

# NORTHERN TERRITORY OF AUSTRALIA

## SERIOUS CRIME CONTROL ACT

As in force at 1 December 2011

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# NORTHERN TERRITORY OF AUSTRALIA

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This reprint shows the Act as in force at 1 December 2011 . Any amendments that commence after that date are not included.

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## SERIOUS CRIME CONTROL ACT

An Act to provide for the making of orders for disrupting and restricting the activities of persons who engage or have engaged in serious criminal activity and members and former members of particular organisations, and for related purposes

**The Legislative Assembly of the Northern Territory enacts as follows:**

### **Part 1            Preliminary matters**

#### **1            Short title**

This Act may be cited as the *Serious Crime Control Act*.

#### **2            Commencement**

This Act commences on the date fixed by the Administrator by *Gazette* notice.

#### **3            Main object of Act**

- (1) The main object of this Act is to protect members of the public from violence associated with serious criminal activity.
- (2) The main object is to be achieved primarily by making control orders to disrupt and restrict the activities of persons who:
  - (a) engage, or have engaged, in serious criminal activity; or
  - (b) are, or have been, members of declared organisations.
- (3) The main object is also to be achieved by allowing:
  - (a) senior police officers to make public safety orders; and
  - (b) courts to make fortification removal orders.

- (4) Without limiting subsections (1) to (3), it is not the intention of the Legislative Assembly that the powers in this Act be used in a manner that would diminish the freedom of persons in the Territory to participate in advocacy, protest, dissent or industrial action.

#### 4 Application of Part IIAA of Criminal Code

Part IIAA of the Criminal Code applies to an offence against this Act.

*Note for section 4*

*Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.*

#### 5 Extra-territorial operation

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

## Part 2 Definitions and key concepts

### 6 Definitions

In this Act:

***adjourned hearing***, see section 25(2)(b)(ii).

***appropriate*** means appropriate having regard to all reasonable circumstances.

***Assistant Commissioner***, see section 4(1) of the *Police Administration Act*.

***associate***, with another person, means:

- (a) to be in company with the other person; or
- (b) to communicate with the other person by any means (including, for example, by letter, facsimile, telephone and email).

***authorisation order***, see section 49(1).

***authority*** includes a licence, registration, approval, certificate or other form of authority required under legislation for carrying on an occupation or activity.

***being present at*** means entering or being at, on, in or in the vicinity of.

***classified information*** means information the Commissioner classifies as criminal intelligence.

***Commissioner*** means the Commissioner of Police.

***control order*** has the meaning given in section 8(1) and includes a copy of the order.

***controlled person***, see section 8(3).

***conviction*** includes a finding of guilt whether or not a conviction is recorded.

***corresponding law*** means a law declared by regulation to be a corresponding law.

***Court of Appeal***, see section 9(1) of the *Supreme Court Act*.

***Court of Summary Jurisdiction*** means the Court of Summary Jurisdiction established under section 41A of the *Justices Act*.

***criminal intelligence*** means:

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

***declaration application*** means an application under section 13 for a declaration under section 15.

**declared organisation**, see section 7.

**Deputy Commissioner**, see section 4(1) of the *Police Administration Act*.

**firearm**, see section 3(1) of the *Firearms Act*.

**former member**, of an organisation, means a person who has been a member of the organisation.

**fortification**, see section 10(1).

**fortification removal order** has the meaning given in section 10(2) and includes a copy of the order.

**member**, of an organisation, includes:

- (a) an associate member or prospective member (however described) of the organisation; and
- (b) a person who identifies himself or herself, in any way, as belonging to the organisation; and
- (c) a person who is treated by the organisation or members of the organisation as if he or she belongs to the organisation; and
- (d) if the organisation is a body corporate – a director or an officer of the body corporate, as defined in section 9 of the Corporations Act 2001.

**objector** means:

- (a) for an objection to a public safety order – the person who lodges a notice of objection to the public safety order under section 51(2); or
- (b) for an objection to a fortification removal order – the person who lodges a notice of objection to the fortification removal order under section 63(1).

**occupation** means an occupation, trade, profession or calling of any kind.

**occupier**, in relation to premises, means a person who has, or is entitled to, possession or control of the premises.

**organisation** means any incorporated body or unincorporated group (however structured), whether or not the body or group:

- (a) is based outside the Territory; or



- (b) consists of persons who are not ordinarily resident in the Territory; or
- (c) is part of a larger organisation.

***personal details***, in relation to a person, means the following:

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

***premises*** includes:

- (a) a building or other structure on land; and
- (b) a part of a building or other structure on land; and
- (c) land.

***prescribed activity*** means any of the following:

- (a) being a Licensee or licensed employee as defined in section 3 of the *Gaming Control Act*;
- (b) being a crowd controller or security officer, or operating a business as a security provider, as defined in section 3 of the *Private Security Act*;
- (c) acting as a pawnbroker or second-hand dealer as defined in section 244(1) of the *Consumer Affairs and Fair Trading Act*;
- (d) carrying on business as a commercial agent, inquiry agent, process server or private bailiff as defined in section 3(1) of the *Commercial and Private Agents Licensing Act*;
- (e) using a firearm as defined in section 3(1) of the *Firearms Act* or carrying on business under a firearms dealer licence as mentioned in section 16 of that Act;
- (f) being a tow truck operator as defined in clause 3 of the Schedule to the *Consumer Affairs and Fair Trading (Tow Truck Operators Code of Practice) Regulations*;
- (g) carrying on the business of a licenced dealer as defined in section 125(1) of the *Consumer Affairs and Fair Trading Act*;

- (h) being a licensee as defined in section 4(1) of the *Liquor Act*;
- (i) carrying on the business of a bookmaker, or being a bookmaker's agent or key employee, as defined in section 4(1) of the *Racing and Betting Act*;
- (j) any other activity required to be registered or licensed under the *Racing and Betting Act*;
- (k) an activity required to be licensed under the *Dangerous Goods Act*;
- (l) any other activity prescribed by regulation, including an activity under an Act mentioned in paragraphs (a) to (k).

**public safety order** has the meaning given in section 9(1) and includes a copy of the order.

**reasonably believes** means believes on reasonable grounds.

**reasonably suspects** means suspects on reasonable grounds.

**registered proprietor**, see section 4 of the *Land Title Act*.

**registrar** means the following:

- (a) for the Supreme Court and Court of Appeal – a Registrar of the Supreme Court of the Northern Territory appointed under section 48 of the *Supreme Court Act*;
- (b) for the Court of Summary Jurisdiction – a Registrar as defined in section 3 of the *Local Court Act*.

**regulatory authority** means a person or body having a function conferred by legislation of authorising persons in connection with carrying on an occupation or activity.

**respondent** means the organisation to whom a declaration application relates.

**restriction period**, see section 9(2).

**senior police officer** means any of the following:

- (a) the Commissioner;
- (b) an Assistant Commissioner;
- (c) a Deputy Commissioner;

- (d) another police officer of or above the rank as prescribed by regulation that is at least the rank of sergeant.

***serious criminal activity*** means the commission of serious criminal offences.

***serious criminal offence*** means:

- (a) an offence for which a law in force in the Territory provides for a maximum penalty of a period of imprisonment of 5 years or more, other than an offence prescribed by regulation; or
- (b) an act or omission committed outside the Territory that would be an offence of a kind mentioned in paragraph (a) if it were committed in the Territory.

## 7 Declared organisation

A ***declared organisation*** is an organisation in relation to which a declaration under section 15 is in force.

## 8 Control order and controlled person

- (1) A ***control order*** is an order made by the Supreme Court under section 25(2)(a) or 26(4)(a) in relation to a specified person, that prohibits the person from:
- (a) associating with another controlled person; and
- (b) if the order is made on the ground that the person is a member or former member of a declared organisation – engaging in conduct for the purpose of recruiting another person to become a member of the organisation.
- (2) The control order may also contain terms mentioned in section 27.
- (3) A ***controlled person*** is a person to whom a control order that is in force relates.

## 9 Public safety order and restriction period

- (1) A ***public safety order*** is an order made by a senior police officer under section 42 prohibiting a person or class of persons from being present at specified premises for a specified period.
- (2) The specified period is the ***restriction period*** for the public safety order.

