

South Australia



STATUTES AMENDMENT (RECORDING OF INTERVIEWS) ACT 1995

No. 65 of 1995

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A.D. 1995

No. 65 of 1995

An Act to amend the Summary Offences Act 1953, the Summary Procedure Act 1921, the Magistrates Court Act 1991, the District Court Act 1991 and the Supreme Court Act 1935.

[Assented to 10 August 1995]

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Statutes Amendment (Recording of Interviews) Act 1995*.

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 SUMMARY OFFENCES ACT 1953**

Substitution of heading preceding s. 67

4. The heading preceding section 67 of the principal Act is struck out and the following heading is substituted:

Police powers of entry, search, etc.

Insertion of Division

5. The following division is inserted after section 74B of the principal Act:

Duty of investigating officers to record interviews

Interpretation

74C. In this Division (sections 74C to 74G)—

"interview" includes—

- (a) a conversation; or
- (b) part of a conversation; or
- (c) a series of conversations;

"investigating officer" means—

- (a) a member of the police force; or
- (b) a person authorised under an Act to investigate offences and arrest suspected offenders.

Obligation to record interviews with suspects

74D. (1) An investigating officer who suspects, or has reasonable grounds to suspect, a person ("the suspect") of having committed an indictable offence and who proposes to interview the suspect must ensure the following requirements are complied with:

- (a) if it is reasonably practicable to record the interview on videotape, a videotape recording of the interview must be made;
- (b) if it is not reasonably practicable to record the interview on videotape but it is reasonably practicable to record the interview on audiotape, an audiotape recording of the interview must be made;
- (c) if it is neither reasonably practicable to record the interview on videotape nor reasonably practicable to record the interview on audiotape—
 - (i) a written record of the interview must be made at the time of the interview or as soon as practicable after the interview; and
 - (ii) as soon as practicable after the interview, the record must be read aloud to the suspect and the reading must be recorded on videotape; and
 - (iii) when the videotape recording begins (but before the reading begins) the suspect must be invited to interrupt the reading at any time to point out errors or omissions in the record; and
 - (iv) if the suspect in fact interrupts the reading to point out an error or omission, the suspect must then be allowed a reasonable opportunity to do so; and

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- (v) at the end of the reading, but while the videotape recording continues, the suspect must again be invited to point out errors or omissions in the record and allowed a reasonable opportunity to do so; and
- (vi) if the investigating officer agrees that there is an error or omission in the record, the officer must amend the record to correct the error or omission and if the officer does not agree that there is an error or omission in the record, the officer must nevertheless make a note of the error or omission asserted by the suspect in an addendum to the record of interview.

(2) If the suspicion, or a reasonable ground for suspicion, arises during the course of an interview, the investigating officer's obligations under subsection (1) arise at that point and apply to the interview from that point.

(3) In deciding whether it is reasonably practicable to make a videotape or audiotape recording of an interview, the following matters must be considered:

- (a) the availability of recording equipment within the period for which it would be lawful to detain the person being interviewed;
- (b) mechanical failure of recording equipment;
- (c) a refusal of the interviewee to allow the interview to be recorded on videotape or audiotape;
- (d) any other relevant matter.

(4) As soon as practicable after a videotape or an audiotape recording is made under this Division, the investigating officer must give the suspect a written statement of the suspect's right—

- (a) if a videotape recording was made—
 - (i) to have the videotape played over to the suspect or the suspect's legal adviser (or both); and
 - (ii) to obtain an audiotape recording of the sound track of the videotape; or
- (b) if an audiotape recording (but no videotape recording) of the interview was made—to obtain a copy of the audiotape.

(5) Arrangements must be made, at the request of a suspect, for the playing of a videotape at a reasonable time and place to be nominated by an appropriate investigating officer.

(6) A suspect must be provided, on request and on payment of the fee fixed by regulation, with—

- (a) an audiotape of the soundtrack of a videotape recording of an interview with the suspect under this Division; or

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- (b) a copy of an audiotape recording of an interview with the suspect under this Division.

Admissibility of evidence of interview

74E. (1) In proceedings for an indictable offence, evidence of an interview between an investigating officer and the defendant is inadmissible against the defendant unless—

- (a) the investigating officer complied with this Division; or
- (b) the court is satisfied that the interests of justice require the admission of the evidence despite the investigating officer's non-compliance.

(2) If, in the course of a trial by jury, the court admits evidence of an interview under subsection (1)(b), the court must—

- (a) draw the jury's attention to the non-compliance by the investigating officer; and
- (b) give an appropriate warning in view of the non-compliance,

unless the court is of the opinion that the non-compliance was trivial.

Prohibition on playing tape recordings of interviews

74F. A person must not play to another person a videotape or audiotape containing an interview or part of an interview recorded under this Division except where the videotape or audiotape is played—

- (a) for purposes related to the investigation of an offence; or
- (b) for the purposes of, or purposes related to, legal proceedings, or proposed legal proceedings, to which the interview is relevant; or
- (c) with the permission of a court before which the videotape or audiotape has been tendered in evidence¹.

