South Australia

# Magistrates Court Act 1991

An Act to establish the Magistrates Court of South Australia; to define its jurisdiction and powers; and for other purposes.

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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 *Magistrates Court Act 1991*.

## 3—Interpretation

(1) In this Act, unless the contrary intention appears—

***Chief Magistrate*** means the person holding or acting in the office of Chief Magistrate under the *Magistrates Act 1983*;

***civil action*** means an action or proceeding brought in a civil division of the Court;

***Court*** or ***Magistrates Court*** means the Magistrates Court of South Australia;

***criminal action*** means an action or proceeding brought in a criminal division of the Court;

***criminal division*** means the Criminal Division or the Nunga Court Division of the Court;

***evidentiary material*** means any document, object or substance of evidentiary value in proceedings before the Court and includes any document, object or substance that should, in the opinion of the Court, be produced for the purpose of enabling the Court to determine whether or not it has evidentiary value;

***interlocutory judgment*** includes—

(a) an interlocutory order; and

(b) an order or ruling relating to the admissibility or giving of evidence;

***judgment*** means a judgment, order or decision and includes an interlocutory judgment;

***judicial office*** means the office of Magistrate, Judicial Registrar or special justice;

***Judicial Registrar*** means a Magistrates Court Judicial Registrar;

***Magistrate*** means a person holding office as a Magistrate under the *Magistrates Act 1983*;

***minor civil action***—see subsection (2);

***minor statutory proceeding*** means—

(a) an application under the *Fences Act 1975*; or

(b) an application under Part 4 or section 33 of the *Second-hand Vehicle Dealers Act 1995*; or

(ba) an application under the *Retail and Commercial Leases Act 1995*, other than an application that involves a monetary claim for more than $12 000; or

(bb) an application under section 11(8) of the *Second-hand Dealers and Pawnbrokers Act 1996*; or

(bc) an application under Part 5 of the *Building Work Contractors Act 1995*; or

(bd) a transferred proceeding within the meaning of Part 3A of the *South Australian Civil and Administrative Tribunal Act 2013*; or

(c) any other proceeding declared by statute to be a minor statutory proceeding;

***neighbourhood dispute*** means a dispute between neighbours, or the occupiers of properties in close proximity, based on allegations of trespass or nuisance;

***Nunga Court*** means the Nunga Court Division of the Court;

***Registrar*** means the Principal Registrar, or any Registrar or Deputy Registrar of the Court, but does not include a Judicial Registrar;

***rules*** means the rules of the Court in force under this Act;

***small claim*** means a monetary claim for $12 000 or less.

(1a) For the purposes of this Act, a person will be taken to be an Aboriginal or Torres Strait Islander person if—

(a) the person is descended from an Aboriginal or Torres Strait Islander person; and

(b) the person identifies as an Aboriginal or Torres Strait Islander person; and

(c) the person is accepted as an Aboriginal or Torres Strait Islander person by an Aboriginal or Torres Strait Islander community.

(1b) When sentencing an Aboriginal or Torres Strait Islander person in the Nunga Court Division of the Court, the Court will be known as—

(a) the Nunga Court; or

(b) if the Chief Magistrate assigns another name to the Court for the purposes of this subsection—that name (and a reference in this Act to the Nunga Court or the Nunga Court Division will be taken to include a reference to the Court as so named).

(1c) Before assigning a name to the Court under subsection (1b)(b), the Chief Magistrate—

(a) must consult with Aboriginal and Torres Strait Islander Justice Officers (within the meaning of section 22 of the *Sentencing Act 2017*) and any other persons or bodies recommended by the Aboriginal and Torres Strait Islander Justice Officers; and

(b) may consult with any other persons or bodies that the Chief Magistrate thinks appropriate.

(2) Subject to subsections (3) and (4), a minor civil action is an action founded on—

(a) a small claim; or

(b) a claim for relief in relation to a neighbourhood dispute; or

(c) a minor statutory proceeding.

(3) If a claim that is not within one of the classes referred to in subsection (2) is introduced into a minor civil action, the action ceases to be a minor civil action unless the Court orders that the subsequent claim be tried separately.

(4) Subject to subsection (4a), if a neighbourhood dispute or a minor statutory proceeding involves—

(a) a monetary claim for more than $12 000; or

(b) a claim for relief in the nature of an order to carry out work where the value of the work is more than $12 000,

a party may elect, in accordance with the rules, to exclude the dispute or proceeding from the rules governing minor civil actions[1], and in that case, the dispute or proceeding ceases to be a minor civil action.

(4a) Subsection (4) does not apply to a minor statutory proceeding that is a transferred proceeding within the meaning of Part 3A of the *South Australian Civil and Administrative Tribunal Act 2013* (and the Court may deal with the proceeding as a minor statutory proceeding despite the fact that the proceeding involves a claim that exceeds the monetary limits referred to in that subsection).

(5) Proceedings for a contempt of the Court will be regarded as a civil action or a criminal action according to whether the contempt relates to proceedings in a civil division or a criminal division of the Court and where the contempt is unrelated to proceedings in the Court, the proceedings for contempt will be regarded as a criminal action.

**Notes—**

1 See Division 2 of Part 5.

2 For definition of divisional penalties (and divisional expiation fees) see Appendix.

# Part 2—Magistrates Court of South Australia

## Division 1—Establishment of Court

### 4—Establishment of Court

The Magistrates Court of South Australia is established.

### 5—Court of record

The Court is a Court of record.

### 6—Seal

(1) The Court will have such seals as are necessary for the transaction of its business.

(2) A document apparently sealed with a seal of the Court will, in the absence of evidence to the contrary, be taken to have been duly issued under the authority of the Court.

## Division 2—Structure and constitution of Court

### Subdivision 1—Divisions and constitution of Court

### 7—Divisions of Court

(1) The Court is divided into the following Divisions:

(a) the Civil (General Claims) Division;

(b) the Civil (Consumer and Business) Division;

(c) the Civil (Minor Claims) Division;

(d) the Criminal Division;

(da) the Nunga Court Division;

(e) the Petty Sessions Division.

(2) The Court is, in its Criminal Division, a court of summary jurisdiction.

### 7A—Constitution of Court

(1) Subject to this section, the Court, when sitting to adjudicate on any matter, must be constituted of a Magistrate.

(1a) Subject to the regulations, Judicial Registrars may exercise such jurisdiction of the Court as assigned by the Chief Magistrate or the rules.

(2) The Court may be constituted of a special justice—

(a) in its Petty Sessions Division; or

(b) to hear and determine uncontested applications of a class prescribed by the regulations; or

(ba) to hear and determine appeals under section 23 of the *Fines Enforcement and Debt Recovery Act 2017*; or

(c) in any other case—if there is no Magistrate or Judicial Registrar available.

(2aa) If the Court is constituted of a Judicial Registrar or special justice in criminal proceedings, the Court—

(a) may not impose a sentence of imprisonment; and

(b) if of the opinion that the limitation on its powers imposed under this subsection prevents it from imposing an appropriate sentence—may adjourn the question of sentence for hearing and determination by a Magistrate.

(2a) If there is no Magistrate, Judicial Registrar or special justice available to constitute the Court as a bail authority, the Court may be constituted of 2 justices for the purposes of an application under the *Bail Act 1985*.

(3) The Court may, at any one time, be separately constituted in accordance with this section for the hearing and determination of any number of separate matters.

## Subdivision 2—Provisions relating to Judicial Registrars

## 7AB—Appointment and conditions of Judicial Registrars

(1) The Governor may, on the recommendation of the Attorney-General and with the concurrence of the Chief Magistrate, appoint a legal practitioner of at least 5 years standing to be a Magistrates Court Judicial Registrar.

(2) The term of appointment (which must be for at least 7 years), the remuneration and the conditions of service applicable to a person holding an appointment under this section will be as determined by the Governor with the concurrence of the Chief Magistrate, and specified in the instrument of appointment.

(3) An appointment of a Judicial Registrar under this section will be taken to be on a full-time basis unless the instrument of appointment provides that the appointment is on a part-time basis.

(4) However, a Judicial Registrar not appointed on a part-time basis may, by written agreement with the Chief Magistrate made with the approval of the Attorney-General, perform the duties of office on a part-time basis for a period specified in the agreement.

(5) An instrument appointing a Judicial Registrar on a part-time basis or an agreement under subsection (4) must specify the hours of duty the Judicial Registrar will ordinarily be required to work, expressed as a proportion of the time a Judicial Registrar appointed on a full-time basis is ordinarily required to work.

(6) The hours of duty specified in an instrument of appointment or an agreement under subsection (4) may be varied by written agreement between the Judicial Registrar and the Chief Magistrate made with the approval of the Attorney-General.

(7) The remuneration determined by the Governor with the concurrence of the Chief Magistrate and specified in the instrument of appointment may not be reduced by subsequent determination.

(8) However, a Judicial Registrar (whether appointed on a full-time or part-time basis) is, while performing the duties of the office on a part-time basis, entitled to remuneration on a pro-rata basis in respect of the hours of duty at the rate determined by the Governor under this section in relation to a Judicial Registrar appointed on a full-time basis.

(9) For the purpose of determining whether a legal practitioner has the standing necessary for appointment to the office of Judicial Registrar, periods of legal practice within and outside the State will be taken into account.

(10) A person appointed as a Judicial Registrar is, on the recommendation of the Attorney-General and with the concurrence of the Chief Magistrate, eligible for reappointment at the expiration of a term of office.

(11) A Judicial Registrar may, with the approval of the Attorney-General and the concurrence of the Chief Magistrate, concurrently hold office as a member of the Court's non-judicial staff if the non-judicial office is compatible with the judicial office.

## 7AC—Judicial Registrar ceasing to hold office and suspension

(1) The Governor may, on the recommendation of the Attorney-General, remove a Judicial Registrar from office for—

(a) mental or physical incapacity to carry out official duties satisfactorily; or

(b) neglect of duty; or

(c) dishonourable conduct.

(2) A Judicial Registrar ceases to hold office if the Judicial Registrar—

(a) dies; or

(b) completes a term of office and is not reappointed; or

(c) resigns by written notice to the Attorney-General; or

(d) ceases to satisfy any qualification by virtue of which the person was eligible for appointment to the office of Judicial Registrar; or

(e) is removed from office under subsection (1).

(3) The Attorney-General may only make a recommendation under subsection (1) with the concurrence of the Chief Magistrate.

(4) The Chief Magistrate may, on the Chief Magistrate's own initiative or at the request of the Attorney-General, suspend a Judicial Registrar from office if it appears that there may be grounds for the removal of the Judicial Registrar from office.

