

Legislative Council—No 136

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South Australia

**Statutes Amendment (Attorney-General's
Portfolio) (No 2) Bill 2013**

A BILL FOR

An Act to amend various Acts the administration of which is the responsibility of the
Attorney-General.

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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 2) Act 2013*.

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 *Community Titles Act 1996***4—Amendment of section 37—Restrictions on the making of by-laws**

- (1) Section 37(1)(d)—delete paragraph (d) and substitute:

- 15 (d) prevent an occupier of a lot who has a disability from keeping a relevant animal on the lot or restrict the use of a relevant animal by the occupier if the relevant animal is trained to assist the occupier in respect of the disability; or

- (2) Section 37(1)(e)—delete "suffers from a disability from using a dog" and substitute:
 who has a disability from using a relevant animal

- (3) Section 37—after subsection (2) insert:

- 20 (3) In this section—

assistance animal has the same meaning as in the *Equal Opportunity Act 1984*;

relevant animal means an assistance animal or a therapeutic animal;

therapeutic animal has the same meaning as in section 88A of the *Equal Opportunity Act 1984*.

Part 3—Amendment of *Criminal Law Consolidation Act 1935*

5—Amendment of section 63C—Pornographic nature of material

5 Section 63C—after subsection (2) insert:

(2a) No offence is committed against this Division by reason of the production, dissemination or possession of material in good faith by—

10 (a) a police officer or other law enforcement officer acting in the course of his or her duties; or

(b) any other person acting in the course of his or her duties in the administration of the criminal justice system.

15 (2b) No offence is committed against this Division by reason of the production, dissemination or possession of material in good faith by a person acting reasonably for the purpose of providing genuine child protection or legal advice.

Part 4—Amendment of *Criminal Law (Sentencing) Act 1988*

6—Amendment of section 3—Interpretation

Section 3(1)—before the definition of *the Parole Board* insert:

20 *Minister for Correctional Services* means the Minister responsible for the administration of the *Correctional Services Act 1982*;

Minister for Family and Community Services means the Minister responsible for the administration of the *Family and Community Services Act 1972*;

7—Amendment of section 10—Sentencing considerations

Section 10(2)—after paragraph (d) insert:

25 (e) in the case of an offence involving a firearm—the need to protect the safety of the community by ensuring that paramount consideration is given to the need for general and personal deterrence.

Part 5—Amendment of *District Court Act 1991*

8—Amendment of section 11—Chief Judge

Section 11(3)—delete subsection (3)

9—Insertion of section 11AA

After section 11 insert:

11AA—Acting Chief Judge

(1) If—

5 (a) the Chief Judge is absent or, for any reason, is unable for the time being to carry out the duties of the office; or

(b) the office of the Chief Judge becomes vacant,

the Governor may appoint a Judge to be Acting Chief Judge until—

(c) the Chief Judge returns to official duties; or

10 (d) a person is appointed to the office of the Chief Judge,

as the case requires.

(2) Any power or duty attached to the office of the Chief Judge by or under this or any other Act—

15 (a) on the appointment of a Judge to be Acting Chief Judge—
devolves on the Judge so appointed; or

(b) if no such appointment is made—devolves (during the absence or inability of the Chief Judge, or until the vacancy is filled) on the most senior of the other Judges available to undertake those responsibilities.

20 10—Insertion of section 11A

Before section 12 insert:

11A—Appointment of Chief Judge

(1) The Chief Judge is—

25 (a) a Judge of the Supreme Court assigned by the Governor, by proclamation, to be the Chief Judge; or

(b) a legal practitioner of at least 10 years standing or a District Court Judge appointed by the Governor as the Chief Judge.

(2) Before the Governor assigns a Judge of the Supreme Court to be the Chief Judge, the Attorney-General must consult with the Chief Justice of the Supreme Court about the proposed assignment.

30 (3) A Judge of the Supreme Court assigned to be the Chief Judge ceases to be the Chief Judge if the person ceases to be a Judge of the Supreme Court.

35 (4) The remuneration and conditions of service of a Judge of the Supreme Court assigned to be the Chief Judge will be the same as if he or she had not been so assigned and his or her service as the Chief Judge will be regarded as if it were service as a Judge of the Supreme Court.

