

South Australia

Serious and Organised Crime (Control) Act 2008

An Act to provide for the making of declarations and orders for the purpose of disrupting and restricting the activities of criminal organisations, their members and associates; and for other purposes.

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Serious and Organised Crime (Control) Act 2008*.

3—Interpretation

In this Act, unless the contrary intention appears—

authorisation order means an order of the Court under section 25;

Chief Justice means the Chief Justice of the Supreme Court and includes an acting Chief Justice of the Supreme Court;

Commissioner means the Commissioner of Police;

control order means a control order made by the Court under Part 3 (but does not include an interim control order);

conviction means a finding of guilt by a court, or the acceptance of a plea of guilty by a court, whether or not a conviction is recorded;

corresponding control order means an order made under a provision of a law of another State or Territory that is prescribed by regulation for the purposes of this definition;

corresponding declaration means a declaration or order made under a provision of a law of another State or Territory that is prescribed by regulation for the purposes of this definition;

Court—

- (a) in Part 2, Part 3 and Part 6, means the Supreme Court;
- (b) in Part 4, means the Magistrates Court;

criminal intelligence means information relating to actual or suspected criminal activity (whether in this State or elsewhere) the disclosure of which could reasonably be expected to prejudice criminal investigations, to enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement or to endanger a person's life or physical safety;

declared organisation means an organisation subject to a declaration by an eligible Judge under Part 2 or a registered corresponding declaration that is in force under Part 6;

eligible Judge—see section 8;

exercise a function includes perform a duty;

function includes a power, authority or duty;

interim control order means an interim control order made by the Court under section 22A;

member, in relation to an organisation, includes—

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

organisation means any incorporated body or unincorporated group (however structured), whether or not the body or group is based outside South Australia, consists of persons who are not ordinarily resident in South Australia or is part of a larger organisation;

personal details, in relation to a person, means—

- (a) the person's full name; and
- (b) the person's date of birth; and
- (c) the address of where the person is living; and
- (d) the address of where the person usually lives; and
- (e) the person's business address;

proceedings includes any proceedings or hearing before an eligible Judge;

public safety order means an order made by a senior police officer under section 23;

respondent—

- (a) in Part 3, means the person to whom a control order or interim control order, or application for such an order, relates; and
- (b) in Part 6, means the organisation the subject of a corresponding declaration or the person the subject of a corresponding control order (as the case may be);

senior police officer means a police officer of or above the rank of inspector;

serious criminal activity means the commission of serious criminal offences;

serious criminal offences means—

- (a) indictable offences (other than indictable offences of a kind prescribed by regulation); or
- (b) summary offences of a kind prescribed by regulation; or
- (c) offences under the law of another jurisdiction consisting of conduct that would, if engaged in in this State, be offences of a kind specified in paragraph (a) or (b).

4—Objects

- (1) The objects of this Act are—
 - (a) to disrupt and restrict the activities of—
 - (i) organisations involved in serious crime; and
 - (ii) the members and associates of such organisations; and
 - (b) to protect members of the public from violence associated with such criminal organisations.
- (2) Without derogating from subsection (1), it is not the intention of the Parliament that the powers in this Act be used in a manner that would diminish the freedom of persons in this State to participate in advocacy, protest, dissent or industrial action.

5—Burden of proof

- (1) Any question of fact to be decided by a court in proceedings under this Act is to be decided on the balance of probabilities.
- (2) This section does not apply in relation to proceedings for an offence against this Act.

5A—Criminal intelligence

- (1) In any proceedings under this Act before a court, the court—
 - (a) must, on the application of the Commissioner, take steps to maintain the confidentiality of information properly classified by the Commissioner as criminal intelligence, including steps to receive evidence and hear argument about the information in private in the absence of the parties to the proceedings and their representatives; and

- (b) may take evidence consisting of or relating to information so classified by the Commissioner by way of affidavit of a police officer of or above the rank of superintendent.
- (2) In any proceedings under this Act before an eligible Judge, the eligible Judge—
 - (a) must, on the application of the Commissioner, take steps to maintain the confidentiality of information properly classified by the Commissioner as criminal intelligence, including steps to receive or hear submissions about the information, or otherwise deal with the information, in private in the absence of the parties to the proceedings and their representatives; and
 - (b) may receive information so classified or submissions relating to information so classified by the Commissioner by way of statutory declaration of a police officer of or above the rank of superintendent.
 - (3) The duties imposed on a court by subsection (1) in relation to proceedings under this Act apply to any court dealing (whether on an appeal under this, or another, Act or otherwise) with information properly classified under this Act as criminal intelligence or with the question of whether information has been properly classified under this Act by the Commissioner as criminal intelligence.

6—Extra-territorial operation

It is the intention of the Parliament that this Act apply within the State and outside the State to the full extent of the extra-territorial legislative capacity of the Parliament.

7—Delegation

The Commissioner—

- (a) may not delegate the function of classifying information as criminal intelligence for the purposes of this Act except to a Deputy Commissioner or Assistant Commissioner of Police; and
- (b) may not delegate any other function or power of the Commissioner under this Act except to a senior police officer.

Part 2—Declared organisations

8—Eligible Judges

- (1) For the purposes of this Act, an *eligible Judge* is a Judge in relation to whom a consent is in force under subsection (2) and who has been selected by the Chief Justice to act as an eligible Judge in accordance with subsection (3).
- (2) A Judge of the Court (including the Chief Justice) may, by instrument in writing, consent to being selected to act as an eligible Judge under this Act.
- (3) The Chief Justice may, by instrument in writing, select a Judge in relation to whom a consent is in force under subsection (2) to act as an eligible Judge under this Act.
- (4) An eligible Judge has, in relation to the exercise of a function conferred on an eligible Judge by this Act, the same protection, privileges and immunities as a Judge of the Court has in relation to proceedings in the Court.
- (5) A Judge who has given consent under subsection (2) may, by instrument in writing, revoke the consent.

- (6) A selection of a Judge to act as an eligible Judge under subsection (3) is revoked if—
 - (a) the eligible Judge revokes his or her consent in accordance with subsection (5) or ceases to be a Judge; or
 - (b) the Chief Justice determines that the Judge should not continue to be an eligible Judge.
- (7) If an eligible Judge dealing with any proceedings under this Act dies, is absent or ceases to be an eligible Judge, the Chief Justice may, in accordance with subsection (3), select another Judge in relation to whom a consent is in force under subsection (2) to act as an eligible Judge under this Act for the purpose of continuing the proceedings.
- (8) To avoid doubt, the selection of an eligible Judge to exercise a particular function conferred on eligible Judges is not to be made by the Attorney-General or other Minister of the Crown, and the exercise of that particular function is not subject to the control and direction of the Attorney-General or other Minister of the Crown.

9—Commissioner may apply for declaration

- (1) The Commissioner may apply for a declaration under this Part in relation to an organisation.
- (2) The application must—
 - (a) be in writing; and
 - (b) identify the particular organisation in respect of which the declaration is sought; and
 - (c) describe the nature of the organisation and any of its distinguishing characteristics; and
 - (d) set out the grounds on which the declaration is sought; and
 - (e) set out the information supporting the grounds on which the declaration is sought; and
 - (f) set out details of any previous application for a declaration in respect of the organisation and the outcome of that application; and
 - (g) be supported by at least 1 statutory declaration from a police officer of or above the rank of superintendent, verifying the contents of the application.
- (3) The application may identify the organisation by specifying the name of the organisation or the name by which the organisation is commonly known or by providing other particulars identifying the organisation.
- (4) The application must be lodged with the holder of an office prescribed by the regulations and that person must—
 - (a) as soon as practicable, notify the Chief Justice so that the Chief Justice can select an eligible Judge in accordance with section 8; and
 - (b) when an eligible Judge has been so selected, provide the application to the eligible Judge.

- (5) On receiving an application that complies with this section, the eligible Judge must determine the date, time and place of the hearing of the application and notify the Commissioner of the matters referred to in section 10(1)(e).
- (6) Subject to subsection (7), the Commissioner must make a copy of an application under this section, and any statutory declaration supporting the application, available for inspection by—
 - (a) any person who satisfies the Commissioner that he or she is a representative of the organisation; and
 - (b) any person who is alleged in a statutory declaration supporting the application to be a member or former member of the organisation; and
 - (c) any person who satisfies the Commissioner that he or she is a member or former member of the organisation or other person who may be directly affected (whether or not adversely) by the outcome of the application.
- (7) Nothing in subsection (6) authorises or requires the disclosure of information properly classified by the Commissioner as criminal intelligence.

10—Publication of notice of application

- (1) If the Commissioner makes an application under section 9 in relation to an organisation, the Commissioner must as soon as practicable (but no later than 3 days) after being given a notification by the eligible Judge under section 9(5) publish a notice in the Gazette and a newspaper circulating generally throughout the State—
 - (a) specifying that an application has been made for a declaration under this Part in respect of the organisation; and
 - (b) specifying that there may be serious consequences for members of the organisation and other persons if the declaration is made; and
 - (c) inviting interested parties to make or provide submissions to the eligible Judge at the hearing of the application; and
 - (d) specifying the manner in which interested parties may inspect or apply to inspect a copy of the application; and
 - (e) specifying—
 - (i) the date, time and place of the hearing, as determined by the eligible Judge; and
 - (ii) the requirements of the eligible Judge in relation to the provision of written submissions.
- (2) In this section—

interested party, in relation to an application, means an organisation or person who would, under section 15, be entitled to make an oral submission or provide a written submission to the eligible Judge at the hearing of the application.

