

**Legislative Council—No 139**

As received from the House of Assembly and read a first time, 23 June 2016

South Australia

**Summary Procedure (Abolition of Complaints)  
Amendment Bill 2016**

A BILL FOR

An Act to amend the *Summary Procedure Act 1921* and to make related amendments to the *Acts Interpretation Act 1915*.

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## The Parliament of South Australia enacts as follows:

### Part 1—Preliminary

#### 1—Short title

- 5 This Act may be cited as the *Summary Procedure (Abolition of Complaints) Amendment Act 2016*.

#### 2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

#### 3—Amendment provisions

- 10 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 *Summary Procedure Act 1921*

#### 4—Amendment of section 4—Interpretation

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

#### 5—Amendment of section 5—Classification of offences

- 15 (1) Section 5(6)—delete "complaint" and substitute:  
information
- (2) Section 5(8)—delete "complaint or"

#### 6—Amendment of section 20—Form of warrant

- (1) Section 20(1)(a)—delete "or complaint"

(2) Section 20(1)(c)—delete "or complaint"

**7—Amendment of section 22—Form of summons**

(1) Section 22(a)—delete "or complaint"

(2) Section 22(c)—delete "or complaint"

5 **8—Amendment of section 22A—Description of offence**

Section 22A(1)—delete "complaint,"

**9—Amendment of section 27—Service**

Section 27(2)(a)—delete "complaint" and substitute:  
information

10 **10—Amendment of section 27A—Service of summons by post**

Section 27A(1)—delete "makes a complaint" and substitute:  
lays an information

**11—Amendment of section 27B—Hearing on a written plea of guilty**

Section 27B—delete "a complaint" and substitute:  
an information

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**12—Amendment of section 27C—Hearing where defendant fails to appear**

(1) Section 27C(1)—delete "a complaint" and substitute:  
an information

(2) Section 27C(1)(a)—delete "complaint" and substitute:  
information

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(3) Section 27C(1)(b)—delete "complaint" and substitute:  
information

(4) Section 27C(3)(c)—delete "complainant" and substitute:  
informant

25

(5) Section 27C(3)(e)—delete "complaint" and substitute:  
information

**13—Amendment of heading to Part 4 Division 2**

Heading to Part 4 Division 2—delete "Complaint" and substitute:  
Information

30 **14—Amendment of section 49—Information**

(1) Section 49(1)—delete "a complaint may be made" and substitute:  
an information may be laid

- (2) Section 49(2)—delete "A complaint may be made by the complainant personally or by a legal practitioner or other person duly authorised to make the complaint on the complainant's" and substitute:

5                   An information may be laid by the informant personally or by a legal practitioner or other person duly authorised to lay the information on the informant's

- (3) Section 49(3)—delete "complaint is made orally" and substitute:  
information is laid orally

- (4) Section 49(4)—delete "A complaint need not be made" and substitute:

10                   An information charging a person with summary offences only need not be laid

- (5) Section 49(4)(a)—delete "complaint to be made" and substitute:  
information to be laid

- (6) Section 49(5)—delete "A complaint" and substitute:

15                   An information

- (7) Section 49(5)—delete "made" and substitute:  
laid

#### **15—Amendment of section 51—Joinder and separation of charges**

- (1) Section 51—delete "complaint" wherever occurring and substitute in each case:  
20                   information

- (2) Section 51(2)(b)—delete "complaints" and substitute:  
informations

#### **16—Amendment of section 54—Allegations and descriptions in informations and proceedings**

25                   Section 54—delete "complaint" wherever occurring and substitute in each case:  
information

#### **17—Amendment of section 56—Exceptions or exemptions need not be specified or disproved by informant**

- (1) Section 56—delete "complaint" wherever occurring and substitute in each case:  
30                   information

- (2) Section 56(2)—delete "complainant" and substitute:  
informant

#### **18—Amendment of section 57—Issue of summons**

35                   (1) Section 57(1)—delete "a complaint has been made" and substitute:  
an information has been laid

(2) Section 57(2)(a)—delete "complaint is made" and substitute:  
information is laid

(3) Section 57(3)—delete "a complaint" and substitute:  
an information

5 **19—Amendment of section 57A—Procedure enabling written plea of guilty**

(1) Section 57A(1)—delete "makes a complaint" and substitute:  
lays an information

(2) Section 57A(1)—delete "complaint" second occurring and substitute:  
information

10 (3) Section 57A(2)—delete "complaint" and substitute:  
information

(4) Section 57A(7)—delete "complaint" and substitute:  
information

(5) Section 57A(7a)(a)—delete "a complaint" and substitute:  
15 an information

(6) Section 57A(7a)—delete "complaint" second occurring and substitute:  
information

