

Authorised Version No. 005
Criminal Organisations Control Act 2012

No. 80 of 2012

Authorised Version incorporating amendments as at
1 November 2014

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Authorised Version No. 005
Criminal Organisations Control Act 2012

No. 80 of 2012

Authorised Version incorporating amendments as at
1 November 2014

The Parliament of Victoria enacts:

PART 1—PRELIMINARY

1 Purposes

The main purposes of this Act are—

- (a) to provide for the making of declarations and control orders for the purpose of preventing and disrupting the activities of organisations involved in serious criminal activity, and of their members, former members, prospective members and associates; and
- (b) to provide for the recognition and application of declarations and control orders made under corresponding laws; and
- (c) to make related amendments to other Acts.

2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation before 1 November 2013, it comes into operation on that day.

3 Definitions

(1) In this Act—

applicable offence means—

- (a) an indictable offence that is punishable by at least 5 years imprisonment; or
- (b) an offence against a provision specified in an item of the Schedule, being a provision of the Act specified in the heading to that item; or

Note

See also section 10.

- (c) an offence against section 321, 321G or 321M of the **Crimes Act 1958** in relation to an offence referred to in paragraph (a) or (b);

appropriate place means—

- (a) in the case of an organisation that is an incorporated body or association—
 - (i) the entrance to the registered office or principal place of business of that organisation; or
 - (ii) if the organisation is a registered foreign company within the meaning of the Corporations Act—the address of the local agent of that company;

S. 3(1) def. of *applicable offence* substituted by No. 55/2014 s. 60(a).

- (b) in the case of an organisation that is an unincorporated body or association—the entrance to premises at which members of that organisation commonly associate for meetings or other activities of that organisation;

Example

An example of premises under paragraph (b) is a clubhouse.

associate, in relation to—

- (a) a body corporate, has the meaning given by section 125;
- (b) an individual, includes an individual who is regularly in company with, or in communication with by any means (including by electronic communication) that individual;

associate with means—

- (a) to be in company with; or
- (b) to communicate with by any means (including by electronic communication);

carry on a business, in the case of an organisation that is a company or registered foreign company within the meaning of the Corporations Act, has the same meaning as it does under Division 3 of Part 1.2 of that Act;

Chief Commissioner means the Chief Commissioner of Police appointed under section 17 of the **Victoria Police Act 2013**;

S. 3(1) def. of
**Chief
Commis-
sioner**
amended by
No. 37/2014
s. 10(Sch.
item 40,1(b)).

control order means an order made under section 43, as varied or renewed from time to time;

corresponding control order means an order made under a provision of a law of another jurisdiction that is prescribed under the regulations for the purposes of this definition;

corresponding declaration means a declaration made under a provision of a law of another jurisdiction that is prescribed under the regulations for the purposes of this definition;

corresponding order means a corresponding control order or corresponding declaration;

Court means the Supreme Court;

criminal history has the meaning given by section 5;

criminal intelligence means any information, document or other thing relating to actual or suspected criminal activity in Victoria or elsewhere, the disclosure of which could reasonably be expected to—

- (a) prejudice a criminal investigation, including by revealing intelligence-gathering methodologies, investigative techniques or technologies, or covert practices; or
- (b) enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement; or
- (c) endanger a person's life or physical safety;

- criminal intelligence protection order*** has the meaning given by section 70(1);
- criminal purpose*** means the purpose of engaging in, organising, facilitating or supporting serious criminal activity;
- declaration*** means a declaration made under section 19, as varied or renewed from time to time;
- declared individual*** means an individual to whom a declaration applies;
- declared organisation*** means an organisation to which a declaration applies;
- declared organisation member*** means a member, former member or prospective member of a declared organisation;
- honorary member***, of an organisation, includes an individual who is a member but has not paid any membership fee to be a member of the organisation;
- incorporated association*** means an association incorporated under the **Associations Incorporation Reform Act 2012**;
- incorporated associations Registrar*** means the Registrar within the meaning of the **Associations Incorporation Reform Act 2012**;
- law enforcement officer*** means—
- (a) a police officer; or
 - (b) a person who is seconded to Victoria Police, including (but not limited to) a member of the police force or police service (however described) of another jurisdiction;

S. 3(1) def. of *law enforcement officer* amended by No. 37/2014 s. 10(Sch. item 40.1(c)).

S. 3(1) def. of
member
amended by
No. 55/2014
s. 60(b).

lawyer means an Australian lawyer within the
meaning of the **Legal Profession Act 2004**;

member, of an organisation, includes—

- (a) an individual who is a current member
of the organisation because the
individual—
 - (i) has paid a membership fee to be a
member of the organisation; or
 - (ii) has been accepted as a member of
the organisation through another
process set by the organisation; or
- (b) an honorary member of the
organisation; or
- (c) an individual who identifies himself or
herself as belonging to the organisation,
including an individual who wears or
displays the patches or insignia (if any)
of the organisation; or
- (d) an individual whose conduct in relation
to the organisation would reasonably
lead another person to consider the
individual to be a member of the
organisation; or
- (e) an office holder of the organisation;

S. 3(1) def. of
*member of
Victoria Police*
repealed by
No. 37/2014
s. 10(Sch.
item 40.1(d)).

* * * * *

office holder, of an organisation, has the meaning
given by section 6;

organisation has the meaning given by section 7;

police officer has the same meaning as in the
Victoria Police Act 2013;

S. 3(1) def. of
police officer
inserted by
No. 37/2014
s. 10(Sch.
item 40.1(a)).

prohibitive declaration—see section 19(2);

S. 3(1) def. of
*prohibitive
declaration*
inserted by
No. 55/2014
s. 60(d).

property means any legal or equitable estate or
interest (whether present or future and
whether vested or contingent) in real or
personal property of any description;

prospective member has the meaning given by
section 8;

protected criminal intelligence means criminal
intelligence that is the subject of a criminal
intelligence protection order;

Prothonotary means the Prothonotary of the
Supreme Court;

registered corresponding control order means a
corresponding control order registered under
section 101;

registered corresponding declaration means a
corresponding declaration registered under
section 88;

related organisation means an organisation
specified in an application in accordance
with section 15(1)(ba) on which the Court
has made a declaration that applies to an
individual;

S. 3(1) def. of
*related
organisation*
substituted by
No. 55/2014
s. 60(c).

related organisation member means a member,
former member or prospective member of a
related organisation;

respondent has the meaning given by section 9;

S. 3(1) def. of *restrictive declaration* inserted by No. 55/2014 s. 60(d).

restrictive declaration—see section 19(2A);

serious criminal activity means conduct that would, if the facts were found proved beyond reasonable doubt at a trial, constitute any one or more applicable offences and includes any such conduct that occurs before the commencement of Part 2;

S. 3(1) def. of *Victoria Police* substituted by No. 37/2014 s. 10(Sch. item 40.1(e)).

Victoria Police has the same meaning as in the **Victoria Police Act 2013**.

- (2) A reference to an organisation that is an unincorporated body or association—
- (a) in a provision of this Act that creates an offence is to be read as a reference to each of the office holders of the organisation;
 - (b) in any other provision of this Act is to be read as a reference to one or more members of the organisation in their capacity as members.

S. 4 repealed by No. 55/2014 s. 61.

* * * * *

5 Meaning of *criminal history*

- (1) For the purposes of this Act, *criminal history* means—
- (a) any conviction recorded by a court for an offence under a law of Victoria, the Commonwealth or another State or a Territory; and

- (b) any finding of guilt by a court for an offence under a law of Victoria, the Commonwealth or another State or a Territory, whether or not a conviction was recorded; and
 - (c) any pending criminal charge for an offence under a law of Victoria, the Commonwealth or another State or a Territory.
- (2) For the purposes of this Act, *criminal history* includes a conviction that becomes spent under a law of another jurisdiction.
- (3) For the purposes of this Act, *criminal history* does not include a finding at a special hearing under section 17(1)(c) or 38X(1)(c) of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**.

S. 5(3)
amended by
No. 55/2014
s. 145.

6 Meaning of *office holder*

- (1) For the purposes of this Act, an *office holder* of an organisation is—
- (a) if the organisation is a company or a registered foreign company within the meaning of the Corporations Act—
 - (i) an officer as defined under section 9 of that Act;
 - (ii) an individual who is a local agent within the meaning of that Act;
 - (b) if the organisation is an incorporated association—an office holder within the meaning of section 82 of the **Associations Incorporation Reform Act 2012**;
 - (c) if the organisation is a body or association incorporated under a law of another State or a Territory—an individual who is a member of the board or committee or other group of persons (however described under that law)

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- having management of that body or association;
- (d) if the organisation is an unincorporated body or association—
- (i) an individual holding the position of president, vice president, secretary or treasurer of the body or association; or
 - (ii) an individual holding a position similar to a position referred to in subparagraph (i) (however described by the organisation or the rules or constituting documents of the organisation); or
 - (iii) an individual in control of all or a substantial part of the activities of the organisation.
- (2) In addition, if an organisation appoints an individual to be in charge of an activity of the organisation or keep order at a meeting or gathering of the organisation, that individual is an **office holder** of the organisation for the purposes of this Act.

Example

An individual appointed as the sergeant at arms or a road captain by a motorcycle club would be an individual to whom subsection (2) applies.

7 Meaning of *organisation*

- (1) For the purposes of this Act, an **organisation** is an incorporated body or association (including a company or registered foreign company within the meaning of the Corporations Act) or an unincorporated body or association (however structured), whether the body or association—

- (a) is based in Victoria or elsewhere; or
- (b) consists of persons who are or are not ordinarily resident in Victoria; or
- (c) is part of a larger organisation; or
- (d) is affiliated with another organisation.

Example

A chapter of a motorcycle club could be an organisation to which paragraph (c) or (d) applies.

- (2) To avoid doubt, for the purposes of this Act, an **organisation** can include individuals who are related to one another.

8 Meaning of *prospective member*

- (1) For the purposes of this Act, a **prospective member** of an organisation is an individual who has commenced but not completed the process of becoming a member of the organisation.
- (2) For the purposes of this Act, a **prospective member** of an organisation includes—
 - (a) an individual who members of the organisation describe as a "prospect" or "nominee" of the organisation;
 - (b) an individual nominated or sponsored by a member of the organisation for the purpose of that individual becoming a member of the organisation;
 - (c) an individual who wears or displays—
 - (i) some, or an incomplete version, of the organisation's patches or insignia; or
 - (ii) a specific identifier in the place of some or all of the organisation's patches or insignia which identifies the individual as a prospective member;

S. 8(2)(c)
amended by
No. 55/2014
s. 62.

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- (d) an individual undertaking a period of probationary membership with the organisation.

9 Meaning of *respondent*

- (1) For the purposes of this Act, a *respondent* is—
- (a) subject to subsection (2), for an application for a declaration under section 14—the organisation or individual identified in the application;
 - (b) subject to subsection (2), for an application for the revocation of a declaration under section 27—
 - (i) if the applicant is the declared organisation to which or declared individual to whom the declaration applies—the Chief Commissioner;
 - (ii) if the applicant is the Chief Commissioner—the declared organisation to which or declared individual to whom the declaration applies;
 - (c) subject to subsection (2), for an application for the renewal of a declaration under section 33—the declared organisation to which or declared individual to whom the declaration applies;
 - (d) subject to subsection (2), for an application for a control order under section 38—the organisation or individual identified in the application;
 - (e) subject to subsection (2), for an application for the variation or revocation of a control order or ancillary order under section 56—

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- (i) if the applicant is the declared organisation to which or individual to whom the order applies—the Chief Commissioner;
 - (ii) if the applicant is the Chief Commissioner—the declared organisation to which or individual to whom the order applies;
 - (f) subject to subsection (2), for an application for the renewal of a control order under section 63—the declared organisation to which or individual to whom the control order applies;
 - (g) subject to subsection (2), for an application for registration of a corresponding declaration under section 86—the organisation to which the declaration applies;
 - (h) subject to subsection (2), for an application for cancellation of the registration of a registered corresponding declaration under section 97—the declared organisation;
 - (i) for an application for registration of a corresponding control order under section 99—the individual to whom the order applies;
 - (j) for an application for a variation of a registered corresponding control order under section 113—the individual to whom the order applies;
 - (k) for an application to cancel the registration of a registered corresponding control order under section 119—the individual to whom the order applies.

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- (2) In the case of an application referred to in subsection (1) that is in relation to an organisation that is an unincorporated body or association, the *respondent* is the body's or association's president, secretary or other similar office holder.
- (3) The death, resignation or removal from office of an individual referred to in subsection (2) does not affect the continuity of the proceeding in the application referred to in that subsection and the proceeding may be continued against the body or association in the name of that individual's replacement.

10 Descriptions of offences in the Schedule

In the Schedule, a description following a reference to a provision of an Act—

- (a) is provided for convenience of reference only; and
- (b) does not affect—
 - (i) the operation of the provision or this Act; or
 - (ii) the nature or elements of an offence against the provision; and
- (c) must be disregarded if it is inconsistent with the provision.

11 Intention of Parliament that exercise of powers under this Act not diminish certain rights

It is the intention of the Parliament that powers under this Act, so far as is possible consistently with the purposes of this Act, be exercised in a way that does not diminish the freedom of persons in Victoria to participate in lawful protest, advocacy, dissent or industrial action.

12 Extra-territorial operation

It is the intention of the Parliament that the operation of this Act should, so far as is possible, include operation in relation to the following—

- (a) land situated outside Victoria, whether in or outside Australia;
- (b) things situated outside Victoria, whether in or outside Australia;
- (c) acts, transactions and matters done, entered into or occurring outside Victoria, whether in or outside Australia;
- (d) things, acts, transactions and matters, (wherever situated, done, entered into or occurring) that would, apart from this Act, be governed or otherwise affected by the law of the Commonwealth, another State, a Territory or a foreign country.

13 Crown to be bound

This Act binds the Crown in right of Victoria and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

PART 2—DECLARATIONS

Division 1—Applications for declarations

14 Chief Commissioner may apply for declaration

The Chief Commissioner may apply to the Court for a declaration that—

- (a) an organisation is a declared organisation; or
- (b) an individual is a declared individual.

15 Form and content of application

(1) An application under section 14 must—

- (a) be in writing; and
- (b) identify the particular organisation or individual in respect of which or whom the declaration is sought; and
- (ba) in the case of an application in respect of an individual, identify the organisation that is relevant for the purposes of section 19(3)(a) and (b); and
- (c) state the grounds on which the declaration is sought; and
- (d) set out the details of any previous application for a declaration in respect of the organisation or individual and the outcome of that application.

