

Criminal Organisation Bill 2009

Explanatory Notes

Objectives of the Bill

The Bill seeks to disrupt and restrict the activities of organisations involved in serious criminal activity and to disrupt and restrict the activities of the members and associates of such organisations who are involved in serious criminal activity. It is not intended that the powers under the Bill will be exercised in a way that diminishes the freedom of persons to participate in advocacy, protest, dissent or industrial action.

Reasons for the Bill

The structure and methods of organised crime pose a challenge to the criminal justice system which is generally designed to prosecute and punish isolated crimes committed by individuals. A successful prosecution of one or even more members of an organisation may have little effect on the criminal operations of the organisation as a whole. Further, successful prosecutions of organised criminal groups may be hindered by intimidation and violence towards witnesses and investigators.

The Bill provides an alternative mechanism in combating organised criminal activity.

Achievement of the Objectives

The Bill creates a civil regime which allows the Supreme Court, upon application by the Police Commissioner, to make orders aimed at disrupting and restricting the activities of criminal organisations and preventing the expansion of such organisations.

The Bill allows for organisations to be declared ‘criminal organisations’ by the Supreme Court. The declaration will provide the basis for control orders.

Members and associates of declared criminal organisations will, on application of the Commissioner, be liable to have control orders imposed on them. The purpose of a control order is to reduce the capacity of

members of criminal organisations and their associates to carry out activities that may facilitate serious criminal behaviour. Activities that may be controlled by an order include: associating with other persons; possessing stated weapons and other things; carrying or applying to carry on certain prescribed activities, e.g. in the gaming, liquor or security industry; entering or being in certain places; and recruiting new members into a criminal organisation.

The Bill allows for the issuing of public safety orders. A public safety order can prohibit an individual or group from entering a premises, specified area or attending an event. The Supreme Court may make a public safety order for any period it considers necessary but no longer than six months. Applications for public safety orders are made on notice to the respondent but the Bill provides that in urgent circumstances an application may be heard *ex parte* unless the court directs otherwise. The purpose of a public safety order is to reduce the risk posed by criminal gangs to the public through their attendance at events or venues.

A fortification removal order can require an individual or organisation to modify or remove fortifications from particular premises. The purpose of a fortification removal order is to ensure police are not impeded from investigating serious criminal activity by fortifications around clubhouses or other premises used or occupied by criminal organisations and the members and associates of criminal organisations.

In all civil applications under this Bill the Commissioner may apply to have certain evidence declared to be 'criminal intelligence'. Once the Supreme Court has declared the evidence to be 'criminal intelligence' it can not be disclosed to any person including the respondent to an application or their legal representatives. In order for the evidence to be declared criminal intelligence the Police Commissioner must satisfy the Supreme Court that the evidence would prejudice criminal investigations, identify a confidential source of information or endanger the safety of another person. This allows the court to hear certain evidence against individuals, organisations and groups whilst maintaining the physical safety of informants and covert operatives and minimising the threat of prejudicing a criminal investigation.

The Bill provides that a contravention of a control order and public safety order is a criminal offence. It is also an offence to hinder the enforcement of a fortification removal order.

Estimated Cost for Government Implementation

Costs arising from the Bill will be absorbed within existing funding. The Government will continue to monitor potential financial implications to maximise the operational impact of the Bill.

Consistency with Fundamental Legislative Principles

The use of secret ‘criminal intelligence’ evidence

The Bill provides for the use of ‘criminal intelligence’ in civil proceedings which involves withholding admitted evidence from another party to a proceeding and hence raises substantial issues about the principles of natural justice.

The use of criminal intelligence is necessary on the basis that the disclosure of such information could reasonably be expected to: prejudice a criminal investigation; lead to the identity of confidential informants or covert police officers; or endanger a person’s life or physical safety.

Significant safeguards are included in the Bill to address the necessary abrogation of natural justice being: the Supreme Court determines whether certain information should be treated as ‘criminal intelligence’ and is afforded full discretion in making such a determination; in the event the court declares information to be ‘criminal intelligence’ and the evidence is admitted, it is a matter for the court as to the weight placed upon such evidence; the Criminal Organisation Public Interest Monitor (COPIM) will be present at all hearings under the Bill and has access to all the information before the court (except to the extent that the material discloses an informant’s name, current location, where the informant resides or position held within an organisation). The COPIM’s role is in the nature of *amicus curiae* and will assist the court in making a decision as an independent and impartial tribunal.

Informants will not be called to give evidence at a proceeding

The respondent to an application will be denied access to criminal intelligence information. Also, the court and COPIM can not call an informant or operative for the purpose of testing the veracity of the informant’s evidence.

Such an approach is necessary to protect the identity of the informant/operative and the viability of the informant as a continuing source of criminal intelligence information.

However, where the Commissioner seeks to rely on information provided by an informant or operative as part of the criminal intelligence, an affidavit from the police officer that handles the informant/operative must be filed with the court. That affidavit must contain the following information regarding the informant/operative:

- details of the full criminal history (including any charges pending) of the informant/operative;
- details of any allegations of professional misconduct made against the informant/operative;
- details of any inducement or reward that has been offered or provided to the informant/operative in return for their assistance; and
- the grounds for the police officer's honest and reasonable belief that the information provided by the informant/operative is reliable.

The police officer who swears the affidavit must be available for examination or cross examination.

Further, when seeking to rely on criminal intelligence, including informant information, the Police Commissioner must provide the court with information outlining the Queensland Police Service (QPS) internal classification process for intelligence and the classification that was assigned to the intelligence in issue with respect to the intelligence's reliability and credibility.

Further, the court retains full discretion to determine what weight to give any evidence before it, including informant evidence.

Criminal organisation declaration

The central mechanism in the Bill is that the Supreme Court, on a civil application, can declare an organisation to be a criminal organisation. The declaration has no immediate criminal effect upon the organisation but provides the footing for an application for a control order.

The declaration is made by an independent and impartial tribunal, the Supreme Court, exercising its full discretion. The court may only make a criminal organisation declaration if satisfied the members of the organisation associate for the purpose of engaging in or conspiring to engage in, serious criminal activity and that the organisation is an unacceptable risk to the safety, welfare or order of the community. The

court is assisted in its determination by the COPIM. The declaration can be appealed to the Court of Appeal.

Control Orders

The Supreme Court, on a civil application, can impose a control order against a person, restricting activities of the controlled person. The effect of such orders is to significantly curtail the rights and liberties of the controlled person.

Balancing against the infringement of rights and liberties is the fact that the control order is made by an independent and impartial tribunal, the Supreme Court, exercising its full discretion. This affords the highest level of supervision of the power. Before making a control order the court must be satisfied that the respondent is or has been a member of the criminal organisation, engages in or has engaged in serious criminal activity and is associating with another person for the purpose of engaging in or conspiring to engage in serious criminal activity. The order may also be imposed on any person who has engaged or is engaging in serious criminal activity and who associates with any member of a criminal organisation for the criminal purpose as stated. Further, the court is assisted by the COPIM acting in a role akin to an *amicus curiae*. Orders can be appealed to the Court of Appeal.

A control order remains in effect until revoked. Whilst this would appear to afford an indefinite term to such orders it must be noted that a control order may only be made in reliance on the person's membership of a declared criminal organisation or the person's association with a member of a declared criminal organisation. The Bill provides that control orders will end when the relevant declaration expires or is revoked. A controlled person may seek to have the control order revoked if at least two years have passed after the order was made.

Public Safety Orders

The Supreme Court may make a public safety order prohibiting an individual or group from entering specified premises, areas or events. Such an order impacts on rights and liberties.

An order may only be made where the presence of the respondent at the particular place poses a serious risk to public safety or security and making the order is appropriate in the circumstances. The Supreme Court supervises the use of such a power. The COPIM is present for the hearing

of such applications (apart from urgent phone applications). Such orders can be appealed to the Court of Appeal.

Fortification removal orders

The Bill provides for the removal of excessive fortifications at premises used in connection with serious criminal activity or premises owned or habitually occupied or used by a criminal organisation or a member or associate of a criminal organisation. Such fortifications pose a significant obstacle in the execution of search warrants. Where a fortification removal order is not complied with, an authorised police officer may cause the fortification to be removed or modified to the extent required under the order. The Commissioner may forfeit to the State any fortification removed. Any ‘innocent’ owner is compensated but a ‘responsible person’ is not. ‘Responsible person’ is defined to mean the respondent to the application and any other person who participated in causing the fortification to be made and was the occupier of the fortified premises when the order was made.

The Supreme Court has a discretion to impose a fortification removal order if satisfied the premises has a fortification and the extent or nature of the fortification is excessive for any lawful use of that type of premises. Importantly, the Supreme Court can not impose such an order unless satisfied the premises are linked to serious criminal activity or occupied or used by a criminal organisation or one of its members or associates. The court retains a full discretion as to whether to make such an order and in the event an order is made, must fix the time or the period within which the fortification must be removed or modified. The compulsory acquisition of the fortifications without compensation is enlivened in the event the respondent does not comply with the Supreme Court order.

Penalties

The Bill creates a new offence of **contravention of control order or registered corresponding control order** – the offence carries a maximum penalty of three years imprisonment for a first offence and five years for each later offence.

The equivalent Northern Territory offences in the *Serious Crime Control Bill 2009* (NT) carries a maximum penalty of five years imprisonment as does the offence provided in the *Serious and Organised Crime (Control) Act 2008* (SA).

The offence requires proof to an objective standard that the controlled person knowingly contravened the order. The maximum penalties must be sufficient to deter contravention of the order. The maximum penalty provided is consistent with the other jurisdictions and is justified given the criteria the court must be satisfied of before imposing a control order.

The Bill creates a new offence of **contravention of public safety order** – the offence carries a maximum penalty of one year imprisonment.

The equivalent Northern Territory and South Australian offences carry five years imprisonment.

Before imposing a public safety order the court must be satisfied that the presence of the respondent at the area or premises poses a serious risk to public safety or security. In order to protect the public the maximum penalty must be sufficient to deter contravention of the order.

