



ANNO QUINTO

ELIZABETHAE II REGINAE

A.D. 1956.

No. 54 of 1956.

An Act to amend the Criminal Law Consolidation Act,
1935-1952.

[Assented to 29th November, 1956.]

BE IT ENACTED by the Governor of the State of South
Australia, with the advice and consent of the Parliament
thereof, as follows :

1. (1) This Act may be cited as the "Criminal Law Con- Short titles.
solidation Act Amendment Act, 1956".

(2) The Criminal Law Consolidation Act, 1935-1952, as
amended by this Act, may be cited as the "Criminal Law
Consolidation Act, 1935-1956".

(3) The Criminal Law Consolidation Act, 1935-1952, is
hereinafter referred to as "the principal Act".

2. This Act is incorporated with the principal Act and that Incorporation.
Act and this Act shall be read as one Act.

3. Section 77 of the principal Act is amended—

(a) by striking out the words "of a sexual nature (not
being an offence punishable on summary convic-
tion)" in the second and third lines of subsection (1)
thereof and inserting in their place the words
"mentioned in subsection (8) of this section" ;

(b) by inserting after the word "section" in the first line
of subsection (6) thereof, the words "'court'
means the Supreme Court or a court of summary
jurisdiction constituted by a special magistrate ;
and" ;

Amendment of
principal Act,
s. 77—
Indeterminate
sentence where
prisoner
suffers from
venereal
disease.

(c) by adding at the end thereof the following subsection :—

(8) The offences to which this section applies are the offences mentioned in sections 48, 49, 50, 51, 52, 53, 55, 56, 57b, 58, 59, 60, 61, 62, 63, 64, 65, 66, 68, 69, 70, 71, 72, and 255 of this Act and in section 23 of the Police Offences Act, 1953.

Amendment of
principal Act,
s. 77a—

Detention of
persons
incapable of
controlling
sexual
instincts.

4. Section 77a of the principal Act is amended—

(a) by striking out the words “of a sexual nature” in the second line of subsection (1) thereof and inserting in their place the words “mentioned in subsection (9) of this section” ;

(b) by inserting after the word “section” in the first line of subsection (8) thereof the words “ ‘ court’ means the Supreme Court or a court of summary jurisdiction constituted by a special magistrate; and” ;

(c) by adding at the end thereof the following subsection :—

(9) The offences to which this section applies are—

(a) the offences mentioned in sections 48, 49, 50, 51, 52, 53, 55, 56, 57b, 58, 59, 60, 61, 62, 63, 64, 65, 66, 68, 69, 70, 71, 72, and 255 of this Act and in section 23 of the Police Offences Act, 1953; and

(b) any other offence where the evidence indicates that the offender may be incapable of exercising proper control over his sexual instincts.

Application
of amendments
made by
ss. 3 and 4.

5. The amendments made to the principal Act by sections 3 and 4 of this Act shall apply in every case where a person is found guilty after the commencement of this Act of an offence committed whether before or after the said commencement.

Repeal of
s. 300 of
principal Act
and heading
thereto and
enactment of
heading and
ss. 300-300h.

6. Section 300 of the principal Act and the heading thereto are repealed, and the following heading and sections are enacted and inserted in their place :—

Fines and Forfeited Recognizances.

300. (1) In sections 300a to 300h, unless the context otherwise requires, or some other meaning is clearly intended—

Interpretation
of ss. 300a-
300h.

“fine” means a fine imposed by the Supreme Court in its criminal jurisdiction as a penalty for an offence, and includes an instalment or part of any such fine, but does not include a fine imposed on a juror :

“forfeiture” means—

(a) the amount due under a recognizance forfeited by the Supreme Court in its criminal jurisdiction ; and

(b) if the amount due is reduced by the Court or a judge, the amount as so reduced,

and includes an instalment or part of any such amount :

“Master of the Supreme Court” includes the Deputy Master of the Supreme Court :

“paid” includes recovered by execution of a writ of *feri facias*, and “payment” has a corresponding meaning :

“writ of *capias*” means a writ of *capias ad satisfaciendum*.

(2) References in sections 300a to 300h to the forfeiting of a recognizance shall be deemed to refer to the forfeiting of a recognizance by the Supreme Court in its criminal jurisdiction.

(3) Sections 300a to 300h shall apply notwithstanding anything contained in the Debtors Act, 1936.

300a. (1) Where a fine is imposed or a recognizance forfeited by the Supreme Court, the Court or any judge thereof may make any one or more of the following orders, namely—

Powers in
relation to
fines and
forfeited
recognizances.

(a) an order fixing a term of imprisonment which the person liable to pay the fine or forfeiture is to undergo if any sum which he is liable to pay is not duly paid ;

(b) an order allowing time for payment of the fine or forfeiture ;

(c) an order directing payment of the fine or forfeiture by instalments of such amounts and on such days respectively as are specified in the order ;

(d) an order discharging the recognizance or reducing the amount due thereunder.

