

Crimes (Criminal Organisations Control) Act 2009 No 6

[2009-6]



New South Wales

Status Information

Currency of version

Repealed version for 7 December 2010 to 20 March 2012 (accessed 6 October 2024 at 19:17)

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—

- **Repeal**
The Act was repealed by sec 39A of the [Crimes \(Criminal Organisations Control\) Act 2012 No 9](#) with effect from 21.3.2012.
- **Note**
On 23 June 2011, the High Court of Australia in *Wainohu v New South Wales*[2011] HCA 24 stated in response to the question in the special case that “The [Crimes \(Criminal Organisations Control\) Act 2009](#) (NSW) is invalid”.

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](#).

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New South Wales

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Crimes (Criminal Organisations Control) Act 2009 No 6



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 2009*.

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 and email or any other form of electronic communication).

Commissioner means the Commissioner of Police.

control order means an 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.

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.

declared organisation means an organisation in respect of which a declaration under Part 2 that is in force relates.

eligible Judge—see section 5.

exercise a function includes perform a duty.

function includes a power, authority or duty.

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

member of an organisation includes:

- (a) in the case of an organisation that is a body corporate—a director and 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.

protected submission—see section 8 (7).

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

serious criminal activity means any of the following:

- (a) obtaining material benefits from conduct that constitutes a serious indictable offence,

- (b) obtaining material benefits from conduct engaged in outside New South Wales (including outside Australia) that, if it occurred in New South Wales, would constitute a serious indictable offence,
- (c) committing a serious violence offence,
- (d) engaging in conduct outside New South Wales (including outside Australia) that, if it occurred in New South Wales, would constitute a serious violence offence.

serious violence offence means an offence punishable by imprisonment for life or for a term of 10 years or more, where the conduct constituting the offence involves:

- (a) loss of a person's life or serious risk of loss of a person's life, or
- (b) serious injury to a person or serious risk of serious injury to a person, or
- (c) serious damage to property in circumstances endangering the safety of any person, or
- (d) perverting the course of justice (within the meaning of Part 7 of the [Crimes Act 1900](#)) in relation to any conduct that, if proved, would constitute a serious violence offence as referred to in paragraph (a), (b) or (c).

(2) 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 Declared organisations

5 Eligible Judges

(1) In this Part:

eligible Judge means a Judge in relation to whom a consent under subsection (2) and a declaration under subsection (3) are in force.

- (2) A Judge of the Court may, by instrument in writing, consent to being the subject of a declaration by the Attorney General under subsection (3).
- (3) The Attorney General may, by instrument in writing, declare Judges in relation to whom consents are in force under subsection (2) to be eligible Judges for the purposes of this Part.
- (4) An eligible Judge has, in relation to the exercise of a function conferred on an eligible Judge by this Part, the same protection and immunity as a Judge of the Court has in relation to proceedings in the Court.

- (5) A Judge who has given consent under subsection (2) may, by instrument in writing, revoke the consent.
- (6) A declaration of an eligible Judge under subsection (3) cannot be revoked by the Attorney General. However, the declaration of a Judge as an eligible Judge is revoked if:
 - (a) the eligible Judge revokes his or her consent in accordance with subsection (5) or ceases to be a Judge, or
 - (b) the Chief Justice notifies the Attorney General that the Judge should not continue to be an eligible Judge.
- (7) To avoid doubt, the selection of the eligible Judge to exercise any particular function conferred on eligible Judges is not to be made by the Attorney General or other Minister of the Crown, and the exercise of that particular function is not subject to the control and direction of the Attorney General or other Minister of the Crown.

6 Commissioner may apply for declaration

- (1) The Commissioner may apply to an eligible Judge for a declaration (or renewal of a declaration) under this Part that a particular organisation is a declared organisation for the purposes of this Act.
- (2) The application must:
 - (a) be in writing, and
 - (b) identify the particular organisation in respect of which the declaration is sought, and
 - (c) describe the nature of the organisation and any of its distinguishing characteristics, and
 - (d) specify the names (or names by which they are commonly known) of any persons that the Commissioner has reasonable grounds to believe are members of the organisation, and
 - (e) set out the grounds on which the declaration is sought, and
 - (f) set out the information supporting the grounds on which the declaration is sought, and
 - (g) set out details of any previous application for a declaration in respect of the organisation and the outcome of that application, and
 - (h) be supported by an affidavit from the Commissioner, or affidavits from one or more other senior police officers, verifying the contents of the application.

- (3) The application may identify the organisation by specifying the name of the organisation or the name by which the organisation is commonly known or by providing other particulars about the organisation.

Note—

Section 28 contains provisions relating to the disclosure of information in an application or at a hearing under this Act that is criminal intelligence.

7 Publication of notice of application

If the Commissioner makes an application under this Part in relation to an organisation, the Commissioner must as soon as practicable (but no later than 3 days) after the application is made publish a notice in the Gazette and at least one newspaper circulating throughout the State:

- (a) specifying that an application has been made for a declaration under this Part in respect of that organisation, and
- (b) describing the consequences for a member of the organisation if the declaration is made and an interim control order is made in relation to the member, and
- (c) inviting members of that organisation and other persons who may be directly affected (whether or not adversely) by the outcome of the application to make submissions to the eligible Judge at a hearing to be held on a date specified in the notice that has been determined by the eligible Judge.

