

**Legislative Council—No 271**

As received from the House of Assembly and read a first time, 1 November 2017

South Australia

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

A BILL FOR

An Act to amend the *Advance Care Directives Act 2013*; 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 *Magistrates Court Act 1991*; the *Remuneration Act 1990*; the *Second-hand Dealers and Pawnbrokers Act 1996*; the *South Australian Employment Tribunal Act 2014*; the *Spent Convictions Act 2009*; and the *Young Offenders Act 1993*.

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

**Part 1—Preliminary**

**1—Short title**

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

**2—Commencement**

- (1) Subject to this section, this Act will come into operation on a day to be fixed by proclamation.  
 (2) Sections 21 to 23 (inclusive) will be taken to have come into operation on 1 July 2017.  
 10 (3) Subject to subsection (4), Part 7 will come into operation on 8 July 2018.  
 (4) If this Act is assented to after 8 July 2018, Part 7 will be taken to have come into operation on 8 July 2018.

**3—Amendment provisions**

- 15 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 *Advance Care Directives Act 2013***

**4—Amendment of section 45—Resolution of disputes by Public Advocate**

Section 45(12)—delete subsection (12)

## **Part 3—Amendment of *Bail Act 1985***

### **5—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 6—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

### **7—Amendment of section 7—Guarantee of bail**

10 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 4—Amendment of *Construction Industry Long Service Leave Act 1987***

### **15 8—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

### **20 9—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:

25 (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:

30 (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);

- 5 (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).
- 10 (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:
- 15 (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);
- 20 (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
- 25 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))
- (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:
- 30 **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 5—Amendment of *Guardianship and Administration Act 1993***

**10—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 6—Amendment of *Legal Practitioners Act 1981***

**11—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;

**12—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 7—Amendment of *Magistrates Act 1983***

### **13—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 (2) Section 6(2)—delete "or Deputy Chief Magistrate"

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

### **14—Amendment of section 7—Administration of magistracy**

Section 7(2)—delete subsection (2)

### **15—Amendment of section 13—Remuneration of magistrates**

15 Section 13(1)—delete "and Deputy Chief Magistrate"

## **Part 8—Amendment of *Magistrates Court Act 1991***

### **16—Amendment of section 11—Chief Magistrate**

Section 11(3)—delete "the Deputy Chief Magistrate and, if both are absent, on"

### **17—Amendment of section 49—Rules of Court**

20 Section 49(2)—delete ", the Deputy Chief Magistrate"

## **Part 9—Amendment of *Remuneration Act 1990***

### **18—Amendment of section 13—Determination of remuneration of judges, magistrates and certain others**

Section 13(h)—delete paragraph (h)

## 25 **Part 10—Amendment of *Second-hand Dealers and Pawnbrokers Act 1996***

### **19—Amendment of section 3—Interpretation**

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

30 *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;

## 20—Amendment of section 5A—Criminal intelligence

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

- (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:

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

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

- (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 11—Amendment of *South Australian Employment Tribunal Act 2014*

### 21—Amendment of section 3—Interpretation

Section 3(1), definition of *relevant Act*—after "an Act" insert:

(including this Act)

### 22—Insertion of Part 2 Division 8

After section 26I insert:

#### **Division 8—Additional provisions relating to jurisdiction under *Workers Compensation Act 1971***

#### **26IA—Additional provisions relating to jurisdiction under *Workers Compensation Act 1971***

- (1) The purpose of this section is, in consequence of—
- (a) the continued application of the *Workers Compensation Act 1971*<sup>1</sup> under Schedule 9 clause 59(1) of the *Return to Work Act 2014*; and
- (b) the dissolution of the Industrial Relations Court under section 69 of the *Statutes Amendment (South Australian Employment Tribunal) Act 2016*,

to confer on the Tribunal the same jurisdiction under the *Workers Compensation Act 1971* that was previously conferred on the Industrial Relations Court.

**Note—**

<sup>1</sup> The *Workers Compensation Act 1971* was repealed by the *Workers Rehabilitation and Compensation Act 1986*.



(2) The *Workers Compensation Act 1971* is to be read—

- (a) as if a reference in that Act to the "Court" were a reference to the Tribunal; and
- (b) as if reference in that Act to a "Judge" were a reference to a Presidential member of the Tribunal who is a District Court judge; and
- (c) as if a reference in that Act to the "Registrar" were a reference to a registrar of the Tribunal; and
- (d) as if a reference in that Act to an "Industrial magistrate" were a reference to a Presidential member of the Tribunal who is a magistrate; and
- (e) as if a reference in that Act to the "Rules" were a reference to the Rules of the Tribunal; and
- (f) as if a reference in that Act to the "Regulations" were a reference to regulations under this Act; and
- (g) as if a reference in that Act to the "Full Industrial Relations Court" were a reference to the Full Bench of the Tribunal in Court Session.

