

NORTHERN TERRITORY OF AUSTRALIA

SERIOUS CRIME CONTROL ACT 2009

Act No. 32 of 2009

Table of provisions

Part 1 Preliminary matters

1	Short title	1
2	Commencement	1
3	Main object of Act	1
4	Application of Part IIAA of Criminal Code	2
5	Extra-territorial operation	2

Part 2 Definitions and key concepts

6	Definitions	2
7	Declared organisation	7
8	Control order and controlled person	8
9	Public safety order and restriction period	8
10	Fortification and fortification removal order	8
11	Matters before commencement may be relevant	9

Part 3 Declared organisations

Division 1 Eligible judges

12	Consent to be, and declaration of, eligible judge	9
----	---	---

Division 2 Application for declaration and order for hearing of application

13	Commissioner may apply for declaration	10
14	Eligible judge may make declaration, dismiss application or order hearing	10
15	Submissions at hearing	11
16	Rules of evidence do not apply	12
17	Protected submission	12

Division 3 Making and revoking declaration

18	Eligible judge may make declaration	12
19	Notice of declaration	14
20	Eligible judge not required to provide reasons	14

21	Duration of declaration	14
22	Revocation of declaration	15

Part 4 Control orders

Division 1 Making control order

23	Grounds for making control order	16
24	Application for control order	17
25	Hearing of application by Supreme Court	17
26	Adjourned hearing	18
27	Control order may include prohibition, suspension of application or authority or exemption	19
28	Form of control order	20
29	When does control order take effect	21
30	Duration of control order	21

Division 2 Review of control order

31	Right of objection	22
32	Procedure on hearing of objection	22
33	Right of appeal	23
34	Variation or revocation of control order	23
35	Notice of variation or revocation of control order	24

Division 3 Consequences of control order

36	Associating with another controlled person	25
37	Recruiting person to become member of declared organisation....	26
38	Applying for authority in contravention of control order	27
39	Other contravention of control order	27
40	Defence and evidence	28
41	Authority for prescribed activity	28

Part 5 Public safety orders

Division 1 Making, varying and revoking public safety order

42	Senior police officer may make public safety order	29
43	Limitations on making public safety order	30
44	Form of public safety order	31
45	Variation of public safety order by senior police officer	31
46	When does public safety order take effect	31
47	Duration of public safety order	32
48	Revocation of public safety order	32

Division 2	Procedure for obtaining authorisation order	
49	Particular public safety orders must be authorised by Court of Summary Jurisdiction	33
50	Application for authorisation order by telephone.....	33
Division 3	Review of public safety order	
51	Right of objection.....	34
52	Procedure on hearing of objection.....	35
53	Right of appeal	36
54	Notice of making, variation or rescission of public safety order by court.....	36
Division 4	Offence, enforcement and related matters	
55	Contravention of public safety order	37
56	Power to search premises and vehicles	38
57	Proof of public safety order.....	39
Part 6	Fortification removal orders	
Division 1	Making fortification removal order	
58	Grounds for making fortification removal order.....	39
59	Application for fortification removal order	40
60	Court of Summary Jurisdiction may make fortification removal order	40
61	Form of fortification removal order.....	40
62	Service of fortification removal order	41
Division 2	Review of fortification removal order	
63	Right of objection.....	41
64	Procedure on hearing of objection.....	42
65	Right of appeal	43
66	Notice of variation or revocation of fortification removal order	43
Division 3	Offence, enforcement and related matters	
67	Enforcement	44
68	Hindering removal or modification of fortifications	45
69	Liability for damage	46
70	Withdrawal notice	46
71	Application of Part	46
Part 7	Miscellaneous	
72	Court may make ancillary or consequential order.....	47