The Bill creates a new offence of **hindering removal or modification of a fortification** - the offence carries a maximum penalty of five years imprisonment.

The equivalent Northern Territory offence carries three years imprisonment. The Western Australian offence contained in the *Corruption and Crime Commission Act 2003* carries a maximum penalty of five years imprisonment.

A fortification removal order may only be imposed if the court is satisfied the premises is connected to serious criminal activity or is owned or used by a criminal organisation or a member or associate of such an organisation. The court must be satisfied the fortification is excessive for any lawful use of that type of premises. Fortifications can impede the execution of search warrants. Where the respondent fails to comply with such an order, it is important that police can cause the fortification to be removed or modified in accordance with the court order without the fear or concern they will be prevented or obstructed from doing so. The maximum penalty is consistent with the penalties in the other jurisdictions and will act as a deterrent.

The Bill creates a new offence of **unlawful disclosure of criminal intelligence or information in informant affidavit** – the offence carries a maximum penalty of one year's imprisonment.

The offence applies where criminal intelligence information (including information that is or has been the subject of a criminal intelligence application) or information in an informant's affidavit is disclosed without

lawful authority or unless a person is required to disclose under the Bill or where disclosure is necessary to perform the person's functions under the Bill. The Bill provides for a number of defences to the offence. Given that disclosure of such information may endanger a person's life or physical safety it is vital that unauthorised disclosure is appropriately sanctioned.

The Bill creates a new offence of **obtaining of or disclosure of secret information about the identity of informant** – two new offences are inserted into the Criminal Code, both offences carry a maximum penalty of 10 years imprisonment.

The first offence applies to a person who, without lawful justification or excuse, obtains or attempts to obtain secret information (as defined) in the possession of a law enforcement agency or officer about the identity of a criminal organisation informant (as defined). The second offence is a mirror provision directed at persons who publish or communicate such secret information.

The disclosure of the identity of such an informant risks endangering his or her life or physical safety. This justifies the creation of the offence and the maximum penalty.

The Bill inserts **new circumstances of aggravation into a number of offences in the Criminal Code** – the amendments are necessary to deter tactics of intimidation and violence towards potential witnesses and law enforcement investigators.

Powers of entry and seizure

A power of entry is provided to a police officer to enter premises occupied by the person named in a control order and search for and seize items prohibited by the control order, without warrant. This power is similar to that found in section 610 'Police actions after domestic violence order is made' of the *Police Powers and Responsibilities Act 2000*.

The Supreme Court controls the use of this power and it can only be used once in relation to a premises occupied by the controlled person. The control order is made against a person who has been determined to be involved in serious criminal activity. In this light, the person cannot be relied upon to surrender the prohibited items.

Personal information gathering provisions

The legislation authorises police to require personal details of persons in particular circumstances.

The police officer may only require such personal details if the officer finds the person committing an offence against this Bill or reasonably suspect the person has just committed an offence against this Bill. The power also applies where the officer is exercising powers under the Bill in relation to the person. Such a power is necessary to ensure the effective operation of the Bill.

Immunity

The Bill provides immunity from civil liability for officials (defined in the Bill) acting honestly and without negligence. This is necessary to ensure the effective operation of the Bill. Civil liability attaches instead to the State.

Displacement of presumption to bail

The Bill amends the *Bail Act 1980* to displace the presumption in favour of bail for offences of contravention of a control order or a public safety order and for an offence against the Criminal Code, section 359 with a circumstance of aggravation. The displacement of the presumption is justified on the following grounds:

- In order to impose a control order upon an individual, the Supreme Court must be satisfied that the individual is or has engaged in serious criminal activity and is associating with certain persons for the purpose of engaging in or conspiring to engage in serious criminal activity. The purpose of a control order is to reduce the capacity of members of criminal organisations and their associates to carry out activities that may facilitate serious criminal behaviour. A breach of a control order is a serious matter which warrants requiring the individual to show cause why bail is justified;
- In order to impose a public safety order upon a respondent, the Supreme Court must be satisfied that the respondent poses a serious risk to public safety or security. In circumstances where it is alleged that the respondent has defied the order and attended or attempted to attend the particular place in question, it is appropriate that the respondent is required to show cause why bail is justified;
- With respect to an accused charged with the aggravated form of 'Threats' under section 359 of the Criminal Code, the allegation will be that the person has threatened a law enforcement officer

or a person helping a law enforcement officer, when or because the officer is investigating the activities of a criminal organisation. In order to ensure the protection of the officer or person subject to the threat it is appropriate that the accused is required to show cause why bail is justified.

Consultation

Consultation has occurred with the President of the Court of Appeal, Chief Justice of the Supreme Court, Chief Judge of the District Court, Chief Magistrate, Bar Association of Queensland, Queensland Law Society, Director of Public Prosecutions, Legal Aid Queensland, Queensland Council for Civil Liberties, Crime and Misconduct Commission and the Public Interest Monitor.

Notes on Provisions

PART 1 Preliminary

Clause 1 establishes the short title to the Act as the *Criminal Organisation Act 2009*

Clause 2 provides that the Act will commence on day to be fixed by proclamation.

Clause 3 sets out the objectives.

Clause 4 notes that relevant definitions are contained in schedule 2.

Clause 5 establishes that the Act binds all persons including the State.

Clause 6 defines the term *serious criminal activity* to mean a serious criminal offence (as defined in section 7) and any act or omission made outside Queensland if that act or omission would constitute a serious criminal offence in Queensland.

Clause 7 defines the term *serious criminal offence*.

The definition encompasses indictable offences punishable by at least seven years imprisonment, including offences that have been repealed.

The definition also includes any offence against the Act itself or any offences that are listed in schedule 1 to the Act.

Subsection (2) is inserted to make it clear that the definition of serious criminal offence does not include repealed sections 208 or 209 of the Criminal Code unless the act or omission would be an offence against sections 208 or 209 as it currently exists (the offence currently exists in section 208 which includes attempts). Therefore, the definition of serious criminal offence will not apply to acts of sodomy between consenting adults over the age of 18 years.

Subsection (3) notes that references to offences in schedule 1 includes a reference to any offence against the section of that number as the section existed at any time since the original enactment.

Subsection (4) provides that subsection (1)(c) does not limit subsection (1)(a).

PART 2 Criminal Organisations

Clause 8 allows the Commissioner to apply to the Supreme Court for a declaration that an organisation is a criminal organisation.

Subsection (2) sets out the information that must be included in the Commissioner's application. Subsection (4) of the section clarifies what is meant by 'sufficiently identifying the organisation' to make it clear that an organisation only needs to be identified by a commonly known name or other particulars.

Subsection (3) states that the Commissioner's application must be accompanied by any affidavit material that the Commissioner might seek to rely on at a hearing of the application.

Subsection (5) states that the application must be filed with the Supreme Court registry and given a return date within 35 days of the filing date. The Commissioner must then serve the respondent by personal service within seven business days unless personal service is not practicable or if the respondent is an unincorporated association. When personal service does not apply, service is by public notice within 10 days after filing. The

general provisions as to the requirements of personal service and service by public notice are contained in part 9.

Subsection (6) provides that the Commissioner must give copies of the application and any supporting material to the Criminal Organisation Public Interest Monitor (COPIM). Section 88(2) provides that the COPIM will not have access to information which discloses an informant's name, current location, where the informant resides or the position held in an organisation.

Clause 9 gives the respondent the right to file a response to the application at least five business days before the return date. If the respondent chooses to file a response, the response must state the facts that the respondent will rely on and further state the nature of the respondent's response in relation to each order being sought by the applicant. If the respondent intends to rely on an affidavit at the hearing of the application, that affidavit must be filed at the same time as the respondent's response.

Clause 10 allows the court to make a declaration that the respondent is a criminal organisation and sets out the criteria that the court must be satisfied of before it makes such an order. A number of terms in subsection (1) are defined in schedule 2.

Subsection (2) sets out the information that the court must have regard to when considering whether or not to make a declaration.

Subsection (3) clarifies that the respondent does not need to make submissions at the application or be present during the hearing or making of the decision for the court's declaration to be valid.

Subsection (4) allows the court to be satisfied that members of an organisation associate for the purpose of engaging in, or conspiring to engage in, serious criminal activity:-

- (a) whether all members associate for that purpose or only some of the members; and
- (b) whether members associate for that purpose for the same serious criminal activities or different ones; and
- (c) whether or not the members also associate for other purposes.

Subsection (5) clarifies, subsection (4)(a) in so far as if the court makes its finding on the basis that only some of the members associate for the purpose, those members must form a significant group either in terms of

their numbers within a criminal organisation or in terms of their capacity to influence the organisation or its members.

Clause 11 mandates that the Commissioner must publish notice of the declaration in the gazette and at least one state circulated newspaper as soon as reasonably practicable after the declaration is made. Subsection (2) confirms that the declaration will have no effect until it is published.

Clause 12 provides that declarations remain in force for five years unless the declaration is revoked or renewed. Subsection (2) provides that a change of name or membership of a criminal organisation does not affect the declaration. Subsection (3) states that a criminal organisation will include any organisation into which members of that criminal organisation substantially reform themselves regardless of whether the organisation named in the declaration is dissolved.

Clause 13 allows the court to revoke a declaration about a criminal organisation on the application of the Commissioner or the criminal organisation or a member of the criminal organisation.

Subsection (3) sets out the information that must be included in an application for revocation. Subsection (4) states that any affidavit that the applicant intends to rely on at the hearing must be filed with the application.

Subsection (5) makes it clear that the Commissioner must always be a party to any proceedings involving an application for revocation by the criminal organisation or member of that organisation.

Subsection (6) establishes that the applicant must serve copies of the application with any accompanying affidavits on the other parties to the application as soon as reasonably practicable after the application is filed.

Subsection (7) states that if the Commissioner is the applicant to the proceedings, then the application must be personally served unless it is not practicable do so. If it is not practicable to personally serve the application or if the respondent is an unincorporated association, then the application must be served by public notice. The provisions as to the requirements of personal service and service by public notice are contained in part 9.

Subsection (8) requires the Commissioner to provide copies of the application and supporting material to the COPIM (subsection to section 88).