11—Eligible Judge may make declaration

- (1) The eligible Judge may make a declaration on an application made under this Part in relation to an organisation if the eligible Judge is satisfied that—
 - (a) members of the organisation associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity; and
 - (b) the organisation represents a risk to public safety and order in this State.
- (2) In considering whether or not to make a declaration, the eligible Judge may have regard to the following:
 - (a) information suggesting that a link exists between the organisation and serious criminal activity;
 - (b) any convictions recorded against—
 - (i) current or former members of the organisation; or
 - (ii) persons who associate, or have associated, with members of the organisation;
 - (c) information suggesting that—
 - (i) current or former members of the organisation; or
 - (ii) persons who associate, or have associated, with members of the organisation,
have been, or are, involved in serious criminal activity, whether directly or indirectly and whether or not the involvement resulted in convictions;
 - (d) information suggesting that members of an interstate or overseas chapter or branch of the organisation (however described) associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity;
 - (e) anything else the eligible Judge considers relevant.
- (3) A declaration may be made whether or not any of the persons who are entitled to make or provide submissions in relation to the application take advantage of that opportunity.
- (4) Members of an organisation may *associate* for the purposes of this section in any manner including merely by being members of the organisation.
- (5) The eligible Judge may, for the purposes of making the declaration, be satisfied that members of the organisation associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity—
 - (a) whether all the members associate for that purpose or only some of the members; and
 - (b) whether members associate for that purpose in relation to the same serious criminal activity or different serious criminal activity; and
 - (c) whether or not the members also associate for other purposes.

12—Notice of declaration

- (1) As soon as practicable after the making of a declaration under this Part, the Commissioner must publish notice of the declaration in the Gazette and in a newspaper circulating generally throughout the State.
- (2) The declaration is of no effect until notice of it is published under subsection (1).

13—Duration of declaration

A declaration made under this Part remains in force unless and until it is revoked in accordance with this Part.

14—Revocation of declaration

- (1) An eligible Judge may, at any time, revoke a declaration made under this Part in relation to an organisation—
 - (a) on application by the Commissioner; or
 - (b) on application by—
 - (i) the organisation; or
 - (ii) a person who made or provided submissions in relation to the application for the declaration; or
 - (iii) with the permission of the eligible Judge—any other member or former member of the organisation or person directly affected (whether or not adversely) by the declaration.
- (2) An application may not be made under subsection (1)(b) if—
 - (a) an application has been made in relation to the organisation under that paragraph (whether by the same or a different applicant) within the preceding period of 12 months; or
 - (b) an application has been made in relation to the organisation under that paragraph (whether by the same or a different applicant) and that application has not been finally determined.
- (3) An application under subsection (1) must—
 - (a) be in writing; and
 - (b) set out the grounds on which revocation is sought; and
 - (c) set out the information supporting the grounds on which revocation is sought; and
 - (d) be supported by at least 1 statutory declaration from the applicant verifying the contents of the application.
- (4) The application must be lodged with the holder of an office prescribed by the regulations and that person must—
 - (a) as soon as practicable, notify the Chief Justice so that the Chief Justice can select an eligible Judge in accordance with section 8; and
 - (b) when an eligible Judge has been so selected, provide the application to the eligible Judge.

- (5) On receiving an application that complies with this section, the eligible Judge must determine the date, time and place of the hearing of the application and notify the Commissioner and, in the case of an application under subsection (1)(b), the applicant of the matters referred to in subsection (7)(d).
- (6) If an application is made under subsection (1)(b), the applicant must, as soon as practicable after being given the notification by the eligible Judge under subsection (5), serve on the Commissioner a copy of the application and any supporting statutory declaration.
- (7) If an application is made under subsection (1), the Commissioner must publish a notice in the Gazette and a newspaper circulating generally throughout the State—
 - (a) specifying that an application has been made for revocation of a declaration under this Part in respect of the organisation; and
 - (b) inviting interested parties to make or provide submissions to the eligible Judge at the hearing of the application; and
 - (c) specifying the manner in which interested parties may inspect or apply to inspect a copy of the application; and
 - (d) specifying—
 - (i) the date, time and place of the hearing, as determined by the eligible Judge; and
 - (ii) the requirements of the eligible Judge in relation to the provision of written submissions.
- (8) The Commissioner must publish the notice required under subsection (7)—
 - (a) if the application has been made under subsection (1)(a)—not later than 3 days after being given the notification by the eligible Judge under subsection (5); or
 - (b) if the application has been made under subsection (1)(b)—not later than 7 days after being served with the material referred to in subsection (6).
- (9) A declaration may be revoked on an application under subsection (1) only if the eligible Judge is satisfied that, as at the time at which the application for revocation is made and heard, there would not be grounds for the making of a declaration in relation to the organisation.
- (10) The Commissioner must, as soon as practicable after a declaration is revoked—
 - (a) make reasonable efforts to give notice of the revocation to any person who made or provided a submission in relation to the making of the declaration; and
 - (b) publish notice of the revocation in the Gazette and in a newspaper circulating generally throughout the State.
- (11) In this section—

interested party, in relation to an application, means an organisation or person who would, under section 15, be entitled to make an oral submission or provide a written submission to the eligible Judge at the hearing of the application.

15—Submissions at hearings

- (1) At the hearing of any application under this Part, the Commissioner and the organisation to which the application relates are entitled to make oral submissions, personally or through a legal representative, to the eligible Judge and, with the permission of the eligible Judge, to provide, in accordance with any requirements of the eligible Judge, written submissions.
- (2) At the hearing of any application under this Part, a member or former member of the organisation to which the application relates and any other person who may be directly affected (whether or not adversely) by the outcome of the application may—
 - (a) provide, in accordance with any requirements of the eligible Judge, written submissions; and
 - (b) with the permission of the eligible Judge—make oral submissions, personally or through a legal representative, to the eligible Judge.
- (3) A person referred to in subsection (2) who does not wish to appear at the hearing may, at any time before the date fixed for the hearing, apply to the eligible Judge to make a protected submission.
- (4) An application to make a protected submission must—
 - (a) be in writing and be lodged with the holder of an office prescribed by the regulations; and
 - (b) set out the grounds on which the person believes that his or her proposed submission would be a protected submission within the meaning of this section; and
 - (c) include any other prescribed information.
- (5) If the eligible Judge is satisfied that a person who has applied to make a protected submission under this section is eligible to make such a submission, the eligible Judge must notify the person, and the Commissioner, of that fact and of the arrangements that are to be made for the making of the submission.
- (6) The eligible Judge is to take steps to maintain the confidentiality of a protected submission, including steps—
 - (a) to ensure that other persons referred to in subsection (2) (or their legal representatives) are not made aware of—
 - (i) the fact that the submission was made; or
 - (ii) any details contained in, or relating to, the protected submission; and
 - (b) to hear the submission in private in the absence of other persons referred to in subsection (2) (or their legal representatives).
- (7) The Commissioner, or a legal representative of the Commissioner, is entitled to be present when a protected submission is made.
- (8) The holder of the office referred to in subsection (4)(a), the Commissioner and any other person who, in the exercise of official functions or powers, knows of the making of, hears or otherwise has access to a protected submission must not disclose—
 - (a) the fact that the submission was made; or
 - (b) any details contained in, or relating to, the protected submission,

(except to the Attorney-General, the eligible Judge, a court or a person to whom the eligible Judge or the person making the protected submission authorises its disclosure or as may otherwise be required in the course of exercising such official functions or powers).

Maximum penalty: Imprisonment for 2 years.

- (9) The duties imposed on an eligible Judge in relation to a protected submission by subsection (6) also apply to any court dealing with the protected submission.
- (10) A statutory declaration may be provided to the eligible Judge (in accordance with any requirements of the eligible Judge) verifying—
 - (a) any matter referred to in an oral or written submission made to the eligible Judge under this section; or
 - (b) any grounds on which a person believes that his or her proposed submission would be a protected submission.
- (11) In this section—

protected submission means an oral or written submission made by a person who has reasonable grounds to believe that he or she may be subjected to action (whether directly or indirectly) comprising or involving injury, damage, loss, intimidation or harassment in reprisal for making the submission.

16—Reasons to be published in Gazette

- (1) An eligible Judge must, as soon as practicable after making a declaration or decision under this Part—
 - (a) make available (in such manner as the eligible Judge thinks fit) reasons for the declaration or decision to the Commissioner, the organisation to whom the declaration or decision relates and other persons who made or provided submissions in relation to the declaration or decision; and
 - (b) ensure that written reasons for the declaration or decision are published in the Gazette.
- (2) Nothing in this section authorises or requires the disclosure of information by an eligible Judge where an obligation to maintain the confidentiality of the information otherwise exists (whether under section 5A, section 15(6) or some other Act or law).

