

South Australia



**STATUTES AMENDMENT AND REPEAL (JUSTICE PORTFOLIO) ACT
1999**

No. 42 of 1999

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ANNO QUADRAGESIMO OCTAVO

ELIZABETHAE II REGINAE

A.D. 1999

No. 42 of 1999

An Act to amend the Administration and Probate Act 1919, the Bail Act 1985, the Children’s Protection Act 1993, the Correctional Services Act 1982, the Crimes at Sea Act 1998, the Criminal Law (Sentencing) Act 1988, the District Court Act 1991, the Magistrates Court Act 1991, the Statutes Amendment (Fine Enforcement) Act 1998, the Summary Offences Act 1953, the Summary Procedure Act 1921, the Young Offenders Act 1993 and the Youth Court Act 1993; and to repeal the Appeal Costs Fund Act 1979.

[Assented to 5 August 1999]

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Statutes Amendment and Repeal (Justice Portfolio) Act 1999*.

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 THE ADMINISTRATION AND PROBATE ACT 1919**

Amendment of s. 121A—Statement of assets and liabilities to be provided with application for probate or administration

4. Section 121A of the principal Act is amended by striking out from subsection (8) "section 79" and substituting "section 9 of the *Public Trustee Act 1995*".

**PART 3
AMENDMENT OF THE BAIL ACT 1985****Amendment of s. 3—Interpretation**

5. Section 3 of the principal Act is amended by inserting after the definition of "child" in subsection (1) the following definition:

"community corrections officer" means—

- (a) in relation to a child—an officer or employee of an administrative unit of the Public Service whose duties include the supervision of young offenders in the community;
- (b) in any other case—an officer or employee of an administrative unit of the Public Service whose duties include the supervision of adult offenders in the community;.

Amendment of s. 6—Nature of bail agreement

6. Section 6 of the principal Act is amended by striking out from subsection (1)(a) "to be present throughout all proceedings (not being of an interlocutory nature)" and substituting "subject to any directions in the agreement to the contrary, to be present throughout all proceedings".

Amendment of s. 11—Conditions of bail

7. Section 11 of the principal Act is amended—

(a) by striking out subparagraph (D) of subsection (2)(a)(ia) and substituting the following subparagraph:

(D) any other purpose approved by a community corrections officer; or;

(b) by striking out subparagraph (iii) of subsection (2)(a) and substituting the following subparagraph:

(iii) to be under the supervision of a community corrections officer and to obey the lawful directions of the officer; or;

(c) by striking out paragraphs (a) and (b) of subsection (6) and substituting the following paragraph:

(a) if the person is under the supervision of a community corrections officer—without the permission of the Chief Executive (or his or her nominee) of the administrative unit of which the community corrections officer is an officer or employee;;

(d) by striking out from subsection (7a) "an officer of the Department of Correctional Services or the Department of Community Welfare" and substituting "a community corrections officer";

(e) by striking out from subsection (7b) the penalty provision and substituting the following penalty provision:

Maximum penalty: \$2 500.

(f) by striking from subsection (8) "an officer of the Department of Community Welfare or the Department of Correctional Services" and substituting "a community corrections officer";

(g) by striking out subsections (11) and (12) and substituting the following subsection:

(11) Where a bail authority imposes a condition requiring a person—

(a) to remain at a particular place of residence while on bail; or

(b) to be under the supervision of a community corrections officer,

the bail authority must ensure that a copy of the bail agreement is furnished to the relevant responsible Minister.

Amendment of s. 17—Non-compliance with bail agreement constitutes offence

8. Section 17 of the principal Act is amended by striking out from subsection (1) the penalty provision and substituting the following penalty provision:

Maximum penalty: \$10 000 or imprisonment for 2 years.

Amendment of s. 17A—Guarantor must inform member of police force if person fails to comply with bail agreement

9. Section 17A of the principal Act is amended by striking out the penalty provision and substituting the following penalty provision:

Maximum penalty: \$1 250.

Amendment of s. 22—False information on bail applications

10. Section 22 of the principal Act is amended by striking out the penalty provision and substituting the following penalty provision:

Maximum penalty: \$1 250.

