

# Criminal Organisations Legislation Amendment Act 2009 No 23

[2009-23]



New South Wales

## Status Information

### Currency of version

Repealed version for 20 May 2009 to 7 August 2009 (accessed 18 November 2024 at 15:16)

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The Act was repealed by sec 30C of the [Interpretation Act 1987 No 15](#) with effect from 8.8.2009.

### 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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# Criminal Organisations Legislation Amendment Act 2009 No 23



New South Wales

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

## 1 Name of Act

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

## 2 Commencement

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

## Schedule 1 (Repealed)

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

### [1] Section 3 Interpretation

Insert in alphabetical order in section 3 (1):

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

### [2] Section 46 Interpretation

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

, or

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

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

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

**[4] Section 46 (1)**

Insert in alphabetical order:

***organised criminal activity***—see section 46AA.

**[5] Section 46AA**

Insert before section 46A:

**46AA Organised criminal activity**

(1) In this Part:

***organised criminal activity*** means any activity that:

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

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

- (a) loss of a person’s life or serious risk of loss of a person’s life, or
- (b) serious injury to a person or serious risk of serious injury to a person, or

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

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

**[6] Section 46A Searchable offences**

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

, and

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

**[7] Section 46A (2)**

Insert in alphabetical order:

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

**[8] Section 46D**

Insert after section 46C:

**46D Authority to apply for criminal organisation search warrant**

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

**[9] Section 47 Power to apply for search warrants**

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

**[10] Section 47 (3A)**

Insert after section 47 (3):

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

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

Insert after section 62 (2):

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

(a) the name of the following persons:

(i) the occupier (if known) of those premises,

(ii) any person believed to have committed, or to be intending to commit, the searchable offence in respect of which the application is made,

(b) whether the occupier is believed to be knowingly concerned with the commission of the searchable offence.

**[12] Section 73 Expiry of warrant**

Insert after section 73 (2A):

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

**[13] Section 73 (3)**

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

**[14] Section 73 (5)**

Omit “or a covert search warrant”.

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

**[15] Section 73 (7)**

Insert after section 73 (6):

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

**[16] Section 73A Extension of warrant**

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

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

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

Insert instead “under subsection (1)”.

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

Insert after section 242 (3):

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

**[19] Section 242 (4)**

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

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

Insert after section 242A (1):

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

**[21] Section 242A (3)**

Insert “under subsection (1)” after “report”.

**[22] Section 242A (3A)**

Insert after section 242A (3):

- (3A) The report under subsection (1A) is to specify the following matters in relation to the year ended on that 30 June:
- (a) the number of applications for criminal organisation search warrants made under Part 5 and the number of those applications granted,
  - (b) the number of applications for telephone criminal organisation search warrants and the number of those applications granted,
  - (c) the number of criminal organisation search warrants executed,
  - (d) the number of criminal organisation search warrants under which any things were seized,
  - (e) the number of criminal organisation search warrants under which the powers referred to in sections 75A and 75B were exercised,
  - (f) the number of criminal organisation search warrants under which any things were tested,
  - (g) the number of arrests made in connection with searchable offences in respect of which criminal organisation search warrants were executed and the number of those arrests that have led to the laying of charges in relation to the searchable offences concerned,
  - (h) the number of complaints that are made under any Act about conduct relating to the execution of a criminal organisation search warrant by an executing officer and the number of those complaints that are, or have been, the subject of an investigation under any Act,
  - (i) any other matters requested by the Minister for Police or the Attorney General.

**[23] Schedule 5 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

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**Schedule 3 (Repealed)**