

## **House of Assembly—No 2**

As laid on the table and read a first time, 15 February 2012

South Australia

# **Statutes Amendment (Serious and Organised Crime) Bill 2012**

A BILL FOR

An Act to amend the *Australian Crime Commission (South Australia) Act 2004*; the *Bail Act 1985*; the *Controlled Substances Act 1984*; the *Criminal Law (Sentencing) Act 1988*; the *Criminal Law Consolidation Act 1935*; the *Director of Public Prosecutions Act 1991*; the *Evidence Act 1929*; the *Intervention Orders (Prevention of Abuse) Act 2009*; the *Juries Act 1927*; the *Summary Offences Act 1953*; the *Summary Procedure Act 1921*; 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 (Serious and Organised Crime) Act 2012*.

#### 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.

## 10 Part 2—Amendment of *Australian Crime Commission (South Australia) Act 2004*

#### 4—Amendment of section 3—Interpretation

(1) Section 3(1)—after the definition of *confer* insert:

15 *constable* means a member or special member of the Australian Federal Police or a member of the police force or police service of this State;

(2) Section 3(1)—after the definition of *function* insert:

*in contempt of the ACC* has the meaning given by section 26A;

- (3) Section 3(1), definition of *intelligence operation*—delete the definition and substitute:

*intelligence operation* means an operation that is primarily directed towards the collection, correlation, analysis or dissemination of criminal information and intelligence relating to relevant criminal activity, but that may involve the investigation of matters relating to relevant criminal activity;

## 5—Amendment of section 8—Functions of the Board

Section 8(5)—delete "3 days" and substitute:

7 days

## 6—Insertion of sections 26A to 26F

After section 26 insert:

### 26A—Contempt of the ACC

A person is in contempt of the ACC if he or she—

- (a) when appearing as a witness at an examination before an examiner—
  - (i) refuses or fails to take an oath or affirmation when required to do so under section 19; or
  - (ii) refuses or fails to answer a question that he or she is required to answer by the examiner; or
  - (iii) refuses or fails to produce a document or thing that he or she was required to produce by a summons or notice under this Act that was served to him or her as prescribed; or
- (b) is a legal practitioner who is required to answer a question or produce a document at an examination before an examiner, and both of the following apply:
  - (i) the answer to the question would disclose, or the document contains, a privileged communication made by or to the legal practitioner in his or her capacity as a legal practitioner;
  - (ii) he or she refuses to comply with the requirement and does not, when required by the examiner, give the examiner the name and address of the person to whom or by whom the communication was made; or
- (c) gives evidence at an examination before an examiner that he or she knows is false or misleading in a material particular; or
- (d) obstructs or hinders an examiner in the performance of his or her functions as an examiner; or
- (e) disrupts an examination before an examiner; or

- (f) threatens a person present at an examination before an examiner.

### **26B—Supreme Court to deal with contempt**

- 5 (1) If an examiner is of the opinion that, during an examination before the examiner, a person is in contempt of the ACC, the examiner may apply to the Supreme Court for the person to be dealt with in relation to the contempt.
- (2) Before making the application, the examiner must inform the person that the examiner proposes to make the application.
- 10 (3) The application must be accompanied by a certificate that states—
- (a) the grounds for making the application; and
- (b) evidence in support of the application.
- (4) A copy of the certificate must be given to the person before, or at the same time as, the application is made.
- 15 (5) If, after—
- (a) considering the matters specified in the certificate; and
- (b) hearing or receiving any evidence or statements by or in support of the ACC; and
- 20 (c) hearing or receiving any evidence or statements by or in support of the person,

the Supreme Court finds that the person was in contempt of the ACC, the Court may deal with the person as if the acts or omissions involved constituted a contempt of that Court.

### **26C—Conduct of contempt proceedings**

- 25 (1) This section applies if an application for a person to be dealt with in relation to a contempt of the ACC is made to the Supreme Court under section 26B.
- (2) Proceedings in relation to the application are, subject to this Act, to be instituted, carried on, heard and determined in accordance with the laws (including any Rules of Court) that apply in relation to the punishment of a contempt of the Supreme Court.
- 30 (3) In proceedings in relation to the application, a certificate under section 26B(3) is prima facie evidence of the matters specified in the certificate.

### **26D—Person in contempt may be detained**

- 35 (1) If an examiner proposes to make an application under section 26B(1) in respect of a person, he or she may, during the hearing concerned, direct a constable to detain the person for the purpose of bringing the person before the Supreme Court for the hearing of the application.

- (2) If the person is detained under subsection (1)—
- (a) the examiner must apply to the Court as soon as practicable under section 26B(1) in respect of the person; and
  - (b) the person must, subject to subsection (3) of this section, be brought before the Court as soon as practicable.
- (3) The Court may—
- (a) direct that the person be released from detention on condition that he or she will appear before the Court in relation to the application; or
  - (b) order that the person continue to be detained until the application is determined.
- (4) The Court may also impose any other condition on the release, for example—
- (a) that the person surrenders his or her passport; or
  - (b) that the person gives an undertaking as to his or her living arrangements; or
  - (c) that the person reports as required to a law enforcement agency.
- (5) The Court may at any time vary or revoke a condition imposed under subsection (4).

### **26E—Examiner may withdraw contempt application**

- (1) An examiner may at any time withdraw an application in relation to a person under section 26B(1).
- (2) If—
- (a) the examiner does so; and
  - (b) the person is in detention under section 26D,
- the person must be released from detention immediately.

### **26F—Relationship with section 34**

To avoid doubt, evidence relating to an application under section 26B(1) is not required to be given to a person or authority under section 34(1).

## **7—Amendment of section 39—Double jeopardy**

Section 39—after its present contents (now to be designated as subsection (1)) insert:

- (2) If—
- (a) an application is made to the Supreme Court under section 26B(1) in respect of an act or omission by a person; and
  - (b) the person is dealt with by the Court under that section in respect of the act or omission,

the person is not liable to be prosecuted for an offence in respect of that act or omission.

- (3) If a person is prosecuted for an offence in respect of an act or omission referred to in section 26B(1), an application must not be made under section 26B(1) in respect of that act or omission.

## Part 3—Amendment of *Bail Act 1985*

### 8—Amendment of section 3—Interpretation

- (1) Section 3(1)—after the definition of *case manager* insert:

*Chief Executive Officer* has the same meaning as in the *Correctional Services Act 1982*;

- (2) Section 3(1)—after the definition of *intervention program manager* insert:

*serious and organised crime offence* has the same meaning as in the *Criminal Law Consolidation Act 1935*;

*serious and organised crime suspect*—see section 3A;

### 9—Insertion of section 3A

After section 3 insert:

#### 3A—Serious and organised crime suspects

- (1) A bail authority may determine that a person is a *serious and organised crime suspect* for the purposes of this Act if the bail authority is satisfied, on application by the Crown, that—
- (a) the person has been charged with a serious and organised crime offence; and
  - (b) the person was not, at the time of the alleged offence, a child; and
  - (c) the grant of bail to the person is likely to cause a potential witness, or other person connected with proceedings for the alleged offence, to reasonably fear for his or her safety.
- (2) A determination by a bail authority that a person taken into custody on a charge of an offence is a serious and organised crime suspect ceases to apply after 6 months if, at that time—
- (a) the person has not been tried, or is not on trial, for the offence; and
  - (b) the trial of the offence is not subject to a determination of the Supreme Court under section 275(3) of the *Criminal Law Consolidation Act 1935*.



- (3) Subsection (2) does not affect the operation of a bail agreement to which the person is subject at the time at which the determination ceases to apply.

