



STATUTES AMENDMENT (COURTS) ACT 1993

No. 62 of 1993

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ELIZABETHAE II REGINAE

A.D. 1993

No. 62 of 1993

An Act to amend the Supreme Court Act 1935, the District Court Act 1991, the Magistrates Court Act 1991, the Bail Act 1985, the Criminal Law Consolidation Act 1935, the Enforcement of Judgments Act 1991, the Oaths Act 1936, the Summary Procedure Act 1921, the Unclaimed Goods Act 1987 and the Wrongs Act 1936.

[Assented to 27 May 1993]

The Parliament of South Australia enacts as follows:

PART 1 PRELIMINARY

Short title

1. This Act may be cited as the *Statutes Amendment (Courts) Act 1993*.

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 SUPREME COURT ACT 1935

Amendment of s. 30c—Power to award interest

4. Section 30c of the principal Act is amended by striking out subsection (2) and substituting the following subsection:

(2) The interest—

(a) will be calculated at a rate fixed by the court; and

- (b) will be calculated in respect of a period fixed by the court (which must, however, in the case of a judgment given on a liquidated claim, be the period running from when the liability to pay the amount of the claim fell due to the date of judgment unless the court otherwise determines); and
- (c) is payable, in accordance with the court's determination, in respect of the whole or part of the amount for which judgment is given.

Amendment of s. 131—Accessibility of evidence, etc.

5. Section 131 of the principal Act is amended by striking out paragraph (c) of subsection (1) and substituting the following paragraphs:

- (c) a transcript of submissions by counsel;
- (d) a transcript of the judge's summing up or directions to the jury, in a trial by jury;
- (e) a transcript of reasons for judgment (including remarks made by the court on passing sentence);
- (f) a judgment or order given or made by the court.

**PART 3
AMENDMENT OF DISTRICT COURT ACT 1991**

Amendment of s. 39—Pre-judgment interest

6. Section 39 of the principal Act is amended by striking out subsection (2) and substituting the following subsection:

- (2) The interest—
 - (a) will be calculated at a rate fixed by the Court; and
 - (b) will be calculated in respect of a period fixed by the Court (which must, however, in the case of a judgment given on a liquidated claim, be the period running from when the liability to pay the amount of the claim fell due to the date of judgment unless the Court otherwise determines); and
 - (c) is, in accordance with the Court's determination, payable in respect of the whole or part of the amount for which judgment is given.

Insertion of s. 50A

7. The following section is inserted after section 50 of the principal Act:

Service

50A. (1) If it is not practicable to serve any process, notice or other document in the manner otherwise prescribed or contemplated by law, the Court may, by order—

- (a) provide for service by post; or

(b) make any other provision that may be necessary or desirable for service.

(2) Any process, notice or other document served in accordance with an order under subsection (1) will, despite any other law, be taken to have been duly served.

Amendment of s. 51—Rules of Court

8. Section 51 of the principal Act is amended by inserting after paragraph (c) of subsection (1) the following paragraph:

(ca) imposing mutual obligations on parties to proceedings in the Court to disclose to each other the contents of expert reports or other material of relevance to the proceedings before the proceedings are brought to trial;

Amendment of s. 54—Accessibility of evidence, etc.

9. Section 54 of the principal Act is amended by striking out paragraph (c) of subsection (1) and substituting the following paragraphs:

(c) a transcript of submissions by counsel;

(d) a transcript of the judge's summing up or directions to the jury, in a trial by jury;

(e) a transcript of reasons for judgment (including remarks made by the Court on passing sentence);

(f) a judgment or order given or made by the Court.

PART 4

AMENDMENT OF MAGISTRATES COURT ACT 1991

Amendment of s. 3—Interpretation

10. Section 3 of the principal Act is amended by striking out from subsection (1) the definition of "Registrar" and substituting the following definition:

"Registrar" means the Principal Registrar, or any Registrar or Deputy Registrar of the Court;.

Amendment of s. 14—Responsibilities of non-judicial staff

11. Section 14 of the principal Act is amended by striking out subsection (2).

Amendment of s. 15—The Court, how constituted

12. Section 15 of the principal Act is amended by striking out subsection (2) and substituting the following subsection:

(2) If there is no Magistrate available to constitute the Court, the Court may be constituted of two Justices or a Special Justice.

