

House of Assembly

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South Australia

Statutes Amendment (Justice Portfolio) Bill 2006

A BILL FOR

An Act to amend various Acts within the Justice portfolio.

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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 (Justice Portfolio) Act 2006*.

2—Commencement

- (1) This Act will come into operation on a day to be fixed by proclamation.
- (2) Section 7(5) of the *Acts Interpretation Act 1915* does not apply in relation to the commencement of this Act or any 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 *Acts Interpretation Act 1915*

4—Amendment of section 4—Interpretation

Section 4(1), definition of *commencement*—after "day" insert:

or time

Part 3—Amendment of *Associations Incorporation Act 1985*

5—Insertion of section 39AB

After section 39A insert:

39AB—Reliance on information or advice provided by others

If an officer of an incorporated association—

- (a) relies on information, or professional or expert advice, given or prepared by—
 - (i) an employee of the association whom the officer believes on reasonable grounds to be reliable and competent in relation to the matters concerned; or
 - (ii) a professional adviser or expert in relation to matters that the officer believes on reasonable grounds to be within the person's professional or expert competence; or
 - (iii) another officer of the association in relation to matters within that officer's authority; or
 - (iv) a subcommittee of officers on which the officer did not serve in relation to matters within the subcommittee's authority; and
- (b) the reliance was made—
 - (i) in good faith; and
 - (ii) after making an independent assessment of the information or advice, having regard to the officer's knowledge of the association and the complexity of the structure and operations of the association; and
- (c) the reasonableness of the officer's reliance on the information or advice arises in proceedings brought to determine whether an officer has performed a duty under this Act or an equivalent general law duty,

the officer's reliance on the information or advice is, in the absence of proof to the contrary, taken to be reasonable.

Part 4—Amendment of *Australian Crime Commission (South Australia) Act 2004*

6—Amendment of section 3—Interpretation

Section 3(1), definition of *Commonwealth body or person*—after paragraph (g) insert:

- (ga) a legal practitioner appointed under section 7 of the Act; or

Part 5—Amendment of *Business Names Act 1996*

7—Amendment of section 7—Certain business names to be registered

Section 7(1)—after the penalty provision insert:

Expiation fee: \$315.

Part 6—Amendment of *Civil Liability Act 1936*

8—Amendment of section 28—Liability to parents of person wrongfully killed

Section 28(1)(b)—delete "three thousand dollars" and substitute:

\$10 000

9—Amendment of section 29—Liability to surviving spouse of person wrongfully killed

Section 29(1)(b)—delete "four thousand two hundred dollars" and substitute:

\$10 000

10—Amendment of section 69—Definitions

Section 69, definition of *dependant*—delete "Part 2" and substitute:

Part 5

Part 7—Amendment of *Companies (Administration) Act 1982*

11—Substitution of section 7

Section 7—delete the section and substitute:

7—Delegation

- (1) Subject to this Act or any other Act, the Commission may delegate any of the Commission's powers, authorities, functions or duties under this Act or any other Act—
 - (a) to a person employed in the Public Service; or
 - (b) to the person for the time being holding a specified position in the Public Service.
- (2) A delegation under this section—
 - (a) must be in writing; and
 - (b) may be conditional or unconditional; and
 - (c) is revocable at will; and
 - (d) does not prevent the delegator from acting in any matter.
- (3) A delegated function or power may, if the instrument of delegation so provides, be further delegated.

Part 8—Amendment of *Co-operatives Act 1997*

12—Amendment of section 9—Exclusion of operation of Corporations Act

Section 9(2)—after paragraph (a) insert:

- (ab) provisions that relate to the registration of a co-operative as a company under Part 5B.1 of the Corporations Act; or

Part 9—Amendment of *Correctional Services Act 1982*

13—Amendment of section 4—Interpretation

- (1) Section 4(1), definition of *child sexual offence*—after "against" second occurring insert:

a corresponding previous enactment or

- (2) Section 4(1), definition of *child sexual offence*, (g)—delete "section 58A" and substitute:

Part 3 Division 11A

- (3) Section 4(1), definition of *sexual offence*—after "against" first occurring insert:

a corresponding previous enactment or

14—Amendment of section 47—Appeals against orders of Visiting Tribunals

Section 47(1a)(a) and (b)—delete paragraphs (a) and (b) and substitute:

- (a) if the Visiting Tribunal is constituted of a magistrate—to the District Court;
- (b) in any other case—to the Magistrates Court.

