

South Australia

## Statutes Amendment (Courts) Act 2004

An Act to amend the *Courts Administration Act 1993*, the *Criminal Law Consolidation Act 1935*, the *De Facto Relationships Act 1996*, the *Development Act 1993*, the *Environment, Resources and Development Court Act 1993*, the *Juries Act 1927*, the *Summary Procedure Act 1921*, the *Supreme Court Act 1935*, the *Young Offenders Act 1993* and the *Youth Court Act 1993*; to make related amendments to various other Acts; 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 *Statutes Amendment (Courts) Act 2004*.

### **2—Commencement**

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

### **3—Amendment provisions**

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

## Part 2—Amendment of *Courts Administration Act 1993*

### 4—Substitution of section 28A

Section 28A—delete the section and substitute:

#### **28A—Special provisions in relation to publication of judicial decisions**

- (1) The following provisions apply in respect of the publication on an Internet site maintained by the Courts Administration Authority of a decision of a judicial officer of a prescribed court:
  - (a) the Council, a member of the Council, the Administrator and the other members of the staff of the Council have, in respect of that publication, the same privileges and immunities as if the publication consisted of a delivery of the decision by a judicial officer in court; and
  - (b) that publication is in all other respects to be treated as if the publication consisted of the delivery of the decision by a judicial officer in court.
- (2) Subsection (1)—
  - (a) does not apply unless the decision published on the Internet site was released by the judicial officer who made the decision before its publication in accordance with the procedures approved by the designated officer for the prescribed court of which the judicial officer is a member; and
  - (b) does not give rise to any privileges or immunities with respect to any subsequent publication of the decision by a third party.
- (3) In this section—

**decision** means any judgment, decree, order, decision or ruling (whether final or interlocutory), or a sentence, and includes—

  - (a) reasons for decision; and
  - (b) remarks made by a judicial officer in passing sentence;

**designated officer** means—

  - (a) in relation to a court or tribunal that has a judicial head—the judicial head of that court or tribunal;
  - (b) in any other case—the Chief Justice;

**judicial officer**, in relation to a court or tribunal, means a person who alone, or together with others, constitutes the court or tribunal;

**prescribed court** means—

  - (a) the Supreme Court; or

- (b) the District Court; or
- (c) any other court or tribunal of the State prescribed by the regulations.

### **Part 3—Amendment of *Criminal Law Consolidation Act 1935***

#### **5—Substitution of Division 11 of Part 9**

Part 9 Division 11—delete the Division and substitute:

#### **Division 11—Witness fees and expenses**

##### **297—Witness fees**

Witness fees and expenses in respect of proceedings under this Act are payable in accordance with the regulations.

#### **6—Amendment of section 353—Determination of appeals in ordinary cases**

Section 353(4)—delete subsection (4) and substitute:

- (4) Subject to subsection (5), on an appeal against sentence, the Full Court must—
  - (a) if it thinks that a different sentence should have been passed—
    - (i) quash the sentence passed at the trial and substitute such other sentence as the Court thinks ought to have been passed (whether more or less severe); or
    - (ii) quash the sentence passed at the trial and remit the matter to the court of trial for resentencing; or
  - (b) in any other case—dismiss the appeal.

### **Part 4—Amendment of *De Facto Relationships Act 1996***

#### **7—Insertion of section 14A**

After section 14 insert:

##### **14A—Restriction on publication of proceedings**

- (1) A person must not publish, by radio, television, newspaper or in any other way—
  - (a) a report of a proceeding, or part of a proceeding, under this Act that identifies or could tend to identify—
    - (i) a party to the proceeding; or
    - (ii) a witness in the proceeding; or

- (iii) a person who is related to, or associated with, a party to the proceedings or a witness in the proceeding, or is, or is alleged to be, in any other way concerned in the matter to which the proceeding relates; or
- (b) a list of proceedings under this Act identified by reference to the names of the parties to the proceedings.

Maximum penalty: \$10 000 or imprisonment for 2 years.

- (2) Subsection (1) does not apply in relation to—
  - (a) the communication, to persons concerned in proceedings in a court or tribunal established under a law of the Commonwealth or a State or Territory, of any pleading, transcript of evidence or other document for use in connection with those proceedings; or
  - (b) the communication of any pleading, transcript of evidence or other document to—
    - (i) a body that is responsible for disciplining members of the legal profession; or
    - (ii) a person concerned in disciplinary proceedings against a member of the legal profession before such a body; or
  - (c) the communication, to a body that grants legal aid, of any pleading, transcript of evidence or other document for the purpose of facilitating the making of a decision as to whether legal aid should be granted, continued or provided in a particular case; or
  - (d) the publishing of a report or notice in accordance with the direction of a court or tribunal established under a law of the Commonwealth or a State or Territory; or
  - (e) the publishing, under the authority of a court hearing proceedings under this Act, of a list of those proceedings identified by reference to the names of the parties to the proceedings; or
  - (f) the publishing of a report in a publication that—
    - (i) is genuinely intended primarily for use by the members of a profession; and
    - (ii) is a separate volume or part of a series of law reports or other publication of a technical nature; or
  - (g) the publishing of a report—
    - (i) to a person who is a member of a profession, in connection with the practice by that person of that profession or in the course of any form of professional training in which that person is involved; or

