

# Crimes (Criminal Organisations Control) Act 2012 No 9

[2012-9]



New South Wales

## Status Information

### Currency of version

Historical version for 1 December 2014 to 14 December 2014 (accessed 15 April 2024 at 13:36)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**  
[Combat Sports Act 2013 No 96](#) (not commenced)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 1 December 2014

# Crimes (Criminal Organisations Control) Act 2012 No 9



New South Wales

## Contents

<b>Long title</b> .....	7
<b>Part 1 Preliminary</b> .....	7
1 Name of Act .....	7
2 Commencement .....	7
3 Definitions .....	7
4 Extraterritorial operation .....	9
<b>Part 2 Criminal organisations</b> .....	9
5 Commissioner may apply for declaration .....	9
6 Response by respondent .....	10
7 Court may make a declaration .....	10
8 Notice of declaration .....	11
9 Duration of declaration .....	12
10 Revocation of declaration .....	12
11 Stated reasons for making or revoking declaration .....	13
12 Renewal or extension of declarations .....	13
13 Right of appeal .....	13
<b>Part 3 Control of members of declared organisations</b> .....	14
<b>Division 1 Interim control orders</b> .....	14
14 Court may make interim control order .....	14

15 Date of effect of interim control order .....	14
16 Notice of making of interim control order .....	14
16A Service of notice of interim control order .....	15
17 Interim control order ceases when final control order made or served .....	16
18 Expedited hearing in cases of hardship .....	16
<b>Division 2 Control orders</b> .....	<b>17</b>
19 Court may make control order .....	17
20 Person to whom order relates may appear at the hearing .....	18
21 Form of control order .....	18
22 Date of effect of control order .....	19
23 Duration of control order .....	19
24 Right of appeal .....	19
25 Variation or revocation of control order .....	19
<b>Division 3 Consequences of making of interim control orders and control orders</b> .....	<b>20</b>
26 Association between members of declared organisations subject to interim control order or control order .....	20
26A Recruiting persons to become member of declared organisation .....	22
27 Prohibition on carrying on of certain activities when interim control order or control order takes effect .....	22
<b>Part 3A Reciprocal recognition and enforcement of declarations and orders</b> .....	<b>23</b>
<b>Division 1 Preliminary</b> .....	<b>23</b>
27A Definitions .....	23
<b>Division 2 Registration of interstate declaration in New South Wales</b> .....	<b>24</b>
27B Application for registration of interstate declaration in New South Wales .....	24
27C When interstate declaration cannot be registered .....	24
27D Registration of interstate declaration .....	25
27E Period of registration .....	25

27F Notice of registration .....	25
27G Commencement and duration of registered interstate declaration .....	26
27H Effect of registration of interstate declaration .....	26
27I Cancellation of registration of interstate declaration on revocation in jurisdiction where originally made .....	26
27J Cancellation of registration of interstate declaration at request of Commissioner .....	26
27K Cancellation of registration of interstate declaration by Court .....	27
27L Notice of cancellation or expiry of registration of interstate declaration .....	27
<b>Division 3 Registration of interstate control order in New South Wales</b> .....	<b>27</b>
27M Application for registration of interstate control order in New South Wales .....	27
27N When interstate control order cannot be registered .....	28
27O Registration of interstate control order .....	28
27P Referral of application to Court for adaptation or modification .....	29
27Q Determination of application for registration .....	29
27R Period of registration .....	30
27S Notice of registration .....	30
27T Commencement and duration of registered interstate control order .....	30
27U Effect of registration of interstate control order .....	30
27V Variation or revocation of interstate control order in jurisdiction where originally made .....	31
27W Cancellation of registration of interstate control order by Court .....	31
27X Cancellation of registration of interstate control order at request of Commissioner .....	32
27Y Registration of interstate control order cancelled automatically in certain circumstances .....	32
<b>Part 3B Criminal intelligence</b> .....	<b>32</b>
<b>Division 1 Preliminary</b> .....	<b>32</b>
28A Definitions .....	32
28B Objects of Part .....	34
<b>Division 2 Criminal intelligence monitor</b> .....	<b>34</b>
28C The criminal intelligence monitor .....	34
28D Monitor's functions .....	34
28E Material to be given to monitor .....	35
28F Appearance and role of monitor at hearing .....	35

<b>Division 3 Declarations of criminal intelligence</b> .....	36
28G Application for declaration of criminal intelligence .....	36
28H Additional affidavit if informant relied on .....	37
28I Hearing ex parte.....	39
28J Criminal intelligence application heard first .....	39
28K Special closed hearing.....	39
28L Oral evidence by police officers and officers of external agencies .....	39
28M Deciding criminal intelligence application .....	40
28N Duration of criminal intelligence declaration .....	40
28O Revocation of criminal intelligence declaration.....	40
<b>Division 4 Protection of declared criminal intelligence for substantive hearings</b>	
.....	41
28P Application of Division .....	41
28Q Additional matters if informant relied on in substantive hearing .....	41
28R Special closed hearing for consideration of intelligence.....	41
28S Oral evidence by police officers and officers of external agencies .....	42
<b>Division 5 Protection from unlawful disclosure</b> .....	42
28T Unlawful disclosure of criminal intelligence or information in informant affidavit .....	42
28U Registrar to secure information.....	43
<b>Part 4 Miscellaneous</b> .....	44
28, 29 (Repealed) .....	44
30 Criminal organisations register.....	44
30A Provision of information relating to criminal organisations.....	45
31 Attorney General to be notified .....	46
32 Burden of proof.....	46
32A Hearsay evidence.....	46
33 Delegation.....	46
34 Immunity from liability .....	46
35 Protection of exercise of certain functions.....	47
35A Failure of person to disclose identity on request .....	48

36 Proceedings for offences .....	48
37 Rules of court .....	48
37A Service of public notice .....	48
37B Costs .....	49
38 Regulations.....	49
39 Report to Ombudsman on exercise of powers and monitoring by Ombudsman .....	49
39A (Repealed).....	50
40 Review of Act.....	50
<b>Schedule 1 (Repealed)</b> .....	<b>50</b>

# Crimes (Criminal Organisations Control) Act 2012 No 9



New South Wales

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.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Crimes (Criminal Organisations Control) Act 2012*.

### 2 Commencement

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

### 3 Definitions

(1) In this Act:

**associate with** means:

- (a) to be in company with, or
- (b) to communicate with by any means (including by post, facsimile, telephone, email or any other form of electronic communication).

**Commissioner** means the Commissioner of Police.

**control order** means a control order of the Court under section 19.

**controlled member** of a declared organisation means a person to whom an interim control order, or a control order, that is in force relates.

**conviction** includes a finding of guilt by any court, whether or not a conviction is recorded.

**Court** means the Supreme Court.

**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:

- (a) to prejudice criminal investigations, or
- (b) to enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement, or
- (c) to endanger a person's life or physical safety.

**criminal organisation** or **declared organisation** means an organisation subject to a declaration under Part 2 that is in force.

**Note—**

Section 27H provides that a registered interstate declaration operates in New South Wales as if it were a declaration under Part 2.

