

WESTERN AUSTRALIA

LEGISLATIVE COUNCIL

AMENDMENTS AND SCHEDULES

Supplementary Notice Paper No. 230
Issue No. 4

WEDNESDAY, 16 MAY 2012

CRIMINAL ORGANISATIONS CONTROL BILL 2011 [230-2]

When in committee on the *Criminal Organisations Control Bill 2011*:

Clause 3

Hon Giz Watson: To move –

19/3 Page 4, lines 15 to 17 — To delete the lines.

Hon Sue Ellery: To move –

1/3 Page 4, lines 28 and 29 — To delete “a judge or retired judge currently designated under section 26” and insert —

the Commissioner of the Corruption and Crime Commission

Hon Giz Watson: To move –

20/3 Page 4, line 28 — To delete “or retired judge”.

Parliamentary Secretary representing the Attorney General: To move –

2/3 Page 4, lines 30 and 31 — To delete the lines and insert —

firearm —

- (a) has the meaning given in the *Firearms Act 1973* section 4; and
- (b) includes ammunition as defined in that section;

Comment [GH1]: Comment
SNP 230 Issue 1 amendment by Hon Sue Ellery [1/3]
SNP 230 Issue 2 amendments by Parliamentary Secretary representing the Attorney General [2/3 – 18/LT]
SNP 230 Issue 3 amendments by Hon Giz Watson [19/3 – 33/54]

Clause 4

Parliamentary Secretary representing the Attorney General: To move –

3/4 Page 9, lines 2 and 3 — To delete “organisations and other persons who engage in serious criminal activity.” and insert —

organisations.

Clause 7

Hon Giz Watson: To move –

21/7 Page 11, after line 20 — To insert —

- (7) The designated authority must undertake all reasonably practicable steps to notify the respondent of the application.

Clause 8

Hon Giz Watson: To move –

22/8 Page 11, after line 28 — To insert —

- (b) setting out the grounds on which the application is sought; and
(c) setting out the information supporting those grounds; and

Clause 9

Hon Giz Watson: To move –

23/9 Page 12, line 16 — To delete “do not”.

Clause 10

Hon Giz Watson: To move –

24/10 Page 13, lines 9 to 13 — To delete the lines and insert —

- (3) Any member of the respondent, and any other person who may be directly affected (whether or not adversely) by the outcome of the application, may be present and, with the leave of the designated authority, make submissions in relation to the application at the hearing, but subject to subsection (4).

Parliamentary Secretary representing the Attorney General: To move –

4/10 Page 13, line 21 — To delete “either” and insert —

any

Clause 14

Hon Giz Watson: To move –

25/14 Page 16, after line 17 — To insert —

- (iii) the respondent or representatives of the organisation

Clause 25

Parliamentary Secretary representing the Attorney General: To move –

5/25 Page 23, lines 7 to 14 — To delete the lines and insert —

- (1) If the declaration relating to the declared criminal organisation identified in an interim control order or control order in accordance with section 60(1)(c) expires or is revoked, the order ceases to have effect on that expiry or revocation.

Clause 26

Hon Giz Watson: To move –

26/26 Page 23, line 21 — To delete “or retired judges”.

Hon Giz Watson: To move –

27/26 Page 23, lines 23 and 24 — To delete “or retired judges”.

Hon Giz Watson: To move –

28/26 Page 23, line 25 — To delete “or retired judge”.

Hon Giz Watson: To move –

29/26 Page 23, line 27 — To delete “or retired judge”.

Hon Giz Watson: To move –

30/26 Page 24, lines 1 and 2 — To delete “and, in the case of a retired judge, the terms and conditions of appointment of a designated authority”.

Clause 33

Parliamentary Secretary representing the Attorney General: To move –

6/33 Page 27, lines 4 to 9 — To delete the lines and insert —

- (1) This Part provides for the making of control orders in relation to persons who are members of a declared criminal organisation and persons who have an association with a declared criminal organisation.

Clause 37**Hon Giz Watson:** To move –

31/37 Page 29, lines 29 and 30 — To delete the lines.

Hon Giz Watson: To move –

32/37 Page 29, after line 31 — To insert —

- (2) If reasonable attempts were made to notify the person to whom the application relates, without success, the hearing can be held without that person.

