

Criminal Organisations Legislation Amendment Act 2009 No 23

[2009-23]



New South Wales

Status Information

Currency of version

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Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

Notes—

- **Note**

Amending Acts and amending provisions are subject to automatic repeal pursuant to sec 30C of the [Interpretation Act 1987 No 15](#) once the amendments have taken effect.

Authorisation

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Criminal Organisations Legislation Amendment Act 2009 No 23



New South Wales

An Act to amend the *Crimes (Criminal Organisations Control) Act 2009* to make further provision with respect to the control of criminal organisations and to amend various other Acts with respect to associates of such organisations; to amend the *Law Enforcement (Powers and Responsibilities) Act 2002* to make further provision with respect to search powers; and for other purposes.

1 Name of Act

This Act is the *Criminal Organisations Legislation Amendment Act 2009*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by subsection (2).
- (2) Schedule 2 commences on a day or days to be appointed by proclamation.

Schedule 1 Amendment of *Crimes (Criminal Organisations Control) Act 2009 No 6*

[1] Section 16A

Insert after section 16:

16A Service of notice of interim control order

- (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:
 - (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
 - (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.

- (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.
- (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.
- (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.
- (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).

[2] Section 26A

Insert after section 26:

26A Recruiting persons to become member of declared organisation

- (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.

- (2) In this section:

recruit includes counsel, procure, solicit, incite or induce.

[3] Section 30 Criminal organisations register

Omit “until after the last day on which the person to whom the order relates may appeal against the making of the order” from section 30 (3).

Insert instead “before the expiration of the period of 28 days after the control order is made”.

[4] Section 30 (3)

Insert “before the expiration of that period” after “does appeal”.

[5] Section 30 (3A)

Insert after section 30 (3):

(3A) Information published on the register is to be removed from the register if leave 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.

Note—

Leave may be given outside the 28-day period under section 24.

[6] Section 30A

Insert after section 30:

30A Provision of information relating to criminal organisations

(1) In this section:

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.

occupation means an occupation, trade, profession or calling of any kind that may only be carried on by a person holding an authorisation.

regulatory authority 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.

regulatory legislation means the legislation requiring the authorisation of persons in connection with the carrying on of an occupation or activity.

(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:

- (a) any organisation that is a declared organisation, and
- (b) any controlled member of that organisation who is an applicant for, or holder of, an authorisation under the regulatory legislation, and
- (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,

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.

- (3) Those arrangements are sufficient authority for the supply of that information.
- (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.
- (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.

Schedule 2 Amendment of Law Enforcement (Powers and Responsibilities) Act 2002 No 103 (as amended by Act 2009, No 8)

[1] Section 3 Interpretation

Insert in alphabetical order in section 3 (1):

criminal organisation search warrant means a search warrant issued under Division 2 of Part 5 in relation to an organised crime offence.

[2] Section 46 Interpretation

Insert at the end of paragraph (b) of the definition of ***eligible applicant*** in section 46 (1):

, or

- (c) if it is a criminal organisation search warrant—a police officer authorised to apply for such a warrant under section 46D.

[3] Section 46 (1), definition of “eligible issuing officer”

Insert “or a criminal organisation search warrant” after “covert search warrant” wherever occurring in paragraphs (a) and (b).

[4] Section 46 (1)

Insert in alphabetical order:

organised criminal activity—see section 46AA.

[5] Section 46AA

Insert before section 46A:

46AA Organised criminal activity

(1) In this Part:

organised criminal activity means any activity that:

- (a) is carried out on an organised basis, and
- (b) is carried out to advance any one or more of the following objectives:
 - (i) obtaining material benefits from conduct constituting a serious indictable offence,
 - (ii) 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,
 - (iii) committing serious violence offences,
 - (iv) engaging in conduct outside New South Wales (including outside Australia) that, if it occurred in New South Wales, would constitute a serious violence offence.

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:

- (a) loss of a person's life or serious risk of loss of a person's life, or
- (b) serious injury to a person or serious risk of serious injury to a person, or
- (c) serious damage to property in circumstances endangering the safety of any person, or
- (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).

(2) For the purposes of this section, an activity is carried out on an **organised basis** if it is planned, organised, structured or otherwise carried out in such a manner as to indicate that the activity is carried out on more than one occasion and involves more than one participant.

[6] Section 46A Searchable offences

Insert at the end of section 46A (1) (b):

, and

- (c) if the warrant is a criminal organisation search warrant—means an organised crime offence.