**function** includes a power, authority or duty, and **exercise** a function includes perform a duty.

**interim control order** means an interim control order of the Court under section 14.

**member** of an organisation includes:

- (a) in the case of an organisation that is a body corporate—a director or an officer of the body corporate, and
- (b) in any case:
  - (i) an associate member or prospective member (however described) of the organisation, and
  - (ii) a person who identifies himself or herself, in some way, as belonging to the organisation, and
  - (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.

**organisation** means any incorporated body or unincorporated group (however structured), whether or not:

- (a) the body or group is based outside New South Wales, or
- (b) the body or group consists of persons who are not ordinarily resident in New South Wales.

**senior police officer** means a police officer of or above the rank of inspector.

**serious criminal activity** means any of the following:



(a) committing a serious criminal offence within the meaning of section 6 of the *Criminal Assets Recovery Act 1990*,

(b) obtaining material benefits from conduct that constitutes any such offence, whether or not any person has been charged with or convicted of any such offence.

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

#### **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.

## **Part 2 Criminal organisations**

### **5 Commissioner may apply for declaration**

(1) The Commissioner may apply to the Court for a declaration that a particular organisation (the **respondent**) is a criminal organisation for the purposes of this Act.

(2) The application must:

(a) be in writing, and

(b) identify the organisation, and

(c) describe the nature of the organisation and any of its distinguishing characteristics, and

(d) set out the grounds on which the declaration is sought, and

(e) set out the information supporting the grounds on which the declaration is sought, and

(f) set out details of any previous application for a declaration of the organisation and the outcome of that application, and

(g) state that a response to the application may be filed under section 6.

(3) The application must be accompanied by any affidavit the Commissioner intends to rely on at the hearing of the application.

(4) For the purposes of subsection (2) (b), it is sufficient if the organisation is identified by specifying its name or the name by which it is commonly known or by providing other particulars about the organisation.

(5) The application, with any accompanying affidavit, must:

(a) be filed in the Court, and

- (b) on filing, have as the return date for the hearing fixed by the registrar of the Court a day within 35 days after the filing, and
- (c) after being filed, be served by the Commissioner on the respondent:
  - (i) by personal service within 7 business days after the filing, or
  - (ii) if personal service is not practicable, or if the respondent is an unincorporated association or group, by public notice within 10 days after the filing.
- (6) The Court may extend the return date under this section on such conditions the Court considers appropriate.

## **6 Response by respondent**

- (1) The respondent may file a response to the application under this Part.
- (2) The response must set out the facts relied on by the respondent in response to the application.
- (3) The respondent must file the response at least 5 business days before the return date fixed by the registrar of the Court.
- (4) The response must be accompanied by any affidavit the respondent intends to rely on at the hearing of the application.

## **7 Court may make a declaration**

- (1) The Court may make a declaration that the respondent is a criminal organisation for the purposes of this Act if the Court is satisfied that:
  - (a) the respondent is an organisation, and
  - (b) members of the organisation in New South Wales associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity, and
  - (c) the continued existence of the organisation is an unacceptable risk to the safety, welfare or order of the community in this State.
- (2) In considering whether or not to make a declaration, the Court must have regard to:
  - (a) the following information before the Court:
    - (i) information suggesting a link exists between the organisation and serious criminal activity in New South Wales,
    - (ii) any conviction for current or former members of the organisation in New South Wales,

- (iii) information suggesting current or former members of the organisation in New South Wales have been, or are, involved in serious criminal activity, whether directly or indirectly and whether or not the involvement resulted in convictions,
  - (iv) information suggesting 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, and
- (b) anything else the Court considers relevant.
- (3) A declaration may be made whether or not the respondent is present or makes submissions.
- (4) The Court may, for the purpose of making the declaration, be satisfied that members of an organisation associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity:
  - (a) whether all the members in New South Wales associate for that purpose or only some of the members, and
  - (b) whether members in New South Wales associate for that purpose for the same serious criminal activities or different ones, and
  - (c) whether or not the members in New South Wales also associate for other purposes.
- (5) For the purposes of subsection (4) (a), the Court may act on the basis of satisfaction that only some of the members in New South Wales associate for the purpose mentioned in the subsection only if the Court is satisfied that those members constitute a significant group within the organisation in New South Wales, either:
  - (a) in terms of their numbers, or
  - (b) in terms of their capacity to influence the organisation or its members in New South Wales.
- (6) A declared organisation is taken to include any organisation into which the members substantially restructure themselves with or without dissolving the organisation named in the declaration.

## **8 Notice of declaration**

- (1) As soon as reasonably practicable after a declaration is made under this Part, the Commissioner must publish notice of the declaration in the Gazette and in at least one newspaper circulating throughout the State.
- (2) The declaration is of no effect until it is published under subsection (1).

## **9 Duration of declaration**

- (1) A declaration under this Part remains in force for a period of 5 years after the day on which it is made, unless sooner revoked or unless renewed.
- (2) A change in the name or membership of a criminal organisation does not affect the declaration.

## **10 Revocation of declaration**

- (1) The Court may revoke a declaration under this Part on an application under this section.
- (2) An application may be made by:
  - (a) the Commissioner, at any time, or
  - (b) the declared organisation or a member of the declared organisation, subject to this section.
- (3) An application must:
  - (a) be in writing, and
  - (b) set out the grounds on which the revocation is sought, and
  - (c) set out the information supporting the grounds on which the revocation is sought.
- (4) The application must be accompanied by any affidavit the applicant intends to rely on at the hearing of the application.
- (5) The Commissioner is a party to any proceedings for an application by the declared organisation or a member of the declared organisation.
- (6) The applicant must serve a copy of the application, with any accompanying affidavit, on the other party to the proceedings as soon as reasonably practicable after the application is filed.
- (7) If the Commissioner is the applicant, service on the other party must be:
  - (a) by personal service, or
  - (b) if personal service is not practicable or the other party is an unincorporated association or group, by public notice.
- (8) The Court may revoke a declaration on the application of the declared organisation or a member of the declared organisation only if satisfied that there has been a substantial change in the nature or membership of the declared organisation to the extent that:

- (a) members of the organisation in New South Wales no longer associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity, and
  - (b) the continued existence of the organisation no longer represents an unacceptable risk to the safety, welfare or order of the community in this State.
- (9) A declared organisation or a member of a declared organisation may not apply for the revocation of a declaration until at least 3 years after the declaration is made.
- (10) The total number of applications for revocation made by the declared organisation and all members of the declared organisation cannot be more than 2 during the first 5 years after the declaration is made.
- (11) As soon as reasonably practicable after the revocation or expiration of a declaration, the Commissioner must publish notice of the revocation or expiration in the Gazette and in at least one newspaper circulating throughout the State.

#### **11 Stated reasons for making or revoking declaration**

- (1) The Court is to provide a written statement of reasons for any decision to make or revoke a declaration under this Part, or for refusing an application for a declaration or the revocation of a declaration.
- (2) This section does not authorise or require the disclosure of information if an obligation to maintain confidentiality exists (whether under Part 3B or under any other Act or law).

#### **12 Renewal or extension of declarations**

- (1) A declaration under this Part may be renewed at any time before or after the declaration expires.
- (2) For that purpose, the provisions of this Act applying to an application for the making of a declaration apply as if reference to the making of the declaration were a reference to the renewal of the declaration.
- (3) It does not matter how often declarations are renewed.

