



New South Wales

# Crimes (Serious Crime Prevention Orders) Bill 2016

## Explanatory note

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

The *Criminal Legislation Amendment (Organised Crime and Public Safety) Bill 2016* is cognate with this Bill.

## Overview of Bill

The object of this Bill is to enable the Supreme Court and the District Court to make serious crime prevention orders, on the application of the Commissioner of Police, the Director of Public Prosecutions or the New South Wales Crime Commission, so as to prevent, restrict or disrupt involvement by certain persons in serious crime related activities.

## 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 a day or days to be appointed by proclamation.

**Clause 3** defines certain words and expressions used in the proposed Act. In particular, the term *serious criminal offence* is defined to have the same meaning as in the *Criminal Assets Recovery Act 1990*.

The proposed section also defines the *appropriate court*, in relation to an application for, or the making of, a serious crime prevention order against a person, to mean:

- (a) if the ground for making the order is that the person has been convicted of a serious criminal offence—either the Supreme Court or the District Court, or

- (b) if the ground for making the order is that the person has been involved in serious crime related activity for which the person has not been convicted of a serious criminal offence—the Supreme Court.

The term *eligible applicant* is defined to mean any of the following:

- (a) the Commissioner of Police,
- (b) the Director of Public Prosecutions,
- (c) the New South Wales Crime Commission.

The term *serious crime related activity* is defined to mean anything done by a person that is or was at the time a serious criminal offence, whether or not:

- (a) the person has been charged with the offence, or
- (b) if charged, the person:
  - (i) has been tried, or
  - (ii) has been tried and acquitted, or
  - (iii) has been convicted (even if the conviction has been quashed or set aside).

**Clause 4** defines when a person is *involved in serious crime related activity* to mean:

- (a) the person has engaged in serious crime related activity, or
- (b) the person has engaged in conduct that has facilitated another person engaging in serious crime related activity, or
- (c) the person has engaged in conduct that is likely to facilitate serious crime related activity (whether by the person or another person).

## Part 2 Serious crime prevention orders

**Clause 5** enables an appropriate court, on the application of an eligible applicant, to make a serious crime prevention order against a specified person if:

- (a) in the case of a natural person—the person is 18 years old or older, and
- (b) the court is satisfied that:
  - (i) the person has been convicted of a serious criminal offence, or
  - (ii) the person has been involved in serious crime related activity for which the person has not been convicted of a serious criminal offence (including by reason of being acquitted of, or not being charged with, such an offence), and
- (c) the court is satisfied that there are reasonable grounds to believe that the making of the order would protect the public by preventing, restricting or disrupting involvement by the person in serious crime related activities.

**Clause 6** provides for the kinds of provisions that can, and cannot, be included in a serious crime prevention order.

**Clause 7** provides that a serious crime prevention order takes effect when it is served on the person against whom it is made (or on a later date, if any, specified in the order) and has effect for the period specified in the order. The proposed section also provides that the period specified in a serious crime prevention order for its duration must not exceed a period of 5 years.

**Clause 8** makes it an offence for a person against whom a serious crime prevention order is in effect to contravene the order. The maximum penalty for the offence will be 1,500 penalty units for a corporation (currently \$165,000) and 300 penalty units (currently \$33,000) or imprisonment for 5 years, or both, for a natural person.

**Clause 9** enables an eligible applicant to apply to the Supreme Court for a compulsory winding up order requiring the winding up of a company under the *Corporations Act 2001* of the Commonwealth or an association registered under the *Associations Incorporation Act 2009* that has been convicted of an offence against proposed section 8. The proposed section also includes

provisions to displace the winding up provisions of the *Corporations Act 2001* of the Commonwealth to facilitate the making and implementation of such orders.

**Clause 10** enables an eligible applicant to apply to the Supreme Court for a compulsory dissolution order requiring the dissolution of a partnership if the partnership has, or one or more of the partners have, been convicted of an offence against proposed section 8.

**Clause 11** enables both the applicant for a serious crime prevention order and a person against whom such an order is made to appeal to the Court of Appeal against a decision of the Supreme Court or the District Court in relation to the order.

