



ANNO VICESIMO NONO

# ELIZABETHAE II REGINAE

A.D. 1980

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## No. 67 of 1980

An Act to amend the Criminal Law Consolidation Act, 1935-1978

[Assented to 13 November 1980]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. (1) This Act may be cited as the "Criminal Law Consolidation Act Amendment Act, 1980". Short titles.

(2) The Criminal Law Consolidation Act, 1935-1978, is in this Act referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "Criminal Law Consolidation Act, 1935-1980".

2. (1) This Act shall come into operation on a day to be fixed by proclamation. Commence-  
ment.

(2) The Governor may, in a proclamation made for the purposes of subsection (1), suspend the operation of any specified provisions of this Act until a day fixed by the proclamation, or a day to be fixed by subsequent proclamation.

3. Section 310 of the principal Act is repealed and the following section is substituted: Repeal of  
s. 310  
and  
substitution  
of new  
section.

310. (1) The Court by which a sentence of imprisonment is imposed may direct that the sentence be cumulative upon any other sentence, or sentences, of imprisonment then being served, or to be served, by the convicted person. Sentences of  
imprisonment  
may be  
made  
cumulative.

(2) A direction may be given under subsection (1)—

(a) irrespective of the number of cumulative sentences that the convicted person is already serving or liable to serve, or will in consequence of the direction be liable to serve;  
and

(b) irrespective of whether the offence for which the convicted person has been sentenced is, or is not, a felony.

Repeal of  
s. 347.

4. Section 347 of the principal Act is repealed.

Insertion of  
new section  
348a.

5. The following section is inserted after section 348 of the principal Act:

Delegation of  
certain  
powers by  
the Attorney-  
General.

348a. (1) The Attorney-General may, by instrument in writing, delegate any of his powers under this Part—

(a) to apply for the reservation of a question of law;  
or

(b) to appeal against sentence,

to any legal practitioner in the service of the Crown.

(2) A delegation under this section is revocable at will.

(3) An apparently genuine document purporting to be an instrument of delegation under subsection (1) shall, in the absence of proof to the contrary, be accepted in any legal proceedings as proof that the powers referred to in the instrument have been delegated to the legal practitioner referred to in the instrument.

(4) Any document for the institution of proceedings that the Attorney-General is empowered to take under this Part—

(a) purporting to be signed by the Solicitor-General, the Crown Solicitor or the Crown Prosecutor;

and

(b) alleging a delegation by the Attorney-General under this section,

shall, in the absence of proof to the contrary, be deemed to be proof of that delegation.

Amendment of  
s. 350—  
Questions of  
law may be  
reserved.

6. Section 350 of the principal Act is amended—

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

(1a) Where a person is tried upon information and acquitted, the Court shall upon the application of the Attorney-General reserve any question of law arising upon the trial for the consideration and determination of the Full Court.;

and

(b) by striking out from subsection (3) the passage “When a question of law has been reserved, or the Full Court on motion orders a case to be stated,” and substituting the passage “Where a person has been convicted on information, and a question of law has been reserved, or the Full Court has ordered a case to be stated, in relation to his trial or sentencing.”.

Amendment of  
s. 351—  
Case to be  
stated by  
trial judge.

7. Section 351 of the principal Act is amended—

(a) by striking out from subsection (2) the passage “The Full Court shall have authority to hear and finally determine the said question” and substituting the passage “Where a person has been convicted on information, and a case has been stated in pursuance of subsection (1) in relation to his trial or sentencing, the Full Court shall have authority to hear and finally determine the question reserved”;

and

(b) by inserting after subsection (2) the following subsections:—

(2a) Where a person is tried upon information and acquitted, but a question of law arising upon the trial is reserved for the consideration and determination of the Full Court, the Full Court shall have authority to hear and finally determine the question reserved, but the determination of the Full Court shall not invalidate or otherwise affect the acquittal.

(2b) Where a person is tried upon information and acquitted, but a question of law arising upon the trial is reserved for consideration and determination by the Full Court, the Attorney-General is liable to pay the taxed costs of the defendant in proceedings relating to the reservation and determination of the question of law, and if the defendant does not appear in those proceedings the Attorney-General shall instruct counsel to present such argument to the Court as might have been presented by counsel for the defendant.

8. The following section is inserted after section 351 of the principal Act:

Insertion of new section 351a.

351a. (1) Where an application has been made for the reservation of a question of law arising upon the trial of a person who was tried upon information and acquitted, no person shall publish by newspaper, radio or television any report, statement or representation in relation to the application or any consequent proceedings—

Restriction upon reporting proceedings relating to reservation of question of law upon trial of acquitted person.

(a) by which the identity of the person acquitted is revealed;

or

(b) from which the identity of the person acquitted might reasonably be inferred,

unless the person acquitted consents to the publication.

Penalty: One thousand dollars.

(2) In this section, “newspaper” means any newspaper, journal, magazine or other publication that is published daily or at periodic intervals, but does not include—

(a) a publication consisting solely or primarily of the reported decisions or judgments of the Court;

or

(b) a publication of a technical nature designed primarily for use by legal practitioners.

9. Section 352 of the principal Act is amended by inserting after its present contents (now to be designated subsection (1)) the following subsection:

Amendment of s. 352—  
Right of appeal in criminal cases.

(2) Where a person is convicted on information and sentenced, the Attorney-General may, with the leave of the Full Court, appeal to that Court against the sentence passed on that person, unless the sentence is one fixed by law.

Amendment of  
s. 353—  
Determination  
of appeals in  
ordinary cases.

**10. Section 353 of the principal Act is amended—**

(a) by striking out from subsection (4) the passage “On an appeal” and substituting the passage “Subject to subsection (5), on an appeal”;

and

(b) by inserting after subsection (4) the following subsection:—

(5) The Full Court shall not exercise its powers under subsection (4) of this section to increase the severity of a sentence except upon an appeal by the Attorney-General against the sentence.

Amendment of  
s. 367—  
Powers which  
may be  
exercised  
by a judge  
of the  
Court.

**11. Section 367 of the principal Act is amended by striking out the passage “and to admit an appellant to bail,” and substituting the passage “to admit an appellant to bail, and to direct that time spent in custody by an appellant pending determination of an appeal be counted as part of a term of imprisonment,”.**

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

K. D. SEAMAN, Governor