

A Joint Statement on behalf of the Law Society of South Australia and South Australian Bar Association

The Serious and Organised Crime (Control) Bill 2007 (SA): An unacceptable abrogation of the rule of law and fundamental rights

The State Government's *Serious and Organised Crime (Control) Bill 2007 (SA)* which was introduced by the Attorney-General State has passed through the House of Assembly and is now before the Legislative Council. With the support of the Opposition it will undoubtedly be passed without amendment and soon become law. The objects of the legislation include 'the disruption and restriction of the activities of organisations involved in serious crime' and 'the protection of members of the public from violence associated with such organizations'. Those are plainly admirable objects and matters with which all governments and police forces must undoubtedly be concerned.

Declarations by the Attorney-General and control orders beyond any meaningful scrutiny or challenge

However, this legislation goes too far. It undermines the presumption of innocence, restricts or removes the right of silence, lacks proper procedural fairness, and removes access to the courts to challenge possibly biased, unfounded, or unreasonable decisions of the Attorney-General or Commissioner of Police.

The Attorney-General can make a declaration against any 'organisation' where he is personally satisfied that some of its members whether here, interstate or overseas engage in serious crime without stating the grounds or providing any explanation for that declaration. There is no right of appeal or judicial review available against the making of the declaration. A magistrate may make control and public safety orders which may eventually impact on the liberty of individuals. The Bill provides those orders are to be made on the basis of 'facts' established on the balance of probabilities rather than the criminal onus of proof beyond reasonable doubt. The individual affected by such an order may never know the case against him or her where it is based on what the Commissioner claims is 'criminal intelligence.' There is then no ability to challenge the truth or reliability of what may be unfounded and malicious allegations.

Control orders and prosecutions based on 'secret' information

For example, an individual wanting to object to the making of a control or public safety order after it has been made in their absence will have to state the grounds of their objection fully and in detail and in addition must give evidence on oath. They will have to do that where they may not know and are not ever to know what is alleged against them.

A person may be deemed guilty by association where they have any 'contact' or 'meeting' (which includes any contact by email, telephone, or other electronic means) with a designated person even though that contact may be entirely innocent. Once the contact is proven the onus of proving innocence is upon the person charged. The offence carries up to five years imprisonment.

The passage of the anti-terrorism package of legislation in 2005 and 2006 resulted in laws which undermined fair trials and due process. This Bill represents an extension of those laws intended to combat terrorism, and which at the time were argued to be essential in dealing with that emergency, to other areas of traditional law enforcement.

Whilst as a society we claim adherence to international human rights instruments and conventions such as the *Universal Declaration of Human Rights* and the *International Covenant on Civil and Political Rights* our Parliament is about to pass a law which undermines the rule of law and in particular rights to procedural fairness and a fair trial on criminal charges which carry a penalty of imprisonment of up to five years.

Our society rightly prides itself on the fairness of its justice system and the acknowledgment of personal freedom from executive control. The legislation undermines basic and fundamental civil and political rights of all groups and individuals. We should not allow oppressive and repressive laws to become the norm. The dangers posed by this legislation are too great. It should be withdrawn in its entirety.



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