

**Legislative Council—No 155A**

As reported with amendments, report adopted, Standing Orders suspended and passed remaining stages, 28 October 2021

South Australia

**Statutes Amendment (Attorney-General's Portfolio and Other Justice Measures) Bill 2021**

A BILL FOR

An Act to amend various Acts within the portfolio of the Attorney-General and to amend certain other Acts.

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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 *Statutes Amendment (Attorney-General's Portfolio and Other Justice Measures) Act 2021*.

**2—Commencement**

- (1) Subject to this section, this Act comes into operation on the day on which it is assented to by the Governor.
- (2) Part 3 and Part 9 come into operation on a day to be fixed by proclamation.
- 10 (3) Part 7 comes into operation immediately after section 26(2) of the *Correctional Services (Accountability and Other Measures) Amendment Act 2021* comes into operation.
- (4) Part 13 comes into operation immediately after Schedule 1 of the *Termination of Pregnancy Act 2021* comes into operation.
- 15 (5) Part 17 comes into operation on 1 January 2022.

**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 *Aged and Infirm Persons' Property Act 1940*

### 4—Amendment of section 3—Interpretation

(1) Section 3(1), definition of *court*, paragraph (b)—delete paragraph (b) and substitute:

(b) in relation to a matter in which the District Court has jurisdiction—the Supreme Court or the District Court; or

(c) in relation to a matter in which an employment court has jurisdiction—the Supreme Court, the District Court or the employment court;

(2) Section 3(1)—after the definition of *domestic partner* insert:

*employment court* means the South Australian Employment Tribunal established under the *South Australian Employment Tribunal Act 2014*—

(a) in Court session as the South Australian Employment Court; or

(b) constituted of a member of the Tribunal who is, or at least 1 of whom is, a President or a Deputy President of the Tribunal;

### 5—Amendment of section 4—Exercise of jurisdiction of court

(1) Section 4(1a)—delete "a District Court" and substitute:

the District Court

(2) Section 4(1a)—delete "same or any other District"

(3) Section 4—after subsection (1a) insert:

(1b) If an action for damages for personal injury is brought in the employment court, the court has jurisdiction in that action to make a protection order under section 8A and, if the court makes such an order, the court has jurisdiction to hear and determine any consequential or related proceedings under this Act.

### 6—Amendment of section 8A—Protection order on court's own initiative

Section 8A(1)—delete ", by reason of that injury,"

## Part 3—Amendment of *Bail Act 1985*

### 7—Amendment of section 6—Nature of bail agreement

Section 6(2)—delete "be in the prescribed form" and substitute:

(a) if the bail authority is a court—be in a form determined by that court; or

(b) in any other case—be in the prescribed form.

## 8—Amendment of section 7—Guarantee of bail

Section 7(2)—delete "be in the prescribed form" and substitute:

—

- 5
- (a) if the bail authority is a court—be in a form determined by that court;  
or
  - (b) in any other case—be in the prescribed form.

## 9—Amendment of section 8—Form of application

Section 8(1)(a)—delete "be in the prescribed form" and substitute:

—

- 10
- (a) if the bail authority is a court—be in a form determined by that court;  
or
  - (b) in any other case—be in the prescribed form.

## 10—Amendment of section 11—Conditions of bail

Section 11(6)(c)—delete paragraph (c) and substitute:

—

- 15
- or
  - (c) in any other case—
    - (i) if the bail authority is a court—without the permission of a judge or magistrate; or
    - (ii) if the bail authority is a police officer—without the permission of a police officer who is—
      - (A) of or above the rank of sergeant; or
      - (B) the responsible officer for a police station.
- 20

## Part 4—Amendment of *Burial and Cremation Act 2013*

### 11—Amendment of section 10—Cremation permits

Section 10(5)(b)(i)—delete subparagraph (i) and substitute:

- 25
- (i) 2 certificates—
    - (A) 1 being the certificate under section 36(3) of the *Births, Deaths and Marriages Registration Act 1996* certifying that the deceased died from natural causes signed by—
      - 30
        - the medical practitioner who was responsible for the deceased's medical care immediately before death; or
        - a medical practitioner who examined the body of the deceased after death; and
      - (B) the other being a certificate in a form approved by the Registrar signed by another medical practitioner; or
- 35

## **Part 5—Amendment of *Children and Young People (Safety) Act 2017***

### **12—Amendment of section 86—Direction not to communicate with, or be in company of etc, child or young person**

5 (1) Section 86—after subsection (1) insert:

(1a) The Chief Executive may, by notice in writing, direct a specified person not to be in the company of, or otherwise associate with, a specified child or young person who is in the custody, or under the guardianship, of the Chief Executive during the period specified in the notice.

