



STATUTES REPEAL AND AMENDMENT (COURTS) ACT 1991

No. 69 of 1991

SUMMARY OF PROVISIONS

Section

1. Short title
2. Commencement
3. Repeal of Local and District Criminal Courts Act 1926
4. Repeal of Enforcement of Judgments Act 1978
5. Repeal of Debts Repayment Act 1978
6. Amendment of Debtors Act 1936
7. Amendment of Mercantile Law Act 1936
8. Non-application of certain Imperial Acts
9. Amendment of Supreme Court Act 1935
10. Amendment of Children's Protection and Young Offenders Act 1979
11. Amendment of Criminal Injuries Compensation Act 1978
12. Amendment of the Fences Act 1975
13. Amendment of Criminal Law (Sentencing) Act 1988
14. Amendment of Residential Tenancies Act 1978
15. Amendment of Criminal Law Consolidation Act 1935
16. Amendment of Controlled Substances Act 1984
17. Amendment of Acts Interpretation Act 1915
18. Amendment of Bail Act 1985
19. Transitional provisions—District Courts
20. Transitional provisions—Magistrates Courts
21. Transitional provisions—Enforcement of Judgments
22. Transitional provisions—general
23. Interpretation of Acts and instruments



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ELIZABETHAE II REGINAE

A.D. 1991

No. 69 of 1991

An Act to make certain repeals and amendments related to restructuring the court system in the State; to enact transitional provisions; and for other purposes.

[Assented to 12 December 1991]

The Parliament of South Australia enacts as follows:

Short title

1. This Act may be cited as the *Statutes Repeal and Amendment (Courts) Act 1991*.

Commencement

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

Repeal of Local and District Criminal Courts Act 1926

3. The *Local and District Criminal Courts Act 1926* is repealed.

Repeal of Enforcement of Judgments Act 1978

4. The *Enforcement of Judgments Act 1978* is repealed.

Repeal of Debts Repayment Act 1978

5. The *Debts Repayment Act 1978* is repealed.

Amendment of Debtors Act 1936

6. The *Debtors Act 1936* is amended—

(a) by striking out paragraphs (c) and (d) of section 3;

and

(b) by striking out paragraph (iii) of the proviso to section 3 and substituting the following paragraph:

(iii) nothing in this section affects powers of arrest or imprisonment under the *Enforcement of Judgments Act 1991*.

Amendment of Mercantile Law Act 1936

7. The *Mercantile Law Act 1936* is amended by striking out section 18.

Non-application of certain Imperial Acts

8. The following Acts of the Imperial Parliament have no further force or effect in the State:

56 Geo III c. 50

8 Anne c. 14.

Amendment of Supreme Court Act 1935

9. The *Supreme Court Act 1935* is amended—

(a) by inserting the following subsection in section 7:

(4) A Master is, while holding that office, also a District Court Judge.;

(b) by striking out section 35;

(c) by inserting at the end of section 40 the following subsection:

(2) If—

(a) an action for the recovery of damages or any other monetary sum is brought in the Court;

(b) the action might have been brought in the District Court;

and

(c) the plaintiff recovers less than an amount fixed by the rules for the purposes of this paragraph,

no order for costs will be made in favour of the plaintiff unless the Court is of the opinion that it is just, in the circumstances of the case, that the plaintiff should recover the whole or part of the costs of action.;

(d) by inserting after section 72 (1) V the following paragraph:

VI For conferring on the registrar or other member of the non-judicial staff of the court the power to tax costs.;

(e) by striking out from section 82 (2) “The registrar shall be appointed and shall hold office subject to, and in accordance with, the *Public Service Act 1967-1978*, but no” and substitute “No”;

(f) by inserting the following sections after section 110:

Administrative and ancillary staff

110a. (1) The Court’s administrative and ancillary staff consists of—

(a) the registrar;

(b) persons appointed to the non-judicial staff of the Court under this Act;

and

(c) any other persons appointed to the non-judicial staff of the Court.

(2) The Court’s administrative and ancillary staff will be employed under the *Government Management and Employment Act 1985*.

Responsibilities of non-judicial staff

110b. A member of the Court's administrative or ancillary staff is responsible to the Chief Justice (through any properly constituted administrative superior) for the proper and efficient discharge of his or her duties;

(g) by inserting at the end of section 114 (2) (b) "or an earlier date specified by the taxing officer in the certificate";

and

(h) by inserting after section 130 the following section:

Accessibility of evidence, etc.

131. (1) Subject to subsection (2), the Court must, on application by any member of the public and payment of the appropriate fee (if any) fixed by the regulations make available for inspection by the applicant—

(a) a transcript of evidence taken by the Court in any proceedings;

(b) any documentary material admitted into evidence in any proceedings;

(c) any judgment or order given or made by the Court.

(2) Evidentiary material will not be made available for inspection under this section if—

(a) the evidence was not taken or received in open court;

(b) the Court has suppressed it from publication;

or

(c) the Court has determined that it is not to be available for inspection under this section.

