

Legislative Council—No 233

As introduced and read a first time, 27 September 2017

South Australia

Statutes Amendment (Bullying) Bill 2017

A BILL FOR

An Act to amend the *Criminal Law Consolidation Act 1935* and the *Intervention Orders (Prevention of Abuse) Act 2009*.

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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 *Statutes Amendment (Bullying) Act 2017*.

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—Insertion of Part 3 Division 7AA

- 10 After section 20 insert:

Division 7AA—Bullying

20A—Interpretation

- (1) In this Division—

cause—a person causes harm if the person's conduct is the sole cause of the harm or substantially contributes to the harm;

harm means physical or mental harm;

mental harm includes—

- (a) psychological harm; and
- (b) emotional harm; and

- (c) suicidal ideation; and
- (d) thoughts of self-harm; and
- (e) distress, anxiety, or fear, that is more than trivial;

offensive material includes material that is degrading, humiliating, disgraceful or harassing;

parent, of a child, includes—

- (a) a step-parent of the child; and
- (b) a person who stands *in loco parentis* to the child;

reckless—a person is reckless in causing harm to another person if the first person—

- (a) is aware of a substantial risk that the person's conduct could result in harm; and
- (b) engages in the conduct despite the risk and without adequate justification;

serious harm means—

- (a) harm that endangers a person's life; or
- (b) harm that consists of, or results in, serious and protracted impairment of a physical or mental function; or
- (c) harm that consists of, or results in, serious disfigurement.

(2) For the purposes of this Division, a person *bullies* another person if the person does 1 or more of the following:

- (a) expressly or implicitly threatens to cause harm to the person;
- (b) degrades, humiliates, disgraces or harasses the other person, or expressly or implicitly threatens to do so;
- (c) uses abusive or offensive language towards the other person;
- (d) gives or sends offensive material to the other person, or leaves offensive material where it will be found by, given to or brought to the attention of the other person;
- (e) publishes or transmits offensive material by means of the internet or some other form of electronic communication in such a way that the offensive material will be found by, or brought to the attention of, the other person;
- (f) engages in any other conduct that could reasonably be expected to—
 - (i) degrade, humiliate, disgrace or harass the other person; or
 - (ii) cause apprehension or fear in the other person,

and a reference to an *act of bullying* is to be construed accordingly.

- (3) For the purposes of this Division, a reference to *harm* caused to a person will be taken to include self-harm inflicted by the person.

20B—Application of Division

- (1) This Division does not apply to conduct occurring before the commencement of this Division.
- (2) This Division does not apply to conduct consisting of the disciplining of a child by a parent of the child unless it is established that the parent intended to cause harm to the child.
- (3) If a defendant's conduct lies within the limits of what would be generally accepted in the community as normal incidents of social interaction or community life, this Division does not apply to the conduct unless it is established that the defendant intended to cause harm.

20C—Bullying

- (1) A person who, intending to cause harm, or being reckless as to whether harm will be caused, to another person—
- (a) commits more than 1 act of bullying against the other person over a period of not less than 7 days; and
 - (b) by so doing causes harm or serious harm to the other person,
- is guilty of an offence.
- Maximum penalty:
- (a) if the bullying causes serious harm to the victim—imprisonment for 10 years;
 - (b) in any other case—imprisonment for 5 years.
- (2) Despite any other Act or rule of law, if a person is charged on an information with an offence against this section, the information must allege with sufficient particularity—
- (a) the period during which the acts of bullying allegedly occurred; and
 - (b) the alleged conduct comprising the acts of bullying,
- but—
- (c) 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 of bullying; and
 - (d) the information need not—
 - (i) allege particulars of each act of bullying with the degree of particularity that would be required if the act of bullying were charged as an offence under a different section of this or any other Act; or

(ii) identify the occasions on which, places at which or order in which particular acts of bullying occurred; or

(iii) identify particular acts of bullying as causing particular harm to the victim.

(3) In proceedings for an offence against subsection (1), it is not necessary to prove that the defendant intended to cause serious harm to the victim.

(4) In proceedings for an offence against subsection (1) where the victim self-harmed, it is not necessary to prove that the defendant knew, or ought to have known, that the victim may self-harm.

20D—Alternative verdicts etc

(1) If —

(a) a jury is not satisfied beyond reasonable doubt that a charge of an offence against section 20C has been established; but

(b) the Judge has instructed the jury that it is open to the jury on the evidence to find the defendant guilty of a specified lesser offence or any 1 of a number of specified lesser offences; and

(c) the jury is satisfied beyond reasonable doubt that the specified lesser offence, or a particular 1 of the specified lesser offences, has been established,

the jury may return a verdict that the defendant is not guilty of the offence charged but is guilty of the lesser offence.

(2) A person who has been acquitted or convicted on a charge of an offence against section 20C may not be convicted of another offence arising out of the same set of circumstances and involving a physical element that is common to that charge.

(3) A person who has been acquitted or convicted on a charge of an offence other than an offence against section 20C may not be convicted of an offence against that section if the charge arises out of the same set of circumstances and involves a physical element that is common to the charge of that other offence.

Part 3—Amendment of *Intervention Orders (Prevention of Abuse) Act 2009*

4—Amendment of section 8—Meaning of abuse—domestic and non-domestic

Section 8—after subsection (2) insert:

(2a) For the purposes of this Act, bullying (within the meaning of Part 3 Division 7AA of the *Criminal Law Consolidation Act 1935*) will be taken to be an *act of abuse* against a person.