

South Australia



CRIMINAL LAW CONSOLIDATION (FELONIES AND MISDEMEANOURS) AMENDMENT ACT 1994

No. 59 of 1994

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ANNO QUADRAGESIMO TERTIO

ELIZABETHAE II REGINAE

A.D. 1994

No. 59 of 1994

An Act to amend the Criminal Law Consolidation Act 1935 and to make consequential amendments to other legislation to provide for the abolition of the classification of offences as felonies and misdemeanours; and for other purposes.

[Assented to 27 October 1994]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Criminal Law Consolidation (Felonies and Misdemeanours) Amendment Act 1994*.

(2) The *Criminal Law Consolidation Act 1935* 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. 5—Interpretation

3. Section 5 of the principal Act is amended by striking out subsection (2) and substituting the following subsection:

(2) A note to a section or subsection of this Act forms part of the text of the Act unless the note clearly has no substantive effect.

Insertion of s. 5D

4. The following section is inserted after section 5c of the principal Act:

Abolition of historical classifications

5D. (1) The classification of offences as felonies is abolished.

(2) The classification of offences as misdemeanours is abolished.

Insertion of s. 12A

5. The following section is inserted after section 12 of the principal Act:

Causing death by an intentional act of violence

12A. A person who commits an intentional act of violence while acting in the course or furtherance of a major indictable offence punishable by imprisonment for ten years or more (other than abortion¹), and thus causes the death of another, is guilty of murder.

Note—

¹*ie. an offence against section 81(2).*

Substitution of s. 75

6. Section 75 of the principal Act is repealed and the following section is substituted:

Alternative verdict on charge of rape, etc.

75. If on a trial for rape or unlawful sexual intercourse, or an attempt to commit rape or unlawful sexual intercourse, the jury—

- (a) is not satisfied that the accused is guilty of the offence charged; but
- (b) is satisfied that the accused is guilty of an indecent assault or a common assault, or an attempt to commit indecent assault or a common assault (the "lesser offence"),

the jury must find the accused not guilty of the offence charged, but may find the accused guilty of the lesser offence.

Repeal of ss. 134 and 135

7. Sections 134 and 135 of the principal Act are repealed.

Substitution of ss. 167—172

8. Sections 167 to 172 (inclusive) of the principal Act are repealed and the following sections are substituted:

Sacrilege

167. A person who—

- (a) breaks and enters a place of divine worship and commits an offence to which this section applies¹ in that place; or
- (b) breaks out of a place of divine worship after committing an offence to which this section applies¹ in that place,

is guilty of sacrilege and liable to be imprisoned for life.

Note—

¹*ie. larceny or an offence of which larceny is an element; an offence against the person; or an offence involving interference with, damage to, or destruction of, property punishable by imprisonment for 3 years or more.*

Burglary

168. A person who, in the night—

- (a) breaks and enters the place of residence of another intending to commit an offence to which this section applies¹ in the place; or
- (b) breaks out of the place of residence of another after—
 - (i) entering the place to commit an offence to which this section applies¹ in the place; or
 - (ii) committing an offence to which this section applies¹ in the place,

is guilty of burglary and liable to be imprisoned for life.

Note—

¹ie. larceny or an offence of which larceny is an element; an offence against the person; or an offence involving interference with, damage to, or destruction of, property punishable by imprisonment for 3 years or more.

Entering place of residence to commit offence

169. A person who enters the place of residence of another in the night intending to commit an offence to which this section applies¹ in that place is guilty of an offence and liable to be imprisoned for a term not exceeding 7 years.

Note—

¹ie. larceny or an offence of which larceny is an element; an offence against the person; or an offence involving interference with, damage to, or destruction of, property punishable by imprisonment for 3 years or more.

Breaking and entering

170. (1) A person who—

- (a) breaks and enters a building¹ and commits an offence to which this section applies² in the building; or
- (b) breaks out of a building¹ after committing an offence to which this section applies² in the building,

is guilty of an offence and liable to be imprisoned for a term not exceeding 8 years.

