

South Australia



**CRIMINAL LAW (SENTENCING) (MISCELLANEOUS) AMENDMENT
ACT 1995**

No. 69 of 1995

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Further Amendments of Principal Act



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ELIZABETHAE II REGINAE

A.D. 1995

No. 69 of 1995

An Act to amend the Criminal Law (Sentencing) Act 1988.

[Assented to 2 November 1995]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Criminal Law (Sentencing) (Miscellaneous) Amendment Act 1995*.

(2) The *Criminal Law (Sentencing) Act 1988* is referred to in this Act as "the principal Act".

Commencement

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

Amendment of s. 18A—Sentencing for multiple offences

3. Section 18A of the principal Act is amended—

(a) by inserting "or some" after "all";

(b) by inserting "to which the sentence relates" after "each of the offences".

Substitution of s. 19

4. Section 19 of the principal Act is repealed and the following section is substituted:

Limitations on sentencing powers of Magistrates Court

19. (1) The Magistrates Court does not, unless it is constituted of a Magistrate, have the power to impose a sentence of imprisonment.

(2) If the Court, constituted otherwise than by a Magistrate, is of the opinion that a sentence of imprisonment should be imposed in any particular case, it may remand the defendant to appear for sentence before the Court constituted of a Magistrate.

(3) The Magistrates Court does not have the power to impose—

(a) a sentence of imprisonment that exceeds Division 5; or

(b) a fine that exceeds twice the amount of a Division 1 fine.

(4) Subsection (3) applies whether the offence to which the sentence relates is a summary offence or a minor indictable offence.

(5) If the Court is of the opinion in any particular case that a sentence should be imposed that exceeds the limits prescribed by subsection (3), the Court may remand the defendant to appear for sentence before the District Court.

Amendment of s. 39—Discharge without sentence upon defendant entering into a bond

5. Section 39 of the principal Act is amended—

(a) by inserting in subsection (1)(b) "if the terms of the bond so require," before "to appear";

(b) by inserting in subsection (2)(b) " and the terms of the bond require the defendant to appear before the court for sentencing in that event" after "bond".

Amendment of s. 42—Conditions of bond

6. Section 42 of the principal Act is amended—

(a) by inserting after subsection (1) the following subsection:

(1a) This section applies only to a bond that requires the defendant to appear before the court for sentencing in the event of failure to comply with a condition of the bond.;

(b) by striking out subsection (3).

Substitution of s. 45

7. Section 45 of the principal Act is repealed and the following section is substituted:

Notification of court if suitable community service placement is not available

45. (1) If the CEO, on being notified that a court has sentenced a defendant to community service or has included in a bond a condition requiring the performance of community service, is of the opinion that suitable community service work cannot be found for the defendant because of his or her physical or mental infirmity, the CEO must notify the court in writing of that fact.

(2) On receiving a notification under subsection (1), the court may discharge the community service order or revoke the condition, as the case may be, and require the defendant to appear before the court for further sentencing.

Amendment of s. 57—Non-compliance with bond

8. Section 57 of the principal Act is amended—

(a) by inserting after subsection (4) the following subsection:

(4a) If a probationer is found guilty of an offence by a court of an inferior jurisdiction to that of the probative court, being an offence committed during the term of the bond, the court of an inferior jurisdiction must—

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- (a) sentence the probationer for the offence and remand him or her to the probative court to be dealt with for breach of the conditions of the bond; or
 - (b) remand the probationer to the probative court to be sentenced for the offence and dealt with for breach of the conditions of the bond.;
- (b) by inserting before the definition of "court of a superior jurisdiction" in subsection (6) the following definition:

"court of an inferior jurisdiction" means—

- (a) if the probative court is the Supreme Court—the District Court, the ERD Court or the Magistrates Court;
 - (b) if the probative court is the District Court or the ERD Court—the Magistrates Court;;
- (c) by striking out paragraphs (a) and (b) of the definition of "court of a superior jurisdiction" in subsection (6) and substituting the following paragraphs:
- (a) if the probative court is the Magistrates Court—the Supreme Court, the District Court or the ERD Court;
 - (b) if the probative court is the District Court or the ERD Court—the Supreme Court.

