

South Australia

Criminal Law Consolidation (Defences—Domestic Abuse Context) 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 (Defences—Domestic Abuse Context) Amendment Act 2017*.

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*

10 3—Amendment of section 5—Interpretation

Section 5(1)—after the definition of *criminal organisation* insert:

domestic abuse has the same meaning as in the *Intervention Orders (Prevention of Abuse) Act 2009*;

15 4—Amendment of section 15—Self defence

After section 15(5) insert:

Note—

- 1 See section 15D as to belief in circumstances where domestic abuse is alleged.

5—Insertion of sections 15D and 15E

After section 15C insert:

15D—Domestic abuse and self defence

- 5 (1) Without limiting section 15, in proceedings for an offence in circumstances where self defence in the context of domestic abuse is in issue, a person may genuinely believe that the person's conduct is necessary and reasonable for a defensive purpose, and the conduct may be reasonably proportionate to the threat that the person genuinely believes to exist, even if—
- 10 (a) the person is responding to a threat that is not immediate or imminent; or
- (b) the response involves the use of force in excess of the force involved in the harm or threatened harm.
- 15 (2) Without limiting the evidence that may be adduced, in circumstances where self defence in the context of domestic abuse is in issue, evidence of domestic abuse may be relevant in determining whether—
- 20 (a) a person has carried out conduct while believing it to be necessary and reasonable for a defensive purpose; or
- (b) the conduct is reasonably proportionate to the threat that the person genuinely believed to exist.
- (3) Evidence of domestic abuse, in relation to a person, includes evidence of any of the following—
- 25 (a) the history of the relationship between the person and a family member, including abuse by the family member towards the person or by the person towards the family member or by the family member or the person in relation to any other family member;
- 30 (b) the cumulative effect, including psychological effect, on the person or a family member of that abuse;
- (c) social, cultural or economic factors that impact on the person or a family member who has been affected by domestic abuse;
- 35 (d) the general nature and dynamics of relationships affected by domestic abuse, including the possible consequences of separation from the abuser;
- (e) the psychological effect of abuse on people who are or have been in a relationship affected by domestic abuse;
- 40 (f) social or economic factors that impact on people who are or have been in a relationship affected by domestic abuse.
- (4) In this section a person is a *family member* of another person if those 2 persons are in a relationship within the meaning of section 8(8) of the *Intervention Orders (Prevention of Abuse) Act 2009*.

15E—Domestic abuse and the common law defence of duress

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- (1) In proceedings for an offence in circumstances where the common law defence of duress is in issue, evidence of domestic abuse may be relevant in determining whether a person has carried out conduct under duress and, as such, may enliven the defence where it might not otherwise have been enlivened in the absence of that evidence.
- (2) Without limiting the evidence that may be adduced, in circumstances where duress in the context of domestic abuse is in issue, evidence of domestic abuse may be relevant in considering whether—
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- (a) a person has carried out conduct while believing it to be necessary; or
- (b) the conduct is a reasonable response in the circumstances as a person perceives them.
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- (3) Evidence of domestic abuse, in relation to a person, includes those matters referred to in section 15D(3).