**PART 4
AMENDMENT OF CHILDREN'S PROTECTION ACT 1993**

Amendment of s. 11—Notification of abuse or neglect

11. Section 11 of the principal Act is amended—

(a) by striking out from subsection (1) the penalty provision and substituting the following penalty provision:

Maximum penalty: \$2 500.;

(b) by striking out from subsection 2(f) "a probation officer" and substituting "a community corrections officer (an officer or employee of an administrative unit of the Public Service whose duties include the supervision of young or adult offenders in the community)".

Amendment of s. 13—Confidentiality of notification of abuse or neglect

12. Section 13 of the principal Act is amended by striking out from subsection (2) the penalty provision and substituting the following penalty provision:

Maximum penalty: \$5 000.

Amendment of s. 16—Power to remove children from dangerous situations

13. Section 16 of the principal Act is amended—

(a) by striking out from subsection (2) "commissioned officer (as defined in the *Police Act 1952*)" and substituting "inspector";

(b) by striking out from subsection (2) "commissioned officer of the police force" and substituting "member of the police force of or above the rank of inspector".

Amendment of s. 19—Investigations

14. Section 19 of the principal Act is amended by striking out from subsection (6) the penalty provision and substituting the following penalty provision:

Maximum penalty: \$2 500 or imprisonment for 6 months.

Amendment of s. 21—Orders Court may make

15. Section 21 of the principal Act is amended by striking out from subsection (4) the penalty provision and substituting the following penalty provision:

Maximum penalty: Imprisonment for 3 months.

Amendment of s. 23—Power of adjournment

16. Section 23 of the principal Act is amended by striking out from subsection (5) the penalty provision and substituting the following penalty provision:

Maximum penalty: Imprisonment for 3 months.

Amendment of s. 24—Obligation to answer questions or furnish reports

17. Section 24 of the principal Act is amended by striking out from subsection (1) the penalty provision and substituting the following penalty provision:

Maximum penalty: \$2 500 or imprisonment for 6 months.

Amendment of s. 44—Non-compliance with orders

18. Section 44 of the principal Act is amended by striking out the penalty provision and substituting the following penalty provision:

Maximum penalty: Imprisonment for 3 months.

Amendment of s. 58—Duty to maintain confidentiality

19. Section 58 of the principal Act is amended by striking out from subsections (1) and (2) the penalty provisions and substituting, in each case, the following penalty provision:

Maximum penalty: \$10 000.

Amendment of s. 59—Reports of family care meetings not to be published

20. Section 59 of the principal Act is amended by striking out the penalty provision and substituting the following penalty provision:

Maximum penalty: \$10 000.

Insertion of s. 59A

21. The following section is inserted after section 59 of the principal Act:

Restrictions on reports of proceedings

59A. (1) A person must not publish by radio, television, newspaper or in any other way, a report of proceedings in which a child is alleged to be at risk or in need of care or protection, if—

- (a) the court before which the proceedings are heard prohibits publication of any report of the proceedings; or
- (b) the report—
 - (i) identifies the child or contains information tending to identify the child; or
 - (ii) reveals the name, address or school, or includes any particulars, picture or film that may lead to the identification, of any child who is concerned in the proceedings, either as a party or a witness.

(2) The court before which the proceedings are heard may, on such conditions as it thinks fit, permit the publication of particulars, pictures or films that would otherwise be suppressed from publication under subsection (1)(b).

(3) A person who contravenes this section, or a condition imposed under subsection (2), is guilty of an offence.

Maximum penalty: \$10 000.

Amendment of s. 60—Officers must produce evidence of authority

22. Section 60 of the principal Act is amended by striking out the penalty provision and substituting the following penalty provision:

Maximum penalty: \$250.

Amendment of s. 61—Hindering a person in execution of duty

23. Section 61 of the principal Act is amended by striking out the penalty provision and substituting the following penalty provision:

Maximum penalty: \$2 500 or imprisonment for 6 months.

Amendment of s. 63—Regulations

24. Section 63 of the principal Act is amended by striking out from subsection (2) "a Division 8 fine" and substituting "\$1 250".