Subsection (9) allows the court to revoke the declaration only if the court is satisfied that there has been a substantial change in the nature or

membership of the criminal organisation to the extent specified in subsections (9) (a) and (b).

Clause 14 requires the Commissioner to publish notice of the revocation or expiration of a declaration in the gazette and at least one state circulated newspaper as soon as reasonably practicable after the revocation is made or the declaration has expired.

Clause 15 subsection (1) prohibits a criminal organisation or a member of a criminal organisation from applying for a revocation under section 13 until at least three years after the declaration has been made. Subsection (2) prohibits the criminal organisation or a member of a criminal organisation from making more than two applications for revocation in the first five years after the declaration is made.

PART 3 Control Orders

Division 1 Making, variation and revocation

Clause 16 allows the Commissioner to apply to the Supreme Court for a control order for a person.

Subsection (2) sets out the information that must be contained in an application for a control order.

Subsection (3) requires that the application must be accompanied by any affidavit which the Commissioner intends to rely on at the hearing and a draft of the order that the Commissioner is seeking from the court.

Subsection (4) states that the application must be filed with the Supreme Court registry and the registry must provide a return date within 35 days of the filing date. Once the application has been filed, the Commissioner must serve the respondent by personal service within seven business days unless it is impracticable to do so. If personal service is not practicable, the Commissioner must serve by public notice within 10 days after filing. The provisions as to the requirements of personal service and service by public notice are contained in part 9.

Subsection (5) requires that the Commissioner to give copies of the application and any supporting material to the COPIM (subject to section 88).

Clause 17 allows the respondent to file a response to the Commissioner's application. The response must be filed at least five days before the application's return date. If the respondent chooses to file a response, the response must state the facts that the respondent will rely on and further state the nature of the respondent's response in relation to each order being sought by the applicant. The respondent must file with their response any affidavit that the respondent intends to rely on at the hearing of the application.

Clause 18 allows the court to make a control order and sets out the criteria the court must be satisfied of before making such an order.

Subsection (3) sets out information that the court must have regard to when making the decision about whether to make a control order against a person.

Subsection (4) clarifies that the respondent does not need to make submissions at the application or be present during the hearing or present at the making of the decision to grant a control order for the court's control order to be valid.

Subsection (5) defines *member* with respect to this section.

Clause 19 subsection (1) gives the court the power to attach any conditions to a control order that the court considers appropriate.

Subsection (2) sets out a number of specific conditions that the court may consider imposing.

Subsection (3) provides that a condition imposed on a control order under subsection (2) (a) applies in relation to an association with any person who is a member of a criminal organisation. The section provides that whether the person is a member of the criminal organisation at the date the control order is made or becomes a member at a later date does not affect the application of such a condition. Further, the section provides that whether the criminal organisation was declared to be a criminal organisation at the date the control order is made or whether the organisation is declared at a later date does not affect the application of such a condition.

Subsection (4) provides that a condition imposed on a control order under subsection (2) (b) applies in relation to any association with a person who is a controlled person at the time of the association. The section provides

that the condition applies whether or not the person was a controlled person at the date the control order is made or whether the person becomes a controlled person at a later date.

Subsection (5) provides that if the respondent is a member of a criminal organisation then the court must impose the conditions listed in subsection (2)(a), (b), (c)(i), (d) and (e). However, the section also provides that where conditions (2)(a) and (b) would affect a personal relationship the court is provided with a discretion to not impose such a condition and before the court can exercise that discretion it must have regard to the matters set out in subsection (7). *Personal relationship* is defined in schedule 2.

Subsection (6) provides that the court must order a respondent to deliver anything that the respondent will be prohibited from possessing under the control order to the Commissioner's custody within 24 hours of the order being made. Pursuant to section 24, particularly subsection (7), retention of a prohibited thing beyond the 24 hour period may constitute a contravention of a control order.

Subsection (7) requires the court to consider the effect of placing a non-contact condition on a control order on a personal relationship. The court must consider the effect that such a condition would have on the relationship and whether the non-contact condition should relate only to a particular class of activity or relate to activities generally. The definition of *non-contact condition* is contained in schedule 2.

Subsection (8) allows the court to impose conditions on a police officer's power to search and seize particular things as set out in section 25.

Clause 20 subsection (1) establishes that the control order takes effect from the date that the order is made if the respondent or the respondent's legal representatives or any other type of representative of the respondent is present at the hearing of the application. If none of the persons listed in subsection (1) (a) are present then subsection (1) (b) provides that the control order can only take effect once it is served on the respondent.

Subsection (2) provides that if subsection (1) (b) applies then service of the control order must be by way of personal service if it is practicable to personally serve. If personal service is not practicable, the control order must be served by way of public notice. The requirements of personal service and service by public notice are contained in part 9.

Subsection (3) provides that control orders will remain in force until the control order is revoked.

Subsection (4) provides that if control orders or interim control orders are made on the basis of a person's membership or association with a particular criminal organisation, the control order will cease to have effect when the declaration pertaining to that particular criminal organisation expires or is revoked (refer section 18 (1) and (2)).

Clause 21 allows for the making of interim control orders if the application for a control order has been served on the respondent. The interim order may be made on or after the return date for the control order application.

Subsection (3) allows a court to make the interim control order if the court is satisfied that there are reasonable grounds for believing there is sufficient basis to make the final control order.

Subsection (4) clarifies that the respondent does not need to make submissions at the application or be present during the hearing or present at making of the decision to grant an interim control order for the court's interim control order to be valid.

Subsection (5) sets out the conditions that must be contained in an interim control order.

Subsection (6) provides that the interim control order must contain a condition that requires the respondent to deliver any item that the respondent is not allowed to possess under the terms of their interim control order into the custody of the Commissioner within 24 hours. Pursuant to section 24, particularly subsection (7), retention of a prohibited thing beyond the 24 hour period may constitute a contravention of a control order.

Subsection (7) provides that the interim control order takes effect from the date that the order is made if the respondent or the respondent's legal representatives or any other type of representative of the respondent is present at the hearing of the application. Otherwise, the interim control order takes effect once it is served on the respondent.

Subsection (8) provides that if subsection (7) (b) applies then service of the control order must be by way of personal service if it is practicable to personally serve. If personal service is not practicable, the control order must be served by way of public notice. The requirements of personal service and service by public notice under this act are contained in part 9.

Clause 22 subsection (1) allows the court to vary a control order other than a condition mentioned in section 19 (5).

Subsection (2) allows an application for variation to be made by:

- the commissioner at any time; or
- the controlled person if at least 12 months have passed since the date of making the order or if 12 months have passed since the controlled person's last application for variation for their control order.

Subsection (3) sets out the information that the application for a variation of a control order must include.

Subsection (4) requires that an application must be accompanied by any affidavit that the applicant intends to rely on at the hearing of the application and a draft of the order that the applicant is seeking from the court.

Subsection (5) provides that the Commissioner will always be a party to any application for a variation of a control order made by a controlled person.

Subsection (6) provides that the applicant must serve their application with any accompanying affidavit and draft order on the other party to the proceeding as soon as reasonably practicable after the application is filed.

Subsection (7) requires the Commissioner (when the Commissioner is the applicant) to serve the other party by personal service if it is practicable to do so. If it is not practicable, the Commissioner must serve the other party by way of public notice. The requirements for personal service and service by way of public notice are contained in part 9.

Subsection (8) requires the Commissioner to provide the COPIM with copies of the application, the accompanying affidavit and draft order regardless of whether the Commissioner is the applicant or not (subject to section 88).

Subsection (9) sets out what the court must be satisfied of before making a variation to a control order upon an application by a controlled person.

Subsection (10) requires the Commissioner (if the applicant) to serve a copy of the varied control order upon the controlled person as soon as is reasonably practicable after the order is made. Service is by personal service or if personal service is not practicable then by public notice. The requirements for personal service and service by way of public notice are contained in part 9.

Subsection (12) provides that if the Commissioner is the applicant, a variation of a control order takes effect from when the Commissioner

serves the controlled person but if the controlled person is the applicant, the variation of the control order takes effect from when the order is made.

Clause 23 allows the court to revoke a control order on application of the Commissioner at any time or on the application of a controlled person if at least two years have passed since the control was made.

Subsection (3) sets out what information the application must contain.

Subsection (4) requires the application to be accompanied by any affidavit that the applicant intends to rely on at the hearing of an application.

Subsection (5) provides that the Commissioner will always be a party to any proceedings for an application for revocation made by a controlled person.

Subsection (6) provides that the applicant must serve a copy of the application along with any accompanying affidavit on the other party to the proceedings as soon as is reasonably practicable after the application has been filed with the Supreme Court registry.

Subsection (7) requires the Commissioner (if the applicant) to serve the other party by personal service and if personal service is not practicable, by public notice. The requirements for personal service and service by public notice are contained in part 9.

Subsection (8) requires the Commissioner to provide copies of the application and supporting material to the COPIM whether the Commissioner is the applicant or not (subject to section 88).

Subsection (9) sets out what the court must be satisfied of in order to make an order revoking a control order.

Subsection (10) clarifies subsection (9)(b) and (c), that in calculating a period of two years, the court can not take into account any period where the controlled person was imprisoned or detained.

Subsection (11) requires the Commissioner (if the applicant) to serve a copy of the revocation order on the controlled person as soon as is reasonably practicable after the order is made. Service is by personal service and if personal service is not practicable, by public notice. The requirements for personal service and service by way of public notice are contained in part 9.

Subsection (13) provides that a revocation order takes effect when the order is made.

Division 2 Enforcement

Clause 24 subsection (1) creates an offence of knowingly contravening a control order or a registered corresponding control order. The penalty provided for the offence is a maximum of three years imprisonment for a first offence and a maximum of five years imprisonment for each later offence.

Subsection (2) provides that a first offence will be a misdemeanour and any later offence will be a crime.

Subsection (3) clarifies that an offence will be taken to be a later offence only if committed once a person is found guilty of an earlier offence.

Subsection (4) provides that ‘knowingly’ as it is used in subsection (1) includes where the person “ought reasonably to know”. Therefore, an objective standard of knowledge applies.

