

House of Assembly—No 203

As laid on the table and read a first time, 10 May 2017

South Australia

**Summary Procedure (Service) Amendment
Bill 2017**

A BILL FOR

An Act to amend the *Summary Procedure Act 1921*; and to make related amendments to the *Electronic Communications Act 2000*.

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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 *Summary Procedure (Service) Amendment Act 2017*.

5 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 to this Act or a 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 *Summary Procedure Act 1921*

5 4—Amendment of section 4—Interpretation

(1) Section 4(1), definition of *personal service*—delete the definition and substitute:

personal service—see subsection (3)(a);

(2) Section 4—after subsection (2) insert:

10 (3) Subject to the rules, for the purposes of this Act, unless the contrary intention appears—

(a) a reference to a summons, notice or other document, or documentary material, being served personally includes service by means described in section 27(1)(a) and (b); and

15 (b) a reference to a summons, notice or other document, or documentary material, being served by post includes service by means described in section 27(1)(c), (d) and (e).

5—Substitution of section 22

Section 22—delete the section and substitute:

22—Rules in respect of summonses

20 (1) The Magistrates Court may make rules to provide for summonses for the appearance of persons before the Court, including to provide for the manner in which, and by whom, the summons is to be issued, given, sent to, or served, on the person.

25 (2) Without limiting the generality of subsection (1), a summons for the appearance of a person—

(a) must be in a form prescribed by the rules; and

(b) must be directed to the person; and

(c) must state in brief the matter or matters in relation to which the person is charged or is to be charged; and

30 (d) must require the person to appear before the Magistrates Court at a specified time and place to answer to the charge and to be dealt with according to law; and

35 (e) may include any other information that is, in the opinion of the Court, necessary or expedient for the purposes of this Act or any other Act or law.

6—Substitution of sections 27 and 27A

Sections 27 and 27A—delete the sections and substitute:

27—Service

- (1) Subject to this Act or any other Act, and the regulations or the rules, a summons, notice or other document required or authorised to be issued, given or sent to, or served on, a person under this Act may—
- (a) be given personally to the person; or
 - (b) be left for the person at the person's last known residential, business or (in the case of a body corporate) registered address with someone apparently over the age of 16 years; or
 - (c) be posted in an envelope addressed to the person at the person's last known residential, business or (in the case of a body corporate) registered address (in which case the summons, notice or other document will be taken to have been served at the time when it would, in the ordinary course of post, have reached the address to which it was posted); or
 - (d) for the purpose of particular proceedings—be transmitted by fax or email to a fax number or email address provided by the person or a legal practitioner representing the person (in which case the summons, notice or other document will be taken to have been given or served at the time of transmission); or
 - (e) for the purpose of particular proceedings—be made available to the person by some other electronic means, including (for example)—
 - (i) by transmission to an Internet address provided by the person or a legal practitioner representing the person (in which case the summons, notice or other document will be taken to have been given or served at the time of transmission); or
 - (ii) by means of providing (by means of an email transmitted to an email address provided by the person or a legal practitioner representing the person) a link to an Internet address from which the person or legal practitioner may access or download the summons, notice or other document (in which case the summons, notice or other document will be taken to have been given or served at the time of transmission of the email); or
 - (iii) by means of a data storage device from which the summons, notice or other document can be accessed or downloaded—

- 5
- (A) being given personally to the person or a legal practitioner representing the person (in which case the summons, notice or other document will be taken to have been given or served at the time the data storage device is given to the person or legal practitioner, as the case may be); or
- 10
- (B) being left for the person or a legal practitioner representing the person—
- at the person's last known residential, business or (in the case of a body corporate) registered address with someone apparently over the age of 16 years; or
 - at the last known business address of the legal practitioner representing the person with someone apparently over the age of 16 years,
- 15
- (in which case the summons, notice or other document will be taken to have been given or served at the time the data storage device is so left); or
- 20
- (C) being sent by registered post in an envelope—
- addressed to the person at the person's last known residential, business or (in the case of a body corporate) registered address; or
 - addressed to a legal practitioner representing the person at the legal practitioner's business address,
- 25
- (in which case the summons, notice or other document will be taken to have been given or served at the time when proof of receipt is given on delivery of the envelope to the address to which it was posted).
- 30
- 35
- 40
- (2) A summons, notice or other document required or authorised to be given or sent to, or served on, a person under this Act may only be given or sent to, or served on, the person by means referred to in subsection (1)(d) or (e) if, before so doing, it has been ascertained that the person or legal practitioner will be readily able to access or download and (if required) print, the summons, notice or other document.