[7] Section 46A (2)

Insert in alphabetical order:

organised crime offence means any serious indictable offence arising from, or occurring as a result of, organised criminal activity.

[8] Section 46D

Insert after section 46C:

46D Authority to apply for criminal organisation search warrant

- (1) An application for a criminal organisation search warrant may be made by a police officer authorised to make the application by a police officer holding the rank of Superintendent or above.
- (2) An authorisation to apply for a criminal organisation search warrant in respect of a searchable offence may be given in accordance with this section if the person giving the authorisation suspects on reasonable grounds that there is, or within 7 days there will be, in or on the premises a thing of a kind connected with the searchable offence.

[9] Section 47 Power to apply for search warrants

Insert “(other than a criminal organisation search warrant)” after “search warrant” in section 47 (1).

[10] Section 47 (3A)

Insert after section 47 (3):

- (3A) An eligible applicant may apply to an eligible issuing officer for a criminal organisation search warrant in respect of premises if the eligible applicant has reasonable grounds to suspect that there is, or within 7 days there will be, in or on the premises a thing connected with a searchable offence in relation to the warrant.

[11] Section 62 Information in, and consideration of, application for warrant

Insert after section 62 (2):

- (2A) In addition, an eligible issuing officer must not issue a criminal organisation search warrant unless the application for the warrant includes the following information:

- (a) the name of the following persons:
 - (i) the occupier (if known) of those premises,
 - (ii) any person believed to have committed, or to be intending to commit, the searchable offence in respect of which the application is made,
- (b) whether the occupier is believed to be knowingly concerned with the commission of the searchable offence.

[12] Section 73 Expiry of warrant

Insert after section 73 (2A):

- (2B) The time so specified for a criminal organisation search warrant is the date that is 7 days after the date on which the warrant is issued.

[13] Section 73 (3)

Insert “or a criminal organisation search warrant” after “covert search warrant”.

[14] Section 73 (5)

Omit “or a covert search warrant”.

Insert instead “, a covert search warrant or a criminal organisation search warrant”.

[15] Section 73 (7)

Insert after section 73 (6):

- (7) If no time of expiry is specified in a criminal organisation search warrant, the warrant expires 7 days after issue.

[16] Section 73A Extension of warrant

Insert “, a criminal organisation search warrant” after “covert search warrant” in section 73A (1).

[17] Section 242 Monitoring of operation of certain provisions of Act by Ombudsman

Omit “under this section” from section 242 (3).

Insert instead “under subsection (1)”.

[18] Section 242 (3A)-(3C)

Insert after section 242 (3):

- (3A) The Ombudsman must inspect the records of the NSW Police Force under Part 5 in relation to criminal organisation search warrants every 2 years after the commencement of this subsection for the purpose of ascertaining whether or not the requirements of that Part (in so far as they relate to criminal organisation search warrants) are being complied with.
- (3B) For that purpose, the Ombudsman may require the Commissioner of Police to provide access to the relevant records.
- (3C) The Ombudsman must, as soon as practicable after the expiration of each 2 years after the commencement of subsection (3A), prepare a report of the Ombudsman's work and activities under that subsection and furnish a copy of the report to the Attorney General and the Minister for Police.

[19] Section 242 (4)

Insert "under subsection (3) or (3C)" after "copy of the report".

[20] Section 242A Annual reports to be given to Attorney General and Minister for Police

Insert after section 242A (1):

- (1A) The Commissioner of Police must report annually on the exercise of powers under Part 5 with respect to criminal organisation search warrants by police officers.

[21] Section 242A (3)

Insert "under subsection (1)" after "report".

[22] Section 242A (3A)

Insert after section 242A (3):

- (3A) The report under subsection (1A) is to specify the following matters in relation to the year ended on that 30 June:
- (a) the number of applications for criminal organisation search warrants made under Part 5 and the number of those applications granted,
 - (b) the number of applications for telephone criminal organisation search warrants and the number of those applications granted,
 - (c) the number of criminal organisation search warrants executed,
 - (d) the number of criminal organisation search warrants under which any things were seized,
 - (e) the number of criminal organisation search warrants under which the powers

referred to in sections 75A and 75B were exercised,

- (f) the number of criminal organisation search warrants under which any things were tested,
- (g) the number of arrests made in connection with searchable offences in respect of which criminal organisation search warrants were executed and the number of those arrests that have led to the laying of charges in relation to the searchable offences concerned,
- (h) the number of complaints that are made under any Act about conduct relating to the execution of a criminal organisation search warrant by an executing officer and the number of those complaints that are, or have been, the subject of an investigation under any Act,
- (i) any other matters requested by the Minister for Police or the Attorney General.

