

Legislative Council—No 122A

As reported with amendments, report adopted, Standing Orders suspended and passed remaining stages, 9 June 2016

South Australia

**Statutes Amendment (Attorney-General's
Portfolio) Bill 2016**

A BILL FOR

An Act to amend various Acts within the portfolio of the Attorney-General.

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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) Act 2016*.

2—Commencement

- 10
- (1) Subject to this section, this Act will come into operation on the day on which it is assented to by the Governor.
 - (2) Section 12 will come into operation on the day on which section 6 of the *Criminal Law (Forensic Procedures) (Blood Testing for Diseases) Amendment Act 2015* comes into operation.
 - (3) Subsection (2) only applies if, at the assent of the Governor to this Act, section 6 of the *Criminal Law (Forensic Procedures) (Blood Testing for Diseases) Amendment Act 2015* has not come into operation.

- (4) Section 22 will come into operation immediately after section 5 of the *Statutes Amendment (Vulnerable Witnesses) Act 2015* comes into operation.
- (5) Section 29 will come into operation immediately after Schedule 1 of the *Statutes Amendment (Vulnerable Witnesses) Act 2015* comes into operation.
- 5 (6) Section 32 will come into operation immediately after section 26 of the *Statutes Amendment (Vulnerable Witnesses) Act 2015* comes into operation.
- (7) Section 33 will come into operation immediately after Schedule 1 Part 1 of the *Youth Justice Administration Act 2016* comes into operation, or on the day on which this Act is assented to by the Governor, whichever is the later.

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 *Child Sex Offenders Registration Act 2006*

4—Amendment of Schedule 1—Class 1 and 2 offences

- (1) Schedule 1, clause 1(1), definition of *sexual offence*—after paragraph (b) insert:
- (ba) an offence against section 51 of the *Criminal Law Consolidation Act 1935* (sexual exploitation of person with a cognitive impairment); or
- 20 (2) Schedule 1, clause 2—after paragraph (eb) insert:
- (ec) an offence against section 51 of the *Criminal Law Consolidation Act 1935* (sexual exploitation of person with a cognitive impairment) involving sexual intercourse if the victim was a child;
- (3) Schedule 1, clause 3—after paragraph (b) insert:
- 25 (ba) an offence against section 51 of the *Criminal Law Consolidation Act 1935* (sexual exploitation of person with a cognitive impairment) involving indecent contact if the victim was a child;

Part 3—Amendment of *Civil Liability Act 1936*

5—Substitution of Part 9 Division 12

30 Part 9 Division 12—delete Division 12 and substitute:

Division 12—Effect of apology on liability

75—Effect of apology on liability

- (1) An apology made by or on behalf of a person in connection with any matter alleged to have been caused by the person—
- 35 (a) does not constitute an express or implied admission of fault or liability by the person in connection with that matter; and

(b) is not relevant to the determination of fault or liability in connection with that matter.

(2) Evidence of an apology made by or on behalf of a person in connection with any matter alleged to have been caused by the person is not admissible in any civil proceedings as evidence of the fault or liability of the person in connection with that matter.

(3) This section does not apply in relation to—

(a) liability in respect of the tort of defamation; and

(b) civil liability of a kind that is excluded from the operation of this section by regulation.

(4) In this section—

apology means an expression of sympathy or regret, or of a general sense of benevolence or compassion, in connection with any matter, whether or not the apology admits or implies an admission of fault in connection with the matter.

Part 4—Amendment of *Criminal Law Consolidation Act 1935*

6—Amendment of section 5AA—Aggravated offences

(1) Section 5AA(1)(j)—delete "physical or mental disability" and substitute:

physical disability or cognitive impairment

(2) Section 5AA(5)—after the definition of *circumstances of heightened risk* insert:

cognitive impairment includes—

(a) a developmental disability (including, for example, an intellectual disability, Down syndrome, cerebral palsy or an autistic spectrum disorder);

(b) an acquired disability as a result of illness or injury (including, for example, dementia, a traumatic brain injury or a neurological disorder);

(c) a mental illness;

7—Amendment of section 14—Criminal liability for neglect where death or serious harm results from unlawful act

(1) Section 14(4)—after the definition of *child* insert:

cognitive impairment includes—

(a) a developmental disability (including, for example, an intellectual disability, Down syndrome, cerebral palsy or an autistic spectrum disorder);

(b) an acquired disability as a result of illness or injury (including, for example, dementia, a traumatic brain injury or a neurological disorder);

(c) a mental illness;

