

Legislative Council—No 42A

As reported with amendments, report adopted, Standing Orders suspended and passed remaining stages, 30 July 2015

South Australia

Statutes Amendment (Serious and Organised Crime) Bill 2015

A BILL FOR

An Act to amend the *Criminal Law Consolidation Act 1935*; the *Liquor Licensing Act 1997* and the *Summary Offences Act 1953*; and for other purposes.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

5 This Act may be cited as the *Statutes Amendment (Serious and Organised Crime) Act 2015*.

2—Commencement

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

3—Amendment provisions

10 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*

4—Amendment of section 5—Interpretation

- (1) Section 5(1)—after "In this Act" insert:
 , unless the contrary intention appears
15 (2) Section 5(1), definition of *criminal organisation*—after "Part 3B" insert:
 Division 1

5—Insertion of heading to Part 3B Division 1

Before section 83D insert:

Division 1—Participation in criminal organisation

6—Amendment of section 83D—Interpretation

- (1) Section 83D(1)—delete "Part" first occurring and substitute:
 Division
(2) Section 83D(2)—delete "Part" and substitute:
 Division

7—Amendment of section 83G—Evidentiary

25 Section 83G(1)—delete "Part" and substitute:
 Division

8—Insertion of Part 3B Division 2

After section 83G insert:

Division 2—Public places, prescribed places and prescribed events

83GA—Preliminary

(1) In this Division, unless the contrary intention appears—

Committee means the Crime and Public Integrity Policy Committee of the Parliament;

conviction means a finding of guilt by a court, or the acceptance of a plea of guilty by a court, whether or not a conviction is recorded;

criminal organisation means—

- (a) an organisation of 3 or more persons—
 - (i) who have as their purpose, or 1 of their purposes, engaging in, organising, planning, facilitating, supporting, or otherwise conspiring to engage in, serious criminal activity; and
 - (ii) who, by their association, represent an unacceptable risk to the safety, welfare or order of the community; or
- (b) a declared organisation within the meaning of the *Serious and Organised Crime (Control) Act 2008*; or
- (c) an entity declared by regulation to be a criminal organisation;

member, of an organisation, includes an associate member, or prospective member, however described;

participant, in a criminal organisation, means—

- (a) if the organisation is a body corporate—a director or officer of the body corporate; or
- (b) a person who (whether by words or conduct, or in any other way) asserts, declares or advertises his or her membership of, or association with, the organisation; or
- (c) a person who (whether by words or conduct, or in any other way) seeks to be a member of, or to be associated with, the organisation; or
- (d) a person who attends more than 1 meeting or gathering of persons who participate in the affairs of the organisation in any way; or
- (e) a person who takes part in the affairs of the organisation in any other way,

but does not include a lawyer acting in a professional capacity;

prescribed event means an event declared by regulation to be a prescribed event;

prescribed place means a place declared by regulation to be a prescribed place;

public place means—

- (a) a place, or part of a place, that the public is entitled to use, is open to members of the public or is used by the public, whether or not on payment of money; or
- (b) a place, or part of a place, the occupier of which allows, whether or not on payment of money, members of the public to enter;

recruit, a person, to become a participant in a criminal organisation, includes counsel, procure, solicit, incite and induce the person, including by promoting the organisation, to become a participant in the organisation;

serious criminal activity has the same meaning as in the *Serious and Organised Crime (Control) Act 2008*.

- (1a) Each regulation made under subsection (1) for the purposes of the definitions of **criminal organisation**, **prescribed event** or **prescribed place** and required to be laid before each House of Parliament in accordance with the *Subordinate Legislation Act 1978* may only relate to 1 entity, 1 event or 1 place (as the case may require).
- (2) The Governor may only make a regulation declaring an entity to be a criminal organisation for the purposes of paragraph (c) the definition of **criminal organisation** in subsection (1) on the recommendation of the Minister.
- (2a) A recommendation of the Minister in relation to an entity for the purposes of subsection (2) may only be made—
 - (a) after the receipt of a report of the Committee in relation to the entity under section 83GAA (and, in such a case, the recommendation must include a statement as to the opinion of the Committee on whether or not the entity should be declared a criminal organisation for the purposes of this Division); or
 - (b) after the passage of 10 days after a referral in relation to the entity was made to the Committee by the Minister under section 83GAA(1).
- (3) The Minister may, in deciding whether to make recommendation for the purposes of subsection (2), have regard to the following matters:
 - (aa) if the Minister has received a report of the Committee in relation to the entity—the report of the Committee;
 - (a) any information suggesting a link exists between the entity and serious criminal activity;
 - (b) any convictions recorded in relation to—

