

CRIMINAL LAW (CRIMINAL ORGANISATIONS DISRUPTION) AMENDMENT BILL 2013

Explanatory Notes

FOR

Amendments To Be Moved During Consideration In Detail By The Honourable Jarrod Bleijie MP

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	Member: Attorney-General
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Title of the Bill

Criminal Law (Criminal Organisations Disruption) Amendment Bill 2013

Objectives of the Amendments

The objectives of the amendments are to:

1. clarify the defence that appears in a number of provisions of the Bill that the criminal organisation is not an organisation that engages in criminal activity; and
2. amend the definition of 'participant' in clauses 39 and 42 to exclude a lawyer acting in a professional capacity.

Achievement of the Objectives

The objectives are achieved by way of amendment to the Bill as described below.

Alternative Ways of Achieving Policy Objectives

There is no alternative way to achieve the policy objectives.

Estimated Cost for Government Implementation

There are no costs associated with the amendments.

Consistency with Fundamental Legislative Principles

The amendment does not raise any fundamental legislative principles issues.

Consultation

Consultation was not undertaken on the proposed amendments.

NOTES ON PROVISIONS

Clause 1 amends clause 4 of the Bill which inserts a new subsection (3D) into section 16 of the *Bail Act 1980*. Currently the subsection provides for the circumstance in which new subsection (3A) does not apply. The amendment to subsection (3D) clarifies that subsection (3A) does not apply if the defendant proves that the criminal organisation is not an organisation that has, as one of its purposes, the purpose of engaging in, or conspiring to engage in, criminal activity.

Clause 2 amends clause 39 of the Bill which amends schedule 2 of the *Crime and Misconduct Act 2001*. The amendment provides that the definition of the term 'participant' does not include a lawyer acting in a professional capacity.

Clause 3 amends clause 42 of the Bill which inserts new sections 60A-60C into the Criminal Code. New sections 60A-60C create new offences which all include a defence.

The amendment to new section 60A (2) clarifies that it is a defence to a charge of an offence against subsection (1) to prove that the criminal organisation is not an organisation that has as one of its purposes, the purpose of engaging in, or conspiring to engage in, criminal activity.

Clause 4 further amends new section 60A to provide that the definition of the term 'participant' does not include a lawyer acting in a professional capacity.

Clause 5 also amends clause 42, in particular, new section 60B (3). The amendment clarifies that it is a defence to a charge of an offence against section 60B (1) or (2) to prove that the criminal organisation is not an organisation that has as one of its purposes, the purpose of engaging in, or conspiring to engage in, criminal activity.

Clause 6 also amends clause 42, in particular, new 60C (2). The amendment clarifies that it is a defence to a charge of an offence against section 60C (1) to prove that the criminal organisation is not an organisation that has as one of its purposes, the purpose of engaging in, or conspiring to engage in, criminal activity.

Clause 7 amends clause 43 which inserts a new circumstance of aggravation into the offence of affray in the Criminal Code (see new section 72 (2)). New section 72(3) contains a defence to the new circumstance of aggravation. The amendment to section 72(3) clarifies that it is a defence to the circumstance of aggravation to prove that the criminal organisation is not an organisation that has as one of its purposes, the purpose of engaging in, or conspiring to engage in, criminal activity.

Clause 8 amends clause 44 which inserts a new circumstance of aggravation into the offence of misconduct in relation to public office in the Criminal Code (see new section 92A(4A)). New section 92A(4B) contains a defence to the new circumstance of aggravation. The amendment to section 92A(4B) clarifies that it is a defence to the circumstance of aggravation to prove that the criminal organisation is not an organisation that has as one of its purposes, the purpose of engaging in, or conspiring to engage in, criminal activity.

Clause 9 amends clause 45 which inserts a new circumstance of aggravation into the offence of grievous bodily harm in the Criminal Code (see new section 320(2)). New section 320(3) contains a defence to the new circumstance of aggravation. The amendment to section 320(3) clarifies that it is a defence to the circumstance of aggravation to prove that the criminal organisation is not an organisation that has as one of its purposes, the purpose of engaging in, or conspiring to engage in, criminal activity.

Clause 10 amends clause 46 which inserts a new circumstance of aggravation into the offence of serious assaults in the Criminal Code (see new section 340(1A)). New section 340(1B) contains a defence to the new circumstance of aggravation. The amendment to section 340(1B) clarifies that it is a defence to the circumstance of aggravation to prove that the criminal organisation is not an organisation that has as one of its purposes, the purpose of engaging in, or conspiring to engage in, criminal activity.

Clause 11 amends clause 47 which inserts a new circumstance of aggravation into the offence of obtaining or dealing with identification information in the Criminal Code (see new section 408D(1AA)). New section 408D(1AB) contains a defence to the new circumstance of aggravation. The amendment to section 408D(1AB) clarifies that it is a defence to the circumstance of aggravation to prove that the criminal organisation is not an organisation that has as one of its purposes, the purpose of engaging in, or conspiring to engage in, criminal activity.