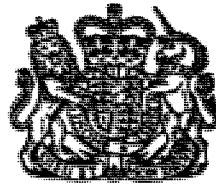


South Australia



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ELIZABETHAE II REGINAE
A.D. 2000

**CRIMINAL LAW CONSOLIDATION (MENTAL IMPAIRMENT)
AMENDMENT ACT 2000**

No. 39 of 2000

[Assented to 13 July 2000]

An Act to amend the Criminal Law Consolidation Act 1935.

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The Parliament of South Australia enacts as follows:**Short title**

1. (1) This Act may be cited as the *Criminal Law Consolidation (Mental Impairment) Amendment Act 2000*.

(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. 269A—Interpretation

3. Section 269A of the principal Act is amended—

(a) by striking out from the definition of "authorised person" in subsection (1) "Minister for Health" and substituting "Minister";

(b) by inserting in subsection (1) after the definition of "authorised person" the following definitions:

"defence"—a defence exists if, even though the objective elements of an offence are found to exist, the defendant is entitled to the benefit of an exclusion, limitation or reduction of criminal liability at common law or by statute;

"defensible"—a defendant's conduct is to be regarded as defensible in proceedings under this Part if, on the trial of the offence to which the proceedings relate, a defence might be found to exist;

"intoxication" means a temporary disorder, abnormality or impairment of the mind that results from the consumption or administration of intoxicants and will pass on metabolism or elimination of intoxicants from the body;;

(c) by inserting in the definition of "mental impairment" in subsection (1) after paragraph (c) of the definition ", but does not include intoxication";

(d) by inserting after the definition of "mental impairment" in subsection (1) the following definition:

"Minister" means the Minister responsible for the administration of the *Mental Health Act 1993*;

Amendment of s. 269B—Distribution of judicial functions between judge and jury

4. Section 269B of the principal Act is amended by inserting after subsection (3) the following subsection:

(4) The defendant's right to elect to have an investigation under this Part conducted by a judge sitting alone is not subject to any statutory qualification.¹

¹The intention is to ensure that the right to elect for trial by judge alone is unfettered by the statutory qualifications on that right imposed by the *Juries Act 1927* (thus preserving the principle enunciated in *R v T* [1999] SASC 429 on this point).

Insertion of s. 269BA

5. The following section is inserted after section 269B of the principal Act:

Charges on which alternative verdicts are possible

269BA. (1) A person charged with an offence is taken, for the purposes of this Part, to be charged in the alternative with any lesser offence for which a conviction is possible on that charge.

(2) It follows that a trial of a charge on which an alternative verdict for a lesser offence is possible is taken to be a trial of a charge of each of the offences for which a conviction is possible.

Amendment of s. 269F—What happens if trial judge decides to proceed first with trial of defendant's mental competence to commit offence

6. Section 269F of the principal Act is amended—

(a) by striking out subsections A.(3) and (4) and substituting the following subsection:

(3) At the conclusion of the trial of the defendant's mental competence, the court must decide whether it has been established, on the balance of probabilities, that the defendant was at the time of the alleged offence mentally incompetent to commit the offence and—

(a) if so—must record a finding to that effect;

(b) if not—must record a finding that the presumption of mental competence has not been displaced and proceed with the trial in the normal way.;

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

(4) On the trial of the objective elements of an offence, the court is to exclude from consideration any question of whether the defendant's conduct is defensible.

Amendment of s. 269G—What happens if trial judge decides to proceed first with trial of objective elements of offence

7. Section 269G of the principal Act is amended—

(a) by inserting after subsection A.(2) the following subsection:

(3) On the trial of the objective elements of an offence, the court is to exclude from consideration any question of whether the defendant's conduct is defensible.;

(b) by striking out subsections B.(3) and (4) and substituting the following subsections:

(3) At the conclusion of the trial of the defendant's mental competence, the court must decide whether it has been established, on the balance of probabilities, that the defendant was at the time of the alleged offence mentally incompetent to commit the offence and—

(a) if so—must record a finding to that effect;

(b) if not—must record a finding that the presumption of mental competence has not been displaced and proceed with the trial in the normal way.

(4) If the trial is to proceed under subsection B.(3)(b), the objective elements of the offence are to be accepted as established.

Amendment of s. 269M—What happens if trial judge decides to proceed first with trial of defendant's mental fitness to stand trial

8. Section 269M of the principal Act is amended—

(a) by striking out subsections A.(3) and (4) and substituting the following subsection:

(3) At the conclusion of the trial of the defendant's mental fitness to stand trial, the court must decide whether it has been established, on the balance of probabilities, that the defendant is mentally unfit to stand trial and—

- (a) if so—must record a finding to that effect;
- (b) if not—must proceed with the trial in the normal way.;

(b) by striking out subsection B.(2) and substituting the following subsections:

(2) If the court is satisfied beyond reasonable doubt that the objective elements of the offence are established, the court must record a finding to that effect and declare the defendant to be liable to supervision under this Part; but otherwise the court must find the defendant not guilty of the offence and discharge the defendant.