Part 10—Amendment of *Criminal Law Consolidation Act 1935*

15—Amendment of section 49—Unlawful sexual intercourse

Section 49(3)—delete "of or above the age of 14 years and"

16—Amendment of section 66—Sexual servitude and related offences

- (1) Section 66(1), penalty provision, (b)—delete "of or over the age of 14 years" and substitute:

under the age of 18 years

- (2) Section 66(2), penalty provision, (b)—delete "of or over the age of 14 years" and substitute:

under the age of 18 years

Part 11—Amendment of *Debtors Act 1936*

17—Amendment of section 3—Abolition of imprisonment for debt

Section 3(5)—delete subsection (5)

18—Amendment of section 4—Penalty for debtor absconding or attempting to abscond

Section 4—delete ", with or without hard labour,"

Part 12—Amendment of *Drugs Act 1908*

19—Amendment of section 47—Penalties for offences

Section 47(4)—delete ", with or without hard labour,"

20—Amendment of section 59—Punishment for forging certificate or warranty

Section 59(1)—delete "with hard labour"

Part 13—Amendment of *Evidence Act 1929*

21—Amendment of section 41—Certifying a false document

Section 41—delete "with hard labour"

Part 14—Amendment of *Fire and Emergency Services Act 2005*

22—Amendment of section 3—Interpretation

Section 3(1)—after the definition of *industrial agreement* insert:

Industrial Relations Commission means the Industrial Relations Commission of South Australia;

23—Amendment of section 29—Other officers and firefighters

- (1) Section 29(2)(c)—delete "District Court" and substitute:

Industrial Relations Commission

- (2) Section 29(2)(d)—delete "District Court" and substitute:

Industrial Relations Commission

- (3) Section 29(2)(e)—delete "District Court" wherever occurring and substitute in each case:

Industrial Relations Commission

24—Amendment of Schedule 1—Appointment and selection of assessors for appeals under Part 3

- (1) Schedule 1, clause 1—delete "with the District Court as assessors in any relevant proceedings under Part 3" and substitute:

as assessors in an appeal under Part 3 to the District Court or the Industrial Relations Commission
- (2) Schedule 1, clause 4—delete "Subject to clause 5, a Judge of the District Court must select" and substitute:

Subject to clause 5, in any proceedings where the District Court, or the Industrial Relations Commission, is to sit with assessors, the judicial officer presiding at the proceedings must select
- (3) Schedule 1, clause 4—delete ", to sit with the District Court in any proceedings where the Court is to sit with assessors"
- (4) Schedule 1, clause 5—delete "before the District Court"
- (5) Schedule 1, clause 6—after "District Court" insert:

or the Industrial Relations Commission (as the case requires)

25—Transitional provision

An amendment made by this Act to the *Fire and Emergency Services Act 2005* applies only in relation to proceedings commenced after the commencement of this section.

Part 15—Amendment of *Judicial Administration (Auxiliary Appointments and Powers) Act 1988*

26—Amendment of section 2—Interpretation

Section 2, definition of *judicial office*, (d)—after "the office of" insert:

Chief Magistrate,

27—Amendment of section 3—Appointment of judicial auxiliaries

- (1) Section 3(2)(c)—delete paragraph (c) and substitute:
 - (c) has retired from office—
 - (i) as a judge of—
 - (A) the High Court; or
 - (B) the Federal Court; or
 - (C) the Supreme Court of some other State, or a Territory, of the Commonwealth; or
 - (D) the District Court or County Court of some other State, or a Territory, of the Commonwealth; or
 - (E) the Court of Appeal or the Supreme Court of New Zealand; or
 - (ii) as a magistrate; or

- (d) holds office—
 - (i) as a judge of—
 - (A) the Federal Court; or
 - (B) the Supreme Court of some other State, or a Territory, of the Commonwealth; or
 - (C) the District Court or County Court of some other State, or a Territory, of the Commonwealth; or
 - (D) the Court of Appeal or the Supreme Court of New Zealand; or
 - (ii) as a magistrate.

