

**House of Assembly—No 105**

As laid on the table and read a first time, 2 December 2020

South Australia

**Criminal Law Consolidation (Coercive Control)  
Amendment Bill 2020**

A BILL FOR

An Act to amend the *Criminal Law Consolidation Act 1935*.

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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 *Criminal Law Consolidation (Coercive Control) Amendment Act 2020*.

#### **2—Commencement**

This Act comes into operation 1 month after the day on which it is assented to by the Governor.

#### **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 *Criminal Law Consolidation Act 1935***

#### **4—Insertion of Part 3 Division 1B**

After section 14A insert:

#### **15 Division 1B—Coercive control**

##### **14B—Interpretation**

In this Division—

*cause*—a person causes harm if the person's conduct is the sole cause of the harm, or substantially contributes to the harm;

*mental harm* means psychological harm and includes emotional reactions such as distress, grief, fear or anger;

*reckless*—a person is reckless in causing physical or mental harm to another if the person—

- 5
- (a) is aware of a substantial risk that the person's conduct could result in physical or mental harm; and
  - (b) engages in the conduct despite the risk and without adequate justification.

**14C—Meaning of *conduct that constitutes coercive control***

- 10
- (1) For the purposes of this Division, a person engages in *conduct that constitutes coercive control* of another if the person engages in conduct that has, or is likely to have, 1 or more of the following effects:
- 15
- (a) the conduct makes the other person dependent on, or subordinate to, the person;
  - (b) the conduct isolates the other person from their friends, relatives or other sources of support;
  - (c) the conduct controls, regulates or monitors the other person's day-to-day activities;
  - 20 (d) the conduct restricts the other person's freedom of movement;
  - (e) the conduct restricts the other person's freedom of action;
  - (f) the conduct restricts the other person's access to support services, including the services of health practitioners and legal practitioners;
  - 25 (g) the conduct frightens, humiliates, degrades or punishes the other person,
- where—
- 30 (h) the person intends the conduct to cause physical or mental harm to the other person, or is reckless as to whether the conduct may cause such harm; and
  - (i) a reasonable person would consider the conduct to be likely to cause physical or mental harm to another person,
- (whether or not such harm is in fact caused).
- 35
- (2) For the purposes of subsection (1), a reference to conduct includes a reference to—
- (a) an omission; and
  - (b) a threat to engage in conduct; and
  - 40 (c) conduct, or a threat, directed at another person (including the offender, a family member of the victim or a third party); and

- (d) conduct, or a threat, directed at a pet or other property belonging to a person (whether the victim or otherwise).
- (3) However, conduct of the following kinds will be taken not to constitute coercive control of another:
- 5 (a) conduct engaged in with the lawful consent of the other person;
- (b) conduct that lies within the limits of what would be generally accepted in the community as normal incidents of interaction within a relationship (however, this paragraph  
10 does not apply in relation to conduct where a person intended to cause physical or mental harm);
- (c) such other conduct, or conduct of a kind, as may be prescribed by the regulations.
- (4) This section applies in relation to conduct engaged in within this  
15 State or within any other jurisdiction.
- (5) To avoid doubt, a single act may amount to conduct that constitutes the coercive control of another person.

#### **14D—Meaning of *prescribed relationship***

For the purposes of this Division, a person is in a prescribed  
20 relationship with another person if—

- (a) they are married to each other; or
- (b) they are domestic partners; or
- (c) they are in some other form of intimate personal relationship in which their lives are interrelated and the actions of  
25 1 affects the other; or
- (d) they are related to each other by or through blood, marriage, a domestic partnership or adoption; or
- (e) they are related according to Aboriginal or Torres Strait Islander kinship rules or are both members of some other  
30 culturally recognised family group; or
- (f) 1 is the carer (within the meaning of the *Carers Recognition Act 2005*) of the other; or
- (g) they live in the same household.

#### **14E—Coercive control**

- 35 (1) A person who engages in conduct that constitutes the coercive control of another person with whom the person is, or was, in a prescribed relationship is guilty of an offence.

Maximum penalty: Imprisonment for 7 years.