Amendment of s. 58—Orders that court may make on breach of bond

9. Section 58 of the principal Act is amended by inserting in subsection (1)(c) "and the terms of the bond require the defendant to appear before the court for sentencing in the event of failure to comply with a condition of the bond" after "the original offence".

Amendment of s. 61—Imprisonment or detention in default of payment

10. Section 61 of the principal Act is amended by inserting after subsection (5) the following subsection:

(5a) However, where the warrant relates to a levy payable under the *Criminal Injuries Compensation Act 1978*, the imprisonment to be served in respect of the levy is to be served after all other terms of imprisonment to which the person is liable (whether under this section or not) have been served.

Amendment of s. 67—Application to work off pecuniary sums by community service

11. Section 67 of the principal Act is amended by inserting in subsection (1) "(not being a levy payable under the *Criminal Injuries Compensation Act 1978*)" after "If the payment of a pecuniary sum".

Statute law revision amendments

12. The principal Act is further amended as indicated in the schedule.

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SCHEDULE
Further Amendments of Principal Act

Provision Amended	How Amended
Section 2	Strike out this section.
Section 3(1)	
definition of "the CEO"	After the definition of "bond" insert the following definition: "the CEO" means the Chief Executive Officer of the Department for Correctional Services;
definition of "community service officer"	Strike out "Department of Correctional Services" and substitute "Department for Correctional Services".
definition of "the Director"	Strike out this definition and substitute the following definition: "ERD Court" means the Environment, Resources and Development Court;
definition of "probation officer"	Strike out "Department of Correctional Services" and substitute "Department for Correctional Services".
definition of "probative court"	Strike out this definition and substitute the following definition: "probative court" means the court (or a court of co-ordinate jurisdiction) that made the order pursuant to which a defendant entered into a bond;.
Section 15(2)	Strike out "notwithstanding" and substitute "despite".
Section 22(1)	
Item Class 2	Strike out "Sections 26 and 27" and substitute "Section 27".
Item Class 5	Strike out "Sections 167 to 172" and substitute "Sections 167 to 171".
Section 22(5)	Strike out "Minister of Correctional Services" and substitute "Minister for Correctional Services".
Section 23(1)	
definition of "offence to which this section applies" paragraph (a)	Strike out ", 72 or 255" and substitute "or 72".
Section 23(2)	Strike out "a District Criminal Court or a court of summary jurisdiction" and substitute "the District Court or the Magistrates Court".

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Section 23(8)(a)	Strike out "Minister of Community Welfare" and substitute "Minister for Family and Community Services".
Section 23(8)(b)	Strike out "Minister of Correctional Services" and substitute "Minister for Correctional Services".
Section 23(10)(a)	Strike out "Minister of Community Welfare" and substitute "Minister for Family and Community Services".
Section 23(10)(b)	Strike out "Minister of Correctional Services" and substitute "Minister for Correctional Services".
Section 32(3)	Strike out "Chairman" and substitute "presiding member".
Section 32(5)(b)	Strike out "a court of summary jurisdiction" and substitute "the Magistrates Court".
Section 32(6)	Strike out "Chairman" and substitute "presiding member".
Section 32(6a)	Strike out "Crown" and substitute "Director of Public Prosecutions". Strike out "Chairman" and substitute "presiding member".
Section 32(7)(b)	Strike out "Chairman" and substitute "presiding member".
Section 32(10)(b)	Strike out "Crown" (twice occurring) and substitute, in each case, "Director of Public Prosecutions". Strike out "Chairman" and substitute "presiding member".
Section 34(b)(ii)	Strike out "a District Criminal Court" and substitute "the District Court or the ERD Court".
Section 34(b)(iii)	Strike out "a court of summary jurisdiction" and substitute "the Magistrates Court".
Section 36	Strike out "Notwithstanding" and substitute "Despite".
Section 37(a)	Strike out "notwithstanding" and substitute "despite the fact".
Section 43	Strike out "Director" and substitute "CEO".
Section 44(1)	Strike out "Minister of Correctional Services" and substitute "Minister for Correctional Services".
Section 44(1a)	Strike out "notwithstanding" and substitute "despite the fact".