17—Making of subsequent declaration

For the avoidance of doubt, nothing prevents the making of a declaration in relation to an organisation that has been the subject of a previous declaration which has been revoked.

18—Practice and procedure

- (1) The practices and procedures of an eligible Judge are to be as determined by the eligible Judge.
- (2) The rules of evidence do not apply to proceedings before an eligible Judge under this Act.

19—Regulations

The regulations may—

- (a) make provision in relation to the manner in which records of proceedings before an eligible Judge are to be dealt with, including—
 - (i) the custody of such records; and
 - (ii) access to such records; and
- (b) prescribe, and provide for the payment of, fees in respect of proceedings before an eligible Judge or any step in such proceedings or access to records of such proceedings.

20—Change of name etc

- (1) A change in the name or membership of a declared organisation does not affect the organisation's status as a declared organisation.
- (2) If the members of a declared organisation substantially re-form themselves into another organisation, that organisation is taken to form a part of the declared organisation (whether or not the organisation named in the declaration is dissolved).

21—Evidentiary

In any proceedings before a court, an apparently genuine document purporting to be signed by the Commissioner and to certify that a specified organisation was, on a specified date, a declared organisation constitutes, in the absence of proof to the contrary, proof of the matter so certified.

Part 3—Control orders

22—Court may make control order

- (1) The Commissioner may apply to the Court for the making of a control order relating to a person (the *respondent*).
- (2) The Court may, on application by the Commissioner, make a control order relating to the respondent if the Court is satisfied that—
 - (a) the respondent is a member of a declared organisation; or
 - (b) the respondent—
 - (i) has been a member of an organisation which, at the time of the application, is a declared organisation; or
 - (ii) engages, or has engaged, in serious criminal activity, and associates or has associated with a member of a declared organisation; or
 - (c) the respondent engages, or has engaged, in serious criminal activity and associates or has associated with other persons who engage, or have engaged, in serious criminal activity,and that the making of the order is appropriate in the circumstances.
- (3) In proceedings under this section—
 - (a) the Commissioner and the respondent are parties to the proceedings; but

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- (b) the Court may, if satisfied that the application has been served on the respondent, hear and determine the proceedings whether or not the respondent chooses to participate in the hearing.
- (4) If the Commissioner requests the making of an interim control order without notice to the respondent under section 22A, the Court may order that service of the application (and any material to be served with the application) on the respondent under this section be delayed until the Court has determined that request.
- (5) A control order may prohibit the respondent from any 1 or more of the following:
- (a) associating with a specified person or persons of a specified class;
 - (b) holding an authorisation to carry on a prescribed activity while the control order remains in force;
 - (c) being present at, or being in the vicinity of, a specified place or premises or a place or premises of a specified class;
 - (d) possessing a specified article or weapon, or articles or weapons of a specified class;
 - (e) carrying on his or her person more than a specified amount of cash;
 - (f) using for communication purposes, or being in possession of, a telephone, mobile phone, computer or other communication device except as may be specified;
 - (g) engaging in other conduct of a specified kind that the Court considers could be relevant to the commission of serious criminal offences.
- (6) If the Court prohibits a respondent from holding an authorisation to carry on a prescribed activity—
- (a) any such authorisation held by the respondent is revoked from the date on which the control order takes effect or a later date specified by the Court; and
 - (b) if the revocation is to take effect on a later date—the Court may impose any further prohibition it thinks fit on the respondent in relation to the conduct of the activity to which the authorisation relates until the revocation takes effect; and
 - (c) the revocation is effected despite any other Act or any law, award or industrial or other agreement affecting the employment of the respondent, and neither the Crown nor the authority that issues an authorisation incurs any liability because of the revocation.
- (7) In determining an application for a control order, the Court may have regard to the following:
- (a) whether the respondent's behaviour, or history of behaviour, suggests that there is a risk that the respondent will engage in serious criminal activity;
 - (b) the extent to which the order might assist in preventing the respondent from engaging in serious criminal activity;
 - (c) the prior criminal record (if any) of the respondent and any person specified in the application as a person with whom the respondent associates or has associated;

- (d) any legitimate reason the respondent may have for associating with any person specified in the application;
 - (e) any other matter that, in the circumstances of the case, the Court considers relevant.
- (8) For the purposes of this section, a person may *associate* with another person by any means including communicating with that person by letter, telephone or fax or by email or other electronic means.
- (9) In this section—
- authorisation* includes the licensing, registration, approval, certification or any other form of authorisation required by or under legislation for the carrying on of an occupation or activity;
- occupation* means an occupation, trade, profession or calling of any kind that may only be carried on by a person holding an authorisation;
- prescribed activity* means an occupation or activity of a kind prescribed by regulation for the purposes of this definition.

22A—Interim control orders

- (1) The Court may, on an application under section 22, make an interim control order if the Court is satisfied that, on the basis of the application and any evidence tendered by the Commissioner, the Court could make a control order under section 22 in relation to the respondent.
- (2) An interim control order—
 - (a) may be made without notice to the respondent; and
 - (b) may include any prohibition that may be included in a control order.
- (3) Section 22(6) applies in relation to an interim control order as if it were a control order.

22B—Duration of control order or interim control order

- (1) A control order or interim control order takes effect—
 - (a) if the respondent or a legal representative of the respondent is present when the order is made—on the making of the order; or
 - (b) otherwise—when the Commissioner serves the order on the respondent.
- (2) Service under subsection (1)(b) must be by personal service.
- (3) Subject to section 22H, a control order remains in force—
 - (a) for the period of time (if any) specified in the order; or
 - (b) until the order is revoked in accordance with section 22C,(whichever occurs first).
- (4) Subject to sections 22D and 22H, an interim control order remains in force for the period specified in the order and any further period specified by the Court.

22C—Variation or revocation

- (1) The Court may make an order varying a control order (a *variation order*) or revoking a control order (a *revocation order*) on application—
 - (a) by the Commissioner; or
 - (b) by the respondent.
- (2) An application may only be made under subsection (1)(b) with the permission of the Court and permission is only to be granted if the Court is satisfied, on the basis of the application and any evidence tendered by the respondent, there has been a substantial change in the relevant circumstances since the control order was made or last varied.
- (3) An application made under subsection (1)(b) must be supported by oral evidence given on oath.
- (4) Subject to this section, in proceedings for the variation or revocation of a control order—
 - (a) the Commissioner and the respondent are parties to the proceedings; but
 - (b) in the case of an application under subsection (1)(a), the Court may, if satisfied that the application has been served on the respondent, hear and determine the proceedings whether or not the respondent chooses to participate in the hearing.
- (5) The Court may, on an application under subsection (1)(a), make an interim variation order if the Court is satisfied that, on the basis of the application and any further information provided or evidence tendered by the Commissioner, it would be appropriate for the Court to vary the control order made in relation to the respondent.
- (6) An interim variation order—
 - (a) may be made without notice to the respondent; and
 - (b) remains in force until further order of the Court.
- (7) In determining an application under this section the Court may have regard to the same matters that the Court may have regard to in determining an application for a control order.
- (8) If a revocation order is made, or a variation order is made on application under subsection (1)(b), the revocation or variation order has effect immediately on the making of the order or at such later time as may be specified by the Court in making the order.
- (9) If a variation order or interim variation order is made on application under subsection (1)(a), the order has effect—
 - (a) if the respondent or a legal representative of the respondent is present when the variation order or interim variation order is made—on the making of the order; or
 - (b) otherwise—when the Commissioner serves the order on the respondent.
- (10) Service under subsection (9)(b) must be by personal service.

22D—Right to object if interim order made ex parte

- (1) This section only applies if an interim control order or interim variation order has been made without notice to the respondent.
- (2) The respondent may, within 14 days of service of the interim control order or interim variation order or such longer period as the Court may allow, lodge a notice of objection with the Court.
- (3) A copy of the notice of objection must be served by the respondent on the Commissioner by registered post at least 21 days before the day appointed for hearing of the notice.
- (4) The Court must, when determining a notice of objection, consider whether, on the basis of the notice and any further information provided or evidence tendered by the Commissioner, the Court could make a control order under section 22 in relation to the respondent or a variation order under section 22C in relation to the control order.
- (5) The Court may, on hearing a notice of objection, confirm, vary or revoke the interim control order or interim variation order.

22E—Consequential and ancillary orders

- (1) The Court may, on making a control order or variation order or an interim control order or variation order, make any consequential or ancillary orders it thinks fit, including, in a case where the order prohibits the possession of an article or weapon or an article or weapon of a specified class, orders—
 - (a) providing for the surrender or confiscation of the article or weapon or such an article or weapon; and
 - (b) if the circumstances of the case so require, authorising a police officer—
 - (i) to enter and search and, if necessary, use reasonable force to break into or open—
 - (A) premises or a vehicle in which the article or weapon, or such an article or weapon is suspected to be; or
 - (B) part of, or anything in or on, premises or a vehicle in which the article or weapon, or such an article or weapon is suspected to be; and
 - (ii) to take possession of the article or weapon, or such an article or weapon.
- (2) An article or weapon surrendered or confiscated under subsection (1) is forfeited to the Crown and may be sold or disposed of as the Minister thinks fit unless the Court orders that the article or weapon is to be returned to the respondent when the control order or interim control order lapses or is revoked.