PART 5
AMENDMENT OF CORRECTIONAL SERVICES ACT 1982

Amendment of s. 4—Interpretation

25. Section 4 of the principal Act is amended—

- (a) by inserting in subsection (1) after the definition of "child sexual offence" the following definition:

"community corrections officer" means an officer or employee of the Department whose duties include the supervision of offenders in the community;

- (b) by striking out from subsection (1) the definition of "parole officer".

Amendment of s. 39A—Delivery of property and money to prisoner on release

26. Section 39A of the principal Act is amended by striking out "parole officer" twice occurring and substituting in each case "community corrections officer".

Amendment of s. 68—Conditions of release on parole

27. Section 68 of the principal Act is amended by striking out from subsection (1)(a)(iii) "parole officer" twice occurring and substituting in each case "community corrections officer".

Amendment of s. 71—Variation or revocation of parole conditions

28. Section 71 of the principal Act is amended by striking out from subsection (4) "parole officer" twice occurring and substituting in each case "community corrections officer".

Amendment of s. 72—Discharge from parole of prisoners other than life prisoners

29. Section 72 of the principal Act is amended by striking out from subsection (2) "parole officer" twice occurring and substituting in each case "community corrections officer".

Amendment of s. 74—Cancellation of release on parole by Board for breach of conditions other than designated conditions

30. Section 74 of the principal Act is amended by striking out from subsection (2) "parole officer" twice occurring and substituting in each case "community corrections officer".

Amendment of s. 74AA—Board may impose community service for breach of non-designated conditions

31. Section 74AA of the principal Act is amended—

- (a) by striking out from subsection (3) "parole officer" twice occurring and substituting in each case "community corrections officer";
- (b) by striking out from subsection (4)(b)(iii) "community service officer of the Department" and substituting "community corrections officer";
- (c) by striking out from subsections (4)(c) and (5) "community service officer" wherever occurring and substituting in each case "community corrections officer".

Amendment of s. 89—Regulations

32. Section 89 of the principal Act is amended by striking out from subsection (2)(l) "parole officers" and substituting "community corrections officers".

PART 6
AMENDMENT OF CRIMES AT SEA ACT 1998

Amendment of Sched.—The Cooperative Scheme

33. The Schedule of the principal Act is amended by striking out from clause 12(1) "Governor" and substituting "Governor-General".

PART 7
AMENDMENT OF CRIMINAL LAW (SENTENCING) ACT 1988

Amendment of s. 3—Interpretation

34. Section 3 of the principal Act is amended—

(a) by striking out from subsection (1) the definition of "community service officer" and substituting the following definition:

"community corrections officer" means an officer or employee of the Department for Correctional Services whose duties include the supervision of offenders in the community;;

(b) by striking out from subsection (1) the definition of "probation officer".

Amendment of s. 3A—Application of Act to youths

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

(a) by striking out from subsection (3)(e) "service" twice occurring and substituting in each case "corrections";

(b) by striking out paragraph (h) of subsection (3).

Amendment of s. 23—Offenders incapable of controlling sexual instincts

36. Section 23 of the principal Act is amended by striking out from subsection (4)(c) "probation" and substituting "community corrections".

Amendment of s. 38—Suspension of imprisonment on defendant entering into bond

37. Section 38 of the principal Act is amended by striking out from subsection (2c) "probation officer" twice occurring and substituting in each case "community corrections officer".

Amendment of s. 42—Conditions of bond

38. Section 42 of the principal Act is amended by striking out from subsection (1)(a) "probation" and substituting "community corrections".

Amendment of s. 46—Ancillary orders for supervision

39. Section 46 of the principal Act is amended by striking out "supervision by a probation officer" and substituting "the supervision of a community corrections officer".

Amendment of s. 47—Special provisions relating to community service

40. Section 47 of the principal act is amended by striking out from subsection (1)(e) and (l) "community service officer" twice occurring and substituting in each case "community corrections officer".

Amendment of s. 48—Special provisions relating to supervision

41. Section 48 of the principal Act is amended—

- (a) by striking out "supervision by a probation officer" and substituting "the supervision of a community corrections officer";
- (b) by striking out from paragraph (c) "probation officer" and substituting "community corrections officer".

Amendment of s. 49—CEO must assign community corrections officer

42. Section 49 of the principal Act is amended—

- (a) by striking out from subsection (1) "probation officer or a community service officer, as the case may require" and substituting "community corrections officer";
- (b) by striking out from subsection (2) "probation officer or community service officer" and substituting "community corrections officer";
- (c) by striking out from subsection (3) "each probation officer and community service officer" and substituting "a community corrections officer".