S. 15(1)(ba)
inserted by
No. 55/2014
s. 63(1).

(1A) An application in respect of an organisation does not need to state whether a prohibitive declaration or a restrictive declaration is sought.

S. 15(1A)
inserted by
No. 55/2014
s. 63(2).

(2) An organisation may be identified in an application by—

S. 15(2)
amended by
No. 55/2014
s. 63(3).

- (a) if the organisation is a company or registered foreign company within the meaning of the Corporations Act, its ACN, ABN or ARBN;

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- (b) if the organisation is an incorporated association, its name and the registration number assigned to it under the **Associations Incorporation Reform Act 2012**;
 - (c) if the organisation is another kind of incorporated body or association, its name and—
 - (i) the registration number (if any) assigned to it under the law under which it is incorporated; or
 - (ii) any other particulars that are sufficient to identify it;
 - (d) if the organisation is an unincorporated body or association—
 - (i) the name by which it is commonly known; or
 - (ii) any other particulars that are sufficient to identify it.
- (3) An application must be accompanied by at least one affidavit which addresses the grounds on which the declaration is sought.

Note

See section 19 for the grounds for making a declaration.

- (4) An application must be served on the respondent as soon as practicable after the application is made.

Note

For service, see Division 2 of Part 6.

16 Notice of application in respect of an organisation

- (1) The Chief Commissioner must cause notice of an application under section 14 for a declaration in respect of an organisation to be published in accordance with this section.

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- (2) The notice of the application must be published in a newspaper circulating generally throughout the State as soon as practicable after the application is made but no later than 7 days after that making.
- (3) The notice of the application must state—
- (a) the name of the organisation; and
 - (b) the grounds on which the declaration is sought; and
 - (c) that—
 - (i) a member of the organisation; or
 - (ii) another person whose interests may be affected by the determination of the application, with the leave of the Court—
may object to the application; and
 - (d) that if a declaration is made in respect of the organisation, the Chief Commissioner may apply for a control order under Part 3 against—
 - (i) the organisation; or
 - (ii) any declared organisation member.

17 Objection to application for declaration

- (1) Any of the following persons may object to an application under section 14—
- (a) the respondent named in the application;
 - (b) if the application is for a declaration in respect of an organisation—
 - (i) a member of the organisation;

- (ii) with the leave of the Court, another person whose interests may be affected by the determination of the application.
- (2) An objection must be made within 60 days after—
- (a) if the respondent is an organisation—notice of the application is published in accordance with section 16;
 - (b) if the respondent is an individual—the application is served on the individual in accordance with section 15(4).
- (3) An objection must—
- (a) state the grounds for the objection; and
 - (b) be accompanied by at least one affidavit which addresses those grounds; and
 - (c) be served on the Chief Commissioner as soon as practicable after the objection is made but no later than 7 days after that making.

S. 17(2)(b)
amended by
No. 55/2014
s. 64.

Note

For service, see Division 2 of Part 6.

18 Court may extend or abridge the time within which an objection may be made

- (1) The Court, by order, may extend or abridge the time within which an objection may be made under section 17.
- (2) The Court may extend time under subsection (1) before or after the time expires.
- (3) More than one extension of time may be granted under subsection (1).

Division 2—Determination of applications

19 Court may make declaration

- (1) The Court, on an application under section 14, may make a declaration—
- (a) in the case of an organisation the subject of the application—that the organisation is a declared organisation;
 - (b) in the case of an individual the subject of the application—that the individual is a declared individual.

S. 19(2)
substituted by
No. 55/2014
s. 65(1).

- (2) The Court may make a declaration under subsection (1)(a) (a *prohibitive declaration*) if—
- (a) the Court is satisfied beyond reasonable doubt that the matters set out in subsection (2B) apply to the organisation; and
 - (b) the Court is satisfied on the balance of probabilities that the activities of the organisation pose a serious threat to public safety and order.

S. 19(2A)
inserted by
No. 55/2014
s. 65(1).

- (2A) The Court may make a declaration under subsection (1)(a) (a *restrictive declaration*) if the Court is satisfied on the balance of probabilities that—
- (a) the matters set out in subsection (2B) apply to the organisation; and
 - (b) the activities of the organisation pose a serious threat to public safety and order.

S. 19(2B)
inserted by
No. 55/2014
s. 65(1).

- (2B) For the purposes of subsection (2)(a) and (2A)(a), the matters that apply to an organisation are, as the case requires—

-
- (a) the organisation—
- (i) has engaged in, organised, facilitated or supported serious criminal activity; or
 - (ii) is engaging in, organising, facilitating or supporting serious criminal activity; or
- (b) any 2 or more members, former members or prospective members of the organisation have used or are using—
- (i) the organisation; or
 - (ii) their relationship with that organisation or with that organisation's members, former members or prospective members—
- for a criminal purpose; or
- (c) any 2 or more members or prospective members of the organisation are also members, former members or prospective members of an organisation to which a control order applies; or
- (d) control orders apply to any 2 or more members or prospective members of the organisation.
- (2C) The Court may also make a prohibitive declaration or a restrictive declaration if the organisation gives its consent to the declaration being made.

S. 19(2C)
inserted by
No. 55/2014
s. 65(1).

Note

Section 135A specifies how consent is to be given.

- (3) The Court may make a declaration under subsection (1)(b) if the Court is satisfied on the balance of probabilities that—

S. 19(3)
amended by
No. 55/2014
s. 65(2)(a).

Criminal Organisations Control Act 2012
No. 80 of 2012
Part 2—Declarations

s. 19

S. 19(3)(a)
amended by
No. 55/2014
s. 65(2)(b).

- (a) the individual is a member, former member or prospective member of the organisation identified in the application for the declaration in accordance with section 15(1)(ba); and
- (b) that individual and at least one other member, former member or prospective member of that organisation have used or are using—
 - (i) that organisation; or
 - (ii) their relationship with that organisation or with that organisation's members—for a criminal purpose; and
- (c) the activities of that individual and the member, former member or prospective member pose a serious threat to public safety and order.

S. 19(3A)
inserted by
No. 55/2014
s. 65(3).

- (3A) The Court may also make a declaration under subsection (1)(b) if the individual gives his or her consent to the declaration being made.

Note

Section 135A specifies how consent is to be given.

S. 19(4)
amended by
No. 55/2014
s. 65(4).

- (4) The Court may decide that it is satisfied as required by subsection (2), (2A) or (3) only if it is satisfied by acceptable, cogent evidence that is of sufficient weight to justify the making of a declaration.

S. 19(5)
amended by
No. 55/2014
s. 65(5)(a).

- (5) For the purposes of subsections (2B)(b) and (3)(b), 2 or more members, former members or prospective members are using or have used an organisation or their relationship with the organisation for a criminal purpose if they are or were—
- (a) associating for that purpose on land owned or occupied by the organisation; or

-
- (b) associating for that purpose at premises (other than premises on land referred to in paragraph (a)) at which members commonly associate for meetings or other activities of the organisation; or
- (c) using property owned or possessed by the organisation for that purpose; or
- (d) in the case of an organisation that is an unincorporated body or association, using property made available by any person for use by any member of the organisation in their capacity as a member for that purpose; or
- (e) associating at a meeting or event of the organisation for that purpose; or
- (f) associating for that purpose while—
- (i) wearing or displaying any of the organisation's patches or insignia; or
 - (ii) identifying themselves as members, former members or prospective members of the organisation;
- (g) using, for that purpose, information, contacts or access to persons or other opportunities which are or were available to them because of their membership of the organisation.
- (6) Subsection (5) does not limit what may constitute using an organisation or a relationship with an organisation for a criminal purpose for the purposes of subsections (2A)(b) and (3)(b).
- (7) In making a declaration by consent in accordance with subsection (2C) or (3A), the Court is not required to consider the matters set out in subsections (2), (2A) and (3).

S. 19(5)(f)(i)
amended by
No. 55/2014
s. 65(5)(b).

S. 19(6)
amended by
No. 55/2014
s. 65(6).

S. 19(7)
inserted by
No. 55/2014
s. 65(7).

20 Criminal history of members, former members and prospective members of certain organisations

In determining whether to make a declaration, the Court may have regard to the criminal history of—

- (a) in the case of an application for a declaration that an organisation is a declared organisation—a member, former member or prospective member of the organisation;
- (b) in the case of an application for a declaration that an individual is a declared individual—
 - (i) that individual; and
 - (ii) any member, former member or prospective member of an organisation the use of which, or relationship with which, is being considered by the Court for the purposes of section 19(3).

S. 21
substituted by
No. 55/2014
s. 66.

21 Objections to be disregarded if respondent consents to declaration

The Court must disregard any objection made under section 17 in making a declaration if the respondent gives consent to the declaration being made.

Note

Section 135A specifies how consent is to be given.

22 Form of declaration

A declaration must specify—

- (a) the organisation to which or individual to whom it applies; and
- (ab) if the declaration applies to an organisation, whether it is a prohibitive declaration or a restrictive declaration; and
- (b) the day on which it is made.

S. 22(ab)
inserted by
No. 55/2014
s. 67.

23 When a declaration takes effect

A declaration takes effect on the day it is made.

24 Duration of declaration

- (1) A declaration remains in effect for 3 years after it takes effect unless it is sooner revoked under section 29 or 29A.
- (2) A declaration does not have effect for any period during which its operation is stayed by the Court.
- (3) A period during which a declaration does not have effect because it is stayed by the Court does not count for the purposes of the period of effect specified under subsection (1).

S. 24(1)
amended by
No. 55/2014
s. 68.

25 Service of declaration

- (1) The Chief Commissioner must cause a copy of a declaration to be served on—
 - (a) the organisation to which or individual to whom the declaration applies; and
 - (b) in the case of a declaration which applies to an organisation—every person who objected under section 17 to the application for the declaration.
- (2) A copy of the declaration must be served under subsection (1) as soon as practicable after the declaration is made but no later than 7 days after that making.

Note

For service, see Division 2 of Part 6.

26 Notice of making of declaration in respect of an organisation

- (1) The Chief Commissioner must cause notice of a declaration which applies to an organisation to be—
 - (a) published—
 - (i) in the Government Gazette; and
 - (ii) in a newspaper circulating generally throughout the State; and
 - (b) affixed to or near an appropriate place.
- (2) The notice must be published and affixed as soon as practicable after the declaration is made but no later than 7 days after that making.
- (3) The notice must state—
 - (a) that a declaration has been made under this Act; and
 - (b) the organisation to which the declaration applies; and
 - (c) the day on which the declaration took effect and period the declaration is in effect; and
 - (d) that the Court's determination to make the declaration may be appealed; and

Note

An appeal lies from the Trial Division of the Supreme Court to the Court of Appeal: see sections 10, 17 and 17A of the **Supreme Court Act 1986**.

- (e) that the Chief Commissioner, while the declaration is in effect, may apply for the making of a control order that applies to an organisation to which the declaration applies, and any member, former member or prospective member of the organisation.

- (4) The notice of the declaration that is to be affixed to or near an appropriate place must be in the prescribed form.

Division 3—Revocation of declarations

27 Application for revocation of declaration

- (1) The Chief Commissioner may apply to the Court for the revocation of a declaration.
- (2) A declared organisation or a declared individual may, with the leave of the Court, apply for the revocation of the declaration that applies to the organisation or individual (as the case may be).
- (3) The Court may grant leave to apply under subsection (2) if—
- (a) the Chief Commissioner files with the Court a notice, signed by the Chief Commissioner, stating that the Chief Commissioner supports the granting of leave; or
 - (b) the Court is satisfied that there has been a substantial change in circumstances since the declaration that applies to the organisation or individual was made.

S. 27(3)
substituted by
No. 55/2014
s. 69.

28 Form and content of application

- (1) An application under section 27 must—
- (a) be in writing; and
 - (b) state the grounds on which the revocation of the declaration is sought.
- (2) An application must be accompanied by at least one affidavit which addresses the grounds on which revocation of the declaration is sought.

- (3) An application must be served as soon as practicable after the application is made on the respondent.

Note

For service, see Division 2 of Part 6.

S. 29
substituted by
No. 55/2014
s. 70.

29 Determination of application for revocation of declaration in respect of organisation

- (1) The Court may, in accordance with this section, revoke a declaration in respect of an organisation on an application under section 27.
- (2) The Court may revoke a prohibitive declaration made on the basis that the Court was satisfied of the matters set out in section 19(2) if the Court is—
- (a) no longer satisfied beyond reasonable doubt that the matters set out in section 19(2B) apply to the declared organisation; or
 - (b) no longer satisfied on the balance of probabilities that the activities of the declared organisation pose a serious threat to public safety and order.
- (3) The Court may revoke a restrictive declaration made on the basis that the Court was satisfied of the matters set out in section 19(2A) if the Court is no longer satisfied on the balance of probabilities that both—
- (a) the matters set out in section 19(2B) apply to the declared organisation; and
 - (b) the activities of the declared organisation pose a serious threat to public safety and order.
- (4) The Court may revoke a prohibitive declaration made by consent in accordance with section 19(2C) if the Court—

-
- (a) is not satisfied beyond reasonable doubt that the matters set out in section 19(2B) apply to the declared organisation; or
 - (b) is not satisfied on the balance of probabilities that the activities of the declared organisation pose a serious threat to public safety and order.
- (5) The Court may revoke a restrictive declaration made by consent in accordance with section 19(2C) if the Court is not satisfied on the balance of probabilities that both—
- (a) the matters set out in section 19(2B) apply to the declared organisation; and
 - (b) the activities of the declared organisation pose a serious threat to public safety and order.
- (6) The Court may revoke a declaration in respect of an organisation if the respondent gives consent to the revocation.

Note

Section 135A specifies how consent is to be given.

29A Determination of application for revocation of declaration in respect of individual

- (1) The Court may, in accordance with this section, revoke a declaration in respect of an individual on an application under section 27.
- (2) The Court may revoke a declaration that was made on the basis that the Court was satisfied of the matters set out in section 19(3) if the Court is no longer satisfied of those matters on the balance of probabilities.
- (3) The Court may revoke a declaration that was made by consent in accordance with section 19(3A) if the Court is not satisfied of the

S. 29A
inserted by
No. 55/2014
s. 71.

matters set out in section 19(3) on the balance of probabilities.

- (4) The Court may revoke a declaration if the respondent gives consent to the revocation.

Note

Section 135A specifies how consent is to be given.

S. 30
amended by
No. 55/2014
s. 72.

30 When revocation of declaration takes effect

If the Court revokes a declaration under section 29 or 29A, the revocation takes effect immediately.

31 Service of order revoking declaration

- (1) The Chief Commissioner must cause a copy of an order of the Court revoking a declaration to be served on the organisation to which or the individual to whom the declaration applied.
- (2) An order of the Court revoking a declaration must be served under subsection (1) as soon as practicable after the order is made but no later than 7 days after that making.

