

Serial 65
Justice Legislation Amendment (Group Criminal Activities) Bill 2006
Dr Toyne

**A BILL
for
AN ACT**

to amend legislation to deal with group criminal activities

NORTHERN TERRITORY OF AUSTRALIA
JUSTICE LEGISLATION AMENDMENT (GROUP CRIMINAL
ACTIVITIES) ACT 2006

Act No. [] of 2006

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2006

AN ACT

to amend legislation to deal with group criminal activities

[Assented to [] 2006]

[Second reading [] 2006]

The Legislative Assembly of the Northern Territory enacts as follows:

PART 1 – PRELIMINARY MATTERS

1. Short title

This Act may be cited as the *Justice Legislation Amendment (Group Criminal Activities) Act 2006*.

2. Commencement

This Act commences on the date fixed by the Administrator by *Gazette* notice.

PART 2 – AMENDMENT OF *SENTENCING ACT*

3. Act amended

This Part amends the *Sentencing Act*.

4. Amendment of section 3 (Interpretation)

Section 3(1)

insert (in alphabetical order)

"non-association order", see section 97A(2)(a);

"place restriction order", see section 97A(2)(b);

5. Amendment of section 5 (Sentencing guidelines)

(1) After section 5(2)(d)

insert

(da) any harm done to a community as a result of the offence (whether directly or indirectly); and

(2) Section 5(2)(a) to (d) and (e) to (q), at the end

insert

and

6. New section 6A

After section 6, in Part 2

insert

6A. Aggravating factors

Without limiting section 5(2)(f), any of the following circumstances in relation to the commission of an offence may be regarded as an aggravating factor for that section:

(a) the offender committed the offence in company with one or more persons;

(b) the offender was armed with a weapon when committing the offence;

(c) the offence was committed during a public disturbance;

(d) the offence was committed without regard to public safety;

(e) the offence was motivated by hate against a group of people;

(f) the offence involved violence or the threat of violence;

- (g) the offence involved more than one victim;
- (h) the offence involved substantial planning and organisation.

7. New Part 5, Division 1A

After section 97

insert

Division 1A – Non-association and place restriction orders

97A. When court may make order

(1) This section applies when a court sentences an offender for an offence (a "significant offence") the maximum penalty for which is imprisonment for 12 months or more.

(2) The court may make one or more of the following orders if the court considers doing so may prevent the offender from committing another significant offence:

- (a) a non-association order prohibiting the offender from one or both of the following as specified in the order:
 - (i) being in company with one or more specified persons during a specified period;
 - (ii) communicating in any way (including by post, fax, phone and other electronic means, and whether directly or indirectly) with one or more specified persons during a specified period;
 - (b) a place restriction order prohibiting the offender, except as provided in the order, from visiting one or more specified places (including a district or specific location) during a specified period.
- (3) The period specified under subsection (2)(a) or (b):
- (a) is not limited by any term of imprisonment imposed on the offender; but
 - (b) must not exceed 12 months.
- (4) An order imposed on the offender under subsection (1):
- (a) is in addition to, and not instead of, any other penalty for the offence; but

- (b) must not be made if the court makes one or more orders under this Act in relation to the offence without recording a conviction for the offence.

(5) This section does not limit the court's power to make another order or direction in relation to the offence under this or another Act.

(6) Without limiting subsection (5), this section does not affect the court's power to impose a condition under section 13(1)(c) or 40(2).

97B. Explanation of order

(1) A court that has imposed a non-association order or place restriction order on an offender must ensure all reasonable steps are taken to explain to the offender (in language the offender can readily understand):

- (a) the offender's obligations under the order; and
- (b) the consequences of not complying with the order.

(2) The order is not invalidated by a failure to comply with subsection (1).

97C. Commencement of order

A non-association order or place restriction order commences on the date it is made or another date specified in the order.

97D. Contravention of order

- (1) A person is guilty of an offence if the person:
 - (a) is subject to a non-association order or place restriction order; and
 - (b) contravenes the order.

Maximum penalty: 100 penalty units or imprisonment for 6 months.

(2) Subsection (1) does not apply if the person contravened the order in compliance with another court order.

(3) It is a defence for an offence against subsection (1) if the defendant proves that:

- (a) the defendant has a reasonable excuse; or
- (b) for a non-association order – the defendant, having unintentionally associated with a person specified in the order under section 97A(2)(a), terminated the association immediately.

