



# **Criminal Organisation Act 2009**

**Current as at 23 September 2013**

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- The list of annotations endnote gives historical information at section level.

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Queensland

# Criminal Organisation Act 2009

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# Criminal Organisation Act 2009

[as amended by all amendments that commenced on or before 23 September 2013]

**An Act to provide for the making of declarations and orders for the purpose of disrupting and restricting the activities of organisations involved in serious criminal activity, and of their members and associates, and to make related amendments to other Acts**

## Part 1 Preliminary

### 1 Short title

This Act may be cited as the *Criminal Organisation Act 2009*.

### 2 Commencement

This Act commences on a day to be fixed by proclamation.

### 3 Objects of Act

- (1) The objects of this Act are to disrupt and restrict the activities of—
  - (a) organisations involved in serious criminal activity; and
  - (b) the members and associates of the organisations.
- (2) It is not the Parliament's intention that powers under this Act be exercised in a way that diminishes the freedom of persons in the State to participate in advocacy, protest, dissent or industrial action.

## **4 Definitions**

The dictionary in schedule 2 defines particular words used in this Act.

## **5 Act binds all persons**

- (1) This Act binds all persons including the State, and, as far as the legislative power of the Parliament permits, the Commonwealth and the other States.
- (2) This Act does not make the Commonwealth, the State or another State liable to be prosecuted for an offence.

## **6 Meaning of *serious criminal activity***

*Serious criminal activity* means—

- (a) a serious criminal offence; or
- (b) an act done or omission made outside Queensland, including outside Australia, that, if done or made in Queensland would have been or would be a serious criminal offence.

## **7 Meaning of *serious criminal offence***

- (1) *Serious criminal offence* means the following—
  - (a) an indictable offence punishable by at least 7 years imprisonment, including an offence against a repealed provision of an Act;
  - (b) an offence against this Act;
  - (c) an offence against a section of the Criminal Code mentioned in schedule 1.

*Notes—*

- 1 For convenience, current headings to sections have been mentioned in schedule 1. If a section has been repealed, the last heading the section had before its repeal is mentioned.
- 2 Because of amendments over time, and the fact that a section may include several offences, an offence against a section mentioned in

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schedule 1 may also be a serious criminal offence because of subsection (1)(a).

- (2) ***Serious criminal offence*** does not include an offence against the Criminal Code, section 208 or 209 in any form in which either section has ever existed unless the act or omission would be an offence against section 208 as it currently exists.
- (3) For subsection (1)(c), a reference to an offence against a section mentioned in schedule 1 includes a reference to any offence against the section of that number as the section existed at any time since the original enactment of—
  - (a) if the Criminal Code as originally enacted had a section of that number—the Criminal Code; or
  - (b) if the Criminal Code as originally enacted did not have a section of that number—the section.
- (4) Subsection (1)(c) does not limit subsection (1)(a).

*Example—*

Schedule 1 mentions section 427, but limits the reference to the section as it existed before its repeal by Act No. 3 of 1997. However, current section 427 imposes a maximum penalty of 10 years imprisonment and therefore an offence against the section is a serious criminal offence.

## Part 2 Criminal organisations

### 8 Commissioner may apply for declaration

- (1) The commissioner may apply to the court for a declaration that a particular organisation (the ***respondent***) is a criminal organisation.
- (2) The application must state the following—
  - (a) details sufficiently identifying the organisation;
  - (b) a description of the nature of the organisation and any of its distinguishing characteristics;
  - (c) the grounds on which the declaration is sought;

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- (d) the information supporting the grounds;
  - (e) details of any previous application for a declaration for the organisation and the outcome of the application;
  - (f) that a response to the application may be filed under section 9.
- (3) The application must be accompanied by any affidavit the commissioner intends to rely on at the hearing of the application.
- (4) For subsection (2)(a), it is sufficient if the organisation is identified by the name by which it is commonly known or by other particulars.
- (5) The application, with any accompanying affidavit, must—
- (a) be filed; and
  - (b) on filing, state as the return date a day within 35 days after the filing; and
  - (c) after being filed, be served by the commissioner on the respondent—
    - (i) by personal service within 7 business days after the filing; or
    - (ii) if personal service is not practicable, or if the respondent is an unincorporated association, by public notice within 10 days after filing.
- (6) The commissioner must give copies of the application and any supporting material to the COPIM under arrangements decided by the COPIM.

*Note for subsection (6)—*

Under section 88(2), this requirement does not apply to particular material about informants.

## **9 Response by respondent**

- (1) The respondent may file a response to the application.
- (2) The response must state—

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- (a) the facts relied on by the respondent in response to the application; and
  - (b) the nature of the response in relation to each order sought by the applicant.
- (3) The respondent must file the response at least 5 business days before the return date.
- (4) The response must be accompanied by any affidavit the respondent intends to rely on at the hearing of the application.

## **10 Court may make a declaration**

- (1) The court may make a declaration that the respondent is a criminal organisation if the court is satisfied that—
- (a) the respondent is an organisation; and
  - (b) members of the organisation associate for the purpose of engaging in, or conspiring to engage in, serious criminal activity; and
  - (c) the organisation is an unacceptable risk to the safety, welfare or order of the community.
- (2) In considering whether or not to make a declaration, the court must have regard to—
- (a) the following information before the court—
    - (i) information suggesting a link exists between the organisation and serious criminal activity;
    - (ii) any conviction for current or former members of the organisation;
    - (iii) information suggesting current or former members of the organisation have been, or are, involved in serious criminal activity, whether directly or indirectly and whether or not the involvement resulted in convictions;
    - (iv) information suggesting members of an interstate or overseas chapter or branch of the organisation associate for the purpose of engaging in, or

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conspiring to engage in, serious criminal activity;  
and

(b) anything else the court considers relevant.

(3) A declaration may be made whether or not the respondent is present or makes submissions.

*Note—*

Section 8 includes service requirements.

(4) The court may, for making the declaration, be satisfied that members of an organisation associate for the purpose of engaging in, or conspiring to engage in, serious criminal activity—

(a) whether all the members associate for that purpose or only some of the members; and

(b) whether members associate for that purpose for the same serious criminal activities or different ones; and

(c) whether or not the members also associate for other purposes.

(5) For subsection (4)(a), the court may act on the basis of satisfaction that only some of the members associate for the purpose mentioned in the subsection only if the court is satisfied that those members constitute a significant group within the organisation, either—

(a) in terms of their numbers; or

(b) in terms of their capacity to influence the organisation or its members.

## **11 Notice of declaration**

(1) As soon as reasonably practicable after the declaration is made, the commissioner must publish notice of the declaration in the gazette and in at least 1 newspaper circulating throughout the State.

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

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## **12 Duration of declaration**

- (1) A declaration remains in force for a period of 5 years after the day on which it is made, unless sooner revoked or unless renewed.
- (2) A change in the name or membership of a criminal organisation does not affect the declaration.
- (3) The criminal organisation is taken to include any organisation into which the members substantially reform themselves with or without dissolving the organisation named in the declaration.

## **13 Revocation of declaration**

- (1) The court may revoke a declaration about a criminal organisation on an application under this section.
- (2) An application may be made by—
  - (a) the commissioner, at any time; or
  - (b) the criminal organisation or a member of the criminal organisation, subject to section 15.
- (3) An application must state—
  - (a) the grounds on which revocation is sought; and
  - (b) the information supporting the grounds on which revocation is sought.
- (4) The application must be accompanied by any affidavit the applicant intends to rely on at the hearing.
- (5) The commissioner is a party to any proceedings for an application by the organisation or a member of the organisation.
- (6) The applicant must serve a copy of the application, with any accompanying affidavit, on the other party to the proceedings as soon as reasonably practicable after the application is filed.
- (7) If the commissioner is the applicant, service on the other party must be—

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- (a) by personal service; or
  - (b) if personal service is not practicable or the respondent is an unincorporated association, by public notice.
- (8) The commissioner must give the following to the COPIM under arrangements decided by the COPIM—
- (a) if the commissioner is the applicant—copies of the application and any accompanying affidavit filed by the commissioner; or
  - (b) if the criminal organisation or a member of the criminal organisation is the applicant—copies of the application and any accompanying affidavit served on the commissioner under subsection (6).

*Note—*

Under section 88(2), this requirement does not apply to particular material about informants.

- (9) The court may revoke the declaration only if satisfied that there has been a substantial change in the nature or membership of the criminal organisation to the extent that—
- (a) members of the organisation no longer associate for the purpose of engaging in, or conspiring to engage in, serious criminal activity; and
  - (b) the organisation no longer represents an unacceptable risk to the safety, welfare and order of the community.

## **14 Notice of revocation or expiration**

As soon as reasonably practicable after the revocation or expiration of a declaration, the commissioner must publish notice of the revocation or expiration in the gazette and in at least 1 newspaper circulating throughout the State.

## **15 Limitation on number and timing of applications for revocation**

- (1) A criminal organisation or a member of a criminal organisation may not apply for the revocation of a declaration



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under section 13 until at least 3 years after the declaration is made.

- (2) Also, the total number of applications made by the organisation and all members of the organisation must not be more than 2 during the first 5 years after the declaration is made.

## **Part 3                      Control orders**

### **Division 1                      Making, variation and revocation**

#### **16              Commissioner may apply for control order**

- (1) The commissioner may apply to the court for a control order for a person (the *respondent*).
- (2) The application must state the following—
- (a) details sufficient to identify the respondent;
  - (b) the grounds on which the order is sought;
  - (c) the information supporting the grounds;
  - (d) details of any previous application for an order for the respondent and the outcome of the application;
  - (e) that the respondent may file a response to the application under section 17;
  - (f) that an interim control order may be made against the respondent under section 21 at any time on or after the return date.
- (3) The application must be accompanied by—
- (a) any affidavit the commissioner intends to rely on at the hearing of the application; and

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- (b) a draft of the order the commissioner is seeking from the court.
- (4) The application must—
  - (a) be filed; and
  - (b) on filing, state as the return date a day within 35 days after the filing; and
  - (c) after being filed, be served on the respondent—
    - (i) by personal service within 7 business days after the filing; or
    - (ii) if personal service is not practicable, by public notice within 10 days after filing.
- (5) The commissioner must give copies of the application and any supporting material to the COPIM under arrangements decided by the COPIM.

*Note for subsection (5)—*

Under section 88(2), this requirement does not apply to particular material about informants.

## **17 Response by respondent**

- (1) The respondent may file a response to the application.
- (2) The response must state—
  - (a) the facts relied on by the respondent in response to the application; and
  - (b) the nature of the response in relation to each order sought by the applicant.
- (3) The respondent must file the response at least 5 business days before the return date.
- (4) The response must be accompanied by any affidavit the respondent intends to rely on at the hearing of the application.

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## 18 Court may make control order

- (1) The court may make a control order for the respondent if the court is satisfied that the respondent—
  - (a) is, or has been, a member of a criminal organisation; and
  - (b) engages in, or has engaged in, serious criminal activity; and
  - (c) associates with any person for the purpose of engaging in, or conspiring to engage in, serious criminal activity.
- (2) Also, the court may make a control order for the respondent if the court is satisfied that the respondent—
  - (a) engages in, or has engaged in, serious criminal activity; and
  - (b) associates with any member of a criminal organisation for the purpose of engaging in, or conspiring to engage in, serious criminal activity.
- (3) In considering whether or not to make an order, the court must have regard to—
  - (a) information about the following before the court—
    - (i) the respondent's criminal history;
    - (ii) the criminal history of a person whose association with the respondent is relied on in the application to support the making of the order;
    - (iii) any activity or behaviour of the respondent at any time that tends to prove a matter of which the court must be satisfied under subsection (1) or (2); and
  - (b) anything else the court considers relevant.
- (4) The control order may be made whether or not the respondent is present or makes submissions.

*Note—*

Section 16 includes service requirements.

- (5) In this section—

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*member*, of a criminal organisation, does not include a person who would otherwise be a member only because the person is a person mentioned in schedule 2, definition *member*, paragraph (e).

## 19 Conditions of control order

- (1) In making a control order for the respondent, the court may impose the conditions on the respondent the court considers appropriate.
- (2) Without limiting subsection (1), a condition may prohibit the respondent from doing any of the following while the control order is in force—
  - (a) associating with any person who is a member of a criminal organisation;
  - (b) associating with any other controlled person;
  - (c) possessing—
    - (i) a thing the possession of which, under the *Weapons Act 1990* or the *Explosives Act 1999*, is prohibited or prohibited other than under a licence, permit or other authority; or
    - (ii) a stated thing or a thing of a stated class;
  - (d) carrying on or applying under an Act to carry on a prescribed activity;
  - (e) recruiting or attempting to recruit anyone to become a member of, or to associate with a member of, a criminal organisation;
  - (f) associating with a stated person or a person of a stated class;
  - (g) entering or being in the vicinity of a stated place or a place of a stated class;
  - (h) applying for or undertaking stated employment.

- (3) A condition imposed under subsection (2)(a) applies in relation to association with any person who is a member of a criminal organisation at the time of the association—
  - (a) whether the person is a member of a criminal organisation when the order is made or becomes a member at a later time; and
  - (b) whether the criminal organisation is a criminal organisation when the order is made or is declared to be a criminal organisation at a later time.
- (4) A condition imposed under subsection (2)(b) applies in relation to association with any person who is a controlled person at the time of the association whether the person is a controlled person when the order is made or becomes a controlled person at a later time.
- (5) If the control order is made under section 18(1)—
  - (a) subject to paragraph (b)(i), the conditions imposed on the order must include the conditions mentioned in subsection (2)(a), (b), (c)(i), (d) and (e); and
  - (b) the conditions imposed on the order—
    - (i) are not required to include a condition mentioned in subsection (2)(a) or (b) to the extent the condition prohibits the respondent from associating with another person with whom the respondent has a personal relationship; but
    - (ii) may, subject to subsection (7), include a condition prohibiting the respondent from associating with another person with whom the respondent has a personal relationship.
- (6) Also, the order must require the respondent to, within 24 hours after the order is made, deliver to the commissioner's custody at a stated police station anything the respondent is prohibited from possessing under the order unless the respondent has lawfully disposed of possession of the thing before the end of that period.

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- (7) Before imposing a non-contact condition under this section prohibiting the respondent from associating with another person with whom the respondent has a personal relationship, the court must consider the effect of the condition on the relationship and whether the condition should only relate to a particular class of activity or relate to activities generally.
- (8) The court may also impose conditions on the use by a police officer of the power under section 25.

