

**Review of police use of powers
under the *Crimes (Criminal
Organisations Control) Act 2012***

Section 39(1) of the *Crimes (Criminal
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Foreword

Under the *Crimes (Criminal Organisations Control) Act 2012*, the Supreme Court can declare that an organisation is a 'criminal organisation' and make control orders in relation to its members. These orders may restrict the ability of members to associate with each other and recruit others to the organisation, and prohibit them from participating in a range of otherwise lawful activities. Overall, the declaration and orders may disrupt and restrict the activities of the organisation.

In recognition of the contentious nature of the scheme, the Act included provisions requiring the NSW Ombudsman to keep under scrutiny the exercise of the powers the Act conferred on police.

The Act originally came into operation in 2009, as part of the Government's response to a violent incident between members of two rival Outlaw Motor Cycle Gangs (OMCGs). Concern about the activities of criminal organisations, and in particular OMCGs, had been growing nationally, with other states and territories enacting similar schemes around that time.

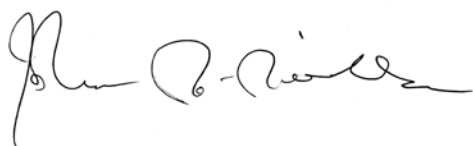
Despite the concerted efforts of a dedicated unit within the Gangs Squad of the NSW Police Force, which spent over three years preparing applications in preparation for declarations under the 2012 Act, no application has yet been brought to Court. As a result, no organisation has been declared to be a criminal organisation under the scheme. The NSW Police Force advised us that work on these applications ceased in 2015, and that it does not intend to resource such work in the future.

During consultations with our office, operational police advised us that the procedural requirements of the Act are onerous, resource-intensive, and involve difficulties that ultimately prevented police making an application to the Court. The decision to stop working on applications was made against the background that police have been provided with other powers they can more effectively use to target OMCGs and other criminal organisations, such as a modernised consorting offence, expanded powers to search for firearms, and restrictions on entry to licensed premises by people wearing OMCG 'colours' and insignia.

Police in other states and territories have experienced similar difficulties in successfully implementing comparable legislation. No declarations have been made in relation to any organisations.

In my view, given the problems identified by police that have prevented them from exercising the powers under this Act, and the fact that police have alternative powers to disrupt the activities of criminal organisations, it would be in the public interest for the Act to be repealed.

I have made this the only recommendation in my report.



Professor John McMillan AO
Acting Ombudsman

Acknowledgements

We would like to acknowledge the assistance we received from the NSW Police Force in conducting this review. In particular, we thank staff from the Criminal Organisation Unit in the State Crime Command for their input.

This report was researched and written by Kate McDonald and Fiona Gayler, assisted by Selena Choo, Michael Gleeson and Justine Simpkins.

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Acronyms and Glossary

COPS	Computerised Operational Policing System (NSW Police Force)
COU	Criminal Organisation Unit
CSO	Crown Solicitor's Office
MLC	Member of the Legislative Council
MP	Member of Parliament
NSW	New South Wales
NSW Police Force	New South Wales Police Force
NSWPD	New South Wales Parliamentary Debates (Hansard)
OMCG	Outlaw Motorcycle Gang. This term has been adopted by the Australian Crime Commission and the NSW Police Force and is acknowledged by the Supreme Court in cases such as <i>Moefi v State Parole Authority</i> [2009] NSWCC 1146.
Qld	Queensland
QPS	Queensland Police Service
SA	South Australia
the Act	<i>Crimes (Criminal Organisations Control) Act 2012</i> (NSW)
the 2009 Act	<i>Crimes (Criminal Organisations Control) Act 2009</i> (NSW)
the 2012 Act	<i>Crimes (Criminal Organisations Control) Act 2012</i> (NSW)
Vic	Victoria
WA	Western Australia

Terms used in this report

criminal organisations control legislation	Legislation in Australian states and territories (except Tasmania and the Australian Capital Territory) aimed at disrupting and restricting the activities of criminal organisations, with a particular focus on OMCGs. The legislation is comprised of the following: <i>Crimes (Criminal Organisations Control) Act 2009</i> (NSW) (repealed) <i>Crimes (Criminal Organisations Control) Act 2012</i> (NSW) <i>Serious and Organised Crime (Control) Act 2008</i> (SA) <i>Criminal Organisation Act 2009</i> (Qld) <i>Serious Crime Control Act 2009</i> (NT) <i>Criminal Organisations Control Act 2012</i> (Vic) <i>Criminal Organisations Control Act 2012</i> (WA).
review period	21 March 2012 to 20 March 2016. This term refers to the four-year period during which the NSW Ombudsman was required to keep under scrutiny the exercise of powers conferred on police officers under the <i>Crimes (Criminal Organisations Control) Act 2012</i> .

Chapter 1. Introduction

The *Crimes (Criminal Organisations Control) Act 2012* (the Act) establishes a statutory framework that enables the Commissioner of Police to apply to the Supreme Court to have an organisation declared to be a 'criminal organisation'. The Commissioner may then apply to the Court to make 'control orders' in relation to individual members. Once individuals are 'controlled members', they commit a criminal offence if they spend time together or recruit others to the organisation. They are also prohibited from engaging in prescribed activities, including certain lawful occupations in industries considered to be vulnerable to infiltration by criminal organisations engaged in drug trafficking, money laundering and car re-birthing.¹

The Act – originally enacted in 2009 – was part of the Government's response to a fatal brawl at Sydney Domestic Airport between members of two rival Outlaw Motor Cycle Gangs (OMCGs). The Act is aimed at disrupting and restricting the activities of criminal organisations, with initial use targeting OMCGs.

Since 2009, the Act was the subject of a successful High Court challenge to its constitutional validity, which led to it being re-enacted in 2012.² The Act has been the subject of numerous additional amendments, including those to remedy issues arising from a High Court case that upheld the constitutional validity of similar legislation in Queensland.³

1.1 Ombudsman's role

The Act included a provision requiring the Ombudsman 'to keep under scrutiny the exercise of powers conferred on police officers under this Act' for the period of four years from the date of commencement of the Act⁴ and to prepare a report on our work and activities.⁵ As the Act commenced on 21 March 2012, our review period is from that date until 20 March 2016.

The 2009 Act – also called the *Crimes (Criminal Organisations Control) Act* – had similar provisions for the Ombudsman to keep it under scrutiny.⁶ However, the Ombudsman was unable to provide the Minister with a report after the Act was repealed.

1.2 Review of the Act by the Attorney General

The Attorney General is required to review the Act following the expiration of a five-year period beginning 21 March 2012 'to determine whether the policy objectives ... remain valid and whether the terms of the Act remain appropriate for securing those objectives'.⁷

1.3 Method

We employed a variety of research and consultation strategies to obtain information for this report. In particular, we consulted regularly with the Criminal Organisation Unit of the Gangs Squad, New South Wales (NSW) Police Force and reviewed the material it provided, which included organisation charts, training documents, guidelines and draft standard operating procedures.⁸

1. The Hon. Nathan Rees MP, New South Wales Parliamentary Debates (NSWPD), (Hansard), Legislative Assembly, 2 April 2009, pp. 14441-14442.
2. *Wainohu v New South Wales* [2011] HCA 24.
3. *Assistant Commissioner Michael James Condon v Pompano Pty Ltd* [2013] HCA 7.
4. *Crimes (Criminal Organisations Control) Act 2012*, s. 39(1).
5. *Crimes (Criminal Organisations Control) Act 2012*, s. 39(5).
6. *Crimes (Criminal Organisations Control) Act 2009*, s. 39(1).
7. *Crimes (Criminal Organisations Control) Act 2012*, s. 40(1).
8. Criminal Organisation Unit, *Organisation Chart*, 9 October 2013; Criminal Organisation Unit, Gangs Squad, State Crime Command, NSW Police Force, *Witness Contact Procedures*; Criminal Organisation Unit, Gangs Squad, State Crime Command, NSW Police Force, *Draft Standard Operating Procedures*, 12 August 2010.

The Ombudsman had been required to keep under scrutiny the exercise of police powers under the 2009 Act. To assist with that review, the NSW Police Force provided us with access to the criminal intelligence relied upon in an application it lodged against the Hells Angels OMCG. We also reviewed the 35-volume brief supporting the police application and attended closed Court hearings.

We conducted a review of academic literature, media reports, Parliamentary debates, and reports by the Legislation Review Committee published between 2009 and the end of the review period. We also attended relevant High Court proceedings, and conducted legal research and analysis.

Our research included other NSW laws that police use to target high-risk OMCGs, including those that criminalise continued associations between members and/or their associates and those that disrupt or inhibit members' ability to engage in certain industries or attend certain locations.

We conducted a comparative analysis of similar or relevant laws in other Australian jurisdictions and whether the relevant police force was able to successfully implement these laws. We analysed reports of reviews of those schemes.

Chapter 2. Context and background

Between 2008 and 2012 all except two of the Australian states and territories introduced new statutory schemes designed to disrupt the activities of criminal organisations.⁹ In this report we refer to these as ‘criminal organisations control legislation’.

Generally, criminal organisations control legislation provides a mechanism for police to seek to have an organisation declared to be a criminal organisation and then subject its members to a range of punitive sanctions that restrict their ability to associate with each other and participate in otherwise lawful activities and occupations. Included is a pathway for police to rely on information, including secret information, that would normally be excluded from consideration in Court proceedings due to fairness or reliability considerations.

This type of legislation is novel and controversial. The South Australian, NSW and Queensland versions have all been the subject of High Court proceedings that considered whether the relevant legislation contravened the Constitution.¹⁰

Although this legislation has been colloquially referred to as ‘anti-bikie’ legislation, it was intended to be used against any organisation whose members associate with each other in order to participate in ‘serious criminal activity’.¹¹

To date, attempts to use criminal organisations control legislation in Queensland, NSW, South Australia and the Northern Territory have been directed against OMCGs. This is partly because OMCGs are visible, having a high degree of formal organisation including ‘patches and tattoos ... written constitutions and bylaws, trademark[ed] ... club names and logos’¹² as well as chapters, officeholders, ‘apprenticeships’ for ‘nominees’ to the group and a code of silence in relation to the activities within the group.¹³

2.1 First criminal organisations control legislation in Australia

In the years prior to the introduction of criminal organisations control legislation there was growing concern nationally about the operation of organised crime and criminal gangs, including Outlaw Motor Cycle Gangs (OMCGs) with evidence that the number of active OMCGs in Australia was increasing. The Australian Crime Commission reported a 53% increase in the number of active OMCGs in the five years from 2007.¹⁴

Policing and legislative responses to this concern varied. An example of the NSW Parliament’s approach was the *Crimes Legislation Amendment (Gangs) Act 2006*, which introduced a range of reforms to criminalise gang participation and gang-related activity.¹⁵ Amendments included giving NSW police officers powers in relation to the removal of fortifications from premises such as OMCG clubhouses.¹⁶

In 2007 there was a well-publicised shooting between rival OMCGs in an Adelaide nightclub that resulted in four people being injured.¹⁷ This prompted the South Australian Premier to introduce ‘legislative reforms aimed at tackling the menace of outlaw motorcycle gangs and other criminal

9. *Serious and Organised Crime (Control) Act 2008* (SA); *Criminal Organisation Act 2009* (Qld); *Criminal Organisations Control Act 2012* (WA); *Criminal Organisations Control Act 2012* (Vic); *Serious Crime Control Act 2009* (NT); *Crimes (Criminal Organisations Control) Act 2009* (NSW).

10. *South Australia v Totani* [2010] HCA 39; *Wainohu v State of New South Wales* [2011] HCA 24; and *Assistant Commissioner Michael James Condon v Pompano Pty Ltd* [2013] HCA 7.

11. *Crimes (Criminal Organisations Control) Act 2012*, s. 3.

12. Australian Crime Commission, *Crime Profile Series – Outlaw Motorcycle Gangs*, July 2013, p. 1.

13. Consultation with staff member from Criminal Organisation Unit, Gangs Squad, State Crime Command, NSW Police Force, 10 December 2014.

14. Paul Jevtovic APM (Australian Crime Commission Executive Director), *OMCG activity in QLD*, media statement, 4 October 2013.

15. *Crimes Legislation Amendment (Gangs) Act 2006*.

16. Amongst these amendments was the insertion of a new Part 16A in the *Law Enforcement Powers and Responsibilities Act 2002*.

