

House of Assembly—No 83A

As reported with an amendment, report agreed to and passed remaining stages,
28 February 2008

South Australia

Statutes Amendment (Public Order Offences) Bill 2007

A BILL FOR

An Act to amend the *Criminal Law Consolidation Act 1935* and the *Summary Offences Act 1953*.

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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 (Public Order Offences) Act 2007*.

2—Commencement

- 5 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 *Criminal Law Consolidation Act 1935*

- 10 4—Amendment of section 5AA—Aggravated offences

Section 5AA(1)(h)—before "the offender" insert:

except in the case of an offence against Part 3A,

5—Insertion of Part 3A

After Part 3 insert:

Part 3A—Offences relating to public order

83A—Interpretation

In this Part—

violence means any violent conduct, so that—

- (a) except for the purposes of section 83C, it includes violent conduct towards property as well as violent conduct towards persons; and
- (b) it is not restricted to conduct causing or intended to cause injury or damage but includes any other violent conduct.

Example—

Throwing at, or towards, a person a missile of a kind capable of causing injury which does not hit, or falls short of, the person.

83B—Riot

- (1) Where 12 or more persons who are present together use or threaten unlawful violence for a common purpose and the conduct of them (taken together) is such as would cause a person of reasonable firmness present at the scene to fear for his or her personal safety, each of the persons using unlawful violence for the common purpose is guilty of riot.

Maximum penalty:

- (a) for a basic offence—imprisonment for 7 years;
 - (b) for an aggravated offence—imprisonment for 10 years.
- (2) It is immaterial whether or not the 12 or more persons use or threaten unlawful violence simultaneously.
 - (3) The common purpose may be inferred from conduct.
 - (4) No person of reasonable firmness need actually be, or be likely to be, present at the scene.
 - (5) Riot may be committed in private as well as in public places.
 - (6) A person is guilty of riot only if the person intends to use violence or is aware that his or her conduct may be violent.
 - (7) Subsection (6) does not affect the determination for the purposes of subsection (1) of the number of persons who use or threaten violence.

- 5 (8) If at a trial of a person for riot the jury is not satisfied that the accused is guilty of the offence charged but is satisfied that the accused is guilty of the offence constituted by section 6A of the *Summary Offences Act 1953* (violent disorder), the jury may bring in a verdict that the accused is guilty of that offence.

83C—Affray

- 10 (1) A person who uses or threatens unlawful violence towards another and whose conduct is such as would cause a person of reasonable firmness present at the scene to fear for his or her personal safety is guilty of affray.

Maximum penalty:

- (a) for a basic offence—imprisonment for 3 years;
(b) for an aggravated offence—imprisonment for 5 years.

- 15 (2) If 2 or more persons use or threaten the unlawful violence, it is the conduct of them taken together that must be considered for the purposes of subsection (1).

- (3) For the purposes of this section, a threat cannot be made by the use of words alone.

- 20 (4) No person of reasonable firmness need actually be, or be likely to be, present at the scene.

- (5) Affray may be committed in private as well as in public places.

- (6) A person is guilty of affray only if the person intends to use or threaten violence or is aware that his or her conduct may be violent or threaten violence.

- 25 (7) An offence of affray 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.

- 30 (8) For the avoidance of doubt, a person who is convicted of the offence of affray that has been prosecuted and dealt with as a summary offence in accordance with subsection (7) is, despite that fact, taken to have been convicted of an indictable offence for the purposes of any Act or law.

Part 3—Amendment of *Summary Offences Act 1953*

6—Insertion of section 6A

Before section 7 insert:

6A—Violent disorder

- 5 (1) If 3 or more persons who are present together use or threaten
unlawful violence and the conduct of them (taken together) is such as
would cause a person of reasonable firmness present at the scene to
fear for his or her personal safety, each of the persons using or
threatening unlawful violence is guilty of an offence.
- 10 Maximum penalty: \$10 000 or imprisonment for 2 years.
- (2) It is immaterial whether or not the 3 or more persons use or threaten
unlawful violence simultaneously.
- (3) No person of reasonable firmness need actually be, or be likely to be,
present at the scene.
- 15 (4) An offence under subsection (1) may be committed in private as well
as in public places.
- (5) A person is guilty of an offence under subsection (1) only if he or she
intends to use or threaten violence or is aware that his or her conduct
may be violent or threaten violence.
- 20 (6) Subsection (5) does not affect the determination for the purposes of
subsection (1) of the number of persons who use or threaten
violence.
- (7) In this section—
- violence* means any violent conduct, so that—
- 25 (a) it includes violent conduct towards property as well as
violent conduct towards persons; and
- (b) it is not restricted to conduct causing or intended to cause
injury or damage but includes any other violent conduct.

Example—

- 30 Throwing at, or towards, a person a missile of a kind
capable of causing injury which does not hit, or falls short
of, the person.