## **20 Duration of control order**

- (1) A control order takes effect—
  - (a) if the respondent or a legal or other representative of the respondent is present at the hearing of the application—when the order is made; or
  - (b) otherwise—when the commissioner serves the order on the respondent.
- (2) Service under subsection (1)(b) must be by personal service or, if personal service is not practicable, by public notice.
- (3) A control order remains in force until the order is revoked.
- (4) Also, if an interim control order or control order is made for a person in reliance on the person's membership of a particular criminal organisation or the person's association with a member of a particular criminal organisation, the order stops having effect when the declaration for the criminal organisation expires or is revoked.

## **21 Interim control order**

- (1) This section applies if an application for a control order has been served on the respondent under section 16(4).
- (2) On or after the return date, the court may make a control order (an *interim control order*) for the respondent to be in force until the court finally decides the application or the application otherwise ends.

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- (3) The court may make the interim control order if the court is satisfied there are reasonable grounds for believing there is sufficient basis to make the final order.
  - (4) The interim control order may be made whether or not the respondent is present or makes submissions.

*Note—*

Section 16 includes service requirements notifying the respondent of the possibility of the making of an interim control order.

- (5) An interim control order is taken to include, and to impose on the respondent, the following conditions—
  - (a) that the respondent must not associate with a person who is a member of a criminal organisation, other than a person with whom the respondent has a personal relationship;
  - (b) that the respondent must not associate with any other controlled person, other than a person with whom the respondent has a personal relationship;
  - (c) that the following are suspended—
    - (i) any licence, permit or authority issued to the respondent under the *Weapons Act 1990*;
    - (ii) any entitlement under the *Weapons Act 1990* to possess or use a weapon;
  - (d) that the respondent must not recruit or attempt to recruit anyone to become a member of or to associate with a member of a criminal organisation.
- (6) Also, the interim control order must require the respondent to, within 24 hours after the order is made, deliver to the commissioner's custody at a stated police station anything the respondent is prohibited from possessing under the order unless the person has lawfully disposed of possession of the thing before the end of that period.
- (7) An interim control order takes effect—

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- (a) if the respondent or legal or other representative of the respondent is present at the hearing of the application—when it is made; or
  - (b) if paragraph (a) does not apply—when the commissioner serves the order on the respondent.
- (8) Service under subsection (7)(b) must be by personal service or, if personal service is not practicable, by public notice.

## **22 Variation of control order**

- (1) The court may vary a control order, other than a condition that under section 19(5) must be included in the order, on an application under this section.
- (2) An application may be made by—
  - (a) the commissioner, at any time; or
  - (b) the controlled person, if at least 12 months have passed after the order was made or the last application for a variation was made by the controlled person.
- (3) An application must state the following—
  - (a) the grounds on which a variation is sought; and
  - (b) the information supporting the grounds.
- (4) The application must be accompanied by—
  - (a) any affidavit the applicant intends to rely on at the hearing of the application; and
  - (b) a draft of the order the applicant is seeking from the court.
- (5) The commissioner is a party to any proceedings for an application by the controlled person.
- (6) The applicant must serve a copy of the application, with any accompanying affidavit and draft order, on the other party to the proceedings as soon as reasonably practicable after the application is filed.



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- (7) If the commissioner is the applicant, service on the other party must be by personal service or, if personal service is not practicable, by public notice.
  - (8) The commissioner must give the following to the COPIM under arrangements decided by the COPIM—
    - (a) if the commissioner is the applicant—copies of the application and any accompanying affidavit and draft order filed by the commissioner; or
    - (b) if the controlled person is the applicant—copies of the application and any accompanying affidavit and draft order served on the commissioner under subsection (6).

*Note—*

Under section 88(2), this requirement does not apply to particular material about informants.

- (9) The court may vary the control order on application by the controlled person only if the court is satisfied that—
  - (a) the controlled person can not reasonably comply with the order because of a change in the controlled person's circumstances; and
  - (b) it is reasonable in all the circumstances to vary the order.
- (10) If the applicant is the commissioner, the commissioner must serve a copy of the order varying the control order on the controlled person as soon as reasonably practicable after the order is made.
- (11) Service under subsection (10) must be by personal service or, if personal service is not practicable, by public notice.
- (12) The order varying the control order takes effect—
  - (a) if the commissioner is the applicant—when the commissioner serves a copy of the order on the controlled person; or
  - (b) if the controlled person is the applicant—when the order is made.

## **23 Revocation of control order**

- (1) The court may revoke a control order on an application under this section.
- (2) An application may be made by—
  - (a) the commissioner, at any time; or
  - (b) the controlled person, if at least 2 years have passed after the order was made.
- (3) An application must state the following—
  - (a) the grounds on which revocation is sought; and
  - (b) the information supporting the grounds.
- (4) The application must be accompanied by any affidavit the applicant intends to rely on at the hearing of the application.
- (5) The commissioner is a party to any proceedings for an application by the controlled person.
- (6) The applicant must serve a copy of the application, with any accompanying affidavit, on the other party to the proceedings as soon as reasonably practicable after the application is filed.
- (7) If the commissioner is the applicant, service on the other party must be by personal service or, if personal service is not practicable, by public notice.
- (8) The commissioner must give the following to the COPIM under arrangements decided by the COPIM—
  - (a) if the commissioner is the applicant—copies of the application and any accompanying affidavit filed by the commissioner; or
  - (b) if the controlled person is the applicant—copies of the application and any accompanying affidavit served on the commissioner under subsection (6).

*Note—*

Under section 88(2), this requirement does not apply to particular material about informants.

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- (9) The court may revoke the control order on the application of the controlled person only if satisfied that—
- (a) there has been a substantial change in the relevant circumstances since the order was made; and
  - (b) if the order was made in reliance on the person's membership of a criminal organisation—the person has not been a member of any criminal organisation for at least 2 years; and
  - (c) the person has not engaged in, or conspired to engage in, serious criminal activity for at least 2 years; and
  - (d) the court considers that, in all the circumstances, it is reasonable to revoke the order.
- (10) For calculating the period of 2 years under subsection (9), a period of imprisonment or detention of the controlled person is not to be counted.
- (11) If the applicant is the commissioner, the commissioner must serve a copy of the revocation order on the controlled person as soon as reasonably practicable after the order is made.
- (12) Service under subsection (11) must be by personal service or, if personal service is not practicable, by public notice.
- (13) The revocation order takes effect when it is made.

## **Division 2                      Enforcement**

### **24                      Contravention of control order or registered corresponding control order**

- (1) A person must not knowingly contravene a control order or a registered corresponding control order made for the person.
- Maximum penalty—
- (a) for the first offence—3 years imprisonment; or
  - (b) for each later offence—5 years imprisonment.

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- (2) A first offence is a misdemeanour and each later offence is a crime.
- (3) An offence is a later offence to an earlier offence if the person commits the offence after the person is found guilty of the earlier offence.
- (4) A person knowingly contravenes a control order or registered corresponding control order if the person does an act or makes an omission the person knows, or ought reasonably to know, is a contravention of the order.
- (5) For a contravention of a non-contact condition, it does not matter—
  - (a) what was the purpose of the person associating with another person in contravention of the condition; or
  - (b) whether the association related to the commission or potential commission of an offence.
- (6) For a contravention of a non-contact condition that has an exception about associating with a person with whom the controlled person has a personal relationship, it is for the controlled person to prove on the balance of probabilities that the controlled person had a personal relationship with the other person at the relevant time.
- (7) A person does not commit an offence against subsection (1) in relation to a control order or a registered corresponding control order by possessing a thing the person is prohibited from possessing under the order unless the person is in possession of the thing after the end of the following period—
  - (a) if the person is prohibited from possessing the thing under the control order as originally made—the period of 24 hours after the order takes effect;
  - (b) if the person is prohibited from possessing the thing because of a variation of the order—the period of 24 hours after the variation takes effect.

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## 25 Initial power to search and seize particular things

- (1) The power under this section—
  - (a) may only be exercised in relation to a particular controlled person within 7 days after the control order or the registered corresponding control order is served on the person; and
  - (b) may only be exercised once for the premises occupied by a controlled person or, if the person occupies 2 or more premises, once for each of the premises.
- (2) A police officer, with the help, and using the force, that is reasonably necessary, may—
  - (a) enter premises occupied by the controlled person; and
  - (b) search for and seize anything that the controlled person is prohibited from possessing under the order.
- (3) Before first entering the premises, the police officer must do, or make a reasonable attempt to do, the following—
  - (a) locate the controlled person;
  - (b) identify herself or himself to the controlled person;
  - (c) tell the controlled person—
    - (i) the purpose of the entry; and
    - (ii) that the police officer is permitted under this Act to enter the premises without the person's consent; and
    - (iii) about the police officer's powers under this section;
  - (d) give the person an opportunity to allow the police officer to enter the premises without using force.
- (4) In this section—

*enter* includes re-enter.

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## **26 Things seized within the first 24 hours**

- (1) This section applies if—
  - (a) a person possesses a thing the person is prohibited from possessing under a control order or registered corresponding control order; and
  - (b) a period of 24 hours has not passed since the order was served on the person.
- (2) A police officer may seize the thing under section 25.
- (3) The seized thing must be—
  - (a) kept in the commissioner's custody while the order remains in effect; and
  - (b) returned to the person when the control order stops having effect, if the person is entitled to lawful possession of the thing at that time.

# **Part 4 Public safety orders**

## **Division 1 Preliminary**

### **27 Definitions for pt 4**

In this part—

*prescribed conditions* means the conditions imposed on a respondent in a public safety order mentioned in section 29.

*prescribed grounds* means the basis for making a public safety order under section 28.

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## 28 Prescribed grounds for making a public safety order

- (1) The court may make a public safety order for a person or group of persons (the *respondent*) if the court is satisfied that—
  - (a) the presence of the respondent at premises or an event, or within an area, poses a serious risk to public safety or security; and
  - (b) making the order is appropriate in the circumstances.
- (2) In considering whether or not to make an order, the court must have regard to the following—
  - (a) the respondent's criminal history and any previous behaviour of the respondent that posed a serious risk to public safety or security;
  - (b) whether the respondent—
    - (i) is or has been a member of a criminal organisation; or
    - (ii) is or has been the subject of a control order or registered corresponding control order; or
    - (iii) associates, or has associated, with a member of a criminal organisation or a person who is the subject of a control order or registered corresponding control order;
  - (c) if advocacy, protest, dissent or industrial action is the likely reason for the respondent being present at the relevant premises or event or within the relevant area—the public interest in maintaining freedom to participate in those activities;
  - (d) whether the degree of risk involved justifies the imposition of the conditions to be stated in the order, having regard, in particular, to any legitimate reason the respondent may have for being present at the relevant premises or event or within the relevant area;

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- (e) the extent to which making the order will reduce the risk to public safety or security or effective traffic management;
  - (f) anything else the court considers relevant.
- (3) In deciding whether a respondent satisfies a matter under subsection (1) or (2) in the case of a respondent that is a group of persons, the court must consider the extent to which members of the group, as opposed to every member of the group, satisfy the matter.

## **29 Prescribed conditions of a public safety order**

- (1) In making a public safety order for a respondent, the court may impose the conditions on the respondent that the court considers necessary having regard to the prescribed grounds for making the order.
- (2) Without limiting subsection (1), a condition may prohibit the respondent from doing or attempting to do any of the following while the order is in force—
  - (a) entering or remaining in stated premises;
  - (b) attending or remaining at a stated event;
  - (c) entering or remaining in a stated area;
  - (d) doing a stated thing in a stated area.
- (3) Also, it is a condition of the order that the respondent must comply with every reasonable direction given by a police officer for the purposes of the order.
- (4) Without limiting subsection (3), the condition under the subsection is to be stated in the order.
- (5) The court may impose a condition on the order about the use by a police officer of the power under section 37.
- (6) A public safety order does not stop the respondent from entering the respondent's principal place of residence.
- (7) In this section—



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*respondent*, if the respondent to the application was a group of persons, includes any 1 or more of those persons identified in any way in the order.

### **30 Peaceful Assembly Act 1992 unaffected**

This part, or an order under this part, does not affect the *Peaceful Assembly Act 1992*.

## **Division 2 Making, variation and revocation**

### **31 Commissioner may apply for public safety order**

- (1) The commissioner may apply to the court for, or for the extension of, a public safety order for a person or a group of persons (the *respondent*).
- (2) A reference in this division to a respondent, if the respondent is a group of persons, is a reference to the members generally of the group.
- (3) The application must state the following—
  - (a) details sufficient to identify the respondent;
  - (b) the grounds on which the order is sought, being prescribed grounds to the extent they are relevant to the application;
  - (c) the information supporting the grounds;
  - (d) details of any previous application for an order for the respondent and the outcome of the application;
  - (e) that the respondent may file a response to the application under section 32.
- (4) The application must be accompanied by any affidavit the commissioner intends to rely on at the hearing of the application.
- (5) The application, with any accompanying affidavit, must—
  - (a) be filed; and

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- (b) on filing, state as the return date a day within 35 days after the filing; and
  - (c) after being filed, be served by the commissioner on the respondent—
    - (i) by personal service within 7 business days after the filing; or
    - (ii) if personal service is not practicable or the respondent is a group of persons, by public notice within 10 days after filing.
- (6) The commissioner must give copies of the application and any supporting material to the COPIM under arrangements decided by the COPIM.

*Note for subsection (6)—*

Under section 88(2), this requirement does not apply to particular material about informants.

## **32 Response by respondent**

- (1) The respondent may file a response to the application.
- (2) The response must state—
  - (a) the facts relied on by the respondent in response to the application; and
  - (b) the nature of the response in relation to each order sought by the applicant.
- (3) The respondent must file the response at least 5 business days before the return date.
- (4) The response must be accompanied by any affidavit the respondent intends to rely on at the hearing of the application.
- (5) If the respondent is a group of persons, the response must be filed by a nominee mentioned in section 108.

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### **33 Court may make public safety order**

- (1) The court may make a public safety order for the respondent if the court is satisfied that prescribed grounds exist to make the order.
- (2) The public safety order may be made whether or not the respondent is present or makes submissions.

*Note for subsection (2)—*

See section 31, which imposes service requirements, and section 35, which provides for making an order in urgent circumstances without notifying the respondent.

