

EXPOSURE DRAFT

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(Prepared by Parliamentary Counsel's Office)

Crimes (Criminal Organisation Control) Bill 2017

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Crimes (Criminal Organisation Control) Bill 2017

A Bill for

An Act to provide for the making of declarations and orders for the purpose of disrupting and restricting the activities of criminal organisations and their members, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Part 1 Preliminary

1 Name of Act

This Act is the *Crimes (Criminal Organisation Control) Act 2017*.

2 Commencement

This Act commences on the day after its notification day.

Note The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

3 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition ‘*interstate control order*, for part 4 (Reciprocal recognition and enforcement of declarations and orders)—see section 31.’ means that the term ‘interstate control order’ is defined in that section for part 4.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see [Legislation Act](#), s 155 and s 156 (1)).

4 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the [Legislation Act](#), s 127 (1), (4) and (5) for the legal status of notes.

5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code

The [Criminal Code](#), ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg ***conduct***, ***intention***, ***recklessness*** and ***strict liability***).

Note 2 Penalty units

The [Legislation Act](#), s 133 deals with the meaning of offence penalties that are expressed in penalty units.

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Part 2 Criminal organisations

6 Chief police officer may apply for declaration etc

- (1) The chief police officer may apply to the Supreme Court for a declaration that a particular organisation (the *respondent*) is a criminal organisation for this Act.
- (2) The application must—
 - (a) be in writing; and
 - (b) identify the organisation; and
 - (c) describe the nature of the organisation and its distinguishing characteristics; and
 - (d) set out the grounds on which the declaration is sought; and
 - (e) set out the information supporting the grounds on which the declaration is sought; and
 - (f) set out details of each previous application under this section for a declaration of the organisation and the outcome of that application; and
 - (g) include a statement to the effect that a response to the application may be filed under section 7 (Response by respondent).
- (3) The application must be accompanied by any affidavit the chief police officer intends to rely on at the hearing of the application.
- (4) For subsection (2) (b), the organisation may be identified by stating its name or the name by which it is commonly known, or by providing other particulars about the organisation.
- (5) The application and any supporting affidavit must be filed in the Supreme Court.

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- (6) On receiving the application, the registrar must set a return date for the application that is not later than 35 days after the day the application is filed.
- (7) The Supreme Court may extend the return date on the conditions the court considers appropriate.
- (8) The chief police officer must—
 - (a) if personal service is practicable—arrange for personal service of a copy of the application and its supporting affidavit on the respondent within 7 business days after the day the application is filed; or
 - (b) if personal service is not practicable—give public notice about having made the application and the name of the respondent to the application, including information about how the respondent may obtain a copy of the application and its supporting affidavit.

Note **Public notice** means notice on an ACT government website or in a daily newspaper circulating in the ACT (see [Legislation Act](#), dict, pt 1).

7 Response by respondent

- (1) The respondent may file a response to the application under section 6.
- (2) The response must set out the facts relied on by the respondent in response to the application.
- (3) The respondent must file the response at least 5 business days before the return date set by the registrar.
- (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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8 Supreme Court may make declaration

- (1) The Supreme Court may make a declaration that the respondent is a criminal organisation for this Act if the court is satisfied that—
 - (a) the respondent is an organisation; and
 - (b) members of the organisation in the ACT associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity; and
 - (c) the continued existence of the organisation is an unacceptable risk to the safety, welfare or order of the community in the ACT.
- (2) In considering whether or not to make a declaration, the Supreme Court must take into account—
 - (a) the following information, if before the court:
 - (i) information suggesting a link exists between the organisation and serious criminal activity in the ACT;
 - (ii) any conviction for current or former members of the organisation in the ACT;
 - (iii) information suggesting current or former members of the organisation in the ACT 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 organising, planning, facilitating, supporting or engaging in serious criminal activity; and

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- (b) any other information the court considers relevant to a matter mentioned in subsection (1).
- (3) The Supreme Court may make a declaration whether or not the respondent is present or makes a submission.
- (4) The Supreme Court may, for the purpose of making the declaration, be satisfied that members of an organisation associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity—
 - (a) whether all the members in the ACT associate for that purpose or only some of the members; and
 - (b) whether members in the ACT associate for that purpose for the same serious criminal activities or different ones; and
 - (c) whether or not the members in the ACT also associate for other purposes.
- (5) For subsection (4) (a), the Supreme Court may act if satisfied that only some of the members in the ACT associate for the purpose mentioned in the subsection only if the court is satisfied that those members form a significant group within the organisation in the ACT, either—
 - (a) in terms of their numbers; or
 - (b) in terms of their capacity to influence the organisation or its members in the ACT.
- (6) A declared organisation is taken to include any organisation into which the members substantially restructure themselves with or without dissolving the organisation named in the declaration.

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9 Notice of declaration

- (1) As soon as reasonably practicable after the Supreme Court makes a declaration under this part, the chief police officer must give public notice of the making of the declaration.

Note **Public notice** means notice on an ACT government website or in a daily newspaper circulating in the ACT (see [Legislation Act](#), dict, pt 1).

- (2) The declaration does not take effect until public notice is given under subsection (1).

10 Duration of declaration

- (1) A declaration under this part remains in force for a period of 5 years after the day it is made, unless it is revoked or renewed.
- (2) A change in the name or membership of a criminal organisation does not affect the declaration.

11 Revocation of declaration

- (1) The Supreme Court may revoke a declaration under this part on application under this section.
- (2) An application may be made by—
 - (a) the chief police officer, at any time; or
 - (b) the declared organisation or a member of the declared organisation, subject to this section.
- (3) An application must—
 - (a) be in writing; and
 - (b) set out the grounds on which the revocation is sought; and
 - (c) set out the information supporting the grounds on which the revocation is sought.

- (4) The application must be accompanied by any affidavit the applicant intends to rely on at the hearing of the application.
- (5) The chief police officer is a party to any proceeding for an application by the declared organisation or a member of the declared organisation.
- (6) The applicant must serve a copy of the application and its supporting affidavit on the other party to the proceeding as soon as practicable after the application is filed.
- (7) If the chief police officer is the applicant, service on the other party must be—
 - (a) by personal service; or
 - (b) if personal service is not practicable, or if the other party is an unincorporated body, by public notice.

Note **Public notice** means notice on an ACT government website or in a daily newspaper circulating in the ACT (see [Legislation Act](#), dict, pt 1).

- (8) The Supreme Court may revoke a declaration on the application of the declared organisation or a member of the declared organisation only if satisfied that there has been a substantial change in the nature or membership of the declared organisation to the extent that—
 - (a) members of the organisation in the ACT no longer associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity; and
 - (b) the continued existence of the organisation no longer represents an unacceptable risk to the safety, welfare or order of the community in the ACT.

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- (9) A declared organisation or a member of a declared organisation may not apply for the revocation of a declaration until at least 3 years after the declaration is made.
- (10) The total number of applications for revocation made by the declared organisation and all members of the declared organisation cannot be more than 2 during the first 5 years after the declaration is made.
- (11) As soon as reasonably practicable after a declaration is revoked or ends, the chief police officer must give public notice of the revocation or ending of the declaration.

Note **Public notice** means notice on an ACT government website or in a daily newspaper circulating in the ACT (see [Legislation Act](#), dict, pt 1).

12 Stated reasons for making or revoking declaration

- (1) The Supreme Court must give reasons for any decision to make or revoke a declaration under this part, or for refusing an application for a declaration or revocation of a declaration.

Note For what must be included in a statement of reasons, see the [Legislation Act](#), s 179.

- (2) This section does not authorise or require the disclosure of information if an obligation to maintain confidentiality exists under part 5 (Criminal intelligence) or any other law.

13 Renewal of declarations

- (1) A declaration under this part may be renewed at any time before or after it ends.
- (2) The provisions of this part relating to an application for a declaration apply, with any necessary changes, to the renewal of a declaration.

- (3) It does not matter how often a declaration is renewed.

14 Right of appeal—pt 2

Section 26 (Right of appeal—pt 3) applies to a decision of the Supreme Court under this part as if—

- (a) a reference to a controlled member were a reference to a declared organisation; and
- (b) a reference to the making of a control order were a reference to the making of a declaration under this part; and
- (c) any other necessary changes were made.