**10 Fortification and fortification removal order**

- (1) A **fortification** is any security measure involving a structure or device forming part of, or attached to, premises, if the security measure:
- (a) is intended or designed to prevent or impede police access to the premises; or
  - (b) has, or could have, the effect of preventing or impeding police access to the premises and is excessive for the particular type of premises.
- (2) A **fortification removal order** is an order that:
- (a) is made by the Court of Summary Jurisdiction under section 60; and
  - (b) is directed to the occupier of premises or, if there is more than 1 occupier, any 1 or more of the occupiers of the premises; and
  - (c) requires the named occupier or occupiers to remove or modify fortifications at the premises, as specified in the order.

**11 Matters before commencement may be relevant**

- (1) This section applies to a reference in this Act to any of the following matters (each of which is a **relevant matter**):
- (a) an offence;
  - (b) a conviction for an offence;
  - (c) an act or omission (including, for example, engaging in an activity, behaving in a way and associating with a person);
  - (d) membership of an organisation.
- (2) A reference to a relevant matter includes an offence committed, conviction recorded, act or omission committed, and being a member of an organisation, as the case requires, whether:
- (a) before or after the commencement of this section; or
  - (b) in or outside the Territory.
- (3) This section is subject to an express provision to the contrary in another provision of this Act.

## **Part 3            Declared organisations**

### **Division 1        Making declaration**

#### **12                Grounds for making declaration**

- (1) The grounds for making a declaration under section 15 in relation to an organisation are:
  - (a) that members of the organisation associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity; and
  - (b) that the organisation represents a risk to public safety and order.
- (2) For subsection (1)(a), the Supreme Court may be satisfied members of an organisation associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity:
  - (a) whether or not all the members associate for that purpose or only some of the members provided that, if the Court is satisfied only some of the members associate for that purpose, the Court must be satisfied those members constitute a significant group within the organisation, either in terms of their numbers or in terms of their capacity to influence the organisation or its members; and
  - (b) whether or not members associate for the purpose of organising, planning, facilitating, supporting or engaging in the same serious criminal activities or different ones; and
  - (c) whether or not the members also associate for other purposes.

#### **13                Commissioner may apply for declaration**

- (1) The Commissioner may apply to the Supreme Court for a declaration under section 15 that an organisation is a declared organisation for this Act if the Commissioner reasonably believes there are grounds as mentioned in section 12(1)(a) and (b) for making a declaration in relation to the organisation.

*Note for subsection (1)*

*Section 74 requires the Commissioner to notify the Attorney-General of the declaration application.*

- (2) The declaration application may identify the respondent by specifying the name of the respondent or the name by which the respondent is commonly known or by providing other particulars identifying the respondent.
- (3) The declaration application must be supported by an affidavit from the Commissioner or affidavits from one or more other senior police officers.
- (4) The affidavit or, if there is more than one, the affidavits together must include the following:
  - (a) a description of the nature of the respondent and any of its distinguishing characteristics;
  - (b) a statement as to whether the respondent is a declared organisation under a corresponding law;
  - (c) the name of any person the deponent of the affidavit reasonably believes is a member or former member of the respondent, or the name by which the person is commonly known;
  - (d) information supporting the grounds on which the declaration is sought;
  - (e) details of any previous declaration application made in relation to the respondent and the outcome of the application.

#### **14            Protected submission**

- (1) This section applies if a person:
  - (a) wishes to make a submission in relation to a declaration application; but
  - (b) does not wish to be present at the hearing for the declaration application because the person reasonably believes he or she may be subjected to action comprising or involving injury, damage, loss, intimidation or harassment in reprisal for making the submission.
- (2) The Supreme Court may allow the person to make a submission to the Court in private in the absence of the parties to the proceedings, their representatives and the public (a *protected submission*).
- (3) If a protected submission is made, the Supreme Court must take steps to maintain the confidentiality of the submission.

- (4) Despite subsections (2) and (3):
  - (a) the registrar must advise the Commissioner and Attorney-General about a protected submission before it is made; and
  - (b) the Commissioner and Attorney-General are entitled to be present when the submission is made.
- (5) In this section, a reference to the Commissioner or the Attorney-General includes a legal practitioner representing the Commissioner or the Attorney-General or both.

## **15        Supreme Court may make declaration**

- (1) At the hearing for a declaration application, the Supreme Court must determine whether there are grounds as mentioned in section 12(1)(a) and (b) for making a declaration in relation to the respondent and whether it is appropriate to do so.
- (2) In considering whether or not to make a declaration, the Supreme Court may have regard to any of the following:
  - (a) whether the respondent is a declared organisation under a corresponding law;
  - (b) any information suggesting a link exists between the respondent and serious criminal activity;
  - (c) any convictions recorded in relation to current or former members of the respondent;
  - (d) any information suggesting current or former members of the respondent have been or are involved in serious criminal activity (whether directly or indirectly and whether or not the involvement has resulted in any convictions);
  - (e) any information suggesting members of an interstate or overseas chapter or branch of the respondent associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity;
  - (f) any other matter the Court considers relevant.

- (3) The Supreme Court may:
  - (a) if it determines there are grounds as mentioned in section 12(1)(a) and (b) for making a declaration in relation to the respondent and it is appropriate to do so – make a declaration that the respondent is a declared organisation for this Act; or
  - (b) if it determines otherwise – dismiss the application.
- (4) A declaration may be made whether or not the respondent is present.
- (5) To avoid doubt, nothing prevents the making of a declaration in relation to an organisation that has been the subject of a previous declaration that has been revoked in accordance with this Part.

## **16        Notice of declaration**

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

## **17        Duration and application of declaration**

- (1) A declaration remains in force unless and until it is revoked in accordance with this Part.
- (2) A change in the name or membership of a declared organisation does not affect the declaration relating to the organisation.

## **Division 2        Revoking declaration**

### **18        Revocation of declaration**

- (1) The Supreme Court may revoke a declaration on an application to do so under this section.
- (2) An application may be made by:
  - (a) the Commissioner, at any time; or



- (b) subject to section 20 – the declared organisation, or a member of the declared organisation, to which the declaration relates.

*Note for subsection (2)*

*Section 74 requires the Commissioner to notify the Attorney-General of an application made under this section.*

- (3) The Commissioner is a party to any proceedings for an application made by the declared organisation or a member of the declared organisation.
- (4) The Supreme Court may revoke the declaration only if satisfied there has been a substantial change in the nature or membership of the declared organisation to the extent that:
- (a) members of the organisation no longer associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity; and
- (b) the organisation no longer represents a risk to public safety and order.
- (5) If the Supreme Court decides to revoke a declaration, the declaration is revoked on the date specified by the Court, which must be no earlier than 28 days after the day on which the decision of the Court takes effect.

## **19            Notice of revocation**

As soon as reasonably practicable after a declaration is revoked, the Commissioner must publish notice of the revocation in the *Gazette* and in a newspaper circulating throughout the Territory.

## **20            Limitation on number and timing of applications for revocation**

- (1) A declared organisation or a member of a declared organisation may not apply for the revocation of a declaration until at least 12 months after the declaration is made.
- (2) An application may not be made under section 18(2)(b) if any application has been made under that paragraph (whether by the same or a different applicant) within the preceding period of 12 months.

### **Division 3            Evidence**

#### **21            Court not bound by rules of evidence**

- (1) This section applies to:
  - (a) the hearing of an application made under this Part by the Supreme Court; and
  - (b) the hearing of an appeal against a decision of the Supreme Court under this Part by the Court of Appeal.
- (2) In conducting the hearing the court is not bound by the rules of evidence and may inform itself in any way it considers appropriate.

### **Part 4            Control orders**

#### **Division 1            Making control order**

#### **23            Grounds for making control order**

- (1) Each of the following is a ground for making a control order in relation to a person:
  - (a) the person is a member of a declared organisation;
  - (b) the person is a former member of an organisation that is a declared organisation;
  - (c) the person:
    - (i) engages, or has engaged, in serious criminal activity; and
    - (ii) regularly associates with members of a declared organisation;
  - (d) the person:
    - (i) engages, or has engaged, in serious criminal activity; and
    - (ii) regularly associates with other persons who engage, or have engaged, in serious criminal activity.

- (2) To avoid doubt, a control order may be made in relation to a person on the ground that he or she is a member or former member of a declared organisation even if an application has been made under section 18 to revoke the declaration relating to the organisation and the application has yet to be decided.

## **24            Application for control order**

- (1) The Commissioner may apply to the Supreme Court for a control order in relation to a specified person if the Commissioner reasonably believes there is a ground for making a control order in relation to the person.
- (2) The grounds of the application must be verified by:
- (a) an affidavit from the Commissioner; or
  - (b) affidavits from 1 or more other senior police officers.