(2) A person who breaks and enters a building¹ intending to commit an offence to which this section applies² in the place is guilty of an offence and liable to be imprisoned for a term not exceeding 7 years.

Notes—

¹The reference to a building in subsection (1) does not extend to a place of divine worship (because there is separate offence of sacrilege — see section 167). However, the reference to a building in subsection (2) does extend to a place of divine worship.

²ie. larceny or an offence of which larceny is an element; an offence against the person; or an offence involving interference with, damage to, or destruction of, property punishable by imprisonment for 3 years or more.

Nocturnal offences

171. (1) A person who is armed, at night, with a dangerous or offensive weapon intending to use the weapon to commit an offence to which this section applies¹ is guilty of an offence.

(2) A person who is in possession, at night, of housebreaking equipment, without lawful excuse, is guilty of an offence.

(3) A person who is in disguise, at night, intending to commit an offence to which this section applies¹ is guilty of an offence.

(4) A person who is in a building, at night, intending to commit an offence to which this section applies¹ in the building is guilty of an offence.

(5) The penalty for an offence against this section is—

(a) if the accused has previously been convicted of—

(i) an offence against this section (or a corresponding previous enactment); or

(ii) an offence to which this section applies¹—

imprisonment for not more than 10 years; or

(b) in any other case—imprisonment for not more than 7 years.

Note—

¹ie. larceny or an offence of which larceny is an element; an offence against the person; or an offence involving interference with, damage to, or destruction of, property punishable by imprisonment for 3 years or more.

Substitution of ss. 267 and 269

9. Sections 267 and 269 of the principal Act are repealed and the following section is substituted:

Aiding and abetting

267. A person who aids, abets, counsels or procures the commission of an offence is liable to be prosecuted and punished as a principal offender.

Substitution of ss. 271 and 272

10. Sections 271 and 272 of the principal Act are repealed and the following section is substituted:

General power of arrest

271. (1) A person may, without warrant, arrest and detain a person liable to arrest and detention under this section.

(2) A person who arrests and detains another under this section must take the necessary action to have the other person delivered into the custody of a member of the police force forthwith.

(3) A person is liable to arrest and detention under this section if the person is in the act of committing, or has just committed—

- (a) an indictable offence; or
- (b) larceny (whether the larceny is a summary or indictable offence); or
- (c) an offence against the person (whether the offence is summary or indictable);
or
- (d) an offence involving interference with, damage to or destruction of property
(whether the offence is summary or indictable).

SCHEDULE 1

Consequential Amendments to the Criminal Law Consolidation Act 1935

Provision Amended	How Amended
Heading to Part II	Strike out "FELONY".
Heading to section 7	Strike out "felonies".
Sections 7, 11, 12, 20, 21, 25, 78, 80(1), 81(1) and (2), 136, 137, 138, 143(1), 144, 145(1), 146, 147, 148, 149(2), 150, 151(2), 152, 152a, 153, 155, 158, 159, 160, 161, 162, 165, 173, 174, 175, 176(1), 177, 183, 204, 205, 206, 207, 208, 210, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 229, 230, 232, 233 and 234	Strike out "felony" (wherever occurring) and substitute, in each case "an offence".
Sections 23, 27, 41, 42, 43, 49(3) and (5), 56, 58(1), 63, 64, 65, 69, 80(1a), 82, 83(1), 139(2), 140, 143(2), 163(1), 164, 178, 184(1), 185, 186(1), 187(1), 188, 189, 190, 191, 192, 195(1) and 197a(1)	Strike out "a misdemeanour" (wherever occurring) and substitute, in each case, "an offence".
Sections 9(2) and 131	Strike out "felony" (wherever occurring) and substitute, in each case, "offence".
Heading to section 24	Strike out "when felony charged".
Section 24	Strike out "felony" (wherever occurring) and substitute, in the first and second case, "offence" and, in the third case, "that offence".
Sections 26 and 28	Strike out these sections.
Sections 48 and 72	Strike out "the felony of".
Sections 49(1) and 59	Strike out "a felony" and substitute "an offence".
Section 82a(1)	Strike out "a felony or misdemeanour" and substitute "an offence".
Section 193(2)	Strike out "misdemeanours" and substitute "offences".
Heading to section 196	Strike out "where principal guilty of felony".

