

The object of this Bill is to re-enact the *Crimes (Criminal Organisations Control) Act 2009* which was declared invalid by the High Court on 23 June 2011 (*Wainohu v State of NSW*) on the basis that a Judge making a declaration under the Act that an organisation was a criminal organisation was not required to provide reasons for making the declaration (applying the Kable principle, the Court found that a discretion but not a statutory obligation to provide reasons undermined the institutional integrity of the Supreme Court). The proposed re-enactment of the Act imposes an obligation to provide reasons. In order to disrupt and restrict the activities of criminal groups, the Act provided that an eligible Judge of the Supreme Court could, on the application of the Commissioner of Police, declare an organisation to be subject to the Act if its members associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity and it represents a risk to public safety and order in this State. As a consequence of the declaration of an organisation, the Supreme Court has jurisdiction on the application of the Commissioner of Police to make a control order against a member of the Organisation that prevents the person associating with other controlled members of the organisation and from holding a number of statutory authorities (eg security, firearms or liquor licences). The Act provided that the eligible Judge, when making a declaration, was not bound by the rules of evidence and could take into account confidential criminal intelligence (with an obligation to maintain the confidentiality of criminal intelligence but without restricting disclosure to courts, the Attorney General and persons reviewing the operation of the legislation). The requirement to give reasons will be subject to standard Arrangements made by judicial officers to preserve confidentiality where that is necessary.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Clause 3 defines certain words and expressions used in the proposed Act, including **serious criminal activity**, **member** of an organisation and **criminal intelligence**. **Clause 4** provides for the extraterritorial operation of the proposed Act.

Part 2 Declared organisations

Clause 5 provides for Judges of the Supreme Court who consent to being eligible Judges for the purposes of the proposed Part to be declared to be eligible Judges by the Attorney General.

Clause 6 enables the Commissioner of Police to apply for a declaration in relation to a particular organisation as described in the Overview above and sets out the requirements for such an application.

Clause 7 requires notice of the making of the application to be published in the Gazette and in at least one newspaper circulating throughout New South Wales inviting members of the organisation concerned 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.

Clause 8 gives the persons referred to in the notice the right to be present and to make submissions at the hearing unless information to be disclosed at the hearing involves criminal intelligence. Other persons who may be directly affected may also be present and make submissions with leave. Provision is also made to enable submissions to be made in private in certain circumstances.

Clause 9 enables the eligible Judge to make the declaration sought by the Commissioner if the eligible Judge is satisfied that members of the organisation associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity and the organisation represents a risk to public safety and order in this State. The proposed section sets out the matters the eligible Judge may take into account in deciding whether or not to make a declaration.

Clause 10 requires notice to be given of the making of the declaration in the Gazette and in at least one newspaper circulating throughout the State.

Clause 11 provides for the duration of declarations.

Clause 12 provides for the revocation of declarations.

Clause 13 provides that the rules of evidence do not apply to the hearing of an application for a declaration. It also provides that an eligible Judge is required to provide reasons for making or revoking the declaration or refusing the application.

Part 3 Control of members of declared organisations

Division 1 Interim control orders

Clause 14 enables the Supreme Court, on the application of the Commissioner of Police, to make an interim control order in relation to one or more members of a declared organisation pending the hearing and final determination of a confirmatory control order in relation to the member or members concerned. The order may be made in the absence of, and without notice to, the member concerned but only takes effect when the member is notified of its making.

Clause 15 states that an interim control order takes effect when notice of it is served personally on the member concerned.

Clause 16 sets out the information that must be included in the notice served on the member. This includes the grounds on which the interim control order was made, an explanation of the ramifications of the making of the order and an explanation of the right to object to the making of the order at the hearing for the making of the confirmatory control order.

Clause 16A enables the Supreme Court to make an order for substituted service of notice of an interim control order on the person to whom it relates if it has not been possible to personally serve the notice of the order and (if substituted service also fails) to order its public notification.

Clause 17 provides for the duration of interim control orders.

Clause 18 requires the Supreme Court to hear applications for confirmatory control orders as expeditiously as possible in hardship cases.

Division 2 Control orders

Clause 19 provides for the making by the Supreme Court of confirmatory control orders.

Clause 20 enables the member the subject of an order to appear at the hearing for the making of the order and to make submissions in relation to the application for the control order.

Clause 21 provides for the form of a control order, including a requirement that it specify the right to appeal against its making.

Clause 22 provides for when control orders take effect.

Clause 23 provides for the duration of control orders.

Clause 24 provides for appeals in relation to control orders.

Clause 25 provides for the variation and revocation of control orders.

Division 3 Consequences of making of interim control orders and control orders

Clause 26 creates offences relating to a controlled member of a particular declared organisation associating with another controlled member of the same organisation.

Clause 26A makes it an offence for a controlled member of a declared organisation to recruit another person to become a member of the organisation.

Clause 27 provides for the suspension and revocation of authorisations to carry on prescribed activities held by a controlled member on the taking effect of interim control orders and control orders, respectively.

Part 4 Miscellaneous

Clause 28 provides protections for criminal intelligence.

Clause 29 provides protections for certain submissions.

Clause 30 provides for the Commissioner of Police to keep a register of information relating to declared organisations and controlled members.

Clause 30A enables regulatory authorities having functions under legislation relating to authorisations to carry on occupations and activities to enter into arrangements with the Commissioner of Police for the supply of information (including criminal intelligence) concerning declared organisations and their

members and associates to assist them in exercising those functions.

Clause 31 requires the Attorney General to be given notice of applications under the proposed Act and the right to be present and to make submissions at the hearings of the applications.

Clause 32 states the burden of proof in proceedings under the proposed Act.

Clause 33 enables the Commissioner of Police to delegate functions with respect to the categorisation of information as criminal intelligence.

Clause 34 provides immunity from civil and criminal liability for persons exercising functions under the proposed Act and for the Crown.

Clause 35 prevents challenge or review by a court (other than by way of appeal under proposed section 24) or administrative body of the exercise of certain functions under the proposed Act.

Clause 35A makes it an offence for a person to fail to comply with a request by a police officer to disclose his or her identity or to give a false name or incorrect address.

Clause 36 provides for proceedings for offences under the proposed Act or regulations made under the proposed Act.

Clause 37 enables the making of rules of court.

Clause 38 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 39 provides for the Ombudsman to keep under scrutiny, and report on, the exercise of powers by police under the proposed Act for a period of 4 years after the commencement of the proposed Act.

Clause 39A repeals the *Crimes (Criminal Organisations Control) Act 2009*, which was declared invalid by the High Court.

Clause 40 provides for the review of the proposed Act in 5 years from the date of assent to the proposed Act.

Schedule 1 Amendment of Acts and Regulation

Schedule 1 amends the following Acts and Regulation to re-enact provisions inserted by or in connection with the *Crimes (Criminal Organisations Control) Act 2009*:

- (a) *Bail Act 1978*,
- (b) *Commercial Agents and Private Inquiry Agents Act 2004*,
- (c) *Criminal Assets Recovery Act 1990*,
- (d) *Criminal Procedure Act 1986*,
- (e) *Criminal Records Regulation 2004*,
- (f) *Liquor Act 2007*,
- (g) *Motor Dealers Act 1974*,
- (h) *Motor Vehicle Repairs Act 1980*,
- (i) *Pawnbrokers and Second-hand Dealers Act 1996*,
- (j) *Surveillance Devices Act 2007*,
- (k) *Tow Truck Industry Act 1998*.