

Legislative Council—No 145

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South Australia

**Summary Offences (Indecent Filming) Amendment
Bill 2008**

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

This Act may be cited as the *Summary Offences (Indecent Filming) Amendment Act 2008*.

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 *Summary Offences Act 1953*

4—Insertion of section 23AA

After section 23 insert:

23AA—Indecent filming

- 15 (1) A person must not engage in indecent filming.
Maximum penalty: \$10 000 or imprisonment for 2 years.
- (2) It is a defence to a charge of an offence against subsection (1) to prove—
 - 20 (a) that the indecent filming occurred with the consent of the person filmed; or
 - (b) that the indecent filming was undertaken by a licensed investigation agent within the meaning of the *Security and Investigation Agents Act 1995* and occurred in the course of obtaining evidence in connection with a claim for compensation, damages, a payment under a contract or some
25 other benefit.

- (3) A person must not distribute a moving or still picture obtained by indecent filming.

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

- (4) It is a defence to a charge of an offence against subsection (3) to prove—

- (a) that the person filmed consented to the distribution of the moving or still picture; or
- (b) that the defendant did not know, and could not reasonably be expected to have known, that the indecent filming was without the person's consent; or
- (c) that the indecent filming was undertaken by a licensed investigation agent within the meaning of the *Security and Investigation Agents Act 1995* and occurred in the course of obtaining evidence in connection with a claim for compensation, damages, a payment under a contract or some other benefit and the distribution of the moving or still picture was for a purpose connected with that claim.

- (5) An apparent consent will not be an effective consent for the purposes of this section if—

- (a) given by a person who is under 16 years of age or mentally incapacitated; or
- (b) obtained from a person by duress or deception.

- (6) Law enforcement personnel and legal practitioners, or their agents, acting in the course of law enforcement or legal proceedings do not commit an offence under this section.

- (7) If a court convicts a person of an offence against this section the court may order the forfeiture of anything that has been seized and consists of, or contains a record of, moving or still pictures taken in the course of the commission of the offence, or consists of equipment used for the commission of the offence.

- (8) In this section—

distribute includes—

- (a) communicate, exhibit, send, supply or transmit; and
- (b) make available for access by another; and
- (c) enter into an agreement or arrangement to do something contemplated by paragraphs (a) and (b); and
- (d) attempt to distribute;

film means take moving or still pictures by any means;

indecent filming means filming of—

- (a) another person in a state of undress in circumstances in which a reasonable person would expect to be afforded privacy; or

(b) another person engaged in a private act in circumstances in which a reasonable person would expect to be afforded privacy; or

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(c) another person's private region in circumstances in which a reasonable person would not expect that the person's private region might be filmed;

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

private act means—

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(a) a sexual act of a kind not ordinarily done in public; or

(b) using a toilet;

private region of a person means the person's genital or anal region when covered by underwear or bare.