

House of Assembly—No 153

As laid on the table and read a first time, 23 November 2011

South Australia

Statutes Amendment (Attorney-General's Portfolio) Bill 2011

A BILL FOR

An Act to amend the *Criminal Law Consolidation Act 1935*, the *Criminal Law (Sentencing) Act 1988*, the *Director of Public Prosecutions Act 1991*, the *District Court Act 1991*, the *Enforcement of Judgments Act 1991*, the *Environment, Resources and Development Court Act 1993*, the *Judicial Administration (Auxiliary Appointments and Powers) Act 1988*, the *Justices of the Peace Act 2005*, the *Magistrates Act 1983*, the *Magistrates Court Act 1991*, the *Supreme Court Act 1935* 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) Act 2011*.

5 **2—Commencement**

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

3—Amendment provisions

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

10 **Part 2—Amendment of *Criminal Law Consolidation Act 1935*****4—Amendment of section 285BA—Power to serve notice to admit facts**

(1) Section 285BA(1) to (3) (inclusive)—delete the subsections and substitute:

- 15
- (1) If a defendant is to be tried on information, the Director of Public Prosecutions may serve on the defence a notice to admit specified facts.
- (2) The Director of Public Prosecutions must not, without the permission of the court, serve such a notice on a defendant who is unrepresented.
- (3) The notice must—
- 20 (a) specify that it is to be complied with within a specified time or within a time fixed by the court on application by the defence; and

- (b) contain a warning, in the prescribed form, to the effect that, if the defendant is convicted, the court is required to take an unreasonable failure to make an admission in response to the notice into account in fixing sentence.

5 (2) Section 285BA(5)—delete the subsection

Part 3—Amendment of *Criminal Law (Sentencing) Act 1988*

5—Insertion of section 9D

After section 9C insert:

9D—ERD Court sentencing conferences

- 10 (1) Before sentencing a defendant, the ERD Court may, if the defendant expresses contrition for the offence and consents to the convening of a sentencing conference, convene a sentencing conference.
- (2) A sentencing conference is to comprise—
 - 15 (a) the defendant; and
 - (b) the defendant's legal representative (if any); and
 - (c) the prosecutor; and
 - (d) such representatives of persons affected by the commission of the offence as the Court thinks appropriate; and
 - 20 (e) such other persons as the Court thinks may contribute usefully to the sentencing process.
- (3) The primary purpose of a sentencing conference is to negotiate action that the defendant is to take to make reparation for any injury, loss or damage resulting from the offence, or to otherwise show contrition for the offence.

6—Amendment of section 18—Court may add or substitute certain penalties

Section 18—after its present contents (now to be designated as subsection (1)) insert:

- (2) For the purposes of subsection (1), any component of the penalty provided by the special Act other than imprisonment or a fine is to be disregarded.

7—Insertion of section 19D

After section 19C insert:

19D—Deferral of sentence following ERD Court sentencing conference

- 35 (1) The ERD Court may, on finding a person guilty of an offence (whether or not it proceeds to conviction), make an order adjourning proceedings to a specified date for the purpose of allowing the defendant to take action as agreed at a sentencing conference convened by the ERD Court.

(2) As a general rule, proceedings should not be adjourned under this section (whether by a single adjournment or a series of adjournments) for more than 3 months from the date of the agreement reached at the sentencing conference.

5 (3) This section does not limit any power that the Court has, apart from this section, to adjourn proceedings or to grant bail in relation to any period of adjournment.

8—Insertion of Part 3 Division 4

After Part 3 Division 3 insert:

10 Division 4—Effect of imprisonment for contempt

33C—Effect of imprisonment for contempt

If a person is imprisoned for contempt of court—

- 15 (a) any sentence of imprisonment that the person has not yet begun to serve (and any non-parole period in respect of that sentence) will not commence until the expiry of the period of imprisonment for contempt; and
- (b) any sentence of imprisonment that the person is then serving (and any non-parole period in respect of that sentence) ceases to run for the period of imprisonment for contempt.

20 9—Amendment of section 48—Special provisions relating to supervision

Section 48—after paragraph (c) insert:

and

- 25 (d) the person must not, during the period of supervision, leave the State for any reason except in accordance with the written permission of the CEO.

