



New South Wales

Crimes (Criminal Organisations Control) Amendment Bill 2012

Explanatory note

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

Overview of Bill

The *Crimes (Criminal Organisations Control) Act 2012* (the *CCOC 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 the 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 object of this Bill is to amend the CCOC Act:

- (a) 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
- (b) to elaborate on the facts about which an eligible Judge must be satisfied before making a declaration, and

- (c) to provide for the reasons given by an eligible Judge for making a declaration to be admissible in proceedings for the making of a control order as evidence of certain matters, and
- (d) to redefine *serious criminal activity* consistently with the definition of *serious criminal offence* within the meaning of the *Criminal Assets Recovery Act 1990*, and
- (e) to confer on eligible Judges additional powers with respect to the examination of submissions concerning applications for declarations, and
- (f) to enable such submissions to be made personally or through a legal representative and to ensure that legal representatives at hearings before eligible Judges have the same protections and immunities as barristers appearing in proceedings before the Supreme Court, and
- (g) to provide for declarations to be in force for 5 (instead of 3) years, and
- (h) to correct a note by way of statute law revision.

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

Mutual recognition of declarations and orders

Schedule 1 [17] inserts proposed Part 3A into the CCOC Act to achieve the object described in paragraph (a) of the Overview above. **Schedule 1 [1]** contains a consequential amendment. 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 section 9 of the CCOC Act. Accordingly, control orders may be made under the CCOC 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 CCOC Act and can be enforced accordingly.

Grounds for making a declaration

Schedule 1 [6] and [8]–[11] amend section 9 of the CCOC Act to achieve the object described in paragraph (b) of the Overview above. The amendments will make it

clear that the eligible Judge 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. **Schedule 1 [7]** amends section 9 to make it clear that it is not sufficient for the eligible Judge to be satisfied that the organisation represents a risk to public safety and order in New South Wales—the eligible Judge must be satisfied that the continued existence of the organisation represents such a risk.

Schedule 1 [13] and [14] contain consequential amendments.

Duration of declaration

Schedule 1 [12] amends section 11 of the CCOC Act to achieve the object described in paragraph (g) of the Overview above.

Reasons

Schedule 1 [15] amends section 13 of, and **Schedule 1 [16]** inserts proposed section 20A into, the CCOC Act to achieve the object described in paragraph (c) of the Overview above.

Meaning of “serious criminal activity”

Section 3 of the CCOC Act defines *serious criminal activity* by reference (among other things) to the obtaining of material benefits from conduct constituting a serious indictable offence and committing a serious violence offence. **Schedule 1 [2] and [3]** redefine *serious criminal activity* to achieve the object described in paragraph (d) 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 omit 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) are covered by the definition.

Proceedings before eligible Judge

Schedule 1 [5] inserts proposed sections 8A and 8B into the CCOC Act to achieve the object described in paragraph (e) of the Overview above. An eligible Judge is given powers to summon persons and require them to answer questions on oath or affirmation and produce documents, and the power to report various matters to the Supreme Court that may be dealt with as if they were a contempt of that Court.

Schedule 1 [4] and [18] amend sections 8 and 34, respectively, of the CCOC Act to achieve the object described in paragraph (f) of the Overview above.

Statute law revision

Schedule 1 [19] contains an amendment by way of statute law revision.