- (2) Section 14(4), definition of *vulnerable adult*—delete "physical or mental disability" and substitute:

physical disability, cognitive impairment

8—Amendment of section 278—Joinder of charges

Section 278(4), definition of *sexual offence*, (a)—after "50, " insert:

51,

9—Amendment of section 353—Determination of appeals in ordinary cases

Section 353(4)(a)—delete "a different sentence should have been passed" and substitute:

the sentence is affected by error such that the defendant should be re-sentenced

Part 5—Amendment of *Criminal Law (Forensic Procedures) Act 2007*

10—Amendment of section 3—Interpretation

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

gun shot residue procedure means a forensic procedure consisting of the taking of samples by swab or other similar means of the hands and fingers of a person for the purposes of determining the presence of gun shot residue;

- (2) Section 3(1), definition of *intrusive forensic procedure*, (b)—delete paragraph (b) and substitute:

(b) the taking of a dental impression; or

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

simple forensic procedure means a forensic procedure consisting of 1 or more of the following:

- (a) a simple identity procedure;
- (b) a gun shot residue procedure;
- (c) a forensic procedure prescribed by regulation for the purposes of this definition;

11—Amendment of section 14—Suspects procedures

Section 14(2)(b)(i)—delete "simple identity procedure" and substitute:

simple forensic procedure

12—Amendment of section 20A—Interpretation

Section 20A, definition of *prescribed employment*—after paragraph (e) insert:

- (f) employment as an officer or employee of the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of the *Correctional Services Act 1982*;

13—Amendment of section 41—Commissioner may maintain DNA database system

- (1) Section 41(2)(b)—delete "NCIDD" wherever occurring and substitute in each case:
a national database
- 5 (2) Section 41(2)(b)—after subparagraph (iv) insert:
(v) any other thing required or authorised to be done under the
corresponding law or otherwise authorised by law.
- (3) Section 41(3), definition of *NCIDD*—delete the definition

14—Amendment of section 42—Storage of information on DNA database system

10 Section 42(1)—after paragraph (b) insert:

- (ba) the DNA profile is stored on a database kept in accordance with the
directions of the Commissioner of Police for the sole purpose of
preserving a backup copy of that DNA profile; or

15—Insertion of section 50A

After section 50 insert:

50A—Release and disclosure for scientific purposes

- (1) Despite any provision of this Act or any other Act or law, a
prescribed authority may authorise the release, disclosure and use of
forensic material and information obtained under this Act for the
following purposes:
- 20 (a) the validation or development of forensic methodologies;
(b) the furtherance of forensic research and methodologies.
- (2) Forensic material and information released, disclosed or used under
subsection (1) may only be released, disclosed or used in a manner
such that it is not possible to identify the person from whom the
material or information was obtained or to whom the material or
information relates.
- 25 (3) Subsection (1) does not apply to forensic material or information
obtained by carrying out a volunteers and victims procedure on a
person if the DNA profile of that person is contained only on a
volunteers (limited purposes) index.
- 30

16—Amendment of section 55—Power to require forensic procedure on deceased person

Section 55(1)—delete subsection (1) and substitute:

- 5 (1) A senior police officer may, by instrument in writing, authorise the carrying out of a forensic procedure specified in the instrument on the body, a body part, human tissue or other human remains of a deceased person if satisfied that the evidence obtained from the carrying out of the procedure is likely to assist in the investigation of a serious offence or in the identification of the deceased person.

10 **Part 6—Amendment of *Criminal Law (Sentencing) Act 1988***

17—Amendment of section 19A—Intervention orders may be issued on finding of guilt or sentencing

Section 19A(4), definition of *sexual offence*—after paragraph (f) insert:

- 15 (fa) an offence of sexual exploitation of a person with a cognitive impairment under section 51 of the *Criminal Law Consolidation Act 1935*; or

18—Amendment of section 33—Interpretation

Section 33(1), definition of *serious sexual offence*,(a)(i)—after "49, " insert:

51,

20 **Part 7—Amendment of *District Court Act 1991***

Part 8—Amendment of *Electoral Act 1985*

20—Amendment of section 130A—Interpretation

Section 130A(1), definition of *political expenditure*—after paragraph (h) insert:

or

- 25 (i) expenditure of an allowance or benefit of a kind contemplated under section 6A(1) of the *Parliamentary Remuneration Act 1990*; or
(j) expenditure of a prescribed kind;

21—Amendment of section 130ZH—Gifts to relevant entities

- (1) Section 130ZH(1)—delete "disclosure period" and substitute:

30 financial year

- (2) Section 130ZH(4)—delete "during the period"

- (3) Section 130ZH(7)(a)—delete paragraph (a)

- (4) Section 130ZH(7)(b)(i)—delete "start of the disclosure period until the start of the designated period for the relevant election" and substitute:

period commencing 30 days after polling day in a general election until the start of the designated period for the next general election

5 **Part 9—Amendment of *Evidence Act 1929***

22—Amendment of section 4—Interpretation

Section 4—after its present contents (now to be designated as subsection (1)) insert:

10 (2) For the purposes of this Act, a witness who is to give oral evidence in proceedings will be taken to have ***complex communication needs*** if the witness's ability to give the evidence is significantly affected by a difficulty to communicate effectively with the court, whether the communication difficulty is temporary or permanent and whether caused by disability, illness, injury or some other cause.

