

House of Assembly—No 240

As laid on the table and read a first time, 27 September 2017

South Australia

Statutes Amendment (Attorney-General's Portfolio No 3) Bill 2017

A BILL FOR

An Act to amend the *Bail Act 1985*; the *Construction Industry Long Service Leave Act 1987*; the *Guardianship and Administration Act 1993*; the *Legal Practitioners Act 1981*; the *Magistrates Act 1983*; the *Second-hand Dealers and Pawnbrokers Act 1996*; and the *Young Offenders Act 1993*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Statutes Amendment (Attorney-General's Portfolio No 3) Act 2017*.

2—Commencement

- (1) Subject to subsection (2), this Act will come into operation on a day to be fixed by proclamation.
- (2) Subject to subsection (3), Part 6 will come into operation on 8 July 2018.
- (3) If this Act is assented to after 8 July 2018, Part 6 will be taken to have come into operation on 8 July 2018.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Bail Act 1985*

4—Amendment of section 3—Interpretation

Section 3(1)—after the definition of *telephone* insert:

training centre has the same meaning as in the *Young Offenders Act 1993*;

5—Amendment of section 6—Nature of bail agreement

Section 6(3)—after paragraph (b) insert:

- (ba) if the person is in a training centre—the manager of the training centre; or

6—Amendment of section 7—Guarantee of bail

Section 7(3)—after paragraph (b) insert:

- (ba) if the person who is to be released on bail is in a training centre—the manager of the training centre; or

Part 3—Amendment of *Construction Industry Long Service Leave Act 1987*

7—Amendment of section 4—Interpretation

Section 4(1), definition of *electrical or metal trades work*, (b)—after subparagraph (ii) insert:

- (iii) data and communication cabling; or
- (iv) security alarm equipment; or

8—Amendment of section 15—Crediting effective service under this Act and the Long Service Leave Act

(1) Section 15(1) and (2)—delete subsections (1) and (2) and substitute:

- 5 (1) For the purposes of this section, if a person employed as a construction worker commences work in a different capacity in the service of the same employer, the following provisions apply:
- 10 (a) the person's continuity of service is preserved, but only in respect of the aggregate of the periods of work undertaken in each capacity in the service of that employer (and not in respect of any periods of work undertaken with any other employer);
- 15 (b) the period of effective service credited under this Act in respect of work undertaken by the person as a construction worker in the service of that employer (but no other employer) will be credited to the person under the *Long Service Leave Act 1987* (on the basis that 5 days of effective service under this Act is equivalent to 7 days of service under the other Act) (and an effective service so credited will then be cancelled under this Act).

20 (2) For the purposes of this section, if a person employed in a capacity other than as a construction worker commences work as a construction worker in the service of the same employer, the following provisions apply:

- 25 (a) the person's continuity of service is preserved, but only in respect of the aggregate of the periods of work undertaken in each capacity in the service of that employer (and not in respect of any periods of work undertaken with any other employer);
- 30 (b) the period of service in respect of work undertaken by the person other than as a construction worker in the service of that employer (but no other employer) calculated in accordance with the *Long Service Leave Act 1987* up to the point of change in the nature of employment will be credited as effective service for the purposes of this Act (on the basis that 7 days of service under the other Act is equivalent to 5 days of effective service under this Act).

(2) Section 15(3)—after "person's employer" insert:

(being the employer referred to in subsection (1))

40 (3) Section 15(3)—delete "*D* is the effective service entitlement of the person as a construction worker under this Act (expressed in days)." and substitute:

45 *D* is the total number of days of effective service entitlement of the person as a construction worker under this Act minus the portion of effective service entitlement representing the construction work undertaken by the person in the service of any employer other than the employer referred to in subsection (1).

Part 4—Amendment of *Guardianship and Administration Act 1993*

9—Insertion of section 76A

After section 76 insert:

76A—Death by natural causes of person while under detention order may be subject of inquest

- (1) The death or apparent death of a person from natural causes while subject to an order under section 32(1)(b) is, despite the definition of *death in custody* in section 3(1) of the *Coroners Act 2003*, not to be taken to be a death in custody for the purposes of section 21(1)(a) of that Act.
- (2) For the purposes of section 21(1)(c) of the *Coroners Act 2003*, the Coroner's Court must, if the State Coroner considers it necessary or desirable to do so or at the direction of the Attorney-General, hold an inquest to ascertain the cause or circumstances of the death of a person who apparently died from natural causes while subject to an order under section 32(1)(b).
- (3) Subsections (1) and (2) apply regardless of whether the death of the person occurred before or after the commencement of this section.

Part 5—Amendment of *Legal Practitioners Act 1981*

10—Amendment of section 5—Interpretation

Section 5(1), definition of *corresponding law*—delete the definition and substitute:

corresponding law means the following:

- (a) a law of another jurisdiction that corresponds to the relevant provisions of this Act or, if a regulation is made declaring a law of the other jurisdiction to be a law that corresponds to this Act, the law declared under that regulation for the other jurisdiction;
- (b) if the term is used in relation to a matter that happened before the commencement of the law of another jurisdiction that, under paragraph (a), is the corresponding law for the other jurisdiction, a previous law applying to legal practice in the other jurisdiction;

11—Amendment of Schedule 3—Costs disclosure and adjudication

- (1) Schedule 3, clause 25(2)(c)(ii)—delete subparagraph (ii)
- (2) Schedule 3, clause 26(1)—delete "A" and substitute:

Subject to subclause (1a), a

(3) Schedule 3, clause 26—after subclause (1) insert:

(1a) Subclause (1) does not apply to a conditional costs agreement relating to proceedings under the *Migration Act 1958* of the Commonwealth.

