

South Australia

# Magistrates Court (Nunga Court) Amendment Act 2022

An Act to amend the *Magistrates Court Act 1991*.

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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 (Nunga Court) Amendment Act 2022*.

### 2—Commencement

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

## Part 2—Amendment of *Magistrates Court Act 1991*

### 3—Amendment of section 3—Interpretation

- (1) Section 3(1), definition of *criminal action*—delete "the criminal division" and substitute:
  - a criminal division

- (2) Section 3(1)—after the definition of *criminal action* insert:

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

- (3) Section 3(1)—after the definition of *neighbourhood dispute* insert:

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

- (4) Section 3—after subsection (1) insert:

- (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.

- (5) Section 3(5)—delete "the criminal division" and substitute:

a criminal division

#### **4—Amendment of section 7—Divisions of Court**

Section 7(1)—after paragraph (d) insert:

- (da) the Nunga Court Division;

#### **5—Amendment of heading to Part 2 Division 2 Subdivision 3**

Heading to Part 2 Division 2 Subdivision 3—after "Assessors" insert:

and Aboriginal and Torres Strait Islander Elders and Respected Persons etc

## 6—Insertion of section 7C

After section 7B insert:

### **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.

## 7—Insertion of section 9AA

After section 9 insert:

### **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.