



STATUTES AMENDMENT (ATTORNEY-GENERAL'S PORTFOLIO) ACT 1994

No. 21 of 1994

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ELIZABETHAE II REGINAE

A.D. 1994

No. 21 of 1994

An Act to amend the Criminal Law (Sentencing) Act 1988, the Director of Public Prosecutions Act 1991, the Jurisdiction of Courts (Cross-vesting) Act 1987, the National Crime Authority (State Provisions) Act 1984, the Subordinate Legislation Act 1978, the Supreme Court Act 1935 and the Wrongs Act 1936.

[Assented to 26 May 1994]

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Statutes Amendment (Attorney-General's Portfolio) Act 1994*.

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 CRIMINAL LAW (SENTENCING) ACT 1988**

Insertion of s. 9A

4. The following section is inserted after section 9 of the principal Act:

Rectification of sentencing errors

9A. (1) A court that imposes a sentence on a defendant, or a court of co-ordinate jurisdiction, may, on application by the Director of Public Prosecutions or the defendant, make such orders as the court is satisfied are required to rectify an error of a technical nature made by the sentencing court in imposing the sentence, or to supply a deficiency or remove an ambiguity in the sentencing order.

(2) The Director of Public Prosecutions and the defendant are both parties to an application under this section.

Amendment of s. 61A—Driver's licence disqualification for default

5. Section 61A of the principal Act is amended by inserting after subsection (2) the following subsections:

(2a) Subject to subsection (2b), the prescribed cost of issuing a notice of disqualification under this section will be added to the amount in respect of which the person is in default.

(2b) The appropriate officer may waive payment of the cost of issuing a notice of disqualification in such circumstances as he or she thinks just.

Amendment of s. 61B—Suspension of motor vehicle registration for default by body corporate

6. Section 61B of the principal Act is amended by inserting after subsection (2) the following subsections:

(2a) Subject to subsection (2b), the prescribed cost of issuing a notice of an order suspending registration under this section will be added to the amount in respect of which the company is in default.

(2b) The appropriate officer may waive payment of the cost of issuing a notice of an order suspending registration in such circumstances as he or she thinks just.

PART 3

AMENDMENT OF DIRECTOR OF PUBLIC PROSECUTIONS ACT 1991

Amendment of s. 7—Powers of Director

7. Section 7 of the principal Act is amended by inserting after paragraph (d) of subsection (1) the following paragraph:

(da) to institute civil proceedings for contempt of court;.

PART 4

AMENDMENT OF JURISDICTION OF COURTS (CROSS-VESTING) ACT 1987

Amendment of s. 3—Interpretation

8. Section 3 of the principal Act is amended—

(a) by striking out from subsection (1) the definition of "State" and substituting the following definition:

"State" includes the Northern Territory and the Australian Capital Territory;;

(b) by striking out from subsection (1) the definition of "Territory" and substituting the following definition:

"Territory" does not include the Northern Territory or the Australian Capital Territory.

PART 5

AMENDMENT OF NATIONAL CRIME AUTHORITY (STATE PROVISIONS) ACT 1984

Amendment of s. 5—Functions under State laws

9. Section 5 of the principal Act is amended by inserting after subsection (3) the following subsection:

(3a) The Minister may, with the approval of the Inter-Governmental Committee—

- (a) in a notice under subsection (1) referring the matter to the Authority, state that the reference is related to another reference; or
- (b) in a notice in writing to the Authority, state that a reference already made to the Authority by that Minister is related to another reference.

Amendment of s. 6—Performance of functions

10. Section 6 of the principal Act is amended by inserting in subsection (1) "or any person or authority (other than a law enforcement agency) who is authorised by or under a law of the Commonwealth or of a State to prosecute the offence" after "agency".

Amendment of s. 9—Co-operation with law enforcement agencies

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

(2) In performing its special functions, the Authority may co-ordinate its activities with the activities of authorities and persons in other countries performing functions similar to the functions of the Authority.

Amendment of s. 12—Search warrant

12. Section 12 of the principal Act is amended—

- (a) by striking out from subsection (1) "of the Authority";
- (b) by striking out from subsection (1)(a) "the Authority has" and substituting "the member has";
- (c) by striking out from subsection (1)(b) "the Authority" and substituting "the member";
- (d) by striking out from subsection (8)(b) "the Authority shall cause" and substituting "the member must cause";
- (e) by striking out from subparagraph (ii) of subsection (8)(b) "to the Authority" and substituting "to the member";

- (f) by striking out from subsection (9) "The Authority" and substituting "A member";
- (g) by striking out from subsection (9) "the Authority" and substituting "the member".