## **25            Hearing of application by Supreme Court**

- (1) At the hearing of an application for a control order, in relation to each person specified in the application the Supreme Court:
- (a) may hear further information from the Commissioner; and
  - (b) must determine whether there is a ground for making a control order in relation to the person, and whether it is appropriate to do so, taking into account:
    - (i) the affidavit or affidavits verifying the grounds of the application for the order; and
    - (ii) any further information supplied by the Commissioner.
- (2) The Supreme Court may:
- (a) if it determines there is a ground for making a control order in relation to the person and it is appropriate to do so – make a control order; or
  - (b) if it determines otherwise – do either of the following:
    - (i) dismiss the application;

- (ii) order the hearing (the *adjourned hearing*) be adjourned until the person is given notice of the application, and fix the date on which, and time at which, the adjourned hearing is to be held.

*Note for subsection (2)*

*Although an application may be made in relation to more than 1 person, a control order must relate only to a single person.*

- (3) Despite anything to the contrary in the *Supreme Court Act*, a decision of the Supreme Court under subsection (2)(a) cannot be appealed.

## **26            Adjourned hearing**

- (1) This section applies if the Supreme Court orders an adjourned hearing for an application for a control order in relation to a person.
- (2) At least 28 days before the date fixed for the adjourned hearing, the Commissioner must serve on the person a written notice setting out the following information:
  - (a) a statement that an application under section 24 for a control order has been made in relation to the person;
  - (b) a brief explanation of the effect of Part 4, Division 3 if a control order is made;
  - (c) the date on which, and the time at which, the adjourned hearing will be held.
- (3) At the adjourned hearing, the Supreme Court:
  - (a) may hear evidence by or for the Commissioner and the person; and
  - (b) must determine whether there is a ground for making a control order in relation to the person, and whether it is appropriate to do so, taking into account:
    - (i) the affidavit or affidavits verifying the grounds of the application for the control order; and
    - (ii) any other evidence provided at the hearing by or for the Commissioner or the person.

- (4) The Supreme Court may:
- (a) if it determines there is a ground for making a control order in relation to the person and it is appropriate to do so – make a control order; or
  - (b) if it determines otherwise – dismiss the application.

**27            Control order may include prohibition, suspension of application or authority or exemption**

- (1) This section applies if the Supreme Court makes a control order in relation to a person, whether under section 25(2)(a) or 26(4)(a).
- (2) If the Supreme Court considers it appropriate, the control order may prohibit the person from:
- (a) doing any of the following:
    - (i) associating with a specified person;
    - (ii) being present at specified premises;
    - (iii) being present at a specified event;
    - (iv) possessing a specified article;
    - (v) associating with a person who is a member of a declared organisation; or
  - (b) possessing any of the following:
    - (i) a firearm;
    - (ii) a controlled weapon, offensive weapon or prohibited weapon or body armour, as defined in section 3 of the *Weapons Control Act*;
    - (iii) an explosive as defined in section 116(2) of the *Police Administration Act*;
    - (iv) a dangerous drug, or drug manufacturing equipment, as defined in section 120A of the *Police Administration Act*.
- (3) If the Supreme Court considers it appropriate, the control order may:
- (a) prohibit the person from applying for an authority to carry on a specified prescribed activity or all prescribed activities; or

- (b) suspend:
  - (i) any application for an authority for the person to carry on a prescribed activity; or
  - (ii) any authority to carry on a prescribed activity held by the person.
- (4) If the Supreme Court considers there is a good reason why the person should be allowed to associate with a particular controlled person, the Court may exempt the person from the operation of section 36 to the extent, and subject to the conditions, specified in the control order.
- (5) The Supreme Court may exercise a power under subsection (4) on application by the person or on its own initiative.
- (6) If an application or authority is suspended under subsection (3)(b):
  - (a) the Commissioner must notify the relevant regulatory authority about the control order and the suspension; and
  - (b) the authority is suspended even if the Act providing for the authority does not provide for a suspension of the authority.
- (7) A regulation may provide for matters relevant to a suspension of an application or an authority.

## **28        Form of control order**

- (1) A control order must:
  - (a) specify the name and address of the person to whom it relates; and
  - (b) subject to subsection (2), include a statement of the ground on which the order has been made; and
  - (c) if the order is made on the ground that the person is a member or former member of a declared organisation:
    - (i) include a statement that the person is a member or former member of a declared organisation; and
    - (ii) identify the organisation and state details of the declaration under section 15; and
  - (d) include a statement that the person is prohibited from:
    - (i) associating with another controlled person; and

- (ii) if the order is made on the ground that the person is a member or former member of a declared organisation – engaging in conduct for the purpose of recruiting another person to become a member of the declared organisation; and
  - (e) set out any prohibitions or other terms made under section 27; and
  - (f) subject to subsection (3), have attached to it a copy of the affidavit or affidavits mentioned in section 24(2); and
  - (g) set out a brief explanation of:
    - (i) if the order was made under section 25(2)(a) – the person's right of objection under section 31; or
    - (ii) if the order was made under section 26(4)(a) – the person's right of appeal.
- (2) The statement of the ground on which a control order has been made must not contain information that must not be disclosed under section 73.
- (3) If disclosure of information included in any affidavit would contravene section 73:
- (a) the affidavit does not need to be attached to the control order; but
  - (b) an edited copy of the affidavit, from which the information that cannot be disclosed has been removed or erased, must be attached to the order.

## **29 When does control order take effect**

- (1) A control order takes effect:
- (a) if the person to whom the order relates is present in court when it is made – immediately; or
  - (b) otherwise – when the person is served with the order.
- (2) If the person to whom a control order relates is not present in court when the order is made, the Commissioner must serve the order on the person.

## **30 Duration of control order**

- (1) A control order remains in force until it is revoked.

- (2) If a court decides to revoke the declaration of a declared organisation, a control order that includes a statement that the controlled person is a member or former member of the declared organisation is revoked on the date the declaration is revoked.

## **Division 2            Review of control order**

### **31            Right of objection**

- (1) If a control order is made in relation to a person under section 25(2)(a), the person may object to the control order by lodging a notice of objection with the Supreme Court.
- (2) The notice of objection must:
- (a) state the grounds for the objection; and
  - (b) be supported by an affidavit verifying the grounds.
- (3) The notice of objection must be lodged within 14 days after the date the control order was served on the person, unless the Supreme Court gives leave for it to be lodged after that period.
- (4) The controlled person must serve a copy of the notice of objection and affidavit on the Commissioner at least 7 days before the day appointed for the hearing of the objection.
- (5) This section has effect despite anything to the contrary in the *Supreme Court Act*.

### **32            Procedure on hearing of objection**

- (1) This section applies to the Supreme Court when hearing an objection to a control order by the controlled person.
- (2) The objection does not affect the operation of the control order unless the Court orders the operation of the order is stayed until proceedings in relation to the objection end.
- (3) The Supreme Court:
- (a) must consider the notice of objection; and
  - (b) may hear evidence by or for the controlled person and the Commissioner; and
  - (c) must determine whether there is a ground for making a control order and if it is appropriate to do so.



- (4) The Supreme Court must:
- (a) if it determines there is a ground for making a control order and it is appropriate to do so – confirm or vary the control order; or
  - (b) if it determines otherwise – revoke the control order.

### **34            Variation or revocation of control order**

- (1) The Supreme Court may vary or revoke a control order on application by the Commissioner or the controlled person (each of whom is a *party*).
- (2) However, an application for variation or revocation of a control order may only be made by the controlled person with the leave of the Supreme Court.
- (3) The Supreme Court may grant leave under subsection (2) only if satisfied there has been a substantial change in the relevant circumstances since the control order was made or last varied.
- (4) An application for variation or revocation of a control order made by the controlled person must be supported by oral evidence given on oath.
- (5) A party who makes an application under this section must, within 7 days of making the application, serve a copy of it on the other party.
- (6) Before varying or revoking a control order, the Supreme Court must allow the parties a reasonable opportunity to be heard on the matter.

### **35            Notice of variation or revocation of control order**

- (1) This section applies if a control order is varied or revoked.
- (2) The variation takes effect:
  - (a) if the controlled person is present in court when the variation is made – immediately; or
  - (b) otherwise – when the controlled person is served with notice of the variation.
- (2A) The revocation takes effect immediately whether or not the controlled person is present in court when the revocation is made.

- (3) A registrar for the court that makes the variation or revocation must give notice of the variation or revocation to:
  - (a) if the Commissioner is not present in court when the control order is varied or revoked – the Commissioner; and
  - (b) the Attorney-General.
- (4) If the controlled person is not present in court when the control order is varied or revoked, the Commissioner must, as soon as practicable after the variation or revocation is made, serve on the controlled person notice of the variation or revocation of the order.