### **34 Duration of public safety order**

- (1) A public safety order made by the court takes effect—
  - (a) when it is made, if the respondent or a legal or other representative of the respondent is present at the hearing of the application; or
  - (b) if paragraph (a) does not apply—when the commissioner serves the order on the respondent.
- (2) Service under subsection (1)(b) must be by personal service or, if personal service is not practicable or the respondent is a group of persons, by public notice.
- (3) A public safety order made by the court remains in force until the earlier of the following—
  - (a) the order is revoked;
  - (b) the date stated in the order, which must not be more than 6 months after the order is made.

### **35 Applications without notice**

- (1) Despite sections 31(5)(c) and 32, the commissioner may apply to the court for, or for the extension of, a public safety order under section 31 without notice to the respondent.

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- (2) The commissioner may only apply under subsection (1) if the commissioner considers it is necessary to do so because of urgent circumstances.
- (3) The application may be made by telephone, subject to any practice directions.
- (4) The court must consider the application.
- (5) However, the court may, at any time before finally deciding the application, direct the commissioner to give notice of the application to the respondent in the way, and within the time, the court considers appropriate.
- (6) An order made under this section without notice of the application being given to the respondent remains in force only for a period of 24 hours unless the court directs otherwise.
- (7) The court may revoke the order at any time.
- (8) Subsection (6) does not prevent the court granting an extension or further extension of the order, or granting another order for the same circumstances, if an application for the extension or other order is made under this part, other than this section.
- (9) Despite section 67, the court may decide an application under this section before deciding an application under part 6 that particular information, on which the commissioner relies for the application under this section, is criminal intelligence.

### **36 Revocation or variation of public safety order made by court**

- (1) The court, at any time on application by the commissioner, may vary or revoke a public safety order.
- (2) An application must state—
  - (a) the grounds on which the variation or revocation is sought; and
  - (b) the information supporting the grounds on which variation or revocation is sought.

- (3) The application must be accompanied by any affidavit the commissioner intends to rely on at the hearing of the application.
- (4) The commissioner must serve a copy of the application, with any accompanying affidavit, on the respondent.
- (5) The commissioner must serve a copy of the variation or revocation order on the respondent as soon as reasonably practicable after it is made.
- (6) Service of the application or order must be by personal service or, if personal service is not practicable or the respondent is a group of persons, by public notice.
- (7) The commissioner must give copies of the application and any supporting material to the COPIM under arrangements decided by the COPIM.

*Note for subsection (7)—*

Under section 88(2), this requirement does not apply to particular material about informants.

## **Division 3                      Enforcement**

### **37           Powers for premises, event or area in relation to a public safety order**

- (1) A police officer may, without a warrant, enter a public safety place to search for a person for whom a public safety order has been made for the purpose of serving a copy of the order on the person.
- (2) A police officer may, without a warrant, stop, detain and search a vehicle approaching, in or leaving a public safety place—
  - (a) to search for a person for whom a public safety order has been made; or
  - (b) to serve a copy of a public safety order on a person for whom it has been made.

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- (3) A police officer may—
- (a) stop a person or group of persons for whom a public safety order has been made from entering a public safety place; or
  - (b) remove a person or group of persons for whom a public safety order has been made from a public safety place.
- (4) However, before exercising a power under subsection (3), a police officer must, if it is reasonably practicable to do so, first give the person against whom the power is to be exercised a direction—
- (a) for subsection (3)(a)—not to enter the public safety place; or
  - (b) for subsection (3)(b)—to leave the public safety place.
- (5) A police officer may give any direction and use force that is reasonably necessary to exercise a power under subsection (1), (2) or (3).
- (6) A person must not contravene a direction given by a police officer under this section, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

*Note—*

See the *Police Powers and Responsibilities Act 2000*, section 790, for the offence of obstructing or assaulting a police officer in the performance of the officer's duties.

- (7) In this section—
- public safety place*** means—
- (a) premises or an area to which a public safety order applies; or
  - (b) a place where an event is taking place to which a public safety order applies.

### 38 Contravention of public safety order

- (1) A person must not knowingly contravene a public safety order made for the person or a group of persons of which the person is member.

Maximum penalty—1 year's imprisonment.

- (2) A person knowingly contravenes a public safety order if the person does an act or makes an omission the person knows, or ought reasonably to know, is a contravention of the public safety order.

## Part 5 Fortification removal orders

### Division 1 Preliminary

#### 39 Definitions for pt 5

In this part—

*enforcement action* see section 50(1).

*enforcer* see section 50(1).

*fortification* means any structure or device that, alone or as a system or part of a system, is designed to stop or hinder, or to provide any other form of step against, uninvited entry to premises.

*Example of a device that may be part of a system—*

a video surveillance system, also called security camera surveillance

*fortified premises*, for a provision about—

- (a) an application for a fortification removal order—means the premises on which the fortification the subject of the application exists; or
- (b) a fortification removal order—means the premises the subject of the order.

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*remove*, for a provision about a fortification, includes demolishing the fortification.

*responsible person*, for a provision about a fortification removal order or the taking of enforcement action, means—

- (a) the respondent; and
- (b) any other person who—
  - (i) participated in causing the fortifications to be made; and
  - (ii) was the occupier of the fortified premises when the order was made.

#### **40 Relationship with Planning Act and development approvals**

- (1) This section applies for the carrying out of development as defined under the Planning Act—
  - (a) authorised under a fortification removal order; or
  - (b) that is enforcement action.
- (2) If, other than for this subsection, the development would be any of the following under the Planning Act it is taken to be exempt development under that Act—
  - (a) assessable development;
  - (b) development requiring compliance assessment;
  - (c) prohibited development.
- (3) The development may be carried out despite any development approval under the Planning Act.



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## Division 2                      Applying for and obtaining fortification removal order

### 41            Commissioner may apply for order

- (1) The commissioner may apply to the court for a fortification removal order for a person or organisation (the *respondent*) in relation to a fortification (the *fortification*).
- (2) The person dealt with as the respondent must be a person or organisation who is, alone or with others, an occupier of the fortified premises.
- (3) The application must state the following—
  - (a) details sufficient to identify the respondent, the fortification and the fortified premises;
  - (b) the grounds on which the order is sought;
  - (c) the information supporting the grounds;
  - (d) details of any previous application relating to the respondent, the fortification or the fortified premises;
  - (e) that the respondent may, under section 42, file a response to the application.
- (4) The application must be accompanied by any affidavit the commissioner intends to rely on at the hearing of the application.
- (5) The application, with any accompanying affidavit, must—
  - (a) be filed; and
  - (b) on filing, state as the return date a day within 35 days after the filing; and
  - (c) after being filed, be served by the commissioner on the respondent—
    - (i) by personal service within 7 business days after the filing; or

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- (ii) if personal service is not practicable, or if the respondent is an unincorporated association, by public notice within 10 days after filing.
- (6) The commissioner must give copies of the application and any supporting material to the COPIM under arrangements decided by the COPIM.

*Note for subsection (6)—*

Under section 88(2), this requirement does not apply to particular material about informants.

## **42 Response by respondent**

- (1) The respondent may file a response to the application.
- (2) The response must state—
  - (a) the facts relied on by the respondent in response to the application; and
  - (b) the nature of the response in relation to each order sought by the applicant.
- (3) The respondent must file the response at least 5 business days before the return date.
- (4) The response must be accompanied by any affidavit the respondent intends to rely on at the hearing of the application.

## **43 Court may make order**

- (1) The court may make a fortification removal order for the respondent in relation to the fortification if the court is satisfied of all of the following matters—
  - (a) the fortified premises have a fortification;
  - (b) the fortified premises are either—
    - (i) being, have been or are likely to be, used for or in connection with the commission of a serious criminal offence, to conceal evidence of, or to keep proceeds of, a serious criminal offence; or

- 
- (ii) owned or habitually occupied or used by a criminal organisation or a member, prospective member or an associate of a criminal organisation;
  - (c) the extent or nature of the fortification is excessive for any lawful use of that type of premises.
- (2) The order may be made whether or not the respondent is present or makes submissions.

*Note—*

See section 41(5) for service requirements and also section 47(2).

#### **44 Inspection period must be fixed**

- (1) If the court makes the fortification removal order, the court must fix a period for inspection of the fortified premises after the order takes effect.
- (2) During the inspection period, the commissioner or a police officer authorised by the commissioner may, with the help, and using the force, that is reasonably necessary, enter and re-enter the fortified premises from time to time to confirm whether or not—
  - (a) the order has not been complied with; and
  - (b) any other fortifications have been erected on the fortified premises.
- (3) For subsection (2), sections 51 and 52 apply, with necessary changes, as if a reference in the sections to the taking of enforcement action were a reference to inspecting the premises for the purposes under subsection (2).

#### **45 Ancillary orders about enforcement**

- (1) The court may include in the fortification removal order any other order (an *enforcement order*) about the enforcement of the fortification removal order that the court thinks fit.

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*Example of a possible enforcement order—*

The fortified premises is used as a principal place of residence. The court might also make an order about what hours enforcement action relating to the fortification removal order may be taken.

- (2) In deciding whether to make an enforcement order, the court may take into account—
- (a) whether the fortified premises or other premises near to it are used as a principal place of residence; and
  - (b) the interests of any occupiers of the premises or nearby premises who are not the respondent and who may be affected by the enforcement of the order; and
  - (c) any relevant noise standards under the *Environmental Protection Act 1994*.

*Note—*

See also section 53.

- (3) An enforcement order may add to or limit the powers under division 4.

## **46 Content of order**

- (1) The fortification removal order must state—
- (a) the fortification and the fortified premises; and
  - (b) the time or the period within which the fortification must be removed or modified; and
  - (c) if the order requires the fortification to be modified—details of the modification; and
  - (d) the inspection period fixed under section 44 and the powers under section 44(2); and
  - (e) when, under section 47, the order takes effect.
- (2) Also, unless the terms of the order otherwise provide, the order must state that, under division 4, the commissioner or a police officer authorised by the commissioner has power to enforce the order if—
- (a) the order has taken effect; and

- (b) the period within which to file an appeal about the order has ended and—
  - (i) no appeal by the respondent about the order has been filed; or
  - (ii) any appeal by the respondent about the order has ended; and
- (c) the order has not been complied with.

#### **47 When order takes effect**

- (1) The fortification removal order takes effect when it is made if the respondent or a legal or other representative of the respondent was present at the hearing of the application.
- (2) Otherwise, the order takes effect when the commissioner serves the order on the respondent.
- (3) Service under subsection (2) must be—
  - (a) by personal service; or
  - (b) if personal service is not practicable or the respondent is an unincorporated association, by public notice.

### **Division 3 Stays**

#### **48 Automatic stay on appeal**

The filing of a notice of appeal about a fortification removal order stays the operation of the order until the appeal is withdrawn or dismissed.

## **Division 4            Enforcement**

### **Subdivision 1        Preliminary**

#### **49        Application of div 4**

This division applies if—

- (a) a fortification removal order has taken effect; and
- (b) the period within which to file an appeal by the respondent about the order has ended and—
  - (i) no appeal by the respondent about the order has been filed; or
  - (ii) any appeal about the order has been withdrawn or dismissed; and
- (c) the order has not been complied with.

### **Subdivision 2        Enforcement of order**

#### **50        General enforcement powers**

- (1) The commissioner or a police officer authorised by the commissioner (each an *enforcer*) may cause the fortification the subject of the fortification removal order to be removed or modified to the extent required under the order (*enforcement action*).
- (2) An enforcer may, for the taking of the enforcement action, do all or any of the following—
  - (a) enter the fortified premises;
  - (b) remain on the fortified premises for the time necessary to achieve the removal or modification;
  - (c) leave and re-enter the fortified premises from time to time;
  - (d) obtain expert or technical advice;

- (e) take into or onto the fortified premises any persons, equipment and materials the enforcer reasonably requires to take the action;
  - (f) require the occupier of the fortified premises, or a person in or on the premises, to give the enforcer reasonable help to take the action or exercise the powers under paragraphs (a) to (e);
  - (g) remove any person from the fortified premises if it is necessary or desirable to do so to take the action.
- (3) An enforcer may use force that is reasonably necessary to remove a person under subsection (2)(g).
- (4) The powers under this section—
- (a) may, subject to sections 51 and 52 and the terms of the order, be exercised at any time and as often as is required to achieve the removal or modification; and
  - (b) do not limit or otherwise affect any enforcement powers under the order.

## **51 Procedure for entry**

- (1) This section applies if—
- (a) an enforcer is intending to enter the fortified premises for the taking of the enforcement action; and
  - (b) a person who is the respondent or an occupier of the fortified premises is present at the premises.
- (2) Before entering the fortified premises, the enforcer must do, or make a reasonable attempt to do, the following—
- (a) identify herself or himself to the person;
  - (b) tell the person—
    - (i) the purpose of the entry; and
    - (ii) that the enforcer is permitted under this Act to enter the fortified premises without the person's consent; and

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- (iii) about any ancillary powers the enforcer thinks may need to be exercised to take the enforcement action;
  - (c) give the person an opportunity to allow the enforcer to enter the fortified premises immediately without using force.
- (3) However, subsection (2) does not apply if the fortification makes it impracticable to tell the occupier anything.
- (4) In this section—
- ancillary powers* means—
- (a) the powers under section 50(2)(d) to (g) as affected by the fortification removal order; and
  - (b) any powers under the fortification removal order.

## **52 Requirements for entry to buildings on premises**

- (1) An enforcer or a person authorised by an enforcer may enter a building on the premises only if the enforcer reasonably believes the entry is needed to take the enforcement action.
- (2) Also, a person mentioned in subsection (1) may enter a part of the building where a person resides only if—
  - (a) the enforcer reasonably believes the fortification consists of or includes that part; and
  - (b) entry to the part is needed to take the enforcement action.

## **53 Exemption from compliance with noise standards**

- (1) Noise made or caused to be made during the taking of the enforcement action does not constitute an offence against the *Environmental Protection Act 1994*, section 440Q.
- (2) However, subsection (1) does not apply if the enforcement action is taken at a time prohibited under the fortification removal order.