[23] Schedule 5 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Criminal Organisations Legislation Amendment Act 2009

Schedule 3 Amendment of other Acts

3.1 Commercial Agents and Private Inquiry Agents Act 2004 No 70

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

criminal intelligence means information classified by the Commissioner as criminal intelligence within the meaning of the *Crimes (Criminal Organisations Control) Act 2009*.

[2] Section 4 (1), definition of “disqualified individual”

Insert “(whether because of subsection (2A) or otherwise)” after “fit and proper person” in paragraph (c).

[3] Section 4 (1), definition of “disqualified individual”

Insert at the end of paragraph (f):

, or

- (g) an individual who is a controlled member of a declared organisation within the

meaning of the *Crimes (Criminal Organisations Control) Act 2009*.

Note—

Controlled members are prohibited from applying for licences—see section 27 of the *Crimes (Criminal Organisations Control) Act 2009*.

[4] Section 4 (2A)

Insert after section 4 (2):

(2A) For the purposes of paragraph (c) of the definition of **disqualified individual**, 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:

- (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 *Crimes (Criminal Organisations Control) Act 2009*, and
- (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 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.

[5] Section 6 Application to master licences of Licensing and Registration (Uniform Procedures) Act 2002

Insert at the end of the section:

Note—

Section 7 (3) of this Act provides that the Commissioner is not, under this or any other Act or law, required to give any reasons for not granting a master licence if the giving of those reasons would disclose any criminal intelligence. Accordingly, Part 2 of Chapter 5 of the *Administrative Decisions Tribunal Act 1997* does not apply to any decision to refuse to grant a licence based on such information to the extent that it would require disclosure of any criminal intelligence.

[6] Section 7 Grounds for refusing master licence

Insert after section 7 (2):

(3) The Commissioner is not, under this or any other Act or law, required to give any reasons for refusing an application for a master licence where the applicant is a disqualified individual because of section 4 (2A) to the extent that the giving of those reasons would disclose any criminal intelligence.

[7] Section 10 Cancellation of master licence

Insert after section 10 (2):

(2A) The Commissioner is not, under this or any other Act or law, required to give any reasons for cancelling a master licence of a licensee who is a disqualified individual because of section 4 (2A) to the extent that the giving of those reasons would disclose any criminal intelligence.

[8] Section 12 Application to operator licences of [Licensing and Registration \(Uniform Procedures\) Act 2002](#)

Insert at the end of the section:

Note—

Section 13 (3) of this Act provides that the Commissioner is not, under this or any other Act or law, required to give any reasons for not granting an operator licence if the giving of those reasons would disclose any criminal intelligence. Accordingly, Part 2 of Chapter 5 of the [Administrative Decisions Tribunal Act 1997](#) does not apply to any decision to refuse to grant a licence based on such information to the extent that it would require disclosure of any criminal intelligence.

[9] Section 13 Grounds for refusing operator licence

Insert after section 13 (2):

(3) The Commissioner is not, under this or any other Act or law, required to give any reasons for refusing an application for an operator licence where the applicant is a disqualified individual because of section 4 (2A) to the extent that the giving of those reasons would disclose any criminal intelligence.

[10] Section 17 Cancellation of operator licence

Insert after section 17 (2):

(2A) The Commissioner is not, under this or any other Act or law, required to give any reasons for cancelling an operator licence of a licensee who is a disqualified individual because of section 4 (2A) to the extent that the giving of those reasons would disclose any criminal intelligence.

[11] Section 20 Commissioner's determinations reviewable by Administrative Decisions Tribunal

Insert at the end of the section:

(2) In determining an application for a review of any decision to refuse to grant or

cancel a licence under this Act, the Administrative Decisions Tribunal (and any Appeal Panel in determining any appeal against such a review under the *Administrative Decisions Tribunal Act 1997*):

- (a) is to ensure that it does not, in the reasons for its decision or otherwise, disclose any criminal intelligence without the approval of the Commissioner, and
- (b) in order to prevent the disclosure of any such criminal intelligence, is to receive evidence and hear argument in the absence of the public, the applicant for review, the applicant's representative and any other interested party, unless the Commissioner approves otherwise.

[12] Schedule 4 Savings, transitional and other provisions

Insert after clause 12:

Part 3 Provisions consequent on enactment of Criminal Organisations Legislation Amendment Act 2009

13 Grant and cancellation of licences

(1) In this clause:

amending Act means the *Criminal Organisations Legislation Amendment Act 2009*.