Section 196(1)	Strike out this subsection and substitute the following subsection: (1) A person who receives property, knowing it to have been taken, obtained, converted or disposed of in circumstances which amount to an offence, is guilty of an offence. Penalty: Imprisonment for eight years.
Section 196(2) and (3)	Strike out "feloniously" wherever occurring.
Section 196(4)	Strike out "feloniously". Strike out "felon" and substitute "offender".
Section 197	Strike out this section.
Section 198(1)	Strike out ", 197".
Section 202	Strike out ", by any felony or misdemeanour,". Strike out "felony" and substitute "an offence".
Section 209	Strike out "or feloniously". Strike out "felony" and substitute "an offence".
Section 211	Strike out ", felon" (wherever occurring). Strike out ", felony" (first occurring). Strike out "felony" (second occurring) and substitute "an offence".
Section 228	Strike out from paragraph (a) "a felony" and substitute "an offence". Strike out "felony" and substitute "an offence".
Heading before section 270	Strike out "Misdemeanours" and substitute "Offences".
Section 270(1) and (2)	Strike out "misdemeanours" (wherever occurring) and substitute, in each case, "offences".
Section 270ab(1)	Strike out "of the felony".
Heading before section 270b	Strike out this heading and substitute the following heading: <i>Assault with Intent to Commit an Offence.</i>
Section 270b(1)	Strike out this subsection and substitute the following subsection: (1) Subject to subsection (2), a person who assaults another with intent to commit an offence to which this section applies ¹ is guilty of an offence.

Section 270b(2)	Strike out "a felony or indictable misdemeanour" and substitute "an offence to which this section applies ¹ ".
Section 270b	Insert after subsection (3) the following note: <i>Note— ¹ie. larceny or an offence of which larceny is an element; an offence against the person; or an offence involving interference with, damage to or destruction of property which is punishable by imprisonment for three years or more.</i>
Section 278(1)	Strike out "(either of the same or different legal categories)".
Section 279	Strike out "felony" and substitute "offence". Strike out "felonies" and substitute "offences". Strike out "felon" and substitute "offender".
Section 290	Strike out "felony or misdemeanour" and substitute "offence".
Section 291	Strike out this section.
Section 295(1)	Insert ", or an offence formerly classified as a felony," after "felony".
Section 295(2)	Insert ", or an offence formerly classified as a felony," after "felony" (first occurring). Strike out "treason or felony" (second occurring) and substitute "offence".
Section 297(4) and (8)	Strike out "felony" and substitute "an indictable offence".
Section 297(7)(b)	Strike out "felons" and substitute "any person charged with an indictable offence".
Heading to section 329	Strike out "treason or of a felony" and substitute "an offence".
Section 329	Strike out "treason, a felony or any other" and substitute "any".
Schedule 3	Strike out from clause 3 ", whether felonies or misdemeanours,".

