



New South Wales

Crimes (Criminal Organisations Control) Bill 2012

Explanatory note

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

Overview of Bill

The object of this Bill is to re-enact the *Crimes (Criminal Organisations Control) Act 2009* which was declared invalid by the High Court on 23 June 2011 (*Wainohu v State of NSW*) on the basis that a Judge making a declaration under the Act that an organisation was a criminal organisation was not required to provide reasons for making the declaration (applying the Kable principle, the Court found that a discretion but not a statutory obligation to provide reasons undermined the institutional integrity of the Supreme Court). The proposed re-enactment of the Act imposes an obligation to provide reasons.

In order to disrupt and restrict the activities of criminal groups, the Act provided that an eligible Judge of the Supreme Court could, on the application of the Commissioner of Police, declare an organisation to be subject to the Act if its members associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity and it represents a risk to public safety and order in this State. As a consequence of the declaration of an organisation, the Supreme Court has jurisdiction on the application of the Commissioner of Police to make a control order against a member of the organisation that prevents the person

associating with other controlled members of the organisation and from holding a number of statutory authorities (eg security, firearms or liquor licences).

The Act provided that the eligible Judge, when making a declaration, was not bound by the rules of evidence and could take into account confidential criminal intelligence (with an obligation to maintain the confidentiality of criminal intelligence but without restricting disclosure to courts, the Attorney General and persons reviewing the operation of the legislation). The requirement to give reasons will be subject to standard arrangements made by judicial officers to preserve confidentiality where that is necessary.

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. It also provides that an eligible Judge is required to provide reasons for making or revoking the declaration or refusing the application.

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.

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 16A enables the Supreme Court to make an order for substituted service of notice of an interim control order on the person to whom it relates if it has not been possible to personally serve the notice of the order and (if substituted service also fails) to order its public notification.

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 in relation to 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 creates offences relating to a controlled member of a particular declared organisation associating with another controlled member of the same organisation.

Clause 26A makes it an offence for a controlled member of a declared organisation to recruit another person to become a member of the organisation.

Clause 27 provides for the suspension and revocation of authorisations to carry on prescribed activities held by a controlled member on the taking 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 30A enables regulatory authorities having functions under legislation relating to authorisations to carry on occupations and activities to enter into arrangements with the Commissioner of Police for the supply of information (including criminal intelligence) concerning declared organisations and their members and associates to assist them in exercising those functions.

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 35A makes it an offence for a person to fail to comply with a request by a police officer to disclose his or her identity or to give a false name or incorrect address.

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 4 years after the commencement of the proposed Act.

Clause 39A repeals the *Crimes (Criminal Organisations Control) Act 2009*, which was declared invalid by the High Court.

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 and Regulation

Schedule 1 amends the following Acts and Regulation to re-enact provisions inserted by or in connection with the *Crimes (Criminal Organisations Control) Act 2009*:

- (a) *Bail Act 1978*,
- (b) *Commercial Agents and Private Inquiry Agents Act 2004*,
- (c) *Criminal Assets Recovery Act 1990*,
- (d) *Criminal Procedure Act 1986*,
- (e) *Criminal Records Regulation 2004*,
- (f) *Liquor Act 2007*,
- (g) *Motor Dealers Act 1974*,
- (h) *Motor Vehicle Repairs Act 1980*,
- (i) *Pawnbrokers and Second-hand Dealers Act 1996*,
- (j) *Surveillance Devices Act 2007*,
- (k) *Tow Truck Industry Act 1998*.



New South Wales

Crimes (Criminal Organisations Control) Bill 2012

Contents

	Page
Part 1	Preliminary
1	Name of Act 2
2	Commencement 2
3	Definitions 2
4	Extraterritorial operation 4
Part 2	Declared organisations
5	Eligible Judges 5
6	Commissioner may apply for declaration 5
7	Publication of notice of application 6
8	Submissions at the hearing 6
9	Eligible Judge may make declaration 7
10	Notice of declaration 8
11	Duration of declaration 8
12	Revocation of declaration 9

	Page
13 Conduct of hearings of applications for declarations under this Part	10
Part 3 Control of members of declared organisations	
Division 1 Interim control orders	
14 Court may make interim control order	11
15 Date of effect of interim control order	11
16 Notice of making of interim control order	11
16A Service of notice of interim control order	13
17 Interim control order ceases when final control order made or served	13
18 Expedited hearing in cases of hardship	14
Division 2 Control orders	
19 Court may make control order	14
20 Person to whom order relates may appear at the hearing	15
21 Form of control order	15
22 Date of effect of control order	16
23 Duration of control order	16
24 Right of appeal	16
25 Variation or revocation of control order	17
Division 3 Consequences of making of interim control orders and control orders	
26 Association between members of declared organisations subject to interim control order or control order	17
26A Recruiting persons to become member of declared organisation	19
27 Prohibition on carrying on of certain activities when interim control order or control order takes effect	19
Part 4 Miscellaneous	
28 Criminal intelligence	22
29 Protected submission	22
30 Criminal organisations register	23
30A Provision of information relating to criminal organisations	23
31 Attorney General to be notified	24
32 Burden of proof	25
33 Delegation	25
34 Immunity from liability	25
35 Protection of exercise of certain functions	25
35A Failure of person to disclose identity on request	26
36 Proceedings for offences	27
37 Rules of court	27