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

- (2a) However, a person cannot be appointed under subsection (2)(d) except with the concurrence of the judicial head of the Court of the other jurisdiction.

Part 16—Amendment of *Justices of the Peace Act 2005*

28—Amendment of section 13—Roll of justices

Section 13(2)(b) and (c)—delete paragraphs (b) and (c) and substitute:

- (b) either or both of—
 - (i) the town or suburb in which the justice resides;
 - (ii) the town or suburb in which the justice works;
- (c) either or both of—
 - (i) the telephone number on which the justice can be contacted during business hours;
 - (ii) the telephone number on which the justice can be contacted after business hours;

Part 17—Amendment of *Landlord and Tenant Act 1936*

29—Amendment of section 28—False declarations

Section 28—delete ", with or without hard labour"

Part 18—Amendment of *Limitation of Actions Act 1936*

30—Amendment of section 39—Absence from State of person liable

Section 39—delete "section 35, 36, or 37 of this Act" and substitute:

section 35 or 36

31—Amendment of section 40—Absence from State of a joint debtor

Section 40—delete "section 35, 36, or 37 of this Act" and substitute:
section 35 or 36

Part 19—Amendment of *Magistrates Court Act 1991*

32—Amendment of section 7A—Constitution of Court

Section 7A(2)—delete subsection (2) and substitute:

- (2) The Court may—
- (a) in its Petty Sessions Division be constituted of a special justice; and
 - (b) in any other case, be constituted of a special justice if there is no Magistrate available to constitute the Court, but when constituted of a special justice, the Court may not impose a sentence of imprisonment in criminal proceedings.

33—Amendment of section 9A—Petty Sessions Division

Section 9A—after paragraph (b) insert:

and

- (c) to conduct a review of an enforcement order under section 14 of the *Expiation of Offences Act 1996*.

Part 20—Amendment of *Oaths Act 1936*

34—Amendment of section 27—False declaration

Section 27(1)—delete ", with hard labour"

Part 21—Amendment of *Partnership Act 1891*

35—Amendment of section 75—Identification of limited partnerships and incorporated limited partnerships

Section 75(2a)—delete "'L.P.'" or "LP'" and substitute:

I.L.P. or ILP

Part 22—Amendment of *Prisoners (Interstate Transfer) Act 1982*

36—Substitution of Part 2 heading

Heading to Part 2—delete the heading and substitute:

Part 2—Transfer at request of prisoner

37—Amendment of section 7—Requests for, and order of, transfer

Section 7—delete "in the interests of the welfare of the prisoner" wherever occurring

38—Insertion of section 10A

After section 10 insert:

10A—Matters to which Minister may have regard

In forming an opinion or exercising any discretion under this Part, the Minister may have regard to any 1 or more of the following:

- (a) the welfare of the prisoner concerned;
- (b) the administration of justice in this or any other State;
- (c) the security and good order of any prison in this or any other State;
- (d) the safe custody of the prisoner;
- (e) the protection of the community in this or any other State;
- (f) any other matter the Minister considers relevant.

39—Amendment of section 11—Reports

Section 11(1)—delete "may have regard" and substitute:

by reference

40—Amendment of section 23—Ancillary provisions

- (1) Section 23(1)(a)—delete "it is in the interests of the welfare of the person that"
- (2) Section 23—after subsection (1) insert:
 - (1a) In making a decision under subsection (1)(a), the Minister may have regard to any 1 or more of the following:
 - (a) the welfare of the person concerned;
 - (b) the administration of justice in this or any other State;
 - (c) the security and good order of any prison in this or any other State;
 - (d) the safe custody of the person;
 - (e) the protection of the community in this or any other State;
 - (f) any other matter that the Minister considers relevant.