#### **13 Right of appeal**

- (1) Section 24 applies to a decision of the Court under this Part in the same way it applies to a decision of the Court in relation to the making of a control order.
- (2) In that case, a reference to a controlled member is taken to be a reference to a declared organisation.

## **Part 3 Control of members of declared organisations**

### **Division 1 Interim control orders**

#### **14 Court may make interim control order**

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

#### **15 Date of effect of interim control order**

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.

#### **16 Notice of making of interim control order**

- (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.
- (2) The notice must:
  - (a) subject to subsection (3), include a statement of the grounds on which the order was made, and
  - (b) set out an explanation of the effect of sections 26 and 27, and
  - (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
  - (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 Part 3B.
- (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 Part 3B.
- (5) If disclosure of information included in the affidavit would be in breach of Part 3B, 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) 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.
- (2A) An order may be made under subsection (1) whether or not the 28-day period referred to in section 16 (1) has expired.
- (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).

#### **17 Interim control order ceases when final control order made or served**

- (1) An interim control order remains in force until:
  - (a) it is revoked, or
  - (b) it ceases to have effect under subsection (2), or
  - (c) the application for a control order confirming the interim control order is withdrawn or dismissed,whichever first occurs.
- (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:
  - (a) if the person to whom it relates is present in court—when the control order is made, or
  - (b) in any other case—when the person is served personally with a copy of the control order.

#### **18 Expedited hearing in cases of hardship**

- (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.

- (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.

## **Division 2 Control orders**

### **19 Court may make control order**

- (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:
- (a) the person:
    - (i) is a member of a particular declared organisation, or
    - (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
  - (b) sufficient grounds exist for making the control order.
- (2) The Court may:
- (a) make a control order confirming or confirming with variations the interim control order, or
  - (b) revoke the interim control order.
- (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:
- (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
  - (b) the affidavit provided by the person with the notice of objection referred to in section 16, and
  - (c) any other information provided by the Commissioner or person to whom the order relates at the hearing.
- (4) The control order may be made whether or not the person concerned is present at the hearing of the application.
- (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.

- (6) The Court may, on making a control order in relation to a person, make any consequential or ancillary orders it thinks fit.
- (7) Without limiting subsection (6), an order may be made, if in the opinion of the Court the circumstances of the case require:
  - (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
  - (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.
- (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.

## **20 Person to whom order relates may appear at the hearing**

The person to whom the control order relates may appear at the hearing of the application and make submissions in relation to the application.

## **21 Form of control order**

- (1) A control order must:
  - (a) specify the person to whom it relates, and
  - (b) subject to subsection (2)—include a statement of the grounds on which the order has been made, and
  - (c) set out an explanation of the right of appeal under section 24.
- (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 Part 3B.
- (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 Part 3B.
- (4) If disclosure of information included in the affidavit would be in breach of Part 3B, an edited copy of the affidavit, from which the information that cannot be disclosed has been removed or erased, may be attached to the control order.

## **22 Date of effect of control order**

A control order takes effect:

- (a) if the person to whom it relates is present in court—when the control order is made, or
- (b) in any other case—when the person is served personally with a copy of the control order.

## **23 Duration of control order**

A control order remains in force until it is revoked.

## **24 Right of appeal**

- (1) The Commissioner or the controlled member may appeal to the Court of Appeal against a decision of the Court in relation to the making of a control order.
- (2) An appeal lies as of right on a question of law and with leave on a question of fact.
- (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.
- (4) The making of an appeal under this section does not affect the operation of the control order to which the appeal relates.
- (5) On an appeal, the Court of Appeal may:
  - (a) confirm, vary or reverse the decision the subject of the appeal, and
  - (b) make any consequential or ancillary order.

## **25 Variation or revocation of control order**

- (1) The Court may at any time vary or revoke a control order on application:
  - (a) by the Commissioner, or
  - (b) by the person to whom it relates.
- (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.
- (3) The Court must, before varying or revoking a control order under this section:
  - (a) allow all parties a reasonable opportunity to be heard on the matter, and
  - (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.

- (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.
- (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.

### **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**

- (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.

- (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.

- (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.

- (2) A person may be guilty of an offence under this section in respect of associations with the same person or with different people.
- (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.
- (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).
- (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:

- (a) associations between close family members,
  - (b) associations occurring in the course of a lawful occupation, business or profession,
  - (c) associations occurring at a course of training or education of a kind prescribed by the regulations between persons enrolled in the course,
  - (d) associations occurring at a rehabilitation, counselling or therapy session of a kind prescribed by the regulations,
  - (e) associations occurring in lawful custody or in the course of complying with a court order,
  - (f) other associations of a kind prescribed by the regulations.
- (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.
- (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)).
- (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.

**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.

- (8) For the purposes of this section, a person is a **close family member** of another person if:
- (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
  - (b) the person is a parent or grandparent of the other (whether by blood or by marriage), or
  - (c) the person is a brother or sister of the other (whether by blood or by marriage), or
  - (d) the person is, or has been, a guardian or carer of the other.

- (9) In this section:

**domestic relationship** has the same meaning as in the [Property \(Relationships\) Act](#)

1984.

**spouse**—a person is the spouse of another if they are legally married.

## 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.

## 27 Prohibition on carrying on of certain activities when interim control order or control order takes effect

- (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.
- (2) The authorisation is suspended until the interim control order is confirmed (or confirmed with variations) by a control order or is revoked.
- (3) On confirmation of the interim control order by a control order, the authorisation is revoked.
- (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.
- (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.
- (6) 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.

**prescribed activity** means the following:

- (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,
- (b) carrying on a security activity within the meaning of the *Security Industry Act 1997*,
  - (c) carrying on the business of a pawnbroker within the meaning of the *Pawnbrokers and Second-hand Dealers Act 1996*,
  - (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*,
  - (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,
  - (f) operating a tow truck within the meaning of the *Tow Truck Industry Act 1998*,
  - (g) carrying on business as a motor dealer, motor vehicle repairer or motor vehicle recycler within the meaning of the *Motor Dealers and Repairers Act 2013*,
  - (h) (Repealed)
  - (i) selling or supplying liquor within the meaning of the *Liquor Act 2007*,
  - (j) carrying on the business of a bookmaker within the meaning of the *Racing Administration Act 1998*,
  - (j1) carrying on a body art tattooing business or performing body art tattooing procedures within the meaning of the *Tattoo Parlours Act 2012*,
  - (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 *Thoroughbred Racing Act 1996*,
  - (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 *Greyhound Racing Act 2009* or the *Harness Racing Act 2009*,
  - (m) any other activity prescribed by the regulations.

## **Part 3A Reciprocal recognition and enforcement of declarations and orders**

### **Division 1 Preliminary**

#### **27A Definitions**

In this Part:

**interstate control order** means an order made under a provision of a law of another State or Territory that is prescribed by the regulations for the purposes of this definition.

**interstate declaration** means a declaration made under a provision of a law of another State or Territory that is prescribed by the regulations for the purposes of this definition.

