

South Australia



CRIMINAL LAW (UNDERCOVER OPERATIONS) ACT 1995

No. 46 of 1995

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ELIZABETHAE II REGINAE

A.D. 1995

No. 46 of 1995

An Act to authorise the use of undercover operations for the purposes of criminal investigation; and for other purposes.

[Assented to 15 June 1995]

The Parliament of South Australia enacts as follows:

Short title

1. This Act may be cited as the *Criminal Law (Undercover Operations) Act 1995*.

Interpretation

2. In this Act—

"approved undercover operations" means—

- (a) undercover operations approved under this Act; or
- (b) undercover operations approved by a law enforcement authority before the commencement of this Act that are of a type that could have been reasonably approved under this Act if this Act had been in force when the operations commenced;

"authorised participant" in approved undercover operations means—

- (a) a person authorised under the terms of the approval to take part in the operations; or
- (b) in the case of operations that began before the commencement of this Act—a person authorised by a law enforcement authority to take part in the operations;

"senior police officer" means a member of the police force of or above the rank of Superintendent;

"serious criminal behaviour" means behaviour involving the commission of—

- (a) an indictable offence; or
- (b) an offence against the *Controlled Substances Act 1984*; or
- (c) an offence against section 34(1) or (2) or 44(1) or (2) of the *Fisheries Act 1982*; or
- (d) an offence against section 63(1)(a) or 75 of the *Lottery and Gaming Act 1936*; or
- (e) an offence against section 47(1), (2) or (4), 48(1), 48A(1), 51(1) or 60(1) of the *National Parks and Wildlife Act 1972*; or
- (f) an offence against section 117(1) of the *Racing Act 1976*; or
- (g) an offence against section 37 or 38 of the *Summary Offences Act 1953*;

"undercover operations" means operations (which may include conduct that is apart from this Act illegal) of which the intended purpose is to provide persons engaging or about to engage in serious criminal behaviour an opportunity to—

- (a) manifest that behaviour; or
- (b) provide other evidence of that behaviour.

Approval of undercover operations

3. (1) A senior police officer may approve undercover operations for the purpose of gathering evidence of serious criminal behaviour.

(2) An approval may not be given unless the officer—

- (a) suspects, on reasonable grounds, that persons (whose identity may—but need not—be known to the officer) are engaging or about to engage in serious criminal behaviour of the kind to which the proposed undercover operations relate; and
- (b) is satisfied on reasonable grounds that the ambit of the proposed undercover operations is not more extensive than could reasonably be justified in view of the nature and extent of the suspected serious criminal behaviour; and
- (c) is satisfied on reasonable grounds that the means are proportionate to the end *ie* that the proposed undercover operations are justified by the social harm of the serious criminal behaviour against which they are directed; and
- (d) is satisfied on reasonable grounds that the undercover operations are properly designed to provide persons engaging or about to engage in serious criminal behaviour an opportunity—
 - (i) to manifest that behaviour; or
 - (ii) to provide other evidence of that behaviour,

without undue risk that persons without a predisposition to serious criminal behaviour will be encouraged into serious criminal behaviour that they would otherwise have avoided.

(3) Before giving approval the officer must consider whether approval for similar operations has previously been sought, and, if sought and refused, the reasons for that refusal.

(4) The approval must—

- (a) be in writing; and
- (b) be signed by the officer giving it; and
- (c) specify the persons who are authorised to participate in the operations; and
- (d) state the nature of the conduct in which the participants are authorised to engage; and
- (e) specify the date and time the senior police officer signs the approval and the time from which it takes effect (which may be contemporaneous with or later than the time of signing but cannot be earlier); and
- (f) state a period (not exceeding 3 months) for which the approval is given.

(5) A senior police officer may renew an approval from time to time for a further period not exceeding 3 months.

(6) A senior police officer must, within 14 days after giving or renewing an approval, cause a copy of the instrument of approval or renewal to be given to the Attorney-General.

Legal immunity of persons taking part in approved undercover operations

4. (1) Despite any other law, an authorised participant in approved undercover operations incurs no criminal liability by taking part in undercover operations in accordance with the terms of the approval.

(2) This section operates both prospectively and retrospectively.

Report on approvals

5. The Attorney-General must, on or before 30 September in each year, cause a copy of a report to be laid before both Houses of Parliament specifying—

- (a) the classes of offence for which approvals were given or renewed under this Act during the period of 12 months ending on the preceding 30 June; and
- (b) the number of approvals given or renewed during that period for offences of each class.

Regulations

6. The Governor may make regulations for the purposes of this Act.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor