

South Australia



**STATUTES AMENDMENT (COURTS) ACT 1995**

**No. 84 of 1995**

**SUMMARY OF PROVISIONS**

**PART 1  
PRELIMINARY**

1. Short title
2. Commencement
3. Interpretation

**PART 2  
AMENDMENT OF DISTRICT COURT ACT 1991**

4. Amendment of s. 18—The Registrar
5. Amendment of s. 50—Miscellaneous provisions relating to legal process
6. Amendment of s. 50A—Service
7. Amendment of s. 54—Accessibility of evidence, etc.

**PART 3  
AMENDMENT OF ENVIRONMENT, RESOURCES AND DEVELOPMENT  
COURT ACT 1993**

8. Amendment of s. 41—Miscellaneous provisions relating to legal process
9. Amendment of s. 47—Accessibility of evidence

**PART 4  
AMENDMENT OF INDUSTRIAL AND EMPLOYEE RELATIONS ACT 1994**

10. Insertion of s. 19A  
19A. Industrial magistrates
11. Amendment of s. 20—General provisions about assignment to the Court's judiciary

**PART 5  
AMENDMENT OF MAGISTRATES ACT 1983**

12. Insertion of s. 18A  
18A. Concurrent appointments

**PART 6**  
**AMENDMENT OF MAGISTRATES COURT ACT 1991**

13. Amendment of s. 3—Interpretation
14. Amendment of s. 15—Exercise of procedural and administrative powers of Court
15. Amendment of s. 19—Transfer of proceedings between courts
16. Amendment of s. 38—Minor civil actions
17. Amendment of s. 48A—Service
18. Amendment of s. 51—Accessibility of evidence, etc.

**PART 7**  
**AMENDMENT OF SUPREME COURT ACT 1935**

19. Amendment of s. 5—Interpretation
20. Amendment of s. 39—Vexatious proceedings
21. Amendment of s. 82—The registrar
22. Insertion of ss. 118 and 118A
  118. Legal process
  - 118A. Service
23. Amendment of s. 131—Accessibility of evidence, etc.



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**ELIZABETHAE II REGINAE**

A.D. 1995

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No. 84 of 1995

**An Act to amend the District Court Act 1991, the Environment, Resources and Development Court Act 1993, the Industrial and Employee Relations Act 1994, the Magistrates Act 1983, the Magistrates Court Act 1991 and the Supreme Court Act 1935.**

[Assented to 30 November 1995]

The Parliament of South Australia enacts as follows:

**PART 1  
PRELIMINARY**

**Short title**

1. This Act may be cited as the *Statutes Amendment (Courts) Act 1995*.

**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 DISTRICT COURT ACT 1991**

**Amendment of s. 18—The Registrar**

4. Section 18 of the principal Act is amended by inserting after subsection (2) the following subsection:

(3) The Registrar may, in addition to exercising the functions and duties assigned to him or her by this Act or any other Act, exercise any procedural or non-judicial powers of the Court assigned by the Chief Judge or by the rules.

**Amendment of s. 50—Miscellaneous provisions relating to legal process**

5. Section 50 of the principal Act is amended by inserting in subsection (1) ", served" after "issued".

**Amendment of s. 50A—Service**

6. Section 50A of the principal Act is amended by inserting in subsection (1) "relating to civil or criminal proceedings" after "document".

**Amendment of s. 54—Accessibility of evidence, etc.**

7. Section 54 of the principal Act is amended—

(a) by striking out from subsection (1) all the words appearing before paragraph (a) and substituting the following:

Subject to this section, the Court must, on application by any member of the public, allow the applicant to inspect or obtain a copy of—

(aa) any process relating to proceedings and forming part of the Court's records;;

(b) by striking out subsections (2), (3), (4) and (5)<sup>1</sup> and substituting the following subsections:

(2) A member of the public may inspect or obtain a copy of the following material only with the permission of the Court:

(a) material that was not taken or received in open court;

(b) material that the Court has suppressed from publication;

(c) material placed before the Court during sentencing proceedings (including material furnished under section 7 of the *Criminal Law (Sentencing) Act 1988*);

(d) documentary material filed in connection with a preliminary examination;

(e) a transcript of any oral evidence taken at a preliminary examination;

(f) a photograph, slide, film, video tape, audio tape or other form of recording from which a visual image or sound can be produced;

(g) material of a class prescribed by the regulations.

(3) The Court may permit inspection or copying of material referred to in subsection (2) subject to any condition it considers appropriate, including a condition limiting the publication or use of the material.

(4) A decision by the Court on an application under this section is administrative and is final and not subject to any form of review.

(5) The Court may charge a fee, fixed by regulation, for inspection or copying of material under this section.

<sup>1</sup> Subsections (4) and (5) are to be inserted by the *Statutes Amendment (Recording of Interviews) Act 1995* when that Act commences.

