



**CRIMINAL LAW CONSOLIDATION (SERIOUS CRIMINAL TRESPASS)
AMENDMENT ACT 1999**

No. 80 of 1999

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ELIZABETHAE II REGINAE

A.D. 1999

No. 80 of 1999

An Act to amend the Criminal Law Consolidation Act 1935; and to make a related amendment to the Summary Procedure Act 1921.

[Assented to 2 December 1999]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Criminal Law Consolidation (Serious Criminal Trespass) Amendment Act 1999*.

(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 inserting in subsection (1) after the definition of "night" the following definition:

"offensive weapon" means—

- (a) an article or substance made or adapted for use for causing, or threatening to cause, personal injury or incapacity including—
 - (i) a firearm or imitation firearm (*ie* an article intended to be taken for a firearm); or
 - (ii) an explosive or an imitation explosive (*ie* an article or substance intended to be taken for an explosive); or

- (b) an article or substance that a person has—
- (i) for the purpose of causing personal injury or incapacity; or
 - (ii) in circumstances in which another is likely to feel reasonable apprehension that the person has it for the purpose of causing personal injury or incapacity;

Substitution of heading above s. 167

4. The heading above section 167 of the principal Act is repealed and the following heading is substituted:

Serious criminal trespass, etc.

Substitution of ss. 168, 169 and 170

5. Sections 168, 169 and 170 of the principal Act are repealed and the following sections are substituted:

Serious criminal trespass

168. (1) For the purposes of this Act, a person commits a **serious criminal trespass** if the person enters or remains in a place (other than a place that is open to the public) as a trespasser with the intention of committing an offence to which this section applies¹.

(2) A place is to be regarded as open to the public if the public is admitted even though—

- (a) a charge is made for admission; or
- (b) the occupier limits the purposes for which a person may enter or remain in the place by express or implied terms of a public invitation.

(3) A person who enters or remains in a place with the consent of the occupier is not to be regarded as a trespasser unless that consent was obtained by—

- (a) force; or
- (b) a threat; or
- (c) an act of deception.

(4) A reference in this section to the **occupier** of a place extends to any person entitled to control access to the place.

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.*

Serious criminal trespass—non-residential buildings

169. (1) A person who commits a serious criminal trespass in a non-residential building is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

(2) A person who commits a serious criminal trespass in a non-residential building is guilty of an aggravated offence if—

- (a) the person has, when committing the serious criminal trespass, an offensive weapon in his or her possession; or
- (b) the person commits the serious criminal trespass in company with one or more other persons.

Maximum penalty: Imprisonment for 20 years.

(3) In this section—

"non-residential building" means a building or part of a building that is not a place of residence.

Serious criminal trespass—places of residence

170. (1) A person who commits a serious criminal trespass in a place of residence is guilty of an offence.

Maximum penalty: Imprisonment for 15 years.

(2) A person who commits a serious criminal trespass in a place of residence is guilty of an aggravated offence if—

- (a) the person has, when committing the trespass, an offensive weapon in his or her possession; or
- (b) the person commits the trespass in company with one or more other persons; or
- (c) another person is lawfully present in the place and the person knows of the other's presence or is reckless about whether anyone is in the place.

Maximum penalty: Imprisonment for life.

(3) In this section—

"place of residence" means a building, structure, vehicle or vessel, or part of a building, structure, vehicle or vessel, used as a place of residence.

Criminal trespass—places of residence

170A. (1) A person who trespasses in a place of residence is guilty of an offence if another person is lawfully present in the place and the person knows of the other's presence or is reckless about whether anyone is in the place.

Maximum penalty: Imprisonment for 3 years.

(2) In this section—

"place of residence" means a building, structure, vehicle or vessel, or part of a building, structure, vehicle or vessel, used as a place of residence.

Repeal of s. 173

6. Section 173 of the principal Act is repealed.

SCHEDULE

Amendment of Summary Procedure Act 1921

The *Summary Procedure Act 1921* is amended—

- (a) by striking out from the last item in section 5(3)(a)(iii) "section 169, 170, 171 or 172 of the *Criminal Law Consolidation Act 1935* (breaking and entering, etc.)" and substituting "section 171 of the *Criminal Law Consolidation Act 1935* (nocturnal offences)";
- (b) by inserting before the item referred to in paragraph (a) the following item:
 - an offence against section 169(1) or 170(1) of the *Criminal Law Consolidation Act 1935* (serious criminal trespass, etc.) where the intended offence is an offence of dishonesty (not being an offence of violence) involving \$25 000 or less or an offence of interference with, damage to or destruction of property involving \$25 000 or less;;
- (c) by striking out from the table in Schedule 3 the item relating to section 173 of the *Criminal Law Consolidation Act 1935*.

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

E. J. NEAL Governor