73	Criminal intelligence	47
74	Attorney-General to be notified	49
75	Commissioner to keep register	49
76	Provision of information relating to declared organisations	50
77	Service of documents under this Act	51
78	Service of a public safety order on a class of persons.....	52
79	Order for substituted service.....	53
80	Delegation	54
81	Protection from liability	54
82	Protection from proceedings.....	54
83	Burden of proof.....	55
84	Acquisition on just terms.....	55
85	Annual review	55
86	Review of operation of Act.....	56
87	Regulations.....	56

Part 8 Consequential amendments

88	Amendment of <i>Bail Act</i>	56
89	Amendment of Criminal Code.....	57
	103A Threats or reprisals relating to persons involved in criminal investigations or judicial proceedings or against public officers	
90	Amendment of <i>Information Act</i>	61
	49AA Criminal intelligence	
91	Expiry of Part	61



NORTHERN TERRITORY OF AUSTRALIA

Act No. 32 of 2009

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

[Assented to 11 November 2009]
[Second reading 11 June 2009]

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 2009*.

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 18.

declared organisation, see section 7.

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

eligible judge means a judicial officer or former judicial officer in relation to whom a consent under section 12(1), and a declaration under section 12(2), are in force.

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

former judicial officer means a person who was previously a judicial officer.

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.

judicial officer means a person appointed as:

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

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 within the meaning of the *Gaming Control Act*;

- (b) being a crowd controller or security officer within the meaning of the *Private Security Act*, or operating a business as a security provider within the meaning of that Act;
- (c) conducting the business of a credit provider within the meaning of the *Consumer Affairs and Fair Trading Act*, or acting as a pawnbroker or second-hand dealer within the meaning of that Act;
- (d) carrying on business as a commercial agent, inquiry agent, process server or private bailiff within the meaning of the *Commercial and Private Agents Licensing Act*;
- (e) using a firearm or carrying on business under a firearms dealer licence within the meaning of the *Firearms Act*;
- (f) being a tow truck operator within the meaning of the *Consumer Affairs and Fair Trading (Tow Truck Operators Code of Practice) Regulations*;
- (g) carrying on the business of a licenced dealer of motor vehicles within the meaning of the *Consumer Affairs and Fair Trading Act*;
- (h) being a licensee within the meaning of the *Liquor Act*;
- (i) carrying on the business of a bookmaker within the meaning of the *Racing and Betting Act*, or being a key employee or bookmaker's agent within the meaning of that 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).

protected submission means a submission made by a person who 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.

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.

restriction period, see section 9(2).

revocation application, see section 22(1)(b).

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 that is more than 2 years, 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 18 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 Eligible judges

12 Consent to be, and declaration of, eligible judge

- (1) A judicial officer or former judicial officer may consent to being the subject of a declaration by the Attorney-General under subsection (2).
- (2) The Attorney-General may, in writing, declare a judicial officer or former judicial officer in relation to whom a written consent under subsection (1) is in force to be an eligible judge for this Part.
- (3) An eligible judge has, in relation to the exercise of a function conferred on an eligible judge by this Part, the same protection and immunity as a Judge has in relation to proceedings in the Supreme Court.
- (4) A judicial officer or former judicial officer who has given consent under subsection (1) may revoke the consent.

Division 2 Application for declaration and order for hearing of application

13 Commissioner may apply for declaration

- (1) The Commissioner may apply to an eligible judge for a declaration under section 18 that an organisation is a declared organisation for this Act.
- (2) The declaration application must:
 - (a) be in writing; and
 - (b) identify the organisation in relation to which the declaration is sought by specifying its name or the name by which it is commonly known or providing other particulars about the organisation; and
 - (c) describe the nature of the organisation and any of its distinguishing characteristics; and
 - (d) state whether the organisation is a declared organisation under a corresponding law; and
 - (e) specify the name of any person the Commissioner reasonably believes is a member or former member of the organisation, or the name by which the person is commonly known; and
 - (f) set out the grounds on which the declaration is sought; and
 - (g) set out information supporting the grounds on which the declaration is sought; and
 - (h) set out details of any previous declaration application made in relation to the organisation and the outcome of the application; and
 - (i) be supported by an affidavit from the Commissioner, or affidavits from 1 or more other senior police officers, verifying the contents of the application.

