

## South Australia

**STATUTES AMENDMENT (COURTS) ACT 1994**

No. 43 of 1994

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**ELIZABETHAE II REGINAE**

A.D. 1994

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No. 43 of 1994

**An Act to amend the Criminal Law Consolidation Act 1935, the District Court Act 1991, the Enforcement of Judgments Act 1991, the Magistrates Court Act 1991, the Summary Procedure Act 1921 and the Supreme Court Act 1935.**

[Assented to 2 June 1994]

The Parliament of South Australia enacts as follows:

**PART 1  
PRELIMINARY**

**Short title**

1. This Act may be cited as the *Statutes Amendment (Courts) Act 1994*.

**Commencement**

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

**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 CRIMINAL LAW CONSOLIDATION ACT 1935**

**Amendment of s. 5—Interpretation**

4. Section 5(1) of the principal Act is amended by striking out "a District Criminal Court" from the definition of "court" and substituting "the District Court".

**Amendment of s. 274—Interpretation**

5. Section 274 of the principal Act is amended by striking out from subsection (2) "a District Criminal Court" and substituting "the District Court".

**Amendment of s. 285c—Notice of certain evidence to be given**

6. Section 285c of the principal Act is amended by striking out from subsection (1) "a District Criminal Court" and substituting "the District Court".

**Amendment of s. 299a—Orders as to firearms and offensive weapons**

7. Section 299a of the principal Act is amended by striking out "a District Criminal Court" from the definition of "court" in subsection (6) and substituting "the District Court".

**Amendment of s. 348—Interpretation**

8. Section 348 of the principal Act is amended—

- (a) by striking out "a District Criminal Court" from the definition of "ancillary order" and substituting "the District Court";
- (b) by striking out the definition of "District Criminal Court";
- (c) by striking out "a District Criminal Court" from the definition of "information" and substituting "the District Court";
- (d) by striking out "a District Criminal Court" from the definition of "judge" and substituting "the District Court".

**Amendment of s. 352—Right of appeal in criminal cases**

9. Section 352 of the principal Act is amended by striking out from subsection (1)(b) "Criminal".

**Insertion of s. 356A**

10. The following section is inserted after section 356 of the principal Act:

**Enforcement of orders**

356A. Where a conviction or order has been affirmed, amended or made on appeal to the Full Court under this Part, the District Court has the same authority to enforce that conviction or order as if it had not been appealed against or had been made in the first instance.

**Amendment of s. 358—Judge's notes and report to be furnished on appeal**

11. Section 358 of the principal Act is amended by striking out "Criminal".

**Amendment of s. 368—Rules of court**

12. Section 368 of the principal Act is amended by striking out subsection (5) and substituting the following subsection:

(5) The rules of court and the regulations and rules made under this Act, or under another Act for the purposes of this Act, that apply to the Supreme Court, or a judge of the Supreme Court, in the exercise of its criminal jurisdiction, will, until other provision is made, be construed, with necessary adaptations and modifications, to apply to—

- (a) the District Court and judges of the District Court, in the exercise of its criminal jurisdiction; and
- (b) appeals from, and cases stated by, the District Court to the Full Court.

**PART 3**  
**AMENDMENT OF DISTRICT COURT ACT 1991**

**Insertion of s. 14A**

13. The following section is inserted after section 14 of the principal Act:

**Special leave**

14A. (1) A Judge may apply to the Chief Judge for special leave without remuneration.

(2) The Governor may, on the recommendation of the Chief Judge, grant an application for special leave under this section.

(3) A period of special leave under this section will not be taken to be judicial service within the meaning of the *Judges' Pensions Act 1971*.

**Amendment of s. 24—Transfer of proceedings between courts**

14. Section 24 of the principal Act is amended—

(a) by striking out from subsection (1) "A Judge" and substituting "The Supreme Court or a Judge or Master";

(b) by striking out from subsection (2) "A Judge" and substituting "The District Court or a Judge or Master".

**Amendment of s. 43—Right of appeal**

15. Section 43 of the principal Act is amended by striking out from subsection (2)(a) "an interlocutory judgment given by a Master" and substituting "a judgment given by a Master or the Court constituted of a Master".

