

Passed by both Houses



New South Wales

# Crimes (Criminal Organisations Control) Amendment Bill 2013

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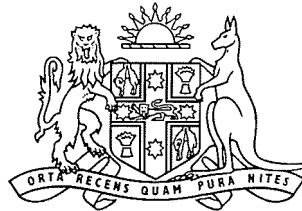
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*I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,  
Sydney, , 2013*



New South Wales

## **Crimes (Criminal Organisations Control) Amendment Bill 2013**

Act No , 2013

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An Act to amend the *Crimes (Criminal Organisations Control) Act 2012* with respect to the control of criminal organisations and their members.

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*I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.*

*Assistant Speaker of the Legislative Assembly.*

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Crimes (Criminal Organisations Control) Amendment Act 2013*.

**2 Commencement**

This Act commences on the date of assent to this Act.

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

**[1] Section 3 Definitions**

Omit the definition of *declared organisation* from section 3 (1). Insert instead:  
*criminal organisation* or *declared organisation* means an organisation subject to a declaration under Part 2 that is in force.

**Note.** Section 27H provides that a registered interstate declaration operates in New South Wales as if it were a declaration under Part 2.

**[2] Section 3 (1)**

Insert in alphabetical order in section 3 (1):

*conviction* includes a finding of guilt by any court, whether or not a conviction is recorded.

**[3] Section 3 (1), definition of “eligible Judge”**

Omit the definition.

**[4] Section 3 (1), definition of “protected submission”**

Omit the definition.

**[5] Section 3 (1), definition of “serious criminal activity”**

Omit the definition. Insert instead:

*serious criminal activity* means any of the following:

- (a) committing a serious criminal offence within the meaning of section 6 of the *Criminal Assets Recovery Act 1990*,
- (b) obtaining material benefits from conduct that constitutes any such offence,

whether or not any person has been charged with or convicted of any such offence.

**[6] Section 3 (1), definition of “serious violence offence”**

Omit the definition.

[7] **Part 2**

Omit the Part. Insert instead:

**Part 2 Criminal organisations**

**5 Commissioner may apply for declaration**

- (1) The Commissioner may apply to the Court for a declaration that a particular organisation (the *respondent*) is a criminal organisation for the purposes of this Act.
- (2) The application must:
  - (a) be in writing, and
  - (b) identify the organisation, and
  - (c) describe the nature of the organisation and any of its distinguishing characteristics, and
  - (d) set out the grounds on which the declaration is sought, and
  - (e) set out the information supporting the grounds on which the declaration is sought, and
  - (f) set out details of any previous application for a declaration of the organisation and the outcome of that application, and
  - (g) state that a response to the application may be filed under section 6.
- (3) The application must be accompanied by any affidavit the Commissioner intends to rely on at the hearing of the application.
- (4) For the purposes of subsection (2) (b), it is sufficient if the organisation is identified by specifying its name or the name by which it is commonly known or by providing other particulars about the organisation.
- (5) The application, with any accompanying affidavit, must:
  - (a) be filed in the Court, and
  - (b) on filing, have as the return date for the hearing fixed by the registrar of the Court a day within 35 days after the filing, and
  - (c) after being filed, be served by the Commissioner on the respondent:
    - (i) by personal service within 7 business days after the filing, or

- (ii) if personal service is not practicable, or if the respondent is an unincorporated association or group, by public notice within 10 days after the filing.

- (6) The Court may extend the return date under this section on such conditions the Court considers appropriate.

#### **6 Response by respondent**

- (1) The respondent may file a response to the application under this Part.
- (2) The response must set out the facts relied on by the respondent in response to the application.
- (3) The respondent must file the response at least 5 business days before the return date fixed by the registrar of the Court.
- (4) The response must be accompanied by any affidavit the respondent intends to rely on at the hearing of the application.

#### **7 Court may make a declaration**

- (1) The Court may make a declaration that the respondent is a criminal organisation for the purposes of this Act if the Court is satisfied that:
  - (a) the respondent is an organisation, and
  - (b) members of the organisation in New South Wales associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity, and
  - (c) the continued existence of the organisation is an unacceptable risk to the safety, welfare or order of the community in this State.
- (2) In considering whether or not to make a declaration, the Court must have regard to:
  - (a) the following information before the Court:
    - (i) information suggesting a link exists between the organisation and serious criminal activity in New South Wales,
    - (ii) any conviction for current or former members of the organisation in New South Wales,
    - (iii) information suggesting current or former members of the organisation in New South Wales have been, or are, involved in serious criminal activity, whether

directly or indirectly and whether or not the involvement resulted in convictions,

- (iv) information suggesting 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, and
- (b) anything else the Court considers relevant.
- (3) A declaration may be made whether or not the respondent is present or makes submissions.
- (4) The Court may, for the purpose of making the 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 all the members in New South Wales associate for that purpose or only some of the members, and
  - (b) whether members in New South Wales associate for that purpose for the same serious criminal activities or different ones, and
  - (c) whether or not the members in New South Wales also associate for other purposes.
- (5) For the purposes of subsection (4) (a), the Court may act on the basis of satisfaction that only some of the members in New South Wales associate for the purpose mentioned in the subsection only if the Court is satisfied that those members constitute a significant group within the organisation in New South Wales, either:
  - (a) in terms of their numbers, or
  - (b) in terms of their capacity to influence the organisation or its members in New South Wales.
- (6) A declared organisation is taken to include any organisation into which the members substantially restructure themselves with or without dissolving the organisation named in the declaration.

