



Western Australia

Criminal Organisations Control Act 2012

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Criminal Organisations Control Act 2012

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Defined terms

Criminal Organisations Control Act 2012

An Act to —

- **provide for the making of declarations and control orders for the purpose of disrupting and restricting the activities of organisations involved in serious criminal activity, their members and associates, and the imposition of criminal sanctions on persons who recruit members for such organisations or finance or support them in other ways; and**
- **amend *The Criminal Code* to create certain offences relating to participating in the activities of a criminal organisation, and instructing the commission of offences for the benefit of, at the direction of or in association with a criminal organisation; and**
- **amend the *Criminal Property Confiscation Act 2000* to enable the confiscation of crime-derived or unlawfully acquired property if a person who is a controlled person or a member of a declared criminal organisation is involved in the commission of an offence; and**
- **amend the *Evidence Act 1906* to provide special protections to victims and prosecution witnesses in proceedings for certain offences involving criminal organisations; and**
- **amend the *Misuse of Drugs Act 1981* to enable the making of a drug trafficker declaration if, at the time of the commission of certain drug offences, the offender was a member of a declared criminal organisation; and**
- **amend the *Sentencing Act 1995* to require the imposition of mandatory minimum sentences on offenders who commit certain offences at the direction of, in association with or for the benefit of a declared criminal organisation, and make such offenders ineligible for parole; and**
- **make related amendments to various Acts,**
- **and for related purposes.**

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the Criminal Organisations Control Act 2012.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the provisions of the Act other than sections 1 and 2 and Part 8 — on a day fixed by proclamation, and different days may be fixed for different provisions;
- (c) Part 8 — when section 7 comes into operation.

3. Terms used

- (1) In this Act, unless the contrary intention appears —

associate, with another person —

- (a) means —
 - (i) to be in company with the other person; or
 - (ii) to communicate with the other person by any means (including by post, facsimile, telephone, email or any other form of electronic communication);

and

- (b) includes associating with the other person, in any of the ways mentioned in paragraph (a), within or outside Western Australia, including outside Australia;

authorisation includes a licence, registration, approval, permit, exemption, certificate or other form of authority (whether granted or obtained under a law of this State or of another State or Territory or of the Commonwealth);

CC Commissioner means the person holding the office of Commissioner established under the *Corruption, Crime and*

Misconduct Act 2003 or the person acting in that office for the reasons mentioned in section 14(1)(a) or (b) of that Act;

close family member has the meaning given in subsection (2);

Commissioner of Police means the person holding or acting in the office of Commissioner of Police under the *Police Act 1892*;

control order means —

- (a) an order made under section 57; or
- (b) a registered interstate control order;

controlled person means a person in relation to whom an interim control order or a control order is in force;

conviction —

- (a) means a finding of guilt by a court, or the acceptance of a plea of guilty by a court, whether or not a conviction is recorded; and
- (b) regardless of the *Spent Convictions Act 1988* sections 13 and 25 to 27, includes a spent conviction as defined in section 3 of that Act;

corresponding law has the meaning given in section 118;

court means the Supreme Court;

criminal intelligence information has the meaning given in section 109;

declaration means —

- (a) a declaration under Part 2 that an organisation is a criminal organisation; or
- (b) a registered interstate declaration;

declared criminal organisation means an organisation in respect of which a declaration is in force;

designated authority means a judge or retired judge currently designated under section 26;

firearm —

- (a) has the meaning given in the *Firearms Act 1973* section 4; and

- (b) includes ammunition as defined in that section;

firearms condition means a condition of an interim control order or a control order that prohibits the controlled person to whom the order relates from possessing a firearm;

firearms licence means —

- (a) a licence issued, permit granted or approval given, under the *Firearms Act 1973*, entitling a person to be in possession of a firearm; or
- (b) a Firearms Act Extract of Licence issued under the *Firearms Act 1973*;

funds means —

- (a) property and assets of every kind, whether tangible or intangible, movable or immovable, however acquired; or
- (b) legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, property or assets to which paragraph (a) applies, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, debt instruments, drafts and letters of credit;

interim control order means an order made under section 38;

interstate control order has the meaning given in section 118;

interstate declaration has the meaning given in section 118;

judge means a judge of the Supreme Court;

juvenile has the meaning given in section 73(1);

member, in relation to an organisation, includes —

- (a) in the case of an organisation that is a body corporate, a director or an officer of the body corporate; and
- (b) in any case —
- (i) an associate member or prospective member (however described) of the organisation; and
- (ii) a person who identifies himself or herself, in some way, as belonging to the organisation;

occupation means an occupation, trade, profession or calling of any kind;

officer of the Corruption and Crime Commission means an officer of the Commission as defined in the *Corruption, Crime and Misconduct Act 2003* section 3(1);

organisation means any incorporated body or unincorporated group (however structured), whether the body or group —

- (a) is based in this State or elsewhere; or
- (b) consists of persons ordinarily resident in this State or elsewhere; or
- (c) is part of, or affiliated with, another organisation, or is separate from, or unaffiliated to, another organisation;

Parliamentary Commissioner means the Parliamentary Commissioner for Administrative Investigations appointed under the *Parliamentary Commissioner Act 1971*;

personal details, in relation to a person, means —

- (a) the person's full name; and
- (b) the person's date of birth; and
- (c) the address where the person is residing; and
- (d) the address where the person usually resides, if that is different from the address referred to in paragraph (c); and
- (e) the person's business address;

prescribed activity has the meaning given in section 80(1);

protected submission means a submission made in accordance with section 11;

recruit includes counsel, procure, solicit, incite and induce;

register means the Register of Criminal Organisations and Controlled Persons kept under section 113;

registered interstate control order means an interstate control order that is registered under Part 7 Division 3;

registered interstate declaration means an interstate declaration that is registered under Part 7 Division 2;

registrar means a person holding or acting in an office designated under the *Supreme Court Act 1935* as the Principal Registrar or a registrar or a deputy registrar;

regulatory authority means a person or body that, under a written law, has a function of granting authorisations to carry on any occupation or activity;

responsible person, in relation to a controlled person who uses or has access to a firearm in the course of that person's usual occupation, means —

- (a) the person who holds a firearms licence (or the equivalent under a law of another State or a Territory) for that firearm; or
- (b) in any other case, the person by whom the controlled person is employed or engaged;

senior police officer means a police officer who is, or is acting as, an inspector or an officer of a rank more senior than an inspector;

serious criminal activity means any of the following —

- (a) obtaining material benefits from conduct that constitutes a serious indictable offence;
- (b) obtaining material benefits from conduct engaged in outside this State (including outside Australia) that, if it occurred in this State, would constitute a serious indictable offence;
- (c) committing a serious violence offence;
- (d) engaging in conduct outside this State (including outside Australia) that, if it occurred in this State, would constitute a serious violence offence;

serious indictable offence means an indictable offence for which the penalty specified by a written law is or includes imprisonment for 5 years or more or life;

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serious violence offence means an offence for which the penalty specified by a written law is or includes imprisonment for 10 years or more or life, if the conduct constituting the offence involves any of the following —

- (a) loss of a person's life or serious risk of loss of a person's life;
- (b) serious injury to a person or serious risk of serious injury to a person;
- (c) serious damage to property in circumstances endangering the safety of any person;

weapon has the meaning given in the *Weapons Act 1999* section 3;

working day means a day other than a Saturday, a Sunday or a public holiday.

- (2) For the purposes of this Act, a person (**person A**) is a **close family member** of another person (**person B**) if —
 - (a) person A is a spouse or former spouse of person B; or
 - (b) person A is, or has been, in a de facto relationship with person B; or
 - (c) person A is a parent or grandparent of person B (whether by blood or marriage); or
 - (d) person A is a brother or sister of person B (whether by blood or marriage); or
 - (e) person A is a guardian or carer of person B.

[Section 3 amended: No. 35 of 2014 s. 39.]

4. Purposes of this Act

- (1) The purposes of this Act are —
 - (a) to disrupt and restrict the activities of organisations involved in serious criminal activity, their members and associates so as to reduce their capacity to carry out activities that may facilitate serious criminal activity; and

(b) to protect members of the public from violence associated with those organisations.

(2) Without derogating from subsection (1), it is not the intention of Parliament that the powers in this Act be used in a manner that would diminish the freedom of persons in this State to participate in advocacy, protest, dissent or industrial action.

5. Act binds Crown

(1) This Act binds the State and, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

(2) Nothing in this Act makes the Crown in any capacity liable to prosecution for an offence.

Part 2 — Declared criminal organisations

Division 1 — Applications for declaration

6. Purpose of declaration

- (1) The purpose of a declaration that an organisation is a criminal organisation is to enable control orders to be made to disrupt and restrict the activities of members and former members of the organisation and certain other persons.
- (2) A declaration also makes it an offence for anyone to recruit persons to become members of the organisation.

7. Application for declaration

- (1) The Commissioner of Police or the CC Commissioner may apply for a declaration that an organisation (the *respondent*) is a criminal organisation for the purposes of this Act.
- (2) The application must —
 - (a) be in writing; and
 - (b) identify the particular organisation in respect of which the declaration is sought; and
 - (c) describe the nature of the organisation and any of its distinguishing characteristics; and
 - (d) set out the grounds on which the declaration is sought; and
 - (e) set out the information supporting those grounds; and
 - (f) set out the details of any previous application for a declaration in respect of the organisation and the outcome of that application.
- (3) The application must be accompanied by one or more affidavits verifying the contents of the application, as follows —
 - (a) if the application is made by the Commissioner of Police, an affidavit from that Commissioner or affidavits from one or more other senior police officers;

- (b) if the application is made by the CC Commissioner, an affidavit from that Commissioner or affidavits from one or more other officers of the Corruption and Crime Commission who are authorised officers under the *Corruption, Crime and Misconduct Act 2003* section 184.
- (4) For the purpose of subsection (2)(b), the application may identify the organisation by —
 - (a) specifying the name of the organisation; or
 - (b) specifying the name by which the organisation is commonly known; or
 - (c) providing other particulars about the organisation.
- (5) The application must be lodged with a registrar nominated for the purpose by or in accordance with the regulations, and that registrar must, without delay, refer the application to a designated authority.
- (6) On receiving an application that complies with this section, a designated authority must determine the date, time and place of the hearing of the application, and notify the applicant accordingly.

[Section 7 amended: No. 35 of 2014 s. 39.]

8. Publication of notice of application

- (1) If an application is made under section 7 in relation to an organisation, the applicant must publish a notice in the *Gazette* and in at least one newspaper circulating throughout the State —
 - (a) specifying that an application has been made for a declaration under this Part in respect of the organisation; and
 - (b) setting out a brief explanation of the effect of Part 3 Division 5 in relation to a member or former member of the organisation if the declaration is made and an interim

- control order or a control order is made in relation to the member or former member; and
- (c) stating that, if the declaration is made, it will be an offence for anyone to recruit another person to become a member of the organisation; and
 - (d) inviting members of the organisation and other persons who may be directly affected (whether or not adversely) by the outcome of the application to make submissions to the designated authority at a hearing; and
 - (e) specifying the date, time and place of the hearing, as determined by the designated authority.
- (2) The notice must be published as soon as practicable but not later than 5 working days after the application is lodged.

Division 2 — Determination of applications

9. Hearing of application

- (1) A designated authority must hold a hearing of an application for a declaration.
- (2) The rules of evidence do not apply to a hearing.
- (3) The persons who may attend and make submissions at the hearing of an application may do so personally or by counsel or representative.
- (4) For the purposes of determining an application for a declaration —
 - (a) a designated authority has the powers of a Royal Commission and the Chairman of a Royal Commission under the *Royal Commissions Act 1968*; and
 - (b) all the provisions of that Act (other than section 18) have effect as if they were enacted in this Act with any necessary changes and in terms made applicable to a designated authority and the determination of an application for a declaration as if an application were a

matter into which a Royal Commission was appointed to inquire under that Act.

- (5) Part 5 applies to proceedings under this Part.

10. Persons who may attend and make submissions

- (1) The applicant for a declaration may be present and make submissions in relation to the application at the hearing of the application.
- (2) The respondent may be present and make submissions in relation to the application at the hearing, but subject to subsection (5).
- (3) Any member of the respondent, and any other person who may be directly affected (whether or not adversely) by the outcome of the application, may, with the leave of the designated authority, be present and make submissions in relation to the application at the hearing, but subject to subsection (5).
- (4) Without limiting the *Royal Commissions Act 1968* section 22, the designated authority may, so far as the designated authority thinks proper, examine or cross-examine any witness on any matter which the designated authority thinks relevant, or allow a person appearing at the hearing to do so.
- (5) Despite subsections (2), (3) and (4) —
- (a) the applicant may object to any person referred to in any of those subsections being present during part of the hearing in which criminal intelligence information is disclosed; and
 - (b) the designated authority must deal with the objection under section 110.
- (6) A person referred to in subsection (3) who does not wish to be present at the hearing may make a protected submission to the designated authority in private in accordance with section 11, and the designated authority must deal with that submission under that section.

11. Protected submissions

- (1) For the purposes of this Part, a *protected submission* is a submission made by a person who has reasonable grounds to believe that he or she, or a close family member of that person, may be subjected to action comprising or involving injury, damage, loss, intimidation or harassment in reprisal for making the submission.
- (2) In proceedings under this Part, a designated authority must take steps to maintain the confidentiality of a protected submission, including steps to receive evidence and hear the submission in private.

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

A designated authority can make a declaration under this Part whether or not any of the persons who are entitled to be present and make submissions at the hearing take advantage of that opportunity.

13. Designated authority may make declaration

- (1) On an application under this Part in relation to a respondent, a designated authority may make a declaration that the respondent is a criminal organisation if the designated authority is satisfied —
 - (a) that the respondent is an organisation; and
 - (b) that members of the organisation associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity; and
 - (c) that the organisation represents a risk to public safety and order in this State.
- (2) In considering whether or not to make a declaration, the designated authority may have regard to any of the following —
 - (a) any information suggesting that a link exists between the organisation and serious criminal activity;

- (b) any criminal convictions of —
 - (i) current or former members of the organisation;
 - (ii) persons who associate, or have associated, with members of the organisation;
 - (c) any information suggesting that current or former members of the organisation, or persons who associate, or have associated, with members of the organisation, are, or have been, involved in serious criminal activity (whether directly or indirectly and whether or not that involvement has resulted in any criminal convictions);
 - (d) any information suggesting that members of an interstate or overseas chapter or branch of the organisation associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity;
 - (e) any submissions made in relation to the application in accordance with section 10;
 - (f) anything else the designated authority considers relevant.
- (3) For the purposes of subsection (1)(b), the designated authority may be satisfied that members of the organisation associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity —
- (a) whether or not all the members associate for that purpose or only some of the members, but if the designated authority is satisfied that only some of the members associate for that purpose, the designated authority must be satisfied that those members constitute a significant group within the organisation, either in terms of their numbers or in terms of their capacity to influence the organisation or its members;
 - (b) whether or not members associate for the purpose of organising, planning, facilitating, supporting or engaging in the same serious criminal activities or different ones;

- (c) whether or not the members also associate for other purposes.

14. Reasons for decision

- (1) A designated authority must give the authority's reasons for deciding —
 - (a) to make a declaration; or
 - (b) not to make a declaration.
- (2) Section 110 applies to the giving of reasons for the decision.
- (3) When a designated authority has made a decision on an application under this Part for a declaration —
 - (a) the designated authority must, as soon as practicable, provide a copy of the authority's reasons for the decision to —
 - (i) the Commissioner of Police; and
 - (ii) the CC Commissioner;and
 - (b) the designated authority must, as soon as practicable, provide a copy of the authority's reasons for the decision to the respondent or the respondent's representative, but only if the respondent or the respondent's representative, before the hearing of the application for the declaration ends —
 - (i) requests to be provided with a copy; and
 - (ii) provides an address to which the copy may be sent;and
 - (c) the Commissioner of Police must make those reasons for the authority's decision publicly available on the register.

15. Notice of declaration

- (1) As soon as practicable after a declaration is made, the applicant for the declaration must publish notice of the declaration in the *Gazette* and in at least one newspaper circulating throughout the State.
- (2) The notice must —
 - (a) state that the organisation specified in the notice is a declared criminal organisation under this Act; and
 - (b) state that the designated authority's reasons for making the declaration are publicly available on the register; and
 - (c) set out a brief explanation of the effect of Part 3 Division 5 in relation to a member or former member of the organisation if an interim control order or a control order is made in relation to the member or former member of the organisation; and
 - (d) state that it is an offence for anyone to recruit another person to become a member of the organisation; and
 - (e) state when the declaration takes effect, and when it will cease to have effect unless sooner revoked or renewed.

16. Duration of declaration

- (1) A declaration takes effect as follows —
 - (a) if the declaration does not state when it takes effect, on the day after the day on which notice of it is published in the *Gazette*;
 - (b) on a later day specified by the designated authority in the declaration.
- (2) The declaration remains in force for a period of 5 years beginning on the day on which it takes effect, unless it is sooner revoked or renewed.

17. Declaration not affected by change in name or reorganisation

- (1) A change in the name or membership of a declared criminal organisation does not affect the declaration relating to that organisation.
- (2) The declared criminal organisation is taken to include any organisation into which the members substantially re-form themselves with or without dissolving the organisation named in the declaration.

Division 3 — Renewal, revocation and expiry of declarations

18. Renewal of declaration

- (1) An application for the renewal of a declaration may be made by —
 - (a) the Commissioner of Police, if he or she was the applicant for the declaration; or
 - (b) the CC Commissioner, if he or she was the applicant for the declaration.
- (2) An application for the renewal of a declaration can be made either before or after the declaration expires.
- (3) Divisions 1 and 2 apply to an application for the renewal of a declaration in the same way that they apply to an application for a new declaration.
- (4) If an application for the renewal of a declaration is made but not determined before the day on which the declaration would otherwise expire, the declaration continues in force until one of the following occurs —
 - (a) the application for the renewal of the declaration is withdrawn;
 - (b) the application for the renewal of the declaration is determined.

- (5) The renewal of a declaration takes effect as follows —
- (a) if the declaration is renewed before it expires, from the date on which the declaration would otherwise have expired (as determined before the application of subsection (4));
 - (b) if the declaration is renewed after it expires, on the day after the day on which notice of the renewal is published in the *Gazette* in accordance with section 15.
- (6) There are no limits on the number of times a declaration can be renewed.

19. Application for revocation of declaration

- (1) The following persons may, at any time, apply for the revocation of a declaration in force in respect of an organisation —
- (a) the Commissioner of Police, but only in relation to a declaration for which he or she was the applicant;
 - (b) the CC Commissioner, but only in relation to a declaration for which he or she was the applicant;
 - (c) the declared criminal organisation;
 - (d) any member of the declared criminal organisation;
 - (e) if the revocation of the declaration is sought on the ground set out in section 21(1)(b), any person who is a former member of the declared criminal organisation.
- (2) An application must —
- (a) be in writing; and
 - (b) set out the grounds on which revocation is sought, and the information supporting those grounds; and
 - (c) be supported by an affidavit from the applicant verifying the contents of the application; and

- (d) be lodged with the nominated registrar referred to in section 7(5), who must, without delay, refer the application to a designated authority.
- (3) Not later than 7 working days after the application is lodged, the applicant must —
 - (a) if the applicant is not the Commissioner of Police or the CC Commissioner, give both of those persons —
 - (i) notification of the making of the application; and
 - (ii) a copy of the application and the supporting affidavit;
 - and
 - (b) publish notice of the making of the application in the *Gazette* and in at least one newspaper circulating throughout the State.
- (4) This section is subject to section 20.

