



**SUMMARY OFFENCES (OFFENSIVE AND OTHER WEAPONS)
AMENDMENT ACT 1998**

No. 78 of 1998

SUMMARY OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of s. 15—Offensive weapons, etc.
4. Amendment of s. 85—Regulations

SCHEDULE

Further Amendments to the Principal Act



ANNO QUADRAGESIMO SEPTIMO

ELIZABETHAE II REGINAE

A.D. 1998

No. 78 of 1998

An Act to amend the Summary Offences Act 1953.

[Assented to 17 December 1998]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Summary Offences (Offensive and other Weapons) Amendment Act 1998*.

(2) The *Summary Offences Act 1953* is referred to in this Act as "the principal Act".

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Amendment of s. 15—Offensive weapons, etc.

3. Section 15 of the principal Act is amended—

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

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

(b) by inserting after "control" in subsection (1a) "(whether the control is immediate control or not)";

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

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

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

Maximum penalty: \$7 500 or imprisonment for 18 months.;

(e) by inserting the following subsections after subsection (1b):

(1c) A person who—

(a) manufactures, sells, distributes, supplies or otherwise deals in, prohibited weapons; or

(b) has possession of, or uses, a prohibited weapon,

is guilty of an offence.

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

(1d) It is a defence to prosecution for an offence against paragraph (b) of subsection (1c) to prove that the defendant is an exempt person under subsection (2a) in the circumstances of the alleged offence.

(1e) Depending on the terms of a declaration under subsection (2b), it is a defence to prosecution for an offence against either paragraph (a) or (b), or both paragraphs (a) and (b), of subsection (1c) to prove that the defendant is an exempt person under subsection (2b) in the circumstances of the alleged offence.

(1f) A person (being a person who is otherwise entitled to do so) must not—

(a) carry or have control of—

(i) a loaded firearm; or

(ii) a firearm and a loaded magazine that can be attached to and used in conjunction with the firearm,

in a public place; or

(b) have possession of or use a dangerous article or a prohibited weapon,

unless he or she does so in a safe and secure manner.

Maximum penalty: \$1 250 or imprisonment for 3 months.;

(f) by striking out "weapon" from subsection (2) and substituting "offensive or prohibited weapon";

(g) by inserting the following subsections after subsection (2):

(2a) The following persons are exempt persons for the purposes of subsection (1d) in the following circumstances:

(a) a person who has possession of, or uses, a prohibited weapon for the purpose or in the course of conducting his or her business or for the purpose or in the course of his or her employment, but—

(i) only if the possession and use of the weapon is reasonably required for that purpose; and

- (ii) not if the possession or use of the weapon is in the course, or for the purpose of manufacturing, selling, distributing, supplying or otherwise dealing in the weapon;
- (b) a member of South Australia Police who has possession of, or uses, a prohibited weapon for the purpose or in the course of his or her duties as such a member;
- (c) a person who has possession of a prohibited weapon for the purposes of a museum or art gallery;
- (d) a person who has possession of, or uses, a prohibited weapon for the purpose or in the course of providing a lawful form of entertainment of other persons that reasonably requires the possession or use of the prohibited weapon;
- (e) a person who has possession of, or uses, a prohibited weapon for the purpose or in the course of participating in a lawful and recognised form of recreation or sport that reasonably requires the possession or use of the prohibited weapon;
- (f) a person who has possession of, or uses, a prohibited weapon for the purpose or in the course of an official ceremony that reasonably requires the possession or use of the prohibited weapon;
- (g) a person who has possession of, or uses, a dagger for a religious purpose.

(2b) The following persons are exempt persons for the purposes of subsection (1e) in the following circumstances:

- (a) a person who has been declared or who is a member of a class that has been declared by the Minister under subsection (2d) to be an exempt person or exempt class in the circumstances specified in the declaration;
- (b) a person who has been declared or who is a member of a class that has been declared by regulation to be an exempt person or exempt class in the circumstances specified in the regulation.