### **Division 3            Consequences of control order**

#### **36            Associating with another controlled person**

- (1) A controlled person must not associate with another controlled person.

Fault elements:

The person:

- (a) knows, or is reckless as to whether, the other person is a controlled person; and
- (b) intends to associate with the other person.

Maximum penalty:        Imprisonment for 5 years.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the association is in accordance with an exemption under section 27(4).
- (3) Subject to the terms of a control order, the following forms of associations are to be disregarded in applying subsection (1) to a defendant to whom the control order relates if the defendant proves the association was 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, as prescribed by regulation, between persons enrolled in the course;

- (d) associations occurring at a rehabilitation, counselling or therapy session, as prescribed by regulation;
  - (e) associations occurring in lawful custody or in the course of complying with a court order;
  - (f) other associations, as prescribed by regulation.
- (4) To avoid doubt, in proceedings for an offence against subsection (1), it is not necessary for the prosecution to prove:
- (a) the defendant associated with another person for any particular purpose; or
  - (b) the association would have led to the commission of any offence.

(5) In this section:

***close family member***, of a specified person, means:

- (a) a person who is a spouse or former spouse of the specified person; or
- (b) a person who is, or has been, in a domestic relationship with the specified person; or
- (c) a person who is a parent or grandparent of the specified person (whether by blood or by marriage); or
- (d) a person who is a child or grandchild of the specified person (whether by blood or by marriage); or
- (e) a person who is a brother or sister of the specified person (whether by blood or by marriage); or
- (f) a person who is a guardian or carer of the specified person; or
- (g) a person for whom the specified person is a guardian or carer.

***domestic relationship*** means the relationship between 2 persons (whether or not they are related by family and irrespective of their gender) who live together as a couple on a genuine domestic basis, but does not include:

- (a) the relationship between spouses; or

- (b) a relationship where 1 of the persons provides the other with domestic support or personal care (or both) for fee or reward, or on behalf of some other person or an organisation of whatever kind.

*Note for definition **domestic relationship***

*Two persons may live together as a couple on a genuine domestic basis whether or not a sexual relationship exists, or has ever existed, between them.*

### **37 Recruiting person to become member of declared organisation**

- (1) This section applies to a controlled person who is stated to be a member or former member of a declared organisation in a control order that is in force.
- (2) The controlled person must not engage in conduct for the purpose of recruiting another person to become a member of the declared organisation.

Fault elements:

The person:

- (a) intentionally engages in conduct; and
- (b) intends that the other person become a member of the declared organisation.

Maximum penalty: Imprisonment for 5 years.

- (3) In this section:

**recruiting** includes counselling, procuring, soliciting, inciting and inducing.

### **38 Applying for authority in contravention of control order**

- (1) This section applies to a controlled person if a control order that is in force in relation to the person prohibits him or her from applying for an authority to carry on a prescribed activity.
- (2) The controlled person must not apply for an authority to carry on the prescribed activity.

Fault element: Intention.

Maximum penalty: 50 penalty units or imprisonment for 6 months.

### **39            Other contravention of control order**

- (1) A controlled person commits an offence if he or she engages in conduct that contravenes a control order that is in force.

Fault element:            Intention.

Maximum penalty:        Imprisonment for 5 years.

- (2) This section does not apply to the following conduct:

- (a) associating with another controlled person;
- (b) engaging in conduct for the purpose of recruiting another person to become a member of a declared organisation;
- (c) applying for an authority to carry on a prescribed activity.

*Note for subsection (2)*

*Conduct mentioned in subsection (2) is dealt with in sections 36 to 38.*

### **40            Defence and evidence**

- (1) It is a defence to a prosecution for an offence against this Division if the defendant did not know he or she was a controlled person and the defendant is a controlled person as a result of a control order being served on him or her only in 1 or more of the following ways:

- (a) by sending the order by prepaid post to premises at which the defendant did not, at the time of service, live or work;
- (b) by sending the order by fax to a fax number for premises at which the defendant did not, at the time of service, live or work;
- (c) by leaving the order with a person at premises at which the defendant did not, at the time of service, live or work.

- (2) For this Division, a control order made in relation to a person is conclusive evidence of the terms of the order.

### **41            Authority for prescribed activity**

- (1) Any proceedings under another Act (including an appeal or review) relating to an authority that is suspended under section 27 are stayed while the authority is suspended.
- (2) A suspension of an application for an authority or authority, and a stay of proceedings, is effected despite any other Act or any law, award or industrial or other agreement affecting the employment of

the person holding the authority, and neither the Territory nor the regulatory authority that issues the authority incurs any liability because of the suspension or stay.

- (3) The suspension under this Act of an application for an authority or an authority does not limit the power of a regulatory authority to reject the application or cancel or revoke the authority.

## **Part 5            Public safety orders**

### **Division 1        Making, varying and revoking public safety order**

#### **42            Senior police officer may make public safety order**

- (1) A senior police officer may make a public safety order in relation to a specified person, or a class of persons, for a specified period if satisfied:
- (a) the person being present at, or members of the class of persons being present at, premises for the period poses a serious risk to public safety or security; and
  - (b) making the order for the period is appropriate.
- (2) In considering whether 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 members or former members of an organisation that is a declared organisation; or
    - (ii) are or have been controlled persons; or
    - (iii) associate, or have associated, with a member of a declared organisation or a controlled person;
  - (c) whether the degree of risk involved justifies the imposition of the prohibition 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);

- (d) the extent to which making the order will mitigate any serious risk to public safety or security;
  - (e) the extent to which the order is necessary having regard to other measures reasonably available to mitigate any serious risk to public safety or security;
  - (f) any other matter the officer thinks fit.
- (3) A public safety order:
- (a) may prohibit a person from being present at premises, regardless of whether the person has a legal or equitable interest in the premises; but
  - (b) must not prohibit the person from being present at premises that are the person's principal place of residence.
- (4) A person or members of a class of persons being present at premises poses a ***serious risk to public safety or security*** if there is a serious risk the presence of the person or members of the class of persons might result in:
- (a) the death of a person; or
  - (b) serious physical harm to a person; or
  - (c) serious damage to property or an animal.
- (5) In this section:
- serious damage*** includes:
- (a) in relation to property – the following:
    - (i) destruction of the property;
    - (ii) an alteration to the property that depreciates its value;
    - (iii) rendering the property useless or inoperative; and
  - (b) in relation to an animal – injuring, wounding and killing the animal.

#### **43            Limitations on making public safety order**

- (1) A senior police officer must not make a public safety order prohibiting a person or class of persons from being present at premises if the officer reasonably believes the likely reason for the person or members of the class of persons being present at the premises is non-violent advocacy, protest, dissent or industrial

action.

- (2) Except in accordance with an authorisation order, a senior police officer must not:
  - (a) make a public safety order with a restriction period exceeding 72 hours; or
  - (b) make a public safety order in relation to a person (other than a person who is a member of a declared organisation) or class of persons if the person or class of persons has been restricted, within the immediately preceding period of 72 hours, from being present at particular premises by another public safety order.
- (3) Subsections (1) and (2) apply despite sections 42 and 45.

#### **44            Form of public safety order**

- (1) A public safety order must specify:
  - (a) if the order is made in relation to 1 or more persons – the name and address of each person in relation to whom the order is made; or
  - (b) if the order is made in relation to a class of persons – the class of persons in relation to whom the order is made.
- (2) The public safety order must also set out the terms of the order.

#### **45            Variation of public safety order by senior police officer**

- (1) A senior police officer may vary a public safety order.
- (2) However, a senior police officer may not extend the restriction period of a public safety order unless the extension is in accordance with an authorisation order.
- (3) In considering whether to vary a public safety order, the senior police officer must have regard to the same matters a senior police officer is required to have regard to in considering whether to make a public safety order.
- (4) If a senior police officer varies a public safety order, the order as varied is taken to be a public safety order made on the date of the variation.



#### **46            When does public safety order take effect**

- (1) A public safety order made by a senior police officer takes effect in relation to a person when the following documents are served on the person (regardless of whether the documents have been served on any other person to whom the order relates):
- (a) the order;
  - (b) a written notice specifying the date the order was made and, if section 51 applies to the order, setting out:
    - (i) subject to subsection (2), a statement of the grounds on which the order and any relevant authorisation order was made; and
    - (ii) a brief explanation of the right of objection under section 51.

