

2010

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Crimes (Serious Organised Crime) Amendment Bill 2010

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J2009-830

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

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Crimes (Serious Organised Crime) Amendment Bill 2010

A Bill for

An Act to amend the *Crimes Act 1900* and the Criminal Code in relation to serious organised crime

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Crimes (Serious Organised Crime) Amendment Act*
4 *2010*.

5 **2 Commencement**

6 This Act commences on the day after its notification day.

7 *Note* The naming and commencement provisions automatically commence on
8 the notification day (see Legislation Act, s 75 (1)).

1 **Part 2** **Crimes Act 1900**

2 **3** **Legislation amended—pt 2**

3 This part amends the *Crimes Act 1900*.

4 **4** **New section 35A**

5 *insert*

6 **35A** **Affray**

7 A person commits an offence if—

- 8 (a) the person uses, or threatens to use, unlawful violence towards
9 someone else; and
- 10 (b) the use or threat would be likely to cause a reasonable person
11 to fear for his or her safety; and
- 12 (c) either—
- 13 (i) the person intends to use or threaten unlawful violence;
14 or
- 15 (ii) the person is, or ought to be, aware that the use or threat
16 of unlawful violence would be likely to cause a
17 reasonable person to fear for his or her safety.

18 Maximum penalty: imprisonment for 10 years.

Part 3 Criminal Code 2002**5 Legislation amended—pt 3**

This part amends the *Criminal Code 2002*.

**6 Complicity and common purpose
Section 45 (1) to (6)**

substitute

- (1) A person is taken to have committed an offence if the person aids, abets, counsels, procures, or is knowingly concerned in or a party to, the commission of the offence by someone else.
- (2) However, the person commits the offence because of this section only if—
- (a) either—
- (i) the person's conduct in fact aids, abets, counsels, or procures the commission of the offence by the other person; or
- (ii) as a result of the person's conduct, the person in fact is knowingly concerned in or a party to the commission of the offence by the other person; and
- (b) when carrying out the conduct, the person either—
- (i) intends the conduct to aid, abet, counsel, procure, or result in the person being knowingly concerned in or a party to, the commission of any offence (including its fault elements) of the type committed by the other person; or

- 1 (ii) intends the conduct to aid, abet, counsel, procure, or result
2 in the person being knowingly concerned in or a party to,
3 the commission of an offence by the other person and is
4 reckless about the commission of the offence (including
5 its fault elements) in fact committed by the other person.
- 6 (3) To remove any doubt, the person is taken to have committed the
7 offence only if the other person commits the offence.
- 8 (4) Despite subsection (2), any special liability provisions that apply to
9 an offence apply also to the offence of aiding, abetting, counselling,
10 procuring, or being knowingly concerned in or a party to, the
11 commission of the offence.
- 12 (5) A person must not be found guilty of aiding, abetting, counselling,
13 procuring, or being knowingly concerned in or a party to, the
14 commission of an offence if, before the offence was committed, the
15 person—
- 16 (a) ended the person's involvement; and
17 (b) took all reasonable steps to prevent the commission of the
18 offence.
- 19 (6) A person may be found guilty of aiding, abetting, counselling,
20 procuring, or being knowingly concerned in or a party to, the
21 commission of an offence even if the person who committed the
22 offence is not prosecuted or found guilty.

23 **7 New section 45A**

24 *insert*

25 **45A Joint commission**

- 26 (1) A person is taken to have committed an offence if—
- 27 (a) the person and at least 1 other person enter into an agreement
28 to commit an offence; and

