

Legislative Council—No 32B

As reported with amendments, report adopted, Standing Orders suspended and passed remaining stages, 16 October 2012

South Australia

Statutes Amendment (Courts Efficiency Reforms) Bill 2012

A BILL FOR

An Act to amend the *Building Work Contractors Act 1995*, the *Controlled Substances Act 1984*, the *Criminal Law Consolidation Act 1935*, the *Criminal Law (Sentencing) Act 1988*, the *Domestic Partners Property Act 1996*, the *Magistrates Act 1983*, the *Magistrates Court Act 1991*, the *Mining Act 1971*, the *Opal Mining Act 1995*, the *Retail and Commercial Leases Act 1995*, the *Summary Offences Act 1953*, the *Summary Procedure Act 1921*, the *Unclaimed Goods Act 1987* 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 Efficiency Reforms) Act 2012*.

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.

Part 2—Amendment of *Building Work Contractors Act 1995*

4—Amendment of section 40—Magistrates Court and substantial monetary claims

Section 40(1)—delete "\$40 000" wherever occurring and substitute in each case:

\$100 000

5—Transitional provision

The amendments made to the *Building Work Contractors Act 1995* by this Part—

- (a) do not apply in respect of proceedings commenced before the commencement of this Part (and those proceedings may continue as if this Act had not been enacted); and
- (b) apply in respect of proceedings commenced on or after the commencement of this Part (including proceedings in respect of a claim arising before the commencement of this Part).

Part 3—Amendment of *Controlled Substances Act 1984*

6—Amendment of section 32—Trafficking

Section 32(4)—delete "2" and substitute:

5

7—Amendment of section 33B—Cultivation of controlled plants for sale

Section 33B(4)—delete "2" and substitute:

5

8—Amendment of section 33C—Sale of controlled plants

Section 33C(4)—delete "2" and substitute:

5

9—Transitional provision

The amendments made to the *Controlled Substances Act 1984* by this Part—

- (a) do not apply in relation to the sentencing of a person following the commencement of this Part if the proceedings for the relevant offence were commenced before that commencement (and such sentencing is to occur as if this Act had not been enacted); and
- (b) apply in relation to the sentencing of a person following the commencement of this Part (including the sentencing of a person for an offence that occurred before that commencement) if the proceedings for the relevant offence were commenced on or after that commencement.

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

10—Insertion of section 285AB

After section 285A insert:

285AB—Determinations of court binding on trial judge

5 A determination or order made by a judge of the court in proceedings
dealing with charges laid in an information is binding on a judge of
the court presiding at the trial of the defendant, whether the trial is
the first or a new trial following a stay of the proceedings,
10 discontinuance of an earlier trial or an appeal, unless the trial judge
considers that it would not be in the interests of justice for the
determination or order to be binding or the determination or order is
inconsistent with an order made on such an appeal.

11—Amendment of section 361—Right of appellant to be present

(1) Section 361—after subsection (1) insert:

- 15 (1a) If an appellant who is in custody is entitled to be present at the
hearing of an appeal or an application for permission to appeal or a
proceeding preliminary or incidental to an appeal, the entitlement of
the appellant to be present at the proceedings will be taken to have
20 been satisfied while there is in operation an audio visual link
between the Court and the appellant.
- (1b) However, subsection (1a) does not apply if the Court determines, on
its own initiative or on application by the appellant, that the appellant
should be physically present in the courtroom.

(2) Section 361—after subsection (2) insert:

- 25 (3) In this section—
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.

12—Transitional provision

30 The amendments made to the *Criminal Law Consolidation Act 1935* by this Part are to
be considered procedural rather than substantive.

Part 5—Amendment of *Criminal Law (Sentencing) Act 1988*

13—Amendment of section 9A—Rectification of sentencing errors

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

5 (1) A court that imposes, or purports to impose, a sentence on a
defendant, or a court of co-ordinate jurisdiction, may, on its own
initiative or on application by the Director of Public Prosecutions or
the defendant, make such orders as the court is satisfied are required
to rectify an error of a technical nature made by the sentencing court
10 in imposing, or purporting to impose, the sentence, or to supply a
deficiency or remove an ambiguity in the sentencing order.

(2) Section 9A(2)—delete "an application" and substitute:

proceedings

14—Amendment of section 19—Limitations on sentencing powers of Magistrates Court

15 (1) Section 19(3)—delete paragraph (a) and substitute:

(a) a sentence of imprisonment that exceeds—

(i) if the penalty is for 1 offence—5 years; and

(ii) if the penalty is for more than 1 offence—10 years; or

(2) Section 19(4)—delete "a minor indictable" and substitute:

20 an indictable

(3) Section 19(5)—delete "the District Court" and substitute:

a superior court

15—Amendment of section 50A—Variation of community service order

(1) Section 50A—before subsection (1) insert:

25 (a1) If, on the application of a person required to perform community
service pursuant to a bond or an order of a court, the Minister for
Correctional Services is satisfied—

(a) that the person will not complete the community service in
the time provided for in the order or the bond; and

30 (b) that sufficient reason exists for the person not being able to
complete the community service in the required time,

the Minister may, by instrument in writing, extend the period within
which the person must complete the performance of the community
service.