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Part 3 Control of members of declared organisations

Division 3.1 Interim control orders

15 Supreme Court may make interim control order

- (1) The Supreme Court may, on application by the chief police officer, make an interim control order relating to 1 or more people stated in an application awaiting the hearing and final determination for a control order confirming, or confirming with variations, the interim control order.
- (2) The grounds of the application for an interim control order must be supported by an affidavit from the chief police officer, or a senior police officer, verifying the contents of the application.
- (3) The Supreme Court must make an interim control order in relation to a person if it is satisfied that the application and any further information provided by the chief police officer or a senior police officer satisfy the requirements under section 21 (1) (Supreme Court may make control order) for making a control order in relation to the person.
- (4) The interim control order must be made in the absence of, and without notice to—
 - (a) the person in relation to whom the order is to be made; or
 - (b) the person's representative.
- (5) If the Supreme Court makes an interim control order, it must set the date and time the application for a control order in relation to the person is to be heard.

16 Date of effect of interim control order

An interim control order takes effect on the day notice of the order is served on the person to whom it applies under section 17.

17 Notice of making of interim control order

- (1) The chief police officer must, within 28 days after the day the Supreme Court makes an interim control order, arrange personal service of notice of the order on the person to whom it applies.

Note Section 18 (6) provides that notice of an order is taken to have been served by personal service if the Supreme Court orders the chief police officer to give public notice of the order.

- (2) The notice must—
- (a) subject to subsection (3)—include a statement of the grounds on which the order was made; and
 - (b) set out an explanation of the effect of section 28 (Association between controlled members of declared organisations subject to interim control order or control order) and section 30 (Prohibition on carrying on of certain activities when interim control order or control order takes effect); and
 - (c) tell the person the names of any other people the chief police officer knows to be members of the same declared organisation of which that person is a member and to whom an interim control order or control order relates; and
 - (d) provide information about—
 - (i) the person's right to object to the making of the control order at the hearing of the application for the control order; and

- (ii) the procedure to be followed in notifying the Supreme Court before the hearing of the grounds of objection (the ***notice of objection***) and of the need to verify the grounds on which the objection is based by affidavit; and
- (e) state the date and time when the application for the control order is to be heard.
- (3) A statement of the grounds on which an interim control order has been made must not contain information that must not be disclosed under part 5 (Criminal intelligence).
- (4) A copy of the affidavit verifying the grounds on which the application was made must be attached to the interim control order unless disclosure of information included in the affidavit would be contrary to part 5.
- (5) If disclosure of information included in the affidavit would be contrary to part 5, an edited copy of the affidavit, from which the information that cannot be disclosed has been redacted, must be attached to the notice of the interim control order.
- (6) A police officer who suspects on reasonable grounds that a person is a person on whom notice of the making of an interim control order is required to be served under this section may—
 - (a) ask the person to tell the officer the person's name and home address; and
 - (b) ask the person to remain at a particular place for the period, not longer than 2 hours, that is reasonably necessary to serve the notice.

Note It is an offence for a person to fail without reasonable excuse to comply with a request to disclose the person's name and home address or to give false or misleading information about the person's name or home address (see s 85).

- (7) If the person fails to comply with a request under subsection (6) (b), the police officer may detain the person at that place for the period, not longer than 2 hours, that is reasonably necessary to serve the notice.

Note **Fail** includes refuse (see [Legislation Act](#), dict, pt 1).

18 Service of notice of interim control order

- (1) If notice of an interim control order cannot practicably be served on the person to whom it relates in accordance with section 17 (1), the Supreme Court may order—
- (a) service of notice of the interim control order within a period decided by the court that is up to 28 days after the end of the period in which the notice was required to be served under section 17 (1); or
 - (b) instead of personal service—other steps, decided by the court, be taken to notify the person that the interim control order has been made.
- (2) The court must not make an order under subsection (1) unless it is satisfied that the chief police officer has taken all reasonable steps to serve the person by personal service in accordance with section 17.
- (3) An order may be made under subsection (1) whether or not the 28-day period mentioned in section 17 (1) has ended.
- (4) An order under subsection (1) (b) may direct that notice of the interim control order is taken to have been served on the person to whom it applies on the happening of a stated event or at the end of a stated time.

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- (5) If the court is satisfied that the steps stated in an order under subsection (1) (b) have not (despite the best efforts of the chief police officer) brought an interim control order to the attention of the person to whom it applies, the court may specify order that the chief police officer give public notice of the interim control order.

Note **Public notice** means notice on an ACT government website or in a daily newspaper circulating in the ACT (see [Legislation Act](#), dict, pt 1).

- (6) Service in accordance with an order of the Supreme Court under this section is taken to be personal service for section 16 and section 17 (1).

19 Interim control order ceases when final control order made or served

- (1) An interim control order remains in force until whichever of the following happens first:
- (a) it is revoked;
 - (b) it ceases to have effect under subsection (2);
 - (c) the application for a control order confirming the interim control order is withdrawn or dismissed.
- (2) If a control order is made confirming an interim control order, with or without variation, the interim control order ceases to have effect—
- (a) if the person to whom it applies is present in court—when the control order is made; or
 - (b) in any other case—when the person is served by personal service with a copy of the control order.

20 Expedited hearing in cases of hardship

- (1) A person on whom notice of an interim control order is served under this division may ask the Supreme Court to hear the application for the control order confirming the interim control order at a date decided by the court that is earlier than the date stated in the notice.
- (2) The Supreme Court must hear the application for the control order as soon as possible if satisfied by the person concerned that, in the special circumstances of the case, the person will suffer undue hardship if the hearing of the application for the control order is delayed.

Division 3.2 Control orders

21 Supreme Court may make control order

- (1) The Supreme Court may make a control order in relation to a person on whom notice of an interim control order has been served under division 3.1 (Interim control orders) if the court is satisfied that—
 - (a) the person—
 - (i) is a member of a declared organisation; or
 - (ii) is or purports to be a former member of a declared organisation but has an ongoing involvement with the organisation and its activities; and
 - (b) sufficient grounds exist for making the control order.
- (2) The Supreme Court must revoke the interim control order by either—
 - (a) making a control order confirming, or confirming with variations, the interim control order; or
 - (b) dismissing the application for the control order.

- (3) In considering whether or not there are sufficient grounds to make the control order in relation to the person, the Supreme Court must take into account—
 - (a) the affidavit from the chief police officer or senior police officer verifying the contents of the application for the interim control order; and
 - (b) any notice of objection and affidavit filed by the person; and
 - (c) any other information provided at the hearing by the chief police officer or person to whom the interim control order applies.
- (4) The control order may be made whether or not the person is present at the hearing of the application.
- (5) If the person is not present at the hearing, the chief police officer must serve a copy of the control order on the person by personal service.
- (6) The Supreme Court may, on making a control order in relation to the person, make any other orders it considers appropriate in the circumstances.
- (7) Without limiting subsection (6), an order may be made in relation to the person to whom the control order applies—
 - (a) if the person satisfies the court that there is a good reason why the person should be allowed to associate with a particular controlled member—exempting the person from the operation of section 28 (Association between controlled members of declared organisations subject to interim control order or control order) to the extent, and subject to the conditions, stated by the court; or

- (b) exempting the person from the operation of section 30 (Prohibition on carrying on of certain activities when interim control order or control order takes effect) for a period stated by the court to allow the person to organise the person's affairs.
- (8) For the purposes of deciding whether subsection (1) (a) (ii) applies to a person, the Supreme Court may take into account whether the person regularly associates with members of the declared organisation without reasonable cause and the extent to which the conduct of the person demonstrates that the person has genuinely dissociated from the organisation.

22 Person to whom control order relates may appear at the hearing

The person to whom an interim control order applies may appear at the hearing of the application for the control order and make submissions in relation to the application for the order.

23 Form of control order

- (1) A control order must—
 - (a) state the person to whom it applies; and
 - (b) include a statement of the reasons for the making of the order; and
 - (c) set out an explanation of the right of appeal under section 26 (Right of appeal—pt 3).
- (2) However, a statement of reasons for the making of a control order must not include information that must not be disclosed under part 5 (Criminal intelligence).

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- (3) A copy of the affidavit verifying the grounds on which the order was sought must be attached to the control order unless disclosure of information included in the affidavit would be contrary to part 5.
- (4) If disclosure of information included in the affidavit would be contrary to part 5, an edited copy of the affidavit, from which the information that cannot be disclosed has been redacted, must be attached to the control order.