Amendment of s. 13—Application by telephone for search warrants**13. Section 13 of the principal Act is amended—**

- (a) by striking out from subsection (1) "the Authority considers" and substituting "a member considers";
- (b) by striking out from subsection (1) "a member of the Authority" and substituting "the member".

Amendment of s. 15—Order for delivery to Authority of passport of witness**14. Section 15 of the principal Act is amended—**

- (a) by striking out from subsection (1) "of the Authority";
- (b) by striking out from subsection (3) "by the Authority" and substituting "by a member";
- (c) by striking out from subsection (4) "the Authority shall" and substituting "a member must".

Amendment of s. 16—Hearings**15. Section 16 of the principal Act is amended—**

- (a) by striking out from subsection (2) "or acting members";
- (b) by striking out subsection (3) and substituting the following subsections:

(3) The Chairperson must preside at all hearings at which the Chairperson is present.

(3a) If the Chairperson is not present at a hearing at which there are two or more members, the members present must elect one of their number to preside at that hearing.

(3b) Questions arising at a hearing must be determined by a majority of the votes of the members present.

(3c) The person presiding at a hearing has a deliberative vote, and, if necessary, also has a casting vote.

(3d) The Authority may regulate the conduct of proceedings at a hearing as it thinks fit.;

(c) by striking out subsection (7) and substituting the following subsection:

(7) Where a hearing before the Authority is being held, a person (other than a member or a member of the staff of the Authority approved by the Authority) must not be present at the hearing unless the person is entitled to be present by reason of a direction given by the Authority under subsection (5) or by reason of subsection (6).;

(d) by inserting after subsection (9) the following subsections:

(9a) Subject to subsection (9b), the Chairperson may, in writing, vary or revoke a direction under subsection (9).

(9b) The Chairperson may not vary or revoke a direction if to do so might prejudice the safety or reputation of a person or prejudice the fair trial of a person who has been or may be charged with an offence.

Amendment of s. 17—Power to summon witnesses and take evidence

16. Section 17 of the principal Act is amended—

- (a) by striking out from subsection (1) "or an acting member";
- (b) by striking out from subsection (3) "unless the Authority" and substituting "unless the member issuing the summons";
- (c) by striking out from subsection (4) "or acting member";
- (d) by striking out from subsection (5) "or acting member" (wherever occurring);
- (e) by striking out from subsection (6) "Chairman or by a person acting as Chairman" and substituting "Chairperson".

Amendment of s. 18—Power to obtain documents

17. Section 18 of the principal Act is amended by striking out from subsection (1) "or acting member" (wherever occurring).

Insertion of ss. 18A and 18B

18. The following sections are inserted after section 18 of the principal Act:

Disclosure of summons or notice may be prohibited

18A. (1) The member issuing a summons under section 17 or a notice under section 18 must, or may, as provided in subsection (2), include in it a notation to the effect that disclosure of information about the summons or notice, or any official matter connected with it, is prohibited except in the circumstances, if any, specified in the notation.

(2) A notation must not be included in the summons or notice except as follows:

- (a) the member must include the notation if satisfied that failure to do so would reasonably be expected to prejudice—

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- (i) the safety or reputation of a person; or
 - (ii) the fair trial of a person who has been or may be charged with an offence; or
 - (iii) the effectiveness of an investigation;
- (b) the member may include the notation if satisfied that failure to do so might prejudice—
- (i) the safety or reputation of a person; or
 - (ii) the fair trial of a person who has been or may be charged with an offence; or
 - (iii) the effectiveness of an investigation;
- (c) the member may include the notation if satisfied that failure to do so might otherwise be contrary to the public interest.

(3) If a notation is included in the summons or notice, it must be accompanied by a written statement setting out the rights and obligations conferred or imposed by section 18B on the person who was served with, or otherwise given, the summons or notice.

(4) If, after the Authority has concluded the investigation concerned—

- (a) no evidence of an offence has been obtained as described in section 6(1); or
- (b) evidence of an offence or offences has been assembled and given as required by section 6(1) and the Authority has been advised that no person will be prosecuted; or
- (c) evidence of an offence or offences committed by only one person has been assembled and given as required by section 6(1) and criminal proceedings have begun against that person; or
- (d) evidence of an offence or offences committed by two or more persons has been assembled and given as required by section 6(1) and—
 - (i) criminal proceedings have begun against all those persons; or
 - (ii) criminal proceedings have begun against one or more of those persons and the Authority has been advised that no other of those persons will be prosecuted,

all the notations that were included under this section in any summonses or notices relating to the investigation are cancelled by this subsection.