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- (5) A person appointed as Chief Judge under subsection (1)(b) will be taken to have been appointed as a Judge of the District Court (if he or she is not already a Judge of the District Court) and as a Judge of the Supreme Court of South Australia.
- (6) The Chief Judge may not perform the duties, or exercise the powers, of a Judge of the Supreme Court unless the Chief Justice of the Supreme Court, with the consent of the Chief Judge, assigns the Chief Judge to perform the duties and exercise the powers of a Judge of the Supreme Court for a period determined by the Chief Justice.
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- (7) The Chief Judge must, as soon as is reasonably practicable after consenting to an assignment under subsection (6), notify the Attorney-General that he or she has so consented and the Attorney-General must, as soon as is reasonably practicable after receiving such notification, publish in the Gazette a notice setting out—
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- (a) the fact that the Chief Judge has consented to an assignment under subsection (6); and
- (b) the period of the assignment.
- (8) The office of Judge of the Supreme Court is the primary judicial office of the Chief Judge and—
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- (a) the remuneration and conditions of service of the Chief Judge will be the same as if he or she held a single appointment as a Judge of the Supreme Court; and
- (b) service as the Chief Judge will be regarded as if it were
- 25
- service as a Judge of the Supreme Court.
- (9) Subject to subsection (10), the retirement, resignation or removal from office of a person appointed as the Chief Judge under subsection (1)(b) is governed by the law applicable to the retirement, resignation or removal from office of a Judge of the Supreme Court and the Chief Judge will, until retirement, resignation or removal from office (or earlier death), continue to hold both of those
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- appointments.
- (10) A person appointed as the Chief Judge under subsection (1)(b)—
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- (a) may not, except with the approval of the Governor, resign from the office of the Chief Judge and the office of Judge of the District Court, without also resigning from the office of Judge of the Supreme Court; but
- (b) may resign from the office of the Chief Judge and the office of Judge of the Supreme Court without simultaneously resigning from the office of Judge of the District Court,
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- and a resignation under paragraph (a) or (b) will not give rise to any right to pension, retirement leave or other similar benefit.

- (11) The Governor may, by proclamation, made at the request or with the consent of a Judge of the Supreme Court assigned to be the Chief Judge under subsection (1)(a), revoke the assignment of that Judge under this section.

5 **11—Amendment of section 12—Appointment of other judicial officers**

- (1) Section 12(1)—after "Appointments" insert:
under this section
- (2) Section 12(2)(a)—delete paragraph (a)
- (3) Section 12(4)—after "judicial office of the Court" insert:
10 (other than under section 11A)

12—Amendment of section 13—Judicial remuneration

- Section 13(1)—delete "The" and substitute:
Subject to section 11A, the

13—Amendment of section 54—Accessibility to Court records

- 15 (1) Section 54(2)(c)—delete "(including material furnished under section 7 of the *Criminal Law (Sentencing) Act 1988*)"
- (2) Section 54—after subsection (4) insert:
20 (4a) Despite the preceding subsections, if 100 years have passed since the end of the calendar year in which material referred to in this section became part of the Court's records—
- (a) in the case of records that have been delivered into the custody of State Records—section 26 of the *State Records Act 1997* applies (to the exclusion of this section) to the giving of access to the records; and
- 25 (b) in any other case—a member of the public may, without any requirement to seek permission of the Court, be given access to the records.

Part 6—Amendment of *Evidence Act 1929*

30 **14—Amendment of section 13C—Court's power to make audio visual record of evidence of vulnerable witnesses in criminal proceedings**

- (1) Section 13C(2)—delete "and access to the record is to be restricted to court officials who are responsible for its custody"
- (2) Section 13C—after subsection (2) insert:
35 (2a) Rules of court may be made regulating access to, and responsibility for, an audio visual record in the custody of the court.

Part 7—Amendment of *Graffiti Control Act 2001*

15—Amendment of section 7—Appointment and powers of authorised persons

- (1) Section 7(2)—delete "cans of spray paint" and substitute:

graffiti implements

- (2) Section 7(5)—delete subsection (5) and substitute:

- (5) An authorised person must, on demand by a person affected by an exercise or proposed exercise of a power under this section, produce, for inspection by that person—

(a) if the authorised person is a police officer not in uniform—his or her warrant card; and

(b) in any other case—the identity card issued to the authorised person under the *Local Government Act 1999*.

Part 8—Amendment of *Magistrates Court Act 1991*

16—Amendment of section 51—Accessibility to Court records

- (1) Section 51(2)(c)—delete "(including material furnished under section 7 of the *Criminal Law (Sentencing) Act 1988*)"

- (2) Section 51—after subsection (4) insert:

- (4a) Despite the preceding subsections, if 100 years have passed since the end of the calendar year in which material referred to in this section became part of the Court's records—

(a) in the case of records that have been delivered into the custody of State Records—section 26 of the *State Records Act 1997* applies (to the exclusion of this section) to the giving of access to the records; and

(b) in any other case—a member of the public may, without any requirement to seek permission of the Court, be given access to the records.

