2017

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

CRIMES (CRIMINAL ORGANISATION CONTROL) AMENDMENT BILL 2017

EXPLANATORY STATEMENT

Presented by

Jeremy Hanson MLA
Shadow Attorney-General

CRIMES (CRIMINAL ORGANISATION CONTROL) AMENDMENT BILL 2017

This explanatory statement relates to the Crimes (Criminal Organisation Control) Amendment Bill 2017 (the Bill) as presented to the Legislative Assembly. It has been prepared to assist the reader of the Bill to understand the policy rationale and the scope of the amendments and to help inform debate. It does not form part of the Bill and has not been endorsed by the Legislative Assembly.

The Statement must be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Background

The risk of the ACT becoming a 'safe haven' for organised criminal activity has been raised as a matter of public policy since other jurisdictions started introducing their own versions of this legislation as early as 2009.

In 2016, the ACT Labor government presented a discussion paper on anti-consorting legislation and developed their own model. That proposal was not brought into legislation, with proponents citing human rights concerns.

Since then, and in particular when jurisdictions such as NSW passed their Bills, there has been a marked increase in criminal activity associated with outlaw motorcycle gangs (OMCGs). At time of tabling, the front page of the Canberra Times ran a story describing Canberra as a 'war zone' after a shooting and firebombing in a suburban residence. This was the latest in a series of serious criminal attacks, including the use of machine guns in Canberra suburbs and fire-bombings.

Just some of the public discussion includes; 'Outlaw bikie gangs heading to Canberra because of the ACT's soft laws on consorting" (Daily Telegraph, 16 January 2017), "Bikies drawn to Canberra due to lack of anti-gang laws" (ABC, 6 March 2017), "Calls for anti-consorting laws after Comancheros' Canberra run" (Canberra Times, 21 August 2017), "ACT needs anti-consorting laws now before someone dies" (Sydney Morning Herald, 8 September 2017).

At least 8 serious attacks have occurred since the proposed anti-consorting laws were dropped.

In response to a clear threat to public safety, and the realisation that the lack of anti-gang legislation is creating a 'pull' effect in the Capital, this legislation was drafted and developed to provide an effective deterrent but also address the human rights issues previous drafts have encountered.

Development

An Exposure Draft was developed and placed on the legislation register on July 31, 2017. The formal consultation period extended until 29 September 2017, and continued suggestions and submissions were received until October 27, 2017.

Feedback and submissions were received from many groups and stakeholders, including:

- The Bar Association of the ACT
- The ACT Law Society
- Human Rights Commissioner
- Victims of Crime Commissioner
- Public Advocate and Children and Young People Commissioner
- Discrimination, Health Services and Disability and Community Services Commissioner
- Have Your Say public website

The Bill as presented to the Assembly includes amendments from those consultations, particularly addressing human rights compatibility issues.

Overview of the legislation

The Bill seeks to introduce a criminal organisation control regime, adapted for the use in the ACT, to prevent, disrupt and deter the operations of organised criminal organisations. Although the active organisations which are most active at time of tabling include those self-identified as Motorcycle Clubs, the legislation is aimed at any organised criminal organisation.

The Exposure Draft was modelled on the existing NSW legislation, as one of the key policy objectives is to remove the effect that the Territory is seen as, and has become, a 'safe haven' for organised criminal gangs within the jurisdiction of NSW.

Consultation with stakeholders, feedback from the operation of the legislation in other jurisdictions – in particular NSW – and consultation with the human rights commission has led to several amendments which create a unique approach which will achieve the legitimate policy objective but do so in a reasonable, necessary and proportionate way.

Human rights implications

In submissions it was put that "By their nature, anti-consorting or control order regimes will limit various rights contained in the Human Rights Act, including the right to equality and non-discrimination (s 8), the right to freedom of association (s 15), the right to freedom of expression (s 16), and the right to a fair hearing (s 21)."

The Human Rights Act, and prior parliamentary decisions, however, do and have limited human rights where that limitation is reasonable, necessary and proportionate to the objective being sought (s 28). To meet the requirements of s 28 of the HR Act, a limitation must (i) be aimed at a legitimate objective, and (ii) be rationally and proportionately connected to that objective.