17. “‘Bikie argument’ sparked nightclub shooting”, ABC News (online), 2 June 2007, viewed 30 May 2016; Mark Russell, ‘Nightclub bikie shooting sparks fears of gang war’, *The Age* (online), 3 June 2007, viewed 30 May 2016; ‘Bikie gang members labelled “terrorists”’, *The Age* (online), 4 June 2007, viewed 26 June 2014.

associations'.¹⁸ The *Serious and Organised Crime (Control) Act 2008* (SA) resulted. This was the first criminal organisations control legislation in Australia. It 'dr[ew] directly upon the Commonwealth's national security laws' that commenced in 2005, adapting a statutory approach designed to tackle terrorist organisations to organised crime.¹⁹

In 2008, the NSW Commissioner of Police publicly stated that NSW was monitoring the effectiveness of the South Australian criminal organisations control legislation, but was 'yet to be convinced that was the way to go'.²⁰ Nonetheless, he was of the view if the South Australian legislation proved to be effective then, with 'some harmonisation across the country ... you might see a very good result'.²¹

2.2 Introduction of criminal organisations control legislation in NSW

By early 2009, there was an increase in tension and violence between the Hells Angels and the Comanchero OMCGs in NSW. The Commissioner of Police made a submission to the NSW Government asking for additional powers including legislation similar to the 2008 South Australian Act.²²

The fatal brawl on 22 March 2009 at Sydney Domestic Airport between 18 members of the Hells Angels and Comanchero OMCGs triggered both an immediate reorganisation of NSW Police Force resources and a legislative response from the Government. On 27 March 2009, five days after the brawl, Strike Force Raptor was launched by the NSW Police Force 'to target the illegal activities of and prevent violence between Outlaw Motorcycle Gangs'.²³ Strike Force Raptor continues and is located in the Gangs Squad. It conducts 'high impact pro-active policing strategies targeting OMCG members and their associates'.²⁴

On 29 March 2009, in what was regarded as an attack related to the airport brawl, a Hells Angel member was shot at his home. Media reports at the time indicated that such incidents of violence were illustrative of the escalation in 'bikie gang' wars that posed an increasing threat to public safety.²⁵

On 2 April 2009, then Premier Nathan Rees introduced the Crimes (Criminal Organisations Control) Bill 2009 (the 2009 Bill) to Parliament to 'ensure that police have the powers they need to deal with violent outlaw motorcycle gangs'.²⁶ This Bill was passed with the support of both major parties and the new statutory scheme commenced on 3 April 2009, after less than two days of consideration in Parliament.

2.3 High Court challenge to the 2009 Act and subsequent repeal

Following the lodgement in July 2010 of the first application by the NSW Commissioner of Police under the *Crimes (Criminal Organisations Control) Act 2009* (the 2009 Act), proceedings were commenced by Mr Derek Wainohu (a long-term member of the Hells Angels in NSW targeted in the application)²⁷ that challenged:

the Act's validity on the basis it confers functions on eligible judges and upon the Supreme Court which undermine the institutional integrity of that Court in a way that is inconsistent with the national integrated judicial system for which Ch III of the Constitution provides.²⁸

18. The Hon. M.J. Atkinson, South Australia Parliamentary Debates, (Hansard), House of Assembly, 21 November 2007, p. 1805

19. Rebecca Anian-Welsh and George Williams, 'The New Terrorists: The Normalisation and Spread of Anti-Terror Laws in Australia', *Melbourne University Law Review*, Vol. 38(2), 2014, p. 376 in Alan Wilson SC, *Review of the Criminal Organisation Review Act 2009*, 15 December 2015, p. 148.

20. Commissioner Scipione, Evidence before Joint Committee on the Australian Crime Commission, *Legislative arrangements to outlaw serious and organised crime groups*, 29 September 2008, p. 31.

21. Commissioner Scipione, Evidence before Joint Committee on the Australian Crime Commission, *Legislative arrangements to outlaw serious and organised crime groups*, 29 September 2008, p. 25.

22. Nick Grim, 'Bikie War, Bikie Law', (transcript), *NSW Stateline*, ABC, broadcast 6 March 2009, viewed 25 September 2014.

23. NSW Police Force, *Strike Force Raptor*, Intranet Bulletin, 17 February 2015.

24. NSW Police Force, *Strike Force Raptor*, Intranet Bulletin, 17 February 2015.

25. J. Fife-Yeomans, 'Sydney airport security failure over bikie war: a plane cop out', *Daily Telegraph*, 24 March 2009.

26. The Hon. Nathan Rees MP, New South Wales Parliamentary Debates (NSWPD), (Hansard), Legislative Assembly, 2 April 2009, p. 14440.

27. *Wainohu v New South Wales* [2011] HCA 24, para. 3.

28. *Wainohu v New South Wales* [2011] HCA 24, para. 3 (per French CJ and Kiefel J).

This argument was successful and, on 23 June 2011, the High Court held that the 2009 Act was invalid.²⁹ Important to the High Court's decision was the absence of any requirement for an eligible judge to provide reasons for his or her decisions under the Act.³⁰

2.4 2012 Act and the 2013 amendments

On 21 March 2012, the 2009 Act was formally repealed and replaced by the *Crimes (Criminal Organisations Control) Act 2012* (the 2012 Act).³¹ Then Attorney General, the Hon. Greg Smith, stated the purpose of the 2012 Act was to 're-enact the [2009] Act in a form which repairs the identified constitutional shortcomings'.³² Overall there was little difference between the two Acts; however, as a direct result of the High Court's findings in the *Wainohu* case,³³ eligible judges were now required to give reasons for their decisions.³⁴

In July 2012 a High Court challenge was launched in relation to the criminal organisations control legislation in Queensland (the *Criminal Organisation Act 2009* (Qld)). Under that Act, the Queensland Police Service had sought a declaration that the Gold Coast chapter of the Finks Motorcycle Club (the Finks) and an allegedly related company (Pompano Pty Ltd) were a criminal organisation. They relied on information 'declared to be criminal intelligence' that had been considered by the Queensland Supreme Court in special closed hearings.³⁵ The basis of the constitutional challenge was that the Finks were wrongly excluded from these closed hearings in which the application to declare information as criminal intelligence was considered. It was argued that this exclusion impaired the institutional integrity of a state Court invested with federal jurisdiction and infringed Ch III of the Constitution. The challenge was rejected by the High Court on 14 March 2013.³⁶

A week later, on Thursday 21 March 2013, the NSW Government introduced an amending Bill proposing significant amendments to the 2012 Act.³⁷ Its intention was to adopt those aspects of the Queensland legislation to bring the NSW scheme 'in line with Queensland provisions which have withstood challenge in the High Court'.³⁸ The amendments passed Parliament on the next sitting day, 25 March 2013, and commenced on 3 April 2013.

The changes included a requirement that an application for a criminal organisation declaration be heard by the Supreme Court rather than an eligible judge.³⁹ The consequence of this was that decisions about declarations are judicial rather than administrative, and the rules of evidence that normally govern Supreme Court proceedings apply. The general application of the rules of evidence to applications was one of the reasons the High Court found the Queensland legislation to be valid.⁴⁰

The other significant change was the adoption of the detailed mechanisms in the Queensland scheme relating to the use of criminal intelligence to support a declaration against an organisation. This effectively created a three stage model 'where the first stage will be to seek a criminal intelligence declaration, and the second and third stages will be the declaration and control order proceedings in which the criminal intelligence material will be used'.⁴¹

29. *Wainohu v New South Wales* [2011] HCA 24.

30. *Wainohu v New South Wales* [2011] HCA 24, para. 68 (per French CJ and Kiefel J), para. 109 (per Gummow, Hayne, Crennan and Bell JJ).

31. Crimes (Criminal Organisations Control) Bill 2012, cl. 39A.

32. The Hon. Greg Smith SC MP, NSWPD, (Hansard), Legislative Assembly, 15 February 2012, p. 8279.

33. *Wainohu v New South Wales* [2011] HCA 24.

34. Explanatory Note, Crimes (Criminal Organisations Control) Bill 2012.

35. *Assistant Commissioner Michael James Condon v Pompano Pty Ltd* [2013] HCA 7, para. 11.

36. *Assistant Commissioner Michael James Condon v Pompano Pty Ltd* [2013] HCA 7. The High Court handed down this decision on 14 March 2013.

37. The Crimes (Criminal Organisations Control) Amendment Bill 2013.

38. The Hon. Greg Smith SC MP, NSWPD, (Hansard), Legislative Assembly, 21 March 2013, p. 19116. See also Paul Lynch speaking on behalf of the Opposition who described the adoption of parts of the Queensland legislation as 'elegant and sensible': Paul Lynch MP, NSWPD, (Hansard), Legislative Assembly, 21 March 2013, p. 19117.

39. In the majority judgment in *Wainohu v State of New South Wales* [2011] HCA 24, paras 77 and 105, Gummow, Hayne, Crennan and Bell JJ determined that the Act conferred powers upon Supreme Court judges in a *persona designata* capacity, without conferring jurisdiction upon the Supreme Court itself. Such a conferral of non-judicial functions or powers on a judicial officer, by State legislation, can impact on the institutional integrity of the Court.

40. *Assistant Commissioner Michael James Condon v Pompano Pty Ltd* [2013] HCA 7, para. 87 (per French CJ).

41. The Hon. Greg Smith SC, NSWPD, (Hansard), Legislative Assembly, 21 March 2013, p. 19116.

There were also a number of amendments aimed at improving the operation of the Act, including the introduction of mutual recognition provisions allowing interstate declarations and control orders to be recognised in NSW.

2.5 Additional amendments to the criminal organisations control scheme in NSW

The NSW criminal organisations control scheme has been amended 12 different times between 2009 and the end of the review period in March 2016. Many of these involve technical amendments,⁴² with a few extending the industries in which controlled members would be prohibited from participating.⁴³ However, the overarching intention of the criminal organisations control legislation, that is, to target criminal organisations, has remained unchanged.

A complete list of the amending Acts is contained at Appendix A.

2.6 NSW Parliamentary intention of the scheme established by the criminal organisations control legislation

When introducing the 2009 Bill into Parliament, then Premier the Hon. Nathan Rees stated that the new legislative scheme 'is specific to outlaw motorcycle gangs and their members'⁴⁴ and was designed to be a proportionate response 'to an escalation in violent crime involving outlaw motorcycle gangs that has spilled into public places, and is threatening the lives and safety of innocent bystanders'.⁴⁵

The scheme was intended to target OMCGs specifically by seeking to declare them to be criminal organisations, then seeking orders in relation to members that restrict these members' ability to associate with each other and ability to 'earn a dishonest living'.⁴⁶ These members will be 'stripped of their licence, if they hold one, for working in a number of high-risk industries that are vulnerable to bikie and organised crime infiltration'.⁴⁷ An accompanying amendment to the *Criminal Assets Recovery Act 1990* was intended to 'take away their dishonest earnings'.⁴⁸

Then Attorney General, the Hon. John Hatzistergos, stated:

I make the point that the bill is not about outlawing criminal organisations; it is about ripping them apart. Let us get that quite clear: the bill is about ripping those organisations apart—taking apart their membership, taking apart their assets, and taking apart the industries in which they are involved and which sustain their illegal operations.⁴⁹

The language of the second reading speech for the 2012 Bill⁵⁰ shifted from a single focus on OMCGs to 'organised crime' and criminal gangs more generally.⁵¹

42. For example, the *Statute Law (Miscellaneous Provisions) Act 2009* corrected the misspelling of Commissioner in the original Act.

43. *Tattoo Parlours Act 2012* and *Combat Sports Act 2013*.

44. The Hon. Nathan Rees MP, NSWPD, (Hansard), Legislative Assembly, 2 April 2009, p. 14440.

45. The Hon. Nathan Rees MP, NSWPD, (Hansard), Legislative Assembly, 2 April 2009, p. 14440.

46. The Hon. Nathan Rees MP, NSWPD, (Hansard), Legislative Assembly, 2 April 2009, p. 14440.

47. The Hon. Nathan Rees MP, NSWPD, (Hansard), Legislative Assembly, 2 April 2009, p. 14440.

48. The Hon. Nathan Rees MP, NSWPD, (Hansard), Legislative Assembly, 2 April 2009, p. 14441.

49. The Hon. John Hatzistergos, NSWPD, (Hansard), Legislative Council, 2 April 2009, p. 14373.

50. Crimes (Criminal Organisations Control) Bill 2012.

51. For example, see the Hon. Greg Smith SC, NSWPD, (Hansard), Legislative Assembly, 15 February 2012, p. 8279: 'The Australian Crime Commission estimates that organised crime costs Australia between \$10 and \$15 billion per year, and its impact on public safety in NSW cannot be understated. This bill represents part of the Government's response to this threat.'