*Note for subsection (1)*

*If a public safety order is varied by a senior police officer, under section 45(4) the varied order is taken to be a new order and this section would apply.*

- (2) However, if the public safety order is served under section 78(1)(b), the order takes effect on the date of the *Gazette* published as stated in that paragraph.
- (3) A statement of the grounds on which a public safety order or an authorisation order has been made must not contain information that must not be disclosed under section 73.

#### **47            Duration of public safety order**

A public safety order remains in force until:

- (a) it is revoked; or
- (b) the end of the restriction period specified in the order.

#### **48            Revocation of public safety order**

- (1) A senior police officer:
- (a) may revoke a public safety order; and
  - (b) must revoke a public safety order if satisfied the grounds for making the order no longer exist.
- (2) If the Commissioner is satisfied the grounds for making a public safety order no longer exist, the Commissioner must revoke it.

- (3) As soon as practicable after a person revokes a public safety order, the person must serve notice of the revocation on each person to whom the order related.

## **Division 2            Procedure for obtaining authorisation order**

### **49            Particular public safety orders must be authorised by Court of Summary Jurisdiction**

- (1) If a senior police officer wishes to make a public safety order of a kind mentioned in section 43(2)(a) or (b), the officer may apply to the Court of Summary Jurisdiction for an order (an *authorisation order*) authorising the officer to make an order of that kind.
- (2) The grounds of the application must be verified by affidavit.
- (3) An authorisation order may be made by the Court of Summary Jurisdiction on an application made without notice to any person.
- (4) An authorisation order must specify the maximum restriction period that may be specified in the relevant public safety order.

### **50            Application for authorisation order by telephone**

- (1) If it is impracticable for a senior police officer to make an application to the Court of Summary Jurisdiction for an authorisation order, the officer may apply to a magistrate for the order, and the application may be dealt with by a magistrate, by telephone under this section.
- (2) The applicant must inform the magistrate:
  - (a) the applicant is a senior police officer; and
  - (b) of the applicant's name and rank.
- (3) On receiving the information mentioned in subsection (2), the magistrate is entitled to assume, without further inquiry, the applicant is authorised to make an application for an authorisation order.
- (4) The magistrate must satisfy himself or herself (as far as practicable), by the oral questioning of the applicant and any other available witness by telephone, that the case is of sufficient urgency to justify dealing with the application without requiring the personal attendance of the applicant.

- (5) If under subsection (4):
- (a) the magistrate is not satisfied it is appropriate to deal with the application, the magistrate must direct the applicant to apply to the Court of Summary Jurisdiction under section 49; or
  - (b) the magistrate is satisfied it is appropriate to deal with the application, the applicant must inform the magistrate of the grounds on which the applicant proposes to make the public safety order.
- (6) If the magistrate is satisfied there are sufficient grounds for the applicant to make the public safety order, the magistrate must inform the applicant of the facts the magistrate considers justify the making of the public safety order (the *relevant facts*).
- (7) If the applicant undertakes to make an affidavit verifying the relevant facts, the magistrate may:
- (a) make the authorisation order noting on the order the relevant facts; and
  - (b) inform the applicant of the terms of the authorisation order.
- (8) As soon as practicable after the authorisation order is made:
- (a) the applicant must forward to the magistrate an affidavit verifying the relevant facts; and
  - (b) the magistrate must:
    - (i) forward to the applicant a copy of the order; and
    - (ii) file the order, or a copy of the order, and the affidavit forwarded by the applicant, in the Court of Summary Jurisdiction.
- (9) An authorisation order made by a magistrate under this section is taken to be an authorisation order made by the Court of Summary Jurisdiction under section 49.

### **Division 3            Review of public safety order**

#### **51            Right of objection**

- (1) This section applies to a person to whom a public safety order relates if the restriction period specified in the order:
- (a) is more than 7 days; or

- (b) does not start on or immediately after the date the order takes effect under section 46.
- (2) The person may object to the public safety order by lodging a notice of objection with the Court of Summary Jurisdiction.
- (3) The notice of objection must:
  - (a) state the grounds for the objection; and
  - (b) be lodged by the earlier of:
    - (i) the end of the restriction period specified in the public safety order; or
    - (ii) the end of the 14 day period starting on the date the order, or the order as varied, took effect in relation to the objector.
- (4) The objector must serve a copy of the notice of objection on the Commissioner at least 7 days before the day appointed for the hearing of the objection.
- (5) This section has effect despite anything to the contrary in the *Justices Act*.

## **52            Procedure on hearing of objection**

- (1) This section applies to the Court of Summary Jurisdiction when hearing an objection to a public safety order.
- (2) The objection does not affect the operation of the public safety order.
- (3) The Court of Summary Jurisdiction:
  - (a) must consider the notice of objection; and
  - (b) may hear evidence by or for the objector and the Commissioner about the objection; and
  - (c) must determine whether there are sufficient grounds for making a public safety order and if it is appropriate to do so.
- (4) The Court of Summary Jurisdiction must:
  - (a) if it determines there are sufficient grounds for making a public safety order and it is appropriate to do so – confirm or vary the order; or
  - (b) if it determines otherwise – rescind the order.

- (5) If a public safety order is rescinded it is taken never to have come into effect.

**54            Notice of making, variation or rescission of public safety order by court**

- (1) This section applies if, as a result of a court decision, a public safety order is made, varied or rescinded.

- (2) The public safety order or variation of the public safety order takes effect:

(a) for a class order – when the order or notice of the variation is served as mentioned in subsection (4); or

(b) for an order other than a class order if the person to whom the order relates is present in court when the order or variation is made – immediately; or

(c) for an order other than a class order if the person to whom the order relates is not present in court when the order or variation is made – when the person is served with the order or notice of the variation as mentioned in subsection (5).

- (3) If the Commissioner is not present in court when the public safety order is made, varied or rescinded, a registrar for the court must give notice of the making, variation or rescission of the order to the Commissioner.

- (4) If a class order is made, varied or rescinded the Commissioner must, as soon as practicable, serve the order or notice of the variation or rescission under section 78.

- (5) If a public safety order, other than a class order, is made, varied or rescinded, and the person to whom the order relates or related is not present in court when the order is made, varied or rescinded, the Commissioner must, as soon as practicable, serve the order or notice of the variation or rescission on the person.

- (6) In this section:

***class order*** means a public safety order in relation to a class of persons.

## **Division 4            Offence, enforcement and related matters**

### **55            Contravention of public safety order**

- (1) A person in relation to whom a public safety order is in force must not contravene the order.

Fault elements:

The person:

- (a) knows, or is reckless as to whether, the order is in force; and
- (b) intentionally engages in conduct which contravenes the order.

Maximum penalty:        Imprisonment for 5 years.

*Note for subsection (1)*

*A public safety order is not in force in relation to a person until it has been served on the person.*

- (2) It is a defence to a prosecution for an offence against subsection (1) if:

- (a) the defendant has a reasonable excuse; or
- (b) the defendant did not know the public safety order was in force and the public safety order was served on the defendant only in 1 or more of the following ways:
  - (i) by sending the order by prepaid post to premises at which the defendant did not, at the time of service, live or work;
  - (ii) by sending the order by fax to a fax number for premises at which the defendant did not, at the time of service, live or work;
  - (iii) by leaving the order with a person at premises at which the defendant did not, at the time of service, live or work.

### **56            Power to search premises and vehicles**

- (1) A police officer may search any premises specified in a public safety order if the officer reasonably suspects a person in relation to whom a public safety order is in force is at or in the premises.
- (2) However, the police officer may remain on the premises only for as long as is reasonably necessary to find out if the person is or has been on the premises.

- (3) A police officer may stop and search a vehicle, and search anything in or on the vehicle, if the officer reasonably suspects:
  - (a) a person in the vehicle is a person in relation to whom a public safety order is in force; and
  - (b) the vehicle is approaching, is in or has recently left any premises specified in the public safety order.
- (4) However, the police officer may detain the vehicle, or an occupant of the vehicle, only for as long as is reasonably necessary to find out if the person in relation to whom a public safety order is in force is in the vehicle.
- (5) If a police officer detains an occupant of a vehicle stopped under this section only for as long as is reasonably necessary to conduct a search under this section, that action does not, by itself, constitute an arrest of the person.
- (6) For section 112(1) of the Criminal Code, a person detained under this section is in the lawful custody of the police officer while detained.
- (7) For exercising a power under subsections (1) to (4), a police officer may require a person to do a specified act directed towards ascertaining whether a public safety order has been contravened.
- (8) A person must not fail or refuse to comply with a requirement of a police officer under this section.