(5) If a Judicial Registrar is suspended under subsection (4), the Judicial Registrar remains entitled to the Judicial Registrar's usual remuneration and allowances during the period of suspension.

### Subdivision 3—Assessors and Aboriginal and Torres Strait Islander Elders and Respected Persons etc

#### 7B—Assessors

If under an Act conferring a jurisdiction on the Court in its Civil (Consumer and Business) Division the Court is to sit with assessors in exercising that jurisdiction, then the following provisions apply:

(a) the Court will (except for the purpose of dealing with interlocutory, procedural or administrative matters) sit with assessors selected in accordance with the Act conferring the jurisdiction;

(b) where the Court sits with assessors—

(i) questions of law or procedure will be determined by the judicial officer presiding at the proceedings; and

(ii) other questions will be determined by majority opinion.

#### 7C—Aboriginal and Torres Strait Islander Elders and Respected Persons etc

(1) The Nunga Court must, in sentencing an Aboriginal or Torres Strait Islander defendant, be assisted by 1 or more of the following:

(a) a person regarded by the defendant, and accepted within the defendant's Aboriginal or Torres Strait Islander community, as an Aboriginal or Torres Strait Islander Elder or Respected Person;

(b) a person accepted by the defendant's Aboriginal or Torres Strait Islander community as a person qualified to provide cultural advice relevant to sentencing of the defendant,

and may be assisted by any other person the Court considers appropriate.

(2) A person referred to in subsection (1) is to assist the Court in sentencing Aboriginal or Torres Strait Islander defendants by providing advice on Aboriginal or Torres Strait Islander society and culture or any other matter the Court considers appropriate.

(3) Nothing in this section limits section 7A.

## Division 3—Jurisdiction of Court

#### 8—Civil jurisdiction

(1) The Court has jurisdiction—

(a) to hear and determine an action (at law or in equity) for a sum of money where the amount claimed does not exceed $100 000;

(b) to hear and determine an action (at law or in equity) to obtain or recover title to, or possession of, real or personal property where the value of the property does not exceed $100 000;

(c) to hear and determine an interpleader action where the value of the property to which the action relates does not exceed $100 000;

(d) to grant any form of relief necessary to resolve a minor civil action.

(2) The parties to an action may waive any monetary limit on the civil jurisdiction of the Court, and, in that event, the Court will have jurisdiction to determine, the action without regard to that limitation.

## 9—Criminal jurisdiction

(1) Subject to the *Criminal Procedure Act 1921* the Court has jurisdiction—

(a) to conduct committal proceedings for a charge of an indictable offence;

(ab) to determine and impose sentence on a defendant who admits a charge of a major indictable offence (other than treason, murder, or an attempt or conspiracy to commit, or assault with intent to commit, either of those offences);

(b) to hear and determine a charge of a minor indictable offence;

(c) to hear and determine a charge of a summary offence.

(2) The Court does not, unless it is constituted of a Magistrate, have the power to impose a sentence of imprisonment.

(3) If the Court, constituted otherwise than by a Magistrate, is of the opinion that a sentence of imprisonment should be imposed in any particular case, it may remand the defendant to appear for sentence before the Court constituted of a Magistrate.

(4) The Court does not have the power to impose—

(a) a sentence of imprisonment that exceeds—

(i) if the penalty is for 1 offence—5 years; and

(ii) if the penalty is for more than 1 offence—10 years; or

(b) a fine that exceeds—

(i) in the case of an offence under the *Work Health and Safety Act 2012* being heard by an industrial magistrate—$300 000; or

(ii) in any other case—$150 000.

(5) The limits imposed by subsection (4)(b) apply regardless of whether the relevant offence was committed before or after the commencement of that paragraph.

(6) Subsection (4) applies whether the offence to which the sentence relates is a summary offence or an indictable offence.

(7) If the Court is of the opinion in any particular case that a sentence should be imposed that exceeds the limits prescribed by subsection (4), the Court may remand the defendant to appear for sentence before a superior court.

## 9AA—Nunga Court

(1) The purpose of the Nunga Court is—

(a) to include members of Aboriginal and Torres Strait Islander communities in the sentencing process; and

(b) to provide an opportunity for Aboriginal and Torres Strait Islander defendants, Magistrates, Aboriginal and Torres Strait Islander Elders and Respected Persons and other participants in the sentencing process to discuss the offending, sentencing and criminal justice system; and

(c) to increase the confidence of Aboriginal and Torres Strait Islander communities in the criminal justice system.

(2) The Nunga Court has jurisdiction to determine and impose sentence for an offence or offences heard and determined in the Criminal Division of the Court if—

(a) the defendant is an Aboriginal or Torres Strait Islander person; and

(b) the defendant has pleaded guilty to the offence; and

(c) the defendant has applied, in a manner and form determined by the Chief Magistrate, to be sentenced for the offence in the Nunga Court.

(3) Except where the Court is of the opinion that it is not appropriate to do so, the Court should grant an application under subsection (2)(c) and transfer the defendant's matter or matters to the Nunga Court for sentencing.

(4) In any proceedings before the Nunga Court, the Nunga Court must take steps to ensure that the proceedings are conducted—

(a) with as little formality as is reasonably possible; and

(b) as expeditiously as is reasonably practicable; and

(c) in a way that is likely to be understood and followed by such of the following persons as may be present at the proceedings:

(i) the defendant;

(ii) family members of the defendant;

(iii) any other members of Aboriginal and Torres Strait Islander communities.

(5) Nothing in this section prevents the Court from establishing other programs or procedures in respect of Aboriginal or Torres Strait Islander defendants.

(6) Nothing in this section limits the *Sentencing Act 2017*, the *Young Offenders Act 1993* or any other Act or law.

## 9A—Petty Sessions Division

(1) The Court in its Petty Sessions Division has jurisdiction—

(b) to hear and determine any of the following charges:

(i) a charge of any offence in respect of which an expiation notice has been given to a person alleged to have committed the offence where the alleged offender has elected to be prosecuted for the offence to which the expiation notice relates;

(ii) a charge of a prescribed offence;

(iii) a charge of any other offence in respect of which the maximum penalty does not exceed a fine of $2 500 or include imprisonment (but may include disqualification from holding or obtaining a driver's licence); and

(c) to conduct appeals under section 23 of the *Fines Enforcement and Debt Recovery Act 2017*.

(2) In this section—

***prescribed offence*** means an offence—

(a) in respect of which the maximum penalty does not exceed a fine of $2 500 but does include imprisonment; and

(b) that is prescribed by the regulations for the purposes of this definition.

## 10—Statutory jurisdiction

(1) The Court has any jurisdiction conferred on it by statute.

(1a) The Court, in its Civil (Consumer and Business) Division, has—

(a) jurisdiction to hear and determine an application under Part 4 or Schedule 3 of the *Second-hand Vehicle Dealers Act 1995*; and

(ab) jurisdiction to hear and determine an application under the *Retail and Commercial Leases Act 1995*; and

(b) jurisdiction to hear and determine an application under Part 5 of the *Building Work Contractors Act 1995*; and

(c) any other jurisdiction conferred on that Division by statute.

(1b) Nothing prevents the Court, in its Civil (Consumer and Business) Division (whether constituted of a judicial officer or officers or sitting with assessors), from exercising civil jurisdiction other than that referred to in subsection (1a) in order to promote the convenient disposal of proceedings by the hearing together of different causes of action or claims.

(2) The rules may assign a particular statutory jurisdiction (other than a statutory jurisdiction specifically assigned by or under another Act to a particular Division of the Court) either to the Civil (General Claims) Division, or to the Criminal Division, of the Court.

## 10A—Minor civil actions

The jurisdiction of the Court to hear and determine minor civil actions is to be exercised—

(a) subject to paragraph (b), by the Civil (Minor Claims) Division;

(b) in the case of minor civil actions falling within a statutory jurisdiction specifically assigned to the Civil (Consumer and Business) Division, by that Division.

## 10AB—Certain civil actions may be taken to be minor civil actions

If proceedings involving a monetary claim have been duly commenced in the Civil (General Claims) Division or the Civil (Consumer and Business) Division—

(a) the Court may, if it thinks it appropriate to do so, on application by or with the consent of the parties, hear and determine the proceedings as a minor civil action; and

(b) the proceedings will, in that event, for the purposes of this Act be taken to be a minor civil action.

### 10B—Power to continue hearing as another Division

If proceedings commenced in one Division of the Court should have been commenced in another Division, the Court may, if it thinks fit, continue to hear and determine the proceedings as if it were sitting as that other Division and as if the proceedings had been commenced in that other Division.

# Part 3—Administration of Court

## Division 1—Chief Magistrate

### 11—Chief Magistrate

(1) The Chief Magistrate is the principal judicial officer of the Court.

(2) The Chief Magistrate is responsible for the administration of the Court.

(3) In the absence of the Chief Magistrate from official duties, responsibility for administration of the Court devolves on the Acting Chief Magistrate appointed in accordance with section 6B of the *Magistrates Act 1983*.

## Division 2—The Court's administrative and ancillary staff

### 12—Administrative and ancillary staff

(1) The Court's administrative and ancillary staff consists of—

(a) the Principal Registrar;

(b) the Registrars;

(c) the Deputy Registrars;

(d) the Magistrates' clerks;

(e) the Listing Co-ordinator;

(f) any other persons appointed to the non-judicial staff of the Court.

(2) The Court's administrative and ancillary staff will be appointed under the *Courts Administration Act 1993*.

### 13—Principal Registrar

(1) The Principal Registrar is the Court's chief administrative officer.

(2) A person cannot be appointed to the office of Principal Registrar, nor can a person holding that office be dismissed or reduced in status, except on the recommendation, or with the concurrence, of the Chief Magistrate.

### 14—Responsibilities of non-judicial staff

(1) A member of the Court's administrative or ancillary staff is responsible to the Chief Magistrate (through any properly constituted administrative superior) for the proper and efficient discharge of his or her duties.

### 14A—Sitting or acting outside State

(1) If the Court is required to perform its functions at a place outside the State, the Minister may appoint as a member of the non-judicial staff of the Court at the place—

(a) a person who holds office as a registrar or other officer of a court of the jurisdiction in which the place is located; or

(b) any other person.

(2) The *Courts Administration Act 1993* applies—

(a) with any modifications and exclusions required by the context; and

(b) with prescribed modifications and exclusions,

in relation to an appointment (and to the person subject to an appointment) under subsection (1).

(3) The conditions of service of a person appointed under subsection (1) will be as determined by the Minister.

(4) A person appointed under subsection (1)(a) ceases to hold office if the person ceases to hold office as an officer of the court of the other jurisdiction.