## **8 Notice of declaration**

- (1) As soon as reasonably practicable after a declaration is made under this Part, the Commissioner must publish notice of the declaration in the Gazette and in at least one newspaper circulating throughout the State.



- (2) The declaration is of no effect until it is published under subsection (1).

**9 Duration of declaration**

- (1) A declaration under this Part remains in force for a period of 5 years after the day on which it is made, unless sooner revoked or unless renewed.
- (2) A change in the name or membership of a criminal organisation does not affect the declaration.

**10 Revocation of declaration**

- (1) The Court may revoke a declaration under this Part on an application under this section.
- (2) An application may be made by:
  - (a) the Commissioner, at any time, or
  - (b) the declared organisation or a member of the declared organisation, subject to this section.
- (3) An application must:
  - (a) be in writing, and
  - (b) set out the grounds on which the revocation is sought, and
  - (c) set out the information supporting the grounds on which the revocation is sought.
- (4) The application must be accompanied by any affidavit the applicant intends to rely on at the hearing of the application.
- (5) The Commissioner is a party to any proceedings for an application by the declared organisation or a member of the declared organisation.
- (6) The applicant must serve a copy of the application, with any accompanying affidavit, on the other party to the proceedings as soon as reasonably practicable after the application is filed.
- (7) If the Commissioner is the applicant, service on the other party must be:
  - (a) by personal service, or
  - (b) if personal service is not practicable or the other party is an unincorporated association or group, by public notice.
- (8) The Court may revoke a declaration on the application of the declared organisation or a member of the declared organisation only if satisfied that there has been a substantial change in the

nature or membership of the declared organisation to the extent that:

- (a) members of the organisation in New South Wales no longer associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity, and
  - (b) the continued existence of the organisation no longer represents an unacceptable risk to the safety, welfare or order of the community in this State.
- (9) A declared organisation or a member of a declared organisation may not apply for the revocation of a declaration until at least 3 years after the declaration is made.
- (10) The total number of applications for revocation made by the declared organisation and all members of the declared organisation cannot be more than 2 during the first 5 years after the declaration is made.
- (11) As soon as reasonably practicable after the revocation or expiration of a declaration, the Commissioner must publish notice of the revocation or expiration in the Gazette and in at least one newspaper circulating throughout the State.

**11 Stated reasons for making or revoking declaration**

- (1) The Court is to provide a written statement of reasons for any decision to make or revoke a declaration under this Part, or for refusing an application for a declaration or the revocation of a declaration.
- (2) This section does not authorise or require the disclosure of information if an obligation to maintain confidentiality exists (whether under Part 3B or under any other Act or law).

**12 Renewal or extension of declarations**

- (1) A declaration under this Part may be renewed at any time before or after the declaration expires.
- (2) For that purpose, the provisions of this Act applying to an application for the making of a declaration apply as if reference to the making of the declaration were a reference to the renewal of the declaration.
- (3) It does not matter how often declarations are renewed.

**13 Right of appeal**

- (1) Section 24 applies to a decision of the Court under this Part in the same way it applies to a decision of the Court in relation to the making of a control order.
- (2) In that case, a reference to a controlled member is taken to be a reference to a declared organisation.

**[8] Sections 16 and 21**

Omit “section 28” wherever occurring. Insert instead “Part 3B”.

**[9] Parts 3A and 3B**

Insert after Part 3:

**Part 3A Reciprocal recognition and enforcement of declarations and orders**

**Division 1 Preliminary**

**27A Definitions**

In this Part:

*interstate control order* means an order made under a provision of a law of another State or Territory that is prescribed by the regulations for the purposes of this definition.

*interstate declaration* means a declaration made under a provision of a law of another State or Territory that is prescribed by the regulations for the purposes of this definition.

*registrar* means a person who is:

- (a) appointed in accordance with section 120 of the *Supreme Court Act 1970*, and
- (b) nominated by the Principal Registrar of the Court for the purposes of this Part.

*respondent* means the organisation the subject of an interstate declaration or the person the subject of an interstate control order (as the case may be).

## **Division 2 Registration of interstate declaration in New South Wales**

### **27B Application for registration of interstate declaration in New South Wales**

- (1) The Commissioner may apply to the registrar for the registration of an interstate declaration.
- (2) An application for registration must:
  - (a) be made in writing, and
  - (b) be accompanied by an affidavit from the Commissioner including or accompanied by the following:
    - (i) a copy of the interstate declaration,
    - (ii) enough information to satisfy the registrar that the declaration is an interstate declaration that is in force.
- (3) An application for registration of an interstate declaration does not need to be served on the respondent.

### **27C When interstate declaration cannot be registered**

An application for registration of an interstate declaration cannot be made, and an interstate declaration cannot be registered, if any of the following apply to the declaration:

- (a) the law of the jurisdiction in which the declaration was made specifies a period within which the respondent may appeal against the declaration, and that period is still running,
- (b) the determination of an application by the respondent for leave to appeal against the declaration (whether made before or after any appeal period has expired) is pending,
- (c) the determination of an appeal by the respondent against the declaration is pending.