5 **Part 6—Amendment of *Magistrates Act 1983***

12—Amendment of section 6—Magistracy

(1) Section 6(1)—delete subsection (1) and substitute:

(1) There will be a Chief Magistrate appointed by the Governor on the recommendation of the Attorney-General.

10 (1a) The Chief Magistrate may appoint a magistrate to be Deputy Chief Magistrate for a term (not exceeding 5 years) specified in the instrument of appointment.

(2) Section 6(3)—delete subsection (3)

15 **Part 7—Amendment of *Second-hand Dealers and Pawnbrokers Act 1996***

13—Amendment of section 3—Interpretation

Section 3(1)—after the definition of *Commissioner of Police* insert:

20 *criminal intelligence* means information relating to actual or suspected criminal activity (whether in this State or elsewhere) the disclosure of which could reasonably be expected to prejudice criminal investigations, enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement or endanger a person's life or physical safety;

14—Amendment of section 5A—Criminal intelligence

(1) Section 5A—before subsection (1) insert:

25 (a1) Information that is classified by the Commissioner of Police as criminal intelligence for the purposes of this Act may not be disclosed to any person other than the Minister, a court or a person to whom the Commissioner of Police authorises its disclosure.

(2) Section 5A(2)(b)—after "affidavit" insert:

30 "of a police officer of or above the rank of superintendent"

(3) Section 5A—after subsection (2) insert:

35 (3) The Commissioner of Police may not delegate the function of classifying information as criminal intelligence for the purposes of this Act except to a Deputy Commissioner or Assistant Commissioner of Police.

Part 8—Amendment of *Young Offenders Act 1993*

15—Amendment of section 3—Objects and statutory policies

Section 3(3)—after paragraph (a) insert:

- 5 (ab) compensation and restitution should also be provided, where appropriate, for persons who have suffered loss or damage as a result of offences committed by youths;

16—Amendment of section 4—Interpretation

(1) Section 4(1), after the definition of *injury* insert:

loss or damage includes costs and expenses, but does not include injury;

10 (2) Section 4—after subsection (2) insert:

(3) A reference in this Act to a person who has suffered loss or damage includes a reference to a body that has suffered loss or damage.

17—Amendment of section 8—Powers of police officer

(1) Section 8(1)—after paragraph (a) insert:

15 (ab) the officer may require the youth to enter into an undertaking to pay compensation to a person who has suffered loss or damage as a result of the offence;

(2) Section 8(1)(c)—delete "or to do anything else that may be appropriate in the circumstances of the case"

20 (3) Section 8(1)—after paragraph (c) insert:

(d) the officer may require the youth to enter into an undertaking to apologise to a person who has suffered loss or damage as a result of the offence;

25 (e) the officer may require the youth to do anything else that may be appropriate in the circumstances of the case.

(4) Section 8—after subsection (5) insert:

30 (5a) If a youth enters into an undertaking under this section to apologise to a person who has suffered loss or damage as a result of the offence, the apology must be made in the presence of an adult person approved by a police officer.

(5) Section 8(9)—after "this Division" insert:

(other than an offence described in subsection (10))

(6) Section 8—after subsection (9) insert:

35 (10) If a police officer deals with an offence (as a result of which a person has suffered loss or damage) under this Division, the officer must—

(a) ask the person whether he or she wishes to be informed of the identity of the offender and how the offence has been dealt with; and

- (b) if the person indicates that he or she does wish to have that information—give the person that information.

18—Amendment of section 10—Convening of family conference

- (1) Section 10(1)—after paragraph (d) insert:

(e) a person who has suffered loss or damage as a result of the offence, and if that person is a youth, the person's guardians.

- (2) Section 10(2)(c)—delete paragraph (c) and substitute:

(c) will invite the persons referred to in subsection (1) and, in the case of a youth referred to in subsection (1)(d) or (e), will invite them to bring along a person of their choice to provide assistance and support; and

19—Amendment of section 12—Powers of family conference

- (1) Section 12(1)—after paragraph (b) insert:

(ba) the conference may require the youth to enter into an undertaking to pay compensation to a person who has suffered loss or damage as a result of the offence;

- (2) Section 12(1)(d)—delete "or to do anything else that may be appropriate in the circumstances of the case"

- (3) Section 12(1)—after paragraph (d) insert:

(e) the conference may require the youth to enter into an undertaking to apologise to a person who has suffered loss or damage as a result of the offence;

(f) the conference may require the youth to do anything else that may be appropriate in the circumstances of the case.

- (4) Section 12(5)—before "named in the undertaking" insert:

or persons who have suffered loss or damage

- (5) Section 12(7)—after "of the offence" insert:

or the person suffering loss or damage

- (6) Section 12(11)—after "this Division" insert:

(other than an offence described in subsection (12))

- (7) Section 12—after subsection (11) insert:

(12) If a family conference deals with an offence (as a result of which a person has suffered loss or damage) under this Division, the Youth Justice Co-ordinator must—

(a) ask the person whether they wish to be informed of the identity of the offender and how the offence has been dealt with; and

(b) if the person indicates that they do wish to have that information—give that information accordingly.

20—Amendment of section 13—Limitation on publicity

Section 13(1)(c)—before "or any other person" insert:
, a person who has suffered loss or damage

21—Amendment of section 26—Limitation on Court's power to require bond

5 Section 26(3)(ba)—before "or for any other person or body" and insert:
, a person who has suffered loss or damage

22—Amendment of section 64—Information about youth may be given in certain circumstances

10 Section 64(1)—delete ", loss" and substitute:
or loss