

South Australia

Serious and Organised Crime (Control) Act 2008

An Act to provide for the making of declarations and orders for the purpose of disrupting and restricting the activities of criminal organisations, their members and associates; to make related amendments to the *Bail Act 1985*, the *Criminal Law Consolidation Act 1935*, the *Freedom of Information Act 1991* and the *Summary Offences Act 1953*; and for other purposes.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Interpretation
- 4 Objects
- 5 Burden of proof
- 6 Extra-territorial operation
- 7 Delegation

Part 2—Declared organisations

- 8 Commissioner may apply for declaration
- 9 Publication of notice of application
- 10 Attorney-General may make declaration
- 11 Notice of declaration
- 12 Revocation of declaration
- 13 Disclosure of reasons and criminal intelligence

Part 3—Control orders

- 14 Court may make control order
- 15 Form of control order
- 16 Service
- 17 Right of objection
- 18 Procedure on hearing of notice of objection
- 19 Appeals to Supreme Court
- 20 Variation or revocation of control order
- 21 Criminal intelligence
- 22 Offence to contravene or fail to comply with control order

Part 4—Public safety orders

Division 1—Making of public safety orders

- 23 Senior police officer may make public safety order

- 24 Variation and revocation of public safety order
- 25 Certain variations and orders must be authorised by Court
- 26 Right of objection
- 27 Procedure on hearing of notice of objection
- 28 Appeals to Supreme Court
- 29 Disclosure of reasons and criminal intelligence

Division 2—Service and notification

- 30 Service and notification
- 31 Urgent orders

Division 3—Enforcement and evidentiary provisions

- 32 Offence to contravene or fail to comply with public safety order
- 33 Power to search premises and vehicles
- 34 Evidentiary

Part 5—Offences

- 35 Criminal associations
- 36 Provision of personal details

Part 6—Reviews and expiry of Act

- 37 Annual review and report as to exercise of powers
- 38 Review of operation of Act
- 39 Expiry of Act

Part 7—Miscellaneous

- 40 Immunity from liability
- 41 Protection from proceedings
- 42 Prosecution of offence as a summary offence
- 43 Regulations

Schedule 1—Related amendments

Part 1—Preliminary

- 1 Amendment provisions

Part 2—Amendment of *Bail Act 1985*

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

Part 3—Amendment of *Criminal Law Consolidation Act 1935*

- 3 Substitution of section 248
 - 248 Threats or reprisals relating to persons involved in criminal investigations or judicial proceedings
- 4 Substitution of section 250
 - 250 Threats or reprisals against public officers

Part 4—Amendment of *Freedom of Information Act 1991*

- 5 Amendment of Schedule 1—Exempt documents

Part 5—Amendment of *Summary Offences Act 1953*

- 6 Repeal of section 13
- 7 Amendment of section 74BB—Fortification removal order

Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Serious and Organised Crime (Control) Act 2008*.

2—Commencement

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

3—Interpretation

In this Act, unless the contrary intention appears—

authorisation order means an order of the Court under section 25;

Commissioner means the Commissioner of Police;

control order means an order of the Court under section 14;

Court means the Magistrates Court;

criminal intelligence means information relating to actual or suspected criminal activity (whether in this State or elsewhere) the disclosure of which could reasonably be expected to prejudice criminal investigations, to enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement or to endanger a person's life or physical safety;

declared organisation means an organisation subject to a declaration by the Attorney-General under section 10;

defendant, in relation to a control order—see section 14;

member, in relation to an organisation, includes—

- (a) in the case of an organisation that is a body corporate—a director or an officer of the body corporate; and
- (b) in any case—
 - (i) an associate member or prospective member (however described) of the organisation; and
 - (ii) a person who identifies himself or herself, in some way, as belonging to the organisation; and
 - (iii) a person who is treated by the organisation or persons who belong to the organisation, in some way, as if he or she belongs to the organisation;

organisation means any incorporated body or unincorporated group (however structured), whether or not the body or group is based outside South Australia, consists of persons who are not ordinarily resident in South Australia or is part of a larger organisation;

personal details, in relation to a person, means—

- (a) the person's full name; and
- (b) the person's date of birth; and
- (c) the address of where the person is living; and
- (d) the address of where the person usually lives; and
- (e) the person's business address;

public safety order means an order made by a senior police officer under section 23;

senior police officer means a police officer of or above the rank of inspector;

serious criminal activity means the commission of serious criminal offences;

serious criminal offences means—

- (a) indictable offences (other than indictable offences of a kind prescribed by regulation); or
- (b) summary offences of a kind prescribed by regulation.

4—Objects

- (1) The objects of this Act are—
 - (a) to disrupt and restrict the activities of—
 - (i) organisations involved in serious crime; and
 - (ii) the members and associates of such organisations; and
 - (b) to protect members of the public from violence associated with such criminal organisations.
- (2) Without derogating from subsection (1), it is not the intention of the Parliament that the powers in this Act be used in a manner that would diminish the freedom of persons in this State to participate in advocacy, protest, dissent or industrial action.

5—Burden of proof

- (1) Any question of fact to be decided by a court in proceedings under this Act is to be decided on the balance of probabilities.
- (2) This section does not apply in relation to proceedings for an offence against this Act.

6—Extra-territorial operation

It is the intention of the Parliament that this Act apply within the State and outside the State to the full extent of the extra-territorial legislative capacity of the Parliament.

7—Delegation

The Commissioner—

- (a) may not delegate the function of classifying information as criminal intelligence for the purposes of this Act except to a Deputy Commissioner or Assistant Commissioner of Police; and
- (b) may not delegate any other function or power of the Commissioner under this Act except to a senior police officer.