Amendment of s. 50—Community corrections officer may give reasonable directions

43. Section 50 of the principal Act is amended—

- (a) by striking out from subsection (1) "probation officer" and substituting "community corrections officer";
- (b) by striking out subsection (2) and substituting the following subsection:

(2) If the person is required to perform community service, the community corrections officer may also give reasonable directions to the person—

- (a) requiring the person to report to a community service centre or other place at certain times; or
- (b) requiring the person to perform certain projects or tasks as community service; or
- (c) requiring the person to undertake or participate in courses of instruction at a community service centre or other place; or
- (d) requiring the person to behave in a particular manner while undertaking community service.

Amendment of s. 50AA—Powers of community corrections officer in the case of home detention

44. Section 50AA of the principal Act is amended by striking out from subsections (1), (2) and (3) "probation officer" wherever it occurs and substituting in each case "community corrections officer".

Amendment of s. 51—Power of Minister in relation to default in performance of community service

45. Section 51 of the principal Act is amended by striking out from subsection (1) "community service officer" and substituting "community corrections officer".

**PART 8
AMENDMENT OF THE DISTRICT COURT ACT 1991**

Amendment of s. 13—Judicial remuneration

46. Section 13 of the principal Act is amended—

- (a) by striking out from subsection (1) "The Chief Judge and the Judges" and substituting "The judicial officers";
- (b) by striking out subsection (3).

Amendment of s. 42—Costs

47. Section 42 of the principal Act is amended—

- (a) by inserting in subsection (1) "and may be awarded against any person (whether a party to or a witness in the proceedings or not)" after "discretion of the Court";
- (b) by striking out from subsection (3) ", at the conclusion of those proceedings".

Amendment of s. 43—Right of appeal

48. Section 43 of the principal Act is amended—

- (a) by striking out from subsection (4) "or witness" and substituting ", witness or other person";
- (b) by striking out from subsection (4) "for costs" and substituting "under section 42".

**PART 9
AMENDMENT OF MAGISTRATES COURT ACT 1991**

Insertion of s. 10AB

49. The following section is inserted in the principal Act after section 10A:

Certain civil actions may be taken to be minor civil actions

10AB. If proceedings involving a monetary claim have been duly commenced in the Civil (General Claims) Division or the Civil (Consumer and Business) Division—

- (a) the Court may, if it thinks it appropriate to do so, on application by or with the consent of the parties, hear and determine the proceedings as a minor civil action; and
- (b) the proceedings will, in that event, for the purposes of this Act be taken to be a minor civil action.

Amendment of s. 37—Costs

50. Section 37 of the principal Act is amended—

- (a) by inserting in subsection (1) "and may be awarded against any person (whether a party to or a witness in the proceedings or not)" after "discretion of the Court";
- (b) by striking out from subsection (2) ", at the conclusion of those proceedings".

Amendment of s. 40—Right of appeal

51. Section 40 of the principal Act is amended—

- (a) by striking out from subsection (5) "or witness" and substituting ", witness or other person";
- (b) by striking out from subsection (5) "for costs" and substituting "under section 37".

PART 10

AMENDMENT OF STATUTES AMENDMENT (FINE ENFORCEMENT) ACT 1998

Amendment of s. 22

52. Section 22 of the principal Act (which inserts new section 56A into the *Criminal Law (Sentencing) Act 1988*) is amended by striking out subsection (1) of new section 56A and substituting the following subsection:

(1) The Administrator may appoint—

- (a) members of the staff of the State Courts Administration Authority; or
- (b) persons appointed by the Sheriff to be deputy sheriffs or sheriff's officers,

as authorised officers.

Amendment of s. 25

53. Section 25 of the principal Act (which inserts certain new sections into the *Criminal Law (Sentencing) Act 1988*) is amended—

(a) by striking out subsections (1) and (2) of new section 70E and substituting the following subsection:

(1) An authorised officer may make an order suspending a debtor's driver's licence for a period of 60 days (and such an order may be made despite the fact that the debtor is currently disqualified from holding or obtaining a licence).

