



New South Wales

Crimes (Criminal Organisations Control) Amendment Bill 2013

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The *Crimes (Criminal Organisations Control) Act 2012* (the *Principal Act*) provides that an eligible Judge of the Supreme Court may, on the application of the Commissioner of Police, declare an organisation to be subject to that Act if its members 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 New South Wales. As a consequence of the declaration of an organisation, the Supreme Court has jurisdiction to make a control order against a member of the organisation that prevents the person from associating with other controlled members of the organisation and from holding a number of statutory authorities such as firearms and liquor licences.

The Principal Act was re-enacted in 2012 to require the eligible Judge to give reasons for any decision following a High Court decision (*Wainohu*) that it was invalid because the eligible Judge had a discretion but not an obligation to give reasons.

Following a recent High Court decision (*Pompano*) the High Court has upheld the validity of the corresponding *Criminal Organisation Act 2009* of Queensland (the *Queensland Act*) despite a challenge to the use of criminal intelligence information.

That Queensland Act uses the model of the Supreme Court (rather than an eligible Judge) making declarations of criminal organisations.

The object of this Bill is to amend the Principal Act:

- (a) to adopt the model in the Queensland Act for the Supreme Court to make declarations that organisations are criminal organisations (in place of declarations by eligible Judges), and
- (b) to adopt the model in the Queensland Act for the Supreme Court (in place of the Police Commissioner) making a determination whether information is criminal intelligence, and appointing a monitor to assist the Court, and
- (c) to provide for the recognition and enforcement in New South Wales of comparable declarations and orders made in other States and Territories in relation to criminal organisations and their members, and
- (d) to elaborate on the facts about which the Supreme Court must be satisfied before making a declaration of a criminal organisation, and
- (e) to redefine *serious criminal activity* consistently with the definition of *serious criminal offence* within the meaning of the *Criminal Assets Recovery Act 1990*, and
- (f) to provide for declarations of criminal organisations to be in force for 5 (instead of 3) years as in the Queensland Act.

Outline of provisions

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.

Schedule 1 Amendment of Crimes (Criminal Organisations Control) Act 2012 No 9

Declarations of criminal organisations by Court

Schedule 1 [7] substitutes Part 2 of the Principal Act to achieve the object described in paragraph (a) of the Overview above. The proposed Part substantially re-enacts Part 2 of the Principal Act in similar terms to the Queensland Act so that declarations of criminal organisations are made by the Supreme Court.

Proposed section 7 achieves the object described in paragraph (d) of the Overview above. The proposed section makes it clear that the Supreme Court need only be satisfied that members of an organisation in New South Wales associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity, not members wherever the organisation has a presence. Proposed section 7 also makes it clear that it is not sufficient for the Supreme Court to be satisfied that the organisation represents an unacceptable risk to the safety, welfare

or order of the community in New South Wales—the Court must be satisfied that the continued existence of the organisation represents such a risk.

Proposed section 9 achieves the object described in paragraph (f) of the Overview above.

Schedule 1 [1]–[3] and [15] contain consequential amendments.

Criminal intelligence

Schedule 1 [9] inserts proposed Part 3B into the Principal Act to achieve the object described in paragraph (b) of the Overview above. The proposed Part enables the Supreme Court to declare certain information to be criminal intelligence (at present under the Principal Act the Commissioner determines whether information is criminal intelligence). If, in any part of the hearing of an application under the Principal Act, declared criminal intelligence is to be considered, the Court must order that part of the hearing to be a closed hearing. The proposed Part also creates an offence of unlawful disclosure of criminal intelligence (with a maximum penalty of \$11,000 or imprisonment for 12 months, or both).

Division 2 of proposed Part 3B makes provision for the appointment and functions of the criminal intelligence monitor.

Schedule 1 [13] enables declared criminal intelligence to be admitted in proceedings under the Principal Act despite rules relating to hearsay evidence, but without affecting other rules and discretions relating to court proceedings

Schedule 1 [2], [4], [8] and [10]–[12] contain consequential amendments.

Mutual recognition of declarations and orders

Schedule 1 [9] inserts proposed Part 3A into the Principal Act to achieve the object described in paragraph (c) of the Overview above. The proposed Part provides for a Supreme Court Registrar to register declarations and orders made in other States and Territories in relation to criminal organisations and their members.

An interstate declaration is treated on registration as if it were a declaration under proposed section 7 of the Principal Act. Accordingly, control orders may be made under the Principal Act with respect to members of that organisation in New South Wales.

An interstate control order may be registered in New South Wales with such adaptations or modifications as the Supreme Court considers are necessary or desirable for its effective operation in New South Wales. The registered interstate control order will operate in New South Wales as if it were a control order made under Part 3 of the Principal Act and can be enforced accordingly.

Meaning of “serious criminal activity”

Section 3 of the Principal Act defines *serious criminal activity* by reference (among other things) to the obtaining of material benefits from conduct constituting a serious indictable offence or committing a serious violence offence. **Schedule 1 [5] and [6]** redefine *serious criminal activity* to achieve the object described in paragraph (e) of

the Overview above by reference instead to the definition of *serious criminal offence* in section 6 of the *Criminal Assets Recovery Act 1990* and by omitting the definition of *serious violence offence*. The amendments will ensure, for example, that serious offences that do not necessarily involve material benefits and offences involving violence punishable by 5 or more years' imprisonment (not only 10 years' or more as is currently the case) are covered by the definition.

Miscellaneous amendments

Schedule 1 [15] provides (in line with the Queensland Act) that parties to proceedings for a declaration under Part 2 of the Principal Act bear their own legal costs.

Schedule 1 [14] contains an amendment by way of statute law revision.

Schedule 2 Consequential amendment of other Acts

Schedule 2 makes consequential amendments to other Acts relating to criminal intelligence under the Principal Act.