(2) A term of imprisonment fixed under subsection (1) of this section—

(a) shall, if the Court or judge so directs, be imprisonment with hard labour ; and

(b) shall not exceed twelve months.

(3) An order under this section—

(a) may be made either at the time when the fine is imposed or the recognizance forfeited, or subsequently, and either by the Court or judge imposing the fine or forfeiting the recognizance, or by any other judge ; and

(b) may amend any previous order under this section.

Default in
payment of
instalments.

300b. If default is made in payment of any instalment of a fine or forfeiture, the whole of that fine or forfeiture, or as the case may be, the whole of the balance thereof remaining unpaid, shall immediately become payable.

Imprisonment
under order of
Court when no
time allowed
for payment.

300c. Where an order fixing a term of imprisonment to be served in default of payment of a fine or forfeiture is made against a person present before the Court or judge, and the Court or judge does not allow time for payment, and the fine or forfeiture is not immediately paid, that person may while the default continues be detained in custody without the issue of any writ for the term so fixed subject to any reduction thereof under section 300g.

Recovery and
payment of
fines and
forfeitures.

300d. (1) The Sheriff shall recover all fines and forfeitures and whenever he deems it necessary apply for and execute writs for that purpose.

(2) Payment of a fine or forfeiture may be made to—

(a) the Sheriff or Deputy Sheriff or some other person appointed by the Sheriff to receive such payments :

(b) where the person liable to make payment is in prison, to the keeper of the prison.

(3) The keeper of a prison shall on receiving payment of a fine or forfeiture forthwith pay the amount received to the Sheriff.

(4) If rules of court are made providing for the costs of execution of a writ of *feri facias* issued under section 300e to be recovered, the Sheriff shall recover such costs, and for that purpose sections 300a to 300h shall apply as though the fine or forfeiture were increased by the amount of the costs.

300e. (1) Subject to this section, a judge of the Supreme Court or the Master thereof shall have power to issue writs of *feri facias* and *capias* for the purpose of enforcing payment of fines and forfeitures. Issue of writs.

(2) No such writ shall be issued except upon application made by the Sheriff and proof of default.

The application may be dealt with *ex parte*.

(3) A writ of *feri facias*—

(a) may be issued notwithstanding that a term of imprisonment to be served in default of payment has been fixed by order of the Court or a judge; but

(b) shall not be issued or executed after the person in default has been lodged in prison for such default, whether under a writ of *capias* or otherwise.

(4) A writ of *capias* may be issued—

(a) without the previous issue of a writ of *feri facias* against the person in default; or

(b) after the issue of a writ of *feri facias* against the person in default, if the Sheriff certifies that he could find no goods, chattels, lands or tenements or insufficient goods, chattels, lands and tenements of such person, whereof he could cause to be made the amount mentioned in the writ, or so much thereof as had not previously been paid.

(5) A writ of *capias* issued under this section shall specify the term of imprisonment of the person in default, and such term shall be as follows—

(a) if an order has been made under section 300a fixing a term of imprisonment, the term of imprisonment so fixed, subject to any reduction thereof under section 300g; or

(b) if no order is in force under section 300a fixing a term of imprisonment, such term of imprisonment, with or without hard labour, as the judge or Master issuing the writ thinks fit, but not exceeding twelve months.

(6) A writ issued under this section shall remain in force until executed or returned by the Sheriff.

(7) A writ issued under this section shall be in the prescribed form or, if no form is prescribed, in such form as the judge or Master issuing the writ thinks fit.

Term of imprisonment may run from termination of a sentence.

300f. The Court, judge or Master, when fixing, or specifying in a writ, the term of imprisonment which a person in default is liable to serve, may order that such term shall not begin to run until after the end of any other term of imprisonment which the person is serving or is liable to serve.

Reduction of imprisonment on part payment of a fine or forfeiture.

300g. (1) A term of imprisonment which a person is serving or liable to serve on default in payment of a fine or forfeiture shall, on payment of a part of the fine or forfeiture, be reduced by such number of days as bears to the total number of days of the term less one, the proportion most nearly approximating to, without exceeding, the proportion which the part paid bears to the amount of the fine or forfeiture.

(2) When application is made to a judge or the Master to issue a writ of *capias* in respect of a fine or forfeiture, and it is made to appear to him that any part of the fine or forfeiture has been paid, he shall issue the writ accordingly for the term as reduced under this section.

(3) Where a writ of *capias* has been issued against any person pursuant to section 300e, and payment is made of any part of the fine or forfeiture, the Sheriff shall endorse a memorandum of such payment, and the reduction thereby effected, upon the writ, which shall thereupon be deemed to have been amended accordingly.

Proof of orders and defaults.