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### Subdivision 3 Powers after taking enforcement action

#### 54 Forfeiture of removed fortification

- (1) The commissioner may forfeit to the State any fortification removed in taking the enforcement action.
- (2) On the forfeiture, the removed fortification—
  - (a) becomes the property of the State; and
  - (b) may, subject to any direction given under the *Police Service Administration Act 1990*, section 4.6, be dealt with by the commissioner as the commissioner considers appropriate.
- (3) Without limiting subsection (2), the commissioner may destroy or dispose of the removed fortification.
- (4) Subsections (5) and (6) apply if the commissioner proposes to sell the removed fortification.
- (5) The sale must be by auction.
- (6) The proceeds of the sale must be applied in the following order—
  - (a) first, in meeting the expenses of the sale;
  - (b) second, in meeting any reasonable costs incurred in—
    - (i) taking the enforcement action; and
    - (ii) storing the removed fortification; and
    - (iii) doing anything necessary to prepare them for sale;
  - (c) third, to the consolidated fund.
- (7) An amount applied under subsection (6)(c) is a *net proceed* from the fortification.

#### 55 Recovery of enforcement costs

- (1) The State may recover from a responsible person as a debt any reasonable costs incurred in taking the enforcement action.

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- (2) However, if—
- (a) the fortification the subject of the enforcement action were removed in taking the action; and
  - (b) the removed fortification has been forfeited to the State under section 54;
- any net proceed from the fortification must be set off against the amount of the debt.

## Division 5                      Miscellaneous provisions

### 56            **Hindering removal or modification of a fortification**

- (1) A person who does an act or makes an omission with intent to hinder any of the following commits a crime—
- (a) the removal or modification of a fortification under a fortification removal order;
  - (b) the taking of enforcement action.

Maximum penalty—5 years imprisonment.

- (2) In this section—
- fortification removal order* only includes a fortification removal order if—
- (a) the order has taken effect; and
  - (b) the period within which to file an appeal about the order has ended and—
    - (i) no appeal by the respondent about the order has been filed; or
    - (ii) any appeal by the respondent about the order has been withdrawn or dismissed.

*hinder* includes prevent, obstruct, interfere with and delay.

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**57 Compensation from State to particular owners**

- (1) This section applies if—
  - (a) a fortification has been removed or modified under a fortification removal order or because of the taking of enforcement action; and
  - (b) the owner of the fortified premises is someone other than a responsible person.
- (2) The owner may claim compensation from the State for any reasonable costs incurred for all or any of the following—
  - (a) repairing any damage to the fortified premises because of the removal or modification;
  - (b) restoring the fortified premises to the condition they were in before the fortification was made.
- (3) The compensation may be claimed and ordered in a proceeding brought in a court of competent jurisdiction.
- (4) A court may order compensation in a proceeding to be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.
- (5) A regulation may prescribe matters that may, or must, be taken into account by the court when considering whether it is just to make the order mentioned subsection (4).

**58 Recovery of paid compensation from responsible person**

- (1) This section applies if—
  - (a) an owner mentioned in section 57 has made a claim against the State under that section; and
  - (b) the State has paid the owner an amount for the claim.
- (2) The State may recover the amount from any responsible person as a debt.
- (3) However, any net proceed from the relevant fortification that has not already been set off under section 55(2) must be set off against the amount.

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- (4) For this section it does not matter—
  - (a) whether the amount was paid because of a judgment in a proceeding for the claim or under a compromise of the claim; or
  - (b) that the responsible person was not a party to the proceeding or compromise.

## Part 6 Criminal intelligence

### Division 1 Preliminary

#### 59 What is *criminal intelligence*

- (1) *Criminal intelligence* is information relating to actual or suspected criminal activity, whether in the State or elsewhere, the disclosure of which could reasonably be expected to—
  - (a) prejudice a criminal investigation; or
  - (b) enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement; or
  - (c) endanger a person's life or physical safety.
- (2) Criminal intelligence may be information that the commissioner has obtained through the police service or from an external agency.

#### 59A Other definitions for pt 6

In this part—

*criminal intelligence application* means an application mentioned in section 63(1).

*external agency* means any of the following—

- 
- (a) the Crime and Misconduct Commission;
  - (b) the Australian Federal Police;
  - (c) a police force or service of another State;
  - (d) the chief executive (corrective services);
  - (e) an officer of another State with powers and functions substantially corresponding to the powers and functions of the chief executive (corrective services) under the *Corrective Services Act 2006*;
  - (f) another entity—
    - (i) established under a law of another jurisdiction, including a jurisdiction outside Australia; and
    - (ii) with functions that include investigating or inquiring into criminal conduct, misconduct or corruption (whether or not the functions are stated in the law mentioned in subparagraph (i)); and
    - (iii) declared by regulation to be an external agency for this Act.

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

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

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

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

- (a) if the commissioner obtained the information from an external agency—that agency; or

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- (b) otherwise—the police service.

## **60 Objects of pt 6**

The objects of this part are to—

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

*Note—*

For the prohibited disclosures, see section 82.

## **61 Affidavit contents**

An affidavit relied on or to be relied on by the commissioner in an application under this part may contain statements based on information and belief if the person making the affidavit states the sources of the information and the grounds for the belief.

## **62 Part subject to COPIM provisions**

This part applies subject to part 7.

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## Division 2                      Declaration of criminal intelligence

### 63            Applying for declaration

- (1) The commissioner may apply to the court for a declaration that particular information is criminal intelligence (*declared criminal intelligence*).
- (2) However, the commissioner may make the application only if the commissioner reasonably believes the information is criminal intelligence.
- (3) The application must—
  - (a) identify the information; and
  - (b) state the relevant agency for the information; and
  - (c) state—
    - (i) that the commissioner seeks a declaration that the information is criminal intelligence; and
    - (ii) the grounds on which the declaration is sought; and
  - (d) include an explanation of—
    - (i) the relevant agency's intelligence assessment system; and
    - (ii) the assessment of the information that was made under the system.
- (4) An affidavit to be relied on by the commissioner at the hearing must be filed with the application.
- (5) If any of the information has been provided by an informant, the application and affidavits and other material filed with the application need not include any identifying information about the informant and identifying information about the informant can not otherwise be required to be given to the court.
- (6) The commissioner must give copies of the application and any supporting material to the COPIM under arrangements decided by the COPIM.

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*Note—*

Under section 88(2), this requirement does not apply to particular material about informants.

(7) In this section—

***intelligence assessment system*** means a system for assessing information relating to actual or suspected criminal activity according to—

- (a) the reliability of the source of the information; and
- (b) the validity of the information.

#### **64 Additional affidavit if informant relied on**

- (1) This section applies if the information mentioned in section 63(1) (the ***relevant intelligence***) was provided to the relevant agency by an informant.
- (2) The informant can not be called or otherwise required to give evidence.
- (3) The commissioner must, at any time before the hearing of the application, file an affidavit by an officer of the relevant agency.
- (4) The affidavit must—
  - (a) state—
    - (i) the relevant agency; and
    - (ii) the officer's position at the relevant agency; and
  - (b) state that the officer reasonably believes, and has made all reasonable efforts to ensure, the officer has full knowledge of—
    - (i) the information held by the relevant agency about the informant; and
    - (ii) the intelligence held by the relevant agency that was provided by the informant; and
  - (c) state that the officer reasonably believes the relevant agency has made all reasonable enquiries about the



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

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an allegation of professional misconduct against the informant—

- (a) need not state the date of the conviction or charge or date on which the offence was committed or is alleged to have been committed or date on which the misconduct happened or is alleged to have happened; but
- (b) if it does not state a date as mentioned in paragraph (a), must state the time of the conviction, charge, offence, alleged offence, misconduct or alleged misconduct as being in a stated period of not more than 7 years.

*Examples for subsections (5) to (7)—*

- 1 An affidavit may describe an informant's criminal history as—
    - 'for the period 2000 to 2006—2 property offences involving dishonesty and 1 offence of a sexual nature; and
    - for the period 2007 to 2011—1 offence involving violence.'
  - 2 An affidavit may state that the information held by the relevant agency is that there has been 1 allegation of professional misconduct made against the informant and that the alleged misconduct was during the period 2000 to 2006.
- (8) Other than information about the informant's criminal history or an allegation of professional misconduct against the informant given in the affidavit under subsections (4) to (7), information about the informant's criminal history or an allegation of professional misconduct against the informant can not be required to be given to the court.
- (9) Subsection (8) does not prevent further information being given to the court other than under a requirement.
- (10) Also, the requirement under subsection (4)(d)(i) to state the informant's full criminal history applies only to the extent of the information held by the relevant agency if—
- (a) the agency is an external agency; and
  - (b) the affidavit states that the officer believes—
    - (i) the agency might not hold all the information comprising the informant's criminal history; and

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- (ii) an officer of the agency—
    - (A) could not lawfully obtain further information about the informant’s criminal history; or
    - (B) could not obtain further information about the informant’s criminal history without disclosing the identity of the informant.

## 65 Registrar to secure information

- (1) The registrar must seal the following documents and store them in a secure place immediately upon their filing—
  - (a) the application;
  - (b) any document filed in support of the application;
  - (c) any affidavit filed under section 64;
  - (d) any order made for the application.
- (2) The *Public Records Act 2002* does not apply to the documents.
- (3) Unless the court otherwise orders, the documents must not be made available for inspection by anyone other than—
  - (a) the registrar; or
  - (b) the presiding judge or judge’s associate; or
  - (c) the COPIM; or
  - (d) a reviewer under section 131.
- (4) However, the COPIM can not inspect any part of the documents to the extent they disclose any identifying information about an informant.
- (5) An order may be made under subsection (3) only if—
  - (a) the court considers access to the documents by the other person is needed to perform functions under this Act or the *Crime and Misconduct Act 2001*; and
  - (b) the court considers the access will not—
    - (i) prejudice any criminal investigation; or

- (ii) enable the discovery by further persons of the existence or identity of confidential sources of information relevant to law enforcement; or
    - (iii) endanger anyone's life or physical safety; and
  - (c) the court has given the other person a warning about the confidential nature of information contained in the documents and the unlawful disclosure offence.
- (6) The registrar may—
  - (a) make electronic copies of the documents mentioned in subsection (1)(a) to (c) on a storage device; and
  - (b) after the end day for the application—
    - (i) return the documents that have been copied to the commissioner; and
    - (ii) store the storage device, unconnected to any computer, in a secure place.
- (7) This section applies even if the application is withdrawn or dismissed.
- (8) If the criminal intelligence declaration applied for is made, this section ceases to apply if the declaration is revoked.
- (9) In this section—

***end day***, for the application, means—

  - (a) if the application ends before it is decided, the day the application ends; or
  - (b) if the application is decided—
    - (i) the last day on which an appeal may be made against the decision; or
    - (ii) if an appeal is made against the decision, the day the appeal ends.

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

**66 Hearing ex parte**

The court must consider the criminal intelligence application without notice of it having been given other than to the COPIM.

**67 Criminal intelligence application heard first**

- (1) If the commissioner relies on the information for a substantive application, the criminal intelligence application must be decided first.
- (2) Subsection (1) applies no matter when the applications were filed.

**68 Court warning about confidentiality**

Before hearing the criminal intelligence application, the court must give a warning about the confidential nature of the information and the unlawful disclosure offence.

**69 Requirements for transcript of hearing**

- (1) The warning required under section 68 must be recorded in bold print at the start of the transcript of the hearing.
- (2) Each page of the transcript must be watermarked with a warning directing the reader to the unlawful disclosure offence.

**70 Special closed hearing**

- (1) The hearing of the criminal intelligence application is a closed hearing to the extent provided under this section.
- (2) To ensure the hearing is closed, the court must exclude from it all persons or particular persons other than the following—
  - (a) the applicant;
  - (b) the applicant's legal and other representatives;
  - (c) the COPIM;

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- (d) any witness who may be called to give evidence under this part;
- (e) court staff necessary for the hearing.

## **71 Oral evidence by police officers and officers of external agencies**

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

## **72 Deciding application**

- (1) The court may declare that the information is criminal intelligence if the court is satisfied the information is criminal intelligence.
- (2) In exercising its discretion to declare information to be criminal intelligence, the court may have regard to whether matters mentioned in section 60(a)(i) to (iii) outweigh any unfairness to a respondent.
- (3) Subsection (2) does not limit the matters that the court may consider in exercising its discretion.

*Example—*

The court may take into consideration that, under section 64(10), the information about an informant's criminal history contained in an affidavit filed in the court may be incomplete.

- (4) If the information was provided to the relevant agency by an informant, the court may not declare that the information is criminal intelligence unless some or all of the information is supported in a material particular by other information before the court.

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- (5) The supporting information mentioned in subsection (4) may be other information before the court that is declared criminal intelligence or that is the subject of a criminal intelligence application.
  - (6) If the court is not satisfied information is criminal intelligence or proposes to exercise its discretion not to make the declaration, it must, before deciding the application, give the commissioner an opportunity to withdraw it.
  - (7) In this section—  
*respondent* means a respondent to any existing or possible substantive application in which the information mentioned in subsection (1) may be considered.

### **73 Duration of criminal intelligence declaration**

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

### **74 Revocation of criminal intelligence declaration**

- (1) The court, at any time on application by the commissioner, may revoke a criminal intelligence declaration.
- (2) The application must state—
  - (a) the grounds on which the revocation is sought; and
  - (b) the information supporting the grounds on which revocation is sought.
- (3) The application must be accompanied by any affidavit the commissioner intends to rely on at the hearing of the application.
- (4) The commissioner must give copies of the application and any supporting material to the COPIM under arrangements decided by the COPIM.

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*Note—*

Under section 88(2), this requirement does not apply to particular material about informants.

- (5) The court must consider the application without notice of it having been given other than to the COPIM.

## **Division 3                      Protection of declared criminal intelligence for substantive hearings**

### **75                      Application of div 3**

- (1) A *substantive application* is an application under this Act other than a criminal intelligence application.
- (2) This division applies if—
  - (a) a substantive application is filed; and
  - (b) any document filed with the application or filed in support of the application contains declared criminal intelligence.
- (3) If this division applies to a substantive application, this division applies as well as any other provision of this Act relating to the application.

### **76                      Additional matters if informant relied on**

- (1) This section applies if the declared criminal intelligence was provided to the relevant agency by an informant.
- (2) The informant can not be called or otherwise required to give evidence.
- (3) The commissioner must, at any time before the hearing of the substantive application, file an affidavit by an officer of the relevant agency complying with section 64(4) to (10).
- (4) The substantive application and affidavits and other material filed with the application need not include any identifying



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information about the informant and identifying information about the informant can not otherwise be required to be given to the court.

