

Legislative Council—No 164

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South Australia

Serious and Organised Crime (Control) (Declared Organisations) Amendment Bill 2013

A BILL FOR

An Act to amend the *Serious and Organised Crime (Control) Act 2008*; and to make a related amendment to the *Serious and Organised Crime (Unexplained Wealth) Act 2009*.

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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 *Serious and Organised Crime (Control) (Declared Organisations) Amendment Act 2013*.

5 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 *Serious and Organised Crime (Control) Act 2008*

4—Amendment of section 3—Interpretation

- (1) Section 3, definition of *Chief Justice*—delete the definition
- (2) Section 3, definition of *declared organisation*—delete "by an eligible Judge"
- (3) Section 3, definitions of *eligible Judge*, *exercise* and *function*—delete the definitions
- (4) Section 3, definition of *proceedings*—delete the definition

5—Amendment of section 5A—Criminal intelligence

Section 5A(2)—delete subsection (2)

6—Repeal of section 8

Section 8—delete the section

7—Amendment of section 9—Commissioner may apply for declaration

- (1) Section 9(1)—after "apply" insert:
to the Court
- (2) Section 9(2)(g)—delete "statutory declaration" and substitute:
affidavit
- (3) Section 9(2)(g)—delete "of or above the rank of superintendent"
- (4) Section 9(4) and (5)—delete subsections (4) and (5)
- (5) Section 9(6)—delete "any statutory declaration" and substitute:
any affidavit
- (6) Section 9(6)(b)—delete "a statutory declaration" and substitute:
an affidavit
- (7) Section 9(6)—after paragraph (c) insert:
and
(d) any other person whom the Court considers should be provided with
an opportunity to inspect the application and supporting affidavits.

8—Amendment of section 10—Publication of notice of application

- (1) Section 10(1)—delete "(but no later than 3 days) after being given a notification by the eligible Judge under section 9(5)"

(2) Section 10(1)(c)—delete paragraph (c) and substitute:

- (c) advising interested parties of their rights in relation to making or providing submissions to the Court at the hearing of the application; and

5 (3) Section 10(1)(e)—delete paragraph (e) and substitute:

- (e) specifying the date, time and place of the hearing.

(4) Section 10(2), definition of *interested party*—delete "eligible Judge" and substitute:
Court

9—Amendment of section 11—Court may make declaration

10 (1) Section 11(1)—delete "eligible Judge may" and substitute:

Court may

(2) Section 11(1)—delete "the eligible Judge is"

(3) Section 11(2)—delete "eligible Judge" wherever occurring and substitute in each case:

Court

15 (4) Section 11(5)—delete "eligible Judge" and substitute:

Court

10—Amendment of section 12—Notice of declaration

Section 12(2)—delete "The declaration" and substitute:

Unless the Court otherwise directs, the declaration

11—Amendment of section 14—Revocation of declaration

20 (1) Section 14(1)—delete subsection (1) and substitute:

(1) The Court may, at any time, revoke a declaration made under this Part in relation to an organisation on application—

(a) by the Commissioner; or

25 (b) by—

(i) the organisation; or

(ii) a person who made or provided submissions in relation to the application for the declaration; or

(iii) with the permission of the Court—

30 (A) any other member or former member of the organisation or person directly affected (whether or not adversely) by the declaration; or

35 (B) any other person whom the Court considers should, in the interests of justice, be entitled to make the application.

- (2) Section 14(2)—after "subsection (1)(b)" insert:
except with the permission of the Court
- (3) Section 14(3)(d)—delete "statutory declaration" and substitute:
affidavit
- 5 (4) Section 14(4) and (5)—delete subsections (4) and (5)
- (5) Section 14(6)—delete "after being given the notification by the eligible Judge under
subsection (5)"
- (6) Section 14(6)—delete "statutory declaration" and substitute:
affidavit
- 10 (7) Section 14(7)—after "the Commissioner must" insert:
, as soon as practicable,
- (8) Section 14(7)(b)—delete paragraph (b) and substitute:
(b) advising interested parties of their rights in relation to making or
providing submissions to the Court at the hearing of the application;
and
- 15 (9) Section 14(7)(d)—delete paragraph (d) and substitute:
(d) specifying the date, time and place of the hearing.
- (10) Section 14(8)—delete subsection (8)
- (11) Section 14(9)—delete "only if the eligible Judge" and substitute:
if the Court
- 20 (12) Section 14(11), definition of *interested party*—delete "eligible Judge" and substitute:
Court

12—Substitution of section 15

Section 15—delete the section and substitute:

15—Procedure at hearings

- (1) At the hearing of an application under this Part, the following are
entitled to make oral submissions, personally or through a legal
representative, to the Court and, with the permission of the Court, to
provide, in accordance with any requirements of the Court, written
submissions:
- 30 (a) the Commissioner;
- (b) the organisation to which the application relates;
- (c) any person who is alleged in an affidavit supporting the
application to be a member or former member of the
organisation;
- 35

(d) any person who is a member or former member of the organisation or other person who may be directly affected (whether or not adversely) by the outcome of the application;

(e) any other person whom the Court considers should, in the interests of justice, be entitled to make submissions.

