



# STATUTES AMENDMENT (ATTORNEY-GENERAL'S PORTFOLIO) ACT 1995

No. 27 of 1995

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A.D. 1995

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No. 27 of 1995

**An Act to amend the Bail Act 1985, the Criminal Law Consolidation Act 1935, the Evidence Act 1929, the Fences Act 1975, the Law of Property Act 1936, the Legal Services Commission Act 1977, the Magistrates Act 1983, the Parliamentary Committees Act 1991, the Summary Offences Act 1953 and the Summary Procedure Act 1921.**

[Assented to 27 April 1995]

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 1995*.

### 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 BAIL ACT 1985

### Amendment of s. 5—Bail authorities

4. Section 5 of the principal Act is amended—

- (a) by striking out from subsection (1)(d) "justice" and substituting "magistrate";
- (b) by striking out from subsection (1)(e) "justice" and substituting "court".

**Amendment of s. 11—Conditions of bail**

5. Section 11 of the principal Act is amended—

(a) by striking out from subsection (6)(c)(i) "justice" and substituting "magistrate";

(b) by striking out subsection (9) and substituting the following subsection:

(9) Where—

(a) a bail authority imposes a condition under this section; but

(b) the applicant remains in custody because the condition is not fulfilled,

the applicant must (if he or she is not sooner released) be brought back before a bail authority for a review of the condition as soon as reasonably practicable and, in any event, within five working days after the condition is imposed.

**Amendment of s. 13—Procedure on arrest**

6. Section 13 of the principal Act is amended—

(a) by striking out subsection (2) and substituting the following subsection:

(2) An eligible person who is a child and has applied unsuccessfully to a member of the police force for release on bail must, if the child or a guardian so requests, be brought as soon as practicable before the Youth Court of South Australia for the purpose of making an application for release on bail.;

(b) by striking out from subsection 5(b) "a justice" and substituting "the Magistrates Court".

**Amendment of s. 14—Review of decisions of bail authorities**

7. Section 14 of the principal Act is amended by striking out from subsection (2)(b) "justice (not being a magistrate)" and substituting "court constituted of justices".

**Amendment of s. 15—Telephone review**

8. Section 15 of the principal Act is amended—

(a) by striking out from subsection (1)(a) "justice (not being a magistrate)" and substituting "court constituted of justices";

(b) by striking out from subsection (1) "the justice" and substituting "the justices";

(c) by striking out from subsection (2)(b) "justice" and substituting "justices";

(d) by striking out paragraph (d) of subsection (2) and substituting the following paragraph:

(d) if the decision that is the subject of the review was made by justices—the magistrate must then speak with the member of the police force who appeared before the justices and opposed the application for bail (if he or she is present and wishes to speak in relation to the application for review); and;

(e) by striking out paragraph (e) of subsection (2) and substituting the following paragraph:

(e) the magistrate must then advise the member of the police force or justices who made the original decision of the decision on review, and bail must then be granted or refused in accordance with that decision.;

(f) by striking out from subsection (3) "a justice" and substituting "the Magistrates Court constituted of a magistrate".

**Amendment of s. 17—Non-compliance with bail agreement constitutes offence**

9. Section 17 of the principal Act is amended—

(a) by inserting at the foot of subsection (1) the following penalty provision:

Penalty: Division 5 fine or division 5 imprisonment.;

(b) by striking out subsection (2) and substituting the following subsection:

(2) A penalty imposed under this section must not exceed the maximum penalty that may be imposed for the principal offence.;

(c) by striking out from subsection (3) "subsection (2)" and substituting "this section";

(d) by striking out subsection (3a).

**Amendment of s. 18—Arrest of eligible person on non-compliance with bail agreement**

10. Section 18 of the principal Act is amended—

(a) by striking out from subsection (3)(a) "or justice";

(b) by striking out paragraph (b) of subsection (3) and substituting the following paragraph:

(b) the Magistrates Court.

**Amendment of s. 19—Estreatment**

11. Section 19 of the principal Act is amended—

(a) by striking out from subsection (1)(a) "or justice";

(b) by striking out paragraph (b) of subsection (1) and substituting the following paragraph:

(b) the Magistrates Court.;

(c) by striking out from subsection (2) "or justice";

(d) by striking out from subsection (3) "or justice", wherever occurring;

(e) by striking out from subsection (3a) "or justice".

**PART 3**  
**AMENDMENT OF CRIMINAL LAW CONSOLIDATION ACT 1935**

**Insertion of s. 291**

12. The following heading and section are inserted in Part 9 of the principal Act after section 290:

*Proceedings Against Corporations*

**Proceedings against corporations**

**291.** (1) In this section—

"representative", in relation to a corporation, means a person appointed by the corporation to represent it for the purposes of this section.

(2) For the purposes of this section—

- (a) a representative need not be appointed under the seal of a corporation; and
- (b) a statement in writing purporting to be signed by a managing director of a corporation or by one or more of the persons having the management of the affairs of a corporation, to the effect that the person named in the statement has been appointed as the representative of the corporation for the purposes of this section is admissible in evidence and, in the absence of evidence to the contrary, is proof that the person has been so appointed.

(3) A corporation charged with an offence may appear in the proceedings by its representative and may, by its representative, enter or withdraw a plea or make or withdraw an election.

(4) If—

- (a) a representative appears in a proceeding against a corporation for an offence; and
- (b) there is a requirement that something be done in the presence of the defendant, or be said to the defendant,

it is sufficient if that thing is done in the presence of the representative or said to the representative.