SCHEDULE 2

Consequential Amendments to Other Acts

Provision Amended	How Amended
<i>Aircraft Offences Act 1971</i> Sections 9 and 11	Strike out "felony" and substitute "an offence".
<i>Architects Act 1939</i> Section 23 (1)	Strike out paragraph (e) and substitute the following paragraph: (e) who has been convicted of an indictable offence.
<i>Ballot Act 1862</i> Sections 7, 9, 10, 11 and 17	Strike out "a misdemeanour" (wherever occurring) and substitute, in each case, "an offence".
<i>Bills of Sale Act 1886</i> Heading to section 37	Strike out "to be misdemeanour".
Section 37	Strike out "a misdemeanour" and substitute "an offence".
<i>Brands Act 1933</i> Section 73(1)	Strike out "a felony" and substitute "an offence".
Section 75	Strike out from paragraph (d) "with felonious intent or". Strike out "a felony" and substitute "an offence".
Section 77	Strike out this section.
<i>Carriers Act 1891</i> Heading to section 9	Strike out "felonious" and substitute "unlawful".
Section 9	Strike out "felonious" and substitute "unlawful".
<i>Cattle Compensation Act 1939</i> Section 14(5)	Strike out "a misdemeanour" and substitute "an offence".
Section 20	Strike out this section.
<i>Constitution Act 1934</i> Section 17(h)	Strike out "a felony or any infamous crime" and substitute "an indictable offence".
Section 31(h)	Strike out "a felony or any infamous crime" and substitute "an indictable offence".

Cremation Act 1891

Sections 5(1) and 8

Strike out "a misdemeanour" and substitute "an offence".

Section 7

Strike out "felony" and substitute "an offence".

Criminal Law (Sentencing) Act 1988

Section 31(3)

Strike out this subsection and substitute the following subsection:

(3) A direction may be given under subsection (1) irrespective of the number of cumulative sentences that the defendant is already serving or will, in consequence of the direction, be liable to serve.

Crown Lands Act 1929

Heading to section 285

Strike out "a felony" and substitute "an offence".

Section 285

Strike out "a felony" and substitute "an offence".

Section 287

Strike out "a misdemeanour" and substitute "an offence".

Debtors Act 1936

Section 4

Strike out "a misdemeanour" and substitute "an offence".

Drugs Act 1908

Section 59(1)

Strike out "a misdemeanour" and substitute "an offence".

Evidence Act 1929

Section 26

Strike out "felony or misdemeanour" and substitute "offence".

Heading to section 41

Strike out "a misdemeanour".

Section 41

Strike out "a misdemeanour" and substitute "an offence".

Heading to section 59

Strike out "to be a felony".

Section 59

Strike out "felony" and substitute "an offence".

Friendly Societies Act 1919

Sections 45a(4)

Strike out "a misdemeanour" and substitute "an offence".

Heading to section 51

Strike out "misdemeanours" and substitute "offences".

Section 51

Strike out "a misdemeanour" and substitute "an offence".

Heading to section 52

Strike out this heading and substitute the following heading:

Penalty for certain offences

Section 52	Strike out "a misdemeanour under this Act" and substitute "an offence under section 45a(4) or section 51".
Heading to section 53	Strike out ", to be a felony".
Section 53	Strike out "felony" and substitute "an offence".
<i>Harbours Act 1936</i>	
Section 155	Strike out "felony" and substitute "an offence".
Section 184	Strike out "a misdemeanour" and substitute "an offence".
<i>Hospitals Act 1934</i>	
Section 13(1)	Strike out "treason, felony, or misdemeanour" and substitute "indictable offence".
<i>Kidnapping Act 1960</i>	
Sections 2(1) and 3(1)	Strike out "felony" (wherever occurring) and substitute, in each case, "an offence".
<i>Landlord and Tenant Act 1936</i>	
Section 28	Strike out "a misdemeanour" and substitute "an offence".
<i>Liens on Fruit Act 1923</i>	
Section 9	Strike out "a misdemeanour" and substitute "an offence".
<i>Local Government Act 1934</i>	
Section 716	Strike out this section.
Section 772	Strike out "felony" and substitute "an offence".
Section 793(1) and (2)	Strike out "felony, misdemeanour or" (wherever occurring).
<i>Marine Act 1936</i>	
Heading to section 31	Strike out "a misdemeanour" and substitute "an offence".
Sections 31(1) and (2), 44(2), 63(2) and 137	Strike out "a misdemeanour" and substitute "an offence".
Section 144	Strike out this section.
<i>Mental Health (Supplementary Provisions) Act 1935</i>	
Section 56(1)	Strike out "a felony" and substitute "an offence".
Section 56(2)	Strike out "a misdemeanour" and substitute "an offence".