### **27D Registration of interstate declaration**

The registrar must register an interstate declaration that is the subject of an application under this Division if the registrar is satisfied of the following:

- (a) that the declaration is in force,
- (b) if the law of the jurisdiction in which the declaration was made requires notice of the declaration to be published—that the requirement has been complied with,

- (c) if the law of the jurisdiction in which the declaration was made requires notice of the declaration to be served on any organisation, person or group of persons—that the requirement has been complied with or is taken to have been complied with,
- (d) that section 27C does not prevent registration of the declaration.

**27E Period of registration**

- (1) On registering an interstate declaration, the registrar is to specify the date on which the registration expires.
- (2) The date specified by the registrar is to be the date on which the interstate declaration would cease to be in force in the jurisdiction in which it was made if it were not sooner revoked.
- (3) The registration of the interstate declaration expires on the specified date.
- (4) Subsections (1)–(3) do not apply if, under the law of the jurisdiction in which the interstate declaration was made, the interstate declaration remains in force for an indefinite period, in which case:
  - (a) on registering the declaration—the registrar is to specify that the registration is in force for an indefinite period, and
  - (b) the registration of the interstate declaration does not expire.

**27F Notice of registration**

- (1) Not later than 2 business days after registering an interstate declaration, the registrar must give the Commissioner a certificate of the registration with a copy of the registered interstate declaration attached.
- (2) As soon as practicable after receiving a copy of the registered interstate declaration, the Commissioner must:
  - (a) publish notice of the registration of the interstate declaration in the Gazette and in at least one newspaper circulating throughout the State, and
  - (b) give notice of the registration to the commissioner (by whatever name called) of the police force or police service of the State or Territory in which the interstate declaration was made and, if the interstate declaration was made by a court, a registrar of that court.

**27G Commencement and duration of registered interstate declaration**

A registered interstate declaration:

- (a) comes into force in New South Wales on the day after the day on which notice of registration of the declaration is published in the Gazette under section 27F, and
- (b) remains in force in New South Wales until one of the following occurs:
  - (i) the registration of the declaration expires in accordance with section 27E,
  - (ii) the registration of the declaration is cancelled under this Part.

**27H Effect of registration of interstate declaration**

- (1) A registered interstate declaration that has come into force under section 27G operates in New South Wales as if it were a declaration made under Part 2.
- (2) A change in the name or the membership of an organisation that is the subject of a registered interstate declaration does not affect its registration or effect in this State.

**27I Cancellation of registration of interstate declaration on revocation in jurisdiction where originally made**

- (1) This section applies to a registered interstate declaration if:
  - (a) the declaration is revoked in the jurisdiction in which it was made, and
  - (b) the registrar receives notice of the revocation.
- (2) On receiving notice of the revocation of the registered interstate declaration, the registrar must:
  - (a) cancel the registration of the declaration without delay, and the cancellation takes effect immediately, and
  - (b) give the Commissioner written notice of the cancellation.

**27J Cancellation of registration of interstate declaration at request of Commissioner**

- (1) The Commissioner may, at any time while an interstate declaration is registered under this Part, apply to the registrar to cancel the registration of the declaration.
- (2) On receiving an application under this section, the registrar must:
  - (a) cancel the registration of the declaration without delay, and the cancellation takes effect immediately, and

- (b) give the Commissioner written notice of the cancellation.

**27K Cancellation of registration of interstate declaration by Court**

- (1) The Court may, on application by the respondent, cancel the registration of an interstate declaration if satisfied that the declaration should not have been registered in accordance with this Part.
- (2) The Commissioner is a party to the application.
- (3) If the registration of an interstate declaration is cancelled under this section, any control order made under this Act relating to a member of the organisation that is the subject of the interstate declaration on the basis of the declaration ceases to have effect.
- (4) Nothing in this section authorises the Court to reconsider the merits of the interstate declaration.

**27L Notice of cancellation or expiry of registration of interstate declaration**

As soon as practicable after the registration of an interstate declaration is cancelled under this Part or expires, the Commissioner must:

- (a) publish notice of the cancellation or expiration in the Gazette and in at least one newspaper circulating throughout the State, and
- (b) give notice of the cancellation or expiration to the commissioner (by whatever name called) of the police force or police service of the State or Territory in which the declaration was made and, if the declaration was made by a court, a registrar of that court.

**Division 3 Registration of interstate control order in New South Wales**

**27M Application for registration of interstate control order in New South Wales**

- (1) The Commissioner may apply to the registrar for the registration of an interstate control order.
- (2) An application for registration must:
  - (a) be made in writing, and
  - (b) be accompanied by an affidavit from the Commissioner including or accompanied by the following:
    - (i) a copy of the interstate control order,

- (ii) enough information to satisfy the registrar that the order is an interstate control order that is in force.
- (3) The application must state:
  - (a) whether the Commissioner believes it is necessary for the interstate control order to be adapted or modified for its effective operation in New South Wales, and
  - (b) if so, the details of the adaptation or modification that the Commissioner believes to be necessary.
- (4) An application for the registration of an interstate control order does not need to be served on the respondent.

**27N When interstate control order cannot be registered**

An application for registration of an interstate control order cannot be made, and an interstate control order cannot be registered, if:

- (a) the respondent is subject to a control order or interim control order under Part 3, or
- (b) any of the following apply to the order:
  - (i) the law of the jurisdiction in which the order was made specifies a period within which the respondent may appeal against the order, and that period is still running,
  - (ii) the determination of an application by the respondent for leave to appeal against the order (whether made before or after any appeal period has expired) is pending,
  - (iii) the determination of an appeal by the respondent against the order is pending.