Subsection (5) clarifies that that a breach of a non-contact condition is not dependant on proof of any particular purpose for the association.

Subsection (6) provides that the defendant in proceedings for an offence under this section involving a breach of a non-contact condition that has an exception about association with a person with whom the defendant has a person relationship, will bear the onus of proving on the balance of probabilities that the association which is the subject of the proceedings involved a person with whom the defendant had a personal relationship. The definitions of *non-contact* condition and *personal relationship* are in schedule 2.

Subsection (7) provides that a person will not contravene their control order if they are found in possession of a prohibited article in the first 24 hours after the making of the control order. This provides a controlled person with an opportunity to divest themselves of any prohibited items in the first 24 hours after a control order is made and is consistent with the provision in section 21, subsection (6).

Clause 25 provides a police officer with certain search and seizure powers which can be exercised in the first seven days after a control order or registered corresponding control order is served on a person and can only be exercised once in relation to each premises occupied by the controlled person.

Subsection (3) sets out the steps that a police officer must take or make a reasonable attempt to take before entering the premises occupied by the controlled person.

Subsection (4) clarifies that the word ‘enter’ as it is used in this section should be read to include the right of re-entry on the single occasion that the police officer may use their powers in relation to a particular premises.

Clause 26 provides a police officer with the power to seize a prohibited thing even if that seizure occurs within the first 24 hours after a control order has been made. However, subsection (3) provides for the things that are seized pursuant to this section to be kept in the Commissioner’s custody while the order is in effect. The seized things must be returned to the controlled person when the control order is no longer in effect with the proviso that the controlled person is lawfully able to take possession of the seized thing at that time.

PART 4 Public Safety Orders

Clause 27 defines the meaning of *prescribed conditions* and *prescribed grounds* for the purposes of part 4.

Clause 28 subsection (1) sets out what the court must be satisfied of before making a public safety order. Subsection (2) sets out what the court must have regard to when deciding whether to make a public safety order or not.

Subsection (3) provides that when the respondent is a group of persons the court must consider the extent to which members of the group as opposed to every individual member of the group, satisfy a matter under subsection (1) and (2).

Clause 29 Subsection (1) allows a court to impose any necessary conditions on persons or groups who are subject to a public safety order.

Subsection (2) does not limit subsection (1) but sets out conditions that the court can impose if they believe it is necessary to do so to give effect to the public safety order.

Subsection (3) requires that all public safety orders must contain a direction that a respondent to the order must comply with every reasonable direction given by a police officer for the purpose of complying with the order.

Subsection (4) requires that the requirement in subsection (3) be explicitly stated in the order.

Subsection (5) allows the court to impose conditions relating to police powers under section 37.

Subsection (6) clarifies that a public safety order can not stop a respondent from entering the respondent's own principal place of residence.

Subsection (7) defines *respondent*.

Clause 30 provides that part 4 does not affect the *Peaceful Assembly Act 1992*.

Division 2 Making, variation and revocation

Clause 31 subsection (1) allows the Commissioner to apply to the Supreme Court for a public safety order.

Subsection (2) provides that where the respondent is a group of persons the term 'respondent' is a reference to the members generally of the group.

Subsection (3) sets out the information that must be contained in the application.

Subsection (4) requires that the application must be accompanied by any affidavit that the Commissioner will rely on at the hearing of the application.

Subsection (5) requires that the application as detailed in subsection (3) and the affidavit as detailed in subsection (4) must be filed with the Supreme Court registry. Subsection (5) (b) requires the registry to provide a return date within 35 days after the filing date. Subsection (5) (c) (i) requires that the application and accompanying affidavits be personally served. Subsection (5) (c) (ii) states that if personal service is not practicable or if the respondent is a group of persons then service is by way of public notice. The requirements as to personal service and service by way of public notice are contained in part 9.

Subsection (6) requires the Commissioner to give copies of the application and any supporting material to the COPIM under arrangements decided by the COPIM (subject to section 88).

Clause 32 allows the respondent to file a response to the Commissioner's application. The response must be filed at least five days before the application's return date. If the respondent chooses to file a response, the response must state the facts that the respondent will rely on and further state the nature of the respondent's response in relation to each order being sought by the applicant. The respondent must file with their response any affidavit that the respondent intends to rely on at the hearing of the application. Subsection (5) requires that if the respondent is a group of persons, the response must be filed by one nominee of that group as mentioned in section 108.

Clause 33 subsection (1) allows the court to make a public safety order if satisfied that prescribed grounds exist to make the order.

Subsection (2) provides that the order will be effective regardless of whether the respondent was present at the hearing of the application or made any submission at the hearing of the application.

Clause 34 subsection (1) provides that a public safety order will take effect from either:

- a) the date the order is made if the respondent, a representative of the respondent or a legal representative is present at the hearing of the application; or
- b) when the Commissioner serves the order on the respondent.

Subsection (2) requires the Commissioner to serve the public safety order by personal service. If personal service is not practicable or if the respondent is a group of persons then service is by public notice. The requirements as to personal service and service by way of public notice are contained in part 9.

Subsection (3) provides that a public safety order will remain in force for the duration of the order or until revoked, whichever event happens first. Subsection 3(b) also provides that a public safety order can not be longer than six months in duration.

Clause 35 provides for ex parte urgent applications, however, the court may, before finally deciding the application, direct the Commissioner to give notice to the respondent. Urgent applications may be made by telephone subject to any practice directions from the Chief Justice. An order made ex parte will remain in force for a period of 24 hours unless the court directs otherwise.

Pursuant to subsection (8), the court can not grant an extension of an ex parte order or grant another ex parte order for the same circumstances, unless the application is made on notice. Subsection (9) anticipates the occasion where the Commissioner makes an urgent application and relies on information the Commissioner reasonably believes to be criminal intelligence. The Commissioner may make a criminal intelligence application but the court may adjourn that application and proceed with the public safety order application.

Clause 36 subsection (1) allows the court to vary or revoke a public safety order at any time but only on the application of the Commissioner.

Subsection (2) sets out the information that must be included in any application for a variation or revocation of a public safety order.

Subsection (3) requires an application for variation or revocation of a public safety order to be accompanied by any affidavit on which the Commissioner intends to rely.

Subsection (4) requires the Commissioner to serve a copy of the application and accompanying affidavit on the respondent.

Subsection (5) requires the Commissioner to serve a copy of the variation or revocation order on the respondent as soon as is reasonably practicable after it is made.

Subsection (6) requires personal service and if personal service is not practicable or if the respondent is a group of persons then service is by public notice. The requirements of personal service and service by way of public notice are set out in part 9.

Subsection (7) requires the Commissioner to give copies of the application and supporting material to the COPIM (subject to section 88).

Division 4 Enforcement

Clause 37 subsection (1) allows a police officer to enter a public safety place (as defined in subsection (7)) without warrant to search for a person against whom a public safety order has been made for the purpose of serving copy of the order upon the person.

Subsection (2) allows a police officer to stop, detain and search a vehicle approaching in or leaving a public safety place without a warrant in order to:

- a) search for a person for whom a public safety order has been made; or
- b) to serve a copy of the public safety order on a person.

Subsection (3) allows a police officer to stop a person or persons entering public safety places and allows a police officer to remove a person or persons from such a place.

Subsection (4) requires a police officer who is exercising powers under subsection (3) to give certain directions to persons whom the power is exercised against if it is reasonably practicable to do so.

Subsection (5) allows a police officer to give any direction or use force to exercise the power under this section.

Subsection (6) creates an offence for contravening a direction given by a police officer under this section without reasonable excuse.

Subsection (7) defines the term *public safety place*.

Clause 38 creates an offence of knowingly contravening a public safety order and provides a maximum penalty of one year's imprisonment. Knowingly is defined to include where the person *ought reasonably to know*. Therefore, an objective standard of knowledge applies.

PART 5 Fortification removal orders

Division 1 Preliminary

Clause 39 defines key terms used within part 5.

Clause 40 establishes the relationship between part 5 and the *Integrated Planning Act 1997* and the *Sustainable Planning Act 2009* and development approvals provided under that legislation.

Division 2 Applying for and obtaining fortification removal order

Clause 41 subsection (1) allows the Commissioner to apply to the Supreme Court for a fortification removal order against a person or an organisation.

Subsection (2) requires that the respondent must be a person or organisation who occupies the fortified premises.

Subsection (3) sets out the information that an application for a fortification removal order must contain.

Subsection (4) requires the application to be accompanied by any affidavit that the Commissioner intends to rely on.

Subsection (5) requires the application and accompanying affidavit to be filed with the Supreme Court registry and given a return date within 35 days. This subsection also requires that the application and accompanying affidavit be personally served on the respondent within seven business days of filing. If it is not practicable to personally serve the respondent or if the respondent is an unincorporated association then service is by public notice. The requirements for personal service and service by way of public notice are set out in part 9.

Subsection (6) requires the Commissioner to give copies of the application and filed affidavits to the COPIM (subject to section 88).

Clause 42 allows the respondent to file a response to the Commissioner's application. The response must be filed at least five days before the application's return date. If the respondent chooses to file a response, the response must state the facts that the respondent will rely on and further state the nature of the respondent's response in relation to each order being sought by the applicant. The respondent must file with their response any affidavit that the respondent intends to rely on at the hearing of the application.

Clause 43 allows the court to make a fortification removal order for the respondent if the court is satisfied of certain matters set out in subsection (1) of the section.

Subsection (2) provides that the fortification removal order can be made whether or not the respondent is present during the hearing of the application or makes any submissions at the hearing of the application.

Clause 44 subsection (1) requires the court to fix a period of inspection when making a fortification removal order.

Subsection (2) allows the Commissioner or an authorised police officer to use reasonably necessary force to enter and re-enter the fortified premises from time to time during the period required to be fixed in subsection (1) to confirm whether the fortification removal order has been complied with and whether any other fortifications have been erected on the fortified premises.

Subsection (3) provides that the procedures and requirement for entry as provided in sections 51 and 52 apply to the exercise of powers provided under subsection (2) of this section.