Note

For service, see Division 2 of Part 6.

32 Notice of revocation of declaration in respect of an organisation

- (1) The Chief Commissioner must cause notice of an order of the Court revoking a declaration which applied to an organisation to be—
- (a) published—
- (i) in the Government Gazette; and
- (ii) in a newspaper circulating generally throughout the State; and
- (b) affixed to or near an appropriate place.

-
- (2) The notice must be published and affixed as soon as practicable after the order was made but no later than 7 days after it was made.
 - (3) The notice must state—
 - (a) that a declaration has been revoked; and
 - (b) the organisation to which the declaration applied; and
 - (c) the day on which the revocation took effect; and
 - (d) that the Court's determination to revoke the declaration may be appealed.

Note

An appeal lies from the Trial Division of the Supreme Court to the Court of Appeal: see sections 10, 17 and 17A of the **Supreme Court Act 1986**.

- (4) The notice that is to be affixed to or near an appropriate place must be in the prescribed form.

Division 4—Renewal of declarations

33 Application for renewal of declaration

- (1) The Chief Commissioner may apply to the Court for the renewal of a declaration.
- (2) An application must be made before the declaration ceases to have effect.

34 Determination of application for renewal of declaration

- (1) The Court, on an application under section 33, may renew the declaration the subject of the application.
- (2) The Court may renew the declaration even if the declaration ceases to have effect before the Court makes its determination on the application.

35 Applicable procedure for renewal of declarations

- (1) Subject to this Division, Divisions 1 and 2 apply to an application for the renewal of a declaration, and the determination of the application by the Court, in the same way that they apply to an application for a declaration and the determination by the Court of such an application.
- (2) For the purposes of subsection (1), a reference in Divisions 1 and 2 to—
 - (a) an application for the making of a declaration is to be read as a reference to an application for the renewal of a declaration;
 - (b) the making of a declaration is to be read as a reference to a renewal of a declaration;
 - (c) a declaration is to be read as a reference to a declaration renewed under section 34.

36 When a renewed declaration takes effect

A declaration renewed under section 34 takes effect—

- (a) if it is renewed before it ceases to have effect—on the day after the day it would have ceased to have effect if it were not renewed; or
- (b) if it is not renewed before it ceases to have effect—on the day the Court determines to renew it.

37 Declarations may be renewed more than once

A declaration may be renewed more than once.

PART 3—CONTROL ORDERS

Division 1—Applications for control orders

38 Chief Commissioner may apply for control order

- (1) The Chief Commissioner may apply to the Court for a control order in respect of an individual or organisation.
- (2) An application under subsection (1) may be made at the same time as or after an application for a declaration under section 14 is made in respect of the individual or organisation.

39 Form and content of application

- (1) An application under section 38 must—
 - (a) be in writing; and
 - (b) identify the particular organisation or individual in respect of which or whom the control order is sought; and
 - (c) state the grounds on which the control order is sought; and
 - (d) state the conditions that are sought to be imposed under the control order; and
 - (e) set out the details of any previous application for a control order in respect of the organisation or individual and the outcome of that application.
- (2) In the case of an application in respect of an organisation, the organisation may be identified in the application by—
 - (a) if the organisation is a company or registered foreign company within the meaning of the Corporations Act, its ACN, ABN or ARBN;

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- (b) if the organisation is an incorporated association, its name and the registration number assigned to it under the **Associations Incorporation Reform Act 2012**;
- (c) if the organisation is another kind of incorporated body or association, its name and—
- (i) the registration number (if any) assigned to it under the law under which it is incorporated; or
 - (ii) any other particulars that are sufficient to identify it;
- (d) if the organisation is an unincorporated body or association—
- (i) the name by which it is commonly known; or
 - (ii) any other particulars that are sufficient to identify it.
- (3) An application must be accompanied by at least one affidavit which addresses the grounds on which the control order is sought.

Note

See section 43 for the grounds for making a control order.

- (4) An application must be served on the respondent as soon as practicable after the application is made.

Note

For service, see Division 2 of Part 6.

40 Notice of application in respect of an organisation

- (1) The Chief Commissioner must cause notice of an application under section 38 for a control order in respect of an organisation to be published in accordance with this section.

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- (2) The notice of the application must be published in a newspaper circulating generally throughout the State as soon as practicable after the application is made but no later than 7 days after that making.
- (3) The notice of the application must state—
- (a) the name of the organisation; and
 - (b) the grounds on which the control order is sought; and
 - (c) the conditions that are sought to be imposed under the control order; and
 - (d) that—
 - (i) a member of the organisation; or
 - (ii) another person whose interests may be affected by the determination of the application, with the leave of the Court—
- may object to the application.

41 Objection to application for control order

- (1) Any of the following persons may object to an application under section 38—
- (a) the respondent named in the application;
 - (b) if the application is for a control order in respect of an organisation—
 - (i) a member of the organisation;
 - (ii) with the leave of the Court, a person whose interests may be affected by the determination of the application.
- (2) An objection must be made within 60 days after—
- (a) if the respondent is an organisation—notice of the application is published in accordance with section 40;

(b) if the respondent is an individual—the application is served on the individual in accordance with section 39(4).

(3) An objection must—

- (a) state the grounds for the objection; and
- (b) be accompanied by at least one affidavit which addresses those grounds; and
- (c) be served on the Chief Commissioner as soon as practicable after the objection is made but no later than 7 days after that making.

Note

For service, see Division 2 of Part 6.

42 Court may extend or abridge the time within which an objection may be made

- (1) The Court, by order, may extend or abridge the time within which an objection may be made under section 41.
- (2) The Court may extend time under subsection (1) before or after the time expires.
- (3) More than one extension of time may be granted under subsection (1).

Division 2—Determination of applications

43 Court may make control order

- (1) The Court may make a control order that applies to an organisation if the organisation is a declared organisation and the Court is satisfied that—
 - (a) if the declaration which applies to the organisation is a prohibitive declaration—the making of the control order is likely to contribute to the purpose of preventing or disrupting serious criminal activity by—

S. 43(1)
substituted by
No. 55/2014
s. 73(1).

- (i) the organisation; or
 - (ii) any members, former members or prospective members of the organisation; or
- (b) if the declaration which applies to the organisation is a restrictive declaration—it is necessary or desirable to restrict, or to impose conditions on, the activities of—
- (i) the organisation; or
 - (ii) any members, former members or prospective members of the organisation—
- in order to end, prevent or reduce a serious threat to public safety and order.

- (1A) The Court may also make a control order that applies to an organisation if—
- (a) the organisation is a declared organisation; and
 - (b) the organisation gives its consent to the control order being made.

S. 43(1A)
inserted by
No. 55/2014
s. 73(2).

Note

Section 135A specifies how consent is to be given.

- (2) The Court may make a control order that applies to an individual if the Court is satisfied that—
- (a) the individual is a member, former member or prospective member of an organisation that is subject to a declaration; and
 - (b) either—
 - (i) if the declaration is a prohibitive declaration—the making of the control order is likely to contribute to the purpose of preventing or disrupting—

S. 43(2)
substituted by
No. 55/2014
s. 73(3).

- (A) serious criminal activity by the individual; or
- (B) serious criminal activity by any other person that is being or may be facilitated by the individual; or

- (ii) if the declaration is a restrictive declaration—it is necessary or desirable to restrict, or to impose conditions on, the activities of the individual in order to end, prevent or reduce a serious threat to public safety and order.

S. 43(2A)
inserted by
No. 55/2014
s. 73(4).

- (2A) The Court may make a control order that applies to an individual if—
 - (a) the individual is a declared individual; and
 - (b) the Court is satisfied that it is necessary or desirable to restrict, or to impose conditions on, the activities of the individual in order to end, prevent or reduce a serious threat to public safety and order.

S. 43(2B)
inserted by
No. 55/2014
s. 73(4).

- (2B) The Court may also make a control order that applies to an individual if—
 - (a) either—
 - (i) the Court is satisfied that the individual is a declared organisation member; or
 - (ii) the individual is a declared individual; and
 - (b) the individual gives his or her consent to the control order being made.

Note

Section 135A specifies how consent is to be given.

- (3) For the purposes of subsection (1) or (2), the Court may be satisfied that the making of a control order is likely to contribute to the purpose of preventing or disrupting serious criminal

activity without having to determine which particular applicable offence or offences would be prevented or disrupted.

- (4) The Court may decide that it is satisfied as required by subsection (1) or (2) only if it is satisfied by acceptable, cogent evidence that is of sufficient weight to justify the making of a control order.
- (5) In making a control order by consent in accordance with subsection (1A) or (2B), the Court is not required to consider the matters set out in subsections (1), (2) and (2A).

S. 43(5)
inserted by
No. 55/2014
s. 73(5).

44 Criminal history of current and former members and prospective members of certain organisations

In determining whether to make a control order the Court may have regard to the criminal history of—

- (a) in the case of an application for a control order that applies to a declared organisation—a member, former member or prospective member of the organisation;
- (b) in the case of an application for a control order that applies to an individual—
- (i) that individual; and
 - (ii) any member, former member or prospective member of a declared organisation or related organisation of which that individual is a member, former member or prospective member.

45 Content of control orders—declared organisations

- (1) In making a control order that applies to a declared organisation, the Court may impose the conditions the Court considers appropriate.

Criminal Organisations Control Act 2012
No. 80 of 2012
Part 3—Control Orders

s. 45

(2) Without limiting subsection (1), a control order may include conditions that do any one or more of the following—

S. 45(2)(a)
repealed by
No. 55/2014
s. 74(1)(a).

* * * * *

S. 45(2)(b)
amended by
No. 55/2014
s. 74(1)(b).

- (b) prohibit certain members, former members or prospective members of the declared organisation (or certain classes of members, former members or prospective members) from participating in the activities of the organisation;
- (c) require the declared organisation to exclude certain members, former members or prospective members of the organisation from participating in the activities of the organisation;
- (d) prohibit members, former members or prospective members of the declared organisation from wearing or displaying the patches or insignia of the organisation;
- (e) prohibit the declared organisation from carrying out an activity specified in the condition;
- (f) restrict the declared organisation from carrying out an activity specified in the condition in a specified way;
- (g) prohibit the declared organisation from using specified property it owns, possesses, uses or occupies for specified activities (whether that property is located in Victoria or elsewhere);
- (h) restrict, as specified in the condition, the use and possession by the declared organisation of property it owns, possesses, uses or

S. 45(2)(h)
amended by
No. 55/2014
s. 74(1)(c).

occupies (whether that property is located in Victoria or elsewhere).

(2A) The control order may include a condition that prohibits the organisation from doing any of the following only if the declaration applying to the organisation is a prohibitive declaration—

S. 45(2A)
inserted by
No. 55/2014
s. 74(2).

- (a) continuing to operate;
- (b) carrying on business;
- (c) taking on new members.

(3) In the case of a control order that applies to a declared organisation that is an unincorporated body or association, the conditions that are included in the control order may be directed at one or more members of the organisation as the Court considers appropriate.

(4) A person who was a member of a declared organisation on the day of the initial application, but who has since become a former member of that organisation, is taken to be both a member and a former member for the purposes of a condition imposed under subsection (2)(b) or (d).

S. 45(4)
substituted by
No. 55/2014
s. 74(3).

(5) In this section—

carrying out of an activity does not include being or becoming a party to a proceeding (including an appeal);

S. 45(5)
inserted by
No. 55/2014
s. 74(3).

day of the initial application, in relation to a declared organisation, means the day on which the Chief Commissioner applied for the declaration that applies to the organisation.

S. 46(1)
amended by
No. 55/2014
s. 75.

46 Winding up of incorporated associations that are prohibited from operating under a control order

- (1) If the Court, in making a control order for a declared organisation that is an incorporated association, includes a condition under section 45(2A)(a), the Court may order the winding up of that organisation.
- (2) The Chief Commissioner must cause a copy of the order for the winding up of the association to be served on the incorporated associations Registrar as soon as practicable after the making of the order.

47 Content of control orders—individuals

- (1) In making a control order that applies to an individual, the Court may impose the conditions the Court considers appropriate.
- (2) Without limiting subsection (1), a control order that applies to an individual who is a declared organisation member may include conditions that do any one or more of the following—
 - (a) prohibit the individual from associating with another declared organisation member or an associate of another declared organisation member;
 - (b) restrict, as specified in the condition, the individual from associating with another declared organisation member or an associate of another declared organisation member;
 - (c) prohibit the individual from continuing to be a member of a declared organisation;
 - (d) prohibit the individual from participating in the activities of a declared organisation;

-
- (e) restrict the nature of the individual's membership of a declared organisation or participation in the activities of a declared organisation;

Example

A condition may prohibit a member from wearing or displaying the patches or insignia of the declared organisation.

- (f) prohibit the individual from using or possessing property which a declared organisation owns, possesses, occupies or uses;
- (g) restrict, as specified in the condition, the individual's use or possession of property which a declared organisation owns, possesses, occupies or uses;
- (h) if the individual is a member of a declared organisation that is an unincorporated body or association—
- (i) prohibit the individual from using property made available by any person for use by any member of the organisation in their capacity as a member; or
 - (ii) restrict, as specified in the condition, the individual's use of property made available by any person for use by any member of the organisation in their capacity as a member.
- (3) Without limiting subsection (1), a control order that applies to a declared individual may include conditions that do any one or more of the following—
- (a) prohibit the individual from associating with a related organisation member or an associate of a related organisation member;

-
- (b) restrict, as specified in the condition, the individual from associating with a related organisation member or an associate of a related organisation member;
 - (c) prohibit the individual from continuing to be a member of a related organisation;
 - (d) prohibit the individual from participating in the activities of a related organisation;
 - (e) restrict the nature of the individual's membership of a related organisation or participation in the activities of a related organisation;

Example

A condition may prohibit a member from wearing or displaying the patches or insignia of the related organisation.

- (f) prohibit the individual from using or possessing property which a related organisation owns, possesses, occupies or uses;
- (g) restrict, as specified in the condition, the individual's use or possession of property which a related organisation owns, possesses, occupies or uses;
- (h) if the individual is a member of a related organisation that is an unincorporated body or association—
 - (i) prohibit the individual from using property made available by any person for use by any member of the organisation in their capacity as a member; or

- (ii) restrict, as specified in the condition, the individual's use of property made available by any person for use by any member of the organisation in their capacity as a member.

48 Ancillary orders

On making a control order, the Court may make any ancillary order it considers appropriate to enable the order to be given effect.

