

**Legislative Council—No 166A**

As reported with amendments and an amended Title, report adopted, Standing Orders suspended and passed remaining stages, 1 December 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 *Judicial Conduct Commissioner Act 2015*; the *Legislation Revision and Publication Act 2002*; the *Summary Procedure Act 1921*; the *Victims of Crime Act 2001*; 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 subsection (2), this Act will come into operation on the day on which it is assented to by the Governor.
- (2) 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.

### **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**

- (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.

- (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.
- (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.
- (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;
- 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

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:

- 5 (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.
- 10 (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.
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**Part 5A—Amendment of *Judicial Conduct Commissioner Act 2015***

**9A—Amendment of section 4—Interpretation**

20 Section 4(1), definition of *relevant jurisdictional head*—after "*Courts Administration Act 1993*" insert:

and includes, in a case where the judicial officer who is, or is to be, the subject of a complaint is a jurisdictional head, the Chief Justice of the Supreme Court

25 **9B—Amendment of section 18—Referral of complaint to relevant jurisdictional head**

(1) Section 18—after subsection (2) insert:

- 30 (2a) If a complaint is referred, under this section, to the Chief Justice of the Supreme Court because the complaint relates to a jurisdictional head, the Chief Justice may take action in relation to the complaint by—
- 35 (a) making recommendations to the jurisdictional head the subject of the complaint (including, for example, recommendations as to caseloads, record keeping, medical examinations or counselling); or
- (b) counselling the jurisdictional head the subject of the complaint in relation to any conduct that has the potential to undermine public confidence in the court.

(2) Section 18—after subsection (3) insert:

- (3a) If any recommendations have been made to a jurisdictional head the subject of a complaint in accordance with subsection (2a)(a), the jurisdictional head must, within 28 days after the making of the recommendations (or such other period as may be agreed between the Commissioner and the jurisdictional head), give the Commissioner written notification of the action taken by the jurisdictional head in response to the recommendations.

## **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 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 8A—Amendment of *Victims of Crime Act 2001***

### **16A—Amendment of Schedule 1—Repeal and transitional provisions**

Schedule 1, clause 2—after subclause (3) insert:

- (4) Without derogating from section 37, the Governor may make regulations under this Act for the purposes of applications referred to in subclause (1) (including any regulation that could have been made under the repealed Act as in force immediately before its repeal).

- 5 (5) The *Criminal Injuries Compensation Regulations 2002* continue to have effect for the purposes of subclause (1) until revoked by regulations made under this Act (and Part 3A of the *Subordinate Legislation Act 1978* does not apply, and is taken never to have applied, to the *Criminal Injuries Compensation Regulations 2002* as so continued).

## **Part 9—Amendment of *Young Offenders Act 1993***

### **17—Repeal of section 40**

Section 40—delete the section

10 **Part 10—Amendment of *Youth Court Act 1993***

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

Section 10(9)—delete subsection (9)