**registrar** means a person who is:

- (a) appointed in accordance with section 120 of the *Supreme Court Act 1970*, and
- (b) nominated by the Principal Registrar of the Court for the purposes of this Part.

**respondent** means the organisation the subject of an interstate declaration or the person the subject of an interstate control order (as the case may be).

## **Division 2 Registration of interstate declaration in New South Wales**

### **27B Application for registration of interstate declaration in New South Wales**

- (1) The Commissioner may apply to the registrar for the registration of an interstate declaration.
- (2) An application for registration must:
  - (a) be made in writing, and
  - (b) be accompanied by an affidavit from the Commissioner including or accompanied by the following:
    - (i) a copy of the interstate declaration,
    - (ii) enough information to satisfy the registrar that the declaration is an interstate declaration that is in force.
- (3) An application for registration of an interstate declaration does not need to be served on the respondent.

### **27C When interstate declaration cannot be registered**

An application for registration of an interstate declaration cannot be made, and an interstate declaration cannot be registered, if any of the following apply to the declaration:

- (a) the law of the jurisdiction in which the declaration was made specifies a period within which the respondent may appeal against the declaration, and that period is still running,
- (b) the determination of an application by the respondent for leave to appeal against the declaration (whether made before or after any appeal period has expired) is pending,



- (c) the determination of an appeal by the respondent against the declaration is pending.

#### **27D Registration of interstate declaration**

The registrar must register an interstate declaration that is the subject of an application under this Division if the registrar is satisfied of the following:

- (a) that the declaration is in force,
- (b) if the law of the jurisdiction in which the declaration was made requires notice of the declaration to be published—that the requirement has been complied with,
- (c) if the law of the jurisdiction in which the declaration was made requires notice of the declaration to be served on any organisation, person or group of persons—that the requirement has been complied with or is taken to have been complied with,
- (d) that section 27C does not prevent registration of the declaration.

#### **27E Period of registration**

- (1) On registering an interstate declaration, the registrar is to specify the date on which the registration expires.
- (2) The date specified by the registrar is to be the date on which the interstate declaration would cease to be in force in the jurisdiction in which it was made if it were not sooner revoked.
- (3) The registration of the interstate declaration expires on the specified date.
- (4) Subsections (1)–(3) do not apply if, under the law of the jurisdiction in which the interstate declaration was made, the interstate declaration remains in force for an indefinite period, in which case:
  - (a) on registering the declaration—the registrar is to specify that the registration is in force for an indefinite period, and
  - (b) the registration of the interstate declaration does not expire.

#### **27F Notice of registration**

- (1) Not later than 2 business days after registering an interstate declaration, the registrar must give the Commissioner a certificate of the registration with a copy of the registered interstate declaration attached.
- (2) As soon as practicable after receiving a copy of the registered interstate declaration, the Commissioner must:
  - (a) publish notice of the registration of the interstate declaration in the Gazette and in at least one newspaper circulating throughout the State, and

- (b) give notice of the registration to the commissioner (by whatever name called) of the police force or police service of the State or Territory in which the interstate declaration was made and, if the interstate declaration was made by a court, a registrar of that court.

**27G Commencement and duration of registered interstate declaration**

A registered interstate declaration:

- (a) comes into force in New South Wales on the day after the day on which notice of registration of the declaration is published in the Gazette under section 27F, and
- (b) remains in force in New South Wales until one of the following occurs:
  - (i) the registration of the declaration expires in accordance with section 27E,
  - (ii) the registration of the declaration is cancelled under this Part.

**27H Effect of registration of interstate declaration**

- (1) A registered interstate declaration that has come into force under section 27G operates in New South Wales as if it were a declaration made under Part 2.
- (2) A change in the name or the membership of an organisation that is the subject of a registered interstate declaration does not affect its registration or effect in this State.

**27I Cancellation of registration of interstate declaration on revocation in jurisdiction where originally made**

- (1) This section applies to a registered interstate declaration if:
  - (a) the declaration is revoked in the jurisdiction in which it was made, and
  - (b) the registrar receives notice of the revocation.
- (2) On receiving notice of the revocation of the registered interstate declaration, the registrar must:
  - (a) cancel the registration of the declaration without delay, and the cancellation takes effect immediately, and
  - (b) give the Commissioner written notice of the cancellation.

**27J Cancellation of registration of interstate declaration at request of Commissioner**

- (1) The Commissioner may, at any time while an interstate declaration is registered under this Part, apply to the registrar to cancel the registration of the declaration.
- (2) On receiving an application under this section, the registrar must:
  - (a) cancel the registration of the declaration without delay, and the cancellation takes

effect immediately, and

- (b) give the Commissioner written notice of the cancellation.

#### **27K Cancellation of registration of interstate declaration by Court**

- (1) The Court may, on application by the respondent, cancel the registration of an interstate declaration if satisfied that the declaration should not have been registered in accordance with this Part.
- (2) The Commissioner is a party to the application.
- (3) If the registration of an interstate declaration is cancelled under this section, any control order made under this Act relating to a member of the organisation that is the subject of the interstate declaration on the basis of the declaration ceases to have effect.
- (4) Nothing in this section authorises the Court to reconsider the merits of the interstate declaration.

#### **27L Notice of cancellation or expiry of registration of interstate declaration**

As soon as practicable after the registration of an interstate declaration is cancelled under this Part or expires, the Commissioner must:

- (a) publish notice of the cancellation or expiration in the Gazette and in at least one newspaper circulating throughout the State, and
- (b) give notice of the cancellation or expiration to the commissioner (by whatever name called) of the police force or police service of the State or Territory in which the declaration was made and, if the declaration was made by a court, a registrar of that court.

### **Division 3 Registration of interstate control order in New South Wales**

#### **27M Application for registration of interstate control order in New South Wales**

- (1) The Commissioner may apply to the registrar for the registration of an interstate control order.
- (2) An application for registration must:
  - (a) be made in writing, and
  - (b) be accompanied by an affidavit from the Commissioner including or accompanied by the following:
    - (i) a copy of the interstate control order,
    - (ii) enough information to satisfy the registrar that the order is an interstate

control order that is in force.

- (3) The application must state:
  - (a) whether the Commissioner believes it is necessary for the interstate control order to be adapted or modified for its effective operation in New South Wales, and
  - (b) if so, the details of the adaptation or modification that the Commissioner believes to be necessary.
- (4) An application for the registration of an interstate control order does not need to be served on the respondent.

### **27N When interstate control order cannot be registered**

An application for registration of an interstate control order cannot be made, and an interstate control order cannot be registered, if:

- (a) the respondent is subject to a control order or interim control order under Part 3, or
- (b) any of the following apply to the order:
  - (i) the law of the jurisdiction in which the order was made specifies a period within which the respondent may appeal against the order, and that period is still running,
  - (ii) the determination of an application by the respondent for leave to appeal against the order (whether made before or after any appeal period has expired) is pending,
  - (iii) the determination of an appeal by the respondent against the order is pending.

### **27O Registration of interstate control order**

- (1) The registrar must register an interstate control order that is the subject of an application under this Division if the registrar is satisfied of the following:
  - (a) that the order is in force,
  - (b) that the order was served, or taken to be served, on the respondent under the law of the jurisdiction where the order was made,
  - (c) that section 27N does not prevent registration of the order,
  - (d) that the order does not need to be adapted or modified for its effective operation in New South Wales.
- (2) If the registrar considers that the order needs to be adapted or modified for its effective operation in New South Wales, the registrar must refer the application to the Court.