Crimes (Criminal Organisations Control) Bill 2012

Contents

	Page
38 Regulations	27
39 Report to Ombudsman on exercise of powers and monitoring by Ombudsman	27
39A Repeal of Crimes (Criminal Organisations Control) Act 2009 No 6	28
40 Review of Act	28
Schedule 1 Amendment of Acts and Regulation	29



New South Wales

Crimes (Criminal Organisations Control) Bill 2012

No. , 2012

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 <i>Crimes (Criminal Organisations Control) Act 2012</i> .	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, telephone, email or any other form of electronic communication).	11
Commissioner means the Commissioner of Police.	13
control order means a control order of the Court under section 19.	14
controlled member of a declared organisation means a person to whom an interim control order, or a control order, that is in force relates.	15
Court means the Supreme Court.	17
criminal intelligence means information relating to actual or suspected criminal activity (whether in this State or elsewhere) the disclosure of which could reasonably be expected:	18
(a) to prejudice criminal investigations, or	21
(b) to enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement, or	22
(c) to endanger a person's life or physical safety.	25
declared organisation means an organisation to which a declaration under Part 2 that is in force relates.	26
eligible Judge —see section 5.	28
function includes a power, authority or duty, and exercise a function includes perform a duty.	29
interim control order means an interim control order of the Court under section 14.	31
member of an organisation includes:	33
(a) in the case of an organisation that is a body corporate—a director or an officer of the body corporate, and	34
	35

-
- (b) in any case: 1
- (i) an associate member or prospective member (however described) of the organisation, and 2
3
 - (ii) a person who identifies himself or herself, in some way, as belonging to the organisation, and 4
5
 - (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
7
8
- organisation** means any incorporated body or unincorporated group (however structured), whether or not: 9
10
- (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
13
- protected submission**—see section 8 (7). 14
- senior police officer** means a police officer of or above the rank of inspector. 15
16
- serious criminal activity** means any of the following: 17
- (a) obtaining material benefits from conduct that constitutes a serious indictable offence, 18
19
 - (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
21
22
 - (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
25
26
- 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
28
29
- (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
32
 - (c) serious damage to property in circumstances endangering the safety of any person, or 33
34
 - (d) perverting the course of justice (within the meaning of Part 7 of the *Crimes Act 1900*) in relation to any conduct that, if proved, would constitute a serious violence offence as referred to in paragraph (a), (b) or (c). 35
36
37
38
- (2) Notes included in this Act do not form part of this Act. 39
-

Clause 4 Crimes (Criminal Organisations Control) Bill 2012

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.

1
2
3
4

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)	A declaration of an eligible Judge under subsection (3) cannot be revoked by the Attorney General. However, the declaration of a Judge as an eligible Judge is revoked if:	16 17 18
	(a) the eligible Judge revokes his or her consent in accordance with subsection (5) or ceases to be a Judge, or	19 20
	(b) the Chief Justice notifies the Attorney General that the Judge should not continue to be an eligible Judge.	21 22
(7)	To avoid doubt, the selection of the eligible Judge to exercise any particular function conferred on eligible Judges is not to be made by the Attorney General or other Minister of the Crown, and the exercise of that particular function is not subject to the control and direction of the Attorney General or other Minister of the Crown.	23 24 25 26 27
6	Commissioner may apply for declaration	28
(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.	29 30 31
(2)	The application must:	32
	(a) be in writing, and	33
	(b) identify the particular organisation in respect of which the declaration is sought, and	34 35
	(c) describe the nature of the organisation and any of its distinguishing characteristics, and	36 37

- (d) specify the names (or names by which they are commonly known) of any persons whom the Commissioner has reasonable grounds to believe are members of the organisation, and 1
2
3
 - (e) set out the grounds on which the declaration is sought, and 4
 - (f) set out the information supporting the grounds on which the declaration is sought, and 5
6
 - (g) set out details of any previous application for a declaration in respect of the organisation and the outcome of that application, and 7
8
9
 - (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. 10
11
12
- (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. 13
14
15

7 Publication of notice of application 16

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: 17
18
19
20

- (a) specifying that an application has been made for a declaration under this Part in respect of that organisation, and 21
22
- (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 23
24
25
- (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. 26
27
28
29
30

8 Submissions at the hearing 31

- (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). 32
33
34
- (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). 35
36
37
38
39

-
- (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. 1
2
3
4
- (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. 5
6
7
- (5) The eligible Judge is to deal with an objection under subsection (3) in accordance with section 28. 8
9
- (6) The eligible Judge is to deal with a protected submission under subsection (4) in accordance with section 29. 10
11
- (7) In this Act: 12
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. 13
14
15
16