Part 2—Declared organisations

8—Commissioner may apply for declaration

- (1) The Commissioner may apply to the Attorney-General for a declaration under this Part in relation to an organisation.
- (2) The application must—
 - (a) be in writing; and
 - (b) identify the organisation in respect of which the declaration is sought; and
 - (c) set out the grounds on which the declaration is sought; and
 - (d) set out the information supporting the grounds on which the declaration is sought; and
 - (e) set out details of any previous application for a declaration in respect of the organisation and the outcome of that application; and
 - (f) be supported by a statutory declaration from the Commissioner, or statutory declarations from other senior police officers, verifying the contents of the application.
- (3) The application may identify the organisation by specifying the name of the organisation or the name by which the organisation is commonly known or by providing other particulars about the organisation.

9—Publication of notice of application

If the Commissioner makes an application under this Part in relation to an organisation, the Attorney-General must publish a notice in the Gazette and in a newspaper circulating throughout the State—

- (a) specifying that an application has been made for a declaration under this Part in respect of the organisation; and
- (b) inviting members of the public to make submissions to the Attorney-General in relation to the application within 28 days of the date of publication of the notice.

10—Attorney-General may make declaration

- (1) If, on the making of an application by the Commissioner under this Part in relation to an organisation, the Attorney-General is satisfied that—
 - (a) members of the organisation associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity; and
 - (b) the organisation represents a risk to public safety and order in this State,the Attorney-General may make a declaration under this section in respect of the organisation.
- (2) The Attorney-General must not make a declaration under this section in relation to an application unless the period for making submissions in relation to the application referred to in section 9(b) has expired.

- (3) In considering whether or not to make a declaration under this section, the Attorney-General may have regard to any of the following:
- (a) any information suggesting that a link exists between the organisation and serious criminal activity;
 - (b) any criminal convictions recorded in relation to—
 - (i) current or former members of the organisation; or
 - (ii) persons who associate, or have associated, with members of the organisation;
 - (c) any information suggesting that—
 - (i) current or former members of the organisation; or
 - (ii) persons who associate, or have associated, with members of the organisation,
have been, or are, involved in serious criminal activity (whether directly or indirectly and whether or not such involvement has resulted in any criminal convictions);
 - (d) any information suggesting that members of an interstate or overseas chapter or branch of the organisation associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity;
 - (e) any submissions received from members of the public in relation to the application in accordance with section 9;
 - (f) any other matter the Attorney-General considers relevant.
- (4) The Attorney-General may, for the purposes of making a declaration under this section, be satisfied that members of an organisation associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity—
- (a) whether or not all the members associate for that purpose or only some of the members (provided that if the Attorney-General is satisfied that only some of the members associate for that purpose, the Attorney-General must be satisfied that those members constitute a significant group within the organisation, either in terms of their numbers or in terms of their capacity to influence the organisation or its members); and
 - (b) whether or not members associate for the purpose of organising, planning, facilitating, supporting or engaging in the same serious criminal activities or different ones; and
 - (c) whether or not the members also associate for other purposes.

11—Notice of declaration

As soon as practicable after making a declaration under this Part, the Attorney-General must publish notice of the declaration in the Gazette and in a newspaper circulating throughout the State.

12—Revocation of declaration

- (1) The Attorney-General may, at any time, revoke a declaration under this Part.

- (2) The Attorney-General must, as soon as practicable after revoking a declaration, publish notice of the revocation in the Gazette and in a newspaper circulating generally throughout the State.

13—Disclosure of reasons and criminal intelligence

- (1) If the Attorney-General makes a declaration or decision under this Part, the Attorney-General is not required to provide any grounds or reasons for the declaration or decision (other than to a person conducting a review under Part 6 if that person so requests).
- (2) No information provided by the Commissioner to the Attorney-General for the purposes of this Part may be disclosed to any person (except to a person conducting a review under Part 6 or a person to whom the Commissioner authorises its disclosure) if the information is classified by the Commissioner as criminal intelligence.

Part 3—Control orders

14—Court may make control order

- (1) The Court must, on application by the Commissioner, make a control order against a person (the *defendant*) if the Court is satisfied that the defendant is a member of a declared organisation.
- (2) The Court may, on application by the Commissioner, make a control order against a person (the *defendant*) if the Court is satisfied that—
 - (a) the defendant—
 - (i) has been a member of an organisation which, at the time of the application, is a declared organisation; or
 - (ii) engages, or has engaged, in serious criminal activity, and regularly associates with members of a declared organisation; or
 - (b) the defendant engages, or has engaged, in serious criminal activity and regularly associates with other persons who engage, or have engaged, in serious criminal activity,and that the making of the order is appropriate in the circumstances.
- (3) A control order may be issued on an application made without notice to any person.
- (4) The grounds of an application for a control order must be verified by affidavit.
- (5) A control order—
 - (a) may prohibit the defendant from—
 - (i) associating or communicating with specified persons or persons of a specified class; or
 - (ii) entering or being in the vicinity of specified premises or premises of a specified class; or
 - (iii) possessing specified articles or articles of a specified class; and
 - (b) if the defendant is a member of a declared organisation, must prohibit the defendant from—

- (i) associating with other persons who are members of declared organisations; and
 - (ii) possessing—
 - (A) a dangerous article; or
 - (B) a prohibited weapon,
(within the meaning of section 15 of the *Summary Offences Act 1953*),except as may be specified in the order.
- (6) In considering whether or not to make a control order under subsection (2) or in considering the prohibitions that may be included in a control order under subsection (1) or (2), the Court must have regard to the following:
 - (a) whether the defendant's behaviour, or history of behaviour, suggests that there is a risk that the defendant will engage in serious criminal activity;
 - (b) the extent to which the order might assist in preventing the defendant from engaging in serious criminal activity;
 - (c) the prior criminal record (if any) of the defendant and any persons specified in the application as persons with whom the defendant regularly associates;
 - (d) any legitimate reason the defendant may have for associating with any person specified in the application;
 - (e) any other matter that, in the circumstances of the case, the Court considers relevant.
- (7) The Court may, on making a control order, make any consequential or ancillary orders it thinks fit, including, in a case where the control order prohibits the possession of an article or an article of a specified class, orders—
 - (a) providing for the confiscation and disposal of the article or such an article; and
 - (b) if the circumstances of the case so require, authorising a police officer to enter any premises in which the article or such an article is suspected to be, and search for and take possession of the article or such an article.
- (8) For the purposes of this section, a person may *associate* with another person by any means including communicating with that person by letter, telephone or facsimile or by email or other electronic means.