Clause 45 subsection (1) provides the court with a general power to make any other type of order about the enforcement of the fortification removal order that the court thinks is appropriate.

Subsection (2) provides the court with a list of issues that the court may consider when determining whether to make an order under subsection (1).

Subsection (3) provides that when the court makes an order with regards to the enforcement of a fortification removal order those orders may add to or place limits on the enforcement powers provided in division 4 of part 5.

Clause 46 requires that a fortification removal order must contain certain information which is set out in subsections (1) and (2) of the section.

Clause 47 subsection (1) provides that a fortification removal order will become effective immediately upon the court making the order if the respondent, a representative of the respondent or a legal representative of the respondent is present at the hearing of the application.

Subsection (2) provides that if subsection (1) is not applicable the order will take effect when the Commissioner serves the order on the respondent.

Subsection (3) requires that service of a fortification removal order upon the respondent must be by way of personal service if it is practicable. If personal service is not practicable or if the respondent is an unincorporated association then service must be by way of public notice. The requirements of personal service and service by way of public notice are set out in part 9.

Division 3 Stays

Clause 48 provides that the filing of an appeal about a fortification removal order will stay the operation of the order until the appeal is withdrawn or dismissed.

Division 4 Enforcement

Subdivision 1 Preliminary

Clause 49 provides for the circumstances under which the enforcement powers in division 4 can be used.

Subdivision 2 Enforcement of order

Clause 50 subsection (1) allows the Commissioner or an authorised police officer (*an enforcer*) to cause the removal or modification of the fortifications to the extent provided for in a fortification removal order.

Subsection (2) allows an enforcer to take certain action in the course of causing a fortification to be modified or removed.

Subsection (3) allows an enforcer to use reasonably necessary force to remove a person under subsection (2)(g).

Subsection (4) allows the enforcement powers to be exercised at any time and as often as is required to achieve the removal or modification subject to an enforcer's compliance with sections 51 and 52. However, the powers do not limit or otherwise alter any other enforcement powers provided under a fortification removal order.

Clause 51 requires an enforcer to do certain things or make reasonable attempts to do certain things before entering a fortified premises for the purposes of enforcing a fortification removal order where the respondent or an occupier of the fortified premises is present at the premises. If the fortification makes it impracticable to communicate with the occupier of the fortified premises then the requirements do not apply.

Clause 52 subsection (1) provides that entry into a building on fortified premises should only take place if an enforcer reasonably believes that the entry is needed to take enforcement action.

Subsection (2) provides that entry into a residential part of a building on fortified premises can only take place where an enforcer reasonably believes that the fortification consists of or includes the residential part of the building and entry into the residential part of the building is necessary to take enforcement action.

Clause 53 subsection (1) provides that noise that is caused by taking enforcement action does not constitute an offence against section 440Q of the *Environmental Protection Act 1994* i.e. an offence of contravening a noise standard. However, pursuant to subsection (2) the exemption does not apply if the enforcement action is taken at a time prohibited under the fortification removal order.

Subdivision 3 Powers after taking enforcement action

Clause 54 subsection (1) allows the Commissioner to forfeit to the State any fortification removed under division 4, part 5.

Subsection (2) provides that a removed fortification becomes the property of the State and may be dealt with by the Commissioner as the Commissioner considers appropriate, subject to the provisions of the *Police Service Administration Act 1990* section 4.6.

Subsection (3) allows the Commissioner to destroy or dispose of a removed fortification.

Subsections (4) to (7) provide for how forfeited fortifications must be sold and the proceeds applied.

Clause 55 allows the State to recover from a responsible person (as defined in section 39) as a debt, the reasonable costs incurred in taking enforcement action. However, the net proceeds from the sale of the fortification must be set off against the amount of the debt.

Division 5 Miscellaneous provisions

Clause 56 subsection (1) creates an offence where a person intentionally hinders the removal or modification of a fortification or hinders the taking of enforcement action. A maximum penalty of five years imprisonment is provided for this offence.

Subsection (2) defines the terms '*fortification removal order*' and '*hinder*'.

Clause 57 subsection (1) sets out the circumstances which must be present for a compensation claim to be made against the State relating to the taking of enforcement.

Subsection (2) sets out the reasonable costs relating to the taking of enforcement action that an owner other than a responsible person can claim from the State.

Subsection (3) allows the compensation to be claimed and ordered against the State in a court of competent jurisdiction.

Subsection (4) allows a court to make an order of compensation against the State only if the court is satisfied that it is just to make the order in all the circumstances of the particular case.

Subsection (5) allows for a future regulation to prescribe matters that may or must be taken into account by the court when considering whether it is 'just' to make the order as specified in subsection (4) of the section.

Clause 58 applies when the State has made a payment under section 57 and allows the State to recover an amount from any responsible person as a debt.

PART 6 Criminal Intelligence

Division 1 Preliminary

Clause 59 defines the term 'criminal intelligence'.

Clause 60 sets out the objects.

Clause 61 allows any affidavits relied on by the Commissioner in an application under this part to contain hearsay evidence.

Clause 62 provides that part 6 must be read subject to part 7 which deals with the creation and the role of the Criminal Organisation Public Interest Monitor ('COPIM').

Division 2 Declaration of criminal intelligence

Clause 63 subsections (1) and (2) allow the Commissioner to apply to the Supreme Court for a declaration that particular information is criminal intelligence if the Commissioner reasonably believes that the information is criminal intelligence.

Subsection (3) sets out the information that must be included in the Commissioner's application.

Subsection (4) provides that any affidavit that the Commissioner wishes to rely on at the hearing of the application must be filed with the application.

Subsection (5) requires the Commissioner to give copies of any application to the COPIM (subject to section 88).

Clause 64 applies to information that was supplied by an informant and forms part of the Commissioners application. The term *informant* is defined in schedule 2.

Subsections (2) and (3) provide that an informant can not be called on to give evidence but the Commissioner must file an affidavit by the police officer who handles the informant who has supplied the information. It follows that such an affidavit must be provided to the COPIM.

Subsection (4) sets out the information that must be contained in the affidavit sworn by the police officer who handles the informant and filed by the Commissioner.

Clause 65 subsection (1) requires the registrar to seal certain documents immediately upon those documents being filed under part 6, division 2 and store them in a secure place.

Subsection (2) provides that the *Public Records Act 2002* does not apply to documents filed under part 6, division 2.

Subsection (3) requires that unless the court orders otherwise, the documents filed under part 6 division 2 are not to be made available to anyone other than the registrar, the judge who is presiding over the specific application and that judge's associate, the COPIM and the retired Supreme Court judge who performs the required reviews.

Subsection (4) provides that a COPIM can not inspect any part of a document filed under part 6, division 2 which includes an informant's name, current location, where the informant resides or position held by the informant in an organisation.

Subsection (5) limits the orders a court can 'otherwise' make under subsection (3). It sets out the only circumstances in which the court can order that documents be made available to persons other than those specified in subsection (3).

Subsection (6) allows the registrar to return hard copies of documents specified in subsection (1) to the Commissioner on the application's end day provided that the registrar has made electronic copies of the documents on a storage device that is unconnected to any computer and stores the storage device securely.

Subsection (7) provides that the section applies even if an application under part 6, division 2 is withdrawn or dismissed.

Subsection (8) provides that if a criminal intelligence declaration is revoked this section will cease to apply to that information.

Subsection (9) defines the terms *end day* and *storage device*.

Clause 66 provides that an application under part 6, division 2 can be heard without notice of the application having been given to any person other than the COPIM.

Clause 67 provides that if the Commissioner intends to rely on criminal intelligence for a substantive application, the criminal intelligence application must be heard first, regardless of when any application is filed. However, there is an exception to this in relation to applications for public safety orders made without notice.

Clause 68 requires that before a hearing begins in an application under part 6, division 2, the court must provide a warning to all persons present in the court about the confidential nature of information that is about to be heard and the unlawful disclosure offence that is set out at section 82.

Clause 69 provides that the warning has to be recorded in bold print at the start of the transcript of the hearing and each page of the transcript must be watermarked with a warning that directs the reader to the unlawful disclosure offence.

Clause 70 subsection (1) provides that the hearing of an application under part 6, division 2 is a special closed hearing. Whilst all applications under the Bill are closed pursuant to section 108 (4) and (5), the effect of the section is to create a special closed hearing for these ex parte applications.

Subsection (2) sets out a list of the only persons who can remain in the court during a hearing of an application under part 6, division 2.

Clause 71 subsection (1) provides that with the court's leave any police officer who is not an informant can be called to give evidence at a hearing of an application under part 6, division 2 and may be cross examined by the court or the COPIM.

Subsection (2) places a limitation on the examination and cross examination provided in subsection (1) in so far as preventing the court or the COPIM from asking a question that could lead to the disclosure of an informant's name, current location, where the informant resides or a position held by the informant in an organisation.

Clause 72 subsection (1) provides the court with discretion to make a declaration that information is criminal intelligence if the court is satisfied that the information is criminal intelligence.

Subsection (2) expressly provides that the court may, in exercising its discretion as to whether to declare information to be criminal intelligence consider whether unfairness to a respondent outweighs any of the matters set out in section 60(a) (i) to (iii).

Subsection (3) requires that in circumstances where the court does not make a declaration that information is criminal intelligence, the court must give the Commissioner an opportunity to withdraw the application.

Subsection (4) defines *respondent* to include a respondent to any existing or possible future application under this Act.

Clause 73 provides that a criminal intelligence declaration takes effect from when it is made and remains in force until the declaration is revoked.

Clause 74 subsection (1) allows the court to revoke a criminal intelligence declaration at any time but only on the application of the Commissioner.

Subsection (2) sets out the information that must be contained in an application under this section.

Subsection (3) provides that an application under this section must be accompanied by any affidavit that the commissioner intends to rely on at the hearing of the application.

Subsection (4) requires the Commissioner to give copies of the application and any supporting material to the COPIM (subject to section 88).

Subsection (5) requires the court to consider the application without notice of the application been given to any person other than the COPIM.