35 (2) Section 50A(1)—delete "sentenced a person to" and substitute:

ordered a person to perform

(3) Section 50A(2)—delete subsection (2) and substitute:

(2) The period within which community service must be performed cannot be extended under this section, whether by the Minister or the court, by a period exceeding 6 months, or periods that, in aggregate, exceed 6 months.

(3) If the Minister extends the period within which a person must complete the performance of community service under an order or bond, the order or bond will be taken to have been amended accordingly.

(4) The Minister must notify the probative or sentencing court of any exercise of powers under subsection (a1).

16—Amendment of section 70L—Community service orders

(1) Section 70L—after subsection (5) insert:

(5a) If, on the application of a person required to perform community service pursuant to an order under this section, an authorised officer is satisfied—

(a) that the person will not complete the community service in the time provided for in the order; and

(b) that sufficient reason exists for the person not being able to complete the community service in the required time,

the officer may, by instrument in writing, extend the period within which the person must complete the performance of the community service (even if the period, as so extended, exceeds 3 years).

(5b) The period within which community service must be performed cannot be extended under subsection (5a) by a period exceeding 6 months, or periods that, in aggregate, exceed 6 months.

(5c) If an authorised officer extends the period within which a person must complete the performance of community service under an order, the order will be taken to have been amended accordingly.

(2) Section 70L—after subsection (6) insert:

(6a) If an authorised officer makes a community service order in respect of a debtor, the officer must notify the probative or sentencing court of the order and of the exercise of any other powers under this section.

17—Transitional provisions

(1) The amendments made to sections 9A, 50A and 70L of the *Criminal Law (Sentencing) Act 1988* by sections 13, 15 and 16 are to be considered procedural rather than substantive.

(2) The amendments made to section 19 of the *Criminal Law (Sentencing) Act 1988* by section 14—

- 5
- (a) do not apply in relation to the sentencing of a person by the Magistrates Court following the commencement of this Part if the proceedings for the relevant offence were commenced before that commencement (and such sentencing is to occur as if this Act had not been enacted); and
- 10
- (b) apply in relation to the sentencing of a person by the Magistrates Court following the commencement of this Part (including the sentencing of a person for an offence that occurred before that commencement) if the proceedings for the relevant offence were commenced on or after that commencement.

Part 6—Amendment of *Domestic Partners Property Act 1996*

18—Amendment of section 3—Interpretation

Section 3(1), definition of *court*, (c)—delete "\$80 000" and substitute:

15 \$100 000

19—Transitional provision

The amendment made to the *Domestic Partners Property Act 1996* by this Part—

- 20
- (a) does not apply in respect of proceedings commenced before the commencement of this Part (and those proceedings may continue as if this Act had not been enacted); and
- (b) applies in respect of proceedings commenced on or after the commencement of this Part (including proceedings in respect of a claim arising before the commencement of this Part).

Part 6A—Amendment of *Magistrates Act 1983*

19A—Amendment of section 6—Appointment to administrative offices in magistracy

(1) Section 6—after subsection (2) insert:

(2a) A person is not eligible for appointment as the Chief Magistrate unless he or she is a legal practitioner of at least 7 years standing.

30 (2b) For the purpose of determining whether a legal practitioner has the standing necessary for appointment as the Chief Magistrate, periods of legal practice and (where relevant) judicial service within and outside the State will be taken into account.

(2) Section 6(3)—delete "the Chief Magistrate or"

35 (3) Section 6(4)—delete "shall" and substitute:

(other than an appointment as the Chief Magistrate) will

19B—Insertion of section 6A

After section 6 insert:

6A—Chief Magistrate to be magistrate and District Court Judge

- 5 (1) The Chief Magistrate will be taken to have been appointed as a
magistrate and as a Judge of the District Court of South Australia (if
he or she is not already a magistrate or a Judge of the District Court
of South Australia).
- 10 (2) Section 6 of the *Judicial Administration (Auxiliary Appointments and
Powers) Act 1988* applies to the Chief Magistrate and, for that
purpose, the office of Judge of the District Court of South Australia
will be taken to be the primary judicial office of the Chief Magistrate
and service as Chief Magistrate will be regarded as if it were service
as a Judge of the District Court of South Australia.
- 15 (3) However—
- (a) the Chief Magistrate may not perform the duties, or exercise
the powers, of a Judge of the District Court of South
Australia while the Chief Magistrate holds an appointment
as Chief Magistrate; and
- 20 (b) the Chief Magistrate may—
- (i) resign from the office of Chief Magistrate without
simultaneously resigning from the office of Judge
of the District Court of South Australia; or
- 25 (ii) resign from the office of Judge of the District Court
of South Australia and from the office of the Chief
Magistrate without simultaneously resigning from
office as a magistrate,
- and such a resignation will not give rise to any right to
pension, retirement leave or other similar benefit.
- 30 (4) The Governor may, by regulation, make provisions relating to
existing entitlements, and recognition of prior service, of the person
holding the office of the Chief Magistrate on the commencement of
this section or a person appointed to the office after that
commencement, including by making modifications to the
application of an Act that deals with superannuation or pensions.