## **77 Registrar to secure intelligence**

- (1) If any of the following documents contain declared criminal intelligence the registrar must, immediately upon their filing, seal and store them in a secure place—
  - (a) any document filed with or in support of the application;
  - (b) any affidavit filed under section 76(3).
- (2) The *Public Records Act 2002* does not apply to the documents.
- (3) Unless the court otherwise orders, the documents must not be made available for inspection by anyone other than—
  - (a) the registrar; or
  - (b) the presiding judge or judge’s associate; or
  - (c) the COPIM; or
  - (d) a reviewer under section 131.
- (4) However, the COPIM can not inspect any part of the documents to the extent they disclose any identifying information about an informant.
- (5) An order may be made under subsection (3) only if—
  - (a) the court considers access to the documents by the other person is needed to perform functions under this Act or the *Crime and Misconduct Act 2001*; and
  - (b) the court considers the access will not—
    - (i) prejudice any criminal investigation; or
    - (ii) enable the discovery by further persons of the existence or identity of confidential sources of information relevant to law enforcement; or
    - (iii) endanger anyone’s life or physical safety; and

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- (c) the court has given the other person a warning about the confidential nature of information contained in the documents and the unlawful disclosure offence.
- (6) The registrar may—
  - (a) make electronic copies of the documents mentioned in subsection (1)(a) and (b) on a storage device; and
  - (b) after the end day for the application—
    - (i) return the documents that have been copied to the commissioner; and
    - (ii) store the storage device, unconnected to any computer, in a secure place.
- (7) This section applies even if the application is withdrawn or dismissed.
- (8) This section ceases to apply if the criminal intelligence declaration for the declared criminal intelligence is revoked.
- (9) In this section—

*end day*, for the application, means—

  - (a) if the application ends before it is decided, the day the application ends; or
  - (b) if the application is decided—
    - (i) the last day on which an appeal may be made against the decision; or
    - (ii) if an appeal is made against the decision, the day the appeal ends.

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

## **78 Special closed hearing for consideration of intelligence**

- (1) The court must order any part of the hearing of the substantive application in which the declared criminal intelligence is to be considered (the *relevant part*) to be a closed hearing to the extent provided under this section.

- (2) The court must exclude from the relevant part all persons or particular persons other than the following—
  - (a) the commissioner;
  - (b) a police officer;
  - (c) an officer of an external agency from which the commissioner obtained any of the declared criminal intelligence;
  - (d) the commissioner's legal representatives and nominees;
  - (e) the COPIM;
  - (f) court staff necessary for the hearing.
- (3) Before the relevant part starts, the court must give a warning about the confidential nature of the declared criminal intelligence and the unlawful disclosure offence.

## **79 Requirements for transcript**

- (1) The warning required under section 78(3) must be recorded in bold print at the start of the transcript of any part of the hearing that is closed under that section.
- (2) Each page of the part of the transcript must be watermarked with a warning directing the reader to the unlawful disclosure offence.

## **80 Oral evidence by police officers and officers of external agencies**

- (1) A police officer who is not an informant or an officer of an external agency who is not an informant may be—
  - (a) called at the hearing of the substantive application to give evidence including or about the declared criminal intelligence; and
  - (b) cross-examined by the court or the COPIM.

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- (2) However, no question may be asked of the officer or the COPIM that could lead to the disclosure of any identifying information about an informant.

## **81 Admissibility not affected by declaration**

To remove any doubt, it is declared that if, apart from the declaration, the document would be admitted into evidence, it must be admitted into evidence despite the declaration.

## **Division 4 Protection from unlawful disclosure**

### **82 Unlawful disclosure of criminal intelligence or information in informant affidavit**

- (1) This section applies to any of the following—
- (a) information that is or has ever been the subject of a criminal intelligence application;
  - (b) information mentioned in section 64(4) contained in an affidavit filed under section 64 or 76 (an *informant affidavit*);
  - (c) declared criminal intelligence the declaration for which has not been revoked.
- (2) A person must not disclose the information or intelligence unless the disclosure is—
- (a) made with lawful authority or excuse; or
  - (b) required under section 131; or
- Editor's note—*
- section 131 (Criminal intelligence given to reviewer)
- (c) made only to the extent necessary to perform the person's functions under or relating to this Act;
- Examples of functions under this Act—*
- carrying out a review of this Act under part 9, division 6

- 
- preparing a report under section 132 about a review of this Act
- (d) if the information is in an informant affidavit—by the informant the subject of the affidavit.
- Maximum penalty—85 penalty units or 1 year's imprisonment.
- (3) It is a defence to an offence against subsection (2) for the defendant to prove—
- (a) the information or intelligence was publicly available when the disclosure was made; or
  - (b) that when the disclosure was made the defendant had an honest and reasonable but mistaken belief that the information or intelligence was not criminal intelligence.
- (4) For subsection (3)(b), it is not reasonable for the defendant to hold the belief if the defendant received a warning under section 131(2) for the information or intelligence.

## **Part 7                      Criminal organisation public interest monitor**

### **Division 1                Appointment**

#### **83            Appointment of COPIM**

- (1) The Governor in Council may appoint a person as the criminal organisation public interest monitor (the *COPIM*).
- (2) The Governor in Council may, in an appointment, fix the terms and conditions of the appointment.
- (3) The COPIM is to be appointed under this Act and not under the *Public Service Act 2008*.

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- (4) Appointment as the COPIM under this Act does not prevent the appointee from—
  - (a) being appointed as the public interest monitor or a deputy public interest monitor under the *Police Powers and Responsibilities Act 2000* or the *Crime and Misconduct Act 2001*; or
  - (b) carrying out functions of a public interest monitor under an Act mentioned in paragraph (a) or another Act.

#### **84 Qualifications for appointment as COPIM**

- (1) A person is qualified for appointment as the COPIM if the person has served as, or is qualified for appointment as, a judge of—
  - (a) the Supreme Court of Queensland; or
  - (b) the Supreme Court of another State; or
  - (c) the High Court of Australia; or
  - (d) the Federal Court of Australia.
- (2) In deciding who to recommend to the Governor in Council for appointment as the COPIM, the Minister must give priority, among possible appointees who are otherwise equally qualified and suitable for appointment, to a retired judge.
- (3) A person may not be appointed as the COPIM if the person is any of the following or is a member of, or employed in or by or to help, any of the following—
  - (a) the Director of Public Prosecutions;
  - (b) the Office of the Director of Public Prosecutions;
  - (c) the Crime and Misconduct Commission;
  - (d) the police service;
  - (e) the Commissioner for Children and Young People and Child Guardian.

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## **85 Procedure before appointment as COPIM**

A person may be appointed or reappointed as the COPIM only if the Minister has—

- (a) advertised nationally calling for applications from suitably qualified persons to be considered for appointment; and
- (b) consulted with the parliamentary committee about—
  - (i) the process of selection for appointment; and
  - (ii) the appointment of the person as the COPIM; and
- (c) obtained and considered a report about the person's personal and professional background to the extent it is relevant to the person's suitability for appointment as the COPIM.

## **Division 2 Functions**

### **86 COPIM's functions**

The COPIM's functions are—

- (a) to monitor each application to the court for a criminal organisation order or the variation or revocation of a criminal organisation order; and
- (b) to monitor each criminal intelligence application; and
- (c) to test, and make submissions to the court about, the appropriateness and validity of the monitored application.

### **87 Performance of functions by another monitor if COPIM unavailable**

- (1) This section applies if, at the time of an application to a court, the COPIM is not available.
- (2) With the consent of the court and the commissioner, a monitor may perform the functions of the COPIM for the application.

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(3) This Act applies to the monitor, in relation to the performance of the COPIM's functions, as if the monitor were the COPIM.

(4) In this section—

*monitor* means the public interest monitor or a deputy public interest monitor under the *Police Powers and Responsibilities Act 2000* or the *Crime and Misconduct Act 2001*.

## **88 Material to be given to COPIM**

(1) At a hearing for an application at which the COPIM appears, the applicant must give to the COPIM as soon as reasonably practicable all material given by the applicant to the court.

(2) However, a requirement under this Act to give material to the COPIM does not apply to material to the extent it discloses any identifying information about the informant.

(3) Material given to the COPIM may refer to an informant by way of a unique identifier.

(4) The COPIM must—

(a) store the material in a secure place; and

(b) return the material to the applicant after completing the report under section 92 for the period in which the application was made.

(5) A COPIM is entitled to access to a record, or to a transcript of a record, of a hearing at which the COPIM appears.

## **89 Appearance and role of COPIM at hearing**

(1) This section applies to a hearing for an application at which the COPIM appears.

(2) The COPIM may—

(a) for the purpose of testing the appropriateness and validity of the application—

(i) present questions for the applicant to answer; or

(ii) examine or cross-examine a witness; or



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- (b) make submissions to the court about the appropriateness of granting the application.
  - (3) However, the COPIM must not make a submission to the court while a respondent or a legal representative of a respondent is present.
  - (4) Also, the court may, in its discretion, exclude the COPIM from the hearing while a respondent or a legal representative of a respondent is present.
  - (5) In this section—  
*present* includes present by way of an audiovisual link or audio link.

## Division 3                      Miscellaneous

### 90            **Restrictions on legal practice during or after appointment as COPIM**

- (1) A person who is or was the COPIM (the *first person*) must not act as a lawyer for—
  - (a) an organisation if—
    - (i) the organisation is a criminal organisation; or
    - (ii) the organisation is or was a respondent to a relevant application and the first person appeared as the COPIM at the hearing for the application; or
    - (iii) the first person obtained criminal intelligence about the organisation because of the first person's appointment as the COPIM; or
  - (b) an individual if—
    - (i) the individual is or was a respondent to a relevant application and the first person appeared as the COPIM at the hearing for the application; or
    - (ii) the first person obtained criminal intelligence about the individual because of the first person's appointment as the COPIM; or

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- (iii) the first person knows, or ought reasonably to know, that the individual is or was a member of an organisation while the organisation is or was an organisation mentioned in paragraph (a); or
  - (c) a person who the first person knows, or ought reasonably to know, has been convicted of an offence against this Act.
- (2) A failure by a lawyer to comply with subsection (1) is capable of constituting unsatisfactory professional conduct or professional misconduct under the *Legal Profession Act 2007*.
- (3) In this section—  
*relevant application* means an application mentioned in section 86.

## 91 Functions of parliamentary committee

- (1) The parliamentary committee has the following functions—
  - (a) to monitor and review the performance of the COPIM's functions under this Act;
  - (b) to report to the Legislative Assembly, commenting as it considers appropriate, on any matter about the COPIM the committee considers should be brought to the Assembly's attention;
  - (c) to examine each annual report tabled in the Legislative Assembly under this Act.
- (2) However, the committee must not be given access to any criminal intelligence.

## 92 Annual report

- (1) As soon as is reasonably practicable after the end of each financial year, but within 4 months after the end of the financial year, the COPIM must prepare and give to the Minister a written report about the performance of the COPIM's functions under this Act during the financial year.

- (2) The report must not include criminal intelligence.
- (3) The report may include recommendations.
- (4) The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving the report.

## Part 8 Corresponding orders

### 93 Application for registration of a corresponding order in Queensland

- (1) The commissioner may apply to the registrar for the registration of a corresponding order.
- (2) The application must be accompanied by—
  - (a) an affidavit including or accompanied by the following—
    - (i) a copy of the corresponding order;
    - (ii) enough information to enable the registrar to find that the order is a corresponding order that is in force; and
  - (b) any other affidavit the commissioner intends to rely on at the hearing of the application.
- (3) If the application relates to a corresponding control order, the application must state—
  - (a) whether the commissioner believes it is necessary for the corresponding control order to be adapted or modified for its effective operation in the State; and
  - (b) if so, the details of the adaptation or modification that the commissioner believes to be necessary.

*Example—*

A condition imposed on the respondent under a corresponding control order is expressed in terms of legislation of the State in which the order

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was made. The application may state that the commissioner believes it is necessary for the order to be modified to refer to Queensland legislation.

## **94 Registration of a corresponding order**

- (1) This section applies if the registrar is satisfied that—
  - (a) the corresponding order is in force; and
  - (b) the corresponding order was served, or was taken to be served, on the organisation, person or group of persons against whom it was made (the *respondent*) under the law of the jurisdiction where the order was made.
- (2) Subject to section 95, the registrar must register the corresponding order, whether or not the respondent is given notice of the application to the registrar.
- (3) A registered corresponding order is registered for the period during which the corresponding order, as originally made, is in force.
- (4) A regulation may—
  - (a) prescribe the way the registrar is to register a corresponding order or a varied corresponding control order; and
  - (b) provide for the keeping of the register and access to it.

## **95 Referral of corresponding control order to court for adaptation or modification**

- (1) This section applies if the application is for the registration of a corresponding control order and—
  - (a) under section 93(3)(b), the application states an adaptation or modification that the commissioner believes to be necessary for the effective operation of the order in the State; or
  - (b) the registrar believes it is necessary for the corresponding control order to be adapted or modified for its effective operation in the State.

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- (2) The registrar must refer the corresponding control order to the court for adaptation or modification.
  - (3) The commissioner must serve a copy of the application for registration of the corresponding control order, with any accompanying affidavit, and an appearance notice, on the respondent.
  - (4) Service must be—
    - (a) by personal service; or
    - (b) if personal service is not practicable, by public notice.
  - (5) The application may be heard in the respondent's absence if the court is satisfied a copy of the application and an appearance notice were served on the respondent under subsections (3) and (4).
  - (6) However, the court may, at any time before deciding the application, direct the commissioner to give a further appearance notice to the respondent.
  - (7) The court may vary the corresponding control order for the purposes of its registration by adapting or modifying it in a way the court considers necessary or desirable for its effective operation in the State.
  - (8) For varying the corresponding control order as mentioned in subsection (7), the court must consider—
    - (a) anything that could be considered by the court if the application were for a control order under this Act; and
    - (b) any changes in the respondent's circumstances since the corresponding control order was made.
  - (9) The registrar must register the corresponding control order as varied by the court.
  - (10) In this section—

***appearance notice*** means a notice in the approved form stating the following in relation to a corresponding control order—

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- (a) that an application for the registration of the corresponding control order has been referred to the court;
- (b) when and where the application is to be heard;
- (c) that the respondent is required to appear at the hearing;
- (d) that the court may register the corresponding control order, or the corresponding control order as varied by the court, in the respondent's absence if the respondent fails to appear at the hearing.