Division 3 Protection of declared criminal intelligence for substantive hearings

Clause 75 sets out the circumstances in which part 6, division 3 applies i.e. when documents are filed in support of a substantive application and contain declared criminal intelligence. The section provides that protections for criminal intelligence provided for in part 6, division 3, apply to all applications for an order made under this Bill regardless of what part of the Bill the application relates to.

Clause 76 applies if information that is eligible for protection under part 6, division 3, contains any information which was supplied to the Commissioner by an informant and the Commissioner seeks to rely on that information. The term *informant* is defined in schedule 2. This section mirrors section 64.

Clause 77 subsection (1) requires the registrar to seal specified documents and store those documents in a secure place immediately upon their filing.

Subsection (2) provides that the *Public Records Act 2002* does not apply to documents that are eligible for protection under part 6, division 3.

Subsection (3) requires that unless the court orders otherwise, the documents filed under Part 6 division 2 are not to be made available to anyone other than the registrar, the judge who is presiding over the specific application and that judge's associate, the COPIM and the retired Supreme Court judge who performs a required review.

Subsection (4) provides that a COPIM can not inspect any part of a document filed under part 6, division 2 which includes an informant's

name, current location, where the informant resides or the position held by the informant in an organisation.

Subsection (5) limits the orders a court can ‘otherwise’ make under subsection (3). It sets out the only circumstances in which the court can order that documents be made available to persons other than those specified in subsection (3).

Subsection (6) allows the registrar to return hard copies of documents specified in subsections (1)(a) and (b) to the Commissioner on the application’s end day provided that the registrar has made electronic copies of the documents on a storage device that is unconnected to any computer and stores the storage device securely.

Subsection (7) provides that the section applies even if the substantive application is withdrawn or dismissed.

Subsection (8) provides that if a criminal intelligence declaration is revoked then this section will cease to apply to that information.

Subsection (9) defines the terms *end day* and *storage device*.

Clause 78 subsection (1) provides that if during the hearing of an application the court is to consider declared criminal intelligence, then that evidence must be considered by the court during a special closed hearing. Whilst it is the case that all hearings under the Bill are closed pursuant to section 108 (4) and (5), the effect of this section is that the respondent and the respondents legal representatives must be excluded from the court for the consideration of criminal intelligence.

Subsection (3) provides that before a closed hearing under this section begins, the court must give a warning to all persons present in the court about the confidential nature of the information that will be before the court and alert them to the unlawful disclosure offence which is provided for at section 82.

Clause 79 requires the warning to be recorded in bold print at the start of the transcript of any part of the hearing that is closed pursuant to this section and that each page of the transcript must be watermarked with a warning directing the reader to the unlawful disclosure offence.

Clause 80 subsection (1) provides that with the court’s leave any police officer who is not an informant can be called to give evidence at a hearing of an application brought under this Bill in relation to information which is eligible for protection under part 6, division 3. A police officer may be examined and cross examined by the court or the COPIM.

Subsection (2) places a limitation on the examination and cross-examination provided in subsection (1) in so far as preventing the court or the COPIM from asking a question that could lead to the disclosure of an informant's named, current location, where an informant resides or a position held by the informant in an organisation.

Clause 81 clarifies that if, apart from the declaration, criminal intelligence would be admitted into evidence, the criminal intelligence must be admitted despite the declaration.

Division 4 Protection from unlawful disclosure

Clause 82 creates an offence of unlawful disclosure of criminal intelligence. Subsection (1) provides that the offence applies in relation to declared criminal intelligence that has not been revoked and information that is or ever was the subject of an application under part 6, division 2 whether or not a declaration was made. It also provides that the offence applies to information mentioned in sections 64(4) or 76(4) and contained in an *informant affidavit* filed under sections 64 or 76.

Subsection (2) provides that it is an offence to disclose the information and intelligence described in subsection (1) unless any of the circumstances set out in subsections (2)(a) through to (d) apply. The penalty provided for the offence is 85 penalty units or one year's imprisonment.

Subsection (3) provides that it is a defence if the information or intelligence was in the public domain at the time the disclosure took place or if the defendant had an honest and reasonably held belief that the information or intelligence they disclosed was not information or intelligence described in subsection (1).

Subsection (4) provides that the defence of honest and reasonable but mistaken belief set out in subsection (3)(b) will not be available if a defendant receives a warning under section 131(2).

PART 7 **Criminal organisation public interest monitor**

Division 1 **Appointment**

Clause 83 subsections (1) and (2) allows the Governor in Council to appoint a person as the criminal organisation public interest monitor (COPIM) and to fix the terms and conditions of appointment.

Subsection (3) requires that the COPIM be appointed under this Act and not the *Public Service Act 2008*.

Subsection (4) provides that the COPIM can also be appointed as the Public Interest Monitor under the other Acts mentioned.

Clause 84 sets out the qualifications that a person may have in order to be eligible for appointment as a COPIM.

Clause 85 provides for the procedure that must to be followed by the Minister when a COPIM is appointed or reappointed.

Division 2 **Functions**

Clause 86 sets out the core functions of the COPIM.

Clause 87 allows the Public Interest Monitor or Deputy Public Interest Monitor to perform the functions of the COPIM if the COPIM is not available.

Clause 88 requires an applicant to provide the COPIM with a copy of the all the material that has been provided to the court. However, the COPIM does not have access to material to the extent that the material discloses an informant's name, current location, where the informant resides or a position held by the informant in an organisation. Such material may refer to an informant by way of a unique identifier. Subsection (4) requires the COPIM to store the material provided by the Commissioner securely and return that material after completing the COPIM's annual report. Subsection (5) makes it clear that the COPIM is entitled to access to a record, or to a transcript of a record of a hearing at which the COPIM appears.

Clause 89 allows the COPIM to pose questions to an applicant, examine and cross examine any witness for the purpose of testing the appropriateness and validity of any application made under this act. The COPIM can make submissions to the court about the appropriateness of granting any application.

Subsection (3) prohibits a COPIM from making any submission to the court whilst a respondent or a legal representative of a respondent is present in the court.

Subsection (4) provides the court with a discretion to exclude the COPIM from a hearing during a period in which the respondent or a legal representative of a respondent is present in the court room.

Subsection (5) defines the meaning of '*present*'.

Division 3 Miscellaneous

Clause 90 provides that a person who is appointed to be a COPIM is restricted from acting for certain persons and organisations both during and after the COPIM's term of appointment and a failure to comply is conduct capable of constituting unsatisfactory professional conduct or professional misconduct under the *Legal Profession Act 2007*.

Clause 91 provides for the functions of the Law, Justice and Safety Committee in relation to the COPIM and confirms that the Committee must not be given access to any criminal intelligence.

Clause 92 requires the COPIM to provide an annual report to the Minister about the performance of the COPIM's functions under the Bill and such report may contain recommendations.

Subsection (4) requires the Minister to table a copy of the report in the Legislative Assembly within 14 days of the Minister receiving the report.

PART 8 Corresponding orders

Clause 93 allows the Commissioner to apply to the registrar of the Supreme Court for the registration of a corresponding order (defined in schedule 2) from another state or territory.

Subsection (2) requires the Commissioner's application to be accompanied by specific documents.

Subsection (3) sets out further specific information which must be stated in the application.

Clause 94 subsection (1) sets out what the registrar must be satisfied of before the registrar can register the corresponding order.

Subsection (2) requires the registrar (subject to the registrar's obligations under section 95) to register the corresponding order whether or not the respondent has been given notice of the application.

Subsection (3) provides that the period of registration for a corresponding order in Queensland must correspond with the period of registration provided for by the court in the jurisdiction in which the corresponding order was originally made.

Subsection (4) allows for a regulation to be made which will prescribe the way in which a corresponding order or varied corresponding order can be registered, recorded and accessed.

Clause 95 requires the registrar to refer the corresponding order to the court for adaptation or modification if the applicant requires it or if the registrar believes that it is necessary for its effective operation in Queensland.

Subsection (3) provides that the Commissioner is required to serve a copy of the application for registration of the corresponding order along with the other specified documents on the respondent.

Subsection (4) requires the Commissioner to personally serve the documents specified in subsection (3) on the respondent. If personal service is not practicable then service is by public notice. The requirements for personal service and service by way of public notice are contained in part 9.

Subsection (5) allows an application to be heard in the absence of a respondent only if the service requirements in subsections (3) and (4) have been complied with.

Subsection (6) allows the court the discretion to direct the Commissioner to provide a further appearance notice to the respondent regardless of whether the Commissioner has complied with subsections (3) and (4).

Subsection (7) allows the court to vary the corresponding order in any way for the purposes of ensuring that the order will be able to operate effectively in Queensland.

Subsection (8) provides the court with matters that the court must take into account before deciding whether to vary and how to vary a corresponding order in accordance with subsection (7).

Subsection (9) requires the registrar to register a corresponding order varied by the court.

Subsection (10) defines the term *appearance notice* and specifies the information that must be contained in such an appearance notice.

Clause 96 subsection (1) requires the registrar to provide the Commissioner with a certificate of registration which has attached to it a copy of the registered corresponding order. This must be done by the registrar within two business days of the registrar registering the corresponding order.

Subsection (2) prohibits the registrar from seeking any fee or reimbursement for expenses that might be incurred by the registrar under part 8.

Subsection (3) requires the Commissioner to serve the documents provided by the registrar in subsection (1) on the respondent as soon as reasonably practicable after receiving the documents.

Subsection (4) requires personal service unless it is not practicable or the respondent is an unincorporated association in which case service is by public notice. The requirements for personal service and service by way of public notice are contained in part 9.

Subsection (5) sets out the service requirements of the Commissioner in circumstances where the respondent is a child (as defined in schedule 4 of the *Juvenile Justice Act 1992*). The Commissioner is required to provide a copy of the order to the parent of the child respondent if the parent is able to be located. The subsection provides that if any of the terms contained in the corresponding order are likely to result in the child respondent needing to change their place of residence the Commissioner must provide a copy of the corresponding order to the chief executive of child safety in addition to providing it to the parent of the child.

Subsection (6) provides that if the Commissioner fails to properly comply with subsections (3) or (5), this will not affect the validity of the registration of the corresponding order.