49 Conditions restricting association with others

Before making a control order with a condition of the kind specified under section 47(2)(a) or (b) or (3)(a) or (b) the Court must allow the individual to whom the control order will apply to make submissions in respect of the condition to be imposed.

50 Court must specify when control order takes effect

- (1) The Court must specify the day on which a control order takes effect.
- (2) The day specified by the Court must be a day that is within 6 months after the day on which the Court makes the control order.

51 Standard of proof that applies to applications

A question of fact to be decided by the Court in respect of an application for a control order is to be decided on the balance of probabilities.

51A Objections to be disregarded if respondent consents to control order

The Court must disregard any objection made under section 41 in making a control order if the respondent gives consent to the control order being made.

S. 51A
inserted by
No. 55/2014
s. 76.

Note

Section 135A specifies how consent is to be given.

52 Form of control order

A control order must specify—

- (a) the organisation to which or individual to whom the order applies; and
- (b) in the case of an individual—
 - (i) if the control order was made on the basis that the Court was satisfied of the matters set out in section 43(2)—the declared organisation; or
 - (ii) if the control order was made on the basis that the Court was satisfied of the matters set out in section 43(2A)—the related organisation; or
 - (iii) if the control order was made by consent in accordance with section 43(2B)—
 - (A) whether the order was made on the basis of section 43(2B)(a)(i) or (ii); and
 - (B) the declared organisation or related organisation (as the case requires); and
- (c) the grounds on which the order was made; and
- (d) the conditions imposed under the order; and
- (e) the terms of any ancillary orders made by the Court to give effect to the control order; and
- (f) the day on which the order is made; and
- (g) the day on which the order takes effect.

S. 52(b)
substituted by
No. 55/2014
s. 77.

53 Duration of control order

- (1) A control order remains in effect for 3 years after it takes effect unless—
 - (a) the control order is revoked; or
 - (b) in the case of a control order that applies to a declared organisation or declared individual—the declaration that applies to that organisation or individual is revoked or ceases to have effect; or
 - (c) in the case of a control order that applies to an individual who is a declared organisation member—the declaration that applies to the declared organisation of which that individual is a member, former member or prospective member is revoked or ceases to have effect.
- (2) A control order does not have effect for any period during which—
 - (a) the operation of the control order is stayed by the Court; or
 - (b) in the case of a control order that applies to a declared organisation or declared individual—the operation of the declaration (the *related declaration*) that applies to that organisation or individual is stayed by the Court; or
 - (c) in the case of control order that applies to an individual who is a declared organisation member—the operation of the declaration (the *related declaration*) that applies to the declared organisation of which that individual is a member, former member or prospective member is stayed by the Court.

- (3) A period during which a control order does not have effect because it, or the related declaration, is stayed does not count for the purposes of the period of effect specified under subsection (1).

54 Service of control order

- (1) The Chief Commissioner must cause a copy of a control order to be served on—
- (a) the declared organisation to which or individual to whom the control order applies; and
 - (b) in the case of a control order that applies to a declared organisation—every person who objected under section 41 to the application for the control order.
- (2) A control order must be served under subsection (1) as soon as practicable after the control order is made but no later than 7 days after that making.

Note

For service, see Division 2 of Part 6.

55 Notice of making of control order that applies to a declared organisation

- (1) The Chief Commissioner must cause notice of the making of a control order which applies to a declared organisation to be—
- (a) published—
 - (i) in the Government Gazette; and
 - (ii) in a newspaper circulating generally throughout the State; and
 - (b) affixed to or near an appropriate place.
- (2) The notice must be published and affixed as soon as practicable after the control order is made but no later than 7 days after that making.

S. 55(1)
substituted by
No. 55/2014
s. 78(1).

S. 55(2)
amended by
No. 55/2014
s. 78(2).

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- (3) The notice must state—
- (a) that a control order has been made under this Act; and
 - (b) the declared organisation to which the control order applies; and
 - (c) the day on which the control order was made; and
 - (d) the day on which the control order takes effect; and
 - (e) that the control order has effect for 3 years unless it is sooner revoked or the declaration that applies to the declared organisation ceases to have effect; and
 - (f) the conditions imposed under the control order; and
 - (g) the terms of any ancillary orders made by the Court to give effect to the control order; and
 - (h) if applicable, the terms of any order ordering the winding up of the organisation; and

Note

See section 46.

- (i) that it is an offence to contravene the control order; and

Note

See section 68.

- (j) that the Court's determination to make the control order may be appealed.

Note

An appeal lies from the Trial Division of the Supreme Court to the Court of Appeal: see sections 10, 17 and 17A of the **Supreme Court Act 1986**.

S. 55(4)
inserted by
No. 55/2014
s. 78(3).

- (4) The notice that is to be affixed to or near an appropriate place must be in the prescribed form.

Division 3—Variation or revocation of control orders and ancillary orders

56 Application for variation or revocation of control order or ancillary order

S. 56(3)
substituted by
No. 55/2014
s. 79.

- (1) The Chief Commissioner may apply to the Court for the variation or revocation of a control order or ancillary order.
- (2) A declared organisation to which or an individual to whom a control order or ancillary order applies may, with the leave of the Court, apply for the variation or revocation of the control order or ancillary order (as the case may be).
- (3) The Court may grant leave to apply under subsection (2) if—
- (a) the Chief Commissioner files with the Court a notice, signed by the Chief Commissioner, stating that the Chief Commissioner supports the granting of leave; or
 - (b) the Court is satisfied that there has been a substantial change in circumstances since the control order or ancillary order that applies to the declared organisation or the individual was made.

57 Form and content of application

- (1) An application under section 56 must—
- (a) be in writing; and
 - (b) state the grounds on which the variation or revocation of the control order or an ancillary order is sought.

- (2) An application must be accompanied by at least one affidavit which addresses the grounds on which the variation or revocation of the control order or ancillary order is sought.
- (3) An application must be served on the following persons as soon as practicable after the application is made on the respondent.

Note

For service, see Division 2 of Part 6.

58 Determination of application for variation or revocation—control order

S. 58
substituted by
No. 55/2014
s. 80.

- (1) The Court may, in accordance with this section, vary or revoke a control order on an application under section 56.
- (2) The Court may vary a control order if—
 - (a) the Court considers there has been a substantial change in circumstances since the order was made; or
 - (b) the respondent consents to the variation.
- (3) The Court may revoke a control order that was made on the basis that the Court was satisfied of the matters set out in section 43(1), (2) or (2A) if the Court is no longer satisfied of those matters.
- (4) The Court may revoke a control order that was made by consent in accordance with section 43(1A) if the Court is not satisfied of the matters set out in section 43(1).
- (5) The Court may revoke a control order that was made by consent in accordance with section 43(2B) if—
 - (a) in the case of a control order that was made on the basis of section 43(2B)(a)(i), the Court is not satisfied of the matters set out in section 43(2); or

- (b) in the case of a control order that was made on the basis of section 43(2B)(a)(ii), either—
- (i) the individual is no longer a declared individual; or
 - (ii) the Court is not satisfied of the matters set out in section 43(2A)(b).

- (6) The Court may revoke a control order if the respondent consents to the revocation.

Note

Section 135A specifies how consent is to be given.

S. 58A
inserted by
No. 55/2014
s. 81.

58A Determination of application for variation or revocation—ancillary order

- (1) The Court may, in accordance with this section, vary or revoke an ancillary order on an application under section 56.
- (2) The Court may vary an ancillary order if—
 - (a) the Court considers there has been a substantial change in circumstances since the order was made; or
 - (b) the respondent consents to the variation.
- (3) The Court may revoke an ancillary order if—
 - (a) the Court is satisfied that the basis on which the order was made no longer exists; or
 - (b) the respondent consents to the revocation.

Note

Section 135A specifies how consent is to be given.

59 Court must specify when variation or revocation of control order or ancillary order takes effect

- (1) The Court must specify the day on which—
 - (a) a control order or an ancillary order, as varied, takes effect;

(b) the revocation of a control order or an ancillary order takes effect.

- (2) The day specified by the Court must be a day that is within 6 months after the day on which the Court varies or revokes the control order or ancillary order (as the case may be).

60 Service of varied control order or ancillary order

- (1) The Chief Commissioner must cause a copy of a control order or ancillary order varied under section 58 to be served on the declared organisation to which or the individual to whom the control order or ancillary order applies.
- (2) A copy of a control order or ancillary order varied under section 58 must be served under subsection (1) as soon as practicable after the order is varied but no later than 7 days after the variation.

Note

For service, see Division 2 of Part 6.

61 Service of order revoking control order or ancillary order

- (1) The Chief Commissioner must cause a copy of an order of the Court revoking a control order or ancillary order to be served on the declared organisation or individual to whom it applied.
- (2) An order of the Court revoking a control order or ancillary order must be served under subsection (1) as soon as practicable after the order is made but no later than 7 days after that making.

Note

For service, see Division 2 of Part 6.

62 Notice of variation or revocation of control order or ancillary order applying to an organisation

- (1) The Chief Commissioner must cause notice of an order of the Court varying a control order or ancillary order which applies to a declared organisation, or revoking a control order or ancillary order which applied to a declared organisation, to be—
 - (a) published—
 - (i) in the Government Gazette; and
 - (ii) in a newspaper circulating generally throughout the State; and
 - (b) affixed to or near an appropriate place.
- (2) The notice must be published and affixed as soon as practicable after the order was made but no later than 7 days after it was made.
- (3) The notice must state—
 - (a) that the control order or ancillary order has been varied or revoked, as the case may be; and
 - (b) the declared organisation to which the control order or ancillary order applies or applied; and
 - (c) the day on which the control order or ancillary order was varied or revoked; and
 - (d) if the control order was varied, when the order, as varied, takes effect; and
 - (e) that the Court's determination to vary or revoke the control order or ancillary order may be appealed.

Note

An appeal lies from the Trial Division of the Supreme Court to the Court of Appeal: see sections 10, 17 and 17A of the **Supreme Court Act 1986**.

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- (4) The notice that is to be affixed to or near an appropriate place must be in the prescribed form.

Division 4—Renewal of control orders

63 Application for renewal of control orders

- (1) The Chief Commissioner may apply to the Court for the renewal of a control order.
- (2) An application must be made before the control order ceases to have effect.

64 Determination of application for renewal of control order

- (1) The Court, on an application under section 63, may renew the control order the subject of the application.
- (2) The Court may renew the control order even if the control order ceases to have effect before the Court makes its determination on the application.

65 Applicable procedure for renewal of control order

- (1) Subject to this Division, Divisions 1 and 2 apply to an application for the renewal of a control order, and the determination of the application by the Court, in the same way that they apply to an application for a control order and the determination by the Court of such an application.
- (2) For the purposes of subsection (1), a reference in Divisions 1 and 2 to—
- (a) an application for the making of a control order is to be read as a reference to an application for the renewal of a control order;
 - (b) the making of a control order is to be read as a reference to a renewal of a control order;
 - (c) a control order is to be read as a reference to a control order renewed under section 64.

66 When a renewed control order takes effect

A control order renewed under section 64 takes effect—

- (a) if it is renewed before it ceases to have effect—on the day after the day it would have ceased to have effect if it were not renewed;
- (b) if it is not renewed before it ceases to have effect—on the day the Court specifies in the order of the Court renewing the control order.

67 Control orders may be renewed more than once

A control order may be renewed more than once.

Division 5—Offences

68 Individual to whom or organisation to which a control order applies must comply with order

- (1) An individual or organisation that knows or is reckless as to the fact that a control order is in effect that applies to the individual or organisation must not contravene that control order.

Penalty: In the case of an individual, 600 penalty units or imprisonment for 5 years or both;

In case of a body corporate,
3000 penalty units.

- (2) An offence against subsection (1) is an indictable offence.
- (3) For the purposes of subsection (1), service of a copy of a control order that applies to the individual or organisation is proof, in the absence of evidence to the contrary, that the individual or organisation knows that a control order that

applies to that individual or organisation is in effect.

- (4) An individual who is prohibited under a condition of a control order from being a member of a declared organisation does not contravene that condition for the purposes of subsection (1) if—
- (a) the individual presents or points to evidence that suggests a reasonable possibility that he or she took all reasonable steps to cease to be a member of the organisation as soon as practicable after he or she knew that the order was in effect; and
 - (b) the contrary is not proved (beyond reasonable doubt) by the prosecution.
- (5) In proceedings for an offence against subsection (1) for a contravention by an individual (the *accused*) of a condition of a control order that prohibits the individual from associating with other individuals, it is not necessary for the prosecution to prove that the accused associated with another person for any particular purpose or that the association would have led to the commission of any offence.
- (6) In this section, *control order* includes any ancillary order.

PART 4—PROTECTION OF CRIMINAL INTELLIGENCE

Division 1—Preliminary

69 Definitions

In this Part—

protection application means an application under section 70 for a criminal intelligence protection order;

substantive application means—

- (a) an application for a declaration or a control order; or
- (b) an application for the revocation of a declaration or a control order; or
- (c) an application for the variation of a control order; or
- (d) an application for the registration of a corresponding control order referred to the Court under section 102; or
- (e) an application—
 - (i) for the variation of a registered corresponding control order; or
 - (ii) for the cancellation of the registration of a registered corresponding declaration or a registered corresponding control order.

Division 2—Criminal intelligence protection orders

70 Application for criminal intelligence protection order

- (1) If the Chief Commissioner has made a substantive application, the Chief Commissioner may apply to the Court for an order (a *criminal intelligence protection order*) in relation to any information,

document or other thing related to that substantive application that the Chief Commissioner believes on reasonable grounds is criminal intelligence.

Note

Criminal intelligence is defined in section 3(1).
An application for a criminal intelligence protection order is called a *protection application*—see section 69.

- (2) A protection application must—
- (a) be in writing; and
 - (b) state the grounds on which the order is sought; and
 - (c) be accompanied by an affidavit which addresses the grounds on which the order is sought.

71 Appointment and role of special counsel

- (1) If a protection application is made, the Court may appoint a special counsel to represent the interests of the respondent to the substantive application in relation to which the protection application was made at the hearing of the protection application.
- (2) A special counsel must be a barrister within the meaning of the **Legal Profession Act 2004** who, in the opinion of the Court, has the appropriate skills and ability to represent the interests of the respondent at the hearing of the protection application.
- (3) At any time before the special counsel attends the hearing or obtains any information or the original or a copy of any document or other thing that is the subject of the protection application, the special counsel may communicate with the respondent, or any representative of the respondent, for the purposes of obtaining information from the respondent or representative in relation to the protection application.