2.7 Parliamentary debate

Each version of the NSW criminal organisations control legislation has had the support of both major political parties, despite the contentious and exceptional nature of the scheme. The Greens party sought amendments to the 2009 Bill, including a sunset clause, but these were not supported.⁵²

Both major parties at different times have emphasised that the criminal organisations control legislation is not intended to be a 'silver bullet', rather it is one of a number of strategies to deal with organised crime, including that committed by OMCGs.⁵³

Parliamentary members of the Greens party have expressed the following concern:

If we want to arrest bikies it should be in relation to their involvement in crime, not because they have a beer together ... The law should not be used like a fishing trawler catching everyone in its net, big and small fish alike. Criminalising non-criminal activity is a misuse of legislative power.⁵⁴

2.7.1. Legislation Review Committee

The Legislation Review Committee scrutinised seven separate Bills in relation to the criminal organisations control legislation in NSW.⁵⁵ It considered whether these Bills unreasonably encroached on specific rights and liberties.⁵⁶ The Committee expressed consistent concerns about the various Bills. In particular, the Committee referred a number of issues to Parliament, including the potential for the statutory scheme to have an unfair negative impact upon people, including those with no criminal convictions by:

- prohibiting people from working in a broad range of industries and occupations⁵⁷
- making it a criminal offence for certain people to associate with each other.⁵⁸

The Committee noted the competing public interests in keeping criminal intelligence secret versus the need to ensure procedural fairness for those the subject of applications under the Act.⁵⁹ However, the Committee did not refer this issue to Parliament. The Committee, however, did consider that allowing

52. Ms Lee Rhiannon MLC, Dr John Kaye MLC and Ms Sylvia Hale MLC, NSWPD, (Hansard), Legislative Council, 2 April 2009, pp. 14377–14386.

53. Mr Bryan Doyle MP, NSWPD, (Hansard), Legislative Assembly, 15 February 2012, p. 8338; see also Mr Frank Terenzini MP, NSWPD, (Hansard), Legislative Assembly, 12 May 2009, p. 15068; The Hon. Greg Smith SC MP, NSWPD, (Hansard), Legislative Assembly, 15 February 2012, p. 9280.

54. Ms Sylvia Hale MLC, NSWPD, (Hansard), Legislative Council, 2 April 2009, p. 14347.

55. Crimes (Criminal Organisations Control) Bill 2009 considered in Legislation Review Committee, NSW Parliament, *Legislation Review Digest No. 5 of 2009*, Sydney, 4 May 2009, pp. 13-25; Criminal Organisations Legislation Amendment Bill 2009 considered in Legislation Review Committee, NSW Parliament, *Legislation Review Digest No. 6 of 2009*, Sydney, 12 May 2009, pp. 21-31; Courts and Crimes Legislation Amendment Bill 2009 considered in Legislation Review Committee, NSW Parliament, *Legislation Review Digest No. 14 of 2009*, Sydney, 27 October 2009, pp. 13-16, 20, 22; Crimes (Criminal Organisations Control) Bill 2012 considered in Legislation Review Committee, NSW Parliament, *Legislation Review Digest No. 10/55*, Sydney, 21 February 2012, pp. 9-18; Tattoo Parlours Bill 2012 considered in Legislation Review Committee, NSW Parliament, *Legislation Review Digest No. 16/55*, Sydney, 8 May 2012, pp. 1-11; Crimes (Criminal Organisations Control) Amendment Bill 2012 considered in Legislation Review Committee, NSW Parliament, *Legislation Review Digest No. 30/55*, Sydney, 19 February 2013, pp. 11-14; Crimes (Criminal Organisations Control) Amendment Bill 2013 considered in Legislation Review Committee, NSW Parliament, *Legislation Review Digest No. 34/55*, Sydney, 25 March 2013, pp. 1-7.

56. Section 8A of the *Legislation Review Act 1987* outlines the function of the Legislation Review Committee with respect to Bills.

57. Legislation Review Committee, NSW Parliament, *Legislation Review Digest No. 5 of 2009*, Sydney, 4 May 2009, pp. 22-23; Legislation Review Committee, NSW Parliament, *Legislation Review Digest No. 6 of 2009*, Sydney, 12 May 2009, pp. 26-29; Legislation Review Committee, NSW Parliament, *Legislation Review Digest No. 10/55*, Sydney, 21 February 2012, p. 17; Legislation Review Committee, NSW Parliament, *Legislation Review Digest No. 30/55*, Sydney, 19 February 2013, pp. 13-14; Legislation Review Committee, NSW Parliament, *Legislation Review Digest No. 34/55*, Sydney, 25 March 2013, p. 4. The Legislation Review Committee also raised concerns about the prohibition on people from working in certain industries (but did not specifically refer the issue to Parliament) in Legislation Review Committee, NSW Parliament, *Legislation Review Digest No. 14 of 2009*, Sydney, 27 October 2009, p. 23.

58. Legislation Review Committee, NSW Parliament, *Legislation Review Digest No. 5 of 2009*, Sydney, 4 May 2009, pp. 18-20; Legislation Review Committee, NSW Parliament, *Legislation Review Digest No. 6 of 2009*, Sydney, 12 May 2009, pp. 25-26; *Legislation Review Committee, NSW Parliament, Legislation Review Digest No. 10/55*, Sydney, 21 February 2012, p. 13; Legislation Review Committee, NSW Parliament, *Legislation Review Digest No. 16/55*, Sydney, 8 May 2012, p. 8; Legislation Review Committee, NSW Parliament, *Legislation Review Digest No. 34/55*, Sydney, 25 March 2013, p. 4. The Legislation Review Committee also raised a concern about the criminal offences of association (but did not specifically refer the issue to Parliament) in Legislation Review Committee, NSW Parliament, *Legislation Review Digest No. 14 of 2009*, Sydney, 27 October 2009, p. 22-23; Legislation Review Committee, NSW Parliament, *Legislation Review Digest No. 30/55*, Sydney, 19 February 2013, p. 13.

59. Legislation Review Committee, NSW Parliament, *Legislation Review Digest No. 34/55*, Sydney, 25 March 2013, p. 5.

the Commissioner of Police to rely upon hearsay evidence may go too far in further undermining the fairness of the closed hearings and referred this issue to Parliament.⁶⁰

The Committee also raised the following concerns about the current Act:

- adequacy of rights of appeal and review⁶¹
- sufficiency of the notification provisions in the Act⁶²
- the appropriateness of the recognition of interstate orders, without oversight by the Court⁶³
- the failure of the Act to differentiate the treatment of members of organisations who are under the age of 18, and⁶⁴
- the appropriateness of allowing regulations (as opposed to Parliament) to increase the number and type of activities or occupations (outlined in section 27 of the Act) in which controlled members will be restricted from participating.⁶⁵

2.8 Public commentary

Many different individuals and organisations, including legal and civil liberties organisations, academics, and journalists have expressed concern about elements of the criminal organisations control scheme in NSW since its commencement in 2009.

For example, the NSW Law Society, the NSW Bar Association and the Law Council of Australia have concerns that the Act abrogates the 'fundamental rights of freedoms of association, freedom of speech, equal treatment before Courts and tribunals, the presumption of innocence and the entitlement to fair hearings'.⁶⁶

The legislation has also been compared to Australia's anti-terrorism laws which set out procedures for proscribing terrorist organisations and criminalising associations with these organisations.⁶⁷ The similarities have raised concerns about a shift to pre-emptive and preventative law enforcement strategies. For example, one academic wrote:

The Act exposes the slippery slope to the large-scale erosion of procedural and substantive protections in the criminal law that began with the 'exceptional' terrorism offences.⁶⁸

60. Legislation Review Committee, NSW Parliament, *Legislation Review Digest No. 34/55*, Sydney, 25 March 2013, p. 5. The Legislation Review Committee had been concerned prior to the 2013 amendments about excluding the rules of evidence from applications to have organisations declared as criminal organisations. The Committee referred this to Parliament: Legislation Review Committee, NSW Parliament, *Legislation Review Digest No. 10/55*, Sydney, 21 February 2012, p. 15.

61. Legislation Review Committee, NSW Parliament, *Legislation Review Digest No. 10/55*, Sydney, 21 February 2012, p. 16; Legislation Review Committee, NSW Parliament, *Legislation Review Digest No. 34/55*, Sydney, 25 March 2013, p. 6.

62. Legislation Review Committee, NSW Parliament, *Legislation Review Digest No. 10/55*, Sydney, 21 February 2012, pp. 12-13; Legislation Review Committee, NSW Parliament, *Legislation Review Digest No. 34/55*, Sydney, 25 March 2013, p. 4.

63. Legislation Review Committee, NSW Parliament, *Legislation Review Digest No. 34/55*, Sydney, 25 March 2013, p. 5.

64. Legislation Review Committee, NSW Parliament, *Legislation Review Digest No. 5 of 2009*, Sydney, 4 May 2009, p. 24; Legislation Review Committee, NSW Parliament, *Legislation Review Digest No. 6 of 2009*, Sydney, 12 May 2009, pp. 25-26.

65. Legislation Review Committee, NSW Parliament, *Legislation Review Digest No. 5 of 2009*, Sydney, 4 May 2009, p. 23; Legislation Review Committee, NSW Parliament, *Legislation Review Digest No. 6 of 2009*, Sydney, 12 May 2009, p. 26; Legislation Review Committee, NSW Parliament, *Legislation Review Digest No. 10/55*, Sydney, 21 February 2012, p. 18.

66. Law Council of Australia, Briefing Note, 'Anti-Bikie' Laws – Recent Developments, 28 April 2014, at paragraph 64, p. 13.

67. Andreas Schloenhardt, Submission to Senate Inquiry into the Crimes Legislation Amendment (Serious and Organised Crime) Bill (No. 2), p. 18; Arlie Loughnan, 'The Legislation We Had to Have?: The Crimes (Criminal Organisations Control) Act 2009 (NSW)', *Current Issues in Criminal Justice*, Vol. 20, No. 3, September 2009, p. 464.

68. Arlie Loughnan, 'The Legislation We Had to Have?: The Crimes (Criminal Organisations Control) Act 2009 (NSW)', *Current Issues in Criminal Justice*, Vol. 20, No. 3, September 2009, p. 464.

Other concerns may be broadly summarised as follows:

- By focusing on an organisation, the Act potentially criminalises associations between people without evidence linking them to criminal activity. This includes people who may never have been convicted of a criminal offence.⁶⁹
- The operation of the Act may unfairly restrict people from participating in types of lawful and skilled employment, therefore removing an individual's ability to earn a lawful income.⁷⁰
- There are potential dangers and unfairness associated with closed hearings and the use of secret criminal intelligence.⁷¹
- The Act contains an overly broad definition of serious criminal activity and may include possession of cannabis or theft of goods of low value, in circumstances where the relevant person has not been charged or convicted of any such offence.⁷²

Some of the concerns initially expressed about the 2009 Act have been addressed by subsequent amendments to the scheme, discussed earlier in this chapter, such as the requirement that declarations be made by the Supreme Court.

69. Andreas Schloenhardt, 'Mafias and Motorbikes: New Organised Crime Offences in Australia', *Current Issues in Criminal Justice*, Vol. 19, No. 3, March 2008, p. 278; Nicola McGarrity, 'Much ado about nothing? The future of 'bikies' control orders in Australia', *Constitutional Law Conference*, 2012; Nicolas Perpetch, 'Broad backlash over anti-association laws', *The Australian*, 30 April 2012; Dan Oakes, 'New bikie laws ' a serious assault on civil liberties'', *The Age*, 15 November 2012.

70. Arlie Loughnan, 'The Legislation We Had to Have?: The *Crimes (Criminal Organisations Control) Act 2009* (NSW)', *Current Issues in Criminal Justice*, Vol. 20, No. 3, September 2009, p. 463; Nicholas Cowdery, 'Comments on organisation/Association Legislation – "Bikie Gangs"', May 2009, p. 4.

71. Mark Le Grand, 'The strange new bikie legislation', *The Australian*, 19 June 2009; Steven Churches and Sue Milne, 'Kable, K-Generation and Totani: Validation of criminal intelligence at the expense of natural justice in Ch III Courts', *Australian Journal of Administrative Law*, Vol. 18, 29 November 2010; 'New anti-bikies law allow "secret evidence"', *ABC News*, 30 October 2009.

72. *Crimes (Criminal Organisations Control) Act 2012*, s. 3; Nicholas Cowdery, 'Comments on organisation/Association Legislation – "Bikie Gangs"', May 2009, p. 3.

Chapter 3. Overview of the current statutory framework

This chapter provides an overview of the current legislative framework in NSW established by the *Crimes (Criminal Organisations Control) Act 2012* (the Act).

The Act involves a three stage process aimed at disrupting the activities of an organisation declared to be a criminal organisation, by subsequently exposing certain members to criminal and civil sanctions if they engage in defined activities.