**Note—**

5 The person is, however, eligible to reapply for bail—see section 4(1)(h).

**10—Amendment of section 4—Eligibility for bail**

- (1) Section 4(1)—after paragraph (f) insert:

- 10 (g) a person arrested on a warrant issued under section 19A;  
(h) a person who is no longer a serious and organised crime suspect because of the operation of section 3A(2).

- (2) Section 4—after subsection (1) insert:

- 15 (1a) A person who is eligible to apply for bail in accordance with subsection (1)(h) may so apply despite the fact that he or she is already subject to a bail agreement (the *previous bail agreement*) if, at the time of the previous bail agreement, the person was a serious and organised crime suspect (and if a new bail agreement is entered into following such an application, the previous bail agreement ceases to be in force).

20 **11—Amendment of section 10A—Presumption against bail in certain cases**

- (1) Section 10A—after subsection (1) insert:

- 25 (1a) An applicant who is a serious and organised crime suspect will not be taken to have established that special circumstances exist for the purposes of subsection (1) unless the applicant also establishes, by evidence verified on oath or by affidavit, that he or she has not previously been convicted of—  
(a) a serious and organised crime offence; or  
(b) an offence committed in another jurisdiction that would, if committed in this jurisdiction, have been a serious and organised crime offence.

- (2) Section 10A(2), definition of *prescribed applicant*—after paragraph (ba) insert:

- (bb) an applicant who is a serious and organised crime suspect;

**12—Amendment of section 11—Conditions of bail**

- (1) Section 11—after subsection (2) insert:

- 35 (2aa) If the applicant is a serious and organised crime suspect, any grant of bail to the applicant—  
(a) must be made subject to the following conditions:  
40 (i) a condition that the applicant agree to reside at a specified address and to remain at that place of residence while on bail, not leaving it except for 1 of the following purposes:

- (A) necessary medical or dental treatment for the applicant;
- (B) averting or minimising a serious risk of death or injury (whether to the applicant or some other person);
- (C) any other purpose approved by the Chief Executive Officer;

(ii) a condition that the applicant agree to be fitted with a device of a kind approved by the Chief Executive Officer for the purpose of monitoring compliance with the condition referred to in subparagraph (i) and to comply with all reasonable directions of the Chief Executive Officer in relation to the device;

(iii) a condition that the applicant agree to not communicate with any person other than specified persons, or persons of a specified class or of a class prescribed by regulation;

(iv) a condition that the applicant agree to only use for communication purposes, or be in possession of, such telephones, mobile phones, computers or other communication devices as may be specified; and

(b) may not be made subject to the condition referred to in subsection (2)(a)(ia) (but the bail authority may, subject to this section, impose any other condition referred to in subsection (2)).

(2) Section 11(3a)—delete subsection (3a) and substitute:

(3a) Before a bail authority imposes a condition under subsection (2)(a)(ia) or (2aa)(a)(i), the bail authority should obtain a report (whether oral or in writing) from the Crown on—

(a) in the case of a condition under subsection (2)(a)(ia)—the appropriateness of such a condition being imposed in the applicant's case; or

(b) in the case of a condition under subsection (2aa)(a)(i)—whether the place of residence proposed to be specified in the condition is appropriate in the applicant's case.

### **13—Insertion of section 19A**

After section 19 insert:

#### **19A—Arrest of person who is serious and organised crime suspect**

Where it appears to a court that—

(a) the matters referred to in section 3A(1)(a), (b) and (c) apply in relation to a person who has been released on bail; but

- (b) no application was made by a police officer to the bail authority for a determination to that effect,

the court may—

- (c) cancel the right of the person to be at liberty in pursuance of the agreement; and
- (d) if it appears necessary or desirable to do so—issue a warrant for the person's arrest.

#### 14—Insertion of section 23A

After section 23 insert:

#### 23A—Bail authority to consider intervention orders

- (1) If a police officer or a person representing the Crown in bail proceedings is made aware that the victim of the alleged offence, or a person otherwise connected with proceedings for the alleged offence, feels a need for protection from the alleged offender or any other person associated with the alleged offender—
  - (a) the police officer or other person must ensure that the perceived need for protection is brought to the attention of the bail authority; and
  - (b) the bail authority must consider—
    - (i) if the bail authority is a court—whether to issue an intervention order in accordance with this section; or
    - (ii) in any other case—whether to apply to the Magistrates Court for an intervention order under the *Intervention Orders (Prevention of Abuse) Act 2009*.
- (2) If an applicant for bail is a serious and organised crime suspect, the bail authority must, on its own initiative, consider—
  - (a) if the bail authority is a court—whether to issue an intervention order in accordance with this section; or
  - (b) in any other case—whether to apply to the Magistrates Court for an intervention order under the *Intervention Orders (Prevention of Abuse) Act 2009*.
- (3) A court may, when determining a bail application, exercise the powers of the Magistrates Court to issue against the applicant or any person associated with the applicant, an intervention order under the *Intervention Orders (Prevention of Abuse) Act 2009* as if an application had been made under that Act against the applicant or other person.
- (4) An order issued under this section has effect as an intervention order under the *Intervention Orders (Prevention of Abuse) Act 2009*.

## 15—Amendment of section 24—Act not to affect provisions relating to intervention and restraining orders

Section 24—Delete "Nothing" and substitute:

Except as provided in section 23A, nothing

## 5 16—Transitional provision

The amendments to the *Bail Act 1985* effected by this Part only apply in relation to a person taken into custody on a charge of an offence allegedly committed after the commencement of this Part.

## Part 4—Amendment of *Controlled Substances Act 1984*

### 10 17—Amendment of section 4—Interpretation

(1) Section 4(1)—after the definition of *the Advisory Council* insert:

*aggravated offence*—where a provision differentiates between the penalty for an aggravated offence and the penalty for a basic offence, the reference to an aggravated offence is a reference to the offence in its aggravated form (see section 43);

(2) Section 4(1)—after the definition of *authorised officer* insert:

*basic offence*—where a provision differentiates between the penalty for an aggravated offence and the penalty for a basic offence, the reference to a basic offence is a reference to the offence in its non-aggravated form (see section 43);

### 18—Amendment of section 32—Trafficking

(1) Section 32(2), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a basic offence—\$200 000 or imprisonment for 25 years, or both;
- (b) for an aggravated offence—\$500 000 or imprisonment for life, or both.

(2) Section 32(2a), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a basic offence—\$75 000 or imprisonment for 15 years, or both;
- (b) for an aggravated offence—\$200 000 or imprisonment for 25 years, or both.

(3) Section 32(3), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a basic offence—\$50 000 or imprisonment for 10 years, or both;
- (b) for an aggravated offence—\$75 000 or imprisonment for 15 years, or both.

**19—Amendment of section 33—Manufacture of controlled drugs for sale**

- (1) Section 33(2), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a basic offence—\$200 000 or imprisonment for 25 years, or both;  
(b) for an aggravated offence—\$500 000 or imprisonment for life, or both.

- (2) Section 33(3), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a basic offence—\$50 000 or imprisonment for 10 years, or both;  
(b) for an aggravated offence—\$75 000 or imprisonment for 15 years, or both.

**20—Amendment of section 33A—Sale, manufacture etc of controlled precursor**

- (1) Section 33A(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a basic offence—\$200 000 or imprisonment for 25 years, or both;  
(b) for an aggravated offence—\$500 000 or imprisonment for life, or both.

- (2) Section 33A(2), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a basic offence—\$75 000 or imprisonment for 15 years, or both;  
(b) for an aggravated offence—\$200 000 or imprisonment for 25 years, or both.