(4) In subsection (3), a reference to an association with the specified person is a reference to being in company, or communicating, with the specified person in contravention of the order.

97E. Variation of order on application

(1) A person who is subject to a non-association order or place restriction order may apply for a variation or revocation of the order.

(2) The application must be made to the court that made the order.

(3) The application must be accompanied by a copy of the order and each previous variation made to the order.

(4) The application may be made only by leave of the court.

(5) The leave may be granted only if the court is satisfied it should grant the leave in the interest of justice, having regard to changes in the applicant's circumstances since the order was made or last varied.

(6) The court may refuse to consider granting the leave if it is satisfied the application is frivolous or vexatious.

(7) If the leave is granted:

(a) the court must give notice of the application to each party to the proceedings in which the order was made; and

(b) the party is entitled to be heard in relation to the application.

(8) The court must deal with the application by:

(a) varying or revoking the order as the court considers appropriate in the circumstances; or

(b) dismissing the application.

97F. Variation of order following conviction

(1) This section applies to a person who:

(a) is subject to a non-association order or place restriction order in relation to an offence; and

(b) is subsequently sentenced by a court for another offence.

(2) The court may vary or revoke the order when sentencing the person for the other offence.

97G. Order may not be extended by variation

The power to vary an order under section 97E or 97F does not include a power to extend the period specified in the order under section 97A(2)(a) or (b).

97H. Certain information not to be published or broadcast

(1) A person is guilty of an offence if the person publishes or broadcasts, or otherwise discloses to someone:

- (a) the fact that a named person is specified in a non-association order under section 97A(2)(a) (whether the order is still in force); or
- (b) any information calculated to identify such a person.

Maximum penalty: 200 penalty units.

(2) Subsection (1) does not apply in relation to:

- (a) the publication or broadcasting of a report that is authorised by a court; and
- (b) the disclosure of information to any of the following persons:
 - (i) the person subject to the order (the "offender");
 - (ii) a person involved in administering the order or other penalty imposed on the offender;
 - (iii) a person specified in the order under section 97A(2)(a);
 - (iv) a person involved in proceedings for an alleged breach of the order;
 - (v) a person to whom the information is required to be disclosed under a law in force in the Territory;
 - (vi) a police officer;
 - (vii) a person authorised by a court to receive the information.

PART 3 – AMENDMENT OF *BAIL ACT*

8. Act amended

This Part amends the *Bail Act*.

9. Amendment of section 3 (Interpretation)

- (1) Section 3(1), definition of "bail condition", after "27"

insert

or 27A

- (2) Section 3(3)(a), (b) and (c), at the end

insert

or

- (3) Section 3(3)(e)

omit

person,

substitute

person; or

- (4) After section 3(3)(e)

insert

(f) section 27A(1)(a) or (b) – to entering into the agreement;

10. Amendment of section 27 (Conditions of bail)

- (1) Section 27(2)

omit

only may be imposed on the grant of bail –

substitute

may be imposed on the grant of bail under this section:

- (2) After section 27(2)

insert

(2A) A condition imposed under this section may be in addition to, or instead of, a condition imposed under section 27A.

11. New section 27A

After section 27

insert

27A. Bail conditions regarding non-association and place restriction

(1) One or more of the following conditions may be imposed on the grant of bail under this section:

(a) a condition that the accused person enter into an agreement to comply with specified requirements prohibiting the person from one or both of the following as specified in the agreement:

- (i) being in company with one or more specified persons while on bail;
- (ii) communicating in any way (including by post, fax, phone and other electronic means, and whether directly or indirectly) with one or more specified persons while on bail;

(b) a condition that the accused person enter into an agreement to comply with specified requirements prohibiting the person, except as provided in the agreement, from visiting one or more specified places (including a district or specific location) while on bail.

(2) A condition imposed under this section may be in addition to, or instead of, a condition imposed under section 27.

(3) An agreement entered under subsection (1) must be in writing.

(4) The accused person is taken not to have contravened a condition imposed under subsection (1) if:

(a) the accused person:

- (i) contravened the condition in compliance with a court order;
or
- (ii) otherwise has a reasonable excuse; or

(b) for a condition mentioned in subsection (1)(a) – the accused person, having unintentionally associated with a person specified under that subsection for that condition, terminated the association immediately.