**27O Registration of interstate control order**

- (1) The registrar must register an interstate control order that is the subject of an application under this Division if the registrar is satisfied of the following:
  - (a) that the order is in force,
  - (b) that the order was served, or taken to be served, on the respondent under the law of the jurisdiction where the order was made,
  - (c) that section 27N does not prevent registration of the order,
  - (d) that the order does not need to be adapted or modified for its effective operation in New South Wales.



- (2) If the registrar considers that the order needs to be adapted or modified for its effective operation in New South Wales, the registrar must refer the application to the Court.

**27P Referral of application to Court for adaptation or modification**

- (1) If an application is referred to the Court under section 27O, the Commissioner must serve a copy of the application, with any accompanying affidavit, and an appearance notice, personally on the respondent.
- (2) The application may be heard in the respondent's absence if the Court is satisfied that a copy of the application and an appearance notice were served on the respondent under subsection (1).
- (3) In this section:  
*appearance notice* means a notice in writing stating the following in relation to an interstate control order:
  - (a) that an application for the registration of the interstate control order has been referred to the Court,
  - (b) when and where the application is to be heard,
  - (c) that the respondent is required to appear at the hearing,
  - (d) that the interstate control order, or the interstate control order as varied by the Court, may be registered in the respondent's absence if the respondent fails to appear at the hearing.

**27Q Determination of application for registration**

- (1) On hearing an application referred to it under section 27O, the Court may direct the registrar to register the order:
  - (a) with any adaptations or modifications that the Court considers necessary or desirable for its effective operation in New South Wales, or
  - (b) without any adaptations or modifications.
- (2) Before giving a direction under subsection (1), the Court must:
  - (a) be satisfied of the matters set out in section 27O (1) (a)–(c), and
  - (b) consider:
    - (i) anything that could be considered by the Court if the application were an application for a control order under this Act, and
    - (ii) any changes in the respondent's circumstances since the interstate control order was made.

- (3) The registrar must register the interstate control order in accordance with the direction of the Court.

**27R Period of registration**

- (1) On registering an interstate control order, the registrar is to specify the date on which the registration expires.
- (2) The date specified by the registrar is to be the date on which the interstate control order would cease to be in force in the jurisdiction in which it was made if it were not sooner revoked.
- (3) The registration of the interstate control order expires on the specified date.
- (4) Subsections (1)–(3) do not apply if, under the law of the jurisdiction in which the interstate control order was made, the interstate control order remains in force for an indefinite period, in which case:
- (a) on registering the order—the registrar is to specify that the registration is in force for an indefinite period, and
  - (b) the registration of the interstate control order does not expire.

**27S Notice of registration**

- (1) Not later than 2 working days after registering an interstate control order, the registrar must give the Commissioner a certificate of the registration with a copy of the registered interstate control order attached.
- (2) As soon as practicable after receiving a copy of the registered interstate control order, the Commissioner must:
- (a) serve a copy of the order personally on the respondent, and
  - (b) publish notice of the registration of the interstate control order in the Gazette and in at least one newspaper circulating throughout the State.

**27T Commencement and duration of registered interstate control order**

A registered interstate control order:

- (a) comes into force in New South Wales on the day on which the respondent is served personally with a copy of the order, and

- (b) remains in force in New South Wales until one of the following occurs:
  - (i) the registration of the order expires in accordance with section 27R,
  - (ii) the registration of the order is cancelled under this Part.

**27U Effect of registration of interstate control order**

A registered interstate control order that has come into force under section 27T operates in New South Wales as if it were a control order made under Part 3 but the provisions of Part 3 (other than Division 3) do not apply in relation to the registered interstate control order.

**27V Variation or revocation of interstate control order in jurisdiction where originally made**

- (1) If an interstate control order is varied by a court in the jurisdiction in which it was made:
  - (a) the variations to the order may be registered under this Part in the same way as the interstate control order is registered, whether the variations were made before or after registration of the interstate control order, and
  - (b) the provisions of this Part apply accordingly with all necessary modifications.
- (2) Subsection (3) applies to a registered interstate control order if:
  - (a) the order is revoked by a court in the jurisdiction in which the order was made, and
  - (b) the registrar receives notice of that revocation from an officer of that court or from the Commissioner.
- (3) On receiving notice of the revocation, the registrar must:
  - (a) cancel the registration of the order without delay, and the cancellation takes effect immediately, and
  - (b) give the Commissioner written notice of that cancellation.
- (4) As soon as practicable after receiving notice of the cancellation of the registration of an interstate control order, the Commissioner must serve a copy of the notice personally on the respondent.

**27W Cancellation of registration of interstate control order by Court**

- (1) The Court may, on application by the respondent, cancel the registration of an interstate control order if satisfied that the

control order should not have been registered in accordance with section 27O.

- (2) The Commissioner is a party to the application.
- (3) If the registration of an interstate control order is cancelled under this section, the interstate control order ceases to have effect in New South Wales and the respondent is taken not to have committed any offence under Division 3 of Part 3 as a controlled member.
- (4) Nothing in this section authorises the Court to reconsider the merits of the interstate control order.