- (3) Section 33A(3), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a basic offence—\$50 000 or imprisonment for 10 years, or both;  
(b) for an aggravated offence—\$75 000 or imprisonment for 15 years, or both.

- (4) Section 33A(4), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a basic offence—\$50 000 or imprisonment for 10 years, or both;  
(b) for an aggravated offence—\$75 000 or imprisonment for 15 years, or both.

- (5) Section 33A(5), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a basic offence—\$50 000 or imprisonment for 10 years, or both;  
(b) for an aggravated offence—\$75 000 or imprisonment for 15 years, or both.

## **21—Amendment of section 33B—Cultivation of controlled plants for sale**

- (1) Section 33B(2), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a basic offence—\$200 000 or imprisonment for 25 years, or both;  
(b) for an aggravated offence—\$500 000 or imprisonment for life, or both.

- (2) Section 33B(3), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a basic offence—\$50 000 or imprisonment for 10 years, or both;  
(b) for an aggravated offence—\$75 000 or imprisonment for 15 years, or both.

## **22—Amendment of section 33C—Sale of controlled plants**

- (1) Section 33C(2), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a basic offence—\$200 000 or imprisonment for 25 years, or both;  
(b) for an aggravated offence—\$500 000 or imprisonment for life, or both.

- (2) Section 33C(3), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a basic offence—\$50 000 or imprisonment for 10 years, or both;  
(b) for an aggravated offence—\$75 000 or imprisonment for 15 years, or both.

## **23—Amendment of section 33DA—Sale of instructions**

Section 33DA(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a basic offence—\$10 000 or imprisonment for 3 years, or both;  
(b) for an aggravated offence—\$15 000 or imprisonment for 5 years, or both.

## **24—Amendment of section 33GB—Sale of instructions to a child**

Section 33GB(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a basic offence—\$20 000 or imprisonment for 3 years, or both;  
(b) for an aggravated offence—\$30 000 or imprisonment for 5 years, or both.

## 25—Insertion of section 43

Before section 44 insert:

### 43—Aggravated offences

- 5 (1) An aggravated offence is an offence committed in circumstances where—
- (a) the offender committed the offence for the benefit of a criminal organisation, or 2 or more members of a criminal organisation, or at the direction of, or in association with, a criminal organisation; or
- 10 (b) in the course of, or in connection with, the offence the offender identified himself or herself in some way as belonging to, or otherwise being associated with, a criminal organisation (whether or not the offender did in fact belong to, or was in fact associated with, the organisation).
- 15 (2) For the purposes of subsection (1)(b), a person will be taken to have identified himself or herself as belonging to, or as being associated with, a criminal organisation if the person displayed (whether on an article of clothing, as a tattoo or otherwise) the insignia of the criminal organisation unless the person proves that he or she did not
- 20 display the insignia knowingly or recklessly.
- (3) Subsection (2) does not limit the ways in which a person may identify himself or herself as belonging to, or being associated with, a criminal organisation.
- (4) If a person is charged with an aggravated offence, the circumstances alleged to aggravate the offence must be stated in the instrument of charge.
- 25 (5) In this section—
- criminal organisation* has the same meaning as in Part 3B of the *Criminal Law Consolidation Act 1935*.
- 30 (6) This section does not prevent a court from taking into account, in the usual way, the circumstances of and surrounding the commission of an offence for the purpose of determining sentence.

#### Examples—

- 35 1 A person is charged with a basic offence and the court finds that the offence was committed in circumstances that would have justified a charge of the offence in its aggravated form. In this case, the court may, in sentencing, take into account the circumstances of aggravation for the purpose of determining penalty but must (of course) fix a penalty
- 40 within the limits appropriate to the basic offence.

2 A person is charged with an aggravated offence and the  
court finds a number (but not all) of the circumstances  
alleged in the instrument of charge to aggravate the offence  
have been established. In this case, the court may, in  
5 sentencing, take into account the established circumstances  
of and surrounding the aggravated offence (whether alleged  
in the instrument of charge or not) but must not (of course)  
take account of circumstances alleged in the instrument of  
charge that were not established.

## 10 **Part 5—Amendment of *Criminal Law (Sentencing) Act 1988***

### **26—Insertion of section 19AA**

After section 19 insert:

#### **19AA—Non-association or place restriction orders may be issued on sentence**

- 15 (1) A court may, on sentencing a person for a prescribed offence,  
exercise the powers of the Magistrates Court to issue against the  
defendant a non-association order or a place restriction order under  
the *Summary Procedure Act 1921* as if a complaint had been made  
20 under that Act against the defendant in relation to that conviction  
(and if the person is already subject to such an order, the court may  
vary or revoke that order as if an application for variation or  
revocation of the order had been made under that Act, regardless of  
whether the order was made by it or by some other court).
- 25 (2) A non-association order or a place restriction order issued or varied  
under this section on sentencing a person for a prescribed offence—
- (a) has effect as such an order under the *Summary Procedure Act 1921*; and
  - (b) is not a sentence for the purposes of this Act but may be  
30 taken into account in determining the sentence for the  
prescribed offence.
- (3) In this section—  
*prescribed offence* has the same meaning as in Part 4 Division 5 of  
the *Summary Procedure Act 1921*.

### **27—Insertion of Part 2 Division 6**

35 After section 29D insert:

#### **Division 6—Applications for re-sentencing**

##### **29E—Re-sentencing for subsequent cooperation with law enforcement agency**

- 40 (1) This section applies to a person if—
- (a) the person is currently serving a period of imprisonment for  
an offence or offences (the *relevant sentence*); and



- (b) the person has cooperated with a law enforcement agency.
- 5 (2) A person to whom this section applies may, with the permission of the court that imposed the relevant sentence, apply to the court to have the sentence quashed and a new sentence imposed, taking into account the person's cooperation with the law enforcement agency in accordance with this section.
- 10 (3) The court may only grant permission to make an application under this section if the court is satisfied that the cooperation relates directly to an offence that is, in the opinion of the court, a serious offence that has been committed or may be committed in the future (whether in this or any other jurisdiction).
- (4) The chief officer of the law enforcement agency, the Director of Public Prosecutions and the applicant are parties to the proceedings on the application.
- 15 (5) In determining a new sentence on an application under this section, the court must have regard to such of the following as may be relevant:
- (a) the nature and extent of the person's cooperation;
  - (b) the timeliness of the cooperation;

20 (c) the truthfulness, completeness and reliability of any information or evidence provided by the person;

  - (d) the evaluation (if any) by the authorities of the significance and usefulness of the person's cooperation;
  - (e) any benefit that the person has gained or is likely to gain by reason of the cooperation;

25 (f) the degree to which the safety of the person (or some other person) has been put at risk of violent retribution as a result of the person's cooperation;
  - (g) whether the cooperation concerns the offence for which the person is being sentenced or some other offence, whether related or unrelated;

30 (h) whether, as a consequence of the person's cooperation, the person would be likely to suffer violent retribution while serving any term of imprisonment, or be compelled to serve any such term in particularly severe conditions;

  - (i) the nature of any steps that would be likely to be necessary to protect the person on his or her release from prison;
  - (j) the likelihood that the person will commit further offences,

35 and may have regard to any other factor or principle the court thinks relevant.

40

(6) On an application by a person under this section, the court must not impose a sentence that is more severe than the relevant sentence, but the court may extend the non-parole period where the court passes a shorter sentence.

(7) In this section—

*chief officer* of a law enforcement agency means—

- (a) in the case of SA Police—the Commissioner of Police;
- (b) in any other case—the person for the time being occupying a position within the agency prescribed by the regulations.

