upon, he shall, for the purposes of this Act, be deemed to be bound thereby, when called upon, to appear before any court of summary jurisdiction so constituted that such court as so constituted would have had jurisdiction to hear and determine in a summary way the charge in respect of that offence.

(b) by striking out the passage “, otherwise than by” in the first and second lines of subsection (2) of that section and substituting in lieu thereof the passage “by a court, other than”; and

(c) by striking out the words “twenty-five pounds” in subparagraph 1 of paragraph (a) of subsection (3) of that section and substituting in lieu thereof the words “two hundred pounds”.

Amendment of
principal Act,
s. 5.

5. Section 5 of the principal Act is amended—

(a) by inserting after the word “made” in subsection (2) of that section the words “or by which the conditions of a probationer’s recognizance are varied”; and

(b) by inserting after the word “order” in subsection (3) of that section the words “or an order varying the conditions of a probationer’s recognizance”.

Repeal and re-
enactment of
s. 8 of principal
Act—

Power to vary
conditions of,
and to
discharge,
recognizance.

6. Section 8 of the principal Act is repealed and the following section is enacted and substituted in lieu thereof :—

8. (1) A probative court may—

(a) on application by the Minister or any person authorized by him in that behalf, or, on the application of the probationer concerned, by order, vary the conditions of a probationer’s recognizance; or

(b) on application by a probationer and on being satisfied that the probationer’s conduct has been such as to make it unnecessary that he should remain longer under supervision, by order, discharge the recognizance.

(2) No order shall be made under subsection (1) of this section unless—

- (a) in the case of an application by the Minister or a person authorized by him in that behalf, the probationer has received reasonable notice of the application and has been given a reasonable opportunity, in person or by counsel or solicitor, of calling such evidence and making such representations to the court as the court considers relevant to the application ; or
- (b) in the case of an application by the probationer, the Minister has received reasonable notice of the application and the Minister or a person authorized by him in that behalf has been given a reasonable opportunity of calling such evidence and making such representations to the court as the court considers relevant to the application.

7. Section 9 of the principal Act is repealed and the following section is enacted and substituted in lieu thereof :—

Repeal and re-enactment of s. 9 of principal Act—

9. (1) If a court is satisfied by complaint or information on oath that a probationer has failed to observe any of the conditions of his recognizance, the court may—

Provision in case of probationer failing to observe conditions of recognizance.

- (a) issue a warrant for the probationer's apprehension ;
or
- (b) if it thinks fit, issue a summons or summonses to the probationer or to the probationer and his sureties, if any, as the case may be, requiring him or requiring him and them, as the case requires, to attend at such place and at such time as is specified in the summons or summonses.

(2) The probationer, when apprehended, shall, if not brought forthwith before a probative court, be brought forthwith before a court of summary jurisdiction.

(3) The court before which a probationer is brought on apprehension, or before which a probationer appears in answer to the summons may, if it is not a probative court, remand him in custody or on bail until he can be brought before a probative court.

(4) A probative court, on being satisfied that the probationer has failed to observe any condition of his recognizance, may forthwith, without further proof of his guilt,

sentence him for the original offence, or, if he has not already been convicted thereof, convict and sentence him for the original offence.

(5) Where a probationer who was under the age of eighteen years at the time when he entered into a recognizance under this Act is of or over that age at the time when he is brought before a probative court under this section, the following provisions shall apply and have effect :—

(a) If the probative court is a court of summary jurisdiction, the court shall, subject to the provisions of section 129 of the Justices Act, 1921-1960, proceed to exercise its powers under subsection (4) of this section as if—

(i) the probationer had been over the age of eighteen years at the time when he was found guilty of the original offence ; and

(ii) he had been lawfully found guilty or convicted of that offence, as the case may be, by a court of competent jurisdiction.

(b) If the probative court is the Supreme Court or a Judge thereof, the court shall proceed to exercise its powers under subsection (4) of this section as if the probationer had been over the age of eighteen years at the time when he was convicted of the original offence.

**Amendment of
principal Act,
s. 11.**

8. Section 11 of the principal Act is amended by adding at the end thereof the following new subsection (the preceding part of the section being re-designated as subsection (1) thereof) :—

(2) Subsection (1) of this section does not apply to subsection (5) of section 9 of this Act.

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

J. M. NAPIER, Governor's Deputy.