Oaths Act 1936

Sections 27(1) and (2) and 30

Strike out "a misdemeanour" (wherever occurring) and substitute, in each case, "an offence".

Real Property Act 1886

Heading to section 229

Strike out "Felonies" and substitute "Indictable Offences".

Section 229

Strike out "felony" and substitute "an indictable offence".

Insert at the foot of this section:

Penalty: Imprisonment for 14 years.

Section 230

Insert at the foot of this section:

Penalty: Imprisonment for 14 years.

Section 231

Strike out this section.

Section 240

Strike out "a felony or a misdemeanour" and substitute "an offence".

Registration of Deeds Act 1935

Section 43(1)

Strike out "felony" and substitute "an offence".

Renmark Irrigation Trust Act 1936

Section 13 I

Strike out "felony" and substitute "an indictable offence".

Section 154 XIV, XVII,
XVIII and XIX

Strike out "a misdemeanour" (wherever occurring) and substitute, in each case, "an offence".

Section 160

Strike out "a misdemeanour" and substitute "an offence".

Sections 174 and 187

Strike out "felony" and substitute "an offence".

Section 207

Strike out this section and substitute the following section:

Complaints**207.** A complaint may be made at the instance of the trust or any person.*Sewerage Act 1929*

Section 85c(2)

Strike out "felonies" and substitute "convictions".

Stamp Duties Act 1923

Section 107

Strike out "a misdemeanour" and substitute "an offence".

Heading to section 108

Strike out "felonies" and substitute "certain offences".

Section 108(1)

Strike out "felony" and substitute "an offence".

Succession Duties Act 1929

Section 74

Strike out "a misdemeanour" and substitute "an offence".

Section 76

Strike out this section.

Summary Offences Act 1953

Section 62a(1)

Strike out "a felony or misdemeanour" and substitute "an offence".

Section 67(4)(a) and (b)

Strike out "a felony or misdemeanour" (wherever occurring) and substitute, in each case, "an offence".

Section 67(5)

Strike out this subsection.

Schedule

Strike out "any felony or misdemeanour" (wherever occurring) and substitute, in each case, "an offence".

Summary Procedure Act 1921

Section 5(3)

Strike out from paragraph (a)(iii) "felony" and substitute "offence".

Third schedule

Strike out the following items:

- | | |
|-----|--|
| 135 | Larceny after a previous conviction for a misdemeanour |
| 197 | Receiving where principal guilty of misdemeanour. |

Strike out from item 196 "where principal guilty of felony".

Fourth schedule

Strike out the following item:

- | | |
|-----|---|
| 134 | Larceny after a previous conviction for felony. |
|-----|---|

Swine Compensation Act 1936

Section 15(5)

Strike out "a misdemeanour" and substitute "an offence".

Section 20

Strike out this section.

Trustee Act 1936

Section 36(1)

Strike out "treason or felony" and substitute "an indictable offence".

Water Conservation Act 1936

Sections 61 and 73

Strike out "a misdemeanour" and substitute "an offence".

Section 92

Strike out this section.

Waterworks Act 1932

Section 64

Strike out "felony" and substitute "an offence".

Section 108(2)

Strike out "felonies" and substitute "convictions".

Section 111

Strike out this section and substitute the following section:

Time for commencement of prosecutions**111. Proceedings for an offence against this Act must be commenced within two years of the date of the alleged offence.***Wrongs Act 1936*

Section 19

Strike out "felony" and substitute "an indictable offence".

Section 23C(4)

Strike out "a felony" and substitute "an indictable offence".

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

ROMA MITCHELL Governor