

South Australia



ANNO QUADRAGESIMO NONO  
ELIZABETHAE II REGINAE  
A.D. 2000

**STATUTES AMENDMENT AND REPEAL (ATTORNEY-GENERAL'S  
PORTFOLIO) ACT 2000**

No. 57 of 2000

[Assented to 20 July 2000]

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An Act to amend the Associations Incorporation Act 1985, the Correctional Services Act 1982, the Crimes at Sea Act 1998, the Criminal Injuries Compensation Act 1978, the Criminal Law Consolidation Act 1935, the Criminal Law (Forensic Procedures) Act 1998, the Criminal Law (Sentencing) Act 1988, the Election of Senators Act 1903, the Environment, Resources and Development Court Act 1993, the Evidence Act 1929; the Expiation of Offences Act 1996; the Magistrates Court Act 1991, the Real Property Act 1886, the Wills Act 1936 and the Young Offenders Act 1993; and to repeal the Australia Acts (Request) Act 1999.

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## SUMMARY OF PROVISIONS

### PART 1 PRELIMINARY

1. Short title
2. Commencement
3. Interpretation

### PART 2 AMENDMENT OF ASSOCIATIONS INCORPORATION ACT 1985

4. Amendment of s. 41—Winding up of incorporated association

### PART 3 AMENDMENT OF CORRECTIONAL SERVICES ACT 1982

5. Amendment of heading
6. Amendment of s. 50—Effect of prisoner being at large

### PART 4 AMENDMENT OF CRIMES AT SEA ACT 1998

7. Amendment of s. 2—Commencement
8. Insertion of new section
  - 6A. Application of Act
9. Amendment of s. 8—Repeal and transitional provision
10. Amendment of Schedule—The Cooperative Scheme

### PART 5 AMENDMENT OF CRIMINAL INJURIES COMPENSATION ACT 1978

11. Amendment of s. 7—Application for compensation
12. Amendment of s. 8—Proof and evidence
13. Amendment of s. 10—Legal costs

### PART 6 AMENDMENT OF CRIMINAL LAW CONSOLIDATION ACT 1935

14. Amendment of s. 254—Escape or removal from lawful custody

### PART 7 AMENDMENT OF CRIMINAL LAW (FORENSIC PROCEDURES) ACT 1998

15. Amendment of s. 29—Application of this Division
16. Amendment of s. 30—Order authorising taking of blood samples and fingerprints
17. Amendment of s. 49—Databases

### PART 8 AMENDMENT OF CRIMINAL LAW (SENTENCING) ACT 1988

18. Amendment of s. 3—Interpretation
19. Amendment of s. 31—Cumulative sentences.
20. Amendment of s. 32—Duty of court to fix or extend non-parole periods
21. Amendment of s. 47—Special provisions relating to community service
22. Amendment of s. 56—Enforcement must be taken under this Part

**PART 9  
AMENDMENT OF ELECTION OF SENATORS ACT 1903**

23. Amendment of s. 2—Power to fix dates in relation to election

**PART 10  
AMENDMENT OF ENVIRONMENT, RESOURCES AND DEVELOPMENT COURT  
ACT 1993**

24. Amendment of s. 44—Legal costs

**PART 11  
AMENDMENT OF EVIDENCE ACT 1929**

25. Amendment of s. 66—Taking of affidavits out of the State

**PART 12  
AMENDMENT OF EXPIATION OF OFFENCES ACT 1996**

26. Amendment of s. 14—Enforcement orders are not subject to appeal but may be reviewed  
27. Amendment of s. 16—Withdrawal of expiation notices

**PART 13  
AMENDMENT OF MAGISTRATES COURT ACT 1991**

28. Amendment of s. 38—Minor civil actions

**PART 14  
AMENDMENT OF REAL PROPERTY ACT 1886**

29. Amendment of s. 277—Regulations

**PART 15  
AMENDMENT OF WILLS ACT 1936**

30. Amendment of s. 12—Validity of will  
31. Amendment of s. 22—In what cases wills may be revoked

**PART 16  
AMENDMENT OF YOUNG OFFENDERS ACT 1993**

32. Amendment of s. 63B—Application of Correctional Services Act 1982 to youth with non-parole period

**PART 17  
REPEAL OF AUSTRALIA ACTS (REQUEST) ACT 1999**

33. Repeal of Australia Acts (Request) Act 1999

The Parliament of South Australia enacts as follows:

**PART 1  
PRELIMINARY**

**Short title**

1. This Act may be cited as the *Statutes Amendment and Repeal (Attorney-General's Portfolio) Act 2000*.

**Commencement**

2. (1) This Act, except for section 13 and Part 10, will come into operation on a day to be fixed by proclamation.