(2c) The declaration of a person, or a class, as an exempt person or class for the purposes of subsection (1e) may be conditional or unconditional.

(2d) The Minister may declare a person or a class of persons to be an exempt person or class for the purposes of subsection (1e) in the circumstances specified in the declaration.

(2e) The Minister may delegate his or her power under subsection (2d) to any person or body.

(2f) A delegation under subsection (2e)—

- (a) must be in writing; and
- (b) may be conditional or unconditional; and

- (c) does not derogate from the Minister's ability to exercise the power under subsection (2d); and
- (d) is revocable at will by the Minister.
- (2g) An application to the Minister or the Minister's delegate for a declaration under subsection (2d) must be—
- (a) in a form approved by the Minister or delegate; and
- (b) accompanied by the fee prescribed by regulation.;
- (h) by striking out the definition of "carry" from subsection (3);
- (i) by inserting the following definition after the definition of "dangerous article" in subsection (3):
- "exempt person"**—see subsections (2a) and (2b);;
- (j) by striking out ", dagger" from the definition of "offensive weapon" in subsection (3);
- (k) by inserting after "instrument" in the definition of "offensive weapon" in subsection (3) "but does not include a prohibited weapon";
- (l) by inserting the following definitions after the definition of "offensive weapon" in subsection (3):
- "official ceremony"** means a ceremony conducted—
- (a) by the Crown in right of the State or the Commonwealth; or
- (b) by or under the auspices of—
- (i) the Government of the State or the Commonwealth; or
- (ii) South Australia Police; or
- (iii) the armed forces;
- "prohibited weapon"** means an article or thing declared by regulation to be a prohibited weapon for the purposes of this section.;
- (m) by inserting the following subsection after subsection (3):
- (3a) For the purposes of this section a person will be taken to be carrying a firearm or other offensive weapon or a magazine or an article of disguise if he or she has the firearm, other offensive weapon, magazine or article on or about his or her person or if it is under his or her immediate control.;
- (n) by striking out subsection (5).

Amendment of s. 85—Regulations

4. Section 85 of the principal Act is amended by inserting after its present contents (now to be designated as subsection (1)) the following subsection:

(2) Without limiting subsection (1), the regulations may—

- (a)** declare any specified articles or things, or articles or things of a specified class, to be dangerous articles or prohibited weapons for the purposes of section 15.
- (b)** declare a person or a class of persons to be an exempt person or class for the purposes of section 15(1e) in the circumstances specified in the regulation;
- (c)** impose fees in relation to the administration of this Act.

SCHEDULE

Further Amendment of Principal Act

Provision Amended	How Amended
Section 6(1)	Strike out the penalty provision and substitute: Maximum penalty: \$10 000 or imprisonment for 2 years.
Section 6(2)	Strike out the penalty provision and substitute: Maximum penalty: \$2 500 or imprisonment for 6 months.
Section 7(1)	Strike out the penalty provision and substitute: Maximum penalty: \$1 250 or imprisonment for 3 months.
Section 7(2)	Strike out the penalty provision and substitute: Maximum penalty: \$1 250 or imprisonment for 3 months.
Section 7A(1)	Strike out the penalty provision and substitute: Maximum penalty: \$10 000 or imprisonment for 2 years.
Section 8(1)	Strike out the penalty provision and substitute: Maximum penalty: \$750.
Section 9A(4)	Strike out the penalty provision and substitute: Maximum penalty: \$750.
Section 11	Strike out the penalty provision and substitute: Maximum penalty: \$750.
Section 11A	Strike out the penalty provision and substitute: Maximum penalty: \$750.
Section 12(1)	Strike out the penalty provision and substitute: Maximum penalty: \$250.
Section 13	Strike out the penalty provision and substitute: Maximum penalty: \$2 500 or imprisonment for 6 months.
Section 15A(1)	Strike out the penalty provision and substitute: Maximum penalty: \$10 000 or imprisonment for 2 years.
Section 16(1)	Strike out the penalty provision and substitute: Maximum penalty: \$2 500 or imprisonment for 6 months.
Section 17(1)	Strike out the penalty provision and substitute: Maximum penalty: Where the unlawful purpose is the commission of an offence punishable by a maximum term of imprisonment of 2 years or more—imprisonment for 2 years. In any other case—\$2 500 or imprisonment for 6 months.
Section 17(3)	Strike out the penalty provision and substitute: Maximum penalty: \$2 500 or imprisonment for 6 months.
Section 17A(1)	Strike out the penalty provision and substitute: Maximum penalty: \$2 500 or imprisonment for 6 months.
Section 17A(2)	Strike out the penalty provision and substitute: Maximum penalty: \$1 250.
Section 17A(2a)	Strike out the penalty provision and substitute: Maximum penalty: \$1 250.