10 (2) Section 86—after subsection (4) insert:

(4a) Despite section 267 of the *Criminal Law Consolidation Act 1935* or any other Act or law, a child or young person—

15 (a) in whose company a person is, or with whom a person associates, in contravention of a direction under this section; or

(b) with whom a person communicates, or attempts to communicate, in contravention of a direction under this section; or

20 (c) who is harboured or concealed in contravention of a direction under this section,

commits no offence in relation to that conduct.

(3) Section 86—after subsection (5) insert:

25 (6) Despite a provision of the *Evidence Act 1929* or any other Act or law, a child or young person to whom a direction under this section relates is competent, but is not compellable, to give evidence in proceedings relating to a charge of an offence against this section.

## **Part 6—Amendment of *Civil Liability Act 1936***

### **13—Amendment of section 64—Abolition of rule as to unity of spouses**

30 Section 64(3)—delete subsection (3) and substitute:

(3) If proceedings are brought pursuant to this section, the court may dismiss the proceedings if it appears to the court that no substantial benefit would accrue to either party from the continuation of the proceedings.

## Part 7—Amendment of *Correctional Services Act 1982*

### 14—Amendment of section 66—Automatic release on parole for certain prisoners

- 5 (1) Section 66(2)(aba)—delete "(within the meaning of Part 3 Division 4 of the *Sentencing Act 2017*)"
- (2) Section 66(3)—after the definition of *offence of personal violence* insert:
- serious drug offence* means—
- 10 (a) an offence against Part 5 Division 2 or 3 of the *Controlled Substances Act 1984* or a substantially similar offence against a corresponding previous enactment; or
- (b) a conspiracy to commit, or an attempt to commit, such an offence.

## Part 8—Amendment of *Courts Administration Act 1993*

### 15—Amendment of section 27A—Interpretation

- 15 (1) Section 27A, definition of *judicial office*—after paragraph (b) insert:
- (ba) the office of Supreme Court judicial registrar;
- (2) Section 27A, definition of *judicial office*—after paragraph (c) insert:
- (ca) the office of District Court Judicial Registrar or Youth Court judicial registrar;
- (3) Section 27A, definition of *judicial office*—after paragraph (e) insert:
- 20 (ea) the office of Magistrates Court Judicial Registrar;

## Part 9—Amendment of *Criminal Law (High Risk Offenders) Act 2015*

### 16—Amendment of section 4—Interpretation

- 25 (1) Section 4(1), definition of *serious sexual offence*—after paragraph (b) insert:
- (c) an offence against a law of the Commonwealth corresponding to an offence referred to in paragraph (a) (ignoring any element of the law of the Commonwealth relating to the location of the offence);
- (2) Section 4(1), definition of *youth*—delete the definition
- (3) Section 4—after subsection (2) insert:
- 30 (3) A reference in this Act to a person convicted of an offence includes a person who was, at the time they were convicted of the offence, under the age of 18 years.

## 17—Substitution of sections 5 and 6

Sections 5 and 6—delete the sections and substitute:

### 5—Meaning of high risk offender

For the purposes of this Act, a *high risk offender* is—

- 5
- (a) a serious sexual offender who is serving a sentence of imprisonment imposed in respect of a serious sexual offence; or
- 10
- (b) a serious sexual offender who is serving a sentence of imprisonment any part of which is in respect of any of the following offences:
- 15
- (i) an offence under section 58 or 63A of the *Criminal Law Consolidation Act 1935*;
- (ii) an offence under section 44, 45, 65 or 66N(2) of the *Child Sex Offenders Registration Act 2006*;
- 20
- (iii) an offence under section 99I of the *Criminal Procedure Act 1921*;
- (iv) an offence prescribed by the regulations for the purposes of this paragraph; or
- 25
- (c) a serious sexual offender who is serving a sentence of imprisonment imposed in respect of any other offence to be served concurrently or consecutively with a sentence of imprisonment in respect of a serious sexual offence; or
- (d) a serious violent offender who is serving a sentence of imprisonment imposed in respect of a serious offence of violence; or
- 30
- (e) a serious violent offender who is serving a sentence of imprisonment imposed in respect of any other offence to be served concurrently or consecutively with a sentence of imprisonment in respect of a serious offence of violence; or
- (f) a terror suspect who is serving a sentence of imprisonment; or
- (g) a person who is subject to an extended supervision order; or
- (h) a person who is detained pursuant to a preventative detention order; or
- 35
- (i) a person who is serving a sentence of imprisonment during the course of which an extended supervision order applying to the person expires.

### 6—Application of Act

- 40
- (1) Subject to subsection (2), an application for a supervision order under this Act may not be made in respect of a person who is under the age of 18 years.

(2) An application for a supervision order under this Act (which applies with any modifications prescribed by the regulations) may be made in respect of a person who—

- (a) is of or above the age of 16 years; and
- (b) is a terror suspect.

### 18—Amendment of section 7—Proceedings

(1) Section 7(2)—delete "extended supervision order may only be made within 12 months of" and substitute:

order under this section may only be made within the 12 months preceding

(2) Section 7—after subsection (6) insert:

(7) In determining whether to make an order under this section in respect of the respondent, the Court must not take into consideration any intention of the respondent to leave this State (whether permanently or temporarily).

### 19—Amendment of section 9—Interim supervision orders

Section 9—after subsection (2) insert:

(3) The obligations of a person subject to an interim supervision order are suspended during any period that the person is in government custody.

### 20—Amendment of section 10—Supervision orders—terms and conditions

(1) Section 10(1)—after paragraph (d) insert:

(da) a condition that the person subject to the order is prohibited from leaving the State without the permission of the Supreme Court or the Parole Board, which may be subject to the terms and conditions that the Court or the Parole Board (as the case requires) thinks fit;

(2) Section 10(1)(e)—after "order" insert:

(including any condition the Parole Board is able to impose under section 11(1))

(3) Section 10—after subsection (4) insert:

(5) The Supreme Court or the Parole Board (as the case requires) may only give permission under subsection (1)(da) if the person provides information about their proposed travel out of the State, including any particulars prescribed by the regulations, to the Court, the Parole Board or any other person specified by the Court or the Board.

### 21—Amendment of section 11—Conditions of extended supervision orders imposed by Parole Board

Section 11(1)(a)—after subparagraph (i) insert:

(ia) remain at the person's residence during a specified period and not leave the residence at any time during that period except for a specified purpose, or in specified circumstances; or

## 22—Amendment of section 13—Variation and revocation of supervision order by Supreme Court

Section 13—after subsection (3) insert:

- 5
- (4) If the Supreme Court is of the opinion that an application under subsection (1) for the variation of a condition of an order should be determined by the Parole Board, the Court may refer the application to the Board for determination.
- (5) The Supreme Court may make rules in respect of the transfer of specified classes of applications to the Parole Board.
- 10
- (6) If an application is transferred or referred to the Parole Board under this section, the application will proceed as if it had been made to the Parole Board and a reference to the Supreme Court in this section will be taken to be a reference to the Board (as the case requires).

## 23—Amendment of section 14—Consequential and ancillary orders

15

Section 14—after subsection (2) insert:

- (2a) The Parole Board may, on varying a supervision order, make any consequential or ancillary order it thinks fit in the circumstances of the particular case.

