Bill introduced on motion by Mr Greg Smith read a first time and printed.

Second Reading

Mr GREG SMITH (Epping—Attorney General, and Minister for Justice) [3.24 p.m.]: I move:

That this bill be now read a second time.

The Government is pleased to introduce the Crimes (Criminal Organisations Control) Amendment Bill 2013. In recent years States and Territories around Australia have recognised the growing threat of criminal organisations by passing legislation aimed at disrupting their activities. The prevailing model has been legislation under which an authority, usually a Supreme Court judge acting in his or her personal capacity or the Supreme Court itself, can declare an organisation to be a criminal organisation. Control orders can then be made against members of declared organisations which limit their ability to associate and to participate in high-risk industries. New South Wales was among the first to introduce such legislation.

While legislation of this kind is relatively new, it already has quite a story. Part of the South Australian legislation was successfully challenged in the High Court in 2010. The New South Wales Crimes (Criminal Organisations Control) Act 2009 was ruled invalid on different grounds in 2011. The South Australian Act has since been amended to repair the constitutional faults identified by the High Court. The New South Wales Act was repealed and replaced with modified legislation. Most recently the Government introduced the Crimes (Criminal Organisations Control) Amendment Bill 2012. It included a number of amendments to improve the operation of the Act. It also introduced mutual recognition provisions, allowing interstate declarations and orders to be given force in New South Wales, and vice versa.

At the time the bill was introduced the Queensland organised crime legislation was being challenged in the High Court by the Gold Coast chapter of the Finks Motorcycle Club. The Finks sought to impugn the constitutional validity of the provisions of the Queensland Act. Anticipating that the High Court's decision would once again have an impact on declaration-based legislation Australia wide, the Government decided not to progress the bill before Parliament until the High Court's decision had been handed down. That decision was correct. The High Court handed down its decision on the Queensland legislation on 14 March 2013. The High Court rejected the Finks challenge to the provisions in question, making the Queensland Act the first of its kind in Australia to have withstood constitutional challenge. The Crimes (Criminal Organisations Control) Amendment Bill 2013 proposes to adopt those aspects of the Queensland model which were considered and upheld by the High Court.

I now turn to the detail of the bill. First, the declaration of a criminal organisation will now be made by the Supreme Court of New South Wales itself rather than an eligible judge of the Supreme Court. The test to obtain a declaration is also being modified. Under the existing test an eligible judge must be satisfied that members of the organisation associate for the purpose of engaging in serious criminal activity and that the organisation poses a risk to public safety and order in New South Wales. The court will now need to be satisfied that members of an organisation in New South Wales associate for the purpose of serious criminal activity and the continued existence of the organisation is an unacceptable risk to the safety, welfare or order of the community in New South Wales. This test represents a hybrid of the test proposed by the 2012 bill, as well as adopting the "unacceptable risk" test used in Queensland and approved by the High Court. The amended test makes it clear that the police commissioner can seek a declaration in respect of an organisation that has a national or global presence. The application will be based on the activities of the people we are concerned about, being the organisation's members within New South Wales.

The bill proposes that the detailed Queensland mechanisms relating to criminal intelligence be adopted in New South Wales. The provisions relating to the use of criminal intelligence are contained in section 28 of the existing New South Wales Act,. It provides that the commissioner may classify information as criminal intelligence where its disclosure may prejudice criminal investigations, risk disclosing the existence or identity of a confidential informant, or endanger a person's life or safety. In New South Wales, if the determining authority is satisfied that the commissioner has correctly classified information as criminal intelligence, confidentiality is to be maintained in relation to such information, including hearing the information in private, in the absence of the respondents to applications.

The New South Wales legislation will now be brought in line with Queensland provisions which have withstood challenge in the High Court. Under the new criminal intelligence model the police commissioner will make an application to the Supreme Court to have material declared to be criminal intelligence. It will effectively create a three-stage model, where the first stage will be to seek a criminal intelligence declaration, and the second and third stages will be the declaration and control order proceedings in which the criminal intelligence material will be used. Importantly, the provisions continue to safeguard people who, by coming forward, put their lives at risk. The new part will provide that information before the court need not reveal the informant's identity and, if criminal intelligence is being considered, the court must order that part of the hearing be closed. The part also creates an offence of unlawfully disclosing criminal intelligence, with a maximum penalty of $11,000 or imprisonment for 12 months, or both.

Third, the bill introduces provisions to allow a criminal intelligence monitor to have a role in the proceedings. The function of the criminal intelligence monitor will be to monitor each criminal intelligence application, as well as declaration and control order proceedings. The monitor will be provided with all materials relevant to applications, and test and make submissions to the court about the appropriateness of such applications. In discharging this

function the monitor will be permitted to examine or cross-examine witnesses, and make submissions to the court about the appropriateness of granting the application. A provision will be inserted which will allow for regulations to be made to appoint a person as a criminal intelligence monitor.

While the High Court's decision on the Queensland legislation did not focus on the existence of the Criminal Organisations Public Interest Monitor, as the position is known under the Queensland Act, the monitor's role was described as one aspect which tended to support the validity of the Act. Consequently the bill proposes to adopt this mechanism in New South Wales. The remainder of the bill contains those provisions previously introduced under the 2012 bill in November 2012 which remain necessary and have not been subsumed in the amendments outlined above. I refer members to *Hansard* for details of those provisions.