



New South Wales

Crimes (Criminal Organisations Control) Bill 2009

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to disrupt and restrict the activities of organisations (*declared organisations*):

- (a) whose members associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity and that represent a risk to public safety and order in New South Wales, and
- (b) which are the subject of a declaration by an eligible Judge (a Supreme Court judge acting as *persona designata*).

The Bill provides for the Supreme Court to make interim control orders in relation to members (*controlled members*) of declared organisations, which may later be confirmed (or confirmed with variations) by confirmatory control orders. The making of orders has the following ramifications for the controlled member:

- (a) the controlled member will commit an offence if he or she associates with another controlled member of the particular declared organisation,
- (b) any authorisation to carry on certain specified activities will, on the making of an interim control order, be suspended and, on the making of the confirmatory control order, be cancelled.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Clause 3 defines certain words and expressions used in the proposed Act, including *serious criminal activity*, *member* of an organisation and *criminal intelligence*.

Clause 4 provides for the extraterritorial operation of the proposed Act.

Part 2 Declared organisations

Clause 5 provides for Judges of the Supreme Court who consent to being eligible Judges for the purposes of the proposed Part to be declared to be eligible Judges by the Attorney General.

Clause 6 enables the Commissioner of Police to apply for a declaration in relation to a particular organisation as described in the Overview above and sets out the requirements for such an application.

Clause 7 requires notice of the making of the application to be published in the Gazette and in at least one newspaper circulating throughout New South Wales inviting members of the organisation concerned and other persons who may be directly affected (whether or not adversely) by the outcome of the application to make submissions to the eligible Judge at a hearing to be held on a date specified in the notice.

Clause 8 gives the persons referred to in the notice the right to be present and to make submissions at the hearing unless information to be disclosed at the hearing involves criminal intelligence. Other persons who may be directly affected may also be present and make submissions with leave. Provision is also made to enable submissions to be made in private in certain circumstances.

Clause 9 enables the eligible Judge to make the declaration sought by the Commissioner if the eligible Judge is satisfied that members of the organisation associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity and the organisation represents a risk to public safety and order in this State. The proposed section sets out the matters the eligible Judge may take into account in deciding whether or not to make a declaration.

Clause 10 requires notice to be given of the making of the declaration in the Gazette and in at least one newspaper circulating throughout the State.

Clause 11 provides for the duration of declarations.

Clause 12 provides for the revocation of declarations.

Clause 13 provides that the rules of evidence do not apply to the hearing of an application for a declaration and that the eligible Judge is not required to provide reasons for making a declaration.

Part 3 Control of members of declared organisations

Division 1 Interim control orders

Clause 14 enables the Supreme Court, on the application of the Commissioner of Police, to make an interim control order in relation to one or more members of a declared organisation pending the hearing and final determination of a confirmatory control order in relation to the member or members concerned. The order may be made in the absence of, and without notice to, the member concerned but only takes effect when the member is notified of its making in accordance with proposed sections 15 and 16.

Clause 15 states that an interim control order takes effect when notice of it is served personally on the member concerned.

Clause 16 sets out the information that must be included in the notice served on the member. This includes the grounds on which the interim control order was made, an explanation of the ramifications of the making of the order and an explanation of the right to object to the making of the order at the hearing for the making of the confirmatory control order.

Clause 17 provides for the duration of interim control orders.

Clause 18 requires the Supreme Court to hear applications for confirmatory control orders as expeditiously as possible in hardship cases.

Division 2 Control orders

Clause 19 provides for the making by the Supreme Court of confirmatory control orders.

Clause 20 enables the member the subject of an order to appear at the hearing for the making of the order and to make submissions in relation to the application for the control order.

Clause 21 provides for the form of a control order, including a requirement that it specify the right to appeal against its making.

Clause 22 provides for when control orders take effect.

Clause 23 provides for the duration of control orders.

Clause 24 provides for appeals against the making of control orders.

Clause 25 provides for the variation and revocation of control orders.

Division 3 Consequences of making of interim control orders and control orders

Clause 26 makes it an offence for a controlled member of a particular declared organisation to associate with another controlled member of the same organisation.

Clause 27 provides for the suspension and revocation of authorisations to carry on prescribed activities held by a controlled member on the taking of effect of interim control orders and control orders, respectively.

Part 4 Miscellaneous

Clause 28 provides protections for criminal intelligence.

Clause 29 provides protections for certain submissions.

Clause 30 provides for the Commissioner of Police to keep a register of information relating to declared organisations and controlled members.

Clause 31 requires the Attorney General to be given notice of applications under the proposed Act and the right to be present and to make submissions at the hearings of the applications.

Clause 32 states the burden of proof in proceedings under the proposed Act.

Clause 33 enables the Commissioner of Police to delegate functions with respect to the categorisation of information as criminal intelligence.

Clause 34 provides immunity from civil and criminal liability for persons exercising functions under the proposed Act and for the Crown.

Clause 35 prevents challenge or review by a court (other than by way of appeal under proposed section 24) or administrative body of the exercise of certain functions under the proposed Act.

Clause 36 provides for proceedings for offences under the proposed Act or regulations made under the proposed Act.

Clause 37 enables the making of rules of court.

Clause 38 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 39 provides for the Ombudsman to keep under scrutiny, and report on, the exercise of powers by police under the proposed Act for a period of 2 years after the commencement of the proposed Act.