Amendment of s. 19—Transfer of proceedings between courts

13. Section 19 of the principal Act is amended by inserting after subsection (2) the following subsection:

(2a) If civil or criminal proceedings in the Supreme Court lie within the jurisdiction of the Magistrates Court, and would, in the opinion of the Supreme Court, be more conveniently or appropriately heard and determined by the Magistrates Court, the Supreme Court may order the transfer of the proceedings accordingly.

Amendment of s. 34—Pre-judgment interest

14. Section 34 of the principal Act is amended by striking out subsection (2) and substituting the following subsection:

(2) The interest—

(a) will be calculated at a rate fixed by the Court; and

(b) will be calculated in respect of a period fixed by the Court (which must, however, in the case of a judgment given on a liquidated claim, be the period running from when the liability to pay the amount of the claim fell due to the date of judgment unless the Court otherwise determines); and

(c) is, in accordance with the Court's determination, payable in respect of the whole or part of the amount for which judgment is given.

Amendment of s. 40—Right of appeal

15. Section 40 of the principal Act is amended by inserting after subsection (1) the following subsection:

(1a) An appeal does not, however, lie against an interlocutory judgment given in summary proceedings.

Insertion of s. 48A

16. The following section is inserted after section 48 of the principal Act:

Service

48A. (1) If it is not practicable to serve any process, notice or other document in the manner otherwise prescribed or contemplated by law, the Court may, by order—

(a) provide for service by post; or

(b) make any other provision that may be necessary or desirable for service.

(2) Any process, notice or other document served in accordance with an order under subsection (1) will, despite any other law, be taken to have been duly served.

Amendment of s. 49—Rules of Court

17. Section 49 of the principal Act is amended by inserting after paragraph (c) of subsection (1) the following paragraph:

- (ca) imposing mutual obligations on parties to proceedings in the Court to disclose to each other the contents of expert reports or other material of relevance to the proceedings before the proceedings are brought to trial;

Amendment of s. 51—Accessibility of evidence, etc.

18. Section 51 of the principal Act is amended by striking out paragraph (c) of subsection (1) and substituting the following paragraphs:

- (c) a transcript of submissions by counsel;
- (d) a transcript of the judge's summing up or directions to the jury, in a trial by jury;
- (e) a transcript of reasons for judgment (including remarks made by the Court on passing sentence);
- (f) a judgment or order given or made by the Court.

**PART 5
AMENDMENT OF BAIL ACT 1985**

Amendment of s. 4—Eligibility for bail

19. Section 4 of the principal Act is amended—

- (a) by striking out paragraphs (a) and (ab) of subsection (1) and substituting the following paragraph:

- (a) a person who has been taken into custody—
- (i) on a charge of an offence; or
- (ii) in the case of a child—on suspicion of having committed an offence;;

- (b) inserting after paragraph (d) of subsection (1) the following paragraphs:

- (e) a person who appears before a court in answer to a summons (including a person who so appears as a witness);
- (f) a person who has been arrested on a warrant and is appearing or is to appear before a court as a witness.

Amendment of s. 5—Bail authorities

20. Section 5 of the principal Act is amended by inserting after paragraph (ea) of subsection (1) the following paragraph:

- (eb) where the eligible person is appearing, or is to appear, as a witness before a court—that court;.

Amendment of s. 6—Nature of bail agreement**21. Section 6 of the principal Act is amended—**

- (a) by striking out from subsection (1) “is an agreement under which a person who has been charged with, or convicted of, an offence” and substituting “with a person who has been charged with, or convicted of, an offence is an agreement under which that person”;
- (b) by inserting after subsection (1a) the following subsection:

(1b) A bail agreement with a person who is appearing or is to appear before a court as a witness in proceedings (other than proceedings relating to an offence for which that person has been charged or convicted) is an agreement under which that person makes an undertaking to the court—

- (a) to be present at the proceedings in accordance with the terms of the agreement; and
- (b) to comply with any conditions as to the person’s conduct while on bail stipulated in the agreement; and
- (c) if the agreement so provides—to forfeit to the Crown a sum stipulated in the agreement if the person fails, without proper excuse, to comply with a term or condition of the agreement.

