

Legislative Council

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South Australia

Summary Procedure (Paedophile Restraining Orders) Amendment Bill 2007

A BILL FOR

An Act to amend the *Summary Procedure Act 1921*.

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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 Procedure (Paedophile Restraining Orders) Amendment Act 2007*.

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.

Part 2—Amendment of *Summary Procedure Act 1921*

4—Amendment of section 99AA—Paedophile restraining orders

- (1) Section 99AA(1)(a) and (b)—delete paragraphs (a) and (b) and substitute:
 - (a) the defendant—
 - (i) is required to comply with the reporting obligations imposed by Part 3 of the *Child Sex Offenders Registration Act 2006*; or
 - (ii) has been found—
 - (A) loitering near children; or
 - (B) using the internet to communicate with children or persons whom the defendant believed to be children (other than children or persons with whom the defendant has some good reason to communicate),

on at least 2 occasions and there is reason to think that the defendant may, unless restrained, again so loiter or so use the internet; and
- (2) Section 99AA(2)—delete subsection (2) and substitute:
 - (2) A restraining order under this section may restrain the defendant from 1 or more of the following:
 - (a) loitering—
 - (i) near children at or in the vicinity of a specified place or class of places or in specified circumstances; or
 - (ii) near children in any circumstances;
 - (b) using the internet or using the internet in a manner specified in the order;
 - (c) owning, possessing or using a computer or other device that is capable of being used to gain access to the internet.
- (3) Section 99AA(3)(b)—delete "child sexual offence" and substitute:

sexual offence against a child
- (4) Section 99AA(3)—after paragraph (e) insert:
 - (ea) any apparent pattern in the defendant's use of the internet (if any) to contact children;
- (5) Section 99AA(4)—delete subsection (4) and substitute:
 - (4) For the purposes of this section, a defendant *loiters near children* if the defendant loiters, without reasonable excuse, at or in the vicinity of a school, public toilet or place at which children are regularly present, whether or not children are actually present at the school, public toilet or place.

5—Insertion of section 99AAB

After section 99AA insert:

99AAB—Power to conduct routine inspection of computer etc

- (1) If a restraining order under section 99AA includes provisions relating to use of the internet by the defendant, a police officer may, at any time, enter premises occupied by the defendant and—
 - (a) inspect any computer or device capable of storing electronic data at those premises; or
 - (b) remove from the premises any computer or device capable of storing electronic data for the purpose of inspecting the computer or device,

to determine whether there is any evidence to suggest that the defendant may have contravened the restraining order.

- (2) If the defendant is aware that, in order to gain access to data stored on a computer or other device being inspected or removed by a police officer under this section it is necessary to enter any password, code or other information or to perform any function in relation to the data, the defendant must provide the police officer with that password, code or information or assist the police officer in performing that function.

Maximum penalty: Division 5 imprisonment.

- (3) If a person is convicted of an offence against subsection (2) in relation to a computer or device that is owned by the convicted person, the computer or device is forfeited to the Crown and may be dealt with and disposed of in such manner as the Minister may direct.
- (4) A power must not be exercised under this section in relation to particular premises more than once in any 12 month period.
- (5) If a computer or device removed from premises in accordance with subsection (1)(b) is not to be seized and retained as evidence of an offence, the computer or device must be returned to the defendant—
 - (a) as soon as practicable following inspection of the computer or device; or
 - (b) within 1 month after the removal,

whichever occurs first.

- (6) A police officer may use such force to enter premises, or to take other action under this section, as is reasonably necessary for the purpose.
- (7) This section is in addition to, and does not derogate from, any other police powers.

6—Amendment of section 99I—Offence to contravene or fail to comply with restraining order

Section 99I—after subsection (4) insert:

(5) If—

- (a) a person is convicted of an offence of contravening or failing to comply with a restraining order under section 99AA; and
- (b) the offence involved the use of a computer or other device capable of being used to gain access to the internet that is owned by the convicted person,

the computer or device is forfeited to the Crown and may be dealt with and disposed of in such manner as the Minister may direct.