

CRIMINAL ORGANISATIONS CONTROL BILL 2011

EXPLANATORY MEMORANDUM

PART 1 Preliminary

Clause 1 Short title

The short title of the Act will be the *Criminal Organisations Control Act 2011*.

Clause 2 Commencement

This clause allows for the Act to come into operation on different dates fixed by proclamation.

Clause 3 Terms used

Defines certain terms used in the Act.

Clause 4 Purposes of this Act

Describes the purposes of the Act

Clause 5 Act binds Crown

This clause provides that the Crown is bound by the Bill but is not made subject to criminal liability.

PART 2 – Declared criminal organisations

Division 1 – Applications for declaration

Clause 6 Purpose of declaration

Subclause (1) – describes the purpose of declaring a criminal organisation is to enable control orders to be made to disrupt and restrict the activities of members and former members of the organisation and certain other persons.

Subclause (2) – highlights that declaring an organisation a criminal organisation also makes it an offence for anyone to recruit persons to the organisation.

Clause 7 Application for declaration

Subclause (1) – provides for the Commissioner of Police or the Commissioner of the Corruption and Crime Commission to apply for an organisation to be declared a criminal organisation.

Subclause (2) – sets out what must be included in an application. In particular, the application must identify the particular organisation, describe the nature of the organisation, and set out the grounds on which the declaration is sought.

Subclause (3) – requires the applicant to verify the contents of the application by affidavit.

Subclause (4) – allows the application to identify the organisation in a number of different ways.

Subclause (5) – provides that the application must be lodged with a registrar nominated for that purpose and that registrar must refer the application to a designated authority, without delay.

Subclause (6) – requires the designated authority to set a hearing date, time and place and notify the parties accordingly.

Clause 8 Publication of notice of application

Subclause (1) – requires the applicant to publish notice of the application in at least one newspaper circulating throughout the State and in the *Gazette*. The notice must:

- (a) specify that an application for a declaration has been made in respect of a particular organisation;
- (b) give a brief explanation of the consequences for members and former members of the organisation if the declaration is made and interim control orders or control orders are made in relation to them;
- (c) state that if a declaration is made it will be an offence to recruit members to the organisation;
- (d) invite members of the organisation and others who may be directly affected by the outcome of the application to make submissions to the designated authority at a hearing.
- (e) Specify the date, time and place of the hearing.

Subclause (2) – requires the notice to be published no later than 5 working days after the application is lodged.

Division 2 – Determination of applications

Clause 9 Hearing of application

Subclause (1) – states that the designated authority must hold a hearing of an application for a declaration of criminal organisation.

Subclause (2) – provides that the rules of evidence do not apply to a hearing.

Subclause (3) – provides for persons to attend the hearing and make submissions personally or by counsel or representative.

Subclause (4) – gives the designated authority the powers of a Royal Commission for the purposes of determining an application.

Subclause (5) – applies Part 5 regarding the protection of criminal intelligence information to proceedings on an application for a declaration.

Clause 10 Persons who may attend and make submissions

Subclauses (1) & (2) – allow the applicant and the respondent organisation to attend the hearing and make submissions.

Subclause (3) - allows any member of the respondent, and any other person who may be directly affected by the outcome of the application, to attend the hearing and

make submissions, but only with the leave of the designated authority and subject to any objections made under subclause (4).

Subclause (4) – allows the applicant to object to any person referred to in sub clause (2) and (3) being present during part of the hearing in which criminal intelligence information is disclosed, and an objection must be dealt with by the designated authority under clause 110.

Subclause (5) – allows a person referred to in subclause (3) who does not wish to attend the hearing to make a protected submission to the designated authority.

Clause 11 Protected submissions

Subclause (1) – provides that a protected submission is a submission made by a person who has reasonable grounds to believe that they or a close family member may face repercussions (such as injury or intimidation) in reprisal for making a submission.

Subclause (2) – requires the designated authority to maintain the confidentiality of protected submissions.

Clause 12 Designated authority can make declaration despite non-appearance of respondent or others

This clause allows the designated authority to make a declaration even though persons who are entitled to be present and make submissions at a hearing do not take advantage of that opportunity.

Clause 13 Designated authority may make declaration

Subclause (1) – sets out the grounds upon which the designated authority may make a declaration. The designated authority must be satisfied that:

- (a) the respondent is an organisation; and
- (b) members of the organisation associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity; and
- (c) the organisation represents a risk to public safety and order in this State.

Subclause (2) – sets out certain matters that the designated authority may have regard to in considering whether to make a declaration. These include information suggesting that a link exists between the organisation and serious criminal activity, any criminal convictions of current or former members of the organisation and information suggesting that an interstate or overseas chapter or branch of the organisation engages in serious criminal activity.

Subclause (3) – sets out certain circumstances in which the designated authority may be satisfied that members of the organisation associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity.

Clause 14 Reasons for decision

Subclause (1) – requires the designated authority to give reasons for either making or not making a declaration.

Subclause (2) – applies clause 110 to the giving of reasons for the decisions to protect criminal intelligence information.

Subclause (3) – provides that once a decision has been made under this Part the designated authority must provide a copy of the reasons to the Commissioner of Police and the CC Commissioner, and the Commissioner of Police must make those reasons publicly available on the register kept under clause 113.

Clause 15 Notice of declaration

Subclause (1) – requires the applicant to publish notice of a declaration made in relation to an organisation in the *Gazette* and at least one newspaper circulating throughout the State.

Subclause (2) – provides that the notice must:

- (a) state that the organisation is a declared criminal organisation;
- (b) state that the designated authority's reasons for making the declaration are publicly available on the register;
- (c) set out a brief explanation of the consequences for members and former members of the organisation if interim control orders or control orders are made in relation to them;
- (d) state that it is an offence to recruit another person to the organisation;
- (e) state when the declaration takes effect and ceases to have effect unless revoked or renewed.

Clause 16 Duration of declaration

Subclause (1) – provides that a declaration takes effect:

- (a) On the day after the day the notice is published in the *Gazette*; or
- (b) On a later day specified by the designated authority in the declaration.

Subclause (2) – provides that a declaration lasts for five years, unless it is revoked or renewed.

Clause 17 Declaration not affected by change in name or reorganisation

Subclauses (1) & (2) ensure that the declaration is not affected by any change in the name of the organisation or by a reorganisation of that organisation.

Division 3 – Renewal, revocation and expiry of declarations

Clause 18 Renewal of declaration

Subclause (1) – provides for the Commissioner of Police or the CC Commissioner to make an application for the renewal of a declaration.

Subclause (2) – allows for the application for renewal to be made before or after the declaration expires.

Subclause (3) – provides that the process for determining an application for renewal is the same as for an application for a new declaration.

Subclause (4) – provides that if an application for renewal is made but not determined before the day the declaration would otherwise expire, the declaration continues in force until either:

- (a) The application for renewal is withdrawn; or
- (b) The application for renewal is determined.

Subclause (5) – sets out when the renewal of a declaration takes effect:

- (a) If the declaration is renewed before it expires, the renewal takes effect from the day when the declaration would otherwise have expired;
- (b) If the declaration is renewed after it expires, the renewal takes effect on the day after the day on which notice of the renewal is published in the *Gazette*, as required by clause 15.

Subclause (6) – provides that there are no limits on the number of times a declaration can be renewed.

Clause 19 Application for revocation of declaration

Subclause (1) – provides for the following persons to apply for the revocation of a declaration:

- (a) the Commissioner of Police (if he or she was the applicant for the declaration);
- (b) the CC Commissioner (if he or she was the applicant for the declaration);
- (c) the declared criminal organisation;
- (d) any member of the declared criminal organisation;
- (e) if the revocation is sought on the grounds that the organisation no longer exists, any former member of the declared criminal organisation.

Subclause (2) – sets out how an application for the revocation of a declaration must be made.

Subclause (3) – provides that no later than 7 days after an application is lodged,

- (a) if the applicant is not the Police Commissioner or the CC Commissioner, the applicant must give the Commissioners notice of the application, and a copy of the application with supporting affidavits; and
- (b) notice of the making of an application must in all cases be published in the *Gazette* and in at least one newspaper circulating throughout the State.

Clause 20 Consideration of application for revocation may be dismissed

This clause provides that if the applicant for the revocation of a declaration is not the Commissioner of Police or the CC Commissioner, a designated authority may refuse to consider the application if one or more applications have been previously made and the latest application does not set out any new grounds for the revocation.

Clause 21 Determination of application for revocation

Subclause (1) – provides that a designated authority may revoke a declaration only if the designated authority is satisfied:

- (a) that there has been a substantial change in the nature or membership of the organisation to the extent that its members no longer associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity, and the organisation no longer represents a risk to public safety and order in the State; or
- (b) that the declared criminal organisation no longer exists and clause 17(2) does not apply.

Subclause (2) – applies clauses 9 to 12 (with all necessary modifications) with respect to the determination of an application for the revocation of a declaration.

Clause 22 Reasons for decision

This clause requires a designated authority to give reasons for any of the following decisions:

- (a) to refuse to consider an application for the revocation of a declaration;
- (b) to revoke a declaration;
- (c) Not to revoke a declaration.

Subclauses (2) and (3) are to the same effect as clause 14(2) and (3).

Clause 23 When revocation of declaration takes effect

This clause provides that the revocation of a declaration takes effect immediately.

Clause 24 Notice of revocation or expiry of declaration

This clause provides that when a declaration expires, or is revoked, the original applicant for the declaration must:

- (a) publish a notice of the revocation or expiry in the *Gazette* and at least one newspaper circulating throughout the State;
- (b) take all reasonably practicable steps to let every person who made a submission at the original hearing know the declaration has ceased; and
- (c) if he or she is aware that the declaration has effect in another State or Territory (which it might do because of the reciprocal recognition of the declaration in another jurisdiction), notify the commissioner of the police service of that State or Territory.

Clause 25 Effect of expiry or revocation of declaration

Subclauses (1) and (2) – provide that if the basis for an interim control order or a control order is a declaration, and the declaration expires or is revoked, then the interim control order or control order expires immediately.

Subclause (3) – provides that the expiry or revocation of a declaration does not affect:

- (a) a person's liability for anything done before the declaration ceased;
- (b) any investigation or proceeding related to that liability.

Division 4 – Designated authorities

Clause 26 Designation of judges or retired judges to determine applications

Subclause (1) – the Governor may in writing designate judges or retired judges to be designated authorities for the purposes of the Bill.