10—Amendment of section 50—Community corrections officer to give reasonable directions

(1) Section 50(1)—before paragraph (a) insert:

- 30 (aa) must give reasonable directions to the person requiring the person to report to the officer on a regular basis; and

(2) Section 50(1)(a)(i)—delete subparagraph (i)

(3) Section 50(1)(a)(iii)—delete subparagraph (iii)

11—Amendment of section 58—Orders that court may make on breach of bond

35 Section 58(3)(b)(i)(B)—delete subsubparagraph (B) and substitute:

- (B) in the case of a bond requiring performance of community service—

- extend the period within which any uncompleted hours of community service must be performed by not more than 6 months; or
- if the period within which the community service must be performed has expired, impose a period of not more than 6 months within which any uncompleted hours of community service must be performed; or

12—Amendment of section 70I—Court may remit or reduce pecuniary sum or make substitute orders

(1) Section 70I(3)—delete subsection (3) and substitute:

(3) On reconsidering a matter under this section, the Court may—

(a) make an order—

- (i) remitting the pecuniary sum; or
- (ii) reducing the pecuniary sum by a specified amount; or
- (iii) deferring payment of the pecuniary sum until such time as the Court thinks fit (being a period not more than 2 years after the date of the reconsideration of the matter); or
- (iv) converting the order imposing the pecuniary sum into an order for community service; or
- (v) converting the order imposing the pecuniary sum into an order—
 - (A) disqualifying the debtor from holding or obtaining a driver's licence for a period not exceeding 6 months; or
 - (B) cancelling the debtor's driver's licence and disqualifying the debtor from obtaining such a licence for a period not exceeding 6 months; or

(b) make an order dealing with specified amounts of the pecuniary sum (that, when aggregated, make up the whole) as follows:

- (i) by remitting a specified amount of the pecuniary sum;
- (ii) by deferring payment of a specified amount of the pecuniary sum until such time as the Court thinks fit (being a period not more than 2 years after the date of the reconsideration of the matter);
- (iii) by converting the order in relation to a specified amount of the pecuniary sum into an order for community service;

- (iv) by converting the order in relation to a specified amount of the pecuniary sum into an order—
- (A) disqualifying the debtor from holding or obtaining a driver's licence for a period not exceeding 6 months; or
 - (B) cancelling the debtor's driver's licence and disqualifying the debtor from obtaining such a licence for a period not exceeding 6 months;
- (v) by confirming the imposition of a specified amount of the pecuniary sum; or
- (c) confirm the order imposing the pecuniary sum.

(3a) The Court may make any ancillary order the Court thinks appropriate.

- (2) Section 70I(4)—delete "(b)"
- (3) Section 70I(5)—after "community service" insert:
under subsection (3)(a)
- (4) Section 70I(6)—after "pecuniary sum" insert:
under subsection (3)(a)

13—Amendment of section 71—Community service orders may be enforced by imprisonment

Section 71(8)—delete "the person's failure to comply with the order is excusable on the ground of the person's obligations to remunerated employment gained since the making of the order, and that the person" and substitute:

the person who has failed to comply with the order requiring performance of community service

Part 4—Amendment of *Director of Public Prosecutions Act 1991*

14—Substitution of section 6A

Section 6A—delete the section and substitute:

6A—Delegation

- (1) The Director may delegate to a suitable person (including a person for the time being performing particular duties or holding or acting in a particular position) a function or power of the Director under this or any other Act.
- (2) A delegation under this section—
- (a) must be by instrument in writing; and
 - (b) may be absolute or conditional; and

(c) does not derogate from the power of the Director to act in any matter; and

(d) is revocable at will.

(3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

Part 5—Amendment of *District Court Act 1991*

15—Amendment of section 32—Mediation and conciliation

Section 32(1)—delete "(whether sitting with assessors or not) may, with or without the consent of the parties, and a Master or" and substitute:

or Master (whether or not sitting with assessors) may, with or without the consent of the parties, or

Part 6—Amendment of *Enforcement of Judgments Act 1991*

16—Amendment of section 11—Authority to take possession of property

Section 11(2)—delete subsection (2) and substitute:

(2) In executing the warrant, the sheriff may—

(a) if the warrant relates to land—enter the land and eject from the land any person who is not lawfully entitled to be on the land; or

(b) if the warrant relates to personal property—enter land and seize and take possession of the property,

using appropriate means and such force as may be reasonably necessary in the circumstances.

Part 7—Amendment of *Environment, Resources and Development Court Act 1993*

17—Amendment of section 29—Costs

Section 29—after subsection (6) insert:

(6a) If the Court considers that a party to proceedings before the Court has engaged in misconduct, it may make an order for costs against that party in favour of any other party to the proceedings.

(6b) However, no order for costs is to be made under subsection (6a) unless the Court considers such an order to be necessary in the interests of justice.

18—Insertion of section 40A

After section 40 insert:

40A—Custody of litigant's funds and securities

- 5
- (1) The Registrar is responsible for the proper custody of money paid into the Court and securities delivered to the Court in connection with proceedings in the Court.
- (2) The Treasurer guarantees the safe keeping of any such money or security from the time it comes into the Court's custody until it lawfully ceases to be in that custody.
- 10
- (3) Any liability arising under the guarantee will be satisfied from the General Revenue of the State (which is appropriated to the necessary extent).
- (4) Money paid into the Court may be invested in a manner authorised by the rules and any interest or accretions arising from the investment will be dealt with as prescribed by the rules.
- 15
- (5) Any money in the Court's custody that has remained unclaimed for 6 years or more may be dealt with under the *Unclaimed Moneys Act 1891*.