*Note—*

This section and section 94 do not provide for a role for the COPIM due to the limited nature of the power to register, or to adapt or modify and register, the corresponding order.

## **96 Action by the registrar and commissioner after registration of a corresponding order**

- (1) No later than 2 business days after registering a corresponding order, the registrar must give the commissioner a certificate of the registration with a copy of the registered corresponding order attached.
- (2) The registrar may not ask the commissioner for any fee, or reimbursement for any expenses incurred, under this part.
- (3) As soon as reasonably practicable after receiving a copy of the registered corresponding order, the commissioner must serve a copy on the respondent.
- (4) Service must be—
  - (a) by personal service; or
  - (b) if personal service is not practicable or the respondent is an unincorporated association or group of persons, by public notice.
- (5) Also, for a child respondent, the commissioner must, as soon as reasonably practicable after receiving a copy of the registered corresponding order, give a copy of the order to—

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- (a) the chief executive (child safety), if the order is likely to result in the respondent needing to change his or her place of residence; and
  - (b) a parent of the child respondent, if the commissioner is able to find a parent of the child respondent after making reasonable attempts.
- (6) Failure to comply with either or both of subsections (3) and (5) does not affect the validity of the registration of the corresponding order.
- (7) However, the registered corresponding order has no effect on a particular person for whom it was made until the person is served under subsection (3).

#### **97 Effect of registration of a corresponding order**

- (1) Particular provisions of this Act apply to a registered corresponding order in the same way as they apply to a local order, including, for example—
- (a) sections 24 to 26; and
  - (b) schedule 2, definitions *controlled person* and *criminal organisation*.
- (2) Subsection (3) applies if the corresponding order is varied under section 95 in the respondent's absence, and the respondent has not been notified of the variation.
- (3) Until the respondent is notified of the variation, the registered corresponding order has effect and is enforceable against the respondent as if it had not been varied.

#### **98 Varying a registered corresponding control order**

- (1) The commissioner or the respondent may apply to the court under the relevant rules of court for a variation of a registered corresponding control order.
- (2) In deciding the application, the court must consider anything that must be considered under this Act on an application for a local order.

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- (3) Section 22 applies to the application as if—
  - (a) a reference in the section to a control order were a reference to a registered corresponding control order; and
  - (b) a reference in the section to a controlled person were a reference to the respondent.

## **99 Cancelling the registration of a registered corresponding order**

- (1) The commissioner or the respondent may apply to the court for an order cancelling the registration of a registered corresponding order.
- (2) In deciding the application, the court must consider anything that can be considered under this Act for an application for the making of a local order.
- (3) Sections 13, 15 and 23 apply to the application as if a reference in the sections to a local order were a reference to a registered corresponding order.
- (4) If the court cancels the registration of the registered corresponding order, the corresponding order, or the corresponding order as varied under this Act, stops having effect in Queensland.

## **Part 9 General**

### **Division 1 Recruitment offence**

#### **100 Recruiting persons to become member of criminal organisation**

A person commits a crime if the person—



- (a) is a member of a criminal organisation or a controlled person; and
- (b) recruits or attempts to recruit anyone to become a member of, or associate with a member of, any criminal organisation.

Maximum penalty—5 years imprisonment.

## **Division 2                    General provisions about proceedings for orders**

### **101    General application of rules of court**

The *Uniform Civil Procedure Rules 1999* apply in relation to applications made to the court under this Act to the extent the rules are consistent with this Act.

### **102    Service by public notice**

- (1) This section applies if service by the commissioner of an application, order or other thing by public notice is required or authorised by a provision of this Act.
- (2) For service by public notice to be effective, the commissioner must publish a notice in a newspaper circulating throughout the State.
- (3) The notice under subsection (2) need only state the following—
  - (a) the general nature of the application or other thing;
  - (b) details to the extent practicable of the respondent or other person for whom the notice was made;
  - (c) how copies of any affidavit or draft order to be used in the application or other thing may be obtained or read.

### **103 Service by police officer generally**

A police officer may serve any document required or permitted by this Act to be served by the commissioner on any person.

### **104 Service affidavits that must be filed**

- (1) This section applies for a provision of this Act that requires service of anything by an applicant to be—
  - (a) by personal service; or
  - (b) if personal service is not practicable or the service is on an unincorporated association or group of persons, by public notice.
- (2) For personal service, the applicant must file, as soon as practicable, an affidavit of personal service made by the individual who personally served the thing.
- (3) For service by public notice, the applicant must file, by the end of the next business day after publication, an affidavit stating the following—
  - (a) why the service was by public notice rather than personal service;
  - (b) if the service was by public notice because it was not practicable to personally serve the thing, the reasons it was not practicable;
  - (c) the steps taken to publish the notice.
- (4) The affidavit mentioned in subsection (3) must be accompanied by a copy of the published notice.
- (5) As soon as practicable after the affidavit mentioned in subsection (3) is filed, a sealed copy of the affidavit and notice must be sent by registered post to the respondent at the respondent's last known address.
- (6) However, if the respondent is an unincorporated association or group of persons and the applicant is not aware of any address of the respondent—

- (a) subsection (5) applies only if the applicant is aware of the address of an individual who the applicant believes to be an office holder of the association or group; and
- (b) if subsection (5) applies under paragraph (a), it applies as if a reference to the respondent were a reference to the office holder.

### **105 Commissioner must notify particular persons when filing applications and documents**

- (1) As soon as practicable after the commissioner files an application or is given notice of an application to the court, the commissioner must—
  - (a) give notice in the approved form of the application to the Attorney-General; and
  - (b) notify the ROE chief executive that the application has been made and that it is an application under this Act.
- (2) If the commissioner files an application under this Act, it must be accompanied by a notice to the registrar in the approved form stating—
  - (a) that an application has been made under this Act; and
  - (b) if the application is made under part 6, that the application is made under part 6.
- (3) If the commissioner files a document to which section 77 applies, the document must be accompanied by a notice to the registrar in the approved form stating that the document is a document to which section 77 applies.

### **106 Extension of return date**

- (1) The applicant in a proceeding under this Act may apply to the court for an extension of a return date currently applying to the application.
- (2) The application for the extension must be served on the other party to the proceedings in the same way as the original application.

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- (3) The court may grant the extension on the conditions the court considers appropriate.

### **107 Affidavit contents**

- (1) An affidavit relied on or to be relied on by a person in an application under this Act may only contain a matter if direct oral evidence of the matter would be admissible.
- (2) Despite subsection (1), an affidavit authorised under section 61 that has been admitted in evidence in an application under part 6 may also be admitted in evidence in the proceedings for the substantive application.
- (3) In this section—  
*substantive application* means the substantive application to which applies a declaration made on an application under part 6.

### **108 Hearing attendance and evidence forms**

- (1) A party to a proceeding for an application to the court under this Act or for an appeal or review relating to an order under this Act may appear and be legally represented at the hearing of the application, appeal or review.
- (2) However, if the party is an organisation or a group of persons for whom an order is proposed to be made, has been made or refused—
  - (a) only 1 individual member of the organisation or group (the *nominee*) may be present in court; and
  - (b) apart from any legal representative of the organisation or group of persons, no other person may be present in court as a member or representative of the organisation or group of persons.
- (3) The hearing can not proceed without the COPIM appearing before the court, unless the court otherwise decides.
- (4) The hearing is a closed hearing.

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- (5) To ensure the hearing is closed, the court must exclude from it all persons other than—
- (a) the commissioner; and
  - (b) the other party or, if the other party is an organisation or a group of persons, the nominee of the organisation or group; and
  - (c) the legal representatives of the commissioner and the other party; and
  - (d) the COPIM; and
  - (e) any witness mentioned in subsection (6)(b) while the witness is giving evidence; and
  - (f) court staff.
- (6) The commissioner or other party may—
- (a) make submissions; and
  - (b) with the leave of the court, file further affidavits and call, examine and cross-examine witnesses to the same extent as is permitted in other proceedings.
- (7) This section does not apply to a closed hearing under section 70 or 78.

*Note—*

Those sections provide particular rules for the closed hearings.

## **109 Records of hearings**

- (1) A person may not have access to a record of a hearing under this Act, or to a transcript of a record, other than under this Act.
- (2) On request by the commissioner, the ROE chief executive must give the commissioner an electronic copy of a transcript for a hearing of an application under this Act.
- (3) A person may apply to the commissioner for a copy of a transcript for a hearing for an application under this Act, other than a transcript for a closed hearing under section 70 or 78.

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- (4) An application under subsection (3) must be accompanied by the fee prescribed under a regulation (if any).
- (5) The commissioner must grant an application under this section as soon as practicable.
- (6) This section does not limit—
  - (a) a court or judge being given access to a record of a hearing, or to a transcript of a record, for the purpose of a proceeding under this Act or appeal from a decision under this Act; or
  - (b) a COPIM or reviewer being given material as provided under this Act.

#### **110 Standard of proof**

A question of fact in proceedings under this Act, other than proceedings for an offence, is to be decided on the balance of probabilities.

#### **111 Costs**

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

#### **112 Criminal organisation order made for child**

- (1) This section applies if a criminal organisation order is made for a child, or a criminal organisation order made for a child is varied or revoked on the commissioner's application.
- (2) The commissioner must, as soon as reasonably practicable, give a copy of the order to—
  - (a) the chief executive (child safety); and

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- (b) a parent of the child, if the commissioner is able to find a parent of the child respondent after making reasonable attempts.
  - (3) Also the order, or a variation of the order, is of no effect in relation to the child until a police officer personally serves a copy of the order or variation order on the child.
  - (4) Subsection (3) applies despite any other provision of this Act permitting any form of service other than personal service.

### **113 Criminal organisation order renewal and extension**

- (1) Unless otherwise provided, a criminal organisation order made under this Act may be renewed at any time before or after the order expires.
- (2) For subsection (1), provisions of this Act applying to an application for the making of a criminal organisation order apply as if reference to the making of the order were a reference to the renewal of an order.
- (3) It does not matter how often orders are renewed.

## **Division 3 Proceedings for offences**

### **114 Summary offence**

An offence against this Act not defined as a crime or misdemeanour is a summary offence.

### **115 Proceedings for an indictable offence**

- (1) A proceeding for a charge of an indictable offence against this Act may, at the prosecution's election, be taken—
  - (a) by way of summary proceedings before a magistrate under the *Justices Act 1886*; or
  - (b) on indictment.

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- (2) Subsection (3) applies if at any stage during a summary proceeding the magistrate is satisfied that the defendant may not be adequately punished on summary conviction because of the nature and seriousness of the offence or any other relevant consideration.
- (3) The Magistrates Court—
  - (a) must not decide the charge as a summary offence; and
  - (b) must proceed by way of an examination of witnesses in relation to an indictable offence.
- (4) If a Magistrates Court acts under subsection (3)—
  - (a) any plea of the person charged, made at the start of the proceeding, must be disregarded; and
  - (b) any evidence brought in the proceeding before the magistrate decided to act under subsection (3) is taken to be evidence in the proceeding for the committal of the person for trial or sentence; and
  - (c) before committing the person for trial or sentence the magistrate must make a statement to the person under the *Justices Act 1886*, section 104(2)(b).
- (5) The magistrate must invite and hear any submissions from the prosecution and defence before making a decision under subsection (2).

**116 Limitation on who may summarily hear a proceeding for an indictable offence and the level of penalty**

- (1) A proceeding against a person for an indictable offence must be before a magistrate if it is a proceeding—
  - (a) for the summary conviction of a person; or
  - (b) for an examination of witnesses in relation to the charge.
- (2) However, if a proceeding for an indictable offence is brought before a justice who is not a magistrate, jurisdiction is limited to taking or making a procedural action or order within the meaning of the *Justices of the Peace and Commissioners for Declarations Act 1991*.



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- (3) The maximum penalty that may be imposed on a summary conviction of an indictable offence is 100 penalty units or 3 years imprisonment or the maximum prescribed for the offence, whichever is the lesser.

**117 Limitation on time for starting proceeding for a summary offence**

A proceeding for a summary offence against this Act must start—

- (a) within 1 year after the offence is committed; or
- (b) within 1 year after the commission of the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

**Division 4 General police provisions**

**118 Powers for the service of orders**

- (1) A police officer may, without a warrant, do any of the following for the purpose of serving anything, for this Act, on a person, group of persons or an organisation named in an order—

- (a) enter premises the subject of the order;
- (b) stop or detain a vehicle approaching, in or leaving premises the subject of the order;
- (c) search the premises or vehicle.

- (2) In this section—

*order* means any order under this Act other than a criminal intelligence declaration.

**119 Power to require personal details**

- (1) A police officer may require a person to state the person's personal details if the officer—

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- (a) finds the person committing an offence against this Act;  
or
  - (b) finds the person in circumstances that lead the police officer to reasonably suspect the person has just committed an offence against this Act; or
  - (c) has information that leads the police officer to reasonably suspect the person has just committed an offence against this Act; or
  - (d) is exercising powers under this Act in relation to the person.
- (2) The police officer may also require the person mentioned in subsection (1) to give evidence of the correctness of the person's stated name or address if, in the circumstances, it would be reasonable to expect the person to—
- (a) be in possession of evidence of the correctness of the stated name or address; or
  - (b) otherwise be able to give the evidence.
- (3) When making a requirement under this section, the police officer must give the person an offence warning for the requirement.
- (4) In this section—
- offence warning*, for a requirement, means a warning that, without a reasonable excuse, it is an offence for the person to whom the requirement is made not to comply with it.

## **120 Failure to comply with personal details requirement**

- (1) A person of whom a requirement under section 119 is made must comply with the requirement unless the person has a reasonable excuse.
- Maximum penalty—40 penalty units.
- (2) If the requirement is given under section 119(1), without limiting the circumstances that may constitute a reasonable excuse, it is a reasonable excuse if—

- (a) the requirement is given because the police officer giving it suspects the person has committed an offence against this Act; and
- (b) the person is not proved to have committed the offence.

## 121 Exemption from disclosing police officer's name or address

- (1) This section applies if—
  - (a) a police officer is performing functions under this Act or is carrying out an investigation under any Act in relation to an organisation or any of its members; and
  - (b) the officer reasonably suspects the organisation—
    - (i) associates solely or predominately for the purpose of conspiring to engage or engaging in serious criminal activity; and
    - (ii) is an unacceptable risk to the safety, welfare or order of the community.
- (2) Despite the *Police Powers and Responsibilities Act 2000*, the officer need not disclose the officer's name or address to anyone the subject of the investigation or the performance of the functions.
- (3) However, subsection (2) does not affect any of the officer's duties under the *Police Powers and Responsibilities Act 2000*, chapter 14, part 6.

