

South Australia



**STATUTES AMENDMENT (ATTORNEY-GENERAL'S PORTFOLIO)  
ACT 1998**

**No. 59 of 1998**

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# ELIZABETHAE II REGINAE

A.D. 1998

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## No. 59 of 1998

An Act to amend the Acts Interpretation Act 1915, the Criminal Law Consolidation Act 1935, the Environment, Resources and Development Court Act 1993, the Evidence (Affidavits) Act 1928, the Land Acquisition Act 1969, the Oaths Act 1936, the Partnerships Act 1891, the Police (Complaints and Disciplinary Proceedings) Act 1985, the Public Trustee Act 1995, the State Records Act 1997, the Strata Titles Act 1988, the Wills Act 1936 and the Youth Court Act 1993.

[Assented to 3 September 1998]

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 1998*.

#### Commencement

2. (1) Subject to subsection (2), this Act will come into operation on a day to be fixed by proclamation.

(2) Section 4 will be taken to have come into operation on 10 March 1988.

#### 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 ACTS INTERPRETATION ACT 1915

**Amendment of s. 14C—Exercise of powers conferred by a provision of an Act or statutory instrument before the provision comes into operation**

4. Section 14C of the principal Act is amended—

(a) by striking out "Anything" from subsection (2) and substituting "Subject to subsection (3), anything";

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

(3) The appointment of a person to a position pursuant to subsection (1) takes effect at the time of appointment but any power exercised by that person pursuant to subsection (1) does not take effect until the relevant provision comes into operation.

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

**Amendment of s. 348—Interpretation**

5. Section 348 of the principal Act is amended—

(a) by striking out paragraph (a) and substituting the following paragraph:

(a) a forfeiture order under section 8 or 9 of the *Criminal Assets Confiscation Act 1996*; or;

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

(b) a restraining order under section 15 of the *Criminal Assets Confiscation Act 1996*; or.

**Amendment of s. 353—Determination of appeals in ordinary cases**

6. Section 353 of the principal Act is amended by striking out subsection (5) and substituting the following subsection:

(5) The Full Court must not increase the severity of a sentence on an appeal by the convicted person except to extend the non-parole period where the Court passes a shorter sentence.

**Amendment of s. 354A—Right of appeal against ancillary orders**

7. Section 354A of the principal Act is amended by striking out subsection (3) and substituting the following subsections:

(3) An appeal under this section (whether relating to civil or criminal proceedings) may, if appropriate, be heard together with an appeal against sentence and may be brought as part of such an appeal.

(4) If an appeal against sentence and an appeal against an ancillary order are brought separately the Supreme Court may direct that they be heard together.

**PART 4**  
**AMENDMENT OF ENVIRONMENT, RESOURCES AND DEVELOPMENT COURT  
ACT 1993**

**Amendment of s. 45—Court fees**

8. Section 45 of the principal Act is amended by inserting after subsection (2) the following subsections:

(3) If a registrar lodges with the District Court a certificate of court fees payable under this Act, the Registrar of the District Court must register it and proceedings may then be taken on it, or any other action taken, as if it were a judgment or order of the District Court.

(4) A registrar must not lodge a certificate with the District Court under subsection (3) unless—

- (a) a notice has been served by certified mail on the person by whom outstanding court fees are payable, demanding payment of the fees by a specified date (being not less than 14 days after the date of service); and
- (b) the fees remain outstanding after the date specified in the notice under paragraph (a).

**PART 5**  
**AMENDMENT OF EVIDENCE (AFFIDAVITS) ACT 1928**

**Substitution of s. 2A**

9. Section 2A of the principal Act is repealed and the following section is substituted:

**Power of proclaimed managers and members of police force to take affidavits**

2A. (1) Affidavits for use in any court of the State may be sworn before a proclaimed manager or a proclaimed member of the police force.

(2) In this section, "proclaimed manager" and "proclaimed member of the police force" have the same meanings as in Part 5 of the *Oaths Act 1936*.

**PART 6**  
**AMENDMENT OF LAND ACQUISITION ACT 1969**

**Repeal of Part 4A**

10. Part 4A of the principal Act is repealed.

**PART 7**  
**AMENDMENT OF OATHS ACT 1936**

**Amendment of s. 6—Oaths to be taken by members of the Executive Council**

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

(3) Subsection (1) does not require a person to take the oath of allegiance or the oath of fidelity more than once during the term of any Parliament.