(5) The trial of a corporation may proceed in the absence of any representative of the corporation.

(6) If a corporation arraigned on an information fails to appear by a representative to enter a plea in relation to the charge, the court may order that a plea of not guilty be entered.

**PART 4**  
**AMENDMENT OF EVIDENCE ACT 1929**

**Amendment of s. 21—Competence and compellability of witnesses**

13. Section 21 of the principal Act is amended by striking out subsection (5) and substituting the following subsection:

(5) The judge presiding at proceedings in which a close relative of an accused person is called as a witness against the accused must satisfy himself or herself that the prospective witness—

- (a) is aware of his or her right to apply for an exemption under this section; or
- (b) is incapable, by reason of age or mental impairment, of understanding his or her right to apply for an exemption under this section.

**PART 5**  
**AMENDMENT OF FENCES ACT 1975**

**Amendment of s. 23—Departures from requirements of this Act**

14. Section 23 of the principal Act is amended by inserting after subsection (3) the following subsection:

(4) The court may not, when determining a matter in a minor civil action under this Act, exercise any discretionary power to disregard a requirement or provision of this Act or to provide a special form of relief that the court would (but for this subsection) be able to exercise only by virtue of the provisions of the *Magistrates Court Act 1991* relating to minor civil actions.

**PART 6**  
**AMENDMENT OF LAW OF PROPERTY ACT 1936**

**Insertion of s. 24d**

15. The following section is inserted after section 24c of the principal Act:

**Capacities of corporations**

**24d.** (1) A corporation sole established under an Act has, and will be taken always to have had—

- (a) perpetual succession and a common seal; and
- (b) the capacity to sue and be sued in the corporation's name; and
- (c) subject to any limitations imposed under an Act, all the powers of a natural person.

(2) A right or liability that a corporation sole or corporation aggregate would have acquired or incurred but for the occurrence (before or after the commencement of this section) of a temporary vacancy in the office or offices of the corporation will be treated as having taken effect on the filling of the vacant office or offices as if the vacancy or vacancies had been filled before the right or liability was acquired or incurred.

**PART 7**  
**AMENDMENT OF LEGAL SERVICES COMMISSION ACT 1977**

**Insertion of s. 33A**

16. The following section is inserted after section 33 of the principal Act:

**Immunity of members**

33A. (1) A member of the Commission incurs no liability for an honest act or omission in the exercise or discharge, or purported exercise or discharge, by the member or the Commission of a power, function or duty under this Act.

(2) A liability that would, but for subsection (1), lie against a member lies instead against the Commission.

**PART 8**  
**AMENDMENT OF MAGISTRATES ACT 1983**

**Amendment of s. 7—Responsibility for administration and control of the magistracy**

17. Section 7 of the principal Act is amended by striking out from subsection (3) "the Deputy Chief Magistrate or a Supervising Magistrate or Assistant Supervising Magistrate" and substituting "any magistrate".

**PART 9**  
**AMENDMENT OF PARLIAMENTARY COMMITTEES ACT 1991**

**Amendment of s. 12B—Membership of Committee**

18. Section 12B of the principal Act is amended—

(a) by striking out from subsection (1) "The Committee is to consist of five" and substituting "Subject to subsection (1a), the Committee is to consist of six";

(b) by inserting the following subsection after subsection (1):

(1a) On and from the first sitting day of the House of Assembly following the next general election of members of the House of Assembly after the commencement of this subsection the Committee is to consist of five members of the House of Assembly appointed by the House of Assembly.

**Amendment of s. 24—Procedure at meetings**

19. Section 24 of the principal Act is amended by striking out subsection (2) and substituting the following subsections:

(2) The number of members of a Committee that constitute a quorum of the Committee is—

(a) if the Committee consists of five members—three members (at least one of whom must have been appointed to the Committee from the group led by the Leader of the Opposition in the Committee's appointing House); and

(b) if the Committee consists of six or seven members—four members.

(2a) No business may be transacted at a meeting of a Committee unless a quorum is present.



**PART 10**  
**AMENDMENT OF SUMMARY OFFENCES ACT 1953**

**Insertion of s. 15A**

**20.** The following section is inserted after section 15 of the principal Act:

**Possession of body armour**

**15A.** (1) A person who, without the approval in writing of the Commissioner—

- (a) manufactures, sells, distributes, supplies or otherwise deals in, body armour;  
or
- (b) has possession of, or uses, body armour,

is guilty of an offence.

**Penalty:** Division 5 fine or division 5 imprisonment.

(2) In this section—

"body armour" means a protective jacket, vest or other article of apparel designed to resist the penetration of a projectile discharged from a firearm.

**Insertion of s. 80**

**21.** The following section is inserted after section 79B of the principal Act:

**Power of entry and search in relation to fires and other emergencies**

**80.** A member of the police force may, at any time of the day or night, with or without assistance—

- (a) enter and inspect land, premises or an object for the purpose of determining the cause of a fire or other emergency; or
- (b) remove an object or material that may tend to prove the cause of a fire or other emergency; or
- (c) retain possession of an object or material for the purpose of an investigation or inquiry into the cause of the fire or other emergency.

**PART 11**  
**AMENDMENT OF SUMMARY PROCEDURE ACT 1921**

**Repeal of s. 72**

**22.** Section 72 of the principal Act is repealed.

**Amendment of s. 112—Remand of defendant**

**23.** Section 112 of the principal Act is amended by inserting "who is a natural person" after "defendant" (first occurring).

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

ROMA MITCHELL Governor