14 Eligible judge may make declaration, dismiss application or order hearing

- (1) This section applies if a declaration application is made to an eligible judge in relation to an organisation.
- (2) The eligible judge may:
 - (a) make a declaration under section 18; or

- (b) dismiss the declaration application; or
 - (c) order a hearing be held for the application and fix the date on which, and the time at which, the hearing is to be held.
- (3) If the eligible judge makes an order under subsection (2)(c), the Commissioner must:
 - (a) as soon as practicable (but no later than 7 days) after the date of the order, publish notice of the declaration application in the *Gazette* and a newspaper circulating throughout the Territory; and
 - (b) at least 7 days before the date fixed for the hearing, serve a copy of the notice on each person whose name is specified in the application as a member of the organisation.
- (4) The notice mentioned in subsection (3) must:
 - (a) specify that a declaration application has been made in relation to the organisation; and
 - (b) set out a brief explanation of the effect of Part 4, Division 3 in relation to a member or former member of the organisation if a control order is made in relation to the member or former member; and
 - (c) invite members and former members of the organisation and other persons who may be directly affected (whether adversely or not) by the outcome of the application to make submissions to the eligible judge at a hearing to be held on a date specified in the notice.

15 Submissions at hearing

- (1) This section applies if the eligible judge orders a hearing for a declaration application in relation to an organisation.
- (2) A person whose name is specified in the declaration application as a member or former member of the organisation may be present at the hearing and make submissions in relation to the application.
- (3) With the leave of the eligible judge, the following persons may also be present at the hearing and make submissions in relation to the declaration application:
 - (a) any member or former member of the organisation who is not specified in the application;

- (b) any other person who may be directly affected (whether adversely or not) by the outcome of the application.
- (4) Despite subsections (2) and (3), the Commissioner may object to any person mentioned in the subsections being present during any part of the hearing in which classified information is disclosed and, if the Commissioner does so, the eligible judge must deal with the objection under section 73.
- (5) If a person mentioned in subsection (2) or (3) does not wish to be present at the hearing:
 - (a) the person may make a protected submission in private to the eligible judge; and
 - (b) the eligible judge must deal with the protected submission under section 17.

16 Rules of evidence do not apply

The rules of evidence do not apply to a hearing for a declaration application.

17 Protected submission

- (1) An eligible judge must take steps to maintain the confidentiality of a protected submission, including steps to receive evidence and hear the submission in private.
- (2) The eligible judge must advise the Commissioner and the Attorney-General about a protected submission before receiving evidence or hearing the submission in private.
- (3) Despite subsection (1), the Commissioner and the Attorney-General are entitled to be present when the protected submission is made.
- (4) In subsection (3), a reference to the Commissioner or the Attorney-General includes a legal practitioner representing the Commissioner or the Attorney-General or both.

Division 3 Making and revoking declaration

18 Eligible judge may make declaration

- (1) This section applies if a declaration application is made to an eligible judge in relation to an organisation, whether or not a hearing is held for the application.

- (2) The eligible judge may make a declaration that the organisation is a declared organisation for this Act if satisfied:
 - (a) members of the organisation associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity; and
 - (b) the organisation represents a risk to public safety and order.
- (3) In considering whether or not to make a declaration, the eligible judge may have regard to any of the following:
 - (a) whether the organisation is a declared organisation under a corresponding law;
 - (b) any information suggesting a link exists between the organisation and serious criminal activity;
 - (c) any convictions recorded in relation to current or former members of the organisation;
 - (d) any information suggesting current or former members of the organisation 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 organisation associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity;
 - (f) any submissions made in relation to the declaration application by the Attorney-General or under section 15;
 - (g) any other matter the eligible judge considers relevant.
- (4) To avoid doubt, if a hearing is held for the declaration application, a declaration may be made whether or not persons mentioned in section 15(2) and (3) are present or make submissions.
- (5) For subsection (2)(a), the eligible judge 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 eligible judge is satisfied only some of the members associate for that purpose, the eligible judge 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.