24 Date of effect of control order

A control order takes effect—

- (a) if the person to whom it relates is present in court—when the control order is made; or
- (b) in any other case—when the person is served by personal service with a copy of the control order.

25 Duration of control order

A control order is in force until it is revoked.

26 Right of appeal—pt 3

- (1) A party to the proceeding in which a control order is made may—
 - (a) appeal without leave to the Court of Appeal on a question of law; and
 - (b) apply to the Court of Appeal for leave to appeal on a question of fact.
- (2) An appeal or application for leave to appeal under this section does not affect the operation of the control order to which the application or appeal relates.

27 Variation or revocation of control order

- (1) The Supreme Court may at any time vary or revoke a control order on application by—
 - (a) the chief police officer; or
 - (b) the person to whom it applies.
- (2) An application for variation or revocation of a control order may only be made by the person to whom the order applies with the leave of the Supreme Court, and leave is only to be granted if the court is satisfied there has been a substantial change in the relevant circumstances since the order was made or last varied.
- (3) The Supreme Court must, before varying or revoking a control order under this section—
 - (a) allow all parties a reasonable opportunity to be heard on the matter; and
 - (b) have regard to the same factors that the court is required to have regard to when considering whether or not to make a control order and when considering the terms of a control order.
- (4) If an application for the variation or revocation of a control order is made by the person to whom the order applies, the application must be supported by oral evidence given on oath.
- (5) The Supreme Court must give notice of the variation or revocation of a control order to the chief police officer (if the chief police officer is not present when the order is varied or revoked) and to the Attorney-General.

Division 3.3 Consequences of making of interim control orders and control orders

28 Association between controlled members of declared organisations subject to interim control order or control order

- (1) A controlled member of a declared organisation commits an offence if the member associates with another controlled member of the organisation.

Maximum penalty: Imprisonment for 2 years.

- (2) A controlled member of a declared organisation commits an offence if the member associates with another controlled member of the organisation at any time within a period of 3 months on 3 or more occasions.

Maximum penalty: Imprisonment for 3 years.

- (3) A controlled member of a declared organisation commits an offence if the member associates with another controlled member of the organisation after being convicted of an offence under this section.

Maximum penalty: Imprisonment for 5 years.

- (4) For this section, a person associates with another controlled member whether the other controlled member is the same person or different people on each occasion.

- (5) It is a defence to a prosecution for an offence against this section if the defendant proves that the defendant did not know, and could not reasonably be expected to have known, that the other person with whom the defendant associated was a controlled member of the declared organisation.

- (6) It is a defence to a prosecution for an offence against this section if the association is in accordance with an exemption under section 21 (7) (a) (Supreme Court may make control order).
- (7) It is a defence to a prosecution for an offence against this section if the defendant proves that—
 - (a) the association happened under any of the following circumstances:
 - (i) because the other controlled member is a close family member;
 - (ii) in the course of a lawful occupation, business or profession;
 - (iii) in the course of prescribed training or education in which the defendant and the other controlled member were enrolled in good faith;
 - (iv) at a prescribed rehabilitation, counselling or therapy session;
 - (v) when in lawful custody or complying with a court order;
 - (vi) circumstances prescribed by regulation; and
 - (b) the defendant did not, under the circumstances, associate with the other controlled member for an ulterior purpose.

Note The defendant has a legal burden in relation to the matters mentioned in ss (5) to (7) (see [Criminal Code](#), s 59).

- (8) To remove any doubt, in a proceeding for an offence against this section, it is not necessary for the prosecution to prove that the defendant associated with the other controlled member for a particular purpose or that the association would have led to the commission of an offence.

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- (9) For this section, a control order made in relation to a person is conclusive evidence that the person is a controlled member of the particular declared organisation to which the control order relates and of the terms of the order (including any exemptions from the operation of this section under section 21 (7) (a)).
- (10) A police officer who suspects on reasonable grounds that a person is a controlled member of a declared organisation and is associating with another controlled member of the declared organisation may ask the person to tell the officer the person's name and home address.

Note It is an offence for a person to fail without reasonable excuse to comply with a request to disclose the person's name and home address or to give false or misleading information about the person's name or home address (see s 85).

- (11) For this section, a person is a *close family member* of another person if—
- (a) the person is, or has been, the domestic partner of the other person; or
 - (b) the person is a parent or grandparent of the other person; or
 - (c) the person is a parent or grandparent of the other person by marriage; or
 - (d) the person is a brother or sister of the other person; or
 - (e) the person is a brother or sister of the other person by marriage; or
 - (f) the person is, or has been, a guardian or carer of the other person.

29 Recruiting person to become member of declared organisation

- (1) A controlled member of a declared organisation commits an offence if the member recruits another person to become a member of the organisation.

Maximum penalty: Imprisonment for 5 years.

- (2) In this section:

recruit means counsel, procure, solicit, incite or induce.

30 Prohibition on carrying on of certain activities when interim control order or control order takes effect

- (1) Any authorisation to carry on a prescribed activity that is held by a controlled member of a declared organisation is automatically suspended on the taking effect of an interim control order in relation to the person.
- (2) The authorisation is suspended until the interim control order is confirmed, or confirmed with variations, by a control order or is revoked.
- (3) On confirmation of the interim control order by a control order, the authorisation is revoked.
- (4) A controlled member of a declared organisation is ineligible to apply for authorisation to carry on a prescribed activity while an interim control order or control order in relation to the member is in force.
- (5) An entity responsible for giving an authorisation for the conduct of a prescribed activity must—
- (a) if a person mentioned in subsection (4) applies for a grant, or renewed grant, of the authorisation—reject the application; or

- (b) if a person mentioned in subsection (4) holds a current grant of the authorisation—immediately cancel the authorisation.
- (6) A suspension or revocation of an authorisation in accordance with this section operates despite any law, award or industrial or other agreement affecting the employment of the person holding the authorisation, and neither the Territory nor the authority that issues an authorisation incurs any liability because of the suspension or revocation.
- (7) In this section:

authorisation includes a licence, registration, approval, certification or any other form of permission required by or under a territory law for a person's occupation or activity.

occupation means employment, trade, profession or calling of any kind that may only be carried on by a person holding an authorisation.

prescribed activity means the following:

- (a) any of the following within the meaning of the [Casino Control Act 2006](#):
 - (i) operation of a casino;
 - (ii) being a casino owner;
 - (iii) being a casino official;
 - (iv) being a casino lessee;
- (b) carrying on a business issued, or required to be issued, with a licence under the [Gaming Machine Act 2004](#).
- (c) carrying on a security activity within the meaning of the [Security Industry Act 2003](#);

- (d) carrying on the business of a pawnbroker within the meaning of the *Pawnbrokers Act 1902*;
- (e) carrying on the business of a second-hand dealer within the meaning of the *Second-hand Dealers Act 1906*;
- (f) carrying on business as a debt collector, however described;
- (g) carrying on business as a private investigator, however described;
- (h) possessing or using a firearm, or an imitation firearm, within the meaning of the *Firearms Act 1996* or carrying on business as a firearms dealer within the meaning of that Act;
- (i) operating a tow truck within the meaning of the *Road Transport (Vehicle Registration) Regulation 2000*;
- (j) carrying on business as a motor vehicle repairer within the meaning of the *Fair Trading (Motor Vehicle Repair Industry) Act 2010*;
- (k) carrying on business as a dealer, wholesaler or car market operator within the meaning of the *Sale of Motor Vehicles Act 1977*;
- (l) supplying liquor within the meaning of the *Liquor Act 2010*;
- (m) engaging in race bookmaking or sports bookmaking within the meaning of the *Race and Sports Bookmaking Act 2001*;
- (n) carrying on business as a body art tattooist or performing body art tattooing procedures, however described;
- (o) carrying out the activities of an owner, trainer, jockey or another person associated with racing who is regulated by a controlling body under the *Racing Act 1999*;

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Part 3
Division 3.3

Control of members of declared organisations
Consequences of making of interim control orders and control orders

Section 30

- (p) participating in a boxing contest within the meaning of the *Boxing Control Act 1993*;
- (q) carrying out the activities of an operator of a brothel or an escort agency under the *Prostitution Act 1992*.
- (r) any other activity prescribed by regulation.