(2) Section 13 and Part 10 will be taken to have come into operation on 1 July 2000.

**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 ASSOCIATIONS INCORPORATION ACT 1985**

**Amendment of s. 41—Winding up of incorporated association**

4. Section 41 of the principal Act is amended by striking out from subsection (2) "and Division 3 of Part 5.9" and substituting ", Division 3 of Part 5.9 and Chapter 5A".

**PART 3  
AMENDMENT OF CORRECTIONAL SERVICES ACT 1982**

**Amendment of heading**

5. The heading to Division 4 of Part 5 of the principal Act is amended by striking out "ESCAPING OR".

**Amendment of s. 50—Effect of prisoner being at large**

6. Section 50 of the principal Act is amended by striking out subsection (1).

**PART 4  
AMENDMENT OF CRIMES AT SEA ACT 1998**

**Amendment of s. 2—Commencement**

7. Section 2 of the principal Act is amended by inserting after its following contents (now to be designated as subsection (1)) the following subsection:

(2) Section 7(5) of the *Acts Interpretation Act 1915* does not apply in relation to the commencement of this Act or any provision of this Act.

**Insertion of new section**

8. The following section is inserted after section 6 of the principal Act:

**Application of Act**

6A. This Act and the cooperative scheme do not apply to an act or omission to which section 15 of the *Crimes (Aviation) Act 1991* (Commonwealth) applies.

**Amendment of s. 8—Repeal and transitional provision**

9. Section 8 of the principal Act is amended by inserting after its present contents (now to be designated as subsection (1)) the following subsection:

(2) For the purposes of determining whether this Act applies or the repealed *Crimes (Offences at Sea) Act 1980* applies in relation to an act or omission that is alleged to have occurred at some unspecified time between two dates, one date being before and the other after the repeal of that Act, the alleged act or omission will be taken to have occurred before the repeal of that Act.

**Amendment of Schedule—The Cooperative Scheme**

10. The Schedule of the principal Act is amended—

- (a) by striking out from the definition of "State" in clause 1(1) "and Norfolk Island";
- (b) by striking out subclause (5) of clause 14;
- (c) by striking out from clause 15(1) "(other than Norfolk Island)";
- (d) by striking out subclause (2) of clause 15.

**PART 5**

**AMENDMENT OF CRIMINAL INJURIES COMPENSATION ACT 1978**

**Amendment of s. 7—Application for compensation**

11. Section 7 of the principal Act is amended by inserting after subsection (9) the following subsections:

(9aa) The court must not make an order for compensation in favour of a claimant if the court—

- (a) is satisfied beyond reasonable doubt that the injury to the claimant occurred while the claimant was engaged in conduct constituting an indictable offence; and
- (b) is satisfied on the balance of probabilities that the claimant's conduct contributed materially to the risk of injury to the claimant.

(9aab) Subsection (9aa) does not apply if the claimant has been acquitted of the offence.

(9aac) Despite subsection (9aa), the court may make an order for compensation in favour of a claimant if the court is of the opinion that in the circumstances of the particular claim failure to compensate would be unjust.

**Amendment of s. 8—Proof and evidence**

12. Section 8 of the principal Act is amended by striking out from subsection (1) "Subject to this section" and substituting "Subject to this Act".

**Amendment of s. 10—Legal costs**

13. Section 10 of the principal Act is amended—

- (a) by inserting after "must not exceed" in paragraph (a) of subsection (1) "the amount that is, after deduction of the GST payable in respect of it, equivalent to";

(b) by inserting after "an amount by way of costs in excess of" in paragraph (b) of subsection (1) "the amount that is, after deduction of the GST payable in respect of it, equivalent to";

(c) by inserting the following subsection after subsection (2):

(3) In this section—

"GST" means the tax payable under the GST law;

"GST law" means—

- (a) *A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth); and
- (b) the related legislation of the Commonwealth dealing with the imposition of a tax on the supply of goods, services and other things.

