

South Australia



ANNO QUINQUAGESIMO PRIMO  
ELIZABETHAE II REGINAE  
A.D. 2002

**STATUTES AMENDMENT (ATTORNEY-GENERAL'S PORTFOLIO) ACT  
2002**

No. 33 of 2002

[Assented to 28 November 2002]

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An Act to amend the Acts Interpretation Act 1915, the Administration and Probate Act 1919, the Criminal Law (Sentencing) Act 1988, the Domestic Violence Act 1994, the Evidence Act 1929, the Expiation of Offences Act 1996, the Partnership Act 1891, the Real Property Act 1886, the Summary Offences Act 1953, the Trustee Act 1936, the Trustee Companies Act 1988 and the Worker's Liens Act 1893.

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The Parliament of South Australia enacts as follows:

**PART 1  
PRELIMINARY**

**Short title**

1. This Act may be cited as the *Statutes Amendment (Attorney-General's Portfolio) Act 2002*.

**Commencement**

2. (1) Subject to subsection (2), this Act will come into operation on a day to be fixed by proclamation.

(2) Sections 15 and 16 will be taken to have come into operation on 28 January 2000.

**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 ACTS INTERPRETATION ACT 1915**

**Amendment of s. 14BA—References to other statutory provisions include references to relevant statutory instruments**

4. Section 14BA of the principal Act is amended by striking out subsection (2) and substituting the following subsection:

(2) A reference in an Act to a Part or provision of that Act or some other Act (whether an Act of this State or of the Commonwealth or a place outside this State) includes, unless the contrary intention appears—

- (a) reference to statutory instruments made or in force under that Part or provision; and
- (b) reference to statutory instruments made or in force under some other Part or provision of that Act or other Act insofar as the statutory instruments are connected to that Part or provision.

**PART 3  
AMENDMENT OF ADMINISTRATION AND PROBATE ACT 1919**

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

5. Section 121A of the principal Act is amended—

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

(2a) Where the deceased person was not, at the time of death, domiciled in Australia, the disclosure under subsection (1) or (2) is only required in respect of—

- (a) assets situated in Australia; and
- (b) liabilities that are a charge on those assets or arose in Australia.;

(b) by inserting after subsection (7) the following subsection:

(7a) For the purposes of subsection (2a), if—

- (a) it is uncertain whether an asset is situated, or a liability arose, in Australia or elsewhere; or
- (b) an asset is situated, or a liability arose, in part in Australia and in part elsewhere,

the asset will be taken to be situated, or the liability will be taken to have arisen in Australia.

#### **PART 4 AMENDMENT OF CRIMINAL LAW (SENTENCING) ACT 1988**

##### **Amendment of s. 71—Community Service orders may be enforced by imprisonment**

6. Section 71 of the principal Act is amended by striking out from subsection (8)(b) "for the offence that attracts the highest fine" and substituting "the total of the maximum fines that may be imposed for the offences".

#### **PART 5 AMENDMENT OF DOMESTIC VIOLENCE ACT 1994**

##### **Amendment of s. 3—Interpretation**

7. Section 3 of the principal Act is amended by striking out paragraphs (b) and (c) of the definition of "member of the defendant's family" and substituting the following paragraphs:

- (b) a child of whom the defendant or a spouse or former spouse of the defendant has custody as a parent or guardian;
- (c) a child who normally or regularly resides with the defendant or a spouse or former spouse of the defendant;.

#### **PART 6 AMENDMENT OF EVIDENCE ACT 1929**

##### **Amendment of s. 6—Oaths, affirmations, etc.**

8. Section 6 of the principal Act is amended by striking out subsection (4) and substituting the following subsection:

(4) An affirmation is to be administered to a person by asking the person "Do you solemnly and truly affirm" followed by the words of the appropriate oath (omitting any words of imprecation or calling to witness) after which the person must say "I do solemnly and truly affirm".

**Substitution of s. 34A**

9. Section 34A is repealed and the following section substituted:

**Proof of commission of offence**

34A. Where a person has been convicted of an offence or found by a court exercising criminal jurisdiction to have committed an offence and the commission of the offence is in issue or relevant to an issue in a civil proceeding, the conviction or finding is evidence of the commission of the offence and admissible in the proceeding against the person or a party claiming through or under the person.

**Amendment of s. 42—Proof of conviction or acquittal of an indictable offence**

10. Section 42 of the principal Act is amended by striking out from subsection (1) "Chief Clerk of the Supreme Court" and substituting "Registrar of the Supreme Court or the District Court".

**PART 7****AMENDMENT OF EXPIATION OF OFFENCES ACT 1996****Amendment of s. 14—Review of enforcement orders and effect on right of appeal against conviction**

11. Section 14 of the principal Act is amended—

- (a) by striking out from subsection (1) "An enforcement order is not subject to appeal, but the person liable under the order" and substituting "Subject to this section, the person liable under an enforcement order";
- (b) by striking out from subsection (6) "(but nothing in this section affects the person's right of appeal against the conviction of the offence or offences to which the order relates)";
- (c) by inserting after subsection (6) the following subsections:

(7) If an enforcement order has been reviewed under this section or an application for such a review has been made and not withdrawn, the person liable under the order may not appeal against the conviction of the offence or offences to which the order relates.

