



SUMMARY PROCEDURE (SUMMARY PROTECTION ORDERS) AMENDMENT ACT 1992

No. 75 of 1992

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ELIZABETHAE II REGINAE

A.D. 1992

No. 75 of 1992

An Act to amend the Summary Procedure Act 1921.

[Assented to 26 November 1992]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Summary Procedure (Summary Protection Orders) Amendment Act 1992*.

(2) The *Summary Procedure Act 1921* 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. 4—Interpretation

3. Section 4 of the principal Act is amended—

(a) by inserting after the definition of “industrial offence” in subsection (1) the following definition:

“interstate summary protection order” means an order made under a law of another State or a Territory of the Commonwealth declared by regulation to be a law corresponding to Division 7 of Part 4;

and

(b) by inserting after the definition of “summary offence” in subsection (1) the following definitions:

“summary protection order” means an order made under section 99:

“telephone” includes any telecommunication device.

Substitution of heading to Part IV Division VII

4. The heading to Part IV Division VII is repealed and the following heading is substituted:

DIVISION VII—SUMMARY PROTECTION ORDERS.

Amendment of s. 99—Summary protection orders**5. Section 99 of the principal Act is amended—**

- (a) by striking out from subsection (1) “subsection (2)” and substituting “this section”;
- (b) by inserting after “to appear before the court” in subsection (4) “not later than 7 days after the date of the order”;
- (c) by inserting after subsection (4a) the following subsections:

(4b) A complaint under this section may be made and dealt with by telephone as follows:

(a) the complainant must be—

(i) a member of the police force who establishes his or her identity and official position in a manner acceptable to the Court;

or

(ii) a person introduced by a member of the police force who establishes his or her identity and official position in a manner acceptable to the Court;

(b) the Court must satisfy itself (as far as practicable) that the complaint is genuine, and that the case is of sufficient urgency to justify making an order without requiring the personal attendance of the complainant, by the oral questioning of the complainant and any other available witnesses by telephone;

(c) if the Court is then satisfied that it is appropriate to make an order, the member of the police force who made the complaint or introduced the complainant—

(i) must make out, in accordance with directions communicated by the Court by telephone, a document in the form prescribed by the rules comprising—

• the terms of the Court’s order;

and

• a summons requiring the defendant to appear before the Court at a specified time and place to show cause why the order should not be confirmed,

(and the order will not be effective after the conclusion of the hearing to which the defendant is summoned unless the defendant does not appear at that hearing in obedience to the summons or the Court, having considered any evidence given by or on behalf of the defendant, confirms the order);

and

(ii) must return a copy of the completed document, or send it by facsimile, to the Court;

(d) if the Court is not satisfied that it is an appropriate case for making an order without requiring the personal attendance of the complainant, the Court may adjourn the hearing of the complaint to a time and place fixed by the Court and inform the complainant of the time and place so fixed.

(4c) A tape recording must be made of any oral proceedings conducted by telephone under subsection (4b).

(4d) If a hearing is adjourned under subsection (4b), the Court need not be constituted at the adjourned hearing of the same judicial officer as ordered the adjournment.

(4e) If a member of the police force has reason to believe that a complaint under this section is being or is about to be made against a person in accordance with subsection (4b), the member may—

(a) require the person to remain at a particular place while the complaint is made and dealt with so that any order or summons made or issued on the complaint may be served on the person;

and

(b) if the person refuses or fails to comply with the requirement or the member has reasonable grounds to believe that the requirement will not be complied with, arrest and detain the person in custody (without warrant) for—

(i) so long as may be necessary for the complaint to be made and dealt with and any order or summons made or issued to be served on the person;

or

(ii) two hours,

whichever is the lesser;

and

(d) by striking out subsections (6), (7), (8) and (9) and substituting the following subsection:

(6) An order under this section must be served personally on the defendant.

Insertion of ss. 99a, 100 and 100a

6. The following sections are inserted after section 99 of the principal Act:

Orders as to firearms

99a. (1) Subject to subsection (2), when the Court makes a summary protection order, it must make the following additional orders:

(a) if the defendant has possession of a firearm—an order that the firearm be confiscated, and disposed of or dealt with as directed by the Court, and, if the circumstances of the case so require, an order authorising a member of the police force to enter any premises in which such a firearm is suspected to be, and search for and take possession of any such firearm;

(b) if the defendant has a licence or permit to be in possession of a firearm—an order that the licence or permit be cancelled and delivered up to the Registrar of Firearms;

and

(c) an order that the defendant be disqualified from holding or obtaining a licence or permit to be in possession of a firearm.

(2) If the summary protection order is subject to confirmation—

(a) an order for confiscation of a firearm must provide for the return of any confiscated firearm to the defendant if the summary protection order is not confirmed;

(b) if the defendant has a licence or permit to be in possession of a firearm—an order will be made in the first instance for the suspension of the licence or permit until the court determines whether to confirm the summary protection order, but if the summary protection order is confirmed, an order must then be made for the cancellation of the licence or permit and its delivery up to the Registrar of Firearms;

and

(c) an order disqualifying the defendant from holding or obtaining a licence or permit to be in possession of a firearm will lapse if the summary protection order is not confirmed.

(3) The Court may on the application of the defendant vary or revoke an order under this section if satisfied—

(a) that the defendant has never been guilty of violent or intimidatory conduct;

and

(b) that the defendant needs to have a firearm for purposes related to the earning of a livelihood.

(4) An order under this section lapses on the revocation of the summary protection order in relation to which the order was made.

(5) A person who has possession of a firearm while an order under this section remains in force against that person is guilty of an offence.

Penalty: Imprisonment for 2 years.

Registration of interstate summary protection orders

100. (1) The Principal Registrar may, subject to the rules, register an interstate summary protection order in the Court.

(2) Subject to subsection (3), a registered interstate summary protection order has the same effect, and may be enforced in the same way, as a summary protection order made under this Act.

(3) The Court may make such adaptations or modifications to the order (as it applies in this State) as the Court considers necessary or desirable for the effective operation of the order in this State.

(4) The Court may, at any time on application by a member of the police force, a person for whose benefit a registered interstate protection order was made or a person against whom a registered interstate protection order was made—

(a) vary the order as it applies in this State;

or

(b) cancel the registration of the order.

(5) If an interstate summary protection order is registered under this section, the Principal Registrar must forward a copy of the order to the Commissioner of Police.

(6) If the Court varies a registered interstate summary protection order as it applies in this State, or cancels the registration of the order, the Principal Registrar must notify the Commissioner of Police of the variation or cancellation.

Offence to contravene or fail to comply with summary protection order

100a. (1) A person who contravenes or fails to comply with a summary protection order or a registered interstate summary protection order is guilty of an offence.

Penalty: Imprisonment for 2 years.

(2) If a member of the police force has reason to suspect that a person has committed an offence against subsection (1), the member may, without warrant, arrest and detain that person.

(3) A person arrested and detained under subsection (2) must be brought before the Court as soon as practicable and, in any event, not more than 24 hours after arrest to be dealt with for the offence.

(4) In calculating the time that has elapsed since arrest for the purposes of subsection (3), no period falling on a Saturday, Sunday or public holiday will be counted.

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

ROMA MITCHELL Governor