Clause 40 provides for the review of the proposed Act in 5 years from the date of assent to the proposed Act.

Schedule 1 Amendment of Acts

Schedule 1.1 amends the *Bail Act 1978* so that there will be a neutral presumption against bail in relation to the offence under section 26 (Association between

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members of declared organisations subject to interim control order or control order) of the proposed Act.

Schedule 1.2 amends the *Criminal Assets Recovery Act 1990* so that its provisions will apply to persons engaged in offences under section 93T (Participation in criminal groups) of the *Crimes Act 1900*.

Schedule 1.3 amends the *Criminal Procedure Act 1986* so that the indictable offence in section 26 of the proposed Act may be prosecuted summarily.



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New South Wales

Crimes (Criminal Organisations Control) Bill 2009

No. , 2009

A Bill for

An Act to provide for the making of declarations and orders for the purpose of disrupting and restricting the activities of criminal organisations and their members; to make related amendments to various Acts; and for other purposes.

The Legislature of New South Wales enacts: 1

Part 1 Preliminary 2

1 Name of Act 3

This Act is the *Crimes (Criminal Organisations Control) Act 2009*. 4

2 Commencement 5

This Act commences on the date of assent to this Act. 6

3 Definitions 7

(1) In this Act: 8

associate with means: 9

(a) to be in company with, or 10

(b) to communicate with by any means (including by post, facsimile, 11

telephone and email or any other form of electronic 12

communication). 13

Commissioner means the Commissioner of Police. 14

control order means an order of the Court under section 19. 15

controlled member of a declared organisation means a person to whom 16

an interim control order, or a control order, that is in force relates. 17

Court means the Supreme Court. 18

criminal intelligence means information relating to actual or suspected 19

criminal activity (whether in this State or elsewhere) the disclosure of 20

which could reasonably be expected: 21

(a) to prejudice criminal investigations, or 22

(b) to enable the discovery of the existence or identity of a 23

confidential source of information relevant to law enforcement, 24

or 25

(c) to endanger a person's life or physical safety. 26

declared organisation means an organisation in respect of which a 27

declaration under Part 2 that is in force relates. 28

eligible Judge—see section 5. 29

exercise a function includes perform a duty. 30

function includes a power, authority or duty. 31

interim control order means an interim control order under section 14. 32

member of an organisation includes: 33

(a) in the case of an organisation that is a body corporate—a director 34

and an officer of the body corporate, and 35

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|---|----------------------|
| (b) in any case: | 1 |
| (i) an associate member or prospective member (however described) of the organisation, and | 2
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| (ii) a person who identifies himself or herself, in some way, as belonging to the organisation, and | 4
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| (iii) a person who is treated by the organisation or persons who belong to the organisation, in some way, as if he or she belonged to the organisation. | 6
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| organisation means any incorporated body or unincorporated group (however structured), whether or not: | 9
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| (a) the body or group is based outside New South Wales, or | 11 |
| (b) the body or group consists of persons who are not ordinarily resident in New South Wales. | 12
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| protected submission —see section 8 (7). | 14 |
| senior police officer means a police officer of or above the rank of inspector. | 15
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| serious criminal activity means any of the following: | 17 |
| (a) obtaining material benefits from conduct that constitutes a serious indictable offence, | 18
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| (b) obtaining material benefits from conduct engaged in outside New South Wales (including outside Australia) that, if it occurred in New South Wales, would constitute a serious indictable offence, | 20
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| (c) committing a serious violence offence, | 23 |
| (d) engaging in conduct outside New South Wales (including outside Australia) that, if it occurred in New South Wales, would constitute a serious violence offence. | 24
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| serious violence offence means an offence punishable by imprisonment for life or for a term of 10 years or more, where the conduct constituting the offence involves: | 27
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| (a) loss of a person's life or serious risk of loss of a person's life, or | 30 |
| (b) serious injury to a person or serious risk of serious injury to a person, or | 31
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| (c) serious damage to property in circumstances endangering the safety of any person, or | 33
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| (d) perverting the course of justice (within the meaning of Part 7 of the <i>Crimes Act 1900</i>) in relation to any conduct that, if proved, would constitute a serious violence offence as referred to in paragraph (a), (b) or (c). | 35
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38 |
| (2) Notes included in this Act do not form part of this Act. | 39 |
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Clause 4 Crimes (Criminal Organisations Control) Bill 2009

Part 1 Preliminary

4 Extraterritorial operation

It is the intention of the Parliament that this Act apply within the State and outside the State to the full extent of the extraterritorial legislative capacity of the Parliament.