(2) A person or organisation referred to in subsection (1) who is not the applicant (an *interested party*) may, in accordance with any requirements of the Court, file with the Court 1 or more affidavits in response to the application.

(3) The applicant may, with the permission of the Court, file with the Court 1 or more affidavits in response to any affidavit filed by an interested party.

(4) At the hearing of an application under this Part, the applicant or an interested party may adduce oral evidence, or cross-examine a person who has given oral evidence or provided an affidavit, if the Court considers, on application, or on its own initiative, that it is in the interests of justice to permit the evidence or the cross-examination.

(5) If the applicant or an interested party applies to adduce oral evidence or cross-examine a person who has given oral evidence or provided an affidavit, the Court may, before deciding whether to allow the evidence or to allow the cross-examination, require the applicant or interested party to file a notice of contention specifying fully and in detail the grounds on which the application is made.

13—Repeal of section 16

Section 16—delete the section

14—Amendment of section 18—Practice and procedure

Section 18(1) and (2)—delete subsections (1) and (2) and substitute:

In proceedings under this Part, the Court—

- (a) is not bound by the rules of evidence but may inform itself on any matter as it thinks fit; and
- (b) must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.

15—Substitution of section 19

Section 19—delete the section and substitute:

19—Appeal

The commencement of an appeal under the *Supreme Court Act 1935* against a declaration made under this Part does not, of itself, affect the operation of the declaration to which the appeal relates.

16—Amendment of section 22—Court may make control order

Section 22(7)—after paragraph (a) insert:

- (ab) the reasons given by the Court for the making of any relevant declaration;

5 **17—Amendment of section 22A—Interim control orders**

Section 22A(1)—delete subsection (1) and substitute:

- (1) The Court may, on an application under section 22, make an interim control order if the Court is satisfied that it is appropriate to do so in all of the circumstances.

10 **18—Amendment of section 22C—Variation or revocation**

- (1) Section 22C(2)—delete "and permission is only to be granted if the Court is satisfied, on the basis of the application and any evidence tendered by the respondent, there has been a substantial change in the relevant circumstances since the control order was made or last varied"

- 15 (2) Section 22C(3)—delete subsection (3)

- (3) Section 22C(5)—delete subsection (5) and substitute:

- (5) The Court may make an interim variation order if the Court is satisfied that it is appropriate to do so in all of the circumstances.

20 **19—Amendment of section 22D—Right to object if interim order made ex parte**

- (1) Section 22D(3)—delete "at least 21 days before the day appointed for hearing of the notice"

- (2) Section 22D(4)—delete subsection (4)

20—Amendment of section 39U—Representation of unincorporated group

25 Section 39U(1)—delete "or eligible Judge"

21—Amendment of section 39W—Costs

- (1) Section 39W(2)—delete "or eligible Judge"

- (2) Section 39W(3)—delete "or eligible Judge"

- (3) Section 39W(3)(c)—delete paragraph (c) and substitute:

30 (c) order the representative to pay to the registrar of the court for the credit of the Consolidated Account an amount fixed by the court as compensation for time wasted.

- (4) Section 39W(4)—delete subsection (4)

35 **22—Amendment of section 39Y—Use of evidence or information for purposes of Act**

Section 39Y(2)—delete "despite the fact that the person who provided the information to the Commissioner has not consented to such use or has refused consent to such use."

Schedule 1—Related amendment of *Serious and Organised Crime (Unexplained Wealth) Act 2009*

1—Insertion of section 43A

After section 43 insert:

5 **43A—Use of evidence or information for purposes of Act**

Despite any other Act or law, evidence or information obtained by the lawful exercise of powers under an Act or law (whether before or after the commencement of this section) and evidence or information obtained incidentally to such an exercise of powers—

- 10 (a) may be used by law enforcement and prosecution authorities for the purposes of this Act; and
- (b) is not inadmissible in proceedings before a court under this Act merely because the evidence or information was not obtained for the purposes of this Act.