15—Form of control order

- (1) A control order must—
 - (a) be directed at the person specified as the defendant in the application; and
 - (b) set out the terms of the order; and
 - (c) specify whether the order is made under section 14(1), (2)(a) or (2)(b); and
 - (d) subject to subsection (2)—include a statement of the grounds on which the order has been issued; and
 - (e) set out an explanation of the right of objection under section 17.

- (2) A statement of the grounds on which a control order has been issued must not contain information that must not be disclosed in accordance with section 21.
- (3) A copy of the affidavit verifying the grounds on which the application was made must be attached to the control order unless disclosure of information included in the affidavit would be in breach of section 21.
- (4) If disclosure of information included in the affidavit would be in breach of section 21, an edited copy of the affidavit, from which the information that cannot be disclosed has been removed or erased, may be attached to the control order.

16—Service

- (1) Subject to subsection (3), a control order must be served on the defendant personally.
- (2) If a police officer has reasonable cause to suspect that a person is a person on whom a control order is required to be served in accordance with this section, the officer may—
 - (a) require the person to state all or any of the person's personal details; and
 - (b) require the person to remain at a particular place for—
 - (i) so long as may be necessary for the order to be served on the person; or
 - (ii) 2 hours,whichever is the lesser; and
 - (c) if the person refuses or fails to comply with a requirement under a preceding paragraph, or the officer has reasonable cause to suspect that the requirement will not be complied with, arrest and detain the person in custody (without warrant) for the period referred to in paragraph (b).
- (3) If the person serving a control order—
 - (a) has reasonable cause to believe that the defendant is present at any premises; but
 - (b) is unable to gain access to the defendant at the premises for the purpose of effecting personal service of the order on the defendant,the control order may be served on the defendant by—
 - (c) leaving it for the defendant at the premises with someone apparently over the age of 16 years; or
 - (d) if the person serving the order is unable to gain access to such a person at the premises—affixing it to the premises at a prominent place at or near to the entrance to the premises.
- (4) A control order is not binding on the defendant until it has been served on the defendant in accordance with this section.

17—Right of objection

- (1) A person on whom a control order has been served may, within 14 days of service of the order or such longer period as the Court may allow, lodge a notice of objection with the Court.

- (2) The grounds of the objection must be stated fully and in detail in the notice of objection.
- (3) A copy of the notice of objection must be served by the objector on the Commissioner by registered post at least 7 days before the day appointed for hearing of the notice.

18—Procedure on hearing of notice of objection

- (1) The Court must, when determining a notice of objection, consider whether, in the light of the evidence presented by both the Commissioner and the objector, sufficient grounds existed for the making of the control order.
- (2) The Court may, on hearing a notice of objection—
 - (a) confirm, vary or revoke the control order; and
 - (b) make any other orders of a kind that could have been made by the Court on the making of the control order.
- (3) Without derogating from subsection (2), if the defendant—
 - (a) is a member of a declared organisation; and
 - (b) satisfies the Court that there is good reason why he or she should be allowed to associate with a particular member, or particular members, of a declared organisation,

the Court may vary the order to specify that the defendant is not prohibited from associating with that member or those members, subject to such conditions (if any) as the Court thinks fit.

19—Appeals to Supreme Court

- (1) The Commissioner or an objector may appeal to the Supreme Court against a decision of the Court on a notice of objection.
- (2) An appeal lies as of right on a question of law and with permission on a question of fact.
- (3) An appeal must be commenced within the time, and in accordance with the procedure, prescribed by rules of the Supreme Court.
- (4) The commencement of an appeal under this section does not affect the operation of the control order to which the notice of objection related.
- (5) On an appeal, the Supreme Court may—
 - (a) confirm, vary or reverse the decision subject to appeal; and
 - (b) make any consequential or ancillary order.

20—Variation or revocation of control order

- (1) The Court may vary or revoke a control order on application—
 - (a) by the Commissioner; or
 - (b) by the defendant.

-
- (2) An application for variation or revocation of a control order may only be made by the defendant with the permission of the Court and permission is only to be granted if the Court is satisfied there has been a substantial change in the relevant circumstances since the order was made or last varied.
 - (3) The Court must, before varying or revoking a control order under this section—
 - (a) allow all parties a reasonable opportunity to be heard on the matter; and
 - (b) have regard to the same factors that the Court is required to have regard to in considering whether or not to make a control order and in considering the terms of a control order.
 - (4) If an application for variation or revocation of a control order is made by the defendant, the application must be supported by oral evidence given on oath.

21—Criminal intelligence

- (1) No information provided by the Commissioner to a court for the purposes of proceedings relating to the making, variation or revocation of a control order may be disclosed to any person (except to the Attorney-General, a person conducting a review under Part 6, a court or a person to whom the Commissioner authorises its disclosure) if the information is properly classified by the Commissioner as criminal intelligence.
- (2) In any proceedings relating to the making, variation or revocation of a control order, the court determining the proceedings—
 - (a) must, on the application of the Commissioner, take steps to maintain the confidentiality of information properly classified by the Commissioner as criminal intelligence, including steps to receive evidence and hear argument about the information in private in the absence of the parties to the proceedings and their representatives; and
 - (b) may take evidence consisting of, or relating to, information that is so classified by the Commissioner by way of affidavit of a police officer of or above the rank of superintendent.

