

House of Assembly—No 105

As laid on the table and read a first time, 10 March 2016

South Australia

Statutes Amendment (Child Marriage) Bill 2016

A BILL FOR

An Act to amend the *Children's Protection Act 1993* and 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 *Statutes Amendment (Child Marriage) Act 2016*.

5 2—Commencement

This Act will come into operation on the day on which it is assented to by the Governor.

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 *Children's Protection Act 1993*

4—Amendment of section 6—Interpretation

Section 6(2)—after paragraph (a) insert:

- 15 (ab) in the case of a child to whom section 26C applies—the child has gone through, or is about to go through, the form or ceremony of marriage; or

5—Amendment of section 26B—Protection of children at risk of genital mutilation

Section 26B(2) to (4)—delete subsections (2) to (4) (inclusive)

6—Insertion of sections 26C and 26D

After section 26B insert:

26C—Protection of children at risk of being removed from State for marriage

- (1) If the Court is satisfied that there are reasonable grounds to suspect that a child to whom this section applies may be at risk of removal from the State for marriage, the Court may make orders for the protection of the child.

Examples—

The Court might for example make an order—

- (a) preventing a person from taking the child from the State; or
(b) requiring that the child's passport be held by the Court for a period specified in the order or until further order.
- (2) In proceedings under subsection (1), the Court must assume that it is in the child's best interests to resist pressure of racial, ethnic, religious, cultural or family origin that might lead to removal of the child from the State for marriage.
- (3) This section does not apply to a child of 16 or over in relation to whom an order is in force under section 12 of the *Marriage Act 1961* of the Commonwealth.
- (4) In this section—

child means a person under 18 years of age.

26D—Procedural matters

- (1) An application for an order under this Division may be made by a police officer or by the Chief Executive.
- (2) The Court may make an order on an application under this Division without giving a person who is to be bound by the Court's order notice of the proceedings or an opportunity to be heard in the proceedings.
- (3) However, in that case the Court must allow the person against whom the order is made a reasonable opportunity to appear before the Court to show why the order should be varied or revoked.

Part 3—Amendment of *Criminal Law Consolidation Act 1935*

7—Amendment of section 5AA—Aggravated offences

Section 5AA(1)(e)(i)—after "Part 3" insert:

Division 8A or

8—Insertion of Part 3 Division 8A

After Part 3 Division 8 insert:

Division 8A—Child marriage

34—Interpretation

5 In this Division, unless the contrary intention appears—
child means a person under the age of 18 years.

34A—Application of Division

10 This Division does not apply to a child of 16 or over in relation to
whom an order is in force under section 12 of the *Marriage Act 1961*
of the Commonwealth.

34B—Bringing child into State for marriage

- 15 (1) A person must not bring a child to whom this Division applies into
the State, or arrange for such a child to be brought into the State,
with the intention of causing the child to be married.

Maximum penalty:

- (a) for a basic offence—imprisonment for 15 years;
(b) for an aggravated offence—imprisonment for 19 years.

- 20 (2) In proceedings for an offence against subsection (1), if it is proved
that—

- (a) the defendant brought a child, or arranged for a child to be
brought, into the State; and
(b) the child, while in the State, went through the form or
ceremony of marriage,

25 it will be presumed, in the absence of proof to the contrary, that the
defendant brought the child, or arranged for the child brought, into
the State (as the case may be) with the intention of causing the child
to be married.

34C—Removing child from State for marriage

- 30 (1) A person must not take a child to whom this Division applies from
the State, or arrange for such a child to be taken from the State, with
the intention of causing the child to be married.

Maximum penalty:

- (a) for a basic offence—imprisonment for 15 years;
(b) for an aggravated offence—imprisonment for 19 years.

- 35 (2) In proceedings for an offence against subsection (1), if it is proved
that—

- (a) the defendant took a child, or arranged for a child to be
taken, from the State; and

(b) the child, while outside the State, went through the form or ceremony of marriage,

it will be presumed, in the absence of proof to the contrary, that the defendant took the child, or arranged for the child to be taken, from the State (as the case may be) with the intention of causing the child to be married.

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34D—Consent no defence

This Division applies irrespective of whether the child concerned, or a parent or guardian of the child, consents to the marriage.