

South Australia



ANNO QUINQUAGESIMO
ELIZABETHAE II REGINAE
A.D. 2001

STATUTES AMENDMENT (STALKING) ACT 2001

No. 55 of 2001

[Assented to 8 November 2001]

An Act to amend the Criminal Law Consolidation Act 1935, the Domestic Violence Act 1994 and the Summary Procedure Act 1921.

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The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Statutes Amendment (Stalking) Act 2001*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Interpretation

3. A reference in this Act to the principal Act is a reference to the Act referred to in the heading to the Part in which the reference occurs.

**PART 2
AMENDMENT OF CRIMINAL LAW CONSOLIDATION ACT 1935**

Amendment of s. 19AA—Unlawful stalking

4. Section 19AA of the principal Act is amended—

(a) by inserting in subparagraph (iv) of subsection (1)(a) "or sends" after "gives";

(b) by inserting after subparagraph (iv) of subsection (1)(a) the following subparagraphs:

(iva) publishes or transmits offensive material by means of the internet or some other form of electronic communication in such a way that the offensive material will be found by, or brought to the attention of, the other person; or

(ivb) communicates with the other person, or to others about the other person, by way of mail, telephone (including associated technology), facsimile transmission or the internet or some other form of electronic communication in a manner that could reasonably be expected to arouse apprehension or fear in the other person; or;

(c) by inserting after subsection (5) the following subsection:

(6) For the purposes of this section, the circumstances of a dealing with material may be taken into account in determining whether the material was offensive material but, if material was inherently offensive material, the circumstances of a dealing with the material cannot be taken to have deprived it of that character.

**PART 3
AMENDMENT OF DOMESTIC VIOLENCE ACT 1994**

Amendment of s. 4—Grounds for making domestic violence restraining orders

5. Section 4 of the principal Act is amended—

(a) by striking out subparagraph (iv) of subsection (2)(c) and substituting the following subparagraphs:

- (iv) the defendant—
 - (A) gives or sends offensive material to a family member or leaves offensive material where it will be found by, given to, or brought to the attention of a family member; or
 - (B) publishes or transmits offensive material by means of the internet or some other form of electronic communication in such a way that the offensive material will be found by, or brought to the attention of, a family member; or
- (iva) the defendant communicates with a family member, or to others about a family member, by way of mail, telephone (including associated technology), facsimile transmission or the internet or some other form of electronic communication; or;

(b) by inserting after subsection (3) the following subsection:

(3a) For the purposes of this section, the circumstances of a dealing with material may be taken into account in determining whether the material was offensive material but, if material was inherently offensive material, the circumstances of a dealing with the material cannot be taken to have deprived it of that character.

PART 4 AMENDMENT OF SUMMARY PROCEDURE ACT 1921

Amendment of s. 99—Restraining orders

6. Section 99 of the principal Act is amended—

(a) by striking out paragraph (d) of subsection (2) and substituting the following paragraphs:

- (d) the defendant—
 - (i) gives or sends offensive material to a person or leaves offensive material where it will be found by, given to, or brought to the attention of a person; or
 - (ii) publishes or transmits offensive material by means of the internet or some other form of electronic communication in such a way that the offensive material will be found by, or brought to the attention of, a person; or
- (da) the defendant communicates with a person, or to others about a person, by way of mail, telephone (including associated technology), facsimile transmission or the internet or some other form of electronic communication; or;

(b) by inserting after subsection (2a) the following subsection:

(2ab) For the purposes of this section, the circumstances of a dealing with material may be taken into account in determining whether the material was offensive material but, if material was inherently offensive material, the circumstances of a dealing with the material cannot be taken to have deprived it of that character.