

South Australia

## **Statutes Amendment (Gangs) Bill 2007**

A BILL FOR

An Act to amend the *Criminal Law (Sentencing) Act 1988*; the *Summary Offences Act 1953*; the *Summary Procedure Act 1921*; the *Young Offenders Act 1993*; and the *Youth Court Act 1993*.

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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 *Statutes Amendment (Gangs) Act 2007*.

## 2—Commencement

This Act will come into operation 2 months after the date of assent.

## 3—Amendment provisions

5 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 (Sentencing) Act 1988*

### 4—Amendment of section 19A—Other orders may be issued on finding of guilt or sentence

- 10
- (1) Section 19A(1)—delete "a restraining" and substitute:  
an anti-social behaviour order or restraining
  - (2) Section 19A(1a)—delete "an order" and substitute:  
a restraining order
  - (3) Section 19A(2)(a)—delete "a restraining" and substitute:  
an anti-social behaviour order or restraining

## 15 Part 3—Amendment of *Summary Offences Act 1953*

### 5—Insertion of Part 14AA

After Part 14 insert:

## Part 14AA—Child curfew orders

### 65A—Interpretation

- 20 In this Part—
- Chief Executive* means the person for the time being holding, or acting in, the position of chief executive of the administrative unit of the Public Service charged with the administration of the *Children's Protection Act 1993*;
- 25 *child* means a person under the age of 16 years;
- child curfew order*—see section 65B.

### 65B—Child curfew orders

- 30
- (1) The Minister may, on the recommendation of the Commissioner, if satisfied that it is necessary to impose a curfew under this section for the purpose of maintaining public order or safety in a particular area of the State, make a *child curfew order* in respect of the area.
  - (2) Notice of a child curfew order must be published in the Gazette and in a newspaper circulating generally throughout the State.

- 5
- (3) A notice under subsection (2) must specify—
- (a) the area in respect of which the child curfew order applies (the *curfew area*); and
  - (b) the age of children to whom the child curfew order applies; and
  - (c) the hours, between 9 pm on any day and 6 am on the following day, during which the child curfew order applies (the *curfew hours*).
- 10
- (4) A child to whom a child curfew order applies must not be in a public place within the curfew area during the curfew hours unless the child is under the effective control of a parent or a responsible person aged 18 or over.
- 15
- (5) A child curfew order takes effect from the date specified in the notice and continues until the expiry date specified in the notice or the making of a further order under this section that revokes or replaces the order.

### **65C—Contravention of child curfew order**

- 20
- (1) If a child is in a curfew area in contravention of a child curfew order, a police officer may remove the child to the child's place of residence unless the officer has reasonable cause to believe that the child would, if removed to that place, be likely to suffer significant harm.
- 25
- (2) If a police officer removes a child under this section, and the child is not returned to the child's home under subsection (1), the officer must deliver the child into the care of such person as the Chief Executive, or the Chief Executive's nominee, directs.

## **6—Insertion of Part 16A**

After Part 16 insert:

### **Part 16A—Criminal gangs**

#### **74BN—Declaration of criminal gang**

- 30
- (1) The Governor may, on the advice of the Commissioner of Police, declare an organisation or group to be a *criminal gang* for the purposes of this Part.
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- (2) A declaration may only be made under this section if the Governor is satisfied that the organisation or group is directly or indirectly engaged in preparing, planning, assisting in or fostering criminal activity.

- (3) A declaration must—
- (a) identify the organisation or group to which it applies (whether by referring to the name by which the organisation or group is ordinarily known, the names of known members of the organisation or group, the address of any premises that are known to be occupied or used by the organisation or group or any other identifying particulars); and
  - (b) be published in the Gazette and in a newspaper circulating generally throughout the State.

**74BO—Special police powers relating to criminal gangs**

- (1) If a police officer suspects, on reasonable grounds, that a person is a member of a criminal gang, the police officer may (without derogating from any other powers)—
- (a) require the person to disclose his or her identity and provide proof of identity; and
  - (b) stop and search the person or a person accompanying the person, and anything in the possession of or under the control of such persons (including any vehicle); and
  - (c) enter, break open and search any premises that the police officer reasonably believes are occupied by the person; and
  - (d) if the person is loitering in a public place, require the person to leave the place and the area in the vicinity of the place in which he or she was loitering.
- (2) Section 81 applies to a search conducted under this section as if the search were conducted under that section.
- (3) A police officer may detain a person for as long as is reasonably necessary to conduct a search under this section.
- (4) A person who, without reasonable excuse, refuses or fails to comply with a requirement under subsection (1)(a) or (d) or, in response to a requirement under subsection (1)(a), gives an answer that is false or misleading in a material particular, is guilty of an offence.

Maximum penalty: \$1 250 or imprisonment for 3 months.