19 Notice of declaration

- (1) As soon as practicable after a declaration is made under section 18 in relation to an organisation, but no later than 7 days after the date of the declaration, the Commissioner must:
 - (a) publish notice of the declaration in the *Gazette* and a newspaper circulating throughout the Territory; and
 - (b) serve a copy of the notice on each person whose name was specified in the declaration application as a member or former member of the organisation.
- (2) The notice mentioned in subsection (1) must:
 - (a) specify that a declaration under section 18 has been made in relation to the organisation; and
 - (b) set out a brief explanation of the effect of Part 4, Division 3 in relation to a member or former member of the organisation if a control order is made in relation to the member or former member.

20 Eligible judge not required to provide reasons

An eligible judge is not required to provide any grounds or reasons for a declaration under section 18 or a determination made by the eligible judge under this Part (other than to a person conducting a review under section 85 or 86 if the person so requests).

Note for section 20

If reasons are provided that include classified information, section 73 applies.

21 Duration of declaration

- (1) A declaration under section 18 takes effect on the date notice of the declaration is published in the *Gazette* or any later date specified in the declaration.

- (2) The declaration remains in force for 10 years, or any lesser period specified by the eligible judge when making the declaration, after the date on which it takes effect unless it is sooner revoked or renewed.
- (3) A change in the name or membership of a declared organisation does not affect the declaration.

22 Revocation of declaration

- (1) Subject to subsection (8), the eligible judge who made a declaration under section 18 may revoke it:
 - (a) on the written request of the Commissioner; or
 - (b) on application (a **revocation application**) by a member of the declared organisation for the revocation of the declaration.
- (2) A revocation application must:
 - (a) be in writing; and
 - (b) set out the grounds on which revocation is sought; and
 - (c) set out information supporting the grounds on which revocation is sought; and
 - (d) be supported by an affidavit from the applicant verifying the contents of the application.
- (3) As soon as practicable after making a revocation application, the applicant must notify the Commissioner about the application.

Note for subsection (3)

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

- (4) The eligible judge may refuse to consider a revocation application if:
 - (a) at least 1 revocation application has previously been made in relation to the declaration; and
 - (b) the judge does not consider the revocation application before him or her sets out any new grounds for the revocation.
- (5) In considering a revocation application, the eligible judge must allow the applicant and the Commissioner to appear before him or her and make submissions in relation to it.

- (6) The eligible judge may revoke a declaration on a revocation application only if satisfied there has been such a substantial change in the nature or membership of the organisation that:
 - (a) members of the organisation no longer associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity; or
 - (b) the organisation no longer represents a risk to public safety and order.
- (7) As soon as practicable after a declaration is revoked, the Commissioner must:
 - (a) publish notice of its revocation in the *Gazette* and a newspaper circulating generally throughout the Territory; and
 - (b) give notice of its revocation to the Attorney-General and, if the declaration was made at a hearing, any person who made a submission at the hearing.
- (8) If the eligible judge who made a declaration has died, has ceased to be an eligible judge or is absent from the Territory or otherwise unavailable, a power exercisable by the eligible judge under this section may be exercised by any other eligible judge.

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 if the person is a member or former member of a declared organisation, even if there is a revocation application in relation to the organisation that 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 section 25

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

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 18; 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 under section 33.
- (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) Despite subsection (1), a control order including a statement that the controlled person is a member or former member of a declared organisation ceases to have effect if the declaration of the declared organisation 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.