- 1 (b) either—
- 2 (i) an offence is committed in accordance with the
- 3 agreement; or
- 4 (ii) an offence is committed in the course of carrying out the
- 5 agreement.
- 6 (2) For subsection (1) (b) (i), an offence is committed *in accordance*
- 7 *with an agreement* if—
- 8 (a) the conduct of 1 or more parties in accordance with the
- 9 agreement makes up the physical elements consisting of
- 10 conduct of an offence (the *joint offence*) of the same type as
- 11 the offence agreed to; and
- 12 (b) to the extent that a physical element of the joint offence
- 13 consists of a result of conduct—the result arises from the
- 14 conduct engaged in; and
- 15 (c) to the extent that a physical element of the joint offence
- 16 consists of a circumstance—the conduct engaged in, or a result
- 17 of the conduct engaged in, happens in the circumstance.
- 18 (3) For subsection (1) (b) (ii), an offence is committed *in the course of*
- 19 *carrying out an agreement* if a person is reckless about the
- 20 commission of an offence (the *joint offence*) that another person in
- 21 fact commits in the course of carrying out the agreement.
- 22 (4) A person commits an offence because of this section only if the
- 23 person and at least 1 other party to the agreement intend that an
- 24 offence will be committed under the agreement.
- 25 (5) An agreement—
- 26 (a) may consist of a non-verbal understanding; and
- 27 (b) may be entered into before, or at the same time as, the conduct
- 28 making up any of the physical elements of the joint offence
- 29 was engaged in.

- 1 (6) A person must not be found guilty of an offence because of this
2 section if, before the conduct making up any of the physical
3 elements of the joint offence concerned was engaged in, the
4 person—
- 5 (a) ended the person’s involvement; and
6 (b) took all reasonable steps to prevent the conduct from being
7 engaged in.
- 8 (7) A person may be found guilty of an offence because of this section
9 even if—
- 10 (a) another party to the agreement is not prosecuted or found
11 guilty; or
12 (b) the person was not present when any of the conduct making up
13 the physical elements of the joint offence was engaged in.
- 14 (8) Any special liability provisions that apply to the joint offence apply
15 also for the purposes of deciding whether a person commits the
16 offence because of the operation of this section.
- 17 (9) To remove any doubt, if a person is taken to have committed an
18 offence because of this section, the offence is punishable as if, apart
19 from the operation of this section, the person had committed the
20 offence.

21 **8 Section 46 heading**

22 *substitute*

23 **46 Commission by proxy**

9 New chapter 6A*insert***Chapter 6A Participation in criminal groups****650 Meaning of *criminal activity*—ch 6A**

In this chapter:

criminal activity means conduct that constitutes an indictable offence.**651 Meaning of *criminal group*—ch 6A**

(1) In this chapter:

criminal group means a group of 3 or more people who have either or both of the following objectives:

- (a) to obtain a material benefit from conduct engaged in in or outside the ACT (including outside Australia) that, if it occurred in the ACT, would constitute an indictable offence under a territory law;
- (b) to commit serious violence offences (whether in or outside the ACT).

(2) A group of people can be a *criminal group* 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 a particular activity; or
- (c) its membership changes from time to time.

- 1 (3) In this section:
- 2 *serious violence offence*—an offence is a *serious violence offence*
- 3 if—
- 4 (a) it is punishable by imprisonment for a term of 5 years or more;
- 5 and
- 6 (b) the conduct constituting the offence involves any of the
- 7 following:
- 8 (i) loss of a person’s life or serious risk of loss of a person’s
- 9 life;
- 10 (ii) serious injury to a person or serious risk of serious injury
- 11 to a person;
- 12 (iii) serious damage to property in circumstances endangering
- 13 the safety of any person.

14 **652 Participating in a criminal group**

15 A person commits an offence if the person—

- 16 (a) participates in a criminal group; and
- 17 (b) knows that the group is a criminal group; and
- 18 (c) knows, or ought to have known, that the person’s participation
- 19 in the criminal group contributes to criminal activity.

20 Maximum penalty: imprisonment for 5 years.

21 **653 Participating in a criminal group—causing harm**

22 (1) A person commits an offence if the person—

- 23 (a) participates in, or intends to participate in, a criminal group;
- 24 and

1 (b) in the course of participating in, or intending to participate in,
2 the criminal group, engages in conduct that causes harm to
3 someone else; and

4 (c) is reckless about causing harm to that person or another person
5 by the conduct.

6 Maximum penalty: imprisonment for 10 years.

7 *Note* The fault element of recklessness can be satisfied by proof of intention,
8 knowledge or recklessness (see Criminal Code, s 20 (4)).

