

## Explanatory note

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

### Overview of Bill

The object of this Bill is to amend various Acts to make further provision to disrupt and restrict the activities of declared organisations within the meaning of the Crimes (Criminal Organisations Control) Act 2009 (the 2009 Act). These are organisations whose members associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity and that represent a risk to public safety and order in New South Wales and that are the subject of a declaration of an eligible Judge under that Act.

The amendments are described in detail below.

### 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 Act (with the exception of Schedule 2 which is to commence on a day or days to be appointed by proclamation).

### Explanatory note page 2

#### Criminal Organisations Legislation Amendment Bill 2009

### Explanatory note

#### Schedule 1 Amendment of Crimes (Criminal Organisations Control) Act 2009 No 6

Schedule 1 amends the 2009 Act as follows:

(a) to enable the Supreme Court to make an order for substituted service of notice of an interim control order on the person to whom it relates if it has not been possible to personally serve the notice of the order and (if substituted service also fails) to order its public notification (Schedule 1 [1]—proposed section 16A),

(b) to make it an offence for a member of a declared organisation who is subject to a control order under that Act to recruit another person to be a member of the organisation (Schedule 1 [2]—proposed section 26A),

(c) to enable information to be published on the criminal organisations register 28 days after a control order is made in relation to a member of a declared organisation (unless an appeal against the order is lodged before the expiration of that period) (Schedule 1 [3]–[5]),

(d) to enable regulatory authorities having functions under legislation relating to authorisations to carry on occupations and activities to enter into arrangements with the Commissioner of Police for the supply of information (including criminal intelligence) concerning declared organisations and their members and associates to assist them in exercising those functions (Schedule 1 [6]—proposed section 30A).

Proposed section 30A will facilitate the operation of provisions relating to the exercise of functions by regulatory authorities to be inserted in various Acts by Schedule 3 that are described below.

#### Schedule 2 Amendment of Law Enforcement

(Powers and Responsibilities) Act 2002

No 103 (as amended by Act 2009, No 8)

Schedule 2 amends the Law Enforcement (Powers and Responsibilities) Act 2002 (as recently amended by Act 2009, No 8) to enable an eligible Judge (a Supreme Court judge acting as *persona designata*) to issue a new form of search warrant (a criminal organisation search warrant) (see Schedule 2 [3]).

A criminal organisation search warrant may be issued if there are reasonable grounds to suspect that there is, or within 7 days there will be, in or on premises a thing connected with an organised crime offence. An organised crime offence is a serious indictable offence arising from, or occurring as a result of, organised criminal

activity (see the definitions of these terms as inserted by Schedule 2 [5]–[7]).  
An application for a criminal organisation search warrant may be made only by a police officer authorised to make the application by a police officer holding the rank of Superintendent or above (see Schedule 2 [2] and [8]). The warrant generally

Explanatory note page 3

Criminal Organisations Legislation Amendment Bill 2009

Explanatory note

expires 7 days after issue (see Schedule 2 [12]–[16]). The powers exercisable under such a warrant are essentially the same as those exercisable under a standard search warrant (not as will be able to be exercised under a covert search warrant on the commencement of the amendments made to the Law Enforcement (Powers and Responsibilities) Act 2002 by Act 2009, No 8).

Provision is made for the Ombudsman to inspect the records of the NSW Police Force every 2 years and report on the results of that inspection to ensure that the requirements of the 2002 Act are being complied with in relation to the new form of warrant (Schedule 2 [17]–[19]). Provision is also made for annual reports on the exercise of the new search powers (Schedule 2 [20]–[22]).

Schedule 2 [1], [4], [9], [10] and [11] make consequential amendments.

Schedule 2 [23] enables the making of savings and transitional regulations.

Schedule 3 Amendment of other Acts

Schedule 3 (other than Schedule 3.2 and 3.7) amends certain Acts to enable regulatory authorities having functions under those Acts relating to authorisations to carry on occupations and activities under the Acts to refuse to grant such authorisations (and to cancel them) where the regulatory authorities have reasonable grounds to believe from information held or provided by the Commissioner of Police in relation to applicants for authorisations or holders of authorisations that:

(a) the applicants or holders are members of, or regularly associate with one or more members of, a declared organisation within the meaning of the Crimes (Criminal Organisations Control) Act 2009, and

(b) the nature and circumstances of the applicants' or holders' relationship with the organisation or its members are such that it could reasonably be inferred that improper conduct that would further the criminal activities of the declared organisation is likely to occur if they hold or continue to hold authorisations.

The amendments include provisions to ensure that any information provided by the Commissioner of Police to the regulatory authorities that is classified by the Commissioner as criminal intelligence is not disclosed.

The Acts amended and authorisations affected are as follows:

(a) master licences and operator licences under the Commercial Agents and Private Inquiry Agents Act 2004 (Schedule 3.1),

(b) licences and approvals to manage licensed premises under the Liquor Act 2007 (Schedule 3.3),

(c) licences under the Motor Dealers Act 1974 (Schedule 3.4),

(d) licences and tradespersons' certificates under the Motor Vehicle Repairs Act 1980 (Schedule 3.5),

Explanatory note page 4

Criminal Organisations Legislation Amendment Bill 2009

Explanatory note

(e) licences under the Pawnbrokers and Second-hand Dealers Act 1996 (Schedule 3.6),

(f) licences and drivers certificates under the Tow Truck Industry Act 1998 (Schedule 3.8).

Schedule 3.7 amends the definition of relevant proceeding in section 4 (1) of the Surveillance Devices Act 2007. Section 40 of that Act prohibits the use, communication or publication of protected information (defined to include, for

example, information from the use of a surveillance device under a warrant under the Act or relating to an application for such a warrant) except for specified purposes. The proposed amendment will enable protected information to be used in any proceeding in respect of a declaration under Part 2, or a control order under Division 1 or 2 of Part 3, of the Crimes (Criminal Organisations Control) Act 2009. Schedule 3.2 amends the Criminal Procedure Act 1986 so that the proposed new indictable offence relating to recruitment of members of declared organisations to be inserted in the Crimes (Criminal Organisations Control) Act 2009 by Schedule 1 [2] may be prosecuted summarily.