

Legislative Council—No 32A

As reported with amendments, report adopted, Standing Orders suspended and passed remaining stages, 10 September 2015

South Australia

Statutes Amendment (Youth Court) Bill 2015

A BILL FOR

An Act to amend the *Youth Court Act 1993* and the *Young Offenders Act 1993*; and to make related or consequential amendments to various other Acts.

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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 (Youth Court) Act 2015*.

2—Commencement

5 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 *Youth Court Act 1993*

4—Substitution of sections 9 and 10

10 Sections 9 and 10—delete the sections and substitute:

9—Court's judiciary

(1) The Court's judiciary consists of—

- 15 (a) the Judge of the Court; and
- (b) magistrates who are designated by proclamation as magistrates of the Court (of whom at least 2 must be designated as members of the Court's principal judiciary); and
- 20 (c) special justices who are designated by proclamation as special justices of the Court.

25 (2) A proclamation designating a magistrate or special justice as a member of the Court's judiciary must classify him or her as a member of the Court's principal judiciary (being those members who are to be occupied predominantly in the Court) or as a member of the Court's ancillary judiciary (being those members who are not occupied predominantly in the Court).

(3) A proclamation designating a magistrate or special justice as a member of the Court's principal judiciary must state a term for which he or she is to be a member of the Court's principal judiciary.

30 (4) A proclamation under this section may be varied or revoked by subsequent proclamation.

(5) The fact that a judicial officer is a member of the Court's judiciary does not prevent the judicial officer from performing judicial functions unrelated to the Court.

10—Court's principal judicial officer

- (1) The principal judicial officer of the Court with responsibility for the administration of the Court is the Judge of the Court.
- (2) The Judge of the Court is a Judge of the District Court designated by proclamation as the Judge of the Court.
- (3) A proclamation designating a person as the Judge of the Court must state a term (not exceeding 5 years) for which he or she is to be the Judge of the Court.
- (4) A person may, at the expiration of a term of office, be designated by subsequent proclamation as the Judge of the Court for a further term (not exceeding 5 years) stated in the proclamation.
- (5) A proclamation under this section may be varied or revoked by subsequent proclamation.
- (6) The Judge of the Court may delegate any power or function conferred on the Judge of the Court under this Act or another Act to a magistrate who is a member of the Court's principal judiciary.
- (7) A delegation under subsection (6) is revocable at will and does not derogate from the power of the Judge of the Court to act himself or herself in any matter.
- (8) In the absence of the Judge of the Court from official duties as the principal judicial officer of the Court, the Governor may nominate a Judge of the District Court to act in the office of the Judge of the Court.
- (9) The Judge of the Court is responsible to the Chief Judge of the District Court for the proper and efficient discharge of his or her duties under this Act and the *District Court Act 1991*.
- (10) The Judge of the Court may exercise the powers of the Chief Magistrate under the *Magistrates Act 1983* in place of the Chief Magistrate in relation to a magistrate who is a member of the Court's principal judiciary.
- (11) The appointment of a person as the Judge of the Court does not prevent the person while holding such office from simultaneously holding the office, and performing the duties and exercising the powers, of a Judge of the District Court.

5—Amendment of Section 12—Registrar

Section 12(2)—delete "Senior Judge" and substitute:

Judge of the Court

6—Amendment of Section 13—Responsibilities of staff

Section 13—delete "Senior Judge" and substitute:

Judge of the Court

7—Amendment of section 14—Constitution of Court

(1) Section 14(1)—delete "must be constituted of a Judge or a Magistrate" and substitute:

, must be constituted of the Judge of the Court or a magistrate

(2) Section 14(2) to (4)—delete subsections (2) to (4) (inclusive) and substitute:

(2) The Court may not impose a sentence of detention of more than 3 years in criminal proceedings.

(3) The Court may be constituted of a special justice if neither the Judge of the Court nor a magistrate is available to constitute the Court but, when so constituted, the Court may not—

(a) hear and determine a charge of an indictable offence; or

(b) impose a sentence of detention in criminal proceedings; or

(c) hear and determine proceedings in which an order for the protection or care of a child is sought.

(3) Section 14(5)—delete "a Magistrate or"

(4) Section 14(5)—delete "a Judge" and substitute:

the Judge of the Court or a magistrate

8—Amendment of section 15—Time and place of sittings

Section 15(3)—delete "Senior Judge" and substitute:

Judge of the Court

9—Amendment of section 22—Appeals

(1) Section 22(1)—after "may" insert:

, in accordance with the rules of the appellate court,

(2) Section 22(2)—delete subsection (2) and substitute:

(2) The appeal lies—

(a) if the judgment is given by the Judge of the Court—

(i) in the case of an interlocutory judgment—to the Supreme Court constituted of a single Judge; or

(ii) in any other case—to the Full Court of the Supreme Court; or

(b) if the judgment is given by a magistrate—

(i) in the case of an interlocutory judgment—to the Judge of the Court; or

(ii) in the case of an action relating to a major indictable offence—to the Full Court of the Supreme Court; or

(iii) in any other case—to the Supreme Court constituted of a single Judge; or

- (c) if the judgment (including an interlocutory judgement) is given by a special justice—to the Judge of the Court.