(7) Section 57A(8)—delete "a complainant uses the form of complaint" and substitute:  
an informant uses the form of information

20 (8) Section 57A(9)—delete "complaint" and substitute:  
information

**20—Amendment of section 58—Issue of warrant**

Section 58(a)—delete "complaint" and substitute:  
information

25 **21—Amendment of section 60—Forms of custody etc**

Section 60(1)—delete "complainant" and substitute:  
informant

**22—Amendment of section 62—Proceedings on non-appearance of defendant**

30 Section 62—delete "complaint" wherever occurring and substitute in each case:  
information

**23—Amendment of section 62A—Power to proceed in absence of defendant**

(1) Section 62A(1)—delete "a complaint" and substitute:  
an information

- (2) Section 62A(1)—delete "complaint" second occurring and substitute:  
information

**24—Amendment of section 62B—Powers of court on written plea of guilty**

- (1) Section 62B—delete "complaint" wherever occurring and substitute in each case:  
5 information

- (2) Section 62B(4)—delete "complaint made against him and the court before whom the defendant appears to answer the complaint" and substitute:  
information laid against him and the court before whom the defendant appears to answer the information

- 10 (3) Section 62B(6)(c)—delete "complainant" and substitute:  
informant

**25—Amendment of section 62BA—Proceedings where defendant neither appears nor returns written plea of guilty**

- (1) Section 62BA(1)(a)—delete "a complaint has been made" and substitute:  
15 an information has been laid

- (2) Section 62BA(1)(b)—delete "the complaint" wherever occurring and substitute in each case:  
the information

- (3) Section 62BA(1)(b)—delete "a complaint" and substitute:  
20 an information

- (4) Section 62BA(1)—delete "complaint" fifth and sixth occurring and substitute in each case:  
information

- (5) Section 62BA(2)—delete "complaint" wherever occurring and substitute in each case:  
25 information

- (6) Section 62BA(4)—delete "a complaint purports to have been made" and substitute:  
an information purports to have been laid

- (7) Section 62BA(4)—delete "made" second occurring and substitute:  
laid

- 30 (8) Section 62BA(5)—delete "a complaint" and substitute:  
an information

**26—Amendment of section 62C—Proceedings in absence of defendant**

- Section 62C—delete "complaint" wherever occurring and substitute in each case:  
information

**27—Amendment of section 62D—Proof of previous convictions**

(1) Section 62D—delete "complaint" wherever occurring and substitute in each case:  
information

(2) Section 62D(1)—delete "complainant" and substitute:  
informant

**28—Amendment of section 63—Non-appearance of informant**

(1) Section 63(1)—delete "complainant" and substitute:  
informant

(2) Section 63(1)—delete "complaint" and substitute:  
information

**29—Amendment of section 64—If both parties appear, court to hear and determine the case**

Section 64—delete "complaint" and substitute:  
information

**30—Amendment of section 67—When defendant pleads guilty, court to convict or make an order**

Section 67—delete "complaint" wherever occurring and substitute in each case:  
information

**31—Amendment of section 68—Procedure on plea of not guilty**

(1) Section 68—delete "complaint" wherever occurring and substitute in each case:  
information

(2) Section 68(1)(a)—delete "complainant" and substitute:  
informant

(3) Section 68(1)(c)—delete "complainant" and substitute:  
informant

**32—Amendment of section 69—After hearing the parties court to convict or dismiss**

Section 69—delete "complaint" wherever occurring and substitute in each case:  
information

**33—Amendment of section 69A—Examination of defendant**

Section 69A(1)—delete "a complaint" and substitute:  
an information



**34—Amendment of section 70A—Convictions where charges joined in information**

Section 70A(1)—delete "complaint" and substitute:  
information

5 **35—Amendment of section 70B—Conviction for attempt where full offence charged**

Section 70B—delete "a complaint" and substitute:  
an information

**36—Amendment of section 71—Order and certificate of dismissal**

10 Section 71—delete "complaint" wherever occurring and substitute in each case:  
information

**37—Amendment of section 78—Non-association and place-restriction orders**

(1) Section 78(1)—delete "A complaint may be made" and substitute:  
An information may be laid

15 (2) Section 78(2)—delete "a complaint" and substitute:  
an information

(3) Section 78(2)(a)—delete "complaint" second occurring and substitute:  
information

20 **38—Amendment of section 80—Issue of non-association or place restriction order in absence of defendant**

