

South Australia

Statutes Amendment (Victims of Crime) Act 2009

An Act to amend the *Criminal Law (Sentencing) Act 1988*; the *Criminal Law Consolidation Act 1935*; the *Defamation Act 2005*; the *Freedom of Information Act 1991*; and the *Victims of Crime Act 2001*.

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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 (Victims of Crime) Act 2009*.

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 *Criminal Law (Sentencing) Act 1988*

4—Amendment of section 6—Determination of sentence

Section 6—after paragraph (b) insert:

; and

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

5—Amendment of section 7—Prosecutor to furnish particulars of victim's injury etc

Section 7—after subsection (2) insert:

- (2a) If the offence is not an offence in relation to which a victim impact statement may be furnished in accordance with section 7A, the court must nevertheless allow particulars furnished under this section to include a victim impact statement unless the court determines that it would not be appropriate in the circumstances of the case (and the other provisions of this Division relating to victim impact statements apply to such a statement as if it were furnished under section 7A).

6—Amendment of section 7A—Victim impact statements

- (1) Section 7A(1)—after "indictable offence" insert:

or a prescribed summary offence
- (2) Section 7A(1)—delete "trial" and substitute:

sentencing
- (3) Section 7A(2)—delete subsection (2)
- (4) Section 7A(3)—delete "The court, on convicting the defendant of the offence" and substitute:

Before determining sentence for the offence, the court
- (5) Section 7A(3a)—delete subsection (3a) and substitute:
 - (3a) If the court considers there is good reason to do so, it may, in order to assist a person who wishes to read out a victim impact statement to the court—
 - (a) allow an audio or audio visual record of the person reading the statement to be played to the court; or
 - (b) exercise any other powers that it has with regard to a vulnerable witness.
 - (3b) Subject to subsection (3c) (but despite any other provision of this Act), the court must, if the person so requested when furnishing the statement, ensure that—
 - (a) the defendant; or
 - (b) if the defendant is a body corporate, a director or some other representative of the body corporate satisfactory to the court,is present when the statement is read out to the court.
 - (3c) Subsection (3b) does not apply if the court is satisfied that special reasons exist which make it inappropriate for the defendant or other person to be present, or that the presence of the defendant or other person may cause a disturbance or a threat to public order and safety (however, in such a case, the court must ensure that the defendant or other person is present by means of an audio visual link or audio link, if such facilities are reasonably available to the court, or that arrangements are otherwise made for the statement to be audiovisually recorded and played to the defendant or other person).
- (6) Section 7A—after subsection (4) insert:
 - (5) In this section—

prescribed summary offence means—
 - (a) a summary offence that results in the death of a victim or a victim suffering total incapacity; or
 - (b) a summary offence (other than a summary offence of assault) that results in a victim suffering serious harm;

serious harm means—

- (a) harm that endangers a person's life; or
- (b) harm that consists of loss of, or serious and protracted impairment of, a part of the body or a physical or mental function; or
- (c) harm that consists of serious disfigurement;

total incapacity—a victim suffers total incapacity if the victim is permanently physically or mentally incapable of independent function.

7—Insertion of sections 7B and 7C

After section 7A insert:

7B—Community impact statements

- (1) Any person may make a submission to the Commissioner for Victims' Rights for the purpose of assisting the Commissioner to compile information which may be included in a statement under this section.
- (2) In any proceedings to determine sentence for an offence, the prosecutor or the Commissioner for Victims' Rights may, if he or she thinks fit, furnish the sentencing court with—
 - (a) a written statement about the effect of the offence, or of offences of the same kind, on people living or working in the location in which the offence was committed (a *neighbourhood impact statement*); or
 - (b) a written statement about the effect of the offence, or of offences of the same kind, on the community generally or on any particular sections of the community (a *social impact statement*).
- (3) Before determining sentence for the offence, the court will cause the statement to be read out to the court by the prosecutor, or such other person as the court thinks fit, unless the court determines that it is inappropriate or would be unduly time consuming for the statement to be so read out.
- (4) The validity of a sentence is not affected by non-compliance or insufficient compliance with this section.

7C—Statements to be provided in accordance with rules

- (1) A statement to be furnished to a court under section 7A or 7B must comply with and be furnished in accordance with rules of court.
- (2) Nothing prevents a statement to be furnished to a court under section 7A or 7B from containing recommendations relating to the sentence to be determined by the court.