(3) On the trial of the objective elements of an offence under this section, the court is to exclude from consideration any question of whether the defendant's conduct is defensible.

Amendment of s. 269N—What happens if trial judge decides to proceed first with trial of objective elements of offence

9. Section 269N of the principal Act is amended—

(a) by striking out subsection A.(2) and substituting the following subsections:

(2) If the court is satisfied beyond reasonable doubt that the objective elements of the offence are established, the court must record a finding to that effect; but otherwise the court must find the defendant not guilty of the offence and discharge the defendant.

(3) On the trial of the objective elements of an offence under this section, the court is to exclude from consideration any question of whether the defendant's conduct is defensible.

Amendment of s. 269Q—Report on mental condition of the defendant

10. Section 269Q of the principal Act is amended by striking out "Minister for Health" twice occurring and substituting, in each case, "Minister".

Amendment of s. 269T—Matters to which court is to have regard

11. Section 269T of the principal Act is amended—

- (a) by inserting after "reports" in subsection (2)(a) "(expert reports)";
- (b) by striking out from subsection (2)(b) "Minister for Health" and substituting "Minister";

(c) by inserting after subsection (2) the following subsection:

(2a) However, the court may act on the basis of one or two expert reports if—

- (a) the supervision order arose from proceedings based on a charge of a summary (rather than an indictable) offence; and
- (b) satisfied that, in the circumstances of the case, the report or reports adequately cover the matters on which the court needs expert advice.

Substitution of s. 269U

12. Section 269U of the principal Act is repealed and the following section is substituted:

Revision of supervision order

269U. (1) If a person who has been released on licence under this Division contravenes or is likely to contravene a condition of the licence, the court by which the supervision order was made may, on application by the Crown (which may be made, in a case of urgency, by telephone), review the supervision order.

(2) After allowing the Crown and the person subject to the order a reasonable opportunity to be heard on the application for review, the court may—

- (a) confirm the present terms of the supervision order; or
- (b) amend the order so that it ceases to provide for release on licence and provides instead for detention; or
- (c) amend the order by varying the conditions of the licence,

and make any further order or direction that may be appropriate in the circumstances.

(3) When an application for review of a supervision order is made, the court may issue a warrant to have the person subject to the order arrested and brought before the court and may, if appropriate, make orders for detention of that person until the application is determined.

Amendment of s. 269V—Custody, supervision and care

13. Section 269V of the principal Act is amended by striking out "Minister for Health" wherever occurring and substituting, in each case, "Minister".

Insertion of s. 269VA

14. The following section is inserted after section 269V:

Effect of supervening imprisonment

269VA. (1) If a person who has been released on licence under this Division commits an offence while subject to the licence and is sentenced to imprisonment for the offence, the supervision order is suspended for the period the person is in prison serving the term of imprisonment.

(2) In determining when the term of a supervision order comes to an end, the period of a suspension under subsection (1) is not to be taken into account.

Amendment of s. 269W—Counsel to have independent discretion

15. Section 269W is amended by inserting after its present contents (now to be designated as subsection (1)) the following subsection:

(2) If the counsel for the defendant in criminal proceedings (apart from proceedings under this Part) has reason to believe that the defendant is unable, because of mental impairment, to give rational instructions on questions relevant to the proceedings (including whether to be tried by judge alone), the counsel may act, in the exercise of an independent discretion, in what the counsel genuinely believes to be the defendant's best interests.

Insertion of s. 269WA

16. The following section is inserted after section 269W of the principal Act:

Power to order examination, etc., in pre-trial proceedings

269WA. (1) If in pre-trial proceedings it appears to the court that it might expedite the trial to order the examination of the defendant under this section in anticipation of trial, the court may, by order—

- (a) require the defendant to undergo an examination by a psychiatrist or other appropriate expert; and
- (b) require that the results of the examination be reported to the court.

(2) The prosecution and the defence are entitled to access to the report.

Amendment of s. 269Y—Appeals

17. Section 269Y of the principal Act is amended by striking out subsection (3) and substituting the following subsections:

(3) An appeal lies by leave of the court of trial or the appropriate appellate court against a key decision by the court of trial.

(4) A key decision is—

- (a) a decision that the defendant was, or was not, mentally competent to commit the offence charged against the defendant; or
- (b) a decision that the defendant is, or is not, mentally unfit to stand trial; or
- (c) a decision that the objective elements of an offence are established against the defendant.

Amendment of s. 269Z—Counselling of next of kin and victims

18. Section 269Z of the principal Act is amended by striking out from subsection (1) "Minister for Health" and substituting "Minister".