## Part 6—Amendment of *Criminal Law Consolidation Act 1935*

### 28—Amendment of section 5—Interpretation

(1) Section 5(1)—after the definition of *court* insert:

*criminal organisation* has the same meaning as in Part 3B;

(2) Section 5(1)—after the definition of *property* insert:

*serious and organised crime offence* means—

- (a) an offence against Part 3B; or
- (b) an offence that—
  - (i) is punishable by life imprisonment; or
  - (ii) is an aggravated offence against a provision of this, or any other, Act,

if it is alleged that the offence was committed in the circumstances where—

- (iii) the offender committed the offence for the benefit of a criminal organisation, or 2 or more members of a criminal organisation, or at the direction of, or in association with, a criminal organisation; or
- (iv) in the course of, or in connection with, the offence the offender identified himself or herself in some way as belonging to, or otherwise being associated with, a criminal organisation (whether or not the offender did in fact belong to, or was in fact associated with, the organisation);

### 29—Amendment of section 5AA—Aggravated offences

(1) Section 5AA(1)—after paragraph (g) insert:

(ga) —

- (i) the offender committed the offence for the benefit of a criminal organisation, or 2 or more members of a criminal organisation, or at the direction of, or in association with, a criminal organisation; or

- (ii) in the course of, or in connection with, the offence the offender identified himself or herself in some way as belonging to, or otherwise being associated with, a criminal organisation (whether or not the offender did in fact belong to, or was in fact associated with, the organisation);

(2) Section 5AA—after subsection (2) insert:

(2a) For the purposes of subsection (1)(ga)(ii), a person will be taken to have identified himself or herself as belonging to, or as being associated with, a criminal organisation if the person displayed (whether on an article of clothing, as a tattoo or otherwise) the insignia of the criminal organisation unless the person proves that he or she did not display the insignia knowingly or recklessly.

(2b) Subsection (2a) does not limit the ways in which a person may identify himself or herself as belonging to, or being associated with, a criminal organisation.

(3) Section 5AA(4)—after "established" insert:

(but a failure to comply with this subsection does not affect the validity of the jury's verdict)

### 30—Insertion of Part 3B

After Part 3A insert:

## Part 3B—Offences relating to criminal organisations

### 83D—Interpretation

(1) In this Part—

***criminal group***—a group consisting of 2 or more persons is a criminal group if—

- (a) an aim or activity of the group includes engaging in conduct, or facilitating engagement in conduct, constituting a serious offence of violence (or conduct that would, if engaged in within this State, constitute such an offence); or
- (b) an aim or activity of the group includes engaging in conduct, or facilitating engagement in conduct, constituting a serious offence (or conduct that would, if engaged in within this State, constitute such an offence) that is intended to benefit the group, persons who participate in the group or their associates;

***criminal organisation*** means—

- (a) a criminal group; or
- (b) a declared organisation;

***declared organisation*** has the same meaning as in the *Serious and Organised Crime (Control) Act 2008*;

***harm*** has the same meaning as in Part 3 Division 7A;

***participating*** in a criminal organisation includes (without limitation)—

- (a) recruiting others to participate in the organisation; and
- (b) supporting the organisation; and
- (c) committing an offence for the benefit of, or at the direction of, the organisation; and
- (d) occupying a leadership or management position in the organisation or otherwise directing any acts of the organisation;

***perverting the course of justice*** means obstructing, preventing, perverting or defeating the course of justice or the administration of the law;

***public officer*** means—

- (a) a person appointed to public office by the Governor; or
- (b) a judicial officer; or
- (c) a member of Parliament; or
- (d) a person employed in the Public Service of the State; or
- (e) a police officer; or
- (f) any other officer or employee of the Crown; or
- (g) a member of a State instrumentality or of the governing body of a State instrumentality or an officer or employee of a State instrumentality; or
- (h) a member of a local government body or an officer or employee of a local government body; or
- (i) a juror in any proceedings; or
- (j) a person who personally performs work for the Crown, a State instrumentality or a local government body as a contractor or as an employee of a contractor or otherwise directly or indirectly on behalf of a contractor;

***serious harm*** has the same meaning as in Part 3 Division 7A;

***serious offence*** means an indictable offence that is punishable by imprisonment for life or for a term of 5 years or more;

***serious offence of violence*** means a serious offence where the conduct constituting the offence involves—

- (a) the death of, or serious harm to, a person or a risk of the death of, or serious harm to, a person; or
- (b) serious damage to property in circumstances involving a risk of the death of, or harm to, a person; or

(c) perverting the course of justice in relation to any conduct that, if proved, would constitute a serious offence of violence as referred to in paragraph (a) or (b).

5 (2) A group of people is capable of being a criminal group for the purposes of this Part whether or not—

(a) any of them are subordinates or employees of others; or

(b) only some of the people involved in the group are involved in planning, organising or carrying out any particular activity; or

10 (c) membership of the group changes from time to time.

### **83E—Participation in criminal organisation**

(1) A person who participates in a criminal organisation—

(a) knowing that, or being reckless as to whether, it is a criminal organisation; and

15 (b) knowing that, or being reckless as to whether, his or her participation in that organisation contributes to the occurrence of any criminal activity,

is guilty of an offence.

Maximum penalty: Imprisonment for 15 years.

20 (2) A person who assaults another person, knowing that, or being reckless as to whether, he or she is, by that act, participating in a criminal activity of a criminal organisation, is guilty of an offence.

Maximum penalty: Imprisonment for 20 years.

25 (3) A person who destroys or damages property belonging to another person, or threatens to destroy or damage property belonging to another person, knowing that, or being reckless as to whether, he or she is, by that act, participating in a criminal activity of a criminal organisation, is guilty of an offence.

Maximum penalty: Imprisonment for 20 years.

30 (4) A person who assaults a public officer while in the execution of the officer's duty, knowing that, or being reckless as to whether, he or she is, by that act, participating in a criminal activity of a criminal organisation, is guilty of an offence.

Maximum penalty: Imprisonment for 25 years.

35 (5) A term of imprisonment to which a person is sentenced for an offence against this section is cumulative on any other term of imprisonment or detention in a training centre that the person is liable to serve in respect of another offence (not being another offence against this section).

(6) For the purposes of this section, an action is taken to be carried out in relation to a public officer while in the execution of the officer's duty, even though the public officer is not on duty at the time, if it is carried out—

- 5                   (a) as a consequence of, in retaliation for or otherwise in connection with actions undertaken by that public officer in the execution of the officer's duty; or
- (b) because the officer is a public officer.

10           (7) For the purposes of this section, a person is presumed, in the absence of proof to the contrary, to be knowingly participating in an organisation at a particular time if the person is, at that time, displaying (whether on an article of clothing, as a tattoo or otherwise) the insignia of that organisation.

### 83F—Alternative verdicts

15                   If, on the trial of a person for an offence under section 83E(2), (3) or (4), the jury is not satisfied that the accused is guilty of the offence charged but is satisfied that the accused is guilty of an offence under section 83E(1), it may find the accused not guilty of the offence charged but guilty of an offence under section 83E(1), and the accused is liable to punishment accordingly.

20

### 83G—Evidentiary

- 25           (1) If, in any criminal proceedings, the court is satisfied beyond a reasonable doubt that a particular group was, at a particular time, a criminal group within the meaning of this Part, the court may, on the application of the Director of Public Prosecutions, make a declaration to that effect.
- 30           (2) If a declaration is made in relation to a group under this section, that group will, for the purposes of any subsequent criminal proceedings, be taken to be a criminal group in the absence of proof to the contrary.