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- (4) At any time after the special counsel commences to attend the hearing or obtains any information or the original or a copy of any document or other thing that is the subject of the protection application, the special counsel—
- (a) may communicate to the respondent or a representative of the respondent any order made by the Court at or in relation to the hearing; and
 - (b) must not communicate any other information in relation to the hearing to the respondent or a representative of the respondent, but may seek information from the respondent or representative that is necessary for the special counsel to represent the interests of the respondent.
- (5) The special counsel—
- (a) must not perform his or her role in a manner that compromises the confidentiality of all or any part of the information, document or other thing that is the subject of the protection application; and
 - (b) does not incur any liability to the respondent in respect of anything done or omitted to be done by the special counsel in performing his or her role as special counsel.

72 Adjournment to allow special counsel to communicate with respondent

- (1) The Court may adjourn a proceeding on a protection application to allow a special counsel appointed under section 71 to communicate with the respondent or a representative of the respondent in accordance with section 71(3) or (4).
- (2) Subsection (1) does not limit any other power of the Court to adjourn a proceeding.

73 Protection application to be heard in closed court unless Court orders otherwise

- (1) Unless the Court orders otherwise, a protection application must be heard in closed court.
- (2) The Court may make an order under subsection (1) if it considers it appropriate to do so.
- (3) If the protection application is heard in closed court, the only persons who may be present at the hearing are—
 - (a) the Chief Commissioner or his or her delegate;
 - (b) any lawyers representing the Chief Commissioner;
 - (c) a special counsel appointed under section 71 in relation to the application;
 - (d) any witnesses who may be called to give evidence;
 - (e) the presiding judge and any court staff necessary for the hearing.
- (4) If the protection application is heard in closed court, the Court must cause a notice to be posted on a door of the court house or in another conspicuous place where notices are usually posted at the court house—
 - (a) stating that the hearing is being held in closed court; and
 - (b) stating who may be present at the hearing; and
 - (c) stating that it is an offence for anyone else to enter or attempt to enter the place where the hearing is being held.

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- (5) The Chief Commissioner may withdraw the protection application or the substantive application, or both, if the Court makes an order under subsection (1).
- (6) This section applies despite anything to the contrary in section 18 or 19 of the **Supreme Court Act 1986**.

74 Offence to enter closed court

- (1) A person not referred to in section 73(3) who knows or is reckless as to the fact that a hearing is being held in closed court under section 73 must not enter the place where the hearing is being held.

Penalty: 600 penalty units or imprisonment for 5 years or both.

- (2) An offence against subsection (1) is an indictable offence.
- (3) If—
- (a) a person is charged with an offence against subsection (1); and
 - (b) the prosecution proves that a notice was posted in accordance with section 73(4) at the time of the alleged offence—

the person is presumed to have known, or to have been reckless as to the fact, that the hearing was being held in closed court unless the person presents or points to evidence that the person did not know and was not reckless as to that fact.

- (4) This section applies despite anything to the contrary in section 18 of the **Supreme Court Act 1986**.

75 Determining protection application

- (1) After hearing a protection application, the Court may make a criminal intelligence protection order in respect of all or any part of the information, document or other thing to which the application relates if the Court is satisfied that—
 - (a) the information, document, thing or part is criminal intelligence; and
 - (b) the reasons for maintaining the confidentiality of the criminal intelligence outweigh any prejudice or unfairness to the respondent to the substantive application.
- (2) If the Court declines to make a criminal intelligence protection order in respect of all or any part of the information, document or other thing—
 - (a) the Chief Commissioner is not obliged to adduce that information, document, other thing or part in evidence in the proceeding on the substantive application; and
 - (b) the Chief Commissioner may withdraw the substantive application.
- (3) The Chief Commissioner may also withdraw the substantive application if the Court at any time during the proceeding on the substantive application makes an order for discovery of all or any part of the information, document or other thing that was the subject of the protection application, whether or not a criminal intelligence protection order was made.

76 Admissibility of protected criminal intelligence

To avoid doubt, the making of a criminal intelligence protection order is not determinative of the admissibility of the protected criminal intelligence in evidence in the proceeding on the substantive application.

77 Offence to publish report of hearing of protection application

- (1) Unless the Court orders otherwise, a person must not publish a report of a hearing of a protection application or any information derived from such a hearing.

Penalty: In the case of an individual, 600 penalty units or imprisonment for 5 years or both;

In the case of a body corporate,
3000 penalty units.

- (2) An offence against subsection (1) is an indictable offence.
- (3) The Court may make an order under subsection (1) if it considers it appropriate to do so.

Division 3—How protected criminal intelligence is dealt with in substantive applications

78 Division applies to the *relevant part* of a substantive application

- (1) This Division applies to any part of a proceeding on a substantive application in which protected criminal intelligence is sought to be admitted, or is adduced, in evidence.

Note

Protected criminal intelligence is criminal intelligence that is the subject of a criminal intelligence protection order—see section 3(1).

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- (2) In this Division, the part of proceedings referred to in subsection (1) is called the *relevant part*.

79 Appointment and role of special counsel

- (1) The Court may appoint a special counsel to represent the interests of the respondent to the substantive application at the hearing of the relevant part.
- (2) A special counsel must be a barrister within the meaning of the **Legal Profession Act 2004** who, in the opinion of the Court, has the appropriate skills and ability to represent the interests of the respondent at the hearing of the relevant part.
- (3) If a special counsel was appointed under section 71 to represent the interests of the respondent at the hearing of the protection application, the Court may appoint the same person or a different person as special counsel under this section.
- (4) At any time before the special counsel attends the hearing of the relevant part or obtains any of the protected criminal intelligence or any copy of any of the protected criminal intelligence, the special counsel may communicate with the respondent, or any representatives of the respondent, for the purposes of obtaining information from the respondent or representative in relation to the relevant part.
- (5) To avoid doubt, subsection (4) does not apply if the special counsel is the same person as the special counsel appointed under section 71 to represent the interests of the respondent at the hearing of the protection application.
- (6) If the special counsel is the same person as the special counsel appointed under section 71, the special counsel—

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- (a) may communicate to the respondent or a representative of the respondent any order made by the Court at or in relation to the hearing of the relevant part; and
 - (b) must not communicate any other information in relation to the hearing of the relevant part to the respondent or a representative of the respondent, but may seek information from the respondent or representative that is necessary for the special counsel to represent the interests of the respondent.
- (7) If the special counsel is not the same person as the special counsel appointed under section 71, at any time after the special counsel commences to attend the hearing of the relevant part or obtains any of the protected criminal intelligence or any copy of any of the protected criminal intelligence, the special counsel—
- (a) may communicate to the respondent or a representative of the respondent any order made by the Court at or in relation to the hearing; and
 - (b) must not communicate any other information in relation to the hearing to the respondent or a representative of the respondent, but may seek information from the respondent or representative that is necessary for the special counsel to represent the interests of the respondent.
- (8) The special counsel—
- (a) must not perform his or her role in a manner that compromises the confidentiality of all or any part of the protected criminal intelligence; and

- (b) does not incur any liability to the respondent in respect of anything done or omitted to be done by the special counsel in performing his or her role as special counsel.
- (9) The Court may direct that the special counsel may be present as an observer at any hearing of the substantive application other than the hearing of the relevant part.

Note

The special counsel is entitled to be present at the hearing of the relevant part—see section 81(3)(c).

80 Adjournment to allow special counsel to communicate with respondent

- (1) The Court may adjourn a proceeding on a substantive application to allow a special counsel appointed under section 79 to communicate with the respondent or a representative of the respondent in accordance with section 79(4), (6) or (7) (as the case requires).
- (2) Subsection (1) does not limit any other power of the Court to adjourn a proceeding.

81 Protected criminal intelligence to be dealt with in closed court unless Court orders otherwise

- (1) Unless the Court orders otherwise, the relevant part must be heard in closed court.
- (2) The Court may make an order under subsection (1) if it considers it appropriate to do so.
- (3) If the relevant part is heard in closed court, the only persons who may be present at the hearing of the relevant part are—
- (a) the Chief Commissioner or his or her delegate;
 - (b) any lawyers representing the Chief Commissioner;

- (c) a special counsel appointed under section 79 in relation to the relevant part;
 - (d) any witnesses who may be called to give evidence;
 - (e) the presiding judge and any court staff necessary for the hearing.
- (4) If the relevant part is heard in closed court, the Court must cause a notice to be posted on a door of the court house or in another conspicuous place where notices are usually posted at the court house—
- (a) stating that the hearing of the relevant part is being held in closed court; and
 - (b) stating who may be present at the hearing of the relevant part; and
 - (c) stating that it is an offence for anyone else to enter or attempt to enter the place where the hearing of the relevant part is being held.
- (5) If the Court makes an order under subsection (1)—
- (a) the Chief Commissioner is not obliged to adduce any protected criminal intelligence in evidence; and
 - (b) the Chief Commissioner may withdraw the substantive application.

Note

The Chief Commissioner may also withdraw the substantive application if the Court makes an order for discovery of all or any part of the protected criminal intelligence—see section 75(3).

- (6) This section applies despite anything to the contrary in section 18 or 19 of the **Supreme Court Act 1986**.

82 Offence to enter closed court

- (1) A person not referred to in section 81(3) who knows or is reckless as to the fact that a hearing is being held in closed court under section 81 must not enter the place where the hearing is being held.

Penalty: 600 penalty units or imprisonment for 5 years or both.

- (2) An offence against subsection (1) is an indictable offence.
- (3) If—
- (a) a person is charged with an offence against subsection (1); and
 - (b) the prosecution proves that a notice was posted in accordance with section 81(4) at the time of the alleged offence—

the person is presumed to have known, or to have been reckless as to the fact, that the hearing was being held in closed court unless the person presents or points to evidence that the person did not know and was not reckless as to that fact.

- (4) This section applies despite anything to the contrary in section 18 of the **Supreme Court Act 1986**.

83 Offence to publish report of hearing of relevant part

- (1) Unless the Court orders otherwise, a person must not publish a report of a hearing of the relevant part or any information derived from such a hearing.

Penalty: In the case of an individual, 600 penalty units or imprisonment for 5 years or both;

In the case of a body corporate,
3000 penalty units.

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- (2) An offence against subsection (1) is an indictable offence.
 - (3) The Court may make an order under subsection (1) if it considers it appropriate to do so.

Division 4—General

84 Disclosure, receipt or solicitation of protected criminal intelligence

- (1) Subject to subsection (3), a person must not disclose, receive or solicit any information, document or other thing if the person knows or is reckless as to the fact that the information, document or other thing is protected criminal intelligence.

Penalty: In the case of an individual, 600 penalty units or imprisonment for 5 years or both;

In the case of a body corporate,
3000 penalty units.

- (2) An offence against subsection (1) is an indictable offence.
- (3) Subsection (1) does not apply—
 - (a) to disclosure, receipt or solicitation of protected criminal intelligence that was in the public domain at the time of the disclosure, receipt or solicitation; or
 - (b) to disclosure, receipt or solicitation of protected criminal intelligence by a law enforcement officer in the performance of his or her duty; or

- (c) to disclosure of protected criminal intelligence by a person to a lawyer, or the receipt or solicitation of protected criminal intelligence by a lawyer from a person, in the course of the person consulting the lawyer for legal advice; or
 - (d) to disclosure, receipt or solicitation of protected criminal intelligence that is published in accordance with an order of the Court under section 77(1) or 83(1); or
 - (e) to disclosure, receipt or solicitation of protected criminal intelligence that is required, authorised or permitted by or under this Act.
- (4) A person does not commit an offence against subsection (1) if—
- (a) the person presents or points to evidence that suggests a reasonable possibility that a circumstance referred to in subsection (3) existed at the time of the alleged commission of the offence; and
 - (b) the contrary is not proved (beyond reasonable doubt) by the prosecution.

85 Disclosure, receipt or solicitation of other confidential material

- (1) This section applies to any information, document or other thing that was the subject of a protection application that was not granted by the Court.
- (2) Subject to subsection (4), a person must not disclose, receive or solicit any information, document or other thing to which this section applies if the person knows or is reckless as to the fact that the information, document or other thing is information or a document or other thing to which this section applies.

Penalty: In the case of an individual, 600 penalty units or imprisonment for 5 years or both;

In the case of a body corporate,
3000 penalty units.

- (3) An offence against subsection (2) is an indictable offence.
- (4) Subsection (2) does not apply—
- (a) to disclosure, receipt or solicitation of any information, document or other thing that was in the public domain at the time of the disclosure, receipt or solicitation; or
 - (b) to disclosure, receipt or solicitation of any information, document or other thing that has been adduced in evidence by or on behalf of the Chief Commissioner in relation to a substantive application; or
 - (c) to disclosure, receipt or solicitation of any information, document or other thing by a law enforcement officer in the performance of his or her duty; or
 - (d) to disclosure of any information, document or other thing by a person to a lawyer, or the receipt or solicitation of any information, document or other thing by a lawyer from a person, in the course of the person consulting the lawyer for legal advice; or
 - (e) to disclosure, receipt or solicitation of any information, document or other thing that is published in accordance with an order of the Court under section 77(1); or
 - (f) to disclosure, receipt or solicitation of any information, document or other thing that is required, authorised or permitted by or under this Act.

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- (5) A person does not commit an offence against subsection (2) if—
- (a) the person presents or points to evidence that suggests a reasonable possibility that a circumstance referred to in subsection (4) existed at the time of the alleged commission of the offence; and
 - (b) the contrary is not proved (beyond reasonable doubt) by the prosecution.
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**PART 5—RECOGNITION OF CORRESPONDING
DECLARATIONS AND CONTROL ORDERS**

**Division 1—Reciprocal recognition of corresponding
declarations**

Subdivision 1—Application for registration

**86 Chief Commissioner may apply for registration of
corresponding declaration**

- (1) The Chief Commissioner may apply to the Prothonotary for registration of a corresponding declaration.
- (2) An application for registration of a corresponding declaration does not need to be served on the respondent.

87 Form and content of application

An application for registration of a corresponding declaration must—

- (a) be in writing; and
- (b) be accompanied by—
 - (i) a copy of the declaration to be registered; and
 - (ii) an affidavit that includes enough information to enable the Prothonotary to find that the declaration is a corresponding declaration that is in effect.

Subdivision 2—Registration of corresponding declaration

**88 Registration of corresponding declaration by
Prothonotary**

- (1) On an application under section 86, the Prothonotary must register the corresponding declaration if the Prothonotary is satisfied—

- (a) that the declaration is in effect; 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.
- (2) The Prothonotary must not register a corresponding declaration unless the Prothonotary is satisfied of the matters set out in subsection (1).