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Part 2	Declared organisations	1
5	Eligible Judges	2
(1)	In this Part:	3
	<i>eligible Judge</i> means a Judge in relation to whom a consent under subsection (2) and a declaration under subsection (3) are in force.	4 5
(2)	A Judge of the Court may, by instrument in writing, consent to being the subject of a declaration by the Attorney General under subsection (3).	6 7
(3)	The Attorney General may, by instrument in writing, declare Judges in relation to whom consents are in force under subsection (2) to be eligible Judges for the purposes of this Part.	8 9 10
(4)	An eligible Judge has, in relation to the exercise of a function conferred on an eligible Judge by this Part, the same protection and immunity as a Judge of the Court has in relation to proceedings in the Court.	11 12 13
(5)	A Judge who has given consent under subsection (2) may, by instrument in writing, revoke the consent.	14 15
(6)	The Attorney General may, by instrument in writing, amend or revoke a declaration under subsection (3).	16 17
6	Commissioner may apply for declaration	18
(1)	The Commissioner may apply to an eligible Judge for a declaration (or renewal of a declaration) under this Part that a particular organisation is a declared organisation for the purposes of this Act.	19 20 21
(2)	The application must:	22
(a)	be in writing, and	23
(b)	identify the particular organisation in respect of which the declaration is sought, and	24 25
(c)	describe the nature of the organisation and any of its distinguishing characteristics, and	26 27
(d)	specify the names (or names by which they are commonly known) of any persons that the Commissioner has reasonable grounds to believe are members of the organisation, and	28 29 30
(e)	set out the grounds on which the declaration is sought, and	31
(f)	set out the information supporting the grounds on which the declaration is sought, and	32 33
(g)	set out details of any previous application for a declaration in respect of the organisation and the outcome of that application, and	34 35 36

(h) be supported by an affidavit from the Commissioner, or affidavits from one or more other senior police officers, verifying the contents of the application. 1
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(3) The application may identify the organisation by specifying the name of the organisation or the name by which the organisation is commonly known or by providing other particulars about the organisation. 4
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Note. Section 28 contains provisions relating to the disclosure of information in an application or at a hearing under this Act that is criminal intelligence. 7
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7 Publication of notice of application 9

If the Commissioner makes an application under this Part in relation to an organisation, the Commissioner must as soon as practicable (but no later than 3 days) after the application is made publish a notice in the Gazette and at least one newspaper circulating throughout the State: 10
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(a) specifying that an application has been made for a declaration under this Part in respect of that organisation, and 14
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(b) describing the consequences for a member of the organisation if the declaration is made and an interim control order is made in relation to the member, and 16
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(c) inviting members of that organisation and other persons who may be directly affected (whether or not adversely) by the outcome of the application to make submissions to the eligible Judge at a hearing to be held on a date specified in the notice that has been determined by the eligible Judge. 19
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8 Submissions at the hearing 24

(1) A member of the organisation specified in an application under this Part may be present and make submissions in relation to the application at the hearing of the application, subject to subsection (3). 25
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(2) Any member of the organisation who was not specified in the application under this Part and any other person who may be directly affected (whether or not adversely) by the outcome of the application may, with the leave of the eligible Judge, be present and make submissions at the hearing, subject to subsection (3). 28
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(3) The Commissioner may object to any person referred to in subsection (1) or (2) being present during any part of the hearing in which information classified by the Commissioner as criminal intelligence is disclosed. 33
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(4) A person referred to in subsection (1) or (2) who does not wish to be present at the hearing may make a protected submission to the eligible Judge in private. 37
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- (5) The eligible Judge is to deal with an objection under subsection (3) in accordance with section 28. 1
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- (6) The eligible Judge is to deal with a protected submission under subsection (4) in accordance with section 29. 3
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- (7) In this Act: 5
protected submission means a submission made by a person who has reasonable grounds to believe that he or she may be subjected to action comprising or involving injury, damage, loss, intimidation or harassment in reprisal for making the submission. 6
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- 9 Eligible Judge may make declaration** 10
- (1) If, on the making of an application by the Commissioner under this Part in relation to a particular organisation, the eligible Judge is satisfied that: 11
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- (a) members of the organisation associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity, and 14
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- (b) the organisation represents a risk to public safety and order in this State, 17
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- the eligible Judge may make a declaration under this Part that the particular organisation is a declared organisation for the purposes of this Act. 19
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- (2) In considering whether or not to make a declaration, the eligible Judge may have regard to any of the following: 22
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- (a) any information suggesting that a link exists between the organisation and serious criminal activity, 24
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- (b) any criminal convictions recorded in relation to current or former members of the organisation, 26
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- (c) any information suggesting that current or former members of the organisation have been, or are, involved in serious criminal activity (whether directly or indirectly and whether or not such involvement has resulted in any criminal convictions), 28
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- (d) any information suggesting that members of an interstate or overseas chapter or branch of the organisation associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity, 32
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- (e) any submissions made in relation to the application by the Attorney General or as referred to in section 8, 36
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- (f) any other matter the eligible Judge considers relevant. 38

(3)	A declaration may be made whether or not any of the persons referred to in section 8 are present or make submissions.	1 2
(4)	The eligible Judge may, for the purposes of making a declaration, be satisfied that members of an organisation associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity:	3 4 5 6
(a)	whether or not all the members associate for that purpose or only some of the members (provided that, if the eligible Judge is satisfied that only some of the members associate for that purpose, the eligible Judge must be satisfied that those members constitute a significant group within the organisation, either in terms of their numbers or in terms of their capacity to influence the organisation or its members), and	7 8 9 10 11 12 13
(b)	whether or not members associate for the purpose of organising, planning, facilitating, supporting or engaging in the same serious criminal activities or different ones, and	14 15 16
(c)	whether or not the members also associate for other purposes.	17
10	Notice of declaration	18
	As soon as practicable after making a declaration under this Part, the Commissioner must publish notice of the declaration in the Gazette and in at least one newspaper circulating throughout the State.	19 20 21
11	Duration of declaration	22
(1)	A declaration under this Part takes effect on the day notice of it is published in the Gazette or a later day specified in the declaration.	23 24
(2)	The declaration remains in force for a period of 3 years after the day on which it takes effect (unless it is sooner revoked or renewed).	25 26
(3)	A change in the name or membership of a declared organisation does not affect the declaration.	27 28
12	Revocation of declaration	29
(1)	The eligible Judge may, at any time, revoke a declaration under this Part:	30 31
(a)	on the request in writing of the Commissioner, or	32
(b)	on application by a member of the organisation.	33
(2)	An application under subsection (1) (b) must:	34
(a)	be in writing, and	35
(b)	set out the grounds on which revocation is sought, and	36