33 Right of appeal

- (1) The Commissioner may appeal to the Court of Appeal against a determination of the Supreme Court under section 25(2)(b)(i).
- (2) The Commissioner or a controlled person may appeal to the Court of Appeal against a determination of the Supreme Court under section 26(4) or 32(4).
- (3) An appeal lies as of right on a question of law or fact.
- (4) An appeal must be started within 28 days after the date the determination is made, unless the Court of Appeal gives leave for it to be started after that period.
- (5) An appeal must be made in accordance with the procedure prescribed under the *Supreme Court Act*.
- (6) An appeal under subsection (2) does not affect the operation of the control order to which the determination relates, unless the Court of Appeal orders the operation of the order is stayed until proceedings in relation to the appeal end.
- (7) Fresh evidence or evidence in addition to or in substitution for the evidence before the Supreme Court may be given on an appeal.
- (8) On an appeal, the Court of Appeal may:
 - (a) confirm the determination, with or without variation; or
 - (b) set aside the determination and, if it considers necessary, substitute its own determination.

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, as a result of a determination by either of the following, a control order is varied or revoked:
 - (a) the Supreme Court under section 32 or 34;
 - (b) the Court of Appeal under section 33.

Note for subsection (1)

If a court mentioned in subsection (1) makes a control order (instead of varying or revoking a control order) under a section mentioned in subsection (1), section 29 applies to the order.

- (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.
- (3) A registrar for the court 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.

53 Right of appeal

- (1) The Commissioner may appeal to the Supreme Court against a determination on an application for an authorisation order.
- (2) The Commissioner or an objector may appeal to the Supreme Court against a determination made under section 52(4).
- (3) An appeal lies as of right on a question of law or fact.
- (4) An appeal must be started within the time, and in accordance with the procedure, prescribed under the *Supreme Court Act*.
- (5) An appeal under subsection (2) does not affect the operation of the public safety order to which the determination the subject of the appeal relates.
- (6) Fresh evidence or evidence in addition to or in substitution for the evidence before the Court of Summary Jurisdiction, or the magistrate if the appeal relates to a determination of a magistrate under section 50, may be given on an appeal.
- (7) On an appeal, the Supreme Court may:
 - (a) confirm the determination, with or without variation; or
 - (b) set aside the determination and, if it considers necessary, substitute its own determination.

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

- (1) This section applies if, as a result of a determination by either of the following, a public safety order is made, varied or rescinded:
 - (a) the Court of Summary Jurisdiction under section 52;
 - (b) the Supreme Court under section 53.
- (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.

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 determination 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 determination (unless the Court specifies otherwise).

65 Right of appeal

- (1) The Commissioner or an objector may appeal to the Supreme Court against a determination made under section 64(4).
- (2) An appeal lies as of right on a question of law or fact.
- (3) The appeal must be started within the time, and in accordance with the procedure, prescribed under the *Supreme Court Act*.
- (4) If an appeal is started, enforcement of the fortification removal order to which the notice of objection relates is stayed until proceedings in relation to the appeal end.
- (5) Fresh evidence or evidence in addition to or in substitution for the evidence before the Court of Summary Jurisdiction may be given on an appeal.
- (6) On an appeal, the Supreme Court may:
- (a) confirm the determination, with or without variation; or
 - (b) set aside the determination and, if it considers necessary, substitute its own determination.
- (7) If the appeal results in confirmation or variation of the fortification removal order, the period of time allowed for compliance with the order, as specified in the order, is taken to start on the day of the Supreme Court's determination (unless the Court specifies otherwise).

66 Notice of variation or revocation of fortification removal order

- (1) This section applies if, as a result of a determination by either of the following, a fortification removal order is varied or revoked by:
- (a) the Court of Summary Jurisdiction under section 64;
 - (b) the Supreme Court under section 65.

Note for subsection (1)

If a court mentioned in subsection (1) makes a fortification removal order (instead of varying or revoking a fortification removal order) under a section mentioned in subsection (1), section 62 applies to the order.