- (i) current or former participants in the entity; or
- (ii) persons who associate, or have associated, with participants in the entity;

5 (c) any information suggesting current or former participants in the entity have been, or are, involved in serious criminal activity (whether directly or indirectly and whether or not the involvement has resulted in any convictions);

10 (d) any information suggesting participants in an interstate or overseas chapter or branch (however described) of the entity have as their purpose, or 1 of their purposes, organising, planning, facilitating, supporting or engaging in serious criminal activity;

(e) any other matter the Minister considers relevant.

15 (3a) Section 10A of the *Subordinate Legislation Act 1978* does not apply in relation to a regulation made under paragraph (c) of the definition of ***criminal organisation*** in subsection (1).

20 (4) For the avoidance of doubt, nothing prevents the regulations declaring as a criminal organisation an entity that is, at the time of the declaration, based interstate or overseas and not operating in this State.

(5) A change in the name or membership of a criminal organisation does not affect its status as a criminal organisation.

25 (6) If the members of a criminal organisation (the ***original organisation***) substantially re-form themselves into another organisation, that organisation is taken to form a part of the original organisation (whether or not the original organisation is dissolved).

83GAA—Report of Crime and Public Integrity Policy Committee

30 (1) The Minister may, by notice in writing, refer a proposal to declare an entity to be a criminal organisation by regulation under paragraph (c) of the definition of ***criminal organisation*** to the Committee.

35 (2) On receipt of a referral under subsection (1), the Committee must request the Commissioner of Police (the ***Commissioner***) to provide to the Committee any information that the Commissioner thinks fit that may support the referral.

40 (3) The Committee must inquire into and consider a referral under subsection (1) along with any supporting information provided by the Commissioner under subsection (2) and must report to the Minister on whether or not the Committee is of the opinion that the entity should be declared a criminal organisation for the purposes of this Division.

(4) The Committee may include grounds for its opinion in a report under subsection (3).

83GB—Participants in criminal organisation being knowingly present in public places

- 5 (1) Any person who is a participant in a criminal organisation and is knowingly present in a public place with 2 or more other persons who are participants in a criminal organisation commits an offence.

Maximum penalty: Imprisonment for 3 years.

- 10 (2) It is a defence to a charge of an offence against subsection (1) for the defendant to prove that the criminal organisation in which it is alleged that the defendant is a participant is not an organisation that has, as 1 of its purposes, the purpose of engaging in, or conspiring to engage in, criminal activity.

83GC—Participants in criminal organisation entering prescribed places and attending prescribed events

- 15 (1) Any person who is a participant in a criminal organisation and enters, or attempts to enter, a prescribed place commits an offence.

Maximum penalty: Imprisonment for 3 years.

- (2) Any person who is a participant in a criminal organisation and attends, or attempts to attend, a prescribed event commits an offence.

Maximum penalty: Imprisonment for 3 years.

- 20 (3) It is a defence to a charge of an offence against subsection (1) or (2) to prove that the criminal organisation is not an organisation that has, as 1 of its purposes, the purpose of engaging in, or conspiring to engage in, criminal activity.

83GD—Participants in criminal organisation recruiting persons to become participants in the organisation

- 25 (1) Any person who is a participant in a criminal organisation and recruits, or attempts to recruit, anyone to become a participant in a criminal organisation commits an offence.

Maximum penalty: Imprisonment for 3 years.

- 30 (2) It is a defence to a charge of an offence against subsection (1) to prove that the criminal organisation in which it is alleged that the defendant is a participant is not an organisation that has, as 1 of its purposes, the purpose of engaging in, or conspiring to engage in, criminal activity.