## Part 4—Amendment of *Summary Procedure Act 1921*

### 7—Insertion of Part 4 Division 8

Part 4—after Division 7 insert:

#### Division 8—Anti-social behaviour orders

##### 99M—Anti-social behaviour orders

- (1) On a complaint under this Division, the Court may make an anti-social behaviour order against the defendant if the Court is satisfied that—
  - (a) the defendant has, after the commencement of this section, acted in an anti-social manner; and
  - (b) such an order is necessary to protect persons from further anti-social acts by the defendant.
- (2) An anti-social behaviour order—
  - (a) may prohibit the defendant from doing anything described in the order which, in the opinion of the Court, is necessary for the purpose of protecting the community, or particular members of the community, from further anti-social acts by the defendant; and
  - (b) if the Court is satisfied that it would be reasonably practicable for the defendant to perform community service—must require the defendant to perform not less than 40 hours of community service.
- (3) An order requiring the performance of community service under this section must be dealt with and enforced as if it were a sentence of community service (and in any enforcement proceedings the Court may exercise any power that it could exercise in relation to a sentence of community service).
- (4) An anti-social behaviour order will have effect for a period (being not less than 2 years) specified in the order or until further order.
- (5) For the purposes of this section, a defendant has acted in an *anti-social manner* if the defendant has acted in a manner that caused or was likely to cause harassment, alarm or distress to 1 or more persons (other than persons residing in the same household as the defendant).
- (6) However, in determining whether a defendant has acted in an anti-social manner, the Court must not take into account any act of the defendant which the defendant establishes was reasonable in the circumstances.
- (7) The Court may, when making an order under this section, make any consequential or ancillary order or direction that it considers necessary or expedient in the circumstances of the case.

## 99N—Complaints

A complaint may be made under this Division by a member of the police force.

## 99O—Issue of anti-social behaviour order in absence of defendant

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(1) An anti-social behaviour order may be made in the absence of the defendant if the defendant was required by summons or conditions of bail to appear at the hearing of the complaint and failed to appear in obedience to the summons.

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(2) An anti-social behaviour order may be made in the absence of the defendant and despite the fact that the defendant was not summoned to appear at the hearing of the complaint, but in that case, the Court must summon the defendant to appear before the Court to show cause why the order should not be confirmed.

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(3) The Court may make an order under subsection (2) on the basis of evidence received in the form of an affidavit but, in that case—

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(a) the deponent must, if the defendant so requires, appear personally at the proceedings for confirmation of the order to give oral evidence of the matters referred to in the affidavit; and

(b) if the deponent does not appear personally to give evidence in accordance with such a requirement, the Court may not rely on the evidence contained in the affidavit for the purpose of confirming the order.

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(4) The Court may, from time to time without requiring the attendance of any party, adjourn the hearing to which a defendant is summoned under subsection (2) to a later date if satisfied that the summons has not been served or that there is other adequate reason for the adjournment.

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(5) The date fixed in the first instance for the hearing to which a defendant is summoned under subsection (2) must be within 7 days of the date of the order, and the date fixed under subsection (4) for an adjourned hearing must be within 7 days of the date on which the adjournment is ordered, unless the Court is satisfied—

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(a) that a later date is required to enable the summons to be served; or

(b) that there is other adequate reason for fixing a later date.

(6) An anti-social behaviour order made under subsection (2)—

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(a) continues in force until the conclusion of the hearing to which the defendant is summoned or, if the hearing is adjourned, until the conclusion of the adjourned hearing; but

(b) will not be effective after the conclusion of the hearing to which the defendant is summoned, or the adjourned hearing, unless the Court confirms the order—

(i) on failure of the defendant to appear at the hearing in obedience to the summons; or

(ii) having considered any evidence given by or on behalf of the defendant; or

(iii) with the consent of the defendant.

(7) The Court may confirm an anti-social behaviour order in an amended form.

(8) If a hearing is adjourned under this section, the Court need not be constituted at the adjourned hearing of the same judicial officer as ordered the adjournment.

### **99P—Service**

(1) An anti-social behaviour order must be served on the defendant personally and is not binding on the defendant until it has been so served.

(2) If an anti-social behaviour order is confirmed in an amended form or is varied before being confirmed or at any other time, the order in its amended form must be served on the defendant personally and until so served—

(a) the variation is not binding on the defendant; but

(b) the order as in force prior to the variation continues to be binding on the defendant.

(3) If a member of the police force has reason to believe that a person is subject to an anti-social behaviour order that has not been served on the person, the member may—

(a) require the person to remain at a particular place for—

(i) so long as may be necessary for the order, and, if the order is subject to confirmation, the summons to appear before the Court to show cause why the order should not be confirmed, to be served on the person; or

(ii) 2 hours,

whichever is the lesser; and

(b) if the person refuses or fails to comply with the requirement or the member has reasonable grounds to believe that the requirement will not be complied with, arrest and detain the person in custody (without warrant) for the period referred to in paragraph (a).