The first stage involves the Commissioner of Police applying to the Supreme Court to have certain information declared to be 'criminal intelligence'.⁷³ In the second stage the Commissioner may apply to the Court to have an organisation declared to be a 'criminal organisation' under the Act, relying on evidence that includes information that has been declared to be 'criminal intelligence'.

In the third stage the Commissioner may apply to the Court for 'control orders' in relation to individual members of the criminal organisation. Significant restrictions then apply to individuals subject to control orders. Breach of these restrictions may give rise to criminal charges and a range of civil sanctions.

The Act straddles both civil and criminal areas of the law. Applications by the Commissioner to the Court in relation to criminal intelligence, criminal organisations and alleged members, are civil proceedings, and therefore the rules and procedures relating to civil law apply. The burden of proof that must be met by the Commissioner in relation to questions of fact in these applications is the balance of probabilities.⁷⁴ Notably, the rule against hearsay evidence does not apply to criminal intelligence applications.⁷⁵ The higher criminal burden of proof (beyond reasonable doubt) applies to the prosecution of criminal offences arising from the Act for controlled members.⁷⁶

3.1 Criminal intelligence applications

'Criminal intelligence' is defined as 'information relating to actual or suspected criminal activity', the exposure of which may prejudice criminal investigations, identify confidential police sources, or endanger a person's safety.⁷⁷ The Commissioner may apply for a declaration that particular information is criminal intelligence, but only if he or she reasonably believes the information is criminal intelligence.⁷⁸

Once information is declared to be 'criminal intelligence' its secrecy is protected in subsequent proceedings to have the organisation concerned declared as a 'criminal organisation'⁷⁹ and proceedings to have control orders made in relation to members of the organisation.⁸⁰ For example, the Court is required to close the Court during proceedings to have an organisation declared, during those parts when criminal intelligence is to be considered.⁸¹ In addition, it is an offence to disclose any information declared to be declared 'criminal intelligence' without 'lawful authority or excuse'.⁸²

The 'criminal intelligence' provisions⁸³ are modelled on Queensland's *Criminal Organisation Act 2009* which were considered and upheld by the High Court in the *Pompano* case⁸⁴ in March 2013.⁸⁵

73. *Crimes (Criminal Organisations Control) Act 2012*, s. 28J states that criminal intelligence applications must be decided first.

74. *Crimes (Criminal Organisations Control) Act 2012*, s. 32.

75. *Crimes (Criminal Organisations Control) Act 2012*, s. 32A(1).

76. See ss. 26 and 26A of the *Crimes (Criminal Organisations Control) Act 2012* for relevant criminal offences.

77. *Crimes (Criminal Organisations Control) Act 2012*, s. 3(1).

78. *Crimes (Criminal Organisations Control) Act 2012*, s. 28G(1).

79. *Crimes (Criminal Organisations Control) Act 2012*, ss. 28Q and 28R.

80. *Crimes (Criminal Organisations Control) Act 2012*, ss. 16(3), (4), (5), and 21(2).

81. *Crimes (Criminal Organisations Control) Act 2012*, s. 28R.

82. *Crimes (Criminal Organisations Control) Act 2012*, s. 28T.

83. *Crimes (Criminal Organisations Control) Act 2012*, Part 3B.

84. *Assistant Commissioner Michael James Condon v Pompano Pty Ltd* [2013] HCA 7.

85. The *Crimes (Criminal Organisations Control) Amendment Act 2013*, Schedule 1[9] inserted Part 3B into the *Crimes (Criminal Organisations Control) Act 2012*, with the Part commencing on 3 April 2013.

Hearings of criminal intelligence applications are special closed hearings.⁸⁶ Organisations and their members in relation to whom declarations and control orders are to be sought are not notified of, or permitted to participate in, these closed hearings.⁸⁷ These affected parties are therefore not given the opportunity to refute or test the allegations contained in the secret information.

In order to provide a mechanism for the Court to assess the reliability of the information, the Act creates a role for an independent person called the 'criminal intelligence monitor'.⁸⁸ This person participates in the closed hearings for the purposes of testing the appropriateness and validity of the Commissioner's application.⁸⁹ The monitor is appointed under the Regulations⁹⁰ and is to be provided access to the material relied on by the Commissioner.⁹¹ The Commissioner is also required to meet a number of procedural requirements when applying for information to be declared as 'criminal intelligence'.⁹² These are discussed in greater detail in chapter 4.

3.2 Criminal organisation applications

After any criminal intelligence applications have been finalised, the Commissioner may seek a declaration from the Court that a particular organisation (the respondent) is a criminal organisation under the Act.⁹³ An application for such a declaration must be served on the respondent.⁹⁴ The application must be in writing, describe the nature of the organisation, and set out the grounds on which the declaration is sought.⁹⁵

These applications are heard in an open court. The respondent organisation is able to participate and may provide evidence to the Court. However, the Court may make a declaration 'whether or not the respondent is present or makes submissions'.⁹⁶ Any information relied on by the Commissioner that has been previously declared to be 'criminal intelligence' will remain secret from the respondent organisation during the hearing.⁹⁷

The Court may make a declaration that the organisation is a criminal organisation if satisfied on the balance of probabilities that:

- the respondent is an organisation⁹⁸
- some of its members⁹⁹ in NSW 'associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity',¹⁰⁰ and
- it poses 'an unacceptable risk to the safety, welfare or order of the community'¹⁰¹ in NSW.

86. *Crimes (Criminal Organisations Control) Act 2012*, s. 28K(1).

87. *Crimes (Criminal Organisations Control) Act 2012*, s. 28K(2).

88. *Crimes (Criminal Organisations Control) Act 2012*, s. 28C.

89. Sections 28D and 28F of the *Crimes (Criminal Organisations Control) Act 2012* outline the criminal intelligence monitor's functions, appearance and role at closed hearings.

90. *Crimes (Criminal Organisations Control) Act 2012*, s. 28C(1).

91. *Crimes (Criminal Organisations Control) Act 2012*, s. 28E.

92. *Crimes (Criminal Organisations Control) Act 2012*, ss. 28G and 28H.

93. *Crimes (Criminal Organisations Control) Act 2012*, s. 5(1).

94. *Crimes (Criminal Organisations Control) Act 2012*, s. 5(5)(c).

95. *Crimes (Criminal Organisations Control) Act 2012*, s. 5(2)(a), (c) and (d) respectively.

96. *Crimes (Criminal Organisations Control) Act 2012*, s. 7(3).

97. *Crimes (Criminal Organisations Control) Act 2012*, ss. 28Q and 28R.

98. *Crimes (Criminal Organisations Control) Act 2012*, s. 7(1)(a).

99. *Crimes (Criminal Organisations Control) Act 2012*, s. 7(4) provides that the Court may be satisfied that members associate for relevant purposes whether all members associate for that purpose or only some and whether or not they associate for other purposes as well.

100. *Crimes (Criminal Organisations Control) Act 2012*, s. 7(1)(b).

101. *Crimes (Criminal Organisations Control) Act 2012*, s. 7(1).

'Serious criminal activity' is defined broadly.¹⁰² For example, it may include possession of cannabis or theft of goods of low value,¹⁰³ in circumstances where the relevant person has not been charged or convicted of any such offence.¹⁰⁴

The Court must provide reasons for its decision, but cannot include the details of any information previously declared to be 'criminal intelligence'.¹⁰⁵

A declaration made by the Court remains in force for five years unless revoked or renewed earlier.¹⁰⁶ The Court may renew a declaration at any time before or after it expires and there does not appear to be a limit on the number of times a declaration can be renewed.¹⁰⁷

The respondent organisation has some rights to appeal any declaration made against it.¹⁰⁸ Three years after the declaration is made, the respondent organisation may also apply to have the declaration revoked.¹⁰⁹ The Court may only revoke a declaration where there has been a substantial change in the 'nature or membership' of the organisation to the extent that the members no longer associate to participate in serious criminal activity and are no longer an unacceptable risk to the NSW community.¹¹⁰

3.3 Control order applications

Once an organisation has been declared by the Court to be a criminal organisation, the Commissioner may apply to have 'interim control orders' and then 'control orders' made in relation to individuals alleged to be members of the declared organisation.¹¹¹ If issued, these individuals become 'controlled members' and a raft of punitive conditions apply to them.

The Commissioner can apply for an interim control order pending the hearing and final determination of an application for a control order. Such an application may be heard without notice to, and in the absence of, the individual affected.¹¹² However, the order takes effect only when it is personally served on that individual.¹¹³ An interim control order remains in force until:

- it is revoked,¹¹⁴ or
- an application for a control order confirming the interim control order is withdrawn or dismissed,¹¹⁵ or
- a control order is made confirming the interim control order and the person is in Court for that decision or, if the person is absent, when he or she is personally served with a copy of the control order.¹¹⁶

102. *Crimes (Criminal Organisations Control) Act 2012*, s. 3.

103. This is because the definition includes committing a 'serious criminal offence', which is defined in the *Criminal Assets Recovery Act 1990* (a definition that itself includes a number of offences).

104. *Crimes (Criminal Organisations Control) Act 2012*, s. 3.

105. *Crimes (Criminal Organisations Control) Act 2012*, s. 11(2).

106. *Crimes (Criminal Organisations Control) Act 2012*, s. 9.

107. *Crimes (Criminal Organisations Control) Act 2012*, s. 12.

108. *Crimes (Criminal Organisations Control) Act 2012*, s. 13 with reference to s. 24. The organisation has a right of appeal in relation to the Court's decision on legal matters but must seek leave to appeal against a decision of the Court in relation to facts.

109. *Crimes (Criminal Organisations Control) Act 2012*, s. 10(9). Between three to five years after the declaration is made the organisation can only make two applications for revocation of the application. The Act does not restrict the Commissioner's rights to seek a revocation of the declaration.

110. *Crimes (Criminal Organisations Control) Act 2012*, s. 10(8).

111. *Crimes (Criminal Organisations Control) Act 2012*, Part 3.

112. *Crimes (Criminal Organisations Control) Act 2012*, s. 14(4).

113. *Crimes (Criminal Organisations Control) Act 2012*, s. 15.

114. *Crimes (Criminal Organisations Control) Act 2012*, s. 17(1)(a).

115. *Crimes (Criminal Organisations Control) Act 2012*, s. 17(1)(c).

116. *Crimes (Criminal Organisations Control) Act 2012*, s. 17(2).

Within 28 days of the making of an interim control order, the Commissioner must serve notice of the order personally on the person affected.¹¹⁷ This notice must include information about:

- the grounds on which the order was made¹¹⁸
- some of the legal effects of a control order, including what offences the person could commit¹¹⁹
- the names of any other members of the same declared organisation in relation to whom an interim control order or control order has been made¹²⁰
- the person's right to object to the making of the order at the hearing of the application for the control order¹²¹
- the procedure to be followed in notifying the Court before the hearing of the person's grounds of objection, and the fact that the person must swear an affidavit,¹²² and
- the date and time of the hearing of the application for the control order.¹²³

An application for a control order is heard in open Court. At the hearing, the Commissioner and the person affected can provide information to the Court, which the Court is to take into account in considering whether or not there are sufficient grounds to make the control order.¹²⁴

The Court may make a control order if it is satisfied on the balance of probabilities that:

- the person is a member of the declared organisation or a former member who continues to be involved with the organisation and its activities,¹²⁵ and
- sufficient grounds exist for making the order.¹²⁶

The Act does not contain explicit reference to any requirement for the Commissioner to establish that the member is directly involved with any of the criminal activities of the declared organisation.

If the person affected is not present at the hearing, the Court may still make a control order.¹²⁷ However, in such circumstances it will only take effect when a copy of it is served personally on the person.¹²⁸

Both the Commissioner and the person affected may appeal to the Court of Appeal against a decision of the Court to make, or not make, a control order.¹²⁹ However, a party requires leave from the Court of Appeal to appeal a question of fact.¹³⁰ The person affected or the Commissioner may also apply for a variation to the control order or to revoke it.¹³¹

A control order remains in force while the organisation of which the person is a member remains declared a criminal organisation unless it is revoked by the Court.¹³²

117. *Crimes (Criminal Organisations Control) Act 2012*, s. 16(1).

118. *Crimes (Criminal Organisations Control) Act 2012*, s. 16(2)(a).

119. *Crimes (Criminal Organisations Control) Act 2012*, s. 16(2)(b).

120. *Crimes (Criminal Organisations Control) Act 2012*, s. 16(2)(c).

121. *Crimes (Criminal Organisations Control) Act 2012*, s. 16(2)(d)(i).

122. *Crimes (Criminal Organisations Control) Act 2012*, s. 16(2)(d)(ii).