Part 23—Amendment of *Professional Standards Act 2004*

41—Amendment of section 4—Interpretation

- (1) Section 4—after the definition of *business assets* insert:

costs includes fees, charges, disbursements and expenses;
- (2) Section 4, definition of *damages*—delete the definition and substitute:

damages means—

 - (a) damages awarded in respect of a claim or counter-claim or claim by way of set-off; and

- (b) costs in or in relation to the proceedings ordered to be paid in connection with such an award (other than costs incurred in enforcing a judgment or incurred on an appeal made by a defendant); and
 - (c) any interest payable in respect of those damages or costs;
- (3) Section 4—after its present contents as amended by this section (now to be designated as subsection (1)) insert:
- (2) A reference in this Act to the amount payable under an insurance policy in respect of an occupational liability includes a reference to—
 - (a) defence costs payable in respect of a claim, or notification that may lead to a claim (other than reimbursement of the defendant for time spent in relation to the claim), but only if those costs are payable out of the 1 sum insured under the policy in respect of the occupational liability; and
 - (b) the amount payable under or in relation to the policy by way of excess.

42—Substitution of section 23

Section 23—delete the section and substitute:

23—Limitation of liability by insurance arrangements

A scheme may provide that if a person to whom the scheme applies and against whom a proceeding relating to occupational liability is brought is able to satisfy the court that—

- (a) the person has the benefit of an insurance policy insuring the person against the occupational liability to which the cause of action relates; and
- (b) the amount payable under the policy in respect of that occupational liability is not less than the amount of the monetary ceiling specified in the scheme in relation to the class of person and the kind of work to which the cause of action relates,

the person is not liable in damages in relation to that cause of action above the amount of that monetary ceiling.

43—Amendment of section 24—Limitation of liability by reference to amount of business assets

- (1) Section 24(a)—delete "at the time at which the act or omission giving rise to the cause of action occurred"

(2) Section 24(b)(ii)—delete subparagraph (ii) and substitute:

- (ii) the net current market value of the business assets and the amount payable under the policy in respect of that occupational liability, if combined, would total an amount that is not less than the amount of the monetary ceiling specified in the scheme in relation to the class of person and the kind of work to which the cause of action relates,

44—Amendment of section 25—Limitation of liability by multiple of charges

(1) Section 25(1)(a)(ii)—delete subparagraph (ii) and substitute:

- (ii) under which the amount payable in respect of that occupational liability is not less than an amount (the *limitation amount*), being a reasonable charge for the services provided by the person or which the person failed to provide and to which the cause of action relates, multiplied by the multiple specified in the scheme in relation to the class of person and the kind of work to which the cause of action relates; or

(2) Section 25(1)(c)(ii)—delete subparagraph (ii) and substitute:

- (ii) the net current market value of the assets and the amount payable under the policy in respect of that occupational liability, if combined, would total an amount that is not less than the limitation amount,

45—Insertion of section 28A

After section 28 insert:

28A—Liability in damages not reduced to below relevant limit

The liability in damages of a person to whom a scheme applies is not reduced below the relevant limitation imposed by a scheme in force under this Act because the amount available to be paid to the claimant under the insurance policy required for the purposes of this Act in respect of that liability is less than the relevant limitation.

Note—

Section 4(2) permits a defence costs inclusive policy for the purposes of the Act, which may reduce the amount available to be paid to a client in respect of occupational liability covered by the policy. Section 28A makes it clear that this does not reduce the cap on the liability of the scheme participant to the client and, accordingly, the scheme participant will continue to be liable to the client for the amount of any difference between the amount payable to the client under the policy and the amount of the cap.