EXPOSURE DRAFT

Part 4 **Reciprocal recognition and enforcement of declarations and orders**

Division 4.1 **Preliminary**

31 **Definitions—pt 4**

In this part:

interstate control order means an order made under a State law that is prescribed by regulation for this definition.

Note *State* includes the Northern Territory (see [Legislation Act](#), dict, pt 1).

interstate declaration means a declaration made under a State law that is prescribed by regulation for this definition.

registered interstate control order means an interstate control order registered under this part.

registered interstate declaration means an interstate declaration registered under this part.

respondent means the organisation the subject of an interstate declaration or the person the subject of an interstate control order.

Division 4.2 **Registration of interstate declarations in the ACT**

32 **Application for registration of interstate declaration**

- (1) The chief police officer may apply to the registrar for the registration of an interstate declaration.

- (2) An application for registration must be—
 - (a) in writing; and
 - (b) accompanied by an affidavit from the chief police officer including or accompanied by the following:
 - (i) a copy of the interstate declaration;
 - (ii) enough information to satisfy the registrar that the declaration is an interstate declaration that is in force.
- (3) An application for registration of an interstate declaration does not need to be served on the respondent.

33 When interstate declaration cannot be registered

An application for registration of an interstate declaration cannot be made, and an interstate declaration cannot be registered, if any of the following apply to the declaration:

- (a) the law of the jurisdiction in which the declaration was made states a period within which the respondent may appeal against the declaration, and that period has not ended;
- (b) the determination of an application by the respondent for leave to appeal against the declaration, whether made before or after any appeal period has ended, is pending;
- (c) the determination of an appeal by the respondent against the declaration is pending.

34 Registration of interstate declaration

The registrar must register an interstate declaration that is the subject of an application under this division if the registrar is satisfied about the following:

- (a) that the declaration is in force;

- (b) if the law of the jurisdiction in which the declaration was made requires notice of the declaration to be published—that the requirement has been complied with;
- (c) if the law of the jurisdiction in which the declaration was made requires notice of the declaration to be served on any entity—that the requirement has been complied with or is taken to have been complied with;
- (d) that section 33 does not prevent registration of the declaration.

35 Period of registration of interstate declaration

- (1) On registering an interstate declaration, the registrar must state the date the registration ends.
- (2) The date stated by the registrar must be the date the interstate declaration would cease to be in force in the jurisdiction in which it was made if it were not sooner revoked.
- (3) The registration of the interstate declaration ends on the stated date.
- (4) Subsections (1) to (3) do not apply if, under the law of the jurisdiction in which the interstate declaration was made, the interstate declaration remains in force for an indefinite period.
- (5) If subsections (1) to (3) do not apply—
 - (a) on registering the interstate declaration—the registrar must state that the registration is in force for an indefinite period; and
 - (b) the registration of the interstate declaration does not end.

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36 Notice of registration of interstate declaration

- (1) Not later than 2 business days after registering an interstate declaration, the registrar must give the chief police officer a certificate of the registration with a copy of the registered interstate declaration attached.
- (2) As soon as practicable after receiving a copy of the registered interstate declaration, the chief police officer must—

- (a) give public notice of the registration of the interstate declaration; and

Note **Public notice** means notice on an ACT government website or in a daily newspaper circulating in the ACT (see [Legislation Act](#), dict, pt 1).

- (b) give notice of the registration to the commissioner, however described, of the police force or police service of the State in which the declaration was made and, if the declaration was made by a court, a registrar of that court.

Note **State** includes the Northern Territory (see [Legislation Act](#), dict, pt 1).

37 Commencement and duration of registered interstate declaration

An interstate declaration registered under this part—

- (a) comes into force in the ACT on the day after the day public notice of registration of the declaration is given under section 36; and

- (b) remains in force in the ACT until whichever of the following happens first:
 - (i) if section 35 (3) (Period of registration of interstate declaration) applies—the date stated by the registrar as the date the registered interstate declaration ends;
 - (ii) the registration of the declaration is cancelled under this part.

38 Effect of registration of interstate declaration

- (1) A registered interstate declaration that has come into force under section 37 operates in the ACT as if it were a declaration made under part 2 (Criminal organisations).
- (2) A change in the name or the membership of an organisation that is the subject of the declaration does not affect its registration or effect in the ACT.

39 Cancellation of registration of interstate declaration on revocation in jurisdiction where originally made

- (1) This section applies to a registered interstate declaration if—
 - (a) the declaration is revoked in the jurisdiction in which it was made; and
 - (b) the registrar receives notice of the revocation.
- (2) On receiving notice of the revocation, the registrar must—
 - (a) cancel the registration of the declaration without delay; and
 - (b) give the chief police officer written notice of the cancellation.
- (3) The cancellation of the registered interstate declaration takes effect immediately.

40 Cancellation of registration of interstate declaration at request of chief police officer

- (1) The chief police officer may, at any time while an interstate declaration is registered under this part, apply to the registrar to cancel the declaration's registration.
- (2) On receiving an application under this section, the registrar must—
 - (a) cancel the declaration's registration without delay; and
 - (b) give the chief police officer written notice of the cancellation.
- (3) The cancellation of the registered interstate declaration takes effect immediately.

41 Cancellation of registration of interstate declaration by Supreme Court

- (1) The Supreme Court may, on application by the respondent, cancel the registration of an interstate declaration if satisfied that the declaration should not have been registered under this part.
- (2) The chief police officer is a party to the application.
- (3) If the registration of an interstate declaration is cancelled under this section, any control order made under this Act that applies to a member of the organisation that is the subject of the interstate declaration and made on the basis of the declaration ceases to have effect immediately.
- (4) Nothing in this section authorises the Supreme Court to reconsider the merits of the interstate declaration.

42 Notice of cancellation or ending of registration of interstate declaration

As soon as practicable after the registration of an interstate declaration is cancelled under this part or otherwise ends, the chief police officer must—

- (a) give public notice of the declaration's cancellation or ending; and

Note **Public notice** means notice on an ACT government website or in a daily newspaper circulating in the ACT (see [Legislation Act](#), dict, pt 1).

- (b) give notice of the declaration's cancellation or ending to the commissioner, however described, of the police force or police service of the State in which the declaration was made and, if the declaration was made by a court, a registrar of that court.

Note **State** includes the Northern Territory (see [Legislation Act](#), dict, pt 1).

Division 4.3 Registration of interstate control orders in the ACT

43 Application for registration of interstate control order

- (1) The chief police officer may apply to the registrar for the registration of an interstate control order.
- (2) An application for registration must be—
 - (a) in writing; and
 - (b) accompanied by an affidavit from the chief police officer including or accompanied by the following:
 - (i) a copy of the interstate control order;

- (ii) enough information to satisfy the registrar that the order is an interstate control order that is in force.
- (3) The application must state—
 - (a) whether the chief police officer believes it is necessary for the interstate control order to be adapted or modified for its effective operation in the ACT; and
 - (b) if so, the details of the adaptation or modification that the chief police officer believes to be necessary.
- (4) An application for the registration of an interstate control order does not need to be served on the respondent.

44 When interstate control order cannot be registered

An application for registration of an interstate control order cannot be made, and an interstate control order cannot be registered, if—

- (a) the respondent is subject to a control order or interim control order under part 3 (Control of members of declared organisations); or
- (b) any of the following apply to the order:
 - (i) the law of the jurisdiction in which the order was made states a period within which the respondent may appeal against the order, and that period has not ended;
 - (ii) the determination of an application by the respondent for leave to appeal against the order, whether made before or after any appeal period has ended, is pending;
 - (iii) the determination of an appeal by the respondent against the order is pending.

45 Registration of interstate control order

- (1) The registrar must register an interstate control order that is the subject of an application under this division if the registrar is satisfied about the following:
 - (a) that the order is in force;
 - (b) that the order was served, or taken to be served, on the respondent under the law of the jurisdiction where the order was made;
 - (c) that section 44 does not prevent registration of the order;
 - (d) that the order does not need to be adapted or modified for its effective operation in the ACT.
- (2) If the registrar considers that the order needs to be adapted or modified for its effective operation in the ACT, the registrar must refer the application to the Supreme Court.