### **99Q—Variation or revocation of order**

- (1) The Court may vary or revoke an anti-social behaviour order on application—
- (a) by a member of the police force; or
  - (b) by the defendant.
- (2) An application for variation or revocation of an anti-social behaviour order may only be made by the defendant with the permission of the Court and permission is only to be granted if—
- (a) the order has been in force for not less than 2 years; and
  - (b) 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 an anti-social behaviour order under this section, allow all parties a reasonable opportunity to be heard on the matter.

### **99R—Notification of making etc of orders**

- (1) Where an anti-social behaviour order is made, the Principal Registrar must forward a copy of the order to the Commissioner of Police.
- (2) Where an anti-social behaviour order is varied or revoked, the Principal Registrar must notify the Commissioner of Police of the variation or revocation.

### **99S—Offence to contravene or fail to comply with order**

A person who contravenes or fails to comply with a prohibition imposed by an anti-social behaviour order is guilty of an offence.

Penalty: Division 5 imprisonment.

### **99T—Burden of proof**

In proceedings under this Division other than for an offence, the Court is to decide questions of fact on the balance of probabilities.

## **Part 5—Amendment of *Young Offenders Act 1993***

### **8—Insertion of section 34A**

After section 34 insert:

#### **34A—Parenting orders**

- (1) Subject to this section, if—
- (a) an anti-social behaviour order is made by the Court in respect of a child under Part 4 Division 8 of the *Summary Procedure Act 1921*; or
  - (b) a child is convicted in the Court of an offence of a prescribed kind,

and the relevant condition is satisfied, the Court must make a parenting order in respect of a person who is a guardian of the child.

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- (2) The relevant condition is that the parenting order would be desirable in the interests of preventing—
- (a) in a case falling within subsection (1)(a), any repetition of the kind of behaviour which led to the anti-social behaviour order being made; or
- (b) in a case falling within subsection (1)(b), the commission of any further offence by the child.
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- (3) The Court must, before making a parenting order, obtain and consider information about the guardian's family circumstances and the likely effect of the order on those circumstances.
- (4) The Court must not make a parenting order unless it is satisfied that arrangements for implementing such orders are available in the area in which it appears to the Court that the guardian resides or will reside.
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- (5) A parenting order is an order requiring the guardian—
- (a) to comply, for a period not exceeding 12 months, with such requirements as are specified in the order; and
- 20
- (b) to attend, for a concurrent period not exceeding 3 months and not more than once in any week, such counselling or guidance sessions as may be specified in directions given by the responsible officer.
- (6) Requirements specified in, and directions given under, a parenting order must, as far as practicable, be such as to avoid—
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- (a) any conflict with the guardian's religious beliefs; and
- (b) any interference with the times, if any, at which the guardian normally works or attends any educational institution or course of instruction.
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- (7) Before making a parenting order, the Court must explain to the guardian in ordinary language—
- (a) the effect of the order and of the requirements proposed to be included in it; and
- 35
- (b) the consequences which may follow (under subsection (10)) if any of those requirements are not complied with; and
- (c) that the Court has power (under subsection (8)) to review the order on the application either of the guardian or of the responsible officer.
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- (8) If while a parenting order is in force it appears to the Court, on the application of the responsible officer or the guardian, that it is appropriate to make an order under this subsection, the Court may make an order discharging the parenting order or varying it—
- (a) by cancelling any provision included in it; or

(b) by inserting in it (either in addition to or in substitution for any of its provisions) any provision that could have been included in the order if the court had then had power to make it and were exercising the power.

5 (9) If an application under subsection (8) for the discharge of a parenting order is dismissed, no further application for its discharge may be made under that subsection by any person except with the consent of the Court.

10 (10) If, while a parenting order is in force, the guardian, without reasonable excuse, fails to comply with a requirement included in the order, or specified in directions given by the responsible officer, the guardian is guilty of an offence.  
Maximum penalty: 2 years imprisonment.

15 (11) In this section—  
*responsible officer*, in relation to a parenting order, means an officer of the Department for Families and Communities or other person designated by the Minister for the purposes of this definition.

## **Part 6—Amendment of *Youth Court Act 1993***

### **9—Amendment of section 7—Jurisdiction**

20 Section 7(c)—delete paragraph (c) and substitute:

(c) has the same jurisdiction as the Magistrates Court to make—

- 25 (i) an anti-social behaviour order under the *Summary Procedure Act 1921* where the person against whom protection is sought is a child or youth; or
- (ii) a restraining order under the *Summary Procedure Act 1921* or a domestic violence restraining order under the *Domestic Violence Act 1994* where the person for or against whom protection is sought is a child or youth,

30 and has power under the relevant Act to vary or revoke such an order previously made by the Court; and