- (3) A copy of a statement to be furnished to a court under section 7A or 7B must be made available for inspection by the defendant or his or her counsel in accordance with rules of court and the defendant is entitled to make submissions to the court in relation to the statement.

8—Amendment of section 13—Order for payment of pecuniary sum not to be made in certain circumstances

Section 13(1)—after "pecuniary sum" insert:

(other than a VIC levy)

9—Amendment of section 19A—Restraining orders may be issued on finding of guilt or sentence

Section 19A—after subsection (2) insert:

- (3) A court must, on finding a person guilty of a sexual offence or on sentencing a person for a sexual offence—
- (a) consider whether or not an order should be issued under this section; and
 - (b) if the court determines that an order should not be issued under this section—give reasons for that determination (and the determination is subject to appeal as if it were an order of the court made on sentence).
- (4) In this section—
- sexual offence* means—
- (a) rape; or
 - (b) compelled sexual manipulation; or
 - (c) indecent assault; or
 - (d) any offence involving unlawful sexual intercourse or an act of gross indecency; or
 - (e) incest; or
 - (f) any offence involving sexual exploitation or abuse of a child, or exploitation of a child as an object of prurient interest; or
 - (g) any attempt to commit, or assault with intent to commit, any of the foregoing offences.

10—Insertion of Part 9 Division 2A

After section 58 insert:

Division 2A—Enforcement of restitution orders

59—Non-compliance with order for restitution of property

- (1) If—
 - (a) an order is made under section 52 requiring property to be restored to a person; and
 - (b) the order is not complied with,
the person may request an authorised officer to take action under this section for enforcement of the order.
- (2) On receiving a request under this section in relation to an order requiring the restitution of property, an authorised officer may—
 - (a) enter any land (using such force as may be necessary) on which the officer reasonably suspects the property is situated and seize and remove the property; or
 - (b) cause the property to be valued (in such manner as the officer thinks fit) and make an order requiring the defendant to pay to the person an amount equal to the value of the property.
- (3) In exercising powers under subsection (2)(a), an authorised officer may be assisted by such other persons (including a member of the police force) as the officer considers necessary in the circumstances.
- (4) An authorised officer who makes an order under subsection (2)(b) must cause a copy of the order to be served on the defendant personally or by post.
- (5) An order under subsection (2)(b)—
 - (a) may be made in the absence of, and without prior notice to, the defendant; and
 - (b) may be varied or cancelled by an authorised officer in such circumstances as the officer considers just; and
 - (c) is enforceable as a pecuniary sum.
- (6) The prescribed fees for issuing, serving and executing an order under subsection (2)(b) are payable in addition to the amount specified in the order as the value of the relevant property and form part of the amount payable under the order.
- (7) In this section—

defendant, in relation to property, means the defendant in the proceedings in which the order requiring restitution of the property was made.

11—Amendment of section 64—Arrangements may be made as to manner and time of payment

Section 64(1)—after "pecuniary sum" insert:

(other than a VIC levy)

12—Amendment of section 70I—Court may remit or reduce pecuniary sum or make substitute orders

Section 70I(3)—after paragraph (a) insert:

- (ab) defer payment of the pecuniary sum in whole or part until such time as the Court thinks fit, being a period not more than 2 years after the date on which the Court reconsiders the matter under this section; or

13—Repeal of Part 9, Division 3, Subdivision 5

Part 9, Division 3, Subdivision 5—delete Subdivision 5

14—Amendment of section 70L—Community service orders

Section 70L—after "pecuniary sum" insert:

(other than any part of the pecuniary sum that is comprised of a VIC levy)

15—Enquiry in relation to section 7A of *Criminal Law (Sentencing) Act 1988*

- (1) The Minister must, at the end of 2 years from the commencement of section 6, appoint a person to conduct an enquiry into—
- (a) the operation of section 7A of the *Criminal Law (Sentencing) Act 1988* as amended by section 6; and
- (b) the likely impacts (including the costs) of extending the definition of *prescribed summary offence* in that section to include a broader range of summary offences.
- (2) A report on the enquiry must be provided to the Minister and the Minister must cause a copy of the report to be laid before each House of Parliament as soon as practicable after receipt of the report.