9 Eligible Judge may make declaration 17

- (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: 18
19
20
- (a) members of the organisation associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity, and 21
22
23
- (b) the organisation represents a risk to public safety and order in this State, 24
25
- the eligible Judge may make a declaration under this Part that the particular organisation is a declared organisation for the purposes of this Act. 26
27
28
- (2) In considering whether or not to make a declaration, the eligible Judge may have regard to any of the following: 29
30
- (a) any information suggesting that a link exists between the organisation and serious criminal activity, 31
32
- (b) any criminal convictions recorded in relation to current or former members of the organisation, 33
34
- (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), 35
36
37
38

(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,	1 2 3 4
(e)	any submissions made in relation to the application by the Attorney General or as referred to in section 8,	5 6
(f)	any other matter the eligible Judge considers relevant.	7
(3)	A declaration may be made whether or not any of the persons referred to in section 8 are present or make submissions.	8 9
(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:	10 11 12 13
(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	14 15 16 17 18 19 20
(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	21 22 23
(c)	whether or not the members also associate for other purposes.	24
10	Notice of declaration	25
	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.	26 27 28
11	Duration of declaration	29
(1)	A declaration under this Part takes effect on the day notice of it is published in the Gazette or on a later day specified in the declaration.	30 31
(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).	32 33
(3)	A change in the name or membership of a declared organisation does not affect the declaration.	34 35

12	Revocation of declaration	1
(1)	The eligible Judge may, at any time, revoke a declaration under this Part:	2
	(a) on the request in writing of the Commissioner, or	3
	(b) on application by a member of the organisation.	4
(2)	An application under subsection (1) (b) must:	5
	(a) be in writing, and	6
	(b) set out the grounds on which revocation is sought, and	7
	(c) set out the information supporting the grounds on which revocation is sought, and	8
	(d) be supported by an affidavit from the applicant verifying the contents of the application.	9
(3)	The applicant must notify the Commissioner of the making of the application as soon as practicable after it is made.	10
	Note. Section 31 requires the Commissioner to notify the Attorney General of the application.	11
(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:	12
	(a) members of the organisation no longer associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity, and	13
	(b) the organisation no longer represents a risk to public safety and order in the State.	14
(5)	The Commissioner must, as soon as practicable after a declaration is revoked:	15
	(a) publish notice of the revocation in the Gazette and in at least one newspaper circulating generally throughout the State, and	16
	(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.	17
(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.	18
(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.	19

Clause 13 Crimes (Criminal Organisations Control) Bill 2012

Part 2 Declared organisations

13	Conduct of hearings of applications for declarations under this Part	1
(1)	The rules of evidence do not apply to the hearing of an application under this Part.	2 3
(2)	If an eligible Judge makes or revokes a declaration under this Part or refuses an application under this Part, the eligible Judge is required to provide reasons for making or revoking the declaration or refusing the application.	4 5 6 7

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 the person's 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	Date of effect of interim control order	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:
 - (i) the right to object to the making of the order at the hearing of the application for the control order, and
 - (ii) the procedure to be followed in notifying the Court before the hearing of the grounds of objection (the *notice of objection*) and of the need to verify the grounds by affidavit, and
 - (e) state the date on which, and the time at which, the hearing of the application for the control order is to be heard.
- (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.
- (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.
- (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.
- (6) A police officer who has reasonable cause to suspect that a person is a person on whom notice of the making of an interim control order is required to be served under this section may:
- (a) request the person to disclose his or her identity, and
 - (b) request the person to remain at a particular place for such period (not exceeding 2 hours) as is reasonably necessary to serve the notice.
- Note.** It is an offence for a person to fail or refuse without reasonable excuse to comply with a request to disclose his or her identity or to give false or misleading information about his or her identity—see section 35A.
- (7) If the person refuses or fails to comply with a request under subsection (6) (b), the police officer may detain the person at that place for such period (not exceeding 2 hours) as is reasonably necessary to serve the notice.

16A	Service of notice of interim control order	1
(1)	If notice of an interim control order cannot practicably be served on the person to whom it relates in accordance with section 16 (1), the Court may, by order, direct that:	2
	(a) service of the notice of the order be postponed for a period (not exceeding 28 days) after the period within which it is required to be served under that subsection as specified by the Court, or	3
	(b) instead of personal service, such steps be taken as are specified by the Court in the order for the purpose of bringing the interim control order to the attention of the person.	4
(2)	The Court must not make an order under subsection (1) unless it is satisfied that the Commissioner has taken all reasonable steps possible to personally serve the person within the period and as required by section 16.	5
(2A)	An order may be made under subsection (1) whether or not the 28-day period referred to in section 16 (1) has expired.	6
(3)	An order of the Court under subsection (1) (b) may direct that the notice of the interim control order be taken to have been served on the person to whom it relates on the happening of a specified event or on the expiry of a specified time.	7
(4)	If the Court is satisfied that steps specified in an order under subsection (1) (b) have not (despite the best endeavours of the Commissioner) brought an interim control order to the attention of the person to whom it relates, the Court may specify that the notice of the interim control order be published in the Gazette, a daily newspaper circulating generally in the State or by some other form of public notification.	8
(5)	Service in accordance with an order of the Court under this section is taken to constitute personal service for the purposes of sections 15 and 16 (1).	9
17	Interim control order ceases when final control order made or served	10
(1)	An interim control order remains in force until:	11
	(a) it is revoked, or	12
	(b) it ceases to have effect under subsection (2), or	13
	(c) the application for a control order confirming the interim control order is withdrawn or dismissed,	14
	whichever first occurs.	15