22F—Appeal

The commencement of an appeal under the *Supreme Court Act 1935* against an order made under this Part does not, of itself, affect the operation of the order to which the appeal relates.

22G—Evidentiary

- (1) Subject to this section, in any proceedings under this Part—
 - (a) transcripts of evidence or documents tendered in evidence, or material otherwise relied on by a court, in proceedings in which a person has been convicted of an offence; and
 - (b) evidence or documents relating to the factual basis on which a person was convicted and sentenced for an offence,will be admissible, and the Court may draw any conclusions of fact that it considers proper from the evidence, document or other material.
- (2) Subject to this section, in any proceedings under this Part, an apparently genuine document purporting to be a police record of a person's antecedents or criminal history will be admissible without further proof as evidence of the facts referred to in the document, or to be inferred from the document.
- (3) An affidavit of a police officer of or above the rank of superintendent will be admissible in evidence for the purpose of proving that evidence, a document or other material is of a kind referred to in subsection (1) or (2).
- (4) Evidence, a document or other material will not be admitted in evidence under subsection (1) or (2) if the Court is of the opinion—
 - (a) that the person by whom, or at whose direction, the evidence, document or material was prepared can and should be called by the party tendering the evidence, document or material to give evidence of the matters contained in the evidence, document or material; or
 - (b) that the evidentiary weight of the evidence, document or material is slight and is outweighed by the prejudice that might result to any of the parties from the admission of the evidence, document or material in evidence; or
 - (c) that it would be otherwise contrary to the interests of justice to admit the evidence, document or material in evidence.
- (5) In any proceedings under this Part, an apparently genuine document purporting to be remarks made by a court in—
 - (a) sentencing a person for an offence; or
 - (b) giving reasons for upholding or dismissing an appeal—
 - (i) against a sentence for an offence; or
 - (ii) against a conviction for an offence where the conviction is upheld,as to the facts which the court accepts or finds to have been established in the proceedings for the offence will be admissible without further proof, if relevant to an issue in the proceedings, as evidence of those facts.
- (6) In determining whether to admit any material in evidence under this section, the Court may receive evidence by affidavit of any matter pertaining to the admission of that material.

- (7) For the purpose of determining the evidentiary weight, if any, of material admitted in evidence under this section, consideration may be given to the source from which the material was produced, the safeguards (if any) that have been taken to ensure its accuracy, and any other relevant matters.
- (8) Nothing in this section limits the material that might be admissible in proceedings under this Part.

22H—Automatic revocation of order

Without derogating from any power of the Court under this Part, if a control order or interim control order is made in relation to a person in reliance on the person's membership of a particular declared organisation or the person's association with a member of a particular declared organisation, the order is revoked when the declaration for the declared organisation is no longer in force.

22I—Offence to contravene or fail to comply with control order

- (1) A person who contravenes or fails to comply with a control order or interim control order is guilty of an offence.
Maximum penalty: Imprisonment for 5 years.
- (2) A person does not commit an offence against this section in respect of an act or omission unless the person knew that the act or omission constituted a contravention of, or failure to comply with, the order or was reckless as to that fact.

Part 4—Public safety orders

Division 1—Making of public safety orders

23—Senior police officer may make public safety order

- (1) A senior police officer may make an order (a *public safety order*) in respect of a person or a class of persons if satisfied that—
 - (a) the presence of the person, or of persons of that class, at any premises or event, or within an area, poses a serious risk to public safety or security; and
 - (b) the making of the order is appropriate in the circumstances.
- (2) In considering whether or not to make a public safety order in relation to a person or class of persons, the senior police officer must have regard to the following:
 - (a) whether the person or members of the class of persons have previously behaved in a way that posed a serious risk to public safety or security or have a history of engaging in serious criminal activity;
 - (b) whether the person or members of the class of persons—
 - (i) are, or have been, members of a declared organisation; or
 - (ii) are, or have been, subject to control orders; or
 - (iii) associate, or have associated, with members of a declared organisation or persons subject to control orders;

- (c) if advocacy, protest, dissent or industrial action is the likely reason for the person or members of the class of persons being present at the relevant premises or event, or within the relevant area—the public interest in maintaining freedom to participate in such activities;
 - (d) whether the degree of risk involved justifies the imposition of the prohibitions to be specified in the order (having regard, in particular, to any legitimate reason the person or members of the class of persons may have for being present at the relevant premises or event, or within the relevant area);
 - (e) the extent to which the making of the order will mitigate any risk to public safety or security;
 - (f) the extent to which the order is necessary having regard to other measures reasonably available to mitigate the risk;
 - (g) any other matters the officer thinks fit.
- (3) A public safety order may prohibit a specified person or specified class of persons from—
- (a) entering or being on specified premises; or
 - (b) attending a specified event; or
 - (c) entering or being within a specified area.
- (4) If a public safety order prohibits attendance at a specified event, the order—
- (a) may, in specifying the event, include associated events or activities (provided that the associated events or activities occur on the same day as the principal event or part of the principal event); and
 - (b) must define the area or areas in which the event takes place for the purposes of the order; and
 - (c) must define when the event is taken to start and finish for the purposes of the order.
- (5) Despite any other provision of this section, a senior police officer must not make a public safety order that would prohibit a person or class of persons from being present at any premises or event, or within an area, if—
- (a) those persons are members of an organisation formed for, or whose primary purpose is, non-violent advocacy, protest, dissent or industrial action; and
 - (b) the officer believes that advocacy, protest, dissent or industrial action is the likely reason for those persons to be present at the premises or event or within the area.
- (6) Subject to section 25, a public safety order operates for the period specified in the order.
- (7) A public safety order may prohibit a person from entering premises or being on premises, whether or not the person has a legal or equitable interest in the premises, but must not prohibit a person from entering premises or being on premises that are the person's principal place of residence.

- (8) For the purposes of this section, the presence of a person or persons at premises or an event or within an area poses a *serious risk to public safety or security* if there is a serious risk that the presence of the person or persons might result in—
- (a) the death of, or serious physical harm to, a person; or
 - (b) serious damage to property.
- (9) In this section—
- damage*, in relation to property, includes the following:
- (a) destruction of the property;
 - (b) an alteration to the property that depreciates its value;
 - (c) rendering the property useless or inoperative;
 - (d) in relation to an animal—injuring, wounding or killing the animal.

24—Variation and revocation of public safety order

A public safety order may be varied or revoked by a senior police officer at any time and must be revoked if the Commissioner is satisfied that the grounds for making the order no longer exist.

25—Certain variations and orders must be authorised by Court

- (1) Despite any other provision of this Division, a senior police officer must not—
- (a) make a public safety order that would operate for a period of more than 72 hours or, in the case of a public safety order relating to a specified event that occurs over a period in excess of 72 hours, the total duration of the event; or
 - (b) vary a public safety order so that it operates for a period of more than 72 hours or, in the case of a public safety order relating to a specified event that occurs over a period in excess of 72 hours, the total duration of the event; or
 - (c) make a public safety order relating to a person (other than a person who is a member of a declared organisation) if that person has, within the immediately preceding period of 72 hours, been subject to another public safety order,
- unless authorised by order of the Court under this section.
- (2) A senior police officer may apply to the Court for an order (an *authorisation order*) authorising the senior police officer to make—
- (a) a public safety order; or
 - (b) a variation to a public safety order,
- of a kind specified in subsection (1).
- (3) An authorisation order may be made by the Court on an application made without notice to any person.
- (4) The grounds of an application for an authorisation order must be verified by affidavit.

- (5) An application to the Court for an authorisation order may be made and dealt with by a Magistrate by telephone as follows:
- (a) the applicant must inform the Magistrate—
 - (i) of the applicant's name and rank; and
 - (ii) that he or she is a senior police officer,and the Magistrate, on receiving that information, is entitled to assume, without further inquiry, that the applicant is authorised to make an application under this section;
 - (b) the Magistrate must satisfy himself or herself (as far as practicable) that the case is of sufficient urgency to justify dealing with the application without requiring the personal attendance of the applicant, by the oral questioning of the applicant and any other available witnesses by telephone;
 - (c) if the Magistrate is not satisfied that it is appropriate to deal with the application without requiring the personal attendance of the applicant, the Magistrate may adjourn the hearing of the application to a time and place fixed by the Magistrate and inform the applicant of the time and place so fixed;
 - (d) if the Magistrate is satisfied that it is appropriate to deal with the application without requiring the personal attendance of the applicant, the applicant must inform the Magistrate of the grounds on which the applicant proposes to make the order or the variation;
 - (e) if the Magistrate is then satisfied that it is appropriate for the applicant to make the order or variation, the Magistrate must inform the applicant of the facts that justify, in his or her opinion, the making of the order or variation, and must not proceed to make the order authorising the order or variation unless the applicant undertakes to make an affidavit verifying those facts;
 - (f) if the applicant gives such an undertaking, the Magistrate may then make the order, noting on the order the facts that justify, in the view of the Magistrate, the making of the order or variation and informing the applicant of the terms of the order;
 - (g) the applicant must, as soon as practicable after the making of the order, forward to the Magistrate an affidavit verifying the facts referred to in paragraph (e);
 - (h) the Magistrate must, as soon as practicable after the making of the authorisation order, forward to the applicant a copy of the order.
- (6) A Magistrate who makes an authorisation order under subsection (5) must file the order, or a copy of the order, and the affidavit forwarded by the applicant, in the Court.
- (7) An authorisation order must specify the maximum period for which the relevant public safety order (as made or varied in accordance with the authorisation order) may operate.

