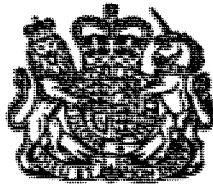


South Australia



ANNO QUADRAGESIMO NONO  
ELIZABETHAE II REGINAE  
A.D. 2000

**SUMMARY OFFENCES (SEARCHES) AMENDMENT ACT 2000**

No. 54 of 2000

[Assented to 20 July 2000]

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An Act to amend the Summary Offences Act 1953 and to make a related amendment to the Criminal Law (Forensic Procedures) Act 1998.

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## SUMMARY OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of s. 81—Power to search, examine and take particulars of persons
4. Amendment of Criminal Law (Forensic Procedures) Act 1998

**The Parliament of South Australia enacts as follows:****Short title**

1. (1) This Act may be cited as the *Summary Offences (Searches) Amendment Act 2000*.
- (2) The *Summary Offences Act 1953* is referred to in this Act as "the principal Act".

**Commencement**

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

**Amendment of s. 81—Power to search, examine and take particulars of persons**

3. Section 81 of the principal Act is amended—

(a) by striking out subsections (1), (2) and (3) and substituting the following subsections:

(1) A person who is taken into lawful custody may be searched in accordance with this section and anything found as a result of the search may be removed.

(2) The following provisions apply to a search under this section:

- (a) the search may only be carried out by a member of the police force or a medical practitioner or registered nurse acting at the request of a member of the police force, but an intrusive search may only be carried out by such a medical practitioner or registered nurse;
- (b) the person carrying out the search may use such force as is reasonably necessary for the purpose and may be assisted by a member of the police force or other person;
- (c) where a medical practitioner or registered nurse is to carry out an intrusive search, the detainee must be allowed a reasonable opportunity to arrange for the attendance, at the detainee's expense, of a medical practitioner or registered nurse of his or her choice to witness the search.

(3) The following further provisions apply to an intimate search:

- (a) if an intimate search is to be carried out on a detainee who is a minor, the search must not be carried out unless a solicitor or adult relative or friend, nominated by the minor, is present (but this paragraph need not be complied with if, in the opinion of a member of the police force, it is not reasonably practicable to do so in view of the urgency of the search);
- (b) if an intimate search is to be carried out on a detainee whose native language is not English and who is not reasonably fluent in English, the detainee must be informed that he or she may request the assistance of an interpreter;
- (c) if a detainee requests the assistance of an interpreter under paragraph (b), the search must not be carried out unless an interpreter is present (but paragraph (b) and this paragraph need not be complied with if, in the opinion of a member of the police force, it is not reasonably practicable to do so in view of the urgency of the search);

- (d) except where it is not reasonably practicable to do so, an intimate search must be carried out by a person of the same sex as the detainee (unless the detainee requests otherwise);
- (e) except where it is not reasonably practicable to do so, an intimate search must be recorded on videotape (but that part of an intimate search that consists of an intimate intrusive search will not be recorded if the detainee objects);
- (f) if, apart from the question of whether or not the detainee objects to the recording, it is otherwise reasonably practicable to record an intimate search on videotape, the member of the police force supervising the search must, before the search is carried out—
  - (i) give the detainee a written statement in a form approved by the Minister outlining—
    - (A) the value of recording the search on videotape; and
    - (B) that the detainee may object to the search being so recorded; and
    - (C) where relevant, that if the detainee objects to an intimate intrusive search being recorded, the intimate intrusive search will not be recorded; and
  - (ii) read the statement to the detainee (with the assistance of an interpreter if one is to be present during the search);
- (g) if an intimate search, or that part of an intimate search that consists of an intimate intrusive search, is not to be recorded on videotape, the member of the police force must ensure—
  - (i) that a written record of the search is made at the time of or as soon as practicable after the search, documenting all items found on the detainee and everything said and done by all persons present; and
  - (ii) that, as soon as practicable after the search, the record is read aloud to the detainee and the reading is recorded on videotape; and
  - (iii) that, when the videotape recording begins (but before the reading begins) the detainee is invited to interrupt the reading at any time to point out errors or omissions in the record; and
  - (iv) that, if the detainee in fact interrupts the reading to point out an error or omission, the detainee is then allowed a reasonable opportunity to do so; and
  - (v) that, at the end of the reading, but while the videotape recording continues, the detainee is again invited to point out errors or omissions in the record and allowed a reasonable opportunity to do so; and

- (vi) that, if the member of the police force agrees that there is an error or omission in the record, the member amends the record to correct the error or omission and if the member does not agree that there is an error or omission in the record, the member nevertheless makes a note of the error or omission asserted by the detainee in an addendum to the record.