(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:	1
		2
		3
(a)	if the person to whom it relates is present in court—when the control order is made, or	4
		5
(b)	in any other case—when the person is served personally with a copy of the control order.	6
		7
18	Expedited hearing in cases of hardship	8
(1)	A person on whom notice of the making of an interim control order is served under this Division may request the Court to hear the application for the control order confirming the interim control order at an earlier date determined by the Court than that specified in the notice.	9
		10
		11
		12
(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.	13
		14
		15
		16
Division 2	Control orders	17
19	Court may make control order	18
(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 Division 1 if the Court is satisfied that:	19
		20
		21
(a)	the person:	22
		23
(i)	is a member of a particular declared organisation, or	24
		25
(ii)	is or purports to be a former member of a particular declared organisation but has an on-going involvement with the organisation and its activities, and	26
		27
(b)	sufficient grounds exist for making the control order.	28
(2)	The Court may:	29
		30
(a)	make a control order confirming or confirming with variations the interim control order, or	31
		32
(b)	revoke the interim control order.	33
(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:	34
		35
(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	36
		37

(b)	the affidavit provided by the person with the notice of objection referred to in section 16, and	1 2
(c)	any other information provided by the Commissioner or person to whom the order relates at the hearing.	3 4
(4)	The control order may be made whether or not the person concerned is present at the hearing of the application.	5 6
(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.	7 8 9
(6)	The Court may, on making a control order in relation to a person, make any consequential or ancillary orders it thinks fit.	10 11
(7)	Without limiting subsection (6), an order may be made, if in the opinion of the Court the circumstances of the case require:	12 13
(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 member—exempting the person from the operation of section 26 to the extent, and subject to the conditions, specified by the Court, or	14 15 16 17 18
(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.	19 20 21
(8)	For the purposes of determining whether subsection (1) (a) (ii) applies to a person, the Court may take into account whether the person regularly associates with members of the declared organisation without reasonable cause and the extent to which the conduct of the person demonstrates that the person has genuinely dissociated himself or herself from the organisation.	22 23 24 25 26 27
20	Person to whom order relates may appear at the hearing	28
	The person to whom the control order relates may appear at the hearing of the application and make submissions in relation to the application.	29 30
21	Form of control order	31
(1)	A control order must:	32
(a)	specify the person to whom it relates, and	33
(b)	subject to subsection (2)—include a statement of the grounds on which the order has been made, and	34 35
(c)	set out an explanation of the right of appeal under section 24.	36

(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.	1 2 3
(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.	4 5 6
(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.	7 8 9 10
22	Date of effect of control order	11
	A control order takes effect:	12
(a)	if the person to whom it relates is present in court—when the control order is made, or	13 14
(b)	in any other case—when the person is served personally with a copy of the control order.	15 16
23	Duration of control order	17
	A control order remains in force until it is revoked.	18
24	Right of appeal	19
(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.	20 21 22
(2)	An appeal lies as of right on a question of law and with leave on a question of fact.	23 24
(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.	25 26 27
(4)	The making of an appeal under this section does not affect the operation of the control order to which the appeal relates.	28 29
(5)	On an appeal, the Court of Appeal may:	30
(a)	confirm, vary or reverse the decision the subject of the appeal, and	31 32
(b)	make any consequential or ancillary order.	33

25	Variation or revocation of control order	1
(1)	The Court may at any time vary or revoke a control order on application:	2
(a)	by the Commissioner, or	3
(b)	by the person to whom it relates.	4
(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.	5 6 7 8 9
(3)	The Court must, before varying or revoking a control order under this section:	10 11
(a)	allow all parties a reasonable opportunity to be heard on the matter, and	12 13
(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.	14 15 16
(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.	17 18 19
(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.	20 21 22
Division 3	Consequences of making of interim control orders and control orders	23 24
26	Association between members of declared organisations subject to interim control order or control order	25 26
(1)	A controlled member of a declared organisation who associates with another controlled member of the declared organisation is guilty of an offence. Maximum penalty: Imprisonment for 2 years.	27 28 29 30
(1A)	A controlled member of a declared organisation who, at any time within a period of 3 months, associates with another controlled member of the declared organisation on 3 or more occasions is guilty of an offence. Maximum penalty: Imprisonment for 3 years.	31 32 33 34