123. *Crimes (Criminal Organisations Control) Act 2012*, s. 16(2)(e).

124. *Crimes (Criminal Organisations Control) Act 2012*, s. 19(3).

125. *Crimes (Criminal Organisations Control) Act 2012*, s. 19(1)(a).

126. *Crimes (Criminal Organisations Control) Act 2012*, s. 19(1)(b).

127. *Crimes (Criminal Organisations Control) Act 2012*, s. 19(4).

128. *Crimes (Criminal Organisations Control) Act 2012*, s. 22(b).

129. *Crimes (Criminal Organisations Control) Act 2012*, s. 24(1).

130. *Crimes (Criminal Organisations Control) Act 2012*, s. 24(2).

131. *Crimes (Criminal Organisations Control) Act 2012*, s. 25.

132. *Crimes (Criminal Organisations Control) Act 2012*, s. 23.

3.3.1. Consequences for controlled members

The consequences of being subject to an interim or final control order are significant. It is a criminal offence for 'controlled members' to associate with each other, with maximum penalties ranging from two to five years imprisonment depending on the number of associations or the number of offences committed.¹³³ While some associations are permitted between controlled members (such as associations between close family members or that occur in the course of a lawful occupation)¹³⁴ there is no need for the prosecution to establish that a prohibited association was in some way linked to criminal activity or occurred for any particular purpose.¹³⁵

It is also a criminal offence for a controlled member to recruit or induce another to become a member of a declared organisation.¹³⁶

Once a member is subject to an interim or final control order, a significant number of prohibitions on participating in certain activities, including some occupations, automatically follow.¹³⁷ Examples of these prohibitions include operating a tow truck, owning or training racehorses, working as a security guard, and selling alcohol. The prohibitions are enforced via the revocation of the necessary licences required to undertake those activities or occupations.¹³⁸

To give effect to the restrictions on prescribed activities, the NSW Police Force is permitted to supply information about declared organisations and controlled members with regulatory authorities, where this is considered reasonably necessary for the proper exercise of any functions of the regulatory authorities relating to authorisations and disciplinary action, such as suspending or revoking licences.¹³⁹

The Commissioner is required to keep a register of information about declarations and orders made under the Act.¹⁴⁰ The register may contain the name of any declared organisation and the name of any controlled member of the organisation.¹⁴¹ The Commissioner may publish any information contained in the register in a newspaper, and may also make it available to members of the public.¹⁴²

3.4 Mutual recognition provisions

The Act provides for the recognition in NSW of criminal organisation declarations and control orders made in other states and territories under their equivalent criminal organisations control legislation.¹⁴³ As a result, declarations and control orders from other Australian jurisdictions will be enforceable by the NSW Police Force.

133. *Crimes (Criminal Organisations Control) Act 2012*, s. 26(1), (1A), (1B).

134. *Crimes (Criminal Organisations Control) Act 2012*, s. 26(5).

135. *Crimes (Criminal Organisations Control) Act 2012*, s. 26(6).

136. *Crimes (Criminal Organisations Control) Act 2012*, s. 26A.

137. *Crimes (Criminal Organisations Control) Act 2012*, s. 27.

138. Relevant penalties for continuing to engage in the prohibited activities are contained in the various statutes and regulations governing each activity.

139. *Crimes (Criminal Organisations Control) Act 2012*, s. 30A.

140. *Crimes (Criminal Organisations Control) Act 2012*, s. 30(1).

141. *Crimes (Criminal Organisations Control) Act 2012*, s. 30(2).

142. *Crimes (Criminal Organisations Control) Act 2012*, s. 30(4) and (5).

143. Part 3A, Division 2 of the *Crimes (Criminal Organisations Control) Act 2012* governs the recognition and registration of criminal organisation declarations and Part 3A, Division 3 of the Act governs the recognition and registration of control orders.

Chapter 4. Implementation and operational challenges

In this chapter we discuss the NSW Police Force's experience in implementing the provisions of the *Crimes (Criminal Organisations Control) Act 2012* (the 2012 Act) during the review period.

There have been no applications made under the 2012 Act despite the continued focus of a dedicated and specialist unit within the Gangs Squad of the NSW Police Force assisted by the Crown Solicitor's office and Senior Counsel.¹⁴⁴ Proceedings for criminal intelligence applications require participation from a 'criminal intelligence monitor'. No monitor was appointed during the review period. A regulation that provides details about how such a monitor would be appointed, and categories of people who were prohibited from being a monitor, was published in May 2014.¹⁴⁵

The experience in NSW has been mirrored interstate, with no state or territory police force successfully using their equivalent criminal organisations control legislation to impede the activities of any organisation to date.¹⁴⁶

4.1 Steps taken by the NSW Police Force to implement the Act

During Parliamentary debates, it was stated that:

For all this to come together, police must approach it in the same way as they do preparing for a major trial. It does not just happen over a day or overnight. As soon as the Act commenced, the Commissioner established an implementation committee headed by the deputy commissioner. The police are working hard behind the scenes with members of the Attorney General's staff.¹⁴⁷

Significant resources were assigned to implementing the criminal organisations control scheme after its original introduction in 2009. For example, in anticipation of preparing and then obtaining declarations against organisations and control orders in relation to its members, the NSW Police Force:

- formed an implementation team 'aimed at getting everything in place to ensure that the use of the provisions will be implemented as smoothly as possible'¹⁴⁸
- established the Criminal Organisation Unit (COU)
- developed draft standard operating procedures, outlining the COU's role in preparing applications for the Court, recording any declarations made as well as the recording and enforcement of control orders made in relation to individuals¹⁴⁹
- made enhancements to the NSW Police Force's Computerised Operational Policing System (COPS), so that current Court orders could be recorded and where appropriate, enforced,¹⁵⁰ and
- provided specialist training to members of the COU and training to all police in relation to the recording of membership of criminal organisations on COPS.¹⁵¹

144. No criminal intelligence applications or criminal organisations applications have been made in NSW. This means no control orders have been made.

145. The *Crimes (Criminal Organisations Control) Regulation 2014*, made under section 28C and 38 of the *Crimes (Criminal Organisations Control) Act 2012*, was published on 16 May 2014.

146. In 2011, the Commissioner of Police in South Australia obtained a control order in relation to a former member of the Rebels. The control order was made in accordance with section 14(2) of the *Serious and Organised Crime (Control) Act 2008* (SA) which did not require a declaration of a criminal organisation as a pre-requisite: Alan Wilson SC, *Review of the Criminal Organisation Review Act 2009*, 15 December 2015, pp. 150-151. For the purposes of this report, we do not consider this provision to be 'criminal organisations control' legislation.

147. The Hon. Tony Kelly, MLC, New South Wales Parliamentary Debates (NSWPD), (Hansard), Legislative Council, 2 September 2009, p. 17079.

148. NSW Police Force, 'New Criminal Organisation Unit for State Crime Command', *Police Weekly*, 27 July 2009, p. 17.

149. Criminal Organisation Unit, Gangs Squad, State Crime Command, NSW Police Force, *Draft Standard Operating Procedures*, 12 August 2010.

150. Consultation with NSW Police Force, 3 June 2010; Consultation with staff member from Criminal Organisation Unit, Gangs Squad, State Crime Command, NSW Police Force, 14 December 2010, p. 2; Consultation with staff member from Criminal Organisation Unit, Gangs Squad, State Crime Command, NSW Police Force, 27 February 2014, p. 3.

151. Consultation with staff member from Criminal Organisation Unit, Gangs Squad, State Crime Command, NSW Police Force, 20 August 2013, p. 3; Consultation with staff member from Criminal Organisation Unit, Gangs Squad, State Crime Command, NSW Police Force, 5 August 2014, p. 2; NSW Police Force, 'New Criminal Organisation Unit for State Crime Command', *Police Weekly*, 27 July 2009, p. 17.

The COU is located within the Gangs Squad. The Gangs Squad is a specialist squad located in the Organised Crime Directorate of the State Crime Command which 'leads and drives the NSW Police Force response in respect to serious and organised gang related activity, primarily involving Outlaw Motor Cycle Gangs and selected Organised Criminal Networks'.¹⁵²

The COU was established 'to implement the *Crimes (Criminal Organisations Control) Act 2009* in conjunction with the NSW Police Force's Office of General Counsel and the NSW Crown Solicitor's Office'.¹⁵³ The role of the COU was to prepare applications under the 2009 legislation to seek declarations in relation to particular organisations and then to seek control orders in relation to members.¹⁵⁴ As police wished to have some of the information to be used in those applications declared as 'criminal intelligence', the COU's responsibilities also included preparing 'criminal intelligence' applications.¹⁵⁵

Since its establishment the COU has worked with the Office of General Counsel, the Crown Solicitor's Office and Senior Counsel preparing applications under the 2009 and 2012 Acts.

The COU has been staffed by detectives and intelligence analysts.¹⁵⁶ At times there were more than 10 specialist officers within the unit, working at different times with the Crown Solicitor's Office and Senior Counsel.¹⁵⁷ This is similar to the experience of the Queensland Police Service, where 'seven specialist staff were devoted to the compilation of the Finks application'.¹⁵⁸

Staff from the COU also provided assistance to other commands and investigations including giving expert evidence in relation to Outlaw Motor Cycle Gangs (OMCGs) in criminal trials.¹⁵⁹

4.2 The NSW Police Force's first application under the 2009 Act

On 6 July 2010, the Acting Commissioner of Police made an application to an eligible judge seeking to have the Hells Angels Motorcycle Club of NSW (the Hells Angels) declared to be a criminal organisation under the *Crimes (Criminal Organisations Control) Act 2009* (the 2009 Act).¹⁶⁰

Preparation of the application was resource-intensive and complex, taking the COU more than 12 months to complete. The application was 30 pages in length and supported by 35 volumes of material.¹⁶¹ The application relied upon 79 allegations of criminal activity referred to as 'incidents'. About a quarter of the incidents concerned conflict between rival OMCGs, such as the Sydney Airport brawl as well as shootings or bombings of clubhouses. The remaining incidents (approximately 75%) were concerned with alleged crimes committed by individual members of the Hells Angels mainly in relation to drugs, firearms, assault (including sexual assault) and extortion.

In almost half of the 79 incidents relied upon by the Commissioner of Police, people had been convicted of criminal offences.¹⁶² The remaining incidents were 'unproven', that is, no people had been convicted of offences in relation to them at the time they were included in the application. There

152. NSW Police Force, *Gangs Squad*, viewed 1 May 2016, http://www.police.nsw.gov.au/about_us/structure/operations_command/state_crime_command.

153. NSW Police Force, *Gangs Squads, Business Units: Criminal Organisation Unit*, viewed 3 June 2016, http://intranet.police.nsw.gov.au/organisational_units/operations_command/state_crime_command/organised_crime_directorate/gangs_squad/business_units.

154. NSW Police Force, 'New Criminal Organisation Unit for State Crime Command', *Police Weekly*, 27 July 2009, p. 17.

155. Consultation with staff member from Criminal Organisation Unit, Gangs Squad, State Crime Command, NSW Police Force, 14 December 2010.

156. NSW Police Force, 'New Criminal Organisation Unit for State Crime Command', *Police Weekly*, 27 July 2009, p. 17.

157. The Hon. Stuart Ayres, General Purpose Standing Committee No. 4, Transcript of examination of proposed expenditure for police and emergency services, sport and recreation, 20 August 2014, p. 16.

158. Alan Wilson SC, *Review of the Criminal Organisation Review Act 2009*, 15 December 2015, p 81.

159. Consultation with staff member from Criminal Organisation Unit, Gangs Squad, State Crime Command, NSW Police Force, 14 December 2010, p. 4; Consultation with staff member from Criminal Organisation Unit, Gangs Squad, State Crime Command, NSW Police Force, 10 April 2013, p. 3.

160. Acting Commissioner of Police for New South Wales, 'Application to an Eligible Judge for a Declaration under the Crimes (Criminal Organisations) Control Act', filed with the Supreme Court on 6 July 2010.

161. *Wainohu v State of New South Wales* [2011] HCA 24, para. 27.

162. Acting Commissioner of Police for New South Wales, 'Application to an Eligible Judge for a Declaration under the Crimes (Criminal Organisations) Control Act', filed with the Supreme Court on 6 July 2010.

were a variety of reasons for this, including that investigations or Court proceedings were ongoing, there was insufficient evidence to prosecute people (for example in relation to some incidents victims had allegedly refused to co-operate with police), or criminal prosecutions had been unsuccessful.¹⁶³ The Commissioner sought to rely upon criminal intelligence to support a small number of these 'unproven incidents' referred to in the application. The details of the criminal intelligence were intended to be kept secret from the Hells Angels in subsequent applications.