(5) A member of the Court's administrative and ancillary staff may, with the approval of the State Courts Administrator, concurrently hold office as an officer of a court of another jurisdiction.

## Division 3—Sittings and distribution of business

### 15—Exercise of procedural and administrative powers of Court

A Judicial Registrar, Registrar, special justice or justice may—

(a) issue summonses and warrants on behalf of the Court;

(b) adjourn proceedings before the Court;

(c) exercise any procedural or non-judicial powers of the Court assigned by the rules.

### 16—Time and place of sittings

(1) The Court may sit at any time (including a Sunday).

(2) The Court may sit at any place (either within or outside the State).

(3) The Court will sit at such times and places as the Chief Magistrate may direct.

(4) Registries of the Court will be maintained at such places (either within or outside the State) as the Governor may determine.

### 17—Adjournment from time to time and place to place

The Court may—

(a) adjourn proceedings from time to time and from place to place; or

(b) adjourn proceedings to a time and place to be fixed; or

(c) order the transfer of proceedings from place to place.

### 18—Sittings in open court

Except where an Act or the rules otherwise provide, the Court's proceedings must be open to the public.

### 19—Transfer of proceedings between courts

(1) The District Court may order—

(a) that civil proceedings commenced in the Magistrates Court be transferred to the District Court; or

(b) that civil proceedings commenced in the District Court (but which lie within the jurisdiction of the Magistrates Court) be transferred to the Magistrates Court.

(2) A Magistrate may order that civil proceedings commenced in the Magistrates Court be transferred to the District Court.

(2a) If civil or criminal proceedings in the Supreme Court lie within the jurisdiction of the Magistrates Court, and would, in the opinion of the Supreme Court, be more conveniently or appropriately heard and determined by the Magistrates Court, the Supreme Court may order the transfer of the proceedings accordingly.

(3) Where proceedings have been transferred under this section, they may be continued and completed as if steps taken in the proceedings prior to the transfer had been taken in the court to which they are transferred.

## Part 4—Evidentiary powers

### 20—Power to require attendance of witnesses and production of evidentiary material

(1) The Court may, on the application of a party to proceedings or on its own initiative, issue a summons requiring a person to appear before the Court at a specified time and place to give evidence or to produce evidentiary material (or both).

(2) A summons to produce evidentiary material may, instead of providing for production of the material before the Court, provide for production of the material to an officer of the Court nominated in the summons.

(3) If—

(a) a person fails to comply with a summons under subsection (1); or

(b) there are grounds for believing that, if such a summons were issued, a person would not comply with it,

the Court may issue a warrant to have the person arrested and brought before the Court.

### 21—Power of Court to compel the giving of evidence

(1) A person who is called to give evidence or to produce evidentiary material before a Court and—

(a) refuses or fails to make an oath or affirmation when required to do so by the Court;

(b) refuses or fails to give evidence on a subject on which that person is compellable to give evidence;

(c) refuses or fails without reasonable excuse to produce evidentiary material that that person is required by the Court to produce,

commits a contempt of the Court.

(2) This section applies whether the person was summoned before the Court, brought before the Court on a warrant, or came to the Court of his or her own volition.

### 22—Entry and inspection of property

(1) The Court may enter any land or building and carry out an inspection that the Court considers relevant to a proceeding before the Court.

(2) The Court may authorise an officer of the Court to enter any land or building and carry out an inspection that the Court considers relevant to a proceeding before the Court.

(3) A person who obstructs the Court, or a person authorised by a Court, in the exercise of a power of entry or inspection under this section commits a contempt of the Court.

### 23—Production of persons held in custody

If the Court requires the attendance before it of any person who is held in custody in the State, the Court may—

(a) issue a summons or a notice requiring the custodian to produce that person before the Court at a nominated time and place; or

(b) issue a warrant authorising the sheriff, or a member of the police force, to take the person from the custodian and bring him or her before the Court.

### 24—Issue of evidentiary summonses

A summons or a notice under this Part may be issued on behalf of the Court by—

(a) a Magistrate; or

(ab) a Judicial Registrar; or

(b) a Justice; or

(c) a Registrar; or

(d) any other officer authorised by the rules to issue such summonses.

# Part 5—Special provisions as to Court's civil jurisdiction

## Division 1—General

### 25—Interim injunctions etc

The Court may, on such terms as appear just, grant an injunction or make any other order that may be necessary to preserve the subject-matter of an action intact until the questions arising in the action have been finally determined.

## 26—Restraining orders

(1) A Court may make an order (a ***restraining order***) preventing or restricting dealing with property of a defendant to an action if—

(a) the action appears to have been brought on reasonable grounds; and

(b) the property may be required to satisfy a judgment that has been, or may be, given in the action; and

(c) there is a substantial risk that the defendant will dispose of the property before judgment is given, or before it can be enforced.

(2) A restraining order must be served as directed by the Court.

(3) A person who deals with property subject to a restraining order except as permitted by the order commits a contempt of Court.

(4) The Court may vary or revoke a restraining order at any time.

(5) If it appears to the Court that grounds for making a restraining order exist but the Court requires further evidence to identify property in relation to which the order could be effectively made, the Court may summons the defendant, or issue a warrant to have the defendant arrested and brought before the Court, for examination on that subject.

## 27—Mediation and conciliation

(1) Subject to and in accordance with the rules, the Court constituted of a Magistrate or Judicial Registrar (whether sitting with assessors or not) may, with or without the consent of the parties, and any other judicial officer or a Registrar may, with the consent of the parties, appoint a mediator and refer an action or any issues arising in an action for mediation by the mediator.

(2) A mediator appointed under this section has the privileges and immunities of a Magistrate and such of the powers of the Court as the Court may delegate.

(2a) A mediator appointed under this section must not, except as required or authorised to do so by law, disclose to another person any information obtained in the course or for the purposes of the mediation.

(2b) The Court may itself endeavour to achieve a negotiated settlement of an action or resolution of any issues arising in an action.

(2c) A Magistrate, Judicial Registrar or other judicial officer who attempts to settle an action or to resolve any issues arising in an action is not disqualified from taking further part in those proceedings but will be so disqualified if he or she is appointed as a mediator in relation to those proceedings.

(3) Evidence of anything said or done in an attempt to settle an action by mediation under this section is not subsequently admissible in the proceedings or in related proceedings.

(5) Where a case is settled under this section, the terms of the settlement may be embodied in a judgment.

## 28—Trial of issues by arbitrator

(1) The Court may refer an action or any issues arising in an action for trial by an arbitrator.

(2) The arbitrator may be appointed either by the parties to the action or by the Court.

(3) The arbitrator becomes for the purposes of the reference an officer of the Court and may exercise such of the powers of the Court as the Court delegates to the arbitrator.

(4) The Court will, unless good reason is shown to the contrary, adopt the award of the arbitrator as its judgment on the action or issues referred.

(5) The costs of the arbitrator will be borne, in the first instance, equally by the parties or in such other proportions as the Court may direct, but the Court may subsequently order that a party be reimbursed wholly or in part by another party for costs incurred under this subsection.

## 29—Expert reports

(1) The Court may refer any question arising in an action for investigation and report by an expert in the relevant field.

(2) A person to whom a question is referred under this section becomes for the purposes of the investigation an officer of the Court and may exercise such of the powers of the Court as the Court delegates.

(3) The Court may adopt a report obtained under this section in whole or part.

(4) The costs of the expert's investigation and report will be borne, in the first instance, equally by the parties or in such other proportions as the Court may direct, but the Court may subsequently order that a party be reimbursed wholly or in part by another party for costs incurred under this subsection.

## 30—Law and equity

(1) Legal and equitable claims and defences may be included (without discrimination between them) in the same action.

(2) If there is a conflict between the rules of common law and equity as they apply to a particular action, the rules of equity prevail.

## 31—Alternative forms of relief

(1) Although a particular form of relief is sought by a party to an action, the Court may grant any other form of relief that it considers more appropriate to the circumstances of the case.

(2) In particular—

(a) where a party seeks relief by way of injunction or specific performance, the Court may award damages in addition to or in substitution for such relief;

(b) where a party seeks foreclosure of the equity of redemption in mortgaged property, the Court may, instead of ordering foreclosure—

(i) direct the sale of the mortgaged property; or

(ii) direct a transfer of the mortgage debt and security to a person who agrees to assume the debt.

(This subsection is not exhaustive.)

## 32—Declaratory judgments

The Court may, on matters within its jurisdiction, make binding declarations of right whether or not any consequential relief is or could be claimed.

## 33—Interim awards of damages

(1) In an action for damages, the Court may give a declaratory judgment finally determining the question of liability between the parties, but leaving the quantum of damages to be determined subsequently.

(2) The Court may, at the time of giving declaratory judgment or subsequently, order the defendant—

(a) to make such interim payments as the Court thinks fit on account of the damages that are yet to be finally assessed (but such payments should not include any allowance for non-economic loss unless the Court is satisfied that there is good reason for including such an allowance);

(b) to give such security as the Court thinks fit for the payment of damages yet to be assessed.

(3) If—

(a) declaratory judgment is given in a case of personal injury; and

(b) the injured person is incapacitated (wholly or partially) for employment; and

(c) it appears to the Court that the injured person is not making adequate efforts towards rehabilitation for employment,

a component of an interim payment attributable to loss of earnings must not exceed 75% of the loss of earnings over the period to which the interim payment relates.

(4) A party to an action in which declaratory judgment has been given may at any time apply to the Court for a final assessment of damages.

(5) If an application is made under subsection (4) and—

(a) the action arises from personal injury and the medical condition of the injured person appears to have stabilised; or

(b) four years or more have elapsed since the date of the declaratory judgment,

the application should not be refused except in exceptional circumstances.

(6) If a party in whose favour a declaratory judgment has been given dies before the final assessment of damages—

(a) the administrator of the deceased's estate may continue the action for the benefit of the estate (in which case the deceased's damages will be finally assessed to the date of death and further allowance may be made for damages allowable under the *Survival of Causes of Action Act 1940*); or

(b) if the deceased's death was caused or accelerated by the circumstances out of which the action arose—the administrator may convert the action into one on behalf of dependants under the *Wrongs Act 1936*.

(7) If the administrator converts the action into one on behalf of dependants, the Court will, in assessing damages on behalf of the dependants, make a proper allowance for damages paid to the deceased.

## 33A—Consent orders for structured settlements

In an action for damages for personal injury, the court may, with the consent of the parties, make an order for damages to be paid wholly or in part in the form of periodic payments, by way of an annuity or otherwise, instead of in a lump sum.