35 **19C—Amendment of section 9—Tenure of office**

Section 9(1)(c)—delete "sixty-five" and substitute:

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Part 7—Amendment of *Magistrates Court Act 1991*

20—Amendment of section 3—Interpretation

(1) Section 3(1), definition of *minor statutory proceeding*, (ba)—delete "\$12 000" and substitute:

5 \$25 000

(2) Section 3(1), definition of *small claim*—delete "\$6 000" and substitute:

 \$25 000

(3) Section 3(4)(a) and (b)—delete "\$6 000" wherever occurring and substitute in each case:

10 \$25 000

21—Amendment of section 8—Civil jurisdiction

(1) Section 8(1)(a)—delete paragraph (a) and substitute:

 (a) to hear and determine an action (at law or in equity) for a sum of money where the amount claimed does not exceed \$100 000;

15 (2) Section 8(1)(b) and (c)—delete "\$80 000" wherever occurring and substitute in each case:

 \$100 000

22—Amendment of section 9—Criminal jurisdiction

Section 9—after paragraph (a) insert:

20 (ab) to determine and impose sentence on a defendant who admits a charge of a major indictable offence (other than treason, murder, or an attempt or conspiracy to commit, or assault with intent to commit, either of those offences);

23—Amendment of section 42—Appeals

25 Section 42(2)—after paragraph (a) insert:

 (ab) in the case of a sentence passed on the conviction of a person of a major indictable offence—to the Full Court of the Supreme Court with the permission of the Full Court; or

24—Transitional provision

30 (1) The amendments made to sections 3 and 8 of the *Magistrates Court Act 1991* by sections 20 and 21—

 (a) do not apply in respect of proceedings commenced before the commencement of this Part (and those proceedings may continue as if this Act had not been enacted); and

35 (b) apply in respect of proceedings commenced on or after the commencement of this Part (including proceedings in respect of a claim arising before the commencement of this Part).

- 5 (2) The amendments made to sections 9 and 42 of the *Magistrates Court Act 1991* by sections 22 and 23 apply in relation to the sentencing of a person by the Magistrates Court following the commencement of this Part (including the sentencing of a person for an offence that occurred before that commencement) only if the proceedings for the relevant offence were commenced on or after that commencement.

24A—Review of certain amendments

- 10 (1) The Attorney-General must, as soon as practicable after the first anniversary of the commencement of section 20, conduct a review of the operation and impact of the amendments made to the *Magistrates Court Act 1991* by that section.
- (2) The Attorney-General must prepare a report based on the review and must, within 12 sitting days after the report is prepared, cause copies of the report to be laid before each House of Parliament.

Part 8—Amendment of *Mining Act 1971*

25—Amendment of section 67—Jurisdiction relating to tenements and monetary claims

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Section 67(1a)—delete "\$40 000" and substitute:

\$100 000

26—Transitional provision

The amendment made to the *Mining Act 1971* by this Part—

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- (a) does not apply in respect of proceedings commenced before the commencement of this Part (and those proceedings may continue as if this Act had not been enacted); and
- (b) applies in respect of proceedings commenced after the commencement of this Part (including proceedings in respect of a claim arising before the commencement of this Part).

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Part 9—Amendment of *Opal Mining Act 1995*

27—Amendment of section 72—Jurisdiction relating to tenements and monetary claims

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Section 72(2a)—delete "\$40 000" and substitute:

\$100 000

28—Transitional provision

The amendment made to the *Opal Mining Act 1995* by this Part—

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- (a) does not apply in respect of proceedings commenced before the commencement of this Part (and those proceedings may continue as if this Act had not been enacted); and
- (b) applies in respect of proceedings commenced on or after the commencement of this Part (including proceedings in respect of a claim arising before the commencement of this Part).

Part 10—Amendment of *Retail and Commercial Leases Act 1995*

29—Amendment of section 69—Substantial monetary claims

Section 69(1)—delete "\$40 000" and substitute:

\$100 000

30—Transitional provision

The amendment made to the *Retail and Commercial Leases Act 1995* by this Part—

- (a) does not apply in respect of proceedings commenced before the commencement of this Part (and those proceedings may continue as if this Act had not been enacted); and
- (b) applies in respect of proceedings commenced on or after the commencement of this Part (including proceedings in respect of a claim arising before the commencement of this Part).