26—Right of objection

- (1) If the period for which a public safety order (as made or varied) will operate is more than 7 days, a person bound by the public safety order may lodge a notice of objection with the Court—
 - (a) before the end of the period for which the order, or the order as so varied, operates; or
 - (b) within 14 days of the date on which the order, or the order as so varied, became binding on the person,whichever occurs first.
- (2) The grounds of the objection must be stated fully and in detail in the notice of objection.
- (3) A copy of the notice of objection must be served by the objector on the Commissioner by registered post at least 2 days before the day appointed for hearing of the notice.

27—Procedure on hearing of notice of objection

- (1) The Court must, when determining a notice of objection, consider whether, in the light of the evidence presented by both the Commissioner and the objector, sufficient grounds existed for the making of the public safety order, any variations made to the public safety order and any relevant authorisation order.
- (2) The Court may, on hearing a notice of objection—
 - (a) confirm, vary or rescind the public safety order; and
 - (b) make consequential or ancillary orders.

28—Appeals to Supreme Court

- (1) The Commissioner may appeal to the Supreme Court against a decision of the Court on an application under section 25.
- (2) The Commissioner or an objector may appeal to the Supreme Court against a decision of the Court on a notice of objection.
- (3) An appeal lies as of right on a question of law and with permission on a question of fact.
- (4) An appeal must be commenced within the time, and in accordance with the procedure, prescribed by rules of the Supreme Court.
- (5) The commencement of an appeal under subsection (2) does not affect the operation of the public safety order to which the notice of objection related.
- (6) On an appeal the Supreme Court may—
 - (a) confirm, vary or reverse the decision subject to appeal; and
 - (b) make consequential or ancillary orders.

29—Disclosure of reasons and criminal intelligence

- (1) Subject to section 30, if a senior police officer decides to make, vary or revoke a public safety order, the officer is not required to provide any grounds or reasons for the decision to a person affected by the decision.

- (2) Information forming the basis for the making, variation or revocation of a public safety order must not be disclosed to any person (except to the Attorney-General, a court or a person to whom the Commissioner authorises its disclosure) if, at the time at which the question of disclosure is to be determined, the information is properly classified by the Commissioner as criminal intelligence (whether or not the information was so classified at the time at which the public safety order was made, varied or revoked).

Division 2—Service and notification

30—Service and notification

- (1) If a public safety order is made or varied by a senior police officer, the senior police officer must ensure that—
- (a) a copy of the order as so made or varied; and
 - (b) a notification in accordance with this section,
- is served by personal service on each person to whom the order relates.
- (2) The notification accompanying the order—
- (a) must be in writing; and
 - (b) must specify the date on which the order or variation was made; and
 - (c) if the order as so made or varied is one to which section 26 applies—
 - (i) subject to subsection (3), must include a statement of the grounds on which the public safety order, any variations made to the public safety order and any relevant authorisation order was made; and
 - (ii) include an explanation of the right of objection under section 26.
- (3) A statement of the grounds on which a public safety order, variations to a public safety order or an authorisation order has been made must not contain information that must not be disclosed in accordance with section 29.
- (6) A public safety order (as made or varied) is not binding on a person to whom the order relates unless the order and notification have been served on that person in accordance with this section.
- (7) Once a public safety order and notification have been served on a person in accordance with this section, the order is binding on the person, regardless of whether any other person or persons to whom the order relates have been so served.

31—Urgent orders

- (1) Despite section 30, if a police officer is satisfied that a public safety order (as made or varied) should become binding on a person as a matter of urgency—
- (a) the officer may communicate the contents of the order, or the order as so varied, verbally to any person to whom the order relates and advise such person of the place at which the person may obtain a written copy of the order and a notification in accordance with this section; and
 - (b) on the information described in paragraph (a) being communicated to the person, the order, or the order as so varied, will be binding on the person.

- (2) The police officer who verbally communicates the order to the person must ensure that—
- (a) a copy of the order; and
 - (b) the notification that would have been required to accompany the order if the order had been served on the person in accordance with section 30,
- is available for collection by the person at the place referred to in subsection (1)(a) (during the ordinary business hours applicable to that place) on the next business day following the day on which the order was communicated to the person.

Division 3—Enforcement and evidentiary provisions

32—Offence to contravene or fail to comply with public safety order

- (1) A person who contravenes or fails to comply with a public safety order is guilty of an offence.
- Maximum penalty: Imprisonment for 5 years.
- (2) A person does not commit an offence against this section in respect of an act or omission unless the person knew that the act or omission constituted a contravention of, or failure to comply with, the order or was reckless as to that fact.
- (3) If a public safety order prohibits a person from entering or being within a specified area, it is a defence to a prosecution for an offence against this section to prove that the defendant had a reasonable excuse for entering or being within the specified area.

33—Power to search premises and vehicles

- (1) A police officer may search—
- (a) premises specified in a public safety order; or
 - (b) premises in which an event specified in a public safety order is being held; or
 - (c) premises situated within an area specified in a public safety order,
- if the officer suspects on reasonable grounds that a person to whom the public safety order relates is within the premises.
- (2) A police officer may stop and search a vehicle, and anything in the vehicle, if the officer suspects on reasonable grounds that—
- (a) a person within the vehicle is a person to whom a public safety order relates; and
 - (b) the vehicle is approaching, is in, or has recently left, any premises, event or area specified in the public safety order.
- (3) A police officer may detain a vehicle for so long as is reasonably necessary to conduct a search under this section.
- (4) A police officer may detain a person who is in a vehicle stopped under this section for as long as is reasonably necessary to conduct a search under this section (and that action does not, by itself, constitute an arrest of the person).

- (5) A person must not, without reasonable excuse, fail or refuse to comply with a requirement made by a police officer for the purposes of this section.

Maximum penalty: Imprisonment for 5 years.

33A—Principles of equity and good conscience

In proceedings under this Part, other than for an offence, a court—

- (a) is not bound by the rules of evidence but may inform itself as the court thinks fit; and
- (b) must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.

34—Evidentiary

In any legal proceedings, an apparently genuine document purporting to be a public safety order is, in the absence of proof to the contrary, proof of the order and its terms.

Part 5—Offences

34A—Permitting premises to be habitually used as place of resort by members of declared organisation

- (1) A person who is the owner, occupier or lessee of any premises must not knowingly permit those premises to be habitually used as a place of resort by members of a declared organisation.

Maximum penalty: Imprisonment for 2 years.

- (2) A person must not be knowingly concerned in the management of any premises habitually used as a place of resort by members of a declared organisation.

Maximum penalty: Imprisonment for 2 years.

- (3) In proceedings for an offence against subsection (1), a person who—

- (a) is the owner, occupier or lessee of any premises habitually used as a place of resort by members of a declared organisation; and
- (b) is a member of the declared organisation,

is presumed, in the absence of proof to the contrary, to knowingly permit those premises to be habitually used as a place of resort by members of the declared organisation.

- (4) In proceedings for an offence against subsection (2), a person who—

- (a) is concerned in the management of any premises habitually used as a place of resort by members of a declared organisation; and
- (b) is a member of the declared organisation,

is presumed, in the absence of proof to the contrary, to be knowingly concerned in the management of those premises.

- (5) In this section—

owner, in relation to premises, includes—

- (a) a person entitled to receive rent paid in respect of the premises; and

- (b) a person to whom the rent in respect of the premises is paid.

34B—Recruiting person to become member of declared organisation

- (1) A person commits an offence if the person is a member of a declared organisation or is subject to a control order or interim control order and the person—
- (a) recruits, or attempts to recruit, anyone to become a member of a declared organisation; or
 - (b) encourages anyone to associate with another person who is a member of a declared organisation.

Maximum penalty: Imprisonment for 5 years.

- (2) A person does not commit an offence against subsection (1) unless the person knew—
- (a) in the case of an offence against subsection (1)(a)—that the organisation was a declared organisation; or
 - (b) in the case of an offence against subsection (1)(b)—that the other person was a member of a declared organisation,

or was reckless as to that fact.

35—Criminal associations

- (1) A person who associates, on not less than 6 occasions during a period of 12 months, with a person who is—
- (a) a member of a declared organisation; or
 - (b) the subject of a control order,

is guilty of an offence.

Maximum penalty: Imprisonment for 5 years.

- (2) A person does not commit an offence against subsection (1) unless, on each occasion on which it is alleged that the person associated with another, the person knew that the other was—
- (a) a member of a declared organisation; or
 - (b) a person the subject of a control order,

or was reckless as to that fact.