## 34—Pre-judgment interest

(1) Unless good reason is shown to the contrary, the Court will, on the application of a party in whose favour a monetary judgment has been, or is to be, given include in the judgment an award of interest in accordance with this section.

(2) The interest—

(a) will be calculated at a rate fixed by the Court; and

(b) will be calculated in respect of a period fixed by the Court (which must, however, in the case of a judgment given on a liquidated claim, be the period running from when the liability to pay the amount of the claim fell due to the date of judgment unless the Court otherwise determines); and

(c) is, in accordance with the Court's determination, payable in respect of the whole or part of the amount for which judgment is given.

(3) The Court may, without proceeding to calculate interest under subsection (2), award a lump sum instead of interest.

(4) This section does not—

(a) authorise the award of interest on interest;

(b) authorise the award of interest on exemplary or punitive damages;

(c) affect damages for dishonour of a negotiable instrument;

(d) authorise the award of interest (except by consent) on a sum for which judgment is given by consent;

(e) limit or affect the operation of any other enactment or rule of law dealing with interest.

## 35—Interest on judgment debts

(1) A judgment debt bears interest at a rate prescribed by the rules.

(2) Subject to any direction by the Court to the contrary, the interest runs—

(a) in the case of taxed costs—from the date the costs are taxed or an earlier date fixed by the taxing officer;

(b) in the case of any other monetary sum—from the date of the judgment.

## 36—Payment to child

(1) Although a party to an action is a child, a Court may order the payment of money to that party.

(2) Where such an order is made, a receipt given by the child is a valid discharge for the person to whom it is given.

### 37—Costs

(1) Subject to this Act and the rules, costs in any civil proceedings will be in the discretion of the Court and may be awarded against any person (whether a party to or a witness in the proceedings or not).

(2) If proceedings are delayed through the neglect or incompetence of a legal practitioner, the Court may—

(a) disallow the whole or part of the costs as between the legal practitioner and his or her client (and, where appropriate, order the legal practitioner to repay costs already paid);

(b) order the legal practitioner to indemnify his or her client or any other party to the proceedings for costs resulting from the delay;

(c) order the legal practitioner to pay to the Principal Registrar for the credit of the Consolidated Account an amount fixed by the Court as compensation for time wasted.

(3) The Court may not make an order against a legal practitioner under subsection (2) unless the Court has informed the practitioner of the nature of the order proposed and allowed the practitioner a reasonable opportunity to make representations, and call evidence, in relation to the matter.

(4) If a person who is summoned to appear as a witness in any proceedings fails, without reasonable excuse, to appear in obedience to the summons, the Court may order that person—

(a) to indemnify the parties to the proceedings for costs resulting from failure to obey the summons;

(b) to pay to the Registrar for the credit of the Consolidated Account an amount fixed by the Court as compensation for time wasted in consequence of the witness's failure to obey the summons.

## Division 2—Minor civil actions

### 38—Minor civil actions

(1) The following provisions are applicable to the trial of a minor civil action:

(a) the trial will take the form of an inquiry by the Court into the matters in dispute between the parties rather than an adversarial contest between the parties;

(b) the Court will itself elicit by inquiry from the parties and the witnesses, and by examination of evidentiary material produced to the Court, the issues in dispute and the facts necessary to decide those issues;

(c) the Court may itself call and examine witnesses;

(d) the parties are not bound by written pleadings;

(e) the Court is not bound by the rules of evidence;

(f) the Court must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.

(2) At or before the trial of a minor civil action, the Court should explore any possible avenues of achieving a negotiated settlement of the matters in dispute.

(3) After giving judgment in a minor civil action, the Court—

(a) should advise the unsuccessful party of his or her right to apply for review of the proceedings by the District Court; and

(b) should give the successful party any advice or assistance as to the enforcement of the judgment that the Court considers appropriate in the circumstances; and

(c) if there is a judgment debtor who is present, should proceed immediately to investigate his or her means of satisfying the judgment and to take any further action that appears appropriate in view of the results of that investigation.

(4) The following provisions govern representation in minor civil actions:

(a) representation of a party by a legal practitioner will not be permitted unless—

(i) another party to the action is a legal practitioner; or

(ii) all parties to the action agree; or

(iii) the Court is of the opinion that the party would be unfairly disadvantaged if not represented by a legal practitioner;

(ab) however, the Court may, in its discretion, permit representation of a party by a legal practitioner at the hearing of an interlocutory application;

(b) if a party to the action is a body corporate, the Court must, if the party seeks to be represented by an officer or employee who is not a legal practitioner, permit such representation;

(c) if a person is subrogated to the rights of a party, the Court will permit that person to appear in the proceedings on behalf of that party and to be represented in the same way as if that person were a party;

(d) the Court will permit a party, or a person subrogated to the rights of a party, to be assisted by a person who is not a legal practitioner but only if that person is not acting for fee or reward.

(5) In a minor civil action costs for getting up the case for trial, or by way of counsel fees, will not be awarded unless all parties were represented by counsel, or the Court is of opinion that there are special circumstances justifying the award of such costs.

(6) The District Court (constituted of a single Judge) may, on the application of a party dissatisfied with a judgment given in a minor civil action, review the matter.

(7) The following provisions apply to such a review by the District Court:

(a) subject to paragraph (ab), the right of a party to be represented by a legal practitioner at the review will be determined in accordance with subsection (4);

(ab) if, in the case of a review that relates to a minor civil action in respect of a transferred proceeding within the meaning of Part 3A of the *South Australian Civil and Administrative Tribunal Act 2013*, a party was represented by a legal practitioner at the proceeding, then the party may be represented by a legal practitioner at the review by the Court;

(b) the Court may inform itself as it thinks fit and, in doing so, is not bound by the rules of evidence;

(c) the Court may, if it thinks fit, re-hear evidence taken before the Magistrates Court;

(d) in determining the matter, the Court may—

(i) affirm the judgment; or

(ii) rescind the judgment and substitute a judgment that the Court considers appropriate; or

(iii) if the review arises from a default judgment or summary judgment, rescind the judgment and—

(A) substitute a judgment that the Court considers appropriate; or

(B) remit the matter to the Magistrates Court for hearing or further hearing;

(e) in hearing and determining the review, the Court must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.

(8) A decision of the District Court on a review is final and not subject to appeal.

(9) However, the District Court may reserve a question of law arising in a review for determination by the Court of Appeal which may determine the question and make any consequential orders or directions appropriate to the circumstances of the case.

### 39—Determination in minor civil action creates no issue estoppel

A determination of an issue in a minor civil action does not prevent the parties from again litigating the same issue in different proceedings based on a different claim.

# Part 6—Appeals and reservation of questions of law

## Division 1—Appeals from Civil Division of Court

### 40—Right of appeal

(1) A party to a civil action (except a minor civil action) may, in accordance with the rules of the Supreme Court, appeal against any judgment given in the action.

(2) If the rules of the Supreme Court provide that an appeal from a judgment of a particular class can only be brought with the permission of that Court, the right of appeal is limited accordingly, but in any other case an appeal lies as of right.

(3) The appeal lies to the Supreme Court constituted of a single Judge but the Judge may (if he or she thinks fit) refer the appeal for hearing and determination by the Court of Appeal.

(4) If jurisdiction to try the civil action is created by statute and the terms of the statute are such as to indicate that Parliament did not intend that there should be an appeal from a decision made in the exercise of that jurisdiction, that intention prevails.

(5) A right of appeal conferred by this section extends to a legal practitioner, witness or other person against whom an order under section 37 is made.

### 41—Reservation of questions of law

(1) The Court may reserve any question of law arising in a civil action for determination by the Supreme Court.

(1a) Subsection (1) does not apply to a minor civil action unless the action is founded on a minor statutory proceeding in respect of a transferred proceeding within the meaning of Part 3A of the *South Australian Civil and Administrative Tribunal Act 2013*.

(2) Where a question of law is reserved for determination by the Supreme Court, that Court may determine the question and give any consequential orders or directions appropriate to the circumstances of the case.

## Division 2—Appeals from Criminal Division of Court

### 42—Appeals

(1) A party to a criminal action may, subject to this section and in accordance with the rules of the appellate court, appeal against any judgment given in the action (including a judgment dismissing a charge of a summary or minor indictable offence but not any judgment arising from committal proceedings).

(1a) An appeal does not, however, lie against an interlocutory judgment unless—

(a) the judgment stays the proceedings; or

(b) the judgment destroys or substantially weakens the basis of the prosecution case and, if correct, is likely to lead to abandonment of the prosecution; or

(c) the Court or the appellate court is satisfied that there are special reasons why it would be in the interests of the administration of justice to have the appeal determined before commencement or completion of the trial and grants its permission for an appeal.

(2) The appeal lies—

(ab) in the case of a sentence passed on the conviction of a person of an offence that is, or offences that include, a major indictable offence—to the Court of Appeal with the permission of the Court of Appeal; or

(b) in any other case—to the Supreme Court constituted of a single Judge (but the Judge may, if he or she thinks fit, refer the appeal for hearing and determination by the Court of Appeal).

(4) On an appeal, the appellate court may, if the interests of justice so require, re-hear any witnesses or receive fresh evidence.

(5) On the hearing of the appeal, the appellate court may exercise any one or more of the following powers:

(a) it may confirm, vary or quash the judgment subject to the appeal and, if the Court thinks the interests of justice so require, it may vary or quash any other judgment given in the same or related proceedings;

(b) it may remit the case for hearing or further hearing before the Magistrates Court;

(c) it may make any other order (including, subject to subsection (5a), an order for costs) that may be necessary or desirable in the circumstances.

(5a) The Court of Appeal may not make an order for costs in relation to an appeal to the Court of Appeal of a kind referred to in subsection (2)(ab).

(6) Where a judgment or order has been confirmed, varied or made on appeal under this section, the Magistrates Court has the same authority to enforce that judgment or order as if it had not been appealed against or had been made in the first instance.

## 43—Reservation of questions of law

(1) The Court may reserve any question of law arising in a criminal action (except committal proceedings for a charge of an indictable offence) for determination by a superior court.

(2) The question will be reserved—

(b) in any other case—for determination by the Supreme Court constituted of a single Judge (but the Judge may, if he or she thinks fit, refer the matter for determination by the Court of Appeal).

(3) The Court for whose determination a question of law is reserved under this section may determine the question and give any consequential orders or directions that may be appropriate in the circumstances of the case.

## 43A—Second or subsequent appeals

(1) A Court to which a particular appeal against conviction lies under section 42 (the ***appeal court***) may hear a second or subsequent appeal against conviction if the Court is satisfied that there is fresh and compelling evidence that should, in the interests of justice, be considered on an appeal.