Part 11—Amendment of *Summary Offences Act 1953*

31—Amendment of section 24—Urinating etc in a public place

Section 24—after the penalty provision insert:

Expiation fee: \$80.

Part 12—Amendment of *Summary Procedure Act 1921*

32—Amendment of section 76A—Power to set aside conviction or order

Section 76A(1) and (2)—delete subsections (1) and (2) and substitute:

- (1) The Court may set aside a conviction or order—
 - (a) on its own initiative; or
 - (b) on the application of a party made within 14 days after the party receives notice of the conviction or order.

33—Amendment of section 103—Procedure in Magistrates Court

Section 103—after subsection (3) insert:

- (3aa) If a defendant charged with a major indictable offence admits the charge before the charge proceeds to a preliminary examination, the Court may, subject to section 108(1)—
 - (i) determine and impose sentence on the defendant (in the same way as for a charge of a summary offence); or
 - (ii) commit the defendant to a superior Court for sentence.

34—Amendment of section 105—Procedure at preliminary examination

- (1) Section 105(1)(a)—delete "will commit the defendant to a superior Court for sentence;" and substitute:

may, subject to section 108(1)—

- (i) determine and impose sentence on the defendant (in the same way as for a charge of a summary offence); or
(ii) commit the defendant to a superior Court for sentence;

- (2) Section 105(2)(c)(i)—delete "the defendant will be committed to a superior Court for sentence;" and substitute:

the Court may, subject to section 108(1)—

- (A) determine and impose sentence on the defendant (in the same way as for a charge of a summary offence); or
(B) commit the defendant to a superior Court for sentence;

- (3) Section 105(4a)—delete "However, in" and substitute:

In

35—Amendment of section 108—Forum for sentence

Section 108—before its present contents (now to be designated as subsection (2)) insert:

- (1) If—

- (a) a defendant admits a charge of a major indictable offence (other than treason, murder, or an attempt or conspiracy to commit, or assault with intent to commit, either of those offences); and
(b) the Director of Public Prosecutions for the State or the Commonwealth and the defendant consent to the defendant being sentenced by the Court,

the Court is to determine and impose sentence itself unless the Court is of the opinion that the interests of justice require committal to a superior Court.

36—Amendment of heading to Part 5 Division 5

Heading to Part 5 Division 5—delete "**minor**"

37—Amendment of section 114—Procedural provisions of Criminal Law Consolidation Act

Section 114—delete "a minor indictable" and substitute:

an indictable

38—Transitional provisions

- (1) The amendment made to section 76A of the *Summary Procedure Act 1921* by section 32 applies in respect of convictions and orders made before or after the commencement of the amendment.
- 5 (2) The amendments made to sections 103, 105 and 108 of the *Summary Procedure Act 1921* by sections 33, 34 and 35—
- (a) do not apply in respect of the procedure to be followed after the commencement of this Part in proceedings commenced before that commencement (and such proceedings are to proceed as if this Act had not
10 been enacted); and
- (b) apply in respect of the procedure to be followed in proceedings commenced after that commencement.

Part 13—Amendment of *Unclaimed Goods Act 1987*

39—Amendment of section 3—Interpretation

15 Section 3(1), definition of *Court*—delete "\$80 000" wherever occurring and substitute in each case:

\$100 000

40—Transitional provision

The amendment made to the *Unclaimed Goods Act 1987* by this Part—

- 20 (a) does not apply in respect of proceedings commenced before the commencement of this Part (and those proceedings may continue as if this Act had not been enacted); and
- (b) applies in respect of proceedings commenced on or after the commencement
25 of this Part (including proceedings in respect of a claim arising before the commencement of this Part).

Part 14—Amendment of *Youth Court Act 1993*

41—Amendment of section 14—Constitution of Court

- (1) Section 14(2)—delete "The" and substitute:

Subject to subsection (2a), the

- 30 (2) Section 14—after subsection (2) insert:

(2a) The Court, when sitting to determine and impose sentence on a defendant who admits a charge of a major indictable offence (other than treason, murder, or an attempt or conspiracy to commit, or assault with intent to commit, either of those offences), may be
35 constituted of a Magistrate.

42—Amendment of section 22—Appeals

Section 22(2)—after paragraph (b) insert:

- (ba) in the case of a sentence passed by a Magistrate on the conviction of a person of a major indictable offence—to the Full Court of the Supreme Court;

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43—Transitional provisions

The amendments made to the *Youth Court Act 1993* by this Part apply in respect of the sentencing of a person by the Youth Court following the commencement of this Part (including the sentencing of a person for an offence that occurred before that commencement) only if the proceedings for the relevant offence were commenced on or after that commencement.

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