

Legislative Council—No 123A

As reported with amendments, report adopted, Standing Orders suspended and passed remaining stages, 23 June 2016

South Australia

**Summary Offences (Filming and Sexting Offences)
Amendment Bill 2016**

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 (Filming and Sexting Offences) Amendment Act 2016*.

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—Amendment of heading to Part 5A

Heading to Part 5A—after "Filming" insert:

and sexting

15 5—Amendment of section 26A—Interpretation

(1) Section 26A—after the definition of *carriage service provider* insert:

cognitive impairment includes—

- 20 (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;

5 (2) Section 26A, definition of *film*—delete "moving or still"

(3) Section 26A—after the definition of *humiliating or degrading filming* insert:

image means a moving or still image, and includes an image that has been altered by digital or other means;

(4) Section 26A, definition of *invasive image*—delete the definition and substitute:

10 *invasive image*—see subsections (2) and (3);

(5) Section 26A, definition of *private act*—after paragraph (a) insert:

(ab) an act carried out in a sexual manner or context; or

(6) Section 26A, definition of *private region*—after "anal region" insert:

, or in the case of a female, the breast,

15 (7) Section 26A—after its present contents as amended by this section (now to be designated as subsection (1)) insert:

(2) For the purposes of this Part, an image of a person will be taken to be an *invasive image* of the person if it depicts the person in a place other than a public place—

20 (a) engaged in a private act; or

(b) in a state of undress such that—

(i) in the case of a female—the bare breasts are visible;
or

25 (ii) in any case—the bare genital or anal region is visible.

(3) However, an image of a person that falls within the standards of morality, decency and propriety generally accepted by reasonable adults in the community will not be taken to be an invasive image of the person.

30 **6—Amendment of section 26B—Humiliating or degrading filming**

(1) Section 26B(2)—delete "a moving or still" and substitute:

an

(2) Section 26B(9), definitions of *broadcasting*, *media organisation* and *publish*—delete the definitions and substitute:

35 *media organisation* means an organisation whose activities consist of or include the collection, preparation for dissemination or dissemination of the following material for the purpose of making it available to the public:

(a) material having the character of news, current affairs, information or a documentary;

- (b) material consisting of commentary or opinion on, or analysis of, news, current affairs, information or a documentary;

7—Amendment of section 26C—Distribution of invasive image

Section 26C(1), penalty provision—delete the penalty provision and substitute:

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Maximum penalty:

- (a) if the invasive image is of a person under the age of 17 years—\$20 000 or imprisonment for 4 years;
- (b) in any other case—\$10 000 or imprisonment for 2 years.

8—Amendment of section 26D—Indecent filming

- 10 (a1) Section 26D(1), penalty provision, (a)—delete "a minor" and substitute:
under the age of 17 years

- (1) Section 26D(3)—delete "a moving or still" and substitute:
an

- 15 (1a) Section 26D(3), penalty provision, (a)—delete "a minor" and substitute:
under the age of 17 years

- (2) Section 26D(4)(c)—delete "moving or still"

9—Insertion of section 26DA

After section 26D insert:

20 **26DA—Threat to distribute invasive image or image obtained
from indecent filming**

- (1) A person who—
- (a) threatens to distribute an invasive image of a person; and
 - (b) intends to arouse a fear that the threat will be, or is likely to be, carried out, or is recklessly indifferent as to whether such a fear is aroused,

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is guilty of an offence.

Maximum penalty:

- 30 (a) if the invasive image is of a person under the age of 17 years—\$10 000 or imprisonment for 2 years;
- (b) in any other case—\$5 000 or imprisonment for 1 year.

- (2) A person who—
- (a) threatens to distribute an image obtained by the indecent filming of a person; and
 - (b) intends to arouse a fear that the threat will be, or is likely to be, carried out, or is recklessly indifferent as to whether such a fear is aroused,

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is guilty of an offence.

Maximum penalty:

- (a) if the person filmed was under the age of 17 years—\$10 000 or imprisonment for 2 years;
 - (b) in any other case—\$5 000 or imprisonment for 1 year.
- (3) It is a defence to a charge of an offence against subsection (1) or (2) to prove—
- (a) that—
 - (i) the person filmed consented to that particular distribution of the image the subject of the filming; or
 - (ii) the person consented to distribution of the image the subject of the filming generally; and
 - (b) that the person had not, at the time of the alleged offence, withdrawn consent to the distribution of the image.
- (4) This section applies to a threat directly or indirectly communicated by words (written or spoken) or by conduct, or partially by words and partially by conduct, and may be explicit or implicit.

10—Amendment of section 26E—General provisions

- (1) Section 26E(1)(a)—delete "16 years of age or mentally incapacitated" and substitute:
the age of 17 years or with a cognitive impairment
- (2) Section 26E(3)—delete "moving or still"