Subclause (2) – the Governor cannot designate a judge or retired judge unless the judge or retired judge consents in writing.

Subclause (3) – the period of designation and, in the case of a retired judge, the terms and conditions of appointment as a designated authority, are to be set out in the instrument of appointment.

Clause 27 Termination of designation

Subclause (1) – A designated authority may revoke his or her consent by writing.

Subclause (2) – the Governor cannot revoke the designation of a judge or retired judge under clause 26.

Subclause (3) – provides that a designation is revoked if:

- (a) the judge or retired judge revokes his or her consent; or
- (b) the judge ceases to be a judge, or the Chief Justice of Western Australia notifies the Attorney General that the Chief Justice considers the time a designated authority may be required to exercise his or her functions may compromise the ability of the court to perform its functions.

Clause 28 Designated authorities not subject to control by Executive

This clause provides that the selection of a designated authority to exercise a function under the Bill is not to be made by the Attorney General or any other Minister of the Crown and the exercise of a particular function by a designated authority is not subject to the control and direction of the Executive.

Clause 29 Other designated authorities may act

Provides for another designated authority to determine an application for the renewal or revocation of a declaration if the designated authority who made the declaration has died or ceased to be a designated authority or is absent.

Clause 30 Protection and immunity

Gives a designated authority the same protection and immunity as a judge has in relation to proceedings in the Supreme Court.

Clause 31 Nature and functions of the designated authority

Subclause (1) – provides that the functions conferred on a designated authority by the Bill are conferred in a personal capacity (ie, as *persona designata*) and not as a court or member of a court.

Subclause (2) – makes clear that anything done by a designated authority has effect only by virtue of the Bill, and must not be taken by implication to be done by a court.

Clause 32 Record of proceedings

This clause requires the records of proceedings under Part 2 or section 128 to be dealt with in accordance with the requirements of any regulations made under clause 170.

Part 3 – Control Orders

Division 1 – Overview

Clause 33 Overview

This clause provides an overview of how Part 3 is intended to operate, and in particular the processes for obtaining interim control orders and control orders. It is intended only as a guide, and does not limit the provisions of Part 3.

Clause 34 Application of provisions protecting criminal intelligence information

This clause applies Part 5 (which relates to the protection of criminal intelligence information) to proceedings under Part 3.

Division 2 – Interim control orders

Subdivision 1 – Applications for interim control orders

Clause 35 Application for interim control order

Subclause (1) – provides for the Commissioner of Police to apply to the Supreme Court for an interim control order relating to a person.

Subclause (2) – provides that an application for an interim control order can be made only in relation to a person specified in clause 57(2).

Clause 36 Form of application

Sets out what an application for an interim control order must contain. It must –

- (a) be in writing; and
- (b) identify the person by name or by attaching a recent photograph; and
- (c) set out the grounds on which the order is sought; and
- (d) set out the information supporting these grounds; and
- (e) set out any non-standard conditions sought to be included in the order; and
- (f) indicate whether or not the person in relation to whom the interim control order is sought is already a controlled person; and
- (g) be accompanied by an affidavit from the Commissioner of Police, or other senior police officers, verifying the contents of the application.

Clause 37 Application for hearing without notice or on notice

Provides that an application can ask the court to hear the application for an interim control order either without notice to, and in the absence of the person to whom the application relates, or at a hearing held on notice to the respondent.

Subdivision 2 – Determination of applications

Clause 38 Making of interim control order

Subclause (1) – allows for the court to make an interim control order if it is satisfied that the application complies with clause 36 and that on the basis of the information supplied to the court, the court could make a control order under clause 57.

Subclause (2) – allows for applications to apply to two or more people although individual orders must be made for each person.

Subclause (3) – allows for orders to be made *ex-parte*.

Subclause (4) – applies standard conditions to an interim control order under Division 5 Subdivision 1, and allows the court to impose non-standard conditions and make consequential and ancillary orders.

Clause 39 Explanation of interim control order

This clause imposes a requirement to adequately explain the interim control order to the person to whom it applies.

Subclause (1) – provides that if the person is present in court when the order is made then the court must take all reasonable steps to ensure the person understands their obligations and what will happen if they fail to comply with those obligations.

Subclause (2) – provides if the person is not present in court then the Commissioner of Police must ensure the explanation is delivered when the order is served.

Subclause (3) – requires the person to have the order explained in language likely to be understood by them.

Subclause (4) – requires that the explanation be given both in writing and orally, if practicable.

Subclause (5) – provides that failure to comply with this clause does not invalidate an interim control order.

Clause 40 Court to fix hearing date for application for control order

If the court makes an interim control order, the application for the order is automatically treated as an application for a control order confirming the interim control order. The court must fix a hearing date for the deemed application for a control order as soon as practicable after the interim control order is made but leaving enough time for the person to whom the order relates to prepare and file a notice of objection (clause 55). The court can vary the date fixed for a hearing so that there is sufficient time for the respondent to prepare and file a notice of objection.

Clause 41 Notice of making of interim control order

This clause provides for the Commissioner of Police to serve notice of the interim control order personally on the person to whom it relates within 28 days after the order is made.

Clause 42 Content of notice

Subclause (1) – specifies the contents of the notice that must be served under clause 41.

Subclauses (2) and (3) – copies of the affidavits that accompanied the application for the control order must be attached to the notice, unless they contain protected criminal intelligence information.

Clause 43 Powers to request particulars and detain for purposes of service

Subclause (1) – This clause gives a police officer who has reasonable cause to suspect that someone is a person on whom notice of the making of an interim control order must be served power to:

- (a) require the person to disclose their personal details; and
- (b) detain the person for up to two hours to serve the notice.

Subclauses (2) – (4) – Refusing or failing to comply with the requirement to give personal details, or giving false particulars, is an offence under clause 104.

Subclause (5) – A person detained under this clause is taken to be in lawful custody, so escaping would be an offence under *The Criminal Code* section 146.

Clause 44 Alternative means of service

Subclauses (1) to (4) – provide that the court can allow more time for notice of the making of an interim control order to be served on a person, or direct that alternative steps to personal service be taken to bring the interim control order to the person’s attention.

Subclause (5) – if these alternative steps fail, the court may order that notice of the interim control order be published in the *Gazette* and a daily newspaper circulating throughout the State or by some other form of public notification.

Subclause (6) – the taking of the above steps is considered to satisfy the requirement for personal service.

Clause 45 Commencement and duration of interim control order

This clause provides that an interim control order comes into force when the respondent is present in court when the order is made, or if not, when notice of the order is personally served.

The interim control order lasts until a control order confirming the interim order is made and comes into force; the interim order is revoked; the application for a control order confirming the interim order is withdrawn or dismissed; or the declaration of criminal organisation on which the interim control order is based is revoked or expires.

Subdivision 3 – Revocation of interim control orders made without notice

Clause 46 Application for revocation of interim control order made without notice

This clause provides that if an interim control order is made *ex parte*, the respondent can make an application for revocation of the order on the grounds that the applicant for the order failed to disclose to the court material matter that, at the time of the hearing, was known to, or reasonably discoverable by, the applicant, or on the grounds that the order should not have been made or is no longer appropriate. However the person cannot apply for a revocation if the court has already determined a previous application for revocation or variation of the order.

Clause 47 Determination of application to revoke interim control order

This clause requires the court to hear an application under clause 46 to revoke an interim control order as soon as practicable after an application is made. On hearing the application, the court may decide to revoke the order, vary it, or dismiss the application.

Clause 48 Revocation of interim control order halts proceedings for control order

This clause provides that if an interim control order is revoked under clause 47 then the proceedings for a control order confirming the interim order are automatically discontinued. This does not prevent the Commissioner of Police from making another application for an interim control order or a control order in relation to the same person.

Subdivision 4 – Variation of interim control orders

Clause 49 Application for variation of interim control order

This clause allows a person who is subject to an interim control order or the Commissioner of Police to apply for a variation of the order at any time while the order is in force. Each of them can make more than one application to vary the same interim control order, but:

- (a) the controlled person can make a second or subsequent application only with the leave from the court; and
- (b) the court may only grant leave if it is satisfied that there has been a substantial change in the relevant circumstances since the last application to vary the order was determined.

Clause 50 Determination of application for variation

This clause provides that on hearing an application for the variation of an interim control order, the court can vary the order or dismiss the application. If a variation is made, the court can exercise any power that it could have exercised when the original order was made.

Division 3 Control orders

Subdivision 1 – How proceedings for control orders begun

Clause 51 How proceedings for control order begun

This clause describes how proceedings for a control order may be initiated. This may be by –

- (a) directly applying under clause 52 for a control order; or
- (b) applying under clause 35 for an interim control order, in which case if the order is made the application is treated as an application for a control order confirming the interim order.

Subdivision 2 – Applications for control orders

Clause 52 Application for control order

The Commissioner of Police may apply directly to the court for a control order in relation to any person specified in clause 57(2).

Clause 53 Form of application

Sets out what an application for a control order must contain. It must –

- (a) be in writing; and
- (b) identify the person by name or by attaching a recent photograph;

- (c) set out the grounds on which the order is sought;
- (d) set out the information supporting these grounds; and
- (e) set out any non-standard conditions sought; and
- (f) indicate whether or not the person in relation to whom the control order is sought is already a controlled person; and
- (g) be accompanied by an affidavit from the Commissioner of Police, or other senior police officers verifying the contents of the application.

Clause 54 Filing and service of application

Subclauses (1) & (2) – provide that the application and affidavits must be filed in the court, then served personally on the person to whom the application relates as soon as practicable after filing.

Subclause (3) – applies clauses 43 and 44 to the service of the order.

Subclause (4) – provides that a copy of the affidavit or affidavits that accompanied the application must be served with the application on the respondent.

Subclause (5) – the affidavits may be redacted to remove criminal intelligence information.

Subdivision 3 – Notice of objection to making of control order

Clause 55 Notice of objection

Subclause (1) – provides for the person subject to an interim control order to object to the making of a control order at the hearing of the application for a control order confirming the interim order.

Subclause (2) – allows for the person on whom notice of an application for a control order has been served to object to the making of the order at the hearing of the application.

Subclause (3) – provides that the person must file a notice of objection in the court.

Subclause (4) – requires that the notice of objection must:

- (a) be in writing; and
- (b) be filed not later than 14 working days after notice of the making of the interim control order or notice of the application for a control order was served on the person, or within a longer period allowed by the court; and
- (c) set out the grounds on which the person objects; and
- (d) be accompanied by an affidavit verifying the grounds of the objection.