### 31—Amendment of section 172—Blackmail

Section 172(1), penalty provision:

Maximum penalty:

- 35           (a) for a basic offence—imprisonment for 15 years;
- (b) for an aggravated offence—imprisonment for 20 years.

### 32—Amendment of section 244—Offences relating to witnesses

Section 244(1), (2), (3) and (5), penalty provisions—delete "7 years" wherever occurring and substitute in each case:

10 years

**33—Amendment of section 245—Offences relating to jurors**

Section 245(1), (2), (3) and (5), penalty provisions—delete "7 years" wherever occurring and substitute in each case:

10 years

5 **34—Amendment of section 248—Threats or reprisals relating to persons involved in criminal investigations or judicial proceedings**

Section 248(1) and (2), penalty provisions—delete "7 years" wherever occurring and substitute in each case:

10 years

10 **35—Amendment of section 249—Bribery or corruption of public officers**

Section 249(1) and (2), penalty provisions—delete "7 years" wherever occurring and substitute in each case:

10 years

**36—Amendment of section 250—Threats or reprisals against public officers**

15 Section 250(1) and (2), penalty provisions—delete "7 years" wherever occurring and substitute in each case:

10 years

**37—Amendment of section 251—Abuse of public office**

(1) Section 251(1), penalty provision—delete the penalty provision and substitute:

20 Maximum penalty:

- (a) for a basic offence—imprisonment for 7 years;
- (b) for an aggravated offence—imprisonment for 10 years.

(2) Section 251(2), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a basic offence—imprisonment for 7 years;
- (b) for an aggravated offence—imprisonment for 10 years.

**38—Amendment of section 275—Information may be presented in name of Director of Public Prosecutions**

Section 275—after subsection (2) insert:

30 (3) The Supreme Court must make rules for expediting prescribed proceedings and, if there has been a determination by a bail authority under the *Bail Act 1985* that the defendant in such proceedings is a serious and organised crime suspect, the trial of the matter must be commenced within the period of 6 months after the making of that determination, unless the determination ceases to apply or the Court determines—

- (a) on its own initiative, that it is not reasonably practicable for the Court to deal with the matter within that period; or

(b) on application by the Director of Public Prosecutions or the defendant, that exceptional circumstances exist that justify the matter being set down for trial at a later date.

5 (4) For the avoidance of doubt, any power of the Supreme Court or the District Court to order the transfer of proceedings under this or any other Act or law applies to proceedings brought under this section in the same way as it applies to any other criminal proceedings.

(5) In this section—

10 *prescribed proceedings* means proceedings brought under this section for —

(a) an alleged serious and organised crime offence; or

(b) an offence joined in the same information as an alleged serious and organised crime offence.

## Part 7—Amendment of *Director of Public Prosecutions Act 1991*

### 15 39—Amendment of section 7—Powers of Director

Section 7(1)—after paragraph (f) insert:

(fa) to undertake to a person not to use, or make derivative use of, information or a thing against the person in a proceeding, other than in relation to the falsity of evidence given by the person in a proceeding;

## Part 8—Amendment of *Evidence Act 1929*

### 40—Amendment of section 4—Interpretation

(1) Section 4—after the definition of *spouse* insert:

*statement* includes a statement however made;

25 (2) Section 4, definition of *vulnerable witness*—after paragraph (d) insert:

or

(e) in the case of proceedings for a serious and organised crime offence (within the meaning of the *Criminal Law Consolidation Act 1935*)—a person who will only consent to being a witness in the proceedings if he or she is treated as a vulnerable witness for the purposes of the proceedings;



#### 41—Insertion of sections 34KA to 34KD

After section 34K insert:

##### **34KA—Admissibility of evidence of out of court statements by unavailable witnesses**

- 5 (1) Subject to this section, in prescribed proceedings, a statement not made in oral evidence in the proceedings (an *out of court statement*) is admissible as evidence of any matter stated if—
- 10 (a) oral evidence given in the proceedings by the person who made the out of court statement would be admissible as evidence of that matter; and
- (b) the person who made the out of court statement (the *relevant person*) is identified to the court’s satisfaction; and
- (c) any 1 of the conditions specified in subsection (2) is satisfied.
- 15 (2) The conditions are as follows:
- (a) that the relevant person is dead;
- (b) that the relevant person is unfit to be a witness because of a bodily or mental condition;
- 20 (c) that the relevant person is outside of the State and it is not reasonably practicable to secure his or her attendance;
- (d) that the relevant person cannot be found although such steps as it is reasonably practicable to take to find him or her have been taken;
- 25 (e) that through fear the relevant person does not give (or does not continue to give) oral evidence in the proceedings, either at all or in connection with the subject matter of the out of court statement, and the court gives leave for the out of court statement to be given in evidence.
- 30 (3) For the purposes of subsection (2)(e) *fear* is to be widely construed and includes, for example, fear of the death or injury of another person or of financial loss.
- (4) Leave may be given under subsection (2)(e) only if the court considers that the out of court statement ought to be admitted in the interests of justice, having regard to—
- 35 (a) any information (whether or not given in evidence, or of a kind that could be given in evidence) suggesting threats have been made to the witness, whether directly or indirectly; and
- (b) the statement’s contents; and

- 5
- (c) any risk that its admission or exclusion will result in unfairness to a defendant in the proceedings (and in particular to how difficult it will be to challenge the statement if the relevant person does not give oral evidence and the defendant is not able to cross-examine the person); and
  - (d) any other measures that could be taken by the court in relation to the relevant person; and
  - (e) any other relevant circumstances.

- 10
- (5) A condition set out in any paragraph of subsection (2) which is in fact satisfied is to be treated as not satisfied if it is shown that the circumstances described in that paragraph are caused—
- 15 (a) by the person in support of whose case it is sought to give the out of court statement in evidence; or
  - (b) by a person acting on his or her behalf, in order to prevent the relevant person giving oral evidence in the proceedings (whether at all or in connection with the subject matter of the out of court statement).
- 20 (6) Nothing in this section makes an out of court statement admissible as evidence if it was made by a person who was not competent at the time when he or she made the statement.
- (7) This section is in addition to, and does not derogate from, any other power of a court to admit an out of court statement into evidence.
- (8) In this section—
- 25 *prescribed proceedings* means—
- (a) proceedings for a criminal offence; or
  - (b) proceedings under the *Serious and Organised Crime (Control) Act 2008*.

### 34KB—Credibility

- 30 (1) This section applies if in prescribed proceedings—
- (a) a statement not made in oral evidence in the proceedings (an *out of court statement*) is admitted as evidence of a matter stated; and
  - 35 (b) the maker of the out of court statement does not give oral evidence in connection with the subject matter of the statement.
- (2) In a case to which this section applies—
- 40 (a) any evidence which (if the person who made the out of court statement had given such evidence) would have been admissible as relevant to the reliability of the statement and the person's credibility as a witness is so admissible in the proceedings; and

5 (b) evidence may, with the court's leave, be given of any matter which (if the person who made the out of court statement had given such evidence) could have been put to the person in cross-examination as relevant to the reliability of the statement and the person's credibility as a witness but of which evidence could not have been adduced by the cross-examining party; and

10 (c) evidence tending to prove that the person who made the out of court statement made (at whatever time) any other statement inconsistent with the statement admitted as evidence is admissible for the purpose of showing that the person contradicted himself or herself.

15 (3) If as a result of evidence admitted under this section an allegation is made against the maker of a statement, the court may permit a party to lead additional evidence of such description as the court may specify for the purposes of denying or answering the allegation.

(4) In this section—

*prescribed proceedings* means—

20 (a) proceedings for a criminal offence; or

(b) proceedings under the *Serious and Organised Crime (Control) Act 2008*.