- 5
- (3) Without limiting the generality of paragraph (e) of subsection (1), the regulations or the rules may prescribe electronic means of service other than those referred to in that paragraph for the purposes of this Act.
- 10
- (4) Without limiting the effect of the preceding subsections, a summons, notice or other document required or authorised to be given or sent to, or served on, a person by this Act may, if the person is a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth, be served on the person in accordance with that Act.
- 15
- (5) If a summons, notice or other document is given or sent to, or served, otherwise than by being given personally to the person to whom it is to be given or sent, or on whom it is to be served, the Magistrates Court may require the summons, notice or other document to again be given or sent to, or re-served on, the person if there is reasonable cause to believe that the summons, notice or other document has not come to the notice of the person.

7—Substitution of sections 27B and 27C

Sections 27B and 27C—delete the sections and substitute:

27B—Hearing on a written plea of guilty

If—

- 25
- (a) an information and summons in the form required by the rules under section 57A is served on the defendant named in the summons in accordance with the rules; and
- (b) the defendant fails to appear in obedience to the summons but pleads guilty in writing to the offence to which that summons relates,

the Magistrates Court may proceed to deal with the matter in the manner provided by sections 62B and 62C.

27C—Hearing if defendant fails to appear

- 30
- (1) Subject to this section, if a summons is served in accordance with section 27 on the defendant named in the summons and—
- 35
- (a) either the defendant fails to appear in obedience to the summons; or
- (b) the defendant fails to plead guilty in the manner provided for under section 57A to the offence to which the summons relates,
- the Magistrates Court may—
- 40
- (c) proceed in the absence of the defendant to the hearing of the information to which the summons relates (and, despite section 62C, adjudicate the matter as if the defendant had personally appeared in obedience to the summons); or

- (d) order that the information be heard in the absence of the defendant and adjourn the hearing (and, on the adjourned hearing, proceed in the manner provided for in paragraph (c)).
- 5 (2) If a hearing is adjourned under subsection (1)(d), it is not necessary for the Magistrates Court to be constituted of the same judicial officer at the adjourned hearing.
- (3) On conviction after a hearing under subsection (1), the Magistrates Court must not—
- 10 (a) impose any penalty other than a fine; or
- (b) disqualify the defendant from holding or obtaining a licence to drive a motor vehicle; or
- (c) treat the offence as other than a first offence unless the informant proves that the defendant has previously been
- 15 convicted of such an offence; or
- (d) make an order for payment of compensation of an amount that exceeds an amount specified in the information,
- unless—
- (e) the summons was given personally to the defendant; or
- 20 (f) —
- (i) the Court has first adjourned the hearing of the information to a specified time and place; and
- (ii) the defendant is personally served, not less than
- 25 14 days before the time to which the hearing has been adjourned, with a notice informing the defendant of—
- (A) the conviction; and
- (B) the time and place to which the hearing has been adjourned; and
- 30 (C) the provisions of section 76A; and
- (iii) the defendant does not, within 14 days after the date of service of the notice on the defendant, apply in accordance with section 76A, for an order setting aside the conviction.
- 35 (4) If a defendant, not being a defendant who has been personally served with a notice under subsection (3)(f), is convicted after a hearing under subsection (1), the Registrar must, within 7 days of that conviction, serve on the defendant a notice setting out the particulars of the conviction, the penalty imposed and section 76A.

- 5 (5) If a defendant who has been personally served with a notice under subsection (3)(f) is convicted after a hearing under subsection (1), the Registrar must, within 7 days after the imposition of a penalty in respect of that conviction, serve on the defendant a notice setting out the particulars of that conviction and the penalty imposed.