46—Amendment of section 30—Limit of occupational liability by schemes

Section 30(2)—delete "at the time of the relevant act or omission" and substitute:

at the time at which the act or omission giving rise to the cause of action concerned occurred

47—Insertion of Schedule 4

After Schedule 3 insert:

Schedule 4—Validation of certain schemes etc

1—Interpretation

In this Schedule—

amending Part means that Part of the *Statutes Amendment (Justice Portfolio) Act 2006* that amends the principal Act;

principal Act means the *Professional Standards Act 2004*.

2—Validation of schemes etc

- (1) A scheme approved under the principal Act before the commencement of the amending Part is taken to be, and always to have been, a valid scheme if it would have been valid had the amendments made by the amending Part to the principal Act been in force when the scheme was approved.
- (2) Anything done or omitted to be done in respect of such a scheme is taken to be, and always to have been, validly done or omitted. In particular, an insurance policy required by the principal Act before a limitation on liability in damages of a person to whom such a scheme applies is reduced, is taken to comply, and always to have complied, with the principal Act if it would have complied had the amendments made by the amending Part to the principal Act been in force when the policy was issued.
- (3) This clause extends to proceedings pending in a court immediately before the commencement of this clause.

3—Regulations

- (1) The Governor may make regulations of a savings or transitional nature consequent on the enactment of the amending Part.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the *Statutes Amendment (Justice Portfolio) Act 2006* or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date on which the amending Part comes into operation, the provision does not operate so as—
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its operation; or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its operation.

Part 24—Amendment of *Renmark Irrigation Trust Act 1936*

48—Amendment of section 187—Forgery

Section 187—delete "with hard labour"

Part 25—Amendment of *Residential Tenancies Act 1995*

49—Amendment of section 90—Tribunal may terminate tenancy where tenant's conduct unacceptable

Section 90(2)(b)—delete paragraph (b) and substitute:

- (b) the Tribunal may order the landlord—
 - (i) to take such action as is specified in the order for the purpose of taking possession of the premises; and
 - (ii) not to permit the tenant to occupy the premises (whether as a tenant or otherwise) for a specified period or until further order (and any agreement entered into in contravention of such an order is void).

Part 26—Amendment of *Security and Investigation Agents Act 1995*

50—Amendment of section 8B—Applicant for security agents licence required to provide fingerprints

- (1) Section 8B(1)—delete "by a police officer"
- (2) Section 8B(5)—delete "by a police officer"

51—Amendment of section 11AB—Power of Commissioner to require security agent to provide fingerprints

- (1) Section 11AB(1)—delete "by a police officer"
- (2) Section 11AB(2)—delete "by a police officer"

52—Amendment of section 23E—Appeal

- (1) Section 23E(1)—after "suspend the licence" insert:

or any other decision made by the Commissioner under either of those sections in connection with the suspension
- (2) Section 23E—after subsection (1) insert:
 - (1a) An appeal must be instituted within 1 month of the making of the decision appealed against.

53—Repeal of section 23F

Section 23F—delete the section

54—Amendment of section 23Q—Appeal

Section 23Q—after its present contents (now to be designated as subsection (1)) insert:

- (2) An appeal must be instituted within 1 month of the making of the decision appealed against.

55—Amendment of section 25—Cause for disciplinary action

Section 25(1)(f)(iii)—delete "licensee" and substitute:

person

56—Insertion of section 36AA

After section 36 insert:

36AA—Taking of fingerprints

- (1) If fingerprints are to be taken from a person under this Act, the fingerprints must be taken by—
 - (a) a police officer; or
 - (b) a person, or a member of a class of persons, authorised in writing by the Commissioner for the purpose.
- (2) A notice under this Act requesting or requiring a person to attend at a specified time and place for the purpose of having his or her fingerprints taken may, if the person does not reside in the State, specify a place outside of the State.

57—Insertion of section 36B

After section 36A insert:

36B—Immunity

No liability attaches to the Commissioner or the Crown for the exercise or purported exercise in good faith of the Commissioner's power to suspend or cancel a security agents licence.