- (2) An application for a licence made, but not determined, before the commencement of this clause is to be dealt with under this Act as amended by the amending Act.
- (3) Sections 10 and 17, as amended by the amending Act, extend to a licence in force immediately before the commencement of this clause.

3.2 Criminal Procedure Act 1986 No 209

Schedule 1 Indictable offences triable summarily

Insert "or 26A" after "section 26" in the matter relating to the *Crimes (Criminal Organisations Control) Act 2009* in Part 4 of Table 1.

3.3 Liquor Act 2007 No 90

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

criminal intelligence means information classified by the Commissioner of Police as

criminal intelligence within the meaning of the *Crimes (Criminal Organisations Control) Act 2009*.

[2] Section 40 Licence applications

Insert at the end of section 40 (3) (b):

, or

- (c) an individual who is a controlled member of a declared organisation within the meaning of the *Crimes (Criminal Organisations Control) Act 2009*.

Note—

Controlled members are prohibited from applying for licences—see section 27 of the *Crimes (Criminal Organisations Control) Act 2009*.

[3] Section 45 Decision of Authority in relation to licence application

Insert after section 45 (4):

- (5) Without limiting subsection (3) (a), a person is not a fit and proper person to carry on the business or activity to which a proposed licence relates if the Authority has reasonable grounds to believe from information provided by the Commissioner of Police in relation to the person:

(a) that the person:

- (i) is a member of, or
(ii) is a close associate of, or
(iii) regularly associates with one or more members of,

a declared organisation within the meaning of the *Crimes (Criminal Organisations Control) Act 2009*, and

- (b) that the nature and circumstances of the person's relationship with the organisation or its members are such that it could reasonably be inferred that improper conduct that would further the criminal activities of the declared organisation is likely to occur if the person is granted a licence.

- (6) The Authority is not, under this or any other Act or law, required to give any reasons for not granting a licence because of subsection (5) to the extent that the giving of those reasons would disclose any criminal intelligence.

[4] Section 68 Approval of persons to manage licensed premises

Insert after section 68 (4):

(4A) Without limiting subsection (4) (a), a person is not a fit and proper person to manage licensed premises if the Authority has reasonable grounds to believe from information provided by the Commissioner of Police in relation to the person:

(a) that the person:

(i) is a member of, or

(ii) is a close associate of, or

(iii) regularly associates with one or more members of,

a declared organisation within the meaning of the *Crimes (Criminal Organisations Control) Act 2009*, and

(b) that the nature and circumstances of the person's relationship with the organisation or its members are such that it could reasonably be inferred that improper conduct that would further the criminal activities of the declared organisation is likely to occur if the person is granted an approval.

(4B) The Authority is not, under this or any other Act or law, required to give any reasons for not granting an approval because of subsection (4A) to the extent that the giving of those reasons would disclose any criminal intelligence.

[5] Section 139 Grounds for making complaint

Omit section 139 (3) (i). Insert instead:

(i) that the licensee is not a fit and proper person to be the holder of a licence (whether for the same reason as that set out in section 45 (5) or otherwise) or the manager is not a fit and proper person to be the manager of the licensed premises (whether for the same reason as that set out in section 68 (4A) or otherwise),

[6] Section 140 Procedure for taking disciplinary action

Insert after section 140 (5):

(6) Subsection (1) does not require the Authority to disclose any criminal intelligence.

[7] Section 141 Disciplinary powers of Authority

Insert after section 141 (1):

(1A) If the Authority is satisfied that the criminal organisation associate ground applies in relation to a licensee, the Authority must do one or both of the following:

(a) disqualify the licensee from holding a licence for such period as the Authority thinks fit,

(b) cancel the licence.

(1B) If the Authority is satisfied that the criminal organisation associate ground applies in relation to a manager, the Authority must do one or both of the following:

(a) disqualify the manager from being the manager of licensed premises for such period as the Authority thinks fit,

(b) withdraw the manager's approval to manage licensed premises.

[8] Section 141 (2)

Insert "(other than a criminal organisation associate ground)" after "grounds".

[9] Section 141 (8)

Insert after section 141 (7):

(8) In this section:

criminal organisation associate ground means:

(a) in relation to a licensee—that the licensee is not a fit and proper person to be the holder of a licence for the same reason as that set out in section 45 (5), or

(b) in relation to a manager—that the manager is not a fit and proper person to be the manager of the licensed premises for the same reason as that set out in section 68 (4A).