Clause 42**Parliamentary Secretary representing the Attorney General:** To move –

7/42 Page 32, lines 24 to 29 — To delete the lines and insert —

- (c) include the information that section 60(1)(c) requires to be included in a control order; and

Clause 45**Parliamentary Secretary representing the Attorney General:** To move –

8/45 Page 36, line 17 — To delete “section 25(2).” and insert —

section 25(1).

Clause 54**Hon Giz Watson:** To move –

33/54 Page 42, after line 18 — To insert —

- (6) The application must be accompanied by information about the right of the person to whom the application relates to object to the application under Section 55.

Clause 60**Parliamentary Secretary representing the Attorney General:** To move –

9/60 Page 48, line 6 — To delete “if the order is made under section 57(2)(a), (b) or (c).”.

Parliamentary Secretary representing the Attorney General: To move –

10/60 Page 49, lines 1 to 3 — To delete the lines and insert —

- (h) set out an explanation of the circumstances in which the order might cease to have effect under section 25(1); and

Clause 62**Parliamentary Secretary representing the Attorney General:** To move –

11/62 Page 50, line 11 — To delete “section 25(2).” and insert —

section 25(1).

Clause 80**Parliamentary Secretary representing the Attorney General:** To move –

12/80 Page 63, after line 2 — To insert —

- (5A) If an interim control order is varied under section 50, or a control order is varied under section 66 or 68, and the effect of the variation is to include or remove a condition that the controlled person is prohibited from carrying on a prescribed activity, then this section applies as follows —
- (a) if the effect of the variation is to include that condition —
 - (i) the prohibition on the controlled person carrying on the prescribed activity takes effect when the variation takes effect; and
 - (ii) the suspension of an authorisation or an application for an authorisation in relation to the prescribed activity takes effect when the variation takes effect; and
 - (iii) the prohibition on the controlled person applying for, or continuing with any existing application for, any authorisation to carry on the prescribed activity takes effect when the variation takes effect;
 - (b) if the effect of the variation is to remove that condition —
 - (i) the prohibition on the controlled person carrying on the prescribed activity ceases when the variation takes effect; and
 - (ii) the suspension of an authorisation or an application for an authorisation in relation to the prescribed activity ceases when the variation takes effect; and
 - (iii) the prohibition on the controlled person applying for, or continuing with any existing application for, any authorisation to carry on the prescribed activity ceases when the variation takes effect.

Clause 84**Parliamentary Secretary representing the Attorney General**

13/84 Page 65, line 22 to page 66, line 17 — To oppose the clause.

New Clause 84**Parliamentary Secretary representing the Attorney General:** To move –

14/NC84 Page 65, after line 21 — To insert —

84. Dealing with things surrendered or seized: firearms, firearms licences and weapons

- (1) If a firearm or weapon is surrendered under section 82 or seized under section 83 —
 - (a) the firearm or weapon is forfeited to the State; and
 - (b) the *Criminal and Found Property Disposal Act 2006* applies to and in relation to the firearm or weapon as if —
 - (i) the firearm or weapon were property that has been seized in the course of a criminal investigation and has become forfeited property within the meaning of that Act; and
 - (ii) the interim control order or control order that prohibits the controlled person to whom the order relates from possessing the firearm or weapon were an order that ordered the forfeiture of the firearm or weapon to the State.
- (2) If a firearms licence is surrendered under section 82 or seized under section 83 —
 - (a) the Commissioner of Police must destroy the licence as soon as practicable; and
 - (b) the destruction of the licence is to be treated as a cancellation of the licence under the *Firearms Act 1973* section 20(4).
- (3) However, the Commissioner of Police must not exercise the powers in subsection (1) or (2) in relation to the surrendered or seized firearm, firearms licence or weapon —
 - (a) if the surrender or seizure is by virtue of an interim control order, before a control order confirming the interim control order is made; and
 - (b) if a control order confirming the interim control order is made, or if the surrender or seizure is by virtue of a control order, before the expiration of the time allowed for appealing against the control order or, if an appeal is lodged within that time, before the appeal is concluded.
- (4) If any of the things set out in subsection (5) (a *relevant event*) occurs —
 - (a) the Commissioner of Police must hold the surrendered or seized firearm, firearms licence or weapon in safe custody until it is reclaimed by the person lawfully entitled to possess it or it may be otherwise lawfully disposed of, whichever occurs first; and
 - (b) the person lawfully entitled to possess the firearm, firearms licence or weapon may reclaim it from the Commissioner of Police, unless it has been sooner lawfully disposed of; and
 - (c) if the firearm, firearms licence or weapon is not reclaimed within one month after the relevant event occurs, the Commissioner of Police may —
 - (i) in the case of a firearm, dispose of the firearm under the *Firearms Act 1973* section 33 as if the owner of the firearm cannot be found; or
 - (ii) in the case of a firearms licence, exercise the power in subsection (2); or
 - (iii) in the case of a weapon, make a direction under the *Weapons Act 1999* section 18(1) as if the weapon had been forfeited to the State under that Act.