**27X Cancellation of registration of interstate control order at request of Commissioner**

- (1) The Commissioner may, at any time while an interstate control order is registered under this Part, apply to the registrar to cancel the registration of the order.
- (2) On receiving an application under this section, the registrar must:
  - (a) cancel the registration of the order without delay, and the cancellation takes effect immediately, and
  - (b) give the Commissioner written notice of the cancellation.
- (3) As soon as practicable after receiving notice of the cancellation of the registration of an interstate control order, the Commissioner must serve a copy of the notice of cancellation personally on the respondent.

**27Y Registration of interstate control order cancelled automatically in certain circumstances**

The registration of an interstate control order under this Part is immediately cancelled if:

- (a) the person to whom the order relates becomes subject to a control order or interim control order under Part 3, or
- (b) the order was made in reliance on the person to whom it relates:
  - (i) being a member of a particular organisation that is subject to an interstate declaration that is no longer in force, or
  - (ii) associating with a member of a particular organisation that is subject to an interstate declaration that is no longer in force.

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## Part 3B Criminal intelligence

### Division 1 Preliminary

#### 28A Definitions

In this Part:

*court staff* includes a judge's associate, a police officer or other officer providing Court security, a Court reporter and any other person ordinarily used by the Court for the conduct of proceedings.

*criminal intelligence application* means an application under Division 3 for a declaration that particular information is criminal intelligence.

*criminal intelligence monitor* means the criminal intelligence monitor designated under Division 2.

*declared criminal intelligence* means information declared by the Court under Division 3 to be criminal intelligence.

*external agency* means any of the following:

- (a) the New South Wales Crime Commission,
- (b) the Independent Commission Against Corruption,
- (c) the Australian Federal Police,
- (d) the Australian Crime Commission,
- (e) a police force or service of another State or Territory,
- (f) the Commissioner of Corrective Services, Department of Attorney General and Justice, or an officer of another State or Territory with functions substantially corresponding to the functions of the Commissioner,
- (g) another entity established under a law of another jurisdiction, including a jurisdiction outside Australia, declared by the regulations to be an external agency for the purposes of this Part.

*identifying information*, about an informant, means any of the following information:

- (a) name, including any aliases,
- (b) date of birth,
- (c) current location,
- (d) where the informant resides,
- (e) a position held by the informant in an organisation.

**informant** means any of the following:

- (a) anyone who has given, to the NSW Police Force or to an external agency, information that the Commissioner reasonably believes is criminal intelligence, and who is not a police officer or an officer of an external agency,
- (b) a police officer, or officer of an external agency, who has obtained information through the use of an assumed identity.

**informant affidavit** means an affidavit under section 28H or 28Q.

**officer**, of an external agency, includes a person employed by the agency, seconded to the agency or engaged by the agency under a contract for services.

**relevant agency**, in relation to information that is declared criminal intelligence or that is the subject of a criminal intelligence application, means:

- (a) if the Commissioner obtained the information from an external agency—that agency, or
- (b) otherwise—the NSW Police Force.

**substantive application** means an application under this Act other than a criminal intelligence application.

## **28B Objects of Part**

The objects of this Part are to:

- (a) allow evidence that is or contains criminal intelligence to be admitted in applications under this Act without the evidence:
  - (i) prejudicing criminal investigations, or
  - (ii) enabling the discovery of the existence or identity of confidential sources of information relevant to law enforcement, or
  - (iii) endangering anyone's life or physical safety, and
- (b) prohibit the unlawful disclosure of particular criminal intelligence.

## **Division 2 Criminal intelligence monitor**

### **28C The criminal intelligence monitor**

- (1) The regulations may provide for the designation of a retired judicial officer, or a person qualified to be appointed as a judicial

officer, of any Australian jurisdiction to be the criminal intelligence monitor under this Act.

- (2) The regulations may impose restrictions on a lawyer who is or was the criminal intelligence monitor representing a client who is or was a respondent to an application under this Act or associated with any such respondent.

**28D Monitor's functions**

The functions of the criminal intelligence monitor are as follows:

- (a) to monitor each criminal intelligence application,
- (b) to monitor each application to the Court under Part 2 or 3,
- (c) to test, and make submissions to the Court about, the appropriateness and validity of the monitored application.

**28E Material to be given to monitor**

- (1) The Commissioner is to give to the criminal intelligence monitor the following:
  - (a) a copy of any criminal intelligence application (or any application to revoke a declaration of criminal intelligence) and any supporting material,
  - (b) a copy of any application for the declaration of an organisation under Part 2 or for a control order (or interim control order) under Part 3 and any supporting material,
  - (c) a copy of any other material given to the Court by the Commissioner during the hearing of any such application.
- (2) However, this section does not apply to material to the extent it discloses any identifying information about the informant.
- (3) Material given to the criminal intelligence monitor may refer to an informant by way of a unique identifier.
- (4) The criminal intelligence monitor must:
  - (a) store the material in a secure place, and
  - (b) return the material to the Commissioner as soon as practicable after the matter concerned is finalised.
- (5) A criminal intelligence monitor is entitled to access to a record, or to a transcript of a record, of a hearing at which the monitor appears.

**28F Appearance and role of monitor at hearing**

- (1) This section applies to a hearing for an application at which the criminal intelligence monitor appears.
- (2) The monitor may:
  - (a) for the purpose of testing the appropriateness and validity of the application:
    - (i) present questions for the applicant to answer, or
    - (ii) examine or cross-examine a witness, or
  - (b) make submissions to the Court about the appropriateness of granting the application.
- (3) However, the monitor must not make a submission to the Court while a respondent or a legal representative of a respondent is present.
- (4) The Court may, in its discretion, exclude the monitor from the hearing while a respondent or a legal representative of a respondent is present.
- (5) In this section:  
*present* includes present by way of an audio-visual link or audio link.