Subclause (5) – provides that the respondent must serve a copy of the notice of objection on the Commissioner of Police within five working days after their objection is filed in the court.

Subdivision 4 – Making control orders

Clause 56 Determination of application for control order

Subclause (1) – provides for the court to determine an application for a control order confirming an interim control order by making an order under clause 57 confirming the interim order (with or without variations) or by revoking the interim order.

Subclause (2) – provides that on application for a control order the court can make an order under clause 57 or dismiss the application.

Subclause (3) – allows the court to hear and determine several applications at once but must make individual orders.

Subclause (4) – allows the Commissioner of Police and the respondent to appear and make submissions at the hearing.

Subclause (5) – allows the court to make a control order whether or not the respondent is present or makes submissions at the hearing.

Subclause (6) – sets out the information that must be considered by the court in making its decision, that being the affidavits, contents of the applications or other information provided by the Commissioner of Police or respondent at the hearing.

Clause 57 Circumstances in which control order may be made

Subclause (1) – provides that the court may make a control order if the court is satisfied that there are grounds for making the order and that it is appropriate in the circumstances to make the order.

Subclause (2) – sets out the grounds for making a control order in relation to a person. They are any of the following:

- (a) The person is member of a declared criminal organisation;
- (b) The person –
 - (i) is a former member of a declared criminal organisation; but
 - (ii) has ongoing involvement with the organisation and its activities.
- (c) The person –
 - (i) engages in, or has engaged in, serious criminal activity; and
 - (ii) regularly associates with members of a declared criminal organisation.
- (d) The person –
 - (i) engages in, or has engaged in, serious criminal activity; and
 - (ii) regularly associates with other persons who engage in, or have engaged in, serious criminal activity.

Subclause (3) – provides that the court must have regard to the following in considering whether or not to make a control order:

- (a) whether the person's behaviour, or history of behaviour, suggests that there is a risk that the person will engage in serious criminal activity;
- (b) the extent to which the order might assist in preventing the person from engaging in serious criminal activity;
- (c) Any criminal convictions;
- (d) Any criminal convictions of the person's associates;
- (e) Any legitimate reason the person may have for associating with anyone specified in the application;
- (f) Anything else the court considers relevant.

Subclause (4) – applies in determining whether or not a former member of a declared criminal organisation has an ongoing involvement with the organisation and its activities. The court may take into account whether the person regularly associates with members of the declared criminal organisation without reasonable excuse, and the extent to which the conduct of the person demonstrates that he or she has genuinely disassociated himself or herself from the organisation.

Clause 58 Conditions of control order

Subclause (1) – provides that the standard conditions set out in Division 5 Subdivision 1 apply under a control order, and that the court may impose any other conditions the court deems appropriate.

Subclause (2) – sets out a non-exhaustive list of the things that a condition may do:

- (a) Prohibit the person from carrying on prescribed activities (as defined in clause 80);
- (b) Prohibit the person from applying for or undertaking specified types of employment;
- (c) Prohibit the person from entering, or being on or near, certain premises or place;
- (d) Prohibit the person from possessing a firearm, weapon, or dangerous substance;
- (e) Prohibit the person from possessing a substance, article or thing specified in the order;
- (f) Prohibit the person from accessing or using certain forms of communication or technology specified in the order.

Subclause (3) – allows the court to make a condition subject to exceptions.

Clause 59 Consequential or ancillary orders

Subclause (1) – provides that on making a control order, the court may make any consequential or ancillary orders it thinks fit.

Subclause (2) – some of the orders that the court can make are:

- (a) an order allowing the person to associate with a particular controlled person where there is good reason for it;
- (b) an order allowing the person to temporarily carry on a prescribed activity, so as to enable the person to organise their affairs;
- (c) if the person is prohibited from carrying on a prescribed activity, an order requiring the person to surrender any authorisation to carry on the prescribed activity.

Clause 60 Form of control order

Subclause (1) – Provides that a control order must:

- (a) specify the person it relates to; and
- (b) specify the provisions under which the order was made; and
- (c) if the order was made on the basis of the person's membership or former membership of a declared criminal organisation, or regular association with members of such an organisation, identify that organisation and include details of the declaration; and
- (d) include a statement of the grounds on which the order is made, excluding any criminal intelligence information protected under clause 111; and
- (e) set out the terms of the order including any non-standard conditions and consequential or ancillary orders;
- (f) state that the names of controlled persons are listed on the register kept under clause 113; and
- (g) specify the date of expiry of the order, which cannot be later than 5 years after the order is made; and

- (h) if applicable, set out an explanation of the circumstances in which the order may cease to have effect if the relevant declaration expires or is revoked; and
- (i) - (k) set out explanations of the rights to appeal, and apply for a variation or revocation of the order, under clauses 64, 67 and 70.

Subclauses (2) and (3) – copies of the affidavits that accompanied the application for the order must be attached to the order, subject to the need to protect criminal intelligence information.

Clause 61 Explanation of control order

This clause imposes a requirement to adequately explain a control order to the person to whom it applies.

Subclause (1) – provides that if the person is present in court when the order is made then the court must take all reasonable steps to ensure the person understands their obligations and what will happen if they fail to comply with those obligations..

Subclause (2) – provides that if the person is not present in court when the control order is made, the Commissioner of Police must take all reasonable steps to give the explanation to the person when served with a copy of the order.

Subclause (3) – provides that the person must have their obligations under the control order, and the consequences if they fail to comply, explained to them in language likely to be understood by them.

Subclause (4) – provides for the explanation to be given both in writing and orally, if practicable.

Subclause (5) – provides that failure to comply with this clause does not invalidate a control order.

Clause 62 Commencement and duration of control order

Subclause (1) – provides that a control order commences when the order is made if the controlled person is present in court at that time, and if not when the person is personally served with the order.

Subclause (2) – provides that a control order remains in force until it expires, is revoked or ceases to have effect because the declaration on which it is based ceases to have effect.

Subclause (3) – provides that the powers available under clauses 43 and 44 apply in relation to service of a control order.

Clause 63 Successive control orders permitted

Subclause (1) – allows an interim control order or a control order to be made in relation to a person while a control order is still in force or after it has expired. This means that a series of interim control orders and control orders can apply to a person without there being a gap between them.

Subclause (2) – provides when successive interim control orders or control orders can be made, and specifies when each new order comes into force. More than one order cannot be in force at the same time.

Subclause (3) – provides that subclause (2) overrides provisions relating to the commencement of interim control orders and control orders.

Subdivision 5 – Appeals, variations and revocations

Clause 64 Appeal against making or refusal of control order

Subclause (1) – provides the controlled person or the Commissioner of Police with the right to appeal to the Court of Appeal against a decision of the court in relation to the making of a control order.

Subclause (2) – provides that an appeal may be lodged on a question of law in all cases, however, an appeal on a question of fact or mixed law and fact requires the leave of the Court of Appeal.

Subclause (3) – limits the period of appeal on a question of law to 21 days after the decision of the court, similar to most appeals to the Court of Appeal, unless leave is given to appeal after that time.

Subclause (4) – provides that in relation to an appeal on a question of fact or mixed law and fact, the period within which leave to appeal can be sought is 21 days after the decision of the court, unless the Court of Appeal extends the time.

Subclause (5) – provides that an extension of the time limit to appeal or seek leave to appeal may be given even though the time limit has already passed.

Clause 65 Appeal does not stay order unless Court of Appeal orders otherwise

A control order still operates when an appeal or an application for leave to appeal has been made, unless the Court of Appeal orders otherwise.

Clause 66 Determination of appeal

On appeal the Court of Appeal may:

- (a) confirm, vary, or set aside the original decision; and
- (b) make any decision that the court may have made; and
- (c) if the decision appealed against is set aside, order that the matter concerned be dealt with again; and
- (d) make any consequential or ancillary order.

Clause 67 Application to vary control order

This clause provides that an application can be made by the Commissioner of Police or a controlled person to vary a control order.

Subclause (1) – allows the controlled person or the Commissioner of Police to apply for a variation of the order at any time while the control order remains in force.

Subclause (2) – allows the controlled person to apply for a variation only with the leave of the court and provides that the court may only grant leave if it is satisfied that there has been a substantial change in the relevant circumstances since the order was made or an application to vary the order was last determined.

Subclause (3) – sets out what must be stated on the application to vary an order.

Subclause (4) – allows the controlled person and the Commissioner of Police to appear at the hearing of the application and make submissions; but the court may determine the application even if they do not take advantage of this opportunity.

Clause 68 Determination of application for variation

This clause relates to the determination of an application for variation of a control order.

Subclause (1) – allows the court to:

- (a) Vary the control order, and for that purpose may exercise any power it could have exercised on the making of the original control order; or
- (b) Dismiss the application.

Subclause (2) – Before varying an order, the court must have regard to the same factors that the court is required to consider when deciding whether or not to make a control order in the first place, and in considering the terms of a control order.

Subclause (3) – provides that the court can reduce, but cannot extend, the duration of a control order upon an application for variation.

Subclause (4) – sets out when a variation to a control order takes effect.

Subclause (5) – provides that the powers available under clauses 43 and 44 apply in relation to service of notice of the variation of a control order.

Clause 69 Explanation of variation

Clause (1) – applies clause 61 to variations of a control order, so that the controlled person has explained to them any change to their obligations under the varied order.

Clause (2) – subclause (1) does not apply if the order is varied on the application of, and only in the terms sought by, the controlled person.

Clause 70 Application for revocation of control order

Subclause (1) – provides that the controlled person or the Commissioner of Police may at any time while the control order remains in force apply for a revocation of the order.

Subclause (2) – provides that –

- (a) an application made by the controlled person must have leave of the court; and
- (b) the court may only grant leave if it is satisfied that there has been a substantial change in the relevant circumstances since the order was made or an application to revoke the order was last determined.

Subclause (3) – sets out what must be stated on the application to revoke an order.

Subclause (4) – means that the controlled person and the Commissioner of Police may appear at the hearing of the application and make submissions; but the court may determine the application even if they do not take advantage of this opportunity.

Clause 71 Determination of application for revocation

This clause relates to the determination of an application for the revocation of a control order.

Subclause (1) – the court may:

- (a) revoke the order; or
- (b) Dismiss the application.

Subclause (2) – before revoking a control order, the court must have regard to the same factors that the court is required to consider when deciding whether or not to make a control order in the first place, and in considering the terms of an order.

Subclause (3) – provides that the revocation of a control order takes effect immediately.