- (3) A person who—
- (a) has a criminal conviction (against the law of this State or another jurisdiction) of a kind prescribed by regulation; and
 - (b) associates, on not less than 6 occasions during a period of 12 months, with another person who has such a criminal conviction,

is guilty of an offence.

Maximum penalty: Imprisonment for 5 years.

- (4) A person does not commit an offence against subsection (3) unless, on each occasion on which it is alleged that the person associated with another, the person knew that the other had the relevant criminal conviction or was reckless as to that fact.

- (5) A person may be guilty of an offence against subsection (1) or (3) in respect of associations with the same person or with different people.
- (6) The following forms of associations will be disregarded for the purposes of this section unless the prosecution proves that the association was not reasonable in the circumstances:
- (a) associations between close family members;
 - (b) associations occurring in the course of a lawful occupation, business or profession;
 - (c) associations occurring at a course of training or education of a prescribed kind between persons enrolled in the course;
 - (d) associations occurring at a rehabilitation, counselling or therapy session of a prescribed kind;
 - (e) associations occurring in lawful custody or in the course of complying with a court order;
 - (f) associations of a prescribed kind.
- (7) Without derogating from subsection (6) but subject to subsection (8), a court hearing a charge of an offence against this section may determine that an association will be disregarded for the purposes of this section if the defendant proves that he or she had a reasonable excuse for the association.
- (8) In proceedings for an offence against this section, subsection (7) does not apply to an association if, at the time of the association, the defendant—
- (a) was a member of a declared organisation; or
 - (b) was a person the subject of a control order; or
 - (c) had a criminal conviction (against the law of this State or another jurisdiction) of a kind prescribed for the purposes of subsection (3).
- (9) For the avoidance of doubt, in proceedings for an offence against this section, it is not necessary for the prosecution to prove that the defendant associated with another person for any particular purpose or that the association would have led to the commission of any offence.
- (10) If a police officer has reasonable cause to suspect that 2 people are or have been associating with each other and that at least 1 of those people is—
- (a) a member of a declared organisation; or
 - (b) the subject of a control order; or
 - (c) a person who has a criminal conviction referred to in subsection (3),
- the police officer may require 1 or both of those people to state all or any of their personal details.
- (11) For the purposes of this section—
- (a) a person may *associate* with another person by any means including communicating with that person by letter, telephone or facsimile or by email or other electronic means; and
 - (b) a person is a *close family member* of another person if—

- (i) 1 is a spouse or former spouse of the other or is, or has been, in a close personal relationship with the other; or
- (ii) 1 is a parent or grandparent of the other (whether by blood or by marriage); or
- (iii) 1 is a brother or sister of the other (whether by blood or by marriage); or
- (iv) 1 is a guardian or carer of the other.

(12) In this section—

close personal relationship has the same meaning as in Part 3 of the *Family Relationships Act 1975*;

spouse—a person is the spouse of another if they are legally married.

36—Provision of personal details

- (1) If a police officer has reasonable cause to suspect that a personal detail as stated in response to a requirement under this Act is false, the officer may require the person making the statement to produce evidence of the correctness of the personal detail as stated.
- (2) A person who—
 - (a) refuses or fails, without reasonable excuse, to comply with—
 - (i) a requirement under this Act to state his or her personal details; or
 - (ii) a requirement under subsection (1); or
 - (b) in response to such a requirement—
 - (i) states a personal detail that is false; or
 - (ii) produces false evidence of a personal detail,

is guilty of an offence.

Maximum penalty: Imprisonment for 5 years.

- (3) A police officer who has required a person to state all or any of the person's personal details under this Act is required to comply with a request to identify himself or herself, by—
 - (a) producing his or her police identification; or
 - (b) stating orally or in writing his or her surname, rank and identification number.

Part 6—Corresponding orders

Division 1—Preliminary

37—Interpretation

In this Part—

registrar means—

- (a) in relation to a corresponding declaration—the holder of an office prescribed by the regulations; and
- (b) in relation to a corresponding control order—the registrar within the meaning of the *Supreme Court Act 1935*.

38—Service

- (1) An application, order or other document that is to be served on a respondent under this Part may, if personal service is not practicable or the respondent is an unincorporated group, be served by public notice or in any other manner directed by the Court.
- (2) For the purposes of this section, an application, order or other document will be taken to have been served on a respondent by public notice on publication of a notice in a newspaper circulating generally throughout the State setting out the following:
 - (a) the general nature of the application, order or other document;
 - (b) details (to the extent practicable) of the respondent who is being served with the application, order or other document;
 - (c) the manner in which a copy of the application, order or other document (including any accompanying affidavit) may be obtained or read by the respondent.

Division 2—Registration of corresponding declarations

39—Application may be made by Commissioner

- (1) The Commissioner may apply to the registrar for the registration of a corresponding declaration.
- (2) An application for registration—
 - (a) must be made in the prescribed manner; and
 - (b) must be accompanied by a copy of the corresponding declaration to be registered.
- (3) An application for registration of a corresponding declaration does not need to be served on the respondent.
- (4) An application for registration of a corresponding declaration cannot be made under this Division if any of the following apply to the declaration:
 - (a) the declaration is no longer in force;

- (b) the law of the jurisdiction in which the declaration was made specifies requirements as to publication of the declaration or service of the declaration that have not been complied with (or are not, in accordance with that law, taken to have been complied with);
- (c) the law of the jurisdiction in which the declaration was made specifies a period within which the respondent may appeal against the declaration, and that period has not expired;
- (d) the determination of an application by the respondent for permission to appeal against the declaration (whether made before or after any appeal period has expired) is pending;
- (e) the determination of an appeal by the respondent against the declaration is pending;
- (f) the application is of a kind, or is made in circumstances, prescribed by the regulations for the purposes of this provision.

39A—Registration of corresponding declaration

- (1) On an application under this Division for the registration of a corresponding declaration, the registrar must register the declaration if satisfied that the application has been properly made under this Division.
- (2) On registering a corresponding declaration under this Division, the registrar must specify the date on which the registration under this Act will expire (being the date on which the corresponding declaration would cease to be in force in the jurisdiction in which it was made if it were not sooner revoked).
- (3) However, subsection (2) does not apply if, under the law of the jurisdiction in which the corresponding declaration was made, the corresponding declaration remains in force for an indefinite period, in which case—
 - (a) on registering the declaration, the registrar is to specify that the registration is for an indefinite period; and
 - (b) the registration of the corresponding declaration under this Act does not expire.

39B—Notice of registration

- (1) Not later than 2 working days after registering a corresponding declaration, the registrar must give the Commissioner a certificate of the registration with a copy of the registered corresponding declaration attached.
- (2) As soon as practicable after receiving a copy of the registered corresponding declaration, the Commissioner must publish notice of the registration of the declaration in the Gazette and in a newspaper circulating generally throughout the State.

39C—Commencement and effect of registered corresponding declaration

- (1) A registered corresponding declaration—
 - (a) comes into force in this State on the day after the day on which notice of the registration of the declaration is published in the Gazette in accordance with section 39B(2); and

- (b) remains in force in this State until 1 of the following occurs:
 - (i) the registration of the declaration expires in accordance with section 39A(2);
 - (ii) the registration of the declaration is cancelled under Division 3.
- (2) If a registered corresponding declaration has come into force under this section, the registered corresponding declaration has effect in this State as if it were a declaration made under Part 2 (but the provisions of Part 2, other than sections 20 and 21, do not apply in relation to the registered corresponding declaration).

Division 3—Cancellation of registration

39D—Revocation in jurisdiction where corresponding declaration originally made

- (1) This section applies to a registered corresponding declaration if—
 - (a) the declaration is revoked in the jurisdiction in which it was made; and
 - (b) the registrar receives notice of that revocation.
- (2) On receiving notice of the revocation of the registered corresponding declaration, the registrar must—
 - (a) cancel the registration of the declaration without delay (and the cancellation takes effect immediately); and
 - (b) give the Commissioner written notice of that cancellation.

39E—Cancellation of registration of corresponding declaration by Court

- (1) The Court may, on application by the respondent, cancel the registration of a corresponding declaration if satisfied that the declaration should not have been registered in accordance with section 39A(1).
- (2) The Commissioner is a party to an application under this section.
- (3) If registration of a corresponding declaration is cancelled under this section, the corresponding declaration is taken never to have been registered.
- (4) Nothing in this section authorises the Court to reconsider the merits of the corresponding declaration.

39F—Cancellation of registration of corresponding declaration at request of Commissioner

- (1) The Commissioner may, at any time while a corresponding declaration is registered under this Part, apply to the registrar to cancel the registration of the declaration.
- (2) On receiving an application under this section, the registrar must—
 - (a) cancel the registration of the declaration without delay (and the cancellation takes effect immediately); and
 - (b) give the Commissioner written notice of that cancellation.

39G—Notice of cancellation or expiry of registration of corresponding declaration

As soon as practicable after the registration of a corresponding declaration is cancelled under this Division or expires, the Commissioner must publish notice of the cancellation or expiry in the Gazette and in a newspaper circulating generally throughout the State.

