

South Australia



**STATUTES AMENDMENT (ADMINISTRATIVE AND DISCIPLINARY  
DIVISION OF DISTRICT COURT) ACT 1996**

No. 53 of 1996

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ANNO QUADRAGESIMO QUINTO

**ELIZABETHAE II REGINAE**

**A.D. 1996**

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**No. 53 of 1996**

**An Act to amend the Motor Vehicles Act 1959, the South Australian Metropolitan Fire Service Act 1936 and the Tobacco Products (Licensing) Act 1986.**

*[Assented to 1 August 1996]*

The Parliament of South Australia enacts as follows:

**PART 1  
PRELIMINARY**

**Short title**

1. This Act may be cited as the *Statutes Amendment (Administrative and Disciplinary Division of District Court) Act 1996*.

**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 of the Part in which the reference occurs.

**PART 2  
AMENDMENT OF MOTOR VEHICLES ACT 1959**

**Amendment of s. 5—Interpretation**

4. Section 5 of the principal Act is amended by striking out from subsection (1) the definition of "the Tribunal".

**Amendment of s. 98c—Interpretation**

5. Section 98c of the principal Act is amended by inserting before the definition of "inspector" the following definition:

"District Court" means the Administrative and Disciplinary Division of the District Court;.

**Substitution of ss. 98pc to 98pg**

6. Sections 98pc to 98pg of the principal Act are repealed and the following sections are substituted:

**Cause for disciplinary action**

**98pc.** (1) There is proper cause for disciplinary action against a person who holds or has held a towtruck certificate or a temporary towtruck certificate if—

- (a) the certificate of the person was improperly obtained;
- (b) the person has contravened or failed to comply with a provision of this Act;
- (c) the person has contravened or failed to comply with a condition of the certificate;
- (d) the person has contravened, or failed to comply with, a provision of the *Radiocommunications Act 1992* of the Commonwealth, as amended from time to time, or an Act of the Commonwealth enacted in substitution for that Act;
- (e) the person has been convicted, or found guilty, of an offence involving dishonest, threatening or violent behaviour or involving the use of a motor vehicle;

or

- (f) the person has been guilty of any other act or default of such a nature that, in the opinion of the District Court, disciplinary action should be taken against the person.

(2) If a person has expiated an offence that attracts demerit points under this Act, the person will be taken, for the purposes of subsection (1), to have been convicted of the offence.

(3) This section applies in relation to conduct occurring before or after the commencement of this section.

**Complaints**

**98pd.** An inspector or any other person may lodge with the District Court a complaint setting out matters that are alleged to constitute grounds for disciplinary action under this Part.

**Hearing by District Court**

**98pe.** (1) On the lodging of a complaint, the District Court may conduct a hearing for the purpose of determining whether the matters alleged in the complaint constitute grounds for disciplinary action under this Part.

(2) Without limiting the usual powers of the District Court, the Court may during the hearing—

- (a) allow an adjournment to enable an inspector to investigate or further investigate matters to which the complaint relates;

and

- (b) allow the modification of the complaint or additional allegations to be included in the complaint subject to any conditions as to adjournment and notice to parties and other conditions that the Court may think fit to impose.

**Participation of assessors in disciplinary proceedings**

**98pf.** In any proceedings under this Part, the District Court will, if the judicial officer who is to preside at the proceedings so determines, sit with assessors selected in accordance with the fifth schedule.

**Disciplinary action**

**98pg.** (1) On the hearing of a complaint, the District Court may, if it is satisfied on the balance of probabilities that there is proper cause for taking disciplinary action against the person to whom the complaint relates, by an order or orders do one or more of the following:

- (a) reprimand the person;
- (b) impose a fine not exceeding \$1000;
- (c) in the case of a person who holds a towtruck certificate or temporary towtruck certificate —suspend or cancel the certificate;
- (d) disqualify the person from holding a towtruck certificate or temporary towtruck certificate under this Act.

(2) The District Court may—

- (a) stipulate that a disqualification is to apply permanently;
- (b) stipulate that a suspension or disqualification is to apply—
  - (i) for a specified period;
  - (ii) until the fulfilment of stipulated conditions;or
  - (iii) until further order;
- (c) stipulate that an order relating to a person is to have effect at a specified future time.