- (1B) A controlled member of a declared organisation who associates with another controlled member of the declared organisation after being convicted of an offence under this section is guilty of an offence. Maximum penalty: Imprisonment for 5 years. 1
2
3
4
- (2) A person may be guilty of an offence under this section in respect of associations with the same person or with different people. 5
6
- (3) It is a defence to a prosecution for an offence under this section 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. 7
8
9
10
11
- (4) It is a defence to a prosecution for an offence under this section if the association is in accordance with an exemption under section 19 (7) (a). 12
13
- (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: 14
15
16
17
- (a) associations between close family members, 18
 - (b) associations occurring in the course of a lawful occupation, business or profession, 19
20
 - (c) associations occurring at a course of training or education of a kind prescribed by the regulations between persons enrolled in the course, 21
22
23
 - (d) associations occurring at a rehabilitation, counselling or therapy session of a kind prescribed by the regulations, 24
25
 - (e) associations occurring in lawful custody or in the course of complying with a court order, 26
27
 - (f) other associations of a kind prescribed by the regulations. 28
- (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. 29
30
31
32
- (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)). 33
34
35
36
37

(7A)	A police officer who has reasonable cause to suspect that a person is a controlled member of a declared organisation who is associating with another controlled member of the declared organisation may request the person to disclose his or her identity.	1 2 3 4
	Note. It is an offence for a person to fail or refuse without reasonable excuse to comply with a request to disclose his or her identity or to give false or misleading information about his or her identity—see section 35A.	5 6 7
(8)	For the purposes of this section, a person is a <i>close family member</i> of another person if:	8 9
	(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	10 11
	(b) the person is a parent or grandparent of the other (whether by blood or by marriage), or	12 13
	(c) the person is a brother or sister of the other (whether by blood or by marriage), or	14 15
	(d) the person is, or has been, a guardian or carer of the other.	16
(9)	In this section:	17
	<i>domestic relationship</i> has the same meaning as in the <i>Property (Relationships) Act 1984</i> .	18 19
	<i>spouse</i> —a person is the spouse of another if they are legally married.	20
26A	Recruiting persons to become member of declared organisation	21
(1)	A controlled member of a declared organisation who recruits another person to become a member of the organisation is guilty of an offence. Maximum penalty: Imprisonment for 5 years.	22 23 24
(2)	In this section: <i>recruit</i> includes counsel, procure, solicit, incite or induce.	25 26
27	Prohibition on carrying on of certain activities when interim control order or control order takes effect	27 28
(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.	29 30 31 32
(2)	The authorisation is suspended until the interim control order is confirmed (or confirmed with variations) by a control order or is revoked.	33 34 35
(3)	On confirmation of the interim control order by a control order, the authorisation is revoked.	36 37

- (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. 1
2
3
4
- (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. 5
6
7
8
9
10
- (6) In this section: 11
- authorisation** includes the licensing, registration, approval, certification or any other form of authorisation of a person required by or under legislation for the carrying on of an occupation or activity. 12
13
14
- occupation** means an occupation, trade, profession or calling of any kind that may only be carried on by a person holding an authorisation. 15
16
- prescribed activity** means the following: 17
- (a) operating a casino within the meaning of the *Casino Control Act 1992*, or being a special employee within the meaning of Part 4 of that Act, 18
19
20
- (b) carrying on a security activity within the meaning of the *Security Industry Act 1997*, 21
22
- (c) carrying on the business of a pawnbroker within the meaning of the *Pawnbrokers and Second-hand Dealers Act 1996*, 23
24
- (d) carrying on business as a commercial agent or private inquiry agent within the meaning of the *Commercial Agents and Private Inquiry Agents Act 2004*, 25
26
27
- (e) possessing or using a firearm, or an imitation firearm, within the meaning of the *Firearms Act 1996* or carrying on business as a firearms dealer within the meaning of that Act, 28
29
30
- (f) operating a tow truck within the meaning of the *Tow Truck Industry Act 1998*, 31
32
- (g) carrying on business as a dealer within the meaning of the *Motor Dealers Act 1974*, 33
34
- (h) carrying on business as a repairer within the meaning of the *Motor Vehicle Repairs Act 1980*, 35
36
- (i) selling or supplying liquor within the meaning of the *Liquor Act 2007*, 37
38
- (j) carrying on the business of a bookmaker within the meaning of the *Racing Administration Act 1998*, 39
40

-
- | | | |
|-----|--|------------------|
| (k) | carrying out the activities of an owner, trainer, jockey, stablehand, bookmaker, bookmaker's clerk or another person associated with racing who is required to be registered or licensed under the <i>Thoroughbred Racing Act 1996</i> , | 1
2
3
4 |
| (l) | carrying out the activities of an owner, trainer or other person associated with greyhound or harness racing who is required to be registered under the <i>Greyhound Racing Act 2009</i> or the <i>Harness Racing Act 2009</i> , | 5
6
7
8 |
| (m) | any other activity prescribed by the regulations. | 9 |