**Division 3 Declarations of criminal intelligence**

**28G Application for declaration of criminal intelligence**

- (1) The Commissioner may apply to the Court for a declaration that particular information is criminal intelligence, but only if the Commissioner reasonably believes the information is criminal intelligence.
- (2) The application must:
  - (a) be in writing, and
  - (b) identify the information, and
  - (c) state the relevant agency for the information, and
  - (d) state:
    - (i) that the Commissioner seeks a declaration that the information is criminal intelligence, and
    - (ii) the grounds on which the declaration is sought, and
  - (e) include an explanation of:
    - (i) the relevant agency's intelligence assessment system, and



- (ii) the assessment of the information that was made under the system.
- (3) An affidavit to be relied on by the Commissioner at the hearing of the application must be filed with the application.
- (4) An affidavit to be relied on by the Commissioner at the hearing of the application may contain statements based on information and belief if the person making the affidavit states the sources of the information and the grounds for the belief (despite any rule relating to the admission of hearsay or other evidence in proceedings before the Court).
- (5) If any of the information has been provided by an informant, the application and affidavits and other material filed with the application need not include any identifying information about the informant and identifying information about the informant cannot otherwise be required to be given to the Court.
- (6) In this section:
  - intelligence assessment system* means a system for assessing information relating to actual or suspected criminal activity according to:
    - (a) the reliability of the source of the information, and
    - (b) the validity of the information.

**28H Additional affidavit if informant relied on**

- (1) This section applies if the information that the Commissioner applies to be declared criminal intelligence (the *relevant intelligence*) was provided to the relevant agency by an informant.
- (2) The informant cannot be called or otherwise required to give evidence.
- (3) The Commissioner must, at any time before the hearing of the application, file an affidavit by an officer of the relevant agency.
- (4) The affidavit must:
  - (a) state:
    - (i) the relevant agency, and
    - (ii) the officer's position at the relevant agency, and

- (b) state that the officer reasonably believes, and has made all reasonable efforts to ensure, the officer has full knowledge of:
    - (i) the information held by the relevant agency about the informant, and
    - (ii) the intelligence held by the relevant agency that was provided by the informant, and
  - (c) state that the officer reasonably believes the relevant agency has made all reasonable enquiries about the existence, and to obtain the details, of any allegations of professional misconduct against the informant, and
  - (d) contain the following information about the informant:
    - (i) the informant's full criminal history, including pending charges,
    - (ii) any information held by the relevant agency about allegations of professional misconduct against the informant,
    - (iii) any inducements or rewards offered or provided to the informant in return for assistance,
    - (iv) whether the informant was an adult or a child when the informant provided the relevant intelligence to the relevant agency,
    - (v) whether the informant was serving a term of imprisonment or otherwise being held in custody when the informant provided the relevant intelligence to the relevant agency, and
  - (e) state:
    - (i) that the officer holds an honest and reasonable belief that the relevant intelligence is reliable, and
    - (ii) the reasons for that belief.
- (5) For the purposes of subsection (4) (d) (i), it is sufficient description of a conviction or charge in the informant's criminal history to state that the conviction or charge related to property, violence or another stated matter, and if it involved dishonesty, without providing further particulars of the offence to which the conviction or charge relates.
- (6) For the purposes of subsection (4) (d) (ii), it is sufficient to state whether or not there have been any allegations of professional misconduct against the informant and if any misconduct or alleged misconduct involved dishonesty.

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- (7) For the purposes of subsection (4) (d) (i) and (ii), the description in the affidavit of a conviction or charge in the informant's criminal history or an allegation of professional misconduct against the informant:
- (a) need not state the date of the conviction or charge or date on which the offence was committed or is alleged to have been committed or date on which the misconduct happened or is alleged to have happened, but
  - (b) if it does not state such a date, must state the time of the conviction, charge, offence, alleged offence, misconduct or alleged misconduct as being in a stated period of not more than 7 years.
- (8) Other than information about the informant's criminal history or an allegation of professional misconduct against the informant given in the affidavit under subsections (4)–(7), information about the informant's criminal history or an allegation of professional misconduct against the informant cannot be required to be given to the Court.
- (9) Subsection (8) does not prevent further information being given to the Court other than under a requirement.
- (10) The requirement under subsection (4) (d) (i) to state the informant's full criminal history applies only to the extent of the information held by the relevant agency if:
- (a) the agency is an external agency, and
  - (b) the affidavit states that the officer believes:
    - (i) the agency might not hold all the information comprising the informant's criminal history, and
    - (ii) an officer of the agency:
      - (A) could not lawfully obtain further information about the informant's criminal history, or
      - (B) could not obtain further information about the informant's criminal history without disclosing the identity of the informant.

**281 Hearing ex parte**

The Court must consider a criminal intelligence application without notice of it having been given other than to the criminal intelligence monitor.

**28J Criminal intelligence application heard first**

- (1) If the Commissioner relies on the relevant information for a substantive application under this Act, the criminal intelligence application must be decided first.
- (2) Subsection (1) applies regardless of when the applications were filed.