### **27P Referral of application to Court for adaptation or modification**

- (1) If an application is referred to the Court under section 270, the Commissioner must serve a copy of the application, with any accompanying affidavit, and an appearance notice, personally on the respondent.
- (2) The application may be heard in the respondent's absence if the Court is satisfied that a copy of the application and an appearance notice were served on the respondent under subsection (1).
- (3) In this section:

**appearance notice** means a notice in writing stating the following in relation to an interstate control order:

- (a) that an application for the registration of the interstate control order has been referred to the Court,
- (b) when and where the application is to be heard,
- (c) that the respondent is required to appear at the hearing,
- (d) that the interstate control order, or the interstate control order as varied by the Court, may be registered in the respondent's absence if the respondent fails to appear at the hearing.

### **27Q Determination of application for registration**

- (1) On hearing an application referred to it under section 270, the Court may direct the registrar to register the order:
  - (a) with any adaptations or modifications that the Court considers necessary or desirable for its effective operation in New South Wales, or
  - (b) without any adaptations or modifications.
- (2) Before giving a direction under subsection (1), the Court must:
  - (a) be satisfied of the matters set out in section 270 (1) (a)-(c), and
  - (b) consider:
    - (i) anything that could be considered by the Court if the application were an application for a control order under this Act, and
    - (ii) any changes in the respondent's circumstances since the interstate control order was made.
- (3) The registrar must register the interstate control order in accordance with the direction of the Court.

### **27R Period of registration**

- (1) On registering an interstate control order, the registrar is to specify the date on which the registration expires.
- (2) The date specified by the registrar is to be the date on which the interstate control order would cease to be in force in the jurisdiction in which it was made if it were not sooner revoked.
- (3) The registration of the interstate control order expires on the specified date.
- (4) Subsections (1)–(3) do not apply if, under the law of the jurisdiction in which the interstate control order was made, the interstate control order remains in force for an indefinite period, in which case:
  - (a) on registering the order—the registrar is to specify that the registration is in force for an indefinite period, and
  - (b) the registration of the interstate control order does not expire.

### **27S Notice of registration**

- (1) Not later than 2 working days after registering an interstate control order, the registrar must give the Commissioner a certificate of the registration with a copy of the registered interstate control order attached.
- (2) As soon as practicable after receiving a copy of the registered interstate control order, the Commissioner must:
  - (a) serve a copy of the order personally on the respondent, and
  - (b) publish notice of the registration of the interstate control order in the Gazette and in at least one newspaper circulating throughout the State.

### **27T Commencement and duration of registered interstate control order**

A registered interstate control order:

- (a) comes into force in New South Wales on the day on which the respondent is served personally with a copy of the order, and
- (b) remains in force in New South Wales until one of the following occurs:
  - (i) the registration of the order expires in accordance with section 27R,
  - (ii) the registration of the order is cancelled under this Part.

### **27U Effect of registration of interstate control order**

A registered interstate control order that has come into force under section 27T operates

in New South Wales as if it were a control order made under Part 3 but the provisions of Part 3 (other than Division 3) do not apply in relation to the registered interstate control order.

**27V Variation or revocation of interstate control order in jurisdiction where originally made**

- (1) If an interstate control order is varied by a court in the jurisdiction in which it was made:
  - (a) the variations to the order may be registered under this Part in the same way as the interstate control order is registered, whether the variations were made before or after registration of the interstate control order, and
  - (b) the provisions of this Part apply accordingly with all necessary modifications.
- (2) Subsection (3) applies to a registered interstate control order if:
  - (a) the order is revoked by a court in the jurisdiction in which the order was made, and
  - (b) the registrar receives notice of that revocation from an officer of that court or from the Commissioner.
- (3) On receiving notice of the revocation, the registrar must:
  - (a) cancel the registration of the order without delay, and the cancellation takes effect immediately, and
  - (b) give the Commissioner written notice of that cancellation.
- (4) As soon as practicable after receiving notice of the cancellation of the registration of an interstate control order, the Commissioner must serve a copy of the notice personally on the respondent.

**27W Cancellation of registration of interstate control order by Court**

- (1) The Court may, on application by the respondent, cancel the registration of an interstate control order if satisfied that the control order should not have been registered in accordance with section 27O.
- (2) The Commissioner is a party to the application.
- (3) If the registration of an interstate control order is cancelled under this section, the interstate control order ceases to have effect in New South Wales and the respondent is taken not to have committed any offence under Division 3 of Part 3 as a controlled member.
- (4) Nothing in this section authorises the Court to reconsider the merits of the interstate

control order.

### **27X Cancellation of registration of interstate control order at request of Commissioner**

- (1) The Commissioner may, at any time while an interstate control order is registered under this Part, apply to the registrar to cancel the registration of the order.
- (2) On receiving an application under this section, the registrar must:
  - (a) cancel the registration of the order without delay, and the cancellation takes effect immediately, and
  - (b) give the Commissioner written notice of the cancellation.
- (3) As soon as practicable after receiving notice of the cancellation of the registration of an interstate control order, the Commissioner must serve a copy of the notice of cancellation personally on the respondent.

### **27Y Registration of interstate control order cancelled automatically in certain circumstances**

The registration of an interstate control order under this Part is immediately cancelled if:

- (a) the person to whom the order relates becomes subject to a control order or interim control order under Part 3, or
- (b) the order was made in reliance on the person to whom it relates:
  - (i) being a member of a particular organisation that is subject to an interstate declaration that is no longer in force, or
  - (ii) associating with a member of a particular organisation that is subject to an interstate declaration that is no longer in force.

## **Part 3B Criminal intelligence**

### **Division 1 Preliminary**

#### **28A Definitions**

In this Part:

**court staff** includes a judge's associate, a police officer or other officer providing Court security, a Court reporter and any other person ordinarily used by the Court for the conduct of proceedings.

**criminal intelligence application** means an application under Division 3 for a declaration that particular information is criminal intelligence.

**criminal intelligence monitor** means the criminal intelligence monitor designated



under Division 2.

**declared criminal intelligence** means information declared by the Court under Division 3 to be criminal intelligence.

**external agency** means any of the following:

- (a) the New South Wales Crime Commission,
- (b) the Independent Commission Against Corruption,
- (c) the Australian Federal Police,
- (d) the Australian Crime Commission,
- (e) a police force or service of another State or Territory,
- (f) the Commissioner of Corrective Services, Department of Attorney General and Justice, or an officer of another State or Territory with functions substantially corresponding to the functions of the Commissioner,
- (g) another entity established under a law of another jurisdiction, including a jurisdiction outside Australia, declared by the regulations to be an external agency for the purposes of this Part.

**identifying information**, about an informant, means any of the following information:

- (a) name, including any aliases,
- (b) date of birth,
- (c) current location,
- (d) where the informant resides,
- (e) a position held by the informant in an organisation.