22—Offence to contravene or fail to comply with control order

- (1) A person who contravenes or fails to comply with a control order is guilty of an offence.
Maximum penalty: Imprisonment for 5 years.
- (2) A person does not commit an offence against this section in respect of an act or omission unless the person knew that the act or omission constituted a contravention of, or failure to comply with, the order or was reckless as to that fact.

Part 4—Public safety orders

Division 1—Making of public safety orders

23—Senior police officer may make public safety order

- (1) A senior police officer may make an order (a *public safety order*) in respect of a person or a class of persons if satisfied that—
 - (a) the presence of the person, or of persons of that class, at any premises or event, or within an area, poses a serious risk to public safety or security; and
 - (b) the making of the order is appropriate in the circumstances.
- (2) In considering whether or not to make a public safety order in relation to a person or class of persons, the senior police officer must have regard to the following:
 - (a) whether the person or members of the class of persons have previously behaved in a way that posed a serious risk to public safety or security or have a history of engaging in serious criminal activity;
 - (b) whether the person or members of the class of persons—
 - (i) are, or have been, members of a declared organisation; or
 - (ii) are, or have been, subject to control orders; or
 - (iii) associate, or have associated, with members of a declared organisation or persons subject to control orders;
 - (c) if advocacy, protest, dissent or industrial action is the likely reason for the person or members of the class of persons being present at the relevant premises or event, or within the relevant area—the public interest in maintaining freedom to participate in such activities;
 - (d) whether the degree of risk involved justifies the imposition of the prohibitions to be specified in the order (having regard, in particular, to any legitimate reason the person or members of the class of persons may have for being present at the relevant premises or event, or within the relevant area);
 - (e) the extent to which the making of the order will mitigate any risk to public safety or security;
 - (f) the extent to which the order is necessary having regard to other measures reasonably available to mitigate the risk;
 - (g) any other matters the officer thinks fit.
- (3) A public safety order may prohibit a specified person or specified class of persons from—
 - (a) entering or being on specified premises; or
 - (b) attending a specified event; or
 - (c) entering or being within a specified area.

- (4) If a public safety order prohibits attendance at a specified event, the order—
- (a) may, in specifying the event, include associated events or activities (provided that the associated events or activities occur on the same day as the principal event or part of the principal event); and
 - (b) must define the area or areas in which the event takes place for the purposes of the order; and
 - (c) must define when the event is taken to start and finish for the purposes of the order.
- (5) Despite any other provision of this section, a senior police officer must not make a public safety order that would prohibit a person or class of persons from being present at any premises or event, or within an area, if—
- (a) those persons are members of an organisation formed for, or whose primary purpose is, non-violent advocacy, protest, dissent or industrial action; and
 - (b) the officer believes that advocacy, protest, dissent or industrial action is the likely reason for those persons to be present at the premises or event or within the area.
- (6) Subject to section 25, a public safety order operates for the period specified in the order.
- (7) A public safety order may prohibit a person from entering premises or being on premises, whether or not the person has a legal or equitable interest in the premises, but must not prohibit a person from entering premises or being on premises that are the person's principal place of residence.
- (8) For the purposes of this section, the presence of a person or persons at premises or an event or within an area poses a *serious risk to public safety or security* if there is a serious risk that the presence of the person or persons might result in—
- (a) the death of, or serious physical harm to, a person; or
 - (b) serious damage to property.
- (9) In this section—
- damage*, in relation to property, includes the following:
- (a) destruction of the property;
 - (b) an alteration to the property that depreciates its value;
 - (c) rendering the property useless or inoperative;
 - (d) in relation to an animal—injuring, wounding or killing the animal.

24—Variation and revocation of public safety order

A public safety order may be varied or revoked by a senior police officer at any time and must be revoked if the Commissioner is satisfied that the grounds for making the order no longer exist.

25—Certain variations and orders must be authorised by Court

- (1) Despite any other provision of this Division, a senior police officer must not—
 - (a) make a public safety order that would operate for a period of more than 72 hours or, in the case of a public safety order relating to a specified event that occurs over a period in excess of 72 hours, the total duration of the event; or
 - (b) vary a public safety order so that it operates for a period of more than 72 hours or, in the case of a public safety order relating to a specified event that occurs over a period in excess of 72 hours, the total duration of the event; or
 - (c) make a public safety order relating to a person (other than a person who is a member of a declared organisation) if that person has, within the immediately preceding period of 72 hours, been subject to another public safety order,unless authorised by order of the Court under this section.
- (2) A senior police officer may apply to the Court for an order (an *authorisation order*) authorising the senior police officer to make—
 - (a) a public safety order; or
 - (b) a variation to a public safety order,of a kind specified in subsection (1).
- (3) An authorisation order may be made by the Court on an application made without notice to any person.
- (4) The grounds of an application for an authorisation order must be verified by affidavit.
- (5) An application to the Court for an authorisation order may be made and dealt with by a Magistrate by telephone as follows:
 - (a) the applicant must inform the Magistrate—
 - (i) of the applicant's name and rank; and
 - (ii) that he or she is a senior police officer,and the Magistrate, on receiving that information, is entitled to assume, without further inquiry, that the applicant is authorised to make an application under this section;
 - (b) the Magistrate must satisfy himself or herself (as far as practicable) that the case is of sufficient urgency to justify dealing with the application without requiring the personal attendance of the applicant, by the oral questioning of the applicant and any other available witnesses by telephone;
 - (c) if the Magistrate is not satisfied that it is appropriate to deal with the application without requiring the personal attendance of the applicant, the Magistrate may adjourn the hearing of the application to a time and place fixed by the Magistrate and inform the applicant of the time and place so fixed;