- 35 (3) This section does not apply in relation to a declared organisation within the meaning of the *Serious and Organised Crime (Control) Act 2008*.

83GE—Sentencing

- 40 (1) Subject to subsection (2), but despite any other Act or law, the following provisions apply to the sentencing of a person for an offence under this Division:

- (a) a sentence of imprisonment must be imposed on the person;

- (b) the sentence of imprisonment cannot be suspended;
- (c) sections 17 and 18 of the *Criminal Law (Sentencing) Act 1988* do not apply;
- (d) section 18A(1) of the *Criminal Law (Sentencing) Act 1988* does not apply (but nothing in this subsection affects the operation of that section in respect of other offences for which the person is being sentenced).

- (2) A court sentencing a person for an offence under this Division may declare that subsection (1), in whole or part, does not apply to the person if he or she satisfies the court, by evidence given on oath, that exceptional circumstances exist in the particular case.
- (3) If a court finds that exceptional circumstances exist for the purposes of subsection (2), the court must give written reasons for so finding.
- (4) If a court is required to fix a non-parole period in relation to the sentencing of a person for an offence under this Division—
 - (a) the standard non-parole period must be taken into account by the court in determining the appropriate sentence (without limiting the matters that are otherwise required or permitted to be taken into account in determining the appropriate sentence); and
 - (b) if the court fixes a non-parole period that is longer or shorter than the standard non-parole period, the court must make a record of its reasons for so doing and must identify in the record of its reasons each factor that it took into account.
- (5) A requirement under subsection (4)(b) for a court to make a record of reasons for fixing a non-parole period that is longer or shorter than a standard non-parole period does not require the court to identify the extent to which the seriousness of the offence for which the non-parole period is set differs from that of an offence to which the standard non-parole period is referable.
- (6) A failure of a court to comply with subsection (4) does not invalidate a sentence.
- (7) In this section, *standard non-parole period*—
 - (a) is 9 months; and
 - (b) represents the non-parole period for an offence, being a first offence, in the middle of the range of objective seriousness for offences in this Division.

83GF—Evidentiary

- (1) If, in any criminal proceedings, the court is satisfied beyond reasonable doubt that a particular organisation was, at a particular time, a criminal organisation within the meaning of paragraph (a) of the definition of *criminal organisation* in section 83GA(1), the court may, on the application of the Director of Public Prosecutions, make a declaration to that effect.

- (2) If a declaration is made in relation to an organisation under subsection (1), then that organisation will, for the purposes of any subsequent criminal proceedings, be taken to be a criminal organisation (within the meaning of paragraph (a) of the definition of *criminal organisation* in section 83GA(1)) in the absence of proof to the contrary.

Part 3—Amendment of *Liquor Licensing Act 1997*

9—Insertion of Part 7B

After section 117A insert:

Part 7B—Offences relating to criminal organisations

117B—Preliminary

- (1) In this Part—

Committee means the Crime and Public Integrity Policy Committee of the Parliament;

declared criminal organisation means an entity declared by regulation to be a declared criminal organisation;

prohibited item means an item of clothing or jewellery or an accessory that displays—

- (a) the name of a declared criminal organisation; or
- (b) the club patch, insignia or logo of a declared criminal organisation; or

Note—

The things mentioned in paragraph (b) are also known as the "*colours*" of the organisation.

- (c) any image, symbol, abbreviation, acronym or other form of writing that indicates membership of, or an association with, a declared criminal organisation, including—
 - (i) the symbol "*I%*"; and
 - (ii) the symbol "*I%er*"; and
 - (iii) any other image, symbol, abbreviation, acronym or other form of writing prescribed by regulation for the purposes of this definition.

- (1a) Each regulation made for the purposes of the definition of *declared criminal organisation* in subsection (1) and required to be laid before each House of Parliament in accordance with the *Subordinate Legislation Act 1978* may only relate to 1 entity.

(1b) The Governor may only make a regulation declaring an entity to be a declared criminal organisation for the purposes of the definition of ***declared criminal organisation*** in subsection (1) on the recommendation of the Minister.