**informant** means any of the following:

- (a) anyone who has given, to the NSW Police Force or to an external agency, information that the Commissioner reasonably believes is criminal intelligence, and who is not a police officer or an officer of an external agency,
- (b) a police officer, or officer of an external agency, who has obtained information through the use of an assumed identity.

**informant affidavit** means an affidavit under section 28H or 28Q.

**officer**, of an external agency, includes a person employed by the agency, seconded to the agency or engaged by the agency under a contract for services.

**relevant agency**, in relation to information that is declared criminal intelligence or that is the subject of a criminal intelligence application, means:

- (a) if the Commissioner obtained the information from an external agency—that agency, or
- (b) otherwise—the NSW Police Force.

**substantive application** means an application under this Act other than a criminal intelligence application.

## **28B Objects of Part**

The objects of this Part are to:

- (a) allow evidence that is or contains criminal intelligence to be admitted in applications under this Act without the evidence:
  - (i) prejudicing criminal investigations, or
  - (ii) enabling the discovery of the existence or identity of confidential sources of information relevant to law enforcement, or
  - (iii) endangering anyone's life or physical safety, and
- (b) prohibit the unlawful disclosure of particular criminal intelligence.

## **Division 2 Criminal intelligence monitor**

### **28C The criminal intelligence monitor**

- (1) The regulations may provide for the designation of a retired judicial officer, or a person qualified to be appointed as a judicial officer, of any Australian jurisdiction to be the criminal intelligence monitor under this Act.
- (2) The regulations may impose restrictions on a lawyer who is or was the criminal intelligence monitor representing a client who is or was a respondent to an application under this Act or associated with any such respondent.

### **28D Monitor's functions**

The functions of the criminal intelligence monitor are as follows:

- (a) to monitor each criminal intelligence application,
- (b) to monitor each application to the Court under Part 2 or 3,
- (c) to test, and make submissions to the Court about, the appropriateness and validity of the monitored application.

**28E Material to be given to monitor**

- (1) The Commissioner is to give to the criminal intelligence monitor the following:
  - (a) a copy of any criminal intelligence application (or any application to revoke a declaration of criminal intelligence) and any supporting material,
  - (b) a copy of any application for the declaration of an organisation under Part 2 or for a control order (or interim control order) under Part 3 and any supporting material,
  - (c) a copy of any other material given to the Court by the Commissioner during the hearing of any such application.
- (2) However, this section does not apply to material to the extent it discloses any identifying information about the informant.
- (3) Material given to the criminal intelligence monitor may refer to an informant by way of a unique identifier.
- (4) The criminal intelligence monitor must:
  - (a) store the material in a secure place, and
  - (b) return the material to the Commissioner as soon as practicable after the matter concerned is finalised.
- (5) A criminal intelligence monitor is entitled to access to a record, or to a transcript of a record, of a hearing at which the monitor appears.

**28F Appearance and role of monitor at hearing**

- (1) This section applies to a hearing for an application at which the criminal intelligence monitor appears.
- (2) The monitor may:
  - (a) for the purpose of testing the appropriateness and validity of the application:
    - (i) present questions for the applicant to answer, or
    - (ii) examine or cross-examine a witness, or
  - (b) make submissions to the Court about the appropriateness of granting the application.
- (3) However, the monitor must not make a submission to the Court while a respondent or a legal representative of a respondent is present.
- (4) The Court may, in its discretion, exclude the monitor from the hearing while a respondent or a legal representative of a respondent is present.

(5) In this section:

**present** includes present by way of an audio-visual link or audio link.

### **Division 3 Declarations of criminal intelligence**

#### **28G Application for declaration of criminal intelligence**

- (1) The Commissioner may apply to the Court for a declaration that particular information is criminal intelligence, but only if the Commissioner reasonably believes the information is criminal intelligence.
- (2) The application must:
  - (a) be in writing, and
  - (b) identify the information, and
  - (c) state the relevant agency for the information, and
  - (d) state:
    - (i) that the Commissioner seeks a declaration that the information is criminal intelligence, and
    - (ii) the grounds on which the declaration is sought, and
  - (e) include an explanation of:
    - (i) the relevant agency's intelligence assessment system, and
    - (ii) the assessment of the information that was made under the system.
- (3) An affidavit to be relied on by the Commissioner at the hearing of the application must be filed with the application.
- (4) An affidavit to be relied on by the Commissioner at the hearing of the application may contain statements based on information and belief if the person making the affidavit states the sources of the information and the grounds for the belief (despite any rule relating to the admission of hearsay or other evidence in proceedings before the Court).
- (5) If any of the information has been provided by an informant, the application and affidavits and other material filed with the application need not include any identifying information about the informant and identifying information about the informant cannot otherwise be required to be given to the Court.
- (6) In this section:

**intelligence assessment system** means a system for assessing information relating

to actual or suspected criminal activity according to:

- (a) the reliability of the source of the information, and
- (b) the validity of the information.

**28H Additional affidavit if informant relied on**

- (1) This section applies if the information that the Commissioner applies to be declared criminal intelligence (the **relevant intelligence**) was provided to the relevant agency by an informant.
- (2) The informant cannot be called or otherwise required to give evidence.
- (3) The Commissioner must, at any time before the hearing of the application, file an affidavit by an officer of the relevant agency.
- (4) The affidavit must:
  - (a) state:
    - (i) the relevant agency, and
    - (ii) the officer's position at the relevant agency, and
  - (b) state that the officer reasonably believes, and has made all reasonable efforts to ensure, the officer has full knowledge of:
    - (i) the information held by the relevant agency about the informant, and
    - (ii) the intelligence held by the relevant agency that was provided by the informant, and
  - (c) state that the officer reasonably believes the relevant agency has made all reasonable enquiries about the existence, and to obtain the details, of any allegations of professional misconduct against the informant, and
  - (d) contain the following information about the informant:
    - (i) the informant's full criminal history, including pending charges,
    - (ii) any information held by the relevant agency about allegations of professional misconduct against the informant,
    - (iii) any inducements or rewards offered or provided to the informant in return for assistance,
    - (iv) whether the informant was an adult or a child when the informant provided the relevant intelligence to the relevant agency,
    - (v) whether the informant was serving a term of imprisonment or otherwise being

held in custody when the informant provided the relevant intelligence to the relevant agency, and

(e) state:

(i) that the officer holds an honest and reasonable belief that the relevant intelligence is reliable, and

(ii) the reasons for that belief.

(5) For the purposes of subsection (4) (d) (i), it is sufficient description of a conviction or charge in the informant's criminal history to state that the conviction or charge related to property, violence or another stated matter, and if it involved dishonesty, without providing further particulars of the offence to which the conviction or charge relates.

(6) For the purposes of subsection (4) (d) (ii), it is sufficient to state whether or not there have been any allegations of professional misconduct against the informant and if any misconduct or alleged misconduct involved dishonesty.

(7) For the purposes of subsection (4) (d) (i) and (ii), the description in the affidavit of a conviction or charge in the informant's criminal history or an allegation of professional misconduct against the informant:

(a) need not state the date of the conviction or charge or date on which the offence was committed or is alleged to have been committed or date on which the misconduct happened or is alleged to have happened, but

(b) if it does not state such a date, must state the time of the conviction, charge, offence, alleged offence, misconduct or alleged misconduct as being in a stated period of not more than 7 years.