- (ii) to an individual who is a party to any proceedings under this Act, in connection with the conduct of those proceedings; or
  - (iii) to a person who is a student, in connection with the studies of that person.
- (3) An offence against this section is an indictable offence.
  - (4) Proceedings for an offence against this section must not be commenced except by, or with the written consent of, the Director of Public Prosecutions.

## **Part 5—Amendment of *Development Act 1993***

### **8—Insertion of section 98**

Part 13—before section 99 insert:

#### **98—Constitution of Environment, Resources and Development Court**

The following provisions apply in respect of the constitution of the Environment, Resources and Development Court when exercising jurisdiction under this Act:

- (a) the Court may be constituted in a manner provided by the *Environment, Resources and Development Court Act 1993* or may, if the Senior Judge of the Court so determines, be constituted of a Judge and one commissioner;
- (b) the provisions of the *Environment, Resources and Development Court Act 1993* apply in relation to the Court constituted of a Judge and one commissioner in the same way as in relation to a full bench of the Court;
- (c) the Court may not be constituted of or include a commissioner unless—
  - (i) in a case where only one commissioner is to sit (whether alone or with another member or members of the Court)—the commissioner; or
  - (ii) in any other case—at least one commissioner, is a commissioner who has been specifically designated by the Governor as a person who has expertise in fields that are relevant to the jurisdiction conferred on the Court by this Act.

## **Part 6—Amendment of *Environment, Resources and Development Court Act 1993***

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

Section 3(1), definition of *registrar*—delete "Assistant" and substitute:

Deputy

### **10—Amendment of section 8—Judges of the Court**

Section 8—delete "Presiding Member" wherever occurring and substitute in each case:

Senior Judge

### **11—Amendment of section 9—Magistrates**

Section 9(3)—delete "Presiding Member" and substitute:

Senior Judge

### **12—Amendment of section 13—Disclosure of interest by members of the Court**

Section 13(b)(i)—delete "Presiding Member" and substitute:

Senior Judge

### **13—Amendment of section 14—Court's administrative and ancillary staff**

(1) Section 14(1)(b)—delete "an Assistant" and substitute:

a Deputy

(2) Section 14(4)—delete "Presiding Member" and substitute:

Senior Judge

### **14—Amendment of section 15—Constitution of Court**

Section 15—delete "Presiding Member" wherever occurring and substitute in each case:

Senior Judge

### **15—Amendment of section 16—Conferences**

Section 16(2)—delete "Presiding Member" and substitute:

Senior Judge

### **16—Amendment of section 18—Time and place of sittings**

Section 18(3)—delete "Presiding Member" and substitute:

Senior Judge

### **17—Amendment of section 48—Rules**

Section 48(3)—delete "Presiding Member" and substitute:

Senior Judge

## **Part 7—Amendment of *Juries Act 1927***

### **18—Amendment of section 6A—Additional jurors**

- (1) Section 6A(2)—after "verdict," insert:

or to consider whether to return a verdict without hearing further evidence,
- (2) Section 6A(3)—after paragraph (b) insert:
  - (c) if the jury is retiring to consider whether or not to return a verdict without hearing further evidence—direct that they rejoin the jury in the event that the jury decides that it wishes to hear further evidence before returning a verdict.

### **19—Amendment of section 30—Summons**

Section 30(1)—delete "form of schedule 5" and substitute:  
prescribed form

### **20—Repeal of section 31—Duty of sheriff to keep list of persons summoned**

Section 31—delete the section

### **21—Amendment of section 55—Separation of jury**

Section 55(2)—after "verdict" insert:  
or to consider whether to return a verdict without hearing further evidence

### **22—Substitution of section 70**

Section 70—delete the section and substitute:

#### **70—Payment of jurors etc**

- (1) If a person summoned to render jury service punctually attends a court in compliance with the summons—
  - (a) the person is, unless he or she is paid wages or salary by an employer in respect of the period during which the person attends a court for the purposes of jury service, entitled to be remunerated in accordance with the prescribed scale;
  - (b) if the person is paid wages or salary by an employer in respect of the period referred to in paragraph (a), the employer is entitled to be reimbursed an amount equal to the amount of remuneration that the person would have been entitled to under that paragraph had he or she not been paid such wages or salary.
- (2) Any payment to be made under subsection (1) must be made out of the Consolidated Account (which is appropriated to the necessary extent).