8—Amendment of section 57—Issue of summons by Magistrates Court

- (1) Section 57(1)—before "Court" first appearing insert:

Magistrates

- (2) Section 57(2)—after "need be issued" insert:

10 by the Magistrates Court

- (3) Section 57(2)—before paragraph (a) insert:

- (aa) where the summons for the appearance of the defendant has already been issued prior to the information being laid and filed in the Court; or

15 9—Substitution of section 57A

Section 57A—delete the section and substitute:

57A—Rules may make provision for written guilty pleas

- 20 (1) The Magistrates Court may make rules to provide for a person against whom an information has been laid for an offence that is not punishable by imprisonment (either for a first or subsequent offence) to elect to plead guilty to the offence without appearing in the Court in obedience to a summons.
- (2) Without limiting the generality of subsection (1), the rules may make provision for any of the following matters:
- 25 (a) the forms of information and summons;
- (b) the manner in which an information or summons is to be given or sent to, or served on, a person;
- (c) the manner in which a plea of guilty may be made and given to the Magistrates Court;
- 30 (d) any other matter that is, in the opinion of the Court, necessary or expedient for the purposes of this section.
- (3) A defendant who returns a form in which the defendant pleads guilty in accordance with the rules need not attend the Magistrates Court as directed by the summons.
- 35 (4) If a defendant who has been served with forms of information and summons in accordance with the rules fails to return a form pleading guilty in accordance with the rules, and fails to appear in obedience to the summons, the Magistrates Court may, subject to section 62B, proceed to exercise its powers under section 62(1)(a) or (b).

(5) This section does not apply in relation to a defendant who is a child within the meaning of the *Young Offenders Act 1993* except where the defendant—

(a) is of or above the age of 16 years; and

(b) is charged with an offence under the *Road Traffic Act 1961*.

10—Substitution of sections 62B, 62BA and 62C

Sections 62B, 62BA and 62C—delete the sections and substitute:

62B—Powers of Magistrates Court on written plea of guilty

(1) This section sets out the powers of the Magistrates Court that apply when a defendant fails to appear in obedience to a summons but has given the Court, in the manner and form prescribed by the rules made under section 57A, a form pleading guilty.

(2) The Magistrates Court may not issue a warrant for the arrest of the defendant on the ground of non-appearance but may—

(a) on proof of service of the information and summons; and

(b) on production of the form duly completed,

convict and, subject to this section, adjudicate the matter as fully and effectually to all intents and purposes as if the defendant—

(c) had personally appeared before the Court in obedience to the summons; and

(d) had pleaded guilty and made the same submissions as to penalty as are set out in the form.

(3) The Magistrates Court may receive and act on receipt of a form that has been completed and sent to the Court.

(4) The prosecution may recite to the Magistrates Court any relevant matters alleged against the defendant in the same way as if the defendant had personally appeared and pleaded guilty.

(5) Nothing in this section prejudices an application by a defendant to withdraw a plea of guilty at any time prior to the hearing and determination of the information laid against the defendant; and the Magistrates Court before whom the defendant appears to answer the information may permit a withdrawal of the plea on such terms as may be just.

(6) If a defendant includes in a form pleading guilty matters that would, if true, indicate the defendant has a valid defence to the information, or which differ substantially in relevant particulars from the matters recited to the Magistrates Court by the prosecution, the Court may—

(a) strike out the plea of guilty; and

(b) adjourn the hearing of the information to a specified time and place; and

- (c) order that the defendant be served with a summons under section 57,

after which the defendant must be dealt with as though the previous summons had not been issued, and the provisions of this section and section 57A no longer apply.

- 5
- (7) If a defendant who has given the Magistrates Court a form pleading guilty is convicted, the Court must not—
- 10
- (a) impose a sentence of imprisonment on the defendant; or
- (b) disqualify the defendant from holding or obtaining a licence to drive a motor vehicle unless—
- 15
- (i) it is proved to the Court that the summons was given personally to the defendant; or
- (ii) the procedure prescribed in section 62C is followed; or
- (c) treat the offence as other than a first offence unless the informant proves that the defendant has been previously convicted; or
- (d) subject to the rules—order the defendant to pay witness fees.
- 20
- (8) Where a defendant is convicted under this section, the Registrar must immediately, either personally or by post, give the defendant written notice of—
- (a) the conviction; and
- (b) any fine or other monetary sum to be paid; and
- (c) the time and manner of payment.