### **34KC—Stopping the case where evidence is unconvincing**

25 (1) If on a defendant's trial before a judge and jury for an offence the court is satisfied at any time after the close of the case for the prosecution that—

(a) the case against the defendant is based wholly or partly on a statement not made in oral evidence in the proceedings (an *out of court statement*); and

30 (b) the evidence provided by the out of court statement is so unconvincing that, considering its importance to the case against the defendant, a conviction of the offence would be unsafe,

35 the court must either direct the jury to acquit the defendant of the offence or, if it considers that there ought to be a retrial, discharge the jury.

(2) Where—

(a) a jury is directed under subsection (1) to acquit a defendant of an offence; and

40 (b) the circumstances are such that, apart from this subsection, the defendant could if acquitted of that offence be found guilty of another offence,

the defendant may not be found guilty of that other offence if the court is satisfied as mentioned in subsection (1) in respect of it.

- (3) This section does not prejudice any other power a court may have to direct a jury to acquit a person of an offence or to discharge a jury.

### **34KD—Court’s general discretion to exclude evidence**

- (1) In prescribed proceedings the court may refuse to admit a statement as evidence of a matter stated if—
- (a) the statement was made otherwise than in oral evidence in the proceedings; and
  - (b) the court is satisfied that the case for excluding the statement, taking account of the danger that to admit it would result in undue waste of time, substantially outweighs the case for admitting it, taking account of the value of the evidence.
- (2) Nothing in this section derogates from any other power of a court to exclude evidence at its discretion (whether by preventing questions from being put or otherwise).
- (3) In this section—
- prescribed proceedings* means—
- (a) proceedings for a criminal offence; or
  - (b) proceedings under the *Serious and Organised Crime (Control) Act 2008*.

### **42—Transitional provision**

Sections 34KA, 34KB, 34KC and 34KD of the *Evidence Act 1929* as inserted by section 41 of this Act only apply in relation to proceedings commenced after the commencement of section 41.

## **Part 9—Amendment of *Intervention Orders (Prevention of Abuse) Act 2009***

### **43—Amendment of section 9—Priority for certain interventions**

Section 9—after "domestic abuse" insert:

and proceedings brought by a bail authority under section 23A of the *Bail Act 1985*

## Part 10—Amendment of *Juries Act 1927*

### 44—Amendment of section 7—Trial without jury

Section 7—after subsection (3) insert:

- 5 (3a) Where an information is presented to the District Court or the Supreme Court under section 275 of the *Criminal Law Consolidation Act 1935* and the information includes a charge of a serious and organised crime offence (within the meaning of that Act), the Director of Public Prosecutions may apply to the court for an order that the accused be tried by judge alone.
- 10 (3b) The court may make an order on an application under subsection (3a) if it considers it is in the interests of justice to do so (and may do so at any time before commencement of the trial of the matter, regardless of whether a jury has been constituted in accordance with this Act to try the issues on the trial).
- 15 (3c) Without limiting subsection (3b), the court may make an order on an application under subsection (3a) if it considers that there is a real possibility that acts that may constitute an offence under section 245 or 248 of the *Criminal Law Consolidation Act 1935* would be committed in relation to a member of a jury.
- 20 (3d) An order of a court on an application under subsection (3a) may be appealed against in the same manner as a decision on an issue antecedent to trial.

## Part 11—Amendment of *Summary Offences Act 1953*

### 45—Amendment of section 4—Interpretation

25 Section 4(1)—after the definition of *senior police officer* insert:

*serious and organised crime offence* has the same meaning as in the *Criminal Law Consolidation Act 1935*;

### 46—Insertion of section 13

After section 12 insert:

#### 30 **13—Consorting**

- (1) A person must not, without reasonable excuse, habitually consort with a prescribed person or persons.  
Maximum penalty: Imprisonment for 2 years.
- 35 (2) For the purposes of this section a person may *consort* with another person by any means including by letter, telephone or fax or by email or other electronic means.

(3) In this section—

*prescribed person* means a person who has been found guilty of, or who is reasonably suspected of having committed, a serious and organised crime offence.

5 **47—Amendment of section 18—Loitering**

Section 18—after subsection (2) insert:

10 (3) If a police officer has reasonable grounds to suspect that a person who is loitering in a public place is of a prescribed class, the officer may request that the person state the reason why he or she is in that place.

(4) The police officer must, before making the request, advise the person—

15 (a) that the request is being made under this section; and

(b) which prescribed class the officer believes the person belongs to.

(5) If, in response to a request by a police officer under subsection (3), a person of a prescribed class refuses or fails to state a satisfactory reason for being in that place, the person is guilty of an offence.

Maximum penalty: \$5 000 or imprisonment for 3 months.

20 (6) A person is of a prescribed class for the purposes of this section if the person is—

(a) a person who has been found guilty of, or who is reasonably suspected of having committed, a serious and organised crime offence; or

25 (b) a prescribed drug offender within the meaning of the *Criminal Assets Confiscation Act 2005*; or

(c) a person who is subject to a firearms prohibition order under Part 2A of the *Firearms Act 1977*; or

30 (d) a person who is subject to a control order under the *Serious and Organised Crime (Control) Act 2008*; or

(e) a person who is subject to a weapons prohibition order under Part 3A; or

(f) a person who is subject to a consorting prohibition notice under Part 14A; or

35 (g) a person who is subject to a non-association or place restriction order under Part 4 Division 5 of the *Summary Procedure Act 1921*; or

40 (h) a person who is subject to a paedophile restraining order under Part 4 Division 7 of the *Summary Procedure Act 1921*; or

(i) a person of a class prescribed by regulation.

(7) For the purposes of subsection (6), a person may belong to a prescribed class by virtue of an offence committed, an order made or a notice issued before or after the commencement of that subsection.

(8) In any proceedings for an offence under subsection (5)—

5 (a) an apparently genuine document purporting to be signed by the Commissioner and to certify that at a specified time a weapons prohibition order or a consorting prohibition notice applied to, or was in force against, a specified person is admissible as evidence of the matter so certified and is, in  
10 the absence of proof to the contrary, to be regarded as proof of the matter so certified; and

15 (b) an apparently genuine document purporting to be signed by the Registrar of Firearms and to certify that at a specified time a firearms prohibition order applied to, or was in force against, a specified person is admissible as evidence of the matter so certified and is, in the absence of proof to the contrary, to be regarded as proof of the matter so certified.

#### 48—Insertion of Part 14A

After section 65 insert:

### 20 **Part 14A—Consorting prohibition notices**

#### **66—Interpretation**

(1) In this Part—

*close personal relationship* has the same meaning as in Part 3 of the *Family Relationships Act 1975*;

25 *consorting prohibition notice* means a notice issued by a senior police officer under section 66A(1);

*Court* means the Magistrates Court;

30 *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;

*offence of violence* means an offence where the offender—

35 (a) uses a weapon, or threatens to use a weapon, against another; or

(b) inflicts serious harm on another, or threatens to inflict serious harm on another,

40 for the purpose of committing the offence, or escaping from the scene of the offence;

**prescribed offence** means—

- (a) an offence against Part 5 Division 2 of the *Controlled Substances Act 1984* or a corresponding offence against a previous enactment; or
- (b) an indictable offence against the *Firearms Act 1977*; or
- (c) an indictable offence of violence; or
- (d) a serious and organised crime offence; or
- (e) an offence involving extortion or money laundering; or
- (f) any attempt to commit, or assault with intent to commit, any of the foregoing offences; or
- (g) an offence against the law of another jurisdiction that would, if committed in this State, constitute any of the foregoing offences;

**recipient**—see section 66A(1);

**senior police officer** means a police officer of or above the rank of superintendent;

**spouse**—a person is the spouse of another if they are legally married.

(2) For the purposes of this Part—

- (a) a person may **consort** with another person by any means including by letter, telephone or fax 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.