(2) A convicted person may only appeal under this section with the permission of the appeal court.

(3) The appeal court may allow an appeal under this section if it thinks that there was a substantial miscarriage of justice.

(4) If an appeal against conviction is allowed under this section, the court may quash the conviction and either direct a judgment and verdict of acquittal to be entered or direct a new trial by the Magistrates Court.

(5) If the appeal court orders a new trial under subsection (4), the court—

(a) may make such other orders as the court thinks fit for the safe custody of the person who is to be retried or for admitting the person to bail; but

(b) may not make any order directing the Magistrates Court to convict or sentence the person.

(6) For the purposes of subsection (1), evidence relating to an offence is—

(a) ***fresh*** if—

(i) it was not adduced at the trial of the offence; and

(ii) it could not, even with the exercise of reasonable diligence, have been adduced at the trial; and

(b) ***compelling*** if—

(i) it is reliable; and

(ii) it is substantial; and

(iii) it is highly probative in the context of the issues in dispute at the trial of the offence.

(7) Evidence is not precluded from being admissible on an appeal referred to in subsection (1) just because it would not have been admissible in the earlier trial of the offence resulting in the relevant conviction.

# Part 7—Miscellaneous

## 44—Immunities

(1) A Magistrate, Judicial Registrar, special justice or other person exercising the jurisdiction of the Court has the same privileges and immunities from liability as a Judge of the Supreme Court.

(2) A non-judicial officer of the Court incurs no civil or criminal liability for an honest act or omission in carrying out or purportedly carrying out official functions.

## 45—Contempt in face of Court

A person who—

(a) interrupts the proceedings of the Court or misbehaves before the Court;

(b) insults a Magistrate, Judicial Registrar, Registrar or other officer of the Court who is acting in the exercise of official functions;

(c) refuses, in the face of the Court, to obey a lawful direction of the Court,

is guilty of a contempt of the Court.

## 46—Punishment of contempts

The Court may punish a contempt as follows:

(a) it may impose a fine (not exceeding a Division 5 fine); or

(b) it may commit to prison for a specified term (not exceeding Division 5 imprisonment) or until the contempt is purged.

## 47—Custody of litigant's funds and securities

(1) The Registrar is responsible for the proper custody of money paid into the Court and securities delivered to the Court in connection with proceedings in the Court.

(2) The Treasurer guarantees the safe keeping of any such money or security from the time it comes into the Court's custody until it lawfully ceases to be in that custody.

(3) Any liability arising under the guarantee will be satisfied from the General Revenue of the State (which is appropriated to the necessary extent).

(4) Money paid into the Court may be invested in a manner authorised by the rules and any interest or accretions arising from the investment will be dealt with as prescribed by the rules.

(5) Any money in the Court's custody that has remained unclaimed for six years or more may be dealt with under the *Unclaimed Moneys Act 1891*.

## 48—Miscellaneous provisions relating to legal process

(1) Any process of the Court may be issued, served or executed on a Sunday as well as any other day.

(2) The validity of process is not affected by the fact that the person who issued it dies or ceases to hold office.

## 48A—Service

(1) If it is not practicable to serve any process, notice or other document relating to civil or criminal proceedings in the manner otherwise prescribed or contemplated by law, the Court may, by order—

(a) provide for service by post; or

(b) make any other provision that may be necessary or desirable for service.

(2) Any process, notice or other document served in accordance with an order under subsection (1) will, despite any other law, be taken to have been duly served.

## 48B—Certain trials of sexual offences to be given priority

(1) The Court will give the necessary directions to ensure that a trial of a sexual offence where the alleged victim of the offence is a person to whom this section applies is given priority over any less urgent criminal trial and is dealt with as expeditiously as the proper administration of justice allows.

(2) In this section—

***person to whom this section applies*** means—

(a) a child; or

(b) a person with a disability that adversely affects the person's capacity to give a coherent account of the person's experiences or to respond rationally to questions;

***sexual offence*** means—

(a) rape; or

(b) indecent assault; or

(c) any offence involving unlawful sexual intercourse or an act of gross indecency; or

(d) incest; or

(e) any offence involving sexual exploitation or abuse of a child, or exploitation of a child as an object of prurient interest; or

(ea) an offence of sexual exploitation of a person with a cognitive impairment under section 51 of the *Criminal Law Consolidation Act 1935*; or

(f) any attempt to commit, or assault with intent to commit, any of the offences referred to in a preceding paragraph.

## 49—Rules of Court

(1) Rules of the Court may be made—

(a) regulating the business of the Court and the duties of the various officers of the Court; and

(b) regulating the custody and use of the Court's seals; and

(ba) regulating the making of bail applications, including limiting the making of bail applications to the Court in circumstances where the application may be made to another court; and

(c) regulating the practice and procedure of the Court (including in its appellate jurisdiction); and

(ca) imposing mutual obligations on parties to proceedings in the Court to disclose to each other the contents of expert reports or other material of relevance to the proceedings before the proceedings are brought to trial; and

(cb) regulating the referral of an action or issues arising in an action to mediation or arbitration, the conduct of mediations or arbitrations or the referral of questions for investigation and report by an expert; and

(d) regulating the form in which evidence is taken or received by the Court; and

(da) empowering the Court—

(i) to order the carrying out of a biological or other scientific test that may be relevant to the determination of a question before the Court; and

(ii) to include in such an order directions about the carrying out of the test and, in particular, directions requiring a person (including a party to the proceedings) to submit to the test or to have a child or other person who is not of full legal capacity submit to the test; and

(iii) if a party is required to submit to the test, or to have another submit to the test—to include in the order a stipulation that, if the party fails to comply with the order, the question to which the test is relevant will be resolved adversely to the party; and

(e) regulating costs; and

(f) dealing with any other matter necessary or expedient for the effective and efficient operation of the Court.

(2) Rules of the Court may be made by the Chief Magistrate and any two or more other Magistrates.

(3) Rules of the Court take effect from the date of publication in the Gazette or some later date specified in the rules.

## 50—Court fees

(1) The Governor may, by regulation, prescribe and provide for the payment of fees in relation to proceedings in the Court, or any step in such proceedings.

(1a) Without limiting the generality of subsection (1), the regulations may provide for all or any of the following matters:

(a) specific fees;

(b) maximum fees;

(c) minimum fees;

(d) fees that vary according to value, time, class of matter, or on any other basis;

(e) fees that differ for different classes of proceedings, different classes of party or different jurisdictions of the Court;

(f) the manner of payment of fees;

(g) the time or times at which fees are to be paid,

and it is not necessary for a fee to be related to the actual administrative cost incurred.

(1b) The regulations may—

(a) be of general or limited application; and

(b) make different provision according to the persons, things or circumstances to which they are expressed to apply; and

(c) provide in a specified case or class of case for the exemption of any proceeding, person or thing, or a class of proceeding, person or thing, from any of the provisions of the regulations, whether—

(i) unconditionally or on specified conditions; and

(ii) either wholly or to such an extent as is specified; and

(d) provide for the payment in advance of a fee or part of a fee prescribed under the regulations; and

(e) provide for the reduction, waiver, postponement, remission or refund, in whole or in part, of a fee prescribed under the regulations; and

(f) provide, in specified circumstances, for the reinstatement or payment, in whole or in part, of a fee prescribed under the regulations which was reduced, waived, postponed, remitted or refunded under the regulations; and

(g) confer a discretionary authority or impose a duty on the Court, a member of the Court's judiciary or a Registrar.

(2) The Court may remit or reduce a fee on account of the poverty of the party by whom the fee is payable or for any other proper reason.

## 51—Accessibility to Court records

(1) Subject to this section, the Court must, on application by any member of the public, allow the applicant to inspect or obtain a copy of—

(aa) any process relating to proceedings and forming part of the Court's records;

(a) a transcript of evidence taken by the Court in any proceedings;

(b) any documentary material admitted into evidence in any proceedings;

(e) a transcript of reasons for judgment (including remarks made by the Court on passing sentence);

(f) a judgment or order given or made by the Court.

(2) A member of the public may inspect or obtain a copy of the following material only with the permission of the Court:

(a) material that was not taken or received in open court;

(b) material that the Court has suppressed from publication;

(ba) sensitive material in the custody of the Court;

(c) material placed before the Court during sentencing proceedings;

(d) documentary material filed in connection with committal proceedings;

(e) a transcript of any oral evidence taken at committal proceedings;

(f) a photograph, slide, film, video tape, audio tape or other form of recording from which a visual image or sound can be produced;

(fa) a report prepared to assist the Court in determining a person's eligibility for, or progress in, an intervention program (within the meaning of the *Bail Act 1985* or the *Sentencing Act 2017* or the *Intervention Orders (Prevention of Abuse) Act 2009*);

(g) material of a class prescribed by the regulations.

(3) The Court may permit inspection or copying of material referred to in subsection (2) subject to any of the following conditions:

(a) a condition that material that is sensitive material will be available for examination under the supervision of the Court at a place specified in the notice and at a time to be arranged;

(b) a condition limiting the publication or use of the material;

(c) any other condition that the Court considers appropriate.

(4) A decision by the Court on an application under this section is administrative and is final and not subject to any form of review.

(4a) Despite the preceding subsections, if 100 years have passed since the end of the calendar year in which material referred to in this section became part of the Court's records—

(a) in the case of records that have been delivered into the custody of State Records—section 26 of the *State Records Act 1997* applies (to the exclusion of this section) to the giving of access to the records; and

(b) in any other case—a member of the public may, without any requirement to seek permission of the Court, be given access to the records.

(5) The Court may charge a fee, fixed by regulation, for inspection or copying of material under this section.