20. Consideration of application for revocation may be dismissed

- (1) This section applies if —
 - (a) an application is made under section 19 for the revocation of a declaration; and
 - (b) the applicant is not the Commissioner of Police or the CC Commissioner.
- (2) If this section applies, a designated authority may refuse to consider the application if —
 - (a) at least one application for the revocation of the declaration has previously been made under section 19; and
 - (b) the designated authority considers that the latest application does not set out any new grounds for the revocation.

21. Determination of application for revocation

- (1) A designated authority may revoke a declaration on an application made under section 19 only if the designated authority is satisfied that —
- (a) there has been a substantial change in the nature or membership of the declared criminal organisation to the extent that —
 - (i) members of the organisation no longer associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity; and
 - (ii) the organisation no longer represents a risk to public safety and order in this State;
 - or
 - (b) the organisation in respect of which the declaration was made no longer exists, and section 17(2) does not apply with respect to members of that organisation.
- (2) Sections 9 to 12 apply to an application under section 19 for the revocation of a declaration with all necessary modifications, and with the following specific modifications —
- (a) the persons who may be present and make submissions in relation to the application at the hearing are —
 - (i) the Commissioner of Police; and
 - (ii) the CC Commissioner; and
 - (iii) the applicant, if not the Commissioner of Police or the CC Commissioner; and
 - (iv) with the leave of the designated authority, any member (or if the application is made on the ground set out in subsection (1)(b), any former member) of the declared criminal organisation and any other person who may be directly affected (whether or not adversely) by the outcome of the application;

- (b) an objection under section 10(5) may be made only by the Commissioner of Police or the CC Commissioner, and may be made in relation to any person referred to in paragraph (a)(iii) or (iv) of this subsection;
- (c) any person referred to in paragraph (a)(iv) may make a protected submission in accordance with section 11.

22. Reasons for decision

- (1) A designated authority must give the authority's reasons for deciding —
 - (a) to refuse to consider an application made under section 19 for the revocation of a declaration; or
 - (b) to revoke a declaration on an application made under section 19; or
 - (c) not to revoke a declaration on an application made under section 19.
- (2) Section 110 applies to the giving of reasons for the decision.
- (3) When a designated authority has made a decision on an application made under section 19 for the revocation of a declaration —
 - (a) the designated authority must, as soon as practicable, provide a copy of the authority's reasons for the decision to —
 - (i) the Commissioner of Police; and
 - (ii) the CC Commissioner;and
 - (b) the Commissioner of Police must make those reasons for the authority's decision publicly available on the register.

23. When revocation of declaration takes effect

If a designated authority revokes a declaration under section 21, the revocation takes effect immediately.

24. Notice of revocation or expiry of declaration

As soon as practicable after a declaration is revoked or expires, the Commissioner of Police or the CC Commissioner (whichever was the applicant for the declaration) must —

- (a) publish notice of the revocation or expiry in the *Gazette* and in at least one newspaper circulating throughout the State; and
- (b) take all reasonably practicable steps to give notice of the revocation or expiry to every person who made a submission (including a protected submission) at the hearing at which the declaration was made; and
- (c) if he or she is aware that the declaration has effect under the law of another State or a Territory, give notice of the revocation or expiry to the commissioner (by whatever name called) of the police force or police service of that State or Territory.

25. Effect of expiry or revocation of declaration

- (1) If the declaration relating to the declared criminal organisation identified in an interim control order or control order in accordance with section 60(1)(c) expires or is revoked, the order ceases to have effect on that expiry or revocation.
- (2) The expiry or revocation of a declaration does not affect —
 - (a) any person's liability for anything done or omitted before that expiry or revocation; or
 - (b) any investigation or proceeding in respect of that liability.

Division 4 — Designated authorities

26. Designation of judges or retired judges to determine applications

- (1) The Governor may, in writing, designate one or more judges or retired judges for the purposes of this Act.

- (2) The Governor cannot designate a judge or retired judge under this section unless —
 - (a) the judge or retired judge has consented in writing to the designation; and
 - (b) the consent is in force.
- (3) The period of designation and, in the case of a retired judge, the terms and conditions of appointment of a designated authority are as set out in the instrument of appointment.
- (4) The period of designation of a retired judge must not exceed 5 years, but a retired judge may be designated for a further term.

27. Termination of designation

- (1) A judge or retired judge who has given consent under section 26(2)(a) may, in writing, revoke that consent.
- (2) The Governor cannot revoke the designation of a judge or retired judge under section 26.
- (3) However, the designation of a judge or retired judge as a designated authority is revoked if —
 - (a) the judge or retired judge revokes his or her consent in accordance with subsection (1); or
 - (b) in the case of a judge —
 - (i) he or she ceases to be a judge; or
 - (ii) the Chief Justice of Western Australia notifies the Attorney General that the judge should not continue to be a designated authority because the Chief Justice considers that the amount of time that the judge may be required to devote to the exercise of the functions of a designated authority will or is likely to compromise the ability of the court to perform its functions.

28. Designated authorities not subject to control by Executive

The selection of a designated authority to exercise any particular function conferred on designated authorities by this Act is not to be made by the Attorney General or any other Minister of the Crown, and the exercise of that particular function is not subject to the control and direction of the Attorney General or any other Minister of the Crown.

29. Any designated authority may act

Any designated authority may determine an application for the renewal or revocation of a declaration, regardless of whether or not he or she made that declaration.

30. Protection and immunity

A designated authority has, in relation to the exercise of a function conferred on a designated authority by this Act, the same protection and immunity as a judge has in relation to proceedings in the Supreme Court.

31. Nature and functions of designated authority

- (1) The functions conferred on a designated authority by this Act are conferred on the designated authority in a personal capacity and not as a court or a member of a court.
- (2) Anything done by a designated authority under this Act has effect only by virtue of this Act, and is not to be taken by implication to be done by a court.
- (3) Subsection (2) does not limit subsection (1).

32. Record of proceedings

- (1) In this section —
declaration proceedings means proceedings under this Part or section 128.

- (2) The records of declaration proceedings must be dealt with in accordance with the requirements (if any) specified in the regulations.
- (3) The regulations may —
 - (a) regulate and prescribe the procedure and practice to be followed in respect of —
 - (i) the custody of the records of declaration proceedings;
 - (ii) access to, and the searching, inspection and copying of, the records of declaration proceedings;
 - (b) limit or prohibit access to, and the searching, inspection and copying of, records of declaration proceedings;
 - (c) prescribe fees payable in respect of access to, and the searching, inspection and copying of, any record of declaration proceedings.

Part 3 — Control orders

Division 1 — Overview

33. Overview

- (1) This Part provides for the making of control orders in relation to persons who are members of a declared criminal organisation and persons who have an association with a declared criminal organisation.
- (2) A control order imposes certain restrictions on the activities of those persons, such as prohibiting them from associating with each other, and may also restrict other activities such as carrying on certain occupations, possessing firearms and other things, and accessing or using certain forms of technology or communication.
- (3) A control order in relation to a person can be obtained by way of a 2-stage process or a one-stage process.
- (4) The 2-stage process is as follows —
 - (a) the Commissioner of Police applies to the Supreme Court for an interim control order in relation to the person, and if the court grants the order —
 - (i) the order takes effect when it is served and continues in force pending a hearing to decide whether a control order will be granted; and
 - (ii) certain restrictions on the activities of the person apply or can be stated in the order to apply while the interim control order remains in force;
 - (b) the court holds a hearing and decides whether or not to grant a control order confirming the interim control order, and if so, what consequential or ancillary orders should be made (such as exempting the person from some of the restrictions that would ordinarily apply under a control order).

- (5) The one-stage process is as follows —
- (a) the Commissioner of Police applies to the Supreme Court for a control order in relation to the person;
 - (b) the court holds a hearing and decides whether or not to grant a control order, and if so, what consequential or ancillary orders should be made (such as exempting the person from some of the restrictions that would ordinarily apply under a control order).
- (6) A control order remains in force for up to 5 years, but can be revoked or varied on application by the Commissioner of Police or the person to whom it relates.
- (7) This section is intended only as a guide to the general scheme and effect of this Part, and does not limit the other provisions of this Part.

34. Application of provisions protecting criminal intelligence information

Part 5 applies to proceedings under this Part.

Division 2 — Interim control orders

Subdivision 1 — Applications for interim control orders

35. Application for interim control order

- (1) The Commissioner of Police may apply to the court for an interim control order relating to a person.
- (2) An application for an interim control order can be made only in relation to a person specified in section 57(2).

36. Form of application

An application under section 35 must —

- (a) be in writing; and

- (b) identify the person in relation to whom the interim control order is sought by —
 - (i) specifying the person’s name (or the name by which they are commonly known); or
 - (ii) if the person’s name is unknown, attaching to the application a recent photograph or recent digital image of the person;and
- (c) set out the grounds on which the interim control order is sought; and
- (d) set out the information supporting those grounds; and
- (e) set out any non-standard conditions sought to be included in the interim control order in accordance with section 58, the grounds on which those conditions are sought, and the information supporting those grounds; and
- (f) state whether or not the person in relation to whom the interim control order is sought is already a controlled person; and
- (g) be accompanied by an affidavit from the Commissioner of Police, or affidavits from one or more other senior police officers, verifying the contents of the application.

37. Application for hearing without notice or on notice

An application under section 35 can ask the court to hear the application for the interim control order —

- (a) without notice to, and in the absence of, the person to whom the application relates; or
- (b) at a hearing held on notice to that person.

Subdivision 2 — Determination of applications

38. Making of interim control order

- (1) On an application under section 35, the court may make an interim control order in relation to the person to whom the application relates if the court is satisfied —
 - (a) that the application complies with section 36; and
 - (b) that, on the basis of the application and any further information supplied by the Commissioner of Police, the court could make a control order under section 57 in relation to that person.
- (2) If the court considers it convenient and appropriate to do so, the court may hear and determine, at the same time, 2 or more applications for interim control orders against different people, but separate interim control orders must be made with respect to each person in relation to whom the court decides to make an order.
- (3) If the court is satisfied that it is appropriate in the circumstances, the court can make an interim control order in relation to a person without notice to, and in the absence of, that person.
- (4) If the court makes an interim control order —
 - (a) the standard conditions apply under the order in accordance with Division 5 Subdivision 1; and
 - (b) in addition, the court may —
 - (i) impose any other condition the court considers appropriate under section 58; and
 - (ii) make any consequential or ancillary orders it thinks fit under section 59.

39. Explanation of interim control order

- (1) When the court makes an interim control order, and the person to whom the order relates is present in court at the time, the

court must ensure that all reasonable steps are taken to give the person the explanation set out in subsection (3).

- (2) If the person is not present in court when the interim control order is made, the Commissioner of Police must ensure that all reasonable steps are taken to give the person the explanation set out in subsection (3) when notice of the order is served personally on the person.
- (3) The person must have explained to them, in language likely to be understood by them —
 - (a) the person's obligations under the interim control order; and
 - (b) the consequences that may follow if the person fails to comply with those obligations.
- (4) The explanation must, so far as practicable, be given both orally and in writing.
- (5) Failure to comply with this section does not invalidate an interim control order.

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

- (1) If the court makes an interim control order in relation to a person —
 - (a) the application for the interim control order is treated as an application under Division 3 by the Commissioner of Police for a control order confirming the interim control order made in relation to the person; and
 - (b) the court must fix a date, time and place for the hearing of the application for a control order.
- (2) The date fixed under subsection (1)(b) —
 - (a) must be as soon as practicable after the interim control order is made; but
 - (b) must allow the person to whom the interim control order relates sufficient time to prepare and file a notice of

objection under section 55 and serve a copy of the notice on the Commissioner of Police.

- (3) In order that subsection (2)(b) is complied with, the court may at any time vary the date fixed under subsection (1)(b).

41. Notice of making of interim control order

- (1) The Commissioner of Police must, within 28 days after the making of an interim control order, serve notice of the order personally on the person to whom it relates.
- (2) This section is subject to section 44.

42. Content of notice

- (1) The notice required by section 41 to be served on a person must —
- (a) either —
- (i) specify the person to whom the interim control order relates; or
 - (ii) if the person's name is unknown, include or have attached to it a recent photograph or recent digital image of that person;
- and
- (b) include a statement of the grounds on which the interim control order was made, but must not contain information the disclosure of which would be in breach of section 111; and
- (c) include the information that section 60(1)(c) requires to be included in a control order; and
- (d) set out —
- (i) an explanation of the standard conditions applying under an interim control order in accordance with Division 5 Subdivision 1; and
 - (ii) any other conditions of the order imposed under section 58; and

- (iii) any consequential or ancillary orders made under section 59;
 - and
 - (e) advise the person that the names of persons who are controlled persons are listed on the register kept under section 113; and
 - (f) set out an explanation of —
 - (i) the right to apply under section 46 for the revocation of the interim control order, if it was made without notice; and
 - (ii) the right to apply under section 49 for the variation of the interim control order; and
 - (iii) the right to object to the making of a control order confirming the interim control order at the hearing of the application for that control order; and
 - (iv) the procedure to be followed in notifying the court before the hearing of the grounds of objection in accordance with section 55;
 - and
 - (g) state the date, time and place fixed under section 40 for the hearing of the application for a control order.
- (2) A copy of the affidavit or affidavits that accompanied the application for the interim control order must be attached to the notice of the order.
- (3) Subsection (2) is subject to section 112.

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

- (1) A police officer who has reasonable cause to suspect that someone is a person on whom notice of the making of an interim control order is required to be served under section 41 may —

- (a) require the person to disclose his or her personal details; and
 - (b) require the person to remain at a particular place for as long as is reasonably necessary (but no longer than 2 hours) to serve the notice.
- (2) If a police officer has reasonable cause to suspect that a personal detail given by a person in response to a requirement under subsection (1) is false, the officer may require the person to produce evidence of the correctness of the detail.
- (3) If the person refuses or fails to comply with a requirement under subsection (1) or (2), the police officer may detain the person at that place for as long as is reasonably necessary (but no longer than 2 hours) to serve the notice.
- (4) Section 104 makes a refusal or failure to comply with a requirement under subsection (1) or (2) and giving false particulars in response to a requirement an offence.
- (5) A person who is required to remain or is detained at a particular place under this section when he or she is not under arrest is to be taken to be in lawful custody.

44. Alternative means of service

- (1) If the Commissioner of Police cannot practicably serve notice of an interim control order on the person to whom it relates in accordance with section 41, the court may, by order —
 - (a) direct that service of the notice be postponed for a specified period of not more than 28 days after the period within which the notice is required to be served under section 41; or
 - (b) direct that, instead of personal service, specified steps be taken to bring the interim control order to the attention of that person.
- (2) The court must not make an order under subsection (1) unless it is satisfied that the Commissioner has taken all reasonably

practicable steps to serve the notice personally within the period and as required by section 41.

- (3) The court can make an order under subsection (1) whether or not the 28 day period specified in section 41 has expired.
- (4) An order under subsection (1)(b) may direct that notice of the interim control order be taken to have been served on the happening of a specified event or on the expiry of a specified time.
- (5) If the court is satisfied that, despite the best endeavours of the Commissioner, steps specified in an order under subsection (1)(b) have not brought an interim control order to the attention of the person to whom it relates, the court may order that the notice of the interim control order be published in the *Gazette*, a daily newspaper circulating throughout the State or by some other form of public notification.
- (6) The taking of steps to bring an interim control order to the attention of the person to whom it relates in compliance with an order of the court under subsection (1) or (5) is taken to constitute personal service for the purposes of sections 41 and 45(1)(b).

45. Commencement and duration of interim control order

- (1) An interim control order comes into force as follows —
 - (a) when the order is made, if the person to whom the order relates is present in court at the time;
 - (b) in any other case, when notice of the order is served personally on the person to whom it relates in accordance with section 41 or 44.
- (2) An interim control order remains in force until one of the following occurs —
 - (a) the interim control order, having been made without notice to the person to whom it relates, is revoked under section 47;

- (b) the application for a control order confirming the interim control order is withdrawn or dismissed;
- (c) the interim control order is revoked under section 56(1)(b);
- (d) a control order is made confirming the interim control order (with or without variation) and the control order comes into force under section 62(1);
- (e) the interim control order ceases to have effect under section 25(1).

Subdivision 3 — Revocation of interim control orders made without notice

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

- (1) If an interim control order is made without notice to the person to whom it relates, that person may apply to the court for the revocation of the order —
 - (a) on the grounds that the applicant for the order failed to disclose to the court that heard the application for the order a material matter that, at the time of that hearing, was known to, or reasonably discoverable by, the applicant; or
 - (b) on the grounds that the order should not have been made or is no longer appropriate.
- (2) An application can be made under this section at any time after the interim control order is made and before it ceases to be in force.
- (3) An application must —
 - (a) be in writing; and
 - (b) set out the grounds on which revocation of the interim control order is sought, and the information supporting those grounds; and

- (c) be supported by an affidavit from the applicant verifying the contents of the application; and
 - (d) be filed in the court, together with the accompanying affidavit.
- (4) The person to whom an interim control order relates cannot make an application under this section for the revocation of the order if the court has already determined —
- (a) a previous application for the revocation of that order; or
 - (b) an application under section 49 for the variation of that order.
- (5) If an application is made under this section —
- (a) the person to whom the interim control order relates and the Commissioner of Police may appear at the hearing of the application and make submissions in relation to the application; but
 - (b) the court may hear and determine the application whether or not any of the persons who are entitled to be present and make submissions at the hearing take advantage of that opportunity.

47. Determination of application to revoke interim control order

- (1) The court must hear an application under section 46 as soon as practicable after the application is made.
- (2) On hearing an application under section 46 for the revocation of an interim control order, the court may —
 - (a) by order, revoke the interim control order if the court is satisfied that the grounds of the application are made out; or
 - (b) vary the interim control order as if an application had been made under section 49, and section 50 applies accordingly; or
 - (c) dismiss the application.

- (3) A revocation order takes effect when it is made.
- (4) Unless the controlled person is present in court when the revocation order is made, the Commissioner of Police must serve a copy of the revocation order personally on the controlled person as soon as practicable after the order is made.
- (5) Section 44 applies with all necessary modifications in relation to service of a copy of the revocation order on the controlled person.

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

- (1) If an interim control order made without notice to the person to whom it relates is revoked under section 47 —
 - (a) the application for the interim control order ceases to be treated under section 40(1)(a) as an application for a control order confirming the interim control order; and
 - (b) the proceedings for a control order in relation to that person are discontinued.
- (2) Subsection (1) does not prevent the Commissioner of Police from making another application for an interim control order, or an application for a control order, in relation to the same person.