Amendment of s. 10—Discretion exercisable by bail authority**22. Section 10 of the principal Act is amended—**

- (a) by striking out from subsection (1) “(not being a person who has been convicted of the offence in respect of which he or she has been taken into custody)” and substituting “who has been charged with, but not convicted of, an offence in respect of which he or she has been taken into custody”;
- (b) by inserting after subsection (2) the following subsection:

(3) Where the applicant is a person who is appearing or is to appear before a court as a witness in proceedings (other than proceedings relating to an offence for which that person has been charged or convicted), the bail authority should, subject to this Act, release the applicant on bail unless there is a likelihood that the applicant would, if released, abscond.

Amendment of s. 19—Estreatment**23. Section 19 of the principal Act is amended by striking out subsection (3a) and substituting the following subsection:**

(3a) A court or justice that makes an order under this section may allow time for payment of the amount forfeited and, if appropriate, direct that the amount be paid in instalments.

PART 6
AMENDMENT OF CRIMINAL LAW CONSOLIDATION ACT 1935

Repeal of ss. 46 and 47

24. Sections 46 and 47 of the principal Act are repealed.

Repeal of s. 86b

25. Section 86b of the principal Act is repealed.¹

Amendment of s. 278—Joinder of charges

26. Section 278 of the principal Act is amended by striking out from subsection (1) “for more than one felony or for more than one misdemeanour, and charges for both felonies and misdemeanours,” and substituting “for two or more offences (either of the same or different legal categories)”.

PART 7
AMENDMENT OF ENFORCEMENT OF JUDGMENTS ACT 1991

Amendment of s. 3—Interpretation

27. Section 3 of the principal Act is amended by inserting after the definition of “**judgment creditor**” the following definition:

“**judgment debt**” includes the costs of enforcing the judgment under this Act;.

Amendment of s. 7—Sale of property

28. Section 7 of the principal Act is amended by inserting after subsection (3) the following subsection:

(3a) If the warrant authorises the sale of land, the sheriff may eject from the land any person who is not lawfully entitled to be on the land.

PART 8
AMENDMENT OF OATHS ACT 1936

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

29. Section 7 of the principal Act is amended by striking out from subsection (4) “*Justices Act 1921*” and substituting “*Justices of the Peace Act 1991*”.

PART 9
AMENDMENT OF SUMMARY PROCEDURE ACT 1926

Amendment of s. 4—Interpretation

30. Section 4 of the principal Act is amended by striking out from subsection (1) the definition of “**summary protection order**” and substituting the following definition:

¹ Section 86b is a section proposed to be inserted by the *Statutes Amendment (Illegal Use of Motor Vehicles) Act 1992*.

“summary protection order” means an order under section 99 or a composite order consisting of an order under section 99 and an order or orders under section 99a;.

Insertion of s. 8

31. The following section is inserted after section 7 of the principal Act:

Industrial offences

8. A charge of an industrial offence must be set down for hearing by an industrial magistrate.

Amendment of s. 29—Assistance of counsel

32. Section 29 of the principal Act is amended by striking out “is entitled to the assistance of counsel in the presentation of his or her case” and substituting “may be represented by counsel”.

Amendment of s. 49—Complaint

33. Section 49 of the principal Act is amended by striking out “laid” from subsections (1) and (2) and substituting, in each case, “made”.

Amendment of s. 99—Summary protection orders

34. Section 99 of the principal Act is amended—

(a) by striking out from subsection (4) “not later than 7 days after the date of the order”;

(b) by inserting after subsection (4e) the following subsections:

(4f) The date fixed in the first instance for the hearing to which a defendant is summoned under subsection (4) or (4b) must be within 7 days after the date of the order but, if it then appears that the summons has not yet been served, or there is some other adequate reason to defer the date of the hearing, the Court may, without requiring the attendance of any party, adjourn the hearing to a later date.

(4g) Successive adjournments may be granted under subsection (4f) but no such adjournment should be for more than 7 days unless the Court is satisfied that there is adequate reason for a longer adjournment.