89 Period of registration

- (1) On registering a corresponding declaration under this Division, the Prothonotary must specify the day on which the registration ceases to have effect.
- (2) The day specified in accordance with subsection (1) is to be—
- (a) the day on which the corresponding declaration would cease to have effect in the jurisdiction in which it was made if it were not sooner revoked; or
 - (b) if, under the law of the jurisdiction in which the corresponding declaration was made, the corresponding declaration remains in effect for an indefinite period—the day that is 3 years after the day of registration in this State.
- (3) The registration of the corresponding declaration ceases to have effect on the day specified in accordance with subsection (1).

90 Notice and copy to Chief Commissioner

- (1) The Prothonotary must give the Chief Commissioner notice of the registration of a corresponding declaration and a copy of the registered corresponding declaration.
- (2) The notice and copy must be given as soon as practicable after the corresponding declaration is registered but no later than 7 days after that registration.

91 Service of corresponding declaration

- (1) The Chief Commissioner must cause a copy of a registered corresponding declaration to be served on the respondent.
- (2) The copy must be served as soon as practicable after the Chief Commissioner receives a copy of the registered corresponding declaration but no later than 7 days after that receipt.

Note

For service, see Division 2 of Part 6.

92 Notice of registration of corresponding declaration

- (1) The Chief Commissioner must cause notice of the registration of a corresponding declaration to be published—
 - (a) in the Government Gazette; and
 - (b) in a newspaper circulating generally throughout the State.
- (2) The notice must be published as soon as practicable after the Chief Commissioner receives a copy of the registered corresponding declaration but no later than 7 days after that receipt.

- (3) The notice must—
- (a) state that a corresponding declaration has been registered under this Act; and
 - (b) state the organisation to which the registered corresponding declaration applies; and
 - (c) state the day on which the registered corresponding declaration took effect and the period the declaration is in effect; and
 - (d) state that the Chief Commissioner may apply for a control order under this Act in respect of an individual on the basis of the registered corresponding declaration.

93 Effect of failure to comply with sections 90 to 92

- (1) A failure to comply with section 90, 91 or 92 does not affect the validity of the registration of the corresponding declaration.
- (2) However, the registered corresponding declaration has no effect on the respondent until sections 90, 91 and 92 are complied with.

94 Commencement of registered corresponding declaration

A registered corresponding declaration comes into effect in this State on the later of—

- (a) the day on which a copy of the registered corresponding declaration is served on the respondent; and
- (b) the day on which the notice of the registration of the corresponding declaration is published in the Government Gazette.

95 Duration of registered corresponding declaration

- (1) Subject to subsection (2), a registered corresponding declaration remains in effect in this State until one of the following occurs—
 - (a) the registration of the corresponding declaration ceases to have effect in accordance with section 89;
 - (b) the registration of the corresponding declaration is cancelled under section 97.
- (2) A registered corresponding declaration is not in effect in this State if it is not in effect in the jurisdiction in which it was made.

96 Effect of registration of corresponding declaration

A registered corresponding declaration that is in effect under this Part operates in this State for the purposes of section 43(2) and (2B) as if it were a restrictive declaration made under Part 2.

Subdivision 3—Cancellation of registration

97 Cancellation of registration of corresponding declaration

- (1) The Chief Commissioner may apply, at any time, to the Prothonotary to cancel the registration of a registered corresponding declaration.
- (2) On receiving an application under subsection (1), the Prothonotary must—
 - (a) cancel the registration of the corresponding declaration; and
 - (b) give the Commissioner of Police written notice of that cancellation.

S. 96
amended by
No. 55/2014
s. 82.

98 Notice of cancellation

- (1) The Chief Commissioner must cause notice of the cancellation of registration of a corresponding declaration to be published—
 - (a) in the Government Gazette; and
 - (b) in a newspaper circulating generally throughout the State.
- (2) The notice must be published as soon as practicable after the Chief Commissioner receives notice of the cancellation but no later than 7 days after that receipt.

Division 2—Reciprocal recognition of corresponding control orders

Subdivision 1—Application for registration

99 Chief Commissioner may apply for registration of corresponding control orders

- (1) The Chief Commissioner may apply to the Prothonotary for registration of a corresponding control order.
- (2) An application for registration of a corresponding control order does not need to be served on the respondent.
- (3) An application for registration of a corresponding control order that applies to an individual may be made at the same time as or after an application for registration of a corresponding declaration for an organisation.

100 Form and content of application

An application for registration of a corresponding control order must—

- (a) be in writing; and
- (b) state that the Chief Commissioner believes that it is necessary or desirable that the corresponding control order operate in this State; and
- (c) state whether the Chief Commissioner believes that it is necessary or desirable for the control order to be registered with variations for its effective operation in this State, and if so, the details of those variations; and
- (d) be accompanied by—
 - (i) a copy of the control order to be registered; and
 - (ii) an affidavit that includes enough information to enable the Prothonotary to find that the control order is a corresponding control order that is in effect.

Subdivision 2—Registration of corresponding control orders

101 Registration of corresponding control order by Prothonotary

- (1) On an application under section 99 for the registration of a corresponding control order, the Prothonotary must register the order if the Prothonotary is satisfied—
 - (a) that the order is in effect; and

- (b) if the law of the jurisdiction in which the order was made requires notice of the order to be published—that the requirement has been complied with; and
 - (c) if the law of the jurisdiction in which the order was made requires that the order 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 the application states that the Chief Commissioner believes that it is necessary or desirable that the corresponding control order operate in this State; and
 - (e) that the application does not state that the Chief Commissioner believes that it is necessary for the corresponding control order to be registered with variations for its effective operation in this State.
- (2) The Prothonotary must not register a corresponding control order unless the Prothonotary is satisfied of the matters set out in subsection (1).

102 Referral of application to Court for variation

If the application states that the Chief Commissioner believes that it is necessary for a corresponding control order to be registered with variations for its effective operation in this State, the Prothonotary must—

- (a) refer the application for registration to the Court; and
- (b) notify the Chief Commissioner of that referral.

103 Service of application

- (1) If an application for registration of a corresponding control order is referred to the Court under section 102, the Chief Commissioner must cause the following documents to be served on the respondent—
 - (a) a copy of the application for registration;
 - (b) a copy of each affidavit that accompanied the application.
- (2) The copies must be served as soon as practicable after the application is referred to the Court.

Note

For service, see Division 2 of Part 6.

104 Hearing of application

- (1) The Chief Commissioner and the respondent may appear at the hearing of an application referred to the Court under section 102 and make submissions in relation to the application.
- (2) However, the Court may hear and determine the application even if the respondent does not appear.

105 Determination of application for registration

- (1) After hearing an application for registration of a corresponding control order referred to the Court under section 102, the Court may—
 - (a) direct the Prothonotary to register the order—
 - (i) with any variations that the Court considers necessary for its effective operation in this State; or
 - (ii) without any variations; or
 - (b) determine that the order is not to be registered.

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- (2) Before giving a direction under subsection (1), the Court must—
- (a) be satisfied that the respondent is a member, former member or prospective member of an organisation that is the subject of a corresponding declaration that is currently in effect; and
 - (b) take into account any substantial change in the respondent's circumstances since the corresponding control order was made.
- (3) In determining an application to register a corresponding control order with variations, the Court may—
- (a) vary the conditions of the order, whether or not those conditions could be imposed on a control order under Part 3 and whether or not those conditions are mandatory or discretionary under the law of the jurisdiction in which the order was made;
 - (b) specify additional conditions on the order that could be imposed on a control order under Part 3, whether or not those conditions could be imposed on the order under the law of the jurisdiction in which the order was made;
 - (c) specify conditions of the order that do not apply in this State, whether or not those conditions are mandatory or discretionary under the law of the jurisdiction in which the order was made;
 - (d) specify any ancillary conditions that are necessary to give effect to the order in this State.

106 Registration of corresponding control order after determination of Court

- (1) The Prothonotary must register a corresponding control order without variation or with variations as directed by the Court under this Division.
- (2) The Prothonotary must not register a corresponding control order if the Court has determined under this Division that the order is not to be registered.

107 Period of registration

- (1) On registering a corresponding control order under this Division, the Prothonotary must specify the day on which the registration ceases to have effect.
- (2) The day specified in accordance with subsection (1) is to be—
 - (a) the day on which the corresponding control order would cease to have effect in the jurisdiction in which it was made if it were not sooner revoked; or
 - (b) if, under the law of the jurisdiction in which the corresponding control order was made, the corresponding control order remains in effect for an indefinite period—the day that is 3 years after the day of registration in this State.

108 Notice and copy to Chief Commissioner

- (1) The Prothonotary must give the Chief Commissioner notice of the registration of a corresponding control order and a copy of the registered corresponding control order.
- (2) The notice and copy must be given as soon as practicable after the corresponding control order is registered but no later than 7 days after that registration.

109 Service of corresponding control order

- (1) The Chief Commissioner must cause a copy of a registered corresponding control order to be served on the respondent.
- (2) The copy must be served as soon as practicable after the Chief Commissioner receives a copy of the registered corresponding control order but no later than 7 days after that receipt.

Note

For service, see Division 2 of Part 6.

110 Commencement of registered corresponding control order

A registered corresponding control order comes into effect in this State on the day on which the order is served on the respondent under section 109.

111 Duration of registered corresponding control order

- (1) Subject to subsection (2), a registered corresponding control order remains in effect in this State until one of the following occurs—
 - (a) the registration of the corresponding control order ceases to have effect in accordance with section 107;
 - (b) the registration of the corresponding control order is cancelled under section 121.
- (2) A registered corresponding control order is not in effect in this State if it is not in effect in the jurisdiction in which it was made.

112 Effect of registration of corresponding control order

A registered corresponding control order that has come into effect under this Part operates in this State for the purposes of section 68 as if it were a control order made under Part 3.

Subdivision 3—Application for variation of registered corresponding control order

113 Application for variation of registered corresponding control order

- (1) The Chief Commissioner may apply to the Court for the variation of a registered corresponding control order.
- (2) The respondent may, with the leave of the Court, apply to the Court for the variation of a registered corresponding control order.
- (3) The Court may grant leave to apply under subsection (2) if the Court is satisfied that there has been a substantial change in circumstances since the corresponding control order was made.

114 Form and content of application

- (1) An application under section 113 must—
 - (a) be in writing; and
 - (b) set out the details of the variation sought and the grounds for the variation.
- (2) An application must be accompanied by at least one affidavit which addresses the grounds on which the variation is sought.
- (3) An application must be served as soon as practicable after the application is made on the following persons—
 - (a) if the applicant is the Chief Commissioner—the respondent;
 - (b) if the applicant is the respondent—the Chief Commissioner.

Note

For service, see Division 2 of Part 6.

115 Determination of Court in relation to application for variation

- (1) After hearing an application for the variation of a registered corresponding control order under section 113, the Court may, if the Court considers it appropriate to do so—
 - (a) direct the Prothonotary to vary the registered corresponding control order, if the Court considers the variation is necessary for the effective operation of the order in this State;
or
 - (b) determine that a variation is not to be made;
or
 - (c) direct the Prothonotary to cancel the registration of the corresponding control order.
- (2) In making a determination under subsection (1), the Court must have regard to any substantial change in circumstances since the corresponding control order was made.
- (3) Section 105(2) and (3) (with any necessary changes) apply to an application for the variation of a registered corresponding control order made under section 113.
- (4) If the Court directs the Prothonotary to vary a registered corresponding control order, the variation takes effect when notice of the variation is served on the respondent under section 118.

116 Prothonotary must give effect to determination of Court

The Prothonotary must vary a registered corresponding control order as directed by the Court under section 115.

117 Notice and copy of varied order to Chief Commissioner

- (1) The Prothonotary must give the Chief Commissioner—
 - (a) notice of the variation of the registered corresponding control order under section 115; and
 - (b) a copy of the registered corresponding control order with the variation.
- (2) The notice and copy must be given as soon as practicable after the determination is made by the Court under section 115 but no later than 7 days after that determination.

118 Service of order with variation

- (1) The Chief Commissioner must cause a copy of the registered corresponding control order with the variation under section 115 to be served on the respondent.
- (2) The copy must be served as soon as practicable after the Chief Commissioner receives a copy of the registered corresponding control order with the variation but no later than 7 days after that receipt.

Note

For service, see Division 2 of Part 6.

Subdivision 4—Cancellation of registration of corresponding control order

119 Application for cancellation of registered corresponding control order

- (1) The Chief Commissioner may apply to the Court to cancel the registration of a registered corresponding control order.

- (2) The respondent may, with the leave of the Court, apply to the Court to cancel the registration of a registered corresponding control order.
- (3) The Court may grant leave to apply under subsection (2) if the Court is satisfied that there has been a substantial change in circumstances since the corresponding control order was made.

120 Form and content of application

- (1) An application under section 119 must—
 - (a) be in writing; and
 - (b) state the grounds on which the cancellation is sought.
- (2) An application must be accompanied by at least one affidavit which addresses the grounds on which the cancellation is sought.

121 Determination of Court in relation to application for cancellation

- (1) After hearing an application for the cancellation of the registration of a registered corresponding control order under section 119, the Court may, if it considers it appropriate to do so—
 - (a) direct the Prothonotary to cancel the registration of the corresponding control order; or
 - (b) if the Court considers that it is reasonably practicable to make variations to the registered corresponding control order for its effective operation in this State—determine not to cancel the order and direct the Prothonotary to make those variations; or
 - (c) determine not to cancel the registration of the corresponding control order.

- (2) In making a determination under subsection (1), the Court must have regard to any substantial change in circumstances since the corresponding control order was made.
- (3) If the Court directs the Prothonotary to vary a registered corresponding control order, the variation takes effect when notice of the variation is served on the respondent under section 124.

122 Prothonotary must give effect to determination of Court

The Prothonotary must cancel the registration of, or vary, a registered corresponding control order as directed by the Court under section 121.

123 Notice to Chief Commissioner

- (1) The Prothonotary must give the Chief Commissioner—
 - (a) notice of the cancellation of the registration, or variation, of the registered corresponding control order under section 121; and
 - (b) if applicable, a copy of the registered corresponding control order with the variation.
- (2) The notice must be given as soon as practicable after the determination is made by the Court under section 121 but no later than 7 days after that determination.

124 Service of notice on respondent

- (1) The Chief Commissioner must cause the following to be served on the respondent, as applicable—
 - (a) a copy of the notice of cancellation of the registration, or the variation, of the registered corresponding control order under section 121; and

(b) a copy of the registered corresponding control order with the variation.

(2) The copy must be served as soon as practicable after the Chief Commissioner receives the notice of cancellation or variation but no later than 7 days after that receipt.

Note

For service, see Division 2 of Part 6.