[10] Section 142 Procedure for implementing disciplinary action

Insert after section 142 (2):

(2A) Subsection (2) does not require the Authority to disclose any criminal intelligence.

[11] Section 144 Review by ADT of decisions by Authority under this Part

Insert after section 144 (3):

(4) In determining an application for a review of any decision by the Authority under section 141 (1A) or (1B), the Administrative Decisions Tribunal (and any Appeal Panel in determining any appeal against such a review under the [Administrative Decisions Tribunal Act 1997](#)):

(a) is to ensure that it does not, in the reasons for its decision or otherwise, disclose

any criminal intelligence without the approval of the Commissioner of Police, and

- (b) in order to prevent the disclosure of any criminal intelligence, is to receive evidence and hear argument in the absence of the public, the applicant for review, the applicant's representative and any other interested party, unless the Commissioner of Police approves otherwise.

[12] Schedule 1 Savings and transitional provisions

Insert after clause 26:

Part 3 Provisions consequent on enactment of [Criminal Organisations Legislation Amendment Act 2009](#)

27 Grant and cancellation of licences and approvals to manage licensed premises

- (1) In this clause:

amending Act means the [Criminal Organisations Legislation Amendment Act 2009](#).

- (2) An application for a licence or approval to manage licensed premises made, but not determined, before the commencement of this clause is to be dealt with under this Act as amended by the amending Act.
- (3) Sections 139 and 141, as amended by the amending Act, extend to a licence or approval to manage licensed premises in force immediately before the commencement of this clause.

3.4 Motor Dealers Act 1974 No 52

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

criminal intelligence means information classified by the Commissioner of Police as criminal intelligence within the meaning of the [Crimes \(Criminal Organisations Control\) Act 2009](#).

[2] Section 12 Grounds on which application to be granted or refused

Insert after section 12 (2) (f):

- (f1) the applicant is a controlled member of a declared organisation within the meaning

of the *Crimes (Criminal Organisations Control) Act 2009*,

Note—

Controlled members are prohibited from applying for licences—see section 27 of the *Crimes (Criminal Organisations Control) Act 2009*.

[3] Section 12 (3A)

Insert after section 12 (3):

(3A) Without affecting the generality of subsection (2) (g), a person is not a fit and proper person to be the holder of a licence if the Director-General has reasonable grounds to believe from information provided by the Commissioner of Police in relation to the person that:

- (a) the person is a member of, or regularly associates with one or more members of, a declared organisation within the meaning of the *Crimes (Criminal Organisations Control) Act 2009*, and
- (b) the nature and circumstances of the person's relationship with the organisation or its members are such that it could reasonably be inferred that improper conduct that would further the criminal activities of the declared organisation is likely to occur if the person is granted a licence.

[4] Section 12 (7A)

Insert after section 12 (7):

(7A) The Director-General is not, under subsection (7), Part 2 of the applied Act (within the meaning of section 10) or any other Act or law, required to give any reasons for refusing an application for a licence because of subsection (3A) to the extent that the giving of those reasons would disclose any criminal intelligence.

[5] Section 20D Notices to show cause

Insert “, (3A)” after “section 12 (2)” in section 20D (1) (f).

[6] Section 20D (4)

Insert after section 20D (3):

(4) Subsection (1) does not require the Director-General to disclose any criminal intelligence in a notice served on the holder of a licence because of the matter referred to in section 12 (3A).

[7] Section 20E Determination of disciplinary measures by the Director-General

Insert after section 20E (1B):

- (1C) Despite subsection (1), the Director-General must cancel the licence concerned if satisfied that the matter referred to in section 12 (3A) has been established.

[8] Section 20F Reviews by the Administrative Decisions Tribunal

Insert after section 20F (2):

- (3) In determining an application for a review of any decision to refuse to grant a licence because of section 12 (3A) or to cancel a licence because of section 20E (1C), the Administrative Decisions Tribunal (and any Appeal Panel in determining any appeal against such a review under the *Administrative Decisions Tribunal Act 1997*):
- (a) is to ensure that it does not, in the reasons for its decision or otherwise, disclose any criminal intelligence, and
 - (b) in order to prevent the disclosure of any criminal intelligence, is to receive evidence and hear argument in the absence of the public, the applicant for review and the applicant's representative and any other interested party,
- unless the Commissioner of Police approves otherwise.

[9] Schedule 2 Savings and transitional provisions

Insert after clause 5:

6 Grant and cancellation of licences

- (1) In this clause:
- amending Act** means the *Criminal Organisations Legislation Amendment Act 2009*.
- (2) An application for a licence made, but not determined, before the commencement of this clause is to be dealt with under this Act as amended by the amending Act.
- (3) Sections 20D and 20E, as amended by the amending Act, extend to a licence in force immediately before the commencement of this clause.