- 5
- (2) If a defendant is charged with an offence against this section in respect of a course of conduct—
- (a) it is not necessary to prove that the defendant was, or ought to have been, aware that each act making up the course of conduct amounts to conduct that constitutes coercive control of another; and
- (b) the information need not—
- 10
- (i) allege particulars of each act with the degree of particularity that would be required if the act were charged as a separate offence; or
- (ii) identify particular acts or the occasions on which, places at which or order in which acts occurred; or
- (iii) identify particular acts as causing, wholly or partly, particular harm to the victim.
- 15
- (3) A defendant may be charged with an offence against this section in respect of a course of conduct even if some of the acts making up the course of conduct occurred before the commencement of this section.
- (4) A court sentencing a person for an offence against this section is to sentence the person consistently with the verdict of the trier of fact but having regard to the general nature or character of the conduct that constitutes the coercive control of another person determined by the sentencing court to have been proved beyond a reasonable doubt (and, for the avoidance of doubt, the sentencing court need not ask any question of the trier of fact directed to ascertaining the general nature or character of the conduct that constitutes the coercive control of another person determined by the trier of fact found to be proved beyond a reasonable doubt).
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#### **14F—Aggravated coercive control**

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- (1) A person who, in circumstances of aggravation, engages in conduct that constitutes the coercive control of another person with whom the person is, or was, in a prescribed relationship is guilty of an offence. Maximum penalty: Imprisonment for 15 years.
- (2) For the purposes of this section, a person engages in conduct that constitutes the coercive control of another person in circumstances of aggravation if—
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- (a) the conduct, or a threat to engage in conduct, is directed at a child of the other person; or
- (b) the conduct involves directly or indirectly using a child of the other person to control the other person; or
- 40
- (c) the conduct occurs within the view or hearing of a child of the other person; or
- (d) the conduct involves the use of a weapon of any kind; or

- (e) the conduct involves the distribution of, or a threat to distribute, an invasive image of the other person; or
- (f) the person had, before engaging in the conduct, previously been found guilty of an offence against this section or section 14E, or a corresponding offence against the law of another State or Territory; or
- (g) the conduct occurs in any other circumstances prescribed by the regulations for the purposes of this paragraph.

(3) For the purposes of this section, if—

- (a) conduct that constitutes the coercive control of another person forms part of a course of conduct; and
- (b) 1 or more acts making up that course of conduct occurs in circumstances of aggravation,

then the course of conduct will be taken to have occurred in circumstances of aggravation.

(4) If a defendant is charged with an offence against this section in respect of a course of conduct—

- (a) it is not necessary to prove that the defendant was, or ought to have been, aware that each act making up the course of conduct amounts to conduct that constitutes coercive control of another; and
- (b) the information need not—
  - (i) allege particulars of each act with the degree of particularity that would be required if the act were charged as a separate offence; or
  - (ii) identify particular acts or the occasions on which, places at which or order in which acts occurred; or
  - (iii) identify particular acts as causing, wholly or partly, particular harm to the victim.

(5) A defendant may be charged with an offence against this section in respect of a course of conduct even if some of the acts making up the course of conduct occurred before the commencement of this section.

(6) A court sentencing a person for an offence against this section is to sentence the person consistently with the verdict of the trier of fact but having regard to the general nature or character of the conduct that constitutes the coercive control of another person determined by the sentencing court to have been proved beyond a reasonable doubt (and, for the avoidance of doubt, the sentencing court need not ask any question of the trier of fact directed to ascertaining the general nature or character of the conduct that constitutes the coercive control of another person determined by the trier of fact found to be proved beyond a reasonable doubt).

(7) In this section—

*invasive image* has the same meaning as in Part 5A of the *Summary Offences Act 1953*.

**14G—Alternative verdicts**

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If—

- (a) a jury is not satisfied beyond reasonable doubt that a charge of an offence against section 14E or 14F has been established; but
- (b) the Judge has instructed the jury that it is open to the jury on the evidence to find the defendant guilty of a specified offence against this or any other Act; and
- (c) the jury is satisfied beyond reasonable doubt that the specified offence has been established,

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the jury may return a verdict that the defendant is not guilty of the offence charged but is guilty of the specified offence.

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