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Section 44(2)	Strike out "Minister of Correctional Services" and substitute "Minister for Correctional Services".
Section 44A(c)	Strike out "Director" and substitute "CEO".
	Strike out "Department of Family and Community Services" and substitute "Department for Family and Community Services".
Section 47(h)	Strike out "such" and substitute "remunerated".
Section 47(j)	Strike out "Minister of Correctional Services" and substitute "Minister for Correctional Services".
Section 48(b)	Strike out "Director" and substitute "CEO".
Section 49(1) and (2)	Strike out "Director" (twice occurring) and substitute, in each case, "CEO".
Section 50(1)(b)	Strike out "Minister of Correctional Services" and substitute "Minister for Correctional Services".
Section 50(2)(b)	Strike out "Minister of Correctional Services" and substitute "Minister for Correctional Services".
Section 50A(1)	Strike out "Minister of Correctional Services" and substitute "Minister for Correctional Services".
Section 50B(1)	Strike out "Minister" (first occurring) and substitute "Minister for Correctional Services".
Section 51(1)	Strike out "Minister of Correctional Services" and substitute "Minister for Correctional Services".
Section 51(3)	Strike out "notwithstanding" and substitute "despite the fact".
Section 51(4)	Strike out "Minister of Correctional Services" and substitute "Minister for Correctional Services".
Section 53(5)(c)	Strike out "a court of summary jurisdiction" and substitute "the Magistrates Court".
Section 53(7)	Strike out "notwithstanding" and substitute "despite the fact".
Part 8 heading	Strike out "SUMMARY JURISDICTION" and substitute "MAGISTRATES COURT"
Section 55(2)	Insert "by the Magistrates Court" after "ordered".
Section 57(3)	Strike out "a court of summary jurisdiction" and substitute "the Magistrates Court".
Section 58(5)	Strike out "may not" and substitute "cannot".
Section 59A	Strike out "notwithstanding" and substitute "despite the fact".

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Section 66(1)	Strike out "or" (first occurring). Insert "or to suspend the registration of a motor vehicle" after "licence".
Section 67	Strike out "Director" (wherever occurring) and substitute, in each case, "CEO".
Section 67(18)(a)	Strike out "Department of Family and Community Services" and substitute "Department for Family and Community Services".
Section 67(18)(c)	Strike out "Department of Family and Community Services" and substitute "Department for Family and Community Services".
Section 70	Strike out "Notwithstanding" and substitute "Despite".
Section 71(7)	Strike out "Notwithstanding" and substitute "Despite".
Section 72(2)	Strike out "a court of summary jurisdiction" and substitute "the Magistrates Court". Strike out "the clerk of the relevant court" and substitute "a Registrar of that Court".
Section 72(3)	Strike out "the clerk of a court of summary jurisdiction" and substitute "a Registrar of the Magistrates Court". Strike out "or a District Court" and substitute ", the District Court or the ERD Court". Strike out "clerk" (second occurring) and substitute "Registrar".
Section 72(4)	Strike out "The clerk of a court of summary jurisdiction" and substitute "A Registrar of the Magistrates Court".
Section 72(4)(a)	Strike out "clerks of courts of summary jurisdiction" and substitute "Registrars of that Court". Strike out "or District Courts" and substitute ", the District Court or the ERD Court".

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

B. S. HETZEL, Governor's Deputy