5 (1c) A recommendation of the Minister in relation to an entity for the purposes of subsection (1b) may only be made—

10 (a) after the receipt of a report of the Committee in relation to the entity under section 117BA (and, in such a case, the recommendation must include a statement as to the opinion of the Committee on whether or not the entity should be declared a declared criminal organisation for the purposes of this Part); or

15 (b) after the passage of 10 days after a referral in relation to the entity was made to the Committee by the Minister under section 117BA(1).

(1d) The Minister may, in deciding whether to make recommendation for the purposes of subsection (1b), have regard to the following matters:

20 (a) if the Minister has received a report of the Committee in relation to the entity—the report of the Committee;

(b) any information suggesting a link exists between the entity and serious criminal activity;

(c) any convictions recorded in relation to—

25 (i) current or former participants in the entity; or

(ii) persons who associate, or have associated, with participants in the entity;

(d) any information suggesting current or former participants in the entity have been, or are, involved in serious criminal activity (whether directly or indirectly and whether or not the involvement has resulted in any convictions);

30 (e) any information suggesting participants in an interstate or overseas chapter or branch (however described) of the entity have as their purpose, or 1 of their purposes, organising, planning, facilitating, supporting or engaging in serious criminal activity;

35 (f) any other matter the Minister considers relevant.

(1e) Section 10A of the *Subordinate Legislation Act 1978* does not apply in relation to a regulation declaring an entity to be a declared criminal organisation for the purposes of the definition of ***declared criminal organisation*** in subsection (1).

40 (2) A change in the name or membership of an organisation declared by regulation to be a declared criminal organisation does not affect the organisation's status as a declared criminal organisation.

5 (3) If the members of an organisation declared by regulation to be a declared criminal organisation substantially re-form themselves into another organisation, that organisation is taken to form a part of the declared criminal organisation (whether or not the declared criminal organisation is dissolved).

(4) For the avoidance of doubt, nothing prevents the regulations declaring as a criminal organisation an entity that is, at the time of the declaration, based interstate or overseas and not operating in this State.

10 **117BA—Report of Crime and Public Integrity Policy Committee**

(1) The Minister may, by notice in writing, refer a proposal to declare an entity to be a declared criminal organisation by regulation for the purposes of the definition of *declared criminal organisation* to the Committee.

15 (2) On receipt of a referral under subsection (1), the Committee must request the Commissioner of Police (the *Commissioner*) to provide to the Committee any information that the Commissioner thinks fit that may support the referral.

20 (3) The Committee must inquire into and consider a referral under subsection (1) along with any supporting information provided by the Commissioner under subsection (2) and must report to the Minister on whether or not the Committee is of the opinion that the entity should be declared a declared criminal organisation for the purposes of this Part.

25 (4) The Committee may include grounds for its opinion in a report under subsection (3).

117C—Exclusion of persons wearing or carrying prohibited items

30 (1) The following persons must not knowingly allow a person who is wearing or carrying a prohibited item to enter or remain in licensed premises:

(a) the licensee for the premises;

(b) the responsible person for the premises;

35 (c) an employee or agent of the licensee or responsible person working at the premises.

Maximum penalty: \$10 000.

40 (2) It is a defence to a charge of an offence against this section for the defendant to prove that the defendant or another person referred to in subsection (1)(a), (b) or (c) made a request to a police officer in accordance with section 117E(3) in relation to the person wearing or carrying a prohibited item.

117D—Entering and remaining in licensed premises wearing or carrying a prohibited item

A person must not enter or remain in licensed premises if the person is wearing or carrying a prohibited item.

Maximum penalty:

- (a) For a first offence—\$25 000;
- (b) For a second offence—\$50 000 or imprisonment for 6 months;
- (c) For a third or subsequent offence—\$100 000 or imprisonment for 18 months.

117E—Removal of person wearing or carrying prohibited item from premises

- (1) If an authorised person requires a person who is wearing or carrying a prohibited item (the "*prohibited person*") to leave licensed premises, the prohibited person must immediately leave the premises.