(c)	set out the information supporting the grounds on which revocation is sought, and	1 2
(d)	be supported by an affidavit from the applicant verifying the contents of the application.	3 4
(3)	The applicant must notify the Commissioner of the making of the application as soon as practicable after it is made.	5 6
	Note. Section 31 requires the Commissioner to notify the Attorney General of the application.	7 8
(4)	A declaration may be revoked under subsection (1) (b) only if the eligible Judge is satisfied that there has been such a substantial change in the nature or membership of the organisation that:	9 10 11
(a)	members of the organisation no longer associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity, and	12 13 14
(b)	the organisation no longer represents a risk to public safety and order in the State.	15 16
(5)	The Commissioner must, as soon as practicable after a declaration is revoked:	17 18
(a)	publish notice of the revocation in the Gazette and in at least one newspaper circulating generally throughout the State, and	19 20
(b)	give notice of the revocation to the Attorney General and to any person who made a submission at the hearing at which the declaration was made.	21 22 23
(6)	An interim control order or control order relating to a member of an organisation that is the subject of a revoked declaration ceases to have effect on revocation of the declaration.	24 25 26
(7)	If the eligible Judge who made a declaration under this Part has died, has ceased to be an eligible Judge or is absent, a power exercisable by that eligible Judge under this section may be exercised by any other eligible Judge.	27 28 29 30
13	Conduct of hearings of applications for declarations under this Part	31
(1)	The rules of evidence do not apply to the hearing of an application for a declaration under this Part.	32 33
(2)	If an eligible Judge makes a declaration or decision under this Part, the eligible Judge is not required to provide any grounds or reasons for the declaration or decision (other than to a person conducting a review under section 39 if that person so requests).	34 35 36 37
	Note. If reasons are provided that include criminal intelligence, section 28 applies.	38 39

Part 3	Control of members of declared organisations	1
Division 1	Interim control orders	2
14	Court may make interim control order	3
(1)	The Court may, on application by the Commissioner, make an interim control order relating to one or more persons specified in the application pending the hearing and final determination of an application for a control order confirming (or confirming with variations) the interim control order.	4 5 6 7 8
(2)	The grounds of the application must be supported by an affidavit from the Commissioner, or affidavits from one or more other senior police officers, verifying the contents of the application.	9 10 11
(3)	The Court is to make an interim control order in relation to a person if it is satisfied that the application and any further information supplied by the Commissioner satisfy the requirements under section 19 (1) for making a control order in relation to the person.	12 13 14 15
(4)	The interim control order may be made in the absence of, and without notice to, the person in relation to whom the order is to be made (or their representatives).	16 17 18
(5)	If the Court makes an interim control order, it must fix the date on which, and the time at which, the hearing of the application for a control order in relation to the person is to be heard.	19 20 21
15	When does an interim control order take effect?	22
	An interim control order takes effect on the day on which notice of the order is served personally on the person to whom it relates under section 16.	23 24 25
16	Notice of making of interim control order	26
(1)	The Commissioner must, within 28 days after the making of an interim control order, serve notice of the order personally on the person to whom it relates.	27 28 29
(2)	The notice must:	30
(a)	subject to subsection (3), include a statement of the grounds on which the order was made, and	31 32
(b)	set out an explanation of the effect of sections 26 and 27, and	33
(c)	advise the person of the names of any other persons known by the Commissioner to be members of the same declared organisation of which that person is a member and to whom an interim control order or control order relates, and	34 35 36 37

(d)	set out an explanation of:	1
(i)	the right to object to the making of the order at the hearing of the application for the control order, and	2
(ii)	the procedure to be followed in notifying the Court before the hearing of the grounds of objection (the <i>notice of objection</i>) and of the need to verify the grounds by affidavit, and	3
(e)	state the date on which, and the time at which, the hearing of the application for the control order is to be heard.	4
(3)	A statement of the grounds on which an interim control order has been made must not contain information that must not be disclosed in accordance with section 28.	5
(4)	A copy of the affidavit verifying the grounds on which the application was made must be attached to the interim control order unless disclosure of information included in the affidavit would be in breach of section 28.	6
(5)	If disclosure of information included in the affidavit would be in breach of section 28, an edited copy of the affidavit, from which the information that cannot be disclosed has been removed or erased, may be attached to the notice of the interim control order.	7
17	Interim control order ceases when final control order made or served	8
(1)	An interim control order remains in force until:	9
(a)	it is revoked, or	10
(b)	it ceases to have effect under subsection (2), or	11
(c)	the application for a control order confirming the interim control order is withdrawn or dismissed,	12
	whichever first occurs.	13
(2)	If a control order is made confirming an interim control order (whether with or without variation), the interim control order ceases to have effect:	14
(a)	if the person to whom it relates is present in court—when the control order is made, or	15
(b)	in any other case—when the person is served personally with a copy of the control order.	16
18	Expedited hearing in cases of hardship	17
(1)	A person on whom notice of the making of an interim control order is served under section 16 (1) may request the Court to hear the	18