(5) If a notation is cancelled by subsection (4), the Authority must serve a written notice of that fact on each person who was served with, or otherwise given, the summons or notice containing the notation.

(6) If a notation made under subsection (1) is inconsistent with a direction given under section 16(9), a notation has no effect to the extent of the inconsistency.

Offences of disclosure

18B. (1) A person who is served with, or otherwise given, a summons or notice containing a notation made under section 18A must not disclose—

- (a) the existence of the summons or notice or any information about it; or
- (b) the existence of, or any information about, an official matter connected with the summons or notice.

Penalty: \$2 000 or imprisonment for one year.

(2) Subsection (1) does not prevent the person from making a disclosure—

- (a) in accordance with the circumstances, if any, specified in the notation; or
- (b) to a legal practitioner for the purpose of obtaining legal advice or representation relating to the summons, notice or matter; or
- (c) to a legal aid officer for the purpose of obtaining assistance under section 27 of the Commonwealth Act relating to the summons, notice or matter; or
- (d) if the person is a body corporate—to an officer or agent of the body corporate for the purpose of ensuring compliance with the summons or notice; or
- (e) if the person is a legal practitioner—
 - (i) for the purpose of complying with a legal duty of disclosure arising from his or her professional relationship with a client; or
 - (ii) for the purpose of obtaining the agreement of another person under section 19(3) to the legal practitioner answering a question or producing a document at a hearing before the Authority.

(3) If a disclosure is made to a person as permitted by subsection (2) or (4), the following provisions apply:

- (a) while he or she is a person of a kind to whom a disclosure is so permitted to be made, he or she must not disclose the existence of, or any information about, the summons or notice, or an official matter connected with it, except as permitted by subsection (4);

- (b) while he or she is no longer such a person, he or she must not, in any circumstances, make a record of, or disclose the existence of, the summons, notice or matter, or disclose any information about any of them.

Penalty: \$2 000 or imprisonment for one year.

(4) A person to whom information has been disclosed, as permitted by subsection (2) or this subsection, may disclose that information—

- (a) if the person is an officer or agent of a body corporate referred to in subsection (2)(d)—
- (i) to another officer or agent of the body corporate for the purpose of ensuring compliance with the summons or notice; or
 - (ii) to a legal practitioner for the purpose of obtaining legal advice or representation relating to the summons, notice or matter; or
 - (iii) to a legal aid officer for the purpose of obtaining assistance under section 27 of the Commonwealth Act relating to the summons, notice or matter; or
- (b) if the person is a legal practitioner—for the purpose of giving legal advice, making representations, or obtaining assistance under section 27 of the Commonwealth Act, relating to the summons, notice or matter; or
- (c) if the person is a legal aid officer—for the purpose of obtaining legal advice or representation relating to the summons, notice or matter.

(5) This section ceases to apply to a summons or notice after—

- (a) the notation contained in the summons or notice is cancelled by section 18A(4); or
- (b) five years elapse after the issue of the summons or notice, whichever is sooner.

(6) A reference in this section to disclosing something's existence includes disclosing information from which a person could reasonably be expected to infer its existence.

(7) In this section—

“legal aid officer” means—

- (a) a member, or member of staff, of a legal aid commission within the meaning of the *Commonwealth Legal Aid Act 1977*; or

- (b) the person to whom the Commonwealth Attorney-General has delegated his or her powers and functions under section 27 of the Commonwealth Act;

"official matter" means any of the following (whether past, present or contingent):

- (a) a reference under section 13 or 14 of the Commonwealth Act;
- (b) an investigation conducted or co-ordinated by the Authority;
- (c) a hearing held by the Authority;
- (d) court proceedings.

Amendment of s. 19—Failure of witnesses to attend and answer questions

19. Section 19 of the principal Act is amended—

- (a) by striking out from subsection (1)(b) "or an acting member";
- (b) by striking out from subsection (2)(b) "or acting member";
- (c) by striking out from subsection (3) "or acting member".