(4h) If the hearing is adjourned under subsection (4f) or (4g) the order continues in force until the conclusion of the adjourned hearing.;

(c) by striking out subsections (6), (10), (11) and (12).

Amendment of s. 99a—Firearms orders

35. Section 99a of the principal Act is amended—

(a) by striking out from subsection (1) “it must make the following additional orders” and substituting “it must include as part of the composite order the following supplementary orders (referred to in this Part as “firearms orders”)”;

(b) by striking out subsections (3), (4) and (5).

Insertion of ss. 99b—99d

36. The following sections are inserted after section 99a of the principal Act:

Service

99b. A summary protection order must be served personally on the defendant and is not binding on the defendant until it has been personally served.

Variation or revocation of summary protection order

99c. (1) The Court may, on application by—

- (a) a member of the police force; or
- (b) a person for whose benefit a summary protection order was made; or
- (c) a person against whom a summary protection order was made,

vary or revoke the summary protection order.

(2) A firearms order cannot be revoked unless the Court is satisfied—

- (a) that the summary protection order should be revoked in its entirety; or
- (b) that the defendant has never been guilty of violent or intimidatory conduct and needs to have a firearm for purposes related to earning a livelihood.

(3) The Court must, before varying or revoking a summary protection order allow all parties a reasonable opportunity to be heard on the matter.

Notification of making, etc., of summary protection orders

99d. (1) Where a summary protection order is made, the Principal Registrar must forward a copy of the order to the Commissioner of Police and, if the complainant is not a member of the police force, the complainant.

(2) Where a summary protection order is varied or revoked, the Principal Registrar must notify the Commissioner of Police and, where the complainant is not a member of the police force, the complainant of the variation or revocation.

Amendment of s. 100—Registration of interstate summary protection orders

37. Section 100 of the principal Act is amended by striking out subsection (3) and substituting the following subsection:

(3) The Court may—

- (a) give such directions; and
- (b) make such adaptations or modifications to the order (as it applies in this State),

as the Court considers necessary or desirable for the effective operation of the order in this State.

Amendment of s. 104—Preliminary examination of charges of indictable offences

38. Section 104 of the principal Act is amended by inserting after subsection (5) the following subsection:

(6) If—

- (a) a statement filed in the Court under this section is false or misleading in a material particular; and
- (b) the person by whom the statement was made—
 - (i) knew that the statement was to be used for the purposes of a prosecution; and
 - (ii) knew that the statement was false or misleading,

that person is guilty of an offence.

Penalty: Division 5 imprisonment.

Amendment of s. 107—Evaluation of evidence at preliminary examination

39. Section 107 of the principal Act is amended by striking out from subsection (3)(b)(ii) “(or has previously so elected)”.

Amendment of s. 189—Costs

40. Section 189 of the principal Act is amended—

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

(1) Subject to subsection (2), the Court may award such costs for or against a party to proceedings as the Court thinks fit.;

(b) by striking out subsection (5) and substituting the following subsection:

(5) If proceedings are unreasonably obstructed by a party or a witness, or proceedings are delayed through the failure of a party or a witness to appear before the Court when required to do so, the Court may make either or both of the following orders:

- (a) an order that the party or witness indemnify any party for costs resulting from the obstruction or delay;
- (b) an order that the party or witness pay to the Principal Registrar for the credit of the Consolidated Account an amount fixed by the Court as compensation for time wasted in consequence of the obstruction or delay.

PART 10
AMENDMENT OF UNCLAIMED GOODS ACT 1987

Amendment of s. 3—Interpretation

41. Section 3 of the principal Act is amended by striking out from subsection (1) the definition of “the Court” and substituting the following definition:

“Court” means—

- (a) in relation to a question affecting unclaimed goods of which the value does not exceed \$60 000—the Magistrates Court;
- (b) in relation to a question affecting unclaimed goods of which the value exceeds \$60 000—the District Court or the Supreme Court;.

PART 11
AMENDMENT OF WRONGS ACT 1936

Amendment of s. 35a—Motor accidents

42. Section 35a of the principal Act is amended by striking out paragraph (l) of subsection (1).

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

ROMA MITCHELL Governor