

South Australia

Criminal Law Consolidation (Abusive Behaviour) Amendment Bill 2021

A BILL FOR

An Act to amend the *Criminal Law Consolidation Act 1935* and to make related amendments to the *Bail Act 1985* and the *Evidence Act 1929*.

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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 (Abusive Behaviour) Amendment Act 2021*.

2—Commencement

- (1) This Act will come into operation on a day to be fixed by proclamation.

(2) Section 7(5) of the *Acts Interpretation Act 1915* does not apply to this Act.

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 *Criminal Law Consolidation Act 1935*

4—Substitution of heading

Heading to Part 3 Division 7AA—delete the heading and substitute:

Division 7AA—Relationship offences

5—Insertion of section 20B

After section 20A insert:

20B—Abusive behaviour

(1) A person who is, or has been, in a relationship with another person and intentionally engages in abusive behaviour in relation to that other person in circumstances where—

- (a) 1 or more of the acts of abuse comprising the abusive behaviour consists of or includes behaviour, or a threat to engage in behaviour, that is directed at a child; or
- (b) the person makes use of a child, or threatens to make use of a child, in 1 or more of the acts of abuse comprising the abusive behaviour; or
- (c) a child sees or hears, or is present during, 1 or more of the acts of abuse comprising the abusive behaviour,

is guilty of an offence.

Maximum penalty: Imprisonment for 7 years.

(2) A person who is, or has been, in a relationship with another person and recklessly engages in abusive behaviour in relation to that other person in circumstances where—

- (a) 1 or more of the acts of abuse comprising the abusive behaviour consists of or includes behaviour, or a threat to engage in behaviour, that is directed at a child; or
- (b) the person makes use of a child, or threatens to make use of a child, in 1 or more of the acts of abuse comprising the abusive behaviour; or
- (c) a child sees or hears, or is present during, 1 or more of the acts of abuse comprising the abusive behaviour,

is guilty of an offence.

Maximum penalty: Imprisonment for 3 years.

- (3) A person who is, or has been, in a relationship with another person and intentionally engages in abusive behaviour in relation to that other person is guilty of an offence.
Maximum penalty: Imprisonment for 5 years.
- 5 (4) A person who is, or has been, in a relationship with another person and recklessly engages in abusive behaviour in relation to that other person is guilty of an offence.
Maximum penalty: Imprisonment for 2 years.
- 10 (5) In proceedings for an offence against this section, it is a defence for the defendant to prove that the abusive behaviour to which the offence relates—
- (a) was engaged in with the lawful consent of the other person; or
- (b) was reasonable in the particular circumstances.
- 15 (6) A person who has been convicted or acquitted of an offence under this section cannot be convicted of an offence relating to a particular act of abuse if the act of abuse is alleged to have occurred in the course of the abusive behaviour to which the conviction or acquittal relates.
- 20 (7) In proceedings for an offence against this section—
- (a) the prosecution is not required to allege the particulars of any act of abuse that would be necessary if the act of abuse were charged as a separate offence; and
- 25 (b) the trier of fact is not required to be satisfied of the particulars of any act of abuse that it would have to be satisfied of if the act or abuse were charged as a separate offence, but must be satisfied as to the general nature or character of those acts of abuse; and
- 30 (c) if the trier of fact is a jury, the members of the jury are not required to agree on which acts of abuse constitute the abusive behaviour.
- (8) For the purposes of this section, a person ***intentionally engages in abusive behaviour*** in relation to another person if—
- 35 (a) the person commits 2 or more acts of abuse (whether of the same or different kinds) in relation to the other person; and
- (b) the person intends by that behaviour to cause harm to the other person.
- (9) For the purposes of this section, a person ***recklessly engages in abusive behaviour*** in relation to another person if—
- 40 (a) the person commits 2 or more acts of abuse (whether of the same or different kinds) in relation to the other person; and
- (b) the person—

- (i) is aware of a substantial risk that the behaviour could result in harm to the other person; and
- (ii) engages in the behaviour despite the risk and without adequate justification.

(10) For the purposes of this section, 2 people are in a ***relationship*** 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 1 affects the other.

(11) If—

- (a) a jury is not satisfied beyond reasonable doubt that a charge of an offence against this section 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 lesser offence; and
- (c) the jury is satisfied beyond reasonable doubt that the specified lesser offence has been established,

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

(12) In this section—

act of abuse, in relation to a person, means—

- (a) behaviour directed at the person that is violent, threatening, intimidating, frightening, humiliating, degrading or punishing; or
- (b) depriving the person of their liberty; or
- (c) deliberately damaging property belonging to the person, or in the presence of the person; or
- (d) causing death or injury to an animal (whether or not the animal belongs to the person); or
- (e) isolating the person from their friends, relatives or other sources of support; or
- (f) tracking or monitoring the person's movements, activities or communications (whether by physically following the person, using technology or some other method); or
- (g) denying the person financial, social or personal autonomy; or
- (h) denying, or threatening to deny, the person access to basic necessities including food, clothing or sleep (whether or not the person would, in fact, have had access to those necessities); or

- (i) withholding, or threatening to withhold, necessary medication, medical equipment, or medical treatment from the person; or
- (j) preventing the person from entering their place of residence; or
- (k) withholding financial support necessary for meeting the reasonable living expenses of the person (or any other person living with, or dependent on, the person) in circumstances in which the person is dependent on the financial support to meet those living expenses; or
- (l) preventing the person from having access to joint financial assets for the purposes of meeting normal household expenses,

but does not include an act or omission, or act or omission of a kind, declared by the regulations to be excluded from the ambit of the purposes of this definition;

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

child means a person under 18 years of age;

emotional or psychological harm includes—

- (a) mental illness; and
- (b) nervous shock; and
- (c) distress, anxiety, or fear, that is more than trivial;

harm means physical or emotional or psychological harm (whether temporary or permanent);

lesser offence, in relation to an offence against this section, means—

- (a) in relation to an offence against subsection (1)—
- (i) an offence against subsection (3) or (4); or
- (ii) another offence against this Act for which a lesser maximum penalty is prescribed;
- (b) in any other case—another offence against this Act for which a lesser maximum penalty is prescribed.

20C—Review of section 20B

- (1) The Minister must cause a review of the operation of section 20B (as enacted by the *Criminal Law Consolidation (Abusive Behaviour) Amendment Act 2021*) to be conducted and a report on the review to be prepared and submitted to the Minister.
- (2) The review and the report must be completed within 12 months after the third anniversary of the commencement of section 20B.

- (3) The Minister must cause a copy of the report submitted under subsection (1) to be laid before both Houses of Parliament within 6 sitting days after receiving the report.

Schedule 1—Related amendments

5 Part 1—Amendment of *Bail Act 1985*

1—Amendment of section 10A—Presumption against bail in certain cases

Section 10A(2)(d)—after subparagraph (i) insert:

- (ia) section 20B;

Part 2—Amendment of *Evidence Act 1929*

10 2—Amendment of section 4—Interpretation

Section 4(1), definition of *serious offence against the person*, (d)—after subparagraph (i) insert:

- (ia) an offence of abusive behaviour under section 20B of the *Criminal Law Consolidation Act 1935*; or