

House of Assembly—No 238

As laid on the table and read a first time, 27 September 2017

South Australia

**Statutes Amendment (Extremist Material)
Bill 2017**

A BILL FOR

An Act to amend the *Criminal Law Consolidation Act 1935* and the *Summary Offences Act 1953*.

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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 (Extremist Material) Act 2017*.

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 83CA

After section 83C insert:

83CA—Information for terrorist acts

- 15 (1) A person who, without reasonable excuse—
 - (a) collects or makes a record of information of a kind likely to be of practical use to a person committing or preparing a terrorist act; or
 - (b) has possession of a document or record containing information of that kind,

is guilty of an offence.

Maximum penalty: Imprisonment for 7 years.

5 (2) If a court finds a person guilty of an offence against this section, the court may order the forfeiture of anything that has been seized and consists of, or contains, material to which the offence relates or consists of equipment used for the commission of the offence.

10 (3) A court making an order for forfeiture of any equipment or item under subsection (2) may, if it thinks fit, allow the offender or any other person an opportunity to retrieve (in accordance with any directions of the court) specified records, or other material, not involved in the commission of the offence from the equipment or item before it is so forfeited.

(4) In this section—

15 *Commonwealth Criminal Code* means the Criminal Code set out in the Schedule to the *Criminal Code Act 1995* of the Commonwealth, or a law of the Commonwealth that replaces that Code;

terrorist act has the same meaning as in Part 5.3 of the Commonwealth Criminal Code.

Part 3—Amendment of *Summary Offences Act 1953*

20 5—Insertion of Part 7A

After section 35 insert:

Part 7A—Extremist material

36—Interpretation

In this Part—

25 *broadcasting* includes datacasting;

carriage service provider has the same meaning as in section 87 of the *Telecommunications Act 1997* of the Commonwealth;

30 *Commonwealth Criminal Code* means the Criminal Code set out in the Schedule to the *Criminal Code Act 1995* of the Commonwealth, or a law of the Commonwealth that replaces that Code;

computer data means electronic data from which an image, sound or text may be created by means of a computer;

computer record or system means a computer disk or tape or other object or device on which computer data is stored;

35 *distribute* includes—

- (a) communicate, exhibit, send, supply, upload or transmit; and
- (b) make available for access by another,

but does not include distribution by a person solely in the person's capacity as an internet service provider, internet content host or a carriage service provider;

extremist material—see section 36A;

5 *internet content host* has the same meaning as in Schedule 5 of the *Broadcasting Services Act 1992* of the Commonwealth;

internet service provider has the same meaning as in Schedule 5 of the *Broadcasting Services Act 1992* of the Commonwealth;

10 *law enforcement personnel* means police officers or officers of a law enforcement agency;

material includes—

- (a) any written or printed material; or
- (b) any picture, painting or drawing; or
- (c) any carving, sculpture, statue or figure; or
- 15 (d) any photograph, film, video recording or other object or thing from which an image may be reproduced; or
- (e) any computer data or the computer record or system containing the data; or
- 20 (f) any other material or object on which an image or representation is recorded or from which an image or representation may be reproduced;

media organisation means—

- 25 (a) an organisation that engages in broadcasting pursuant to a licence under the *Broadcasting Services Act 1992* of the Commonwealth or that is otherwise authorised under a law of the Commonwealth to engage in broadcasting; or
- (b) an organisation that is a constituent body of the Australian Press Council or is authorised under a law of the Commonwealth to engage in publishing;

30 *publish* means publish by newspaper, radio or television, or on the internet, or by other similar means of communication to the public;

terrorist act has the same meaning as in Part 5.3 of the Commonwealth Criminal Code;

35 *terrorist organisation* means an organisation referred to in paragraph (b) of the definition of *terrorist organisation* in Division 102 of the Commonwealth Criminal Code.

36A—Extremist material

(1) In this Part (and subject to subsection (2)) *extremist material* means—

- 40 (a) material that a reasonable person would understand to be—

- (i) directly or indirectly encouraging, glorifying, promoting or condoning terrorist acts; or
- (ii) seeking support for, or justifying, the carrying out of terrorist acts; or

5 (b) material that a reasonable person would suspect has been produced or distributed by a terrorist organisation.

10 (2) A publication, film or computer game that is classified, within the meaning of the *Classification (Publications, Films and Computer Games) Act 1995*, with a classification other than RC does not constitute extremist material for the purposes of this Part.

37—Possession, production or distribution of extremist material

(1) A person who, without reasonable excuse—

- (a) has possession of extremist material; or
- (b) takes any step in the production or distribution of extremist material,

15 is guilty of an offence.

Maximum penalty: \$10 000 or imprisonment for 2 years.

20 (2) Without limiting the circumstances in which a defendant may be found to have a reasonable excuse for the purposes of subsection (1), the defendant will have a reasonable excuse if the defendant establishes that—

- (a) the conduct constituting the offence was for a legitimate public purpose; or
- (b) in the case of an offence against subsection (1)(a)—the material to which the charge relates came into the defendant's possession unsolicited and that the defendant took reasonable steps to get rid of it as soon as the defendant became aware of the material and its nature.

30 (3) For the purposes of this section, conduct will only be taken to be for a ***legitimate public purpose*** if the conduct was in the public interest having regard to the following:

- (a) whether the conduct was for the purpose of educating or informing the public;
- (b) whether the conduct was for the purpose of a work of artistic merit;
- (c) whether the conduct was for a purpose connected to law enforcement or public safety;
- (d) whether the conduct was for a medical, legal or scientific purpose;
- (e) any other factor the court determining the charge considers relevant.

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- (4) If, in any proceedings for an offence against this section, the defendant establishes that the conduct allegedly constituting the offence was engaged in by or on behalf of a media organisation, the conduct will, for the purposes of this section, be taken to have been engaged in for a legitimate public purpose unless the court determining the charge finds that, having regard to the matters set out in subsection (3), the conduct was not for a legitimate public purpose.
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- (5) Law enforcement personnel and legal practitioners, or their agents, acting in the course of law enforcement or legal proceedings do not commit an offence against this section.

38—Forfeiture

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- (1) If a court finds a person guilty of an offence against this Part, the court may order the forfeiture of anything that has been seized and consists of, or contains, material to which the offence relates or consists of equipment used for the commission of the offence.
- 20
- (2) A court making an order for forfeiture of any equipment or item under subsection (1) may, if it thinks fit, allow the offender or any other person an opportunity to retrieve (in accordance with any directions of the court) specified records, or other material, not involved in the commission of the offence from the equipment or item before it is so forfeited.