Section 17A(2c)	Strike out the penalty provision and substitute: Maximum penalty: \$750.
Section 17B(1)	Strike out the penalty provision and substitute: Maximum penalty: \$750.
Section 17C(1)	Strike out the penalty provision and substitute: Maximum penalty: \$750.
Section 17D(1)	Strike out the penalty provision and substitute: Maximum penalty: \$5 000 or imprisonment for 1 year.
Section 17D(2)	Strike out the penalty provision and substitute: Maximum penalty: \$5 000 or imprisonment for 1 year.
Section 18(2)	Strike out the penalty provision and substitute: Maximum penalty: \$1 250 or imprisonment for 3 months.
Section 18A(1)	Strike out the penalty provision and substitute: Maximum penalty: \$1 250 or imprisonment for 3 months.
Section 20(1)	Strike out the penalty provision and substitute: Maximum penalty: \$750.
Section 21(1)	Strike out the penalty provision and substitute: Maximum penalty: \$750.
Section 21A(1)	Strike out the penalty provision and substitute: Maximum penalty: \$1 250 or imprisonment for 3 months.
Section 22(1)	Strike out the penalty provision and substitute: Maximum penalty: \$250.
Section 23(1)	Strike out the penalty provision and substitute: Maximum penalty: \$1 250 or imprisonment for 3 months.
Section 23(2)	Strike out the penalty provision and substitute: Maximum penalty: \$2 500 or imprisonment for 6 months.
Section 24	Strike out the penalty provision and substitute: Maximum penalty: \$250.
Section 25	Strike out the penalty provision and substitute: Maximum penalty: \$750.
Section 26(1)	Strike out the penalty provision and substitute: Maximum penalty: \$2 500 or imprisonment for 6 months.
Section 28(1)	Strike out the penalty provision and substitute: Maximum penalty: For a first offence—\$1 250 or imprisonment for 3 months. For a subsequent offence—\$2 500 or imprisonment for 6 months.
Section 29	Strike out the penalty provision and substitute: Maximum penalty: For a first offence—\$1 250 or imprisonment for 3 months. For a subsequent offence—\$2 500 or imprisonment for 6 months.