3.5 Motor Vehicle Repairs Act 1980 No 71

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

criminal intelligence means information classified by the Commissioner of Police as criminal intelligence within the meaning of the *Crimes (Criminal Organisations Control) Act 2009*.

[2] Section 18 Refusal of application for licence

Insert at the end of section 18 (1) (j):

, or

(k) the applicant is a controlled member of a declared organisation within the meaning of the *Crimes (Criminal Organisations Control) Act 2009*.

Note—

Controlled members are prohibited from applying for licences—see section 27 of the *Crimes (Criminal Organisations Control) Act 2009*.

[3] Section 18 (2A) and (2B)

Insert after section 18 (2):

(2A) Without affecting the generality of subsection (1) (i), an applicant is not a fit and proper person to be the holder of a licence if the Authority has reasonable grounds to believe from information provided by the Commissioner of Police in relation to the applicant that:

- (a) the applicant is a member of, or regularly associates with one or more members of, a declared organisation within the meaning of the *Crimes (Criminal Organisations Control) Act 2009*, and
- (b) the nature and circumstances of the applicant's relationship with the organisation or its members are such that it could reasonably be inferred that improper conduct that would further the criminal activities of the declared organisation is likely to occur if the applicant is granted a licence.

(2B) The Authority is not, under this or any other Act or law, required to give any reasons for refusing an application for a licence because of subsection (2A) to the extent that the giving of those reasons would disclose any criminal intelligence.

[4] Section 24 Grant of tradesperson's certificate

Insert after section 24 (3):

- (4) Without affecting the generality of subsection (3) (a), an individual is not a fit person to be the holder of a tradesperson's certificate if the Authority has reasonable grounds to believe from information provided by the Commissioner of Police in relation to the individual that:
- (a) the individual is a member of, or regularly associates with one or more members of, a declared organisation within the meaning of the *Crimes (Criminal Organisations Control) Act 2009*, and
 - (b) the nature and circumstances of the individual's relationship with the organisation or its members are such that it could reasonably be inferred that improper conduct that would further the criminal activities of the declared organisation is likely to occur if the individual is granted a certificate.
- (5) The Authority is not, under this or any other Act or law, required to give any reasons for not granting a certificate because of subsection (4) to the extent that the giving of those reasons would disclose any criminal intelligence.

[5] Section 41 Show cause notices

Insert after section 41 (2):

- (2A) Subsection (2) does not require the Authority to disclose any criminal intelligence in a notice served on the holder of a licence or certificate because of the matter referred to in section 42 (1) (na) or 43 (fa).

[6] Section 42 Grounds on which a licence holder may be dealt with under this Part

Insert after section 42 (1) (n):

- (na) that the holder is not a fit and proper person to continue to hold a licence for the same reason as that set out in section 18 (2A) in relation to the grant of a licence,

[7] Section 43 Grounds on which a certificate holder may be dealt with under this Part

Insert after section 43 (f):

- (fa) that the holder is not a fit person to continue to hold a certificate for the same reason as that set out in section 24 (4) in relation to the grant of a certificate,

[8] Section 44 Determination of disciplinary measures by Authority

Insert after section 44 (3):

- (3A) Despite subsection (1), the Authority must cancel the licence or certificate concerned if satisfied that the matter referred to in section 42 (1) (na) or 43 (fa), respectively, has been established.

[9] Section 45 Reviews by Administrative Decisions Tribunal

Insert after section 45 (1):

- (1A) In determining an application for a review of any decision to refuse to grant a licence or certificate on the grounds referred to in section 18 (2A) or 24 (4) or cancel such a licence or certificate under section 44, the Administrative Decisions Tribunal (and any Appeal Panel in determining any appeal against such a review under the *Administrative Decisions Tribunal Act 1997*):
- (a) is to ensure that it does not, in the reasons for its decision or otherwise, disclose any criminal intelligence, and
 - (b) in order to prevent the disclosure of any criminal intelligence, is to receive evidence and hear argument in the absence of the public, the applicant for review and the applicant's representative and any other interested party,
- unless the Commissioner of Police approves otherwise.

[10] Schedule 5 Savings and transitional provisions

Insert after clause 14:

Part 6 Provisions consequent on enactment of [Criminal Organisations Legislation Amendment Act 2009](#)

15 Grant and cancellation of licences and certificates

- (1) In this clause:

amending Act means the *Criminal Organisations Legislation Amendment Act 2009*.