PART 6—GENERAL

Division 1—Corporate criminal responsibility

125 Definitions

In this Division—

associate, in relation to a body corporate,
means—

- (a) an employee or agent of the body corporate to the extent that he or she is acting within the actual or apparent scope of his or her employment or within his or her actual or apparent authority; or
- (b) an officer of the body corporate;

officer means—

- (a) in the case of body corporate that is—
 - (i) a company or registered foreign company within the meaning of the Corporations Act; or
 - (ii) is incorporated under a law of another State or a Territory—

an officer (as defined by section 9 of the Corporations Act) of the body corporate to the extent that he or she is acting within the actual or apparent scope of his or her employment or within his or her actual or apparent authority;

- (b) in the case of a body corporate that is an incorporated association—an office holder within the meaning of section 82 of the **Associations Incorporation Reform Act 2012**;

specified section means section 68(1), 77(1), 83(1), 84(1) or 85(2).

126 Corporate criminal responsibility for certain offences against this Act

- (1) For the purposes of a proceeding against a body corporate for an offence against a specified section—
 - (a) relevant conduct engaged in by an associate of the body corporate must also be attributed to the body corporate; and
 - (b) knowledge of an associate of the body corporate must also be attributed to the body corporate.
- (2) If an officer of a body corporate contravenes a specified section, the body corporate must be taken to have also contravened that section and may be proceeded against and found guilty of an offence against that section whether or not the officer has been proceeded against or found guilty of that offence.
- (3) In a proceeding against a body corporate for an offence against a specified section, brought in reliance on subsection (2), it is a defence to the charge for the body corporate to prove that it exercised due diligence to prevent the contravention of that section by the officer.
- (4) It is not necessary that each element of an offence against a specified section that is attributed to a body corporate by force of subsection (1) be supplied by the same associate of the body corporate.

Division 2—Service

127 General rules as to service

- (1) For the purposes of this Act—
- (a) if a document is to be served on an individual—it must be served in accordance with section 128; and
 - (b) if a document is to be served on a company or a registered foreign company within the meaning of the Corporations Act—it must be served in accordance with section 109X or 601CX of that Act, as the case may be; and
 - (c) if a document is to be served on an incorporated association—it must be served in accordance with section 217 of the **Associations Incorporation Reform Act 2012**; and
 - (d) if a document is to be served on a body or association incorporated under a law of another State or a Territory—it must be served in accordance with section 129; and
 - (e) if a document is to be served on an unincorporated body or association—it must be served in accordance with section 128 on an office holder of the organisation.
- (2) If it appears to a court on sworn evidence, whether oral or by affidavit, that service cannot be promptly effected, the court may make an order for substituted service.

128 Service on an individual

A document may be served on an individual—

- (a) by delivering it personally to the individual;
or
- (b) by sending it by prepaid ordinary post to the individual at his or her usual or last known residential or business address; or
- (c) by leaving it at the individual's usual or last known residential or business address with an individual on the premises who is apparently at least 16 years old and apparently residing or employed there.

129 Service on bodies and associations incorporated interstate

A document may be served on a body or association incorporated under a law of another State or a Territory—

- (a) by leaving a copy of the document at the registered office or principal place of business of the body corporate; or
- (b) by sending a copy of the document by prepaid ordinary post to the registered office or principal place of business of the body corporate.

Division 3—Register

130 Register of declarations, control orders and corresponding orders

- (1) The Chief Commissioner must establish and maintain a register of—
 - (a) declarations; and
 - (b) control orders; and

S. 130(2)(a)
amended by
No. 37/2014
s. 10(Sch.
item 40.2).

- (c) registered corresponding declarations; and
 - (d) registered corresponding control orders.
- (2) The purposes of the register are—
- (a) to enable police officers to readily determine what declarations, control orders, registered corresponding declarations and registered corresponding control orders are in effect; and
 - (b) to enable members of the public to know of declarations, control orders and registered corresponding declarations that may affect them.
- (3) The register must contain an entry for—
- (a) each declaration; and
 - (b) each control order; and
 - (c) each registered corresponding declaration; and
 - (d) each registered corresponding control order.
- (4) The Chief Commissioner may keep the register in any form the Chief Commissioner thinks fit.

131 Information to be kept on register

S. 131(1)(ba)
inserted by
No. 55/2014
s. 83.

- (1) Each entry in the register in respect of a declaration must include the following information—
- (a) whether the declaration applies to a declared organisation or a declared individual;
 - (b) the identity of the declared organisation to which or a declared individual to whom it applies;
 - (ba) if the declaration applies to an organisation, whether it is a prohibitive declaration or a restrictive declaration;

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- (c) whether the declaration is in effect.
- (2) Each entry in the register in respect of a control order must include the following information—
- (a) whether the order applies to a declared organisation or an individual;
 - (b) the identity of the declared organisation to which or individual to whom it applies;
 - (c) in the case of an individual to whom it applies and who is a declared organisation member, the identity of the declared organisation of which the individual is a member, former member or prospective member;
 - (d) the conditions imposed by the order;
 - (e) whether the control order is in effect.
- (3) Each entry in the register in respect of a registered corresponding declaration must include the following information—
- (a) the identity of the organisation to which it applies;
 - (b) the day on which the corresponding declaration was registered;
 - (c) whether or not the registration is currently in effect.
- (4) Each entry in the register in respect of a registered corresponding control order must include the following information—
- (a) the identity of the individual to whom it applies;
 - (b) in the case of an individual to whom it applies, the identity of the organisation of which the individual is a member, former

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- member or prospective member and to which a corresponding declaration applies;
- (c) the day on which the corresponding control order was registered;
 - (d) whether or not the registration is currently in effect.
- (5) The regulations may provide that an entry on the register must require, or may provide for, the inclusion of prescribed information.
 - (6) The Chief Commissioner must ensure that information referred to in subsections (1)(c) and (2)(d) is kept up to date.
 - (7) The Chief Commissioner must, as soon as possible after becoming aware that information referred to in subsection (3)(c) or (4)(c) is out of date, correct that information so that it is up to date.

132 Public access to certain entries on register

The Chief Commissioner must ensure that the following entries on the register are accessible to any person on payment of the prescribed fee (if any)—

- (a) the entries for declarations applying to declared organisations that are in effect;
- (b) the entries for control orders applying to declared organisations that are in effect;
- (c) the entries for registered corresponding declarations with a registration that is in effect.

Division 4—Reporting

133 Annual report

- (1) The Chief Commissioner must give the Attorney-General a report that includes the following information in respect of each financial year—
- (a) in respect of each of the following kinds of applications, the number of those applications made during that financial year—
 - (i) applications for declarations in respect of organisations;
 - (ii) applications for declarations in respect of individuals;
 - (iii) applications to renew declarations in respect of organisations;
 - (iv) applications to renew declarations in respect of individuals;
 - (v) applications for control orders in respect of declared organisations;
 - (vi) applications for control orders in respect of individuals who are declared individuals;
 - (vii) applications for control orders in respect of individuals who are declared individuals;
 - (viii) applications for control orders in respect of individuals who are declared organisation members;
 - (ix) applications to renew control orders in respect of declared organisations;
 - (x) applications to renew control orders in respect of individuals who are declared individuals;

S. 133(1)(c)
substituted by
No. 55/2014
s. 84.

S. 133(1)(ca)
inserted by
No. 55/2014
s. 84.

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- (xi) applications to renew control orders in respect of individuals who are declared organisation members.
 - (b) in respect of each of the kinds of applications specified in paragraph (a)—
 - (i) the number of those applications that were withdrawn or refused during that financial year; and
 - (ii) the number of those applications that were granted during that financial year;
 - (c) the number of prohibitive declarations that were in effect on the last day of that financial year;
 - (ca) the number of restrictive declarations that were in effect on the last day of that financial year;
 - (d) the number of declarations applying to declared individuals that were in effect on the last day of that financial year;
 - (e) the number of control orders applying to declared organisations that were in effect on the last day of that financial year;
 - (f) the number of control orders applying to individuals that were in effect on the last day of that financial year;
 - (g) the number of corresponding declarations registered under Part 5 during that financial year;
 - (h) the number of corresponding control orders registered under Part 5 during that financial year;
 - (i) the number of registered corresponding declarations in effect on the last day of that financial year;

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- (j) the number of registered corresponding control orders in effect on the last day of that financial year;
 - (k) the number of criminal intelligence protection orders made in that financial year;
 - (l) the number of offences against this Act that were charged during that financial year;
 - (m) the number of proceedings for—
 - (i) charges for offences against this Act that were concluded during that financial year, including the number of any findings of guilt or convictions; and
 - (ii) charges for offences against this Act that were discontinued during that financial year.
 - (2) The report must be given to the Attorney-General as soon as practicable, but within 3 months, after the end of each financial year.
 - (3) The Attorney-General must cause a copy of the report to be laid before each House of Parliament within 12 sitting days of that House after the report is received by the Attorney-General.

Division 5—Other matters

134 Information sharing

- (1) For the purposes of this section, the following are *specified persons*—
 - (a) the Chief Commissioner;
 - (b) the Prothonotary;
 - (c) a special counsel appointed under section 71 or 79;
 - (d) the incorporated associations Registrar.

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- (2) The Chief Commissioner, the Prothonotary or a special counsel appointed under section 71 or 79 may disclose information acquired in the exercise of powers or the performance of functions or duties under this Act to any other specified person for the purpose of—
- (a) enabling the Chief Commissioner, the Prothonotary or a special counsel appointed under section 71 or 79 to exercise powers or perform functions or duties under this Act; or
 - (b) enabling the incorporated associations Registrar to exercise powers or perform functions or duties under the **Associations Incorporation Reform Act 2012**.
- (3) The incorporated associations Registrar may disclose information acquired in the exercise of powers or the performance of functions or duties under the **Associations Incorporation Reform Act 2012** to any other specified person for the purpose of—
- (a) enabling the incorporated associations Registrar to exercise powers or perform functions or duties under that Act; or
 - (b) enabling the Chief Commissioner, the Prothonotary or a special counsel appointed under section 71 or 79 to exercise powers or perform functions or duties under this Act.
- (4) The Chief Commissioner may disclose the identity of an organisation or individual who is subject to a declaration or control order to—
- (a) a police force or police service of a State or a Territory; or
 - (b) the Australian Federal Police; or

- (c) any other authority or person responsible for the enforcement of the laws of the Commonwealth or a State or a Territory; or
- (d) a police force or police service (however described) of a place outside Australia; or
- (e) any other authority or person responsible for the enforcement of the laws of a place outside Australia.

135 Nature of proceedings under Act

Proceedings on an application under this Act are civil in nature, except as otherwise provided under this Act.

135A Consent

- (1) This section applies in relation to the giving of consent referred to in the following provisions—
 - (a) section 19(2C) and (3A);
 - (b) section 21;
 - (c) section 29(6);
 - (d) section 29A(4);
 - (e) section 43(1A)(b) and (2B)(b);
 - (f) section 51A;
 - (g) section 58(2)(b) and (6);
 - (h) section 58A(2)(b) and (3)(b).
- (2) Consent is given by filing with the Court a notice of consent that is—
 - (a) in the case of consent given by an individual—signed by the individual; or
 - (b) in the case of consent given by a company or a registered foreign company within the meaning of the Corporations Act—executed by the company in accordance with section 127 of that Act; or

S. 135A
inserted by
No. 55/2014
s. 85.

- (c) in the case of consent given by an incorporated association—executed in accordance with section 38 of the **Associations Incorporation Reform Act 2012**; or
- (d) in the case of consent given by an association incorporated under the law of another State or Territory—signed by a person authorised to execute a document on behalf of the association under the law of that State or Territory; or
- (e) in the case of consent given by an unincorporated body or association—signed by 2 office holders of the body or association.

S. 135B
inserted by
No. 55/2014
s. 85.

135B Costs

- (1) In relation to an application referred to in section 9(1)—
 - (a) the applicant must bear the applicant's own costs; and
 - (b) the respondent must bear the respondent's own costs; and
 - (c) a person who, under section 17 or 41, makes an objection to the application must bear their own costs.
- (2) Despite subsection (1), the Court may award costs against a person referred to in that subsection if the person has—
 - (a) made an application or objection that the Court considers frivolous or vexatious; or
 - (b) by an unreasonable act or omission caused the other person to incur costs in relation to the application or objection.

- (3) If the Court awards costs against an unincorporated body or association under subsection (2), each member of the body or association is jointly and severally liable for those costs.

135C Adjournment before costs order made

S. 135C
inserted by
No. 55/2014
s. 85.

- (1) This section applies if, at a hearing for an application referred to in section 9(1)—
- (a) the Court decides that there are grounds to award costs against a person under section 135B(2); and
 - (b) neither the person nor the person's legal representative (if any) is present at the hearing.
- (2) The Court may—
- (a) adjourn the proceeding; and
 - (b) give the person notice that an order for costs will be made at the next hearing of the proceeding unless the person contests the making of the order at that hearing.
- (3) For the purposes of this section, an organisation is present at a hearing if an office holder of the organisation is present at the hearing.

136 Delegation

- (1) The Chief Commissioner, by instrument, may delegate any function or power he or she has under this Act, other than this power of delegation, to a police officer of or above the rank of inspector.
- (2) Subsection (1) does not limit section 19 of the **Victoria Police Act 2013**.

S. 136(1)
amended by
No. 37/2014
s. 10(Sch.
item 40.3(a)).

S. 136(2)
amended by
No. 37/2014
s. 10(Sch.
item 40.3(b)).

137 Review of Act

- (1) The Attorney-General must cause a review to be undertaken of the first 5 years of operation of this Act (the *report period*) and the effectiveness of this Act during the report period.
- (2) The review must be completed and a report of the review must be given to the Attorney-General within one year after the end of the report period.
- (3) The Attorney-General must cause a copy of the report of the review to be laid before each House of Parliament within 12 sitting days after the Attorney-General is given the report.
- (4) Subject to subsection (5), the following persons may give any information concerning the operation of this Act to any person involved in undertaking the review—
 - (a) the Chief Commissioner;
 - (b) a special counsel appointed under section 71 or 79;
 - (c) the Prothonotary;
 - (d) the incorporated associations Registrar.
- (5) A person disclosing information under subsection (4)—
 - (a) may disclose information that—
 - (i) is subject to a criminal intelligence protection order; or
 - (ii) was provided to the Court in the course of an application for a criminal intelligence protection order; and
 - (b) must, when disclosing that information, state that the information is of the kind referred to in paragraph (a)(i) or (ii), as the case requires.

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- (6) The report of the review must not include any information referred to in subsection (5).