(5) In subsection (4)(b), a reference to an association with the specified person is a reference to being in company, or communicating, with the specified person in contravention of the condition.

12. Amendment of section 29 (Entry into agreement)

Section 29, after "27"

insert

or 27A

PART 4 – AMENDMENT OF CRIMINAL CODE

13. Act amended

This Part amends the Criminal Code.

14. Amendment of section 1 (Definitions)

Section 1

insert (in alphabetical order)

"riot", see section 63(4);

"riotously assembled", see section 63(4);

15. Amendment of section 28 (Circumstances in which force causing death or grievous harm is justified)

Section 28(d)

omit, substitute

(d) in the case of a police officer when attempting to suppress a riot if all of the following apply:

(i) the officer has orally ordered the immediate dispersal of persons who are riotously assembled (the "rioters") or has attempted to give that order;

(ii) the officer believes on reasonable grounds that, because of the rioters' conduct:

(A) someone other than a rioter is in danger of death or grievous harm; or

(B) an offence in relation to property punishable with imprisonment for life is being committed;

- (iii) if it is practicable to do so – the officer attempts to stop the conduct and gives the rioters a reasonable opportunity to stop the conduct;

16. Repeal and substitution of sections 66 to 68

Sections 66 to 68

repeal, substitute

66. Offences relating to riots

- (1) A person is guilty of an offence if:
 - (a) the person is one of 12 or more people who are riotously assembled; and
 - (b) a police officer orally orders those people to disperse immediately; and
 - (c) the person:
 - (i) fails to comply with the order as soon as the circumstances permit; and
 - (ii) continues to assemble with people riotously.

Maximum penalty: Imprisonment for 14 years.

- (2) A person is guilty of an offence if:
 - (a) the person engages in conduct that involves a violent act; and
 - (b) the conduct results in the prevention of a police officer from orally ordering the immediate dispersal of 12 or more people who are riotously assembled; and
 - (c) one of the following subparagraphs applies:
 - (i) the person engages in the conduct intending or knowing that it involves a violent act and has the result mentioned in paragraph (b);
 - (ii) the person is reckless as to whether the conduct involves a violent act and has that result.

Maximum penalty: Imprisonment for 14 years.

- (3) A person is guilty of an offence if:

- (a) the person is one of 12 or more people who are riotously assembled; and
- (b) a police officer is prevented from orally ordering the immediate dispersal of those people; and
- (c) the person, knowing about the prevention of the making of the oral order, continues to assemble with people riotously.

Maximum penalty: Imprisonment for 14 years.

- (4) A person is guilty of an offence if the person:
 - (a) is one of 12 or more people who are riotously assembled; and
 - (b) unlawfully damages property while the people are so assembled.

Maximum penalty: Imprisonment for 14 years.

(5) To avoid doubt, an offence against subsection (1), (2), (3) or (4), may be committed in private or public places.

(6) In this section:

"conduct that involves a violent act" includes:

- (a) conduct capable of causing injury to a person or damage to property (whether or not it actually causes such injury or damage); and
- (b) a threat to engage in such conduct.

17. Amendment of Schedule 1

Schedule 1, at the beginning

insert

Section 66 (Offences relating to riots)

PART 5 – AMENDMENT OF SUMMARY OFFENCES ACT

18. Act amended

This Part amends the *Summary Offences Act*.

19. Amendment of section 5 (Interpretation)

Section 5

insert (in alphabetical order)

"loiter" means to idle or linger about;

20. Repeal and substitution of section 47AA

Section 47AA

repeal, substitute

47AA. Violent disorder

- (1) A person is guilty of an offence if:
- (a) the person is one of 2 or more people engaging in conduct that involves a violent act; and
 - (b) the conduct would result in anyone who is in the vicinity and of reasonable firmness fearing for his or her safety; and
 - (c) the person:
 - (i) intends or knows that the conduct involves a violent act and would have the result mentioned in paragraph (b); or
 - (ii) is reckless as to whether the conduct involves a violent act and would have that result.

Maximum penalty: Imprisonment for 12 months.