Fault elements:

The person:

- (a) knows, or is reckless as to whether, the person who issued the requirement is a police officer; and
- (b) intentionally fails or refuses to comply with the requirement.

Maximum penalty:        Imprisonment for 5 years.

- (9) It is a defence to a prosecution for an offence against subsection (8) if the defendant has a reasonable excuse.

## **57        Proof of public safety order**

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

## Part 6 Fortification removal orders

### Division 1 Making fortification removal order

#### 58 Grounds for making fortification removal order

- (1) Each of the following is a ground for making a fortification removal order in relation to premises:
- (a) the premises are fortified and it is reasonable to believe the premises are being, have been, or are likely to be, used:
    - (i) for, or in connection with, the commission of a serious criminal offence; or
    - (ii) to conceal evidence of, or in connection with, the commission of a serious criminal offence; or
    - (iii) to keep the proceeds of a serious criminal offence;
  - (b) the premises are fortified and:
    - (i) are owned, either legally or beneficially, by a declared organisation or a member of a declared organisation; or
    - (ii) are occupied or habitually used as a place of resort by members of a declared organisation.

- (2) In this section:

*owned*, for a body corporate, includes owned by a related body corporate of the body corporate.

*related body corporate*, see section 9 of the Corporations Act 2001.

#### 59 Application for fortification removal order

- (1) The Commissioner may apply to the Court of Summary Jurisdiction for a fortification removal order in relation to specified premises.
- (2) The grounds of the application must be verified by affidavit.



**60 Court of Summary Jurisdiction may make fortification removal order**

- (1) At the hearing of an application for a fortification removal order, the Court of Summary Jurisdiction must:
  - (a) if it determines there is a ground for making a fortification removal order and it is appropriate to do so – make a fortification removal order; or
  - (b) if it determines otherwise – dismiss the application.
- (2) The fortification removal order may be made on an application made without notice to any person.
- (3) Despite anything to the contrary in the Justices Act, a decision of the Court of Summary Jurisdiction under subsection (1)(a) cannot be appealed.

**61 Form of fortification removal order**

- (1) A fortification removal order must:
  - (a) identify the premises in relation to which the order is made; and
  - (b) name the occupier or occupiers of the premises to whom the order is directed; and
  - (c) subject to subsection (2), include a statement of the ground on which the order has been made; and
  - (d) include a statement to the effect that specified fortifications at the premises must be removed or modified, as directed by the Court of Summary Jurisdiction, before the end of the period specified in the order (which must not be less than 14 days after the date of service of the order); and
  - (e) subject to subsection (3), have attached to it a copy of the affidavit mentioned in section 59(2); and
  - (f) set out a brief explanation of the right of objection under section 63; and
  - (g) set out a brief explanation of the Commissioner's power to enforce the order under section 67.
- (2) The statement of the ground on which the fortification removal order has been made must not contain information that must not be disclosed under section 73.

- (3) If disclosure of information included in the affidavit would contravene section 73:
- (a) the affidavit does not need to be attached to the fortification removal order; but
  - (b) an edited copy of the affidavit, from which the information that cannot be disclosed has been removed or erased, must be attached to the fortification removal order.

## **62 Service of fortification removal order**

A fortification removal order must be served on:

- (a) the occupier or occupiers named in the order; and
- (b) if the registered proprietor of the premises in relation to which the order has been made is not named in the order – the registered proprietor.

## **Division 2 Review of fortification removal order**

### **63 Right of objection**

- (1) Subject to subsection (2), a person who has been served with a fortification removal order may object to the order by lodging a notice of objection with the Court of Summary Jurisdiction.
- (2) A notice of objection cannot be lodged if a notice of objection has previously been lodged in relation to the fortification removal order (unless proceedings in relation to the earlier notice have been discontinued).
- (3) The notice of objection must:
  - (a) state the grounds for the objection; and
  - (b) be lodged within 14 days after the date on which the fortification removal order was served on the objector.
- (4) The objector must serve a copy of the notice of objection on the Commissioner at least 7 days before the day appointed for the hearing of the objection.
- (5) This section has effect despite anything to the contrary in the *Justices Act*.

#### **64 Procedure on hearing of objection**

- (1) This section applies to the Court of Summary Jurisdiction when hearing an objection to a fortification removal order.
- (2) The Court of Summary Jurisdiction must, if convenient to the Court, be constituted by the magistrate or Justices who issued the fortification removal order to which the objection relates.
- (3) The Court of Summary Jurisdiction:
  - (a) must consider the notice of objection; and
  - (b) may hear evidence by or for the objector and the Commissioner; and
  - (c) must determine whether there is a ground for making a fortification removal order and if it is appropriate to do so.
- (4) The Court of Summary Jurisdiction must:
  - (a) if it determines there is a ground for making a fortification removal order and it is appropriate to do so – confirm or vary the fortification removal order; or
  - (b) if it determines otherwise – revoke the fortification removal order.
- (5) If the fortification removal order is confirmed or varied as a result of a decision by the Court of Summary Jurisdiction, the period of time allowed for compliance with the order, as specified in the order, is taken to start on the day of the Court's decision (unless the Court specifies otherwise).

#### **66 Notice of variation or revocation of fortification removal order**

- (1) This section applies if a fortification removal order is varied or revoked.
- (2) If the Commissioner is not present in court when the fortification removal order is varied or revoked, a registrar for the court must give notice of the variation or revocation to the Commissioner.
- (3) If a person on whom the fortification removal order was served or required to be served is not present in court when the order is varied or revoked, the Commissioner must, as soon as practicable, serve on the person notice of the variation or revocation of the order.

## Division 3 Offence, enforcement and related matters

### 67 Enforcement

- (1) The Commissioner may remove or modify fortifications specified in a fortification removal order to the extent required by the order if:
  - (a) any of the following apply:
    - (i) a notice of objection is not lodged by the end of the period allowed under section 63(3)(b);
    - (ii) the fortification removal order is confirmed or varied by the Court of Summary Jurisdiction under section 64 and an appeal in relation to the decision of the court is not started within the time prescribed under the *Supreme Court Act*;
    - (iii) an appeal results in confirmation or variation of the fortification removal order; and
  - (b) the Commissioner is not satisfied the fortifications have, within the period of time specified in the order or any further time allowed by the Commissioner under subsection (2), been removed or modified to the extent required by the order.
- (2) The Commissioner may extend the time allowed by the fortification removal order if, before the time elapses, an application is made to the Commissioner for an extension of the time.
- (3) For causing fortifications to be removed or modified to the extent required by a fortification removal order, the Commissioner, or any police officer authorised by the Commissioner for this section, may do any of the following:
  - (a) enter the premises identified in the order without warrant;
  - (b) obtain expert or technical advice;
  - (c) make use of any person or equipment considered necessary.
- (4) The Commissioner may seize anything that can be salvaged in the course of removing or modifying fortifications under this section, and may sell or dispose of it as the Commissioner considers appropriate.
- (5) The proceeds of any sale under subsection (4) are forfeited to the Territory and, to the extent they are insufficient to meet the costs incurred by the Commissioner under this section, the Commissioner may recover those costs as a debt from any person who caused the

fortifications to be created.

## 68 Hindering removal or modification of fortifications

- (1) A person must not obstruct the removal or modification of fortifications in accordance with a fortification removal order.

Fault elements:

The person:

- (a) knows of, or is reckless as to, the existence of the fortification removal order; and
- (b) knows, or is reckless as to whether, the removal or modification of fortifications is in accordance with the order; and
- (c) intentionally obstructs the removal or modification of fortifications.

Maximum penalty: 500 penalty units or imprisonment for 3 years.

- (2) Subsection (1) applies to the removal or modification of fortifications by a person who:
- (a) is, or is acting for or on the instructions of, an occupier or registered proprietor of the premises; or
  - (b) is acting under section 67.

- (3) In this section:

**obstruct** includes any act or omission that prevents, interferes with or delays.

## 69 Liability for damage

- (1) Subject to subsection (2), no action lies against the Territory or any person for damage to property resulting from enforcement of a fortification removal order involving the premises identified in the order.
- (2) However, a registered proprietor of premises may recover the reasonable costs associated with repair or replacement of property damaged as a result of the creation of fortifications, or enforcement of a fortification removal order, as a debt from any person who caused the fortifications to be created.

**70 Withdrawal notice**

- (1) If the Commissioner decides not to enforce a fortification removal order, the Commissioner must lodge a withdrawal notice with the Court of Summary Jurisdiction.
- (2) The withdrawal notice must identify the relevant premises, refer to the fortification removal order and state the Commissioner has decided not to enforce the order.
- (3) The withdrawal notice must be served on the occupier or occupiers named in the order and all persons on whom the fortification removal order was served.