46 Referral of application to Supreme Court for adaptation or modification

- (1) If an application is referred to the Supreme Court under section 45, the chief police officer must serve the following by personal service on the respondent:
 - (a) a copy of the application and any supporting affidavit;
 - (b) an appearance notice.
- (2) The application may be heard in the respondent's absence if the Supreme Court is satisfied that a copy of the application and an appearance notice were served on the respondent under subsection (1).

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- (3) In this section:

appearance notice means a written notice stating the following in relation to an interstate control order:

- (a) that an application for the registration of the interstate control order has been referred to the Supreme 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 interstate control order, or the interstate control order as varied by the Supreme Court, may be registered in the respondent's absence if the respondent fails to appear at the hearing.

47 Determination of application for registration

- (1) On hearing an application referred to it under section 45 (Registration of interstate control order), the Supreme Court may direct the registrar to register the order with any adaptations or modifications that the court considers necessary or desirable for its effective operation in the ACT.
- (2) Before giving a direction under subsection (1), the Supreme Court must—
 - (a) be satisfied about the matters mentioned in section 45 (1) (a) to (c); and
 - (b) consider—
 - (i) anything that could be considered by the court if the application were an application for a control order under this Act; and
 - (ii) any changes in the respondent's circumstances since the interstate control order was made.

- (3) The registrar must register the interstate control order in accordance with the direction of the Supreme Court.

48 Period of registration of interstate control order

- (1) On registering an interstate control order, the registrar must state the date the registration ends.
- (2) The date stated by the registrar is to be the date the interstate control order would end in the jurisdiction in which it was made if it were not sooner revoked.
- (3) The registration of the interstate control order ends on the stated date.
- (4) Subsections (1) to (3) do not apply if, under the law of the jurisdiction in which the interstate control order was made, the interstate control order remains in force for an indefinite period.
- (5) If subsections (1) to (3) do not apply—
 - (a) on registering the interstate control order—the registrar must state that the registration is in force for an indefinite period; and
 - (b) the registration of the interstate control order does not end.

49 Notice of registration

- (1) Not later than 2 working days after registering an interstate control order, the registrar must give the chief police officer a certificate of the registration with a copy of the registered interstate control order attached.

- (2) As soon as practicable after receiving a copy of the registered interstate control order, the chief police officer must—
- (a) serve a copy of the order by personal service on the respondent; and
 - (b) give public notice of the registration of the interstate control order.

Note **Public notice** means notice on an ACT government website or in a daily newspaper circulating in the ACT (see [Legislation Act](#), dict, pt 1).

50 Commencement and duration of registered interstate control order

An interstate control order registered under this part—

- (a) comes into force in the ACT on the day the respondent is served by personal service with a copy of the order; and
- (b) remains in force in the ACT until whichever of the following happens first:
 - (i) the registration of the order ends in accordance with section 48 (Period of registration of interstate control order);
 - (ii) the registration of the order is cancelled under this part.

51 Effect of registration of interstate control order

- (1) A registered interstate control order that has come into force under section 50 operates in the ACT as if it were a control order made under part 3 (Control of members of declared organisations).
- (2) However, part 3 (other than division 3.3 (Consequences of making of interim control orders and control orders)) does not apply in relation to the registered interstate control order.

52 Variation or revocation of interstate control order in jurisdiction where originally made

- (1) If an interstate control order is varied by a court in the jurisdiction in which it was made—
 - (a) the variations to the order may be registered under this part in the same way as the interstate control order is registered, whether the variations were made before or after registration of the interstate control order; and
 - (b) this part applies accordingly with necessary changes.
- (2) Subsection (3) applies to a registered interstate control order if—
 - (a) the order is revoked by a court in the jurisdiction in which the order was made; and
 - (b) the registrar receives notice of that revocation from an officer of that court or from the chief police officer.
- (3) On receiving notice of the revocation, the registrar must—
 - (a) cancel the registration of the order without delay; and
 - (b) give the chief police officer written notice of that cancellation.
- (4) As soon as practicable after receiving notice of the cancellation of the registration of an interstate control order, the chief police officer must serve a copy of the notice by personal service on the respondent.
- (5) The cancellation of the registration of an interstate control order takes effect immediately.

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53 Cancellation of registration of interstate control order at request of chief police officer

- (1) The chief police officer may, at any time while an interstate control order is registered under this part, apply to the registrar to cancel the registration of the order.
- (2) On receiving an application under this section, the registrar must—
 - (a) cancel the registration of the order without delay; and
 - (b) give the chief police officer written notice of the cancellation.
- (3) As soon as practicable after receiving notice of the cancellation of the registration of an interstate control order, the chief police officer must serve a copy of the notice of cancellation by personal service on the respondent.
- (4) The cancellation of the registration of an interstate control order takes effect immediately.

54 Cancellation of registration of interstate control order by Supreme Court

- (1) The Supreme Court may, on application by the respondent, cancel the registration of an interstate control order if satisfied that the control order should not have been registered section 45 (Registration of interstate control order).
- (2) The chief police officer is a party to the application.
- (3) If the registration of an interstate control order is cancelled under this section, the interstate control order immediately ceases to have effect in the ACT, and the respondent is taken not to have committed any offence under division 3.3 (Consequences of making of interim control orders and control orders) as a controlled member.

- (4) Nothing in this section authorises the Supreme Court to reconsider the merits of the interstate control order.

55 Registration of interstate control order cancelled automatically in certain circumstances

The registration of an interstate control order under this part is immediately cancelled if—

- (a) the person to whom the order relates becomes subject to a control order or interim control order under part 3 (Control of members of declared organisations); or
- (b) the order was made in reliance on the person to whom it relates—
 - (i) being a member of a particular organisation that is subject to an interstate declaration that is no longer in force; or
 - (ii) associating with a member of a particular organisation that is subject to an interstate declaration that is no longer in force.

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Part 5 Criminal intelligence

Division 5.1 Preliminary

56 Definitions—pt 5

In this part:

court staff includes a judge's associate, a police officer or other officer providing court security, a court reporter and any other person ordinarily used by the Supreme Court for the conduct of proceedings.

criminal intelligence application means an application under division 5.3 for a declaration that particular information is criminal intelligence.

criminal intelligence monitor means the criminal intelligence monitor designated under division 5.2.

declared criminal intelligence means information declared by the Supreme Court under division 5.3 to be criminal intelligence.

external agency means any of the following:

- (a) the Australian Crime Commission;
- (b) a police force or service of a State;
- (c) the director-general, or an officer of another State with functions substantially corresponding to the director-general's functions under the *Corrections Management Act 2007*;

Note ***State*** includes the Northern Territory (see *Legislation Act*, dict, pt 1).

- (d) another entity established under a law of another jurisdiction, including a jurisdiction outside Australia, prescribed by regulation.

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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 lives;
- (e) a position held by the informant in an organisation.

informant means any of the following:

- (a) anyone who has given, to the Australian Federal Police or to an external agency, information that the chief police officer reasonably believes is criminal intelligence, and who is not a police officer or an officer of an external agency;
- (b) a police officer, or officer of an external agency, who has obtained information through the use of an assumed identity.

informant affidavit means an affidavit under section 63 (Additional affidavit if informant relied on) or section 72 (Additional matters if informant relied on in substantive hearing).

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 chief police officer obtained the information from an external agency—that agency; or
- (b) in any other case—the Australian Federal Police.

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substantive application means an application under this Act other than a criminal intelligence application.

57 Objects—pt 5

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.

Division 5.2 Criminal intelligence monitor

58 The criminal intelligence monitor

- (1) A regulation may provide for the designation of a retired judicial officer, or a person qualified to be appointed as a judicial officer, of any Australian jurisdiction to be the criminal intelligence monitor under this Act.
- (2) A regulation may impose restrictions on a lawyer who is or was the criminal intelligence monitor representing a client who is or was a respondent to an application under this Act or associated with a respondent to an application under this Act.