- (d) if the Magistrate is satisfied that it is appropriate to deal with the application without requiring the personal attendance of the applicant, the applicant must inform the Magistrate of the grounds on which the applicant proposes to make the order or the variation;
 - (e) if the Magistrate is then satisfied that it is appropriate for the applicant to make the order or variation, the Magistrate must inform the applicant of the facts that justify, in his or her opinion, the making of the order or variation, and must not proceed to make the order authorising the order or variation unless the applicant undertakes to make an affidavit verifying those facts;
 - (f) if the applicant gives such an undertaking, the Magistrate may then make the order, noting on the order the facts that justify, in the view of the Magistrate, the making of the order or variation and informing the applicant of the terms of the order;
 - (g) the applicant must, as soon as practicable after the making of the order, forward to the Magistrate an affidavit verifying the facts referred to in paragraph (e);
 - (h) the Magistrate must, as soon as practicable after the making of the authorisation order, forward to the applicant a copy of the order.
- (6) A Magistrate who makes an authorisation order under subsection (5) must file the order, or a copy of the order, and the affidavit forwarded by the applicant, in the Court.
- (7) An authorisation order must specify the maximum period for which the relevant public safety order (as made or varied in accordance with the authorisation order) may operate.

26—Right of objection

- (1) If the period for which a public safety order (as made or varied) will operate is more than 7 days, a person bound by the public safety order may lodge a notice of objection with the Court—
- (a) before the end of the period for which the order, or the order as so varied, operates; or
 - (b) within 14 days of the date on which the order, or the order as so varied, became binding on the person,
- whichever occurs first.
- (2) The grounds of the objection must be stated fully and in detail in the notice of objection.
- (3) A copy of the notice of objection must be served by the objector on the Commissioner by registered post at least 2 days before the day appointed for hearing of the notice.

27—Procedure on hearing of notice of objection

- (1) The Court must, when determining a notice of objection, consider whether, in the light of the evidence presented by both the Commissioner and the objector, sufficient grounds existed for the making of the public safety order, any variations made to the public safety order and any relevant authorisation order.

- (2) The Court may, on hearing a notice of objection—
 - (a) confirm, vary or rescind the public safety order; and
 - (b) make consequential or ancillary orders.

28—Appeals to Supreme Court

- (1) The Commissioner may appeal to the Supreme Court against a decision of the Court on an application under section 25.
- (2) The Commissioner or an objector may appeal to the Supreme Court against a decision of the Court on a notice of objection.
- (3) An appeal lies as of right on a question of law and with permission on a question of fact.
- (4) An appeal must be commenced within the time, and in accordance with the procedure, prescribed by rules of the Supreme Court.
- (5) The commencement of an appeal under subsection (2) does not affect the operation of the public safety order to which the notice of objection related.
- (6) On an appeal the Supreme Court may—
 - (a) confirm, vary or reverse the decision subject to appeal; and
 - (b) make consequential or ancillary orders.

29—Disclosure of reasons and criminal intelligence

- (1) Subject to section 30, if a senior police officer decides to make, vary or revoke a public safety order, the officer is not required to provide any grounds or reasons for the decision to a person affected by the decision (but is required to provide such grounds or reasons to a person conducting a review under Part 6 if that person so requests).
- (2) Information forming the basis for the making, variation or revocation of a public safety order must not be disclosed to any person (except to the Attorney-General, a person conducting a review under Part 6, a court or a person to whom the Commissioner authorises its disclosure) if, at the time at which the question of disclosure is to be determined, the information is properly classified by the Commissioner as criminal intelligence (whether or not the information was so classified at the time at which the public safety order was made, varied or revoked).
- (3) No information provided by a senior police officer to a court for the purposes of proceedings relating to the making or variation of a public safety order or the making of an authorisation order may be disclosed to any person (except to the Attorney-General, a person conducting a review under Part 6, a court or a person to whom the Commissioner authorises its disclosure) if the information is properly classified by the Commissioner as criminal intelligence.

- (4) In any proceedings relating to the making or variation of a public safety order or the making of an authorisation order, the court determining the proceedings—
- (a) must, on the application of the Commissioner, take steps to maintain the confidentiality of information that is, at the time of the proceedings, properly classified by the Commissioner as criminal intelligence, including steps to receive evidence and hear argument about the information in private in the absence of the parties to the proceedings and their representatives; and
 - (b) may take evidence consisting of, or relating to, information that is so classified by the Commissioner by way of affidavit of a police officer of or above the rank of superintendent.

Division 2—Service and notification

30—Service and notification

- (1) Subject to subsection (5), if a public safety order is made or varied by a senior police officer, the senior police officer must ensure that—
- (a) a copy of the order as so made or varied; and
 - (b) a notification in accordance with this section,
- is served personally on each person to whom the order relates.
- (2) The notification accompanying the order—
- (a) must be in writing; and
 - (b) must specify the date on which the order or variation was made; and
 - (c) if the order as so made or varied is one to which section 26 applies—
 - (i) subject to subsection (3), must include a statement of the grounds on which the public safety order, any variations made to the public safety order and any relevant authorisation order was made; and
 - (ii) include an explanation of the right of objection under section 26.
- (3) A statement of the grounds on which a public safety order, variations to a public safety order or an authorisation order has been made must not contain information that must not be disclosed in accordance with section 29.
- (4) If a police officer has reasonable cause to suspect that a person is a person on whom a public safety order and notification are required to be served in accordance with this section, the officer may—
- (a) require the person to state all or any of the person's personal details; and
 - (b) require the person to remain at a particular place for—
 - (i) so long as may be necessary for the order and notification required under this section to be served on the person; or
 - (ii) 2 hours,whichever is the lesser; and