**71 Application of Part**

- (1) If the provisions of this Part are inconsistent with any other Act or law, the provisions of this Part prevail.
- (2) No application for approval is required under the *Building Act* for work required by a fortification removal order.
- (3) To avoid doubt, the *Building Act* applies to premises after work required by a fortification removal order is completed.
- (4) This section is subject to section 84.

**Part 7 Miscellaneous****72 Court may make ancillary or consequential order**

- (1) This section applies if, under this Act, a court:
  - (a) decides a matter in relation to a declaration under section 15, control order, public safety order or fortification removal order including by:
    - (i) making a declaration or order; and
    - (ii) confirming a declaration or order, with or without variation; and
    - (iii) revoking or rescinding a declaration or order; or
  - (b) hears an appeal against a decision mentioned in paragraph (a).
- (2) In deciding the matter or the appeal, the court may make any ancillary or consequential order it considers appropriate.

**73 Criminal intelligence**

- (1) This section applies to the following:
- (a) an application for the making or revocation of a declaration made to, and the hearing of the application by, the Supreme Court under Part 3;
  - (b) an appeal against a decision of the Supreme Court under Part 3 made to, and the hearing of the appeal by, the Court of Appeal;
  - (c) an application for the making, variation or revocation of a control order made to, and the hearing of the application by, the Supreme Court under Part 4;
  - (d) an objection to the making of a control order made to, and the hearing of the objection by, the Supreme Court under Part 4;
  - (e) an appeal against a decision of the Supreme Court under Part 4 made to, and the hearing of the appeal by, the Court of Appeal;
  - (f) an application for the making of an authorisation order, and the hearing of the application by the Court of Summary Jurisdiction or the dealing with the application by a magistrate, under Part 5;
  - (g) an objection to the making of a public safety order made to, and the hearing of the objection by, the Court of Summary Jurisdiction under Part 5;
  - (h) an appeal against a decision of a magistrate or the Court of Summary Jurisdiction under Part 5 made to, and the hearing of the appeal by, the Supreme Court;
  - (i) an application for the making of a fortification removal order made to, and the hearing of the application by, the Court of Summary Jurisdiction under Part 6;
  - (j) an objection to the making of a fortification removal order made to, and the hearing of the objection by, the Court of Summary Jurisdiction under Part 6;
  - (k) an appeal against a decision of the Court of Summary Jurisdiction under Part 6 made to, and the hearing of the appeal by, the Supreme Court.

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- (2) A court to which an application, objection or appeal to which this section applies is made, must take steps to maintain the confidentiality of classified information provided to it by the Commissioner, including steps to receive evidence and hear argument about the information in private in the absence of the parties to the proceedings, their representatives and the public, if the court considers the classified information is criminal intelligence.
- (3) If the court considers classified information is not criminal intelligence, the court must allow the Commissioner to withdraw the classified information from consideration.
- (4) A person (other than the Commissioner or a person authorised by the Commissioner) must not disclose information the court considers is criminal intelligence.

Fault elements:

The person:

- (a) knows, or is reckless as to whether, the information is considered criminal intelligence; and
- (b) is reckless as to whether the information is disclosed.

Maximum penalty: 2 000 penalty units or imprisonment for 5 years.

- (5) A person (other than the Commissioner or a person authorised by the Commissioner) must not disclose classified information that is withdrawn under subsection (3) to any person except:
- (a) a person conducting a review under section 85 or 86; or
- (b) the Attorney-General; or
- (c) a person to whom the Commissioner or Attorney-General authorises disclosure.

Fault elements:

The person:

- (a) knows, or is reckless as to whether, the Commissioner has withdrawn the classified information; and
- (b) is reckless as to whether the information is disclosed.

Maximum penalty: 2 000 penalty units or imprisonment for 5 years.



- (6) Despite subsections (2) and (4), the court may disclose information it considers is criminal intelligence to:
- (a) a person conducting a review under section 85 or 86; or
  - (b) the Attorney-General; or
  - (c) a court or a person to whom the Commissioner authorises disclosure.
- (7) In this section:

***court*** means a magistrate, the Court of Summary Jurisdiction, the Supreme Court or the Court of Appeal.

#### **74 Attorney-General to be notified**

- (1) The Commissioner must give notice of any application under Part 3 or 4 to the Attorney-General as soon as practicable after the application is made or the Commissioner receives notice of it.
- (2) The Commissioner must provide the Attorney-General with a copy of the application (including any classified information) if the Attorney-General requests.
- (3) The Attorney-General or a legal practitioner representing the Attorney-General is entitled to be present and make submissions at the hearing of the application.

#### **75 Commissioner to keep register**

- (1) The Commissioner must keep a register of information (the ***register***) about declarations under section 15, control orders and fortification removal orders as in force from time to time under this Act.
- (2) The register may contain the following:
  - (a) the name of any declared organisation (or the name by which it is commonly known);
  - (b) the name of any person to whom a control order that is in force relates (or the name by which the person is commonly known).
- (4) Information contained in the register may be provided to members of the public in any way approved by the Commissioner.

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- (5) Without limiting subsection (4), the Commissioner may publish any information contained in the register in a newspaper circulating in the Territory.

## **76 Provision of information relating to declared organisations**

- (1) A regulatory authority and the Commissioner may enter into arrangements for supplying the regulatory authority with information that:
- (a) is contained in the records of the Police Force of the Northern Territory of Australia; and
  - (b) concerns:
    - (i) any organisation that is a declared organisation; or
    - (ii) any controlled person who is an applicant for, or holder of, an authority under the regulatory legislation; or
    - (iii) any person who is an applicant for, or holder of, an authority under the regulatory legislation and who is a member, or associates with any member, of a declared organisation; and
  - (c) is reasonably necessary for the proper exercise of any function of the regulatory authority relating to authorities and disciplinary proceedings under the regulatory legislation.
- (2) Arrangements made under subsection (1) are sufficient authority for supplying information as mentioned in subsection (1).
- (3) The regulatory authority:
- (a) must take steps to maintain the confidentiality of any information provided by the Commissioner under subsection (1) that is classified information; and
  - (b) must not disclose the information to any person unless authorised to do so by the Commissioner.
- (4) Nothing in this section limits or affects any other power or duty conferred or imposed on the Commissioner or the regulatory authority under the regulatory legislation.

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- (5) In this section:

*regulatory legislation* means legislation of the Territory, the Commonwealth, a State or another Territory requiring the authorisation of persons in connection with carrying on an occupation or activity.

## **77 Service of documents under this Act**

- (1) A document required to be served under this Act must be served under section 25 of the *Interpretation Act*.
- (2) If it is not reasonably practicable for a document to be served on a person as mentioned in subsection (1), the document may be served by affixing it to a prominent place at or near to the entrance to premises if:
- (a) the person serving the document (the *process server*) reasonably believes the person on whom the document must be served is present at the premises; but
  - (b) the process server is unable to gain access to the person at the premises to personally serve the document.
- (3) Despite subsections (1) and (2), if a police officer is satisfied an order should take effect in relation to a person to whom the order relates as a matter of urgency:
- (a) the officer may tell the person the contents of the order and advise the person of the place at which the person may obtain the order and any document required by this Act to accompany the order; and
  - (b) on the person being told the information mentioned in paragraph (a), the order is taken to be served on the person.
- (4) The police officer who tells the person the contents of the order must ensure the following documents are available for collection by the person at the place as mentioned in subsection (3)(a) on the next business day following the day on which the order was communicated (during the ordinary business hours applicable to the place):
- (a) the order;
  - (b) any document that would have been required to accompany the order if the order had been served on the person under subsection (1).

(5) In this section:

***business day*** means a day that is not a Saturday, Sunday or public holiday.

***order*** means:

- (a) a control order, public safety order or fortification removal order; or
- (b) a variation to a control order, public safety order or fortification removal order.

## **78 Service of a public safety order on a class of persons**

(1) A public safety order in relation to a class of persons may be served:

- (a) separately on each member of the class as mentioned in section 46(1); or
- (b) on the class of persons by publishing in the *Gazette*:
  - (i) the order; and
  - (ii) information about how a written notice of the type mentioned in section 46(1)(b) can be obtained.

(2) If a public safety order in relation to a class of persons is varied, revoked or rescinded, notice of the variation, revocation or rescission of the order may be served:

- (a) separately on each member of the class; or
- (b) on the class of persons by publishing the notice in the *Gazette*.