8 Submissions at the hearing

- (1) A member of the organisation specified in an application under this Part may be present and make submissions in relation to the application at the hearing of the application, subject to subsection (3).
- (2) Any member of the organisation who was not specified in the application under this Part and any other person who may be directly affected (whether or not adversely) by the outcome of the application may, with the leave of the eligible Judge, be present and make submissions at the hearing, subject to subsection (3).
- (3) The Commissioner may object to any person referred to in subsection (1) or (2) being present during any part of the hearing in which information classified by the Commissioner as criminal intelligence is disclosed.
- (4) A person referred to in subsection (1) or (2) who does not wish to be present at the hearing may make a protected submission to the eligible Judge in private.
- (5) The eligible Judge is to deal with an objection under subsection (3) in accordance with section 28.
- (6) The eligible Judge is to deal with a protected submission under subsection (4) in

accordance with section 29.

(7) In this Act:

protected submission means a submission made by a person who has reasonable grounds to believe that he or she may be subjected to action comprising or involving injury, damage, loss, intimidation or harassment in reprisal for making the submission.

9 Eligible Judge may make declaration

- (1) If, on the making of an application by the Commissioner under this Part in relation to a particular organisation, the eligible Judge is satisfied that:
 - (a) members of the organisation associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity, and
 - (b) the organisation represents a risk to public safety and order in this State,the eligible Judge may make a declaration under this Part that the particular organisation is a declared organisation for the purposes of this Act.
- (2) In considering whether or not to make a declaration, the eligible Judge may have regard to any of the following:
 - (a) any information suggesting that a link exists between the organisation and serious criminal activity,
 - (b) any criminal convictions recorded in relation to current or former members of the organisation,
 - (c) any information suggesting that current or former members of the organisation have been, or are, involved in serious criminal activity (whether directly or indirectly and whether or not such involvement has resulted in any criminal convictions),
 - (d) any information suggesting that members of an interstate or overseas chapter or branch of the organisation associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity,
 - (e) any submissions made in relation to the application by the Attorney General or as referred to in section 8,
 - (f) any other matter the eligible Judge considers relevant.
- (3) A declaration may be made whether or not any of the persons referred to in section 8 are present or make submissions.
- (4) The eligible Judge may, for the purposes of making a declaration, be satisfied that members of an organisation associate for the purpose of organising, planning,

facilitating, supporting or engaging in serious criminal activity:

- (a) whether or not all the members associate for that purpose or only some of the members (provided that, if the eligible Judge is satisfied that only some of the members associate for that purpose, the eligible Judge must be satisfied that those members constitute a significant group within the organisation, either in terms of their numbers or in terms of their capacity to influence the organisation or its members), and
- (b) whether or not members associate for the purpose of organising, planning, facilitating, supporting or engaging in the same serious criminal activities or different ones, and
- (c) whether or not the members also associate for other purposes.

10 Notice of declaration

As soon as practicable after making a declaration under this Part, the Commissioner must publish notice of the declaration in the Gazette and in at least one newspaper circulating throughout the State.

11 Duration of declaration

- (1) A declaration under this Part takes effect on the day notice of it is published in the Gazette or a later day specified in the declaration.
- (2) The declaration remains in force for a period of 3 years after the day on which it takes effect (unless it is sooner revoked or renewed).
- (3) A change in the name or membership of a declared organisation does not affect the declaration.

12 Revocation of declaration

- (1) The eligible Judge may, at any time, revoke a declaration under this Part:
 - (a) on the request in writing of the Commissioner, or
 - (b) on application by a member of the organisation.
- (2) An application under subsection (1) (b) must:
 - (a) be in writing, and
 - (b) set out the grounds on which revocation is sought, and
 - (c) set out the information supporting the grounds on which revocation is sought, and
 - (d) be supported by an affidavit from the applicant verifying the contents of the application.

- (3) The applicant must notify the Commissioner of the making of the application as soon as practicable after it is made.

Note—

Section 31 requires the Commissioner to notify the Attorney General of the application.

- (4) A declaration may be revoked under subsection (1) (b) only if the eligible Judge is satisfied that there has been such a substantial change in the nature or membership of the organisation that:
- (a) members of the organisation no longer associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity, and
 - (b) the organisation no longer represents a risk to public safety and order in the State.
- (5) The Commissioner must, as soon as practicable after a declaration is revoked:
- (a) publish notice of the revocation in the Gazette and in at least one newspaper circulating generally throughout the State, and
 - (b) give notice of the revocation to the Attorney General and to any person who made a submission at the hearing at which the declaration was made.
- (6) An interim control order or control order relating to a member of an organisation that is the subject of a revoked declaration ceases to have effect on revocation of the declaration.
- (7) If the eligible Judge who made a declaration under this Part has died, has ceased to be an eligible Judge or is absent, a power exercisable by that eligible Judge under this section may be exercised by any other eligible Judge.