Subdivision 4 — Variation of interim control orders

49. Application for variation of interim control order

- (1) The person to whom an interim control order relates or the Commissioner of Police may apply to the court to vary the interim control order.
- (2) An application can be made under this section at any time after the interim control order is made and before it ceases to be in force.
- (3) The person to whom an interim control order relates and the Commissioner of Police can each make more than one

application under this section to vary the same interim control order, but —

- (a) a second or subsequent application can be made by the person to whom the interim control order relates only with the leave of the court; and
 - (b) the court may grant leave only if it is satisfied that there has been a substantial change in the relevant circumstances since an application to vary the order was last determined by the court.
- (4) If an application is made under this section —
- (a) the person to whom the interim control order relates and the Commissioner of Police may appear at the hearing of the application and make submissions in relation to the application; but
 - (b) the court may hear and determine the application whether or not any of the persons who are entitled to be present and make submissions at the hearing take advantage of that opportunity.

50. Determination of application for variation

- (1) On hearing an application under section 49 for the variation of an interim control order, the court may —
 - (a) vary the interim control order, and for that purpose may exercise any power that it could have exercised on the making of the original interim control order; or
 - (b) dismiss the application.
- (2) If the court varies an interim control order under this section, the variation takes effect —
 - (a) if the person to whom the order relates is present in court at the time, when the variation is made; or
 - (b) in any other case, when notice of the variation is served personally on that person.

- (3) Sections 43 and 44 apply with all necessary modifications in relation to service of notice of the variation of an interim control order on the person to whom the order relates.
- (4) Section 39 applies with all necessary modifications in relation to the variation of an interim control order, but only if the variation changes the obligations imposed under the order on the person to whom the order relates.
- (5) Subsection (4) does not apply if the interim control order is varied on the application of, and only in the terms sought by, the person to whom the order relates.

Division 3 — Control orders

Subdivision 1 — How proceedings for control order begun

51. How proceedings for control order begun

Proceedings for a control order in relation to a person may be begun —

- (a) by making an application under section 52 for a control order in relation to the person; or
- (b) by making an application under section 35 for an interim control order in relation to the person, and if the court makes the interim control order the application is treated under section 40(1)(a) as an application under this Division for a control order confirming the interim control order.

Subdivision 2 — Applications for control orders

52. Application for control order

- (1) The Commissioner of Police may apply to the court for a control order relating to a person.
- (2) An application for a control order can be made only in relation to a person specified in section 57(2).

53. Form of application

An application under section 52 must —

- (a) be in writing; and
- (b) identify the person in relation to whom the control order is sought by —
 - (i) specifying the person's name (or the name by which they are commonly known); or
 - (ii) if the person's name is unknown, attaching to the application a recent photograph or recent digital image of the person;
- and
- (c) set out the grounds on which the control order is sought; and
- (d) set out the information supporting those grounds; and
- (e) set out any non-standard conditions sought to be included in the control order in accordance with section 58, the grounds on which those conditions are sought, and the information supporting those grounds; and
- (f) state whether or not the person in relation to whom the control order is sought is already a controlled person; and
- (g) be accompanied by an affidavit from the Commissioner of Police, or affidavits from one or more other senior police officers, verifying the contents of the application.

54. Filing and service of application

- (1) An application under section 52, together with the accompanying affidavit or affidavits, must be filed in the court.
- (2) As soon as practicable after the application has been filed, the applicant must serve the application personally on the person to whom the application relates.

- (3) Sections 43 and 44 apply with all necessary modifications in relation to service of the application on that person.
- (4) The following must be served with the application —
 - (a) a copy of the affidavit or affidavits that accompanied the application for the control order;
 - (b) a written notice setting out an explanation of —
 - (i) the right to object to the making of a control order at the hearing of the application for the control order; and
 - (ii) the procedure to be followed in notifying the court before the hearing of the grounds of objection in accordance with section 55.
- (5) Subsection (4) is subject to section 112.

Subdivision 3 — Notice of objection to making of control order

55. Notice of objection

- (1) The person on whom notice of the making of an interim control order has been personally served in accordance with section 41 may object to the making of a control order at the hearing of the application for a control order confirming the interim control order.
- (2) The person on whom notice of an application for a control order has been personally served in accordance with section 54(2) may object to the making of the order at the hearing of the application.
- (3) If the person wishes to object to the making of the order, the person must file a notice of objection in the court.
- (4) The notice of objection must —
 - (a) be in writing; and
 - (b) be filed not later than 14 working days after notice of the making of the interim control order or notice of the

application for a control order (as the case requires) was served on the person, or within a longer period allowed by the court; and

- (c) set out the grounds on which the person objects to the making of the order; and
 - (d) be accompanied by an affidavit from the person verifying the grounds of objection.
- (5) The person must also serve a copy of the notice of objection on the Commissioner of Police not later than 5 working days after the notice is filed in the court.

Subdivision 4 — Making control orders

56. Determination of application for control order

- (1) On an application for a control order confirming an interim control order, the court may —
 - (a) make a control order under section 57 confirming, or confirming with variations, the interim control order; or
 - (b) revoke the interim control order.
- (2) On an application for a control order, the court may —
 - (a) make a control order under section 57; or
 - (b) dismiss the application.
- (3) If the court considers it convenient and appropriate to do so, the court may hear and determine, at the same time, 2 or more applications to which this section applies against different people, but separate control orders must be made with respect to each person in relation to whom the court decides to make an order.
- (4) The Commissioner of Police and the person to whom the application relates may appear at the hearing of the application and make submissions in relation to the application.

- (5) The court may make a control order whether or not the person to whom the application relates is present or makes submissions at the hearing.
- (6) In considering whether or not there are sufficient grounds to make the control order, the court must take into account —
 - (a) if subsection (1) applies, the affidavit or affidavits that accompanied the application for the interim control order and verified the contents of the application; and
 - (b) if subsection (2) applies, the affidavit or affidavits that accompanied the application for the control order and verified the contents of the application; and
 - (c) the affidavit that accompanied the notice of objection (if any); and
 - (d) any other information provided by the Commissioner of Police, or the person to whom the application relates, at the hearing.

57. Circumstances in which control order may be made

- (1) The court may make a control order in relation to a person if the court is satisfied —
 - (a) that there is a ground for making a control order in relation to the person; and
 - (b) that it is appropriate in the circumstances to make the order.
- (2) Any of the following is a ground for making a control order in relation to a person —
 - (a) that the person is a member of a declared criminal organisation;
 - (b) that the person —
 - (i) is or purports to be a former member of an organisation that is a declared criminal organisation (whether or not the organisation was

- a declared criminal organisation at the time of the person's former membership); but
- (ii) has an ongoing involvement with the organisation and its activities;
- (c) that the person —
- (i) engages in, or has engaged in, serious criminal activity; and
 - (ii) regularly associates with members of a declared criminal organisation.
- (3) The court must have regard to the following in considering whether or not to make a control order in relation to a person, and if it does, in considering what conditions should be imposed under the order —
- (a) whether the person's behaviour, or history of behaviour, suggests that there is a risk that the person will engage in serious criminal activity;
 - (b) the extent to which the order might assist in preventing the person from engaging in serious criminal activity;
 - (c) any criminal convictions that the person has;
 - (d) any criminal convictions of a person whose association with the person is relied on in the application to support the making of the order;
 - (e) any legitimate reason the person may have for associating with any person specified in the application;
 - (f) anything else the court considers relevant.
- (4) For the purpose of determining whether or not subsection (2)(b) applies to a person, the court may take into account whether the person regularly associates with members of the declared criminal organisation without reasonable excuse, and the extent to which the conduct of the person demonstrates that he or she has genuinely dissociated himself or herself from the organisation.

58. Conditions of control order

- (1) When the court makes a control order —
 - (a) the standard conditions apply under the order in accordance with Division 5 Subdivision 1; and
 - (b) in addition, the court may impose any other conditions the court considers appropriate.

- (2) Without limiting subsection (1)(b), a condition may do any of the following in relation to the person to whom the control order relates —
 - (a) prohibit the person from carrying on one or more prescribed activities specified in the order;
 - (b) prohibit the person from applying for or undertaking employment of the kind specified in the order;
 - (c) prohibit the person from entering, or being on or near, any premises or place specified in the order, or any class of premises or place specified in the order;
 - (d) prohibit the person from possessing any of the following —
 - (i) a firearm;
 - (ii) a weapon;
 - (iii) any substance or article that, under the *Dangerous Goods Safety Act 2004*, is an explosive;
 - (e) prohibit the person from possessing a substance, article or thing specified in the order, or a substance, article or thing of a class specified in the order, except as permitted by the terms of the order;
 - (f) prohibit the person from accessing or using one or more forms of communication or technology specified in the order, or one or more forms of communication or technology of a class specified in the order, except as permitted by the terms of the order.

- (3) Any condition imposed by the court under subsection (1)(b) may be absolute or subject to exceptions.

59. Consequential or ancillary orders

- (1) On making a control order in relation to a person, the court may make any consequential or ancillary orders it thinks fit.
- (2) Without limiting subsection (1), the court may make any of the following orders if, in the opinion of the court, the circumstances of the case require —
- (a) if the person satisfies the court that there is good reason why he or she should be allowed to associate with a particular controlled person, an order exempting the person from the operation of section 77 to the extent, and subject to the conditions, specified by the court;
 - (b) an order exempting the person from the operation of section 80 for a period specified by the court, to enable the person to organise his or her affairs;
 - (c) if, under section 58(2)(a), the order includes the condition that the controlled person is prohibited from carrying on a prescribed activity, an order requiring the person to surrender, to a person and at a place and within a period specified in the order, any authorisation that the person has to carry on the prescribed activity.
- (3) If the court imposes a requirement under an order made under subsection (2)(c), it is a condition of the control order that the controlled person comply with the requirement.

60. Form of control order

- (1) A control order must —
- (a) specify the person to whom it relates; and
 - (b) specify which provision of section 57(2) the order is made under; and
 - (c) identify the particular declared criminal organisation that is the basis of the order by —

- (i) identifying in the order, in accordance with the court's findings in the proceedings, the declared criminal organisation of which the person is a member or former member or, as the case requires, with whose members the person regularly associates; and
 - (ii) stating the details of the declaration under which that organisation is a declared criminal organisation;
- and
- (d) include a statement of the grounds on which the order is made, but must not contain information the disclosure of which would be in breach of section 111; and
 - (e) set out the terms of the order, including any non-standard conditions of the order and any consequential or ancillary orders made under section 59; and
 - (f) state that the names of persons who are controlled persons are listed on the register kept under section 113; and
 - (g) specify the date when the order is to expire, which must not be later than 5 years after the date of the making of the order; and
 - (h) set out an explanation of the circumstances in which the order might cease to have effect under section 25(1); and
 - (i) set out an explanation of the right of appeal under section 64; and
 - (j) set out an explanation of the right to apply under section 67 for the variation of the order; and
 - (k) set out an explanation of the right to apply under section 70 for the revocation of the order.
- (2) A copy of the affidavit or affidavits referred to in section 56(6)(a) or (b) (as the case requires) must be attached to the order.

- (3) Subsection (2) is subject to section 112.

61. Explanation of control order

- (1) When the court makes a control order, and the person to whom the order relates is present in court at the time, the court must ensure that all reasonable steps are taken to give the person the explanation set out in subsection (3).
- (2) If the person is not present in court when the control order is made, the Commissioner of Police must ensure that all reasonable steps are taken to give the person the explanation set out in subsection (3) when the person is served with a copy of the order.
- (3) The person must have explained to them, in language likely to be understood by them —
- (a) the person's obligations under the control order; and
 - (b) the consequences that may follow if the person fails to comply with those obligations.
- (4) The explanation must, so far as practicable, be given both orally and in writing.
- (5) Failure to comply with this section does not invalidate a control order.

62. Commencement and duration of control order

- (1) A control order comes into force as follows —
- (a) when the order is made, if the person to whom the order relates is present in court at the time;
 - (b) in any other case, when the person is served personally with a copy of the order.
- (2) A control order remains in force until one of the following occurs —
- (a) the order expires;
 - (b) the order is revoked under section 71;

(c) the order ceases to have effect under section 25(1).

- (3) Sections 43 and 44 apply with all necessary modifications in relation to service of a copy of a control order on the person to whom the order relates.

63. Successive control orders permitted

- (1) The fact that a control order granted in relation to a person is still in force, or has expired, does not prevent an interim control order or another control order being made in relation to that person.

- (2) An application for a control order may be made and granted in relation to a person or, as the case requires, an interim control order may be made and granted in relation to a person, and a control order confirming (or confirming with variations) that interim control order can be made, while that person is already a controlled person under a control order (the *existing order*), but —

- (a) the interim control order or control order (the *new order*) cannot come into force until the existing order expires; and
- (b) the new order must state that it does not come into force until the expiry of the existing order, and state the date on which the existing order is to expire; and
- (c) the new order comes into force as follows —
- (i) if the controlled person is present in court when the new order is made or the controlled person is served personally with notice of, or a copy of, the new order before the expiry of the existing order, on the expiry of the existing order;
- (ii) in any other case, when notice of, or a copy of, the new order is served personally on the person to whom the new order relates.

- (3) Subsection (2) overrides sections 45(1) and 62(1).

Subdivision 5 — Appeals, variations and revocations

64. Appeal against making or refusal of control order

- (1) The controlled person or the Commissioner of Police may appeal to the Court of Appeal against a decision of the court in relation to the making of a control order.
- (2) An appeal lies —
 - (a) in all cases, on a question of law; and
 - (b) with the leave of the Court of Appeal, on a question of fact or a question of mixed law and fact.
- (3) An appeal on a question of law cannot be commenced later than 21 days after the date on which the decision of the court was made, unless the Court of Appeal gives leave for the appeal to be commenced after that time.
- (4) An application for leave to appeal under subsection (2)(b) cannot be made later than 21 days after the date on which the decision of the court was made, unless the Court of Appeal extends the time within which an application for leave to appeal may be made.
- (5) An extension of a time limit may be given under subsection (3) or (4) even though the time limit has already passed.

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

An appeal or an application for leave to appeal under section 64 against a decision of the court in relation to the making of a control order does not stay the operation of the order, unless the Court of Appeal orders that it be stayed.

66. Determination of appeal

On an appeal under section 64, the Court of Appeal —

- (a) may confirm, vary or set aside the decision appealed against; and

- (b) may make any decision that the court could have made; and
- (c) if it sets aside the decision appealed against, may order that the matter concerned be dealt with again; and
- (d) may make any consequential or ancillary order.

67. Application to vary control order

- (1) The controlled person or the Commissioner of Police may, at any time while the control order remains in force, apply to the court to vary the control order.
- (2) The controlled person and the Commissioner of Police can each make more than one application under this section to vary the same control order, but —
 - (a) an application can be made by the controlled person only with the leave of the court; and
 - (b) the court may grant leave only if it is satisfied that there has been a substantial change in the relevant circumstances since the control order was made or, as the case requires, an application to vary the order was last determined by the court.
- (3) An application under this section —
 - (a) must state —
 - (i) the terms of the variation sought; and
 - (ii) the grounds on which the variation is sought; and
 - (iii) the information supporting those grounds;and
 - (b) must be accompanied by any affidavit the applicant intends to rely on at the hearing of the application.
- (4) If an application is made under this section —
 - (a) the controlled person and the Commissioner of Police may appear at the hearing of the application and make submissions in relation to the application; but

- (b) the court may hear and determine the application whether or not any of the persons who are entitled to be present and make submissions at the hearing take advantage of that opportunity.

68. Determination of application for variation

- (1) On hearing an application under section 67 for the variation of a control order, the court may —
 - (a) vary the control order, and for that purpose may exercise any power that it could have exercised on the making of the original control order; or
 - (b) dismiss the application.
- (2) Before varying a control order under this section, the court must have regard to the same factors that the court is required to have regard to in considering whether or not to make a control order and in considering the terms of a control order.
- (3) The court may reduce, but not extend, the duration of a control order under this section.
- (4) If the court varies a control order under this section, the variation takes effect —
 - (a) if the person to whom the order relates is present in court at the time, when the variation is made; or
 - (b) in any other case, when notice of the variation is served personally on that person.
- (5) Sections 43 and 44 apply with all necessary modifications in relation to service of notice of the variation of a control order on the person to whom the order relates.

69. Explanation of variation

- (1) Section 61 applies with all necessary modifications in relation to the variation of a control order under section 68, but only if the variation changes the obligations imposed under the order on the person to whom the order relates.

- (2) Subsection (1) does not apply if the control order is varied on the application of, and only in the terms sought by, the person to whom the order relates.

70. Application for revocation of control order

- (1) The Commissioner of Police or the controlled person may, at any time while the control order remains in force, apply to the court to revoke the control order.
- (2) The Commissioner of Police and the controlled person can each make more than one application under this section to revoke the same control order, but —
- (a) an application can be made by the controlled person only with the leave of the court; and
 - (b) the court may grant leave only if it is satisfied that there has been a substantial change in the relevant circumstances since the control order was made or, as the case requires, an application to revoke the order was last determined by the court.
- (3) An application under this section —
- (a) must state —
 - (i) the grounds on which the revocation is sought; and
 - (ii) the information supporting those grounds; and
 - (b) must be accompanied by any affidavit the applicant intends to rely on at the hearing of the application.
- (4) If an application is made under this section —
- (a) the controlled person and the Commissioner of Police may appear at the hearing of the application and make submissions in relation to the application; but
 - (b) the court may hear and determine the application whether or not any of the persons who are entitled to be

present and make submissions at the hearing take advantage of that opportunity.

71. Determination of application for revocation

- (1) On hearing an application under section 70 for the revocation of a control order, the court may —
 - (a) by order, revoke the control order; or
 - (b) dismiss the application.
- (2) Before revoking a control order under this section, the court must have regard to the same factors that the court is required to have regard to in considering whether or not to make a control order and in considering the terms of a control order.
- (3) A revocation order takes effect when it is made.
- (4) Unless the controlled person is present in court when the revocation order is made, the Commissioner of Police must serve a copy of the revocation order personally on that person as soon as practicable after the order is made.
- (5) Section 44 applies with all necessary modifications in relation to service of a copy of the revocation order on the person to whom the control order related.

72. Notice of variation or revocation

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

- (a) to the Commissioner of Police, if the Commissioner or his or her representative is not present in court when the order is varied or revoked; and
- (b) if the registrar is aware that the control order has effect under the law of another State or a Territory, to the commissioner (by whatever name called) of the police force or police service of that State or Territory.

Division 4 — Orders against persons under 18

73. Orders available against 16 and 17 year olds

- (1) This Act applies in relation to persons who have reached 16 years of age but are under 18 years of age (*juveniles*) in the same way that it applies to persons who have reached 18 years of age.
- (2) Neither an interim control order nor a control order can be made in relation to a person who is under 16 years of age.

74. Notification of orders against juveniles

If an interim control order or a control order is made in relation to a juvenile, or an interim control order or a control order made in relation to a juvenile is varied or revoked, the Commissioner of Police must, as soon as reasonably practicable, give a copy of the order or, as the case requires, the notice of the variation or the revocation order to —

- (a) the chief executive officer of the department of the Public Service principally assisting the Minister in the administration of the *Children and Community Services Act 2004*; and
- (b) a parent or guardian of the juvenile, if the Commissioner of Police is able to find a parent or guardian of the juvenile after making reasonable attempts.

