South Australia

Criminal Procedure (Monitoring Orders) Amendment Act 2022

An Act to amend the *Criminal Procedure Act 1921*.

Contents

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Criminal Procedure (Monitoring Orders) Amendment Act 2022*.

2—Commencement

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

Part 2—Amendment of *Criminal Procedure Act 1921*

3—Insertion of Part 4 Division 8

After section 99KA insert:

Division 8—Bushfire offender monitoring orders

99L—Court may make monitoring order

(1) A police officer may apply to the Magistrates Court for an order requiring a person who has been found guilty of a bushfire offence (the *defendant*) to be monitored, during the State's fire danger season in each year, by use of an electronic monitoring device.

(2) On the hearing of an application under this section, the Magistrates Court may make a monitoring order against the defendant if the Court is satisfied that the defendant is at risk of committing a further bushfire offence.

(3) In considering whether or not to make a monitoring order, the Magistrates Court must have regard to the following:

    (a) whether the defendant has engaged in any conduct (whether or not constituting an offence) that indicates that they might commit a further bushfire offence;

    (b) any psychological or psychiatric condition that indicates that the defendant may be at risk of committing a further bushfire offence;

    (c) any other matter that, in the circumstances of the case, the Magistrates Court considers relevant.

(4) A monitoring order—

    (a) may be made in relation to a defendant regardless of whether the defendant was found guilty of the bushfire offence before or after the commencement of this section; and

    (b) remains in force until revoked by the Court in accordance with subsection (6); and

    (c) ceases to apply to the defendant during any period during which—

        (i) the order is suspended by the Court under subsection (8); or

        (ii) the defendant is being monitored by an electronic monitoring device under any other Act or law.

(5) A person subject to a monitoring order must—

    (a) report to the Commissioner of Police in each year in accordance with any directions of the Commissioner of Police; and

    (b) wear or carry the electronic monitoring device supplied by the Commissioner of Police for the purposes of the order at all times during the State's fire danger season in each year; and

    (c) take reasonable care to maintain the electronic monitoring device undamaged (other than by normal wear and tear); and

    (d) comply with any directions of a corrections officer for the purposes of installing or maintaining the electronic monitoring device; and

    (e) comply with all reasonable directions of the Commissioner of Police in relation to the electronic monitoring device during the period for which the requirement applies.

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

(6) The Magistrates Court may, on application made by a police officer or by the defendant, revoke a monitoring order if the Court is satisfied that—

    (a) the defendant is no longer at risk of committing a further bushfire offence; or

    (b) the defendant is, or will be, residing in a place outside the State and the defendant undertakes to not be present in the State during the State's fire danger season in any year.

(7) If the defendant contravenes an undertaking given in accordance with subsection (6)(b), the defendant is guilty of an offence.

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

(8) The Magistrates Court may, on application made by a police officer or by the defendant, suspend a monitoring order for a specified period if the court is satisfied that the defendant is not at risk of committing a further bushfire offence during that period or that it is otherwise appropriate to do so.

(9) An application for revocation or suspension of a monitoring order may only be made by the defendant with the permission of the Magistrates Court and permission is only to be granted if the Magistrates Court is satisfied there has been a substantial change in the relevant circumstances since the order was made or last suspended.

(10) The Magistrates Court must, before revoking or suspending a monitoring order—

    (a) allow all parties a reasonable opportunity to be heard on the matter; and

(b) have regard to the same factors that the Magistrates Court is required to have regard to in considering whether or not to make a monitoring order.

(11) In proceedings under this section other than for an offence, the Magistrates Court is to decide questions of fact on the balance of probabilities.

(12) The Magistrates Court may, for the purpose of proceedings for the making, revocation or suspension of a monitoring order, require a party to the proceedings or any other body or person to furnish the Court with a report on any matter.

(13) A copy of any report furnished to the Magistrates Court under subsection (12) must be given to each party to the proceedings.

(14) For the purposes of this section (and any monitoring order under this section), the *State's fire danger season* will be taken to continue while any part of the State is subject to a fire danger season fixed under section 78 of the *Fire and Emergency Services Act 2005*.

(15) In this section—

bushfire offence means an offence against section 85B of the *Criminal Law Consolidation Act 1935*;

corrections officer means an officer or employee of the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of the *Correctional Services Act 1982*;

electronic monitoring device means a device approved under section 4 of the *Correctional Services Act 1982*;

monitoring order means an order referred to in subsection (1).