*Editor's note—*

*Police Powers and Responsibilities Act 2000*, chapter 14, part 6 (Duties after arrest)

## 122 Criminal organisations register

- (1) The commissioner must keep a register of information about declarations and orders made under this Act (the ***register of criminal organisations***).
- (2) The register must contain the following information—

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- (a) details of each criminal organisation order and registered corresponding order;
  - (b) the name of each criminal organisation, or the name by which it is commonly known;
  - (c) the name and personal details of each controlled person to the extent known to the commissioner.
- (3) Information relating to a control order or registered corresponding control order is not to be published on the register—
- (a) until after the last day on which the person to whom the order relates may appeal against the making or registration of the order; and
  - (b) if the person to which the order relates does appeal, until the appeal is decided or otherwise ends.
- (4) Information contained in the register may be provided to any person in any way approved by the commissioner.
- (5) Without limiting subsection (4), the commissioner may publish information contained in the register in a newspaper circulating in the State.
- (6) However, in relation to a child as defined under the *Youth Justice Act 1992*, the commissioner may not disclose confidential information as defined under section 284 of that Act other than for the purposes of the *Police Service Administration Act 1990*, part 10.

### **123 Delegation by commissioner**

- (1) The commissioner may only delegate a power of the commissioner under this Act as provided under this section.
- (2) The commissioner may delegate any power to a deputy commissioner or assistant commissioner.
- (3) The commissioner may delegate to a commissioned officer—
  - (a) the power to make an application under section 35; and

- 
- (b) another power other than a power to make an application.

*Notes—*

- 1 The commissioner's delegation power is contained in the *Police Service Administration Act 1990*, section 4.10.
- 2 Section 103 expressly authorises a police officer to serve something on behalf of the commissioner.

## **Division 5                      Appeals**

### **124      Effect of particular orders not stayed by appeal**

- (1) This section applies for the purpose of proceedings for an appeal in relation to—
  - (a) a criminal organisation order, other than a fortification removal order, or registered corresponding order; or
  - (b) the extension or variation of a criminal organisation order, other than a fortification removal order, or registered corresponding order.
- (2) The appeal does not affect—
  - (a) the operation of the order; or
  - (b) prevent the taking of action to implement the decision.
- (3) However, the court or a judge of the court may order the suspension of the operation of the order or stay any proceeding under the order if the court or judge is satisfied it would be appropriate to do so, having regard to—
  - (a) the likely impact of the suspension or stay on the ability to disrupt the criminal nature of the criminal organisation and its membership; and
  - (b) any other relevant matter.

### **125      Limitations on appeals in relation to a declaration**

- (1) This section applies in relation to—

[s 126]

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- (a) a declaration by the court under part 2 that a particular organisation is a criminal organisation; and
  - (b) any order of the court varying or refusing to vary or revoke the declaration.
- (2) An appeal to the Court of Appeal against the declaration or order must be filed under the *Uniform Civil Procedure Rules 1999* within 28 days after the declaration or order is made.
- (3) It is declared that—
- (a) only 1 appeal lies to the Court of Appeal from a declaration mentioned in subsection (1)(a); and
  - (b) if the 1 appeal mentioned in paragraph (a) has been decided, neither the appellant nor any other person may make a further appeal against the declaration.
- (4) Also, it is declared that—
- (a) only 1 appeal lies to the Court of Appeal from an order mentioned in subsection (1)(b); and
  - (b) if the 1 appeal mentioned in paragraph (a) has been decided, neither the appellant nor any other person may make a further appeal against the order.
- (5) This section does not affect the court's power to correct a clerical mistake, or an error arising from an accidental slip or omission, in the declaration or order.

## **126 Court of appeal to expedite disposal of appeal**

The Court of Appeal must use its best efforts to ensure that an appeal to the court in relation to a decision on an application for a criminal organisation order or for any variation, extension or revocation of a criminal organisation order is heard, and the court's final decision is made or order is given, as quickly as is reasonable in the circumstances.

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## **Division 6                      Reviews of Act**

### **127      Minister to ensure reviews are carried out**

The Minister must ensure reviews of this Act are carried out under this division.

### **128      Who carries out reviews**

Each review under this division must be conducted by a retired Supreme Court judge appointed by the Minister.

### **129      Annual reviews of exercise of powers**

- (1) A review must be carried out once each year to determine whether powers under this Act have been appropriately exercised.
- (2) The first review must be started as soon as reasonably practicable after the first anniversary of the commencement of this section.
- (3) A review must relate to—
  - (a) for the first review—the period since the Act commenced; or
  - (b) otherwise—the period since the last review.

### **130      Review of Act's operation**

- (1) This Act must be reviewed as soon as reasonably practicable after 5 years after the commencement of this section.
- (2) The object of the review is to decide whether this Act is operating effectively and meeting its objects under section 3.

### **131      Criminal intelligence given to reviewer**

- (1) The commissioner, registrar or COPIM must give a reviewer access to any criminal intelligence that accompanied an application under this Act within the scope of the review.

[s 132]

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- (2) Before a reviewer, in the performance of the reviewer's functions under this Act, discloses any criminal intelligence to another person, the reviewer must give the other person a warning about the confidential nature of the information and the unlawful disclosure offence.

*Note—*

See also section 82(2)(c).

- (3) A contravention of subsection (2) is not an offence.

## **132 Report**

- (1) After completing a review under this division, the reviewer must prepare a report for the review and give it to the Minister.
- (2) The report must not include criminal intelligence.
- (3) The report may include recommendations.
- (4) The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving the report.

## **Division 7 Miscellaneous provisions**

### **133 Restrictions on legal practice of former police officers**

- (1) A person who has been a police officer (the *first person*) must not act as a legal representative for—
  - (a) an organisation the first person knows, or ought reasonably to know, is a criminal organisation; or
  - (b) a person the first person knows, or ought reasonably to know, is subject to a control order or registered corresponding control order; or
  - (c) a person who the first person knows, or ought reasonably to know, has been convicted of an offence against this Act.



- 
- (2) A failure by a lawyer to comply with subsection (1) is capable of constituting unsatisfactory professional conduct or professional misconduct under the *Legal Profession Act 2007*.
  - (3) The failure of another legal representative to comply with subsection (1) is a suitability matter for the *Legal Profession Act 2007*, section 9.

### **134 Restrictions on practice of current and former police officers as security providers**

- (1) A person who is or has been a police officer (the *first person*) must not act as a security provider under the *Security Providers Act 1993* for—
  - (a) an organisation the first person knows, or ought reasonably to know, is a criminal organisation; or
  - (b) a person the first person knows, or ought reasonably to know, is subject to a control order or registered corresponding control order; or
  - (c) a person who the first person knows, or ought reasonably to know, has been convicted of an offence against this Act.
- (2) A failure by a person to comply with subsection (1) is capable of constituting evidence that the person is not an appropriate person to hold a licence under the *Security Providers Act 1993*.

### **135 Protecting officials from liability**

- (1) An official is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.
- (2) If subsection (1) prevents a civil liability attaching to an official, the liability attaches instead to the State.
- (3) In this section—

*official* means any of the following—

  - (a) a police officer;

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- (b) a person acting under the direction of a police officer;
- (c) the COPIM;
- (d) a public service officer;
- (e) a reviewer;
- (f) a person helping a reviewer perform the reviewer's functions under this Act.

### **136 Evidentiary provisions**

- (1) This section applies for a proceeding under this Act or relating to anything done, to be done or omitted to be done under this Act.
- (2) A document purporting to be an order made by the court under this Act is proof of the order and its contents.
- (3) The following must be presumed unless a party to the proceeding, by reasonable notice, requires proof of it—
  - (a) the appointment of a police officer;
  - (b) the commissioner's authorisation to a police officer to take enforcement action;
  - (c) the power of a police officer to do anything under this Act.

### **136A Definition *informant* not to include ASIO officers**

- (1) This section applies if, under section 59A, definition *external agency*, paragraph (f), ASIO is declared by regulation to be an external agency for this Act.
- (2) In schedule 2, definition *informant*, paragraph (d), the reference to an officer of an external agency does not include an officer of ASIO.
- (3) In this section—

**ASIO** means the Australian Security Intelligence Organisation established under the *Australian Security Intelligence Organisation Act 1979* (Cwlth).

**137 Expiry of Act**

This Act expires on the day that is 7 years after the day this section commences.

**138 Approved forms**

- (1) The chief executive may approve forms for use under this Act.
- (2) The registrar may approve forms for use under section 105.

**139 Regulation-making power**

The Governor in Council may make regulations under this Act.

## **Part 10 Transitional provisions**

**140 References to serious criminal activity and serious criminal offences**

- (1) This section applies for any provision of this Act under which a court may on an application consider the criminal history, activity, behaviour or anything else relating to a person.
- (2) It does not matter whether the criminal history, activity, behaviour or other thing arose or happened before or after the commencement of the provision.

**141 Transitional provision for ss 133 and 134**

Section 133 or section 134, to the extent it refers to a person who has been a police officer, applies only to a person who stops being a police officer after the commencement of the section.

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**142 Regulation made by the *Criminal Organisation Amendment Act 2011***

- (1) This section applies to the regulation made by the *Criminal Organisation Amendment Act 2011*, section 23 and schedule.
- (2) The regulation is subordinate legislation.
- (3) The *Statutory Instruments Act 1992*, part 6 does not apply to the regulation.

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**Schedule 1      Serious criminal offences  
under Criminal Code**

section 7

<b>Section</b>	<b>Section heading</b>
75	Threatening violence
128	Deceiving witnesses
129	Damaging evidence with intent
130	Preventing witnesses from attending
140	Attempting to pervert justice
213	Owner etc. permitting abuse of children on premises
215	Carnal knowledge with or of children under 16
218A	Using internet etc. to procure children under 16
218B	Grooming children under 16
221	Conspiracy to defile
228D	Possessing child exploitation material
229H	Knowingly participating in provision of prostitution (second offence)
229I	Persons found in places reasonably suspected of being used for prostitution etc. (second offence)
229K	Having an interest in premises used for prostitution etc. (second offence)
323	Wounding
327	Setting mantraps
337	Sexual assaults (until repeal by 2000 Act No. 43)
344	Aggravated assaults (until repeal by 1997 Act No. 3)

<b>Section</b>	<b>Section heading</b>
346	Assaults in interference with freedom of trade or work
355	Deprivation of liberty
359	Threats
359A	Unlawful stalking (until repeal by 1999 Act No. 18)
359E	Punishment of unlawful stalking
364	Cruelty to children under 16
408C	Fraud
408D	Obtaining or dealing with identification information
413	Assault with intent to steal
414	Demanding property with menaces with intent to steal
416	Attempts at extortion by threats (until repeal by 2008 Act No. 55)
426	Unlawful entry of vehicle (from enactment by 1998 Act No. 19 until repeal by 2008 Act No. 55)
427	Obtaining goods or credit by false pretence or wilfully false promise (until repeal by 1997 Act No. 3)
428	Obtaining execution of valuable security by a false pretence or wilfully false promise (until repeal by 1997 Act No. 3)
431	Frauds on sale or mortgage of property (until repeal by 2008 Act No. 55)
514	Personation in general

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## Schedule 2 Dictionary

### section 4

***application*** means an application in writing.

***approved form*** means a form approved under section 138.

***associate with*** another person, includes—

- (a) be in company with the other person; and
- (b) communicate with the other person in any way (including by post, facsimile, telephone, email or any other form of electronic communication); and
- (c) associate with the other person whether within or outside Queensland, including outside Australia.

***chief executive (child safety)*** means the chief executive of the department in which the *Child Protection Act 1999* is administered.

***child*** see the *Youth Justice Act 1992*, schedule 4.

***commissioned officer*** see the *Police Service Administration Act 1990*, section 1.4.

***commissioner*** means the commissioner of the police service.

***condition*** includes restriction and prohibition.

***conspiring***, to engage in serious criminal activity, includes organising, planning, facilitating or supporting serious criminal activity.

***controlled person*** means a person who is subject to a control order or a registered corresponding control order.

***control order*** means a control order made under section 18 and, in relation to a control order that is in force, includes an interim control order.

***conviction*** means a finding of guilt by a court, or the acceptance of a plea of guilty by a court, whether or not a conviction is recorded.

***COPIM*** see section 83.

***corresponding control order*** means an order made under a provision of a law of another State that is prescribed under a regulation for this definition.

***corresponding declaration*** means an order made under a provision of a law of another State that is prescribed under a regulation for this definition.

***corresponding order*** means—

- (a) a corresponding declaration; or
- (b) a corresponding control order.

***court*** means the Supreme Court.

***court staff***, for a provision about a proceeding under this Act, includes the judge's associate, a bailiff, a police officer or other officer providing court security, a recorder under the *Recording of Evidence Act 1962* and any other person ordinarily used by the court for the conduct of proceedings.

***criminal history***, of a person, means—

- (a) every conviction of the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this Act, including a conviction—
  - (i) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act; and
  - (ii) that is not revived as prescribed by section 11 of that Act; and
- (b) every charge made against the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this Act.

***criminal intelligence*** see section 59(1).

***criminal intelligence application*** see section 59A.

***criminal organisation*** means—

- (a) an organisation subject to a declaration by the court under part 2; or



- 
- (b) an organisation subject to a corresponding declaration that is registered under part 8.

***criminal organisation order*** means—

- (a) a declaration under part 2; or  
(b) a control order; or  
(c) a public safety order; or  
(d) a fortification removal order.

***declaration*** means a declaration under section 10 that an organisation is a criminal organisation.

***declared criminal intelligence***—

- (a) generally—see section 63(1); and  
(b) for a particular application before the court—means declared criminal intelligence admitted in evidence before the court.

