

House of Assembly—No 10A

As reported with amendments, report agreed to and passed remaining stages, 28
July 2011

South Australia

**Criminal Law Consolidation (Child Pornography)
Amendment Bill 2010**

A BILL FOR

An Act to amend the *Criminal Law Consolidation Act 1935*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Criminal Law Consolidation (Child Pornography) Amendment Act 2010*.

5 2—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Criminal Law Consolidation Act 1935*

3—Amendment of section 62—Interpretation

- 10 (1) Section 62, definition of *child*—delete the definition
- (2) Section 62, definition of *child pornography*, (a)(i)—after "child" insert:
 - under, or apparently under, the age of 17 years
- 15 (3) Section 62, definition of *child pornography*, (a)(ii)—delete "of a child or bodily parts of a child (or what appears to be the image of a child or bodily parts of a child) or in the production of which" and substitute:
 - of (or what appears to be the image of) a child under, or apparently under, the age of 17 years, or of the bodily parts of such a child, or in the production of which such

4—Amendment of section 63B—Procuring child to commit indecent act etc

- 20 (1) Section 63B(1)(a)—delete "by a child of an indecent act" and substitute:
 - of an indecent act by a child under the prescribed age in relation to that person
- (2) Section 63B(1)(b)(i)—after "child" insert:
 - under the prescribed age in relation to that person

(3) Section 63B(1)(b)(ii)—after "child" insert:

under the age of 17 years

(4) Section 63B(3)(a)—after "child" wherever occurring insert:

under the prescribed age in relation to that person

5 (5) Section 63B(3)(b)—after "child" insert:

under the prescribed age in relation to that person

(6) Section 63B—after subsection (3) insert:

(4) It is a defence to a charge under subsection (1)(a), (1)(b)(i) or (3) (other than where the defendant was in *a position of authority* in relation to the child) if the defendant proves to prove that—

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(a) the child was, on the date on which the offence is alleged to have been committed, of or above the age of 16 years; and

(b) the accused—

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(i) was, on the date on which the offence is alleged to have been committed, under the age of 17 years; or

(ii) believed on reasonable grounds that the child was of or above the age of 17 years.

(5) This section does not apply if the person and the child are legally married to each other.

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(6) For the purposes of this section, a person is in *a position of authority* in relation to a child if the person is—

(a) a teacher (within the meaning of the *Education Act 1972*) engaged in the education of the child; or

(b) a foster parent, step-parent or guardian of the child; or

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(c) a religious official or spiritual leader (however described and including lay members and whether paid or unpaid) providing pastoral care or religious instruction to the child; or

(d) a medical practitioner, psychologist or social worker providing professional services to the child; or

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(e) a person employed or providing services in a correctional institution (within the meaning of the *Correctional Services Act 1982*) or a training centre (within the meaning of the *Young Offenders Act 1993*), or any other person engaged in the administration of those Acts, acting in the course of his or her duties in relation to the child; or

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(f) an employer of the child or other person who has the authority to determine significant aspects of the child's terms and conditions of employment or to terminate the child's employment (whether the child is being paid in respect of that employment or is working in a voluntary capacity).

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- (7) For the purposes of this section, the *prescribed age* of a child in relation to a person is—
- (a) if the person is in a position of authority in relation to the child—18 years; or
 - (b) in any other case—17 years.

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