59 Monitor's functions

- (1) The criminal intelligence monitor has the following functions:
 - (a) to monitor each criminal intelligence application;
 - (b) to monitor each application to the Supreme Court under part 2 (Criminal organisations) or part 3 (Control of members of declared organisations);
 - (c) to test, and make submissions to the Supreme Court about, the appropriateness and validity of the monitored application.
- (2) The Minister may make guidelines about the exercise of the criminal intelligence monitor's functions.
- (3) A guideline is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

60 Material to be given to monitor

- (1) The chief police officer must give the criminal intelligence monitor the following:
 - (a) a copy of any criminal intelligence application (or any application to revoke a declaration of criminal intelligence), and any supporting material;
 - (b) a copy of any application for the declaration of an organisation under part 2 (Criminal organisations) or for a control order (or interim control order) under part 3 (Control of members of declared organisations), and any supporting material;
 - (c) a copy of any other material given to the Supreme Court by the chief police officer during the hearing of an application mentioned in paragraph (a) or (b).

- (2) However, this section does not apply to material to the extent it discloses any identifying information about the informant.
- (3) Material given to the criminal intelligence monitor may refer to an informant by way of a unique identifier.
- (4) The criminal intelligence monitor must—
 - (a) store the material in a secure place; and
 - (b) return the material to the chief police officer as soon as practicable after the matter to which it relates is finalised.
- (5) A criminal intelligence monitor is entitled to have access to a record, or to a transcript of a record, of a hearing at which the monitor appears.

61 Appearance and role of monitor at hearing

- (1) This section applies to a hearing for an application at which the criminal intelligence monitor appears.
- (2) The monitor 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
 - (b) make submissions to the Supreme Court about the appropriateness of granting the application.
- (3) However, the monitor must not make a submission to the court while a respondent or a legal representative of a respondent is present.
- (4) The Supreme Court may exclude the monitor from the hearing while a respondent or a legal representative of a respondent is present.

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- (5) In this section:

present includes present by audio-visual link or audio link.

Division 5.3 Declarations of criminal intelligence

62 Application for declaration of criminal intelligence

- (1) The chief police officer may apply to the Supreme Court for a declaration that particular information is criminal intelligence, but only if the chief police officer believes on reasonable grounds the information is criminal intelligence.
- (2) The application must—
 - (a) be in writing; and
 - (b) identify the information; and
 - (c) state the relevant agency for the information; and
 - (d) state—
 - (i) that the chief police officer seeks a declaration that the information is criminal intelligence; and
 - (ii) the grounds on which the declaration is sought; and
 - (e) 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.
- (3) An affidavit to be relied on by the chief police officer at the hearing of the application must be filed with the application.

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- (4) The affidavit may contain statements based on any information and belief if the person making the affidavit identifies the sources of the information and the grounds for the belief (despite any rule relating to the admission of hearsay or other evidence in proceedings before the Supreme Court).
- (5) If any of the information has been provided by an informant—
 - (a) the application, affidavits and other material filed with the application need not include any identifying information about the informant; and
 - (b) identifying information about the informant cannot otherwise be required to be given to the Supreme Court.
- (6) 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.

63 Additional affidavit if informant relied on

- (1) This section applies if the information that the chief police officer applies to be declared criminal intelligence (the *relevant intelligence*) was provided to the relevant agency by an informant.
- (2) The informant cannot be called or otherwise required to give evidence.
- (3) The chief police officer 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 believes on reasonable grounds, 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;

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- (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 an allegation of professional misconduct against the informant—
 - (a) need not state the date of the conviction or charge or date the offence was committed or is alleged to have been committed or date the misconduct happened or is alleged to have happened; but
 - (b) if it does not state a date—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.

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- (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 cannot be required to be given to the Supreme Court.
- (9) Subsection (8) does not prevent further information being given to the Supreme Court other than under a requirement.
- (10) 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
 - (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.

64 Hearing in absence of party

The Supreme Court must consider a criminal intelligence application without notice of the matter having been given other than to the criminal intelligence monitor.

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65 Criminal intelligence application heard first

- (1) If the chief police officer relies on particular information for a substantive application under this Act and a criminal intelligence application is also made in relation to that information, the criminal intelligence application must be decided first.
- (2) Subsection (1) applies regardless of when the applications were filed.

66 Special closed hearing

- (1) The hearing of a criminal intelligence application is a closed hearing to the extent provided under this section.
- (2) To ensure the hearing is closed, the Supreme Court must exclude everyone, or particular people, from it, other than the following:
 - (a) the applicant;
 - (b) the applicant's legal and other representatives;
 - (c) the criminal intelligence monitor;
 - (d) any witness who may be called to give evidence under this part;
 - (e) court staff necessary for the hearing.
- (3) Before hearing the criminal intelligence application, the Supreme Court must give a warning about the confidential nature of the information and that unlawful disclosure of information relating to the hearing may be an offence under section 75 (Unlawful disclosure of criminal intelligence or information in informant affidavit).

67 Oral evidence by police officers and officers of external agencies

- (1) With the Supreme 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 criminal intelligence monitor.
- (2) However, no question may be asked of the officer that could lead to the disclosure of any identifying information about an informant.

68 Deciding criminal intelligence application

- (1) The Supreme Court may declare that 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 Supreme Court may have regard to whether matters mentioned in section 57 (a) (i) to (iii) (Objects—pt 5) outweigh any unfairness to a respondent to any existing or possible substantive application in which the information may be mentioned.
- (3) Subsection (2) does not limit the matters that the Supreme Court may consider in exercising its discretion.
- (4) If the information was provided to the relevant agency by an informant, the Supreme 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.
- (5) The supporting information mentioned in subsection (4) may be other information before the Supreme Court that is declared criminal intelligence or that is the subject of a criminal intelligence application.

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- (6) If the Supreme 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 chief police officer an opportunity to withdraw it.

69 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 it is revoked.

70 Revocation of criminal intelligence declaration

- (1) The Supreme Court may, at any time on application by the chief police officer, 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 the revocation is sought.
- (3) The application must be accompanied by any affidavit the chief police officer intends to rely on at the hearing of the application.
- (4) The Supreme Court must consider the application without notice of it the matter having been given other than to the criminal intelligence monitor.

Division 5.4 Protection of declared criminal intelligence for substantive hearings

71 Application—div 5.4

- (1) 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.
- (2) If this division applies to a substantive application, the division applies as well as any other provision of this Act relating to the application.

72 Additional matters if informant relied on in substantive hearing

- (1) This section applies if the declared criminal intelligence was provided to the relevant agency by an informant.
- (2) The informant cannot be called or otherwise required to give evidence in a hearing for the substantive application.
- (3) The chief police officer must, before the hearing of the substantive application, file an affidavit by an officer of the relevant agency complying with section 63 (4) to (10) (Additional affidavit if informant relied on).
- (4) The substantive application, affidavits and other material filed with the application need not include any identifying information about the informant and identifying information about the informant cannot otherwise be required to be given to the court.

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73 Special closed hearing for consideration of intelligence

- (1) The Supreme 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 Supreme Court must exclude from the relevant part everyone, or particular people, other than the following:
 - (a) the chief police officer;
 - (b) a police officer;
 - (c) an officer of an external agency from which the chief police officer obtained any of the declared criminal intelligence;
 - (d) the chief police officer's legal representatives and nominees;
 - (e) the criminal intelligence monitor;
 - (f) court staff necessary for the hearing.
- (3) Before the relevant part starts, the Supreme Court must give a warning about the confidential nature of the declared criminal intelligence and that unlawful disclosure of information or intelligence relating to the relevant part of the hearing may be an offence under section 75 (Unlawful disclosure of criminal intelligence or information in informant affidavit).

74 Oral evidence by police officers and officers of external agencies

- (1) With the Supreme 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—
 - (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 Supreme Court or the criminal intelligence monitor.
- (2) However, no question may be asked of the officer or the monitor that could lead to the disclosure of any identifying information about an informant.

Division 5.5 Protection from unlawful disclosure

75 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 contained in an informant affidavit;
 - (c) declared criminal intelligence, the declaration for which has not been revoked.
- (2) A person commits an offence if—
 - (a) the person discloses information or intelligence; and

- (b) the disclosure is not—
 - (i) made with lawful authority or excuse; or
 - (ii) made only to the extent necessary to perform the person's functions under or relating to this Act; or
 - (iii) if the information is in an informant affidavit—by the informant the subject of the affidavit.

Maximum penalty: 100 penalty units, imprisonment for 12 months or both.

- (3) It is a defence to an offence against subsection (2) if the defendant proves—
 - (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.

Note The defendant has a legal burden in relation to the matters mentioned in s (3) (see [Criminal Code](#), s 59).