Subclause (4) – provides that if the controlled person is not present in court when the control order is revoked, the Commissioner of Police must serve a copy of the revocation order personally on that person as soon as practicable.

Subclause (5) – applies clause 44 to the service of a copy of the revocation order.

Clause 72 Notice of variation or revocation

A registrar of the court must give notice of the variation or revocation of a control order:

- (a) To the Commissioner of Police, if the Commissioner or his or her representative is not present in the court; and
- (b) to Commissioner of Police in another state or territory if the registrar is aware that the order has effect in another jurisdiction (which it might do because of the reciprocal recognition of the order in another jurisdiction).

Division 4 – Interim and final control orders against persons under 18

Clause 73 Interim and final control orders available against 16 and 17 year olds

This clause provides that interim and final control orders can be made against 16 and 17 year olds (juveniles) in the same way as against adults, but cannot be made against persons under 16.

Clause 74 Notification of orders against juveniles

If an interim control order or a control order is made in relation to juvenile, or such an order is varied or revoked, the Commissioner of Police must notify the chief executive officer of the department that administers the *Children and Community Services Act 2004*, and make reasonable attempts to find and notify a parent or guardian of the juvenile.

Clause 75 Personal service of orders against juveniles required

Subclauses (1) (2) and (3) require that an interim control order or final control order that relates to a juvenile, or a variation of such an order, is of no effect until notice is served personally on the juvenile, unless (except in the case of the making of an

interim control order) the juvenile is present in court when the order is made or varied.

Subclause (4) – applies subclauses (1) to (3) despite any other provision of the Bill that permits personal service to be dispensed with.

Clause 76 Application of certain Acts relating to persons under 18 not affected

This clause makes it clear that Division 4 does not affect the application of the *Children’s Court of Western Australia Act 1988* and the *Young Offenders Act 1994* to any offence or alleged offence under the Bill.

Division 5 – Effect of interim and final control orders **Subdivision 1 – Standard conditions**

Subdivision 1 – describes the standard conditions that apply to an interim or final control order.

Clause 77 Standard condition: non-association with other controlled persons

Subclause (1) – makes it a standard condition of an interim control order that the controlled person must not associate with another controlled person, with the exceptions described in paragraphs (a) and (b).

Subclause (2) – makes it a standard condition of a control order that the controlled person must not associate with another controlled person except as permitted by an exemption under clause 59.

Subclause (3) – highlights that a breach of the non-association condition is an offence under clause 99.

Clause 78 Other standard conditions

Subclause (1) – Specifies other standard conditions that apply to interim and final control orders. They are that the controlled person must not:

- (a) Receive funds from, make funds available to, or collect funds for or on behalf of, a declared criminal organisation;
- (b) Be involved in the organisation, running or financing of any event that is open to the public;
- (c) Recruit a person to become a member of a declared criminal organisation.

Subclause (2) – sets out what offences under the Bill relate to breaches of these standard conditions.

Subdivision 2 – Non-standard conditions

Clause 79 Non-standard conditions of interim control orders and control orders

This clause relates to the non-standard conditions of interim control orders and control orders that may be imposed by the court under clause 58(1)(b). Non-standard conditions are at the discretion of the court.

Subclause (1) – provides that a controlled person under an interim control order or control order must not do any of the following if it breaches a condition of the order:

- (a) Carry on any prescribed activity (as defined in clause 80);
- (b) Apply for or undertake any employment;
- (c) Enter, or be on or near, any premises or place;
- (d) Possess a firearm, weapon or dangerous article;
- (e) Possess a substance, article or thing or class of substance, article or thing;
- (f) Access or use one or more forms of communication or technology;
- (g) Do anything else that is prohibited by a non-standard condition;
- (h) Fail to comply with certain conditions of the order.

Subclause (2) – highlights that a breach of a non-standard condition is an offence under clause 103.

Clause 80 Conditions prohibiting controlled person from carrying on prescribed activity

The intent of this clause is to prevent the involvement of criminal organisations in certain kinds of activity or employment which may attract higher levels of criminal activity. Particular activities include the gaming, motor vehicle, pawnbroking, second-hand dealing, racing, tow truck, and security industries.

Subclause (1) – defines the meaning of “prescribed activity” and specifies a range of activities that are prescribed activities for the purposes of the Bill (paragraphs (a) to (j)). Provision is made to prescribe further activities by regulation (paragraph (k)).

Subclause (2) – applies clause 80 if the court decides to impose, as a condition of an interim control order or a control order, that the controlled person is prohibited from carrying on one or more prescribed activities.

Subclause (3) – If this clause applies:

- (a) The controlled person must not carry on the prescribed activity while the interim order or control order is in force;
- (b) Any authorisation (defined in clause 3(1) to include a licence, registration, permit, exemption, certificate or other form of authority) that the controlled person has to carry on the activity is –
 - (i) Automatically suspended when the order comes into force; and
 - (ii) Remains suspended until the order ceases to be in force or the authorisation ceases to be in force at an earlier date; and
- (c) the person must not apply for, or continue an application for, any authorisation to carry on the prescribed activity; and
- (d) any existing application for an authorisation to carry on the prescribed activity is automatically suspended when the order comes into force and remains suspended until it ceases to be in force.

Subclause (4) – provides that the suspension of an authorisation or an application for an authorisation has effect regardless of–

- (a) whether the law under which the authorisation was obtained provides for suspensions or provides a specific procedure for suspensions; and
- (b) whether the law under which the application was made requires a regulatory authority to process it, or provides that the authorisation is granted as a matter of course; and
- (c) any written law, award or industrial or other agreement affecting the employment of the person holding the authorisation or making an application for an authorisation.

Subclause (5) – provides that in the case of a joint authorisation or a joint application for an authorisation, the suspension only relates to the controlled person.

Subclause (6) – excludes liability on the part of the State or regulatory authorities for the suspension of any authorisation or application for an authorisation.

Clause 81 Commissioner of Police to notify regulatory authority of suspension of authorisation or application

This clause requires the Commissioner of Police to notify the relevant regulatory authority of the suspension of an authorisation or an application for an authorisation.

Subdivision 4 – Surrender and seizure of things

Clauses 82 to 86: these clauses-

- require a controlled person to surrender anything that a condition of an interim control order or a control order prohibits them from possessing, along with any authorisation (such as a firearms licence) that they have to possess the thing;
- empower a police officer, without warrant, to enter a place and search for and seize things that the officer suspects, on reasonable grounds, have not been surrendered as required (including authorisations to carry on prescribed activities). Other laws that confer powers of search, entry or seizure are not affected;
- provide for how things surrendered or seized are to be dealt with. Generally, the thing must be held in safe custody while the interim control order or control order remains in force, and the former controlled person can then reclaim it. In certain cases the thing will be able to be disposed of. The operation of the *Criminal Property Confiscation Act 2000* and other laws that provide for property to be forfeited to the State are not affected.

Subdivision 4 – requirements to provide identifying particulars

Clauses 87 to 91:

- these clauses apply the provisions of the *Criminal Investigation (Identifying People) Act 2002* to a controlled person as if they were a charged suspect charged with a serious offence (as defined in that Act). This means that a police officer may require the person to provide their identifying particulars under the procedures in that Act. This may include a DNA profile;
- the power to take identifying particulars can be exercised only once in respect of the same interim control order or control order. For this purpose an interim control order and a control order confirming that order are treated as the same order;
- identifying particulars (other than DNA material) taken from a controlled person can be retained by the Commissioner of Police for law enforcement, crime prevention or community protection purposes. DNA material can be used for more limited purposes, as set out in the *Criminal Investigation (Identifying People) Act 2002* section 73;
- identifying particulars taken from a controlled person must be destroyed in certain circumstances, such as where the court's decision to make the control order that formed the basis for taking the particulars is reversed on appeal.

Clause 92 Power of police officers to request disclosure of identifying particulars

Subclause (1) – provides that a police officer who has reasonable cause to suspect that a controlled person is associating with another controlled person may require the person to disclose their personal details (such as name and address).

Subclause (2) – provides for a police officer, who reasonably suspects that a person has given a false response, to require the person to produce evidence of the correctness of the detail.

Subclause (3) – highlights that it is an offence under clause 104 to fail or refuse to comply with a requirement to disclose personal details, or to give false particulars.

Subdivision 5 – Notification of order where possession of firearms prohibited

Clauses 93 and 94 apply where an interim control order or a control order includes (whether as part of the original order or as the result of a variation) the condition that the controlled person is prohibited from possessing a firearm. If so, the controlled person must be asked, at the time the order or variation is served on them (and at the time when the order is made or varied, if they are present in court) whether the person uses or has access to a firearm in the course of their occupation, and if so, the name and address of the holder of the firearms licence for the firearm (or if inapplicable, of their employer). They must also be asked whether they and someone else hold firearms licences in respect of the same firearm, and if so, that other person's name and address. If affirmative answers are given, the Commissioner of Police must notify those other persons of the details of the prohibition on the controlled person possessing a firearm, and inform them that it is an offence for them to allow the controlled person to use or have access to a firearm.

Subdivision 6 – General

Clause 95 Orders only available against individuals

An interim control order or a control order can only be made in relation to an individual.

Clause 96 Order prohibiting entry to place

Confirms the ability of an interim control order or a control order to restrict a person's access to a place, even if the person has a legal or equitable right to be at the place.

Clause 97 Correcting minor errors in orders

This clause authorises a registrar, or the court, to correct minor errors (such as clerical mistakes) in an interim control order, a control order, or a consequential or ancillary order.

Clause 98 Relationship with other laws

This clause clarifies the relationship between interim control orders and control orders, and certain orders made under other laws. In the circumstances outlined in

the clause, certain orders under other laws will take precedence over an interim control order or a control order, if there is an inconsistency between the orders.

Part 4 – Offences

Division 1 – Offences by controlled persons

This division relates to offences that are committed by **controlled** persons.

Subdivision 1 – Non-association offences

This subdivision describes the non-association offences. The term “associate” is defined widely in clause 3(1) to include both associating in person and communicating by any means. Association outside the State is also included.

Clause 99 Association between controlled persons an offence

Subclause (1) – makes it an offence for a controlled person to associate with another controlled person:

- (a) For a first offence, the penalty is two years’ imprisonment;
- (b) For a second or subsequent offence committed after conviction for a first offence, the offence is an indictable offence, with a penalty of five years’ imprisonment. The summary conviction penalty for this offence is 3 years’ imprisonment.

Subclause (3) – makes it an offence for a controlled person to associate with another controlled person on three or more occasions within three months, the penalty for which is three years’ imprisonment.