- (2) To avoid doubt:
- (a) to establish the offence, it is unnecessary to prove that each of the 2 or more people individually engaged in conduct that involves a violent act and would have the result mentioned in subsection (1)(b); and
 - (b) no person of reasonable firmness need actually be, or be likely to be, present in the vicinity for the offence to be committed; and
 - (c) the offence may be committed in private or public places; and
 - (d) subsection (1)(c) does not affect the determination of the number of people mentioned in subsection (1)(a).

(3) The offence is an offence to which Part IIAA of the Criminal Code applies.

Note for subsection (3)

Part IIAA of the Criminal Code states the general principles of criminal responsibility (including burdens of proof and general defences) and defines terms used for offences, for example, "conduct", "intention" and "recklessness".

(4) In this section:

"conduct that involves a violent act" includes:

- (a) conduct capable of causing injury to a person or damage to property (whether or not it actually causes such injury or damage); and
- (b) a threat to engage in such conduct.

21. Amendment of section 47A (Loitering)

(1) Section 47A, heading

omit, substitute

Loitering – general offence

(2) Section 47A(3)

omit

22. New section 47B

After section 47A

insert

47B. Loitering – offence following notice

(1) A police officer may give a written notice to a person who is loitering at a public place:

- (a) requiring the person to stay away from the place or an area including the place for a specified period not exceed 72 hours from the time the notice is given; and
- (b) specifying the place or area, and the period, as is reasonable in the circumstances; and
- (c) specifying the consequences of contravening the notice.

- (2) The officer may do so only if the officer reasonably suspects:
 - (a) the person has committed, or is about to commit, an offence at the place or in the area; or
 - (b) the person is part of a group of people at the place and one or more people in the group have committed or are about to commit an offence at the place or in the area.
- (4) The person is guilty of an offence if:
 - (a) the officer gives the person the notice; and
 - (b) the person contravenes the notice.

Maximum penalty: 100 penalty units or imprisonment for 6 months.

(5) It is a defence for an offence against subsection (4) if the defendant proves that the defendant has a reasonable excuse.

(6) The officer must ensure all reasonable steps are taken to explain to the person (in language the person can readily understand) the matters mentioned in subsection (1)(a) to (c).

(7) The notice is not invalidated by a failure to comply with subsection (6).

23. New section 55A

After section 55

insert

55A. Consorting between known offenders

- (1) A person is guilty of an offence if:
 - (a) the Commissioner gives a written notice to the person under this section prohibiting the person, for a specified period not exceeding 12 months, from one or both of the following as specified in the notice:
 - (i) being in company with one or more specified persons;
 - (ii) communicating in any way (including by post, fax, phone and other electronic means, and whether directly or indirectly) with one or more specified persons; and
 - (b) the person contravenes the notice.

Maximum penalty: Imprisonment for 2 years.

(2) It is a defence for an offence against subsection (1) if the defendant proves that:

- (a) the defendant has a reasonable excuse; or
- (b) the defendant, having unintentionally associated with a person specified in the notice, terminated the association immediately.

(3) In subsection (2), a reference to an association with the specified person is a reference to being in company, or communicating, with the specified person in contravention of the notice.

(4) The Commissioner may give a notice to a person (the "notified person") under subsection (1) only if:

- (a) the notified person and each person specified in the notice (a "specified person") have each been found guilty of a prescribed offence; and
- (b) the Commissioner reasonably believes that giving the notice is likely to prevent the commission of a prescribed offence involving:
 - (i) 2 or more offenders; and
 - (ii) substantial planning and organisation.

(5) The notice must specify:

- (a) the notified person's obligations under the notice; and
- (b) the consequences of contravening the notice.

(6) The Commissioner must ensure all reasonable steps are taken to explain to the notified person (in language the notified person can readily understand) the matters mentioned in subsection (5)(a) and (b).

(7) In addition, the Commissioner must give each specified person a notice under subsection (1) imposing similar obligations in relation to prohibiting the specified person from one or both of the following:

- (a) being in company with the notified person and each of the other specified persons;
- (b) communicating with the notified person and each of the other specified persons.

(8) However, the Commissioner may disregard subsection (7) in exceptional circumstances.

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(9) A notice under subsection (1) is not invalidated by a failure to comply with subsections (6) to (8).

(10) A reference to a prescribed offence in subsection (4) is a reference to an offence:

- (a) prescribed by regulation; and
- (b) the maximum penalty for which is imprisonment for 10 years or more.
