

Legislative Council—No 40

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South Australia

**Criminal Law Consolidation (Criminal Neglect)
Amendment Bill 2004**

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 (Criminal Neglect) Amendment Act 2004*.

5 2—Commencement

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

3—Amendment provisions

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

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

4—Insertion of Division 1A

After section 13A insert:

Division 1A—Criminal neglect

15 14—Criminal liability for neglect where death or serious harm results from unlawful act

- (1) A person (the *defendant*) is guilty of the offence of criminal neglect if—
 - (a) a child or a vulnerable adult (the *victim*) dies or suffers serious harm as a result of an unlawful 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 serious harm would be caused to the victim by the unlawful act; and

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(d) the defendant failed to take steps that he or she 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:

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

(b) where the victim suffers serious harm—imprisonment for 5 years.

(2) If a jury considering a charge of criminal neglect against a defendant finds that—

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(a) there is reasonable doubt as to the identity of the person who committed the unlawful act that caused the victim's death or serious harm; but

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(b) the unlawful act can only have been the act of the defendant or some other person who, on the evidence, may have committed the unlawful act,

the jury may find the defendant guilty of the charge of criminal neglect even though of the opinion that the unlawful act may have been the act of the defendant.

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

(4) In this section—

act includes—

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(a) an omission; and

(b) a course of conduct;

child means a person under 16 years of age;

serious harm means—

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(a) harm that endangers, or is likely to endanger, a person's life; or

(b) harm that consists of, or is likely to result in, loss of, or serious and protracted impairment of, a part of the body or a physical or mental function; or

(c) harm that consists of, or is likely to result in, serious disfigurement;

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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 whose ability to protect him/herself from an unlawful act is significantly impaired through physical or mental disability, illness or infirmity.

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