Subsection (7) provides that a registered corresponding order will not be binding in any way upon the person against whom it is made until the person is served in accordance with the requirements of subsections (3) and (4).

Clause 97 subsection (1) provides that a registered corresponding order has the same effect as if the order had been made in Queensland and therefore it may be enforced accordingly.

Subsection (2) provides that subsection (3) applies if the corresponding order is varied under section 95 without notice to the respondent or in the respondent's absence.

Subsection (3) provides that where the corresponding order is varied in the absence of the respondent until a respondent is notified of the variation then the registered corresponding order will only be effective and enforceable against a respondent as if it had never been varied.

Clause 98 subsection (1) allows the Commissioner or the respondent to apply to the court for a variation of a registered corresponding order.

Subsection (2) requires a court to decide the application in accordance with the criteria set out in this Bill for variations of orders made in Queensland.

Subsection (3) provides that with respect to a registered corresponding control order, section 22 applies as if references to 'control order' were references to 'registered corresponding control orders' and reference to 'controlled person' were references to the respondent.

Clause 99 subsection (1) allows the Commissioner or the respondent to apply to the court for an order cancelling the registration of a registered corresponding order.

Subsection (2) requires the court to treat any such application as if it were an application for the revocation of an order of a similar type made in Queensland.

Subsection (3) provides that sections 13, 15 and 23 apply to applications made under this section as if references in those sections to local orders were a reference to a registered corresponding order.

Subsection (4) provides that if the court cancels the registration of the registered corresponding order, then that order immediately stops having effect in Queensland.

PART 9 GENERAL

Division 1 Recruitment offence

Clause 100 creates an offence of recruiting persons to become a member of a criminal organisation. The offence applies to a member of a criminal organisation or a controlled person, who recruits or attempts to recruit anyone to become a member of, or associate with a member of, a criminal organisation. The offence is a crime and carries a maximum penalty of five years imprisonment. The term *recruit* is defined in schedule 2.

Division 2 general provisions about proceedings for orders

Clause 101 provides that the *Uniform Civil Procedure Rules 1999* (UCPR) apply to all applications to the extent that those rules are consistent with the provisions of the Bill.

Clause 102 outlines the applicable process when the Commissioner is required or authorised under the Bill to effect service by public notice.

Clause 103 allows a police officer to serve on any person, any document which is required or permitted to be served by the Commissioner.

Clause 104 subsection (1) provides that the section applies to any provision which requires service of anything by an applicant to be by personal service, or if personal service is not practicable or the service is on an unincorporated association or group of persons, by way of public notice.

Subsection (2) requires an applicant who serves any thing by way of personal service, to file an affidavit of personal service with the court as soon practicable after service has been effected. The subsection further

requires that the affidavit of personal service be sworn by the person who physically performed the personal service of the thing.

Subsection (3) requires that when a thing is served by public notice, the applicant must file an affidavit no later than the end of the business day after which publication of the public notice occurred. The subsection provides that the affidavit must state the reasons why it was not practicable for the applicant to personally serve the thing and then set out the steps the applicant has taken to publish the notice.

Subsection (4) requires that the affidavit mentioned in subsection (3) must be accompanied by a copy of the published notice in the state circulated newspaper.

Subsection (5) requires that as soon as practicable after the affidavit in subsection (3) is filed, a copy of that affidavit marked with the court seal and a copy of the notice that was published in the state circulated newspaper, must be sent by registered post to the respondent at the respondent's last known address.

Subsection (6) provides that if the respondent is an unincorporated association or group of persons and the applicant is not aware of any address for the respondent then subsection (5) does not apply unless the applicant is aware of the address of a office holder of the association or group.

Clause 105 subsection (1) provides that as soon as practicable after the Commissioner files an application or is given notice of an application, the Commissioner must make certain notifications to the Attorney-General and the reporting officer. *Reporting officer* is defined in schedule 2.

Subsection (2) requires the Commissioner to give the registrar a notice in the approved form when filing an application and when filing an application under part 6.

Subsection (3) requires the Commissioner to notify the registrar with notice in the approved form whenever the Commissioner files a document to which section 77 applies.

Clause 106 allows that an applicant in any proceedings to apply to the court for an extension of the return date. The application for extension must be served on any other party to the proceeding in the same way that the act provides for the original application to be served. The court may grant the extension on any conditions that the court considers to be appropriate.

Clause 107 subsection (1) provides that affidavits that are to be relied on by any party to an application may only contain a matter if direct oral evidence of that matter would be admissible.

Subsection (2) provides that nothing in subsection (1) prevents an affidavit that is authorised under section 61 and admitted in evidence in an application under part 6, being admitted into evidence for the purposes of the court's consideration of the substantive application to obtain, vary or revoke a criminal organisation order.

Subsection (3) defines the term *substantive application* as it used with respect to this section.

Clause 108 subsection (1) provides for a right of appearance to any party to a proceeding for an application or for an appeal or a review of an order.

Subsection (2) provides that there is limitation on the provision in subsection (1) in respect of a party which is an organisation or a group of persons. In such a case the organisation or group may be represented in court by one i.e. the nominee. This subsection goes on to provide that apart from any legal representatives, no other person other than the one nominee can be present in the court at the hearing. The term *legal representative* is defined in schedule 2.

Subsection (3) provides that the COPIM must be present at hearings unless the court orders otherwise (see 89(4)).

Subsection (4) provides that hearings for applications are closed hearings and subsection (5) provides an exhaustive list of persons who may remain in the court.

Subsection (6) allows the Commissioner or other party to make submissions and with the leave of the court, file further affidavits and call, examine and cross-examine witnesses to the same extent as permitted in any other proceedings conducted in the Supreme Court in Queensland.

Subsection (7) provides that this section does not apply in any way to hearings that take place under sections 70 or 78.

Clause 109 subsection (1) provides that a person can not be provided with access to a record of a hearing or to a transcript of a record, other than as provided for under the Bill.

Subsection (2) requires the reporting officer, to give to the Commissioner upon the Commissioner's request, an electronic copy of any transcript for

any hearing of an application made under this Bill that is held in the official records of the State Reporting Bureau.

Subsection (3) allows any person to apply to the Commissioner for a transcript other than a transcript for a special closed hearing under section 70 or 78.

Subsection (4) provides that any application made to the Commissioner under subsection (3) must be accompanied by a fee prescribed under a regulation (if any).

Subsection (5) requires the Commissioner to grant an application made under this section as soon as practicable.

Subsection (6) provides that nothing in this section limits a court or judge being provided with records to transcripts of hearings. Further, it provides that nothing in this section prevents the COPIM or reviewer being provided with material.

Clause 110 provides that questions of fact in proceedings under this Bill other than proceedings for offences are to be decided on the balance of probabilities.

Clause 111 provides that in proceedings for applications each party must bear its own costs, however, the court may award costs in the case of frivolous or vexatious applications.

Clause 112 subsection (1) provides that this section applies if a criminal organisation order is made, varied or revoked on the Commissioner's application and if the respondent to that application is a child (as defined in schedule 4 of the *Juvenile Justice Act 1992*).

Subsection (2) requires the Commissioner to provide a copy of that order as soon as reasonably practicable to the chief executive of child safety and to the parent of the child if the parent of the child can be found by the Commissioner.

Subsection (3) provides that an order or variation of an order will have no effect against a child until a police officer personally serves a copy of the order or variation on the child.

Subsection (4) provides that subsection (3) applies despite any provision of this Act that permits service by public notice.

Clause 113 subsection (1) provides that unless it is expressly stated otherwise, a criminal organisation order can be renewed at any time either before or after an order expires.

Subsection (2) provides that the provisions applying to an application for the making of a order apply to applications to renew.

Subsection (3) provides that there is no limit on the number of times that a criminal organisation order can be renewed.

Division 3 Proceedings for offence

Clause 114 provides that any offence against this Act that is not otherwise defined as a crime or a misdemeanour is a summary offence.

Clause 115 provides that indictable offences against the Act may be dealt with summarily at the prosecution's election. However, the matter must proceed upon indictment if the magistrate is satisfied that the defendant may not be adequately punished on summary conviction.

Clause 116 provides that in relation to indictable offences, only a magistrate may hear and determine a summary trial or committal hearing. The section also provides the level of penalty that may be imposed on a summary conviction of an indictable offence.

Clause 117 provides that a proceeding for a summary offence against this Act must start within one year after the offence is committed or within one year after the commission of the offence comes to the complainant's knowledge, but within two years after the commission of the offence.

Division 4 General police provisions

Clause 118 empowers police to enter and search premises and vehicles without a warrant, in order to effect service where personal service is required.

Clause 119 subsection (1) allows a police officer to require a person to provide their personal details in certain circumstances which are outlined in the subsection. The term *personal details* are defined in schedule 2.

Subsection (2) allows a police office to require persons found in the circumstances set out in subsection (1) to provide proof that the personal details provided are correct where it would be reasonable to expect that a

person would be in possession of such evidence or where they would otherwise be able to give the evidence.

Subsection (3) provides that when a police officer requires information from people under this section, the police officer must give the person a warning about the offence provided in section 120.

Subsection (5) defines the term *offence warning*.

Clause 120 subsection (1) creates an offence of failing to comply with the requirement to provide personal details to a police officer under section 119 without a reasonable excuse. A maximum penalty of 40 penalty units applies.

Subsection (2) provides that without limiting other reasonable excuses a defendant might have with respect to subsection (1) if the police officer requires the personal details on the basis that the defendant was suspected of committing an offence and it is subsequently proved that the defendant did not commit that offence, that in itself will amount to a 'reasonable excuse' for the purposes of subsection (1).

Clause 121 Subsection (1) sets out the circumstances in which this section applies.

Subsection (2) provides that if the circumstances in subsection (1) apply then a police officer does not need to disclose the officer's name or address to anyone in the course of investigating or performing an officer's functions in relation to those circumstances.

Subsection (3) provides that subsection (2) does not affect any of the officer's duties as set under chapter 14, part 6 of the *Police Powers and Responsibilities Act 2000*.

Clause 122 Subsection (1) requires the Commissioner to keep a register of information about declarations and orders.