- (2) An application for a licence or certificate made, but not determined, before the commencement of this clause is to be dealt with under this Act as amended by the amending Act.
- (3) Sections 42, 43 and 44, as amended by the amending Act, extend to a licence or

certificate in force immediately before the commencement of this clause.

3.6 Pawnbrokers and Second-hand Dealers Act 1996 No 13

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

criminal intelligence means information classified by the Commissioner of Police as criminal intelligence within the meaning of the *Crimes (Criminal Organisations Control) Act 2009*.

[2] Section 8 Eligibility for licence

Insert at the end of section 8 (1) (c):

, and

(d) he or she is not a controlled member of a declared organisation within the meaning of the *Crimes (Criminal Organisations Control) Act 2009*.

Note—

Controlled members are prohibited from applying for licences—see section 27 of the *Crimes (Criminal Organisations Control) Act 2009*.

[3] Section 8A Disqualified persons

Omit “subsection (2) or (3)” from section 8A (1) (a).

Insert instead “subsection (2), (2A) or (3)”.

[4] Section 8A (2A)

Insert after section 8A (2):

(2A) An individual is disqualified from holding a licence if the Director-General has reasonable grounds to believe from information provided by the Commissioner of Police in relation to the individual that:

- (a) the individual is a member of, or regularly associates with one or more members of, a declared organisation within the meaning of the *Crimes (Criminal Organisations Control) Act 2009*, and
- (b) the nature and circumstances of the individual’s relationship with the organisation or its members are such that it could reasonably be inferred that improper conduct that would further the criminal activities of the declared organisation is likely to occur if the individual is not disqualified from holding a

licence.

[5] Section 9 Application to licences of [Licensing and Registration \(Uniform Procedures\) Act 2002](#)

Insert after section 9 (4):

- (5) Nothing in Part 2 of the applied Act requires the Director-General to give any reasons for refusing an application for a licence because of section 8A (2A) to the extent that the giving of those reasons would disclose any criminal intelligence.

[6] Section 36 Disciplinary action by Director-General

Insert after section 36 (1):

- (1A) Despite subsection (1), the Director-General must revoke the licence if satisfied that the licensee has become a disqualified person because of section 8A (2A).

[7] Section 39 Reviews of decisions of Director-General

Insert after section 39 (1A):

- (1B) In determining an application for review of any decision of the Director-General to refuse to grant a licence to a person because the person is disqualified under section 8A (2A) or revoking a licence because the person has become disqualified under section 36 (1A), the Administrative Decisions Tribunal (and any Appeal Panel in determining any appeal against such a review under the [Administrative Decisions Tribunal Act 1997](#)):
- (a) is to ensure that it does not, in the reasons for its decision or otherwise, disclose any criminal intelligence, and
- (b) in order to prevent the disclosure of any criminal intelligence, is to receive evidence and hear argument in the absence of the public, the applicant for review and the applicant's representative and any other interested party,
- unless the Commissioner of Police approves otherwise.

[8] Schedule 2 Savings and transitional provisions

Insert after clause 21:

Part 5 Provisions consequent on enactment of [Criminal](#)

Organisations Legislation Amendment Act 2009

22 Grant and cancellation of licences

(1) In this clause:

amending Act means the *Criminal Organisations Legislation Amendment Act 2009*.

(2) An application for a licence made, but not determined, before the commencement of this clause is to be dealt with under this Act as amended by the amending Act.

(3) Section 36, as amended by the amending Act, extends to a licence in force immediately before the commencement of this clause.

3.7 Surveillance Devices Act 2007 No 64

Section 4 Definitions

Insert after paragraph (o) of the definition of **relevant proceeding** in section 4 (1):

(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 *Crimes (Criminal Organisations Control) Act 2009*.

3.8 Tow Truck Industry Act 1998 No 111

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

criminal intelligence means information classified by the Commissioner of Police as criminal intelligence within the meaning of the *Crimes (Criminal Organisations Control) Act 2009*.

[2] Section 18 Restrictions on granting licence

Insert after section 18 (2) (c):

(d) that the applicant is a controlled member of a declared organisation within the meaning of the *Crimes (Criminal Organisations Control) Act 2009*,

Note—

Controlled members are prohibited from applying for licences—see section 27 of the *Crimes (Criminal Organisations Control) Act 2009*.

