

Legislative Council—No 166

As received from the House of Assembly and read a first time, 1 November 2016

South Australia

Statutes Amendment (Courts and Justice Measures) Bill 2016

A BILL FOR

An Act to amend the *Bail Act 1985*; the *Criminal Law Consolidation Act 1935*; the *Cross-border Justice Act 2009*; the *Evidence Act 1929*; the *Legislation Revision and Publication Act 2002*; the *Solicitor-General Act 1972*; the *Summary Procedure Act 1921*; the *Young Offenders Act 1993* and the *Youth Court 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 (Courts and Justice Measures) Act 2016*.

2—Commencement

- (1) Subject to this section, this Act will come into operation on a day to be fixed by proclamation.
- (2) Section 16 of this Act will come into operation immediately after section 21 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) Section 17 of this Act will come into operation immediately after section 34 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.
- (4) Section 18 of this Act will come into operation immediately after section 4 of the *Statutes Amendment (Youth Court) Act 2016* comes into operation, or on the day on which this Act is assented to by the Governor, whichever is the later.
- (5) Section 7(5) of the *Acts Interpretation Act 1915* does not apply to this Act or a provision of this Act.

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 6—Nature of bail agreement

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

- (ca) a registrar or deputy registrar of a court; or

5—Amendment of section 7—Guarantee of bail

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

- (ca) a registrar or deputy registrar of a court; or

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

6—Substitution of section 361

Section 361—delete the section and substitute:

361—Presence of appellant or respondent on hearing of appeal

- 5 (1) The Supreme Court may make rules with respect to the presence in court of an appellant or respondent who is in custody during—
- (a) the hearing of the appeal; or
 - (b) the hearing of an application for permission to appeal; or
 - (c) any proceedings preliminary or incidental to an appeal.
- 10 (2) Without limiting subsection (1), the rules of court may (for example)—
- (a) provide that the appellant or respondent may be present during the hearing of an appeal or an application for permission to appeal, or a proceeding preliminary or incidental to an appeal—
 - (i) in person; or
 - (ii) by means of an audio visual link; or
 - (iii) by means of an audio link; and
 - (b) provide that the appellant or respondent may not be present during any such hearing or proceeding.
- 20 (3) Despite any rule to the contrary, the Full Court may, if the Court considers there is good reason to do so, proceed with the hearing of an appeal or an application for permission to appeal, or a proceeding preliminary or incidental to an appeal, in the absence of the appellant or respondent.
- 25 (4) In this section—
- audio link* means a system of 2-way communication linking different places so that a person speaking at any 1 of the places can be heard at the other;
- 30 *audio visual link* means a system of 2-way communication linking different places so that a person speaking at any 1 of the places can be seen and heard at the other.

Part 4—Amendment of *Cross-border Justice Act 2009*

7—Amendment of section 7—Interpretation

35 Section 7(1), definition of *detention centre*, paragraph (a)—after "*Family and Community Services Act 1972*" insert:

or section 21 of the *Youth Justice Administration Act 2016*

Part 5—Amendment of *Evidence Act 1929*

8—Amendment of section 13B—Cross-examination of certain witnesses

(1) Section 13B(1)(a)—after "criminal trial" insert:

(whether or not related to the offence)

(2) Section 13B(5), definition of *offence to which this section applies*—before paragraph (a) insert:

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

9—Amendment of section 59IQ—Appearance etc by audio visual link or audio link

Section 59IQ(4) and (5)—delete subsections (4) and (5) and substitute:

(4) Subject to any other Act and any relevant rules of court, if a defendant is in custody prior to trial and facilities exist for dealing with proceedings by means of an audio visual link or audio link, the court may, if of the opinion that it is appropriate in the circumstances to do so, deal with the proceedings by audio visual link or audio link without requiring the personal attendance of the defendant.

(5) Without limiting the circumstances that a court may take into consideration for the purposes of subsection (4), if the proceeding is the defendant's first appearance before a court in connection with the charge or charges for which the defendant is in custody, the court must take into consideration whether or not the defendant is represented by a legal practitioner or has had the opportunity to obtain legal advice.

Part 6—Amendment of *Legislation Revision and Publication Act 2002*

10—Amendment of section 5—Program for revision and publication of legislation

Section 5(2)—delete "and electronic" and substitute:

or electronic

11—Amendment of section 8—Publication of legislation

Section 8(1) and (2)—delete subsections (1) and (2) and substitute:

(1) Legislation may be published under this Act by—

(a) publishing a printed copy of the legislation; or

(b) publishing an electronic copy of the legislation, from a website or otherwise, in accordance with the regulations.

Part 7—Amendment of *Solicitor-General Act 1972*

12—Amendment of section 5—Terms and appointment of Solicitor-General

Section 5(1)—delete subsection (1) and substitute:

- (1) Subject to this Act, the Solicitor-General will be appointed—
- (a) for a term of office of 10 years or for such shorter term as may be necessary to ensure that the person's term of office extends to (but not beyond) the day on which the person attains the age of 70 years; and
- (b) on terms and conditions determined by the Governor.
- (1a) At the expiration of a term of office, the Solicitor-General will, subject to this Act, be eligible for re-appointment.

13—Amendment of section 8—Resignation and retirement

Section 8(2)—delete subsection (2) and substitute:

- (2) The Solicitor-General will retire from office on the day on which the Solicitor-General attains the age of 70 years, and the office of the Solicitor-General will become vacant on that day.

14—Amendment of section 9—Leave on retirement

Section 9(1)—delete subsection (1) and substitute:

- (1) Subject to this section, the Governor may grant to the Solicitor-General immediately prior to the Solicitor-General's retirement on attaining the age of 70 years, not more than 6 months leave of absence on full salary.

15—Amendment of section 10—Pension rights of Solicitor-General and application of *Judges' Pensions Act 1971*

Section 10—after subsection (1) insert:

- (1a) If the term of office for which the Solicitor-General is appointed expires and the person who held that office has not attained the age of 70 years, or is not then reappointed, the person will be taken for the purposes of the *Judges' Pensions Act 1971*, to have resigned from the office of Solicitor-General on the day on which the term expires.

Part 8—Amendment of *Summary Procedure Act 1921*

16—Amendment of section 184—Application may be made to Court for transfer to training centre

Section 184(1)(c)—delete ", under a Minister, responsible for the administration of the *Family and Community Services Act 1972*" and substitute:

responsible for assisting a Minister in the administration of the *Youth Justice Administration Act 2016*

Part 9—Amendment of *Young Offenders Act 1993*

17—Repeal of section 40

Section 40—delete the section

Part 10—Amendment of *Youth Court Act 1993*

5 **18—Amendment of section 10—Court's principal judicial officer**

Section 10(9)—delete subsection (9)