



Queensland

Criminal Organisation Amendment Act 2011

Act No. 43 of 2011



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Contents

		Page
Part 1	Preliminary	
1	Short title	4
Part 2	Amendment of Criminal Organisation Act 2009	
2	Act amended	4
3	Amendment of s 59 (What is criminal intelligence)	4
4	Insertion of new s 59A	4
	59A Other definitions for pt 6	4
5	Replacement of ss 63 and 64.	6
	63 Applying for declaration	6
	64 Additional affidavit if informant relied on.	7
6	Amendment of s 65 (Registrar to secure information)	10
7	Replacement of s 71 (Oral evidence by police officers)	10
	71 Oral evidence by police officers and officers of external agencies	10
8	Amendment of s 72 (Deciding application).	11
9	Replacement of s 76 (Additional affidavit if informant relied on)	11
	76 Additional matters if informant relied on.	11
10	Amendment of s 77 (Registrar to secure intelligence)	12
11	Amendment of s 78 (Special closed hearing for consideration of intelligence)	12
12	Replacement of s 80 (Oral evidence by police officers)	12
	80 Oral evidence by police officers and officers of external agencies	13
13	Amendment of s 82 (Unlawful disclosure of criminal intelligence or information in informant affidavit).	13
14	Amendment of s 88 (Material to be given to COPIM).	13
15	Amendment of s 122 (Criminal organisations register)	13

Criminal Organisation Amendment Act 2011

Contents

16	Insertion of new s 136A	13
	136A Definition informant not to include ASIO officers	14
17	Insertion of new s 142	14
	142 Regulation made by the Criminal Organisation Amendment Act 2011	14
18	Amendment of sch 2 (Dictionary)	14
Part 3	Amendment of Crime and Misconduct Act 2001	
19	Act amended	16
20	Amendment of s 213 (Secrecy)	16
Part 4	Amendment of Criminal Code	
21	Code amended	16
22	Amendment of s 86 (Obtaining of or disclosure of secret information about the identity of informant)	17
Part 5	Other matters	
23	Making of Criminal Organisation Regulation 2011	17
24	Automatic repeal	18
Schedule	Criminal Organisation Regulation 2011	19
1	Short title	19
2	External agencies—Act, s 59A	19



Queensland

Criminal Organisation Amendment Act 2011

Act No. 43 of 2011

An Act to amend the Criminal Organisation Act 2009, the Crime and Misconduct Act 2001 and the Criminal Code for particular purposes and to make a regulation under the Criminal Organisation Act 2009

[Assented to 6 December 2011]

[s 1]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Criminal Organisation Amendment Act 2011*.

Part 2 Amendment of Criminal Organisation Act 2009

2 Act amended

This part amends the *Criminal Organisation Act 2009*.

3 Amendment of s 59 (What is *criminal intelligence*)

Section 59—

insert—

‘(2) Criminal intelligence may be information that the commissioner has obtained through the police service or from an external agency.’.

4 Insertion of new s 59A

After section 59—

insert—

‘59A Other definitions for pt 6

‘In this part—

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

external agency means any of the following—

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

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

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

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

[s 5]

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

- (a) if the commissioner obtained the information from an external agency—that agency; or
- (b) otherwise—the police service.’.

5 Replacement of ss 63 and 64

Sections 63 and 64—

omit, insert—

‘63 Applying for declaration

- ‘(1) The commissioner may apply to the court for a declaration that particular information is criminal intelligence (*declared criminal intelligence*).
- ‘(2) However, the commissioner may make the application only if the commissioner reasonably believes the information is criminal intelligence.
- ‘(3) The application must—
 - (a) identify the information; and
 - (b) state the relevant agency for the information; and
 - (c) state—
 - (i) that the commissioner seeks a declaration that the information is criminal intelligence; and
 - (ii) the grounds on which the declaration is sought; and
 - (d) include an explanation of—
 - (i) the relevant agency’s intelligence assessment system; and
 - (ii) the assessment of the information that was made under the system.
- ‘(4) An affidavit to be relied on by the commissioner at the hearing must be filed with the application.