Part 8—Amendment of *Judicial Administration (Auxiliary Appointments and Powers) Act 1988*

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19—Amendment of section 3—Appointment of judicial auxiliaries

Section 3—after subsection (7) insert:

- 25
- (8) For the purposes of this section, if in order to be eligible for appointment to a judicial office on a permanent basis a person must hold some other judicial office, the person is to be regarded as eligible for appointment to the judicial office on a permanent basis if he or she is eligible for appointment to the other judicial office on a permanent basis or would be so eligible but for the fact that he or she is over the age of retirement.

30

Example—

To be eligible for appointment as a Judge of the Youth Court on a permanent basis a person must hold office as a District Court Judge. For the purposes of this section, a person is to be regarded as eligible for appointment as a Judge of the Youth Court on a permanent basis if he or she is eligible for appointment as a District Court Judge on a permanent basis or would be so eligible but for the fact that he or she is over the age of retirement.

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Part 9—Amendment of *Justices of the Peace Act 2005*

20—Amendment of section 11—Disciplinary action, suspension and removal of justices from office

- (1) Section 11(3)—delete "If" and substitute:

5 Subject to subsection (4a), if

- (2) Section 11(4)—after "suspension" insert:

 under subsection (3)

- (3) Section 11—after subsection (4) insert:

10 (4a) If a special justice is charged with an offence other than an expiable
 offence, the special justice is, by force of this subsection, suspended
 from office as a special justice until proceedings based on the charge
 have been completed.

(4b) However, the Attorney-General may, on application by the special
justice, by notice in writing—

15 (a) cancel the suspension if satisfied that the outstanding charge
 should, in the circumstances, be disregarded; and

(b) impose such conditions specifying or limiting the official
powers that the special justice may exercise as the
Attorney-General considers appropriate.

20 (4c) A purported exercise of power or authority by a special justice
 suspended from office under subsection (3) or (4a) is not rendered
 invalid by reason only of the suspension.

- (4) Section 11(5)—delete "If" and substitute:

 Subject to subsection (5a), if

- 25 (5) Section 11(5)(b)—delete paragraph (b) and substitute:

(b) is found guilty or convicted by a court of an offence that, in the
opinion of the Governor, shows the person to be unfit to hold office
as a justice; or

- (6) Section 11—after subsection (5) insert:

30 (5a) If a special justice is found guilty or convicted by a court of an
 offence other than an expiable offence, the special justice is, by force
 of this subsection, removed from office as a special justice.

(5b) However, the Attorney-General may, on application by the special
justice, by notice in writing—

35 (a) reinstate the special justice if satisfied that the finding of
 guilt or conviction should, in the circumstances, be
 disregarded; and

- (b) impose such conditions specifying or limiting the official powers that the special justice may exercise as the Attorney-General considers appropriate.

Part 10—Amendment of *Magistrates Act 1983*

21—Insertion of Part 7

After Part 6 insert:

Part 7—Exercise of powers under Commonwealth Acts

23—Arrangements with Commonwealth

- 10 (1) The Governor may make an arrangement with the Governor-General of the Commonwealth in relation to the performance of functions or the exercise of powers by a magistrate under a Commonwealth Act.
- (2) The Governor may arrange with the Governor-General for the variation or revocation of an arrangement made under this section.
- 15 (3) A magistrate may perform functions and exercise powers under a Commonwealth Act under such an arrangement concurrently with the functions and powers conferred under this Act.

Part 11—Amendment of *Magistrates Court Act 1991*

22—Amendment of section 3—Interpretation

- 20 (1) Section 3(1), after the definition of *evidentiary material* insert:
- interlocutory judgment* includes—
- (a) an interlocutory order; and
- (b) an order or ruling relating to the admissibility or giving of evidence;
- (2) Section 3(1), definition of *judgment*—delete "or order"

25 Part 12—Amendment of *Supreme Court Act 1935*

23—Amendment of section 65—Mediation and conciliation

Section 65(1)—delete "may, with or without the consent of the parties, and a master or" and substitute:

or master may, with or without the consent of the parties, or

Part 13—Amendment of *Young Offenders Act 1993*

24—Amendment of section 41A—Conditional release from detention

(1) Section 41A(2)—after paragraph (a) insert:

5 (ab) an application for release of the youth from detention may be determined by the Training Centre Review Board no earlier than 7 days before completion by the youth of at least two-thirds of the period of detention in a training centre to which he or she has been sentenced;

(2) Section 41A(3)—after paragraph (a) insert:

10 (ab) an application for the release of the recidivist young offender may be determined by the Youth Parole Board no earlier than 7 days before completion by the offender of at least four-fifths of the period of detention in a training centre to which he or she has been sentenced;