## 24—Insertion of section 14A

20

After section 14 insert:

### 14A—Variation or revocation of supervision order by Parole Board

- 25
- (1) The Parole Board may, on application made by the Attorney-General or a person subject to a supervision order, vary or revoke a condition of the order (including a condition imposed by the Supreme Court) or impose further conditions on the order.
- (2) A person subject to a supervision order may only apply under subsection (1) with the permission of the Parole Board.
- 30
- (3) The Parole Board must give notice of each application under this section to the Supreme Court.
- (4) The Parole Board may only grant permission under subsection (2) if satisfied that—
- (a) there has been a material change in circumstances relating to the person or supervision order; and
- 35
- (b) it is in the interests of justice to grant permission.
- (5) The Parole Board must not determine an application under this section unless the person subject to the order and the Attorney-General have been afforded a reasonable opportunity to make submissions to the Parole Board on the matter, and the Board has considered any submissions so made.
- 40

- (6) The Parole Board may only vary or revoke the condition imposed by section 10(1)(b) if satisfied that—
- (a) there are cogent reasons to do so; and
  - (b) the possession of the firearm, ammunition or part of a firearm by the person does not represent an undue risk to the safety of the public.
- (7) The Parole Board must, on varying a supervision order or imposing a further condition on an order—
- (a) take all reasonable steps to explain to the person the subject of the order the terms and conditions of the order and, in particular—
    - (i) the person's obligations under the order; and
    - (ii) the consequences that may follow from a failure to comply with the order; and
  - (b) forward a copy of the order as varied to the Supreme Court and to the Commissioner of Police.
- (8) If the Parole Board is of the opinion that an application under subsection (1) for the variation of a condition of an order (including the question of permission under subsection (2)) should be determined by the Supreme Court, the Parole Board may refer the application to the Court.
- (9) If the Supreme Court is of the opinion that an application made under subsection (1) should be determined by the Court, the Court may order that the application be heard and determined by the Court.
- (10) The Supreme Court may make rules in respect of the transfer of specified classes of applications to the Court.
- (11) If an application is transferred or referred to the Supreme Court under this section, the application will proceed as if it had been made to the Court and a reference to the Parole Board in this section will be taken to be a reference to the Court (as the case requires).

## **25—Amendment of section 17—Proceedings before Parole Board under this Part**

Section 17(1)(b)—after subparagraph (i) insert:

- (ia) direct that the person be detained in custody pending circumstances necessary for the purposes of ensuring the person's compliance with a condition of the order being in place; or

## **26—Amendment of section 18—Continuing detention order**

- (1) Section 18(2)—delete "until the expiration of the supervision order, or for such lesser period as may be specified by the Court" and substitute:

- (c) until the expiration of the breached supervision order; or

- (d) if a further supervision order is made in respect of the person—until the expiration of that further supervision order; or
- (e) for such lesser period as may be specified by the Court.

(2) Section 18—after subsection (4) insert:

- 5 (4a) If the Supreme Court declines to make a continuing detention order in respect of a person the subject of proceedings under this section the Court may—
- 10 (a) vary or revoke a condition of the supervision order applying in respect of the person or impose further conditions on the supervision order; and
  - (b) order that the person be detained in custody beyond the determination of the proceedings—
    - 15 (i) pending circumstances reasonably necessary for the purposes of ensuring the person's compliance with a condition of the supervision order being in place; or
    - (ii) in exceptional circumstances, for a period necessary in the circumstances of the case.
- 20 (4b) If the Supreme Court makes a continuing detention order in respect of a person the subject of proceedings under this section and the continuing detention order will expire before the supervision order applying to the person expires, the Court may vary or revoke a condition of the supervision order or impose further conditions on the supervision order.

## 27—Insertion of Part 3A

25 After Part 3 insert:

### Part 3A—Inter-agency cooperation

#### 19AA—Interpretation

In this Part, unless the contrary intention appears—

30 *corresponding law* means a law of the Commonwealth or of another State or a Territory of the Commonwealth, that substantially corresponds to this Act;

*interstate relevant agency* means an agency of the Commonwealth or of another State or a Territory of the Commonwealth, prescribed by the regulations as an interstate relevant agency;

35 *relevant agency* means a public sector agency prescribed by the regulations as a relevant agency;

#### 19AAB—Exchange of information

- 40 (1) A relevant agency may enter into an arrangement (a *cooperative protocol*) with 1 or more interstate relevant agencies in respect of the sharing or exchange of information between the relevant agency and the interstate relevant agencies.

