

4 July 2025

The Hon Kyam Maher MLC
Attorney-General
GPO Box 464
ADELAIDE SA 5001

By email: LLPsubmissions@sa.gov.au



The Law Society
OF SOUTH AUSTRALIA

Dear Attorney

Criminal Law Consolidation (Street Gangs) Amendment Bill 2025

1. I refer to your letter dated 2 June 2025, seeking the Society's views on the draft Criminal Law Consolidation (Street Gangs) Amendment Bill 2025 ('**the Bill**'). Thank you for providing a copy of the draft Bill.
2. I note that the original date for providing a response was 30 June 2025, and that the Society sought and was granted an extension of time to respond, to 4 July 2025.
3. We note that the Bill seeks to amend the *Criminal Law Consolidation Act 1935* by inserting a new Part 3BA – Street Gangs to create a new legislative scheme intended to target and disrupt the activities of street gangs, makes related amendments to the public safety order provisions in Part 4 of the *Serious and Organised Crime (Control) Act 2008*.
4. We note that the Bill:
 - 4.1. inserts an express definition of 'street gang', being a group consisting of 3 or more persons who have a purpose of engaging in, organising, planning, facilitating, supporting or otherwise conspiring to engage in serious offences, and who represent an unacceptable risk to the safety of the community'; or a group prescribed as a street gang by regulation on the recommendation of the Minister;
 - 4.2. allows for the Commissioner of Police to make an application to the Supreme Court or Youth Court for a street gang control order;
 - 4.3. empowers the Supreme Court or Youth Court to impose conditions on an adult or youth who is subject to a street gang order;
 - 4.4. makes related amendments to public safety order provisions of Part 4 of the *Serious and Organised Crime (Control) Act 2008*;
 - 4.5. creates a new standalone offence of recruiting a person to become a participant of a street gang, including making related amendments to the existing offence of recruiting a child to engage in criminal activity in Part 7D of the *Criminal Law Consolidation Act 1935*.
5. The new Part 3BA is intended to apply to both adults and youths.
6. This submission was informed by the Society's Criminal Law, Children and the Law and Human Rights Committees.

Section 83GH – Interpretation and Proscription

7. The Society considers that the scope of the definition of ‘street gangs’ and ‘street gang participants’ is too broad and therefore could potentially result in breaches of the right to freedom of expression and right to freedom of association.
8. In particular the definition of ‘participant in a street gang or other group’ is problematic because the scope of ‘participant’ is very broad as it includes ‘a person who attends more than 1 meeting or gathering of persons who participate in the affairs of the group in any way’. A person does not need to have engaged with criminal offending - just in some way be part of a group that is found to have as a purpose to ‘support’ a serious criminal offence - as there is no link in the definition of ‘participant’ and actual offending or the purpose of the group. This definition is clearly aimed at people who take part in ‘gang’ or similar undesirable activities, however the very broad application may capture those who participate in other activities with such a group for benign or otherwise legitimate and pro-social purposes. Benign purposes might include playing sport or other social grounds, however more importantly it could include counsellors, psychologists, religious organisations, NGO’s or other organisations aimed at assisting such people to lead a more pre-social life. The Society submits that the definition of ‘participant’ should be narrowed by inclusion of a state of mind such as ‘knowingly in company’ or an intention to support or facilitate the gang activity, or alternatively there should be an included ‘without lawful excuse’ carve-out. This would alleviate risk to members of the community in being prosecuted simply by associating with another person.
9. The Society notes concerns about the proscription process for street gangs proposed in the Bill because of:
 - 9.1. the lack of clear criteria to guide the use of the Minister’s proscription powers; and
 - 9.2. the exclusion of procedural fairness (at s 83GH(4)) and lack of opportunities to oppose or seek review of the proposed proscription.

Control Orders and Interim Orders

10. The Society is concerned by the proposed *ex parte* process for obtaining an interim street gang order under s83GJ and the extent to which a person subject to the order may not be aware of some of the evidence against him or her (noting that this relates to the definition of the term ‘criminal intelligence’ in s83GH).
11. In relation to the section 83GI provisions for control orders, whilst controlling attendance at locations and association is legitimate, the Bill also seeks to permit regulating using a communication device or being in possession of the communication device. The Society notes that this is an extremely broad and very prohibitive condition that appears to go beyond what is necessary to control undesirable activities.
12. The Society expresses concern about the duration of the control orders (at s83GK); noting that interim orders can be in place for 6 months and confirmed orders for 2 years, and that this is an extremely long time for a young person to be subject to very serious restrictions on their rights and to be constantly vulnerable for criminal liability – including liability for the acts of other people in the ‘gang’, which is extremely loosely defined.
13. The Society expresses concern about the process at section 83GL(5), by which an interim order can be varied without having to give notice to a respondent.

Section 83GO - Appeal

14. The Society observes that it is unnecessary to include this, as the appeal provision appears to just repeat the orthodox position, that is orders made by Court in the first place stand unless the Appeal Court stays them.