**Clause 12** enables the court that makes a serious crime prevention order to vary or revoke the order on application by the eligible applicant who applied for the order or the person against whom the order is made.

### **Part 3 Miscellaneous**

**Clause 13** makes it clear that proceedings for a serious crime prevention order are civil proceedings and not criminal proceedings. Accordingly, the civil standard of proof on the balance of probabilities will apply.

**Clause 14** enables rules of court to be made under the *Civil Procedure Act 2005*, the *Supreme Court Act 1970* and the *District Court Act 1973* for the purposes of the proposed Act.

**Clause 15** enables the Governor to make regulations for the purposes of the proposed Act.

**Clause 16** provides for the review of the proposed Act in 3 years.

### **Schedule 1 Savings, transitional and other provisions**

**Schedule 1** contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

### **Schedule 2 Consequential amendment of Criminal Procedure Act 1986 No 209**

**Schedule 2** makes a consequential amendment to the Act to provide for an otherwise indictable offence against proposed section 8 to be dealt with summarily unless the prosecutor or accused person elects otherwise.



New South Wales

# Crimes (Serious Crime Prevention Orders) Bill 2016

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New South Wales

# Crimes (Serious Crime Prevention Orders) Bill 2016

No. , 2016

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## A Bill for

An Act to provide for the making of serious crime prevention orders and to make a consequential amendment to the *Criminal Procedure Act 1986*.

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See also the *Criminal Legislation Amendment (Organised Crime and Public Safety) Bill 2016*.

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The Legislature of New South Wales enacts:

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Crimes (Serious Crime Prevention Orders) Act 2016*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Definitions

(1) In this Act:

**appropriate court**, in relation to an application for, or the making of, a serious crime prevention order against a person, means:

- (a) if the ground for making the order is that the person has been convicted of a serious criminal offence—either the Supreme Court or the District Court, or
- (b) if the ground for making the order is that the person has been involved in serious crime related activity for which the person has not been convicted of a serious criminal offence—the Supreme Court.

**eligible applicant** means any of the following:

- (a) the Commissioner of Police,
- (b) the Director of Public Prosecutions,
- (c) the New South Wales Crime Commission.

**involved in serious crime related activity**—see section 4.

**modification** includes addition, exception, omission or substitution.

**serious crime prevention order**—see section 5.

**serious crime related activity** means anything done by a person that is or was at the time a serious criminal offence, whether or not:

- (a) the person has been charged with the offence, or
- (b) if charged, the person:
  - (i) has been tried, or
  - (ii) has been tried and acquitted, or
  - (iii) has been convicted (even if the conviction has been quashed or set aside).

**serious criminal offence** has the same meaning as in the *Criminal Assets Recovery Act 1990*.

(2) Notes included in this Act do not form part of this Act.

### 4 Meaning of “involved in serious crime related activity”

(1) For the purposes of this Act, a person is **involved in serious crime related activity** if:

- (a) the person has engaged in serious crime related activity, or
- (b) the person has engaged in conduct that has facilitated another person engaging in serious crime related activity, or
- (c) the person has engaged in conduct that is likely to facilitate serious crime related activity (whether by the person or another person).

- (2) In determining whether the conduct of a person has facilitated another person to engage in serious crime related activity, a court may take into account whether the conduct was reasonable in all the circumstances. 1  
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## Part 2 Serious crime prevention orders