Subclause (4) – qualifies subclauses (1) or (3) so that it does not matter:

- (a) Whether the association was with the same controlled person on each occasion, or with a different controlled person on each or some occasions; or
- (b) When or on what grounds each of the persons became a controlled person; or
- (c) If the persons are members or former members of the same declared criminal organisation.

Subclause (5) – provides that in proceedings for an offence under subclause (1) or (3) the prosecution does not have to prove:

- (a) the purpose of association; or
- (b) That the association would have led to the commission of any offence.

Clause 100 Defences to charges under section 99

Subclause (1) – provides that the forms of association set out in clause 99 are to be disregarded if the accused was subject to an interim control order and proves the association was reasonable in the circumstances.

Subclause (2) – makes it a defence if the controlled person establishes that they did not know, and could not reasonably be expected to have known, that the other person was a controlled person. It is expected that it will be difficult for the accused to establish this defence, given the provision in clauses 42(1)(e), 60(1)(f) and 140(3) for controlled persons to be informed that the names of controlled persons are listed on the register kept under clause 113.

Subclause (3) – makes it a defence if the association was in accordance with an exemption under clause 59.

Clause 101 Certain associations to be disregarded for interim control orders

Sets out the forms of association to which the defence under clause 100(1) applies, these being:

- (a) between close family members (as defined in clause 3(1));
- (b) during a lawful occupation or business;
- (c) during training or education between persons enrolled in the course;
- (d) during a rehabilitation, counselling or therapy session;
- (e) during lawful custody;
- (f) during the taking or defending of legal proceedings (whether civil or criminal);
- (g) in the course of complying with a court order;
- (h) of a kind prescribed by regulations.

Subdivision 2 – Financing offence

Clause 102 Offence for controlled person to get funds to, from or for declared criminal organisation

Subclause (1) and (2) – makes it an offence if a controlled person receives funds from, or makes funds available to, a declared criminal organisation, or collects funds for, or on behalf of, a declared organisation, either directly, or indirectly. The offence is an indictable offence, with a penalty of five years' imprisonment. The summary conviction penalty is three years' imprisonment. The term "funds" is given a wide meaning in clause 3(1).

Subclause (3) – makes it clear that it does not matter whether the controlled person is a member or former member of the declared criminal organisation.

Subdivision 3 – Other offences by controlled persons

Clause 103 Other contraventions of interim control order or control order

This clause enacts a general offence provision covering contraventions of an interim control order or a control order (other than conduct covered by the non-association, financing or recruiting offences), the penalty for which is two years' imprisonment.

Clause 104 Failure to disclose identity or giving false particulars

This clause makes it an offence for a person-

- to fail or refuse to comply with a requirement under clause 43 or 92 to provide a police officer with the person's personal details; or
- to fail or refuse to produce evidence of the correctness of any personal detail provided; or
- to give a personal detail that is false, or produce false evidence of a personal detail.

The penalty for these offences is 12 months' imprisonment.

Clause 105 Failure to disclose information or giving false information about use of or access to firearms

Subclauses (1) and (2) – make it an offence for a controlled person to fail to disclose information, or to give false information, about their use of or access to firearms, when questioned under clause 93. The penalty for this is 12 months imprisonment.

Division 2 – Other offences

Clause 106 Recruiting members for declared criminal organisation an offence

This clause – makes it an offence for anyone to recruit members for a declared criminal organisation.

The offence is an indictable offence, the penalty for which is:

- (a) For an individual, five years' imprisonment;
- (b) For a body corporate, a fine of \$50,000.

The summary conviction penalty is:

- (a) For an individual, three years' imprisonment;
- (b) For a body corporate, a fine of \$30,000.

For the purposes of this offence, it does not matter whether the person doing the recruiting:

- (a) Is a controlled person; or
- (b) Is a member or former member of the declared criminal organisation.

Clause 107 Permitting premises to be habitually used as a place of resort by members of declared criminal organisation

Subclause (1) – extends the definition of “owner” to include a person entitled to receive rent or to whom rent is paid.

Subclause (2) – makes it an offence for the owner, occupier or lessee of any premises to knowingly permit the premises to be habitually used as a place of resort by members of a declared criminal organisation, the penalty for which is two years' imprisonment.

Subclause (3) – makes it an offence for a person to be knowingly concerned in the management of any premises habitually used as a place of resort by members of a declared criminal organisation, the penalty for which is two years' imprisonment.

Subclause (4) – enacts a presumption, to be rebutted by the accused, that the owner, occupier or lessee of any premises habitually used as a place of resort by members of a declared criminal organisation knowingly permits the premises to be so used if the person is a member of that organisation.

Subclause (5) – enacts a presumption, to be rebutted by the accused, that a person who is concerned in the management of premises habitually used as a place of resort by members of a declared criminal organisation is knowingly concerned in the management of the premises if the person is a member of that organisation.

Clause 108 Offence for responsible person or co-licensee to allow controlled person access to firearm

This clause makes it an offence for a responsible person or co-licensee (as defined in clause 3(1)), who is informed under clause 94 that a controlled person is prohibited to use or have access to a firearm, to allow the controlled person to use or have access to a firearm. The offence is punishable by

- (a) a fine of \$4000, for a responsible person;
- (b) imprisonment for 12 months, or a fine of \$4000, for a co-licensee.

Part 5 – Protection of criminal intelligence information

Clause 109 Terms used: Criminal intelligence information

Defines “***criminal intelligence information***” as information on actual or suspected criminal activity which if disclosed would prejudice an investigation or enable the identity of a confidential source of information to be revealed or endanger a person’s safety, or information that if it were disclosed would prejudice the effectiveness of any police operational procedures or methods.

Clause 110 Protection of criminal intelligence information in proceedings for declaration

Subclause (1) – applies this clause to

- (a) proceedings for an application for a declaration under Part 2, or for the renewal or revocation of a declaration; and
- (b) proceedings on an application for the cancellation of the registration of an interstate declaration under clause 128.

Subclause (2) – places an obligation on a designated authority to maintain the confidentiality of criminal intelligence information, including steps to:

- (a) Receive evidence and hear argument about the information in private to the exclusion of persons other than the Commissioner of Police or the CC Commissioner or their representatives; and
- (b) Prohibit the publication of evidence about the information.

Subclause (3) – provides that if a designated authority considers that information cannot properly be classified as criminal intelligence information, the designated authority must give the relevant Commissioner the opportunity to withdraw the information from consideration, and if the information is withdrawn the designated authority must prohibit the publication of evidence about the information.

Subclause (4) – permits the designated authority to disclose criminal intelligence information, or information withdrawn from consideration, to

- (a) The Attorney General;
- (b) The Parliamentary Commissioner;
- (c) A person conducting a review under Part 8 Division 2;
- (d) A court;
- (e) A person to whom the Commissioner of Police or the CC Commissioner authorises disclosure.

Clause 111 Protection of criminal intelligence information in court proceedings under this Act

This clause provides a regime for the protection of criminal intelligence information in court proceedings relating to interim control orders, control orders, and interstate control orders that is equivalent to the regime that clause 110 provides for proceedings relating to declarations.

Clause 112 Redacted copy of affidavit may be served to protect criminal intelligence information

This clause provides that if an affidavit contains information protected by clause 111, an edited copy of the affidavit from which the protected information has been deleted must served instead of the original affidavit.

Part 6 – Information about declarations and order

Clause 113 Commissioner of Police to keep register

Subclause (1) – requires the Commissioner of Police to keep an accurate and up to date register of:

- (a) the details of each declared criminal organisation; and
- (b) the reasons for designated authorities' decisions; and
- (c) the personal details of each person who is a controlled person under an interim control order or a control order; and
- (d) any other prescribed information.

Subclause (2) – describes what the register will be named.

Subclause (4) – allows the Commissioner to keep the register in any form.

Clause 114 Publication of information on register

Subclause (1) – provides that the Commissioner of Police must make the information on the register public by:

- (a) making the register available for public inspection at a prescribed place; and
- (b) making the register available on a website maintained by the police.

Subclause (2) – allows the Commissioner to make the information available in other ways.

Clause 115 Provision of information about declarations and orders

This clause allows the Commissioner of Police and a regulatory authority to enter into arrangements to supply the regulatory authority with information from the police concerning –

- (a) an organisation that is a declared criminal organisation; or
- (b) a controlled person who is an applicant for, or the holder of, an authorisation;
or
- (c) a person who is an applicant for, or the holder of, an authorisation and is a member of, or associates with any member of, a declared criminal organisation.

The information must be reasonably necessary for the proper exercise of the regulatory authority's functions. The regulatory authority must take steps to maintain the confidentiality of any information that is classified as criminal intelligence information; and must not disclose that information unless authorised to do so.

Clause 116 Application of this Part to registered interstate declarations and control orders

This clause provides that Part 6 applies to registered interstate declarations, and registered interstate control orders, in the same way that it applies to declarations and control orders made under the Bill.

Part 7 – Reciprocal recognition and enforcement of declarations and orders

Division 1 – Preliminary

Clause 117 Overview of this Part

This clause provides an overview of the regime set out in this Part for the recognition and enforcement, in this State, of declarations and orders made in other jurisdictions.

Clause 118 Terms used

This clause defines the terms used in this Part. An interstate declaration is a declaration made under a corresponding law of another State or Territory. An interstate control order is an order made under a corresponding law of another State or Territory. Regulations will prescribe what laws of other States and Territories are corresponding laws.

Division 2 – Reciprocal recognition of declarations

This division is about how interstate declarations are registered in Western Australia.

Subdivision 1 – Applications for registration of interstate declaration

Clause 119 Application for registration of interstate declaration

Subclause (1) – allows the Commissioner of Police or the CC Commissioner to apply to a registrar for the registration of an interstate declaration.

Subclause (2) – describes the form and contents of the application.

Subclause (3) – provides that the application does not have to be served on the respondent organisation.

Clause 120 When interstate declaration cannot be registered

An interstate declaration cannot be registered if the decision to make the declaration in the original jurisdiction may still be appealed, or an application for leave to appeal or an appeal is pending.

Subdivision 2 – Registration of interstate declaration by registrar

Clause 121 Registration of interstate declaration by registrar

The registrar must register an interstate declaration once satisfied:

- (a) That the declaration is in force; and
- (b) that any requirement under the law of the original jurisdiction that notice of the declaration must be published has been satisfied; and
- (c) that the declaration was served on those it needed to be served on in accordance with the law of the original jurisdiction; and
- (d) that It is not subject to appeal as set out in clause 120.