**PART 6**  
**AMENDMENT OF CRIMINAL LAW CONSOLIDATION ACT 1935**

**Amendment of s. 254—Escape or removal from lawful custody**

**14.** Section 254 of the principal Act is amended—

- (a) by striking out from subsection (2) "section 61A of the *Children's Protection and Young Offenders Act 1979*" and substituting "section 48 of the *Young Offenders Act 1993*";
- (b) by inserting after subsection (2) the following subsection:

(2a) A term of imprisonment to which a person is sentenced for an offence against subsection (1) is cumulative on any other term of imprisonment or detention in a training centre that the person is liable to serve.

**PART 7**  
**AMENDMENT OF CRIMINAL LAW (FORENSIC PROCEDURES) ACT 1998**

**Amendment of s. 29—Application of this Division**

**15.** Section 29 of the principal Act is amended by striking out from subsection (1)(a) "on the charge" and substituting "in respect of the offence as charged or of another offence by way of an alternative verdict".

**Amendment of s. 30—Order authorising taking of blood samples and fingerprints**

**16.** Section 30 of the principal Act is amended—

- (a) by striking out from subsection (1)(b) "charge was a charge of" and substituting "offence was";
- (b) by striking out from subsection (2) "charge" and substituting "offence".

**Amendment of s. 49—Databases**

**17.** Section 49 of the principal Act is amended by striking out subsection (2) and substituting the following subsection:

(2) However, a DNA profile derived from material obtained from carrying out a forensic procedure under this Act on a person under suspicion may only be stored on a data base if the person—

- (a) was found guilty of the offence in relation to which the forensic procedure was carried out or of another offence by way of an alternative verdict; or
- (b) was declared to be liable to supervision.

**PART 8**  
**AMENDMENT OF CRIMINAL LAW (SENTENCING) ACT 1988**

**Amendment of s. 3—Interpretation**

18. Section 3 of the principal Act is amended—

- (a) by inserting after the definition of "community corrections officer" in subsection (1) the following definition:

"conditional release" means conditional release from a training centre;;

- (b) by inserting after the definition of "probative court" in subsection (1) the following definition:

"sale" of property includes conversion of the property into money by any appropriate means;.

**Amendment of s. 31—Cumulative sentences**

19. Section 31 of the principal Act is amended—

- (a) by inserting in subsection (1) "or detention in a training centre" after "imprisonment" (second occurring);

- (b) by inserting in subsection (2)(a) "or conditional release" after "parole".

**Amendment of s. 32—Duty of court to fix or extend non-parole periods**

20. Section 32 of the principal Act is amended—

- (a) by inserting in subsection (2) "or conditional release" after "release on parole";

- (b) by inserting in subsection (2) "or detention" after "previous sentence of imprisonment";

- (c) by inserting in subsection (2) "(or detention and imprisonment)" after "total period of imprisonment";

- (d) by inserting in subsection (5)(a) "(or detention and imprisonment)" after "total period of imprisonment";

- (e) by inserting in subsection (5)(c)(iii) "or conditional release" after "release on parole";

- (f) by inserting in subsection (6) "or the Training Centre Review Board (as the case may require)" after "Parole Board";

- (g) by inserting in subsection (6a) "or Training Centre Review Board" after "Parole Board";

- (h) by striking out from subsection (7)(a) "serving a sentence of imprisonment" and substituting "or a training centre serving a sentence of imprisonment or detention";

- (i) by inserting in subsection (7) "or Training Centre Review Board" after "Parole Board";



- (j) by striking out subparagraphs (i) to (iii) of subsection (7)(b) and substituting the following subparagraphs:
- (i) the likely behaviour of the person the subject of the application should he or she be released from custody; and
  - (ii) the necessity (if any) to protect some other person or persons generally should the person be released from custody; and
  - (iii) the behaviour of the person while in custody, but only insofar as it may assist the court to determine how the person is likely to behave should he or she be released; and
- (k) by inserting in subsection (9) "or the Training Centre Review Board (as the case may require)" after "Parole Board";
- (l) by striking out paragraph (b) of subsection (10) and substituting the following paragraph:
- (b) the person the subject of an application by the Director of Public Prosecutions or the presiding member of the Parole Board or Training Centre Review Board under this section is a party to the application and the Director of Public Prosecutions is a party to an application under subsection (3); and

**Amendment of s. 47—Special provisions relating to community service**

21. Section 47 of the principal Act is amended—

- (a) by striking out from subsection (1)(d) "Director" and substituting "CEO";
- (b) by inserting in subsection (1)(f) "for Correctional Services" after "Minister".

