ANNO TRICESIMO QUARTO

# ELIZABETHAE II REGINAE

## A.D. 1985

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## No. 6 of 1985

**An Act to amend the Children's Protection and Young Offenders Act, 1979; the Justices Act, 1921; the Local and District Criminal Courts Act, 1926; the Offenders Probation Act, 1913; the Police Offences Act, 1953; and the Supreme Court Act, 1935.**

[*Assented to 7 March 1985*]

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

Short title.

**1.** This Act may be cited as the "Statutes Amendment (Bail) Act, 1985".

Commencement.

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

Amendment of Children's Protection and Young Offenders Act.

**3.** The Children's Protection and Young Offenders Act, 1979, is amended by inserting after subsection (2) of section 43 the following subsections:

(3) Where a request has been made pursuant to subsection (2) but there is no justice in the vicinity immediately available to hear and determine a further application for bail, the member of the police force shall contact a justice by telephone for the purpose of hearing and determining the further application.

(4) Where a justice is contacted under subsection (3), the following provisions apply—

*(a)* the justice shall make such enquiries as he thinks necessary to satisfy himself of the genuineness of the application;

*(b)* the member of the police force shall explain to the justice—

(i) the circumstances of the application for bail;

(ii) the nature of the decision made on the application;

and

(iii) the reasons for that decision;

*(c)* the justice shall then speak with the child or a guardian of the child and any legal practitioner representing or assist-

ing him for the purpose of ensuring that he is fully informed—

(i) of the reasons for the further application for bail; and

(ii) of the circumstances of the child;

*(d)* the justice shall then speak again with the member of the police force, informing him of his decision on the application, and bail shall then be granted or refused in accordance with that decision.

Amendment of Justices Act.

**4.** The Justices Act, 1921, is amended—

*(a)* by striking out section 21;

*(b)* by striking out sections 30 to 41 (inclusive) and the headings to those sections;

*(c)* by striking out from section 59 the passage "or discharge him upon recognizance as hereinafter provided" and substituting the passage "or release him on bail";

*(d)* by striking out subsection (2) of section 60 and substituting the following subsection:

(2) In any such case, the justice may, instead of committing the defendant to prison or some other form of custody, release him on bail.;

*(e)* by striking out from section 62a the passage "and discharged upon recognizance conditioned for his appearance at a time and place appointed for the hearing of a complaint laid or to be laid against him, fails to appear at that time and place" and substituting the passage "and released on bail fails to appear at the time and place appointed for the hearing of a complaint laid or to be laid against him,";

*(f)* by striking out from subsection (3) of section 65 the passage "or discharge him upon recognizance" and substituting the passage "or release him on bail";

*(g)* by striking out from subsection (5) of section 65 the passage "or discharged upon recognizance," and substituting the passage ", or released on bail,";

*(h)* by striking out from subsection (7) of section 65 the passage "or has been discharged upon recognizance" and substituting the passage "or has been released on bail";

*(i)* by striking out section 76b;

*(j)* by striking out from subsection (1) of section 111 the passage ", before he commits the defendant for trial or admits him to bail,";

*(k)* by striking out sections 112 to 115 (inclusive) and substituting the following sections:

Committal for trial.

112. (1) If at the completion of the evidence the justice is of the opinion that the evidence is not sufficient to put the defendant on trial for an indictable offence, he shall—

*(a)* dismiss the information;

and

*(b)* if the defendant is in custody on the charges contained in the information and on no other lawful warrant or authority—order that he be discharged from custody.

(2) If at the completion of the evidence the justice is of the opinion that the evidence is sufficient to put the defendant on trial for an indictable offence, he shall—

*(a)* inform the defendant of his intention to commit him for trial;

*(b)* inform the defendant of his obligation to give notice of any evidence of alibi that he may desire to give or adduce at his trial, and provide him with a written memorandum explaining the nature of that obligation;

*(c)* commit him for trial;

and

*(d)* make, or cause to be made, a record in the form prescribed by the rules containing—

(i) a statement of the charges on which the defendant is committed for trial;

(ii) the name of the court to which the defendant is committed for trial;

and

(iii) any other particulars prescribed by the rules.