**PART 3**  
**AMENDMENT OF ENVIRONMENT, RESOURCES AND DEVELOPMENT**  
**COURT ACT 1993**

**Amendment of s. 41—Miscellaneous provisions relating to legal process**

8. Section 41 of the principal Act is amended by inserting in subsection (1) ", served" after "issued".

**Amendment of s. 47—Accessibility of evidence**

9. Section 47 of the principal Act is amended—

(a) by striking out from subsection (1) all the words appearing before paragraph (a) and substituting the following:

Subject to this section, the Court must, on application by any member of the public, allow the applicant to inspect or obtain a copy of—

(aa) any process relating to proceedings and forming part of the Court's records;;

(b) by striking out subsections (2) and (3) and substituting the following subsections:

(2) A member of the public may inspect or obtain a copy of the following material only with the permission of the Court:

(a) material that was not taken or received in open court;

(b) material that the Court has suppressed from publication;

(c) material placed before the Court during sentencing proceedings (including material furnished under section 7 of the *Criminal Law (Sentencing) Act 1988*);

(d) a photograph, slide, film, video tape, audio tape or other form of recording from which a visual image or sound can be produced;

(e) material of a class prescribed by the regulations.

(3) The Court may permit inspection or copying of material referred to in subsection (2) subject to any condition it considers appropriate, including a condition limiting the publication or use of the material.

(4) A decision by the Court on an application under this section is administrative and is final and not subject to any form of review.

(5) The Court may charge a fee, fixed by regulation, for inspection or copying of material under this section.

**PART 4**  
**AMENDMENT OF INDUSTRIAL AND EMPLOYEE RELATIONS ACT 1994**

**Insertion of s. 19A**

10. The following section is inserted after section 19 of the principal Act:

**Industrial magistrates**

19A. (1) An industrial magistrate is a magistrate under the *Magistrates Act 1983* assigned by the Governor, by proclamation, to be an industrial magistrate.

(2) There will be as many industrial magistrates as the Governor considers necessary.

(3) Before the Governor makes an assignment under this section, the Attorney-General must consult with the Chief Magistrate of the Magistrates Court on the proposed action.

(4) A person ceases to hold office as an industrial magistrate if the person ceases to hold office as a magistrate under the *Magistrates Act 1983*.

**Amendment of s. 20—General provisions about assignment to the Court's judiciary**

11. Section 20 of the principal Act is amended—

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

(1a) A proclamation assigning a person as a member of the Court's judiciary must classify the person either as a member of the Court's principal judiciary or as a member of the Court's ancillary judiciary.;

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

(2a) The Senior Judge may exercise the powers of the Chief Magistrate under the *Magistrates Act 1983* in place of the Chief Magistrate in relation to an industrial magistrate who is a member of the Court's principal judiciary.

(c) by striking out from subsection (3) "or ancillary".

**PART 5  
AMENDMENT OF MAGISTRATES ACT 1983**

**Insertion of s. 18A**

12. The following section is inserted in the principal Act after section 18:

**Concurrent appointments**

18A. (1) If a person holds or is to hold some other appointment for a fixed term concurrently with appointment as a stipendiary magistrate, the Governor may, with the consent of the person, suspend his or her remuneration, duties and other conditions of service as a stipendiary magistrate for the term of the concurrent appointment.

(2) If the remuneration, duties and other conditions of service of a stipendiary magistrate are suspended under this section for the term of a concurrent appointment, the stipendiary magistrate will not be subject to the direction of the Chief Magistrate during that term.

(3) A period of suspension during a concurrent appointment will count as service under this Act only to the extent (if any) and for the purposes (if any) determined by the Governor.

**PART 6**  
**AMENDMENT OF MAGISTRATES COURT ACT 1991**

**Amendment of s. 3—Interpretation**

13. Section 3 of the principal Act is amended by striking out from the definition of "Magistrate" in subsection (1) "or as an Industrial Magistrate under the *Industrial Conciliation and Arbitration Act 1972*".

**Amendment of s. 15—Exercise of procedural and administrative powers of Court**

14. Section 15 of the principal Act is amended by inserting in paragraph (c) "of the Court" after "powers".

**Amendment of s. 19—Transfer of proceedings between courts**

15. Section 19 of the principal Act is amended by striking out from subsection (1) "A Judge of the" and substituting "The".

**Amendment of s. 38—Minor civil actions**

16. Section 38 of the principal Act is amended—

- (a) by striking out from subsection (3)(a) "judgment debtor" and substituting "unsuccessful party";
- (b) by striking out from subsection (3)(b) "judgment creditor" and substituting "successful party";
- (c) by striking out from subsection (3)(c) "the judgement debtor" and substituting "there is a judgement debtor who".

**Amendment of s. 48A—Service**

17. Section 48A of the principal Act is amended by inserting in subsection (1) "relating to civil or criminal proceedings" after "document".