**Amendment of s. 56—Enforcement must be taken under this Part**

22. Section 56 of the principal Act is amended by inserting after its present contents (now to be designated as subsection (1)) the following subsection:

- (2) Without derogating from the powers of any other public employee, proceedings for enforcement of a bond, community service order or other order of a non-pecuniary nature may be taken by a community corrections officer.

**PART 9  
AMENDMENT OF ELECTION OF SENATORS ACT 1903**

**Amendment of s. 2—Power to fix dates in relation to election**

23. Section 2 of the principal Act is amended—

- (a) by striking out from subsection (1d) "eleven days nor more than twenty-eight days" and substituting "10 days or more than 27 days";
- (b) by striking out from subsection (1f) "twenty-two days nor more than thirty days" and substituting "23 days or more than 31 days".

**PART 10**  
**AMENDMENT OF ENVIRONMENT, RESOURCES AND DEVELOPMENT COURT**  
**ACT 1993**

**Amendment of s. 44—Legal costs**

24. Section 44 of the principal Act is amended—

- (a) by inserting after "by way of costs in excess of" in subsection (2) "the amount that is, after deduction of the GST payable in respect of it, equivalent to";
- (b) by inserting the following subsection after subsection (2):

(3) In this section—

"GST" means the tax payable under the GST law;

"GST law" means—

- (a) *A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth); and
- (b) the related legislation of the Commonwealth dealing with the imposition of a tax on the supply of goods, services and other things.

**PART 11**  
**AMENDMENT OF EVIDENCE ACT 1929**

**Amendment of s. 66—Taking of affidavits out of the State**

25. Section 66 of the principle Act is amended by inserting after paragraph (b1) of subsection (1) the following paragraph:

- (b2) an employee of the Commonwealth, or the Australian Trade Commission, authorised under section 3 of the *Consular Fees Act 1955* (Commonwealth) and exercising his or her function in that place; or.

**PART 12**  
**AMENDMENT OF EXPIATION OF OFFENCES ACT 1996**

**Amendment of s. 14—Enforcement orders are not subject to appeal but may be reviewed**

26. Section 14 of the principal Act is amended—

(a) by inserting after subsection (3)(c) the following paragraph:

(ca) the issuing authority failed to receive—

- (i) a notice sent to the authority by the applicant electing to be prosecuted for the offence; or
- (ii) a statutory declaration or other document sent to the authority by the applicant in accordance with a notice required by law to accompany the expiation notice or expiation reminder notice;

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

(5) If the Court revokes an enforcement order, any subsequent order made under Division 3 of Part 9 of the *Criminal Law (Sentencing) Act 1988* will be taken to have been revoked.

(5a) Despite any other provision of this Act, if the Court revokes an enforcement order on a ground referred to in subsection (3)(b), (c) or (ca), the following provisions apply:

- (a) if the period of 1 year from the date of commission of the alleged offence, or offences, has not expired, the applicant will be taken to have been given an expiation notice by the issuing authority in respect of the alleged offence, or offences, for the first time on the day on which the order was revoked; and
- (b) the expiation notice will also be taken to have been issued on that day; and
- (c) the time within which a prosecution can be commenced for the alleged offence, or offences, will (for the purposes of this Act or any other Act) accordingly be taken to run from that day despite the fact that it may have already otherwise expired.

**Amendment of s. 16—Withdrawal of expiation notices**

27. Section 16 of the principal Act is amended—

- (a) by striking out from subsection (2) "notwithstanding" and substituting "under subsection (1) despite";
- (b) by striking out subsection (4);
- (c) by inserting in subsection (5) "under subsection (1)" after "withdrawn";
- (d) by inserting after subsection (5) the following subsections:

(6) Subject to subsection (7), the issuing authority must withdraw an expiation notice if it becomes apparent that the alleged offender did not receive the notice until after the expiation period, or has never received it, as a result of error on the part of the authority or failure of the postal system.

(7) An expiation notice cannot be withdrawn under subsection (6) if the alleged offender has paid the expiation fee or any instalment or other amount due under the notice.