- (4) For subsection (3) (b), it is not reasonable for the defendant to hold the belief if the defendant received a warning by the Supreme Court under this part for the information or intelligence.

76 Registrar to secure information

- (1) The registrar must seal the following documents and store them in a secure place immediately on their filing:
 - (a) a criminal intelligence application or any document filed in support of the application;

- (b) any document containing declared criminal intelligence filed with or in support of a substantive application;
 - (c) any informant affidavit.
- (2) The *Territory Records Act 2002* does not apply to the documents.
- (3) 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 a judge hearing an appeal or that judge’s associate; or
 - (c) the criminal intelligence monitor; or
 - (d) a person conducting a review under part 6 (Miscellaneous), the Attorney-General or a person to whom the chief police officer or the Attorney-General authorises disclosure.
- (4) However, the criminal intelligence monitor cannot inspect any part of the documents to the extent they disclose any identifying information about an informant.
- (5) The registrar may—
 - (a) make electronic copies of the documents on a storage device; and
 - (b) after the end day for the application in which the documents were filed—
 - (i) return the documents that have been copied to the chief police officer; and
 - (ii) store the storage device, unconnected to any computer, in a secure place.

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- (6) This section applies even if the application is withdrawn or dismissed.
- (7) This section ceases to apply if the criminal intelligence declaration relating to the application is revoked.
- (8) In this section:

end day, for an 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 that 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.

Part 6 Miscellaneous

77 Criminal organisations register

- (1) The chief police officer must keep a register of information about declarations and orders made under this Act (the *register of criminal organisations*).
- (2) The register may contain any of the following information:
 - (a) the name of any declared organisation or the name by which it is commonly known;
 - (b) the name of any controlled member of the declared organisation or the name by which the controlled member is commonly known.
- (3) Information relating to a control order must not be published on the register—
 - (a) before the end of 28 days after the control order is made; and
 - (b) if the person to whom the order relates seeks leave to appeal against the order before the end of the 28-day period—until the appeal is determined or withdrawn.
- (4) Information published on the register must be removed from the register if leave to appeal is sought after the 28-day period and is not to be restored to the register unless leave is refused or, if leave is allowed, the appeal is determined or withdrawn.
- (5) Information contained in the register may be provided to members of the public in any other way approved by the chief police officer.

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- (6) Without limiting subsection (5), the chief police officer may give public notice of any information contained in the register.

Note **Public notice** means notice on an ACT government website or in a daily newspaper circulating in the ACT (see [Legislation Act](#), dict, pt 1).

78 Provision of information relating to criminal organisations

- (1) A regulatory authority and the chief police officer may enter into arrangements for the supply to the regulatory authority of information that—
- (a) is contained in the records of the Australian Federal Police; and
 - (b) concerns—
 - (i) any organisation that is a declared organisation; and
 - (ii) any controlled member of that organisation who is an applicant for, or holder of, an authorisation under the regulatory legislation; and
 - (iii) any person who is an applicant for, or holder of, an authorisation under the regulatory legislation and who is a member, or associates with any member, of that organisation; and
 - (c) is reasonably necessary for the proper exercise of any function of the regulatory authority relating to authorisations and disciplinary proceedings under the regulatory legislation.
- (2) The arrangements entered into under subsection (1) are sufficient authority for the supply of the information mentioned in the subsection.

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- (3) The regulatory authority—
- (a) must take steps to maintain the confidentiality of any information provided by the chief police officer under subsection (1) that is criminal intelligence; and
 - (b) must not disclose the information to any person unless authorised to do so by the chief police officer.
- (4) Nothing in this section limits or affects any other function given to the chief police officer or the regulatory authority under the regulatory legislation.
- (5) In this section:

authorisation includes the licence, registration, approval, certification or any other form of permission required by or under a territory law for a person's occupation or activity.

occupation means employment, trade, profession or calling of any kind that may only be carried on by a person holding an authorisation.

regulatory authority means a person or body having the function given under legislation of authorising people in connection with the carrying on of an occupation or activity.

regulatory legislation means legislation requiring the authorisation of people in connection with the carrying on of an occupation or activity.

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79 Attorney-General to be notified

- (1) The chief police officer must give notice of any application under part 2 (Criminal organisations), part 3 (Control of members of declared organisations) or part 5 (Criminal intelligence) to the Attorney-General as soon as practicable after—
 - (a) if the chief police officer makes the application—the application is made; or
 - (b) in any other case—the chief police officer receives notice of the application.
- (2) The chief police officer must give the Attorney-General a copy of the application, including any information classified by the chief police officer as criminal intelligence, if the Attorney-General asks the chief police officer for the copy.
- (3) The Attorney-General is entitled to be present and to make submissions at the hearing of the application.

80 Burden of proof

- (1) Any question of fact to be decided in a proceeding under this Act must be decided on the balance of probabilities.
- (2) This section does not apply in relation to a proceeding for an offence against this Act.

81 Hearsay evidence

- (1) Information declared by the Supreme Court under part 5 (Criminal intelligence) to be criminal intelligence may be admitted in evidence in a proceeding before the court under part 2 (Criminal organisations) or part 3 (Control of members of declared organisations) despite any rule relating to the admission of hearsay evidence.

- (2) However, this section does not affect any rule or inherent jurisdiction of the Supreme Court in relation to the relevance or probative value of evidence or to procedural fairness.

82 Delegation by chief police officer

- (1) The chief police officer may delegate a function of the chief police officer under this Act to a senior police officer.

Note For the making of delegations and the exercise of delegated functions, see the [Legislation Act](#), pt 19.4.

- (2) However, the chief police officer must not delegate the function of classifying information as criminal intelligence for this Act except to a deputy chief police officer.

83 Protection from liability

- (1) A relevant person is not civilly or criminally liable for anything done or omitted to be done honestly and without recklessness (the *conduct*)—

- (a) in the exercise of a function under this Act; or
- (b) in the reasonable belief that the conduct was in the exercise of a function under this Act.

- (2) In this section:

relevant person means—

- (a) the Attorney-General; or
- (b) the chief police officer; or
- (c) any other police officer or other person exercising a function under this Act; or
- (d) the Territory.

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84 Protection of exercise of certain functions

- (1) This section applies to a function (a *protected function*) given to a person under this Act (a *protected person*) in relation to the making or purported making of a declaration, interim control order or control order under this Act.
- (2) Except as provided by section 26 (Right of appeal—pt 3), the exercise by a protected person of a protected function may not be—
 - (a) challenged, reviewed, quashed or called into question before any court of law or administrative review body in any proceeding; or
 - (b) restrained, removed or otherwise affected by any proceeding.
- (3) Without limiting subsection (2), the subsection applies whether or not the proceeding relates to any question involving compliance or non-compliance, by a protected person, with the provisions of this Act or the rules of natural justice (procedural fairness).
- (4) Accordingly, except as provided by section 26, no court of law or administrative review body has jurisdiction or power to consider any question involving compliance or non-compliance, by the protected person, with those provisions or with those rules so far as they apply to the exercise of any protected function.
- (5) This section has effect despite any provision of any other legislation or any other law (whether written or unwritten).
- (6) In this section:
exercise of functions includes—
 - (a) the purported exercise of functions; and
 - (b) the non-exercise or improper exercise of functions; and
 - (c) the proposed, apprehended or threatened exercise of functions.

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proceeding—

- (a) includes a proceeding for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief; and
- (b) without limiting paragraph (a), includes a proceeding in the exercise of the inherent jurisdiction of the Supreme Court or the jurisdiction conferred by the *Supreme Court Act 1933*, section 20 (1) (Jurisdiction and powers of Supreme Court) or the Self-Government Act, section 48A (1) (Jurisdiction and powers of the Supreme Court).

85 Failure of person to disclose name and home address on request

- (1) A person commits an offence if—
 - (a) a police officer asks the person to tell the officer the person's name and home address in accordance with section 17 (6) (Notice of making of interim control order) or section 28 (10) (Association between controlled members of declared organisations subject to interim control order or control order); and
 - (b) the person fails to comply with the request.

Maximum penalty: 20 penalty units.

Note Giving false or misleading information is an offence against the *Criminal Code*, s 338.

- (2) Subsection (1) does not apply if the person has a reasonable excuse for failing to comply with the request.