In this issue, guidance has been provided in a joint submission from the Human Rights Commissioner, the Victims of Crime Commissioner, the Public Advocate and Children and Young People Commissioner and the Discrimination, Health Services and Disability and Community Services Commissioner. An extract of that submission follows:

i) Legitimate objective

The Commissioner's submission referred to above states:

> "A legitimate objective is one that addresses an area of public or social concern that is pressing and substantial enough to warrant limiting human rights. As noted above, the Commission considers that preventing, disrupting and responding to serious and organised crime, including outlaw motorcycle gang (OMCG) activity, in order to protect public safety is clearly a legitimate objective.
>
> In the context of this bill, we support its basic underlying principle that there is no right to associate for the purpose of criminal activities."

The protection and safety of Canberra citizens, and the prevention and disruption of organised criminal activity is then a legitimate objective. It then remains to demonstrate a rational connection, including that there would no less restrictive measures to achieve the same objective.

ii) Rational connection:

Legislation designed specifically to disrupt and prevent organised crime shows a clear logical connection to the objective stated.

The legislation is targeted solely at identified members of identified groups, determined by the Chief Police Officer and a Supreme Court judge, and only when they are satisfied that the making of a control order will be for the purpose of disrupting and preventing criminal activity.

This is a measured, targeted approach to a clear, specific objective.

The Commissioner's submission raised the issue of a lack of effectiveness in undermining the rational connection, in that if the legislation is ineffective, it would not show the requisite connection. In this regard, an Ombudsman's report into the operation on the NSW legislation in particular has been cited. [1]

However, there are significant differences in the legislation proposed for the ACT, and the legislative framework in which other anti-consorting schemes operate in their home jurisdictions.

The Ombudsman's report notes, specifically, that NSW police prefer to use less cumbersome mechanisms available in that jurisdiction. Those mechanisms include a broad anti-consorting power that allows police to issue directives without judicial oversight. This mechanism is more intrusive than the proposed regime in this Bill, and has received its own criticism for being too harshly applied, with reports of warnings being issued more than 8,500 times, often to groups with no direct links to organised crime.[2]

Whilst raising this as a concern, the Commissioner's submission did accept these as legitimate points, as follows:

> "The Commission acknowledges that, in the absence of comparable alternative powers in the ACT, such as anti-consorting laws, it may be that the control order scheme would be more readily used."

It is important to note that the broader anti-consorting laws favoured by police in NSW are not being proposed for the ACT and would likely raise significant human rights implications.

Therefore, in the environment that the ACT currently faces, and is likely to continue to face, the legislation can provide a valuable, useable tool to disrupt and prevent organised crime.

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[1] NSW Ombudsman, *Review of police use of powers under the Crimes (Criminal Organisations Control) Act 2012 - November 2016*, 9 March 2017, p 3, available at: https://www.ombo.nsw.gov.au/__data/assets/pdf_file/0018/42417/Review-of-police-use-ofpowers-under-the-Crimes-Criminal-Organisations-Control-Act-2012.pdf.

[2] http://www.abc.net.au/news/2016-05-26/claims-anti-bikie-laws-used-in-nsw-to-target-other-groups/7449642

Less restrictive means

The legislation as tabled has included significant safeguards and limitations on its scope. This has been brought about by examining the problems that have arisen in other jurisdictions, and with extensive consultation and involvement with stakeholder groups, particularly the human rights commission, on both previous versions of anti-consorting legislation and on the current Bill. [3]

A very detailed submission was made outlining where the legislation could be improved to make the proposal human rights compliant. Every one of those recommendations was adopted and is included in this legislation.

Lastly, consultation with governments in other states indicates that, notwithstanding the issues that have been raised, no jurisdiction is entertaining the notion of repealing their legislation. Therefore, without some legislative response, the ACT will remain isolated as the only jurisdiction without legislative protection, and the criminal activity will continue.

[3] See: Submission to JACS Directorate Consorting Laws Discussion Paper, June 2016, available at: http://hrc.act.gov.au/humanrights/policy-systemic-work/law-reform-consultation-responses/djacsdiscussion-paper-consorting-laws-act-june-2016/

CLAUSE NOTES

Clause 1 Name of Act

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

Clause 2 Commencement

This Act commences on the day after its notification day.

Clause 3 Dictionary

The dictionary at the end of this Act is part of this Act, and includes notes on the application of signpost definitions.

Clause 4 Notes

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

Clause 5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act, in this case the Criminal Code, Chapter 2.

Clause 6 Meaning of *serious offence*

This section was changed following consultation. The human rights commission stated the previous definition "covers a broad range of offences, many of which are unlikely to be related to organised crime, but which by virtue of their maximum penalty would be captured under the scheme. In our view, the NSW legislation contains a more appropriate definition for these purposes." This clause was drafted to bring more focus on the seriousness and types of crime intended to be covered as it relates to the disruption and prevention of organised crime.

Part 2 Criminal organisations

Clause 7 Chief police officer may apply for declaration etc

This is the main instigating clause of the Act, and sets out the power of the chief police officer to apply for a declaration, and the conditions upon such an application must be made.

Clause 8 Response by respondent

This clause sets out the right of the respondent to reply to the application and the time limits for doing so.

Clause 9 Supreme Court may make declaration

This section provides the power for the Supreme Court to make a declaration that the respondent is a criminal organisation if the court is satisfied that—

(a) the respondent is an organisation; and

(b) members of the organisation 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.

It also sets out the matters that the court must take into account when making a declaration, including:

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

v) any other information the court considers relevant to a matter mentioned in subsection (1).

Furthermore, subsection (4) states that 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.

This section was modified on advice from the human rights commission, who noted the protection that "the Supreme Court to be satisfied on the balance of probabilities that the order is likely to contribute to the purpose of preventing or reducing a serious threat to public safety and order. We recommend that a similar safeguard should be included in the bill." This amended section more closely provides that safeguard and targets the legislation only at the legitimate purpose of the Act.

Subsection (6) states that 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.

Clause 10 Notice of declaration

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. The declaration does not take effect until public notice is given.

Clause 11 Duration of declaration

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. A change in the name or membership of a criminal organisation does not affect the declaration.

Clause 12 Revocation of declaration

The Supreme Court may revoke a declaration under this part on application under this section.

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.

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.

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.

This clause also contains procedural provisions.

Clause 13 Stated reasons for making or revoking declaration

The Supreme Court must give reasons for any decision. 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.

Clause 14 Renewal of declarations

A declaration under this part may be renewed at any time before or after it ends.

Clause 15 Right of appeal—pt 2

This section provides the right of appeal. Section 29 (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.

Part 3 Control of members of declared organisations

Division 3.1 Interim control orders

Clause 16 Supreme Court may make interim control order

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, with the following conditions:

i) 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.

ii) 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.

However, if the interim control order relates to a child or young person, the Supreme Court must make the order only as a last resort. The human rights commission recommended that particular provisions be included to protect the interest of persons under 18, understanding that there may be cases where such a control order may have to be applied in the best interest of that person.

Clause 17 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.

Clause 18 Notice of making of interim control order

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.

The notice must include a statement of the grounds on which the order was made; and set out an explanation of the effect of the control order; and 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.

The order must also 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; and

iii) state the date and time when the application for the control order is to be heard.

This clause also covers a range of procedural matters and powers for police in applying this section.

Clause 19 Service of notice of interim control order

This clause details provisions relating to service of the interim control order and is in line with other service provisions in the ACT.

Clause 20 When interim control order ceases

In consultation, the human rights commission asked for specified time limits to be placed on the operation of interim control orders 'similar to the time limits that apply to the Federal control order regime', and this provision provides that limitation.

Division 3.2 Control orders

Clause 21 Supreme Court may make control order

This clause allows that the Supreme Court may make a control order; 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) it is reasonably necessary to restrict, or impose conditions on, the person's activities in order to end, prevent or reduce a serious threat to public safety and order.

Subsection (b) was included at the recommendation of the human rights commission to provide a clearer link between the operation of the Act and a legitimate purpose.

Other specific drafting modifications were included to provide the appropriate safeguards but still providing the objective of the legislation is able to be met.

Therefore, the Supreme Court may decide that it is satisfied as required only if it is satisfied by acceptable, cogent evidence that is of sufficient weight to justify making the control order.

In deciding whether to make a control order, the Supreme Court may have regard to the criminal history of the person; or any member, former member or prospective member of a declared organisation of which the person is a member or is, or purports to be, a former member.

If the control order applies to a child or young person, the Supreme Court must make the order only as a last resort, having considered as a primary consideration, the best interests of the child or young person; and the youth justice principles in the *Children and Young People Act 2008*, section 94 (Youth justice principles). This was also added after consultation.

Clause 22 Control order—ancillary orders

The Supreme Court may, on making a control order under section 21 in relation to a person, make any other orders it considers appropriate in the circumstances, including orders in relation to the person working at a particular place, or in a particular industry. The example provided is that the court may order the person not to work at a stated tattooing business.

This section was adjusted from the exposure draft, which included a list of deemed industries. This could apply to strict a limit with only a minor connection to the purpose. The ability for the Supreme Court to decide on a case by case basis is more appropriate and more human rights compliant.

In addition, there is the safeguard available that if the person to whom the control order applies satisfies the court that there is a good reason why the person should be allowed to associate with a particular controlled member, an order may be made exempting the person from the operation of section 31 (Association between controlled members of declared organisations subject to interim control order or control order) to the extent, and subject to the conditions, stated in the order.

Clause 23 Application for control order—standard of proof

A question of fact to be decided by the Supreme Court in relation to an application for a control order is to be decided on the balance of probabilities.

Clause 24 Making control order in person's absence

A control order may be made whether or not the person to whom it applies is present at the hearing of the application. 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.

This is to prevent the operation being avoided by not appearing at the hearing. There are still rights of appeal available

Clause 25 Person to whom control order relates and interested person may appear at the hearing

This provides 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, or if the Supreme Court is satisfied, that a person has sufficient interest in the hearing, the person may apply to be heard in relation to the hearing. These examples may include a spouse, parent or guardian.

Clause 26 Form of control order

This section sets out that the 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 29 (Right of appeal—pt 3).

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).

Clause 27 Date of effect of control order

A control order takes effect either; if the person to whom it applies is present in court—when the control order is made; or in any other case—when the person is served by personal service with a copy of the control order.

Clause 28 Duration of control order

The human rights commission recommended that a limit be placed on the duration of a control order. This section has been included to state a control order continues in force until it is revoked or the end of 3 years after the day the order takes effect.

Clause 29 Right of appeal—pt 3

This gives a party to the proceeding in which a control order is made may appeal to the Court of Appeal on a question of law or fact. If the Court of Appeal is satisfied that a person has sufficient interest in a proceeding in which a control order is made, the person may apply to be heard in relation to the appeal. An appeal under this section does not affect the operation of the control order to which the appeal relates.

Clause 30 Variation or revocation of control order

This section states 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.

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.

The Supreme Court must, before varying or revoking a control order under this section allow all parties a reasonable opportunity to be heard on the matter; and 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.

This means the same safeguards will be applied to any variation as to the original application.

This clause also contains procedural matters.

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

Clause 31 Association between controlled members of declared organisations subject to interim control order or control order

This is the key offence provision of the act, and holds that, a controlled member of a declared organisation commits an offence if the member associates with another controlled member of the organisation. The maximum penalty is imprisonment for 2 years.

A controlled member of a declared organisation commits an offence if the member associates with another controlled member of the organisation on 3 or more occasions at any time within a period of 3 months, punishable by a maximum of imprisonment for 3 years.

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. This carries a maximum of imprisonment for 5 years.

This provides an increasing scale based on actual conduct.

This clause only includes safeguards to ensure legislation, and does not apply in 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

(vii) the controlled member did not, under the circumstances, associate with the other controlled member for an ulterior purpose.

Clause 32 Recruiting person to become member of declared organisation

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. In this section ***recruit*** means counsel, procure, solicit, incite or induce.

Part 4 Reciprocal recognition and enforcement of declarations and orders

Division 4.1 Preliminary

Clause 33 Definitions—pt 4

This contains definitions relating to reciprocal arrangements.

Division 4.2 Registration of interstate declarations in the ACT

Clause 34 Application for registration of interstate declaration

The chief police officer may apply to the registrar for the registration of an interstate declaration, and this section sets out the process for doing so.

Clause 35 When interstate declaration cannot be registered

This section sets out the circumstances in which an interstate declaration cannot be registered.

Clause 36 Registration of interstate declaration

This clause sets out the procedure for registering an interstate declaration.

Clause 37 Period of registration of interstate declaration

On registering an interstate declaration, the registrar must state the date the registration ends.

Clause 38 Notice of registration of interstate declaration

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 and, 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

(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.

Clause 39 Commencement and duration of registered interstate declaration

This section covers when an interstate declaration comes into force and describes how long it remains in force.

Clause 40 Effect of registration of interstate declaration

A registered interstate declaration that has come into force under section 39 operates in the ACT as if it were a declaration made under part 2 (Criminal organisations). 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.

Clause 41 Cancellation of registration of interstate declaration on revocation in jurisdiction where originally made

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.

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.

The cancellation of the registered interstate declaration takes effect immediately.

Clause 42 Cancellation of registration of interstate declaration at request of chief police officer

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. This section sets out the procedure for doing so.

Clause 43 Cancellation of registration of interstate declaration by Supreme Court

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. This section sets out the procedure for doing so.

Clause 44 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

(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.

Division 4.3 Registration of interstate control orders in the ACT

Clause 45 Application for registration of interstate control order

The chief police officer may apply to the registrar for the registration of an interstate control order. This section sets out the procedure for doing so.

Clause 46 When interstate control order cannot be registered

This section sets out the conditions under which an application for registration of an interstate control order cannot be made.

Clause 47 Registration of interstate control order

This section sets out the conditions under which an application for registration of an interstate control order must be made.

Clause 48 Referral of application to Supreme Court for adaptation or modification

This section sets out the procedures for referral to the Supreme Court for modification.

Clause 49 Determination of application for registration

On hearing an application referred to it under section 47 (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.

Clause 50 Period of registration of interstate control order

On registering an interstate control order, the registrar must state the date the registration ends, which 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.

Clause 51 Notice of registration

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. 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.

Clause 52 Commencement and duration of registered interstate control order

This is the procedure for the commencement and duration of interstate orders.

Clause 53 Effect of registration of interstate control order

This section states that a registered interstate control order that has come into force under section 52 operates in the ACT as if it were a control order made under part 3 (Control of members of declared organisations).

Clause 54 Variation or revocation of interstate control order in jurisdiction where originally made

If an interstate control order is varied by a court in the jurisdiction in which it was made, this clause allows that 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.

This clause also covers procedural matters.

Clause 55 Cancellation of registration of interstate control order at request of chief police officer

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. 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.

This clause also covers procedural matters.

Clause 56 Cancellation of registration of interstate control order by Supreme Court

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 under section 47 (Registration of interstate control order).

This clause also covers procedural matters.

Clause 57 Registration of interstate control order cancelled automatically in certain circumstances

This section covers the circumstances where interstate orders are automatically cancelled.

Part 5 Criminal intelligence

Division 5.1 Preliminary

Clause 58 Definitions—pt 5

This clause contains definitions relating to criminal intelligence.

Clause 59 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

(c) prohibit the unlawful disclosure of particular criminal intelligence.

Division 5.2 Criminal intelligence monitor

Clause 60 The criminal intelligence monitor

This section establishes a criminal intelligence monitor.

Clause 61 Monitor's functions

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;

(d) to represent the interests of each respondent to the monitored application.

The Minister may make guidelines about the exercise of the criminal intelligence monitor's functions.

A guideline is a disallowable instrument.

The functions of the Monitor were adjusted following consultation, to allow the role to provide a protective function without compromising criminal intelligence, and, without representing the respondent, to ensure procedural fairness is applied to all applications.

Clause 62 Material to be given to monitor

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).

However, this section does not apply to material to the extent it discloses any identifying information about the informant.

This clause also covers procedural matters.

Clause 63 Appearance and role of monitor at hearing

This section applies to a hearing for an application at which the criminal intelligence monitor appears. The monitor may present questions for the applicant to answer; or examine or cross-examine a witness; or make submissions to the Supreme Court about the appropriateness of granting the application.

These important safeguards protect procedural fairness in sensitive intelligence hearings.

Division 5.3 Declarations of criminal intelligence

Clause 64 Application for declaration of criminal intelligence

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.

This clause also covers the procedures for applying for a criminal intelligence declaration.

Clause 65 Additional affidavit if informant relied on

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.

This clause also covers the procedures.

Clause 66 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.

Clause 67 Criminal intelligence application heard first

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.

Clause 68 Special closed hearing

The hearing of a criminal intelligence application is a closed hearing to the extent provided under this section, which sets out the procedures for closed hearings.

Clause 69 Oral evidence by police officers and officers of external agencies

This sections sets out the procedures for receiving oral evidence.

Clause 70 Deciding criminal intelligence application

This sections sets out the procedures for determining criminal intelligence.

Clause 71 Duration of criminal intelligence declaration

A criminal intelligence declaration takes effect when it is made, and remains in force until it is revoked.

Clause 72 Revocation of criminal intelligence declaration

The Supreme Court may, at any time on application by the chief police officer, revoke a criminal intelligence declaration. This section sets out that process.

Division 5.4 Protection of declared criminal intelligence for substantive hearings

Clause 73 Application—div 5.4

This clause sets out the conditions under which this Division applies.

Clause 74 Additional matters if informant relied on in substantive hearing

This section applies if the declared criminal intelligence was provided to the relevant agency by an informant, and sets out additional matters.

Clause 75 Special closed hearing for consideration of intelligence

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. This section sets out conditions and procedures if this applies.

Clause 76 Oral evidence by police officers and officers of external agencies

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.

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

Clause 77 Unlawful disclosure of criminal intelligence or information in informant affidavit

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.

And provides that 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.

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.

Clause 78 Registrar to secure information

This section states that the registrar must seal certain documents and procedures for doing so.

Part 6 Miscellaneous

Clause 79 Criminal organisations register

This section states that the chief police officer must keep a register of information about declarations and orders made under this Act, what that register is to contain and conditions for its maintenance.

Clause 80 Provision of information relating to criminal organisations

A regulatory authority and the chief police officer may enter into arrangements for the supply to the regulatory authority under strict provisions, outlined in this section.

Clause 81 Attorney-General to be notified

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.

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.

The Attorney-General is also entitled to be present and to make submissions at the hearing of the application.

Clause 82 Burden of proof

Any question of fact to be decided in a proceeding under this Act must be decided on the balance of probabilities, except in relation to a proceeding for an offence against this Act.

Clause 83 Hearsay evidence

This sets out the rules and exceptions that may apply to hearsay evidence.

Clause 84 Delegation by chief police officer

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

Clause 85 Protection from liability

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.

Clause 86 Protection of exercise of certain functions

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.

Clause 87 Failure of person to disclose name and home address on request

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 18 (6) (Notice of making of interim control order) or section 31 (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.

This section does not apply if the person has a reasonable excuse.

Clause 88 Content of public notice

This section applies if the chief police officer is required to serve an application or other thing by public notice, and sets out what must be contained in a public notice.

Clause 89 Costs

Each party to a proceeding for a declaration or revocation of a declaration must bear the party's own costs for the proceeding. However, the Supreme Court may award costs against a party who makes an application the court considers frivolous or vexatious.

Clause 90 Regulation-making power

The Executive may make regulations for this Act.

Clause 91 Review of Act after 2 years of operation

The Minister must review this Act after it has been in operation for 2 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. This section expires 4 years after the day it commences.

Clause 92 Expiry of Act

This Act expires 5 years after the day it commences.

Part 7 Consequential amendments

Clause 93 Legislation amended—sch 1

This Act amends the legislation mentioned in schedule 1.

Dictionary

A Dictionary is included for the operation of this Act.