9 (2) A person commits an offence if the person—

10 (a) participates in, or intends to participate in, a criminal group;
11 and

12 (b) in the course of participating in, or intending to participate in,
13 the criminal group, intentionally makes to someone else a
14 threat to cause harm to the other person or a third person; and

15 (c) intends the other person to fear that the threat will be carried
16 out.

17 Maximum penalty: imprisonment for 10 years.

18 **654 Participating in a criminal group—property damage**

19 (1) A person commits an offence if the person—

20 (a) participates in, or intends to participate in, a criminal group;
21 and

22 (b) in the course of participating in, or intending to participate in,
23 the criminal group, engages in conduct that causes damage to
24 property belonging to someone else; and

25 (c) is reckless about causing, damage to that property or any other
26 property belonging to the other person.

27 Maximum penalty: imprisonment for 10 years.

- 1 (2) A person commits an offence if the person—
- 2 (a) participates in, or intends to participate in, a criminal group;
- 3 and
- 4 (b) in the course of participating in, or intending to participate in,
- 5 the criminal group, intentionally makes to someone else a
- 6 threat to damage property belonging to the other person or a
- 7 third person; and
- 8 (c) intends the other person to fear that the threat will be carried
- 9 out.
- 10 Maximum penalty: imprisonment for 10 years.
- 11 (3) In the prosecution of an offence against subsection (2), it is not
- 12 necessary to prove that the person threatened actually feared that the
- 13 threat would be carried.
- 14 (4) In this section:
- 15 *causes* damage or another result—see section 400 (Definitions—
- 16 pt 4.1).
- 17 *damage* property—see section 400 (Definitions—pt 4.1).
- 18 *property*—see section 400 (Definitions—pt 4.1).
- 19 *threat*—see section 402 (Meaning of *threat* for pt 4.1).
- 20 (5) Section 401 (Person to whom property belongs) applies for the
- 21 purposes of this section.

- 1 **655 Recruiting people to engage in criminal activity**
- 2 (1) A person commits an offence if the person recruits someone else to
- 3 carry out, or assist in carrying out, a criminal activity.
- 4 Maximum penalty: imprisonment for 7 years.
- 5 (2) A person commits an offence if the person recruits a child to carry
- 6 out, or assist in carrying out, a criminal activity.
- 7 Maximum penalty: imprisonment for 10 years.
- 8 (3) In this section:
- 9 *recruit* means counsel, procure, solicit, incite or induce.

10 **10 New section 709A**

11 *insert*

12 **709A Threatening etc participant in criminal investigation**

- 13 (1) A person commits an offence if the person causes or threatens to
- 14 cause a detriment to someone else with the intention that the other
- 15 person or a third person will—
- 16 (a) not participate in a criminal investigation; or
- 17 (b) give false or misleading evidence in a criminal investigation;
- 18 or
- 19 (c) withhold true evidence in a criminal investigation; or
- 20 (d) give a false or misleading interpretation as an interpreter in a
- 21 criminal investigation; or
- 22 (e) improperly make a decision as a participant in a criminal
- 23 investigation; or
- 24 (f) improperly influence a participant in a criminal investigation.
- 25 Maximum penalty: 500 penalty units, imprisonment for 5 years or
- 26 both.

- 1 (2) In this section, a person *participates in a criminal investigation* if
 2 the person participates in the investigation as a witness, victim or
 3 legal practitioner or is otherwise assisting police with their inquiries.

4 **11 Dictionary, note 2**

5 *insert*

- 6 • indictable offence (see s 190)
- 7 • summary offence (see s 190)

8 **12 Dictionary, new definitions**

9 *insert*

10 *criminal activity*, for chapter 6A (Participation in criminal
 11 groups)—see section 650.

12 *criminal group*, for chapter 6A (Participation in criminal groups)—
 13 see section 651.

Endnotes

1 **Presentation speech**

Presentation speech made in the Legislative Assembly on 2010.

2 **Notification**

Notified under the Legislation Act on 2010.

3 **Republications of amended laws**

For the latest republication of amended laws, see www.legislation.act.gov.au.