Maximum penalty:

- (a) For a first offence—\$25 000;
 - (b) For a second offence—\$50 000 or imprisonment for 6 months;
 - (c) For a third or subsequent offence—\$100 000 or imprisonment for 18 months.
- (2) If a prohibited person fails to leave when required under subsection (1), an authorised person may use necessary and reasonable force to remove the person.
- (3) If a person referred to in section 117C(1)(a), (b) or (c) requests a police officer to exercise a power conferred by this section in relation to a person, the police officer must do so if satisfied that the power may be exercised in relation to the person under this section.
- (4) A prohibited person must not resist an authorised person who is removing the person under subsection (2).

Maximum penalty:

- (a) For a first offence—\$50 000 or imprisonment for 6 months;
- (b) For a second or subsequent offence—\$100 000 or imprisonment for 18 months.

Part 4—Amendment of *Summary Offences Act 1953*

10—Substitution of section 13

Section 13—delete the section and substitute:

13—Consorting

5

(1) A person who—

(a) habitually consorts with convicted offenders (whether in this State or elsewhere); and

10

(b) consorts in this State with those convicted offenders after having been given an official warning in relation to each of those convicted offenders,

is guilty of an offence.

Maximum penalty: Imprisonment for 2 years.

(2) A person does not habitually consort with convicted offenders for the purposes of this section unless—

15

(a) the person consorts with at least 2 convicted offenders (whether on the same or separate occasions); and

(b) the person consorts with each convicted offender on at least 2 occasions.

20

(3) The following forms of consorting are to be disregarded for the purposes of this section if the defendant satisfies the court that the consorting was reasonable in the circumstances:

(a) consorting with family members;

(b) consorting that occurs in the course of lawful employment or the lawful operation of a business;

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(c) consorting that occurs in the course of training or education;

(d) consorting that occurs in the course of the provision of a health service;

(e) consorting that occurs in the course of the provision of legal advice;

30

(f) consorting that occurs in lawful custody or in the course of complying with a court order.

(4) In this section—

consort means consort in person or by any other means, including by electronic or other form of communication;

35

convicted offender means a person who has been convicted of an indictable offence;

corresponding law means a law of the Commonwealth, another State, or a Territory that is prescribed by regulation for the purposes of this definition;

official warning means—

- 5 (a) a warning given by a police officer (orally or in writing) that—
- (i) a convicted offender is a convicted offender; and
 - (ii) consorting with a convicted offender is an offence;
- 10 or
- (b) a warning or other notification given under a corresponding law.

11—Amendment of section 66A—Senior police officer may issue consorting prohibition notice

(1) Section 66A(1)(a)—delete paragraph (a) and substitute:

- 15 (a) the specified person or each specified person—
- (i) has, within the preceding period of 3 years, been found guilty of 1 or more prescribed offences; or
 - (ii) is reasonably suspected of having committed 1 or more prescribed offences within the preceding period of 3 years;
- 20 and

(2) Section 66A(3)—delete subsection (3)

Part 5—Regulations

12—Preliminary

25 The *Subordinate Legislation Act 1978* does not apply in relation to a regulation made pursuant to this Part.

13—Making of *Criminal Law Consolidation (Criminal Organisations) Regulations 2015*

- 30 (1) Schedule 1 has effect to make the *Criminal Law Consolidation (Criminal Organisations) Regulations 2015* (set out in Schedule 1) as regulations under the *Criminal Law Consolidation Act 1935*.
- (2) To remove any doubt, it is declared that the *Criminal Law Consolidation (Criminal Organisations) Regulations 2015*, on the commencement of Schedule 1, stop being a provision of this Act and become regulations made under the *Criminal Law Consolidation Act 1935*.

14—Making of *Liquor Licensing (Declared Criminal Organisations) Regulations 2015*

- 35 (1) Schedule 2 has effect to make the *Liquor Licensing (Declared Criminal Organisations) Regulations 2015* (set out in Schedule 2) as regulations under the *Liquor Licensing Act 1997*.

- (2) To remove any doubt, it is declared that the *Liquor Licensing (Declared Criminal Organisations) Regulations 2015*, on the commencement of Schedule 2, stop being a provision of this Act and become regulations made under the *Liquor Licensing Act 1997*.