(3) The jurisdiction of the Tribunal by virtue of the operation of subsection (2) is assigned to the South Australian Employment Court.

### 23—Amendment of section 93—Regulations

Section 93(2)(e)—after "under" insert:

this or

### 24—Transitional provisions

(1) In this section—

**decision**, of the Industrial Relations Court includes a direction, determination or order of the Industrial Relations Court;

**decision**, of the Tribunal, has the same meaning as in the principal Act;

**Industrial Relations Court** means the Industrial Relations Court as in existence immediately before the commencement of section 69 of the *Statutes Amendment (South Australian Employment Tribunal) Act 2016*;

**principal Act** means the *South Australian Employment Tribunal Act 2014*;

**relevant day** means the day on which this section comes into operation;

**Tribunal** means the South Australian Employment Tribunal.

(2) A decision (or purported decision) of the Industrial Relations Court made in consequence of Schedule 9 clause 59(1) of the *Return to Work Act 2014* in force immediately before the relevant day will, on and from the relevant day, be taken to be a decision of the Tribunal.

- 5 (3) A right (or purported right) to bring proceedings in consequence of Schedule 9 clause 59(1) of the *Return to Work Act 2014* before the relevant day (but not so exercised before that day) will be exercised as if Part 2 Division 8 of the principal Act had been in operation before the right arose, so that the relevant proceedings may be commenced before the Tribunal.
- 10 (4) Any proceedings that were before (or purportedly before) the Industrial Relations Court in consequence of Schedule 9 clause 59(1) of the *Return to Work Act 2014* before the relevant day will, subject to such directions as the President of the Tribunal thinks fit, be transferred to the Tribunal where they may proceed as if they had been validly commenced before the Tribunal.
- (5) The Tribunal may—
- 15 (a) receive in evidence any transcript of evidence in proceedings before (or purportedly before) the Industrial Relations Court, and draw any conclusions of fact from that evidence that appear proper; and
  - (b) adopt any findings or determinations (or purported findings or determinations) of the Industrial Relations Court that may be relevant to proceedings before the Tribunal; and
  - 20 (c) adopt any determination (or purported determination), or make any determination, in relation to proceedings before (or purportedly before) the Industrial Relations Court before the relevant day (including so as to make a determination in relation to proceedings fully heard, or purportedly fully heard, before the relevant day); and
  - (d) take other steps to promote or ensure the smoothest possible transition from 1 jurisdiction to another in connection with the operation of this section.
- 25 (6) Nothing in this section affects a right of appeal to the Supreme Court against a decision, direction or order of the Full Court of the Industrial Relations Court made or given (or purportedly made or given) before the relevant day.
- 30 (7) A reference in any instrument or agreement made (or purportedly made) in consequence of Schedule 9 clause 59(1) of the *Return to Work Act 2014* to the Industrial Relations Court will, unless the context otherwise requires, be taken to be a reference to the Tribunal.

## **Part 12—Amendment of *Spent Convictions Act 2009***

### **25—Amendment of section 13—Exclusions**

Section 13(2) to (5)—delete subsections (2) to (5) inclusive

### **26—Amendment of Schedule 1—Exclusions**

Schedule 1—before clause 1 insert:

#### **a1—Application of exclusions**

- (1) An exclusion set out in a clause of this Schedule—
- 40 (a) does not apply in relation to an offence if the conviction has been quashed and the person has been granted a pardon for the offence, except as may be prescribed by the regulations;

(b) does not apply in relation to a designated sex-related offence in relation to which an order has been made under section 8A, except—

(i) in relation to the operation of clause 9A; or

(ii) as may be prescribed by the regulations.

(2) An exclusion under clause 6, 7 or 8 does not apply in relation to an offence committed by a particular person if a qualified magistrate has made an order to that effect under section 13A.

(3) The regulations may provide that an exclusion set out in a clause of this Schedule does not apply in relation to a finding (as constituting a conviction for the purposes of this Act) that is taken to be immediately spent under section 4(1a).

## **Part 13—Amendment of *Young Offenders Act 1993***

### **27—Amendment of section 3—Objects and statutory policies**

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

(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;

### **28—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;

(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.

### **29—Amendment of section 8—Powers of police officer**

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

(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"

(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;

(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:

(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:

(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.

### **30—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

### **31—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))

5 (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—

- 10 (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.

**32—Amendment of section 13—Limitation on publicity**

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

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

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

20 **34—Amendment of section 64—Information about youth may be given in certain circumstances**

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