

Legislative Council—No 54A

As reported with amendments, report adopted, Standing Orders suspended and passed remaining stages, 7 November 2018

South Australia

Summary Offences (Disrespectful Conduct in Court) Amendment Bill 2018

A BILL FOR

An Act to amend the *Summary Offences Act 1953*.

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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 *Summary Offences (Disrespectful Conduct in Court) Amendment Act 2018*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

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 *Summary Offences Act 1953*

4—Insertion of Part 11A

After Part 11 insert:

Part 11A—Disrespectful conduct in court

15 **60—Disrespectful conduct in court**

- (1) A person who is a party to proceedings before a court must not intentionally engage in disrespectful conduct before the court during those proceedings.

Maximum penalty: \$1 250 or imprisonment for 3 months.

- 20 (1a) A person cannot be prosecuted for an offence against subsection (1) in respect of certain conduct before a court unless, before the conduct was engaged in, the court had warned the person, in respect of other earlier conduct before the court, that disrespectful conduct before the court may result in a charge of an offence.

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- (1b) It is a defence to prosecution for an offence against subsection (1) to prove that the conduct the subject of the charge arose due to a physical disability or cognitive impairment of the defendant.
- (2) Nothing in this section affects the power of a court to take action for contempt of court.
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- (3) A person cannot be prosecuted for an offence against subsection (1) in respect of certain conduct of the person if the conduct is, or has been, the subject of contempt of court proceedings against the person (except where contempt of court proceedings have been discontinued by a court in contemplation of a charge for an offence against subsection (1) proceeding).
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- (4) An official transcript or official audio or video recording of proceedings in a court is admissible in evidence in proceedings for an offence against this section and is evidence of the matter included in the transcript or audio or video recording.
- (5) The presiding officer of proceedings in a court during which alleged disrespectful behaviour occurred cannot be required to give evidence in proceedings before any court for an offence against this section.
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- (6) This section does not apply in respect of—
- (a) proceedings in the Youth Court of South Australia (other than proceedings under the *Children's Protection Act 1993* or the *Children and Young People (Safety) Act 2017*); or
- 25
- (b) a child who is a party to proceedings under the *Children's Protection Act 1993* or the *Children and Young People (Safety) Act 2017*.
- (7) In this section—
- cognitive impairment*** includes—
- 30
- (a) a developmental disability (including, for example, an intellectual disability, Down syndrome, cerebral palsy or an autistic spectrum disorder);
- (b) an acquired disability as a result of illness or injury (including, for example, dementia, a traumatic brain injury or a neurological disorder);
- (c) a mental illness;
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- court*** includes a tribunal, authority or person invested by law with judicial or quasi-judicial powers, or with authority to make any inquiry or to receive evidence;
- disrespectful conduct*** includes—
- 40
- (a) refusing to stand up after being requested to do so by the court; and
- (b) using offensive or threatening language; and
- (c) interfering with or undermining the authority, dignity or performance of the court;

presiding officer, of proceedings in a court, means the judge, magistrate, judicial officer or other person presiding over the proceedings in the court.