### 5 Making of serious crime prevention orders

- (1) An appropriate court may, on the application of an eligible applicant, make an order (a *serious crime prevention order*) against a specified person if:
  - (a) in the case of a natural person—the person is 18 years old or older, and
  - (b) the court is satisfied that:
    - (i) the person has been convicted of a serious criminal offence, or
    - (ii) the person has been involved in serious crime related activity for which the person has not been convicted of a serious criminal offence (including by reason of being acquitted of, or not being charged with, such an offence), and
  - (c) the court is satisfied that there are reasonable grounds to believe that the making of the order would protect the public by preventing, restricting or disrupting involvement by the person in serious crime related activities.
- (2) If the ground relied on for an application for a serious crime prevention order against a person is that the person has been involved in serious crime related activity for which the person has not been convicted of a serious criminal offence by reason of an acquittal, the application must include the following information:
  - (a) the serious criminal offence of which the person was acquitted,
  - (b) the court in which the offence was tried,
  - (c) the date on which the person was acquitted.
- (3) Unless the appropriate court orders otherwise, the applicant must serve a copy of the application on the person against whom the serious crime prevention order is sought at least 14 days before the hearing date for the application.
- (4) The person against whom a serious crime prevention order is sought and any other person whose interests may be affected by the making of the order may appear at the hearing of the application and make submissions in relation to the application.
- (5) In determining an application for a serious crime prevention order, the court may admit and take into account hearsay evidence despite any rule relating to the admission of hearsay evidence (whether under the *Evidence Act 1995* or otherwise) if:
  - (a) the court is satisfied that the evidence is from a reliable source and is otherwise relevant and of probative value, and
  - (b) the person against whom the order is sought to be made has been notified of, and served with a copy of, the evidence before its admission.
- (6) The applicant must ensure that a serious crime prevention order is served (whether by the applicant or another person) on the person against whom it is made. The order must be served by means of personal service.

### 6 Content of serious crime prevention order

- (1) A serious crime prevention order may contain such prohibitions, restrictions, requirements and other provisions as the court considers appropriate for the purpose of protecting the public by preventing, restricting or disrupting involvement by the person in serious crime related activities.
- (2) However, a serious crime prevention order cannot contain provisions that require a person:
  - (a) to answer questions or provide information orally, or

(b)	to answer questions, or to provide documents or other information, that are subject to client legal privilege (legal professional privilege), or	1 2
(c)	to disclose protected confidences (within the meaning of Division 1A of Part 3.10 of the <i>Evidence Act 1995</i> ), or	3 4
(d)	to provide documents or other information that is held by the person in confidence as part of a banking business unless:	5 6
	(i) the person to whom the confidence is owed has consented, or	7
	(ii) the order specifically requires the provision or production of the documents or other information concerned (or documents or other information of the kind concerned), or	8 9 10
(e)	to answer questions, or to provide documents or other information, that would result in a disclosure prohibited by a provision of another Act (other than the <i>Evidence Act 1995</i> ).	11 12 13
(3)	Without limiting subsection (2), an answer given, or document or other information provided, by a person in compliance with a requirement of a serious crime prevention order (the <b><i>compelled evidence</i></b> ) is not admissible as evidence against that person in civil or criminal proceedings other than:	14 15 16 17
	(a) proceedings for an offence against section 8, or	18
	(b) proceedings in which the person has adduced the compelled evidence.	19
<b>7</b>	<b>Duration of serious crime prevention order</b>	20
(1)	A serious crime prevention order:	21
	(a) takes effect when it is served on the person against whom it is made or on such later date as may be specified in the order, and	22 23
	(b) once it takes effect, has effect for the period specified in the order.	24
(2)	The period specified in a serious crime prevention order for its duration must not exceed a period of 5 years.	25 26
<b>8</b>	<b>Offence: contravention of serious crime prevention order</b>	27
	A person against whom a serious crime prevention order is in effect must not contravene the order.	28 29
	Maximum penalty:	30
	(a) in the case of a corporation—1,500 penalty units, or	31
	(b) in the case of a natural person—300 penalty units or imprisonment for 5 years, or both.	32 33
<b>9</b>	<b>Winding up of voluntary corporation for contravening serious crime prevention orders</b>	34 35
(1)	An eligible applicant may apply to the Supreme Court for an order (a <b><i>compulsory winding up order</i></b> ) requiring the winding up of a voluntary corporation that has been convicted of an offence against section 8.	36 37 38
(2)	The Supreme Court may make a compulsory winding up order against a voluntary corporation if the Court is satisfied that:	39 40
	(a) the corporation has been convicted of an offence against section 8, and	41
	(b) there are no further avenues of appeal available to the corporation in respect of the conviction, and	42 43
	(c) it is in the public interest, and just and equitable, for the corporation to be wound up.	44 45