(8) Other than information about the informant's criminal history or an allegation of professional misconduct against the informant given in the affidavit under subsections (4)–(7), information about the informant's criminal history or an allegation of professional misconduct against the informant cannot be required to be given to the Court.

(9) Subsection (8) does not prevent further information being given to the Court other than under a requirement.

(10) The requirement under subsection (4) (d) (i) to state the informant's full criminal history applies only to the extent of the information held by the relevant agency if:

(a) the agency is an external agency, and

(b) the affidavit states that the officer believes:

(i) the agency might not hold all the information comprising the informant's

criminal history, and

(ii) an officer of the agency:

- (A) could not lawfully obtain further information about the informant's criminal history, or
- (B) could not obtain further information about the informant's criminal history without disclosing the identity of the informant.

### **28I Hearing ex parte**

The Court must consider a criminal intelligence application without notice of it having been given other than to the criminal intelligence monitor.

### **28J Criminal intelligence application heard first**

- (1) If the Commissioner relies on the relevant information for a substantive application under this Act, the criminal intelligence application must be decided first.
- (2) Subsection (1) applies regardless of when the applications were filed.

### **28K Special closed hearing**

- (1) The hearing of a criminal intelligence application is a closed hearing to the extent provided under this section.
- (2) To ensure the hearing is closed, the Court must exclude from it all persons or particular persons other than the following:
  - (a) the applicant,
  - (b) the applicant's legal and other representatives,
  - (c) the criminal intelligence monitor,
  - (d) any witness who may be called to give evidence under this Part,
  - (e) court staff necessary for the hearing.
- (3) Before hearing the criminal intelligence application, the Court must give a warning about the confidential nature of the information and the unlawful disclosure offence under section 28T.

### **28L Oral evidence by police officers and officers of external agencies**

- (1) With the Court's leave, a police officer who is not an informant or an officer of an external agency who is not an informant may be called at the hearing to give evidence and be cross-examined by the Court or the criminal intelligence monitor.

- (2) However, no question may be asked of the officer that could lead to the disclosure of any identifying information about an informant.

### **28M Deciding criminal intelligence application**

- (1) The Court may declare that information is criminal intelligence if the Court is satisfied the information is criminal intelligence.
- (2) In exercising its discretion to declare information to be criminal intelligence, the Court may have regard to whether matters mentioned in section 28B (a) (i)-(iii) outweigh any unfairness to a respondent.
- (3) Subsection (2) does not limit the matters that the Court may consider in exercising its discretion.
- (4) If the information was provided to the relevant agency by an informant, the Court may not declare that the information is criminal intelligence unless some or all of the information is supported in a material particular by other information before the Court.
- (5) The supporting information mentioned in subsection (4) may be other information before the Court that is declared criminal intelligence or that is the subject of a criminal intelligence application.
- (6) If the Court is not satisfied information is criminal intelligence or proposes to exercise its discretion not to make the declaration, it must, before deciding the application, give the Commissioner an opportunity to withdraw it.
- (7) In this section:

***respondent*** means a respondent to any existing or possible substantive application in which the information mentioned in subsection (1) may be considered.

### **28N Duration of criminal intelligence declaration**

- (1) A criminal intelligence declaration takes effect when it is made.
- (2) A criminal intelligence declaration remains in force until the declaration is revoked.

### **28O Revocation of criminal intelligence declaration**

- (1) The Court may, at any time on application by the Commissioner, revoke a criminal intelligence declaration.
- (2) The application must state:
  - (a) the grounds on which the revocation is sought, and
  - (b) the information supporting the grounds on which the revocation is sought.
- (3) The application must be accompanied by any affidavit the Commissioner intends to



rely on at the hearing of the application.

- (4) The Court must consider the application without notice of it having been given other than to the criminal intelligence monitor.

## **Division 4 Protection of declared criminal intelligence for substantive hearings**

### **28P Application of Division**

- (1) This Division applies if:
  - (a) a substantive application is filed, and
  - (b) any document filed with the application or filed in support of the application contains declared criminal intelligence.
- (2) If this Division applies to a substantive application, this Division applies as well as any other provision of this Act relating to the application.

### **28Q Additional matters if informant relied on in substantive hearing**

- (1) This section applies if the declared criminal intelligence was provided to the relevant agency by an informant.
- (2) The informant cannot be called or otherwise required to give evidence.
- (3) The Commissioner must, at any time before the hearing of the substantive application, file an affidavit by an officer of the relevant agency complying with section 28H (4)–(10).
- (4) The substantive application and affidavits and other material filed with the application need not include any identifying information about the informant and identifying information about the informant cannot otherwise be required to be given to the Court.

### **28R Special closed hearing for consideration of intelligence**

- (1) The Court must order any part of the hearing of the substantive application in which the declared criminal intelligence is to be considered (the **relevant part**) to be a closed hearing to the extent provided under this section.
- (2) The Court must exclude from the relevant part all persons or particular persons other than the following:
  - (a) the Commissioner,
  - (b) a police officer,

- (c) an officer of an external agency from which the Commissioner obtained any of the declared criminal intelligence,
  - (d) the Commissioner's legal representatives and nominees,
  - (e) the criminal intelligence monitor,
  - (f) court staff necessary for the hearing.
- (3) Before the relevant part starts, the Court must give a warning about the confidential nature of the declared criminal intelligence and the unlawful disclosure offence under section 28T.

**28S Oral evidence by police officers and officers of external agencies**

- (1) A police officer who is not an informant or an officer of an external agency who is not an informant may be:
- (a) called at the hearing of the substantive application to give evidence including or about the declared criminal intelligence, and
  - (b) cross-examined by the Court or the criminal intelligence monitor.
- (2) However, no question may be asked of the officer or the monitor that could lead to the disclosure of any identifying information about an informant.

**Division 5 Protection from unlawful disclosure**

**28T Unlawful disclosure of criminal intelligence or information in informant affidavit**

- (1) This section applies to any of the following:
- (a) information that is or has ever been the subject of a criminal intelligence application,
  - (b) information contained in an informant affidavit,
  - (c) declared criminal intelligence, the declaration for which has not been revoked.
- (2) A person must not disclose the information or intelligence unless the disclosure is:
- (a) made with lawful authority or excuse, or
  - (b) made only to the extent necessary to perform the person's functions under or relating to this Act, or
  - (c) if the information is in an informant affidavit—by the informant the subject of the affidavit.

Maximum penalty: 100 penalty units or imprisonment for 12 months, or both.

- (3) It is a defence to an offence against subsection (2) for the defendant to prove:
  - (a) the information or intelligence was publicly available when the disclosure was made, or
  - (b) that when the disclosure was made the defendant had an honest and reasonable but mistaken belief that the information or intelligence was not criminal intelligence.
- (4) For the purposes of subsection (3) (b), it is not reasonable for the defendant to hold the belief if the defendant received a warning by the Court under this Part for the information or intelligence.

