

22 November 2012

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

Second Reading

Mr GREG SMITH (Epping—Attorney General, and Minister for Justice) [5.11 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 2012. The bill will provide for mutual recognition of declarations and orders for the control of members of criminal organisations that are made in other States and Territories. The Crimes (Criminal Organisations Control) Act 2012 was introduced in 2012 to repeal, repair, and re-enact the 2009 Act, which was ruled to be invalid by the High Court. South Australia, Queensland and the Northern Territory already have similar legislation in place. Western Australia has introduced a bill, as has Victoria. With the majority of Australian jurisdictions having introduced such legislation, the majority of Ministers at the April 2012 meeting of the Standing Committee on Law and Justice agreed that it would be desirable to pursue a nationally consistent approach to criminal organisation legislation. It was proposed that this would be through State and Territory legislation that provided for the declaration of criminal organisations, orders controlling the activities of members of declared organisations and the mutual recognition of interstate declarations and control orders.

The New South Wales Act already contains the first two elements, and it is the aim of this bill to introduce the mutual recognition element. It is well known that criminal organisations operate across borders, and it would be undesirable if members of declared organisations were able to escape the consequences of a declaration or control order by shifting their activities to another jurisdiction. A mutual recognition mechanism eliminates such a possibility by allowing a declaration or control order made in one State to be registered in the Supreme Court of another State or Territory and enforced as if the declaration or order had been made in that State or Territory.

The proposed amendments in item [15] of schedule 1 to the bill would allow a New South Wales Supreme Court registrar to register a declaration or control order made in another jurisdiction upon application. On registration, interstate declarations and control orders would operate as if they had been made in New South Wales. Recognition of declarations will apply to the group against which the original declaration was made. For example, registering a declaration of the Queensland chapter of an outlaw motor cycle gang in New South Wales would not result in the declaration applying to the New South Wales chapter of that group. However, control orders could be taken out in New South Wales against members of the Queensland chapter if they entered New South Wales. Due to differences between

jurisdictions on the conditions able to be imposed under control orders, the registrar would be able to refer the interstate order to a court for variation to ensure consistency with local control orders.

The Government is introducing this bill in recognition of the fact that the majority of jurisdictions represented in the Standing Committee on Law and Justice agreed that mutual recognition provisions were an essential element of a nationally consistent scheme. This also presented an opportunity to make a number of additional amendments that will improve the operation of the Act. The Government is aware that the Queensland organised crime legislation is currently being challenged in the High Court by the Gold Coast chapter of the Finks Motorcycle Club. The High Court's decision may have implications for legislation of this kind, and New South Wales has opted to intervene in the matter. The Government will not progress this bill through the House until the High Court has handed down its decision. If any aspect of the Queensland legislation is found to be invalid, the Government will review all provisions of the bill in light of the High Court's findings.

First, the bill amends the definition of "serious criminal activity". Section 3 of the Act currently defines "serious criminal activity" as any of the following: obtaining material benefits from conduct that constitutes a serious indictable offence; 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; and committing a serious violence offence or engaging in conduct outside New South Wales, including outside Australia, that if it occurred in New South Wales would constitute a serious violence offence.

Item [2] of schedule 1 to the bill amends the Act to include the offences in the definition of "serious criminal activity" in section 6 of the Criminal Assets Recovery Act 1990, which include: drug trafficking offences; an offence that is punishable by imprisonment for five years or more and involves theft, fraud, obtaining financial benefit from the crime of another, money laundering, extortion, violence, bribery, corruption, harbouring criminals, blackmail, obtaining or offering a secret commission, perverting the course of justice, tax or revenue evasion, illegal gambling, forgery or homicide; firearms offences involving their unauthorised manufacture or sale; drug premise offences; sexual servitude and child prostitution offences; criminal group offences; and destruction of property offences.

The majority of these offences would already fall under the definition of "serious indictable offence" in the present Act, but some of them, whilst very serious offences in their own right, do not involve obtaining material benefits. The amendment will ensure that the eligible judge may take into consideration activities where these offences have been committed by members of the organisation or where material benefits have been obtained from the commission of the offences.

Second, the bill amends the Act to give more detail on the facts about which an eligible judge must be satisfied before making a declaration in respect of an organisation. Under the

existing section 9, 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 before making a declaration. Item [6] of schedule 1 to the bill amends section 9 to state that the eligible judge must be satisfied that members in New South Wales associate for criminal purposes.

In its existing form the legislation makes it clear that a declaration may be sought against an organisation even if it is based outside New South Wales. The intent of the Act is to control the activity of an organisation and its members in New South Wales, regardless of how big it may be globally. This amendment will make it clear that the Commissioner of Police can seek a declaration in respect of an organisation that has a national or global presence and will allow that application to be based on the activities of the people we are concerned about, being the organisation's members within New South Wales.

Item [7] of schedule 1 to the bill also amends section 9 to provide that it must be the continued existence of the organisation that poses a risk to safety and order in New South Wales. The amendments in this bill will ensure that police may focus on organisations that are involved in the commission of a wider range of offences whilst at the same time focusing on organisations that present a continuing threat. This amendment is consistent with the intended operation of the Act, which is to break up the criminal activities of established and ongoing criminal groups. The amendment will ensure that the Act does not capture random acts by groups of individuals who do not represent an ongoing threat and do not warrant intervention under the Act.

Third, item [16] of schedule 1 to the bill inserts a new section 20A into the Act which will make the reasons given by an eligible judge for making a declaration to be admissible in control order proceedings as evidence that the organisation is a declared organisation; that a person identified as a member of that organisation is, in fact, a member; that members of the organisation associate for criminal purposes; and that the continued existence of the organisation represents a risk to public safety and order in New South Wales.

Fourth, item [5] of schedule 1 inserts new sections 8A and 8B, which amend the Act to provide the eligible judge with certain powers with respect to the examination of submissions during an application for a declaration. These will include powers to question persons making submissions, and to require persons present to produce documents or to summon persons who may have relevant information, and a general power to do all things necessary for the exercise of the eligible judge's functions. The bill also includes a contempt provision for those who fail to comply with the eligible judge's requirements or otherwise disrupt proceedings.

Fifth, item [12] of schedule 1 extends the duration of a declaration from three to five years. An application for a declaration will be a time-consuming process involving significant investigative resources and large volumes of evidence. Under the existing provisions, if the commissioner wishes to renew an existing declaration against an organisation because it

remains a threat to public safety in New South Wales, the NSW Police Force will need to begin preparations for the renewal application well in advance of the declaration's expiry in order to ensure the declaration continues uninterrupted. In practice, this will mean that after expending significant time and resources obtaining a declaration, the NSW Police Force will have to repeat the process long before the three-year declaration period lapses. The bill will ensure that the hard work done by the NSW Police Force to obtain a declaration will not be wasted by extending the duration of a declaration to five years. I commend the bill to the House.

Debate adjourned on motion by Mr Paul Lynch and set down as an order of the day for a future day.