75. Personal service of orders against juveniles required

- (1) An interim control order made in relation to a juvenile is of no effect until notice of the order is served personally on the juvenile.
- (2) A control order made in relation to a juvenile is of no effect until a copy of the order is served personally on the juvenile, unless the juvenile is present in court at the time the order is made.

- (3) A variation of a control order or an interim control order made in relation to a juvenile is of no effect until notice of the variation is served personally on the juvenile, unless the juvenile is present in court at the time the court varies the order.
- (4) Subsections (1) to (3) apply despite any other provision of this Act permitting any form of service other than personal service.

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

This Division does not affect the application of the *Children's Court of Western Australia Act 1988* or the *Young Offenders Act 1994* in relation to any offence or alleged offence under a provision of this Act.

Division 5 — Effect of orders

Subdivision 1 — Standard conditions

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

- (1) A controlled person under an interim control order must not associate with any other controlled person, except —
 - (a) as permitted by section 100(1); or
 - (b) as permitted by the terms of an exemption under section 59.
- (2) A controlled person under a control order must not associate with any other controlled person, except as permitted by the terms of an exemption under section 59.
- (3) A breach of this condition is an offence under section 99.

78. Other standard conditions

- (1) A controlled person under an interim control order or a control order must not do any of the following —
 - (a) receive funds from, make funds available to, or collect funds for or on behalf of, a declared criminal organisation;
 - (b) be involved in the organisation, running or financing of any event that is open to the public (whether or not a charge is made or payment for admittance is required);
 - (c) recruit a person to become a member of a declared criminal organisation.
- (2) A breach of —
 - (a) the condition specified in subsection (1)(a) is an offence under section 102;
 - (b) the condition specified in subsection (1)(b) is an offence under section 103;
 - (c) the condition specified in subsection (1)(c) is an offence under section 106.

Subdivision 2 — Non-standard conditions

79. Non-standard conditions

- (1) A controlled person under an interim control order or a control order must not do any of the following in breach of a condition of the order —
 - (a) carry on any prescribed activity specified in the order;
 - (b) apply for or undertake any employment of the kind specified in the order;
 - (c) enter, or be on or near, any premises or place specified in the order, or any class of premises or place specified in the order;
 - (d) possess any of the following —
 - (i) a firearm;

- (ii) a weapon;
 - (iii) any substance or article that, under the *Dangerous Goods Safety Act 2004*, is an explosive;
 - (e) possess a substance, article or thing specified in the order, or a substance, article or thing of a class specified in the order, except as permitted by the terms of the order;
 - (f) access or use one or more forms of communication or technology specified in the order, or one or more forms of communication or technology of a class specified in the order, except as permitted by the terms of the order;
 - (g) do anything else that is prohibited by a condition of the order imposed under section 58 or applying under section 82;
 - (h) fail to comply with a condition of the order imposed under section 58 or applying under section 59(3) or 82.
- (2) A breach of any of the conditions specified in subsection (1) is an offence under section 103.

80. Condition prohibiting controlled person from carrying on prescribed activity

- (1) In this section —
- prescribed activity*** means any of the following —
- (a) any activity that requires a licence, approval or permit under the *Betting Control Act 1954*;
 - (b) being a casino key employee or casino employee as defined in the *Casino Control Act 1984* section 3(1);
 - (c) any activity that requires a Dealer's Licence, Repairer's Licence, Manufacturer's Licence or Shooting Gallery Licence under the *Firearms Act 1973*;
 - (d) any activity that requires a licence, approval or permit under the *Liquor Control Act 1988*;

- (e) any activity required to be licensed or authorised under the *Motor Vehicle Dealers Act 1973*;
 - (f) any activity that requires a business licence or a repairer's certificate under the *Motor Vehicle Repairers Act 2003*;
 - (g) being a pawnbroker or second-hand dealer as defined in the *Pawnbrokers and Second-hand Dealers Act 1994*;
 - (h) the activities of an owner, trainer, jockey, apprentice jockey, track work rider, driver of harness racing horses or another person associated with racing who is required to be licensed under the *Racing and Wagering Western Australia Act 2003*;
 - (i) operating a tow truck in circumstances where the tow truck is required to be licensed under regulations made under the *Road Traffic Act 1974*;
 - (j) any activity required to be licensed or authorised under the *Security and Related Activities (Control) Act 1996*;
 - (k) any other occupation or activity (including an occupation or activity under a written law mentioned in paragraphs (a) to (j)) —
 - (i) that can be lawfully carried on only under an authorisation; and
 - (ii) that is prescribed by the regulations for the purposes of this definition.
- (2) This section applies if, under section 58(2)(a), an interim control order or a control order includes the condition that the controlled person is prohibited from carrying on one or more prescribed activities.
- (3) If this section applies —
- (a) the controlled person must not carry on the prescribed activity while the interim control order or control order remains in force; and

- (b) any authorisation that the controlled person has to carry on the prescribed activity —
 - (i) is automatically suspended when the interim control order or control order comes into force; and
 - (ii) remains suspended until the interim control order or control order ceases to be in force or the authorisation ceases for any reason to be in force at an earlier date;and
 - (c) while the interim control order or control order is in force, the controlled person must not apply for, or continue with any existing application for, any authorisation to carry on the prescribed activity; and
 - (d) any existing application for an authorisation to carry on the prescribed activity —
 - (i) is automatically suspended when the interim control order or control order comes into force; and
 - (ii) remains suspended until the interim control order or control order ceases to be in force or the application lapses for any reason at an earlier date.
- (4) The suspension of an authorisation or an application for an authorisation in accordance with this section takes effect —
- (a) even if the written law under which the authorisation was obtained or the application was made does not provide for suspension of the authorisation or application, or provides a specific procedure for suspension of the authorisation or application; and

- (b) even if, in the case of an application for an authorisation, the written law under which the application was made —
 - (i) requires a regulatory authority to deal with the application; or
 - (ii) provides that an authorisation is granted as a matter of course on the making of the application or if certain requirements or conditions are satisfied or certain circumstances exist;and
 - (c) regardless of any other written law, award or industrial or other agreement affecting the employment of the person holding the authorisation or making the application.
- (5) If a controlled person holds an authorisation, or has made an application for an authorisation, jointly with any other person who is not subject to an interim control order or a control order to which this section applies, the authorisation or application is suspended only to the extent that it is held or made by the controlled person.
- (6) If an interim control order is varied under section 50, or a control order is varied under section 66 or 68, and the effect of the variation is to include or remove a condition that the controlled person is prohibited from carrying on a prescribed activity, then this section applies as follows —
- (a) if the effect of the variation is to include that condition —
 - (i) the prohibition on the controlled person carrying on the prescribed activity takes effect when the variation takes effect; and
 - (ii) the suspension of an authorisation or an application for an authorisation in relation to the prescribed activity takes effect when the variation takes effect; and

- (iii) the prohibition on the controlled person applying for, or continuing with any existing application for, any authorisation to carry on the prescribed activity takes effect when the variation takes effect;
 - (b) if the effect of the variation is to remove that condition —
 - (i) the prohibition on the controlled person carrying on the prescribed activity ceases when the variation takes effect; and
 - (ii) the suspension of an authorisation or an application for an authorisation in relation to the prescribed activity ceases when the variation takes effect; and
 - (iii) the prohibition on the controlled person applying for, or continuing with any existing application for, any authorisation to carry on the prescribed activity ceases when the variation takes effect.
- (7) Neither the State nor any regulatory authority that grants an authorisation incurs any liability because of the suspension of an authorisation or an application for an authorisation under this section.

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

- (1) If an authorisation that a controlled person has to carry on a prescribed activity, or an application by a controlled person for such an authorisation, is suspended under section 80, the Commissioner of Police must, as soon as practicable, notify the relevant regulatory authority of the suspension.
- (2) The regulations may provide for the giving of notifications under this section, including (without limitation) provision for the use of a prescribed form.

Subdivision 3 — Surrender and seizure of things

82. Surrendering things that cannot be possessed under order

- (1) If an interim control order or a control order prohibits the person to whom the order relates from possessing any substance, article or thing (a *prohibited item*), it is a condition of the order that the person must, within 24 hours after the order comes into force, deliver the prohibited item to the custody of the Commissioner of Police at a place specified in the order.
- (2) The person is taken to have complied with the condition referred to in subsection (1) if he or she lawfully disposes of possession of the prohibited item before the expiry of the period referred to in that subsection.
- (3) If an interim control order or a control order prohibits the person to whom the order relates from possessing a firearm, then (without limiting subsection (1)) it is a condition of the order that the person —
 - (a) is prohibited from possessing or obtaining a firearms licence; and
 - (b) must, within 24 hours after the order comes into force, deliver to the custody of the Commissioner of Police at a police station all firearms licences held by the person.
- (4) If an interim control order or a control order prohibits the person to whom the order relates from possessing a prohibited item, and any authorisation (other than a firearms licence) is required to possess that item, then (without limiting subsection (1)) it is a condition of the order that the person —
 - (a) is prohibited from possessing or obtaining an authorisation to possess that item; and
 - (b) must, within 24 hours after the order comes into force, deliver to the custody of the Commissioner of Police at a police station all authorisations held by the person with respect to the item.

- (5) If an interim control order is varied under section 50, or a control order is varied under section 66 or 68, and the effect of the variation is to include a prohibition of the kind referred to in subsection (1), this section applies to that interim control order or control order as if the references in subsections (1), (3)(b) and (4)(b) to the period of 24 hours after the order comes into force were references to the period of 24 hours after the variation takes effect.

83. Seizure of things not surrendered

- (1) This section applies if a person to whom an interim control order or a control order relates does not comply with —
- (a) a requirement under section 82 to surrender a prohibited item, firearms licence or authorisation; or
 - (b) a requirement under an order made under section 59(2)(c) to surrender an authorisation that the person has to carry on a prescribed activity.
- (2) If this section applies, a police officer may, without warrant, enter a place and search for and seize a prohibited item, firearms licence or authorisation if the police officer suspects on reasonable grounds that —
- (a) the person to whom the interim control order or control order relates has a prohibited item, firearms licence or authorisation in his or her possession; and
 - (b) the prohibited item, firearms licence or authorisation is in that place.
- (3) This section does not limit the provision of any other written law under which a police officer or any other person may, with or without warrant, exercise any power of search, entry or seizure, including (without limitation) —
- (a) the *Firearms Act 1973* section 26(1);
 - (b) the *Weapons Act 1999* sections 13 and 14;
 - (c) the *Dangerous Goods Safety Act 2004* sections 37 and 45;

(d) the *Criminal Investigation Act 2006*.

84. Dealing with things surrendered or seized: firearms, firearms licences and weapons

- (1) If a firearm or weapon is surrendered under section 82 or seized under section 83 —
- (a) the firearm or weapon is forfeited to the State; and
 - (b) the *Criminal and Found Property Disposal Act 2006* applies to and in relation to the firearm or weapon as if —
 - (i) the firearm or weapon were property that has been seized in the course of a criminal investigation and has become forfeited property within the meaning of that Act; and
 - (ii) the interim control order or control order that prohibits the controlled person to whom the order relates from possessing the firearm or weapon were an order that ordered the forfeiture of the firearm or weapon to the State.
- (2) If a firearms licence is surrendered under section 82 or seized under section 83 —
- (a) the Commissioner of Police must destroy the licence as soon as practicable; and
 - (b) the destruction of the licence is to be treated as a cancellation of the licence under the *Firearms Act 1973* section 20(4).
- (3) However, the Commissioner of Police must not exercise the powers in subsection (1) or (2) in relation to the surrendered or seized firearm, firearms licence or weapon —
- (a) if the surrender or seizure is by virtue of an interim control order, before a control order confirming the interim control order is made; and

- (b) if a control order confirming the interim control order is made, or if the surrender or seizure is by virtue of a control order, before the expiration of the time allowed for appealing against the control order or, if an appeal is lodged within that time, before the appeal is concluded.
- (4) If any of the things set out in subsection (5) (a *relevant event*) occurs —
- (a) the Commissioner of Police must hold the surrendered or seized firearm, firearms licence or weapon in safe custody until it is reclaimed by the person lawfully entitled to possess it or it may be otherwise lawfully disposed of, whichever occurs first; and
 - (b) the person lawfully entitled to possess the firearm, firearms licence or weapon may reclaim it from the Commissioner of Police, unless it has been sooner lawfully disposed of; and
 - (c) if the firearm, firearms licence or weapon is not reclaimed within one month after the relevant event occurs, the Commissioner of Police may —
 - (i) in the case of a firearm, dispose of the firearm under the *Firearms Act 1973* section 33 as if the owner of the firearm cannot be found; or
 - (ii) in the case of a firearms licence, exercise the power in subsection (2); or
 - (iii) in the case of a weapon, make a direction under the *Weapons Act 1999* section 18(1) as if the weapon had been forfeited to the State under that Act.
- (5) The following are the relevant events referred to in subsection (4) —
- (a) in the case of an interim control order —
 - (i) the order is varied to remove the firearms condition or, as the case requires, the condition

- prohibiting the person to whom the order relates from possessing a weapon;
- (ii) the application for a control order confirming the interim control order is withdrawn or dismissed;
- (iii) the interim control order is revoked under section 47(2)(a) or 56(1)(b);
- (iv) the interim control order ceases to have effect under section 25(1);
- (b) in the case of a control order, on an appeal under section 64 —
 - (i) the decision of the court to make the order is reversed; or
 - (ii) the order is varied under section 66 to remove the firearms condition or, as the case requires, the condition prohibiting the person to whom the order relates from possessing a weapon.

85. Dealing with things surrendered or seized: other things

- (1) If an authorisation (other than a firearms licence or an authorisation to which an order made under section 59(2)(c) applies) is surrendered under section 82 or seized under section 83 —
 - (a) the Commissioner of Police must hold the authorisation in safe custody until it is reclaimed by the holder of the authorisation or it may be otherwise lawfully disposed of, whichever occurs first; and
 - (b) when the relevant interim control order or control order ceases to be in force, the holder of the authorisation may reclaim it from the Commissioner of Police, unless it has been sooner lawfully disposed of; and
 - (c) if the authorisation is not reclaimed within one month after the relevant interim control order or control order ceases to be in force, the Commissioner of Police must destroy the authorisation as soon as practicable.

- (2) The destruction of an authorisation under subsection (1)(c) has no effect on the validity of the authorisation.
- (3) If an authorisation to which an order made under section 59(2)(c) applies is seized under section 83, the Commissioner of Police must deliver the authorisation to the person to whom the order requires it to be surrendered.
- (4) Where neither section 84 nor subsection (1) or (3) apply to a thing surrendered under section 82 or seized under section 83 —
- (a) the *Criminal and Found Property Disposal Act 2006* applies to and in relation to the thing —
 - (i) as if it were property seized in the course of a criminal investigation; and
 - (ii) on the basis that the Commissioner of Police is authorised to retain the thing until the relevant interim control order or control order ceases to be in force or the thing may be otherwise lawfully disposed of, whichever occurs first;
- and
- (b) if the thing is likely to perish while it is being retained by the Commissioner of Police, or would be dangerous to retain, the Commissioner of Police may deal with the thing under section 17 of that Act as if it were held property that is not wholly prohibited property.
- (5) If an interim control order is varied under section 50, or a control order is varied under section 66 or 68, and the effect of the variation is to remove a prohibition of the kind referred to in section 82(1), this section applies as if the references in subsection (1)(b) and (c) and (4)(a)(ii) to the relevant interim control order or control order ceasing to be in force were references to the prohibition ceasing to have effect.

86. Other written laws providing for disposal of surrendered or seized property not affected

Sections 84 and 85 do not affect the operation of —

- (a) the *Criminal Property Confiscation Act 2000*; or
- (b) any other written law under which property that is surrendered under section 82 or seized under section 83 may be forfeited to the State.

Subdivision 4 — Requirements to provide identifying particulars

87. Term used: identifying particular

In this Subdivision —

identifying particular has the meaning given in the *Criminal Investigation (Identifying People) Act 2002* section 3(1).

88. Identifying particulars may be taken under *Criminal Investigation (Identifying People) Act 2002*

- (1) If an interim control order or a control order is in force in relation to a person, then —
 - (a) for the purposes of the *Criminal Investigation (Identifying People) Act 2002* Part 7 and section 67(1)(a), (b) and (ca), the controlled person is taken to be a charged suspect charged with a serious offence (as defined in section 3(1) of that Act); and
 - (b) that Act applies accordingly with any necessary modifications.

- (2) Subsection (1) is subject to sections 89 to 91.

[Section 88 amended: No. 22 of 2013 s. 30.]

89. Power to take identifying particulars exercisable once only

The power to take identifying particulars under section 88 cannot be exercised more than once in respect of the same interim control order or control order, and for the purposes of

this section an interim control order and a control order confirming that interim control order are to be treated as the same order.

90. Retention and use of identifying particulars taken

- (1) The Commissioner of Police may retain for law enforcement, crime prevention or community protection purposes any identifying particulars (other than a DNA profile and material from which to obtain the DNA profile of a person) taken under section 88.
- (2) The *Criminal Investigation (Identifying People) Act 2002* section 73 applies to and in respect of a DNA profile, and material from which to obtain the DNA profile of a person, taken under section 88.
- (3) Identifying particulars taken under section 88 must be destroyed in the circumstances set out in section 91.

91. Disposal of identifying particulars taken

- (1) Identifying particulars taken from a controlled person under section 88 must be destroyed —
 - (a) in any case where the particulars were taken when an interim control order was in force in respect of the person, if —
 - (i) the application for a control order confirming the interim control order is withdrawn or dismissed; or
 - (ii) the interim control order is revoked under section 47(2)(a) or 56(1)(b); or
 - (iii) the interim control order ceases to have effect under section 25(1); or
 - (iv) a control order confirming the interim control order is made, but the decision of the court to make the order is reversed on an appeal under section 64;

(b) in any case where the particulars were taken when a control order was in force in respect of the person, if the decision of the court to make the order is reversed on an appeal under section 64.

(2) The *Criminal Investigation (Identifying People) Act 2002* applies in respect of identifying particulars that are required to be destroyed under this section as if Part 9 of that Act required the identifying particulars to be destroyed.

92. Power of police officers to request disclosure of identity

- (1) A police officer who has reasonable cause to suspect that a person is a controlled person who is associating with another controlled person may require the person to disclose his or her personal details.
- (2) If a police officer has reasonable cause to suspect that a personal detail given by a person in response to a requirement under subsection (1) is false, the officer may require the person to produce evidence of the correctness of the detail.
- (3) Section 104 makes a refusal or failure to comply with a requirement under subsection (1) or (2) and giving false particulars in response to a requirement an offence.