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

16—Amendment of section 269R—Reports and statements to be provided to court

- (1) Section 269R(2)—delete "this section" and substitute:
subsection (1)

- (2) Section 269R—after subsection (2) insert:
- (3) If a court is fixing a limiting term in proceedings under this Division relating to an alleged indictable offence or prescribed summary offence, a person who has suffered injury, loss or damage resulting from the defendant's conduct may furnish the court with a statement of a kind referred to in section 7A of the *Criminal Law (Sentencing) Act 1988* (a **victim impact statement**), as if the defendant had been convicted of the offence and the court was determining sentence (and the court must deal with the statement in all respects as if it were a statement furnished under that section).
 - (4) However, the court need not comply with section 7A(3b) and (3c) of the *Criminal Law (Sentencing) Act 1988* if the court is satisfied that—
 - (a) the defendant is incapable of understanding the victim impact statement; or
 - (b) having regard to the nature of the defendant's mental impairment, it would be inappropriate for the defendant to be present.
 - (5) If a court is fixing a limiting term in proceedings under this Division, the Crown or the Commissioner for Victim's Rights may furnish the court with a statement of a kind referred to in section 7B of the *Criminal Law (Sentencing) Act 1988* (a **neighbourhood impact statement** or a **social impact statement**) as if the court were determining sentence for an offence (and the court must deal with the statement in all respects as if it were a statement furnished under that section).
 - (6) In this section—
prescribed summary offence has the same meaning as in section 7A of the *Criminal Law (Sentencing) Act 1988*.

Part 4—Amendment of *Defamation Act 2005*

17—Amendment of section 25—Defence of absolute privilege

Section 25(2)—after paragraph (c) insert:

or

- (d) the matter is published by a person or body in any circumstances specified in Schedule a1.

18—Insertion of Schedule a1

After section 42 insert:

Schedule a1—Additional publications to which absolute privilege applies

1—Matters arising out of proceedings of Parole Board

- (1) Without limiting section 25(2)(a) to (c), matter that is published—
 - (a) by the Parole Board of South Australia in a report or other document under the *Correctional Services Act 1982* or any other Act; or
 - (b) by a registered victim of an offence in the course of, or for the purposes of, any proceedings of the Parole Board of South Australia relating to the offender.
- (2) In this clause—

registered victim has the same meaning as in the *Correctional Services Act 1982*.

Part 5—Amendment of *Freedom of Information Act 1991*

19—Amendment of Schedule 2—Exempt agencies

Schedule 2, (k)—delete "and the Director of Public Prosecutions" and substitute:
, the Director of Public Prosecutions and the Commissioner for Victims' Rights

Part 6—Amendment of *Victims of Crime Act 2001*

20—Amendment of section 4—Interpretation

Section 4, definition of *homicide*—delete "or manslaughter" and substitute:
, manslaughter or an offence against section 14 of the *Criminal Law Consolidation Act 1935* (criminal neglect) where the victim dies

21—Amendment of section 20—Orders for compensation

- (1) Section 20(5)—delete "in favour of a claimant" and substitute:
in respect of injury to a claimant caused by an offence
- (2) Section 20—after subsection (5) insert:
 - (5a) The court must not make an order for compensation for grief or funeral expenses in favour of a claimant if the court—
 - (a) is satisfied beyond reasonable doubt that the victim's death occurred while the claimant was engaged in conduct constituting an indictable offence; and

- (b) is satisfied on the balance of probabilities that the claimant's conduct contributed materially to the death of the victim,

(unless the court is satisfied that, in the circumstances of the particular claim, failure to compensate would be unjust).

- (3) Section 20(6)—delete "subsection (5)(a)" and substitute:

subsections (5)(a) and (5a)(a)

22—Amendment of section 32—Imposition of levy

Section 32(8)—delete subsection (8)

23—Insertion of section 32A

Before section 33 insert:

32A—Victim may exercise rights through an appropriate representative

- (1) Rights granted to a victim under this, or any other, Act may be exercised on behalf of the victim by an appropriate representative chosen by the victim for that purpose.

Note—

Such rights would include (without limitation) the right to request information under this or any other Act, the right to make a claim for compensation under this or any other Act and the right to furnish a victim impact statement under the *Criminal Law (Sentencing) Act 1988*.

- (2) This section does not apply to rights, or rights of a kind, prescribed by the regulations.

- (3) In this section—

appropriate representative, in relation to a victim, means any of the following:

- (a) an officer of the court;
- (b) the Commissioner for Victims' Rights or a person acting on behalf of the Commissioner for Victims' Rights;
- (c) an officer or employee of an organisation whose functions consist of, or include, the provision of support or services to victims of crime;
- (d) a relative of the victim;
- (e) another person who, in the opinion of the Commissioner for Victims' Rights, would be suitable to act as an appropriate representative.