

Legislative Council—No 8

As introduced and read a first time, 20 February 2020

South Australia

**Criminal Law Consolidation (Domestic Abuse)
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 (Domestic Abuse) Amendment Act 2020*.

2—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 *Criminal Law Consolidation Act 1935*

3—Insertion of Part 3 Division 7AB

After section 20A insert:

Division 7AB—Domestic abuse

20B—Controlling or coercive behaviour in a relationship

- 15 (1) A person commits an offence if—
- (a) the person repeatedly or continuously engages in behaviour towards another person (the *victim*) that is controlling or coercive; and
 - (b) at the time of the behaviour, the person and the victim are in a relationship; and
 - 20 (c) the behaviour has a serious effect on the victim; and
 - (d) the person knows or ought to know that the behaviour will have a serious effect on the victim.

Maximum penalty: Imprisonment for 7 years.

(2) For the purposes of subsection (1)—

(a) 2 people will be taken to be *in a relationship* if—

(i) they are married to each other; or

(ii) they are domestic partners; or

(iii) they are in some other form of intimate personal relationship in which their lives are interrelated and the actions of 1 affects the other; or

(iv) 1 is the child, stepchild or grandchild, or is under the guardianship, of the other (regardless of age); or

(v) 1 is a child, stepchild or grandchild, or is under the guardianship, of a person who is or was formerly in a relationship with the other under paragraph (i), (ii) or (iii) (regardless of age); or

(vi) 1 is a child and the other is a person who acts in *loco parentis* in relation to the child; or

(vii) 1 is a child who normally or regularly resides or stays with the other; or

(viii) they are brothers or sisters or brother and sister; or

(ix) they are otherwise related to each other by or through blood, marriage, a domestic partnership or adoption; or

(x) they are related according to Aboriginal or Torres Strait Islander kinship rules or are both members of some other culturally recognised family group; or

(xi) 1 is the carer (within the meaning of the *Carers Recognition Act 2005*) of the other; and

(b) a person's behaviour has a *serious effect* on a victim if—

(i) it causes the victim to fear, on at least 2 occasions, that violence will be used against the victim; or

(ii) it causes the victim serious alarm or distress which has a substantial adverse effect on the victim's usual day-to-day activities; and

(c) a person *ought to know* that which a reasonable person in possession of the same information would know.

(3) However, a person does not commit an offence under this section if at the time of the behaviour in question—

(a) the person is the parent, stepparent, grandparent or guardian of the victim or otherwise acts in *loco parentis* in relation to the victim; and

(b) the victim is under 16 years of age.

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- (4) In proceedings for an offence against this section it is a defence for the defendant to show that—
- (a) in engaging in the behaviour in question, the defendant believed that they were acting in the victim’s best interests; and
 - (b) the behaviour was, in all the circumstances, reasonable.
- (5) The defence in subsection (4) is not available to a defendant if it is proved that the defendant's behaviour caused the victim to fear that violence would be used against the victim.
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- (6) If a defendant is charged with an offence against this section—
- (a) it is not necessary to prove that each act constituting the behaviour the subject of the charge had a serious effect on the victim or that the defendant knew, or ought to have known, that each such act would have a serious effect on the
 - 15 victim; and
 - (b) the information need not—
 - (i) allege particulars of each such act with the degree of particularity that would be required if the act were charged as an offence under a different section of this or any other Act; or
 - 20 (ii) identify particular acts or the occasions on which, places at which or order in which acts occurred; or
 - (iii) identify particular acts as having a particular effect on the victim.
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- (7) A defendant may be charged with an offence against this section in respect of behaviour even if some of the acts constituting the behaviour occurred before the commencement of this section.