(6) In this section—

***sensitive material***—see section 67H of the *Evidence Act 1929*.

# Legislative history

## Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

## Principal Act and amendments

New entries appear in bold.

| Year | No | Title | Assent | Commencement |
|---|---|---|---|---|
| 1991 | 73 | *Magistrates Court Act 1991* | 12.12.1991 | 6.7.1992 (*Gazette 2.7.1992 p209*) except s 14(2) which was deleted by 62/1993 without coming into operation |
| 1993 | 62 | *Statutes Amendment (Courts) Act 1993* | 27.5.1993 | ss 10—13 & 15—18—1.7.1993 (*Gazette 24.6.1993 p2047*); s 14—28.10.1993 (*Gazette 27.10.1993 p1892*) |
| 1994 | 43 | *Statutes Amendment (Courts) Act 1994* | 2.6.1994 | 9.6.1994 (*Gazette 9.6.1994 p1669*) |
| 1995 | 9 | *Second-hand Vehicle Dealers Act 1995* | 16.3.1995 | Sch 5—30.6.1995 (*Gazette 29.6.1995 p2977*) |
| 1995 | 14 | *Retail Shop Leases Act 1995* | 6.4.1995 | s 82—30.6.1995 (*Gazette 29.6.1995 p2976*) |
| 1995 | 65 | *Statutes Amendment (Recording of Interviews) Act 1995* | 10.8.1995 | Sch (cl 2)—21.12.1995 (*Gazette 21.12.1995 p1760*) |
| 1995 | 84 | *Statutes Amendment (Courts) Act 1995* | 30.11.1995 | 21.12.1995 (*Gazette 21.12.1995 p1759*) |
| 1995 | 85 | *Statutes Amendment (Courts Administration Staff) Act 1995* | 30.11.1995 | 14.12.1995 (*Gazette 14.12.1995 p1641*) |
| 1995 | 87 | *Building Work Contractors Act 1995* | 7.12.1995 | 1.6.1996 (*Gazette 23.5.1996 p2536*) |
| 1996 | 46 | *Statutes Amendment (Mediation, Arbitration and Referral) Act 1996* | 27.6.1996 | 30.9.1996 (*Gazette 29.8.1996 p808*) |
| 1996 | 101 | *Second-hand Dealers and Pawnbrokers Act 1996* | 19.12.1996 | 1.3.1998 (*Gazette 19.2.1998 p932*) |
| 1998 | 60 | *Statutes Amendment (Fine Enforcement) Act 1998* | 3.9.1998 | Pt 7 (ss 39 & 40)—6.3.2000 (*Gazette 18.11.1999 p2358*) |
| 1999 | 42 | *Statutes Amendment and Repeal (Justice Portfolio) Act 1999* | 5.8.1999 | Pt 9 (ss 49—51)—3.10.1999 (*Gazette 23.9.1999 p1208*) |
| 1999 | 66 | *Statutes Amendment (Magistrates Court Appeals) Act 1999* | 18.11.1999 | Pt 2 (ss 4 & 5)—3.1.2000 (*Gazette 9.12.1999 p3114*) |

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|---|---|---|---|---|
| 2000 | 57 | *Statutes Amendment and Repeal (Attorney-General's Portfolio) Act 2000* | 20.7.2000 | Pt 13 (s 28)—1.10.2000 (*Gazette 28.9.2000 p2221*) |
| 2001 | 69 | *Statutes Amendment (Courts and Judicial Administration) Act 2001* | 6.12.2001 | Pt 8 (ss 16—19)—3.2.2002 (*Gazette 24.1.2002 p346*) |
| 2002 | 16 | *Statutes Amendment (Structured Settlements) Act 2002* | 5.9.2002 | Pt 3 (s 5)—1.12.2002 (*Gazette 7.11.2002 p4043*) |
| 2005 | 49 | *Statutes Amendment (Intervention Programs and Sentencing Procedures) Act 2005* | 27.10.2005 | Pt 5 (s 13)—19.12.2005 (*Gazette 15.12.2005 p4326*) |
| 2005 | 56 | *Justices of the Peace Act 2005* | 17.11.2005 | Sch 2 (cll 39—43)—1.7.2006 (*Gazette 22.6.2006 p2012*) |
| 2005 | 74 | *Statutes Amendment (Criminal Procedure) Act 2005* | 8.12.2005 | Pt 5 (s 12)—1.3.2007 (*Gazette 1.3.2007 p672*) |
| 2006 | 17 | *Statutes Amendment (New Rules of Civil Procedure) Act 2006* | 6.7.2006 | Pt 4 (ss 18 & 19)—4.9.2006 (*Gazette 17.8.2006 p2831*) |
| 2006 | 44 | *Statutes Amendment (Justice Portfolio) Act 2006* | 14.12.2006 | Pt 19 (ss 32 & 33)—18.1.2007 (*Gazette 18.1.2007 p234*) |
| 2008 | 7 | *Statutes Amendment (Evidence and Procedure) Act 2008* | 17.4.2008 | Pt 5 (ss 23 & 24)—23.11.2008 (*Gazette 20.11.2008 p5171*) |
| 2009 | 18 | *Cross-border Justice Act 2009* | 21.5.2009 | Sch 1 (cll 3 & 4)—1.11.2009 (*Gazette 29.10.2009 p4982*) |
| 2009 | 62 | *Second-hand Vehicle Dealers (Cooling-off Rights) Amendment Act 2009* | 26.11.2009 | Sch 1 (cl 1)—29.11.2010 (*Gazette 14.10.2010 p5087*) |
| 2009 | 69 | *Magistrates Court (Special Justices) Amendment Act 2009* | 10.12.2009 | 17.12.2009 (*Gazette 17.12.2009 p6350*) |
| 2009 | 85 | *Intervention Orders (Prevention of Abuse) Act 2009* | 10.12.2009 | Sch 1 (cl 17)—9.12.2011 (*Gazette 20.10.2011 p4269*) |
| 2012 | 17 | *Statutes Amendment (Attorney-General's Portfolio) Act 2012* | 24.5.2012 | Pt 11 (s 23)—5.8.2012 (*Gazette 2.8.2012 p3302*) |
| 2012 | 43 | *Statutes Amendment (Courts Efficiency Reforms) Act 2012* | 22.11.2012 | Pt 8 (ss 23—28)—1.7.2013 (*Gazette 16.5.2013 p1541*) |
| 2013 | 9 | *Statutes Amendment (Appeals) Act 2013* | 28.3.2013 | Pt 3 (s 12) & Sch 1—5.5.2013; s 11—1.7.2013 immediately after 43/2012, s 26 (*Gazette 26.4.2013 p1185*) |
| 2013 | 11 | *Statutes Amendment (Attorney-General's Portfolio) Act 2013* | 18.4.2013 | Pt 8 (s 16)—9.6.2013 (*Gazette 6.6.2013 p2498*) |
| 2013 | 31 | *Statutes Amendment (Fines Enforcement and Recovery) Act 2013* | 1.8.2013 | Pt 8 (ss 35—38)—3.2.2014 (*Gazette 30.1.2014 p422*) |
| 2013 | 47 | *Statutes Amendment (Attorney-General's Portfolio No 2) Act 2013* | 24.10.2013 | Pt 7 (s 10)—17.5.2014 (*Gazette 8.5.2014 p1630*) |
| 2015 | 16 | *Statutes Amendment (Vulnerable Witnesses) Act 2015* | 6.8.2015 | Pt 4 (s 21)—1.7.2016 (*Gazette 23.6.2016 p2618*) |
| 2016 | 27 | *Magistrates Court (Monetary Limits) Amendment Act 2016* | 16.6.2016 | 1.8.2016 (*Gazette 21.7.2016 p2988*) |

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|---|---|---|---|---|
| 2016 | 63 | *Statutes Amendment (South Australian Employment Tribunal) Act 2016* | 8.12.2016 | Pt 15 (ss 119 & 120)—1.7.2017 (*Gazette 16.5.2017 p1221*) |
| 2017 | 10 | *Statutes Amendment (Judicial Registrars) Act 2017* | 11.4.2017 | Pt 3 (ss 19—29)—23.5.2017 (*Gazette 23.5.2017 p1725*) |
| 2017 | 18 | *Summary Procedure (Indictable Offences) Amendment Act 2017* | 14.6.2017 | Sch 2 (cll 28—31 & 41)—5.3.2018 (*Gazette 12.12.2017 p4961*) |
| 2017 | 50 | *Statutes Amendment (Court Fees) Act 2017* | 28.11.2017 | Pt 3 (s 5)—5.3.2018 (*Gazette 23.1.2018 p282*) |
| 2017 | 53 | *Statutes Amendment (Sentencing) Act 2017* | 28.11.2017 | Pt 14 (ss 23 & 24)—30.4.2018 (*Gazette 6.2.2018 p612*) |
| 2017 | 70 | *Statutes Amendment (Attorney-General's Portfolio No 3) Act 2017* | 12.12.2017 | Pt 8 (ss 17 & 18)—8.7.2018: s 2(3) |
| 2017 | 71 | *Fines Enforcement and Debt Recovery Act 2017* | 12.12.2017 | Sch 1 (cll 25 & 26)—30.4.2018 (*Gazette 6.2.2018 p609*) |
| 2018 | 5 | *Statutes Amendment (SACAT Federal Diversity Jurisdiction) Act 2018* | 12.7.2018 | Pt 2 (ss 3 to 5)—12.7.2018 |
| 2019 | 21 | *Statutes Amendment (Attorney-General's Portfolio) (No 2) Act 2019* | 19.9.2019 | Pt 9 (s 16)—19.9.2019: s 2(1) |
| 2019 | 45 | *Supreme Court (Court of Appeal) Amendment Act 2019* | 19.12.2019 | Sch 1 (cll 61 to 64)—1.1.2021 (*Gazette 10.12.2020 p5638*) |
| 2020 | 15 | *Statutes Amendment (Bail Authorities) Act 2020* | 11.6.2020 | Pt 4 (s 11)—1.1.2021 (*Gazette 17.12.2020 p5744*) |
| **2022** | **26** | ***Magistrates Court (Nunga Court) Amendment Act 2022*** | **8.12.2022** | **1.3.2023 (*Gazette 15.2.2023 p354*)** |

## Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

| Provision | How varied | Commencement |
|---|---|---|
| Pt 1 | | |
| *s 2* | *omitted under Legislation Revision and Publication Act 2002* | *19.12.2005* |
| s 3 | | |
| s 3(1) | | |
| **criminal action** | **amended by 26/2022 s 3(1)** | **1.3.2023** |
| **criminal division** | **inserted by 26/2022 s 3(2)** | **1.3.2023** |
| interlocutory judgment | inserted by 17/2012 s 23(1) | 5.8.2012 |
| judicial office | amended by 56/2005 Sch 2 cl 39 | 1.7.2006 |
| | amended by 10/2017 s 19(1) | 23.5.2017 |
| Judicial Registrar | inserted by 10/2017 s 19(2) | 23.5.2017 |
| judgment | amended by 17/2012 s 23(2) | 5.8.2012 |
| Magistrate | amended by 84/1995 s 13 | 21.12.1995 |