application for the control order confirming the interim control order at an earlier date determined by the Court than that specified in the notice. 1
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- (2) The Court must hear the application for the control order as expeditiously as possible if satisfied by the person concerned that, in the special circumstances of the case, he or she will suffer undue hardship if the hearing of the application for the control order is delayed. 3
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Division 2 Control orders 7

19 Court may make control order 8

- (1) The Court may make a control order in relation to a person on whom notice of an interim control order has been served under section 16 if the Court is satisfied that: 9
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- (a) the person is a member of a particular declared organisation, and 12
 - (b) sufficient grounds exist for making the control order. 13
- (2) The Court may: 14
- (a) make a control order confirming or confirming with variations the interim control order, or 15
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 - (b) revoke the interim control order. 17
- (3) In considering whether or not there are sufficient grounds to make the control order in relation to the person, the Court is to take into account: 18
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- (a) the affidavit from the Commissioner, or affidavits from one or more other senior police officers, that verified the contents of the application for the interim control order concerned, and 20
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 - (b) the affidavit provided by the person with the notice of objection referred to in section 16, and 23
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 - (c) any other information provided by the Commissioner or person to whom the order relates at the hearing. 25
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- (4) The control order may be made whether or not the person concerned is present at the hearing of the application. 27
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- (5) If the person concerned is not present at the hearing, the Commissioner is to cause a copy of the control order to be served personally on the person. 29
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- (6) The Court may, on making a control order in relation to a person, make any consequential or ancillary orders it thinks fit. 32
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- (7) Without limiting subsection (6), an order may be made, if in the opinion of the Court the circumstances of the case require: 34
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- (a) if the person satisfies the Court that there is a good reason why he or she should be allowed to associate with a particular controlled 36
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	member—exempting the person from the operation of section 26 to the extent, and subject to the conditions, specified by the Court, or	1 2 3
	(b) exempting the person from the operation of section 27 for a period specified by the Court to enable the person to organise his or her affairs.	4 5 6
20	Person to whom order relates may appear at the hearing	7
	The person to whom the control order relates may appear at the hearing of the application and make submissions in relation to the application.	8 9
21	Form of control order	10
	(1) A control order must:	11
	(a) specify the person to whom it relates, and	12
	(b) subject to subsection (2)—include a statement of the grounds on which the order has been made, and	13 14
	(c) set out an explanation of the right of appeal under section 24.	15
	(2) A statement of the grounds on which a control order has been made must not contain information that must not be disclosed in accordance with section 28.	16 17 18
	(3) A copy of the affidavit verifying the grounds on which the order was made must be attached to the control order unless disclosure of information included in the affidavit would be in breach of section 28.	19 20 21
	(4) If disclosure of information included in the affidavit would be in breach of section 28, an edited copy of the affidavit, from which the information that cannot be disclosed has been removed or erased, may be attached to the control order.	22 23 24 25
22	When does a control order take effect?	26
	A control order takes effect:	27
	(a) if the person to whom it relates is present in court—when the control order is made, or	28 29
	(b) in any other case—when the person is served personally with a copy of the control order.	30 31
23	Duration of control order	32
	A control order remains in force until it is revoked.	33

24	Right of appeal	1
(1)	The Commissioner or the controlled member may appeal to the Court of Appeal against a decision of the Court in relation to the making of a control order.	2 3 4
(2)	An appeal lies as of right on a question of law and with leave on a question of fact.	5 6
(3)	An appeal as of right must be made within 28 days after the date on which the decision was made unless the Court of Appeal gives leave for it to be made after that time.	7 8 9
(4)	The making of an appeal under this section does not affect the operation of the control order to which the appeal relates.	10 11
(5)	On an appeal, the Court of Appeal may:	12
(a)	confirm, vary or reverse the decision the subject of the appeal, and	13 14
(b)	make any consequential or ancillary order.	15
25	Variation or revocation of control order	16
(1)	The Court may at any time vary or revoke a control order on application:	17
(a)	by the Commissioner, or	18
(b)	by the person to whom it relates.	19
(2)	An application for variation or revocation of a control order may only be made by the person to whom the order relates with the leave of the Court and leave is only to be granted if the Court is satisfied there has been a substantial change in the relevant circumstances since the order was made or last varied.	20 21 22 23 24
(3)	The Court must, before varying or revoking a control order under this section:	25 26
(a)	allow all parties a reasonable opportunity to be heard on the matter, and	27 28
(b)	have regard to the same factors that the Court is required to have regard to in considering whether or not to make a control order and in considering the terms of a control order.	29 30 31
(4)	If an application for the variation or revocation of a control order is made by the person to whom the order relates, the application must be supported by oral evidence given on oath.	32 33 34
(5)	The Court is to give notice of the variation or revocation of a control order to the Commissioner (if the Commissioner is not present when the order is varied or revoked) and to the Attorney General.	35 36 37

