



**STATUTES AMENDMENT (ATTORNEY-GENERAL'S PORTFOLIO)
ACT 1997**

No. 59 of 1997

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ANNO QUADRAGESIMO SEXTO

ELIZABETHAE II REGINAE

A.D. 1997

No. 59 of 1997

An Act to amend the Criminal Law (Sentencing) Act 1988, the Enforcement of Judgments Act 1991, the Evidence Act 1929, the Fences Act 1975, the Law of Property Act 1936, the Magistrates Act 1983, the Statutes Amendment and Repeal (Common Expiation Scheme) Act 1996 and the Summary Offences Act 1953.

[Assented to 31 July 1997]

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Statutes Amendment (Attorney-General's Portfolio) Act 1997*.

Commencement

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

Interpretation

3. A reference in this Act to the principal Act is a reference to the Act referred to in the heading to the Part in which the reference occurs.

**PART 2
AMENDMENT OF CRIMINAL LAW (SENTENCING) ACT 1988**

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

4. Section 13 of the principal Act is amended by inserting after paragraph (b) of subsection (1) the following:

(and in such a case the court may, if it thinks fit, order the payment of a lesser amount).

PART 3
AMENDMENT OF ENFORCEMENT OF JUDGMENTS ACT 1991

Amendment of s. 12—Enforcement of judgments by proceedings in contempt

5. Section 12 of the principal Act is amended by inserting after subsection (1) the following subsection:

(1a) For the purpose of executing a warrant issued under this section, the sheriff may enter or, where necessary, break into land where the sheriff reasonably suspects the person may be present, using such force as is reasonably necessary for the purpose.

PART 4
AMENDMENT OF EVIDENCE ACT 1929

Amendment of s. 71a—Restriction on reporting proceedings relating to sexual offences

6. Section 71a of the principal Act is amended—

(a) by striking out paragraphs (a), (b) and (c) of subsection (1) and substituting the following paragraphs:

- (a) any evidence given before a Magistrate or Justice in proceedings against a person charged with a sexual offence (whether the evidence is given in the course of proceedings for a summary or minor indictable offence or in a preliminary examination of an indictable offence); or
- (b) any report on such proceedings; or
- (c) any evidence given in, or report of, related proceedings in which the accused person is involved after the accused person is charged but before the relevant date,;

(b) by striking out the definition of "the relevant date" in subsection (5) and substituting the following definition:

"relevant date" means—

- (a) in relation to a charge of a major indictable offence or a charge of a minor indictable offence for which the accused person has elected to be tried by a superior court—the date on which the accused person is committed for trial or sentence; or
- (b) in relation to a charge of any other minor indictable offence or a charge of a summary offence—the date on which a plea of guilty is entered by the accused person or the date on which the accused person is found guilty following a trial; or
- (c) in any case—the date on which the charge is dismissed or the proceedings lapse by reason of the death of the accused person, for want of prosecution, or for any other reason.

PART 5
AMENDMENT OF FENCES ACT 1975

Amendment of s. 12—Powers of court

7. Section 12 of the principal Act is amended—

(a) by inserting before paragraph (a) of subsection (8) the following paragraph:

(aa) in the case of a fence dividing land, of not less than 0.8 hectare in area, used for primary production purposes from land used for residential or other purposes—an adequate fence is a fence that is adequate for the primary production purposes or a fence that is adequate for the residential or other purposes, whichever would cost less;;

(b) by inserting in paragraph (a) of subsection (8) "in any other case—" before "an adequate";

(c) by inserting after subsection (9) the following subsection:

(10) In this section—

"primary production purposes" means agriculture, pasturage, horticulture, viticulture, apiculture, poultry farming, dairy farming, forestry or any other activity consisting of the cultivation of soils, the gathering in of crops, the rearing of livestock or the propagation and harvesting of fish or other aquatic organisms.

Amendment of s. 16—Damage to or destruction of dividing fence

8. Section 16 of the principal Act is amended by striking out subsection (1) and substituting the following subsection:

(1) Subject to this section, where a dividing fence is damaged or destroyed, and there is an urgent need to repair or restore the fence, either of the adjoining owners may, without notice to the adjoining owner, carry out the requisite fencing work and recover from the other adjoining owner—

(a) one-half of the cost of the fencing work; or

(b) the amount that the other adjoining owner would be liable to contribute if the dividing fence were to be replaced,

whichever is the lesser.

PART 6
AMENDMENT OF LAW OF PROPERTY ACT 1936

Amendment of s. 7—Interpretation

9. Section 7 of the principal Act is amended by striking out the definition of "court" and substituting the following definition:

"court" means—

(a) the Supreme Court; or

- (b) the District Court; or
- (c) if the proceedings involve property with a value not exceeding the amount by reference to which the jurisdictional limit of the Magistrates Court is fixed for actions to obtain or recover title to, or possession of, real or personal property—the Magistrates Court;.