Clause 122 Period of registration

Subclause (1) – requires the registrar to specify the date on which the registration of the interstate declaration expires.

Subclause (2) – provides that the specified date is to be the date when the interstate declaration will cease to be in force in the jurisdiction where it was made.

Subclause (3) – provides that the registration of the declaration expires on the specified date.

Subclause (4) – However, if the law of the original jurisdiction provides that the interstate declaration is for an indefinite period, –

- (a) the registrar is to specify that the registration is for an indefinite period; and
- (b) its effect in this State does not expire.

Subdivision 3 – Notice of registration

Clause 123 Notice of registration

Subclause (1) – provides that the registrar must inform the applicant of the registration of the interstate declaration within 2 working days.

Subclause (2) – provides that the applicant must publish notice of the registration in the *Gazette* and at least one newspaper circulating throughout the State.

Subclause (3) – provides for what the notice must contain.

Subclause (4) – ensures that as soon as practicable the registrar must give notice to –

- (a) the commissioner of the police force or police service of the State or Territory where the declaration was made; and
- (b) if the declaration was made by a court, a registrar of that court.

Subdivision 4 – Commencement, duration and effect of registered interstate declaration

Clause 124 Commencement and duration of registered interstate declaration

Provides that a registered interstate declaration –

- (a) Comes into force in this State on the day after the day on which the notice is published in the *Gazette*; and
- (b) Remains in force in this State until the registration expires or is cancelled.

Clause 125 Effect of registration of interstate declaration

Subclause (1) – provides that a registered interstate declaration that is in force operates in this State as if it were a declaration made under Part 2 of this Bill.

Subclause (2) – However, the provisions of Part 2 Division 3 relating to the renewal, revocation and expiry of declarations made under Part 2 do not generally apply to a registered interstate declaration.

Subdivision 5 – Cancellation of registration of interstate declaration

Clause 126 Revocation in jurisdiction where interstate declaration originally made

This clause provides for the cancellation, by the registrar, of the registration of an interstate declaration if the registrar receives notice that the declaration has been revoked in the jurisdiction it was made. Either the CC Commissioner or Commissioner of Police can notify the registrar of the revocation.

On receiving notice of the revocation of the declaration, the registrar must:

- (a) Cancel the registration of the declaration; and
- (b) Give the applicant written notice of the cancellation.

Clause 127 Cancellation of registration of interstate declaration at request of Commissioner of Police or CC Commissioner

Subclause (1) – allows the Commissioner of Police or the CC Commissioner to apply to the registrar to cancel the registration of an interstate declaration.

Subclause (2) – makes clear that the registrar must

- (a) cancel it without delay; and
- (b) give the applicant written notice of that cancellation.

Clause 128 Cancellation of registration of interstate declaration on application by respondent

Subclause (1) – allows the following persons to apply to have the registration of an interstate declaration cancelled:

- (a) The organisation to which the declaration relates (the respondent);
- (b) Any member of the respondent;
- (c) Any person who is a former member of the respondent, if the cancellation is sought on the grounds that the organisation no longer exists and section 17(2) does not apply.

Subclause (2) – makes clear the process to be followed in determining an application to cancel the registration of an interstate declaration, which is similar to the process applying to an application for the revocation of a declaration under clauses 19-23 of this Bill.

Subclause (3) – applies Part 5, which relates to the protection of criminal intelligence information, to proceedings under this clause.

Subdivision 6 – Notice of cancellation or expiry of registration

Clause 129 Notice of cancellation or expiry of registration of interstate declaration

As soon as practicable after the registration of an interstate declaration is cancelled or expires, the original applicant for the registration of the declaration must publish a notice of the cancellation or expiry in the *Gazette* and at least one newspaper circulating throughout the State.

Clause 130 Registrar to notify police commissioner and original court of cancellation of registration

It is the registrar's responsibility to notify the Police Commissioner of the State or Territory where the interstate declaration was made, and (if applicable) the registrar of the original court that made the declaration, as soon as practicable after the cancellation of the registration of the declaration.

Subdivision 7 – Effect of cancellation or expiry of registration

Clause 131 Effect of cancellation or expiry of registration of interstate declaration

The effect of the cancellation or expiry of the registration of an interstate declaration is the same as the effect of the expiry or revocation of a declaration, as described in clause 25.

Subdivision 8 – Evidential provision

Clause 132 Proof of making of interstate declaration not required in proceedings for offence

In proceedings for an offence committed in this State where it is necessary to establish that an organisation is or was a declared criminal organisation and a registered interstate declaration is or was in force for that organisation, no proof is required of:

- (a) making of the interstate declaration; or
- (b) publication of a notice of the declaration; or
- (c) the service of the declaration.

Division 3 – Reciprocal recognition of control orders

Subdivision 1 – Applications for registration of interstate control order

Clause 133 Application for registration of interstate control order

Subclause (1) – allows the Commissioner of Police or the CC Commissioner to apply to a registrar for the registration of an interstate control order.

Subclause (2) – describes the form and contents of the application, which :

- (b) must be accompanied by an affidavit that includes or is accompanied by:
 - (i) A copy of the order; and
 - (ii) Enough information to enable the registrar to find that the order is an interstate control order that is in force; and
- (c) Must be accompanied by any other affidavit the Commissioner intends to rely on at the hearing of the application; and
- (d) Must state:
 - (i) whether the order needs to be adapted or modified for its effective operation in this State; and
 - (ii) if so, the details of the adaptation or modification required.

Subclause (3) – provides that the application does not need to be served on the person to whom the interstate control order relates.

Clause 134 When interstate control order cannot be registered

An interstate control order cannot be registered if the respondent is a controlled person under this Bill; or the order may still be appealed or leave to appeal or an appeal is pending.

Subdivision 2 – Registration of interstate control order by registrar

Clause 135 Registration of interstate control order by registrar

Subclause (1) – provides that on an application for the registration of an interstate control order, the registrar must register the order if he or she is satisfied that:

- (a) The order is in force; and
- (b) The order was served, or taken to be served, on the respondent in the other state; and
- (c) Clause 134 does not prevent the registration; and
- (d) The order does not need to be adapted or modified for effective operation in this State.

Subclause (2) requires the registrar to refer the application to the court if the order needs to be adapted or modified.

Subdivision 3 – Determination by court of application for registration

Clause 136 Referral of application to court for adaptation or modification

This clause provides that if an application for the registration of an interstate control order is referred to the court, the Commissioner of Police must serve the following documents personally on the respondent:

- (a) A copy of the application;
- (b) the affidavits that accompanied the application (subject to clause 113);
- (c) A notice stating the following –
 - (i) That an application for the registration of the order has been referred to the court to consider its modification for effective operation in the State;
 - (ii) When and where the application is to be heard;
 - (iii) That the respondent may appear at the hearing;
 - (iv) That the court may register the order even if the respondent does not appear at the hearing.

Subclause (4) – applies clauses 43 and 44 to the service of these documents.

Subclause (5) – provides that

- (a) the Commissioner of Police and the respondent may appear at the hearing and make submissions;
- (b) the court may hear and determine the application even if they do not take advantage of that opportunity.

Clause 137 Determination of application for registration

Subclause (1) – outlines the process for the determining of an application for the registration of an interstate control order. On hearing an application the court may direct a registrar to register the order with or without any adaptations or modifications.

Subclause (2) – Before giving a direction, the court

- (a) must consider –
 - (i) the matters that a court could consider if the application were for a control order under the Bill; and

- (ii) any changes in the respondent's circumstances since the interstate control order was made; and
- (b) must be satisfied of the matters set out in clause 135(1) (a) to (c).

Subclause (3) – provides that the registrar must register the interstate control order in accordance with the direction of the court.

Subdivision 4 – Period of registration

Clause 138 Period of registration

Subclauses (1) and (2) provide that an interstate control order remains in force for five years from when it was registered unless the registration is sooner cancelled or renewed.

Subdivision 5 – Notice of registration

Clause 139 Notice of registration

Subclause (1) – provides that the registrar must give the Commissioner of Police a certificate of the registration, with a copy of the registered interstate control order attached, no later than 2 working days after registering it.

Subclause (2) – provides that as soon as practicable after receiving a copy of the registered interstate control order, the Commissioner of Police must serve a copy of it personally on the respondent.

Subclause (3) – applies clauses 43 and 44 to the service of the copy of the order.

Subclause (4) – provides that as soon as practicable after registering an interstate control order, the registrar must notify the registrar of the court in the jurisdiction where the order was made.

Clause 140 Explanation of registered interstate control order

Subclause (1) – provides that the Commissioner of Police must ensure that all reasonable steps are taken to explain the order as set out in subclause (2).

Subclause (2) – provides that the person must have the order explained in language they are likely to understand so that they understand their obligations and the consequences for failure to comply.

Subclause (3) – provides that without limiting subclause (2), the explanation must include advice that the names of controlled persons are on the register kept under clause 113.

Subclause (4) – provides that the explanation must be given both orally and in writing, where practicable.

Subclause (5) – provides that failure to comply with this clause does not invalidate the registration.

Subdivision 6 – Commencement, duration and effect of registered interstate control order.

Clause 141 Commencement and duration of registered interstate control order

Subclause (1) – Provides for a registered interstate control order:

- (a) to come into force when the respondent is served personally with a copy of the order; and
- (b) to remain in force until either the registration of the order expires or is cancelled.

Subclause (2) makes subclause (1)(b) subject to clause 147, which relates to renewing an order.

Clause 142 Effect of registration of interstate control order

Subclause (1) – provides that a registered interstate control order operates in this State as if it were a control order made under this Bill, but with the following modifications:

- (a) the order has the terms set out in the order or applying to it in the jurisdiction where it was made, with any adaptations or modifications directed by the court under clause 137.
- (b) The order cannot be appealed, varied, or revoked under the provisions that apply to local control orders (but it may be varied, or its registration cancelled, as provided in clauses 149, 151, and 152).
- (c) the order operates in this State only while it remains registered, but that registration may be renewed under clause 147.

Subclause (2) – provides that, except as provided by subclause (1), the Bill applies to a registered interstate control order in the same way it applies to a local control order.

Subdivision 7 – Renewal of registration of interstate control order

Clause 143 Application for renewal of registration of interstate control order

Subclause (1) –allows the Commissioner of Police to apply to a registrar for the renewal of the registration of an interstate control order.