Division 3	Consequences of making of interim control orders and control orders	1
		2
26	Association between members of declared organisations subject to interim control order or control order	3
		4
(1)	A controlled member of a declared organisation who associates with another controlled member of the declared organisation is guilty of an offence.	5
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	Maximum penalty:	8
(a)	for a first offence—imprisonment for 2 years, and	9
(b)	for a second or subsequent offence—imprisonment for 5 years.	10
(2)	A person may be guilty of an offence under subsection (1) in respect of associations with the same person or with different people.	11
		12
(3)	It is a defence to a prosecution for an offence under subsection (1) if the defendant establishes that he or she did not know, and could not reasonably be expected to have known, that the other person with whom he or she associated was a controlled member of the declared organisation.	13
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(4)	It is a defence to a prosecution for an offence under subsection (1) if the association is in accordance with an exemption under section 19 (7) (a).	18
		19
(5)	The following forms of associations are to be disregarded for the purposes of this section in its application to a defendant to whom an interim control order relates if the defendant proves that the association was reasonable in the circumstances:	20
		21
		22
		23
(a)	associations between close family members,	24
(b)	associations occurring in the course of a lawful occupation, business or profession,	25
		26
(c)	associations occurring at a course of training or education of a kind prescribed by the regulations between persons enrolled in the course,	27
		28
		29
(d)	associations occurring at a rehabilitation, counselling or therapy session of a kind prescribed by the regulations,	30
		31
(e)	associations occurring in lawful custody or in the course of complying with a court order,	32
		33
(f)	other associations of a kind prescribed by the regulations.	34
(6)	For the avoidance of doubt, in proceedings for an offence against this section, it is not necessary for the prosecution to prove that the defendant associated with another person for any particular purpose or that the association would have led to the commission of any offence.	35
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(7)	For the purposes of this section, a control order made in relation to a person is conclusive evidence that the person is a controlled member of the particular declared organisation to which the control order relates and of the terms of the order (including any exemptions from the operation of this section under section 19 (7) (a)).	1 2 3 4 5
(8)	For the purposes of this section, a person is a <i>close family member</i> of another person if:	6 7
	(a) the person is a spouse or former spouse of the other or is, or has been, in a domestic relationship with the other, or	8 9
	(b) the person is a parent or grandparent of the other (whether by blood or by marriage), or	10 11
	(c) the person is a brother or sister of the other (whether by blood or by marriage), or	12 13
	(d) the person is a guardian or carer of the other.	14
(9)	In this section:	15
	<i>domestic relationship</i> has the same meaning as in the <i>Property (Relationships) Act 1984</i> .	16 17
	<i>spouse</i> —a person is the spouse of another if they are legally married.	18
27	Prohibition on carrying on of certain activities when interim control order or control order takes effect	19 20
(1)	Any authorisation to carry on a prescribed activity that is held by a controlled member of a declared organisation is automatically suspended on the taking effect of an interim control order in relation to the person.	21 22 23 24
(2)	The authorisation is suspended until the interim control order is confirmed (or confirmed with variations) by a control order or is revoked.	25 26 27
(3)	On confirmation of the interim control order by a control order, the authorisation is revoked.	28 29
(4)	A controlled member of a declared organisation is prohibited from applying for any authorisation to carry on a prescribed activity so long as an interim control order or control order in relation to the member is in force.	30 31 32 33
(5)	A suspension or revocation of an authorisation in accordance with this section is effected despite any other Act or any law, award or industrial or other agreement affecting the employment of the person holding the authorisation, and neither the Crown nor the authority that issues an authorisation incurs any liability because of such a suspension or revocation.	34 35 36 37 38 39

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- (6) In this section: 1
- authorisation** includes the licensing, registration, approval, 2
certification or any other form of authorisation of a person required by 3
or under legislation for the carrying on of an occupation or activity. 4
- occupation** means an occupation, trade, profession or calling of any 5
kind that may only be carried on by a person holding an authorisation. 6
- prescribed activity** means the following: 7
- (a) operating a casino within the meaning of the *Casino Control Act* 8
1992, or being a special employee within the meaning of Part 4 9
of that Act, 10
- (b) carrying on a security activity within the meaning of the *Security* 11
Industry Act 1997, 12
- (c) carrying on the business of a pawnbroker within the meaning of 13
the *Pawnbrokers and Second-hand Dealers Act 1996*, 14
- (d) carrying on business as a commercial agent or private inquiry 15
agent within the meaning of the *Commercial Agents and Private* 16
Inquiry Agents Act 2004, 17
- (e) possessing or using a firearm within the meaning of the *Firearms* 18
Act 1996 or carrying on business as a firearms dealer within the 19
meaning of that Act, 20
- (f) operating a tow truck within the meaning of the *Tow Truck* 21
Industry Act 1998, 22
- (g) carrying on business as a dealer within the meaning of the *Motor* 23
Dealers Act 1974, 24
- (h) carrying on business as a repairer within the meaning of the 25
Motor Vehicle Repairs Act 1980, 26
- (i) selling or supplying liquor within the meaning of the *Liquor Act* 27
2007, 28
- (j) carrying on the business of a bookmaker within the meaning of 29
the *Racing Administration Act 1998*, 30
- (k) carrying out the activities of an owner, trainer, jockey, 31
stablehand, bookmaker, bookmaker's clerk or another person 32
associated with racing who is required to be registered or licensed 33
under the *Thoroughbred Racing Act 1996*, 34
- (l) carrying out the activities of an owner, trainer or other person 35
associated with greyhound or harness racing who is required to 36
be registered under the *Greyhound and Harness Racing* 37
Administration Act 2004, 38
- (m) any other activity prescribed by the regulations. 39