- (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 determination of the court is not started within the time prescribed under the *Supreme Court Act* as mentioned in section 65(3);
 - (iii) an appeal under section 65 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) determines a matter in relation to a control order, public safety order or fortification removal order including by:
 - (i) making an order; and
 - (ii) confirming an order, with or without variation; and
 - (iii) revoking or rescinding an order; or
 - (b) hears an appeal against a determination mentioned in paragraph (a).
- (2) In determining 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 a declaration made to, and the hearing of the application by, an eligible judge under Part 3;
 - (b) 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;
 - (c) an appeal against a determination of the Supreme Court made to, and the hearing of the appeal by, the Court of Appeal under Part 4;
 - (d) an application for the making of an authorisation order made to, and the hearing of the application by, the Court of Summary Jurisdiction under Part 5;
 - (e) 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;
 - (f) an appeal against a determination of a magistrate or the Court of Summary Jurisdiction made to, and the hearing of the appeal by, the Supreme Court under Part 5;

-
- (g) 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;
 - (h) 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;
 - (i) an appeal against a determination of the Court of Summary Jurisdiction made to, and the hearing of the appeal by, the Supreme Court under Part 6.
- (2) A determining authority 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 determining authority considers the classified information is criminal intelligence.
- (3) If the determining authority considers classified information is not criminal intelligence, the determining authority 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 determining authority 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 determining authority 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:

determining authority means an eligible judge, 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 made under section 18, control orders and fortification removal orders.

- (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).
- (3) Despite subsections (1) and (2), information in relation to a control order must not be entered in the register until after:
- (a) the last day on which the person to whom the order relates may, without the leave of the Supreme Court, appeal against the determination to make the order; or
 - (b) if the person to whom the order relates does appeal – the appeal is determined or withdrawn.
- (4) Information contained in the register may be provided to members of the public in any way approved by the Commissioner.
- (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.
 - (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.

(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 determination, declaration or order made under this Act or purportedly under this Act;
 - (b) proceedings or procedures under this Act or purportedly under this Act;

-
- (c) an act or omission made in the exercise, or purported 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 18 cannot be challenged or questioned in any proceedings.
 - (3) The validity and legality of a control order, public safety order or fortification removal order, or a variation of such an order, cannot be challenged or questioned in proceedings for an offence against this Act.
 - (4) This section is subject to Part 4, Division 2, Part 5, Division 3 and Part 6, Division 2.

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 (other than a person who is an eligible judge) 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.

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.

Part 8 Consequential amendments

88 Amendment of *Bail Act*

- (1) This section amends the *Bail Act*.

- (2) After section 7A(1)(da)

insert

(db) an offence against section 36, 37, 38 or 55 of the *Serious Crime Control Act*;

(dc) an offence against section 103A of the Criminal Code;

89 Amendment of Criminal Code

- (1) This section amends the Criminal Code.

- (2) Section 103A

repeal, substitute

103A Threats or reprisals relating to persons involved in criminal investigations or judicial proceedings or against public officers

- (1) A person must not do any of the following with the intention of inducing a person who is, or may be, involved in a criminal investigation or judicial proceedings, to act or not to act in a way that might influence the outcome of the investigation or proceedings:

- (a) stalk a person within the meaning of section 189;
- (b) cause or procure any physical injury to a person or property;
- (c) threaten or attempt to cause or procure any physical injury to a person or property;
- (d) cause detriment of any kind to a person.

Fault elements:

The person:

- (a) intentionally does an act mentioned in paragraph (a), (b), (c) or (d); and
- (b) intends to induce a person to act or not to act in a way that might influence the outcome of a criminal investigation or judicial proceedings; and
- (c) knows, or is reckless as to whether, the person is or may be involved in the investigation or proceedings.

Maximum penalty: Imprisonment for 7 years.