(3) If—

- (a) a person has been found guilty of an offence;

and

- (b) the circumstances of the offence form, in whole or in part, the subject matter of the complaint,

the person is not liable to a fine under this section in respect of conduct giving rise to the offence.

### **Appeals**

**98pi.** (1) A person may appeal to the District Court against a decision or order of the Registrar under the accident towing roster scheme.

(2) Subject to subsection (4), an appeal must be instituted within one month of the making of the decision or order appealed against or such longer period as the District Court may allow.

(3) The Registrar must, if so required by the person, state in writing the reasons for the Registrar's decision or order.

(4) If the reasons of the Registrar are not given in writing at the time of making the decision or order and the person (within one month of the making of the decision or order) requires the Registrar to state the reasons in writing, the time for instituting an appeal runs from the time at which the person receives the written statement of those reasons.

(5) If the Registrar or the District Court is satisfied that an appeal against a decision or order of the Registrar has been instituted, the Registrar or the Court may suspend the operation of the decision or order until the determination of the appeal.

(6) Except as determined by the District Court, an appeal is to be conducted by way of a fresh hearing and for that purpose the Court may receive evidence given orally or, if the Court determines, by affidavit.

(7) The District Court may, on the hearing of an appeal—

- (a) affirm the decision or order appealed against or rescind the decision or order and substitute a decision or order that the Court thinks appropriate;

and

- (b) make any other order that the case requires (including an order for costs).

### **Insertion of s. 139e**

7. The following section is inserted after section 139d of the principal Act:

#### **Protection from civil liability**

**139e.** (1) No civil liability is incurred by the Registrar, a member of the committee or any person engaged in the administration of this Act for an honest act or omission in the exercise or discharge, or purported exercise or discharge, of a power, function or duty under this Act.

(2) A liability that would, but for subsection (1), lie against the person lies instead against the Crown.

**Insertion of fifth schedule**

8. The following schedule is inserted in the principal Act after the fourth schedule:

**FIFTH SCHEDULE**  
*Appointment and Selection of Assessors for District Court Proceedings  
under Part III C*

1. The Minister must establish the following panels of persons who may sit with the District Court as assessors in proceedings under Part III C:

- (a) a panel consisting of persons representative of the motor trade industry;
- (b) a panel consisting of persons representative of the towtruck industry.

2. A member of a panel is to be appointed by the Minister for a term of office not exceeding three years and on conditions determined by the Minister and specified in the instrument of appointment.

3. A member of a panel is, on the expiration of a term of office, eligible for reappointment.

4. Subject to clause 5, if assessors are to sit with the District Court in proceedings under Part III C, the judicial officer who is to preside at the proceedings must select one member from each of the panels to sit with the Court in the proceedings.

5. A member of a panel who has a personal or a direct or indirect pecuniary interest in a matter before the District Court is disqualified from participating in the hearing of the matter.

6. If an assessor dies or is for any reason unable to continue with any proceedings, the District Court constituted of the judicial officer who is presiding at the proceedings and the other assessor may, if the judicial officer so determines, continue and complete the proceedings.

**PART 3**  
**AMENDMENT OF SOUTH AUSTRALIAN METROPOLITAN FIRE SERVICE ACT 1936**

**Amendment of s. 5—Interpretation**

9. Section 5 of the principal Act is amended—

- (a) by inserting after the definition of "**district**" the following definition:

**"District Court"** means the Administrative and Disciplinary Division of the District Court;;

- (b) by striking out the definitions of "**Senior Judge**" and "**the Tribunal**".

**Substitution of heading to Part II**

10. The headings to Part II and Division I of Part II of the principal Act are repealed and the following heading is substituted:

**PART 2**  
**SOUTH AUSTRALIAN METROPOLITAN FIRE SERVICE**

**Repeal of Part II Division II**

11. Division II of Part II of the principal Act is repealed.

**Amendment of s. 40a—Procedures in relation to appointments**

12. Section 40a of the principal Act is amended—

- (a) by striking out from subsection (3) "Tribunal" and substituting "District Court";
- (b) by striking out from subsection (5) "Tribunal" and substituting "District Court";
- (c) by striking out from subsection (6) "Tribunal" (twice occurring) and substituting "District Court" and "Court" respectively;
- (d) by striking out from subsection (7) "Tribunal" and substituting "District Court".

