



Australian Capital Territory

Crimes (Disrupting Criminal Gangs) Legislation Amendment Act 2019

A2019-43

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Australian Capital Territory

Crimes (Disrupting Criminal Gangs) Legislation Amendment Act 2019

A2019-43

An Act to amend legislation about crimes, and for other purposes

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

J2019-999

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Part 1 Preliminary

1 Name of Act

This Act is the *Crimes (Disrupting Criminal Gangs) Legislation Amendment Act 2019*.

2 Commencement

- (1) Section 3 and part 4 (Crimes Act 1900) commence on the day after this Act's notification day.

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

- (2) The remaining provisions commence on a day fixed by the Minister by written notice.

Note 1 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see [Legislation Act](#), s 77 (1)).

Note 2 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see [Legislation Act](#), s 79).

3 Legislation amended

This Act amends the following legislation:

- [Construction Occupations \(Licensing\) Act 2004](#)
- [Construction Occupations \(Licensing\) Regulation 2004](#)
- [Crimes Act 1900](#)
- [Crimes \(Sentencing\) Act 2005](#)
- [Liquor Act 2010](#).

Part 2 Construction Occupations (Licensing) Act 2004

4 New part 5A

insert

Part 5A Licence cancellation for criminal activity

Division 5A.1 Cancellation orders

65 Meaning of *cancellation order*—div 5A.1

In this division:

cancellation order means an order made under section 67.

66 Application for cancellation order

- (1) The chief police officer may apply to the ACAT for a cancellation order for a licence.
- (2) At least 2 days before applying for the cancellation order, the chief police officer must notify the registrar of the chief police officer's intention to apply for the order.
- (3) The chief police officer must give a copy of the application to the licensee.

67 Cancellation order

- (1) On application under section 66, the ACAT may make a cancellation order for a licence if satisfied that, because of the licensee's criminal activity, the licensee continuing to hold the licence presents an unacceptable risk to community safety.

- (2) For subsection (1)—
- (a) the ACAT must consider the need to minimise the possibility of criminal activity in the construction industry; and
 - (b) the matters the ACAT may consider include—
 - (i) whether the licensee has been convicted or found guilty of a relevant offence; and
 - (ii) non-conviction information about the licensee.
- (3) If the ACAT makes a cancellation order for a licence, the chief police officer must give a copy of the order to the registrar.
- (4) In this section:

non-conviction information, about a licensee, means information about whether the licensee—

- (a) has been charged with a relevant offence but—
 - (i) a proceeding for the offence is not finalised; or
 - (ii) the charge has lapsed, been withdrawn or discharged, or struck out; or
- (b) has been acquitted of a relevant offence; or
- (c) has had a conviction for a relevant offence quashed or set aside; or
- (d) has been served with an infringement notice for a relevant offence; or
- (e) has a spent conviction for a relevant offence.

Note The *Spent Convictions Act 2000* sets out which convictions can be spent (see that [Act](#), s 11) and when a conviction is spent (see that [Act](#), s 12).

relevant offence means any of the following:

- (a) an offence punishable by imprisonment for 5 years or longer;

- (b) an offence against the *Crimes Act 1900*, section 26 (Common assault) or section 35A (1);
- (c) an offence involving fraud or dishonesty.

68 **Revoking cancellation order**

The ACAT may revoke a cancellation order for a licence if satisfied that, as a result of a change in circumstances, the person who held the licence is no longer engaged in criminal activity that would, if the person were a licensee, present an unacceptable risk to community safety.

Division 5A.2 **Criminal intelligence**

69 **Meaning of *criminal intelligence*—div 5A.2**

In this division:

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 anyone's life or physical safety.

70 **Disclosure of criminal intelligence**

Information that the chief police officer classifies as criminal intelligence must not be disclosed for this part to anyone other than the ACAT, a court or an entity to whom the chief police officer authorises its disclosure.

71 Whether information is criminal intelligence—application and decision

- (1) This section applies if the chief police officer applies to the ACAT for a cancellation order under section 66 because, or partly because, of information that is classified by the chief police officer as criminal intelligence.
- (2) The chief police officer must apply to the ACAT for a decision about whether the information is criminal intelligence.
- (3) The application need not be served on anyone unless the ACAT otherwise orders on its own initiative.
- (4) The ACAT may decide that the information is, or is not, criminal intelligence.
- (5) If the ACAT proposes to decide that the information is not criminal intelligence, the chief police officer must be told about the proposal and given the opportunity to withdraw the information from the proceeding.

72 Confidentiality of criminal intelligence—ACAT

- (1) The ACAT must maintain the confidentiality of information that is the subject of an application under section 71 in the following circumstances:
 - (a) until the ACAT makes a decision about whether the information is criminal intelligence;
 - (b) if the ACAT decides the information is criminal intelligence;
 - (c) if the ACAT decides the information is not criminal intelligence, but an appeal from that decision is upheld;
 - (d) if the information is withdrawn.

- (2) However, in a proceeding on an application mentioned in section 71, the ACAT may allow a party or a representative of a party to have access to or inspect information that is criminal intelligence (on conditions the ACAT thinks appropriate) if the ACAT thinks it would not be contrary to the public interest to do so.
- (3) If the ACAT proposes to allow a party or a representative of a party to have access to or inspect information that is criminal intelligence, the chief police officer must be told about the proposal and given the opportunity to withdraw the information from the proceeding.
- (4) The ACAT may take any steps it considers appropriate to maintain the confidentiality of the information.
- (5) However, if the ACAT finds that the information is not criminal intelligence, and the information is not withdrawn, the ACAT need not maintain the confidentiality of the information.

73 Confidentiality of criminal intelligence—courts

- (1) This section applies if a court (on appeal or otherwise) deals with a decision by the ACAT about whether information is criminal intelligence.
- (2) The court must maintain the confidentiality of the information.
- (3) The court may take any steps it considers appropriate to maintain the confidentiality of the information.
- (4) The court must not give any reason for making a finding in relation to the information, other than public interest.
- (5) However, if the court finds that information is not criminal intelligence, and the information is not withdrawn—
 - (a) the court need not maintain the confidentiality of the information and may give reasons for the finding; and

- (b) any other court need not maintain the confidentiality of the information and may give reasons for making a finding in relation to the information.

74 Delegation by chief police officer

- (1) The chief police officer may delegate a function under this division 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) In this section:

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

5 Register—public information New section 107A (2) (aa)

insert

- (aa) the chief police officer gives the registrar a cancellation order under part 5A (Licence cancellation for criminal activity); or

6 New section 107A (6) (ca)

insert

- (ca) if the ACAT has made a cancellation order under part 5A (Licence cancellation for criminal activity) in relation to the licensee—a statement that the cancellation order has been made in relation to the licensee;

7 Dictionary, new definitions

insert

cancellation order, for division 5A.1 (Cancellation orders)—see section 65.

criminal intelligence, for division 5A.2 (Criminal intelligence)—see section 69.

Part 3 Construction Occupations (Licensing) Regulation 2004

8 New section 11A

insert

11A Not eligible because of criminal activity

If a person's licence is cancelled by a cancellation order made under the [Act](#), part 5A, the person is not eligible to be licensed for a period of 5 years after the order was made unless the order is sooner revoked under the [Act](#), section 68.

Part 4 Crimes Act 1900

9 Affray Section 35A (2) and (3)

substitute

- (2) A person commits an offence if—
- (a) the person engages in conduct; and
 - (b) the conduct is violence or the threat of violence; and
 - (c) the violence or threat is directed towards someone else; and
 - (d) 2 or more other people present are also engaging in conduct that is violence, or the threat of violence, directed towards someone else; and
 - (e) the conduct of the person and the other people taken together would be likely to cause a reasonable person to fear for their safety.

Maximum penalty: imprisonment for 5 years.

- (3) A person commits an offence if—
- (a) the person engages in conduct; and
 - (b) the conduct is violence or the threat of violence; and
 - (c) the violence or threat is directed towards someone else; and
 - (d) 5 or more other people present are also engaging in conduct that is violence, or the threat of violence, directed towards someone else; and
 - (e) the conduct of the person and the other people taken together would be likely to cause a reasonable person to fear for their safety.

Maximum penalty: imprisonment for 10 years.

- (4) For an offence against this section—
- (a) the violence or the threat of violence—
 - (i) must involve more than words; and
 - (ii) need not be carried out in common purpose with any other person; and
 - (b) a person towards whom the violence or threat of violence is directed does not need to be involved in the violence or threat; and
 - (c) a reasonable person does not need to be, or be likely to be, present at the place where the conduct happened; and
 - (d) a person does not need to have actually feared for their safety.
- (5) In this section:
engage in conduct—see the [Criminal Code](#), section 13.

10 New sections 35AA and 35AB

insert

35AA Affray—alternative verdicts

- (1) This section applies if, in a prosecution for an offence against section 35A (2) or (3), the trier of fact is not satisfied that the defendant committed the offence but is satisfied beyond reasonable doubt that the defendant committed another offence against section 35A carrying a lesser penalty than the offence charged.
- (2) The trier of fact may find the defendant guilty of the other offence but only if the defendant has been given procedural fairness in relation to that finding of guilt.

35AB Review—affray provisions

- (1) The Minister must review the operation of the following provisions as soon as practicable after the end of their 3rd year of operation:
 - (a) section 35A (2) and (3);
 - (b) section 35AA.
- (2) The Minister must present a report of the review to the Legislative Assembly within 6 months after the day the review is started.
- (3) This section expires 5 years after the day it commences.

**11 Fighting
Section 391, penalty**

substitute

Maximum penalty: 20 penalty units.

**12 Offensive behaviour
Section 392, penalty**

substitute

Maximum penalty: 20 penalty units.

Part 5 Crimes (Sentencing) Act 2005

13 New part 4.6

insert

Part 4.6 Sentencing—schedule offence with criminal group

Division 4.6.1 General

61A Objects—pt 4.6

- (1) The objects of this part are—
 - (a) to acknowledge that the community regards activities of criminal organisations as a serious and harmful threat to community safety; and
 - (b) to deter the commission of offences connected with criminal groups in a way that is consistent with human rights.
- (2) The objects are achieved by increasing the maximum penalty for certain offences found to have been committed in connection with a criminal group or while associated with a criminal group.

61B Definitions—pt 4.6

In this part:

court means—

- (a) the Magistrates Court; or
- (b) the Supreme Court.

criminal intelligence means information relating to actual or suspected conduct that constitutes an indictable offence, whether in the ACT or elsewhere, that if disclosed could reasonably be expected to result in any of the following:

- (a) prejudice to a criminal investigation;
- (b) the discovery of the existence or identity of a confidential source of information relevant to law enforcement;
- (c) a risk to the safety of any person.

offender means an adult who has been found guilty of, or pleaded guilty to, a schedule offence.

schedule offence means an offence mentioned in schedule 1, column 2 under a section mentioned in column 3.

61C Meaning of *criminal group*—pt 4.6

- (1) In this part:

criminal group means a group operating in the ACT or elsewhere that has as an objective—

- (a) engaging in conduct that constitutes an indictable offence, including directing, planning, facilitating, supporting or carrying out the conduct; or
- (b) obtaining for the group, someone in the group or someone else, a material benefit from conduct engaged in, in the ACT or elsewhere that, if it occurred in the ACT, would constitute an indictable offence under a territory law.

- (2) In this section:

group means a group of 2 or more people, however structured, regardless of—

- (a) where the group is based; or

- (b) where a person involved in the group ordinarily lives; or
- (c) whether the people involved in the group changes from time to time; or
- (d) whether only some of the people involved in the group plan, organise or carry out a particular activity.

61D Application—pt 4.6

This part applies only to a schedule offence committed after the commencement of the part.

61E Review—pt 4.6

- (1) The Minister must review the operation of this part as soon as practicable after the end of its 3rd year of operation.
- (2) The Minister must present a report of the review to the Legislative Assembly within 6 months after the day the review is started.
- (3) This section expires 5 years after the day it commences.

Division 4.6.2 Schedule offence—criminal group**61F Schedule offence and criminal group—application**

- (1) The director of public prosecutions may apply to a court for a decision that an offender committed a schedule offence—
 - (a) in connection with a criminal group; or
 - (b) while associated with a criminal group.
- (2) However, the application may only be made if the director of public prosecutions gives the court oral notice of the proposed application immediately after the offender was found guilty of, or pleaded guilty to, the schedule offence.

- (3) The application must—
 - (a) be in writing; and
 - (b) identify the offender; and
 - (c) set out information in support of the application.
- (4) The application must be filed in the court within 7 days after the day the offender was found guilty of, or pleaded guilty to, the schedule offence, or any longer period allowed by the court.
- (5) The director of public prosecutions must serve a copy of the application, with any supporting affidavit, on the offender as soon as reasonably practicable after the application is filed.
- (6) However, subsection (5) does not require the director to disclose criminal intelligence.

61G Schedule offence and criminal group—offender’s response

- (1) An offender who is the subject of an application under section 61F may file a response.
- (2) The response (if any) must be filed within 14 days after the offender was served with the application.

61H Schedule offence and criminal group—when application must be heard and decided

- (1) An application under section 61F must be heard and decided before the offender is sentenced for the schedule offence.
- (2) The court must tell the offender about the effect of section 61K before the court begins deciding whether the offender committed the schedule offence—
 - (a) in connection with a criminal group; or
 - (b) while associated with a criminal group.

611 Court decision—in connection with criminal group

- (1) On application under section 61F (1) (a), the court must decide whether the offender committed the schedule offence in connection with a criminal group.
- (2) The court may be satisfied the offender committed the schedule offence in connection with a criminal group if the offender committed the offence—
 - (a) for the benefit of the criminal group or at least 2 people in the group; or
 - (b) at the direction of a person in the criminal group; or
 - (c) to further the objectives of the criminal group.
- (3) When making the decision, the court must—
 - (a) apply the rules of evidence; and
 - (b) be satisfied beyond reasonable doubt.
- (4) The court must record the reasons for its decision only if the court decides that the offender committed the schedule offence in connection with a criminal group.
- (5) Failure to comply with subsection (4) does not invalidate the decision or the sentence the court imposes on the offender.

61J Court decision—while associated with criminal group

- (1) On application under section 61F (1) (b), the court must decide whether the offender committed the schedule offence while associated with a criminal group.
- (2) The court may be satisfied that the offender committed the schedule offence while associated with a criminal group if—
 - (a) the offender—
 - (i) recruited people to support or participate in the criminal group; or
 - (ii) engaged in conduct that supported the criminal group; or
 - (iii) occupied a position of management or leadership in the criminal group; or
 - (iv) was able to direct the activities of the criminal group; or
 - (b) the offender identified themselves in some way as being associated with the criminal group even if the offender was not—
 - (i) a member of the group; or
 - (ii) recognised as associated with the group by the group or a member of the group.
- (3) When making the decision, the court must—
 - (a) apply the rules of evidence; and
 - (b) be satisfied beyond reasonable doubt.
- (4) The court must record the reasons for its decision only if the court decides that the offender committed the schedule offence while associated with the criminal group.
- (5) Failure to comply with subsection (4) does not invalidate the decision or the sentence the court imposes on the offender.

61K Maximum penalty for schedule offence

- (1) If a court decides that a schedule offence was committed by an offender in connection with a criminal group, the maximum penalty for the offence is increased by 25% of the stated penalty.
- (2) If a court decides that a schedule offence was committed by an offender while associated with a criminal group, the maximum penalty for the offence is increased by 10% of the stated penalty.
- (3) In this section:

stated penalty, for a schedule offence, means the maximum penalty stated in a law for the offence, other than this section.

Division 4.6.3 Criminal group—criminal intelligence**61L Disclosure of criminal intelligence**

Information that the chief police officer classifies as criminal intelligence must not be disclosed for this part to anyone other than the director of public prosecutions or a court.

61M Court must decide whether classified information is criminal intelligence

- (1) If information classified by the chief police officer as criminal intelligence is proposed to be used in a proceeding on application under section 61F, the director of public prosecutions must apply to the court for a decision about whether the information is criminal intelligence.
- (2) The application need not be served on anyone unless the court otherwise orders on its own initiative.
- (3) The court must decide whether the information is, or is not, criminal intelligence.

- (4) If the court proposes to decide that the information is not criminal intelligence, the director of public prosecutions must be told about the proposal and given the opportunity to withdraw the information from the proceeding.
- (5) The application must be heard in closed court.

61N Confidentiality of criminal intelligence

- (1) This section applies if a court (on appeal or otherwise)—
 - (a) deals with the question of whether information classified by the chief police officer as criminal intelligence is criminal intelligence; or
 - (b) finds that information is criminal intelligence, and the information is not withdrawn.
- (2) The court must maintain the confidentiality of the information.
- (3) The court may take any steps it considers appropriate to maintain the confidentiality of the information.
- (4) The court must not give any reason for making a finding in relation to the information, other than public interest.
- (5) However, if the court finds that information is not criminal intelligence, and the information is not withdrawn—
 - (a) the court need not maintain the confidentiality of the information and may give reasons for the finding; and
 - (b) any other court need not maintain the confidentiality of the information and may give reasons for making a finding in relation to the information.
- (6) This section is subject to section 61O.

610 Disclosure of criminal intelligence to offender

- (1) This section applies if—
 - (a) criminal intelligence is proposed to be used in a proceeding for the sentencing of an offender for a schedule offence; and
 - (b) the director of public prosecutions does not withdraw the intelligence.
- (2) The court must hear submissions from the director of public prosecutions and the defence about whether access to the criminal intelligence should be given to the defence.
- (3) If the court is satisfied that the defence must be given access to the criminal intelligence, the court may order access to the intelligence in a form and on any condition the court considers appropriate.
- (4) However, if the director of public prosecutions objects to access being given to the defence or the form or any condition of that access, the director may withdraw the information from the proceeding before the defence has access to the intelligence.
- (5) In this section:
defence means—
 - (a) any lawyer representing the offender; or
 - (b) if the offender is not legally represented—the offender.

14 New schedule 1*insert***Schedule 1 Schedule offences**(see s 61B, def *schedule offence*)**Part 1.1 Crimes Act 1900**

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Part 5

Crimes (Sentencing) Act 2005

Section 14

column 1 item	column 2 offence	column 3 section
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19	Kidnapping	38
20	Money laundering	114B
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Part 1.2**Criminal Code 2002**

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1	Robbery	309
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11	Manufacturing controlled drug for selling	607 (3) and (5)
12	Manufacturing controlled drug	609

column 1 item	column 2 offence	column 3 section
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15	Possessing controlled precursor	612
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22	Supplying plant material, equipment or instructions for cultivating controlled plant	620
23	Possessing plant material, equipment or instructions for cultivating controlled plant	621
24	Participating in a criminal group	652
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column 1 item	column 2 offence	column 3 section
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32	Reprisal against person involved in proceeding	712
33	Perverting the course of justice	713
34	Accessory after the fact	717

Part 1.3 Drugs of Dependence Act 1989

column 1 item	column 2 offence	column 3 section
1	Sale or supply	164

Part 1.4 Firearms Act 1996

column 1 item	column 2 offence	column 3 section
1	Offence—unauthorised possession or use of prohibited firearms	42
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15 Dictionary, new definitions

insert

court, for part 4.6 (Sentencing—schedule offence with criminal group)—see section 61B.

criminal group, for part 4.6 (Sentencing—schedule offence with criminal group)—see section 61C.

criminal intelligence, for part 4.6 (Sentencing—schedule offence with criminal group)—see section 61B.

offender, for part 4.6 (Sentencing—schedule offence with criminal group)—see section 61B.

schedule offence, for part 4.6 (Sentencing—schedule offence with criminal group)—see section 61B.

Part 6 Liquor Act 2010

16 **New section 69A**

insert

69A Non-suitability—criminal activity

- (1) This section applies to a person if—
 - (a) the person was involved with a licence or permit; and
 - (b) a cancellation order for the licence or permit was made under part 11B (Cancellation of licence or permit for criminal activity); and
 - (c) the order was made on the basis, or partly on the basis, of criminal activity of the person.
- (2) The person is taken not to be a suitable person to hold a licence or permit for a period of 5 years after the order was made unless the order is sooner revoked under section 187K.
- (3) In this section:
involved, with a licence or permit—see section 187H.

17 **New division 8.10**

insert

Division 8.10 Exclusion orders

143C Definitions—div 8.10

In this division:

exclusion order—see section 143D.

exclusion period—see section 143D.

excluded person—see section 143D.

143D Meaning of *exclusion order*, *excluded person* and *exclusion period*

An *exclusion order* is an order made by a magistrate that prohibits a person (the *excluded person*) from entering or remaining on licensed premises to which the order applies for a stated period (the *exclusion period*).

143E Application for exclusion order

- (1) The chief police officer may apply to a magistrate for an exclusion order for a person.
- (2) At least 2 days before applying for the exclusion order, the chief police officer must notify the commissioner of the chief police officer's intention to apply for the order.
- (3) The application must be in writing and include—
 - (a) a statement of the grounds on which the application is made; and
 - (b) information to support those grounds.
- (4) The chief police officer must—
 - (a) give a copy of the application to the person; and
 - (b) tell the person the time and date when the application is to be heard.
- (5) The application may be heard and decided in the absence of the person if the person has been given notice under subsection (4) (b).

143F Making of exclusion order

- (1) On application under section 143E, a magistrate may make an exclusion order for a person, but only if satisfied that—
 - (a) the person has, in company with others and on 1 or more occasions in the 12 months before the application was made, engaged in violent conduct on or in the immediate vicinity of any licensed premises; and
 - (b) making an exclusion order will reduce the risk to public safety.
- (2) An exclusion order applies to all licensed premises operated under the following licences:
 - (a) a general licence;
 - (b) an on licence (other than a restaurant and cafe licence);
 - (c) a club licence;
 - (d) a special licence.
- (3) However, on application by the chief police officer or the person, the magistrate may decide the exclusion does not apply to particular licensed premises (the *relevant premises*) if the magistrate is satisfied that—
 - (a) the person has a legitimate and genuine need to be on the premises; and
 - (b) allowing the person to be on the premises would not pose a risk to public safety.
- (4) The exclusion period must be 12 months unless the magistrate considers that a shorter period is appropriate having regard to the nature and seriousness of the conduct.
- (5) An exclusion order must state—
 - (a) the name of the excluded person; and

- (b) if there are no relevant premises—that the exclusion applies to all licensed premises mentioned in subsection (2); and
 - (c) if there are relevant premises—that the exclusion applies to all licensed premises other than the relevant premises and the details of the relevant premises; and
 - (d) the exclusion period.
- (6) The magistrate must give a copy of the exclusion order to—
- (a) the excluded person; and
 - (b) the chief police officer; and
 - (c) the commissioner.

143G Offence—excluded person on premises contrary to exclusion order

- (1) A person commits an offence if the person—
- (a) is subject to an exclusion order in relation to licensed premises; and
 - (b) enters or remains on the premises; and
 - (c) is reckless about whether the premises are licensed premises that the person may not enter or remain on under the exclusion order.

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

- (2) This section does not apply if the person has a reasonable excuse.

Note The defendant has an evidential burden in relation to the matters mentioned in s (2) (see [Criminal Code](#), s 58).

143H Display of notice about effect of exclusion order

- (1) This section applies to the licensee of premises operated under any of the following licences:
 - (a) a general licence;
 - (b) an on licence (other than a restaurant and cafe licence);
 - (c) a club licence;
 - (d) a special licence.
- (2) The licensee must display a notice at or near the entrance to the licensed premises telling people about the effect of section 143G.

143I Amending or revoking exclusion order

- (1) A person subject to an exclusion order may apply to a magistrate for—
 - (a) an amendment of the order in relation to the licensed premises to which it applies; or
 - (b) revocation of the order.
- (2) The application must be in writing and include—
 - (a) for an amendment of the order—the change sought to the licensed premises to which it applies; and
 - (b) a statement of the grounds on which the application is made; and
 - (c) information to support those grounds.
- (3) The magistrate may amend the exclusion order so that it does not apply to particular licensed premises only if satisfied that there has been a change of circumstances that means—
 - (a) the person has a legitimate and genuine need to be on the premises; and

- (b) allowing the person to be on the premises would not pose a risk to public safety.
- (4) The magistrate may revoke the exclusion order only if satisfied that there has been a change of circumstances that means the person being on the premises would no longer pose a risk to public safety.
- (5) An excluded person may make an application under subsection (1) not more than—
 - (a) for an exclusion period of less than 9 months—once during the period; and
 - (b) for an exclusion period of at least 9 months, but not more than 12 months—twice during the period.

18 New section 182A

in division 11.3, insert

182A Meaning of *person of concern*—div 11.3

In this division:

person of concern—a person is a ***person of concern*** if—

- (a) the person is subject to a cancellation order made under part 11B (Cancellation of licence or permit for criminal activity); and
- (b) the cancellation order was made on the basis, or partly on the basis, of the criminal activity of the person.

**19 Grounds for occupational discipline—licensee
New section 183 (1) (k)**

insert

- (k) the licensee has allowed a person of concern to do 1 or more of the following in relation to the business operated under the licence:
- (i) exercise a significant influence in relation to the conduct of the business;
 - (ii) take part in a directorial, managerial or executive decision for the business;
 - (iii) elect or appoint a person as an executive officer in the business.

**20 Grounds for occupational discipline—commercial
permit-holder
New section 184 (1) (k)**

insert

- (k) the permit-holder has allowed a person of concern to do 1 or more of the following in relation to the business operated under the permit:
- (i) exercise a significant influence in relation to the conduct of the business;
 - (ii) take part in a directorial, managerial or executive decision for the business;
 - (iii) elect or appoint a person as an executive officer in the business.

21 New part 11B*insert***Part 11B Cancellation of licence or permit
for criminal activity****187H Definitions—pt 11B**

In this part:

cancellation order, for a licence or permit, means an order made under section 187J.

involved, with a licence—a person is *involved* with a licence if the person is—

- (a) the licensee; or
- (b) a close associate of the licensee; or
- (c) if the licensee is a corporation—an influential person for the corporation; or
- (d) if someone other than the licensee has day-to-day control of the business operated under the licence—a person who has day-to-day control.

involved, with a permit—a person is *involved* with a permit if the person is—

- (a) the permit-holder; or
- (b) a close associate of the permit-holder; or

- (c) if the permit-holder is a corporation—an influential person for the corporation; or
- (d) if someone other than the permit-holder has day-to-day control of the business operated under the permit—a person who has day-to-day control.

187I Application for cancellation order

- (1) The chief police officer may apply to the ACAT for a cancellation order for a licence or permit.
- (2) At least 2 days before applying for the cancellation order, the chief police officer must notify the commissioner of the chief police officer's intention to apply for the order.
- (3) The chief police officer must give a copy of the application to—
 - (a) for a cancellation order for a licence—the licensee; and
 - (b) for a cancellation order for a permit—the permit-holder.

187J Cancellation order

- (1) On application under section 187I, the ACAT may make a cancellation order if satisfied—
 - (a) for a licence—that because of the criminal activity of a person involved with the licence, the licensee continuing to hold the licence presents an unacceptable risk to community safety; and
 - (b) for a permit—that because of the criminal activity of a person involved with the permit, the permit-holder continuing to hold the permit presents an unacceptable risk to community safety.

- (2) For subsection (1)—
- (a) the ACAT must consider the need to minimise the possibility of criminal activity in the liquor industry; and
 - (b) the matters the ACAT may consider include—
 - (i) whether a person involved with a licence or permit has been convicted or found guilty of a relevant offence or had an exclusion order made against them; and
 - (ii) non-conviction information about a person involved with a licence or permit; and
 - (iii) the harm minimisation and community safety principles.

Note **Harm minimisation and community safety principles**—see s 10.

- (3) However the ACAT must not make a cancellation order on the basis of—
- (a) for a licence—the criminal activity of an involved person other than the licensee, unless the ACAT has—
 - (i) told the licensee about the proposed cancellation and who the involved person is; and
 - (ii) given the licensee a stated reasonable time within which to take steps to ensure that the person ceases to be involved with the licence; and
 - (b) for a permit—the criminal activity of an involved person other than the permit-holder, unless the ACAT has—
 - (i) told the permit-holder about the proposed cancellation and who the involved person is; and
 - (ii) given the permit-holder a stated reasonable time within which to take steps to ensure that the person ceases to be involved with the permit.

(4) If the ACAT makes a cancellation order for a licence or permit, the chief police officer must give a copy of the order to the commissioner.

(5) In this section:

non-conviction information, about a person, means information about whether the person—

- (a) has been charged with a relevant offence but—
 - (i) a proceeding for the offence is not finalised; or
 - (ii) the charge has lapsed, been withdrawn or discharged, or struck out; or
- (b) has been acquitted of a relevant offence; or
- (c) has had a conviction for a relevant offence quashed or set aside; or
- (d) has been served with an infringement notice for a relevant offence; or
- (e) has a spent conviction for a relevant offence.

Note The *Spent Convictions Act 2000* sets out which convictions can be spent (see that *Act*, s 11) and when a conviction is spent (see that *Act*, s 12).

relevant offence means any of the following:

- (a) an offence punishable by imprisonment for 5 years or longer;
- (b) an offence against the *Crimes Act 1900*, section 26 (Common assault) or section 35A (1);
- (c) an offence involving fraud or dishonesty;
- (d) an offence against this Act or a law of another jurisdiction substantially corresponding to this Act.

187K Cancellation order—revocation

The ACAT may revoke a cancellation order for a licence or permit if satisfied that, as a result of a change in circumstances—

- (a) for a licence—the person who held the licence is no longer engaged in criminal activity that would, if the person were a licensee, present an unacceptable risk to community safety; and
- (b) for a permit—the person who was the permit-holder is no longer engaged in criminal activity that would, if the person were a permit-holder, present an unacceptable risk to community safety.

187L Offences—cancellation order—involvement of person engaged in criminal activity

- (1) A person commits an offence if—
 - (a) the person was involved with a licence; and
 - (b) the person is subject to a cancellation order for the licence made under section 187J; and
 - (c) the order was made on the basis, or partly on the basis, of criminal activity of the person; and
 - (d) the person does 1 or more of the following in relation to the business operated under the licence that was cancelled:
 - (i) exercises a significant influence in relation to the conduct of the business;
 - (ii) takes part in a directorial, managerial or executive decision for the business;
 - (iii) elects or appoints a person as an executive officer in the business.

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

- (2) A person commits an offence if—
- (a) the person was involved with a permit; and
 - (b) the person is subject to a cancellation order for the permit made under section 187J; and
 - (c) the order was made on the basis, or partly on the basis, of criminal activity of the person; and
 - (d) the person does 1 or more of the following in relation to the business that was operated under the permit that was cancelled:
 - (i) exercises a significant influence in relation to the conduct of the business;
 - (ii) takes part in a directorial, managerial or executive decision for the business;
 - (iii) elects or appoints a person as an executive officer in the business.

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

**22 Disclosure of criminal intelligence—chief police officer
Section 222B (1)**

after

a court

insert

, the ACAT

**23 Whether information is criminal intelligence—application
and decision
New section 222D (1A)**

insert

- (1A) This section also applies if the chief police officer applies to the ACAT for a cancellation order under part 11B (Cancellation of licence or permit for criminal activity) because, or partly because, of information that is classified by the chief police officer as criminal intelligence (the *proceeding*).

**24 Confidentiality of criminal intelligence—commissioner
and ACAT
New section 222F (2A) and (2B)**

insert

- (2A) However, in a proceeding on an application mentioned in section 222D (1A), the ACAT may allow a party or a representative of a party to have access to or inspect information that is criminal intelligence (on conditions the ACAT thinks appropriate) if the ACAT thinks it would not be contrary to the public interest to do so.
- (2B) If the ACAT proposes to allow a party or a representative of a party to have access to or inspect information that is criminal intelligence, the chief police officer must be told about the proposal and given the opportunity to withdraw the information from the proceeding.

25 Dictionary, new definitions

insert

cancellation order, for part 11B (Cancellation of licence or permit for criminal activity)—see section 187H.

exclusion order, for division 8.10 (Exclusion orders)—see section 143D.

exclusion period, for division 8.10 (Exclusion orders)—see section 143D.

excluded person, for division 8.10 (Exclusion orders)—see section 143D.

involved, with a licence, for part 11B (Cancellation of licence or permit for criminal activity)—see section 187H.

involved, with a permit, for part 11B (Cancellation of licence or permit for criminal activity)—see section 187H.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 24 October 2019.

2 Notification

Notified under the [Legislation Act](#) on 6 December 2019.

3 Republications of amended laws

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

I certify that the above is a true copy of the Crimes (Disrupting Criminal Gangs) Legislation Amendment Bill 2019, which was passed by the Legislative Assembly on 26 November 2019.

Clerk of the Legislative Assembly

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