138 Regulations

- (1) The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) The regulations—
- (a) may be of general or limited application; and
 - (b) may differ according to differences in time, place or circumstances.
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Criminal Organisations Control Act 2012
No. 80 of 2012
Part 6—General

s. 139

**Pt 7 (Heading
and ss 139–
141)
repealed by
No. 80/2012
s. 141.**

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SCHEDULE

Section 4(2)(b)

SPECIFIED OFFENCES

Note

In relation to provisions in the **Crimes Act 1958**, see paragraph (c) of the definition of *applicable offence* in section 3(1).

**Note to Sch.
inserted by
No. 55/2014
s. 86(1).**

1 Classification (Publications, Films and Computer Games) (Enforcement) Act 1995

- 1.1 Section 15(2) (sale of a commercial quantity of X 18+ films).
- 1.2 Section 23A(4) (possession of a commercial quantity of X 18+ films with the intention of selling or exhibiting them).
- 1.3 Section 23A(5) (copying a commercial quantity of X 18+ films with the intention of selling or exhibiting them).
- 1.4 Section 24(1) (making an objectionable film).
- 1.5 Section 32(1) (producing an objectionable publication).

2 Control of Weapons Act 1990

- 2.1 Section 5(1) (importing, manufacturing, displaying or advertising for sale a prohibited weapon without an exemption or approval).
- 2.2 Section 5(1A) (possessing, carrying or using a prohibited weapon in licensed premises without an exemption or approval).

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**Sch. item 3
repealed by
No. 55/2014
s. 86(2)(a).**

4 Dangerous Goods Act 1985

- 4.1 Section 54(5) (dealing with an unauthorised explosive).

Criminal Organisations Control Act 2012
No. 80 of 2012

Sch.

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Sch. item 5 repealed by No. 55/2014 s. 86(2)(b).					
6 Firearms Act 1996					
Sch. item 6.1 repealed by No. 55/2014 s. 86(2)(c).	*	*	*	*	*
Sch. item 6.2 amended by No. 55/2014 s. 86(3)(a).			6.2	Section 6(1) (non-prohibited person possessing, carrying or using a registered category A longarm without a licence).	
Sch. item 6.3 amended by No. 55/2014 s. 86(3)(b).			6.3	Section 6(2) (non-prohibited person possessing, carrying or using a registered category B longarm without a licence).	
Sch. item 6.4 amended by No. 55/2014 s. 86(3)(c).			6.4	Section 6(3) (non-prohibited person possessing, carrying or using a registered category C longarm without a licence).	
Sch. item 6.5 amended by No. 55/2014 s. 86(3)(d).			6.5	Section 6(4) (non-prohibited person possessing, carrying or using a registered category D longarm without a licence).	
Sch. item 6.6 repealed by No. 55/2014 s. 86(2)(c).	*	*	*	*	*
			6.7	Section 6(6) (non-prohibited person possessing, carrying or using other longarm).	
			6.8	Section 6A(1) (non-prohibited person possessing, carrying or using an unregistered category A or B longarm).	
			6.9	Section 6A(2) (non-prohibited person possessing, carrying or using an unregistered category C or D longarm).	
Sch. item 6.10 repealed by No. 55/2014 s. 86(2)(c).	*	*	*	*	*

6.11 Section 7(1) (non-prohibited person possessing, carrying or using a registered general category handgun without a licence).

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Sch. item 6.12
repealed by
No. 55/2014
s. 86(2)(c).

6.13 Section 7(3) (non-prohibited person possessing, carrying or using a registered pre-1947 general category handgun for collection purposes without a licence).

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Sch. item 6.13
amended by
No. 55/2014
s. 86(3)(e).

6.15 Section 7(5) (non-prohibited person possessing, carrying or using a registered general category handgun for collection purposes without a licence).

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Sch. item 6.16
repealed by
No. 55/2014
s. 86(2)(c).

6.17 Section 7A(1) (holder of handgun target shooting licence possessing, carrying or using certain types of handguns).

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Sch. item 6.18
repealed by
No. 55/2014
s. 86(2)(c).

6.19 Section 36(1) (holder of longarm licence for category A or B longarms contravening a condition of the licence).

6.20 Section 36(2) (holder of licence for category C or D longarms or general category handguns contravening a condition of the licence).

Sch.

Sch. item 6.21
amended by
No. 55/2014
s. 86(3)(f).

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- 6.21 Section 36(3) (holder of licence for category E longarms or category E handguns contravening a condition of the licence).
 - 6.22 Section 45(3) (disposing of category A or B longarm other than to a licensed firearms dealer).
 - 6.23 Section 45(4) (disposing of category C or D longarm, or general category handgun, other than to a licensed firearms dealer).
 - 6.24 Section 45(5) (disposing of category E longarm, or category E handgun, other than to a licensed firearms dealer).
 - 6.25 Section 53(1) (failing to surrender firearm or cartridge ammunition once a licence is suspended or cancelled).
 - 6.26 Section 57(1) (non-prohibited person possessing, carrying or using a silencer without, or in contravention of, a permit).
 - 6.27 Section 57A(1) (holder of handgun security guard licence possessing, carrying or using restricted ammunition without, or in contravention of, a permit).
 - 6.28 Section 59(1) (being a firearms dealer in category A or B longarms or paintball markers without, or in contravention of, a licence).
 - 6.29 Section 59(2) (being a firearms dealer in other firearms without, or in contravention of, a licence).
 - 6.30 Section 83 (failing to surrender firearms or cartridge ammunition once a dealers licence is suspended or cancelled).
 - 6.31 Section 93(1) (licensed firearms dealer acquiring a category A or B longarm other than from a specified person).

6.32 Section 93(2) (licensed firearms dealer acquiring a category C or D longarm, or a general category handgun, other than from a specified person).

6.33 Section 93(3) (licensed firearms dealer acquiring other firearm other than from a specified person).

6.34 Section 94(1) (licensed firearms dealer disposing of a category A or B longarm other than to a specified person).

6.35 Section 94(2) (licensed firearms dealer disposing of a category C or D longarm or general category handgun other than to a specified person).

Sch. item 6.35
amended by
No. 55/2014
s. 86(3)(g).

6.36 Section 94(3) (licensed firearms dealer disposing of other firearm other than to a specified person).

6.37 Section 95(1) (person who is not a licensed firearms dealer acquiring a category A or B longarm from another person who is not a licensed firearms dealer).

6.38 Section 95(2) (person who is not a licensed firearms dealer acquiring a category C or D longarm from another person who is not a licensed firearms dealer).

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Sch. items
6.39, 6.40
repealed by
No. 55/2014
s. 86(2)(c).

6.41 Section 96(1) (person who is not a licensed firearms dealer disposing of a category A or B longarm to a person who is not a licensed firearms dealer).

Sch. item 6.41
amended by
No. 55/2014
s. 86(3)(h).

6.42 Section 96(2) (person who is not a licensed firearms dealer disposing of a category C or D longarm to a person who is not a licensed firearms dealer).

Criminal Organisations Control Act 2012
No. 80 of 2012

Sch.

Sch. items
6.43, 6.44
repealed by
No. 55/2014
s. 86(2)(c).

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- 6.45 Section 98(1) (person who is not a licensed firearms dealer taking possession of a firearm without personally receiving it).
- 6.46 Section 98(2) (person who is not a licensed firearms dealer giving possession of a firearm without personally giving it).
- 6.47 Section 99(1) (licensed firearms dealer acquiring a category A or B longarm from an interstate person who does not hold an interstate dealers licence).
- 6.48 Section 99(2) (licensed firearms dealer acquiring a category C or D longarm, or a general category handgun, from an interstate person who does not hold an interstate dealers licence).
- 6.49 Section 99(3) (licensed firearms dealer acquiring a category E longarm, or a category E handgun, from an interstate person who does not hold an interstate dealers licence).
- 6.50 Section 100(1) (licensed firearms dealer disposing of a category A or B longarm to an interstate person who does not hold an interstate licence).
- 6.51 Section 100(2) (licensed firearms dealer disposing of a category C or D longarm, or a general category handgun, to an interstate person who does not hold an interstate licence).
- 6.52 Section 100(3) (licensed firearms dealer disposing of a category E longarm, or a category E handgun, to an interstate person who does not hold an interstate licence).
- 6.53 Section 101B(1) (providing financial accommodation for the illegal acquisition or disposal of a category A or B longarm).
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6.54 Section 101B(2) (providing financial accommodation for the illegal acquisition or disposal of a category C or D longarm or a general category handgun).

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Sch. item 6.55
repealed by
No. 55/2014
s. 86(2)(c).

6.56 Section 102(1) (acquiring a category A or B longarm without a permit).

6.57 Section 102(2) (acquiring a category C or D longarm without a permit).

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Sch. item 6.58
repealed by
No. 55/2014
s. 86(2)(c).

6.59 Section 102(3) (acquiring a category E longarm without a permit).

6.60 Section 121(1) (improperly storing a firearm that is possessed under a longarm licence for a category A or B longarm).

6.61 Section 121(1A) (improperly storing cartridge ammunition that is possessed under a longarm licence for a category A or B longarm).

6.62 Section 121(2) (improperly storing a firearm that is possessed under a licence for a general category handgun or a category C or D longarm).

6.63 Section 121(2A) (improperly storing cartridge ammunition that is possessed under a licence for a general category handgun, or a category C or D longarm).

6.64 Section 121(3) (improperly storing a firearm that is possessed under a licence for a category E handgun or a category E longarm).

6.65 Section 121(3A) (improperly storing cartridge ammunition that is possessed under a licence for a category E handgun or a category E longarm).

Sch.

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- 6.66 Section 123(1) (improperly storing a category A or B longarm that is possessed under a dealers licence).
 - 6.67 Section 123(2) (improperly storing a category C or D longarm, or a general category handgun, that is possessed under a dealers licence).
 - 6.68 Section 123(3) (improperly storing a category E handgun, or a category E longarm, that is possessed under a dealers licence).
 - 6.69 Section 123(4) (improperly storing ammunition that is possessed under a dealers licence).
 - 6.70 Section 125 (disposing of cartridge ammunition to an unauthorised person).
 - 6.71 Section 126(1) (carrying or using a category A or B longarm without keeping it safe).
 - 6.72 Section 126(2) (carrying or using a category C or D longarm, or a general category handgun, without keeping it safe).
 - 6.73 Section 126(3) (carrying or using a category E longarm, or a category E handgun, without keeping it safe).
 - 6.74 Section 126(4) (carrying or using cartridge ammunition without keeping it safe).
 - 6.75 Section 127(1) (permitting a category A or B longarm to be carried or used by an unauthorised person).
 - 6.76 Section 127(2) (permitting a category C or D longarm to be carried or used by an unauthorised person).
 - 6.77 Section 127(3) (permitting a category E longarm to be carried or used by an unauthorised person).
 - 6.78 Section 128 (damaging property with a firearm).

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- 6.79 Section 129 (using a firearm in a dangerous manner).
- 6.80 Section 129A (unlicensed person storing a firearm or cartridge ammunition in an insecure manner).
- 6.81 Section 130(1) (carrying or using a firearm in certain places).
- 6.82 Section 131(1) (possessing, carrying or using a firearm on private property without consent).
- 6.83 Section 132(1) (carrying or using a firearm while intoxicated).
- 6.84 Section 132(2) (concealing a firearm for the purpose of committing an indictable offence).
- 6.85 Section 133 (disposing of a firearm to an intoxicated person).
- 6.86 Section 134(1) (shortening the barrel of a longarm).
- 6.87 Section 134(2) (altering an inoperable firearm so it can discharge any shot, bullet or missile).
- * * * * *
- 6.89 Section 134(4) (destroying, or rendering inoperable, a firearm or other item without the Chief Commissioner's approval).
- 6.90 Section 134C(1) (possessing a firearm on which there is no serial number).
- 6.91 Section 135(1) (owning a category A or B longarm without a licence to possess it).
- 6.92 Section 135(2) (owning a category C or D longarm, or a general category handgun, without a licence to possess it).

Sch. item 6.88
repealed by
No. 55/2014
s. 86(2)(c).

Sch.

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- 6.93 Section 135(3) (owning a category E longarm, or a category E handgun, without a licence to possess it).
- 6.94 Section 136 (disposing of a firearm to a minor).
- 6.95 Section 137(1) (altering the particulars on a licence, permit, certificate or other document).
- 6.96 Section 138 (making a false entry in a register or other record).
- 6.97 Section 140A(1) (making a false or misleading statement in making an application).
- 6.98 Section 140A(2) (being false or misleading in providing identification).
- 6.99 Section 140A(3) (making a false or misleading statement in supporting an application).

7 Sex Work Act 1994

Sch. item 7.1
repealed by
No. 55/2014
s. 86(2)(d).

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- 7.2 Section 22(1A) (carrying on business as a sex work service provider other than in accordance with a licence).

Sch. item 7.3
repealed by
No. 55/2014
s. 86(2)(d).

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- 7.4 Section 57(1) (carrying on business as a sex work service provider in association with an unlicensed person).

Sch. item 7.5
repealed by
No. 55/2014
s. 86(2)(d).

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ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 15 November 2012

Legislative Council: 29 November 2012

The long title for the Bill for this Act was "A Bill for an Act to provide for the making of declarations and control orders for the purpose of preventing and disrupting the activities of organisations involved in serious criminal activity, and of their members, former members, prospective members and associates, to provide for the recognition and application of declarations and control orders made under corresponding laws and to make related amendments to other Acts and for other purposes."

The **Criminal Organisations Control Act 2012** was assented to on 18 December 2012 and came into operation on 13 March 2013: Special Gazette (No. 86) 13 March 2013 page 1.

Criminal Organisations Control Act 2012
No. 80 of 2012

Endnotes

2. Table of Amendments

This Version incorporates amendments made to the **Criminal Organisations Control Act 2012** by Acts and subordinate instruments.

Criminal Organisations Control Act 2012, No. 80/2012

Assent Date: 18.12.12
Commencement Date: S. 141 on 1.11.14: s. 141
Current State: This information relates only to the provision/s amending the **Criminal Organisations Control Act 2012**

Victoria Police Amendment (Consequential and Other Matters) Act 2014, No. 37/2014

Assent Date: 3.6.14
Commencement Date: S. 10(Sch. item 40) on 1.7.14: Special Gazette (No. 200) 24.6.14 p. 2
Current State: This information relates only to the provision/s amending the **Criminal Organisations Control Act 2012**

Criminal Organisations Control and Other Acts Amendment Act 2014, No. 55/2014

Assent Date: 26.8.14
Commencement Date: Ss 60–86 on 1.10.14: Special Gazette (No. 330) 23.9.14 p. 1; s. 145 on 31.10.14: Special Gazette (No. 330) 23.9.14 p. 1
Current State: This information relates only to the provision/s amending the **Criminal Organisations Control Act 2012**

3. Explanatory Details

No entries at date of publication.