- (3) If a compulsory winding up order is made against an association, Part 6 of the *Associations Incorporation Act 2009* is taken (subject to such modifications as may be prescribed by the regulations) to apply to the winding up of the association as if the Supreme Court had made an order under section 63 (1) (i) of that Act for its winding up. 1  
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- (4) If a compulsory winding up order is made against a company, the winding up of the company pursuant to that order is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to Chapter 5 of the Corporations Act, subject to the following modifications: 6  
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- (a) the order is taken to have effect for the purposes of the provisions as if the Supreme Court has made an order for the winding up of the company under section 461 (1) (k) of the Corporations Act, 11  
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- (b) such other modifications as may be prescribed by the regulations. 14
- Note.** Part 3 of the *Corporations (Ancillary Provisions) Act 2001* provides for the application of provisions of the *Corporations Act 2001* and Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth as laws of the State in respect of any matter declared by a law of the State (whether with or without modification) to be an applied Corporations legislation matter for the purposes of that Part in relation to those Commonwealth provisions. Section 14 (2) of the *Corporations (Ancillary Provisions) Act 2001* ensures that a declaration made for the purposes of Part 3 of that Act only operates to apply a provision of the Corporations legislation to a matter as a law of the State if that provision does not already apply to the matter as a law of the Commonwealth. If a provision referred to in a declaration already applies as a law of the Commonwealth, nothing in the declaration will affect its continued operation as a law of the Commonwealth. 15  
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- (5) Subsections (1), (2) and (4) are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the Corporations Act in relation to the provisions of Chapter 5 of the Corporations Act. 26  
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- Note.** Section 5G of the Corporations Act enables a State to displace the operation of provisions of the Corporations legislation in favour of provisions of State laws that are declared under State law to be Corporations legislation displacement provisions for the purposes of that section. See, in particular, section 5G (4), (8) and (11) of the Corporations Act in relation to the displacements effected by this subsection. 29  
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- (6) In this section: 34
- association** means an association registered under the *Associations Incorporation Act 2009*. 35  
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- company** means a company within the meaning of the Corporations Act. 37
- Corporations Act** means the *Corporations Act 2001* of the Commonwealth. 38
- voluntary corporation** means: 39
- (a) a company, or 40
- (b) an association. 41
- 10 Dissolution of partnerships** 42
- (1) An eligible applicant may apply to the Supreme Court for an order (a **compulsory dissolution order**) requiring the dissolution of a partnership if the partnership has, or one or more of the partners have, been convicted of an offence against section 8. 43  
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- Note.** The *Partnership Act 1892* provides for incorporated limited partnerships. Incorporated limited partnerships are persons for the purposes of this Act because they are bodies corporate. See the definition of **person** in section 21 (1) of the *Interpretation Act 1987*. 46  
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- (2) The Supreme Court may make a compulsory dissolution order against a partnership if the Court is satisfied that: 49  
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- (a) the partnership has, or one or more of the partners have, been convicted of an offence against section 8, and 51  
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- (b) there are no further avenues of appeal available to the partnership or partners in respect of the conviction or convictions, and 1  
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    - (c) it is in the public interest, and just and equitable, for the partnership to be dissolved. 3  
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  - (3) If a compulsory dissolution order is made against a partnership: 5
    - (a) in the case of an incorporated limited partnership—Schedule 1 to the *Partnership Act 1892* is taken (subject to such modifications as may be prescribed by the regulations) to apply to the dissolution of the partnership as if the Registrar had published a conclusive certificate under clause 3 of that Schedule on the date the order takes effect that the partnership is required to be wound up, or 6  
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    - (b) in the case of any other partnership—Division 4 of Part 2 of the *Partnership Act 1892* is taken (subject to such modifications as may be prescribed by the regulations) to apply to the dissolution as if the Supreme Court had made an order for dissolution under section 35 (f) of that Act. 12  
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  - (4) In this section: 16
    - incorporated limited partnership* and *Registrar* have the same meaning as in the *Partnership Act 1892*. 17  
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- 11 Right of appeal in relation to making of serious crime prevention order** 19
  - (1) Each of the following persons may appeal to the Court of Appeal against a decision of the Supreme Court or the District Court in relation to the making of a serious crime prevention order: 20  
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    - (a) the applicant for the order, 23
    - (b) the person against whom such an order is made. 24
  - (2) An appeal lies as of right on a question of law and with leave on a question of fact. 25
  - (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 grants leave for it to be made after that time. 26  
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  - (4) On an appeal, the Court of Appeal may: 29
    - (a) confirm, vary or reverse the decision the subject of the appeal, and 30
    - (b) make any consequential or ancillary order. 31
- 12 Variation or revocation of serious crime prevention order** 32
  - (1) The court that makes a serious crime prevention order may at any time vary or revoke the order on application by: 33  
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    - (a) the applicant for the order, or 35
    - (b) the person against whom the order is made. 36
  - (2) An application for the variation or revocation of a serious crime prevention order may only be made by the person against whom the order was made 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. 37  
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  - (3) The court, before varying or revoking a serious crime prevention order under this section, must: 42  
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    - (a) allow all parties to the proceedings for the original order a reasonable opportunity to be heard on the matter, and 44  
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- (b) have regard to the same factors that the court is required to have regard to in considering whether or not to make a serious crime prevention order and the content of a serious crime prevention order. 1  
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<b>Part 3</b>	<b>Miscellaneous</b>	1
<b>13</b>	<b>Proceedings for serious crime prevention orders are civil and not criminal</b>	2
(1)	For the purposes of this Act, proceedings on an application for a serious crime prevention order are not criminal proceedings.	3 4
(2)	Except in relation to an offence against this Act:	5
(a)	the rules of construction applicable only in relation to the criminal law do not apply in the interpretation of the provisions of this Act, and	6 7
(b)	the rules of evidence applicable in civil proceedings (including as to the burden of proof) apply, and those applicable only in criminal proceedings do not apply, to proceedings under this Act.	8 9 10
<b>14</b>	<b>Rules of court</b>	11
	Rules of court may be made under the <i>Civil Procedure Act 2005</i> , the <i>Supreme Court Act 1970</i> and the <i>District Court Act 1973</i> for or with respect to the practice and procedure to be followed in respect of proceedings under this Act for serious crime prevention orders and any matters incidental to, or relating to, such practice and procedure.	12 13 14 15 16
<b>15</b>	<b>Regulations</b>	17
	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.	18 19 20 21
<b>16</b>	<b>Review of Act</b>	22
(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.	23 24 25
(2)	The review is to be undertaken as soon as possible after the period of 3 years from the commencement of this Act.	26 27
(3)	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 3 years.	28 29