-
- ‘(5) If any of the information has been provided by an informant, the application and affidavits and other material filed with the application need not include any identifying information about the informant and identifying information about the informant can not otherwise be required to be given to the court.
- ‘(6) The commissioner must give copies of the application and any supporting material to the COPIM under arrangements decided by the COPIM.

Note—

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

- ‘(7) In this section—
- intelligence assessment system*** means a system for assessing information relating to actual or suspected criminal activity according to—
- (a) the reliability of the source of the information; and
 - (b) the validity of the information.

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

- ‘(1) This section applies if the information mentioned in section 63(1) (the ***relevant intelligence***) was provided to the relevant agency by an informant.
- ‘(2) The informant can not be called or otherwise required to give evidence.
- ‘(3) The commissioner must, at any time before the hearing of the application, file an affidavit by an officer of the relevant agency.
- ‘(4) The affidavit must—
- (a) state—
 - (i) the relevant agency; and
 - (ii) the officer’s position at the relevant agency; and

[s 5]

- (b) state that the officer reasonably believes, and has made all reasonable efforts to ensure, the officer has full knowledge of—
 - (i) the information held by the relevant agency about the informant; and
 - (ii) the intelligence held by the relevant agency that was provided by the informant; and
- (c) state that the officer reasonably believes the relevant agency has made all reasonable enquiries about the existence, and to obtain the details, of any allegations of professional misconduct against the informant; and
- (d) contain the following information about the informant—
 - (i) the informant’s full criminal history, including pending charges;
 - (ii) any information held by the relevant agency about allegations of professional misconduct against the informant;
 - (iii) any inducements or rewards offered or provided to the informant in return for assistance;
 - (iv) whether the informant was an adult or a child when the informant provided the relevant intelligence to the relevant agency;
 - (v) whether the informant was serving a term of imprisonment or otherwise being held in custody when the informant provided the relevant intelligence to the relevant agency; and
- (e) state—
 - (i) that the officer holds an honest and reasonable belief that the relevant intelligence is reliable; and
 - (ii) the reasons for that belief.

‘(5) For subsection (4)(d)(i), it is sufficient description of a conviction or charge in the informant’s criminal history to state that the conviction or charge related to property, violence or another stated matter, and if it involved dishonesty, without

providing further particulars of the offence to which the conviction or charge relates.

- ‘(6) For subsection (4)(d)(ii), it is sufficient to state whether or not there have been any allegations of professional misconduct against the informant and if any misconduct or alleged misconduct involved dishonesty.
- ‘(7) For subsection (4)(d)(i) and (ii), the description in the affidavit of a conviction or charge in the informant’s criminal history or an allegation of professional misconduct against the informant—
- (a) need not state the date of the conviction or charge or date on which the offence was committed or is alleged to have been committed or date on which the misconduct happened or is alleged to have happened; but
 - (b) if it does not state a date as mentioned in paragraph (a), must state the time of the conviction, charge, offence, alleged offence, misconduct or alleged misconduct as being in a stated period of not more than 7 years.

Examples for subsections (5) to (7)—

- 1 An affidavit may describe an informant’s criminal history as—
 - ‘for the period 2000 to 2006—2 property offences involving dishonesty and 1 offence of a sexual nature; and
 - for the period 2007 to 2011—1 offence involving violence.’
 - 2 An affidavit may state that the information held by the relevant agency is that there has been 1 allegation of professional misconduct made against the informant and that the alleged misconduct was during the period 2000 to 2006.
- ‘(8) Other than information about the informant’s criminal history or an allegation of professional misconduct against the informant given in the affidavit under subsections (4) to (7), information about the informant’s criminal history or an allegation of professional misconduct against the informant can not be required to be given to the court.
- ‘(9) Subsection (8) does not prevent further information being given to the court other than under a requirement.

[s 6]

- ‘(10) Also, the requirement under subsection (4)(d)(i) to state the informant’s full criminal history applies only to the extent of the information held by the relevant agency if—
- (a) the agency is an external agency; and
 - (b) the affidavit states that the officer believes—
 - (i) the agency might not hold all the information comprising the informant’s criminal history; and
 - (ii) an officer of the agency—
 - (A) could not lawfully obtain further information about the informant’s criminal history; or
 - (B) could not obtain further information about the informant’s criminal history without disclosing the identity of the informant.’.