Part 4	Miscellaneous	1
28	Criminal intelligence	2
(1)	This section applies to and in respect of:	3
(a)	an application to an eligible Judge under Part 2 for the making or revocation of a declaration, and the hearing and determination of the application by the eligible Judge, and	4 5 6
(b)	an application to the Court under Part 3 for the making, variation or revocation of an interim control order or control order, and the hearing and determination of the application by the Court,	7 8 9
	and any criminal intelligence disclosed in connection with any such application, hearing or determination.	10 11
(2)	In this section, the eligible Judge and the Court are referred to as the <i>determining authority</i> .	12 13
(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.	14 15 16 17 18 19
(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.	20 21 22 23
(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).	24 25 26 27
(6)	Despite subsection (3), the determining authority may disclose to the Attorney General, to a person conducting a review under this Part, to a court or to a person to whom the Commissioner authorises disclosure any information the determining authority considers to be properly classified by the Commissioner as criminal intelligence.	28 29 30 31 32
(7)	Subsection (3) applies to a court or person to whom information classified as criminal intelligence is disclosed under this section as if the court or person were a determining authority.	33 34 35
29	Protected submission	36
(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	37 38 39

subsection (2)) of any other person referred to in section 8 (1) or (2) and their representatives.	1 2
(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.	3 4 5 6
30 Criminal organisations register	7
(1) The Commissioner must keep a register of information about declarations and orders made under this Act (the <i>register of criminal organisations</i>).	8 9 10
(2) The register may contain any of the following information:	11
(a) the name of any declared organisation (or the name by which it is commonly known),	12 13
(b) the name of any controlled member of the declared organisation (or the name by which the controlled member is commonly known).	14 15 16
(3) Information relating to a control order is not to be published on the register before the expiration of the period of 28 days after the control order is made and (if the person to whom the order relates does appeal before the expiration of that period) until the appeal is determined or withdrawn.	17 18 19 20 21
(3A) Information published on the register is to be removed from the register if leave to appeal is sought after the 28-day period and is not to be restored to the register unless leave is refused or, if leave is allowed, the appeal is determined or withdrawn.	22 23 24 25
Note. Leave may be given outside the 28-day period under section 24.	26
(4) Information contained in the register may be provided to members of the public in any other manner approved by the Commissioner.	27 28
(5) Without limiting subsection (4), the Commissioner may publish any information contained in the register in a newspaper circulating in the State.	29 30 31
30A Provision of information relating to criminal organisations	32
(1) In this section:	33
<i>authorisation</i> includes the licensing, registration, approval, certification or any other form of authorisation of a person required by or under legislation for the carrying on of an occupation or activity.	34 35 36
<i>occupation</i> means an occupation, trade, profession or calling of any kind that may only be carried on by a person holding an authorisation.	37 38

<i>regulatory authority</i> means the person or body having the function conferred by legislation of authorising persons in connection with the carrying on of an occupation or activity.	1 2 3
<i>regulatory legislation</i> means the legislation requiring the authorisation of persons in connection with the carrying on of an occupation or activity.	4 5 6
(2) A regulatory authority and the Commissioner may enter into arrangements for the supply to the regulatory authority of information that is contained in the records of the NSW Police Force and concerns:	7 8 9
(a) any organisation that is a declared organisation, and	10
(b) any controlled member of that organisation who is an applicant for, or holder of, an authorisation under the regulatory legislation, and	11 12 13
(c) any person who is an applicant for, or holder of, an authorisation under the regulatory legislation and who is a member, or associates with any member, of that organisation,	14 15 16
and that is reasonably necessary for the proper exercise of any function of the regulatory authority relating to authorisations and disciplinary proceedings under the regulatory legislation.	17 18 19
(3) Those arrangements are sufficient authority for the supply of that information.	20 21
(4) The regulatory authority is to take steps to maintain the confidentiality of any information provided by the Commissioner under subsection (2) that is criminal intelligence and must not disclose the information to any person unless authorised to do so by the Commissioner.	22 23 24 25
(5) Nothing in this section limits or affects any other power or duty conferred or imposed on the Commissioner or the regulatory authority under the regulatory legislation.	26 27 28
31 Attorney General to be notified	29
(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.	30 31 32
(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.	33 34 35
(3) The Attorney General is entitled to be present and to make submissions at the hearing of the application.	36 37

32	Burden of proof	1
(1)	Any question of fact to be decided in proceedings under this Act is to be decided on the balance of probabilities.	2 3
(2)	This section does not apply in relation to proceedings for an offence against this Act.	4 5
33	Delegation	6
	The Commissioner:	7
(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	8 9 10
(b)	may not delegate any other function of the Commissioner under this Act except to a senior police officer.	11 12
34	Immunity from liability	13
	No civil or criminal liability attaches to:	14
(a)	the Attorney General, the Commissioner, a police officer or other person exercising functions under this Act (whether or not under delegation), or	15 16 17
(b)	the Crown,	18
	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.	19 20 21
35	Protection of exercise of certain functions	22
(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.	23 24 25 26
(2)	Except as provided by section 24 (Right of appeal), the exercise by any protected person of any protected function may not be:	27 28
(a)	challenged, reviewed, quashed or called into question before any court of law or administrative review body in any proceedings, or	29 30
(b)	restrained, removed or otherwise affected by any proceedings.	31
(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).	32 33 34 35