(3a) In deciding whether it is reasonably practicable to make a videotape recording under this section, the following matters must be considered:

- (a) the availability of recording equipment within the period for which it would be lawful to detain the detainee;
- (b) mechanical failure of recording equipment;
- (c) any objections made to the recording by the detainee;
- (d) any other relevant matter.

(3b) If a videotape recording is made under this section, the member of the police force must, as soon as is reasonably practicable, give the detainee a written statement of his or her right—

- (a) to have the videotape played over to the detainee or his or her legal adviser (or both); and
- (b) to obtain a copy of the videotape recording.

(3c) Arrangements must be made, at the request of a detainee, for the playing of a videotape at a reasonable time and place to be nominated by the member of the police force.

(3d) A detainee must be provided, on request and on payment of the fee fixed by regulation, with a copy of a videotape recording made under this section.

(3e) A person (other than the detainee) must not play, or cause to be played, a videotape recording made under this section except—

- (a) for purposes related to the investigation of an offence or alleged misconduct to which the person reasonably believes the recording may be relevant; or
- (b) for the purposes of, or purposes related to, legal proceedings, or proposed legal proceedings, to which the recording is relevant.

Maximum penalty: \$10 000 or imprisonment for 2 years.

(3f) A videotape recording made under this section or a written record of an intimate search must be destroyed—

- (a) if the Commissioner of Police is satisfied that it is not likely to be required for any of the purposes referred to in subsection (3e); or
- (b) if a court or tribunal so orders.

(3g) The Governor may, by regulation, provide for the storage, control, movement or destruction of videotape recordings and written records made of intimate searches under this section.

(b) by inserting after subsection (4f) the following subsection:

(4g) A procedure under this section—

(a) must be carried out humanely and with care—

(i) to avoid, as far as reasonably practicable, offending genuinely held cultural values or religious beliefs; and

(ii) to avoid inflicting unnecessary physical harm, humiliation or embarrassment; and

(b) must not be carried out in the presence or view of more persons than are necessary for properly carrying out the procedure and satisfying any relevant statutory requirements.;

(c) by inserting after subsection (5) the following subsections:

(5a) No civil or criminal liability is incurred by a person who carries out, or assists in carrying out, a procedure under this section for an act or omission if—

(a) the person genuinely believes that the procedure is authorised under this section; and

(b) the act or omission is reasonable in the circumstances.

(6) In this section—

**"intimate intrusive search"** means an intrusive search of the rectum or vagina;

**"intimate search"** means a search of the body that involves exposure of, or contact with the skin of, the genital or anal area, the buttocks or, in the case of a female, the breasts, and includes an intimate intrusive search;

**"intrusive search"** means an internal search involving the introduction of anything into a bodily orifice;

**"medical practitioner"** means a medical practitioner as defined in the *Medical Practitioners Act 1983*;

**"registered nurse"** means a nurse registered under the *Nurses Act 1999*.

#### **Amendment of Criminal Law (Forensic Procedures) Act 1998**

4. The *Criminal Law (Forensic Procedures) Act 1998* is amended by striking out subsection (2) of section 38 and substituting the following subsection:

(2) If it is reasonably practicable to make a video recording of a forensic procedure, the person who is to carry out the procedure, or a police officer, must—

- (a) give the person on whom the forensic procedure is to be carried out a written statement in a form approved by the Minister outlining—

  - (i) the value of making a video recording of the procedure; and
  - (ii) that the person may object to the procedure being so recorded; and
- (b) read the statement to the person (with the assistance of an interpreter if one is to be present during the carrying out of the procedure).