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|---|---|---|
| minor statutory proceeding | inserted by 9/1995 Sch 5 cl (a) | 30.6.1995 |
| | amended by 14/1995 s 82(a) | 30.6.1995 |
| | amended by 87/1995 Sch 4 cl 2(a) | 1.6.1996 |
| | amended by 101/1996 Sch cl 1 | 1.3.1998 |
| | amended by 69/2001 s 16(a) | 3.2.2002 |
| | amended by 62/2009 Sch 1 cl 1 | 29.11.2010 |
| | amended by 43/2012 s 23(1) | 1.7.2013 |
| | amended by 27/2016 s 4(1) | 1.8.2016 |
| | amended by 5/2018 s 3(1) | 12.7.2018 |
| **Nunga Court** | **inserted by 26/2022 s 3(3)** | **1.3.2023** |
| Registrar | substituted by 62/1993 s 10 | 1.7.1993 |
| | amended by 10/2017 s 19(3) | 23.5.2017 |
| small claim | amended by 69/2001 s 16(b) | 3.2.2002 |
| | amended by 43/2012 s 23(2) | 1.7.2013 |
| | amended by 27/2016 s 4(2) | 1.8.2016 |
| **s 3(1a)—(1c)** | **inserted by 26/2022 s 3(4)** | **1.3.2023** |
| s 3(2) | amended by 9/1995 Sch 5 cl (b) | 30.6.1995 |
| s 3(4) | substituted by 9/1995 Sch 5 cl (c) | 30.6.1995 |
| | amended by 69/2001 s 16(c), (d) | 3.2.2002 |
| | amended by 43/2012 s 23(3) | 1.7.2013 |
| | amended by 27/2016 s 4(3) | 1.8.2016 |
| | amended by 5/2018 s 3(2) | 12.7.2018 |
| s 3(4a) | inserted by 5/2018 s 3(3) | 12.7.2018 |
| **s 3(5)** | **amended by 26/2022 s 3(5)** | **1.3.2023** |
| Pt 2 | | |
| Pt 2 Div 2 | substituted by 9/1995 Sch 5 cl (d) | 30.6.1995 |
| Pt 2 Div 2 Subdiv 1 | | |
| heading | inserted by 10/2017 s 20 | 23.5.2017 |
| s 7 | | |
| s 7(1) | amended by 56/2005 Sch 2 cl 40 | 1.7.2006 |
| | **amended by 26/2022 s 4** | **1.3.2023** |
| s 7A | | |
| s 7A(1a) | inserted by 10/2017 s 21(1) | 23.5.2017 |
| s 7A(2) | amended by 56/2005 Sch 2 cl 41(1) | 1.7.2006 |
| | substituted by 44/2006 s 32 | 18.1.2007 |
| | substituted by 69/2009 s 4 | 17.12.2009 |
| | amended by 31/2013 s 35 | 3.2.2014 |
| | amended by 10/2017 s 21(2), (3) | 23.5.2017 |
| | amended by 71/2017 Sch 1 cl 25 | 30.4.2018 |
| s 7A(2aa) | inserted by 10/2017 s 21(4) | 23.5.2017 |
| s 7A(2a) | inserted by 56/2005 Sch 2 cl 41(2) | 1.7.2006 |
| | amended by 10/2017 s 21(5) | 23.5.2017 |

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|---|---|---|
| Pt 2 Div 2 Subdiv 2 | inserted by 10/2017 s 22 | 23.5.2017 |
| Pt 2 Div 2 Subdiv 3 | | |
| heading | inserted by 10/2017 s 23 | 23.5.2017 |
| | **amended by 26/2022 s 5** | **1.3.2023** |
| s 7B | amended by 87/1995 Sch 4 cl 2(b) | 1.6.1996 |
| **s 7C** | **inserted by 26/2022 s 6** | **1.3.2023** |
| Pt 2 Div 3 | | |
| s 8 | | |
| s 8(1) | amended by 69/2001 s 17 | 3.2.2002 |
| | amended by 43/2012 s 24(1), (2) | 1.7.2013 |
| s 9 | | |
| s 9(1) | s 9 amended by 43/2012 s 25 | 1.7.2013 |
| | s 9 amended by 18/2017 Sch 2 cl 28 | 5.3.2018 |
| | s 9 amended and redesignated as s 9(1) by 53/2017 s 23(1), (2) | 30.4.2018 |
| s 9(2)—(7) | inserted by 53/2017 s 23(2) | 30.4.2018 |
| **s 9AA** | **inserted by 26/2022 s 7** | **1.3.2023** |
| s 9A | | |
| s 9A(1) | s 9A inserted by 56/2005 Sch 2 cl 42 | 1.7.2006 |
| | s 9A amended by 44/2006 s 33 | 18.1.2007 |
| | s 9A amended and redesignated as s 9A(1) by 69/2009 s 5(1)—(3) | 17.12.2009 |
| | (a) deleted by 31/2013 s 36(1) | 3.2.2014 |
| | amended by 31/2013 s 36(2) | 3.2.2014 |
| | amended by 71/2017 Sch 1 cl 26 | 30.4.2018 |
| s 9A(2) | inserted by 69/2009 s 5(3) | 17.12.2009 |
| s 10 | | |
| s 10(1a) | inserted by 9/1995 Sch 5 cl (e) | 30.6.1995 |
| | amended by 14/1995 s 82(b) | 30.6.1995 |
| | amended by 87/1995 Sch 4 cl 2(c) | 1.6.1996 |
| | amended by 69/2001 s 18 | 3.2.2002 |
| s 10(1b) | inserted by 87/1995 Sch 4 cl 2(d) | 1.6.1996 |
| s 10(2) | amended by 9/1995 Sch 5 cl (f) | 30.6.1995 |
| s 10A | inserted by 87/1995 Sch 4 cl 2(e) | 1.6.1996 |
| s 10AB | inserted by 42/1999 s 49 | 3.10.1999 |
| s 10B | inserted by 87/1995 Sch 4 cl 2(e) | 1.6.1996 |
| Pt 3 | | |
| s 11 | | |
| s 11(3) | amended by 70/2017 s 17 | 8.7.2018 |
| s 12 | | |
| s 12(1) | amended by 60/1998 s 39 | 6.3.2000 |
| | (ab) deleted by 31/2013 s 37 | 3.2.2014 |
| s 12(2) | amended by 85/1995 s 12 | 14.12.1995 |

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|---|---|---|
| *s 13A* | *inserted by 60/1998 s 40* | *6.3.2000* |
| | *deleted by 31/2013 s 38* | *3.2.2014* |
| s 14 | | |
| *s 14(2)* | *deleted by 62/1993 s 11* | *1.7.1993* |
| s 14A | inserted by 18/2009 Sch 1 cl 3 | 1.11.2009 |
| s 15 | amended by 62/1993 s 12 | 1.7.1993 |
| | substituted by 9/1995 Sch 5 cl (g) | 30.6.1995 |
| | amended by 84/1995 s 14 | 21.12.1995 |
| | amended by 69/2009 s 6 | 17.12.2009 |
| | amended by 10/2017 s 24 | 23.5.2017 |
| s 16 | | |
| s 16(4) | amended by 18/2009 Sch 1 cl 4 | 1.11.2009 |
| s 19 | | |
| s 19(1) | amended by 84/1995 s 15 | 21.12.1995 |
| s 19(2a) | inserted by 62/1993 s 13 | 1.7.1993 |
| Pt 4 | | |
| s 24 | amended by 10/2017 s 25 | 23.5.2017 |
| Pt 5 | | |
| s 27 | | |
| s 27(1) | substituted by 46/1996 s 7(a) | 30.9.1996 |
| | amended by 10/2017 s 26(1) | 23.5.2017 |
| s 27(2a) | inserted by 46/1996 s 7(b) | 30.9.1996 |
| s 27(2b) | inserted by 46/1996 s 7(b) | 30.9.1996 |
| s 27(2c) | inserted by 46/1996 s 7(b) | 30.9.1996 |
| | amended by 10/2017 s 26(2) | 23.5.2017 |
| s 27(3) | amended by 46/1996 s 7(c) | 30.9.1996 |
| *s 27(4)* | *deleted by 46/1996 s 7(d)* | *30.9.1996* |
| s 29 | | |
| s 29(1) | amended by 46/1996 s 8 | 30.9.1996 |
| s 33A | inserted by 16/2002 s 5 | 1.12.2002 |
| s 34 | | |
| s 34(2) | substituted by 62/1993 s 14 | 28.10.1993 |
| s 37 | | |
| s 37(1) | amended by 42/1999 s 50(a) | 3.10.1999 |
| s 37(2) | amended by 42/1999 s 50(b) | 3.10.1999 |
| s 38 | | |
| s 38(3) | amended by 84/1995 s 16 | 21.12.1995 |
| s 38(4) | amended by 57/2000 s 28(a) | 1.10.2000 |
| s 38(6) | substituted by 57/2000 s 28(b) | 1.10.2000 |
| s 38(7) | substituted by 57/2000 s 28(b) | 1.10.2000 |
| | amended by 5/2018 s 4(1), (2) | 12.7.2018 |
| s 38(8) | substituted by 57/2000 s 28(b) | 1.10.2000 |
| s 38(9) | inserted by 57/2000 s 28(b) | 1.10.2000 |

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|---|---|---|
| | amended by 45/2019 Sch 1 cl 61 | 1.1.2021 |
| Pt 6 | | |
| s 40 | | |
| *s 40(1a)* | *inserted by 62/1993 s 15* | *1.7.1993* |
| | *deleted by 43/1994 s 17* | *9.6.1994* |
| s 40(2) | amended by 17/2006 s 18 | 4.9.2006 |
| s 40(3) | amended by 45/2019 Sch 1 cl 62 | 1.1.2021 |
| s 40(5) | amended by 42/1999 s 51 | 3.10.1999 |
| s 41 | | |
| s 41(1) | amended by 5/2018 s 5(1) | 12.7.2018 |
| s 41(1a) | inserted by 5/2018 s 5(2) | 12.7.2018 |
| s 42 | | |
| s 42(1) | amended by 18/2017 Sch 2 cl 29 | 5.3.2018 |
| s 42(1a) | inserted by 43/1994 s 18(a) | 9.6.1994 |
| | substituted by 74/2005 s 12 | 1.3.2007 |
| s 42(2) | amended by 66/1999 s 4(a) | 3.1.2000 |
| | amended by 43/2012 s 26 | 1.7.2013 |
| | amended by 9/2013 s 11(1) | 1.7.2013 |
| | (a) deleted by 63/2016 s 119 | 1.7.2017 |
| | amended by 45/2019 Sch 1 cl 63(1), (2) | 1.1.2021 |
| *s 42(2a)* | *inserted by 9/2013 s 11(2)* | *1.7.2013* |
| | *deleted by 45/2019 Sch 1 cl 63(3)* | *1.1.2021* |
| *s 42(2b)* | *inserted by 9/2013 s 11(2)* | *1.7.2013* |
| | *deleted by 45/2019 Sch 1 cl 63(3)* | *1.1.2021* |
| *s 42(3)* | *deleted by 66/1999 s 4(b)* | *3.1.2000* |
| s 42(5) | amended by 47/2013 s 10(1) | 17.5.2014 |
| s 42(5a) | inserted by 47/2013 s 10(2) | 17.5.2014 |
| | amended by 45/2019 Sch 1 cl 63(4) | 1.1.2021 |
| s 42(6) | inserted by 43/1994 s 18(b) | 9.6.1994 |
| s 43 | | |
| s 43(1) | amended by 18/2017 Sch 2 cl 30 | 5.3.2018 |
| s 43(2) | amended by 66/1999 s 5 | 3.1.2000 |
| | (a) deleted by 63/2016 s 120 | 1.7.2017 |
| | amended by 45/2019 Sch 1 cl 64 | 1.1.2021 |
| s 43A | inserted by 9/2013 s 12 | 5.5.2013 |
| Pt 7 | | |
| s 44 | | |
| s 44(1) | amended by 10/2017 s 27 | 23.5.2017 |
| | amended by 21/2019 s 16 | 19.9.2019 |
| s 45 | amended by 10/2017 s 28 | 23.5.2017 |
| s 48A | inserted by 62/1993 s 16 | 1.7.1993 |
| s 48A(1) | amended by 84/1995 s 17 | 21.12.1995 |
| s 48B | inserted by 7/2008 s 23 | 23.11.2008 |