Subdivision 5 — Notification of order where possession of firearms prohibited

93. Inquiries about use of, or access to, firearms

- (1) A person who personally serves notice of an interim control order, or a copy of a control order, on a controlled person must, if that order contains a firearms condition —
 - (a) ask the controlled person —
 - (i) whether the person uses or has access to any firearms in the course of the controlled person's usual occupation; and

- (ii) if so, the name and business address of the responsible person; and
 - (iii) whether the person and another person (the *co-licensee*) hold firearms licenses in respect of the same firearm; and
 - (iv) if so, the name and address of the co-licensee; and
 - (b) make a written record of the responses given by the controlled person to those questions; and
 - (c) tell the controlled person that the responsible person or the co-licensee (or both, as the case requires) will be notified that the interim control order or, as the case requires, the control order has been made.
- (2) If the controlled person is present in court when the interim control order or control order is made, the court must —
- (a) do the things set out in subsection (1)(a) to (c); and
 - (b) ensure that the written record required by subsection (1)(b) is sent without delay to the Commissioner of Police.
- (3) If an interim control order is varied under section 50, or a control order is varied under section 66 or 68, and the effect of the variation is to include a firearms condition, this section applies as if —
- (a) the reference in subsection (1) to the personal service of notice of an interim control order or a copy of a control order were a reference to the personal service of notice of the variation; and
 - (b) the reference in subsection (2) to the making of an interim control order or a control order were a reference to the varying of an interim control order or a control order.

- (4) Section 105 makes a failure to answer a question asked under subsection (1) or (2), and giving a false answer to a question asked under either of those subsections, an offence.

94. Commissioner of Police to notify order to responsible person and co-licensee

- (1) If a written record made under section 93(1) or (2) indicates that a controlled person uses or has access to a firearm in the course of the controlled person's usual occupation or holds a firearms licence in respect of a firearm for which a co-licensee also holds a firearms licence, the Commissioner of Police must promptly notify the responsible person or co-licensee, as the case requires —
- (a) that an interim control order or, as the case requires, a control order has been made against the controlled person; and
 - (b) that the order prohibits the controlled person from possessing a firearm; and
 - (c) either —
 - (i) in the case of a control order, of the duration of the order and the possibility of it being renewed; or
 - (ii) in the case of an interim control order, that the order remains in force until a control order is made confirming the interim control order, but may cease to have effect in certain circumstances;
- and
- (d) that it is an offence for the responsible person or co-licensee to allow the controlled person to use or have access to a firearm.
- (2) Section 108 makes it an offence for a responsible person or co-licensee who is notified under this section to allow a controlled person to use or have access to a firearm.

Division 6 — General

95. Orders only available against individuals

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

96. Order prohibiting entry to premises or place

An interim control order or a control order may prohibit a person from entering or remaining in any premises or place, or restrict a person's access to any premises or place, even if the person has a legal or equitable right to be at the premises or place.

97. Correcting minor errors in orders

(1) In this section —

relevant order means —

- (a) an interim control order; or
- (b) a control order; or
- (c) an order made under section 59.

(2) This section applies if a relevant order contains —

- (a) a clerical mistake; or
- (b) an error arising from an accidental slip or omission; or
- (c) a material mistake in the description of any person, thing or matter referred to in the order.

(3) If this section applies —

- (a) a registrar may correct the relevant order; or
- (b) the court, on an application by or on behalf of the Commissioner of Police or the controlled person, may make an order correcting the relevant order.

(4) Subsection (3) does not apply if the correction would adversely affect the interests of the public or the controlled person.

- (5) If a relevant order is corrected under this section, the registrar must ensure that the Commissioner of Police and the controlled person are notified of the correction.

98. Relationship with other laws

- (1) In this section —

family order has the meaning given in the *Restraining Orders Act 1997* section 5;

prohibition order has the meaning given in the *Community Protection (Offender Reporting) Act 2004* section 85;

restraining order —

- (a) has the meaning given in the *Restraining Orders Act 1997* section 3; and
- (b) includes a police order as defined in section 3 of that Act.
- (2) If an interim control order or a control order is inconsistent with a family order or a prohibition order or a restraining order, the family order or prohibition order or restraining order prevails, and the interim control order or control order has no effect to the extent of the inconsistency.
- (3) Subsection (2) applies whether the interim control order or control order was made before or after the family order or prohibition order or restraining order.
- (4) For the purposes of subsection (2), an interim control order or a control order is not inconsistent with another order merely because the interim control order or control order imposes a longer term in relation to any prohibited conduct than was imposed by the other order.

Part 4 — Offences

Division 1 — Offences by controlled persons

Subdivision 1 — Non-association offences

99. Association between controlled persons an offence

- (1) A controlled person who associates with another controlled person commits an offence.

Penalty:

- (a) for a first offence, imprisonment for 2 years;
- (b) for a second or subsequent offence committed after conviction for a first offence, imprisonment for 5 years.

Summary conviction penalty for a second or subsequent offence: imprisonment for 3 years.

- (2) An offence under subsection (1) to which paragraph (b) of the penalty for that offence applies is an indictable offence.

- (3) A controlled person who, at any time within a period of 3 months, associates with another controlled person on 3 or more occasions commits an offence.

Penalty: imprisonment for 3 years.

- (4) For the purposes of subsections (1) and (3), it does not matter —

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

- (5) In proceedings for an offence under subsection (1) or (3), the prosecution does not have to prove —
- (a) that the accused associated with another person for any particular purpose; or
 - (b) that the association would have led to the commission of any offence.

100. Defences to charges under section 99

- (1) For the purposes of the application of section 99(1) and (3) to an accused to whom an interim control order relates, the forms of association set out in section 101 are to be disregarded if the accused proves that the association was reasonable in the circumstances.
- (2) It is a defence to a charge under section 99(1) or (3) for the accused to establish that he or she did not know, and could not reasonably be expected to have known, that the other person with whom he or she associated was a controlled person.
- (3) It is a defence to a charge under section 99(1) or (3) for the accused to establish that the association was in accordance with the terms of an exemption under section 59.

101. Certain associations to be disregarded for interim control orders

The following are the forms of association referred to in section 100(1) —

- (a) associations between close family members;
- (b) associations occurring in the course of a lawful occupation or business or lawful political protest or lawful industrial action;
- (c) associations occurring at a course of training or education between persons enrolled in the course;
- (d) associations occurring at a rehabilitation, counselling or therapy session;
- (e) associations occurring in lawful custody;

- (f) associations occurring in connection with the taking or defending of legal proceedings (whether civil or criminal);
- (g) associations occurring in the course of complying with a court order;
- (h) other associations of a kind prescribed by the regulations.

Subdivision 2 — Financing offence

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

- (1) A controlled person commits an offence if the person —
 - (a) receives funds from, or makes funds available to, a declared criminal organisation (whether directly or indirectly); or
 - (b) collects funds for, or on behalf of, a declared criminal organisation (whether directly or indirectly).

Penalty: imprisonment for 5 years.

Summary conviction penalty: imprisonment for 3 years.

- (2) An offence under subsection (1) is an indictable offence.
- (3) For the purposes of subsection (1), it does not matter whether the controlled person is or is not a member or former member of the declared criminal organisation.

Subdivision 3 — Other offences by controlled persons

103. Other contravention of interim control order or control order

- (1) In this section —
engage in conduct means —
 - (a) to do an act; or
 - (b) to omit to do an act.

- (2) A controlled person commits an offence if he or she engages in conduct that contravenes an interim control order or a control order relating to that person.
Penalty: imprisonment for 2 years.
- (3) This section does not apply to conduct that constitutes an offence under section 99 or 102 or 106.

104. Failure to disclose identity or giving false particulars

- (1) A person who is required by a police officer in accordance with section 43(1) or 92(1) to disclose his or her personal details must not, without reasonable excuse, fail or refuse to comply with the requirement.
Penalty: imprisonment for 12 months.
- (2) A person who is required by a police officer in accordance with section 43(2) or 92(2) to produce evidence of the correctness of a personal detail must not, without reasonable excuse, fail or refuse to comply with the requirement.
Penalty: imprisonment for 12 months.
- (3) A person must not, without reasonable excuse, in response to a requirement made by a police officer in accordance with section 43(1) or 92(1), give any personal detail that is false in a material particular.
Penalty: imprisonment for 12 months.
- (4) A person must not, in response to a requirement made by a police officer in accordance with section 43(2) or 92(2), produce any false evidence.
Penalty: imprisonment for 12 months.

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

- (1) A person who is required by a person or the court in accordance with section 93 to answer a question must not, without reasonable excuse, fail or refuse to answer the question.
Penalty: imprisonment for 12 months.
- (2) A person must not, without reasonable excuse, in response to a question asked by a person or the court in accordance with section 93, give an answer that is false in a material particular.
Penalty: imprisonment for 12 months.
- (3) Nothing in subsection (1) or (2) prevents a person from being dealt with for contempt of court for failing or refusing to answer a question, or for giving an answer that is false in a material particular, but the person is not liable to be punished twice.

Division 2 — Other offences

106. Recruiting members for declared criminal organisation an offence

- (1) A person who recruits another person to become a member of a declared criminal organisation commits an offence.
Penalty:
(a) for an individual, imprisonment for 5 years;
(b) for a body corporate, a fine of \$50 000.
Summary conviction penalty:
(a) for an individual, imprisonment for 3 years;
(b) for a body corporate, a fine of \$30 000.
- (2) An offence under subsection (1) is an indictable offence.
- (3) For the purposes of subsection (1), it does not matter whether the person who recruited the other person —
(a) is or is not a controlled person; or

- (b) is or is not a member or former member of the declared criminal organisation.

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

- (1) In this section —
owner, in relation to any premises, includes —
 - (a) the person entitled to receive the rent of those premises;
and
 - (b) the person to whom the rent of those premises is paid.
- (2) A person who is the owner, occupier or lessee of any premises must not knowingly permit those premises to be habitually used as a place of resort by members of a declared criminal organisation.
Penalty: imprisonment for 2 years.
- (3) A person must not be knowingly concerned in the management of any premises habitually used as a place of resort by members of a declared criminal organisation.
Penalty: imprisonment for 2 years.
- (4) In proceedings for an offence under subsection (2), a person who is the owner, occupier or lessee of any premises habitually used as a place of resort by members of a declared criminal organisation and is a member of that declared criminal organisation is presumed, unless the contrary is shown, to knowingly permit those premises to be habitually used as a place of resort by members of that declared criminal organisation.
- (5) In proceedings for an offence under subsection (3), a person who is concerned in the management of any premises habitually used as a place of resort by members of a declared criminal organisation and is a member of that declared criminal organisation is presumed, unless the contrary is shown, to be knowingly concerned in the management of those premises.

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

A responsible person or co-licensee notified under section 94 who allows the controlled person to use or have access to a firearm commits an offence.

Penalty:

- (a) in the case of a responsible person, a fine of \$4 000;
- (b) in the case of a co-licensee, imprisonment for 12 months or a fine of \$4 000.

Part 5 — Protection of criminal intelligence information

109. Term used: criminal intelligence information

In this Part —

criminal intelligence information means —

- (a) information relating to actual or suspected criminal activity (whether in this State or elsewhere) the disclosure of which could reasonably be expected —
 - (i) to prejudice criminal investigations; or
 - (ii) to enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement; or
 - (iii) to endanger a person's life or physical safety;or
- (b) information the disclosure of which could reasonably be expected to reveal and prejudice the effectiveness of any of the following —
 - (i) police information-gathering or surveillance methods;
 - (ii) police procedures for preventing, detecting, investigating or dealing with matters arising out of breaches of the law.

110. Protection of criminal intelligence information in proceedings for declaration

- (1) This section applies to the following proceedings —
 - (a) an application for a declaration under Part 2, and the hearing of the application;
 - (b) an application for the renewal or revocation of a declaration under Part 2, and the hearing of the application;

- (c) an application under section 128 for the cancellation of the registration of an interstate declaration, and the hearing of the application.
- (2) In proceedings to which this section applies, the designated authority must take all reasonable steps to maintain the confidentiality of information that the designated authority considers to be properly classified by the Commissioner of Police or the CC Commissioner as criminal intelligence information, including steps —
- (a) to receive evidence and hear argument about the information in private and in the absence of any party to the proceedings other than the Commissioner of Police or, as the case requires, the CC Commissioner or the representative of either of them; and
 - (b) to prohibit the publication of evidence about criminal intelligence information.
- (3) If the designated authority considers that the information cannot properly be classified as criminal intelligence information, the designated authority must —
- (a) give the Commissioner of Police or, as the case requires, the CC Commissioner the opportunity to withdraw the information from consideration; and
 - (b) if the information is withdrawn, prohibit the publication of evidence about the information.
- (4) Despite subsections (2) and (3), the designated authority may disclose criminal intelligence information or information withdrawn under subsection (3) to any of the following —
- (a) the Attorney General;
 - (b) the Parliamentary Commissioner, for the purposes of enabling the Parliamentary Commissioner to carry out his or her functions under Part 8 Division 1;
 - (c) a person conducting a review under Part 8 Division 2;
 - (d) a court;

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- (e) a person to whom the Commissioner of Police or, as the case requires, the CC Commissioner authorises disclosure.

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

- (1) This section applies to the following proceedings —
 - (a) an application for the making, revocation or variation of an interim control order, and the hearing of the application;
 - (b) an application for the making, variation or revocation of a control order, and the hearing of the application;
 - (c) an appeal under section 64 against a decision of the court in relation to the making of a control order, and the hearing of the appeal;
 - (d) an application for leave to appeal under section 64, and the hearing of the application;
 - (e) an application for the registration of an interstate control order that is referred to the court under section 135(2), and the hearing of the application;
 - (f) an application under section 148(1) for the registration of variations to a registered interstate control order, if the application is referred to the court under section 135(2), and the hearing of the application;
 - (g) an application under section 149 for the variation of a registered interstate control order, and the hearing of the application;
 - (h) an application under section 152 for the cancellation of the registration of an interstate control order, and the hearing of the application.
- (2) In proceedings to which this section applies, the court must take all reasonable steps to maintain the confidentiality of information that the court considers to be properly classified by the Commissioner of Police or, as the case requires, the CC

Commissioner as criminal intelligence information, including steps —

- (a) to receive evidence and hear argument about the information in private and in the absence of any party to the proceedings other than the Commissioner of Police or, as the case requires, the CC Commissioner or the representative of either of them; and
 - (b) to prohibit the publication of evidence about criminal intelligence information.
- (3) If the court considers that the information cannot properly be classified as criminal intelligence information, the court must —
- (a) give the Commissioner of Police or, as the case requires, the CC Commissioner the opportunity to withdraw the information from consideration; and
 - (b) if the information is withdrawn, prohibit the publication of evidence about the information.
- (4) Despite subsections (2) and (3), the court may disclose criminal intelligence information or information withdrawn under subsection (3) to any of the following —
- (a) the Attorney General;
 - (b) the Parliamentary Commissioner, for the purposes of enabling the Parliamentary Commissioner to carry out his or her functions under Part 8 Division 1;
 - (c) a person conducting a review under Part 8 Division 2;
 - (d) another court;
 - (e) a person to whom the Commissioner of Police or, as the case requires, the CC Commissioner authorises disclosure.

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

- (1) This section applies if —
 - (a) a provision of this Act requires a copy of an affidavit to be served on any person; and
 - (b) the disclosure of information included in that affidavit would be in breach of section 111.
- (2) If this section applies, an edited copy of the affidavit, from which the information that cannot be disclosed has been removed or erased, must be served instead.

Part 6 — Information about declarations and orders

113. Commissioner of Police to keep register

- (1) The Commissioner of Police must keep an accurate and up-to-date register of the following information —
 - (a) details of each declared criminal organisation, including —
 - (i) the name of the organisation, or the name by which the organisation is commonly known; and
 - (ii) details of the declaration under which that organisation is a declared criminal organisation, including any renewals of the declaration;
 - (b) the reasons for designated authorities' decisions, as provided to the Commissioner under section 14(3) or 22(3);
 - (c) the personal details of each person who is a controlled person under an interim control order or a control order;
 - (d) any other prescribed information.
- (2) The register is called the Register of Criminal Organisations and Controlled Persons.
- (3) The Commissioner may keep the register in any form the Commissioner thinks fit.

114. Publication of information on register

- (1) The Commissioner of Police must make the information on the register publicly available free of charge in the following ways —
 - (a) by making the register available during normal office hours at a prescribed place for public inspection;
 - (b) by making the register available on a website maintained by the Western Australian Police Force.

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- (2) The Commissioner may make the information on the register available in any other way the Commissioner considers appropriate.

115. Provision of information about declarations and orders

- (1) A regulatory authority and the Commissioner of Police may enter into arrangements for the supply to the regulatory authority of information that —
- (a) is contained in the records of the Western Australian Police Force; and
 - (b) concerns —
 - (i) any organisation that is a declared criminal organisation; or
 - (ii) any controlled person who is an applicant for, or the holder of, an authorisation; or
 - (iii) any person who is an applicant for, or the holder of, an authorisation and who is a member of, or associates with any member of, a declared criminal organisation;
- and
- (c) is reasonably necessary for the proper exercise of any function of the regulatory authority relating to authorisations and disciplinary proceedings.
- (2) Arrangements made under subsection (1) are sufficient authority for supplying information to which that subsection applies.
- (3) The regulatory authority —
- (a) must take steps to maintain the confidentiality of any information supplied under subsection (1) that is classified by the Commissioner as criminal intelligence information; and
 - (b) must not disclose that information to any person unless authorised to do so by the Commissioner.

- (4) Nothing in this section limits or affects any other power or duty conferred or imposed on the Commissioner or the regulatory authority under the written law under which the regulatory authority operates.

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

- (1) This Part applies in relation to registered interstate declarations in the same way that it applies to declarations.
- (2) This Part applies in relation to registered interstate control orders in the same way that it applies to control orders.

Part 7 — Reciprocal recognition and enforcement of declarations and orders

Division 1 — Preliminary

117. Overview of this Part

- (1) This Part provides for declarations and orders made under a corresponding provision of a law of another State or Territory to be registered under this Act and have effect as declarations and control orders in this State.
- (2) An interstate declaration can be registered by a registrar of the Supreme Court without a hearing, and notice of the registration of the declaration must then be published in the *Gazette* and in at least one newspaper circulating throughout the State.
- (3) An interstate control order that does not need to be adapted or modified for its effective operation in this State can be registered by a registrar of the Supreme Court without a hearing.
- (4) An application for the registration of an interstate control order that needs to be adapted or modified for its effective operation in this State is referred to the Supreme Court, which decides what adaptations and modifications (if any) are required for the order to be registered.
- (5) A registered interstate control order —
 - (a) must be served personally on the person to whom it relates; and
 - (b) has effect for 5 years, but its registration can be cancelled or renewed.
- (6) This section is intended only as a guide to the general scheme and effect of this Part, and does not limit the other provisions of this Part.

118. Terms used

In this Part —

corresponding law means a provision of a law of another State or Territory that is prescribed under section 170 to be a corresponding law;

interstate control order means an order (by whatever name called) made under a corresponding law;

interstate declaration means a declaration (by whatever name called) made under a corresponding law;

respondent —

- (a) in relation to an interstate declaration, means the organisation to which the declaration relates;
- (b) in relation to an interstate control order, means the person to whom the order relates.