**Amendment of s. 51—Accessibility of evidence, etc.**

18. Section 51 of the principal Act is amended—

- (a) by striking out from subsection (1) all the words appearing before paragraph (a) and substituting the following:

Subject to this section, the Court must, on application by any member of the public, allow the applicant to inspect or obtain a copy of—

- (aa) any process relating to proceedings and forming part of the Court's records;;
- (b) by striking out paragraphs (c) and (d) of subsection (1);
- (c) by striking out subsections (2), (3), (4) and (5)<sup>1</sup> and substituting the following subsections:

(2) A member of the public may inspect or obtain a copy of the following material only with the permission of the Court:

- (a) material that was not taken or received in open court;
- (b) material that the Court has suppressed from publication;

- (c) material placed before the Court during sentencing proceedings (including material furnished under section 7 of the *Criminal Law (Sentencing) Act 1988*);
- (d) documentary material filed in connection with a preliminary examination;
- (e) a transcript of any oral evidence taken at a preliminary examination;
- (f) a photograph, slide, film, video tape, audio tape or other form of recording from which a visual image or sound can be produced;
- (g) material of a class prescribed by the regulations.

(3) The Court may permit inspection or copying of material referred to in subsection (2) subject to any condition it considers appropriate, including a condition limiting the publication or use of the material.

(4) A decision by the Court on an application under this section is administrative and is final and not subject to any form of review.

(5) The Court may charge a fee, fixed by regulation, for inspection or copying of material under this section.

<sup>1</sup> Subsections (4) and (5) are to be inserted by the *Statutes Amendment (Recording of Interviews) Act 1995* when that Act commences.

## PART 7 AMENDMENT OF SUPREME COURT ACT 1935

### Amendment of s. 5—Interpretation

19. Section 5 of the principal Act is amended by inserting after the definition of "defendant" in subsection (1) the following definition:

"evidentiary material" means any document, object or substance of evidentiary value in proceedings before the court and includes any document, object or substance that should, in the opinion of the court, be produced for the purpose of enabling the court to determine whether or not it has evidentiary value;.

### Amendment of s. 39—Vexatious proceedings

20. Section 39 of the principal Act is amended by inserting in subsection (1) "or any other interested person" after "Attorney-General".

### Amendment of s. 82—The registrar

21. Section 82 of the principal Act is amended by striking out subsection (3) and substituting the following subsections:

(3) The registrar is the court's principal administrative officer.

(3a) The registrar may, in addition to exercising the functions and duties assigned to him or her by this Act or any other Act, exercise any procedural or non-judicial powers of the court assigned by the Chief Justice or by rules of court under this or any other Act.



**Insertion of ss. 118 and 118A**

22. The following sections are inserted in the principal Act after section 117:

**Legal process**

118. (1) Any process of the court may be issued, served or executed on a Sunday as well as any other day.

(2) The validity of process is not affected by the fact that the person who issued it dies or ceases to hold office.

**Service**

118A. (1) If it is not practicable to serve any process, notice or other document relating to civil or criminal proceedings in the manner otherwise prescribed or contemplated by law, the court may, by order—

- (a) provide for service by post; or
- (b) make any other provision that may be necessary or desirable for service.

(2) Any process, notice or other document served in accordance with an order under subsection (1) will, despite any other law, be taken to have been duly served.

**Amendment of s. 131—Accessibility of evidence, etc.**

23. Section 131 of the principal Act is amended—

- (a) by striking out from subsection (1) all the words appearing before paragraph (a) and substituting the following:

Subject to this section, the court must, on application by any member of the public, allow the applicant to inspect or obtain a copy of—

- (aa) any process relating to proceedings and forming part of the court's records;;

- (b) by striking out subsections (2), (3), (4) and (5)<sup>1</sup> and substituting the following subsections:

(2) A member of the public may inspect or obtain a copy of the following material only with the permission of the court:

- (a) material that was not taken or received in open court;
- (b) material that the court has suppressed from publication;
- (c) material placed before the court during sentencing proceedings (including material furnished under section 7 of the *Criminal Law (Sentencing) Act 1988*);
- (d) documentary material filed in connection with a preliminary examination;
- (e) a transcript of any oral evidence taken at a preliminary examination;
- (f) a photograph, slide, film, video tape, audio tape or other form of recording from which a visual image or sound can be produced;

(g) material of a class prescribed by the regulations.

(3) The court may permit inspection or copying of material referred to in subsection (2) subject to any condition it considers appropriate, including a condition limiting the publication or use of the material.

(4) A decision by the court on an application under this section is administrative and is final and not subject to any form of review.

(5) The court may charge a fee, fixed by regulation, for inspection or copying of material under this section.

<sup>1</sup> Subsections (4) and (5) are to be inserted by the *Statutes Amendment (Recording of Interviews) Act 1995* when that Act commences.

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

ROMA MITCHELL Governor