

## **Legislative Council—No 4A**

As reported with amendments, report adopted, Standing Orders suspended and passed remaining stages, 16 October 2008

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**

- (1) A person must not engage in indecent filming.

15 Maximum penalty:

- (a) if the person filmed was a minor—\$20 000 or imprisonment for 4 years;
- (b) in any other case—\$10 000 or imprisonment for 2 years.

- (2) It is a defence to a charge of an offence against subsection (1) to prove—

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- (a) that the indecent filming occurred with the consent of the person filmed; or

- 5 (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 other benefit.
- (3) A person must not distribute a moving or still picture obtained by indecent filming.  
Maximum penalty:
- 10 (a) if the person filmed was a minor—\$20 000 or imprisonment for 4 years;
- (b) in any other case—\$10 000 or imprisonment for 2 years.
- (4) It is a defence to a charge of an offence against subsection (3) to prove—
- 15 (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
- 20 (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.
- 25 (5) An apparent consent will not be an effective consent for the purposes of this section if—
- 30 (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.
- 35 (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.
- 40 (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
- (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—

- (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.