**PART 4**  
**AMENDMENT OF ENFORCEMENT OF JUDGMENTS ACT 1991**

**Amendment of s. 7—Seizure and sale of property**

16. Section 7 of the principal Act is amended by inserting after subsection (6) the following subsection:

(7) Where property of the judgment debtor seized in pursuance of the warrant consists of a bank note or other money, the sheriff must, unless it has a value greater than its face value, hand it over to the judgment creditor in full or partial satisfaction of the judgment.

**PART 5**  
**AMENDMENT OF MAGISTRATES COURT ACT 1991**

**Amendment of s. 40—Right of appeal**

17. Section 40 of the principal Act is amended by striking out subsection (1a).

**Amendment of s. 42—Appeals**

18. Section 42 of the principal Act is amended—

(a) by inserting after subsection (1) the following subsection:

(1a) An appeal does not, however, lie against an interlocutory judgment given in summary proceedings.;

(b) by inserting after subsection (5) the following subsection:

(6) Where a judgment or order has been confirmed, varied or made on appeal under this section, the Magistrates Court has the same authority to enforce that judgment or order as if it had not been appealed against or had been made in the first instance.

**PART 6****AMENDMENT OF SUMMARY PROCEDURE ACT 1921****Amendment of s. 5—Classification of offences**

19. Section 5 of the principal Act is amended by striking out subsections (6) and (7) and substituting the following subsections:

(6) Where an offence may be either a summary offence or an indictable offence according to the circumstances surrounding its commission, or the antecedents of the defendant, and the offence is designated as a summary offence in the complaint charging the offence, then, subject to subsection (8), the circumstances and the defendant's antecedents will be conclusively presumed to be such as to make the offence a summary offence.

(7) Where an offence may be either a minor indictable offence or a major indictable offence according to the circumstances surrounding its commission, or the antecedents of the defendant, and the offence is classified as a minor indictable offence in the information charging the offence, then, subject to subsection (8), the circumstances and the defendant's antecedents will be conclusively presumed to be such as to make the offence a minor indictable offence.

**Amendment of s. 102—Joinder and separation of charges**

20. Section 102 of the principal Act is amended—

(a) by striking out "If" from subsection (3) and substituting "Subject to subsection (3a) if";

(b) by inserting after subsection (3) the following subsection:

(3a) Where a person has been committed to a superior court for trial on an information which includes charges for both indictable offences and summary offences, the superior court may, if it thinks fit, order that the charges of summary offences be remitted to the Magistrates Court and dealt with in the same way as if the offences had been charged in a complaint.

**Amendment of s. 103—Procedure in the Magistrates Court**

21. Section 103 of the principal Act is amended by inserting after subsection (3) the following subsection:

(4) Where—

- (a) two or more people are charged with committing a crime jointly; and
- (b) one or more of the defendants elect for trial in a superior court; and
- (c) one or more of the defendants fail to elect for trial in a superior court,

the Court may order that the defendants who have failed to elect for trial in a superior court be committed for trial in a superior court with the defendants who have so elected.

**PART 7**  
**AMENDMENT OF SUPREME COURT ACT 1935**

**Insertion of s. 13B**

22. The following section is inserted after section 13A of the principal Act:

**Special leave**

13B. (1) A judge may apply to the Chief Justice for special leave without remuneration.

(2) The Governor may, on the recommendation of the Chief Justice, grant an application for special leave under this section.

(3) A period of special leave under this section will not be taken to be judicial service within the meaning of the *Judges' Pensions Act 1971*.

**Insertion of s. 35**

23. The following section is inserted after section 34 of the principal Act:

**Power to require attendance of witnesses and production of evidentiary material**

35. (1) The court may, on the application of a party to proceedings or on its own initiative, issue a subpoena requiring a person to appear before the court at a specified time and place to give evidence or to produce evidentiary material (or both).

(2) A subpoena to produce evidentiary material may, instead of providing for production of the material before the court, provide for production of the material to an officer of the court nominated in the subpoena.

(3) If—

- (a) a person fails to comply with a subpoena under subsection (1); or
- (b) there are grounds for believing that, if such a subpoena were issued, a person would not comply with it,

the court may issue a warrant to have the person arrested and brought before the court.

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

ROMA MITCHELL Governor