### **28U Registrar to secure information**

- (1) The registrar of the Court must seal the following documents and store them in a secure place immediately upon their filing:
  - (a) a criminal intelligence application or any document filed in support of the application,
  - (b) any document containing declared criminal intelligence filed with or in support of a substantive application,
  - (c) any informant affidavit.
- (2) The [State Records Act 1998](#) does not apply to the documents.
- (3) The documents must not be made available for inspection by anyone other than:
  - (a) the registrar, or
  - (b) the presiding judge or judge's associate (or a judge hearing an appeal or that judge's associate), or
  - (c) the criminal intelligence monitor, or
  - (d) a person conducting a review under Part 4, the Attorney General or a person to whom the Commissioner or the Attorney General authorises disclosure.
- (4) However, the criminal intelligence monitor cannot inspect any part of the documents to the extent they disclose any identifying information about an informant.
- (5) The registrar may:
  - (a) make electronic copies of the documents on a storage device, and
  - (b) after the end day for the application:
    - (i) return the documents that have been copied to the Commissioner, and

(ii) store the storage device, unconnected to any computer, in a secure place.

(6) This section applies even if the application concerned is withdrawn or dismissed.

(7) This section ceases to apply if the criminal intelligence declaration concerned is revoked.

(8) In this section:

**end day**, for the application, means:

(a) if the application ends before it is decided—the day the application ends, or

(b) if the application is decided:

(i) the last day on which an appeal may be made against the decision, or

(ii) if an appeal is made against the decision, the day the appeal ends.

**storage device** does not include a device that is a computer hard drive or other permanent part of a computer.

## Part 4 Miscellaneous

### 28, 29 (Repealed)

### 30 Criminal organisations register

(1) The Commissioner must keep a register of information about declarations and orders made under this Act (the **register of criminal organisations**).

(2) The register may contain any of the following information:

(a) the name of any declared organisation (or the name by which it is commonly known),

(b) the name of any controlled member of the declared organisation (or the name by which the controlled member is commonly known).

(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.

(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.

#### **Note—**

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

- (4) Information contained in the register may be provided to members of the public in any other manner approved by the Commissioner.
- (5) Without limiting subsection (4), the Commissioner may publish any information contained in the register in a newspaper circulating in the State.

### **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.

### **31 Attorney General to be notified**

- (1) The Commissioner must give notice of any application under Part 2, 3 or 3B to the Attorney General as soon as practicable after it is made or the Commissioner receives notice of the application.
- (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.
- (3) The Attorney General is entitled to be present and to make submissions at the hearing of the application.

### **32 Burden of proof**

- (1) Any question of fact to be decided in proceedings under this Act is to be decided on the balance of probabilities.
- (2) This section does not apply in relation to proceedings for an offence against this Act.

### **32A Hearsay evidence**

- (1) Information that is declared by the Court under Part 3B to be criminal intelligence may be admitted in evidence in proceedings before the Court under Part 2 or 3 despite any rule relating to the admission of hearsay evidence.
- (2) However, this section does not affect any rule or inherent jurisdiction of the Court with respect to the relevance or probative value of evidence or to procedural fairness.

### **33 Delegation**

The Commissioner:

- (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
- (b) may not delegate any other function of the Commissioner under this Act except to a senior police officer.

### **34 Immunity from liability**

No civil or criminal liability attaches to:

- (a) the Attorney General, the Commissioner, a police officer or other person exercising functions under this Act (whether or not under delegation), or
- (b) the Crown,

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.

### **35 Protection of exercise of certain functions**

- (1) This section applies to any function (a **protected function**) conferred on a person under this Act (a **protected person**) with respect to the making (or purported making) of any declaration, interim control order or control order under this Act.
- (2) Except as provided by section 24 (Right of appeal), the exercise by any protected person of any protected function may not be:
  - (a) challenged, reviewed, quashed or called into question before any court of law or administrative review body in any proceedings, or
  - (b) restrained, removed or otherwise affected by any proceedings.
- (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).
- (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.
- (5) This section has effect despite any provision of any other legislation or any other law (whether written or unwritten).
- (6) In this section:

**exercise** of functions includes:

  - (a) the purported exercise of functions, and
  - (b) the non-exercise or improper exercise of functions, and
  - (c) the proposed, apprehended or threatened exercise of functions.

**proceedings** includes:

  - (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
  - (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 [Supreme Court Act 1970](#),

but does not include any investigation or proceedings under the *Independent Commission Against Corruption Act 1988*.

### **35A Failure of person to disclose identity on request**

- (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.

Maximum penalty: 20 penalty units.

- (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):
  - (a) give a name that is false in a material particular, or
  - (b) give an address other than the person's full and correct address.

Maximum penalty: 20 penalty units.

#### **Note—**

Safeguards relating to the exercise of power under sections 16 (6) and 26 (7A) are set out in Part 15 of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

### **36 Proceedings for offences**

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.

#### **Note—**

Offences under section 26 (1A) or (1B) or 26A remain indictable offences. Chapter 5 of the *Criminal Procedure Act 1986* requires those offences to be dealt with summarily unless the prosecutor or defendant elects to have them dealt with on indictment.

### **37 Rules of court**

Rules of Court may be made under the *Supreme Court Act 1970* 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.

### **37A Service of public notice**

- (1) This section applies if service by the Commissioner of an application or other thing by public notice is required.
- (2) For service by public notice to be effective, the Commissioner must publish a notice in a newspaper circulating throughout the State.
- (3) The notice need only state the following:
  - (a) the general nature of the application or other thing,



(b) details to the extent practicable of the respondent or other person for whom the notice was made,

(c) how copies of any relevant affidavit or other material may be obtained or read.

### **37B Costs**

- (1) Each party to a proceeding for a declaration (or revocation of a declaration) under Part 2 must bear the party's own costs for the proceeding.
- (2) However, the Court may award costs against a party who makes an application the Court considers frivolous or vexatious.

### **38 Regulations**

- (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.
- (2) The regulations may create offences punishable by a penalty not exceeding 100 penalty units.

### **39 Report to Ombudsman on exercise of powers and monitoring by Ombudsman**

- (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.
- (2) For that purpose, the Ombudsman may require the Commissioner or any public authority to provide information about the exercise of those powers.
- (3) The Commissioner is to ensure that the Ombudsman is provided with a report on:
  - (a) any declaration made under Part 2 or under an interim control order or control order, and
  - (b) the reasons the declaration or order was sought, and
  - (c) any prosecutions brought under section 26 or 26A.
- (4) The Ombudsman must maintain the confidentiality of information provided to the Ombudsman that is classified by the Commissioner as criminal intelligence.
- (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 under this section and furnish a copy of the report to the Attorney General and to the Commissioner.
- (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.

- (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.
- (8) The report:
- (a) is, on presentation and for all purposes, taken to have been laid before the House, and
  - (b) may be printed by authority of the Clerk of the House, and
  - (c) if so printed, is for all purposes taken to be a document published by or under the authority of the House, and
  - (d) is to be recorded:
    - (i) in the case of the Legislative Council, in the Minutes of the Proceedings of the Legislative Council, and
    - (ii) in the case of the Legislative Assembly, in the Votes and Proceedings of the Legislative Assembly,
- on the first sitting day of the House after receipt of the report by the Clerk.

### **39A (Repealed)**

### **40 Review of Act**

- (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.
- (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.
- (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.
- (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.

### **Schedule 1 (Repealed)**