- (2) The information to which a cooperative protocol may relate is limited to the following:
- (a) information concerning high risk offenders;
  - (b) information concerning a person, or person of a class, subject to an order under a corresponding law;
  - (c) any other information prescribed by the regulations.
- (3) For the purposes of a cooperative protocol, a relevant agency is authorised—
- (a) to request and receive information held by an interstate relevant agency that is party to the cooperative protocol; and
  - (b) to disclose information to an interstate relevant agency that is party to the cooperative protocol,
- to the extent that the information is reasonably necessary to assist in the exercise of functions under this Act or the functions of the interstate relevant agencies concerned.
- (4) This section does not limit the operation of any other Act under which a relevant agency is authorised or required to disclose information to another person or body.

### **28—Amendment of section 22—Appeals**

Section 22(1)—after "continuing detention order" insert:

or to refuse to make such an order

## **Part 10—Amendment of *Criminal Procedure Act 1921***

### **29—Amendment of section 103—DPP may lay information in superior court**

Section 103(1)—delete subsection (1) and substitute:

- (1) An information may only be presented to the Supreme Court or the District Court in the name and by the authority of the Director of Public Prosecutions, and, despite any other provision of this Part, a person named in that information may, as a result, be tried at any criminal sessions of the Supreme Court or District Court (as the case may be) for any offence on that information.

## **Part 11—Amendment of *Environment, Resources and Development Court Act 1993***

### **30—Amendment of section 3—Interpretation**

(1) Section 3(1), definition of *registrar*—after "Court" insert;

, but does not include a Judicial Registrar

(2) Section 3(2)—after paragraph (c) insert:

(d) the Judicial Registrars.



## Part 12—Amendment of *Fences Act 1975*

### 38—Amendment of section 24—Rules of court

Section 24—delete "*Local and District Criminal Courts Act 1926*" and substitute:  
*Magistrates Court Act 1991*

## Part 13—Amendment of *Guardianship and Administration Act 1993*

### 39—Amendment of section 61—Prescribed treatment not to be carried out without Tribunal's consent

Section 61(3)—delete subsection (3) and substitute:

- (3) The Tribunal cannot consent to a termination of pregnancy unless—
- (a) it is satisfied that there is no likelihood of the woman acquiring the capacity to give an effective consent within the period that is reasonably available for the safe carrying out of the termination; and
  - (b) it has no knowledge of any refusal on the part of the woman to consent to the termination, being a refusal that was made while capable of giving effective consent and that was communicated by her to a medical practitioner.

## Part 14—Amendment of *Judicial Conduct Commissioner Act 2015*

### 40—Amendment of section 4—Interpretation

(1) Section 4(1), definition of *judicial office*—after paragraph (b) insert:

(ba) the office of Supreme Court judicial registrar;

(2) Section 4(1), definition of *judicial office*—after paragraph (c) insert:

(ca) the office of District Court Judicial Registrar or Youth Court judicial registrar;

(3) Section 4(1), definition of *judicial office*—after paragraph (e) insert:

(ea) the office of Magistrates Court Judicial Registrar;

### 41—Amendment of section 26—Removal of judicial officer

Section 26—after subsection (2) insert:

- (3) To avoid doubt, the power to remove a judicial officer under this section may be exercised despite any other provision for the removal of the judicial officer under the Act under which the judicial officer was appointed.

#### 42—Insertion of section 34A

After section 34 insert:

##### **34A—Commissioner may determine not to give notice in a particular case**

5                                   The Commissioner may, if the Commissioner thinks fit in a particular case, determine not to give a written notification required under this Act to be given by the Commissioner to a person in relation to a complaint or the dismissal of a complaint.

#### **Part 15—Amendment of *Legal Practitioners Act 1981***

#### 10 **43—Amendment of section 14AB—Certain matters to be reported by Society**

Section 14AB(1)(c)—delete "or former legal practitioner" and substitute:

, former legal practitioner or Australian-registered foreign lawyer

#### **44—Amendment of section 23—Unlawful representation**

Section 23—after subsection (3) insert:

15                                   (4) To avoid doubt, subsection (3)(b) does not apply to a legal practitioner who enters into an agreement or an arrangement with an Australian-registered foreign lawyer under which the Australian-registered foreign lawyer is entitled to share in the profits arising from the practice of foreign law in accordance with  
20                                   Schedule 1A.