- (c) if the person refuses or fails to comply with a requirement under a preceding paragraph or the officer has reasonable cause to suspect that the requirement will not be complied with, arrest and detain the person in custody (without warrant) for the period referred to in paragraph (b).
- (5) If the person serving a public safety order and notification—
 - (a) has reasonable cause to believe that the person to be served is present at any premises; but
 - (b) is unable to gain access to the person at the premises for the purpose of effecting personal service of the order and notification on the person, the order and notification may be served on the person by—
 - (c) leaving them for the person at the premises with someone apparently over the age of 16 years; or
 - (d) if the person serving the order and notification is unable to gain access to such a person at the premises—affixing them to the premises at a prominent place at or near to the entrance to the premises.
- (6) A public safety order (as made or varied) is not binding on a person to whom the order relates unless the order and notification have been served on that person in accordance with this section.
- (7) Once a public safety order and notification have been served on a person in accordance with this section, the order is binding on the person, regardless of whether any other person or persons to whom the order relates have been so served.

31—Urgent orders

- (1) Despite section 30, if a police officer is satisfied that a public safety order (as made or varied) should become binding on a person as a matter of urgency—
 - (a) the officer may communicate the contents of the order, or the order as so varied, verbally to any person to whom the order relates and advise such person of the place at which the person may obtain a written copy of the order and a notification in accordance with this section; and
 - (b) on the information described in paragraph (a) being communicated to the person, the order, or the order as so varied, will be binding on the person.
- (2) The police officer who verbally communicates the order to the person must ensure that—
 - (a) a copy of the order; and
 - (b) the notification that would have been required to accompany the order if the order had been served on the person in accordance with section 30,

is available for collection by the person at the place referred to in subsection (1)(a) (during the ordinary business hours applicable to that place) on the next business day following the day on which the order was communicated to the person.

Division 3—Enforcement and evidentiary provisions

32—Offence to contravene or fail to comply with public safety order

- (1) A person who contravenes or fails to comply with a public safety order is guilty of an offence.

Maximum penalty: Imprisonment for 5 years.

- (2) A person does not commit an offence against this section in respect of an act or omission unless the person knew that the act or omission constituted a contravention of, or failure to comply with, the order or was reckless as to that fact.
- (3) If a public safety order prohibits a person from entering or being within a specified area, it is a defence to a prosecution for an offence against this section to prove that the defendant had a reasonable excuse for entering or being within the specified area.

33—Power to search premises and vehicles

- (1) A police officer may search—

- (a) premises specified in a public safety order; or
- (b) premises in which an event specified in a public safety order is being held; or
- (c) premises situated within an area specified in a public safety order,

if the officer suspects on reasonable grounds that a person to whom the public safety order relates is within the premises.

- (2) A police officer may stop and search a vehicle, and anything in the vehicle, if the officer suspects on reasonable grounds that—
- (a) a person within the vehicle is a person to whom a public safety order relates; and
 - (b) the vehicle is approaching, is in, or has recently left, any premises, event or area specified in the public safety order.
- (3) A police officer may detain a vehicle for so long as is reasonably necessary to conduct a search under this section.
- (4) A police officer may detain a person who is in a vehicle stopped under this section for as long as is reasonably necessary to conduct a search under this section (and that action does not, by itself, constitute an arrest of the person).
- (5) A person must not, without reasonable excuse, fail or refuse to comply with a requirement made by a police officer for the purposes of this section.

Maximum penalty: Imprisonment for 5 years.

34—Evidentiary

In any legal proceedings, an apparently genuine document purporting to be a public safety order is, in the absence of proof to the contrary, proof of the order and its terms.

Part 5—Offences

35—Criminal associations

- (1) A person who associates, on not less than 6 occasions during a period of 12 months, with a person who is—
- (a) a member of a declared organisation; or
 - (b) the subject of a control order,
- is guilty of an offence.
Maximum penalty: Imprisonment for 5 years.
- (2) A person does not commit an offence against subsection (1) unless, on each occasion on which it is alleged that the person associated with another, the person knew that the other was—
- (a) a member of a declared organisation; or
 - (b) a person the subject of a control order,
- or was reckless as to that fact.
- (3) A person who—
- (a) has a criminal conviction (against the law of this State or another jurisdiction) of a kind prescribed by regulation; and
 - (b) associates, on not less than 6 occasions during a period of 12 months, with another person who has such a criminal conviction,
- is guilty of an offence.
Maximum penalty: Imprisonment for 5 years.
- (4) A person does not commit an offence against subsection (3) unless, on each occasion on which it is alleged that the person associated with another, the person knew that the other had the relevant criminal conviction or was reckless as to that fact.
- (5) A person may be guilty of an offence against subsection (1) or (3) in respect of associations with the same person or with different people.
- (6) The following forms of associations will be disregarded for the purposes of this section unless the prosecution proves that the association was not reasonable in the circumstances:
- (a) associations between close family members;
 - (b) associations occurring in the course of a lawful occupation, business or profession;
 - (c) associations occurring at a course of training or education of a prescribed kind between persons enrolled in the course;
 - (d) associations occurring at a rehabilitation, counselling or therapy session of a prescribed kind;
 - (e) associations occurring in lawful custody or in the course of complying with a court order;