**28K Special closed hearing**

- (1) The hearing of a criminal intelligence application is a closed hearing to the extent provided under this section.
- (2) To ensure the hearing is closed, the Court must exclude from it all persons or particular persons other than the following:
  - (a) the applicant,
  - (b) the applicant's legal and other representatives,
  - (c) the criminal intelligence monitor,
  - (d) any witness who may be called to give evidence under this Part,
  - (e) court staff necessary for the hearing.
- (3) Before hearing the criminal intelligence application, the Court must give a warning about the confidential nature of the information and the unlawful disclosure offence under section 28T.

**28L Oral evidence by police officers and officers of external agencies**

- (1) With the Court's leave, a police officer who is not an informant or an officer of an external agency who is not an informant may be called at the hearing to give evidence and be cross-examined by the Court or the criminal intelligence monitor.
- (2) However, no question may be asked of the officer that could lead to the disclosure of any identifying information about an informant.

**28M Deciding criminal intelligence application**

- (1) The Court may declare that information is criminal intelligence if the Court is satisfied the information is criminal intelligence.
- (2) In exercising its discretion to declare information to be criminal intelligence, the Court may have regard to whether matters mentioned in section 28B (a) (i)–(iii) outweigh any unfairness to a respondent.

- (3) Subsection (2) does not limit the matters that the Court may consider in exercising its discretion.
- (4) If the information was provided to the relevant agency by an informant, the Court may not declare that the information is criminal intelligence unless some or all of the information is supported in a material particular by other information before the Court.
- (5) The supporting information mentioned in subsection (4) may be other information before the Court that is declared criminal intelligence or that is the subject of a criminal intelligence application.
- (6) If the Court is not satisfied information is criminal intelligence or proposes to exercise its discretion not to make the declaration, it must, before deciding the application, give the Commissioner an opportunity to withdraw it.
- (7) In this section:  
*respondent* means a respondent to any existing or possible substantive application in which the information mentioned in subsection (1) may be considered.

**28N Duration of criminal intelligence declaration**

- (1) A criminal intelligence declaration takes effect when it is made.
- (2) A criminal intelligence declaration remains in force until the declaration is revoked.

**28O Revocation of criminal intelligence declaration**

- (1) The Court may, at any time on application by the Commissioner, revoke a criminal intelligence declaration.
- (2) The application must state:
  - (a) the grounds on which the revocation is sought, and
  - (b) the information supporting the grounds on which the revocation is sought.
- (3) The application must be accompanied by any affidavit the Commissioner intends to rely on at the hearing of the application.
- (4) The Court must consider the application without notice of it having been given other than to the criminal intelligence monitor.

## **Division 4 Protection of declared criminal intelligence for substantive hearings**

### **28P Application of Division**

- (1) This Division applies if:
  - (a) a substantive application is filed, and
  - (b) any document filed with the application or filed in support of the application contains declared criminal intelligence.
- (2) If this Division applies to a substantive application, this Division applies as well as any other provision of this Act relating to the application.

### **28Q Additional matters if informant relied on in substantive hearing**

- (1) This section applies if the declared criminal intelligence was provided to the relevant agency by an informant.
- (2) The informant cannot be called or otherwise required to give evidence.
- (3) The Commissioner must, at any time before the hearing of the substantive application, file an affidavit by an officer of the relevant agency complying with section 28H (4)–(10).
- (4) The substantive application and affidavits and other material filed with the application need not include any identifying information about the informant and identifying information about the informant cannot otherwise be required to be given to the Court.

### **28R Special closed hearing for consideration of intelligence**

- (1) The Court must order any part of the hearing of the substantive application in which the declared criminal intelligence is to be considered (the *relevant part*) to be a closed hearing to the extent provided under this section.
- (2) The Court must exclude from the relevant part all persons or particular persons other than the following:
  - (a) the Commissioner,
  - (b) a police officer,
  - (c) an officer of an external agency from which the Commissioner obtained any of the declared criminal intelligence,
  - (d) the Commissioner's legal representatives and nominees,

- (e) the criminal intelligence monitor,
  - (f) court staff necessary for the hearing.
- (3) Before the relevant part starts, the Court must give a warning about the confidential nature of the declared criminal intelligence and the unlawful disclosure offence under section 28T.

**28S Oral evidence by police officers and officers of external agencies**

- (1) A police officer who is not an informant or an officer of an external agency who is not an informant may be:
- (a) called at the hearing of the substantive application to give evidence including or about the declared criminal intelligence, and
  - (b) cross-examined by the Court or the criminal intelligence monitor.
- (2) However, no question may be asked of the officer or the monitor that could lead to the disclosure of any identifying information about an informant.

**Division 5 Protection from unlawful disclosure**

**28T Unlawful disclosure of criminal intelligence or information in informant affidavit**

- (1) This section applies to any of the following:
- (a) information that is or has ever been the subject of a criminal intelligence application,
  - (b) information contained in an informant affidavit,
  - (c) declared criminal intelligence, the declaration for which has not been revoked.
- (2) A person must not disclose the information or intelligence unless the disclosure is:
- (a) made with lawful authority or excuse, or
  - (b) made only to the extent necessary to perform the person's functions under or relating to this Act, or
  - (c) if the information is in an informant affidavit—by the informant the subject of the affidavit.

Maximum penalty: 100 penalty units or imprisonment for 12 months, or both.