15 (3) However, a witness who is to give oral evidence in proceedings whose native language is not English will not be taken to have ***complex communication needs*** merely because the witness is not reasonably fluent in English (although the witness may be entitled to give the evidence through an interpreter under section 14).

20 **Part 10—Amendment of *Intervention Orders (Prevention of Abuse) Act 2009***

23—Amendment of section 3—Interpretation

Section 3(1)—after the definition of *Children's Protection Act order* insert:

cognitive impairment includes—

- 25 (a) a developmental disability (including, for example, an intellectual disability, Down syndrome, cerebral palsy or an autistic spectrum disorder);
- (b) an acquired disability as a result of illness or injury (including, for example, dementia, a traumatic brain injury or a neurological disorder);
- 30 (c) a mental illness;

24—Amendment of section 29—Special arrangements for evidence and cross-examination

Section 29(2)(f)—delete paragraph (f) and substitute:

- 35 (f) that extra allowance be made for breaks during, and time to be given for, the taking of evidence;

- 5 (g) if the witness has a physical disability or cognitive impairment—that the evidence be taken in a particular way (to be specified by the Court) that will, in the Court's opinion, facilitate the taking of evidence from the witness or minimise the witness's embarrassment or distress (including, if the witness has complex communication needs, with such communication assistance as may be specified by the Court under section 14A of the *Evidence Act 1929*).

25—Amendment of Schedule 1—Transitional provisions

Schedule 1, clause 37—after subclause (4) insert:

- 10 (5) For the avoidance of doubt, an intervention order continued in force under this clause that includes a term fixing a date for the expiry of the order will expire, or will be taken to have expired, on that date unless the Court has, before that date, varied the order under subclause (4) so as to remove the term and make the order ongoing.

15 Part 11—Amendment of *Juries Act 1927*

26—Substitution of section 11

Section 11—delete the section and substitute:

11—Qualification of jurors

20 Each person residing in South Australia who is enrolled on the roll of electors and who is entitled to vote at the election of members of the House of Assembly is, subject to the exceptions mentioned in this Act, qualified and liable to serve as a juror.

27—Insertion of section 17

After section 16 insert:

17—Right of exemption for persons above the age of 70 years

- 25 (1) A judge or the sheriff must, on application by or on behalf of a person summoned to render jury service but not serving on a jury in the course of a criminal trial, excuse the person from attendance or further attendance in compliance with the summons if satisfied that
30 the person is above the age of 70 years.
- (2) Information provided in support of an application may be required to be given on oath or to be in the form of or verified by an affidavit or statutory declaration.

Part 12—Amendment of *Magistrates Court Act 1991*

35 Part 13—Amendment of *Statutes Amendment (Vulnerable Witnesses) Act 2015*

29—Amendment of Schedule 1—Transitional provision

- (1) Schedule 1, clause 1(1)—delete "sexual" wherever occurring

(2) Schedule 1, clause 1(2)—delete subclause (2) and substitute:

(2) An audio visual record of the statement of a witness to whom this subclause applies made to an investigating or other authority before the commencement of section 10 of this Act as part of a formal interview process in relation to the investigation of an alleged offence may, after the commencement of that section, be admitted under section 13BA of the *Evidence Act 1929* as evidence in the trial of a charge of the offence as if the recording had been made pursuant to Division 3 of Part 17 of the *Summary Offences Act 1953* in accordance with the requirements of that Division.

Note—

Section 10 of this Act inserts section 13BA into the *Evidence Act 1929*.

(3) Subclause (2) applies—

(a) to a witness who is—

- (i) a child of or under the age of 14 years; or
- (ii) a person with a disability that adversely affects the person's capacity to give a coherent account of the person's experiences or to respond rationally to questions; and

(b) despite section 34LA(2)(c) of the *Evidence Act 1929*.