Part 9—Amendment of *Police (Complaints and Disciplinary Proceedings) Act 1985*

17—Amendment of section 3—Interpretation

Section 3(1), definition of *internal investigation branch*—delete the definition and substitute:

Internal Investigation Section or *IIS* means the section of the police force established under Part 3;

18—Substitution of heading to Part 3

Part 3 heading—delete the heading and substitute:

Part 3—Internal Investigation Section

19—Amendment of section 13—Constitution of Internal Investigation Section

- 5 (1) Section 13(1)—delete "branch" and substitute:
section (*Internal Investigation Section* or *IIS*)
- (2) Section 13(2)—delete "internal investigation branch" and substitute:
IIS

20—Consequential amendments to Act

- 10 (1) Act—delete "internal investigation branch" wherever occurring and substitute:
IIS
- (2) Act—delete "that branch" wherever occurring and substitute:
the IIS
- (3) Act—delete "branch" wherever occurring and substitute:
15 IIS

21—Amendment of section 19—Action on complaint being made to Ombudsman

- (1) Section 19(1)(b)—after "subject to" insert:
subsection (1a) and
- 20 (2) Section 19—after subsection (1) insert:
(1a) The Ombudsman may, in such manner as the Ombudsman thinks fit,
undertake a preliminary inquiry in relation to a complaint.

22—Amendment of section 21—Determination by Ombudsman that investigation not warranted

- 25 Section 21(1)—delete subsection (1) and substitute:
- (1) The Ombudsman may refuse to entertain a complaint to which this Act applies (whether being a complaint made to the Ombudsman or a complaint of which the Ombudsman has been notified under section 18), or, having commenced to investigate a matter raised in a complaint, may refuse to continue the investigation if of the opinion that—
- 30 (a) the matter raised in the complaint is trivial; or
- (b) the complaint is frivolous or vexatious or is not made in good faith; or
- 35 (c) the complainant or the person on whose behalf the complaint was made has not a sufficient personal interest in the matter raised in the complaint; or

- (d) having regard to all the circumstances of the case, the investigation or the continuance of the investigation of the matter raised in the complaint, is unnecessary or unjustifiable.

5 **Part 10—Amendment of *Spent Convictions Act 2009***

23—Amendment of section 13—Exclusions

- (1) Section 13(3)—delete "The exclusions" and substitute:

Subject to subsection (3a), the exclusions

- (2) Section 13—after subsection (3) insert:

- 10 (3a) Subsection (3) does not apply in relation to the operation of clauses 1, 3 and 4 of Schedule 1.

Part 11—Amendment of *Strata Titles Act 1988*

24—Amendment of section 3—Interpretation

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

15 *assistance animal* has the same meaning as in the *Equal Opportunity Act 1984*;

- (2) Section 3(1)—after the definition of *registered encumbrance* insert:

relevant animal means an assistance animal or a therapeutic animal;

- (3) Section 3(1)—after the definition of *strata scheme* insert:

20 *therapeutic animal* has the same meaning as in section 88A of the *Equal Opportunity Act 1984*;

25—Amendment of section 19—Articles of strata corporation

Section 19(4)(c)—delete paragraph (c) and substitute:

- 25 (c) prevent an occupier of a unit who has a disability from keeping a relevant animal at the unit, or restrict the use of a relevant animal by the occupier if the relevant animal is trained to assist the occupier in respect of the disability; or
- (d) prevent a visitor to a unit who has a disability from using a relevant animal trained to assist the visitor in respect of the disability.

30 **Part 12—Amendment of *Summary Offences Act 1953***

26—Amendment of section 67—General search warrants

Section 67(2)—delete "the Schedule" and substitute:

Schedule 1

27—Substitution of heading to Schedule

Heading to Schedule—delete the heading and substitute:

Schedule 1—General search warrant

Part 13—Amendment of *Supreme Court Act 1935*

5 28—Substitution of section 10

Section 10—delete the section and substitute:

10—Acting Chief Justice

(1) If—

- 10 (a) the Chief Justice is absent or, for any reason, is unable for the time being to carry out the duties of the office; or
- (b) the office of the Chief Justice becomes vacant, the Governor may appoint a puisne judge of the court to be Acting Chief Justice until—
- (c) the Chief Justice returns to official duties; or
- 15 (d) a person is appointed to the office of the Chief Justice, as the case requires.
- (2) Any power or duty attached to the office of the Chief Justice by or under this or any other Act—
- 20 (a) on the appointment of a judge to be Acting Chief Justice—devolves on the judge so appointed; or
- (b) if no such appointment is made—devolves (during the absence or inability of the Chief Justice, or until the vacancy is filled) on the most senior of the puisne judges available to undertake those responsibilities.

25 29—Amendment of section 131—Accessibility to court records

(1) Section 131(2)(c)—delete "(including material furnished under section 7 of the *Criminal Law (Sentencing) Act 1988*)"

(2) Section 131—after subsection (4) insert:

- 30 (4a) Despite the preceding subsections, if 100 years have passed since the end of the calendar year in which material referred to in this section became part of the court's records—
- (a) in the case of records that have been delivered into the custody of State Records—section 26 of the *State Records Act 1997* applies (to the exclusion of this section) to the giving of access to the records; and
- 35 (b) in any other case—a member of the public may, without any requirement to seek permission of the court, be given access to the records.