Section 33(2)	Strike out the penalty provision and substitute: Maximum penalty: (a) if the offence involves child pornography—for a first offence, imprisonment for 2 years and for a second or subsequent offence, imprisonment for 4 years; (b) in any other case—\$20 000 or imprisonment for 6 months.
Section 33(3)	Strike out the penalty provision and substitute: Maximum penalty: \$5 000 or imprisonment for 1 year.
Section 35(1)	Strike out the penalty provision and substitute: Maximum penalty: \$2 500 or imprisonment for 6 months.
Section 37	Strike out the penalty provision and substitute: Maximum penalty: \$10 000 or imprisonment for 2 years.
Section 38	Strike out the penalty provision and substitute: Maximum penalty: \$10 000 or imprisonment for 2 years.
Section 38A(1)	Strike out the penalty provision and substitute: Maximum penalty: \$2 500 or imprisonment for 6 months.
Section 39(1)	Strike out the penalty provision and substitute: Maximum penalty: \$10 000 or imprisonment for 2 years.
Section 40	Strike out the penalty provision and substitute: Maximum penalty: \$10 000 or imprisonment for 2 years.
Section 41(1)	Strike out the penalty provision and substitute: Maximum penalty: \$10 000 or imprisonment for 2 years.
Section 42(1)	Strike out the penalty provision and substitute: Maximum penalty: \$2 500 or imprisonment for 6 months.
Section 43(1)	Strike out the penalty provision and substitute: Maximum penalty: \$10 000 or imprisonment for 2 years.
Section 44(2)	Strike out this subsection and substitute: (2) The maximum penalty for an offence against subsection (1) is as follows: (a) if the person who committed the offence did so with the intention of obtaining a benefit from, or causing a detriment to, another—\$2 500 or imprisonment for 6 months; (b) in any other case—\$2 500.
Section 45(1)	Strike out the penalty provision and substitute: Maximum penalty: \$2 500 or imprisonment for 6 months.
Section 46(1)	Strike out the penalty provision and substitute: Maximum penalty: \$5 000 or imprisonment for 1 year.
Section 47(1)	Strike out the penalty provision and substitute: Maximum penalty: \$250.
Section 48(1)	Strike out the penalty provision and substitute: Maximum penalty: \$2 500 or imprisonment for 6 months.

Section 48(2)	Strike out the penalty provision and substitute: Maximum penalty: \$2 500 or imprisonment for 6 months.
Section 48(4)	Strike out the penalty provision and substitute: Maximum penalty: \$2 500 or imprisonment for 6 months.
Section 50	Strike out the penalty provision and substitute: Maximum penalty: \$250.
Section 51(1)	Strike out the penalty provision and substitute: Maximum penalty: \$10 000 or imprisonment for 2 years.
Section 52	Strike out the penalty provision and substitute: Maximum penalty: \$2 500 or imprisonment for 6 months.
Section 53(1)	Strike out the penalty provision and substitute: Maximum penalty: \$250.
Section 56	Strike out the penalty provision and substitute: Maximum penalty: \$750.
Section 57(1)	Strike out the penalty provision and substitute: Maximum penalty: \$750.
Section 57(3)(a)	Strike out "division 11 fine" and substitute "maximum penalty of \$125"
Section 58(1)	Strike out the penalty provision and substitute: Maximum penalty: \$750.
Section 58A(2)	Strike out the penalty provision and substitute: Maximum penalty: \$750.
Section 58A(4)	Strike out the penalty provision and substitute: Maximum penalty: \$750.
Section 58A(5)	Strike out the penalty provision and substitute: Maximum penalty: \$750.
Section 58A(6)	Strike out the penalty provision and substitute: Maximum penalty: \$750.
Section 58B(4)	Strike out the penalty provision and substitute: Maximum penalty: \$750.
Section 59(8)	Strike out the penalty provision and substitute: Maximum penalty: \$750.
Section 61(1)	Strike out the penalty provision and substitute: Maximum penalty: \$10 000 or imprisonment for 2 years.
Section 62(1)	Strike out the penalty provision and substitute: Maximum penalty: \$10 000 or imprisonment for 2 years.
Section 62A(1)	Strike out the penalty provision and substitute: Maximum penalty: \$10 000 or imprisonment for 2 years.
Section 73(2)	Strike out the penalty provision and substitute: Maximum penalty: \$2 500 or imprisonment for 6 months.
Section 74A(3)	Strike out the penalty provision and substitute: Maximum penalty: \$1 250 or imprisonment for 3 months.
Section 74B(7)	Strike out the penalty provision and substitute: Maximum penalty: \$2 500 or imprisonment for 6 months.

Section 81(4e)	Strike out the penalty provision and substitute: Maximum penalty: \$1 250 or imprisonment for 3 months
Section 83B(5)	Strike out the penalty provision and substitute: Maximum penalty: \$2 500 or imprisonment for 6 months.
Section 83BA(5)	Strike out the penalty provision and substitute: Maximum penalty: \$2 500 or imprisonment for 6 months.
Section 84	Strike out this section.

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

E. J. NEAL Governor