**Amendment of s. 6A—Oaths to be taken by Ministers who are not members of the Executive Council or by Parliamentary Secretary to Premier**

12. Section 6A of the principal Act is amended by inserting after its present contents (now to be designated as subsection (1)) the following subsection:

(2) Subsection (1) does not require a person to take the oath of allegiance more than once during the term of any Parliament.

**Amendment of s. 32—Interpretation**

13. Section 32 of the principal Act is amended—

- (a) by striking out the definitions of "postmaster", "proclaimed manager", "proclaimed postmaster" and "proclaimed member of the police force" and substituting the following definitions after the definition of "manager":

"proclaimed manager" means a manager appointed by the Governor by proclamation under this Part;

"proclaimed member of the police force" means a member of the police force appointed by the Governor by proclamation under this Part.

**Amendment of s. 33—Appointment of persons to take declarations and attest instruments**

14. Section 33 of the principal Act is amended—

- (a) by striking out "postmasters," from subsection (1); and
- (b) by striking out "postmaster," from subsection (2)(b).

**Amendment of s. 34—Who may take declarations and attest instruments**

15. Section 34 of the principal Act is amended—

- (a) by striking out paragraphs II, III and IV and substituting the following paragraphs:

II. any proclaimed manager; or

III. any proclaimed member of the police force of the State;

- (b) by striking out from the proviso "proclaimed postmaster,".

**Substitution of s. 35**

16. Section 35 of the principal Act is repealed and the following section is substituted:

**Meaning of terms in declarations and instruments**

35. The words "proclaimed manager" or "proclaimed police officer" appearing after a signature in a declaration or instrument are to be taken to have the same meaning as defined in this Part unless a different meaning is indicated.

**PART 8  
AMENDMENT OF PARTNERSHIP ACT 1891****Amendment of s. 62—Liability for limited partnerships formed under corresponding laws**

17. Section 62 of the principal Act is amended by striking out subsection (3) and substituting the following subsection:

(3) A law of another State or Territory may not be declared to be a corresponding law unless the Minister has certified to the Governor that the provisions of the law are similar to the provisions of this Part.

**PART 9**  
**AMENDMENT OF POLICE (COMPLAINTS AND DISCIPLINARY PROCEEDINGS)**  
**ACT 1985**

**Amendment of s. 37—Constitution of Police Disciplinary Tribunal**

**18.** Section 37 of the principal Act is amended by inserting the following subsection after subsection (4):

(5) The Governor may appoint three or more magistrates to a panel and, if at any time the magistrate appointed under subsection (4) is absent or unavailable, the Chief Magistrate may appoint a magistrate from the panel to act in his or her place.

**PART 10**  
**AMENDMENT OF PUBLIC TRUSTEE ACT 1995**

**Amendment of s. 29—Common funds**

**19.** Section 29 of the principal Act is amended by inserting after subsection (6) the following subsection:

(6a) The Public Trustee may withdraw from a common fund an amount at credit in the fund on account of a class of persons referred to in subsection (1)(b) for the purpose of recovering commission, fees or expenses fixed by regulations as payable to the Public Trustee by persons of that class.

**PART 11**  
**AMENDMENT OF STATE RECORDS ACT 1997**

**Amendment of s. 19—Mandatory transfer to State Records' custody**

**20.** Section 19 of the principal Act is amended by striking out subsection (6) and substituting the following subsection:

(6) The preceding provisions of this section do not apply to records of a court, but the Governor may direct that specified records of a court be delivered into the custody of State Records if, after considering submissions (if any) from the judge or magistrate in charge of the relevant court and the Manager, the Governor is satisfied that it is advisable to do so.

**PART 12**  
**AMENDMENT OF STRATA TITLES ACT 1988**

**Amendment of s. 36H—Audit of trust accounts**

**21.** Section 36H of the principal Act is amended by striking out from subsection (1)(b) "community" and substituting "strata".

**PART 13  
AMENDMENT OF WILLS ACT 1936**

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

22. 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 to make a will or a codicil to give effect to the testamentary intentions expressed in the document,

the document will be admitted to probate as a will (or a codicil to the 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 person (since deceased) genuinely expressed, by words or conduct, a clear intention to revoke a document that might otherwise have been admitted to probate as a will or codicil of the deceased person, that document is not to be admitted to probate as a will or codicil of the deceased person.

**PART 14  
AMENDMENT OF YOUTH COURT ACT 1993**

**Amendment of s. 9—The Court's judiciary**

23. Section 9 of the principal Act is amended by inserting in subsection (9) "or for a series of terms over a period not exceeding 10 years" after "10 years".

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

E. J. NEAL Governor