(e) that the RTA has reasonable grounds to believe from information provided by the

Commissioner of Police in relation to the applicant that the applicant:

- (i) is a member of, or
- (ii) is a close associate of, or
- (iii) regularly associates with, one or more members of,

a declared organisation within the meaning of the *Crimes (Criminal Organisations Control) Act 2009*, and the nature and circumstances of the applicant's relationship with the organisation or its members are such that it could reasonably be inferred that improper conduct that would further the criminal activities of the declared organisation is likely to occur if the applicant is granted a licence.

[3] Section 18 (6)

Insert after section 18 (5):

- (6) The RTA is not, under this or any other Act or law, required to give any reasons for refusing to grant an application for a licence because of subsection (2) (e) to the extent that the giving of those reasons would disclose any criminal intelligence.

[4] Section 26 Restrictions on granting drivers certificate

Insert after section 26 (2) (d):

- (e) that the applicant is a controlled member of a declared organisation within the meaning of the *Crimes (Criminal Organisations Control) Act 2009*,

Note—

Controlled members are prohibited from applying for drivers certificates—see section 27 of the *Crimes (Criminal Organisations Control) Act 2009*.

- (f) that the RTA has reasonable grounds to believe from information provided by the Commissioner of Police in relation to the applicant that the applicant:
 - (i) is a member of, or
 - (ii) is a close associate of, or
 - (iii) regularly associates with, one or more members of,a declared organisation within the meaning of the *Crimes (Criminal Organisations Control) Act 2009*, and the nature and circumstances of the applicant's relationship with the organisation or its members are such that it could reasonably be inferred that improper conduct that would further the criminal activities of the declared organisation is likely to occur if the applicant is granted a drivers certificate.

[5] Section 26 (3A)

Insert after section 26 (3):

(3A) The RTA is not, under this or any other Act or law, required to give any reasons for refusing to grant an application for a drivers certificate because of subsection (2) (f) to the extent that the giving of those reasons would disclose any criminal intelligence.

[6] Section 41 Disciplinary action

Insert after section 41 (2):

(2A) Despite subsection (2), the RTA must cancel a licence or drivers certificate if disciplinary action is taken on the grounds referred to in section 42 (2).

[7] Section 42 Grounds for taking disciplinary action

Insert at the end of the section:

- (2) The RTA must take disciplinary action under this Division against a licensee or certified driver if the RTA has reasonable grounds to believe from information held in relation to the licensee or certified driver:
- (a) that the licensee or certified driver is a member of, a close associate of, or regularly associates with one or more members of, a declared organisation within the meaning of the *Crimes (Criminal Organisations Control) Act 2009*, and
 - (b) that the nature and circumstances of the licensee's or certified driver's relationship with the organisation or its members are such that it could reasonably be inferred that improper conduct that furthers the criminal activities of the declared organisation is occurring or is likely to occur if the licensee or certified driver continues to hold the licence or drivers certificate, respectively.

[8] Section 43 Procedure for implementing disciplinary action

Insert after section 43 (2):

(2A) The RTA is not, under this or any other Act or law, required to give any reasons for cancelling a licence or drivers certificate under section 41 (2A) to the extent that the giving of those reasons would disclose any criminal intelligence.

[9] Section 45 Application to Administrative Decisions Tribunal for review

Insert after section 45 (1):

- (1A) In determining an application for a review of a decision to refuse to grant an application for a licence or a drivers certificate on the grounds referred to in section 18 (2) (e) or 26 (2) (f), respectively, or to cancel a licence or drivers certificate under section 41 (2A), the Administrative Decisions Tribunal (and any Appeal Panel in determining any appeal against such a review under the *Administrative Decisions Tribunal Act 1997*):
- (a) is to ensure that it does not, in the reasons for its decision or otherwise, disclose any criminal intelligence, and
 - (b) in order to prevent the disclosure of any criminal intelligence, is to receive evidence and hear argument in the absence of the public, the applicant for review and the applicant's representative and of any other interested party, unless the Commissioner of Police approves otherwise.

[10] Schedule 2 Savings and transitional provisions

Insert after clause 20:

Part 6 Provisions consequent on enactment of *Criminal Organisations Legislation Amendment Act 2009*

21 Grant and cancellation of licences and drivers certificates

- (1) In this clause:
- amending Act*** means the *Criminal Organisations Legislation Amendment Act 2009*.
- (2) An application for a licence or drivers certificate made, but not determined, before the commencement of this clause is to be dealt with under this Act as amended by the amending Act.
 - (3) Sections 41 and 42, as amended by the amending Act, extend to a licence or drivers certificate in force immediately before the commencement of this clause.