(8) If an appeal against the conviction of the offence or offences to which an enforcement order relates has been determined or such an appeal has been instituted and not withdrawn, the person liable under the order may not apply for a review of the order under this section.

**PART 8****AMENDMENT OF PARTNERSHIP ACT 1891****Amendment of s. 10—Liability of firm for wrongs**

12. Section 10 of the principal Act is amended—

- (a) by striking out "Where," and substituting "Subject to subsection (2), where,";
- (b) by inserting after its present contents (now to be designated as subsection (1)) the following subsections:

(2) For the purposes of subsection (1), a partner who commits a wrongful act or omission as a member of the governing body of a body corporate is not to be taken to be acting in the ordinary course of business of the firm or with the authority of the partner's co-partners only because of one or more of the following:

- (a) the partner obtained the agreement or authority of the partner's co-partners, or some of them, to be appointed or to act as a member of the governing body;
- (b) remuneration that the partner receives for acting as a member of the body corporate forms part of the income of the firm;
- (c) any co-partner is also a member of the governing body of that or any other body corporate.

(3) In this section—

"member" of a governing body of a body corporate includes a director.

## PART 9 AMENDMENT OF REAL PROPERTY ACT 1886

### Amendment of s. 3—Interpretation

13. Section 3 of the principal Act is amended—

- (a) by striking out the definition of "Chief Secretary";
- (b) by inserting after paragraph (b) of the definition of "Court" the following word and paragraph:

and

- (c) in section 191, Part 17 and Schedule 21 includes the District Court;

### Amendment of s. 210—Persons claiming may, before taking proceedings, apply to the Registrar-General for compensation

14. Section 210 of the principal Act is amended by striking out "Chief Secretary" and substituting "Attorney-General".

### Amendment of s. 223LA—Interpretation

15. Section 223LA of the principal Act is amended by striking out the definition of "electricity entity" in subsection (1) and substituting the following definition:

"electricity entity" means—

- (a) a person who holds a licence under the *Electricity Act 1996* authorising the operation of a transmission or distribution network; or
- (b) a person exempted from the requirement to hold such a licence; or

- (c) Distribution Lessor Corporation or Transmission Lessor Corporation;.

**Amendment of s. 223LG—Service easements**

16. Section 223LG of the principal Act is amended by striking out from subsection (3) "in favour of the entity, entitling it" and substituting "in favour of the entity (and any other electricity entity to which it has leased its rights under the easement), entitling the electricity entity concerned".

**Amendment of Sched. 21—Rules and regulations for procedure in the matter of caveats**

17. Schedule 21 of the principal Act is amended by striking out from clause 1 "Supreme".

**PART 10**

**AMENDMENT OF SUMMARY OFFENCES ACT 1953**

**Amendment of s. 85—Regulations**

18. Section 85 of the principal Act is amended by inserting after paragraph (c) of subsection (2) the following paragraph:

- (d) impose a penalty (not exceeding a fine of \$2 500) for contravention of, or non-compliance with, a regulation.

**PART 11**

**AMENDMENT OF TRUSTEE ACT 1936**

**Amendment of s. 69B—Alteration of charitable trust**

19. Section 69B of the principal Act is amended by striking out from subsection (3)(b) "\$250 000" and substituting "\$300 000".

**PART 12**

**AMENDMENT OF TRUSTEE COMPANIES ACT 1988**

**Amendment of Sched. 1**

20. Schedule 1 of the principal Act is amended by striking out "National Mutual Trustees Limited" and substituting "Perpetual Trustees Consolidated Limited".

**PART 13**

**AMENDMENT OF WORKER'S LIENS ACT 1893**

**Amendment of s. 2—Interpretation**

21. Section 2 of the principal Act is amended by striking out the definition of "Court" and substituting the following definition:

"Court" in the case of an action in the Supreme Court or District Court includes a judge of the court, and in the case of an action in the Magistrates Court includes a magistrate;.

**Amendment of s. 17—Proceedings to compel Registrar-General to record lien in event of refusal**

22. Section 17 of the principal Act is amended by striking out "or a special" and substituting "or District Court or a" after "Supreme Court".



**Amendment of s. 18—Judge or magistrate may make order**

23. Section 18 of the principal Act is amended by striking out "special" twice occurring.

**Repeal of s. 35**

24. Section 35 of the principal Act is repealed.

**Amendment of s. 36—Jurisdiction etc. of courts preserved**

25. Section 36 of the principal Act is amended by striking out "the Supreme Court or of local courts" and substituting "a court".

**Amendment of s. 42—Application of proceeds of sale**

26. Section 42 of the principal Act is amended—

- (a) by striking out "clerk of the local court nearest to the place of sale, to be held by him for the benefit of the person entitled thereto" and the second sentence and substituting "Magistrates Court to be held for the benefit of the person entitled to it";
- (b) by inserting after its present contents as amended (now to be designated as subsection (1)) the following subsection:

(2) The Magistrates Court may, on the application of the person entitled to the surplus, order payment of the surplus to the person.