***enforcement action*** see section 50(1).

***enforcer***, for a provision about a fortification removal order, see section 50(1).

***external agency***, for part 6, see section 59A.

***filed*** means filed with the court.

***fortification*** see section 39.

***fortification removal order*** means an order mentioned in section 41(1).

***fortified premises*** see section 39.

***identifying information***, for part 6, see section 59A.

***informant*** means any of the following—

- (a) anyone who has given, to the police service or an external agency, information that the commissioner reasonably believes is criminal intelligence, and who is not a police officer or officer of the external agency;  
(b) any authorised officer acting under the *Police Powers and Responsibilities Act 2000*, chapter 12;

- (c) a police officer who has obtained information through the use of an assumed identity, whether or not under the *Police Powers and Responsibilities Act 2000*, chapter 12;

*Editor's note—*

*Police Powers and Responsibilities Act 2000*, chapter 12  
(Assumed identities)

- (d) an officer of an external agency who has obtained information through the use of an assumed identity.

*Note—*

See section 136A in relation to officers of ASIO.

***interim control order*** see section 21.

***legal representatives*** means any of the following—

- (a) lawyers;
- (b) supervised trainee legal practitioners under the *Supreme Court (Admission Rules) 2004*.

***local order***, in relation to a corresponding order, means—

- (a) for a corresponding declaration—a declaration under part 2; or
- (b) for a corresponding control order—a control order under part 3.

***member***, of an organisation or criminal organisation includes, any of the following—

- (a) if the organisation is a body corporate—a director or officer of the body corporate;
- (b) a member, associate member or prospective member, however described, of the organisation;
- (c) a person who identifies himself or herself, in some way, as belonging to the organisation;
- (d) a person who is treated by the organisation as if he or she belongs to the organisation;

- 
- (e) a person who associates with a member of the organisation for the purpose of engaging in, or conspiring to engage in, serious criminal activity.

***net proceed***, from a fortification, see section 54(7).

***non-contact condition*** means—

- (a) a condition of a control order under section 19(2)(a), (b) or (f), whether or not the condition includes an exception about associating with a person with whom the controlled person has a personal relationship; or
- (b) a condition of an interim control order under section 21(5)(a) or (b); or
- (c) a condition of a registered corresponding control order corresponding to a condition mentioned in paragraph (a) or (b).

***notice*** means a notice in writing.

***occupier***, of premises, means—

- (a) any person who apparently occupies the premises; or
- (b) an owner of the premises.

***officer***, of an external agency, see section 59A.

***order***, other than a public safety order made by a commissioned officer, means written order.

***organisation*** means any incorporated body or unincorporated group of 3 or more persons, however structured—

- (a) whether the body or group is based inside or outside Queensland; or
- (b) whether the body or group consists of persons who are ordinarily resident inside or outside Queensland.

***parliamentary committee*** means—

- (a) if the Legislative Assembly resolves that a particular committee of the Assembly is to be the parliamentary committee under this Act—that committee; or

- (b) if paragraph (a) does not apply and the standing rules and orders state that the portfolio area of a portfolio committee includes the COPIM—that committee; or
- (c) otherwise—the portfolio committee whose portfolio area includes the department, or the part of a department, in which this Act is administered.

***personal details***, of a person, means full details of the following about the person—

- (a) name, including any aliases;
- (b) date of birth;
- (c) place of birth;
- (d) where he or she is living;
- (e) where he or she usually lives;
- (f) his or her business address.

***personal relationship***—

A *personal relationship* exists between a person and another person if—

- (a) the person is a spouse or former spouse of the other person; or
- (b) the person is in an intimate personal relationship with the other person, including, for example, if the person is a boyfriend or girlfriend of the other person; or
- (c) the person and the other person are parents of the same child; or
- (d) the person is the parent, grandparent or sibling of the other person; or
- (e) the person is the parent, grandparent or sibling of the other person's spouse; or
- (f) the person's spouse is the parent, grandparent or sibling of the other person; or
- (g) the person or person's spouse is a guardian or carer of the other person.

**place** includes premises.

**Planning Act** means the *Integrated Planning Act 1997* or the *Sustainable Planning Act 2009*.

**police minister** means the Minister responsible for the administration of the *Police Service Administration Act 1990*.

**police service** means the Queensland Police Service.

**portfolio area** see the *Parliament of Queensland Act 2001*, schedule.

**portfolio committee** see the *Parliament of Queensland Act 2001*, schedule.

**premises** includes—

- (a) a building or structure, or part of a building or structure, of any type; and
- (b) a group of buildings or structures, or part of a group of buildings or structures, of any type; and
- (c) the land or water where a building or structure, or a group of buildings or structures, is situated; and
- (d) a vehicle or caravan; and
- (e) a tent or cave; and
- (f) a boat; and
- (g) an ocean-going vessel; and
- (h) premises held under 2 or more titles or owners.

**prescribed activity** means the following—

- (a) acting as a casino operator, a casino manager, a casino employee or a casino key employee as defined under the *Casino Control Act 1982*;
- (b) the activities of a security provider under the *Security Providers Act 1993*;
- (c) the activities of a market operator, a pawnbroker or a second-hand dealer as defined under the *Second-hand Dealers and Pawnbrokers Act 2003*;

- (d) acting as a dealer as defined under the *Weapons Act 1990*;
- (e) operating a tow truck within the meaning of the *Tow Truck Act 1973*;
- (f) acting as a motor dealer as defined under the *Property Agents and Motor Dealers Act 2000*;
- (g) selling or supplying liquor as defined under the *Liquor Act 1992*;
- (h) the activities of an owner, trainer, jockey, stablehand, bookmaker, bookmaker's clerk or another person associated with racing who is required to be registered or licensed under the *Racing Act 2002*;
- (i) the activity of providing higher risk personal appearance services that require a licence under the *Public Health (Infection Control for Personal Appearance Services) Act 2003*;
- (j) an activity that requires a licence under the *Prostitution Act 1999*;
- (k) any other activity prescribed under a regulation.

**public notice** means public notice under section 102.

**public safety order** means a public safety order made under part 4.

**recruit** includes counsel, procure, solicit, incite and induce.

**registered corresponding control order** means a corresponding control order that is registered under part 8.

**registered corresponding order** means a corresponding order that is registered under part 8.

**registered post** means the form of post offered by Australia Post providing proof of posting, whether or not proof of receipt is provided.

**registrar** means the registrar of the Supreme Court.

**relevant agency**, for part 6, see section 59A.

**remove**, for part 5, see section 39.

**respondent**—

- (a) for an application for a declaration of a criminal organisation—see section 8(1); or
- (b) for an application for a control order—see section 16(1); or
- (c) for an application for a public safety order—see sections 28(1), 29(7) and 31(1); or
- (d) for an application for a fortification removal order—see section 41(1); or
- (e) for an application for the registration of a corresponding order—see section 94(1)(b); or
- (f) for a provision about an application for an order, or about an order made, under this Act, if the context permits—the respondent under the provisions about the application; or
- (g) for a provision about enforcement action—the respondent to the application for which the relevant fortification removal order was made.

**responsible person**, for part 5, see section 39.

**return date**, for an application, means the return date fixed by the registrar for the hearing of the application.

**reviewer** means a person carrying out a review under part 9, division 6.

**ROE chief executive** means the chief executive of the department in which the *Recording of Evidence Act 1962* is administered.

**sealed copy** means a copy stamped with the seal of the court.

**serious criminal activity** see section 6.

**serious criminal offence** see section 7.

**sibling** includes half-brother, half-sister, stepbrother and stepsister.

**standing rules and orders** see the *Parliament of Queensland Act 2001*, schedule.

*substantive application* see section 75(1).

*unlawful disclosure offence* means the offence against section 82.

*vehicle* see the Criminal Code, section 1.

*weapon* see the *Weapons Act 1990*, schedule 2.



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## Endnotes

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the *Reprints Act 1992*, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 23 September 2013. Future amendments of the *Criminal Organisation Act 2009* may be made in accordance with this reprint under the *Reprints Act 1992*, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No. [X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised version
num	= numbered	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2012
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

### 4 Table of reprints

RA new reprint of the legislation is prepared by the Office of the Queensland Parliamentary Counsel each time a change to the legislation takes effect.

The notes column for this reprint gives details of any discretionary editorial powers under the *Reprints Act 1992* used by the Office of the Queensland Parliamentary Counsel in preparing it. Section 5(c) and (d) of the Act are not mentioned as they contain mandatory requirements that all amendments be included and all necessary consequential amendments be incorporated, whether of punctuation, numbering or another kind. Further details of the use of any discretionary editorial power noted in the table can be obtained by contacting the Office of the Queensland Parliamentary Counsel by telephone on 3237 0466 or email [legislation.queries@oqpc.qld.gov.au](mailto:legislation.queries@oqpc.qld.gov.au).

From 29 January 2013, all Queensland reprints are dated and authorised by the Parliamentary Counsel. The previous numbering system and distinctions between printed and electronic reprints is not continued with the relevant details for historical reprints included in this table.

Reprint No.	Amendments included	Effective	Notes
1	none	15 April 2010	
1A	2011 Act No. 15	13 June 2011	
1B	2011 Act No. 43	6 December 2011	

Current as at	Amendments included	Notes
5 April 2013	2013 Act No. 3	
29 April 2013	2013 Act No. 14	
23 September 2013	2013 Act No. 39	

## 5 List of legislation

### **Criminal Organisation Act 2009 No. 53**

date of assent 3 December 2009

ss 1–2 commenced on date of assent

remaining provisions commenced 15 April 2010 (2010 SL No. 61)

exp 15 April 2017 (see s 137)

amending legislation—

### **Parliament of Queensland (Reform and Modernisation) Amendment Act 2011 No. 15**

**ss 1, 2(3), pt 4 div 2**

date of assent 19 May 2011

ss 1–2 commenced on date of assent

remaining provisions commenced 13 June 2011 (2011 SL No. 76)

### **Criminal Organisation Amendment Act 2011 No. 43 pts 1–2**

date of assent 6 December 2011

commenced on date of assent

### **Classification of Computer Games and Images and Other Legislation Amendment**

**Act 2013 No. 3 ss 1, 2(2)(e)–(f), 61 sch 2**

date of assent 26 February 2013

ss 1–2 commenced on date of assent

remaining provisions commenced 5 April 2013 (2013 SL No. 39)

### **Criminal Law (Child Exploitation and Dangerous Drugs) Amendment Act 2013 No.**

**14 ss 1, 54 sch**

date of assent 29 April 2013

commenced on date of assent

### **Treasury and Trade and Other Legislation Amendment Act 2013 No. 39 ss 1, 109 sch 2**

date of assent 23 September 2013

commenced on date of assent

## 6 List of annotations

### **What is *criminal intelligence***

**s 59** amd 2011 No. 43 s 3

**Other definitions for pt 6**

s 59A ins 2011 No. 43 s 4

**Applying for declaration**

s 63 sub 2011 No. 43 s 5

**Additional affidavit if informant relied on**

s 64 sub 2011 No. 43 s 5

**Registrar to secure information**

s 65 amd 2011 No. 43 s 6

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

s 71 sub 2011 No. 43 s 7

**Deciding application**

s 72 amd 2011 No. 43 s 8

**Additional matters if informant relied on**

s 76 sub 2011 No. 43 s 9

**Registrar to secure intelligence**

s 77 amd 2011 No. 43 s 10

**Special closed hearing for consideration of intelligence**

s 78 amd 2011 No. 43 s 11

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

s 80 sub 2011 No. 43 s 12

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

s 82 amd 2011 No. 43 s 13

**Procedure before appointment as COPIM**

s 85 amd 2011 No. 15 s 50

**Material to be given to COPIM**

s 88 amd 2011 No. 43 s 14

**Functions of parliamentary committee**

s 91 amd 2011 No. 15 s 51

**Commissioner must notify particular persons when filing applications and documents**

s 105 amd 2013 No. 3 s 61 sch 2

**Records of hearings**

s 109 amd 2013 No. 3 s 61 sch 2

**Criminal organisations register**

s 122 amd 2011 No. 43 s 15

**Definition *informant* not to include ASIO officers**

s 136A ins 2011 No. 43 s 16

**PART 11—AMENDMENTS OF ACTS****pt hdg** om R1 (see RA ss 7(1)(k))**Division 1—Amendment of Bail Act 1980****div hdg** om R1 (see RA s 7(1)(k))**Regulation made by the Criminal Organisation Amendment Act 2011****s 142** prev s 142 om R1 (see RA s 40)  
pres s 142 ins 2011 No. 43 s 17  
amd 2013 No. 39 s 109 sch 2**Amendment of s 16 (Refusal of bail)****s 143** om R1 (see RA s 40)**Division 2—Amendment of Criminal Code****div 2 (ss 144–151)** om R1 (see RA ss 7(1)(k) and 40)**Division 3—Amendment of Evidence Act 1977****div 3 (ss 152–153)** om R1 (see RA ss 7(1)(k) and 40)**Division 4—Amendment of Judicial Review Act 1991****div 4 (ss 154–155)** om R1 (see RA ss 7(1)(k) and 40)**Division 5—Amendment of Legal Profession Act 2007****div 5 (ss 156–157)** om R1 (see RA ss 7(1)(k) and 40)**Division 6—Amendment of Parliament of Queensland Act 2001****div 6 (ss 158–159)** om R1 (see RA ss 7(1)(k) and 40)**Division 7—Amendment of Police Powers and Responsibilities Act 2000****div 7 (ss 160–166)** om R1 (see RA ss 7(1)(k) and 40)**SCHEDULE 1—SERIOUS CRIMINAL OFFENCES UNDER CRIMINAL CODE**

amd 2013 No. 14 s 54 sch

**SCHEDULE 2—DICTIONARY**def *child* amd 2011 No. 43 s 18(2)def *court staff* amd 2013 No. 3 s 61 sch 2def *criminal intelligence* amd 2011 No. 43 s 18(3)def *criminal intelligence application* amd 2011 No. 43 s 18(4)def *external agency* ins 2011 No. 43 s 18(1)def *identifying information* ins 2011 No. 43 s 18(1)def *informant* amd 2011 No. 43 s 18(5)–(6)def *Law, Justice and Safety Committee* om 2011 No. 15 s 52(1)def *officer* ins 2011 No. 43 s 18(1)def *parliamentary committee* ins 2011 No. 15 s 52(2)def *portfolio area* ins 2011 No. 15 s 52(2)def *portfolio committee* ins 2011 No. 15 s 52(2)def *relevant agency* ins 2011 No. 43 s 18(1)def *reporting officer* om 2013 No. 3 s 61 sch 2def *ROE chief executive* ins 2013 No. 3 s 61 sch 2def *standing rules and orders* ins 2011 No. 15 s 52(2)

## **7 Forms notified or published in the gazette**

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