### **66A—Senior police officer may issue consorting prohibition notice**

(1) A senior police officer may issue a notice prohibiting a person (the **recipient**) from consorting with a specified person or specified persons if the officer is satisfied that—

- (a) —
  - (i) the recipient is subject to a control order under the *Serious and Organised Crime (Control) Act 2008*; or
  - (ii) the specified person or each specified person—



- 5
- (A) has, within the preceding period of 3 years, been found guilty of 1 or more prescribed offences; or
- (B) is reasonably suspected of having committed 1 or more prescribed offences within the preceding period of 3 years; and
- (b) the recipient has been habitually consorting with the specified person or specified persons; and
- (c) the issuing of the notice is appropriate in the circumstances.
- 10 (2) However, a consorting prohibition notice—
- (a) does not prohibit associations between close family members; and
- (b) does not prohibit associations occurring between persons—
- 15 (i) for genuine political purposes; or
- (ii) while the persons are in lawful custody; or
- (iii) while the persons are acting in compliance with a court order; or
- (iv) while the persons are attending a rehabilitation, counselling or therapy session of a prescribed kind; and
- 20 (c) may specify other circumstances in which the notice does not apply.
- (3) A consorting prohibition notice issued by a police officer on the basis that he or she is satisfied that the recipient is subject to a control order will lapse—
- 25 (a) if—
- (i) an application to vary the control order is made under the *Serious and Organised Crime (Control) Act 2008* within the period ending 28 days after the day on which the consorting prohibition notice was issued; and
- 30 (ii) the application is for the control order to be varied so that the person subject to the order is prohibited from associating with each person specified in the consorting prohibition notice as a person with whom he or she is prohibited from consorting,
- 35 when the application is determined; or
- (b) if no such application is made—at the end of that 28 day period.

### **66B—Form of notice**

- (1) A consorting prohibition notice—
- (a) subject to subsection (2), must specify the grounds on which the notice has been issued; and
  - (b) must contain a statement advising the recipient of the effect of section 66A(2)(a) and (b); and
  - (c) must contain a statement advising the recipient that he or she is entitled to apply for a review of the notice in accordance with this Part.
- (2) A statement of the grounds on which a notice has been issued must not contain information that is classified by the Commissioner as criminal intelligence.

### **66C—Service of notice**

- (1) Subject to the making of an order under subsection (3), a consorting prohibition notice must be served on the recipient personally and is not binding on the recipient until it has been so served.
- (2) If a police officer has reason to believe that a person is subject to a consorting prohibition notice that has not been served on the person, the officer may—
- (a) require the person to remain at a particular place for—
    - (i) so long as may be necessary for the notice 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 officer 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).
- (3) If a police officer satisfies the Court that all reasonable efforts have been made to effect personal service of a notice on a recipient in accordance with this section but that those efforts have failed, the Court may make such orders as it thinks fit in relation to substituted service (and the notice is not binding on the recipient until it has been so served).

### **66D—Application for review**

- (1) Subject to subsection (3), a recipient on whom a consorting prohibition notice has been served may, within 4 weeks after service of the notice, lodge an application with the Court for review of the notice.

- (2) The Court may, on a review, consider the following matters:
- (a) whether sufficient grounds exist to satisfy the Court that the notice was properly issued in accordance with section 66A(1);
  - (b) whether any person specified in the notice is a close family member of the recipient or there are otherwise good reasons why a particular person should not be so specified;
  - (c) whether the notice should specify particular circumstances in which it does not apply.
- (3) The grounds of the review must be stated fully and in detail in the application.
- (4) A copy of the application for review must be served by the recipient on the Commissioner personally or by registered post at least 7 days before the day appointed for conducting the review (and the Commissioner is a party to proceedings on the application).
- (5) The Court may, on a review, confirm, vary or revoke the notice.

#### **66E—Variation or revocation of consorting prohibition notice**

- (1) If, at any time, the Court is satisfied that, since a consorting prohibition notice was made or last varied, there has been a substantial change in the circumstances taken into account in accordance with section 66A(1)(c), the Court may grant the recipient permission to apply to the Court under this section.
- (2) The Court may, on an application under this section, vary or revoke a consorting prohibition notice.
- (3) A copy of the application for variation or revocation must be served by the recipient on the Commissioner personally or by registered post at least 7 days before the day appointed for hearing the application (and the Commissioner is a party to proceedings on the application).

#### **66F—Appeal**

- (1) The Commissioner or the recipient may appeal to the Supreme Court against a decision of the Court under this Part.
- (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.

#### **66G—Revocation of notice by Commissioner**

The Commissioner may, at any time, revoke a consorting prohibition notice by notice in writing to the recipient.

### **66H—Applications by or on behalf of child**

An application to a court that could otherwise be made by a person under this Part may, if the person is a child, be made—

- (a) by the child with the permission of the court, if the child has attained the age of 14 years; or
- (b) on behalf of the child—
  - (i) by a parent or guardian of the child; or
  - (ii) by a person with whom the child normally or regularly resides.

### **66I—Evidence etc**

- (1) In any proceedings under this Part, other than for an offence, the Court—
  - (a) is not bound by the rules of evidence but may inform itself 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.
- (2) A fact to be proved in proceedings under this Part, other than for an offence, is sufficiently proved if proved on the balance of probabilities.

### **66J—Criminal intelligence**

- (1) In any proceedings under this Part, a court—
  - (a) must, on the application of the Commissioner, take steps to maintain the confidentiality of information 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 so classified by the Commissioner by way of affidavit of a senior police officer.
- (2) The Commissioner 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.

### **66K—Offence to contravene or fail to comply with notice**

- (1) A person who contravenes or fails to comply with a consorting prohibition notice is guilty of an offence.

Maximum penalty: Imprisonment for 2 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 notice or was reckless as to that fact.

5 (3) In proceedings for an offence against this section, an apparently genuine document purporting to be signed by the Commissioner and to certify that at a specified time a consorting prohibition notice applied to, or was in force against, a specified person must, in the  
10 absence of proof to the contrary, be regarded as proof of the matter so certified.

## Part 12—Amendment of *Summary Procedure Act 1921*

### 49—Insertion of Part 4 Division 5

After section 76B insert:

#### Division 5—Non-association and place restriction orders

##### 15 77—Interpretation

In this Division—

*close family*, in relation to a defendant, means the following people:

- 20 (a) the defendant’s spouse, or former spouse, or a person in a close personal relationship with the defendant;
- (b) the defendant’s parents and grandparents (whether by blood or by marriage);
- (c) the defendant’s children and grandchildren (whether by blood or by marriage);
- 25 (d) the defendant’s brothers and sisters (whether by blood or by marriage);
- (e) the defendant’s guardians or carers;

*close personal relationship* has the same meaning as in Part 3 of the *Family Relationships Act 1975*;

30 *health service* means a health service within the meaning of the *Health Care Act 2008* and includes any service of a kind prescribed by regulation for the purposes of this definition;

*non-association order* means an order under section 78—

- 35 (a) prohibiting a defendant—
- (i) from being in company with a specified person; or
- (ii) from communicating with that person by any means,
- except at the times or in the circumstances (if any) specified in the order; or

- (b) prohibiting a defendant—
  - (i) from being in company with a specified person; and
  - (ii) from communicating with that person by any means;

5 ***place restriction order*** means an order under section 78—

- (a) prohibiting a defendant from frequenting or visiting a specified place or area except at the times or in the circumstances (if any) specified in the order; or
- (b) prohibiting a defendant from frequenting or visiting a specified place or area at any time or in any circumstance;

***prescribed offence*** means an indictable offence or an offence that would, if committed in this State, be an indictable offence;

***spouse***—a person is the spouse of another if they are legally married;

15 ***welfare service*** means services (whether provided as public or private services) relating to the provision of housing, employment benefits, rental assistance or other financial assistance, family support and other community welfare services necessary for the promotion, protection, development and maintenance of the well-being of persons.

