

Legislative Council—No 51

As received from the House of Assembly and read a first time, 18 November 2014

South Australia

**Criminal Law Consolidation (Sexual Offences—
Cognitive Impairment) Amendment Bill 2014**

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 (Sexual Offences—Cognitive Impairment) Amendment Act 2014*.

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 section 51

After section 50 insert:

51—Sexual exploitation of person with a cognitive impairment

- 15 (1) A person who provides a service (whether for remuneration or not) to a person with a cognitive impairment is guilty of an offence if he or she obtains or procures, by undue influence, sexual intercourse or indecent contact with that person.

Maximum penalty: Imprisonment for 10 years.

- 20 (2) A person who provides a service (whether for remuneration or not) to a person with a cognitive impairment is guilty of an offence if he or she behaves in an indecent manner in the presence of that person—

- (a) without the person's consent; or

- (b) with the person's consent where that consent was obtained by undue influence.

Maximum penalty:

- (a) in the case of a first offence—imprisonment for 3 years;

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- (b) in the case of a subsequent offence—imprisonment for 5 years.

- (3) This section does not apply in relation to a person who is legally married to the person with a cognitive impairment or is the domestic partner of that person.

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- (4) A defendant who was, at the time of an alleged offence against this section, in a position of power, trust or authority in relation to the victim of the offence, is presumed to have obtained the consent of the victim by undue influence unless the defendant proves the contrary on the balance of probabilities.

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- (5) In this section—

close personal relationship means the relationship between 2 adult persons (whether or not related by family and irrespective of their gender) who live together as a couple on a genuine domestic basis, but does not include a relationship where 1 of the persons provides the other with domestic support or personal care (or both) for fee or reward, or on behalf of some other person or an organisation of whatever kind;

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cognitive impairment includes the following:

- (a) an intellectual disability;
- (b) a developmental disorder (including an autistic spectrum disorder);
- (c) a neurological disorder;
- (d) dementia;
- (e) a severe mental illness;
- (f) a brain injury;

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domestic partner—a person is the domestic partner of another if he or she lives with the other in a close personal relationship;

undue influence includes the abuse of a position of trust, power or authority.