25

62BA—Proceedings where defendant neither appears nor returns written plea of guilty

- 30
- (1) If in any proceedings under this Act—
- (a) an information has been laid against a defendant; and
- (b) the defendant has been duly served with a summons but—
- 35
- (i) does not appear at the time and place appointed for the hearing or determination of the information or at a time and place at which the information is subsequently heard or determined; or
- (ii) in the case of an information and summons served under section 57A—the defendant neither appears nor pleads guilty in the manner provided under that section,

the Magistrates Court may proceed to adjudicate on the information in the absence of the defendant in accordance with section 62, and in so doing regard any allegation contained in the summons, or information and summons, (as served on the defendant) as sufficient evidence of the matter alleged.

- 5
- (2) If the Magistrates Court finds the charge proved, the prosecution may recite to the Court any relevant matters alleged against the defendant in the same way as if the defendant had personally appeared and pleaded guilty.
- 10
- (3) For the purposes of subsection (1), allegations are contained in a summons, or information and summons, if they are contained in, annexed to, or accompany, the summons or information and summons.
- 15
- (4) The allegations referred to in subsection (1) may include particulars of the alleged offence and of the circumstances in which it is alleged to have been committed.
- (5) The provisions of this section are supplementary to, and do not derogate from, any other statutory provision regulating the hearing and determination of an information.

20 **62C—Proceedings in absence of defendant**

- (1) If a defendant fails to appear in obedience to a summons and is convicted (whether on a plea of guilty under section 57A or after a hearing in the defendant's absence)—
- 25
- (a) the Magistrates Court may not disqualify the defendant from holding or obtaining a licence to drive a motor vehicle unless—
- (i) the summons was given personally to the defendant; or
- 30
- (ii) the Court has first adjourned the hearing to a specified time and place in order to enable the defendant to appear for the purpose of making submissions on the question of penalty; and
- (b) the Court must not sentence the defendant to imprisonment unless the Court has first adjourned the hearing to a
- 35
- specified time and place in order to enable the defendant to appear for the purpose of making submissions on the question of penalty.
- (2) The Registrar must, as soon as practicable after an adjournment under subsection (1)(a)(ii) or (b), give written notice to the defendant on the form prescribed by the rules, informing the defendant of the purpose for which the hearing was adjourned and of the defendant's right to be heard at the adjourned hearing.
- 40
- (3) If at the time and place so appointed—
- (a) the defendant appears; or

- (b) the defendant fails to appear and it is proved that the notice in writing was served on the defendant,

the Magistrates Court may, according to the circumstances, order that the defendant be imprisoned or disqualified from holding or obtaining a licence to drive a motor vehicle, or both.

- (4) If it appears to the Magistrates Court that, after making due inquiry and exercising reasonable diligence, the Registrar was unable to give a defendant the notice referred to in subsection (2), the Court may, despite any other provision of this section, proceed to determine the question of penalty and make an order as fully and effectually as if the defendant had been duly given the notice.
- (5) The contents of a notice may be proved by the production of a document purporting to be a copy of the notice certified by the Registrar to the effect that the document is a true copy of the notice served on the defendant in the manner or at the address, and on the day stated, in the certificate.
- (6) If a hearing is adjourned under subsection (1), the Magistrates Court need not be constituted at the adjourned hearing of the same judicial officer as ordered the adjournment.

11—Amendment of section 99AA—Paedophile restraining orders

- (1) Section 99AA(a1)—delete subsection (a1) and substitute:

(a1) An application for a restraining order under this section may be made to the Magistrates Court by a police officer.