Division 2 — Reciprocal recognition of declarations

Subdivision 1 — Applications for registration of interstate declaration

119. Application for registration of interstate declaration

- (1) The Commissioner of Police or the CC Commissioner may apply to a registrar for the registration of an interstate declaration.
- (2) An application for registration —
 - (a) must be made in the prescribed manner; and
 - (b) must be accompanied by an affidavit that includes or is accompanied by —
 - (i) a copy of the declaration to be registered; and
 - (ii) enough information to enable the registrar to find that the declaration is an interstate declaration that is in force.

- (3) An application for the registration of an interstate declaration does not need to be served on the respondent.

120. When interstate declaration cannot be registered

An application for the registration of an interstate declaration cannot be made under this Division, and an interstate declaration cannot be registered under this Division, if any of the following apply to the declaration —

- (a) the law of the jurisdiction in which the declaration was made specifies a period within which the respondent may appeal against the declaration, and that period is still running;
- (b) the determination of an application by the respondent for leave to appeal against the declaration (whether made before or after any appeal period has expired) is pending;
- (c) the determination of an appeal by the respondent against the declaration is pending.

Subdivision 2 — Registration of interstate declaration by registrar

121. Registration of interstate declaration by registrar

On an application under section 119 for the registration of an interstate declaration, the registrar must register the declaration if the registrar is satisfied —

- (a) that the declaration is in force; and
- (b) if the law of the jurisdiction in which the declaration was made requires notice of the declaration to be published, that the requirement has been complied with; and
- (c) if the law of the jurisdiction in which the declaration was made requires that the declaration be served on any organisation, person or group of persons, that the requirement has been complied with or is taken to have been complied with; and

- (d) that section 120 does not prevent registration of the order.

122. Period of registration

- (1) On registering an interstate declaration under this Division, the registrar is to specify the date on which the registration expires.
- (2) The date stated in accordance with subsection (1) is to be the date on which the interstate declaration would cease to be in force in the jurisdiction in which it was made if it were not sooner revoked.
- (3) The registration of the interstate declaration expires on the date stated in accordance with subsection (1).
- (4) Subsections (1) to (3) do not apply if, under the law of the jurisdiction in which the interstate declaration was made, the interstate declaration remains in force for an indefinite period, in which case —
- (a) on registering the declaration, the registrar is to specify that the registration is for an indefinite period; and
- (b) the registration of the interstate declaration does not expire.

Subdivision 3 — Notice of registration

123. Notice of registration

- (1) Not later than 2 working days after registering an interstate declaration, the registrar must give the applicant for the registration of the interstate declaration a certificate of the registration with a copy of the registered interstate declaration attached.
- (2) As soon as practicable after receiving a copy of the registered interstate declaration under subsection (1), the applicant for the registration of the declaration must publish notice of the registration of the declaration in the *Gazette* and in at least one newspaper circulating throughout the State.

- (3) Section 15(2) applies with all necessary modifications in relation to the notice required by subsection (2).
- (4) As soon as practicable after registering an interstate declaration, the registrar must give notice of that registration to —
 - (a) the commissioner (by whatever name called) of the police force or police service of the State or Territory in which the declaration was made; and
 - (b) if the declaration was made by a court, a registrar of that court.

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

124. Commencement and duration of registered interstate declaration

A registered interstate declaration —

- (a) comes into force in this State on the day after the day on which notice of the registration of the declaration is published in the *Gazette* in accordance with section 123(2); and
- (b) remains in force in this State until one of the following occurs —
 - (i) the registration of the declaration expires in accordance with section 122(3);
 - (ii) the registration of the declaration is cancelled under section 126, 127 or 128.

125. Effect of registration of interstate declaration

- (1) A registered interstate declaration that has come into force under section 124(a) operates in this State as if it were a declaration made under Part 2.
- (2) However, Part 2 Division 3 does not apply, except as provided by section 128(2).

Subdivision 5 — Cancellation of registration of interstate declaration

126. Revocation in jurisdiction where interstate declaration originally made

- (1) Subsection (2) applies to a registered interstate declaration if —
 - (a) the declaration is revoked in the jurisdiction in which the declaration was made; and
 - (b) a registrar receives notice of that revocation from —
 - (i) if the declaration was revoked by a court, an officer of that court; or
 - (ii) the Commissioner of Police or the CC Commissioner.
- (2) On receiving notice of the revocation of the registered interstate declaration, the registrar must —
 - (a) cancel the registration of the declaration without delay, and the cancellation takes effect immediately; and
 - (b) give the Commissioner of Police or the CC Commissioner (whichever was the applicant for the registration of the declaration) written notice of that cancellation.

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

- (1) The Commissioner of Police or the CC Commissioner may, at any time while an interstate declaration is registered under this Division, apply to a registrar to cancel the registration of the declaration.
- (2) On receiving an application under this section, the registrar must —
 - (a) cancel the registration of the declaration without delay, and the cancellation takes effect immediately; and

- (b) give the Commissioner of Police or the CC Commissioner (whichever was the applicant for the cancellation) written notice of that cancellation.

128. Cancellation of registration of interstate declaration on application by respondent or others

- (1) The following persons may, at any time while an interstate declaration is registered under this Division, apply for the cancellation of the registration of the declaration —
 - (a) the respondent;
 - (b) any member of the respondent;
 - (c) any person who is a former member of the respondent, if cancellation of the registration of the declaration is sought on the ground that the organisation in respect of which the declaration was made no longer exists, and section 17(2) does not apply with respect to members of that organisation.
- (2) Sections 19 to 23 apply, with all necessary modifications, to an application under subsection (1) as if it were an application under Part 2 Division 3 for the revocation of a declaration made by the declared criminal organisation or, as the case requires, a member or former member of the declared criminal organisation.
- (3) Part 5 applies to proceedings under this section.

Subdivision 6 — Notice of cancellation or expiry of registration

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

As soon as practicable after the registration of an interstate declaration is cancelled under this Division or expires, the Commissioner of Police or the CC Commissioner (whichever was the applicant for the registration of the declaration) must publish notice of the cancellation or expiry in the *Gazette* and in at least one newspaper circulating throughout the State.

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

As soon as practicable after the registration of an interstate declaration is cancelled under this Division, the registrar must give notice of that cancellation to —

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

Subdivision 7 — Effect of cancellation or expiry of registration

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

Section 25 applies with all necessary modifications to the expiry or cancellation of the registration of an interstate declaration under this Division as if it were the expiry or revocation of a declaration made under Part 2.

Subdivision 8 — Evidential provision

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

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

- (a) the making of the interstate declaration; or
- (b) the publication of notice of the declaration; or
- (c) service of the declaration on any organisation, person or group of persons.

Division 3 — Reciprocal recognition of control orders

Subdivision 1 — Applications for registration of interstate control order

133. Application for registration of interstate control order

- (1) The Commissioner of Police may apply to a registrar for the registration of an interstate control order.
- (2) An application for registration —
 - (a) must be made in the prescribed manner; and
 - (b) must be accompanied by an affidavit that includes or is accompanied by —
 - (i) a copy of the order to be registered; and
 - (ii) enough information to enable the registrar to find that the order is an interstate control order that is in force;and
 - (c) must be accompanied by any other affidavit the Commissioner intends to rely on at the hearing of the application; and
 - (d) must state —
 - (i) whether the Commissioner considers that the order needs to be adapted or modified for its effective operation in this State; and
 - (ii) if so, the details of the adaptation or modification that the Commissioner considers necessary.
- (3) An application for the registration of an interstate control order does not need to be served on the respondent.

134. When interstate control order cannot be registered

An application for the registration of an interstate control order cannot be made under this Division, and an interstate control order cannot be registered under this Division, if —

- (a) the respondent is a controlled person under an interim control order or a control order made under this Act; or
- (b) any of the following apply to the order —
 - (i) the law of the jurisdiction in which the order was made specifies a period within which the respondent may appeal against the order, and that period is still running;
 - (ii) the determination of an application by the respondent for leave to appeal against the order (whether made before or after any appeal period has expired) is pending;
 - (iii) the determination of an appeal by the respondent against the order is pending.

Subdivision 2 — Registration of interstate control order by registrar

135. Registration of interstate control order by registrar

- (1) On an application under section 133 for the registration of an interstate control order, the registrar must register the order if the registrar is satisfied —
 - (a) that the order is in force; and
 - (b) that the order was served, or taken to be served, on the respondent under the law of the jurisdiction where the order was made; and
 - (c) that section 134 does not prevent registration of the order; and
 - (d) that the order does not need to be adapted or modified for its effective operation in this State.

- (2) If the registrar considers that the order needs to be adapted or modified for its effective operation in this State, the registrar must refer the application to the court.

Subdivision 3 — Determination by court of application for registration

136. Referral of application to court for adaptation or modification

- (1) This section applies if an application for the registration of an interstate control order is referred to the court under section 135(2).
- (2) The Commissioner of Police must serve the following documents personally on the respondent —
- (a) a copy of the application for registration;
 - (b) all affidavits that accompanied the application;
 - (c) a notice stating the following in relation to the application —
 - (i) that an application for the registration of the interstate control order has been referred to the court to consider whether or not, in order to be registered, the order needs to be adapted or modified for its effective operation in this State;
 - (ii) when and where the application is to be heard;
 - (iii) that the respondent may appear at the hearing;
 - (iv) that the court may register the interstate control order (with or without adaptation or variation) in the respondent's absence if the respondent does not appear at the hearing.
- (3) Subsection (2)(b) is subject to section 112.
- (4) Sections 43 and 44 apply with all necessary modifications in relation to service of the documents required by subsection (2).

- (5) If this section applies —
- (a) the Commissioner of Police and the respondent may appear at the hearing of the application and make submissions in relation to the application; but
 - (b) the court may hear and determine the application whether or not any of the persons who are entitled to be present and make submissions at the hearing take advantage of that opportunity.

137. Determination of application for registration

- (1) On hearing an application for the registration of an interstate control order referred to the court under section 135(2), the court may direct a registrar to register the order —
- (a) with any adaptations or modifications that the court considers necessary or desirable for its effective operation in this State; or
 - (b) without any adaptations or modifications.
- (2) Before giving a direction under subsection (1), the court —
- (a) must consider —
 - (i) anything that could be considered by the court if the application were an application for a control order under this Act; and
 - (ii) any changes in the respondent's circumstances since the interstate control order was made;
 - and
 - (b) must be satisfied of the matters set out in section 135(1)(a) to (c).
- (3) The registrar must register the interstate control order in accordance with the direction of the court.

Subdivision 4 — Period of registration

138. Period of registration

- (1) The registration of an interstate control order remains in force for a period of 5 years beginning on the day after the day on which it is registered under this Division, unless the registration is sooner cancelled or renewed.
- (2) On registering an interstate control order under this Division, the registrar is to specify the date on which the registration expires.

Subdivision 5 — Notice of registration

139. Notice of registration

- (1) Not later than 2 working days after registering an interstate control order, the registrar must give the Commissioner of Police a certificate of the registration with a copy of the registered interstate control order attached.
- (2) As soon as practicable after receiving a copy of the registered interstate control order under subsection (1), the Commissioner of Police must serve a copy of the order personally on the respondent.
- (3) Sections 43 and 44 apply with all necessary modifications in relation to service of the copy of the order required by subsection (2).
- (4) As soon as practicable after registering an interstate control order, the registrar must notify the registrar of the court in the jurisdiction in which the interstate control order was made that the order has been registered under this Act.

140. Explanation of registered interstate control order

- (1) The Commissioner of Police must ensure that all reasonable steps are taken to give the person to whom a registered interstate

control order relates the explanation set out in subsection (2) when the person is served with a copy of the order.

- (2) The person must have explained to them, in language likely to be understood by them —
 - (a) the person's obligations under the registered interstate control order; and
 - (b) the consequences that may follow if the person fails to comply with those obligations.
- (3) Without limiting subsection (2), the explanation must include advice that the names of persons who are controlled persons are listed on the register kept under section 113.
- (4) The explanation must, so far as practicable, be given both orally and in writing.
- (5) Failure to comply with this section does not invalidate the registration of an interstate control order.

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

141. Commencement and duration of registered interstate control order

- (1) A registered interstate control order —
 - (a) comes into force in this State when the respondent is served personally with a copy of the order; and
 - (b) remains in force in this State until one of the following occurs —
 - (i) the registration of the order expires;
 - (ii) the registration of the order is cancelled under section 148(3), 151, 152 or 153.
- (2) Subsection (1)(b) is subject to section 147.

142. Effect of registration of interstate control order

- (1) A registered interstate control order that has come into force under section 141(1)(a) operates in this State as if it were a control order made under Part 3, but with the following modifications —
 - (a) the order has the terms set out in the order or applying to it under the law of the jurisdiction in which it was made, with any adaptations or modifications directed by the court under section 137;
 - (b) Part 3 Division 3 Subdivision 5 does not apply, except as provided by sections 149 and 152;
 - (c) the order operates in this State only while it remains registered under this Division, but subject to section 147.
- (2) This Act applies to a registered interstate control order in the same way that it applies to a control order made under Part 3, except as provided by subsection (1).

[Section 142 amended: No. 6 of 2017 s. 6(2).]

Subdivision 7 — Renewal of registration of interstate control order

143. Application for renewal of registration of interstate control order

- (1) The Commissioner of Police may apply to a registrar for the renewal of the registration of an interstate control order.
- (2) An application for renewal —
 - (a) may be made before or after the registration of the interstate control order expires; and
 - (b) must be in the prescribed form; and
 - (c) must be accompanied by an affidavit that includes enough information to enable the registrar to find that the order remains in force in the jurisdiction in which it was made.

- (3) An application for the renewal of the registration of an interstate control order does not need to be served on the respondent.

144. Registrar to renew registration of interstate control order

- (1) On an application under section 143 for the renewal of the registration of an interstate control order, the registrar must renew the registration of the order if the registrar is satisfied that the order remains in force in the jurisdiction in which it was made.
- (2) There are no limits on the number of times the registration of an interstate control order can be renewed.

145. Period of renewal

- (1) The registration of an interstate control order that is renewed under section 144 remains in force for a period of 5 years beginning on —
- (a) if the registration is renewed before it expires, the day after the day on which the registration of the order would otherwise have expired; or
 - (b) if the registration is renewed after it expires, the day after the day on which the registration of the order is renewed.
- (2) Subsection (1) applies unless the registration of the order is sooner cancelled or renewed.
- (3) On renewing the registration of an interstate control order under section 144, the registrar is to specify the date on which the renewal of the registration expires.

146. Notice of renewal of registration

- (1) Not later than 2 working days after renewing the registration of an interstate control order, the registrar must give the Commissioner of Police a certificate of the renewal of the registration with a copy of the registered interstate control order attached.

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- (2) As soon as practicable after receiving a certificate under subsection (1), the Commissioner of Police must serve a copy of the certificate and the registered order personally on the respondent.
- (3) Sections 43, 44 and 140 apply with all necessary modifications in relation to service of the copy of the certificate and order required by subsection (2).
- (4) As soon as practicable after renewing the registration of an interstate control order, the registrar must notify the registrar of the court in the jurisdiction in which the interstate control order was made that the registration of the order has been renewed under this Division.

147. Effect of renewal of registration of interstate control order

- (1) If the registration of an interstate control order is renewed under section 144, the effect that the order has in this State is determined in accordance with this section.
- (2) The order continues in force in this State uninterrupted if —
 - (a) the registration of the order is renewed before that registration expires; and
 - (b) the copy of the certificate and order required by section 146 is served personally on the respondent in accordance with that section not later than the day on which the registration of the order would have expired if it had not been renewed.
- (3) Subsection (4) applies if —
 - (a) the registration of the order is renewed before that registration expires but subsection (2)(b) does not apply; or
 - (b) the registration of the order is renewed after that registration expires.

- (4) If this subsection applies —
- (a) the order ceases to be in force in this State —
 - (i) if subsection (3)(a) applies, when the registration of the order would have expired if it had not been renewed; or
 - (ii) if subsection (3)(b) applies, when the registration of the order expires;
 - and
 - (b) the order again comes into force in this State when the copy of the certificate and order required by section 146 is served personally on the respondent in accordance with that section.

Subdivision 8 — Variation and cancellation of registered interstate control order

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

- (1) If an interstate control order is varied by a court in the jurisdiction in which the order was made —
- (a) the variations to the order may be registered under this Division in the same way as the interstate control order is registered, whether the variations were made before or after the registration of the interstate control order; and
 - (b) the provisions of this Division apply accordingly with all necessary modifications.
- (2) Subsection (3) applies to a registered interstate control order if —
- (a) the order is revoked by a court in the jurisdiction in which the order was made; and
 - (b) a registrar receives notice of that revocation from an officer of that court or from the Commissioner of Police.

- (3) On receiving notice of the revocation of the registered interstate control order, the registrar must —
 - (a) cancel the registration of the order without delay, and the cancellation takes effect immediately; and
 - (b) give the Commissioner of Police written notice of that cancellation.
- (4) As soon as practicable after receiving notice under subsection (3)(b) of the cancellation of the registration of an interstate control order, the Commissioner of Police must serve a copy of the notice of cancellation personally on the respondent.
- (5) Section 44 applies with all necessary modifications in relation to service of a copy of the notice of cancellation on the respondent.

149. Variation of registered interstate control order in this State

- (1) The respondent or the Commissioner of Police may, at any time while an interstate control order is registered under this Division, apply to the court to vary the order as it has effect in this State.
- (2) Sections 67, 68, 69 and 72 apply, with all necessary modifications, to an application under subsection (1) as if it were an application for the variation of a control order made under Part 3.

150. Procedure where registered order varied to include firearms condition

If a registered interstate control order is varied under section 148(1) or 149, and the effect of the variation is to include a firearms condition, Part 3 Division 5 Subdivision 5 applies with all necessary modifications.

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

- (1) The Commissioner of Police may, at any time while an interstate control order is registered under this Division, apply to a registrar to cancel the registration of the order.
- (2) On receiving an application under this section, the registrar must —
 - (a) cancel the registration of the order without delay, and the cancellation takes effect immediately; and
 - (b) give the Commissioner of Police written notice of that cancellation.
- (3) As soon as practicable after receiving notice under subsection (2)(b) of the cancellation of the registration of an interstate control order, the Commissioner of Police must serve a copy of the notice of cancellation personally on the respondent.
- (4) Section 44 applies with all necessary modifications in relation to service of a copy of the notice of cancellation on the respondent.

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

- (1) The respondent may, at any time while an interstate control order is registered under this Division, apply to the court to cancel the registration of the order.
- (2) Sections 70 to 72 apply, with all necessary modifications, to an application under subsection (1) as if it were an application for the revocation of a control order made by the controlled person under Part 3.

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

The registration of an interstate control order under this Division is immediately cancelled if the person to whom the

order relates becomes a controlled person under an interim control order or a control order made under Part 3.

154. Registrar to notify original court of cancellation of registration

As soon as practicable after the registration of an interstate control order is cancelled under this Division, the registrar must notify the registrar of the court in the jurisdiction in which the interstate control order was made that the registration of the order under this Act has been cancelled.

Subdivision 9 — Evidential provision

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

In proceedings for a breach, committed in this State, of a registered interstate control order, no proof is required of —

- (a) the making of the interstate control order or of any variation of it that operates in this State under section 148(1); or
- (b) the service of the order or variation on the person to whom the order relates.