After the application was lodged, a long-term member of the Hells Angels in NSW commenced proceedings in the High Court to have the 2009 Act declared invalid.¹⁶⁴ The application was initially suspended pending the High Court's decision, and subsequently could not proceed after the High Court decided the Act was invalid.¹⁶⁵

4.3 Preparation of applications under the 2012 Act

In March 2012, following the replacement of the 2009 Act with the 2012 Act, the COU commenced preparing new applications to have an organisation declared as a criminal organisation. This application involved significant resources, including ongoing advice from the Crown Solicitor's Office and, on occasion, Senior Counsel. Police sought to rely on information about numerous incidents of alleged criminal activity.¹⁶⁶ As with the previous application, some of these incidents involved 'unproven allegations' supported by information the Commissioner would seek to have declared to be criminal intelligence under the Act.

The COU worked on a number of criminal intelligence applications at the same time as preparing the criminal organisation application.¹⁶⁷ The focus was on preparing applications to have information declared to be 'criminal intelligence' on the different grounds provided for in the Act, being information the disclosure of which could reasonably be expected to:

- prejudice criminal investigations
- enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement, or
- endanger a person's life or physical safety.¹⁶⁸

The intention was to file the criminal organisation application shortly after the criminal intelligence applications had been finalised.¹⁶⁹

In March 2013, as a consequence of the significant 2013 amendments to the 2012 Act, the COU was required to substantially re-work the applications they had been preparing.¹⁷⁰ This was because the amended Act contained provisions that, in practice, required police to comply with significantly more rigorous evidentiary standards.¹⁷¹

163. Acting Commissioner of Police for New South Wales, 'Application to an Eligible Judge for a Declaration under the Crimes (Criminal Organisations) Control Act', filed with the Supreme Court on 6 July 2010.

164. *Wainohu v New South Wales* [2011] HCA 24, para. 3.

165. *Wainohu v New South Wales* [2011] HCA 24.

166. Consultation with staff member from Criminal Organisation Unit, Gangs Squad, State Crime Command, NSW Police Force, 10 April 2013, p. 1.

167. Consultation with staff member from Criminal Organisation Unit, Gangs Squad, State Crime Command, NSW Police Force, 5 August 2014, p. 2.

168. *Crimes (Criminal Organisations Control) Act 2012*, s. 3.

169. Consultation with staff member from Criminal Organisation Unit, Gangs Squad, State Crime Command, NSW Police Force, 5 August 2014, pp. 2-3.

170. The Hon. Stuart Ayres, General Purpose Standing Committee No. 4, Transcript of examination of proposed expenditure for police and emergency services, sport and recreation, 20 August 2014, p. 16; Consultation with staff member from Criminal Organisation Unit, Gangs Squad, State Crime Command, NSW Police Force, 10 April 2013; 'NSW cops working on anti-bikie test case', *The Daily Telegraph* (online), 26 March 2013, viewed 12 October 2016.

171. The effect of the amendments was that applications, including criminal intelligence applications, were to be heard by the Supreme Court rather than lodged in the Supreme Court and heard by an 'eligible judge'. In Court proceedings, the material relied upon must comply with the rules of evidence. One exception is that the Commissioner of Police is able to rely upon hearsay evidence (which is not normally admissible) in criminal intelligence applications. This means that criminal intelligence can be provided by a witness who can remain unnamed and does not attend Court to give evidence. See *Crimes (Criminal Organisations Control) Act 2012*, s. 28G(5).

4.4 Operational challenges

During regular consultations over the course of the review period, the COU explained the considerable operational challenges they faced in utilising the provisions of the 2012 Act as amended in 2013. The practical impact of the more rigorous evidentiary standards was that police needed to prepare more documentation to verify the reliability and accuracy of each piece of information on which it sought to rely.

As discussed earlier in this report, the 2012 Act provides that, to obtain a declaration that a particular respondent organisation is a criminal organisation, the Commissioner must present evidence to satisfy the Court on the balance of probabilities that the respondent is an organisation, some of its members associate for criminal purposes and the organisation poses an unacceptable risk to the community.¹⁷²

In practice, evidence must be presented to establish a number of component parts of these requirements, including evidence:

- of serious criminal activities or 'incidents' that have occurred in the past
- that members of the organisation were involved in these incidents,
- that members of the organisation associate in order to participate in criminal activity,¹⁷³ and
- that particular individuals are members of the organisation.

This evidence must comply with the rules of evidence.

In addition, if the Commissioner wants to rely on information he or she considers should remain secret, the Commissioner must comply with a number of procedural requirements to have that information declared to be 'criminal intelligence'. These processes were put in place to address concerns about the reliability of criminal intelligence, an issue that was identified in the Parliamentary debates:

[C]riminal intelligence is often full of rumour, innuendo, hearsay and attempts by criminals who give information to the police to put their opposition out of the gang and to get them into trouble so that they have a free run.¹⁷⁴

Ordinarily a Court will assess the reliability of information only after the affected party has had the opportunity to test, refute or provide context to the information. The affected parties have no opportunity to do this where the Commissioner seeks to have the information declared as 'criminal intelligence'. The Act provides that the Commissioner must:

- provide copies of applications and supporting material to the criminal intelligence monitor,
- outline the system used by the police to assess the veracity of the information¹⁷⁵ presented in support of a criminal intelligence application, and
- explain the assessment of each piece of information that was made under that system.¹⁷⁶

Further, in criminal intelligence hearings, certain civilian witnesses and undercover police officers (informants) are prohibited from participating in the hearing and providing direct evidence to the Court.¹⁷⁷ Instead, a police officer is to give the informant's evidence to the Court in an 'informant affidavit'.¹⁷⁸ This is due in part to a concern that some informants may refuse to participate in proceedings because they fear that individuals linked to organised crime and criminal gangs may pose a risk to their safety.

172. *Crimes (Criminal Organisations Control) Act 2012*, s. 7(1).

173. *Assistant Commissioner Michael James Condon v Pompano Pty Ltd* [2013] HCA 7, para. 164 (per Hayne, Crennan, Kiefel and Bell JJ).

174. The Hon. Greg Smith SC MP, NSWPD, (Hansard), Legislative Assembly, 29 October 2009, p. 19001.

175. *Crimes (Criminal Organisations Control) Act 2012*, s. 28G(2)(e)(i).

176. *Crimes (Criminal Organisations Control) Act 2012*, s. 28G(2)(e)(ii).

177. *Crimes (Criminal Organisations Control) Act 2012*, ss. 28A, 28H. It is likely that most of the information sought to be declared as criminal intelligence will be provided by informants: Alan Wilson SC, *Review of the Criminal Organisation Review Act 2009*, 15 December 2015, p. 47.

178. *Crimes (Criminal Organisations Control) Act 2012*, s. 28H (3). Whilst the laws of evidence generally apply to criminal intelligence applications, this is a significant exception to the rule against hearsay. *Crimes (Criminal Organisations Control) Act 2012*, s. 28G (3).

Where the information has been provided by an informant, the person's informant affidavit must contain the following additional information:

- a description of the informant's criminal history and pending charges¹⁷⁹
- any information held by the police in relation to 'allegations of professional misconduct' made against the informant¹⁸⁰
- details of any reward offered to the informants to provide the information¹⁸¹
- whether the informant is a child or adult,¹⁸² and
- whether the informant was in prison or otherwise in custody when they provided the information.¹⁸³

The police officer providing the informant affidavit must also formally swear that:

- they have made 'all reasonable efforts to ensure ... [they have] full knowledge' of the police's records in relation to the informant and the information provided by the informant¹⁸⁴
- they believe the police have made reasonable inquiries to ascertain if there are allegations of professional misconduct against the informant,¹⁸⁵ and
- they believe the information is reliable and the reasons for that belief.¹⁸⁶

During our consultations with police, we were told that complying with the numerous procedural requirements for every piece of information they sought to rely on was time-consuming, and the time spent was frequently not fruitful.¹⁸⁷ For example, certain requirements needed civilian witnesses to swear affidavits. Police found that the majority of witnesses they approached were reluctant to assist. One possible barrier was a fear of being involved in proceedings that targeted an entire OMCG.¹⁸⁸

Further, proving that members of an organisation associate in order to participate in serious criminal activity can be complicated because:

[a]side from ... examples of group violence [most OMCG chapters do not engage in organised crime as a collective unit. Rather, their threat arises from small numbers of members conspiring with other criminals for a common purpose. These criminally involved members are able to leverage off the OMCG to aid their criminal activities.¹⁸⁹

The COU told us it was a 'difficult process to decide exactly how to compile and present evidence about different incidents to show that criminal activity was in fact connected to the criminal organisation'.¹⁹⁰ These different incidents must also establish a pattern of behaviour amongst certain members of an organisation. To meet the evidentiary requirements, the COU prepared information about around 160 separate incidents to present to the Court to support the criminal organisation application.

A particular challenge arose from the requirement to prove that serious criminal activities or 'incidents' have occurred in the past, using evidence that complies with the rules of evidence.

179. *Crimes (Criminal Organisations Control) Act 2012*, s. 28H(4)(d)(i), (5), (7).

180. *Crimes (Criminal Organisations Control) Act 2012*, s. 28H(4)(d)(ii), (6), (7).

181. *Crimes (Criminal Organisations Control) Act 2012*, s. 28H(4)(d)(iii).

182. *Crimes (Criminal Organisations Control) Act 2012*, s. 28H(4)(d)(iv).

183. *Crimes (Criminal Organisations Control) Act 2012*, s. 28H(4)(d)(v).

184. *Crimes (Criminal Organisations Control) Act 2012*, ss. 28H(4)(b). The Act also enables criminal intelligence to be provided by other law enforcement agencies. The NSW Police Force decided to only rely upon criminal intelligence held by themselves due to a concern that the background checking could be problematic in relation to external agencies: Consultation with staff member from Criminal Organisation Unit, Gangs Squad, State Crime Command, NSW Police Force, 5 August 2014, p. 4.

185. *Crimes (Criminal Organisations Control) Act 2012*, s. 28H(4)(c).

186. *Crimes (Criminal Organisations Control) Act 2012*, s. 28H(4)(e).

187. Consultation with staff member from Criminal Organisation Unit, Gangs Squad, State Crime Command, NSW Police Force, 5 August 2014, p. 4.

188. Consultation with staff member from Criminal Organisation Unit, Gangs Squad, State Crime Command, NSW Police Force, 5 August 2014, p. 4.

189. Australian Crime Commission, *Crime Profile Series – Outlaw Motorcycle Gangs*, July 2013, p. 2.

190. Consultation with staff member from Criminal Organisation Unit, Gangs Squad, State Crime Command, NSW Police Force, 20 August 2013, p. 2.

Some of these incidents had previously led to a person being convicted of a criminal offence. The rules of evidence allow the Commissioner to give evidence of such a conviction (name, date, offence, sentence imposed and Court),¹⁹¹ but this evidence does not constitute proof of the incident itself nor its critical details.¹⁹² The rules also prevent the Commissioner from relying upon transcripts of and documents tendered in the previous criminal proceedings which would provide the critical details of the incident.¹⁹³ This means that the Commissioner is effectively required to prove for a second time that the incident occurred, albeit to a lower standard of proof.¹⁹⁴ In practice, this means the COU needed to ask witnesses who had given evidence in earlier criminal trials to provide an affidavit and be available to give their evidence again.¹⁹⁵ In our consultations with the COU we were advised that this process is time-consuming and, to a large extent, replicates work that had already been undertaken by police for the criminal proceedings.¹⁹⁶

4.5 Advice about ceasing work on applications

Despite significant preparatory work undertaken by the COU over three years, the Commissioner was unable to lodge with the Supreme Court any of the criminal intelligence applications they had been working on. As a result, the Commissioner could not progress to stages 2 or 3 of the process under the Act, to obtain a criminal organisation declaration or control orders.

In July 2015, after being told informally that work on the applications had stopped, we wrote to the Commissioner seeking his advice in relation to the current and future use of the 2012 Act. In our letter we wrote:

We have recently received informal advice that the NSW Police Force has suspended work on the criminal intelligence application and is consulting with Government in relation to continuing to prepare applications under the Act. I understand that police involved in preparing the application have expressed concerns that the regime created by the Act is complex, challenging to use and resource intensive. I also understand that the NSW Police Force is considering whether it will continue to use the Act given the resources required to support an application and in light of the availability of alternative tools designed to assist police to target Outlaw Motorcycle Gangs including the powers under the *Crimes Act 1900* in relation to consorting, the use of Firearms Prohibition Orders under the *Firearms Act 1996*, and the amendments to the *Restricted Premises Act 1943* enabling police to close down bikie clubhouses. I note that in order for the Supreme Court to consider a criminal intelligence application, the Attorney General must appoint a relevant person to the role of criminal intelligence monitor and that this is yet to occur.