Amendment of s. 20—Warrant for arrest of witness

20. Section 20 of the principal Act is amended—

- (a) by inserting in subsection (1) "or of the Supreme Court" after "Federal Court";
- (b) by inserting after subsection (1)(b) the following word and paragraph:

or

- (c) that a person has committed an offence under section 19(1) or is likely to do so;;

- (c) by inserting in subsection (3) "or of the Supreme Court" after "Federal Court";
- (d) by inserting in subsection (4) "or of the Supreme Court" after "Federal Court".

Amendment of s. 21—Applications to Federal Court of Australia

21. Section 21 of the principal Act is amended by striking out from subsection (9) "as the Authority" and substituting "as a member".

Amendment of s. 24—Protection of witnesses, etc.

22. Section 24 of the principal Act is amended by striking out "or acting member" (wherever occurring).

Amendment of s. 25—Contempt of Authority

23. Section 25 of the principal Act is amended by striking out "or an acting member".

Amendment of s. 27—Powers of acting members of Authority

24. Section 27 of the principal Act is amended by striking out "Chairman" (wherever occurring) and substituting, in each case, "Chairperson".

Amendment of s. 29—Protection of members, etc.

25. Section 29 of the principal Act is amended—

- (a) by striking out from subsection (1) "or an acting member";
- (b) by striking out from subsection (1) "or acting member".

Amendment of s. 30—Appointment of Judge as member not to affect tenure, etc.

26. Section 30 of the principal Act is amended by striking out from subsection (1) "or acting member" (wherever occurring).

Amendment of s. 31—Secrecy

27. Section 31 of the principal Act is amended by striking out from subsection (1) "or acting member".

PART 6
AMENDMENT OF SUBORDINATE LEGISLATION ACT 1978

Amendment of s. 10—Making of regulations

28. Section 10 of the principal Act is amended—

- (a) by striking out subsections (3) and (4) and substituting the following subsections:

(3) Except as is expressly provided in any other Act, every regulation must be laid before each House of Parliament within six sitting days of that House after it has been made.

(4) A failure to have a regulation laid before both Houses of Parliament in accordance with subsection (3) does not affect the operation or effect of that regulation.

(5) The Legislative Review Committee of the Parliament may report a failure to comply with subsection (3) to each House of Parliament.

(5a) Subject to this section, where—

- (a) a regulation has been laid before each House of Parliament in accordance with subsection (3); or
- (b) a report has been made in respect of a regulation by the Legislative Review Committee of the Parliament in accordance with subsection (5),

that regulation may be disallowed by resolution of either House of Parliament and will cease to have effect.

(5b) A resolution is not effective for the purposes of subsection (5a) unless—

- (a) in the case of a regulation that has been laid before the House in accordance with subsection (3)—the resolution is passed in pursuance of a notice of motion given within 14 sitting days (which need not fall within the same session of Parliament) after the regulation was laid before the House; or
- (b) in the case of a regulation that has been the subject of a report by the Legislative Review Committee of the Parliament in accordance with subsection (5)—the resolution is passed in pursuance of a notice of motion given within six sitting days (which need not fall within the same session of Parliament) after the report of the Legislative Review Committee of the Parliament has been made to the House.;

(b) by striking out from subsection (6) "subsection (4)" and substituting "subsection (5a)".

PART 7

AMENDMENT OF SUPREME COURT ACT 1935

Amendment of s. 62H—Rules of Court

29. Section 62H of the principal Act is amended by striking out subsections (5) and (6) and substituting the following subsection:

(5) Rules of Court made under this section take effect from the date of publication in the *Gazette* or some later date specified in the rules.

Amendment of s. 72—Rules of Court

30. Section 72 of the principal Act is amended by striking out subsection (4) (including the sentence following paragraph (c)) and substituting the following subsection:

(4) Rules of Court made under this section take effect from the date of publication in the *Gazette* or some later date specified in the rules.

PART 8

AMENDMENT OF WRONGS ACT 1936

Amendment of s. 35A—Motor accidents

31. Section 35A of the principal Act is amended by striking out subsection (4) and substituting the following subsection:

(4) The defence of *volenti non fit injuria* is not available against the injured person where—

- (a) the injured person was, at the time of the accident, a voluntary passenger in or on a motor vehicle; and
- (b) the driver's ability to drive the motor vehicle was impaired in consequence of the consumption of alcohol or a drug and the injured person was aware, or ought to have been aware, of the impairment.

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

BASIL S. HETZEL, Governor's Deputy