6 Amendment of s 65 (Registrar to secure information)

Section 65(4)—

omit, insert—

- ‘(4) However, the COPIM can not inspect any part of the documents to the extent they disclose any identifying information about an informant.’.

7 Replacement of s 71 (Oral evidence by police officers)

Section 71—

omit, insert—

‘71 Oral evidence by police officers and officers of external agencies

- ‘(1) With the court’s leave, a police officer who is not an informant or an officer of an external agency who is not an informant may be called at the hearing to give evidence and be cross-examined by the court or the COPIM.

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

8 Amendment of s 72 (Deciding application)

- (1) Section 72(3) and (4)—

renumber as section 72(6) and (7).

- (2) Section 72—

insert—

- ‘(3) Subsection (2) does not limit the matters that the court may consider in exercising its discretion.

Example—

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

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

- ‘(5) The supporting information mentioned in subsection (4) may be other information before the court that is declared criminal intelligence or that is the subject of a criminal intelligence application.’.

9 Replacement of s 76 (Additional affidavit if informant relied on)

Section 76—

omit, insert—

‘76 Additional matters if informant relied on

- ‘(1) This section applies if the declared criminal intelligence was provided to the relevant agency by an informant.

[s 10]

- ‘(2) The informant can not be called or otherwise required to give evidence.
- ‘(3) The commissioner must, at any time before the hearing of the substantive application, file an affidavit by an officer of the relevant agency complying with section 64(4) to (10).
- ‘(4) The substantive application and affidavits and other material filed with the application need not include any identifying information about the informant and identifying information about the informant can not otherwise be required to be given to the court.’.

10 Amendment of s 77 (Registrar to secure intelligence)

Section 77(4)—

omit, insert—

- ‘(4) However, the COPIM can not inspect any part of the documents to the extent they disclose any identifying information about an informant.’.

11 Amendment of s 78 (Special closed hearing for consideration of intelligence)

- (1) Section 78(2)(c) to (e)—

renumber as section 78(2)(d) to (f).

- (2) Section 78(2)—

insert—

- ‘(c) an officer of an external agency from which the commissioner obtained any of the declared criminal intelligence;’.

12 Replacement of s 80 (Oral evidence by police officers)

Section 80—

omit, insert—

‘80 Oral evidence by police officers and officers of external agencies

- ‘(1) A police officer who is not an informant or an officer of an external agency who is not an informant may be—
- (a) called at the hearing of the substantive application to give evidence including or about the declared criminal intelligence; and
 - (b) cross-examined by the court or the COPIIM.
- ‘(2) However, no question may be asked of the officer or the COPIIM that could lead to the disclosure of any identifying information about an informant.’

13 Amendment of s 82 (Unlawful disclosure of criminal intelligence or information in informant affidavit)

Section 82(1)(b), ‘or 76(4)’—

omit.

14 Amendment of s 88 (Material to be given to COPIM)

Section 88(2)—

omit, insert—

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

15 Amendment of s 122 (Criminal organisations register)

Section 122(6), ‘*Juvenile*’—

omit, insert—

‘*Youth*’.

16 Insertion of new s 136A

After section 136—

[s 17]

insert—

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

- ‘(1) This section applies if, under section 59A, definition *external agency*, paragraph (f), ASIO is declared by regulation to be an external agency for this Act.
- ‘(2) In schedule 2, definition *informant*, paragraph (d), the reference to an officer of an external agency does not include an officer of ASIO.
- ‘(3) In this section—
ASIO means the Australian Security Intelligence Organisation established under the *Australian Security Intelligence Organisation Act 1979* (Cwlth).’.

17 Insertion of new s 142

After section 141—

insert—

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

- ‘(1) This section applies to the regulation made by the *Criminal Organisation Amendment Act 2011*, section 23 and schedule.
- ‘(2) The regulation is subordinate legislation.
- ‘(3) The *Statutory Instruments Act 1992*, part 6 does not apply to the regulation.
- ‘(4) The making of the regulation by the Act mentioned in subsection (1) does not affect the power of the Governor in Council to further amend the regulation or to repeal it.’.

