

NORTHERN TERRITORY OF AUSTRALIA

SERIOUS CRIME CONTROL AMENDMENT ACT 2011

Act No. 36 of 2011

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 36 of 2011

An Act to amend the *Serious Crime Control Act*

[Assented to 30 November 2011]
[Second reading 19 October 2011]

The Legislative Assembly of the Northern Territory enacts as follows:

1 Short title

This Act may be cited as the *Serious Crime Control Amendment Act 2011*.

2 Commencement

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

3 Act amended

This Act amends the *Serious Crime Control Act*.

4 Section 6 amended

- (1) Section 6, definitions *eligible judge*, *former judicial officer*, *judicial officer*, *protected submission* and *revocation application*

omit

(2) Section 6

insert (in alphabetical order)

respondent means the organisation to whom a declaration application relates.

(3) Section 6, definition **declaration application**

omit

18

insert

15

(4) Section 6, definition **prescribed activity**, paragraphs (a) to (i)

omit, insert

- (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*,

(5) Section 6, definition *serious criminal offence*, paragraph (a)

omit

that is more than 2 years

insert

of 5 years or more

5 Part 3 replaced

Part 3

repeal, insert

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

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- (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

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- (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);

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- (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.

6 Section 23 amended

Section 23(2)

omit, insert

- (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.

7 Section 25 amended

- (1) Section 25, note

omit

section 25

insert

subsection (2)

- (2) After section 25(2)

insert

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

8 Section 30 amended

Section 30(2)

omit, insert

- (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.

9 Section 33 repealed

Section 33

repeal

10 Section 35 amended

- (1) Section 35(1)

omit, insert

- (1) This section applies if a control order is varied or revoked.

- (2) After section 35(2)

insert

- (2A) The revocation takes effect immediately whether or not the controlled person is present in court when the revocation is made.

- (3) Section 35(3), after "the court"

insert

that makes the variation or revocation

11 Section 53 repealed

Section 53

repeal

12 Section 60 amended

After section 60(2)

insert

- (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.

13 Section 65 repealed

Section 65

repeal

14 Section 73 amended

- (1) Section 73(1)

omit, insert

- (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;

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- (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.

(2) Section 73(2), (3), (4) and (6)

omit (all references)

determining authority

insert

court

(3) Section 73(7), definition ***determining authority***

omit

determining authority means an eligible judge,

insert

court means a magistrate,

15 Section 75 amended

(1) Section 75(1)

omit, insert

- (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) Section 75(3)

omit

16 Section 82 amended

(1) Section 82(1)(a) to (c)

omit, insert

- (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;

(2) Section 82(2) to (4)

omit, insert

- (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.

17 Section 85 amended

(1) Section 85(1)

omit

(other than a person who is an eligible judge)

(2) After section 85(6)

insert

(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.

18 Act further amended

The Schedule has effect.

Schedule Act further amended

section 18

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
sections 7 and 28(1)(c)(ii)	18	15
section 28(1)(g)(ii)	under section 33	
section 54(1)	whole subsection	(1) This section applies if, as a result of a court decision, a public safety order is made, varied or rescinded.
section 64(5)	determination (<i>all references</i>)	decision
section 66(1)	whole subsection	(1) This section applies if a fortification removal order is varied or revoked.
section 67(1)(a)(ii)	determination as mentioned in section 65(3)	decision
section 67(1)(a)(iii)	under section 65	
section 72(1)(a)	determines a matter in relation to a	decides a matter in relation to a declaration under section 15,
section 72(1)(a)(i) to (iii)	an	a declaration or
section 72(1)(b)	determination	decision
section 72(2)	determining	deciding