Subsection (2) sets out the information that must be contained in the register.

Subsection (3) sets out when information about a control order or registered corresponding order can be published on the register.

Subsection (4) allows the Commissioner to provide any person with information contained on the register.

Subsection (5) allows the Commissioner to publish the information contained in the register in a state circulated newspaper.

Subsection (6) prohibits the Commissioner from disclosing confidential information about a child defined under s.284 of the *Juvenile Justice Act 1992* other than for the purposes of the *Police Service Administration Act 1990*, part 10.

Clause 123 prohibits the Commissioner from delegating the power to make applications to anyone other than a deputy commissioner or an assistant commissioner. However, the Commissioner may delegate the power to apply for public safety orders without notice to a commissioned officer. The section further prohibits the Commissioner from delegating any other powers other than to a commissioned officer.

Division 5 Appeals

Clause 124 applies to proceedings for an appeal in relation to an order (including the extension or variation of an order) other than a fortification removal order. The section provides the appeal does not stay the order. However, the court or a judge of the court may grant a stay if satisfied that it is appropriate having regard to the likely impact of the stay on the ability to disrupt the criminal nature of the criminal organisation and its membership and any other relevant matter.

Clause 125 provides that only one appeal lies to the Court of Appeal from a declaration and only one appeal lies from any order varying, refusing to vary or revoking a declaration. This clarifies that the respondent organisation is the only entity with standing to appeal.

Clause 126 requires the Court of Appeal to hear expeditiously, appeals from a decision on an application for a criminal organisation order or for any variation, extension or revocation of such an order.

Division 6 Reviews of Act

Clause 127 requires the responsible Minister to ensure that reviews of the Act are carried out in accordance with this division.

Clause 128 requires the reviews to be undertaken by a retired Supreme Court judge who is appointed by the Minister.

Clause 129 requires an annual review to determine whether the powers under the Act have been exercised appropriately.

Clause 130 requires the Act to be reviewed as soon as reasonably practicable five years after commencement to decide whether the Act is operating effectively and meeting its objectives.

Clause 131 subsection (1) requires that a reviewer be given access to any criminal intelligence that accompanied any application that falls under the scope of the review.

Subsection (2) requires a reviewer who provides criminal intelligence to a person in the exercise of the reviewer's functions to warn that person about the confidential nature of the information and the unlawful disclosure offence contained in section 82.

Subsection (3) provides that a contravention of subsection (2) by a reviewer is not an offence.

Clause 132 subsection (1) requires the reviewer to prepare and provide a report to the Minister after completing any review required under this division.

Subsection (2) requires that a report provided under subsection (1) not contain any criminal intelligence.

Subsection (3) allows a report required under subsection (1) to include recommendations.

Subsection (4) requires the responsible Minister to table a copy of any report received under subsection (1) in the Legislative Assembly.

Division 6 Miscellaneous provisions

Clause 133 subsection (1) prohibits a person who has been employed as a police officer from acting as a legal representative for certain persons and organisations.

Subsection (2) provides that a failure by a lawyer to comply with subsection (1) is capable of constituting unsatisfactory professional conduct or professional misconduct under the *Legal Profession Act 2007*.

Subsection (3) provides that a failure of a legal representative, other than a lawyer, to comply with subsection (1) is deemed to be a suitability matter for the purposes of section 9 of the *Legal Profession Act 2007*.

Clause 134 subsection (1) prohibits a person who has been employed as a police officer from acting as a security provider under the *Security Providers Act 1993* for certain persons and organisations.

Subsection (2) provides that a failure by a person to comply with subsection (1) is capable of constituting evidence that a person is not an appropriate person to hold a license under the *Security Providers Act 1993*.

Clause 135 subsection (1) provides immunity from civil liability to officials who act honestly and without negligence under this Act.

Subsection (2) provides that if subsection (1) prevents civil liability attaching to an official that civil liability will then attach to the State.

Subsection (3) defines the word ‘official’ as it is used in this section.

Clause 136 provides a number of evidentiary provisions. Subsection (3) provides that unless a party to a proceeding requires proof of it, the power of a police officer to do anything under the Act is presumed.

Clause 137 provides that the Act will expire seven years after its commencement.

Clause 138 allows the chief executive and the registrar to approve forms for their use under the Act.

Clause 139 allows the Governor in Council to make regulations under the Act.

PART 10 Transitional provisions

Clause 140 applies when under the Act, a court may consider the criminal history, activity, behaviour or anything else relating to a person. The court may consider such information or activity whether or not it pre-dates the commencement of the Act.

Clause 141 provides that sections 133 and 134 only apply to persons who stop being employed as police officers after the commencement of this Act.

PART 12 Amendment of Acts

Division 1 Amendment of Bail Act 1980

Clause 142 provides that this division amends the *Bail Act 1980*

Clause 143 amends section 16 (3) to reverse the presumption in favour of bail in relation to offences under section 24 (Contravening of control order) and section 38 (Contravention of public safety order). The presumption in favour of bail is also reversed with respect to an offence against section 359 (Threats) of the Criminal Code when the circumstance of aggravation under section 359(2) is alleged.

Division 2 Amendment of Criminal Code

Clause 144 provides that this division amends the *Criminal Code*.

Clause 145 amends section 1 of the *Criminal Code* to provide new definitions for the terms *criminal organisation*, *law enforcement agency* and *law enforcement officer*.

Clause 146 inserts a new heading into part 3, chapter 12 of the *Criminal Code* entitled 'Unlawfully obtaining or disclosing information'.

Clause 147 inserts a new section 86 into the *Criminal Code* entitled 'Obtaining of or disclosure of secret information about the identity of informant' which creates two new offences.

The first offence applies to a person who, without any lawful justification or excuse, obtains or attempts to obtain secret information in the possession of a law enforcement agency or law enforcement officer about the identity of a 'criminal organisation informant'. The maximum penalty for this offence is 10 years imprisonment.

The second offence applies to a person who publishes or communicates, without any lawful justification or excuse, secret information in the possession of, or obtained from a law enforcement agency or law enforcement officer about the identity of a 'criminal organisation informant'. The maximum penalty for this offence is 10 years imprisonment.

The section defines the terms: ‘*criminal organisation informant*’, ‘*information about the identity of a criminal organisation informant*’ and ‘*secret information in the possession of a law enforcement agency or law enforcement officer*’.

Clause 148 amends section 119B of the *Criminal Code* to extend to the offence to acts of intimidation and to insert a circumstance of aggravation rendering an offender liable to a maximum penalty of 10 years imprisonment if the offence is committed in relation to a proceeding before a court under this Act. The terms ‘*injury or detriment*’ and ‘*intimidation*’ are defined.

Clause 149 amends section 207A of the *Criminal Code* to remove the definitions for the terms ‘*law enforcement agency*’ and ‘*law enforcement officer*’. The definitions are relocated to section 1 of the *Criminal Code*.

Clause 150 amends section 359 (Threats) of the *Criminal Code* to insert a circumstance of aggravation, rendering the offender liable to 10 years imprisonment, where the threat is made to a law enforcement officer or a person assisting a law enforcement officer when or because the law enforcement officer is investigating activities of a criminal organisation.

Clause 151 amends section 359E (Punishment of unlawful stalking) to insert a circumstance of aggravation, rendering the offender liable to 10 years imprisonment, if any one of the acts that constitute unlawful stalking are done when or because the officer is investigating the activities of a criminal organisation.

Division 3 Amendment of Evidence Act 1977

Clause 152 provides that this division amends the *Evidence Act 1977*.

Clause 153 subsection (1) amends section 21A(1) to insert four new definitions.

Subsection (2) extends the definition of ‘*special witness*’ used in section 21A to include a person who is to give evidence about the commission of a serious criminal offence committed by a criminal organisation or a member of a criminal organisation.

Subsection (3) amends section 21A(2)(a) so that it widens the type of proceedings in which a person can be excluded from the court room or

obscured from the view of the special witness by allowing other types of proceedings to be prescribed.

Subsection (4) amends section 21A(2)(a) to widen its application to apply to any person who is a party to the proceeding in question. This gives further effect to the amendment in subsection (3) in that it anticipates proceedings that are not necessarily criminal proceedings.

Division 4 Amendment of Judicial Review Act 1991

Clause 154 provides that this division amends the *Judicial Review Act 1991*.

Clause 155 excludes this Act from judicial review under the *Judicial Review Act 1991*.

Division 5 Amendment of Legal Profession Act 2007

Clause 156 provides that the division amends the *Legal Profession Act 2007*.

Clause 157 amends section 9(1) to provide that another Act may prescribe a matter to be a ‘suitability matter’ for the purposes of the *Legal Profession Act 2007*, for example, section 133(3) of this Act.

Division 6 Amendment of Parliament of Queensland Act 2001

Clause 158 provides that the division amends the *Parliament of Queensland Act 2001*.

Clause 159 amends section 85 which provides for the areas of responsibility of the Law Justice and Safety Committee to insert a note that directs any reader of the provision to the functions to the Law Justice and Safety Committee as set out in section 91 of this Act.

Division 7 Amendment of Police Powers and Responsibilities Act 2000

Clause 160 provides that this division amends the *Police Powers and Responsibilities Act 2000*.

Clause 161 amends chapter 7, part 1 to insert new section 150AA which provides definitions for two new terms to be used throughout chapter 7, part 1. The two new defined terms are ‘*criminal organisation control order property*’ and ‘*warrant evidence or property*’.

Clause 162 amends section 150(1) so that a police officer may apply for a warrant to enter and search a place to find criminal organisation control order property.

Clause 163 provides an amendment consequential to the amendment in section 162.

Clause 164 provides an amendment consequential to the insertion of the new terms as provided in section 161.

Clause 165 provides an amendment consequential to the inclusion of criminal organisation control order property in section 150 (1) of the PPRA.

Clause 166 provides an amendment consequential to the insertion of the new terms as provided in section 161.

SCHEDULE 1 Serious criminal offences under Criminal Code

This schedule provides a list of offence to be included in the definition of *Serious Criminal Offence* as provided in section 7(1)(c) of this Act.

SCHEDULE 2 Dictionary