

Legislative Council

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South Australia

Statutes Amendment (Attorney-General's Portfolio and Other Justice Measures) Bill 2023

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

This Act may be cited as the *Statutes Amendment (Attorney-General's Portfolio and Other Justice Measures) Act 2023*.

2—Commencement

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

Part 2—Amendment of *Aged and Infirm Persons' Property Act 1940*

3—Amendment of section 3—Interpretation

- (1) Section 3(1), definition of *court*, (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;

4—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.

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

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

Part 3—Amendment of *Children and Young People (Safety) Act 2017*

6—Amendment of section 86—Direction not to communicate with, harbour or conceal child or young person

- (1) Section 86, heading—after "with," insert:

be in company of,
- (2) 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.
- (3) 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—
 - (a) with whom a person communicates, or attempts to communicate, in contravention of a direction under this section; or
 - (b) in whose company a person is, or with whom a person associates, in contravention of a direction under this section; or
 - (c) who is harboured or concealed in contravention of a direction under this section,commits no offence in relation to that conduct.
- (4) Section 86—after subsection (5) insert:
 - (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 4—Amendment of *Civil Liability Act 1936*

7—Amendment of section 64—Abolition of rule as to unity of spouses

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 5—Amendment of *Courts Administration Act 1993*

8—Amendment of section 27A—Interpretation

- (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:
 - (ea) the office of Magistrates Court Judicial Registrar;

Part 6—Amendment of *Criminal Law (High Risk Offenders) Act 2015*

9—Amendment of section 10—Supervision orders—terms and conditions

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

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

10—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

11—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

Part 7—Amendment of *Criminal Procedure Act 1921*

12—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 8—Amendment of *Environment, Resources and Development Court Act 1993*

13—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.

14—Insertion of section 11A

After section 11 insert:

11A—Judicial Registrars

- (1) Any Judicial Registrar holding office under the *District Court Act 1991* who is designated by the Governor, by instrument in writing, as an officer of the Environment, Resources and Development Court will (while they continue to hold office as a Judicial Registrar) be a Judicial Registrar of the Court.
- (2) Subject to the regulations, Judicial Registrars may exercise such jurisdiction of the Court as assigned by the Chief Judge or the rules.

15—Amendment of section 15—Constitution of Court

- (1) Section 15(1)(b)—delete "or commissioner" and substitute:
 , commissioner or Judicial Registrar
- (2) Section 15(7)—after "constituted of" insert:
 a Judicial Registrar or
- (3) Section 15(8)—after "Master" insert:
 , Judicial Registrar

16—Amendment of section 16—Conferences

Section 16(7)(a)—after "magistrate" insert:

, Judicial Registrar

17—Amendment of section 26—Issue of evidentiary summonses

Section 26(b)—after "Master" insert:

, Judicial Registrar

18—Amendment of section 30—Right of appeal

Section 30(1)(d)—after "Master" insert:

, a Judicial Registrar

19—Amendment of section 36—Immunities

Section 36(1)—delete "or Master" and substitute:

, Master or Judicial Registrar

20—Amendment of section 48—Rules

Section 48(1)—after "Court" first occurring insert:

, to authorise the Masters or Judicial Registrars to exercise any part of the jurisdiction of the Court

Part 9—Amendment of *Fences Act 1975*

21—Amendment of section 24—Rules of court

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

Magistrates Court Act 1991

Part 10—Amendment of *Guardianship and Administration Act 1993*

22—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 11—Amendment of *Judicial Conduct Commissioner Act 2015*

23—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;

24—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.

25—Insertion of section 34A

After section 34 insert:

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

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 12—Amendment of *Legal Practitioners Act 1981*

26—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

27—Amendment of section 23—Unlawful representation

Section 23—after subsection (3) insert:

- (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 Schedule 1A.

28—Amendment of section 23D—Notification of establishment of office required

- (1) Section 23D(1)—after "legal practitioner" insert:
or Australian-registered foreign lawyer
- (2) Section 23D(3)—after "State" insert:
or jurisdiction
- (3) Section 23D(6)—delete "interstate legal practitioners" and substitute:
persons

Part 13—Amendment of *Mental Health Act 2009*

29—Amendment of section 84—Representation on reviews or appeals

- Section 84(1)—after "Part" insert:
(other than a review under section 79)

Part 14—Amendment of *Ombudsman Act 1972*

30—Amendment of section 5—Non-application of Act

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

Police Complaints and Discipline Act 2016

Part 15—Amendment of *Real Property Act 1886*

31—Amendment of section 146—Discharge of mortgage by Minister in certain cases

- (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

32—Amendment of section 276—Service of notices

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

Part 16—Amendment of *Roads (Opening and Closing) Act 1991*

33—Amendment of section 46—Delegation by other authorities

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

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:

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

Part 17—Amendment of *Youth Court Act 1993*

34—Amendment of section 9—Court's judiciary

- Section 9(3)—delete subsection (3)