18 Amendment of sch 2 (Dictionary)

- (1) Schedule 2—

insert—

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

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

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

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

- (2) Schedule 2, definition *child*, ‘*Juvenile*’—
omit, insert—
‘*Youth*’.
- (3) Schedule 2, definition *criminal intelligence*, ‘section 59’—
omit, insert—
‘section 59(1)’.
- (4) Schedule 2, definition *criminal intelligence application*, ‘section 63(1)’—
omit, insert—
‘section 59A’.
- (5) Schedule 2, definition *informant*, paragraph (a)—
omit, insert—
‘(a) anyone who has given, to the police service or an external agency, information that the commissioner reasonably believes is criminal intelligence, and who is not a police officer or officer of the external agency;’.
- (6) Schedule 2, definition *informant*—
insert—
‘(d) an officer of an external agency who has obtained information through the use of an assumed identity.

Note—

See section 136A in relation to officers of ASIO.’.

Part 3 **Amendment of Crime and Misconduct Act 2001**

19 **Act amended**

This part amends the *Crime and Misconduct Act 2001*.

20 **Amendment of s 213 (Secrecy)**

- (1) Section 213(3)(a)(i), after ‘commissioner’—

insert—

‘, an application or proceeding under the *Criminal Organisation Act 2009*’.

- (2) Section 213(3)(b)(i)(A), after ‘commissioner’—

insert—

‘, an application or proceeding under the *Criminal Organisation Act 2009*’.

- (3) Section 213(4)(b)—

insert—

‘(iii) for a proceeding under the *Criminal Organisation Act 2009*’.

Part 4 **Amendment of Criminal Code**

21 **Code amended**

This part amends the Criminal Code.

22 Amendment of s 86 (Obtaining of or disclosure of secret information about the identity of informant)

- (1) Section 86(3), definition *criminal organisation informant*, paragraph (a)—

omit, insert—

‘(a) anyone who has given, to the police service or an external agency, information that the commissioner reasonably believes is criminal intelligence for the purposes of the *Criminal Organisation Act 2009*, and who is not a police officer or officer of the external agency;’.

- (2) Section 86(3), definition *criminal organisation informant*, after the editor’s note—

insert—

‘(d) an informant under the *Criminal Organisation Act 2009*, schedule 2, definition *informant*, paragraph (d).’.

- (3) Section 86(3)—

insert—

‘*external agency* see the *Criminal Organisation Act 2009*, section 59A.’.

Part 5 Other matters

23 Making of Criminal Organisation Regulation 2011

- (1) The schedule has effect to make the *Criminal Organisation Regulation 2011* that is set out in the schedule as a regulation under the *Criminal Organisation Act 2009*.
- (2) To remove any doubt, it is declared that the *Criminal Organisation Regulation 2011*, on the commencement of the schedule, stops being a provision of this Act and becomes a regulation made under the *Criminal Organisation Act 2009*.

[s 24]

24 Automatic repeal

For the purpose of the *Acts Interpretation Act 1954*, section 22C, this Act is an amending Act.

Schedule

Criminal Organisation Regulation 2011

section 23

1 Short title

This regulation may be cited as the *Criminal Organisation Regulation 2011*.

2 External agencies—Act, s 59A

Each of the following entities is declared to be an external agency for this Act—

- (a) ASIC;
- (b) the Australian Crime Commission under the *Australian Crime Commission Act 2002* (Cwlth);
- (c) the Australian Customs and Border Protection Service under the *Customs Administration Act 1985* (Cwlth);
- (d) the Australian Security Intelligence Organisation established under the *Australian Security Intelligence Organisation Act 1979* (Cwlth);
- (e) the Corruption and Crime Commission established under the *Corruption and Crime Commission Act 2003* (WA);
- (f) the Independent Commission against Corruption established under the *Independent Commission Against Corruption Act 1988* (NSW);
- (g) the New South Wales Crime Commission established under the *New South Wales Crime Commission Act 1985* (NSW);
- (h) the Office of Police Integrity established under the *Police Integrity Act 2008* (Vic);

- (i) the Australian Commission for Law Enforcement Integrity established by the *Law Enforcement Integrity Commissioner Act 2006* (Cwlth).

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