39H—Effect of cancellation or expiry of registration of corresponding declaration

The expiry or cancellation of the registration of a corresponding declaration under this Division has effect in this State in the same way as the revocation of a declaration made under Part 2.

Division 4—Registration of corresponding control orders

39I—Application may be made by Commissioner

- (1) The Commissioner may apply to the registrar for the registration of a corresponding control order.
- (2) An application for registration—
 - (a) must be made in the prescribed manner; and
 - (b) must be accompanied by a copy of the order to be registered; and
 - (c) must be accompanied by any affidavit the Commissioner intends to rely on in relation to the application; and
 - (d) must state whether the Commissioner considers that the order needs to be adapted or modified for its effective operation in this State and, if so, the details of the adaptation or modification that the Commissioner considers necessary.
- (3) An application for the registration of a corresponding control order does not need to be served on the respondent.
- (4) An application for the registration of a corresponding control order cannot be made under this Division if—
 - (a) the respondent is subject to a control order or interim control order under Part 3; or
 - (b) any of the following apply to the corresponding control order:
 - (i) the order is no longer in force;
 - (ii) the order has not been served, or is not taken to have been served, on the respondent under the law of the jurisdiction where the order was made;
 - (iii) the law of the jurisdiction in which the order was made specifies a period within which the respondent may appeal against the order, and that period has not expired;

- (iv) the determination of an application by the respondent for permission to appeal against the order (whether made before or after any appeal period has expired) is pending;
- (v) the determination of an appeal by the respondent against the order is pending; or
- (c) the application is of a kind, or is made in circumstances, prescribed by the regulations for the purposes of this provision.

39J—Registration of corresponding control order

- (1) On an application under this Division for the registration of a corresponding control order, the registrar must register the order if satisfied—
 - (a) that the application has been properly made under this Division; and
 - (b) that the order does not need to be adapted or modified for its effective operation in this State.
- (2) If the registrar considers that the order needs to be adapted or modified for its effective operation in this State, the registrar must refer the application to the Court.

39K—Referral of application to Court for adaptation or modification

- (1) This section applies if an application for the registration of a corresponding control order is referred to the Court under section 39J(2).
- (2) The Court may vary the corresponding control order for the purposes of its registration by adapting or modifying it in a way the Court considers necessary or desirable for its effective operation in the State.
- (3) Nothing in subsection (2) authorises the Court to reconsider the merits of the corresponding control order.
- (4) If this section applies—
 - (a) the Commissioner and the respondent are parties to the proceedings before the Court relating to the application; but
 - (b) the Court may, if satisfied that the application has been served on the parties, hear and determine the proceedings whether or not the Commissioner or the respondent choose to participate in the hearing.
- (5) Before varying a corresponding control order under this section, the Court must be satisfied that the application for registration has been properly made under this Division.
- (6) The registrar must register the corresponding control order as varied by the Court.

39L—Expiry of registration

- (1) On registering a corresponding control order under this Division, the registrar must specify the date on which the registration under this Act will expire (being the date on which the corresponding control order would cease to be in force in the jurisdiction in which it was made if it were not sooner revoked).

- (2) However, subsection (1) does not apply if, under the law of the jurisdiction in which the corresponding control order was made, the corresponding control order remains in force for an indefinite period, in which case—
- (a) on registering the order, the registrar is to specify that the registration is for an indefinite period; and
 - (b) the registration of the corresponding control order under this Act does not expire.

39M—Notice of registration

- (1) Not later than 2 working days after registering a corresponding control order, the registrar must give the Commissioner a certificate of the registration with a copy of the registered corresponding control order attached.
- (2) As soon as practicable after receiving a copy of the registered corresponding control order, the Commissioner must—
- (a) serve a copy of the order personally on the respondent; and
 - (b) publish notice of the registration of the order in the Gazette.

39N—Commencement and effect of registered corresponding control order

- (1) A registered corresponding control order—
- (a) comes into force in this State when the respondent is served personally with a copy of the order; and
 - (b) remains in force in this State until 1 of the following occurs:
 - (i) the registration of the order expires under section 39L;
 - (ii) the registration of the order is cancelled under Division 5.
- (2) If a registered corresponding control order has come into force under this section, the registered corresponding control order has effect in this State as if it were a control order made under Part 3 (but the provisions of Part 3, other than the provision making it an offence to contravene or fail to comply with a control order (section 22I), do not apply in relation to the registered corresponding control order).

Division 5—Variation and cancellation of registered corresponding control order

39O—Variation or revocation in jurisdiction where corresponding control order originally made

- (1) If a corresponding control order is varied by a court in the jurisdiction in which the order was made—
- (a) the variations to the order may be registered under this Part in the same way as the corresponding control order is registered, whether the variations were made before or after the registration of the corresponding control order; and
 - (b) the provisions of this Part apply accordingly with all necessary modifications.

- (2) Subsection (3) applies to a registered corresponding control order if—
 - (a) the order is revoked by a court in the jurisdiction in which the order was made; and
 - (b) the registrar receives notice of that revocation from an officer of that court or from the Commissioner.
- (3) On receiving notice of the revocation of the registered corresponding control order, the registrar must—
 - (a) cancel the registration of the order without delay (and the cancellation takes effect immediately); and
 - (b) give the Commissioner written notice of that cancellation.
- (4) As soon as practicable after receiving notice of the cancellation of the registration of a corresponding control order, the Commissioner must serve a copy of the notice of cancellation personally on the respondent.

39P—Cancellation of registration of corresponding control order by Court

- (1) The Court may, on application by the respondent, cancel the registration of a corresponding control order if satisfied that the control order should not have been registered in accordance with section 39J(1).
- (2) The Commissioner is a party to an application under this section.
- (3) If registration of a corresponding control order is cancelled under this section, the corresponding control order is taken never to have been registered.
- (4) Nothing in this section authorises the Court to reconsider the merits of the corresponding control order.

39Q—Cancellation of registration of corresponding control order at request of Commissioner

- (1) The Commissioner may, at any time while a corresponding control order is registered under this Part, apply to the registrar to cancel the registration of the order.
- (2) On receiving an application under this section, the registrar must—
 - (a) cancel the registration of the order without delay (and the cancellation takes effect immediately); and
 - (b) give the Commissioner written notice of that cancellation.
- (3) As soon as practicable after receiving notice of the cancellation of the registration of a corresponding control order, the Commissioner must serve a copy of the notice of cancellation personally on the respondent.

39R—Registration of corresponding control order cancelled automatically in certain circumstances

The registration of a corresponding control order under this Part is immediately cancelled if—

- (a) the person to whom the order relates becomes subject to a control order or interim control order made under Part 3; or
- (b) the order was made in reliance on the person to whom the order relates—

- (i) being a member of a particular organisation that is subject to a corresponding declaration; or
 - (ii) associating with a member of a particular organisation that is subject to a corresponding declaration,
- and the corresponding declaration is no longer in force.

39S—Proof of making or variation of corresponding control order not required on proceedings for breach

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

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

Part 7—Miscellaneous

39T—General provisions on service of applications, orders and other documents

- (1) If a police officer has reasonable cause to suspect that a person is someone on whom an application, order or other document is required to be served by personal service under this Act, the officer may—
 - (a) require the person to state all or any of the person's personal details; and
 - (b) require the person to remain at a particular place for—
 - (i) so long as may be necessary for the order to be served on the person; or
 - (ii) 2 hours,whichever is the lesser; and
 - (c) if the person refuses or fails to comply with a requirement under a preceding paragraph, or the officer has reasonable cause to suspect that the requirement will not be complied with, arrest and detain the person in custody (without warrant) for the period referred to in paragraph (b).
- (2) If a person has been required to remain at a particular place in accordance with subsection (1)(b), personal service of a photocopy, faxed copy or printed electronic copy of the application, order or other document will be taken to be personal service of the application, order or other document on the person.
- (3) If the person serving an application, order or other document which is required, under this Act, to be served on a person by personal service—
 - (a) has reasonable cause to believe that the person is present at any premises; but
 - (b) is unable to gain access to the person at the premises for the purpose of effecting personal service,the application, order or other document may be served on the person by—

- (c) leaving it for the person at the premises with someone apparently over the age of 16 years; or
 - (d) if the person serving the order is unable to gain access to such a person at the premises—affixing it to the premises at a prominent place at or near to the entrance to the premises.
- (4) A court dealing with any proceedings under this Act may make such orders as to service of an application, order or other document relating to the proceedings as it thinks fit.

39U—Representation of unincorporated group

- (1) An organisation that is an unincorporated group may, in proceedings under this Act, be represented in the proceedings by a person or persons who satisfy the court or eligible Judge dealing with the proceedings that he or she is, or they are, appropriate representatives of the group or a part of the group.
- (2) A person referred to in subsection (1) may be represented by legal counsel in the proceedings.

39V—Application of Act to children

- (1) Subject to this section, this Act applies in relation to a child in the same way as it applies to an adult.
- (2) A control order may not be made in relation to a child who is under 16 years of age.
- (3) If a control order relating to a child who is of or over 16 years of age is made, varied or revoked, the Commissioner must, as soon as reasonably practicable, give written notice of the making of the order or of the variation or revocation (as the case may be) to—
 - (a) a parent or guardian of the child, if the Commissioner is able to find a parent or guardian of the child after making reasonable attempts; and
 - (b) any other prescribed person or person of a prescribed class.
- (4) In this section—
child means a person under 18 years of age.