(3) In determining to which court a defendant should be committed for trial, a justice shall observe the following principles:

*(a)* if the charge, or one of the charges, on which the defendant is to be committed for trial is a charge of a Group I offence, he shall be committed for trial in the Supreme Court;

*(b)* if the defendant is to be committed for trial on a charge of a Group II offence (there being, in a case where the defendant is committed for trial on a number of charges, no charge of a Group I offence), the justice shall determine whether, in his discretion, the defendant should be committed to the Supreme Court or a District Criminal Court for trial and, in exercising that discretion, shall have regard to—

(i) the gravity of the offence or offences;

(ii) the complexity or otherwise of the evidence tendered;

(iii) the difficulty or uncertainty of the law involved or likely to be involved;

(iv) the respective requests (if any) of the defendant and the informant;

and

(v) any other relevant factor;

*(c)* if the defendant is to be committed for trial on a charge of a Group III offence (there being, in a case where the defendant is committed for trial on a number of charges, no charge of a Group I or Group II offence), he shall be committed for trial in a District Criminal Court;

*(d)* where a defendant is to be committed for trial in the Supreme Court in pursuance of paragraph *(a)* or *(b)*, he shall—

(i) if the preliminary examination was held in a circuit district—be committed for trial at the first circuit session of the Court to commence in that district after the expiration of fourteen days from the date of committal;

(ii) in any other case—be committed for trial at the first criminal session (not being a circuit session) of the Court to commence after the expiration of fourteen days from the date of committal;

*(e)* where a defendant is to be committed for trial in a District Criminal Court in pursuance of paragraph *(b)* or *(c)*, he shall be committed for trial in the District Criminal Court for the district in which the preliminary examination was conducted at the first criminal session of that Court to commence after the expiration of fourteen days from the date of committal.

(4) Where a defendant is committed for trial—

*(a)* the defendant shall, if bail has already been granted and the bail agreement is subsisting, or if the justice then grants an application for bail, be released on bail;

or

*(b)* in any other case, the justice shall, by his warrant, commit him to prison, or to some other place to which he may be lawfully committed, to await his trial.

(5) Where the record referred to in subsection (2) contains a certificate by the justice to the effect that he provided the defendant with the information and memorandum as required by subsection (2) *(b)*, the record shall be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the fact so certified.

*Adjournment of Preliminary Examination*

Adjournment of preliminary examination.

113. (1) Where—

*(a)* a preliminary examination is adjourned;

and

*(b)* the defendant is not entitled to be released in pursuance of a bail agreement entered into by the defendant before the adjournment,

the justice may remand the defendant in custody or release him on bail.

(2) The period of a remand under subsection (1) must not, unless the prosecutor and the defendant consent to a longer period, exceed fifteen days.

(3) If, during the period for which a defendant has been remanded in custody, it appears that the defendant will, by reason of illness or accident, be unable to appear at the expiration of that period, a justice may, in the absence of the defendant, extend the period of remand by not more than fifteen days.

(4) A justice may, by warrant, require that a defendant who has been remanded in custody under this section be brought before him for any proper reason.;

*(l)* by striking out subsections (1) and (2) of section 116 and substituting the following subsections:

(1) Where a defendant is committed for trial, the justice shall deliver, or cause to be delivered, to the Attorney-General—

*(a)* the information;

*(b)* the record of the committal made by the justice;

*(c)* the depositions of witnesses;

*(d)* the statement (if any) of the defendant;

and

*(e)* the recognizances of witnesses.

(2) The Attorney-General shall cause the documents referred to in subsection (1) to be delivered to the proper officer of the court to which the defendant has been committed before the opening of the criminal session to which the committal relates, or at such other time as a judge who is to preside at that criminal session may direct.;

*(m)* by striking out section 136 and substituting the following section:

Committal for sentence.

136. (1) If the defendant pleads guilty, the justice shall—

*(a)* commit him for sentence;

and

*(b)* make, or cause to be made, a record in the form prescribed by the rules containing—

(i) a statement of the charges to which the defendant has pleaded guilty;

(ii) the name of the court to which the defendant is committed for sentence;

and

(iii) any other particulars prescribed by the rules.

(2) In determining to which court a defendant should be committed for sentence, a justice shall observe the following principles:

*(a)* if the charge, or one of the charges, to which the defendant has pleaded guilty is a charge of a Group I offence—he shall be committed to the Supreme Court for sentence;

*(b)* if the charge, or one of the charges, to which the defendant has pleaded guilty is a charge of a Group II offence (there being, in a case where the defendant is committed for sentence for a number of offences, no charge of a Group I offence to which he has pleaded guilty), the justice shall determine whether, in his discretion, the defendant should be committed to the Supreme Court or a District Criminal Court for sentence and, in exercising that discretion, shall have regard to—

(i) the gravity of the offence or offences;

(ii) the respective requests (if any) of the defendant and the informant;

and

(iii) any other relevant factor;

*(c)* if the charge or charges to which the defendant has pleaded guilty is or are charges of Group III offences (there being, in a case where the defendant is committed for sentence for a number of offences, no charge of a Group I or Group II offence to which he has pleaded guilty), the defendant shall be committed to a District Criminal Court for sentence;