Subclause (2) – provides that an application for renewal:

- (a) may be made before or after the registration of the interstate control order expires; and
- (b) must be in the prescribed form; and
- (c) must be accompanied by an affidavit.

Subclause (3) – provides that an application for the renewal of the registration of an interstate control order does not need to be served.

Clause 144 Registrar to renew registration of interstate control order

Subclause (1) – requires the registrar to renew the registration of an interstate control order if the registrar is satisfied that the order remains in force in the jurisdiction in which it was made.

Subclause (2) – provides there is no limit on how many times the registration of an interstate control order can be renewed.

Clause 145 Period of renewal

Subclause (1) – provides that the registration of an interstate control order that is renewed under clause 144 remains in force for a period of five years beginning on –

- (a) the day after the day on which the registration of the order would otherwise have expired, if it is renewed before it expires; or
- (b) if it is renewed after it expires, the day after the day on which the registration of the order is renewed.

Subclause (3) – provides that on renewing the registration the registrar must specify the date on which the renewal of the registration expires.

Subclause 146 Notice of renewal of registration

Subclause (1) – requires the registrar to give a certificate of the renewal of the registration, with a copy of the registered interstate control order attached, to the Commissioner of Police within two working days.

Subclause (2) – the Commissioner must then serve a copy of the certificate and the registered order personally on the respondent.

Subclause (3) – applies clauses 43, 44 and 140 relating to the service of the order and explanation of it.

Subclause (4) – as soon as practicable after renewing the registration, the registrar must notify the registrar of the court in the jurisdiction where the order was made.

Clause 147 Effect of renewal of registration of interstate control order

Subclause (1) – provides that if the registration of an interstate control order is renewed, the effect that the order has in this State is determined as set out in this clause.

Subclause (2) – the order continues in force uninterrupted if:

- (a) the registration of the order is renewed before that registration expires; and
- (b) the copy of the certificate of renewal and the order are served no later than the day the registration of the order would otherwise have expired.

Subclauses (3) and (4) – apply if:

- (a) the registration of the order is renewed before it expires but subclause (2)(b) does not apply; or
- (b) the registration of the order is renewed after it expires.

In these cases, the order ceases to be in force until a copy of the certificate of renewal and the order are served on the respondent.

Subdivision 8 – Variation and cancellation of registered interstate control order

Clause 148 Variation or revocation in jurisdiction where interstate control order originally made

Subclause (1) – provides that if a registered interstate control order is varied in the jurisdiction in which the order was made, the variation may be registered in the same

way as the registration of the order in this State, whether the variation was made before or after the registering of the order in this State.

Subclauses (2) and (3) provide that the registrar must cancel the registration of an interstate control order on being notified that the order has been revoked in the jurisdiction in which it was made. The cancellation takes effect immediately.

Subclause (4) – provides that as soon as practicable the Commissioner of Police must serve a copy of the notice of cancellation personally on the respondent.

Subclause (5) – applies clause 44 with all the necessary modifications to the serving of the notice.

Clause 149 Variation of registered interstate control order in this State

Subclause (1) – allows the respondent or the Commissioner of Police to apply for a variation of a registered interstate control order at any time while it is registered in this State.

Subclause (2) – applies clauses 67, 68, 69, and 72 relating to variation of control orders, with all necessary modifications to an application under subclause (1) as if it were an application for variation of a control order made under Part 3.

Clause 150 Procedure where registered order varied to include firearms condition

This clause applies Part 3 Division 5 subdivision 5 to any variation of a registered interstate control order to include a firearms condition.

Clause 151 Cancellation of registration of interstate control order at request of Commissioner of Police

Subclause (1) – allows the Commissioner of Police to apply to a registrar to cancel the registration at any time while an interstate order is registered.

Subclause (2) – provides that on receiving an application to cancel the order, the registrar must –

- (a) cancel it without delay; and
- (b) give the Commissioner of Police notice of the cancellation.

Subclause (3) – ensures that as soon as practicable the Commissioner of Police serves a notice of cancellation personally on the respondent.

Subclause (4) – applies clause 44 for serving a notice on the respondent to this clause, with necessary modifications.

Clause 152 Cancellation of registration of interstate control order on application by respondent

Subclauses (1) and (2) – enable the respondent to apply to the court to cancel the registration of an interstate control order as if it were an application for revocation of a control order made in this State.

Clause 153 Registration of interstate control order cancelled if control order made under this Act

The registration of an interstate control order is immediately cancelled if the respondent becomes a controlled person under an interim control order or a control order made under Part 3.

Clause 154 Registrar to notify original court of cancellation of registration

The registrar must notify the registrar of the court in the jurisdiction where the interstate control order was made if the registration of the order is cancelled.

Subdivision 9 – Evidential provision

Clause 155 Proof of making or variation of interstate control order not required on proceedings for breach

In proceedings for a breach, committed in this State, of a registered interstate control order, no proof is required of the making of the interstate control order or any variation of it that operates in this State under clause 148(1); or of the service of the interstate order or variation.

Part 8 – Monitoring and review

Division 1 - Monitoring

Clause 156 Terms used

Defines the terms used in this Division.

Clause 157 Parliamentary Commissioner to monitor exercise of powers

Subclause (1) – makes it the responsibility of the Parliamentary Commissioner to monitor the exercise of powers of the Commissioner of Police and police officers, under the Bill, for the period of 5 years after Part 8 comes into operation (the monitoring period).

Subclause (2) – provides that relevant provisions of the *Parliamentary Commissioner Act 1971* apply to the carrying out of the Parliamentary Commissioner's functions under the Bill.

Subclause (3)(a) – provides that the Commissioner of Police must ensure the Parliamentary Commissioner is provided with a report on any:

- (i) declaration;
- (ii) revocation of a declaration;
- (iii) interim control order;
- (iv) control order;
- (v) registered interstate declaration;
- (vi) cancellation of the registration of an interstate declaration;
- (vii) registered interstate control order;
- (viii) prosecution for an offence under any provision in Part 4.

Subclause (3)(b) – ensures that the report includes the reasons why a declaration, control order, interim control order, or the registration of an interstate declaration or interstate control order, was sought.

Clause 158 Parliamentary Commissioner to report on monitoring activities

Subclause (1) – specifies that as soon as practicable after the first four anniversaries of the Act coming into operation, the Parliamentary Commissioner must prepare a report on his or her monitoring activities, including any observations and recommendations about the operation of the Act, and provide it to the Minister and Commissioner of Police.

Subclauses (2) & (3) – provide that the report prepared after the first four anniversaries must relate to the Parliamentary Commissioner’s activities during the preceding 12 month period. The final report prepared after the expiry of the monitoring period must relate to the full five years of the operation of the Act.

Subclause (4) – requires the Minister to table each report from the Parliamentary Commissioner in Parliament within 12 sitting days from the Minister receiving the report.

Clause 159 Maintenance of confidentiality of criminal intelligence

The Parliamentary Commissioner must maintain the confidentiality of information where it is classified by the Commissioner of Police as criminal intelligence information; or provided to the Parliamentary Commissioner under clause 110(4) or 111(4).

Clause 160 Jurisdiction under *Parliamentary Commissioner Act 1971* not limited

This clause ensures that nothing in this Division limits or affects the jurisdiction or functions of the Parliamentary Commissioner under the *Parliamentary Commissioner Act 1971*.

Division 2 – Review of Act

Clause 161 Act to be reviewed after 5 years

Subclauses (1) – makes it the Minister’s responsibility to ensure a review of the operation and effectiveness of the Act is carried out as soon as practicable after five years of its operation.

Subclause (3) – ensures the review is tabled in Parliament, no later than 12 months after the 5-year period.

Clause 162 Maintenance of confidentiality of criminal intelligence

The Minister, or any person conducting the review on the Minister’s behalf, must maintain the confidentiality of information where it is –

- (a) classified as criminal intelligence information; or
- (b) provided to the Minister or other person under clause 110(4) or 111(4).

Part 9 – Miscellaneous

Clause 163 Nature of proceedings under this Act

Subclause (1) – provides that all proceedings under the Bill are civil proceedings, except for proceedings for an offence.

Subclause (2) – provides that, except for proceedings for an offence, the civil standard of proof applies in proceedings under the Bill, and rules of construction applicable only in relation to the criminal law do not apply in the interpretation of the Bill.

Clause 164 Costs in proceedings under this Act

Subclause (1) – limits the awarding of costs against a party to circumstances where the party has engaged in unreasonable conduct that contributed to the institution or continuation of the proceedings, or conduct that was calculated to prolong the case unnecessarily or cause unnecessary expense.

Subclause (2) – provides that this clause overrides any other provisions by which the court can make an order about costs.

Clause 165 Proof of service

Subclauses (1) & (2) – specify that proof of service must be by certificate in writing and state the day, place and time that the person was served with the document.

Subclause (3) – specifies that the certificate must state the full particulars of the name and address of the person served, unless service is on a person whose name is unknown.

Subclause (4) – provides for a certificate under this clause to be sufficient proof that the document has been served, unless the contrary is shown.

Clause 166 Notification of service

Clause 166 is an administrative clause that requires a person who serves a document to complete a certificate of service and deliver the certificate to the registrar.

Clause 167 Delegation by Commissioner of Police

Subclauses (1) & (2) – allow the Commissioner of Police to delegate any power or duty of the Commissioner under the Bill to another police officer specified in the delegation. The delegation must be in writing and signed by the Commissioner of Police.

Subclause (3) – a police officer to whom a power or duty has been delegated cannot in turn delegate that power or duty.

Subclause (4) – specifies that the police officer performing a delegated power or duty is taken to do so in accordance with the terms of the delegation, unless the contrary is shown.

Subclause (5) – ensures that this section does not limit the Commissioner of Police's ability to perform a function through an officer or agent.

Clause 168 Delegation by Corruption and Crime Commissioner

This section gives the CC Commissioner the power to delegate any power or duty under the Bill as if it were a power or duty under the *Corruption and Crime Commission Act 2003*.

Clause 169 Protection from liability for wrongdoing

Subclauses (1) and (2) – provide that a person acting in good faith cannot be subject to any action in tort on the basis of performing a function under the Bill.

Subclause (3) – provides that this clause does not relieve the State of any liability that it might have.

Clause 170 Regulations

This clause provides for the Governor to make regulations prescribing all matters that are required by this Act.

Clause 171 Power to make rules of court

Subclause (1) – provides for the Supreme Court to make rules under the *Supreme Court Act 1935* for the purposes of carrying out this Act.