13 Conduct of hearings of applications for declarations under this Part

- (1) The rules of evidence do not apply to the hearing of an application for a declaration under this Part.
- (2) If an eligible Judge makes a declaration or decision under this Part, the eligible Judge is not required to provide any grounds or reasons for the declaration or decision (other than to a person conducting a review under section 39 if that person so requests).

Note—

If reasons are provided that include criminal intelligence, section 28 applies.

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 their 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 When does an interim control order take effect?

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 section 28.
- (4) A copy of the affidavit verifying the grounds on which the application was made must be attached to the interim control order unless disclosure of information included in the affidavit would be in breach of section 28.
- (5) If disclosure of information included in the affidavit would be in breach of section 28, an edited copy of the affidavit, from which the information that cannot be disclosed has been removed or erased, may be attached to the notice of the interim control order.
- (6) A police officer who has reasonable cause to suspect that a person is a person on whom notice of the making of an interim control order is required to be served under this section may:
- (a) request the person to disclose his or her identity, and
 - (b) request the person to remain at a particular place for such period (not exceeding 2 hours) as is reasonably necessary to serve the notice.

Note—

It is an offence for a person to fail or refuse without reasonable excuse to comply with a request to disclose his or her identity or to give false or misleading information about his or her identity—see section 35A.

- (7) If the person refuses or fails to comply with a request under subsection (6) (b), the police officer may detain the person at that place for such period (not exceeding 2 hours) as is reasonably necessary to serve the notice.

16A Service of notice of interim control order

- (1) 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

section 16 (1) 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 section 16 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 section 28.
- (3) A copy of the affidavit verifying the grounds on which the order was made must be attached to the control order unless disclosure of information included in the affidavit would be in breach of section 28.
- (4) If disclosure of information included in the affidavit would be in breach of section 28, an edited copy of the affidavit, from which the information that cannot be disclosed has been removed or erased, may be attached to the control order.

22 When does a control order take effect?

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:

- (a) for a first offence—imprisonment for 2 years, and
- (b) for a second or subsequent offence—imprisonment for 5 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.

- (2) A person may be guilty of an offence under subsection (1) or (1A) in respect of associations with the same person or with different people.
- (3) It is a defence to a prosecution for an offence under subsection (1) or (1A) 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 subsection (1) or (1A) 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 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 dealer within the meaning of the *Motor Dealers Act 1974*,
- (h) carrying on business as a repairer within the meaning of the *Motor Vehicle Repairs Act 1980*,
- (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*,
- (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 and Harness Racing Administration Act 2004*,
- (m) any other activity prescribed by the regulations.

Part 4 Miscellaneous

28 Criminal intelligence

- (1) This section applies to and in respect of:
 - (a) an application for a declaration made to, and the hearing of the application by, an eligible Judge under Part 2, and
 - (b) an application for the making, variation or revocation of an interim control order or control order made to, and the hearing of the application by, the Court under Part 3.

- (2) In this section, the eligible Judge and the Court are referred to as the **determining authority**.
- (3) A determining authority is to take steps to maintain the confidentiality of information that the determining authority considers to be properly classified by the Commissioner as criminal intelligence, including steps to receive evidence and hear argument about the information in private in the absence of the parties to the proceedings and their representatives and the public.
- (4) If the determining authority considers that the information cannot properly be classified as criminal intelligence, the determining authority must ask the Commissioner whether the Commissioner wishes to withdraw the information from consideration.
- (5) Information that is withdrawn by the Commissioner must not be disclosed to any person (except a person conducting a review under this Part or the Attorney General or a person to whom the Commissioner or Attorney General authorises disclosure).
- (6) Despite subsection (3), the determining authority may disclose to the Attorney General, a person conducting a review under this Part, a court or a person to whom the Commissioner authorises disclosure any information the determining authority considers to be properly classified by the Commissioner as criminal intelligence.

29 Protected submission

- (1) An eligible Judge is to take steps to maintain the confidentiality of a protected submission, including steps to receive evidence and hear the submission in private in the absence (except as provided by subsection (2)) of any other person referred to in section 8 (1) or (2) and their representatives.
- (2) The eligible Judge is to advise the Commissioner and the Attorney General that a protected submission is to be made and the Commissioner and the Attorney General are entitled to be present when it is made.

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 which 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 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 or 3 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 Standard 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.

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—

Section 201 of the *Law Enforcement (Powers and Responsibilities) Act 2002* sets out safeguards in relation to such a request.

36 Proceedings for offences

- (1) Except as provided by subsection (2), proceedings for an offence under this Act are to be dealt with summarily before the Local Court.
- (2) A second or subsequent offence under section 26 (Association between members of declared organisations subject to interim control order or control order) or an offence under section 26 (1A) is to be prosecuted on indictment.
- (3) If proceedings for an offence under this Act are dealt with summarily before the Local Court, the maximum penalty that may be imposed is 100 penalty units or imprisonment for 2 years (or both), or the maximum penalty provided for the offence, whichever is the lesser.

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.

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 (Association between members of declared organisations subject to interim control order or control order).
- (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.

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)