Against this background, I am writing to request your formal advice regarding the current status of any criminal intelligence applications and/or applications for a criminal declaration to the Supreme Court of NSW under the Act. I also request your advice to confirm whether the NSW Police Force is considering the future use of the Act, and if so, I request that you provide details about the outcome of that consideration.¹⁹⁷

In response, the Commissioner advised:

I confirm that the NSW Police Force is working with Government to determine the effectiveness of the Crimes (Criminal Organisations Control) Act. In the meantime, the NSW Police Force continues to employ alternative measures that are working effectively to target the criminal activities of OMCG and other organised crime groups.

191. *Evidence Act 1995*, s. 178.

192. *Evidence Act 1995*, s. 91.

193. By contrast, section 22G of the *Serious and Organised Crime (Control) Act 2008* (SA) enables the Commissioner to rely upon transcripts of evidence or documents previously tendered in evidence in earlier criminal proceedings where a person has been convicted.

194. The standard of proof in criminal proceedings is 'beyond reasonable doubt': *Evidence Act 1995*, s. 141(1).

195. Consultation with staff member from Criminal Organisation Unit, Gangs Squad, State Crime Command, NSW Police Force, 5 August 2014, pp. 5-6.

196. Consultation with staff member from Criminal Organisation Unit, Gangs Squad, State Crime Command, NSW Police Force, 27 February 2014, p. 2; Consultation with staff member from Criminal Organisation Unit, Gangs Squad, State Crime Command, NSW Police Force, 5 August 2014, pp. 5-7.

197. Correspondence from Deputy Ombudsman (Police) to NSW Police Force, dated 9 July 2015.

As you may be aware, there have been significant changes that have contributed to more effective policing of OMCG since the introduction of the *Crimes (Criminal Organisations Control) Act* and its predecessor Act in 2009. These include:

- recent legislative amendments:
 - section 93X of the *Crimes Act 1900* consorting offence;
 - firearms Prohibition Orders, which allow police to search persons, premises or vehicles of persons subject to an order without warrant;
 - *Restricted Premises Act 1943* and Regulations, which permit searches of OMCG club houses and have resulted in closure of clubhouses, seizure of firearms, drugs and property;
 - casino exclusions; and
 - criminal group participation offences, including directing a criminal group, and receiving a material benefit derived from a criminal group;
- Strike Force Raptor, Operation Talon and the National Anti-Gangs Squad (Australian Federal Police, Australian Taxation Office and Customs officers working with the NSW Police Force and other State police);
- Australian Crime Commission National Task Forces Attero and Morpheus, focusing on the Rebels OMCG;
- National Fusion Centre and Australian Gangs Intelligence Coordination Centre, an intelligence-led response to outlaw motor cycle gangs (OMCGs) and other known gangs operating across state and territory borders;
- Kings Cross OMCG colours ban; and
- the regulation of tattoo parlours, the security industry and combat sports.¹⁹⁸

Following the end of the review period, in March 2016, we wrote again to seek updated advice from the Commissioner:

In order to assist us in finalising our report and to ensure all relevant information and advice is included for the consideration of Parliament, I seek your advice about the outcome of the discussions between the NSW Police Force and Government about the legislation, and any further comment, advice or information from you that you wish to provide.

In addition, we are aware that similar legislation has not been successfully implemented in other Australian jurisdictions and that the NSW Government has introduced legislation that provides police with additional alternative tools to target organised crime and criminal gangs. Against this background I seek your views about whether the Act should be repealed.¹⁹⁹

In his reply, the Commissioner wrote:

Thank you for the opportunity to comment on the effectiveness of the *Crimes (Criminal Organisations Control) Act*.

In addition to the measures currently available to police to target organised criminal activity, as outlined in my letter of 31 August 2015, Parliament passed the Criminal Legislation Amendment (Organised Crime and Public Safety) Bill 2016 on 4 May 2016. I am confident that the availability of serious crime prevention orders and public safety orders will enhance our effectiveness in policing organised criminal groups in New South Wales.

The question whether legislation should be repealed is a matter for whole of government consideration and should therefore be addressed to government.²⁰⁰

198. Correspondence from NSW Police Force to Acting NSW Ombudsman, dated 31 August 2015.

199. Correspondence from Deputy Ombudsman (Police) to NSW Police Force, dated 24 March 2016.

200. Correspondence from NSW Police Force to Acting NSW Ombudsman, dated 27 May 2016.

Chapter 5. Experience in other Australian jurisdictions

The *Crimes (Criminal Organisations Control) Act 2012* (the 2012 Act) in NSW is intended to be part of a nationally integrated scheme with provision for the recognition and enforcement of interstate criminal declarations.²⁰¹ In April 2012, Commonwealth, State and Territory Attorneys General discussed the importance of a nationally consistent approach to dealing with criminal organisations, at the Standing Council on Law and Justice.²⁰² It was envisaged that legislative schemes similar to those in South Australia and NSW could be introduced in each jurisdiction.

At the time of writing, equivalent criminal organisations control schemes exist in all Australian jurisdictions except for Tasmania and the Australian Capital Territory.²⁰³ A number of formal reviews of the different schemes have now been conducted.²⁰⁴ No state or territory police force has been able to successfully use their criminal organisations control legislation to have any organisations declared as 'criminal organisations'.

The Ombudsman Western Australia reported in late 2015 that police have not exercised any powers under the 2012 Act in the 24 months prior to November 2015.²⁰⁵ Similarly, police in Victoria have not used their criminal organisations control legislation.²⁰⁶

However, as described below, attempts have been made in Queensland, South Australia and the Northern Territory.

5.1 Queensland

The Queensland Police Service (QPS) prepared and filed one application under the *Criminal Organisation Act 2009* (Qld) seeking a declaration against the Gold Coast chapter of the Finks OMCG and an allegedly related company (Pompano Pty Ltd). Prior to that, the Court had finalised proceedings relating to QPS's criminal intelligence application about information it sought to rely on in those declaration proceedings. The declaration application was suspended while the High Court considered a challenge by the company to the constitutionality of the secrecy provisions in the Queensland Act. The High Court rejected the challenge.²⁰⁷ However, ultimately the Finks application did not proceed.²⁰⁸

201. See *Crimes (Criminal Organisations Control) Act 2012*, Part 3A.

202. Standing Council on Law and Justice, Communiqué, 12-13 April 2012 p. 1.

203. *Serious and Organised Crime (Control) Act 2008* (SA); *Criminal Organisation Act 2009* (Qld); *Serious Crime Control Act 2009* (NT); *Criminal Organisations Control Act 2012* (WA); *Criminal Organisations Control Act 2012* (Vic).

204. Alan Wilson SC, *Review of the Criminal Organisation Review Act 2009*, 15 December 2015; Brian Martin QC, *Report for the purposes of section 85 of the Serious Crime Control Act 2012/3*, 2 September 2013; David Angel QC, *Report for the purposes of section 85 of the Serious Crime Control Act 2013/4*, 31 July 2014; David Angel QC, *Report for the purposes of section 85 of the Serious Crime Control Act 2014/5*, 21 August 2015; Alan Moss, *A review of the execution of the powers under the Serious and Organised Crime (Control) Act 2008 exercised during the period 1 July 2008 to 30 June 2009*, 24 September 2009; Alan Moss, *A review of the execution of the powers under the Serious and Organised Crime (Control) Act 2008 exercised during the period 1 July 2009 to 30 June 2010*, 30 September 2010; Alan Moss, *A review of the execution of the powers under the Serious and Organised Crime (Control) Act 2008 exercised during the period 1 July 2010 to 30 June 2011*, 30 September 2011; Ombudsman Western Australia, *Report by the Parliamentary Commissioner for Administrative Investigations under section 158 of the Criminal Organisations Control Act 2012 for the monitoring period ended 1 November 2014*, 21 January 2015; Ombudsman Western Australia, *Report by the Parliamentary Commissioner for Administrative Investigations under section 158 of the Criminal Organisations Control Act 2012 for the monitoring period ended 1 November 2015*, 20 November 2015.

205. Ombudsman Western Australia, *Report by the Parliamentary Commissioner for Administrative Investigations under section 158 of the Criminal Organisations Control Act 2012 for the monitoring period ended 1 November 2014*, 21 January 2015; Ombudsman Western Australia, *Report by the Parliamentary Commissioner for Administrative Investigations under section 158 of the Criminal Organisations Control Act 2012 for the monitoring period ended 1 November 2015*, 20 November 2015.

206. *Criminal Organisations Control Act 2012* (Vic).

207. *Assistant Commissioner Michael James Condon v Pompano Pty Ltd* [2013] HCA 7.

208. On 13 March 2014, almost a year after successfully defending the constitutional challenge against the criminal intelligence provisions in the High Court (*Assistant Commissioner Michael James Condon v Pompano Pty Ltd* [2013] HCA 7), the Commissioner of Police in Queensland withdrew the criminal organisation application against the Finks.

In a review of the Queensland's organised crime control legislation in 2015 by Alan Wilson SC (the Wilson review),²⁰⁹ it was observed that the 'Finks application process must, for the QPS, have been frustrating and ultimately dispiriting'.²¹⁰ The preparation of the application had involved putting together 140 affidavits, in excess of 6,000 pages of evidence, numerous appearances in Queensland's Supreme Court as well as the High Court, and expenditure in excess of \$1.9 million on staffing costs alone.²¹¹

The Wilson review found there were compelling reasons for this decision, including the cost and complexity involved,²¹² and the introduction of a suite of anti-gang legislation which included the *Vicious Lawless Association Disestablishment Act 2013* (Qld).²¹³ However, another reason was that in the middle of the proceedings, nearly all of the members of the Finks 'patched over' to the Mongols OMCG.²¹⁴ This meant the QPS were seeking an application against an organisation that shifted into another organisation, potentially frustrating their efforts. The QPS was of the opinion that this would make it difficult to obtain a declaration and the Wilson review agreed with this view.²¹⁵

The Wilson review also reported on the practical complexities that QPS faced in implementing the legislation. The difficulties that arose from those provisions of the Act relating to criminal intelligence are of particular relevance to NSW. This is because, as discussed earlier in this report, the *Crimes (Criminal Organisations Control) Act 2012* (NSW) was amended in 2013 to incorporate provisions relating to criminal intelligence that were identical to those in the Queensland Act.²¹⁶

The Wilson review found that QPS's criminal intelligence application involved the compilation of a 'voluminous pile of evidence'²¹⁷ and that an informant affidavit 'consumed over 50 hours of an officer's time'.²¹⁸ The size of the application was in part a consequence of the snowballing effect of additional information being required to support criminal intelligence in informant affidavits.²¹⁹ Also it appeared that possible concerns about the reliability of criminal intelligence resulted in a higher '[q]uantity ... [of information being] called in aid of material that is inherently compromised in its quality'.²²⁰

The Commissioner of Police filed the criminal intelligence application in relation to the Finks following what was described as 'laborious' preparations.²²¹

The QPS also found the proceedings to consider the criminal intelligence application were time-consuming and costly.²²² The Wilson review observed that the proceedings were lengthy, taking place over several days, despite all participants, including the Judge and the Criminal Organisation Public Interest Monitor, Queensland's equivalent of NSW criminal intelligence monitor, having read material in advance of the hearing.²²³ Additional costs were also incurred by the Supreme Court Registry, which was required to introduce special procedures to maintain the secrecy of the criminal intelligence filed with the Court.²²⁴

209. Alan Wilson SC, *Review of the Criminal Organisation Review Act 2009*, 15 December 2015. In 2015, the Attorney General of Queensland commissioned Alan Wilson SC, a retired Judge of the Supreme Court of Queensland, to conduct a review of the operation of the *Criminal Organisation Act 2009* (Qld).

210. Alan Wilson SC, *Review of the Criminal Organisation Review Act 2009*, 15 December 2015, p. 81.

211. Alan Wilson SC, *Review of the Criminal Organisation Review Act 2009*, 15 December 2015, p. 105.

212. Alan Wilson SC, *Review of the Criminal Organisation Review Act 2009*, 15 December 2015, p. 81.

213. Alan Wilson SC, *Review of the Criminal Organisation Review Act 2009*, 15 December 2015, p. 105.

214. Alan Wilson SC, *Review of the Criminal Organisation Review Act 2009*, 15 December 2015, p. 105. The provisions aimed at dealing with 'shape shifting', apply to organisations against which a declaration has already been made: *Criminal Organisation Act 2009*, s. 12.