- (2) Section 99AA(1)—delete "On an information" and substitute:

On the hearing of an application under this section

12—Amendment of section 99AAC—Child protection restraining orders

- (1) Section 99AAC(1)—delete "An information may be laid under this section" and substitute:

An application for a restraining order under this section may be made to the Magistrates Court

- (2) Section 99AAC(2)—delete "On an information" and substitute:

On the hearing of an application under this section

- (3) Section 99AAC(4)(a)—delete "information" and substitute:
application under this section

- (4) Section 99AAC(4)(b)—delete "information" and substitute:
application

- (5) Section 99AAC(7)—delete "informant" and substitute:
applicant

- (6) Section 99AAC(7)—delete "information is not laid" and substitute:
application is not made

(7) Section 99AAC(7)(a)—delete "information" and substitute:

application

(8) Section 99AAC(7)(b)—delete "information" and substitute:

application

5 (9) Section 99AAC(7)(c)—delete "information" wherever occurring and substitute in each case:

application

(10) Section 99AAC(7)(d)—delete "information" wherever occurring and substitute in each case:

10 application

(11) Section 99AAC(7)(e)—delete "information" and substitute:

application

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

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

application

14—Substitution of section 99E

Section 99E—delete the section and substitute:

20 99E—Service

(1) Subject to the making of an order under subsection (5), a restraining order must be served on the defendant in accordance with this section and is not binding on the defendant until it has been so served.

25 (2) If a restraining order is confirmed in an amended form or is varied before being confirmed, or at any other time, subject to the making of an order under subsection (5) or a declaration under subsection (6)—

30 (a) the order in its amended or varied form must be served on the defendant in accordance with this section; and

(b) until so served—

(i) the amendment or variation is not binding on the defendant; but

35 (ii) the order as in force prior to the amendment or variation continues to be binding on the defendant.

(3) For the purposes of this section, a restraining order, or a restraining order in its amended or varied form, is served on the defendant if—

(a) the order is served personally on the defendant; or

- (b) the order is served on the defendant in some other manner authorised by the Magistrates Court; or
- (c) the defendant is present in the Court when the order is made, amended or varied (as the case requires).

- 5 (4) If a police officer has reason to believe that a person is subject to a restraining order that has not been served on the person, the officer may—
- (a) require the person to remain at a particular place for—
 - 10 (i) so long as may be necessary for the order, and, if the order is subject to confirmation, the summons to appear before the Court to show cause why the order should not be confirmed, to be served on the person; or
 - (ii) 2 hours,
- 15 whichever is the lesser; and
- (b) if the person refuses or fails to comply with the requirement or the officer has reasonable grounds to believe that the requirement will not be complied with, arrest and detain the person in custody (without warrant) for the period referred to in paragraph (a).
- 20 (5) If a police officer satisfies the Court that all reasonable efforts have been made to effect personal service of an order on a defendant but that those efforts have failed, the Court may make an order
- 25 authorising service in such other manner as the Court thinks fit and specifies in the order (and, in such a case, the restraining order will not be binding on the defendant until it has been served in accordance with that order).
- 30 (6) If the Court is satisfied that the order in its amended or varied form is more favourable to the defendant, the Court may declare that subsection (2)(b) does not apply and that the amendment or variation is to be binding on the defendant as from the day of the declaration or such other day as the Court specifies.

15—Amendment of section 99G—Notification of making etc of restraining orders

- 35 (1) Section 99G(1)—delete "informant" first occurring and substitute:
applicant for the order
- (2) Section 99G(1)—delete "informant" second occurring and substitute:
applicant
- (3) Section 99G(2)—delete "informant" first occurring and substitute:
40 applicant for the order
- (4) Section 99G(2)—delete "informant" second occurring and substitute:
applicant

16—Amendment of section 99J—Applications by or on behalf of child

- (1) Section 99J—delete "information or"
- (2) Section 99J—delete "laid or" wherever occurring

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

- (1) Section 104(1)(b)—delete paragraph (b) and substitute:
 - (b) give copies of all documentary material filed under paragraph (a) to the defendant or a legal practitioner representing the defendant.
- (2) Section 104(7)—delete subsection (7)

**Schedule 1—Related amendments to *Electronic
Communications Act 2000***

1—Amendment of section 4—Simplified outline

Section 4(1)(c)—delete "dispatch" and substitute:
transmission

2—Amendment of section 13—Time of transmission

- (1) Section 13(1)—delete "dispatch" and substitute:
transmission
- (2) Section 13(2)—delete "dispatched" and substitute:
transmitted

3—Amendment of section 13B—Place of transmission and receipt

Section 13B(1)(a)—delete "dispatched" and substitute:
transmitted