- (2) A person must not do any of the following on account of anything said or done by a person involved in a criminal investigation or judicial proceedings in good faith in the conduct of the investigation or proceedings:

- (a) stalk a person within the meaning of section 189;
- (b) cause or procure any physical injury to a person or property;
- (c) threaten or attempt to cause or procure any physical injury to a person or property;
- (d) cause detriment of any kind to a person.

Fault elements:

The person:

- (a) intentionally does an act mentioned in paragraph (a), (b), (c) or (d); and
- (b) has knowledge of the thing said or done by a person involved in a criminal investigation or judicial proceedings in the conduct of the investigation or proceedings.

Maximum penalty: Imprisonment for 7 years.

- (3) A person must not do any of the following with the intention of influencing the manner in which a public officer discharges or performs his or her official duties or functions:

- (a) stalk a person within the meaning of section 189;
- (b) cause or procure any physical injury to a person or property;
- (c) threaten or attempt to cause or procure any physical injury to a person or property;
- (d) cause detriment of any kind to a person.

Fault elements:

The person:

- (a) intentionally does an act mentioned in paragraph (a), (b), (c) or (d); and
- (b) intends to influence the manner in which a public officer discharges or performs his or her official duties or functions; and

- (c) knows, or is reckless as to whether, the person is a public officer.

Maximum penalty: Imprisonment for 7 years.

- (4) A person must not do any of the following on account of anything said or done by a public officer in good faith in the discharge or performance, or purported discharge or performance, of his or her official duties or functions:

- (a) stalk a person within the meaning of section 189;
- (b) cause or procure any physical injury to a person or property;
- (c) threaten or attempt to cause or procure any physical injury to a person or property;
- (d) cause detriment of any kind to a person.

Fault elements:

The person:

- (a) intentionally does an act mentioned in paragraph (a), (b), (c) or (d); and
- (b) has knowledge of the thing said or done by a public officer in good faith in the discharge or performance or purported discharge or performance of his or her official duties or functions.

Maximum penalty: Imprisonment for 7 years.

- (5) For this section:

- (a) a person is ***involved in a criminal investigation*** if the person is involved in such an investigation as a witness, victim or legal practitioner or is otherwise assisting police with their inquiries; and
- (b) a person is ***involved in judicial proceedings***, whether the proceedings are in progress or are proceedings that are to be, or may be, instituted at a later time, if the person is:
 - (i) a judicial officer or other officer at the proceedings; or
 - (ii) involved in the proceedings as a witness, juror (whether the person has been sworn as a juror or not) or legal practitioner.

(6) In this section:

public officer includes the following:

- (a) a person appointed to public office by the Administrator or a minister;
- (b) a judicial officer;
- (c) a member of the Legislative Assembly;
- (d) a public sector employee;
- (e) a police officer;
- (f) any other officer or employee of the Territory;
- (g) a member of a Territory instrumentality or the governing body of a Territory instrumentality or an officer or employee of a Territory instrumentality;
- (h) a member of a local government body or an officer or employee of a local government body;
- (i) a person who personally performs work for the Territory, a Territory instrumentality or a local government body as a contractor or an employee of a contractor or otherwise directly or indirectly on behalf of a contractor.

Territory instrumentality means:

- (a) an Agency or instrumentality of the Territory; or
- (b) any body (whether or not incorporated) that is established by or under an Act and:
 - (i) is comprised of persons, or has a governing body comprised of persons, a majority of whom are appointed by the Administrator, a minister or an Agency or instrumentality of the Territory; or
 - (ii) is subject to control or direction by a minister.

(3) Schedule 1, after "Section 66 (Offences relating to riots)"

insert

Section 103A (Threats or reprisals relating to persons involved in criminal investigations or judicial proceedings or against public officers)

90 Amendment of *Information Act*

(1) This section amends the *Information Act*.

(2) After section 49

insert

49AA Criminal intelligence

Information is exempt under section 44 if, under the *Serious Crime Control Act*, the information has been classified by the Commissioner of Police as criminal intelligence.

91 Expiry of Part

This Part expires on the day after this section commences.