20 **78—Non-association and place-restriction orders**

- (1) A complaint may be made under this section by a police officer.
- (2) On a complaint, the Court may make a non-association order or a place restriction order (or both) in respect of the defendant if—
  - 25 (a) the defendant has, within the period of 2 years immediately preceding the making of the complaint, been convicted (in this State or elsewhere) of a prescribed offence; and
  - (b) the Court is satisfied that it is reasonably necessary to do so to ensure that the defendant does not commit any further prescribed offences.
- 30 (3) A non-association order or a place restriction order—
  - (a) operates for the period specified in the order (which must be not more than 2 years); and
  - (b) may specify that it is to commence at the end of a period of imprisonment being served by the defendant.
- 35 (4) The Court may—
  - 40 (a) in determining whether it is reasonably necessary to make a non-association order or a place restriction order to ensure that the defendant does not commit any further prescribed offences, take into account events that have taken place outside of this State; and

(b) make a non-association order or a place restriction order against a defendant whether resident in or outside of this State.

5 (5) If a defendant disputes some or all of the grounds on which a non-association order or a place restriction order is sought or made but consents to the order, the Court may make or confirm the order without receiving any further submissions or evidence as to the grounds.

10 **79—Non-association and place restriction orders not to restrict certain associations or activities**

(1) The persons specified in a non-association order as persons with whom the defendant must not associate may not include any member of the defendant's close family.

15 (2) Despite subsection (1), a member of the defendant's close family may be specified in a non-association order if—

(a) the defendant requests that the member be specified in the order; or

20 (b) the Court has reasonable cause to believe, having regard to the criminal antecedents of the member and the defendant, the nature and pattern of criminal activity in which the member and the defendant have both participated or any other matter the Courts thinks fit, that there is an appreciable risk that the defendant may be involved in conduct that could involve the commission of a further prescribed offence if the defendant associates with that member.

25 (3) The places or areas specified in a place restriction order as places or areas that the defendant must not frequent or visit may not include—

(a) the defendant's place of residence or the place of residence of any member of the defendant's close family; or

30 (b) any place of work at which the defendant is regularly employed; or

(c) any educational institution at which the defendant is enrolled; or

(d) any place of worship that the defendant regularly attends.

35 (4) Despite subsection (3), a place or area referred to in that subsection may be specified in a place restriction order if—

(a) the defendant requests that the place or area be specified in the order; or

- 5
- (b) the Court has reasonable cause to believe, having regard to the ongoing nature and pattern of participation of the defendant in criminal activity occurring at that place or area, that there is an appreciable risk that the defendant may be involved in conduct that could involve the commission of a further prescribed offence if the defendant frequents or visits that place or area.

**80—Issue of non-association or place restriction order in absence of defendant**

- 10
- (1) A non-association order or a place restriction 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.
  - 15 (2) A non-association order or a place restriction 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.
  - 20 (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—
    - (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
    - 25 (b) if the deponent does not appear personally to give evidence in pursuance of such a requirement, the Court may not rely on the evidence contained in the affidavit for the purpose of confirming the order.
  - 30 (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.
  - 35 (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—
    - (a) that a later date is required to enable the summons to be served; or
    - 40 (b) that there is other adequate reason for fixing a later date.



- 5
- (6) A non-association order or a place restriction order made under subsection (2)—
- (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—
    - 10 (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.
- 15 (7) The Court may confirm a non-association order or a place restriction 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.

### **81—Service**

- 20 (1) Subject to the making of an order under subsection (4), a non-association order or place restriction order must be served on the defendant personally and is not binding on the defendant until it has been so served.
- 25 (2) If a non-association order or place restriction order is confirmed in an amended form or is varied before being confirmed or at any other time, subject to the making of a declaration under subsection (4) or subsection (5)—
- (a) the order in its amended or varied form must be served on the defendant personally; and
  - 30 (b) until so served—
    - (i) the amendment or variation is not binding on the defendant; but
    - (ii) the order as in force prior to the amendment or variation continues to be binding on the defendant.
- 35 (3) If a police officer has reason to believe that a person is subject to a non-association order or place restriction order that has not been served on the person, the officer 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 officer 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).

(4) If a police officer satisfies the Court that all reasonable efforts have been made to effect personal service of an order on a defendant in accordance with this section but that those efforts have failed, the Court may declare that subsection (2)(a) does not apply and may make such orders as it thinks fit in relation to substituted service (and in such a case, the non-association order or place restriction order will not be binding on the defendant until it has been served in accordance with the orders for substituted service).

(5) If the Court is satisfied that the order in its amended or varied form is more favourable to the defendant, the Court may declare that subsection (2)(b) does not apply and that the amendment or variation is to be binding on the defendant as from the day of the declaration or such other day as the Court specifies.

## **82—Variation or revocation of non-association or place restriction order**

(1) The Court may vary or revoke a non-association order or place restriction order on application by a police officer or the defendant.

(2) An application for variation or revocation of a non-association order or place restriction 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 an 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 non-association order or place restriction order and in considering the terms of such an order.

### 83—Contravention of non-association and place restriction orders

- (1) A person who contravenes or fails to comply with a non-association order or place restriction order is guilty of an offence.

Maximum penalty:

- (a) for a first offence—imprisonment for 6 months;  
(b) for a subsequent offence—imprisonment for 2 years.

- (2) Subsection (1) does not apply if the person establishes that he or she had a reasonable excuse for the contravention or failure to comply.

- (3) Without limiting subsection (2), it is a reasonable excuse for associating with a specified person in contravention of a non-association order if—

- (a) the person did so in compliance with an order of a court; or  
(b) the person did so unintentionally and terminated the association as soon as was reasonably practicable.

- (4) Without limiting subsection (2), it is a reasonable excuse for frequenting or visiting a specified place or area in contravention of a place restriction order if—

- (a) the person did so in compliance with an order of a court; or  
(b) the person did so unintentionally and left the place or area as soon as was reasonably practicable; or  
(c) the person needed to frequent or visit the place or area in order to—  
(i) receive a health service or a welfare service; or  
(ii) obtain legal advice or otherwise be provided with legal services.

### 50—Amendment of section 103—Procedure in the Magistrates Court

Section 103—after subsection (4) insert:

- (5) The fact that an information charging an indictable offence has been filed in the Court does not prevent the Director of Public Prosecutions from subsequently presenting to the Supreme Court or District Court an information charging the same offence under section 275 of the *Criminal Law Consolidation Act 1935* if the Director of Public Prosecutions thinks fit (and the information filed in the Court will, on the giving of written notice by the Director of Public Prosecutions to the Registrar of that fact, be taken to have been withdrawn).

## **Part 13—Amendment of *Youth Court Act 1993***

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

Section 7—after paragraph (b) insert:

- (ba) has the same jurisdiction as the Magistrates Court to make a non-association or place restriction order under the *Summary Procedure Act 1921* where the person who is to be subject to the order is a child or youth, and has power under that Act to vary or revoke such an order previously made by the Court; and

5