¹ For example, the court might permit the use of a videotape or audiotape for the purpose of instructing investigating officers in relation to duties under this Division.

Non-derogation

74G. This Division does not—

- (a) make evidence admissible that would otherwise be inadmissible; or
- (b) affect the court's discretion to exclude evidence.

Insertion of heading before s. 75

6. The following heading is inserted before section 75 of the principal Act:

Arrest

Substitution of s. 85

7. Section 85 of the principal Act is repealed and the following section is substituted:

Regulations

85. The Governor may make regulations for the purposes of this Act.

PART 3

AMENDMENT OF SUMMARY PROCEDURE ACT 1921

Amendment of s. 4—Interpretation

8. Section 4 of the principal Act is amended by inserting in subsection (1) after the definition of "industrial offence" the following definition:

"investigating officer" means—

- (a) an officer of the police force; or
- (b) a person authorised under an Act to investigate offences;

Amendment of s. 104—Preliminary examination of charges of indictable offences

9. Section 104 of the principal Act is amended by striking out subsections (3), (4) and (5) and substituting the following subsections:

(3) A statement filed in the Court—

- (a) must be in the form of a written statement verified by declaration in the form prescribed by the rules; and
- (b) if—
 - (i) the statement is tendered for the prosecution and relates to an interview between an investigating officer and the defendant; and
 - (ii) a videotape or audiotape recording of the interview, or the reading over of a written record of the interview, was made under the *Summary Offences Act 1953*,¹

must be accompanied by a copy of the videotape or audiotape.

(4) However, if the witness is a child under the age of 12 years or a person who is illiterate or suffers from an intellectual handicap, the following provisions apply:

- (a) the witness's statement may be—
 - (i) in the form of a written statement taken down by an investigating officer at an interview with the witness and verified by the officer as an accurate record of the witness's oral statements at the interview so far as they are relevant to the subject matter of the charge; or
 - (ii) in the form of a videotape or audiotape record of an interview with the witness that is accompanied by a written transcript verified by an investigating officer who was present at the interview as a complete record of the interview;

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- (b) if a videotape or audiotape is filed in the Court under paragraph (a)(ii), the prosecutor must—
- (i) provide the defendant with a copy of the verified written transcript of the tape at least 14 days before the date appointed for the defendant's appearance to answer the charge or, if the tape comes into the prosecutor's possession on a later date, as soon as practicable after the tape comes into the prosecutor's possession; and
 - (ii) inform the defendant that the defendant is entitled to have the tape played over to the defendant or his or her legal representative (or both) and propose a time and place for the playing over of the tape; and
- (c) the time proposed for playing the tape must be at least 14 days before the date appointed for the defendant's appearance to answer the charge or, if the tape comes into the prosecutor's possession at a later date, as soon as practicable after the tape comes into the prosecutor's possession (but the time and place may be modified by agreement).

¹ See section 74D of the *Summary Offences Act 1953*. The videotape or audiotape referred to here should be distinguished from the videotape or audiotape of an interview with a young child or a person who is illiterate or suffers from an intellectual handicap. (See subsection (4).) The *Summary Offences Act 1953* establishes its own scheme under which a defendant may obtain access to a videotape or audiotape recording of an interview with the defendant under that Act. Hence there is no separate provision in this section for access to the recording (although the defendant is entitled to copies of the witness's statement and accompanying *documentary* material under subsection (1)(b)). However, where the witness is a young child, or a person who is illiterate or who suffers from an intellectual handicap, subsection (4) provides for access to the contents of the videotape or audiotape.

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SCHEDULE
Consequential Amendments

Amendments to Summary Offences Act 1953

1. The *Summary Offences Act 1953* is amended—

- (a) by striking out from section 58B(4) "(which regulations the Governor is hereby empowered to make)";
- (b) by striking out subsection (19) of section 64.

Amendment of Magistrates Court Act 1991

2. Section 51 of the *Magistrates Court Act 1991* is amended—

- (a) by striking out from subsection (3) "this section" and substituting "subsection (1)";
- (b) by inserting after subsection (3) the following subsections:
 - (4) If evidentiary material consists of a videotape or audiotape, the Court may provide access to, or copying of, the material on conditions the Court considers appropriate.
 - (5) The conditions may limit publication or use of the recorded material.

Amendment of District Court Act 1991

3. Section 54 of the *District Court Act 1991* is amended—

- (a) by striking out from subsection (3) "this section" and substituting "subsection (1)";
- (b) by inserting after subsection (3) the following subsections:
 - (4) If evidentiary material consists of a videotape or audiotape, the Court may provide access to, or copying of, the material on conditions the Court considers appropriate.
 - (5) The conditions may limit publication or use of the recorded material.

Amendment of Supreme Court Act 1935

4. Section 131 of the *Supreme Court Act 1935* is amended—

- (a) by striking out from subsection (3) "this section" and substituting "subsection (1)";
- (b) by inserting after subsection (3) the following subsections:
 - (4) If evidentiary material consists of a videotape or audiotape, the Court may provide access to, or copying of, the material on conditions the Court considers appropriate.
 - (5) The conditions may limit publication or use of the recorded material.

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

ROMA MITCHELL Governor