Amendment of s. 55a—Enforcement of rights against mortgagor

10. Section 55a of the principal Act is amended—

- (a) by striking out from subsection (2a) "by which the jurisdiction conferred by this section is exercisable";
- (b) by striking out subsection (4).

Insertion of s. 58a

11. The following section is inserted in Division 1 of Part 6 of the principal Act, before section 59:

Interpretation and jurisdiction

58a. (1) In this Part—

"court" means the Supreme Court.

(2) The District Court does not have jurisdiction in respect of a matter in respect of which the Supreme Court has jurisdiction under this Part.

Repeal of s. 85

12. Section 85 of the principal Act is repealed.

Amendment of s. 105—Questions between husband and wife as to property

13. Section 105 of the principal Act is amended—

- (a) by striking out from subsection (1) "by originating summons to the court or where the value of the property in dispute does not exceed eight thousand dollars at the option of the applicant by summons to the local court of full jurisdiction nearest to which either party resides" and substituting "to the court";
- (b) by striking out from subsection (2) "or the said local court";
- (c) by striking out from subsection (3) "or the said local court".

Further amendments of principal Act

14. The principal Act is further amended as set out in the schedule.

**PART 7
AMENDMENT OF MAGISTRATES ACT 1983****Amendment of s. 13—Remuneration of magistrates**

15. Section 13 of the principal Act is amended by striking out from subsection (1a) "Chief Justice" and substituting "Chief Magistrate".

PART 8
**AMENDMENT OF STATUTES AMENDMENT AND REPEAL (COMMON EXPIATION
 SCHEME) ACT 1996**

Amendment of Schedule

16. The Schedule of the principal Act is amended—

(a) by inserting in clause 16 before the entry relating to section 40(1) of the *Fisheries Act 1982* the following entries:

Section 5(1) Strike out the definition of "expiable offence".

Section 28(9)(ca) Strike out "pursuant to this Act".;

(b) by inserting in clause 16 after the entry relating to section 40(2) of the *Fisheries Act 1982* the following entries:

Section 41 After the penalty provision insert:
 Expiation fee: A fee determined in accordance with the
 regulations.

Section 42 After the penalty provision insert:
 Expiation fee: Division 7 fee.;

(c) by inserting in clause 16 after "against" in the entry relating to section 72(2)(ab) of the *Fisheries Act 1982* "section 41 or";

(d) by striking out clause 40 and substituting the following clause:

40. Travel Agents Act 1986

Section 46(2) After paragraph (h) insert:

(i) fix expiation fees, not exceeding \$210, for alleged offences against the regulations.

PART 9
AMENDMENT OF SUMMARY OFFENCES ACT 1953

Amendment of s. 15A—Possession of body armour

17. Section 15A of the principal Act is amended by inserting after subsection (1) the following subsections:

(1a) The Commissioner may, subject to such conditions and limitations as the Commissioner thinks fit, give an approval to a person or a class of persons for the purposes of subsection (1) and may revoke an approval or revoke or vary the conditions or limitations under which an approval operates.

(1b) The giving or a variation or revocation of an approval that applies to a class of persons must be notified in the *Gazette*.

SCHEDULE

Further Amendments of Law of Property Act 1936

Provision Amended	How Amended
Section 7	Strike out the definitions of "mental defective", "mentally defective person" and "committee" and substitute the following definition: "mentally incapacitated person" has the same meaning as in the <i>Guardianship and Administration Act 1993</i> ;
Section 42(1)(f)	Strike out "committee of a mentally defective person" and substitute "administrator, committee or other person empowered to act on behalf of a mentally incapacitated person".
Section 42(4)	Strike out "committee of a mentally defective person" and substitute "administrator, committee or other person empowered to act on behalf of a mentally incapacitated person".
Heading to Part 10	Strike out "INFANTS, MARRIED WOMEN, AND MENTAL DEFECTIVES" and substitute "MISCELLANEOUS".
Section 89	Strike out "defective" (twice occurring) and substitute, in each case, "incapacitated".
Section 90	Strike out "defective" (twice occurring) and substitute, in each case, "incapacitated".
Section 91	Strike out "defective" and substitute "incapacitated".
Heading above section 92	Strike out this heading.
Heading to Part 11	Strike out this heading.
Schedule 2	Strike out from Part 6 " <i>Committee of the Estate of a Mentally Defective Person</i> " and substitute " <i>Administrator, Committee or Other Person Empowered to Act on Behalf of a Mentally Incapacitated Person</i> ".

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

E. J. NEAL Governor