

House of Assembly—No 245

As laid on the table and read a first time, 28 September 2017

South Australia

**Criminal Law Consolidation (Children and
Vulnerable Adults) Amendment Bill 2017**

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

- 5 This Act may be cited as the *Criminal Law Consolidation (Children and Vulnerable Adults) Amendment Act 2017*.

2—Commencement

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

3—Amendment provisions

- 10 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*

4—Substitution of heading to Part 3 Division 1A

Heading to Part 3 Division 1A—delete the heading and substitute:

Division 1A—Criminal neglect, ill treatment etc

5—Insertion of section 13B

Before section 14 insert:

13B—Interpretation

(1) In this Division—

act includes—

- (a) an omission; and
- (b) a course of conduct;

child means a person under 16 years of age;

cognitive impairment includes—

- (a) a developmental disability (including, for example, an intellectual disability, Down syndrome, cerebral palsy or an autistic spectrum disorder);
- (b) an acquired disability as a result of illness or injury (including, for example, dementia, a traumatic brain injury or a neurological disorder);
- (c) a mental illness;

unlawful—an act is unlawful if it—

- (a) constitutes an offence; or
- (b) would constitute an offence if committed by an adult of full legal capacity;

vulnerable adult means a person aged 16 years or above who is significantly impaired through physical disability, cognitive impairment, illness or infirmity.

(2) In this Division, the following terms and phrases have the same meaning as in Division 7A (subject to subsections (3) and (4)):

- (a) *cause*;
- (b) *harm*;
- (c) *serious harm*;

(3) For the purposes of this Division, a reference to *harm* will be taken to include detriment caused to the physical, mental or emotional wellbeing or development of a child or vulnerable adult (whether temporary or permanent).

(4) For the purposes of this Division, in determining whether a child has suffered a protracted impairment of a part of the body or a physical or mental function—

- (a) the impairment may be determined to be protracted even where the healing time of the impairment in a particular child is significantly shorter than a similar impairment in an adult; and

(b) the determination is to be made having regard to all of the circumstances of the child (and, in particular, to their age and development).

(5) For the purposes of this Division, a defendant has a *duty of care* to a victim if the defendant is a parent or guardian of the victim or has assumed responsibility for the victim's care.

6—Amendment of section 14—Criminal neglect

(1) Section 14(1), penalty provision, (b)—delete "5 years" and substitute:

10 years

(2) Section 14(2)—after "act may" insert:

not

(3) Section 14(3) and (4)—delete subsections (3) and (4)

7—Insertion of sections 14A and 14B

After section 14 insert:

14A—Ill treatment

(1) A person (the *defendant*) is guilty of the offence of ill treatment if—

(a) a child or a vulnerable adult (the *victim*) dies or suffers harm as a result of any act; and

(b) the defendant had, at the time of the act, a duty of care to the victim; and

(c) the defendant was, or ought to have been, aware that there was an appreciable risk that harm would be caused to the victim by the act; and

(d) the defendant failed to take steps that the defendant could reasonably be expected to have taken in the circumstances to protect the victim from harm and the defendant's failure to do so was, in the circumstances, so serious that a criminal penalty is warranted.

Maximum penalty:

(a) where the victim dies—imprisonment for 15 years; or

(b) where the victim suffers serious harm—imprisonment for 10 years; or

(c) in any other case—imprisonment for 3 years.

(2) If a defendant is charged with an offence against this section in respect of a course of conduct—

(a) it is not necessary to prove that the defendant was, or ought to have been, aware that there was an appreciable risk that harm would be caused to the victim by each act making up the course of conduct; and

(b) the information need not—

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- (i) allege particulars of each act with the degree of particularity that would be required if the act were charged as an offence under a different section of this or any other Act; or
- (ii) identify particular acts of ill treatment or the occasions on which, places at which or order in which acts of ill treatment occurred; or
- (iii) identify particular acts of ill treatment as causing, wholly or partly, particular harm to the child.
- 10 (3) If a jury considering a charge against a defendant under this section finds that—
- (a) there is reasonable doubt as to the identity of the person who committed the act that caused the victim's death or harm to the victim; but
- 15 (b) the act can only have been the act of the defendant or some other person who, on the evidence, may have committed the act,
- the jury may find the defendant guilty of the charge of the offence against this section even though of the opinion that the act may not have been the act of the defendant.
- 20 (4) A defendant may be charged with an offence against this section in respect of a course of conduct even if some of the acts making up the course of conduct occurred before the commencement of this section.

14B—Failing to provide food etc in certain circumstances

- 25 If—
- (a) a person is liable to provide necessary food, clothing or accommodation to a child or vulnerable adult; and
- (b) the person, without lawful excuse, fails to provide that food, clothing or accommodation,
- 30 that person is guilty of an offence.
- Maximum penalty: Imprisonment for 3 years.

8—Amendment of section 21—Interpretation

Section 21—after its present contents (now to be designated as subsection (1)) insert:

- 35 (2) For the purposes of this Division, in determining whether a child has suffered a protracted impairment of a part of the body or a physical or mental function—
- (a) the impairment may be determined to be protracted even where the healing time of the impairment in a particular child is significantly shorter than a similar impairment in an adult; and
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- (b) the determination is to be made having regard to all of the circumstances of the child (and, in particular, to the age and development of the child).

9—Repeal of section 30

5 Section 30—delete the section