#### **45—Amendment of section 23D—Notification of establishment of office required**

(1) Section 23D(1)—after "legal practitioner" insert:

or Australian-registered foreign lawyer

25                                   (2) Section 23D(3)—after "State" insert:

or jurisdiction

(3) Section 23D(6)—delete "interstate legal practitioners" and substitute:

persons

#### **Part 16—Amendment of *Mental Health Act 2009***

#### 30 **46—Amendment of section 84—Representation on reviews or appeals**

Section 84(1)—after "Part" insert:

(other than a review under section 79)

## **Part 17—Amendment of *Ombudsman Act 1972***

### **47—Amendment of section 5—Non-application of Act**

Section 5(2)(a)—delete "*Police (Complaints and Disciplinary Proceedings) Act 1985*" and substitute:

5                                    *Police Complaints and Discipline Act 2016*

## **Part 18—Amendment of *Real Property Act 1886***

### **48—Amendment of section 146—Discharge of mortgage by Minister in certain cases**

10            (1) Section 146(1a)(a)—delete "certified mail to the mortgagee at his or her" and substitute:

   registered post to the mortgagee at their

(2) Section 146(1a)(a)—delete "he or she" and substitute:  
   the mortgagee

### **49—Amendment of section 276—Service of notices**

15            Section 276(a)—delete "certified" and substitute:  
   registered

## **Part 19—Amendment of *Residential Tenancies Act 1995***

### **50—Amendment of section 62—Receipt of bond and transmission to Commissioner**

20            Section 62(2)—after subsection (2) insert:

(3) A payment of bond to the Commissioner under subsection (2) must be accompanied by a notice, in a form approved by the Commissioner, setting out such particulars as the Commissioner may require in relation to the bond payment.

25                                    Maximum penalty: \$1 250.

   Expiation fee: \$210.

## **Part 20—Amendment of *Retail and Commercial Leases Act 1995***

### **51—Amendment of section 64—Mediation of disputes**

Section 64(2)—delete subsection (2) and substitute:

30            (2) A prescribed fee is payable by each party to a mediation under this section.

(3) The Commissioner may waive a fee payable by a party under subsection (2) if satisfied that it is appropriate to do so in a particular case.

## Part 21—Amendment of *Roads (Opening and Closing) Act 1991*

### 52—Amendment of section 46—Delegation by other authorities

- (1) Section 46(2)—delete "Development Assessment Commission under the *Development Act 1993*" and substitute:

5 State Planning Commission under the *Planning, Development and Infrastructure Act 2016*

- (2) Section 46(3)—delete "Governor under Division 2 of Part 4 of the *Development Act 1993* extends to delegation of the Governor's" and substitute:

10 Minister under the *Planning, Development and Infrastructure Act 2016* extends to delegation of the Minister's

## Part 22—Amendment of *Witness Protection Act 1996*

### 53—Amendment of section 3—Interpretation

- (1) Section 3(1), definition of *Commissioner*—delete "*Police Act 1952*" and substitute:  
*Police Act 1998*

- 15 (2) Section 3(1), definition of *Deputy Commissioner*—delete "*Police Act 1952*" and substitute:

*Police Act 1998*

### 54—Amendment of section 24—Disclosure of information where participant becomes a witness in criminal proceedings

20 Section 24(11), definition of *Director of Public Prosecutions*—delete the definition and substitute:

*Director of Public Prosecutions* includes—

- (a) a person acting in the position of Director of Public Prosecutions; or  
(b) the Deputy Director of Public Prosecutions; or  
25 (c) a suitable person to whom the Director has, by instrument in writing and with the approval of the Commissioner, delegated their functions and powers under this section.

## Part 23—Amendment of *Youth Court Act 1993*

### 55—Amendment of section 9—Court's judiciary

30 Section 9(3)—delete subsection (3)