Offence provisions

15. The Society observes that some parts of the offence provisions are so broad that it is not clear what is the conduct they seek to criminalise. In particular:
 - 15.1. Section 83GS - Offence to contravene or fail to comply with street gang control order: The Society observes that section 83GS seems to capture a mens rea of 'recklessness' but it is not clear whether this is intended to refer to recklessness as to knowledge of the order and its terms, or recklessness in terms of mindset when undertaking an action that constitutes a contravention of the order.
 - 15.2. Section 83GT - Offence to recruit persons to become participants in street gangs: The Society submits that the offence provision should have the phrase 'without reasonable excuse' inserted at the start. This goes hand in hand with the comments above regarding the broad definition of 'participants' at section 83GH. There are people who may associate with members of a gang for reasons other than participation in the gang but they may do so in circumstances where they know the person is a member. The 'without reasonable excuse' carve-out would provide protection to such people and avoid the risk of people committing this offence unintentionally.

Section 83GZ - Presumption as to membership

16. The Society observes that this section is an evidentiary aid via a presumption of membership. Whilst on the face of it this is not unreasonable as such provisions exist elsewhere, the Society suggests that the inclusion of tattoos is problematic, as it is difficult for a person to remove a tattoo and it may lead to them being charged multiple times for no reason other than they cannot get it removed.

General comments

17. The Society notes the amorphous nature of these 'groups' and that membership of the group may change from week to week.
18. The Society is concerned that the Bill is intended to apply to children aged 10 and over, and notes that there are less restrictive measures that could be used in response to youth crime – including the laws already in place, and diversionary programs already well developed in other jurisdictions.
19. The application of the Bill serves to criminalise children as young as 10 years old, who may never have been involved in criminal behaviour but are in this process criminalised.
20. The Society notes the Report of the Advisory Commission into the Incarceration Rates of Aboriginal Peoples in South Australia¹, and that the Bill may contradict the following Recommendations:
 - 20.1. Recommendation 3: *That the Government of South Australia commission an independent review of all criminal justice legislation to identify and amend provisions that unfairly discriminate against and prejudice Aboriginal people.*
 - 20.2. Recommendation 18: *That the Government of South Australia fund Aboriginal Community Controlled Organisations to develop and implement health and behavioural*

¹ [Report of the Advisory Commission into the Incarceration Rates of Aboriginal Peoples](#), February 2023

intervention programs and support services for young people under 14 years of age who display offending behaviours, or behaviour associated with needs not being met, and their family members.

Human Rights and International Conventions

21. The Society observes that the impacts of the Bill on human rights are significant and numerous – deriving from the fact that the regime proposed in the Bill seeks to criminalise associations and communications between people *prior* to any intentional engagement in criminal activity – and empowers the Minister to make lists of ‘gangs’ that are unlawful and the Commissioner (and then the Court) to impose restrictions on the movement, activities, communications and associations between members of those ‘gangs’ or anyone who may engage with them (broadly defined).
22. Noting that the scheme is intended to apply to children aged 10 and over ‘in the same way as it applies to an adult’ (s83GX – Application of Part to children) with very limited protection or safeguards for children’s right, may constitute a breach of Article 37 of the Convention on the Rights of the Child.
23. The Society observes that the *ex parte* process for making a street gang order (under s83CJ) could disproportionately impact the right of an individual to be informed, at the time of arrest, of the reasons for his or her arrest and be promptly informed of any charges against him or her, in contravention of Article 9(2) of the International Covenant on Civil and Political Rights.
24. There are also concerns arising from s83GQ and the standard of proof to be applied (balance of probabilities) to all aspects of the regime apart from criminal offences. This may further dilute the legal rights and procedural rights of a respondent under Article 9 of the International Covenant on Civil and Political Rights.
25. The Society observes that the conditions that might attach to a street gang control order do not appear to provide any scope for a person to associate with family members, attend a family home, or attend a family event. This might constitute a violation of the right to privacy and/or family life under Article 17 of the International Covenant on Civil and Political Rights, which states that “no one shall be subjected to arbitrary or unlawful interference with his privacy, home or correspondence”.
26. The Society observes that the conditions that might attach to a street gang control order do not appear to provide any scope for activities engaged in for the purpose of discussing, researching or engaging in political or legal affairs. This might include associating with others, attending certain places, or using a telephone or computer. This might constitute a violation of the right to take part in the conduct of public affairs under Article 25 of the International Covenant on Civil and Political Rights, which recognises and protects the right of every citizen to take part in the conduct of public affairs.
27. The Society observes that the conditions that might attach to a street gang control order also do not appear to provide any scope for possessing cash for the purchase of household items, goods or services, which might constitute a violation of the International Covenant on Economic, Society and Cultural Rights.

Should you have any queries, please do not hesitate to contact me.

Yours sincerely



Marissa Mackie
President