| | | |
|---|---|---|
| s 48B(1) | amended by 16/2015 s 21(1) | 1.7.2016 |
| s 48B(2) | | |
| person to whom this section applies | inserted by 16/2015 s 21(2) | 1.7.2016 |
| sexual offence | amended by 16/2015 s 21(3) | 1.7.2016 |
| s 49 | | |
| s 49(1) | amended by 62/1993 s 17 | 1.7.1993 |
| | amended by 46/1996 s 9 | 30.9.1996 |
| | amended by 17/2006 s 19 | 4.9.2006 |
| | amended by 10/2017 s 29 | 23.5.2017 |
| | amended by 15/2020 s 11 | 1.1.2021 |
| s 49(2) | amended by 70/2017 s 18 | 8.7.2018 |
| s 50 | | |
| s 50(1) | amended by 50/2017 s 5(1) | 5.3.2018 |
| s 50(1a) and (1b) | inserted by 50/2017 s 5(2) | 5.3.2018 |
| s 51 | | |
| s 51(1) | amended by 62/1993 s 18 | 1.7.1993 |
| | amended by 84/1995 s 18(a) | 21.12.1995 |
| | (c) and (d) deleted by 84/1995 s 18(b) | 21.12.1995 |
| s 51(2) | substituted by 84/1995 s 18(c) | 21.12.1995 |
| | amended by 49/2005 s 13 | 19.12.2005 |
| | amended by 7/2008 s 24(1) | 23.11.2008 |
| | amended by 85/2009 Sch 1 cl 17 | 9.12.2011 |
| | amended by 11/2013 s 16(1) | 9.6.2013 |
| | amended by 18/2017 Sch 2 cl 31 | 5.3.2018 |
| | amended by 53/2017 s 24 | 30.4.2018 |
| s 51(3) | amended by 65/1995 Sch cl 2(a) | 21.12.1995 |
| | substituted by 84/1995 s 18(c) | 21.12.1995 |
| | substituted by 7/2008 s 24(2) | 23.11.2008 |
| s 51(4) | inserted by 65/1995 Sch cl 2(b) | 21.12.1995 |
| | substituted by 84/1995 s 18(c) | 21.12.1995 |
| s 51(4a) | inserted by 11/2013 s 16(2) | 9.6.2013 |
| s 51(5) | inserted by 65/1995 Sch cl 2(b) | 21.12.1995 |
| | substituted by 84/1995 s 18(c) | 21.12.1995 |
| s 51(6) | inserted by 7/2008 s 24(3) | 23.11.2008 |

## Transitional etc provisions associated with Act or amendments

### *Statutes Repeal and Amendment (Courts) Act 1991*

### 20—Transitional provisions—Magistrates Courts

(1) On the commencement of the *Magistrates Court Act 1991* the Registrars and non-judicial staff of local courts of limited and special jurisdiction and of courts of summary jurisdiction are transferred to corresponding positions on the staff of the Magistrates Court.

(2) Any proceedings commenced before a local court of limited or special jurisdiction or a court of summary jurisdiction may be continued and completed before the Magistrates Court.

(3) A preliminary examination commenced before a justice may be continued and completed before the Magistrates Court, but the Court will apply the law as in force at the commencement of the proceedings in all respects as if references in that law to a justice were references to the Court.

### 23—Interpretation of Acts and instruments

The following provisions apply to the interpretation of Acts and instruments (whether of a legislative character or not):

(a) a reference to a District Court, a District Criminal Court or a Local Court of Full Jurisdiction will be construed as a reference to the District Court;

(b) a reference to a court of summary jurisdiction or a local court of limited or special jurisdiction will be construed as a reference to the Magistrates Court;

(c) a reference to an officer of a District Court, a District Criminal Court or a Local Court of Full Jurisdiction will be construed as a reference to an officer with corresponding functions and responsibilities in relation to the District Court;

(d) a reference to an officer of a court of summary jurisdiction or a local court of limited or special jurisdiction will be construed as a reference to an officer with corresponding functions and responsibilities in relation to the Magistrates Court.

### *Statutes Amendment (Courts Administration Staff) Act 1995*

### 20—Transitional provision

(1) An appointment to a non-judicial office or position made or purportedly made before the commencement of this Act in accordance with an Act that is amended by this Act will be taken to have been duly made under the statutory provisions that, as amended by this Act, provide for the making of such an appointment as if this Act had been enacted and in force at the relevant time.

### *Statutes Amendment (Courts and Judicial Administration) Act 2001*

## 19—Transitional provision

The amendments made to the principal Act by this Part—

(a) do not apply in respect of proceedings commenced before the commencement of this Part (and those proceedings may continue as if this Act had not been enacted); and

(b) apply in respect of proceedings commenced after the commencement of this Part (including proceedings in respect of a claim arising before the commencement of this Part).

### *Justices of the Peace Act 2005, Sch 2*

## 43—Transitional provision

An amendment made by Schedule 2 of the *Justices of the Peace Act 2005* to the *Magistrates Court Act 1991* does not apply in respect of proceedings commenced before the commencement of the amending provision (and those proceedings may continue as if the amending provision had not been enacted).

### *Statutes Amendment (Appeals) Act 2013, Sch 1—Transitional provision*

The amendments effected by this Act apply in relation to appeals instituted after the commencement of this Act, regardless of whether the offence to which the appeal relates was committed, or allegedly committed, before or after the commencement of this Act.

### *Statutes Amendment (Courts Efficiency Reforms) Act 2012*

## 27—Transitional provision

(1) The amendments made to sections 3 and 8 of the *Magistrates Court Act 1991* by sections 23 and 24—

(a) do not apply in respect of proceedings commenced before the commencement of this Part (and those proceedings may continue as if this Act had not been enacted); and

(b) apply in respect of proceedings commenced on or after the commencement of this Part (including proceedings in respect of a claim arising before the commencement of this Part).

(2) The amendments made to sections 9 and 42 of the *Magistrates Court Act 1991* by sections 25 and 26 apply in relation to the sentencing of a person by the Magistrates Court following the commencement of this Part (including the sentencing of a person for an offence that occurred before that commencement) only if the proceedings for the relevant offence were commenced on or after that commencement.

## 28—Review of certain amendments

(1) The Attorney-General must, as soon as practicable after the first anniversary of the commencement of section 23, conduct a review of the operation and impact of the amendments made to the *Magistrates Court Act 1991* by that section.

(2) The Attorney-General must prepare a report based on the review and must, within 12 sitting days after the report is prepared, cause copies of the report to be laid before each House of Parliament.

### *Magistrates Court (Monetary Limits) Amendment Act 2016, Sch 1*

### 1—Transitional provision

The amendments made to section 3 of the *Magistrates Court Act 1991* by this Act—

(a) do not apply in respect of proceedings commenced before the commencement of this Act (and those proceedings may continue as if this Act had not been enacted); and

(b) apply in respect of proceedings commenced on or after the commencement of this Act (including proceedings in respect of a claim arising before the commencement of this Act).

### *Summary Procedure (Indictable Offences) Amendment Act 2017, Sch 2 Pt 14*

### 41—Transitional provision

The amendments made by this Act apply to proceedings relating to an offence that are commenced after the commencement of this Act, regardless of when the offence occurred (and the Acts amended by this Act, as in force before the commencement of this Act, continue to apply to proceedings that were commenced before the commencement of this Act).

## Historical versions

Reprint No 1—1.7.1993
Reprint No 2—28.10.1993
Reprint No 3—9.6.1994
Reprint No 4—30.6.1995
Reprint No 5—21.12.1995
Reprint No 6—1.6.1996
Reprint No 7—30.9.1996
Reprint No 8—1.3.1998
Reprint No 9—3.10.1999
Reprint No 10—3.1.2000
Reprint No 11—6.3.2000
Reprint No 12—1.10.2000
Reprint No 13—3.2.2002
Reprint No 14—1.12.2002
19.12.2005
1.7.2006
4.9.2006
18.1.2007
1.3.2007
23.11.2008
1.11.2009

17.12.2009
29.11.2010
9.12.2011
5.8.2012
5.5.2013
9.6.2013
1.7.2013
3.2.2014
17.5.2014
1.7.2016
1.7.2016
1.8.2016
23.5.2017
1.7.2017
5.3.2018
30.4.2018
8.7.2018 (electronic only)
12.7.2018
19.9.2019
1.1.2021

# Appendix—Divisional penalties and expiation fees

At the date of publication of this version divisional penalties and expiation fees are, as provided by section 28A of the *Acts Interpretation Act 1915*, as follows:

| Division | Maximum imprisonment | Maximum fine | Expiation fee |
|---|---|---|---|
| 1 | 15 years | $60 000 | — |
| 2 | 10 years | $40 000 | — |
| 3 | 7 years | $30 000 | — |
| 4 | 4 years | $15 000 | — |
| 5 | 2 years | $8 000 | — |
| 6 | 1 year | $4 000 | $300 |
| 7 | 6 months | $2 000 | $200 |
| 8 | 3 months | $1 000 | $150 |
| 9 | – | $500 | $100 |
| 10 | – | $200 | $75 |
| 11 | – | $100 | $50 |
| 12 | – | $50 | $25 |

*Note: This appendix is provided for convenience of reference only.*