**Insertion of ss. 40B and 40C**

13. The following sections are inserted after section 40a of the principal Act:

**Representation of parties and costs**

**40B.** (1) In any proceedings before the District Court on an appeal under this Division—

- (a) an appellant will be entitled to appear personally or to be represented by a member of an industrial association to which the appellant belongs or by a legal practitioner;
- (b) the Corporation will be entitled to be represented by the Chief Officer or by one of its other officers or, if an appellant is represented by a legal practitioner, the Corporation may also be represented by a legal practitioner.

(2) The District Court may, in proceedings before it under this Division, award costs against the Corporation but may not award costs against an appellant.

**Participation of assessors in appeals against nominations for appointments**

**40C.** In any proceedings under this Division, the District Court will sit with assessors selected in accordance with the schedule.

**Amendment of s. 52d—Suspension pending hearing of complaint**

14. Section 52d of the principal Act is amended by striking out from subsection (2) "Tribunal" and substituting "District Court".

**Amendment of s. 52e—Appeals**

15. Section 52e of the principal Act is amended by striking out "Tribunal" (wherever occurring) and substituting, in each case, "District Court".

**Insertion of ss. 52F and 52G**

16. The following sections are inserted after section 52e of the principal Act:

**Representation of parties and costs**

**52F.** (1) In any proceedings before the District Court on an appeal under this Division—

- (a) the appellant will be entitled to appear personally or to be represented by a member of an industrial association to which the appellant belongs or by a legal practitioner;



- (b) the Chief Officer will be entitled to appear personally or to be represented by an officer of the Corporation or, if the appellant is represented by a legal practitioner, the Chief Officer may also be represented by a legal practitioner.

(2) The District Court may, in proceedings before it under this Division, award costs against the Corporation but may not award costs against the appellant.

**Participation of assessors in appeals**

52G. In any proceedings under this Division, the District Court will sit with assessors selected in accordance with the schedule.

**Insertion of schedule**

17. The following schedule is inserted in the principal Act after section 83:

**SCHEDULE**

*Appointment and Selection of Assessors for District Court Proceedings  
under Part V and VA*

1. The Minister must establish the following panels of persons from which persons are to be selected to sit with the District Court as assessors in proceedings under Part V or VA:

- (a) a panel appointed from persons nominated by the Chief Officer;
- (b) a panel appointed from officers nominated by the Union;
- (c) a panel appointed from firefighters nominated by the Union.

2. A member of a panel is to be appointed by the Minister for a term of office not exceeding three years and on conditions determined by the Minister and specified in the instrument of appointment.

3. A member of a panel is, on the expiration of a term of office, eligible for reappointment.

4. Subject to clause 5, the judicial officer who is to preside at the proceedings must select—

- (a) one member from the panel made up of persons nominated by the Chief Officer; and
- (b) if the appellant is an officer—one member from the panel made up of officers nominated by the Union; or
- (c) if the appellant is a firefighter—one member from the panel made up of firefighters nominated by the Union,

to sit with the District Court in the proceedings.

5. A member of a panel who has a personal or a direct or indirect pecuniary interest in a matter before the District Court is disqualified from participating in the hearing of the matter.

6. If an assessor dies or is for any reason unable to continue with any proceedings, the District Court constituted of the judicial officer who is presiding at the proceedings and the other assessor may, if the judicial officer so determines, continue and complete the proceedings.

**PART 4**  
**AMENDMENT OF TOBACCO PRODUCTS (LICENSING) ACT 1986**

**Amendment of s. 21—Appeals**

**18.** Section 21 of the principal Act is amended—

- (a) by striking out subsections (1) to (4);
- (b) by striking out from subsection (5) "Tribunal" and substituting "Administrative and Disciplinary Division of the District Court (the "District Court")";
- (c) by striking out subsection (6);
- (d) by striking out from subsection (7) "Tribunal" and substituting "District Court";
- (e) by inserting after subsection (7) the following subsection:
  - (7a) Except as determined by the District Court, an appeal is to be conducted by way of a fresh hearing and for that purpose the Court may receive evidence given orally or, if the Court determines, by affidavit.;
- (f) by striking out from subsection (8) "Tribunal" and substituting "District Court".

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

E. J. NEAL Governor