58—Amendment of Schedule 2—Repeal and transitional provisions

- (1) Schedule 2, clause 3(1)—delete "by a police officer"
- (2) Schedule 2, clause 3(2)—delete "by a police officer"

Part 27—Amendment of *Stamp Duties Act 1923*

59—Amendment of section 108—Penalties for certain offences

Section 108(1)—delete ", with or without hard labour,"

Part 28—Amendment of *Statutes Amendment and Repeal (Aggravated Offences) Act 2005*

60—Amendment of section 18—Amendment of section 60—Procuring sexual intercourse

Section 18—delete "Section 64" and substitute:

Section 60

Part 29—Amendment of *Subordinate Legislation Act 1978*

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

Section 16A(d)—delete paragraph (d)

62—Transitional provision

- (1) Subject to this section, Part 3A of the Act as amended by section 61 of the *Statutes Amendment (Justice Portfolio) Act 2006* applies in relation to a regulation that was, immediately before the commencement of that section, exempt from expiry under that Part because of the repealed provision.
- (2) A regulation to which this subsection applies will, unless it has already expired or been revoked, be taken to expire under Part 3A of the Act on 1 September of the year following the year in which section 61 of the *Statutes Amendment (Justice Portfolio) Act 2006* commences (and section 16C of the Act applies in relation to the expiry of such a regulation in the same way as it applies to the expiry of any other regulation under Part 3A of the Act).
- (3) Subsection (2) applies to the following regulations:
 - (a) *Criminal Investigation (Extraterritorial Offences) Regulations 1986*;
 - (b) *Prisoners (Interstate Transfer) Regulation 1984*.

Note—

These regulations have not expired under Part 3A of the Act prior to the commencement of this section because of the application of the repealed provision.

- (4) In this section—

Act means the *Subordinate Legislation Act 1978*;

repealed provision means section 16A(d) of the Act.

Part 30—Amendment of *Summary Procedure Act 1921*

63—Amendment of section 4—Interpretation

- (1) Section 4(1), definition of *industrial magistrate*—delete the definition and substitute:

industrial magistrate means a magistrate assigned by the Governor under section 19A of the *Fair Work Act 1994* to be an industrial magistrate;
- (2) Section 4(1), definition of *justice*—delete the definition

- (3) Section 4(1), definition of *the Industrial Court*—delete the definition

64—Amendment of section 5—Classification of offences

- (1) Section 5(3)(a)(iii)(C)—delete "12 years" and substitute:
14 years
- (2) Section 5(3)(a)(iii)(E)—after "where" insert:
the offence is a basic offence within the meaning of that Act and

65—Amendment of section 99AA—Paedophile restraining orders

- (1) Section 99AA(4)(b)—after "against" second occurring insert:
a corresponding previous enactment or
- (2) Section 99AA(4)(b)(vii)—delete "section 58A" and substitute:
Part 3 Division 11A

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

- Section 106(2)—delete "leave" and substitute:
permission

Part 31—Amendment of *Trustee Companies Act 1988*

67—Amendment of Schedule 1—Trustee companies

- (1) Schedule 1—after "ANZ Executors & Trustee Company Limited" insert:
Australian Executor Trustees Limited
Australian Executor Trustees (SA) Limited
- (2) Schedule 1—delete "IOOF Australia Trustees Limited"
- (3) Schedule 1—delete "Perpetual Trustees Australia Limited" and substitute:
Perpetual Limited
- (4) Schedule 1—delete "Tower Trust Limited"

Part 32—Amendment of *Water Efficiency Labelling and Standards Act 2006*

68—Amendment of section 7—Definitions

- Section 7—after the definition of "*damage*" insert:
District Court means the Administrative and Disciplinary Division of the District Court;

Part 33—Amendment of *Worker's Liens Act 1893*

69—Amendment of section 33—Penalty for claim with intent to defraud

Section 33—delete "(with or without hard labour)"

70—Amendment of section 45—Penalty on attempt to deprive worker of lien on goods

Section 45—delete "(with or without hard labour)"