- (3) Section 22(2a)—delete "subsection (2)(ba)" and substitute:
subsection (2)(b)(ii)

10—Amendment of section 32—Rules of Court

- Section 32(2)—delete "Judges and Magistrates" and substitute:
Judge of the Court and the magistrates

11—Transitional provision

- (1) A person who was the Senior Judge or a Judge of the Youth Court immediately before the commencement day may sit as a member of the Court for the purpose of continuing and completing the hearing and determination of proceedings that are, on the commencement day, part heard.
- (2) A person who is, immediately before the commencement day, designated by proclamation as a magistrate of the Court or as a special justice of the Court will, after the commencement day, continue to be a magistrate of the Court or a special justice of the Court (as the case may be) of the classification, and for the term (if any), specified in the proclamation.
- (3) Subject to subsection (4), section 22 of the *Youth Court Act 1993* as in force on and after the commencement day applies in relation to an appeal that has been lodged but not heard or determined before the commencement day.
- (4) Section 22(2) as in force immediately before the commencement day continues to apply in relation to an appeal against a judgment given in the Court by a Judge who, after the commencement day, is no longer a member of the Youth Court's judiciary.
- (5) In this section—
commencement day means the day on which this Part comes into operation.

Part 3—Amendment of *Young Offenders Act 1993*

12—Amendment of section 4—Interpretation

- Section 4(1), definition of *Judge*—delete the definition

13—Amendment of section 9—Youth Justice Co-ordinators

- (1) Section 9(3)—delete "Senior Judge of the Youth Court" and substitute:
Judge of the Court
- (2) Section 9(4)—delete "Senior Judge of the Youth Court" and substitute:
Judge of the Court

14—Amendment of section 28—Power to disqualify from holding driver's licence

- Section 28(2)—delete "a Judge or Magistrate" and substitute:
the Judge of the Court or a magistrate

15—Amendment of section 38—Establishment of Training Centre Review Board

Section 38(2)(a)—delete paragraph (a) and substitute:

- 5 (a) the Judge of the Court and the magistrates who are members of the principal judiciary of the Youth Court; and

16—Amendment of section 39—Reviews etc and proceedings of Training Centre Review Board

(1) Section 39(2)(a)(i)—delete "a Judge" and substitute:

a member of the Board who is a member of the Court's judiciary

10 (2) Section 39(2)(b)(i)—delete "a Judge" and substitute:

a member of the Board who is a member of the Court's judiciary

17—Amendment of section 63—Transfer of youths in detention to other training centre or prison

(1) Section 63(2)—delete "a Judge of"

15 (2) Section 63(4)—delete "a Judge of"

(3) Section 63—after subsection (7) insert:

(8) For the purposes of determining an application under this section, the Youth Court must be constituted of the Judge of the Court or a magistrate.

20 **18—Transitional provision**

(1) A person who was a member of the Training Centre Review Board immediately before the commencement day may sit as a member of the Board for the purpose of continuing and completing the hearing and determination of proceedings that are, on the commencement day, part heard.

25 (2) In this section—

commencement day means the day on which this Part comes into operation.

Part 4—Amendment of *Adoption Act 1988*

19—Amendment of section 4—Interpretation

(1) Section 4(1a)—delete "a Judge, or a magistrate and special justice" and substitute:

30 the Judge of the Court or a magistrate

(2) Section 4(1b)—delete subsection (1b)

Part 5—Amendment of *Children's Protection Act 1993*

20—Amendment of section 6—Interpretation

Section 6(1), definition of *Senior Judge*—delete the definition

21—Amendment of section 21—Orders Court may make

Section 21(3)—delete "Senior Judge" and substitute:
the Judge of the Court or a magistrate

22—Amendment of section 29—Convening a family care meeting

5 Section 29(1)—delete "Senior"

Part 6—Amendment of *Family Relationships Act 1975*

23—Amendment of section 10EA—Court order relating to paternity

Section 10EA(8), definition of *Court*—delete "a Judge" and substitute:
the Judge of the Court or a magistrate

10 **24—Amendment of section 10HB—Orders as to parents of child born under
recognised surrogacy arrangements**

Section 10HB(1), definition of *Court*—delete "a Judge" and substitute:
the Judge of the Court or a magistrate

25—Amendment of section 10HG—Power of Court to cure irregularities

15 Section 10HG(1), definition of *Court*—delete "a Judge" and substitute:
the Judge of the Court or a magistrate

**Part 7—Amendment of *Judicial Administration (Auxiliary
Appointments and Powers) Act 1988***

26—Amendment of section 2—Interpretation

20 Section 2, definition of *judicial office*, (b)—delete ", Judge of the Youth Court"

27—Amendment of section 3—Appointment of judicial auxiliaries

Section 3(8), Example—delete the example