Part 14—Amendment of *Subordinate Legislation Act 1978*

30—Amendment of section 16A—Regulations to which this Part applies

Section 16A—after paragraph (c) insert:

- (d) regulations made pursuant to an agreement for uniform legislation between this State and the Commonwealth or other States or Territories of the Commonwealth and prescribed for the purposes of this section; and

Part 15—Amendment of *Summary Offences Act 1953*

31—Amendment of section 33—Indecent or offensive material

Section 33(1), definition of *material*, (d)—delete "tape or other object" and substitute:
recording or other object or thing

32—Amendment of section 74EA—Application and interpretation

(1) Section 74EA(2), definition of *serious offence against the person*, (a)—before "attempted murder" insert:

murder or

- (2) Section 74EA(2), definition of *serious offence against the person*, (b)—before "attempted manslaughter" insert:

manslaughter or

- (3) Section 74EA(2), definition of *serious offence against the person*, (d)—before subparagraph (i) insert:

(ai) an offence of criminal neglect under section 14 of the *Criminal Law Consolidation Act 1935*; or

- (4) Section 74EA(2), definition of *serious offence against the person*, (d)—after subparagraph (ii) insert:

(iia) an offence of causing harm under section 24 of the *Criminal Law Consolidation Act 1935*; or

33—Amendment of section 79A—Rights on arrest

Section 79A(1a)(c)—delete "a person nominated by the Chief Executive Officer within the meaning of the *Family and Community Services Act 1972*" and substitute:

a person, or a person of a class, nominated by the Chief Executive within the meaning of the *Youth Justice Administration Act 2016*

34—Amendment of section 81—Power to search, examine and take particulars of persons

- (1) Section 81(3)(e)—delete "an intimate search must be recorded on videotape" and substitute:

an audio visual record of an intimate search must be made

- (2) Section 81(3)(f)—delete "record an intimate search on videotape" and substitute:

make an audio visual record of an intimate search

- (3) Section 81(3)(f)(i)(A)—delete "recording the search on videotape" and substitute:

making an audio visual record of the search

- (4) Section 81(3)(g)—delete "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," and substitute:

if an audio visual record of an intimate search, or that part of an intimate search that consists of an intimate intrusive search, is not to be made,

- (5) Section 81(3)(g)(ii)—delete "the reading is recorded on videotape" and substitute:

an audio visual record of the reading is made

- (6) Section 81(3)(g)(iii)—delete "videotape" and substitute:

audio visual

- (7) Section 81(3)(g)(v)—delete "videotape" and substitute:

audio visual

- (8) Section 81(3a)—delete "a videotape recording" and substitute:

an audio visual record

- (9) Section 81(3b)—delete "a videotape recording" and substitute:
an audio visual record
- (10) Section 81(3b)(a)—delete "videotape" and substitute:
audio visual record
- 5 (11) Section 81(3b)(b)—delete "videotape recording" and substitute:
audio visual record
- (12) Section 81(3c)—delete "a videotape" and substitute:
an audio visual record
- (13) Section 81(3d)—delete "a videotape recording" and substitute:
10 an audio visual record
- (14) Section 81(3e)—delete "a videotape recording" and substitute:
an audio visual record
- (15) Section 81(3f)—delete "A videotape recording" and substitute:
An audio visual record
- 15 (16) Section 81(3g)—delete "videotape recordings" and substitute:
audio visual records

Part 16—Amendment of *Summary Procedure Act 1921*

35—Amendment of section 4—Interpretation

- (1) Section 4(1)—after the definition of *the Chief Magistrate* insert:
20 *cognitive impairment* includes—
- (a) a developmental disability (including, for example, an intellectual disability, Down syndrome, cerebral palsy or an autistic spectrum disorder);
 - (b) an acquired disability as a result of illness or injury (including, for
25 example, dementia, a traumatic brain injury or a neurological disorder);
 - (c) a mental illness;
- (2) Section 4(1), definition of *sexual offence*—after paragraph (c) insert:
30 (ca) an offence of sexual exploitation of a person with a cognitive impairment under section 51 of the *Criminal Law Consolidation Act 1935*; or

36—Amendment of section 99AAC—Child protection restraining orders

- Section 99AAC(8), definition of *child sexual offence*—after paragraph (d) insert:
35 (da) an offence of sexual exploitation of a person with a cognitive impairment under section 51 of the *Criminal Law Consolidation Act 1935*;

37—Amendment of section 106—Taking of evidence at preliminary examination

Section 106(3)—after "victim of an alleged sexual offence" insert:

5 , a person with a cognitive impairment that adversely affects the person's
 capacity to give a coherent account of the person's experiences or to respond
 rationally to questions

Part 17—Amendment of *Supreme Court Act 1935*