(3) On payment of the appropriate fee fixed under the regulations, the Court must provide a copy of any material that is available for inspection under this section.

Amendment of Children's Protection and Young Offenders Act 1979

10. The *Children's Protection and Young Offenders Act 1979* is amended—

(a) by striking out from section 4 the definitions of "group I offence", "group II offence" and "group III offence";

(b) by striking out from section 4 the definition of "simple offence";

(c) by striking out from section 9 (5) "the Children's Court sits as a court of summary jurisdiction" and substituting "the Children's Court has all the powers of the Magistrates Court";

(d) by striking out from section 51 (5a) "simple offence" and substituting "summary offence";

(e) by striking out from section 51 (12) "a group I or group II offence" wherever it occurs and substituting in each case "a major indictable offence";

(f) by striking out from section 54 (1) "a group I or group II offence" and substituting "a major indictable offence";

(g) by striking out from section 54 (3) “any group III offence” and substituting “a minor indictable offence”;

and

(h) by striking out from section 77 (a) “a group I or group II offence” and substituting “a major indictable offence”.

Amendment of Criminal Injuries Compensation Act 1978

11. The *Criminal Injuries Compensation Act 1978* is amended by striking out from section 4 the definition of “the court” and substituting the following definition:

“court” means the District Court.

Amendment of the Fences Act 1975

12. The *Fences Act 1975* is amended—

(a) by striking out from section 4 (1) the definition of “court” and substituting:

“court” means the Magistrates Court;

and

(b) by striking out section 13.

Amendment of Criminal Law (Sentencing) Act 1988

13. The *Criminal Law (Sentencing) Act 1988* is amended—

(a) by striking out from section 19 (4) “but is, by virtue of subsection (3), unable to impose a sentence of imprisonment for an appropriate term or a fine of an appropriate amount,” and substituting “and there is, in the court’s opinion, sufficient reason for imposing a penalty in excess of the limits imposed by subsection (3).”;

and

(b) by striking out subsection (1) of section 55.

Amendment of Residential Tenancies Act 1978

14. The *Residential Tenancies Act 1978* is amended by striking out from section 21 (2) “two thousand five hundred dollars” and substituting “\$25 000”.

Amendment of Criminal Law Consolidation Act 1935

15. The *Criminal Law Consolidation Act 1935* is amended—

(a) by striking out from section 39 “three years” and substituting “two years”;

(b) by striking out the penalty provision at the foot of section 85 (1) and substituting the following penalty provision:

Penalty—

(a) for a completed offence—

(i) where the damage exceeds \$25 000—imprisonment for life;

(ii) where the damage exceeds \$2 000 but does not exceed \$25 000—imprisonment for 5 years;

(iii) where the damage does not exceed \$2 000—imprisonment for 2 years;

(b) for an attempt—

- (i) where the damage would, if the offence had been completed, have exceeded \$25 000—imprisonment for 12 years;
 - (ii) where the damage would, if the offence had been completed, have exceeded \$2 000 but would not have exceeded \$25 000—imprisonment for 3 years;
 - (iii) where the damage would not, if the offence had been completed, have exceeded \$2 000—imprisonment for 18 months.;
- (c) by striking out the penalty provision at the foot of section 85 (3) and substituting the following penalty provision:

Penalty—

(a) for a completed offence—

- (i) where the damage exceeds \$25 000—imprisonment for 10 years;
- (ii) where the damage exceeds \$2 000 but does not exceed \$25 000—imprisonment for 3 years;
- (iii) where the damage does not exceed \$2 000—imprisonment for 2 years;

(b) for an attempt—

- (i) where the damage would, if the offence had been completed, have exceeded \$25 000—imprisonment for 6 years;
- (ii) where the damage would, if the offence had been completed, have exceeded \$2 000 but would not have exceeded \$25 000—imprisonment for 2 years;
- (iii) where the damage would not, if the offence had been completed, have exceeded \$2 000—imprisonment for 1 year.;

(d) by striking out from section 86 (1) “3 years” and substituting “2 years”;

(e) by striking out section 87;

and

(f) by striking out section 281a.

Amendment of Controlled Substances Act 1984

16. The *Controlled Substances Act 1984* is amended—

(a) by striking out subparagraph (ii) of section 32 (5) B (a) and substituting the following subparagraphs:

(ii) if the quantity of cannabis or cannabis resin involved in the commission of the offence is less than the amount prescribed for the purposes of this subsection but one-fifth or more of that amount—a penalty not exceeding \$50 000 or imprisonment for ten years, or both;

or

(iii) if the quantity of cannabis or cannabis resin involved in the commission of the offence is less than one-fifth of the amount prescribed for the purposes of this subsection—a penalty not exceeding \$2 000 or imprisonment for two years, or both;

(b) by striking out subparagraph (ii) of section 32 (5) B (b) and substituting the following subparagraphs:

(ii) if the quantity of the substance involved in the commission of the offence is less than the amount prescribed for the purposes of this subsection but one-fifth or more of that amount—a penalty not exceeding \$200 000 or imprisonment for 25 years, or both;

or

(iii) if the quantity of the substance involved in the commission of the offence is less than one-fifth of the amount prescribed for the purposes of this subsection—a penalty not exceeding \$25 000 or imprisonment for five years, or both.;

and

(c) by striking out subsections (1) and (2) of section 43.

Amendment of Acts Interpretation Act 1915

17. The *Acts Interpretation Act 1915* is amended—

(a) by inserting after the definition of “land” in section 4 the following definition:

“major indictable offence” means any indictable offence classified by statute as a major indictable offence¹;

(b) by striking out the definition of “minor indictable offence” from section 4 and substituting the following definition:

“minor indictable offence” means any indictable offence classified by statute as a minor indictable offence¹;

(c) by striking out the definition of “summary offence” from section 4 and substituting the following definition:

“summary offence” means any offence classified by statute as a summary offence¹;

and

(d) by striking out section 43.

The following footnote is to be included in the consolidation of the Act:

¹ For the classification of offences, the reader should refer to section 5 of the *Summary Procedure Act 1921*. However, it should be noted that the principles set out in that section for differentiating major indictable, minor indictable and summary offences may be subject to some special exception made by the Act under which the offence in question is created.

Amendment of Bail Act 1985

18. The *Bail Act 1985* is amended by striking out section 23 and substituting the following section:

Period of release on bail not to count as part of sentence

23. Where a person under sentence of imprisonment is released on bail pending the hearing and determination of an appeal, the period of release does not count as part of the sentence.

Transitional provisions—District Courts

19. (1) On the commencement of the *District Courts Act 1991*—

(a) the Senior District Judge becomes Chief Judge of the Court;

(b) the Judges and Masters holding office under the repealed *Local and District Criminal Courts Act 1926* become Judges and Masters of the Court;

(c) the Registrar and non-judicial staff of local courts of full jurisdiction and district criminal courts are transferred to corresponding positions on the staff of the District Court.

(2) Any proceedings commenced before a local court of full jurisdiction or a district criminal court may be continued and completed before the District Court.

Transitional provisions—Magistrates Courts

20. (1) On the commencement of the *Magistrates Court Act 1991* the Registrars and non-judicial staff of local courts of limited and special jurisdiction and of courts of summary jurisdiction are transferred to corresponding positions on the staff of the Magistrates Court.

(2) Any proceedings commenced before a local court of limited or special jurisdiction or a court of summary jurisdiction may be continued and completed before the Magistrates Court.

(3) A preliminary examination commenced before a justice may be continued and completed before the Magistrates Court, but the Court will apply the law as in force at the commencement of the proceedings in all respects as if references in that law to a justice were references to the Court.

Transitional provisions—Enforcement of Judgments

21. (1) A judgment given by a local court of full jurisdiction will be regarded as a judgment of the District Court and is enforceable under the *Enforcement of Judgments Act 1991*.

(2) A judgment given by a local court of limited or special jurisdiction will be regarded as a judgment of the Magistrates Court and is enforceable under the *Enforcement of Judgments Act 1991*.

(3) Any proceedings for enforcement of a judgment commenced before the commencement of this Act may be continued and completed under the law in force at the time of the commencement of those proceedings.

Transitional provisions—general

22. (1) This section applies to amendments made by this Act or the *Justices Amendment Act 1991*.

(2) The following transitional provisions apply in relation to those amendments:

(a) if the effect of the amendment is to reduce the penalty for an offence, the amendment applies whether the offence was committed before or after the amendment takes effect;

(b) if the effect of the amendment is to increase the penalty for an offence, the amendment applies only to offences committed after it takes effect;

(c) if the effect of the amendment is to increase or remove a time limit for commencing proceedings for an offence, the previous limit applies in respect of an offence committed before the amendment takes effect;

(d) an amendment affecting the classification of an offence as summary or indictable does not apply in relation to an offence committed before the amendment takes effect.

Interpretation of Acts and instruments

23. The following provisions apply to the interpretation of Acts and instruments (whether of a legislative character or not):

(a) a reference to a District Court, a District Criminal Court or a Local Court of Full Jurisdiction will be construed as a reference to the District Court;

- (b) a reference to a court of summary jurisdiction or a local court of limited or special jurisdiction will be construed as a reference to the Magistrates Court;
- (c) a reference to an officer of a District Court, a District Criminal Court or a Local Court of Full Jurisdiction will be construed as a reference to an officer with corresponding functions and responsibilities in relation to the District Court;
- (d) a reference to an officer of a court of summary jurisdiction or a local court of limited or special jurisdiction will be construed as a reference to an officer with corresponding functions and responsibilities in relation to the Magistrates Court.

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

ROMA MITCHELL Governor