### **23—Repeal of Schedule 5**

Schedule 5—delete Schedule 5

## **Part 8—Amendment of *Summary Procedure Act 1921***

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

Section 5(3)(a)(iii)(C)—after "(indecent assault)" insert:

(not being an offence committed against a child under the age of 12 years)

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

Section 99C—after subsection (3) insert:

(3a) Subsections (2) and (3) have effect subject to section 99CA.

#### **Note—**

If the Court decides not to make an order under subsection (2), section 57 requires the Court to issue a summons subject to section 57(2), or, if the complaint, having a defect of substance or form, cannot be cured by amendment by the Court, section 181 enables the Court to dismiss the complaint.

In cases to which section 99CA applies, the Court is required to dismiss complaints that are not supported by oral evidence and has a further power to dismiss complaints in certain circumstances.

### **26—Insertion of section 99CA**

After section 99C insert:

#### **99CA—Special provisions relating to non-police complaints for section 99 restraining orders**

- (1) This section applies to a complaint under this Division where—
  - (a) the complainant is not a member of the police force; and
  - (b) the complaint is not made by telephone by a person introduced by a member of the police force; and
  - (c) the restraining order sought is a restraining order under section 99.
- (2) On a complaint to which this section applies, the following provisions apply despite any other provisions of this Act:
  - (a) the Court must not issue a summons for the appearance of the defendant and must dismiss the complaint unless it is supported by oral evidence;
  - (b) in addition to the discretion whether to make an order under section 99C(2), the Court has, subject to this subsection, a discretion to refuse to issue a summons for the appearance of the defendant and to dismiss the complaint;
  - (c) in determining whether to exercise the discretion under paragraph (b) to dismiss the complaint, the Court must take into account—

- (i) whether it might be appropriate and practicable for the parties to attempt to resolve the matter through mediation or by some other means; and
  - (ii) whether the complaint is in the nature of a cross application; and
  - (iii) any other matters that the Court considers relevant;
- (d) without limiting the circumstances in which the Court may exercise the discretion, the Court may exercise the discretion under paragraph (b) to dismiss the complaint if satisfied that the complaint is frivolous, vexatious, without substance or has no reasonable prospect of success;
- (e) there is a presumption against exercising the discretion under paragraph (b) to dismiss the complaint if the complaint discloses allegations of—
- (i) an offence involving personal violence; or
  - (ii) an offence of stalking under section 19AA of the *Criminal Law Consolidation Act 1935*;
- (f) if the Court exercises the discretion under paragraph (b) to dismiss the complaint, it must record the reasons for doing so in writing.

## **Part 9—Amendment of *Supreme Court Act 1935***

### **27—Amendment of section 39—Vexatious proceedings**

- (1) Section 39(2)—delete "the Supreme Court or any other court of the State" and substitute:
- a prescribed court
- (2) Section 39(6)—delete subsection (6) and substitute:
- (6) In this section—
- prescribed court* means—
- (a) the Supreme Court; or
  - (b) any other court of the State; or
  - (c) the Workers Compensation Tribunal; or
  - (d) any other tribunal of the State prescribed by the regulations;
- proceedings* means civil or criminal proceedings instituted in a prescribed court.

## **Part 10—Amendment of *Young Offenders Act 1993***

### **28—Repeal of Part 7**

Part 7—delete the Part

## Part 11—Amendment of *Youth Court Act 1993*

### 29—Amendment of section 24—Persons who may be present in Court

Section 24(1)(g)—delete paragraph (g)

## Part 12—Retrospective commencement of certain amendments

### 30—Retrospective commencement of amendments to Criminal Law Consolidation Act 1935

Section 10 of the *Criminal Law Consolidation (Offences of Dishonesty) Amendment Act 2002* will be taken to have come into operation on 29 October 2000 immediately after the *Criminal Law Consolidation (Mental Impairment) Amendment Act 2000* came into operation.

## Schedule 1—Related amendments

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Provision amended	How amended
<i>Environment Protection Act 1993</i>	
Section 110(a)	Delete "Presiding Member" and substitute: Senior Judge
<i>Irrigation Act 1994</i>	
Section 68(a)	Delete "Presiding Member" and substitute: Senior Judge
<i>Native Vegetation Act 1991</i>	
Section 33J(a)	Delete "Presiding Member" and substitute: Senior Judge
<i>Water Resources Act 1997</i>	
Section 144(a)	Delete "Presiding Member" and substitute: Senior Judge

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