(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.	1 2 3 4 5
(5)	This section has effect despite any provision of any other legislation or any other law (whether written or unwritten).	6 7
(6)	In this section:	8
	<i>exercise</i> of functions includes:	9
(a)	the purported exercise of functions, and	10
(b)	the non-exercise or improper exercise of functions, and	11
(c)	the proposed, apprehended or threatened exercise of functions.	12
	<i>proceedings</i> includes:	13
(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	14 15 16
(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> ,	17 18 19
	but does not include any investigation or proceedings under the <i>Independent Commission Against Corruption Act 1988</i> .	20 21
35A	Failure of person to disclose identity on request	22
(1)	A person who is requested by a police officer in accordance with section 16 (6) or 26 (7A) to disclose his or her identity must not, without reasonable excuse, fail or refuse to comply with the request.	23 24 25
	Maximum penalty: 20 penalty units.	26
(2)	A person must not, without reasonable excuse, in response to a request made by a police officer in accordance with a provision referred to in subsection (1):	27 28 29
(a)	give a name that is false in a material particular, or	30
(b)	give an address other than the person's full and correct address.	31
	Maximum penalty: 20 penalty units.	32
	Note. Section 201 of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> sets out safeguards in relation to such a request.	33 34

36	Proceedings for offences	1
	Proceedings for an offence under this Act (other than an offence under section 26 (1A) or (1B) or 26A) are to be dealt with summarily before the Local Court.	2 3 4
	Note. Offences under section 26 (1A) or (1B) or 26A remain indictable offences. Chapter 5 of the <i>Criminal Procedure Act 1986</i> enables those offences to be dealt with summarily following an election by the prosecutor or defendant.	5 6 7
37	Rules of court	8
	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.	9 10 11 12
38	Regulations	13
	(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.	14 15 16 17
	(2) The regulations may create offences punishable by a penalty not exceeding 100 penalty units.	18 19
39	Report to Ombudsman on exercise of powers and monitoring by Ombudsman	20 21
	(1) For the period of 4 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.	22 23 24
	(2) For that purpose, the Ombudsman may require the Commissioner or any public authority to provide information about the exercise of those powers.	25 26 27
	(3) The Commissioner is to ensure that the Ombudsman is provided with a report on:	28 29
	(a) any declaration made under Part 2 or under an interim control order or control order, and	30 31
	(b) the reasons the declaration or order was sought, and	32
	(c) any prosecutions brought under section 26 or 26A.	33
	(4) The Ombudsman must maintain the confidentiality of information provided to the Ombudsman that is classified by the Commissioner as criminal intelligence.	34 35 36
	(5) The Ombudsman must, as soon as possible after the expiration of the 4-year period, prepare a report of the Ombudsman's work and activities	37 38

under this section and furnish a copy of the report to the Attorney General and to the Commissioner.	1 2
(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.	3 4 5
(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.	6 7 8
(8) The report:	9
(a) is, on presentation and for all purposes, taken to have been laid before the House, and	10 11
(b) may be printed by authority of the Clerk of the House, and	12
(c) if so printed, is for all purposes taken to be a document published by or under the authority of the House, and	13 14
(d) is to be recorded:	15
(i) in the case of the Legislative Council, in the Minutes of the Proceedings of the Legislative Council, and	16 17
(ii) in the case of the Legislative Assembly, in the Votes and Proceedings of the Legislative Assembly,	18 19
on the first sitting day of the House after receipt of the report by the Clerk.	20 21
39A Repeal of Crimes (Criminal Organisations Control) Act 2009 No 6	22
The <i>Crimes (Criminal Organisations Control) Act 2009</i> is repealed.	23
40 Review of Act	24
(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.	25 26 27
(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.	28 29
(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.	30 31 32 33
(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.	34 35

Schedule 1	Amendment of Acts and Regulation	1
1.1	Bail Act 1978 No 161	2
	Section 9 Presumption in favour of bail for certain offences	3
	Omit section 9 (1) (e1). Insert instead:	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 2012</i> ,	5 6 7 8
1.2	Commercial Agents and Private Inquiry Agents Act 2004 No 70	9 10
[1]	Section 4 Definitions	11
	Omit the definition of <i>criminal intelligence</i> from section (4) (1).	12
	Insert instead:	13
	<i>criminal intelligence</i> means information classified by the Commissioner as criminal intelligence within the meaning of the <i>Crimes (Criminal Organisations Control) Act 2012</i> .	14 15 16
[2]	Section 4 (1), definition of “disqualified individual”	17
	Omit paragraph (g) and note. Insert instead:	18
	(g) an individual who is a controlled member of a declared organisation within the meaning of the <i>Crimes (Criminal Organisations Control) Act 2012</i> .	19 20 21
[3]	Section 4 (2A)	22
	Omit the subsection. Insert instead:	23
	(2A) For the purposes of paragraph (c) of the definition of <i>disqualified individual</i> , an individual is not a fit and proper person to hold a licence under this Act if the Commissioner has reasonable grounds to believe from information held in relation to the individual:	24 25 26 27 28
	(a) that the individual is a member of, or regularly associates with one or more members of, a declared organisation within the meaning of the <i>Crimes (Criminal Organisations Control) Act 2012</i> , and	29 30 31 32
	(b) that the nature and circumstances of the individual’s relationship with the declared organisation or its members are such that it could reasonably be inferred that improper	33 34 35