Section 80(1) and (2)—delete "complaint" wherever occurring and substitute in each case:  
information

**39—Amendment of section 99AA—Paedophile restraining orders**

25 (1) Section 99AA(a1)—delete "A complaint may be made" and substitute:  
An information may be laid

(2) Section 99AA(1)—delete "a complaint" and substitute:  
an information

**40—Amendment of section 99AAC—Child protection restraining orders**

30 (1) Section 99AAC(1)—delete "A complaint may be made" and substitute:  
An information may be laid

(2) Section 99AAC(2)—delete "a complaint" and substitute:  
an information

- (3) Section 99AAC(4)—delete "complaint" wherever occurring and substitute in each case:

information

- (4) Section 99AAC(7)—delete "complainant" and substitute:

informant

- (5) Section 99AAC(7)—delete "complaint is not made" and substitute:

information is not laid

- (6) Section 99AAC(7)(a)—delete "complaint" and substitute:

information

- (7) Section 99AAC(7)(b)—delete "complaint" and substitute:

information

- (8) Section 99AAC(7)(c)—delete "complaint" wherever occurring and substitute in each case:

information

- (9) Section 99AAC(7)(d)—delete "complaint" wherever occurring and substitute in each case:

information

- (10) Section 99AAC(7)(e)—delete "complaint" and substitute:

information

**41—Amendment of section 99C—Issue of restraining order in absence of defendant**

Section 99C(1) and (2)—delete "complaint" wherever occurring and substitute in each case:

information

**42—Amendment of section 99G—Notification of making etc of restraining orders**

Section 99G—delete "complainant" wherever occurring and substitute in each case:

informant

**43—Amendment of section 99J—Informations or applications by or on behalf of child**

- (1) Section 99J—delete "A complaint" and substitute:

An information

- (2) Section 99J—delete "be made" wherever occurring and substitute in each case:

be laid or made

**44—Amendment of section 102—Joinder and separation of charges**

Section 102(3a)—delete "a complaint" and substitute:  
a separate information

**45—Amendment of section 104—Preliminary examination of charges of  
indictable offences**

(1) Section 104(3)—delete "a written statement verified by declaration in the form prescribed by the rules" and substitute:

an affidavit

(2) Section 104(6)—delete subsection (6)

**46—Amendment of section 107—Evaluation of evidence at preliminary  
examination**

Section 107(3)(b)(iii)—delete "complaint" and substitute:  
information charging the defendant with summary offences only

**47—Amendment of section 181—Charges**

Section 181—delete "or complaint" wherever occurring

**48—Amendment of section 187A—Proof of convictions or orders**

(1) Section 187A(1)—delete "or complaint"

(2) Section 187A(1)—delete "complaint" second occurring and substitute:  
information

**49—Amendment of section 189C—Costs against informant in proceedings for  
restraining order**

(1) Section 189C(1)—delete "a complainant" and substitute:  
an informant

(2) Section 189C(1)—delete "the complainant" and substitute:  
the informant

(3) Section 189C(2), definition of *complainant*—delete "complainant" and substitute:  
informant

**Schedule 1—Related amendments and transitional provisions**

**Part 1—Amendment of *Acts Interpretation Act 1915***

**1—Amendment of section 44—Interpretation of references to summary  
proceedings, complaints etc**

(1) Section 44(2)—delete "complaint" and substitute:  
information

(2) Section 44—after subsection (2) insert:

(3) A reference in an Act to a complaint (being an instrument charging a person with a summary offence) will be taken to be a reference to an information under the *Summary Procedure Act 1921* (and a reference to a complainant will be taken to be a reference to an informant under that Act).

(4) A reference in an Act to making a complaint in respect of an offence will be taken to be a reference to laying an information under the *Summary Procedure Act 1921* in respect of an offence of the relevant class.

(5) A reference in an Act to a complaint (being an instrument charging a person with a summary offence) other than of a kind contemplated by subsection (3) or (4) is to be construed so as to recognise that, following the commencement of the *Summary Procedure (Abolition of Complaints) Amendment Act 2016*, all offences are to be charged on information.

## **Part 2—Transitional provision**

### **2—Certain statements to have effect as affidavits**

(1) For the purposes of section 104(3) of the *Summary Procedure Act 1921* (as amended by this Act), a requirement under that subsection that a statement be in the form of an affidavit will be taken to be satisfied if the statement is in the form of a written statement verified by declaration made before the commencement of this clause and in the form prescribed by the rules (as in force immediately before the commencement of this clause).

(2) In this clause—

*rules* has the same meaning as in the *Summary Procedure Act 1921*.