(b) by striking out from new section 70E(3)(b) "that the order has been served" and substituting "of the order";

(c) by striking out subsection (4) of new section 70E and substituting the following subsection:

(4) An order under this section takes effect 21 days from (and including) the day on which the order was made;

(d) by striking out subsection (6) of new section 70E;

- (e) by striking out from new section 70F(2)(b) "that the order has been served" and substituting "of the order";
- (f) by striking out from new section 70F(3)(a) "notice being served on the debtor" and substituting "the Registrar of Motor Vehicles being notified";
- (g) by striking out from new section 72A(3) "brought forthwith before a justice or other proper authority to" and substituting "taken forthwith to the nearest police station at which facilities are continuously available for the care and custody of the arrested person, so that he or she may".

PART 11
AMENDMENT OF SUMMARY OFFENCES ACT 1953

Amendment of Sched.

54. The Schedule of the principal Act is amended by striking out the passage—

This warrant remains in force for six months from its date. [*If for a shorter period state how long.*]

Dated this day of , 19 .

Commissioner of Police

and substituting the passage—

This warrant remains in force for a period of months¹ from the below date.

Dated: (day) (month) (year).

Commissioner of Police

¹ A general search warrant remains in force for 6 months from the date of the warrant or such lesser period as is specified in the warrant—see section 67(3).

PART 12
AMENDMENT OF SUMMARY PROCEDURE ACT 1921

Amendment of s. 104—Preliminary examination of charges of indictable offences

55. Section 104 of the principal Act is amended—

- (a) by inserting in subsection (1)(a)(ii) "(other than documents that, in the opinion of the prosecutor, are only of peripheral relevance to the subject matter of the charge)" after "defendant";
- (b) by inserting in subsection (1)(a)(iii) "(including documents of peripheral relevance that have not been filed in the Court)" after "material" first occurring;
- (c) by striking out from subsection (2) "the material must be filed and copies given" and substituting "the prosecutor must comply with the above requirements in relation to that material".

Transitional provision

56. Section 104 of the principal Act, as amended by this Part, applies in relation to proceedings commenced before or after the commencement of this Part.

**PART 13
AMENDMENT OF YOUNG OFFENDERS ACT 1993**

Amendment of s. 36—Detention of youth sentenced as adult

57. Section 36 of the principal Act is amended—

(a) by striking out subparagraph (iv) from subsection (4)(b) and substituting the following paragraph:

(iv) a reference to a community corrections officer will be taken to be a reference to an officer or employee of the Department whose duties include the supervision of youths in the community.;

(b) by striking out from subsection (5)(c) "parole officer" and substituting "community corrections officer".

Amendment of s. 63B—Application of Correctional Services Act 1982 to youth with non-parole period

58. Section 63B of the principal Act is amended by striking out paragraph (b) and substituting the following paragraph:

(b) a reference to a community corrections officer will be taken to be a reference to an officer or employee of the Department whose duties include the supervision of youths in the community.

Insertion of s. 63C

59. The following section is inserted after section 63B of the principal Act:

Restrictions on reports of proceedings

63C. (1) A person must not publish, by radio, television, newspaper or in any other way, a report of proceedings in which a child or youth is alleged to have committed an offence, if—

(a) the court before which the proceedings are heard prohibits publication of any report of the proceedings; or

(b) the report—

(i) identifies the child or youth or contains information tending to identify the child or youth; or

(ii) reveals the name, address or school, or includes any particulars, picture or film that may lead to the identification, of any child or youth who is concerned in those proceedings, either as a party or a witness.

(2) The court before which the proceedings are heard may, on such conditions as it thinks fit, permit the publication of particulars, pictures or films that would otherwise be suppressed from publication under subsection (1)(b).

(3) A person who contravenes this section, or a condition imposed under subsection (2), is guilty of an offence.

Maximum penalty: \$10 000.

**PART 14
AMENDMENT OF YOUTH COURT ACT 1993**

Repeal of s. 25

60. Section 25 of the principal Act is repealed.

**PART 15
REPEAL OF THE APPEAL COSTS FUND ACT 1979**

Repeal

61. The *Appeal Costs Fund Act 1979* is repealed.

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

E. J. NEAL Governor