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86 Content of public notice

- (1) This section applies if the chief police officer is required to serve an application or other thing by public notice.
- (2) The notice 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 relevant affidavit or other material may be obtained or read.

87 Costs

- (1) Each party to a proceeding for a declaration or revocation of a declaration under part 2 (Criminal organisations) must bear the party's own costs for the proceeding.
- (2) However, the Supreme Court may award costs against a party who makes an application the court considers frivolous or vexatious.

88 Regulation-making power

- (1) The Executive may make regulations for this Act.

Note A regulation must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

- (2) A regulation may prescribe offences for contraventions of a regulation and prescribe maximum penalties of not more than 30 penalty units for offences against a regulation.

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89 Review of Act after 5 years of operation

- (1) The Minister must review this Act after it has been in operation for 5 years to work out whether the policy objects of this Act remain valid and whether the terms of this Act remain appropriate for securing those objects.
- (2) The Minister, or any person carrying out the review on the Minister's behalf, must maintain the confidentiality of information given to the Minister or other person that is classified by the chief police officer as criminal intelligence.
- (3) The Minister must present a report of the review to the Legislative Assembly before the end of this Act's 6th year of operation.
- (4) This section expires 7 years after the day it commences.

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Part 7 **Consequential amendments**

90 **Legislation amended—sch 1**

This Act amends the legislation mentioned in schedule 1.

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Schedule 1 Consequential amendments

(see s 90)

Part 1.1 Ombudsman Act 1989

[1.1] New section 4C (f)

insert

- (f) to monitor the exercise of functions by police officers under the *Crimes (Criminal Organisation Control) Act 2017* for a period of 4 years beginning on the day that Act, section 3 commenced.

[1.2] New section 4C (2)

insert

- (2) This subsection, and subsection (1) (f), expire 4 years after the day the *Crimes (Criminal Organisation Control) Act 2017*, section 3 commences.

[1.3] New division 2.2B

insert

**Division 2.2B Monitoring exercise of police
functions under Crimes (Criminal
Organisation Control) Act 2017**

17Q Police to give ombudsman information

- (1) The ombudsman may require the chief police officer or any public authority to give the ombudsman information about the exercise of functions by police officers under the *Crimes (Criminal Organisation Control) Act 2017*.
- (2) The chief police officer must give the ombudsman a report about the following:
 - (a) any declaration made under the *Crimes (Criminal Organisation Control) Act 2017*, part 2 (Criminal organisations);
 - (b) any interim control order or control order made under that Act;
 - (c) the reasons the declaration or order was sought;
 - (d) any prosecutions brought under that Act, section 28 (Association between controlled members of declared organisations subject to interim control order or control order) or section 29 (Recruiting person to become member of declared organisation).
- (3) The ombudsman must maintain the confidentiality of information given to the ombudsman that is described by the chief police officer as criminal intelligence under the *Crimes (Criminal Organisation Control) Act 2017*.

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[1.4] New section 20B

insert

**20B Report on exercise of police functions under Crimes
(Criminal Organisation Control) Act 2017**

- (1) The ombudsman must, as soon as possible after the end of the period of 4 years beginning on the day the *Crimes (Criminal Organisation Control) Act 2017*, section 3 commenced, give the Attorney-General a written report about the exercise of the ombudsman's functions under section 4C (f) (Functions—generally) and division 2.2B (Monitoring exercise of police functions under Crimes (Criminal Organisation Control) Act 2017).
- (2) The ombudsman must give a copy of any report under this section to the chief police officer.
- (3) The Attorney-General must present the report to the Legislative Assembly within 21 days after the day the Attorney-General receives the report.
- (4) However, if there are no sitting days of the Legislative Assembly during the 21-day period—
 - (a) the Attorney-General must give the report, and a copy for each member of the Legislative Assembly, to the Speaker before the end of the 21-day period; and
 - (b) the report is taken for all purposes to have been presented to the Legislative Assembly on the day the Attorney-General gives it to the Speaker (the ***report day***); and
 - (c) the Speaker must arrange for a copy of the report to be given to each member of the Legislative Assembly on the report day; and

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- (d) despite paragraph (b), the Attorney-General must present the report to the Legislative Assembly—
 - (i) on the next sitting day after the end of the 21-day period;
or
 - (ii) if the next sitting day is the first meeting of the Legislative Assembly after a general election of members of the Assembly—on the second sitting day after the election.
- (5) In this section:
Speaker includes—
 - (a) if the Speaker is unavailable—the Deputy Speaker; and
 - (b) if both the Speaker and the Deputy Speaker are unavailable—the clerk of the Legislative Assembly.*unavailable*—the Speaker or Deputy Speaker is *unavailable* if—
 - (a) the Speaker or Deputy Speaker is absent from duty; or
 - (b) there is a vacancy in the office of Speaker or Deputy Speaker.

Dictionary

(see s 3)

Note 1 The [Legislation Act](#) contains definitions and other provisions relevant to this Act.

Note 2 For example, the [Legislation Act](#), dict, pt 1, defines the following terms:

- body
- business day
- chief police officer
- domestic partner (see s 169 (1))
- entity
- exercise
- function
- oath
- police officer
- State
- Supreme Court.

associate with another person means—

- (a) to be in company with the other person; or
- (b) to communicate with the other person by any means (including by post, fax, telephone, email or any other form of electronic communication).

controlled member, of a declared organisation, means a person to whom an interim control order or control order applies.

control order means a control order made under section 21 (Supreme Court may make control order).

conviction includes a finding of guilt by a court, whether or not a conviction is recorded.

court staff, for part 5 (Criminal intelligence)—see section 56.

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criminal intelligence means information relating to actual or suspected criminal activity (whether in the ACT 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.

criminal intelligence application, for part 5 (Criminal intelligence)—see section 56.

criminal intelligence monitor, for part 5 (Criminal intelligence)—see section 56.

criminal organisation (or ***declared organisation***) means an organisation subject to a declaration under part 2 (Criminal organisations).

Note Section 38 provides that a registered interstate declaration operates in the ACT as if it were a declaration under pt 2.

declared criminal intelligence, for part 5 (Criminal intelligence)—see section 56.

external agency, for part 5 (Criminal intelligence)—see section 56.

identifying information, about an informant, for part 5 (Criminal intelligence)—see section 56.

informant, for part 5 (Criminal intelligence)—see section 56.

informant affidavit, for part 5 (Criminal intelligence)—see section 56.

interim control order means an interim control order made under section 15 (Supreme Court may make interim control order).

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interstate control order, for part 4 (Reciprocal recognition and enforcement of declarations and orders)—see section 31.

interstate declaration, for part 4 (Reciprocal recognition and enforcement of declarations and orders)—see section 31.

member, of an organisation, includes—

- (a) for a corporation—a director or officer of the corporation; and
- (b) in any other case—
 - (i) an associate member or prospective member (however described) of the organisation; and
 - (ii) a person who identifies in some way as belonging to the organisation; and
 - (iii) a person who is treated by the organisation, or people who belong to the organisation, as if the person belongs to the organisation.

notice of objection—see section 17 (2) (d) (ii).

officer, of an external agency, for part 5 (Criminal intelligence)—see section 56.

organisation means an entity, whether or not the entity—

- (a) is based outside the ACT; or
- (b) consists of people who are not ordinarily resident in the ACT.

registered interstate control order, for part 4 (Reciprocal recognition and enforcement of declarations and orders)—see section 31

registered interstate declaration, for part 4 (Reciprocal recognition and enforcement of declarations and orders)—see section 31

registrar means the registrar of the Supreme Court.

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relevant agency, in relation to information that is declared criminal intelligence or that is the subject of a criminal intelligence application, for part 5 (Criminal intelligence)—see section 56.

respondent, for part 4 (Reciprocal recognition and enforcement of declarations and orders)—see section 31.

senior police officer means a police officer of or above the rank of superintendent.

serious criminal activity means—

- (a) committing a serious offence within the meaning of the [Confiscation of Criminal Assets Act 2003](#), section 13 (2); or
- (b) obtaining a material benefit from conduct that constitutes a serious offence;

whether or not anyone has been charged with or convicted of the serious offence.

substantive application, for part 5 (Criminal intelligence)—see section 56.

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Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2017.

2 Notification

Notified under the [Legislation Act](#) on 2017.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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