Part 4	Miscellaneous	1
28	Criminal intelligence	2
(1)	This section applies to and in respect of:	3
(a)	an application for a declaration made to, and the hearing of the application by, an eligible Judge under Part 2, and	4 5
(b)	an application for the making, variation or revocation of an interim control order or control order made to, and the hearing of the application by, the Court under Part 3.	6 7 8
(2)	In this section, the eligible Judge and the Court are referred to as the <i>determining authority</i> .	9 10
(3)	A determining authority is to take steps to maintain the confidentiality of information that the determining authority considers to be properly classified by the Commissioner as criminal intelligence, including steps to receive evidence and hear argument about the information in private in the absence of the parties to the proceedings and their representatives and the public.	11 12 13 14 15 16
(4)	If the determining authority considers that the information cannot properly be classified as criminal intelligence, the determining authority must ask the Commissioner whether the Commissioner wishes to withdraw the information from consideration.	17 18 19 20
(5)	Information that is withdrawn by the Commissioner must not be disclosed to any person (except a person conducting a review under this Part or the Attorney General or a person to whom the Commissioner or Attorney General authorises disclosure).	21 22 23 24
(6)	Despite subsection (3), the determining authority may disclose to the Attorney General, a person conducting a review under this Part, a court or a person to whom the Commissioner authorises disclosure any information the determining authority considers to be properly classified by the Commissioner as criminal intelligence.	25 26 27 28 29
29	Protected submission	30
(1)	An eligible Judge is to take steps to maintain the confidentiality of a protected submission, including steps to receive evidence and hear the submission in private in the absence (except as provided by subsection (2)) of any other person referred to in section 8 (1) or (2) and their representatives.	31 32 33 34 35
(2)	The eligible Judge is to advise the Commissioner and the Attorney General that a protected submission is to be made and the Commissioner and the Attorney General are entitled to be present when it is made.	36 37 38 39

30	Criminal organisations register	1
(1)	The Commissioner must keep a register of information about declarations and orders made under this Act (the <i>register of criminal organisations</i>).	2 3 4
(2)	The register may contain any of the following information:	5
(a)	the name of any declared organisation (or the name by which it is commonly known),	6 7
(b)	the name of any controlled member of the declared organisation (or the name by which the controlled member is commonly known).	8 9 10
(3)	Information relating to a control order is not to be published on the register until after the last day on which the person to whom the order relates may appeal against the making of the order and (if the person to which the order relates does appeal) until the appeal is determined or withdrawn.	11 12 13 14 15
(4)	Information contained in the register may be provided to members of the public in any other manner approved by the Commissioner.	16 17
(5)	Without limiting subsection (4), the Commissioner may publish any information contained in the register in a newspaper circulating in the State.	18 19 20
31	Attorney General to be notified	21
(1)	The Commissioner must give notice of any application under Part 2 or 3 to the Attorney General as soon as practicable after it is made or the Commissioner receives notice of the application.	22 23 24
(2)	The Commissioner is to provide the Attorney General with a copy of the application (including any information classified by the Commissioner as criminal intelligence) if the Attorney General so requests.	25 26 27
(3)	The Attorney General is entitled to be present and to make submissions at the hearing of the application.	28 29
32	Standard of proof	30
(1)	Any question of fact to be decided in proceedings under this Act is to be decided on the balance of probabilities.	31 32
(2)	This section does not apply in relation to proceedings for an offence against this Act.	33 34

33	Delegation	1
	The Commissioner:	2
	(a) may not delegate the function of classifying information as criminal intelligence for the purposes of this Act except to a Deputy Commissioner or Assistant Commissioner of Police, and	3 4 5
	(b) may not delegate any other function of the Commissioner under this Act except to a senior police officer.	6 7
34	Immunity from liability	8
	No civil or criminal liability attaches to:	9
	(a) the Attorney General, the Commissioner, a police officer or other person exercising functions under this Act (whether or not under delegation), or	10 11 12
	(b) the Crown,	13
	in respect of an act or omission in good faith in the exercise or discharge, or purported exercise or discharge, of a function conferred by or under this Act.	14 15 16
35	Protection of exercise of certain functions	17
	(1) This section applies to any function (a <i>protected function</i>) conferred on a person under this Act (a <i>protected person</i>) with respect to the making (or purported making) of any declaration, interim control order or control order under this Act.	18 19 20 21
	(2) Except as provided by section 24 (Right of appeal), the exercise by any protected person of any protected function may not be:	22 23
	(a) challenged, reviewed, quashed or called into question before any court of law or administrative review body in any proceedings, or	24 25
	(b) restrained, removed or otherwise affected by any proceedings.	26
	(3) Without limiting subsection (2), that subsection applies whether or not the proceedings relate to any question involving compliance or non-compliance, by a protected person, with the provisions of this Act or the rules of natural justice (procedural fairness).	27 28 29 30
	(4) Accordingly, except as provided by section 24, no court of law or administrative review body has jurisdiction or power to consider any question involving compliance or non-compliance, by the protected person, with those provisions or with those rules so far as they apply to the exercise of any protected function.	31 32 33 34 35
	(5) This section has effect despite any provision of any other legislation or any other law (whether written or unwritten).	36 37

