

South Australia

# Summary Offences (Indecent Filming) Amendment Act 2008

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*.

### 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 Offences Act 1953*

### 4—Insertion of section 23AA

After section 23 insert:

#### **23AA—Indecent filming**

- (1) A person must not engage in indecent filming.  
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—
  - (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 other benefit.
- (3) A person must not distribute a moving or still picture obtained by indecent filming.  
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.
- (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
- (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.