5 **Schedule 1—Criminal Law Consolidation (Criminal Organisations) Regulations 2015**

1—Short title

These regulations may be cited as the *Criminal Law Consolidation (Criminal Organisations) Regulations 2015*.

10 **2—Organisations declared to be criminal organisations—section 83GA**

For the purposes of paragraph (c) of the definition of *criminal organisation* in section 83GA(1) of the Act, the following entities are declared to be criminal organisations:

- (a) the motorcycle club known as the Bandidos;
- 15 (d) the motorcycle club known as the Comanchero;
- (e) the motorcycle club known as the Descendants;
- (f) the motorcycle club known as the Finks;
- (i) the motorcycle club known as the Gypsy Joker (also known as the Gypsy Jokers);
- 20 (j) the motorcycle club known as the Hells Angels;
- (p) the motorcycle club known as the Mongols;
- (r) the motorcycle club known as the Nomads;
- (x) the motorcycle club known as the Rebels;
- (y) the motorcycle club known as the Red Devils.

25 **3—Places declared to be prescribed places—section 83GA**

- (1) For the purposes of the definition of *prescribed place* in section 83GA(1) of the Act, the whole of the land contained in each certificate of title listed in the first column of the table below, under the heading "Prescribed place", is declared to be a prescribed place.
- 30 (2) Text set out in italic type in the second column of the table below, under the heading "Description", is a description for convenience purposes only which may relate to the whole or part of the prescribed place and is not to be taken to define the prescribed place.

Prescribed place	Description
Certificate of title 5288/611	<i>7 Barfield Crescent, Edinburgh North</i>
Certificate of title 5430/179	<i>Section 331 Keith Street, Whyalla Playford or Lot 331 Keith Street, Whyalla Playford</i>
Certificate of title 6086/487	<i>Lot 101 Jacobs Street, Whyalla Norrie</i>

Certificate of title 5301/953	<i>2 Albert Street, Clarence Gardens or 2a Albert Street, Clarence Gardens</i>
Certificate of title 5650/303	<i>45 Trafford Street, Mansfield Park or Lot 51 Trafford Street, Mansfield Park</i>
Certificate of title 5109/622	<i>7 Dalgleish Street, Thebarton</i>
Certificate of title 5109/623	<i>7 Dalgleish Street, Thebarton</i>
Certificate of title 5220/939	<i>7 Dalgleish Street, Thebarton</i>
Certificate of title 5220/940	<i>7 Dalgleish Street, Thebarton</i>
Certificate of title 5696/244	<i>108-118 Francis Road, Wingfield</i>
Certificate of title 5249/413	<i>108-118 Francis Road, Wingfield</i>
Certificate of title 5249/414	<i>108-118 Francis Road, Wingfield</i>
Certificate of title 5249/415	<i>108-118 Francis Road, Wingfield</i>
Certificate of title 6142/108	<i>305 Commercial Street West, Mount Gambier</i>
Certificate of title 5681/864	<i>124 Churchill Road North, Dry Creek</i>
Certificate of title 5928/347	<i>3-4/62 Middle Row, Salisbury</i>

Schedule 2—*Liquor Licensing (Declared Criminal Organisations) Regulations 2015*

1—Short title

5 These regulations may be cited as the *Liquor Licensing (Declared Criminal Organisations) Regulations 2015*.

2—Organisations declared to be declared criminal organisations

For the purposes of the definition of *declared criminal organisation* in section 117B(1) of the Act, the following entities are declared criminal organisations:

- (a) the motorcycle club known as the Bandidos;
- 10 (d) the motorcycle club known as the Comanchero;
- (e) the motorcycle club known as the Descendants;
- (f) the motorcycle club known as the Finks;
- (i) the motorcycle club known as the Gypsy Joker (also known as the Gypsy Jokers);
- 15 (j) the motorcycle club known as the Hells Angels;
- (p) the motorcycle club known as the Mongols;
- (r) the motorcycle club known as the Nomads;
- (x) the motorcycle club known as the Rebels;
- (y) the motorcycle club known as the Red Devils.