Part 8 — Monitoring and review

Division 1 — Monitoring

156. Terms used

In this Division —

monitoring period means the period of 5 years beginning on the day on which this Part comes into operation;

reporting period, in relation to an anniversary of the day on which the monitoring period begins, means the period of 12 months ending on that anniversary.

157. Parliamentary Commissioner to monitor exercise of powers

- (1) For the monitoring period, the Parliamentary Commissioner is to keep under scrutiny the exercise of powers conferred on the following persons under this Act —
 - (a) the Commissioner of Police;
 - (b) police officers.
- (2) For the purpose of carrying out the Parliamentary Commissioner's functions under this Division —
 - (a) the Parliamentary Commissioner has all the powers, rights and privileges that he or she has under the *Parliamentary Commissioner Act 1971* with respect to investigations under that Act; and
 - (b) Part III Division 3 of that Act applies accordingly with all necessary modifications; and
 - (c) section 11 of that Act applies as if the functions of the Parliamentary Commissioner under this Division were functions of the Parliamentary Commissioner under that Act.

- (3) Without limiting subsection (2) —
- (a) the Commissioner of Police must ensure that the Parliamentary Commissioner is provided with a report on —
 - (i) any declaration made under Part 2; and
 - (ii) any revocation of a declaration made under Part 2; and
 - (iii) any interim control order; and
 - (iv) any control order; and
 - (v) any registered interstate declaration; and
 - (vi) any cancellation of the registration of an interstate declaration; and
 - (vii) any registered interstate control order; and
 - (viii) any prosecution for an offence under any provision of Part 4;and
 - (b) the report must include the reasons why —
 - (i) the declaration or interim control order or control order was sought; or
 - (ii) the registration of the interstate declaration or interstate control order was sought.

158. Parliamentary Commissioner to report on monitoring activities

- (1) The Parliamentary Commissioner must, as soon as practicable after the first, second, third and fourth anniversary of the day on which the monitoring period begins, and after the expiry of the monitoring period —
- (a) prepare a report on his or her activities under this Division, and include in the report any observations or recommendations that the Parliamentary Commissioner considers appropriate to make about the operation of this Act; and

- (b) provide a copy of the report to the Minister and the Commissioner of Police.
- (2) The report prepared after an anniversary of the monitoring period must relate to the Parliamentary Commissioner's activities during the reporting period.
- (3) The report prepared after the expiry of the monitoring period must relate to the Parliamentary Commissioner's activities during the whole monitoring period.
- (4) The Minister must cause each report to be laid before each House of Parliament within 12 sitting days of that House after the Minister receives a copy of it.

159. Maintenance of confidentiality of criminal intelligence

The Parliamentary Commissioner must maintain the confidentiality of information provided to the Parliamentary Commissioner for the purposes of this Division if that information is —

- (a) classified by the Commissioner of Police or the CC Commissioner as criminal intelligence information; or
- (b) provided to the Parliamentary Commissioner under section 110(4) or 111(4).

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

Nothing in this Division limits or affects the jurisdiction or functions of the Parliamentary Commissioner under the *Parliamentary Commissioner Act 1971*.

Division 2 — Review of Act

161. Act to be reviewed after 5 years

- (1) The Minister must carry out a review of the operation and effectiveness of this Act to determine whether or not the policy

objectives of the Act remain valid and whether or not the terms of the Act remain appropriate for securing those objectives.

- (2) The review must be undertaken as soon as practicable after the expiry of the period of 5 years beginning on the day on which this Part comes into operation.
- (3) The Minister must prepare a report on the outcome of the review and cause the report to be laid before each House of Parliament as soon as practicable after it is prepared but not later than 12 months after the end of the period of 5 years.

162. Maintenance of confidentiality of criminal intelligence

The Minister, or any person conducting the review on behalf of the Minister, must maintain the confidentiality of information provided to the Minister or other person for the purposes of this Division if that information is —

- (a) classified by the Commissioner of Police or the CC Commissioner as criminal intelligence information; or
- (b) provided to the Minister or other person under section 110(4) or 111(4).

Part 9 — Miscellaneous

163. Nature of proceedings under this Act

- (1) All proceedings under this Act (except proceedings for an offence under a provision of this Act) are civil proceedings.
- (2) In proceedings under this Act (except proceedings for an offence under a provision of this Act) —
 - (a) questions of fact are to be decided on the balance of probabilities; and
 - (b) a rule of construction that is applicable only in relation to the criminal law does not apply in the interpretation of this Act.

164. Costs in proceedings under this Act

- (1) In proceedings under this Act (except proceedings for an offence under a provision of this Act), a court may order a party (*party A*) to pay all or part of another party's costs only if —
 - (a) any act or omission of or caused by party A was unreasonable in the circumstances and contributed to the institution or continuation of the proceedings; or
 - (b) any act or omission of or caused by party A during or in the conduct of the proceedings was calculated to prolong the proceedings unnecessarily or cause unnecessary expense.
- (2) This section overrides any provision in any other written law under which a court can make an order about costs for proceedings under this Act.

165. Proof of service

- (1) If service of any document is required under this Act, proof of service must be given by certificate in writing.
- (2) The certificate must state that, on the day and at the time and place stated in the certificate, the person giving the certificate

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personally served on a person the requisite document in accordance with this Act.

- (3) The certificate must state full particulars of the name and address of the person served, unless section 36(b)(ii) or 42(1)(a)(ii) or 53(b)(ii) applies.
- (4) A certificate under this section is, in the absence of evidence to the contrary, sufficient proof of service of the document on the person stated to have been served.

166. Notification of service

As soon as practicable after a person serves a document in accordance with this Act, the person must —

- (a) complete a certificate of service in accordance with section 165; and
- (b) deliver the certificate to a registrar of the court.

167. Delegation by Commissioner of Police

- (1) The Commissioner of Police may delegate any power or duty of the Commissioner of Police under this Act to a police officer who is specified, or of a class specified, in the delegation.
- (2) The delegation must be in writing signed by the Commissioner of Police.
- (3) A police officer to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (4) A police officer exercising or performing a power or duty that has been delegated to that police officer under this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Nothing in this section limits the ability of the Commissioner of Police to perform a function through an officer or agent.

168. Delegation by Corruption and Crime Commissioner

The CC Commissioner may delegate any power or duty of the CC Commissioner under this Act as if it were a power or duty of the Corruption and Crime Commission under the *Corruption, Crime and Misconduct Act 2003*, and section 185 of that Act applies with all necessary modifications.

[Section 168 amended: No. 35 of 2014 s. 39.]

169. Protection from liability for wrongdoing

- (1) An action in tort does not lie against a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act.
- (2) The protection given by subsection (1) applies even though the thing done as described in that subsection may have been capable of being done whether or not this Act had been enacted.
- (3) Despite subsection (1), the State is not relieved of any liability that it might have for another person having done anything as described in that subsection.
- (4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

170. Regulations

The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

171. Power to make rules of court

- (1) The Supreme Court may make rules of court under the *Supreme Court Act 1935* for the purposes of this Act.
- (2) Subsection (1) does not limit the rule-making powers conferred by the *Supreme Court Act 1935*.

Part 10 — Amendments to other Acts

172. *Bail Act 1982* amended

- (1) This section amends the *Bail Act 1982*.
- (2) In Schedule 2 item 1 insert before the row relating to section 279:

s. 221E(1)	Participating in activities of criminal organisation
s. 221F(1)	Instructing commission of offence for benefit of criminal organisation

- (3) After Schedule 2 item 2 insert:

2AA. *Criminal Organisations Control Act 2012*

s. 99(1)	Association by controlled person with another controlled person
s. 99(3)	Association by controlled person with another controlled person on 3 or more occasions within 3 month period
s. 102	Offence for controlled person to get funds to, from or for declared criminal organisation
s. 103	Other contravention of interim control order or control order
s. 106	Recruiting members for declared criminal organisation
s. 107(2)	Permitting premises to be habitually used as place of resort by members of declared criminal organisation

s. 107(3) Being knowingly concerned in the management of premises habitually used as place of resort by members of declared criminal organisation

173. The Criminal Code amended

- (1) This section amends *The Criminal Code*.
- (2) After section 5(3)(a) insert:
 - (ba) that the circumstances in which the offence was allegedly committed are such that, if the accused were convicted of the offence, the *Sentencing Act 1995* Part 2 Division 2A would apply to the sentencing of the accused for that offence; or
- (3) In Part IV after section 221B insert:

Chapter XXVIA — Facilitating activities of criminal organisations

221C. Terms used

- (1) In this Chapter —
COC Act means the *Criminal Organisations Control Act 2012*;
criminal organisation has the meaning given in section 221D;
declared criminal organisation has the meaning given in the *Criminal Organisations Control Act 2012* section 3(1);
indictable offence includes conduct engaged in outside this State (including outside Australia) that, if it occurred in this State, would constitute an indictable offence.

- (2) A term used in this Chapter and also in the COC Act has the same meaning in this Chapter as it has in that Act, unless the term is defined in this Code or the context requires otherwise.

221D. Term used: criminal organisation

- (1) For the purposes of this Chapter, an entity is a *criminal organisation* if —
- (a) the entity is a declared criminal organisation; or
 - (b) all of the following apply to the entity —
 - (i) the entity is an organisation;
 - (ii) members of the organisation associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity;
 - (iii) the organisation represents a risk to public safety and order in this State.
- (2) In determining whether an entity is a criminal organisation for the purposes of subsection (1)(b) —
- (a) a court may have regard to any of the matters that a designated authority is entitled to have regard to under the COC Act section 13(2) (other than paragraph (e)) in considering whether or not to make a declaration under that Act; and
 - (b) section 13(3) of that Act applies with all necessary changes for the purposes of the court satisfying itself that subsection (1)(b)(ii) of this section applies to the entity.

221E. Participating in activities of criminal organisation

- (1) A person who, for the purpose of enhancing the ability of a criminal organisation to facilitate or commit an indictable offence, by act or omission, participates in or contributes to any activity of the criminal organisation is guilty of a crime, and is liable to imprisonment for 5 years.

Summary conviction penalty: imprisonment for 2 years.

- (2) For the purposes of subsection (1), facilitation of an offence does not require knowledge of a particular offence the commission of which is facilitated, or that an offence actually be committed.
- (3) In a prosecution for an offence under subsection (1), it is not necessary to prove that —
 - (a) the criminal organisation actually facilitated or committed an indictable offence; or
 - (b) the participation or contribution of the accused actually enhanced the ability of the criminal organisation to facilitate or commit an indictable offence; or
 - (c) the accused knew the specific nature of any indictable offence that may have been facilitated or committed by the criminal organisation; or
 - (d) the accused knew the identity of any of the persons who are members of the criminal organisation.
- (4) In determining whether an accused participates in or contributes to any activity of a criminal organisation, the court may consider, among other factors, whether the accused —
 - (a) uses a name, word, symbol or other representation that identifies, or is associated with, the criminal organisation; or
 - (b) frequently associates with members of the criminal organisation; or
 - (c) receives any benefit from the criminal organisation; or
 - (d) repeatedly engages in activities at the instruction of any of the members of the criminal organisation.

221F. Instructing commission of offence for benefit of criminal organisation

- (1) A person who is a member of a criminal organisation and who instructs, directly or indirectly, any person to commit an offence

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under this Code or any other written law, or an offence against a law of a jurisdiction other than Western Australia, for the benefit of, at the direction of, or in association with, the criminal organisation is guilty of a crime, and is liable to imprisonment for 20 years.

- (2) In a prosecution for an offence under subsection (1), it is not necessary to prove that —
- (a) an offence other than the offence under subsection (1) was actually committed; or
 - (b) the accused instructed a particular person to commit an offence; or
 - (c) the accused knew the identity of all of the persons who are members of the criminal organisation.

174. Criminal Investigation Act 2006 amended

- (1) This section amends the *Criminal Investigation Act 2006*.
- (2) After section 69A insert:

69B. Searching people for things relevant to interim control orders or control orders

If an officer reasonably suspects that a person in a public place is prohibited by an interim control order or a control order under the *Criminal Organisations Control Act 2012* from having something in his or her possession (a *prohibited thing*) in that place, the officer —

- (a) may do a basic search of the person, whether or not the officer suspects the person is in possession of a prohibited thing; and
- (b) may, subject to section 146, seize any prohibited thing that the officer finds; and
- (c) may do a forensic examination on the prohibited thing, whether or not the officer seizes it.

175. Criminal Investigation (Identifying People) Act 2002 amended

- (1) This section amends the *Criminal Investigation (Identifying People) Act 2002*.
- (2) Before section 73(1)(n) insert:
 - (nd) for the purposes of the *Criminal Organisations Control Act 2012*;

176. Criminal Property Confiscation Act 2000 amended

- (1) This section amends the *Criminal Property Confiscation Act 2000*.
- (2) After section 141(1)(a) insert:
 - (ba) any offence against a law in force anywhere in Australia, in any case where —
 - (i) the involvement or suspected involvement of a person in the commission of an offence, or the commission or suspected commission of an offence by a person, or the conviction of a person for an offence, is relevant for the purposes of any proceedings under this Act against that person or for the purposes of any provision of this Part or Parts 5, 6, 8, 10 or 11; and
 - (ii) at the time of the person's involvement or suspected involvement in the commission of the offence or, as the case requires, the time of the commission or suspected commission of the offence by the person, the person is or was a controlled person under a control order under the *Criminal Organisations Control Act 2012*;

or

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(3) After section 148(3) insert:

(4A) In subsection (4B) —

declared criminal organisation has the meaning given in the *Criminal Organisations Control Act 2012* section 3(1);

member, of a declared criminal organisation, has the meaning given in the *Criminal Organisations Control Act 2012* section 3(1).

(4B) Subsection (4C) applies if —

- (a) a person is convicted of a confiscation offence; and
- (b) at the time of the commission of the offence, the person was a member of a declared criminal organisation.

(4C) If this subsection applies, it is presumed that all the property that the person owns or effectively controls at the time of the commission of the confiscation offence is crime-derived property, unless the person establishes the contrary.

(4) Delete section 159(2)(a) and insert:

- (a) the person is charged with a serious drug offence or a relevant drug offence, as those terms are defined in the *Misuse of Drugs Act 1981* section 32A(3); and

[(5) *deleted*]

[Section 176 amended: No. 6 of 2017 s. 6(3).]

177. Evidence Act 1906 amended

(1) This section amends the *Evidence Act 1906*.

- (2) In section 106A insert in alphabetical order:

criminal organisation has the meaning given in *The Criminal Code* section 221D;

criminal organisation offence means an offence alleged to have been committed (whether before or after the *Criminal Organisations Control Act 2012* section 177 comes into operation) —

- (a) by a person who, at the time of the commission of the alleged offence, is alleged to have been a member of a criminal organisation; or
- (b) at the direction of a criminal organisation; or
- (c) in association with one or more members of a criminal organisation (whether or not those members are or have been charged with, or convicted of, the offence); or
- (d) for the benefit of a criminal organisation;

victim, in relation to a serious sexual offence or a criminal organisation offence, means a person upon or in respect of whom it is alleged that the offence was committed, attempted or proposed;

- (3) In section 106G(3) in the definition of **protected witness** delete paragraph (b) and insert:

- (b) if the proceeding is for a serious sexual offence, the victim (irrespective of the person's age); or
- (c) if the proceeding is for a criminal organisation offence —
 - (i) the victim (irrespective of the person's age); or
 - (ii) any witness for the prosecution (irrespective of the person's age).

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- (4) In section 106R(3a) delete “person upon or in respect of whom it is alleged that the offence was committed, attempted or proposed” and insert:

victim of the offence

- (5) After section 106R(3a) insert:

- (3B) Despite subsection (3), in any proceeding for a criminal organisation offence an order must be made under subsection (1) in respect of any person who is a victim of the offence or a witness for the prosecution unless the court is satisfied —

- (a) that subsection (3) does not apply to the person; and
- (b) that the person does not wish to be declared to be a special witness.

- (6) In section 106R(8) delete “a person referred to in subsection (3a)” and insert:

or a criminal organisation offence a person referred to in subsection (3a) or (3B), as the case requires,

178. *Liquor Control Act 1988* amended

- (1) This section amends the *Liquor Control Act 1988*.

- (2) At the end of Part 5A insert:

152NA. Relationship with *Criminal Organisations Control Act 2012*

A prohibition order is of no effect to the extent that it conflicts with or duplicates a condition of an interim control order or a control order under the *Criminal Organisations Control Act 2012* that applies to the relevant person.

179. *Misuse of Drugs Act 1981* amended

- (1) This section amends the *Misuse of Drugs Act 1981*.
- (2) In section 32A(1):
- (a) in paragraph (b)(ii) delete “belong,” and insert:

belong;
 - (b) after paragraph (b) insert:

or
 - (c) a relevant drug offence and, at the time of the commission of the offence, was a member of a declared criminal organisation,
 - (c) after “or the serious drug offence referred to in paragraph (b),” insert:

or the relevant drug offence referred to in paragraph (c),
- (3) In section 32A(3) insert in alphabetical order:

declared criminal organisation has the meaning given in the *Criminal Organisations Control Act 2012* section 3(1);

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member, of a declared criminal organisation, has the meaning given in the *Criminal Organisations Control Act 2012* section 3(1);

relevant drug offence means an offence under any of the following provisions —

- (a) section 5(1)(a)(i);
- (b) section 5(1)(c), where the premises are used for the purpose referred to in section 5(1)(a)(i);
- (c) sections 6(1), 7(1) and 14(1);
- (d) section 33, where the principal offence (as defined in that section) is one of the offences listed in paragraphs (a) to (c);

180. Prohibited Behaviour Orders Act 2010 amended

- (1) This section amends the *Prohibited Behaviour Orders Act 2010*.
- (2) Before section 10(7)(a) insert:
 - (aa) a condition of an interim control order or a control order under the *Criminal Organisations Control Act 2012*; or

181. Sentencing Act 1995 amended

- (1) This section amends the *Sentencing Act 1995*.
- (2) After Part 2 Division 1 insert:

Division 2A — Sentencing where declared criminal organisations involved

9A. Terms used

- (1) In this Division —
COC Act means the *Criminal Organisations Control Act 2012*;

COC Act offence means an offence under the COC Act Part 4;

declared criminal organisation has the meaning given in the *Criminal Organisations Control Act 2012* section 3(1);

relevant indictable offence means an indictable offence listed in Schedule 1A Part 1;

relevant simple offence means a simple offence listed in Schedule 1A Part 2.

- (2) A term used in this Division and also in the COC Act has the same meaning in this Division as it has in that Act, unless the term is defined in this Act or the context requires otherwise.

9B. Application of this Division

This Division overrides —

- (a) Division 1; and
- (b) *The Criminal Code* sections 3(5) and 5(8).

9C. Principal objectives of sentencing for offences where declared criminal organisation involved

- (1) This section applies to an offender who is convicted of —
- (a) a COC Act offence; or
 - (b) an offence to which section 9D(3) or (4) applies.
- (2) The principal objectives of the court in sentencing an offender to which this section applies must be —
- (a) to denounce the activities of declared criminal organisations, their members and associates; and
 - (b) to protect the community from those activities.