- (f) associations of a prescribed kind.
- (7) Without derogating from subsection (6) but subject to subsection (8), a court hearing a charge of an offence against this section may determine that an association will be disregarded for the purposes of this section if the defendant proves that he or she had a reasonable excuse for the association.
- (8) In proceedings for an offence against this section, subsection (7) does not apply to an association if, at the time of the association, the defendant—
- (a) was a member of a declared organisation; or
 - (b) was a person the subject of a control order; or
 - (c) had a criminal conviction (against the law of this State or another jurisdiction) of a kind prescribed for the purposes of subsection (3).
- (9) For the avoidance of doubt, in proceedings for an offence against this section, it is not necessary for the prosecution to prove that the defendant associated with another person for any particular purpose or that the association would have led to the commission of any offence.
- (10) If a police officer has reasonable cause to suspect that 2 people are or have been associating with each other and that at least 1 of those people is—
- (a) a member of a declared organisation; or
 - (b) the subject of a control order; or
 - (c) a person who has a criminal conviction referred to in subsection (3),
- the police officer may require 1 or both of those people to state all or any of their personal details.
- (11) For the purposes of this section—
- (a) a person may *associate* with another person by any means including communicating with that person by letter, telephone or facsimile or by email or other electronic means; and
 - (b) a person is a *close family member* of another person if—
 - (i) 1 is a spouse or former spouse of the other or is, or has been, in a close personal relationship with the other; or
 - (ii) 1 is a parent or grandparent of the other (whether by blood or by marriage); or
 - (iii) 1 is a brother or sister of the other (whether by blood or by marriage); or
 - (iv) 1 is a guardian or carer of the other.
- (12) In this section—
- close personal relationship* has the same meaning as in Part 3 of the *Family Relationships Act 1975*;
- spouse*—a person is the spouse of another if they are legally married.

36—Provision of personal details

- (1) If a police officer has reasonable cause to suspect that a personal detail as stated in response to a requirement under this Act is false, the officer may require the person making the statement to produce evidence of the correctness of the personal detail as stated.
- (2) A person who—
 - (a) refuses or fails, without reasonable excuse, to comply with—
 - (i) a requirement under this Act to state his or her personal details; or
 - (ii) a requirement under subsection (1); or
 - (b) in response to such a requirement—
 - (i) states a personal detail that is false; or
 - (ii) produces false evidence of a personal detail,is guilty of an offence.
Maximum penalty: Imprisonment for 5 years.
- (3) A police officer who has required a person to state all or any of the person's personal details under this Act is required to comply with a request to identify himself or herself, by—
 - (a) producing his or her police identification; or
 - (b) stating orally or in writing his or her surname, rank and identification number.

Part 6—Reviews and expiry of Act

37—Annual review and report as to exercise of powers

- (1) The Attorney-General must, before 1 July in each year (other than the calendar year in which this section comes into operation), appoint a retired judicial officer to conduct a review to determine whether powers under this Act were exercised in an appropriate manner, having regard to the objects of this Act, during the period of 12 months preceding that 1 July.
- (2) The Attorney-General and the Commissioner must ensure that a person appointed to conduct a review is provided with such information as he or she may require for the purpose of conducting the review.
- (3) A person conducting a review must maintain the confidentiality of information provided to the person that is classified by the Commissioner as criminal intelligence.
- (4) A report on a review must be presented to the Attorney-General on or before 30 September in each year.
- (5) The Attorney-General must, within 12 sitting days after receipt of a report under this section, cause copies of the report to be laid before each House of Parliament.
- (6) In this section—

judicial officer means a person appointed as a judge of the Supreme Court or the District Court or a person appointed as judge of another State or Territory or of the Commonwealth.

38—Review of operation of Act

- (1) The Attorney-General must, as soon as practicable after the fourth anniversary of the commencement of this section, conduct a review of the operation and effectiveness of this Act.
- (2) The Attorney-General, or any person conducting the review on behalf of the Attorney-General, must maintain the confidentiality of information provided to the Attorney-General or other person that is classified by the Commissioner as criminal intelligence.
- (3) The Attorney-General must prepare a report based on the review and must, within 12 sitting days after the report is prepared, cause copies of the report to be laid before each House of Parliament.

39—Expiry of Act

This Act will expire 5 years after the date on which this section comes into operation.

Part 7—Miscellaneous

40—Immunity from liability

No civil or criminal liability attaches to—

- (a) the Attorney-General, the Commissioner, a police officer or other person exercising powers and functions under this Act; or
- (b) the Crown,

in respect of an act or omission in good faith in the exercise or discharge, or purported exercise or discharge, of a power, function or duty conferred or imposed by or under this Act.

41—Protection from proceedings

- (1) Except as otherwise provided in this Act, no proceeding for judicial review or for a declaration, injunction, writ, order or other remedy may be brought to challenge or question—
 - (a) a decision, determination, declaration or order under this Act or purportedly under this Act; or
 - (b) proceedings or procedures under this Act or purportedly under this Act; or
 - (c) an act or omission made in the exercise, or purported exercise, of powers or functions under this Act; or
 - (d) an act, omission, matter or thing incidental or relating to the operation of this Act.
- (2) The validity and legality of a declaration under Part 2 cannot be challenged or questioned in any proceedings.
- (3) The validity and legality of a control order or a public safety order cannot be challenged or questioned in proceedings for an offence against this Act.

42—Prosecution of offence as a summary offence

- (1) An indictable offence against this Act may be charged on complaint and be prosecuted and dealt with by the Magistrates Court as a summary offence but, if the Court determines that a person found guilty of such an offence should be sentenced to a term of imprisonment exceeding 2 years, the Court must commit the person to the District Court for sentence.
- (2) For the avoidance of doubt, a person who is convicted of an offence that has been prosecuted and dealt with as a summary offence in accordance with this section is, despite that fact, taken to have been convicted of an indictable offence for the purposes of any Act or law.

43—Regulations

The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.