39W—Costs

- (1) Each party to proceedings on an application under this Act must bear the party's own costs for the proceedings.
- (2) However, a court or eligible Judge may award costs against a party who has—
 - (a) made an application the court considers frivolous or vexatious; or
 - (b) by an unreasonable act or omission, caused another party to incur costs in connection with the proceedings.
- (3) If proceedings are delayed through the neglect or incompetence of a representative, a court or eligible Judge may, at the conclusion of those proceedings—
 - (a) disallow the whole or part of the costs as between the representative and his or her client (and, where appropriate, order the representative to repay costs already paid); or

- (b) order the representative to indemnify his or her client or any other party to the proceedings for costs resulting from the delay; or
 - (c) order the representative to pay to—
 - (i) in the case of proceedings before a court—the registrar of the court; or
 - (ii) in the case of proceedings before an eligible Judge—the holder of an office prescribed by the regulations,for the credit of the Consolidated Account an amount fixed by the court or eligible Judge as compensation for time wasted.
- (4) A person who refuses or fails to comply with an order of an eligible Judge under this section is guilty of an offence.
- Maximum penalty: Imprisonment for 6 months.

39X—Joint and several liability

If a member of a declared organisation is found to be liable, in any civil proceedings, for damage or loss resulting from conduct engaged in by the member for the benefit of the declared organisation or at the direction of, or in association with, the declared organisation, the organisation and each member of the organisation is jointly and severally liable for the damage or loss.

39Y—Use of evidence or information for purposes of Act

- (1) Despite any other Act or law, evidence or information obtained by the lawful exercise of powers under an Act or law (whether before or after the commencement of this section) and evidence or information obtained incidentally to such an exercise of powers—
 - (a) may be used by law enforcement and prosecution authorities for the purposes of this Act; and
 - (b) is not inadmissible in proceedings before a court under this Act merely because the evidence or information was not obtained for the purposes of this Act.
- (2) Despite any other Act or law, information (whether obtained before or after the commencement of this section) properly classified by the Commissioner as criminal intelligence—
 - (a) may be used by law enforcement and prosecution authorities for the purposes of this Act; and
 - (b) may be admitted in evidence or otherwise used in proceedings under this Act, despite the fact that the person who provided the information to the Commissioner has not consented to such use or has refused consent to such use.
- (3) No civil or criminal liability lies against a person in respect of any use of evidence or information permitted by this section.

39Z—Presumption as to membership

For the purposes of any proceedings under this Act, a person is presumed, in the absence of proof to the contrary, to be a member of an organisation at a particular time if the person is, at that time, displaying (whether on an article of clothing, as a tattoo or otherwise) the insignia of that organisation.

40—Immunity from liability

No civil or criminal liability attaches to—

- (a) the Attorney-General, the Commissioner, a police officer or other person exercising powers and functions under this Act; or
- (b) the Crown,

in respect of an act or omission in good faith in the exercise or discharge, or purported exercise or discharge, of a power, function or duty conferred or imposed by or under this Act.

42—Prosecution of offence as a summary offence

- (1) An indictable offence against this Act may be charged on complaint and be prosecuted and dealt with by the Magistrates Court as a summary offence but, if the Court determines that a person found guilty of such an offence should be sentenced to a term of imprisonment exceeding 2 years, the Court must commit the person to the District Court for sentence.
- (2) For the avoidance of doubt, a person who is convicted of an offence that has been prosecuted and dealt with as a summary offence in accordance with this section is, despite that fact, taken to have been convicted of an indictable offence for the purposes of any Act or law.

42A—Review of operation of Act

- (1) The Attorney-General must, as soon as practicable after the fourth anniversary of the commencement of this section, conduct a review of the operation and effectiveness of this Act.
- (2) The Attorney-General, or any person conducting the review on behalf of the Attorney-General, must maintain the confidentiality of information provided to the Attorney-General or other person that is classified by the Commissioner as criminal intelligence.
- (3) The Attorney-General must prepare a report based on the review and must, within 12 sitting days after the report is prepared, cause copies of the report to be laid before each House of Parliament.

43—Regulations

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) Regulations under this Act—
 - (a) may make different provision according to the matters or circumstances to which they are expressed to apply;

- (b) may provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Attorney-General, the Commissioner or any other person or body prescribed by the regulations.

Legislative history

Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Date of expiry of principal Act removed by 13/2012.

Legislation amended by principal Act

The *Serious and Organised Crime (Control) Act 2008* amended the following:

Bail Act 1985

Criminal Law Consolidation Act 1935

Freedom of Information Act 1991

Summary Offences Act 1953

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2008	13	<i>Serious and Organised Crime (Control) Act 2008</i>	15.5.2008	4.9.2008 (<i>Gazette 4.9.2008 p4227</i>)
2012	13	<i>Serious and Organised Crime (Control) (Miscellaneous) Amendment Act 2012</i>	10.5.2012	Pt 2 (ss 4—15) & Sch 1 (cl 4 & 5)—17.6.2012 (<i>Gazette 14.6.2012 p2756</i>)
2012	20	<i>Summary Offences (Weapons) Amendment Act 2012</i>	24.5.2012	Sch 1 (cl 2)—The subparagraph purportedly amended by Sch 1 (cl 2) was not enacted by the Parliament.
2013	32	<i>Serious and Organised Crime (Control) (Declared Organisations) Amendment Act 2013</i>	1.8.2013	Pt 2 (ss 4—22)—11.8.2013 (<i>Gazette 8.8.2013 p3468</i>)

Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	17.6.2012
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	17.6.2012
s 3		
Chief Justice	inserted by 13/2012 s 4(1)	17.6.2012

Serious and Organised Crime (Control) Act 2008—17.6.2012 to 10.8.2013

Legislative history

control order	amended by 13/2012 s 4(2)	17.6.2012
conviction	inserted by 13/2012 s 4(3)	17.6.2012
corresponding control order	inserted by 13/2012 s 4(3)	17.6.2012
corresponding declaration	inserted by 13/2012 s 4(3)	17.6.2012
Court	substituted by 13/2012 s 4(3)	17.6.2012
declared organisation	amended by 13/2012 s 4(4)	17.6.2012
<i>defendant</i>	<i>deleted by 13/2012 s 4(5)</i>	<i>17.6.2012</i>
eligible Judge	inserted by 13/2012 s 4(5)	17.6.2012
exercise	inserted by 13/2012 s 4(5)	17.6.2012
function	inserted by 13/2012 s 4(5)	17.6.2012
interim control order	inserted by 13/2012 s 4(5)	17.6.2012
member	amended by 13/2012 s 4(6)	17.6.2012
proceedings	inserted by 13/2012 s 4(7)	17.6.2012
respondent	inserted by 13/2012 s 4(8)	17.6.2012
serious criminal offences	amended by 13/2012 s 4(9)	17.6.2012
s 5A	inserted by 13/2012 s 5	17.6.2012
Pts 2 and 3	substituted by 13/2012 s 6	17.6.2012
Pt 4		
Div 1		
s 29		
s 29(1)	amended by 13/2012 s 7(1)	17.6.2012
s 29(2)	amended by 13/2012 s 7(2)	17.6.2012
s 29(3) and (4)	<i>deleted by 13/2012 s 7(3)</i>	<i>17.6.2012</i>
s 30		
s 30(1)	amended by 13/2012 s 8(1), (2)	17.6.2012
s 30(4) and (5)	<i>deleted by 13/2012 s 8(3)</i>	<i>17.6.2012</i>
Div 3		
s 33A	inserted by 13/2012 s 9	17.6.2012
Pt 5		
ss 34A and 34B	inserted by 13/2012 s 10	17.6.2012
Pt 6	substituted by 13/2012 s 11	17.6.2012
Pt 7		
ss 39T—39Z	inserted by 13/2012 s 12	17.6.2012
s 41	<i>deleted by 13/2012 s 13</i>	<i>17.6.2012</i>
s 42A	inserted by 13/2012 s 14	17.6.2012
s 43		
s 43(1)	s 43 redesignated as 43(1) by 13/2012 s 15	17.6.2012
s 43(2)	inserted by 13/2012 s 15	17.6.2012

Sch 1

*omitted under Legislation Revision and
Publication Act 2002*

17.6.2012

Transitional etc provisions associated with Act or amendments

Serious and Organised Crime (Control) (Miscellaneous) Amendment Act 2012, Sch 1 Pt 2—Transitional provisions

4—Declarations made before commencement of section 6

A declaration made under section 10 of the *Serious and Organised Crime (Control) Act 2008* as in force before the commencement of section 6 is of no force or effect.

5—Control orders made before commencement of section 6

A control order made under section 14(2)(b) of the *Serious and Organised Crime (Control) Act 2008* (the *Act*) as in force before the commencement of section 6 continues as if it were a control order made under Part 3 of the Act, as in force after the commencement of section 6.