	conduct that would further the criminal activities of the declared organisation is likely to occur if the individual were to hold or continue to hold a licence under this Act.	1 2 3
1.3	Criminal Assets Recovery Act 1990 No 23	4
	Section 6 Meaning of “serious crime related activity”	5
	Omit section 6 (2) (g1). Insert instead:	6
	(g1) an offence under section 93T of the <i>Crimes Act 1900</i> , or	7
1.4	Criminal Procedure Act 1986 No 209	8
	Schedule 1 Indictable offences triable summarily	9
	Omit item 18A from Part 4 of Table 1 to the Schedule. Insert instead:	10
18A	Crimes (Criminal Organisations Control) Act 2012	11
	An offence under section 26 or 26A of the <i>Crimes (Criminal Organisations Control) Act 2012</i> .	12 13
1.5	Criminal Records Regulation 2004	14
	Clause 12A	15
	Omit the clause. Insert instead:	16
12A	Exceptions in relation to declared organisations under the Crimes (Criminal Organisations Control) Act 2012	17 18
	(1) Section 12 of the Act does not apply in relation to an application under Part 2 of the <i>Crimes (Criminal Organisations Control) Act 2012</i> or the making of a decision by an eligible Judge under that Part.	19 20 21 22
	(2) Section 13 of the Act does not apply to the disclosure, by or on behalf of the Commissioner of Police, of information concerning a spent conviction to an eligible Judge for the purposes of an application under Part 2 of the <i>Crimes (Criminal Organisations Control) Act 2012</i> .	23 24 25 26 27
1.6	Liquor Act 2007 No 90	28
[1]	Section 4 Definitions	29
	Omit the definition of <i>criminal intelligence</i> from section 4 (1). Insert instead:	30
	<i>criminal intelligence</i> means information classified by the Commissioner of Police as criminal intelligence within the	31 32

	meaning of the <i>Crimes (Criminal Organisations Control) Act 2012</i> .	1 2
[2]	Sections 40 (3) (c), 45 (5) (a) and 68 (4A) (a)	3
	Omit “ <i>Act 2009</i> ” wherever occurring. Insert instead “ <i>Act 2012</i> ”.	4
1.7	Motor Dealers Act 1974 No 52	5
[1]	Section 4 Definitions	6
	Omit the definition of <i>criminal intelligence</i> from section 4 (1). Insert instead:	7
	<i>criminal intelligence</i> means information classified by the Commissioner of Police as criminal intelligence within the meaning of the <i>Crimes (Criminal Organisations Control) Act 2012</i> .	8 9 10 11
[2]	Section 12 Grounds on which application to be granted or refused	12
	Omit “ <i>Act 2009</i> ” from section 12 (2) (f1) and (3A) (a) wherever occurring.	13
	Insert instead “ <i>Act 2012</i> ”.	14
1.8	Motor Vehicle Repairs Act 1980 No 71	15
[1]	Section 4 Definitions	16
	Omit the definition of <i>criminal intelligence</i> from section 4 (1). Insert instead:	17
	<i>criminal intelligence</i> means information classified by the Commissioner of Police as criminal intelligence within the meaning of the <i>Crimes (Criminal Organisations Control) Act 2012</i> .	18 19 20 21
[2]	Sections 18 (1) (k) and (2A) (a) and 24 (4) (a)	22
	Omit “ <i>Act 2009</i> ” wherever occurring. Insert instead “ <i>Act 2012</i> ”.	23
1.9	Pawnbrokers and Second-hand Dealers Act 1996 No 13	24
[1]	Section 3 Definitions	25
	Omit the definition of <i>criminal intelligence</i> from section 3 (1). Insert instead:	26
	<i>criminal intelligence</i> means information classified by the Commissioner of Police as criminal intelligence within the meaning of the <i>Crimes (Criminal Organisations Control) Act 2012</i> .	27 28 29 30

[2] Sections 8 (1) (d) and 8A (2A) (a)	1
Omit “ <i>Act 2009</i> ” wherever occurring. Insert instead “ <i>Act 2012</i> ”.	2
1.10 Surveillance Devices Act 2007 No 64	3
Section 4 Definitions	4
Omit paragraph (p) from the definition of <i>relevant proceeding</i> in section 4 (1).	5
Insert instead:	6
(p) any proceeding in respect of a declaration under Part 2, or a control order under Division 1 or 2 of Part 3, of the <i>Crimes (Criminal Organisations Control) Act 2012</i> .	7 8 9
1.11 Tow Truck Industry Act 1998 No 111	10
[1] Section 3 Definitions	11
Omit the definition of <i>criminal intelligence</i> from section 3 (1). Insert instead:	12
<i>criminal intelligence</i> means information classified by the Commissioner of Police as criminal intelligence within the meaning of the <i>Crimes (Criminal Organisations Control) Act</i> <i>2012</i> .	13 14 15 16
[2] Sections 18 (2) (d) and (e), 26 (2) (e) and (f) and 42 (2) (a)	17
Omit “ <i>Act 2009</i> ” wherever occurring. Insert instead “ <i>Act 2012</i> ”.	18