



CRIMINAL LAW CONSOLIDATION (APPLICATION OF CRIMINAL LAW) AMENDMENT ACT 1992

No. 63 of 1992

SUMMARY OF PROVISIONS

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ELIZABETHAE II REGINAE

A.D. 1992

No. 63 of 1992

An Act to amend the Criminal Law Consolidation Act 1935.

[Assented to 12 November 1992]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Criminal Law Consolidation (Application of Criminal Law) Amendment Act 1992*.

(2) The *Criminal Law Consolidation Act 1935* is referred to in this Act as “the principal Act”.

Insertion of new s. 5c

2. The following section is inserted immediately after section 5b of the principal Act:

Territorial application of the criminal law of the State

5c. (1) An offence against the law of the State is committed if—

(a) all elements necessary to constitute the offence (disregarding territorial considerations) exist;

and

(b) a territorial nexus exists between the State and at least one element of the offence.

(2) A territorial nexus exists between the State and an element of an offence if—

(a) the element is or includes an event occurring in the State;

or

(b) the element is or includes an event that occurs outside the State but while the person alleged to have committed the offence is in the State.

(3) The existence of the territorial nexus required by subsection (1) (b) (the “necessary territorial nexus”) will be presumed and the presumption is conclusive unless rebutted under subsection (4).

(4) If a person charged with an offence disputes the existence of the necessary territorial nexus, the court will proceed with the trial of the offence in the usual way and if at the

conclusion of the trial the court or, in the case of a jury trial, the jury is satisfied, on the balance of probabilities, that the necessary territorial nexus does not exist, it must, subject to subsection (5), make or return a finding to that effect and the charge will be dismissed.

(5) If the court or, in the case of a jury trial, the jury would, disregarding territorial considerations, find the person not guilty of the offence (but not on the ground of insanity), the court or jury must make or return a finding of not guilty.

(6) The issue of whether the necessary territorial nexus exists must, if raised before the trial, be reserved for consideration at the trial.

(7) A power or authority exercisable on reasonable suspicion that an offence has been committed may be exercised in the State if the person in whom the power or authority is vested suspects on reasonable grounds that the elements necessary to constitute the offence exist (whether or not that person suspects or has any ground to suspect that the necessary territorial nexus with the State exists).

(8) This section applies to offences committed before or after its commencement but does not apply to an offence if—

(a) the law under which the offence is created makes the place of commission (explicitly or by necessary implication) an element of the offence;

(b) the law under which the offence is created is a law of extraterritorial operation and explicitly or by necessary implication excludes the requirement for a territorial nexus between the State and an element of the offence;

or

(c) a charge had been laid before the commencement of this section.

(9) This section is in addition to and does not derogate from any other basis on which the courts of the State may exercise criminal jurisdiction.

(10) In this section—

“event” means any act, omission, occurrence, circumstance or state of affairs (not including intention, knowledge or any other state of mind);

“State” includes—

(a) the territorial sea adjacent to the State;

and

(b) the sea on the landward side of the territorial sea that is not within the limits of the State.

(11) Where a person charged with a particular offence could be found guilty on that charge of some other offence or offences, that person will, for the purposes of this section, be taken to be charged with each offence.

Repeal of s. 17

3. Section 17 of the principal Act is repealed.

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

ROMA MITCHELL Governor