Subclause (2) – ensures subclause (1) does not limit the rule making powers conferred by the *Supreme Court Act 1935*.

Part 10 – Amendments to other Acts

Part 10 makes a number of amendments to various Acts.

Clause 172 Bail Act 1982 amended

This clause amends the *Bail Act 1982*.

Subclause (2) – inserts two new offences into the *Bail Act 1982* Schedule 2 Item 1 –

- s. 221E(1) – Participating in the activities of a criminal organisation; and
- s. 221F(1) – Instructing the commission of an offence for the benefit of a criminal organisation.

Subclause (3) – inserts a new item **2AA Criminal Organisations Control Act 2011** to Schedule 2 of the *Bail Act 1982* that contains a list of offences in the Bill that are to be included as “serious offences” under the *Bail Act 1982*.

Clause 173 The Criminal Code amended

This clause amends *The Criminal Code*.

Subclause (2) – amends section 5(3) of *The Criminal Code*, which sets out circumstances in which the court may decide that an indictable offence that may be tried summarily is to be tried on indictment. The amendment extends the provision so that it applies where the new Part 2 Division 2A of the *Sentencing Act 1995* (to be inserted by clause 181(2)) applies to the offence.

Subclause (3) – inserts a new chapter **Chapter XXVIA – Facilitating activities of criminal organisations** into *The Criminal Code*, which creates 2 new offences as follows:

The proposed **new section 221E** makes it a crime, punishable by imprisonment for 5 years, for a person to participate in or contribute to any activity of a criminal organisation, where the person does so for the purpose of enhancing the ability of the criminal organisation to facilitate or commit an indictable offence. For this purpose, the term “criminal organisation” is not limited to declared criminal organisations under Part 2 of the Bill, but a declared criminal organisation is treated as a criminal organisation (proposed **new section 221D**). In addition, the term “indictable offence”, for the purposes of this new section, includes conduct engaged in outside this State (including outside Australia) that, if it occurred in this State, would constitute an indictable offence.

The summary conviction penalty for this new offence is imprisonment for 2 years.

The proposed new section **221F** makes it a crime, punishable by imprisonment for 20 years, for a member of a criminal organisation (as defined in the proposed **new section 221D**) to directly or indirectly instruct a person to commit an offence under *The Criminal Code* or any other written law, or an offence against a law of a jurisdiction outside Western Australia, for the benefit of, at the direction of, or in association with, the criminal organisation.

Proposed subsection (2) – provides that in a prosecution for the offence, no proof is required that –

- (a) an offence, other than the offence under subsection (1), was committed; or
- (b) the accused instructed a particular person to commit an offence; or
- (c) the accused knew the identity of all of the persons who are members of the criminal organisation.

Clause 174 *Criminal Investigation Act 2006* amended

This clause amends the *Criminal Investigation Act 2006*

Subclause (2) – inserts a new section 69B into the *Criminal Investigation Act 2006*, which gives the police the power to search controlled persons in a public place for things they are prohibited from possessing under an interim control order or a control order. The prohibited thing may then be seized and forensically examined.

Clause 175 *Criminal Investigation (Identifying People) Act 2002* amended

This clause amends the *Criminal Investigation (Identifying People) Act 2002*

Subclause (2) – amends section 73(1) so that identifying information obtained under that Act may be disclosed for the purposes of the Bill.

Clause 176 *Criminal Property Confiscation Act 2000* amended

This clause amends the *Criminal Property Confiscation Act 2000*.

Subclause (2) – amends section 141 of the Act so as to make any offence committed or suspected of having been committed by a controlled person, or an offence in the

commission of which a controlled person was involved or suspected of having been involved, a confiscation offence for the purposes of the Act.

Subclause (3) – amends section 148 of the Act. The amendment extends the definition of “crime derived property” to cases where a person who is a member of a declared criminal organisation is convicted of a confiscation offence. The effect of the amendment is that it is presumed that all the property the person owns or effectively controls at the time of the commission of the offence is crime-derived property, unless the person establishes to the contrary.

Subclauses (4) & (5) – amend section 159(2) of the Act. In conjunction with the amendments to the *Misuse of Drugs Act 1981* contained in clause 181, this amendment introduces a category of drug offences which, if committed by a member of a declared criminal organisation, mean that the offender is automatically taken to be declared a “declared drug trafficker” for the purposes of the Act.

Clause 177 *Evidence Act 1906* amended

This clause amends the *Evidence Act 1906*.

Subclauses (2) to (6) make various amendments to sections 106A, 106G and 106R of the Act. The effect of the amendments is to provide that, in proceedings for an offence that is alleged to have been committed by a member of a criminal organisation, or at the direction or for the benefit of a criminal organisation, or in association with members of a criminal organisation, the victim of the alleged offence and any prosecution witness are entitled to the same protections in the proceedings as those given in criminal proceedings to the victims of serious sexual offences.

For these purposes, the term “criminal organisation” has the same meaning as in the proposed new section 221D of *The Criminal Code* (as inserted by clause 173(3)).

These amendments will apply regardless of whether the offence was committed before or after this Bill comes into operation.

Clause 178 *Liquor Control Act 1988* amended

This clause amends the *Liquor Control Act 1988*.

Subclause (2) – The effect of the amendment is that interim control orders and control orders take precedence over prohibition orders made under that Act.

Clause 179 *Misuse of Drugs Act 1981* amended

This clause amends section 32A of the *Misuse of Drugs Act 1981*, which provides for persons convicted of certain drug offences to be declared to be drug traffickers.

Subclause (2) – extends the provisions of section 32A so that a person who was a member of a declared criminal organisation at the time of the commission of one of a number of drug offences, if convicted of the offence, will be able to be declared a drug trafficker.

Clause 180 *Prohibited Behaviour Orders Act 2010* amended

This clause amends the *Prohibited Behaviour Orders Act 2010*.

The effect of the amendment is that a PBO is of no effect to the extent that it conflicts with or duplicates a condition of an interim control order or a control order made under the Bill.

Clause 181 Sentencing Act 1905 amended

This clause amends the *Sentencing Act 1995*.

Subclause (2) – inserts a proposed new **Division 2A** into the Act, dealing with sentencing for offences where there is some connection between the offence and a declared criminal organisation. The general effect of the amendments is two-fold:

- to enact a sentencing principle that applies to such offences
- to impose mandatory minimum sentences for certain offences.

Proposed section 9A defines certain terms used in the new Division 2A

Proposed section 9A(2) makes clear that a term used in this Division and in the *Criminal Organisations Control Act 2011* has the same meaning as it has in that Act, unless the term is defined in the *Sentencing Act 1995* or the context requires otherwise.

Proposed section 9B provides that proposed new Division 2A overrides the sentencing provisions in Division 1 of the *Sentencing Act 1995* and *The Criminal Code* sections 3(5) and 5(8).

Proposed section 9C (subsections 1 & 2) states that the principal objectives of the court in sentencing an offender for certain offence connected with a declared criminal organisation must be to denounce the activities of declared criminal organisations, their members and associates and to protect the community from those activities.

Proposed section 9D introduces mandatory minimum sentences where a declared criminal organisation is involved.

Proposed subsection (1) applies proposed subsections (3) and (4) if an offender is convicted of a relevant indictable offence, whether it was dealt with on indictment or summarily, or a relevant simple offence, (the relevant offences are listed in the proposed new Schedule 1A (inserted by clause 181(4)), and the offence was committed

- (i) at the direction of a declared criminal organisation; or
- (ii) in association with one of more members of a declared criminal organisation; or
- (iii) for the benefit of a declared criminal organisation.

Proposed subsection (2) provides that, if the offender was a member of a declared criminal organisation at the time of the commission of the offence, it is presumed that the offence was committed in the circumstances set out in proposed subsection (1)(b), unless the offender shows otherwise.

Proposed subsection (3) provides that if the offence was a relevant indictable offence, dealt with on indictment, the court must impose the following penalties:

- (a) if the statutory penalty for the offence includes life imprisonment, a term of imprisonment of not less than 15 years; or
- (b) if the statutory penalty for the offence is or includes imprisonment (but not life imprisonment), a term of imprisonment of not less than 75 per cent of that statutory penalty, but in no case less than 2 years (even if the maximum penalty for the offence is less than that); or
- (c) if the statutory penalty for the offence does not otherwise include imprisonment, a term of imprisonment of 2 years.

Proposed subsection (4) applies when the offender is convicted of a relevant indictable offence dealt with summarily or a relevant simple offence in which case the court must impose:

- (a) if the statutory penalty is or includes any period of imprisonment, a term of imprisonment of not less than 2 years (even if the maximum penalty for the offence is less than that); or
- (b) if the statutory penalty does not include imprisonment, a term of imprisonment of 2 years.

Proposed subsection (5) makes clear that if the offence is an indictable offence that has been dealt with summarily but the offender committed for sentence is liable to the indictment penalty, under the *Criminal Code* section 5(10), then the court must sentence the offender under proposed subsection (3).

Proposed subsection (6) makes this section subject to proposed section 9E.

Proposed section 9E operates so that 9D is not applicable to persons aged less than 18 years at the time of the offence.

Proposed section 9F (1) provides that the court must not suspend a term of imprisonment imposed under section 9D(3) or (4).

Proposed section 9F (2) ensures that section 9D does not prevent the court from:

- (a) imposing life imprisonment, if that is a penalty that may be imposed;
- (b) imposing indefinite imprisonment under Part 14; or
- (c) fining the offender and imposing a term of imprisonment if –
 - (i) both may be imposed for an offence, or
 - (ii) section 9D(3)(c) or (4)(b) applies.

Proposed section 9G (1) and (2) provide that there is to be no eligibility for parole if the court sentences an offender to a fixed term of imprisonment under proposed section 9D(3) or (4).

Proposed section 9G (3) and (4) provide that the court must set a minimum period of 20 years that the offender must serve before being eligible for parole, where –

- (a) the offender is convicted of murder; and
- (b) proposed section 9D(3) applies; and
- (c) the court sentences the offender to life imprisonment; and

(d) the court sets a minimum period that the offender must serve before being eligible for parole.

Subclause (3) – inserts at the end of Part 17 a proposed section 124C. The proposed new section empowers the Supreme Court to make a control order against an offender when sentencing the offender.

Subclause (4) – inserts a proposed new Schedule 1A that lists a number of relevant indictable and simple offences which for the purposes of the new proposed section 9D of the *Sentencing Act* are “relevant offences”. Part 1 of the new Schedule 1A lists the relevant indictable offences and Part 2 lists the relevant simple offences.