(6)	In this section:	1
	<i>exercise</i> of functions includes:	2
	(a) the purported exercise of functions, and	3
	(b) the non-exercise or improper exercise of functions, and	4
	(c) the proposed, apprehended or threatened exercise of functions.	5
	<i>proceedings</i> includes:	6
	(a) proceedings for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, and	7
		8
		9
	(b) without limiting paragraph (a), proceedings in the exercise of the inherent jurisdiction of the Court or the jurisdiction conferred by section 23 of the <i>Supreme Court Act 1970</i> ,	10
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	but does not include any investigation or proceedings under the <i>Independent Commission Against Corruption Act 1988</i> .	13
		14
36	Proceedings for offences	15
	(1) Except as provided by subsection (2), proceedings for an offence under this Act are to be dealt with summarily before a Local Court.	16
		17
	(2) A second or subsequent offence under section 26 (Association between members of declared organisations subject to interim control order or control order) is to be prosecuted on indictment.	18
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	(3) If proceedings for an offence under this Act are dealt with summarily before a Local Court, the maximum penalty that may be imposed is 100 penalty units or imprisonment for 2 years (or both), or the maximum penalty provided for the offence, whichever is the lesser.	21
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37	Rules of court	25
	Rules of Court may be made under the <i>Supreme Court Act 1970</i> for or with respect to the practice and procedure to be followed in respect of proceedings under this Act and any matters incidental to, or relating to, such practice and procedure.	26
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38	Regulations	30
	(1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.	31
		32
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		34
	(2) The regulations may create offences punishable by a penalty not exceeding 100 penalty units.	35
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39	Report to Ombudsman on exercise of powers and monitoring by Ombudsman	1 2
(1)	For the period of 2 years from the date of commencement of this Act, the Ombudsman is to keep under scrutiny the exercise of powers conferred on police officers under this Act.	3 4 5
(2)	For that purpose, the Ombudsman may require the Commissioner or any public authority to provide information about the exercise of those powers.	6 7 8
(3)	The Commissioner is to ensure that the Ombudsman is provided with a report on:	9 10
(a)	any declaration made under Part 2 or under an interim control order or control order, and	11 12
(b)	the reasons the declaration or order was sought, and	13
(c)	any prosecutions brought under section 26 (Association between members of declared organisations subject to interim control order or control order).	14 15 16
(4)	The Ombudsman must maintain the confidentiality of information provided to the Ombudsman that is classified by the Commissioner as criminal intelligence.	17 18 19
(5)	The Ombudsman must, as soon as possible after the expiration of the 2-year period, prepare a report of the Ombudsman's work and activities under this section and furnish a copy of the report to the Attorney General and to the Commissioner.	20 21 22 23
(6)	The Attorney General is to lay (or cause to be laid) a copy of the report before both Houses of Parliament as soon as practicable after the Attorney General receives the report.	24 25 26
(7)	If a House of Parliament is not sitting when the Attorney General seeks to lay a report before it, the Attorney General may present copies of the report to the Clerk of the House concerned.	27 28 29
(8)	The report:	30
(a)	is, on presentation and for all purposes, taken to have been laid before the House, and	31 32
(b)	may be printed by authority of the Clerk of the House, and	33
(c)	if so printed, is for all purposes taken to be a document published by or under the authority of the House, and	34 35
(d)	is to be recorded:	36
(i)	in the case of the Legislative Council, in the Minutes of the Proceedings of the Legislative Council, and	37 38

(ii)	in the case of the Legislative Assembly, in the Votes and Proceedings of the Legislative Assembly,	1
	on the first sitting day of the House after receipt of the report by the Clerk.	2
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40	Review of Act	5
(1)	The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.	6
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		8
(2)	The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.	9
		10
(3)	The Minister, or any person conducting the review on behalf of the Minister, must maintain the confidentiality of information provided to the Minister or other person that is classified by the Commissioner as criminal intelligence.	11
		12
		13
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(4)	A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.	15
		16

Schedule 1	Amendment of Acts	1
1.1	Bail Act 1978 No 161	2
	Section 9 Presumption in favour of bail for certain offences	3
	Insert after section 9 (1) (e):	4
	(e1) an offence under section 26 (Association between members of declared organisations subject to interim control order or control order) of the <i>Crimes (Criminal Organisations Control) Act 2009</i> ,	5 6 7 8
1.2	Criminal Assets Recovery Act 1990 No 23	9
	Section 6 Meaning of “serious crime related activity”	10
	Insert after section 6 (2) (g):	11
	(g1) an offence under section 93T of the <i>Crimes Act 1900</i> , or	12
1.3	Criminal Procedure Act 1986 No 209	13
	Schedule 1 Indictable offences triable summarily	14
	Insert in appropriate order in Part 4 of Table 1:	15
18A	Crimes (Criminal Organisations Control) Act 2009	16
	An offence under section 26 of the <i>Crimes (Criminal Organisations Control) Act 2009</i> .	17 18