<b>Schedule 1</b>	<b>Savings, transitional and other provisions</b>	1
<b>Part 1</b>	<b>General</b>	2
<b>1</b>	<b>Regulations</b>	3
(1)	The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any other Act that amends this Act.	4 5
(2)	If the regulations so provide, any such provision may:	6
(a)	have effect despite any specified provisions of this Act (including a provision of this Schedule), and	7 8
(b)	take effect from the date of assent to the Act concerned or a later date.	9
(3)	To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:	10 11 12
(a)	to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or	13 14 15
(b)	to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.	16 17 18
(4)	A regulation made for the purposes of this clause may make separate savings and transitional provisions or amend this Schedule to consolidate the savings and transitional provisions.	19 20 21
<b>Part 2</b>	<b>Provisions consequent on enactment of this Act</b>	22
<b>2</b>	<b>Application of Act to serious crime related activities and serious criminal offences occurring before commencement</b>	23 24
	A serious crime prevention order may be made by reference to serious crime related activities and serious criminal offences that occurred before the commencement of this Act as well as to those that occur on or after that commencement.	25 26 27

**Schedule 2 Consequential amendment of Criminal Procedure Act 1986 No 209**

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**Schedule 1 Indictable offences triable summarily**

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Insert after clause 18A in Part 4 of Table 1:

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**18B Crimes (Serious Crime Prevention Orders) Act 2016**

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An offence under section 8 of the *Crimes (Serious Crime Prevention Orders) Act 2016*.

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