- (3) It is a defence to an offence against subsection (2) for the defendant to prove:
  - (a) the information or intelligence was publicly available when the disclosure was made, or
  - (b) that when the disclosure was made the defendant had an honest and reasonable but mistaken belief that the information or intelligence was not criminal intelligence.
- (4) For the purposes of subsection (3) (b), it is not reasonable for the defendant to hold the belief if the defendant received a warning by the Court under this Part for the information or intelligence.

**28U Registrar to secure information**

- (1) The registrar of the Court must seal the following documents and store them in a secure place immediately upon their filing:
  - (a) a criminal intelligence application or any document filed in support of the application,
  - (b) any document containing declared criminal intelligence filed with or in support of a substantive application,
  - (c) any informant affidavit.
- (2) The *State Records Act 1998* does not apply to the documents.
- (3) The documents must not be made available for inspection by anyone other than:
  - (a) the registrar, or
  - (b) the presiding judge or judge's associate (or a judge hearing an appeal or that judge's associate), or
  - (c) the criminal intelligence monitor, or
  - (d) a person conducting a review under Part 4, the Attorney General or a person to whom the Commissioner or the Attorney General authorises disclosure.
- (4) However, the criminal intelligence monitor cannot inspect any part of the documents to the extent they disclose any identifying information about an informant.
- (5) The registrar may:
  - (a) make electronic copies of the documents on a storage device, and
  - (b) after the end day for the application:
    - (i) return the documents that have been copied to the Commissioner, and



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(ii) store the storage device, unconnected to any computer, in a secure place.

(6) This section applies even if the application concerned is withdrawn or dismissed.

(7) This section ceases to apply if the criminal intelligence declaration concerned is revoked.

(8) In this section:

*end day*, for the application, means:

(a) if the application ends before it is decided—the day the application ends, or

(b) if the application is decided:

(i) the last day on which an appeal may be made against the decision, or

(ii) if an appeal is made against the decision, the day the appeal ends.

*storage device* does not include a device that is a computer hard drive or other permanent part of a computer.

**[10] Section 28 Criminal intelligence**

Omit the section.

**[11] Section 29 Protected submission**

Omit the section.

**[12] Section 31 Attorney General to be notified**

Omit “Part 2 or 3” from section 31 (1). Insert instead “Part 2, 3 or 3B”.

**[13] Section 32A**

Insert after section 32:

**32A Hearsay evidence**

(1) Information that is declared by the Court under Part 3B to be criminal intelligence may be admitted in evidence in proceedings before the Court under Part 2 or 3 despite any rule relating to the admission of hearsay evidence.

(2) However, this section does not affect any rule or inherent jurisdiction of the Court with respect to the relevance or probative value of evidence or to procedural fairness.

**[14] Section 36 Proceedings for offences**

Omit the note to the section. Insert instead:

**Note.** Offences under section 26 (1A) or (1B) or 26A remain indictable offences. Chapter 5 of the *Criminal Procedure Act 1986* requires those offences to be dealt with summarily unless the prosecutor or defendant elects to have them dealt with on indictment.

**[15] Sections 37A and 37B**

Insert after section 37:

**37A Service of public notice**

- (1) This section applies if service by the Commissioner of an application or other thing by public notice is required.
- (2) For service by public notice to be effective, the Commissioner must publish a notice in a newspaper circulating throughout the State.
- (3) The notice need only state the following:
  - (a) the general nature of the application or other thing,
  - (b) details to the extent practicable of the respondent or other person for whom the notice was made,
  - (c) how copies of any relevant affidavit or other material may be obtained or read.

**37B Costs**

- (1) Each party to a proceeding for a declaration (or revocation of a declaration) under Part 2 must bear the party's own costs for the proceeding.
- (2) However, the Court may award costs against a party who makes an application the Court considers frivolous or vexatious.

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## **Schedule 2 Consequential amendment of other Acts**

### **2.1 Commercial Agents and Private Inquiry Agents Act 2004 No 70**

#### **Section 4 Definitions**

Insert “, or declared by the Supreme Court under that Act to be criminal intelligence” after “2012” in the definition of *criminal intelligence* in section 4 (1).

### **2.2 Liquor Act 2007 No 90**

#### **Section 4 Definitions**

Insert “, or declared by the Supreme Court under that Act to be criminal intelligence” after “2012” in the definition of *criminal intelligence* in section 4 (1).

### **2.3 Motor Dealers Act 1974 No 52**

#### **Section 4 Definitions**

Insert “, or declared by the Supreme Court under that Act to be criminal intelligence” after “2012” in the definition of *criminal intelligence* in section 4 (1).

### **2.4 Motor Vehicle Repairs Act 1980 No 71**

#### **Section 4 Definitions**

Insert “, or declared by the Supreme Court under that Act to be criminal intelligence” after “2012” in the definition of *criminal intelligence* in section 4 (1).

### **2.5 Pawnbrokers and Second-hand Dealers Act 1996 No 13**

#### **Section 3 Definitions**

Insert “, or declared by the Supreme Court under that Act to be criminal intelligence” after “2012” in the definition of *criminal intelligence* in section 3 (1).

## **2.6 Tow Truck Industry Act 1998 No 111**

### **Section 3 Definitions**

Insert “, or declared by the Supreme Court under that Act to be criminal intelligence” after “2012” in the definition of *criminal intelligence* in section 3 (1).