*(d)* where a defendant is to be committed to the Supreme Court for sentence in pursuance of paragraph *(a)* or *(b)*, he shall—

(i) if the preliminary examination was held in a circuit district—be committed for sentence at the first circuit session of the Court to commence in that district after the expiration of fourteen days from the date of committal;

(ii) in any other case—be committed for sentence at the first criminal session (not

being a circuit session) of the Court to commence after the expiration of fourteen days from the date of committal;

*(e)* where the defendant is to be committed for sentence in a District Criminal Court in pursuance of paragraph *(b)* or *(c)*, he shall be committed for sentence in the District Criminal Court for the district in which the preliminary examination was conducted at the first criminal session of that Court to commence after the expiration of fourteen days from the date of committal.

(3) Where a defendant is committed for sentence—

*(a)* the defendant shall, if bail has already been granted and the bail agreement is subsisting, or if the justice then grants an application for bail, be released on bail;

or

*(b)* in any other case, the justice shall, by his warrant, commit him to prison, or to some other place to which he may be lawfully committed, to await sentence.;

*(n)* by striking out section 139 and substituting the following section:

Documents to be forwarded.

139. (1) When a person is committed for sentence, the justice shall deliver, or cause to be delivered, to the Attorney-General—

*(a)* the information;

*(b)* the record of the committal made by the justice;

*(c)* the depositions of witnesses;

and

*(d)* the recognizances of witnesses.

(2) The Attorney-General shall cause the documents to be delivered to the proper officer of the court to which the defendant has been committed before the opening of the criminal session to which the committal relates, or at such other time as a judge who is to preside at that criminal session may direct.;

*(o)* by striking out section 140;

*(p)* by striking out subsections (1) and (2) of section 141 and substituting the following subsections:

(1) Where a defendant is committed for sentence, he may, by notice in writing to the Attorney-General not less than seven clear days before the opening of the criminal session to which the committal relates, withdraw his plea of guilty and substitute a plea of not guilty.

(2) Where a defendant withdraws a plea of guilty in pursuance of subsection (1), he shall be deemed to have been committed for trial instead of sentence.;

*(q)* by striking out from section 142 the passage "for sentence of a defendant committed or admitted to bail as aforesaid" and substituting the passage "of a defendant committed for sentence";

*(r)* by striking out Division IV of Part V (comprising sections 143 to 150a (inclusive)) and the headings to those sections;

*(s)* by striking out section 168;

*(t)* by striking out from subsection (1a) of section 170 the passage "and is liberated upon recognizance on appeal" and substituting the passage "and, on appeal, is released on bail";

and

*(u)* by inserting after section 187a the following heading and section:

*Proof of Recognizance*

Evidence of recognizance.

187ab. An apparently genuine document purporting to be a recognizance under this Act, or a copy of such a recognizance, shall be accepted in any court as evidence of the recognizance and of its terms and conditions.

Amendment of Local and District Criminal Courts Act.

**5.** The Local and District Criminal Courts Act, 1926, is amended by striking out subsection (3) of section 337.

Amendment of Offenders Probation Act.

**6.** The Offenders Probation Act, 1913, is amended by inserting after section 9 the following section:

Proof of probation order or recognizance.

9a. An apparently genuine document purporting to be a probation order or a recognizance under this Act, or a copy of such an order or recognizance, shall be accepted in any court as evidence of the order or recognizance and of its terms and conditions.

Amendment of Police Offences Act.

**7.** The Police Offences Act, 1953, is amended—

*(a)* by striking out section 78 and substituting the following section:

Proceedings on arrest without warrant.

78. A person who is apprehended without warrant pursuant to this Act shall be forthwith delivered—

*(a)* into the custody of the member of the police force in charge of the police station nearest to the place of apprehension at which facilities are continuously available for the care and custody of the person apprehended;

or

*(b)* in the case of a person apprehended within a radius of thirty kilometres from the General Post Office at Adelaide—into the custody of the member of the police force who is in charge of—

(i) the police station at Adelaide known as the City Watch House;

or

(ii) any other police station within that radius at which facilities are continuously available for the care and custody of the person apprehended.;

and

*(b)* by striking out section 80.

**8.** The Supreme Court Act, 1935, is amended— Amendment of Supreme Court Act.

*(a)* by striking out from the proviso to subsection (2) of section 54 the passage ", or admitted to bail,";

*(b)* by striking out from paragraphs *(a)* and *(b)* of subsection (1) of section 59 the passage ", or admitted to bail,";

*(c)* by striking out from subsection (2) of section 59 the passage "or admitted to bail";

and

*(d)* by striking out section 61.

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

D. B. DUNSTAN, Governor