(3) This section applies despite section 77.

## **79 Order for substituted service**

(1) If it is not reasonably practicable for a document to be served under section 77, the Commissioner may apply for an order for substituted service to:

- (a) for a control order or a document relating to a control order – the Supreme Court; or
- (b) for a public safety order, fortification removal order or a document relating to a public safety order or fortification removal order – the Court of Summary Jurisdiction.

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- (2) If the court is satisfied the Commissioner has taken all reasonable steps possible to serve the document under section 77 on the person on whom it must be served, the court may, by order, direct that:
- (a) service of the document be postponed for a period specified by the court; or
  - (b) instead of service under section 77, steps, as specified by the court in the order, are to be taken to bring the document to the attention of the person.
- (3) An order of the court under subsection (2) may direct that the document is taken to have been served on the person on whom it must be served on the happening of a specified event or on the expiry of a specified time.
- (4) If the court is satisfied that steps specified in an order under subsection (2)(b) have not (despite the best endeavours of the Commissioner) brought a document to the attention of the person on whom it must be served, the court may specify that the document be published in the *Gazette* or a newspaper circulating generally in the Territory or by some other form of public notification.
- (5) Service in accordance with an order of the court under this section is taken to constitute service for this Act.
- (6) In this section:

*the court* means the court to which an application under subsection (1) is made.

## 80 Delegation

The Commissioner may not delegate:

- (a) the function of classifying information as criminal intelligence for this Act except to a Deputy Commissioner or Assistant Commissioner; and
- (b) any other function or power of the Commissioner under this Act except to a senior police officer.

*Note for section 80*

*Section 14 of the Police Administration Act permits the Commissioner to delegate the Commissioner's powers and functions in certain circumstances.*

**81 Protection from liability**

- (1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function as any of the following:
  - (a) the Attorney-General;
  - (b) the Commissioner;
  - (c) a police officer, including as a senior police officer;
  - (d) a person conducting a review under section 85 or 86.
- (2) Subsection (1) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.
- (3) In this section:

*exercise*, of a power, includes the purported exercise of the power.

*performance*, of a function, includes the purported performance of the function.

**82 Protection from proceedings**

- (1) A proceeding for judicial review or for a declaration, injunction, writ, order or other remedy cannot be brought to challenge or question any of the following:
  - (a) a decision, determination or order made under this Act;
  - (b) proceedings or procedures under this Act;
  - (c) an act or omission made in the exercise of powers or functions under this Act;
  - (d) an act, omission, matter or thing incidental or relating to the operation of this Act.
- (2) The validity and legality of a declaration under section 15, control order, public safety order or fortification removal order, or a variation of such a declaration or order, cannot be challenged or questioned in proceedings for an offence against this Act.
- (3) This section is subject to any right of appeal provided for under another Act.

**83 Burden of proof**

- (1) A 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.

**84 Acquisition on just terms**

If, apart from this section, property would be acquired from a person because of the operation of this Act other than on just terms:

- (a) the person is entitled to receive from the Territory the compensation necessary to ensure the acquisition is on just terms; and
- (b) a court of competent jurisdiction may decide the amount of compensation or make the orders it considers necessary to ensure the acquisition is on just terms.

**85 Annual review**

- (1) The Attorney-General must, before the end of each financial year, appoint a former judicial officer to:
  - (a) conduct a review to determine whether, during the financial year, powers under this Act were exercised in an appropriate way having regard to the purposes of this Act; and
  - (b) report, in writing, to the Attorney-General on the review.
- (2) The Attorney-General and the Commissioner must ensure the former judicial officer is provided with the information the officer requires for conducting the review.
- (3) A report on a review relating to a financial year must be given to the Attorney-General on or before 31 December immediately following the end of the financial year.
- (4) The former judicial officer must not include classified information in the report under subsection (3).
- (5) The Attorney-General must, within 8 sitting days of receiving a report under subsection (3), table the report in the Legislative Assembly.

(6) If the former judicial officer considers it appropriate to report to the Attorney-General on a matter involving classified information, the former judicial officer may prepare a separate report that includes the classified information and give it to the Attorney-General.

(7) In this section:

*former judicial officer* means a person who was previously appointed as:

(a) a Judge; or

(b) a judge of a supreme court of a State or another Territory.

## **86 Review of operation of Act**

(1) As soon as practicable after the fourth anniversary of the commencement of this section, the Attorney-General must 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 classified information provided to the Attorney-General or other person.

(3) The Attorney-General must prepare a report based on the review and, within 8 sitting days after the report is prepared, table the report in the Legislative Assembly.

## **87 Regulations**

The Administrator may make regulations under this Act.



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**ENDNOTES**
**1 KEY**

Key to abbreviations

|                             |                              |
|-----------------------------|------------------------------|
| amd = amended               | od = order                   |
| app = appendix              | om = omitted                 |
| bl = by-law                 | pt = Part                    |
| ch = Chapter                | r = regulation/rule          |
| cl = clause                 | rem = remainder              |
| div = Division              | renum = renumbered           |
| exp = expires/expired       | rep = repealed               |
| f = forms                   | s = section                  |
| <i>Gaz</i> = <i>Gazette</i> | sch = Schedule               |
| hdg = heading               | sdiv = Subdivision           |
| ins = inserted              | SL = Subordinate Legislation |
| lt = long title             | sub = substituted            |
| nc = not commenced          |                              |

**2 LIST OF LEGISLATION*****Serious Crime Control Act 2009* (Act No. 32, 2009)**

|             |  |
|-------------|--|
| Assent date | 11 November 2009                                   |
| Commenced   | 1 December 2011 ( <i>Gaz</i> S69, 1 December 2011) |

***Oaths, Affidavits and Declarations (Consequential Amendments) Act 2010* (Act No. 40, 2010)**

|             |  |
|-------------|--|
| Assent date | 18 November 2010                                     |
| Commenced   | 1 March 2011 ( <i>Gaz</i> G7, 16 February 2011, p 4) |

***Serious Crime Control Amendment Act 2011* (Act No. 36, 2011)**

|             |  |
|-------------|--|
| Assent date | 30 November 2011                                   |
| Commenced   | 1 December 2011 ( <i>Gaz</i> S69, 1 December 2011) |

**3 LIST OF AMENDMENTS**

|            |                        |
|------------|------------------------|
| s 6        | amd No. 36, 2011, s 4  |
| s 7        | amd No. 36, 2011, s 18 |
| pt 3 hdg   | sub No. 36, 2011, s 5  |
| pt 3       |                        |
| div 1 hdg  | sub No. 36, 2011, s 5  |
| s 12       | sub No. 36, 2011, s 5  |
| pt 3       |                        |
| div 2 hdg  | rep No. 36, 2011, s 5  |
| ss 13 – 17 | sub No. 36, 2011, s 5  |
| pt 3       |                        |
| div 3 hdg  | rep No. 36, 2011, s 5  |
| pt 3       |                        |
| div 2 hdg  | ins No. 36, 2011, s 5  |
| ss 18 – 20 | sub No. 36, 2011, s 5  |
| pt 3       |                        |
| div 3 hdg  | ins No. 36, 2011, s 5  |
| s 21       | sub No. 36, 2011, s 5  |
| s 22       | rep No. 36, 2011, s 5  |

## ENDNOTES

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|            |                         |
|------------|-------------------------|
| s 23       | amd No. 36, 2011, s 6   |
| s 25       | amd No. 36, 2011, s 7   |
| s 28       | amd No. 36, 2011, s 18  |
| s 30       | amd No. 36, 2011, s 8   |
| s 33       | rep No. 36, 2011, s 9   |
| s 35       | amd No. 36, 2011, s 10  |
| s 53       | rep No. 36, 2011, s 11  |
| s 54       | amd No. 36, 2011, s 18  |
| s 60       | amd No. 36, 2011, s 12  |
| s 64       | amd No. 36, 2011, s 18  |
| s 65       | rep No. 36, 2011, s 13  |
| ss 66 – 67 | amd No. 36, 2011, s 18  |
| s 72       | amd No. 36, 2011, s 18  |
| s 73       | amd No. 36, 2011, s 14  |
| s 75       | amd No. 36, 2011, s 15  |
| s 82       | amd No. 36, 2011, s 16  |
| s 85       | amd No. 36, 2011, s 17  |
| pt 8 hdg   | exp No. 32, 2009, s 91  |
| s 89       | amd No. 40, 2010, s 118 |
|            | exp No. 32, 2009, s 91  |
| ss 90 – 91 | exp No. 32, 2009, s 91  |