(8) If an expiation notice is withdrawn under subsection (6)—

- (a) the issuing authority must, if a certificate has been sent to the Court under section 13 for enforcement of the notice, inform the Court of the withdrawal of the notice; and
- (b) any enforcement order made under this Act in respect of the notice and all subsequent orders made under Division 3 of Part 9 of the *Criminal Law (Sentencing) Act 1988* will be taken to have been revoked; and

- (c) the issuing authority may, if the period of 1 year from the date of commission of the alleged offence, or offences, to which the notice related has not expired, give a fresh expiation notice to the alleged offender; and
- (d) the issuing authority cannot prosecute the alleged offender for an alleged offence to which the withdrawn notice related unless the alleged offender has been given a fresh expiation notice and allowed the opportunity to expiate the offence; and
- (e) the time within which a prosecution can be commenced for an alleged offence to which the fresh expiation notice relates will (for the purposes of this Act or any other Act) be taken to run from the day on which the alleged offender is given that notice, despite the fact that the time for commencement of the prosecution may have already otherwise expired.

(9) The withdrawal of an expiation notice under this section is effected by giving written notice of the withdrawal, personally or by post, to the person to whom the expiation notice was given.

### PART 13 AMENDMENT OF MAGISTRATES COURT ACT 1991

#### Amendment of s. 38—Minor civil actions

28. Section 38 of the principal Act is amended—

(a) by inserting after paragraph (a) of subsection (4) the following paragraph:

(ab) however, the Court may, in its discretion, permit representation of a party by a legal practitioner at the hearing of an interlocutory application;;

(b) by striking out subsections (6) to (8) (inclusive) and substituting the following subsections:

(6) The District Court (constituted of a single Judge) may, on the application of a party dissatisfied with a judgment given in a minor civil action, review the matter.

(7) The following provisions apply to such a review by the District Court:

- (a) the right of a party to be represented by a legal practitioner at the review will be determined in accordance with subsection (4);
- (b) the Court may inform itself as it thinks fit and, in doing so, is not bound by the rules of evidence;
- (c) the Court may, if it thinks fit, re-hear evidence taken before the Magistrates Court;
- (d) in determining the matter, the Court may—
  - (i) affirm the judgment; or

- (ii) rescind the judgment and substitute a judgment that the Court considers appropriate; or
- (iii) if the review arises from a default judgment or summary judgment, rescind the judgment and—
  - (A) substitute a judgment that the Court considers appropriate; or
  - (B) remit the matter to the Magistrates Court for hearing or further hearing;
- (e) in hearing and determining the review, the Court must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.

(8) A decision of the District Court on a review is final and not subject to appeal.

(9) However, the District Court may reserve a question of law arising in a review for determination by the Full Court of the Supreme Court which may determine the question and make any consequential orders or directions appropriate to the circumstances of the case.

#### PART 14 AMENDMENT OF REAL PROPERTY ACT 1886

##### Amendment of s. 277—Regulations

29. Section 277 of the principal Act is amended by inserting in subsection (1)(a) ", including fees and charges for searching, whether electronically or in any other manner, the Register Book or any document deposited or registered or information recorded under this Act or pursuant to any other Act, and for obtaining copies of any material so searched" after "under this Act".

#### PART 15 AMENDMENT OF WILLS ACT 1936

##### Amendment of s. 12—Validity of will

30. Section 12 of the principal Act is amended by striking out subsections (2) and (3) and substituting the following subsections:

- (2) Subject to this Act, if the Court is satisfied that—
  - (a) a document expresses testamentary intentions of a deceased person; and
  - (b) the deceased person intended the document to constitute his or her will,

the document will be admitted to probate as a will of the deceased person even though it has not been executed with the formalities required by this Act.

(3) If the Court is satisfied that a document that has not been executed with the formalities required by this Act expresses an intention by a deceased person to revoke a document that might otherwise have been admitted to probate as a will of the deceased person, that document is not to be admitted to probate as a will of the deceased person.

**Amendment of s. 22—In what cases wills may be revoked**

31. Section 22 of the principal Act is amended by striking out "No will" and substituting "Subject to section 12(3), no will".

**PART 16  
AMENDMENT OF YOUNG OFFENDERS ACT 1993**

**Amendment of s. 63B—Application of Correctional Services Act 1982 to youth with non-parole period**

32. Section 63B of the principal Act is amended by striking out "who is transferred from a prison to a training centre under this Act is serving a non-parole period in the" and substituting "is serving a non-parole period in a".

**PART 17  
REPEAL OF AUSTRALIA ACTS (REQUEST) ACT 1999**

**Repeal of Australia Acts (Request) Act 1999**

33. The *Australia Acts (Request) Act 1999* is repealed.