Schedule 1—Related amendments

Part 1—Preliminary

1—Amendment provisions

In this Schedule, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Bail Act 1985*

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

Section 10A(2)—delete subsection (2) and substitute:

- (2) In this section—
prescribed applicant means—
 - (a) an applicant taken into custody in relation to any of the following offences if committed, or allegedly committed, by the applicant in the course of attempting to escape pursuit by a police officer or attempting to entice a police officer to engage in a pursuit:
 - (i) an offence against section 13 of the *Criminal Law Consolidation Act 1935* in which the victim's death was caused by the applicant's use of a motor vehicle;
 - (ii) an offence against section 19A of the *Criminal Law Consolidation Act 1935*;
 - (iii) an offence against section 29 of the *Criminal Law Consolidation Act 1935* if the act or omission constituting the offence was done or made by the applicant in the course of the applicant's use of a motor vehicle; or

- (b) an applicant taken into custody in relation to an offence against section 17 where there is alleged to have been a contravention of, or failure to comply with, a condition of a bail agreement imposed under section 11(2)(a)(ii); or
- (c) an applicant taken into custody in relation to an offence of contravening or failing to comply with a control order or public safety order issued under the *Serious and Organised Crime (Control) Act 2008*; or
- (d) an applicant taken into custody in relation to an offence against any of the following provisions of the *Criminal Law Consolidation Act 1935*:
 - (i) section 172;
 - (ii) section 248;
 - (iii) section 250.

Part 3—Amendment of *Criminal Law Consolidation Act 1935*

3—Substitution of section 248

Section 248—delete this section and substitute:

248—Threats or reprisals relating to persons involved in criminal investigations or judicial proceedings

- (1) A person who—
 - (a) stalks another person; or
 - (b) causes or procures, or threatens or attempts to cause or procure, any physical injury to a person or property,

with the intention of inducing a person who is or may be involved in a criminal investigation or judicial proceedings, to act or not to act in a way that might influence the outcome of the investigation or proceedings, is guilty of an offence.

Penalty: Imprisonment for 7 years.

- (2) A person who—
 - (a) stalks another person; or
 - (b) causes or procures, or threatens or attempts to cause or procure, any physical injury to a person or property,

on account of anything said or done by a person involved in a criminal investigation or judicial proceedings in good faith in the conduct of the investigation or proceedings, is guilty of an offence.

Penalty: Imprisonment for 7 years.

- (3) For the purposes of this section, a person *stalks* another if the person does any of the following, in a manner that could reasonably be expected to arouse the other person's apprehension or fear:
- (a) follows the other person; or
 - (b) loiters outside the place of residence of the other person or some other place frequented by the other person; or
 - (c) enters or interferes with property in the possession of the other person; or
 - (d) gives or sends offensive material to the other person, or leaves offensive material where it will be found by, given to or brought to the attention of the other person; or
 - (e) 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
 - (f) 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; or
 - (g) keeps the other person under surveillance; or
 - (h) acts in any other way.
- (4) For the purposes of this section—
- (a) a person is *involved in a criminal investigation* if the person is involved in such an investigation as a witness, victim or legal practitioner or is otherwise assisting police with their inquiries; and
 - (b) a person is *involved in judicial proceedings* if the person is—
 - (i) a judicial officer or other officer at judicial proceedings; or
 - (ii) involved in such proceedings as a witness, juror or legal practitioner,whether the proceedings are in progress or are proceedings that are to be or may be instituted at a later time.

4—Substitution of section 250

Section 250—delete this section and substitute:

250—Threats or reprisals against public officers

- (1) A person who—
- (a) stalks another person; or
 - (b) causes or procures, or threatens or attempts to cause or procure, any physical injury to a person or property,

with the intention of influencing the manner in which a public officer discharges or performs his or her official duties or functions, is guilty of an offence.

Penalty: Imprisonment for 7 years.

(2) A person who—

- (a) stalks another person; or
- (b) causes or procures, or threatens or attempts to cause or procure, any physical injury to a person or property,

on account of anything said or done by a public officer in good faith in the discharge or performance or purported discharge or performance of his or her official duties or functions, is guilty of an offence.

Penalty: Imprisonment for 7 years.

(3) For the purposes of this section, a person *stalks* another if the person does any of the following, in a manner that could reasonably be expected to arouse the other person's apprehension or fear:

- (a) follows the other person; or
- (b) loiters outside the place of residence of the other person or some other place frequented by the other person; or
- (c) enters or interferes with property in the possession of the other person; or
- (d) gives or sends offensive material to the other person, or leaves offensive material where it will be found by, given to or brought to the attention of the other person; or
- (e) 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
- (f) 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; or
- (g) keeps the other person under surveillance; or
- (h) acts in any other way.

Part 4—Amendment of *Freedom of Information Act 1991*

5—Amendment of Schedule 1—Exempt documents

Schedule 1, clause 4—after subclause (3) insert:

- (3a) A document is an exempt document if it has been created by South Australia Police and contains information classified by the Commissioner of Police, in accordance with the provisions of any other Act, as criminal intelligence.

Part 5—Amendment of *Summary Offences Act 1953*

6—Repeal of section 13

Section 13—delete the section

7—Amendment of section 74BB—Fortification removal order

Section 74BB(1)(b)—after subparagraph (ii) insert:

; or

(iii) the premises—

- (A) are owned by a declared organisation or a member of a declared organisation; or
- (B) are occupied or habitually used as a place of resort by members of a declared organisation,

Legislative history

Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Expiry of Act

The *Serious and Organised Crime (Control) Act 2008* will expire on 4.9.2013: see s 39.

Principal Act

Year	No	Title	Assent	Commencement
2008	13	<i>Serious and Organised Crime (Control) Act 2008</i>	15.5.2008	4.9.2008 (<i>Gazette</i> 4.9.2008 p4227)