9D. Mandatory minimum sentences where declared criminal organisation involved

- (1) Subsections (3) and (4) apply if —
- (a) an offender is convicted of —
 - (i) a relevant indictable offence, whether the offence is dealt with on indictment or summarily; or
 - (ii) a relevant simple offence;and
 - (b) the offence was committed by that offender —
 - (i) at the direction of a declared criminal organisation; or
 - (ii) in association with one or more persons who, at the time of the commission of the offence, were members of a declared criminal organisation (whether or not those persons were also convicted of the offence), but only if the offender knew, at the time of the commission of the offence, that one or more of those persons were members of a declared criminal organisation; or
 - (iii) for the benefit of a declared criminal organisation.
- (2) For the purposes of subsection (1), if, at the time of the commission of the offence, the offender was a member of a declared criminal organisation —
- (a) it is presumed that the offence was committed by the offender in all of the circumstances referred to in subsection (1)(b)(i) to (iii), without the prosecution having to show which of those circumstances actually applies; and
 - (b) that presumption is rebutted only if the offender shows that the offence was not committed in any of those circumstances.

- (3) If this subsection applies, and the offence of which the offender was convicted is a relevant indictable offence dealt with on indictment, the court must impose on the offender —
- (a) if the statutory penalty for the offence includes life imprisonment, a term of imprisonment of not less than 15 years; or
 - (b) if the statutory penalty for the offence is or includes a period of imprisonment (but not life imprisonment), a term of imprisonment of not less than 75% of that statutory penalty, but in no case less than 2 years (even if the maximum penalty for the offence is otherwise less than 2 years' imprisonment); or
 - (c) if the statutory penalty for the offence does not otherwise include imprisonment, a term of imprisonment of 2 years.
- (4) If this subsection applies, and the offence of which the offender was convicted is a relevant indictable offence dealt with summarily or a relevant simple offence, the court must impose on the offender —
- (a) if the statutory penalty for the offence is or includes a period of imprisonment, a term of imprisonment of not less than 2 years (even if the maximum penalty for the offence is otherwise less than 2 years' imprisonment); or
 - (b) if the statutory penalty for the offence does not otherwise include imprisonment, a term of imprisonment of 2 years.
- (5) However, the court must sentence the offender under subsection (3) if the offence is a relevant indictable offence dealt with summarily but the offender is committed for sentence and, under *The Criminal Code* section 5(10), is liable to the penalty with which the offence is punishable on indictment.
- (6) This section is subject to section 9E.

9E. Section 9D not applicable to persons aged under 18

Section 9D does not apply to an offender who, at the time of the commission of the offence, was under 18 years of age.

9F. Further provisions relating to mandatory minimum sentences imposed under section 9D

- (1) A court must not suspend a term of imprisonment imposed under section 9D(3) or (4).
- (2) Section 9D does not prevent the court from —
 - (a) imposing life imprisonment, if life imprisonment may be imposed for the offence; or
 - (b) imposing indefinite imprisonment under Part 14; or
 - (c) fining the offender as well as imposing a term of imprisonment if —
 - (i) both imprisonment and a fine may be imposed for the offence; or
 - (ii) section 9D(3)(c) or (4)(b) applies.

9G. Eligibility for parole

- (1) If a court sentences an offender to a fixed term of imprisonment under section 9D(3) or (4), the court must not make a parole eligibility order under section 89 in respect of that term of imprisonment.
- (2) Subsection (1) overrides section 89.
- (3) Subsection (4) applies if —
 - (a) an offender is convicted of murder; and
 - (b) section 9D(3) applies to the offender in respect of that offence; and
 - (c) the court sentences the offender to life imprisonment for that offence; and

- (d) under section 90(1)(a), the court sets a minimum period that the offender must serve before being eligible for release on parole.
- (4) If this subsection applies, the court must set a minimum period of at least 20 years.
- (5) Subsection (4) overrides section 90(1)(a).
- (3) At the end of Part 17 insert:

124C. Orders under *Criminal Organisations Control Act 2012*

- (1) For the purposes of section 123, a control order made against an offender under the *Criminal Organisations Control Act 2012* is taken to be an order made under this Part.
- (2) Only the Supreme Court can make a control order under this Part.
- (4) After section 150 insert:

Schedule 1A — Relevant indictable and simple offences for purposes of Part 2 Division 2A

[s. 9A(1)]

Part 1 — Relevant indictable offences

Enactment	Description of offence
1. <i>The Criminal Code</i>	
s. 68B(2)	Being armed in or near place of public entertainment
s. 68C(2)	Being armed in public in company
s. 68D(2)	Having ready access to both weapons and cash

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Enactment	Description of offence
s. 68E(2)	Having ready access to both weapons and illegal drugs
s. 68(1)	Being armed in a way that may cause fear
s. 71	Fighting in public causing fear
s. 74	Threatening violence
s. 82	Bribery of public officer
s. 83	Corruption
s. 85	Falsification of records by public officer
s. 87(2)	Impersonating a public officer
s. 121	Judicial corruption
s. 122	Official corruption not judicial but relating to offences
s. 123	Corrupting or threatening jurors
s. 124	Perjury
s. 127	False evidence before Royal Commission
s. 128	Threatening witness before Royal Commission etc.
s. 129	Fabricating evidence
s. 130	Corruption of witnesses
s. 132	Destroying evidence
s. 133	Preventing witnesses from attending
s. 135	Conspiring to defeat justice
s.136	Compounding or concealing offences

Enactment	Description of offence
s. 143	Attempting to pervert course of justice
s. 151	Obstructing officers of courts of justice
s. 172	Obstructing public officers
s. 221E(1)	Participating in activities of criminal organisation
s. 221F(1)	Instructing commission of offence for benefit of criminal organisation
s. 279	Murder
s. 280	Manslaughter
s. 281	Unlawful assault causing death
s. 283	Attempt to murder
s. 292	Disabling in order to commit indictable offence etc
s. 294	Acts intended to cause grievous bodily harm or to resist or prevent arrest
s. 297	Grievous bodily harm
s. 301	Wounding and similar acts
s. 304(2)	Acts or omissions, with intent to harm, causing bodily harm or danger
s. 317	Assaults occasioning bodily harm
s. 317A	Assaults with intent
s. 318	Serious assaults
s. 320(2)-(6)	Child under 13, sexual offences against
s. 321(2)-(6)	Child of or over 13 and under 16, sexual offences against

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Enactment	Description of offence
s. 323	Indecent assault
s. 324	Aggravated indecent assault
s. 325	Sexual penetration without consent
s. 326	Aggravated sexual penetration without consent
s. 327	Sexual coercion
s. 328	Aggravated sexual coercion
s. 330(2)-(6)	Incapable person, sexual offences against
s. 331B	Sexual servitude
s. 331C	Conducting business involving sexual servitude
s. 331D	Deceptive recruiting for commercial sexual services
s. 332	Kidnapping
s. 333	Deprivation of liberty
s. 338A	Threats with intent to influence
s. 338B	Threats
s. 338C(1) and (2)	Statements or acts creating false apprehension as to existence of threats or danger
s. 338E(1)	Stalking with intent to intimidate
s. 378(2)	Stealing a motor vehicle, aggravated by reckless or dangerous driving
s. 378(4a)	Stealing an aircraft
s. 378(5)	Stealing if offence committed under certain circumstances
s. 392	Robbery

Enactment	Description of offence
s. 393	Assault with intent to rob
s. 397	Demanding property with threats with intent to extort or gain
s. 398	Attempts at extortion by threats
s. 401(1) and (2)	Burglary
s. 444	Criminal damage
s. 557	Making or possession of explosives under suspicious circumstances
s. 558	Conspiracy to commit indictable offence
s. 563A(1)	Property laundering
2. <i>Bush Fires Act 1954</i>	
s. 32(2)	Offences of lighting or attempting to light fire likely to injure
3. <i>Corruption and Crime Commission Act 2003</i>	
s. 168	Giving false testimony
s. 169	Bribery of witness
s. 172	Preventing witness from attending
s. 173	Injury or detriment to witness
4. <i>Criminal Organisations Control Act 2012</i>	
s. 99(1)	Association by controlled person with another controlled person — if the offender is liable to imprisonment for 5 years
s. 102	Offence for controlled person to get funds to, from or for declared criminal organisation
s. 106	Recruiting members for declared criminal organisation

Enactment	Description of offence
5. <i>Firearms Act 1973</i>	
s. 6(3)	Indictable offence of contravention of regulation prohibiting acquisition etc. of potentially dangerous firearm, silencer etc.
s. 19(1)	Obtaining, disposing of etc. firearm or ammunition when not holder of licence or permit
s. 19(4)	Repairing or manufacturing firearm or ammunition otherwise than in accordance with licence
s. 23(3) and (5)	Indictable offences relating to firearms
6. <i>Misuse of Drugs Act 1981</i>	
s. 6(1)	Indictable offences concerned with prohibited drugs
s. 7(1)	Indictable offences concerned with prohibited plants
s. 7A(1)	Selling etc thing that person knows will be used in hydroponic cultivation of prohibited plants
s. 14(1)	Having possession of category 1 or category 2 item in excess of prescribed quantity
s. 33(1)	Attempting to commit an indictable offence under section 6(1), 7(1), 7A(1) or 14(1)
s. 33(2)	Conspiring with another to commit an indictable offence under section 6(1), 7(1), 7A(1) or 14(1)

Enactment	Description of offence
s. 33(3)	Inciting another to commit, or becoming an accessory after the fact to, an indictable offence under section 6(1), 7(1), 7A(1) or 14(1)
7. <i>Road Traffic Act 1974</i>	
s. 59	Dangerous driving causing death, injury etc.
s. 59A	Dangerous driving causing bodily harm — if the offender is liable to imprisonment for 7 years

Part 2 — Relevant simple offences

Enactment	Description of offence
1. <i>The Criminal Code</i>	
s. 206	Supplying intoxicants to people likely to abuse them
s. 313	Common assaults
s. 338E(2)	Stalking in manner reasonably expected to intimidate
s. 428	Possessing stolen or unlawfully obtained property
s. 445	Damaging property
s. 557H	Possessing a disguise
s. 557I(2)	Possessing bulletproof clothing
s. 560	Conspiracy to commit simple offence
2. <i>Bail Act 1982</i>	
s. 50(1)	Indemnifying or agreeing to indemnify surety

Enactment	Description of offence
s. 50C(3)	Hindering community corrections officer in administration of home detention condition
s. 50D(2)	Hindering police officer seeking to ascertain compliance with home detention condition
s. 51(1), (2) and (2a)	Failure to comply with requirement or condition of bail undertaking
s. 60	Failure of accused or surety to notify change of residential address
s. 62	Giving false information for bail purposes
3.	<i>Corruption and Crime Commission Act 2003</i>
s. 165	Obstructing the Commission, the Parliamentary Inspector or their officers
s. 171	Destroying evidence
4.	<i>Criminal Organisations Control Act 2012</i>
s. 99(1)	Association by controlled person with another controlled person — if the offender is liable to imprisonment for not more than 2 years
s. 99(3)	Association by controlled person with another controlled person on 3 or more occasions within 3 month period
s. 103	Other contravention of interim control order or control order
s. 107(2)	Permitting premises to be habitually used as place of resort by members of declared criminal organisation

Enactment	Description of offence
s. 107(3)	Being knowingly concerned in the management of premises habitually used as place of resort by members of declared criminal organisation
5. <i>Firearms Act 1973</i>	
s. 19(2)	Obtaining, disposing of etc. firearm or ammunition from or to person not holding licence or permit
s. 21(2)	Breach of or failure to observe restriction, limitation or condition of licence, permit or approval
s. 22A(2) and (3)	Offences relating to possession and production of Extract of Licence
s. 22C(1)	Offences relating to Extract of Licence, licences, permits etc.
s. 23(1), (2), (6), (7), (8), (9), (9a), (10), (10a) and (11)	General offences
s. 24(6)	Failing to cooperate with police officer in exercise of powers relating to firearms etc.
s. 30(4)	Offences relating to obtaining or disposing of ammunition
s. 30A(1), (2) and (3)	Offences relating to sale and disposal of firearms
s. 30B(1) and (2)	Offences relating to reporting of loss, theft, destruction of firearm or disposal out of State
6. <i>Misuse of Drugs Act 1981</i>	
s. 5(1)	Offences concerned with prohibited drugs and prohibited plants

s. 181

Enactment	Description of offence
s. 6(2)	Having in possession or using prohibited drug
s. 7(2)	Having in possession or cultivating prohibited plant
s. 7A(3)	Contravening order not to sell etc. thing that may be used in hydroponic cultivation of plants
s. 8(1) and (2)	Fraudulent behaviour in relation to prohibited drugs
s. 14(2)	Having possession of category 1 or category 2 item without lawful excuse
s. 15(1), (2) and (3)	Offences relating to sale or supply of category 1 items
s. 16(1) and (2)	Offences relating to storage of category 1 items
s. 17(1) and (2)	Offences relating to sale or supply of category 2 items
s. 18(1) and (2)	Offences relating to declarations
s. 33(1)	Attempting to commit a simple offence under section 5(1) or 6(2) or 7(2)
s. 33(2)	Conspiring with another to commit a simple offence under section 5(1) or 6(2) or 7(2)
s. 33(3)	Inciting another to commit, or becoming an accessory after the fact to, a simple offence under section 5(1) or 6(2) or 7(2)
7. Restraining Orders Act 1997	
s. 61(1), (2) and (2a)	Breach of restraining order or police order

Enactment	Description of offence
8. <i>Road Traffic Act 1974</i>	
s. 59A	Dangerous driving causing bodily harm — if the offender is not liable to imprisonment for 7 years
9. <i>Weapons Act 1999</i>	
s. 6(1)	Offences relating to prohibited weapons
s. 7(1) and (2)	Offences relating to controlled weapons
s. 8A(2) and (3)	Selling or supplying controlled weapons to children
s. 8(1)	Carrying or possessing article as weapon
182. <i>Young Offenders Act 1994 amended</i>	
(1) This section amends the <i>Young Offenders Act 1994</i> .	
(2) In Schedule 2 item 1 insert before the row relating to section 279:	
s. 221E(1)	Participating in activities of criminal organisation
s. 221F(1)	Instructing commission of offence for benefit of criminal organisation
(3) After Schedule 2 item 2 insert:	
2AA. <i>Criminal Organisations Control Act 2012</i>	
s. 99(1)	Association by controlled person with another controlled person

s. 182

- | | |
|-----------|---|
| s. 99(3) | Association by controlled person with another controlled person on 3 or more occasions within 3 month period |
| s. 102 | Offence for controlled person to get funds to, from or for declared criminal organisation |
| s. 103 | Other contravention of interim control order or control order |
| s. 106 | Recruiting members for declared criminal organisation |
| s. 107(2) | Permitting premises to be habitually used as place of resort by members of declared criminal organisation |
| s. 107(3) | Being knowingly concerned in the management of premises habitually used as place of resort by members of declared criminal organisation |

Notes

This is a compilation of the *Criminal Organisations Control Act 2012* and includes amendments made by other written laws. For provisions that have come into operation see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Criminal Organisations Control Act 2012</i> ¹	49 of 2012	29 Nov 2012	s. 1 and 2: 29 Nov 2012 (see s. 2(a)); Act other than s. 1, 2, Pt. 8 and s. 176(5): 2 Nov 2013 (see s. 2(b) and <i>Gazette</i> 1 Nov 2013 p. 4891); Pt. 8: 2 Nov 2013 (see s. 2(c) and <i>Gazette</i> 1 Nov 2013 p. 4891)
<i>Criminal Investigation (Identifying People) Amendment Act 2013</i> s. 30	22 of 2013	12 Nov 2013	13 Nov 2013 (see s. 2(c))
<i>Corruption and Crime Commission Amendment (Misconduct) Act 2014</i> s. 39	35 of 2014	9 Dec 2014	1 Jul 2015 (see s. 2(b) and <i>Gazette</i> 26 Jun 2015 p. 2235)
<i>Statutes (Minor Amendments) Act 2017</i> s. 6	6 of 2017	12 Sep 2017	13 Sep 2017 (see s. 2(b))

Uncommenced provisions table

To view the text of the uncommenced provisions see *Acts as passed* on the WA Legislation website.

Short title	Number and year	Assent	Commencement
<i>TAB (Disposal) Act 2019</i> s. 147	21 of 2019	18 Sep 2019	To be proclaimed (see s. 2(1)(b)(xiii))
<i>Firearms Amendment Act 2022</i> Pt. 3 Div. 2	13 of 2022	18 May 2022	To be proclaimed (see s. 2(c))

Other notes

- ¹ The *Criminal Organisations Control Act 2012* s. 176(5) had not come into operation when it was deleted by the *Statutes (Minor Amendments) Act 2017* s. 6(3).
- ² The amendment in the *Corruption and Crime Commission Amendment (Misconduct) Act 2014* s. 39 to Sch. 1A Pt. 1 it. 3 and Pt. 2 it. 3 is not included because the reference to the provision to be amended is unclear.

Defined terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined term	Provision(s)
associate	3(1)
authorisation.....	3(1)
CC Commissioner	3(1)
close family member.....	3(1), 3(2)
COC Act	221C(1), 9A(1)
COC Act offence	9A(1)
co-licensee	93(1)
Commissioner of Police	3(1)
control order.....	3(1)
controlled person.....	3(1)
conviction	3(1)
corresponding law	3(1), 118
court	3(1)
criminal intelligence information.....	3(1), 109
criminal organisation	221C(1), 221D(1), 177(2)
criminal organisation offence.....	177(2)
declaration.....	3(1)
declaration proceedings	32(1)
declared criminal organisation.....	3(1), 221C(1), 176(4A), 179(3), 9A(1)
designated authority	3(1)
engage in conduct	103(1)
existing order	63(2)
family order.....	98(1)
firearm.....	3(1)
firearms condition	3(1)
firearms licence	3(1)
funds	3(1)
identifying particular.....	87
indictable offence	221C(1)
interim control order	3(1)
interstate control order.....	3(1), 118
interstate declaration	3(1), 118
judge	3(1)
juvenile	3(1)
juveniles	73(1)
member	3(1), 176(4A), 179(3)
monitoring period	156
new order	63(2)
occupation.....	3(1)
officer of the Corruption and Crime Commission	3(1)

Defined terms

organisation.....	3(1)
owner	107(1)
Parliamentary Commissioner	3(1)
party A	164(1)
person A	3(2)
person B	3(2)
personal details	3(1)
prescribed activity.....	3(1), 80(1)
prohibited item.....	82(1)
prohibited thing.....	69B
prohibition order	98(1)
protected submission.....	3(1), 11(1)
recruit.....	3(1)
register	3(1)
registered interstate control order	3(1)
registered interstate declaration	3(1)
registrar	3(1)
regulatory authority.....	3(1)
relevant drug offence	179(3)
relevant event.....	84(4)
relevant indictable offence	9A(1)
relevant order	97(1)
relevant simple offence	9A(1)
reporting period.....	156
respondent.....	7(1), 118
responsible person.....	3(1)
restraining order	98(1)
senior police officer	3(1)
serious criminal activity	3(1)
serious indictable offence	3(1)
serious violence offence.....	3(1)
victim	177(2)
weapon	3(1)
working day	3(1)