300h. On the hearing of any application in which it is necessary to prove the making of an order under section 300a or default in payment of a fine or forfeiture—

(a) a certificate signed by the judge or one of the judges who made the order, or by the Associate of such judge, or by the Master or Chief Clerk of the Supreme Court, and purporting to

certify the terms of any such order, shall be sufficient proof of the making and terms of the order :

- (b) a certificate signed by the Sheriff (whether endorsed on a writ or otherwise) and purporting to certify that default has been made in such payment shall be sufficient proof of the matters mentioned in the certificate :
- (c) judicial notice shall be taken of the signature of any judge or any of the officers mentioned in this section.

7. Section 313 of the principal Act is amended by striking out paragraph (b) of subsection (1) thereof.

Amendment of principal Act, s. 313—
Fines and sureties.

8. (1) Section 321 of the principal Act is repealed and the following section enacted and inserted in its place :—

Repeal and re-enactment of s. 321 of principal Act—

321. (1) Subject to this Act, every habitual criminal shall, at the expiration of his sentence, be detained during Her Majesty's pleasure in some place of confinement set apart for that purpose by proclamation.

Habitual criminal to be detained during pleasure.

(2) A place of confinement so proclaimed shall be a prison within the meaning of the Prisons Act, 1936-1954, and the detention of a habitual criminal therein shall be subject to that Act and the regulations thereunder.

(3) The Governor may by proclamation vary or revoke any proclamation made under subsection (1) of this section.

(2) A proclamation made under the power contained in section 321 of the principal Act before the commencement of this Act shall, unless revoked, have effect as if made under section 321 of the principal Act as enacted by this Act.

9. Section 322 of the principal Act is repealed.

Repeal of s. 322 of principal Act—
Habitual criminal to work at some trade.

10. Sections 323, 324 and 325 of the principal Act are repealed and the following section is enacted and inserted in their place :—

Repeal of ss. 323-325 of principal Act and re-enactment of s. 323—

323. (1) The Governor may at any time on the recommendation of the Comptroller of Prisons release an habitual criminal on licence subject to compliance with such conditions, if any, as the Governor may from time to time determine.

Release on licence of habitual criminals.

(2) The Governor may at any time by order recall to a place of confinement an habitual criminal released on licence under this section, but without prejudice to the power of the Governor to release him on licence again, and when any habitual criminal is so recalled, his licence shall cease to have effect and he shall, if at large, be deemed to be unlawfully at large.

(3) If, during the period of three years following the release of an habitual criminal on licence under this section, he is not recalled by the Governor, he shall cease to be an habitual criminal at the expiration of that period unless the Governor orders to the contrary.

Repeal of
ss. 326 and
327 of
principal Act—
Males and
females to be
kept apart.
Alcoholic
liquor
prohibited.

11. Sections 326 and 327 of the principal Act are repealed.

Repeal and
re-enactment
of s. 328 of
principal Act—

12. (1) Section 328 of the principal Act is repealed and the following section enacted and inserted in its place :—

Regulations
under Prisons
Act, 1936-1954.

328. Regulations, not inconsistent with this Act, may be made under the Prisons Act, 1936-1954, for the purposes of the provisions of this Act relating to habitual criminals and for prescribing the duties, liabilities, privileges and conditions of detention of an habitual criminal in a place of confinement, and without limiting the generality of the foregoing—

- (a) with respect to the control and management of a place of confinement of habitual criminals ;
- (b) for prescribing the conditions under which and the manner in which an habitual criminal may petition for his release ;
- (c) for the appointment of a consultative committee for each place of confinement to consider the detention of every habitual criminal detained therein and matters incidental thereto and to advise the Comptroller of Prisons thereon ;
- (d) for the application to habitual criminals of any provision of the Prisons Act, 1936-1954, or the regulations thereunder.

(2) Any regulation made under the powers contained in section 328 of the principal Act and in force at the commencement of this Act, not being a regulation for the crediting of

payment of earnings to habitual criminals, shall be deemed to have been made pursuant to section 328 of the principal Act as enacted by this Act, and shall have effect accordingly.

13. Schedules 4 to 7 (inclusive) to the principal Act are struck out.

Repeal of
Schedules 4
to 7 of
principal Act.

14. (1) The principal Act as amended by sections 6, 7 and 13 of this Act shall apply with respect to—

Application of
principal Act
as amended by
this Act to
fines and
forfeitures

(a) every fine imposed or recognizance forfeited before the commencement of this Act if no writ has been issued pursuant to section 300 of the principal Act to enforce the fine or forfeiture; and

(b) every fine imposed or recognizance forfeited after the commencement of this Act.

(2) For the purposes of subsection (1), an order made pursuant to paragraph (b) of subsection (1) of section 313 of the principal Act before the commencement of this Act shall be deemed to have been made pursuant to section 300a of the principal Act as enacted by this Act.

(3) Where a writ has been issued before the commencement of this Act pursuant to section 300 of the principal Act to enforce payment of a fine or forfeiture, the principal Act shall continue to apply with respect to the fine or forfeiture as if this Act had not been passed.

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

R. A. GEORGE, Governor.