215. Alan Wilson SC, *Review of the Criminal Organisation Review Act 2009*, 15 December 2015, p. 105.

216. The *Crimes (Criminal Organisations Control) Amendment Act 2013* inserted Part 3B into the *Crimes (Criminal Organisations Control) Act 2012*, to provide for a process for information to be declared to be 'criminal intelligence'. Those provisions were identical to Part 6 of the *Criminal Organisation Act 2009* (Qld).

217. Alan Wilson SC, *Review of the Criminal Organisation Review Act 2009*, 15 December 2015, p. 58.

218. Alan Wilson SC, *Review of the Criminal Organisation Review Act 2009*, 15 December 2015, p. 57. See also pp. 55-59 for an analysis of the practical complexities and resources involved in criminal intelligence applications.

219. Alan Wilson SC, *Review of the Criminal Organisation Review Act 2009*, 15 December 2015, p. 58.

220. Alan Wilson SC, *Review of the Criminal Organisation Review Act 2009*, 15 December 2015, p. 58.

221. Alan Wilson SC, *Review of the Criminal Organisation Review Act 2009*, 15 December 2015, p. 58.

222. Alan Wilson SC, *Review of the Criminal Organisation Review Act 2009*, 15 December 2015, p. 106.

223. Alan Wilson SC, *Review of the Criminal Organisation Review Act 2009*, 15 December 2015, pp. 102-103.

224. Alan Wilson SC, *Review of the Criminal Organisation Review Act 2009*, 15 December 2015, pp. 82-88.

The review reported that:

It is a clear and unavoidable conclusion that criminal intelligence adds greatly to the length and complexity of COA proceedings. It makes the Act prohibitively expensive, slow and cumbersome to use. It therefore both inhibits the use of the Act and, when used, retards the Act's ability to disrupt and restrict the criminal organisations that it targets.²²⁵

Concerns have also been raised about the effectiveness of the monitor in testing the appropriateness and the validity of the application.²²⁶ The monitor told the Wilson review that it was 'impossible' for him to test the validity of factual matters and that he was concerned about 'the level of unfairness that remained inherent in the process and, in light of this, at the possibility that the accountability that the [monitor] brings to the process might be more apparent than real'.²²⁷

Serious doubts were expressed in the Wilson review about whether the Commissioner of Police could have relied upon the declared criminal intelligence to any significant extent in the subsequent criminal organisation application, had the application proceeded.²²⁸

The experience in Queensland highlights difficulties associated with the focus of criminal organisations control legislation upon an organisation and in particular, it 'does not bode well for its use against the less visible and more innovative groups that characterise modern organised crime'.²²⁹

5.2 South Australia

In May 2009, under the South Australian *Serious and Organised Crime (Control) Act 2008* (the first criminal organisations control legislation in Australia), the Commissioner of Police successfully applied to the Attorney General to have the Finks OMCG declared as a criminal organisation.

The Commissioner of Police then applied to a Magistrate for control orders in relation to 12 alleged members of the Finks to prevent them from associating with each other (amongst other restrictions). Two of these alleged members initiated Court proceedings that resulted in a majority of the High Court deciding that relevant sections of the South Australian Act were constitutionally invalid.²³⁰

Prior to the finalisation of the High Court proceedings, the Commissioner also sought a declaration against the Rebels OMCG. The applications were initially put on hold pending the High Court's decision and were later discontinued.²³¹

The South Australian authorities did obtain a control order in relation to a former member of the Rebels OMCG, but this was using a different provision of the *Serious and Organised Crime (Control) Act*, which did not require as a pre-requisite that the Rebels club itself was declared as a criminal organisation.

225. Alan Wilson SC, *Review of the Criminal Organisation Review Act 2009*, 15 December 2015, p. 62.

226. *Criminal Organisation Act 2009* (Qld), s. 86.

227. Alan Wilson SC, *Review of the Criminal Organisation Review Act 2009*, 15 December 2015, p. 87.

228. Alan Wilson SC, *Review of the Criminal Organisation Review Act 2009*, 15 December 2015, pp. 58-59.

229. Alan Wilson SC, *Review of the Criminal Organisation Review Act 2009*, 15 December 2015, p. 73.

230. *South Australia v Totani* [2010] HCA 39.

231. Alan Wilson SC, *Review of the Criminal Organisation Review Act 2009*, 15 December 2015, p. 11, with further analysis on p. 150.

5.3 Northern Territory

In the Northern Territory, it has been reported that 'it is understood that Northern Territory Police devoted considerable effort to developing an application against the Darwin Chapter of an OMCG'²³² under the *Serious Crime Control Act 2009* (NT). However, '[t]he operation was reviewed after six months and discontinued, possibly in light of the significant additional resources that would have been required to progress the application'.²³³

At the time of writing the Northern Territory Act remains unused.²³⁴

232. Alan Wilson SC, *Review of the Criminal Organisation Review Act 2009*, 15 December 2015, p. 168.

233. Alan Wilson SC, *Review of the Criminal Organisation Review Act 2009*, 15 December 2015, p. 168.

234. Brian Martin QC, *Report for the purposes of section 85 of the Serious Crime Control Act 2012/3*, 2 September 2013; David Angel QC, *Report for the purposes of section 85 of the Serious Crime Control Act 2013/4*, 31 July 2014; David Angel QC, *Report for the purposes of section 85 of the Serious Crime Control Act 2014/5*, 21 August 2015.

Chapter 6. Conclusion

Organised crime 'is a creature of many shapes and hues',²³⁵ with the majority of groups or networks being loose, flexible and rarely aiming to be visible.²³⁶

The scheme established by the *Crimes (Criminal Organisations Control) Act 2012* (the Act) promised police a new and novel approach to dealing with crime of this nature. By restricting members of criminal organisations from associating with each other and recruiting new members, the legislation aimed to disrupt their activities and, in doing so, prevent crime.

The model appealed to Parliaments in six of the eight states and territories around Australia, with all passing similar legislation in the space of four years. This was in a climate of rising concern about the threats posed by organised crime and, in particular, the activities of Outlaw Motor Cycle Gangs.

Despite high expectations, however, in practice no police force in Australia has been able to successfully utilise the legislation.

The NSW experience, mirrored in other jurisdictions, has been resource-intensive and operationally challenging. Only one application was filed in Court, but that did not proceed after a member of the respondent OMCG successfully mounted a High Court challenge to the legislation itself, which resulted in a decision that the law was unconstitutional. Although the legislation has been changed on numerous occasions, primarily to keep it safe from further constitutional challenge, these changes have introduced additional operational challenges. During the review period the NSW Police Force was unable to bring any applications to a state of readiness for presentation to a Court.

Last year, the NSW Police Force made a decision not to commit any further resources to using this scheme to tackle organised crime groups and instead to make use of alternative measures, some of which have proven easier to implement and more effective to achieve the outcomes sought. In particular, police can use a modernised consorting offence, criminal group participation offences, expanded search and seizure powers under the *Restricted Premises Act 1943* and the *Firearms Act 1996*, casino exclusion powers and restrictions to entry to licensed premises by people wearing OMCG 'colours' and insignia. Additionally, earlier this year Parliament passed legislation to give police the ability to seek serious crime prevention orders, and to make public safety orders.

The NSW Police Force's decision to direct resources to using tools that are more practicable to implement, and more effective in policing the activities of organised criminal groups, appears reasonable. Continuing to devote resources to the process of seeking a declaration would not be in the public interest.

The experience of police forces in other jurisdictions does not suggest that the operational difficulties presented by the NSW model, or any other comparable criminal organisations control legislation, could be easily remedied by further legislative amendment. In this regard, our views are similar to those expressed in the report on the review of the Queensland legislation.²³⁷

We have concluded that the Act does not provide police with a viable mechanism to tackle criminal organisations, and is unlikely to ever be able to be used effectively. In addition, we agree with police's view that they have the capacity to achieve similar outcomes to those intended by the Act – to restrict members of criminal organisations from associating with each other, recruiting new members and participating in certain occupations – using other measures. For these reasons, it is our recommendation that the Act should be repealed.

235. Alan Wilson SC, *Review of the Criminal Organisation Review Act 2009*, 15 December 2015, p. 21.

236. Australian Crime Commission, *Crime Profile: Outlaw Motorcycle Gangs*, July 2013.

237. Alan Wilson SC, *Review of the Criminal Organisation Review Act 2009*, 15 December 2015, p. 15.

The Attorney General is responsible for completing a statutory review of the Act as soon as possible after 21 March 2017, to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.²³⁸ While the policy objectives of the Act may remain valid, the terms of the legislation are evidently not appropriate for achieving those objectives, as the NSW Police Force has been unable to successfully use the provisions of the Act as Parliament intended. Importantly, the NSW Police Force has not made submissions to amend the Act and has indicated that it does not intend using it in the future.

The upcoming statutory review provides the Attorney General with an opportunity to consider our recommendation that the Act be repealed. Considerable efforts and resources have already been spent by police in attempting to implement the Act and the experience of police in other Australian states has been similar. In our view, it would not be in the public interest to require police to continue to utilise the Act when it is their view that using other powers are more effective in disrupting criminal organisations. In these circumstances, the Attorney General may choose to adopt our recommendation and seek to repeal the legislation.

Recommendation

The *Crimes (Criminal Organisations Control) Act 2012* should be repealed.


238. *Crimes (Criminal Organisations Control) Act 2012*, s. 40.

Appendix A

List of the 12 Acts that amended the *Crimes (Criminal Organisations Control) Act 2009* and *Crimes (Criminal Organisations Control) Act 2012*

Name of amending Act	Amendment (to 2009 Act)
<i>Criminal Organisations Legislation Amendment Act 2009</i>	Amendment to Schedule 1 <ul style="list-style-type: none"> • Additional offence of controlled members recruiting new members to the organisation • Court may order substituted service of interim control orders • Commissioner may share information with a regulatory authority (an organisation that authorises people to participate in an occupation or other activities) about declared 'criminal organisations', controlled members and any people who associate with any members of 'criminal organisations'.
<i>Statute Law (Miscellaneous Provisions) Act 2009</i>	Amendment to section 39(5) <ul style="list-style-type: none"> • Amendment corrects a spelling mistake of Commissioner
<i>Courts and Crimes Legislation Amendment Act 2009</i>	Amendment to section 5 <ul style="list-style-type: none"> • Relating to eligible Judges Amendments to sections 16 and 35 <ul style="list-style-type: none"> • Police given powers to request people's identity in certain circumstances. Failure to comply with request for identity can amount to a criminal offence. Amendment to section 19 <ul style="list-style-type: none"> • Additional offence of controlled members associating with any other controlled member on at least three occasions in a three month period Amendment to section 26 <ul style="list-style-type: none"> • Definition of 'members of an organisation' expanded to include some former members
<i>Statute Law (Miscellaneous Provisions) (No 2) Act 2009</i>	Amendment to section 36(1) and (3) <ul style="list-style-type: none"> • Correction to the description of Local Court.
<i>Weapons and Firearms Legislation Amendment Act 2010</i>	Amendment to section 27(6) <ul style="list-style-type: none"> • Amendment to definition of 'firearm' to include an 'imitation firearm'
<i>Courts and Crimes Legislation Further Amendment Act 2010</i>	Amendment to section 39 <ul style="list-style-type: none"> • Ombudsman's review period extended from two years to four years
<i>Crimes (Criminal Organisations Control) Act 2012</i>	Repealed the 2009 Act.

Name of amending Act	Amendment (to 2012 Act)
<i>Tattoo Parlours Act 2012</i>	Amendment to section 27 <ul style="list-style-type: none"> Controlled members are automatically banned from providing tattoo services
<i>Combat Sports Act 2013</i>	Amendment to section 27 <ul style="list-style-type: none"> Controlled members are automatically banned from participating in combat sports
<i>Motor Dealers and Repairers Act 2013</i>	Amendment to section 27 <ul style="list-style-type: none"> Controlled members are automatically banned from some occupational activities within the motor vehicle industry which is now regulated by this Act.
<i>Crimes (Criminal Organisations Control) Amendment Act 2013</i>	<ul style="list-style-type: none"> Significant amendments to the Act to model Queensland's organised crime control legislation which was found valid by the High Court in <i>Assistant Commissioner Michael James Condon v Pompano Pty Ltd</i> [2013] HCA 7. <ul style="list-style-type: none"> Amendments to section 3, Part 2 (sections 5-13), sections 16, 21, 31, 32A, 35A, 36, 37A, 37B. New Part 3A (sections 27A-27Y). New Part 3B (sections 28A-28U).
<i>Law Enforcement (Powers and Responsibilities) Amendment Act 2014</i>	Amendment to section 35A <ul style="list-style-type: none"> Minor amendments to reflect amendments to the safeguards relating to the exercise of powers as set out in Part 15 of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i>.



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