- (5) The following are the relevant events referred to in subsection (4) —
- (a) in the case of an interim control order —
 - (i) the order is varied to remove the firearms condition or, as the case requires, the condition prohibiting the person to whom the order relates from possessing a weapon;
 - (ii) the application for a control order confirming the interim control order is withdrawn or dismissed;
 - (iii) the interim control order is revoked under section 47(2)(a) or 56(1)(b);
 - (iv) the interim control order ceases to have effect under section 25(1);
 - (b) in the case of a control order, on an appeal under section 64 —
 - (i) the decision of the court to make the order is reversed; or
 - (ii) the order is varied under section 66 to remove the firearms condition or, as the case requires, the condition prohibiting the person to whom the order relates from possessing a weapon.

Clause 85

Parliamentary Secretary representing the Attorney General: To move –

15/85 Page 66, line 19 to page 67, line 12 — To delete the lines and insert —

- (1) If an authorisation (other than a firearms licence or an authorisation to which an order made under section 59(2)(c) applies) is surrendered under section 82 or seized under section 83 —
 - (a) the Commissioner of Police must hold the authorisation in safe custody until it is reclaimed by the holder of the authorisation or it may be otherwise lawfully disposed of, whichever occurs first; and
 - (b) when the relevant interim control order or control order ceases to be in force, the holder of the authorisation may reclaim it from the Commissioner of Police, unless it has been sooner lawfully disposed of; and
 - (c) if the authorisation is not reclaimed within one month after the relevant interim control order or control order ceases to be in force, the Commissioner of Police must destroy the authorisation as soon as practicable.
- (2) The destruction of an authorisation under subsection (1)(c) has no effect on the validity of the authorisation.

Parliamentary Secretary representing the Attorney General: To move –

16/85 Page 67, after line 33 — To insert —

- (5) If an interim control order is varied under section 50, or a control order is varied under section 66 or 68, and the effect of the variation is to remove a prohibition of the kind referred to in section 82(1), this section applies as if the references in subsection (1)(b) and (c) and (4)(a)(ii) to the relevant interim control order or control order ceasing to be in force were references to the prohibition ceasing to have effect.

Clause 91**Parliamentary Secretary representing the Attorney General:** To move –

17/91 Page 69, line 27 — To delete “section 25(2); or” and insert —

section 25(1); or

Clause 181**Parliamentary Secretary representing the Attorney General:** To move –

34/181 Page 131, lines 26 to 30 — To delete the lines and insert —

- (ii) in association with one or more persons who, at the time of the commission of the offence, were members of a declared criminal organisation (whether or not those persons were also convicted of the offence), but only if the offender knew, at the time of the commission of the offence, that one or more of those persons were members of a declared criminal organisation; or

Postponed Clause 14**Parliamentary Secretary representing the Attorney General:** To move –

35/14 Page 16, after line 18 — To insert —

- (aa) the designated authority must, as soon as practicable, provide a copy of the authority’s reasons for the decision to the respondent or the respondent’s representative, but only if the respondent or the respondent’s representative, before the hearing of the application for the declaration ends —
 - (i) requests to be provided with a copy; and
 - (ii) provides an address to which the copy may be sent;
- and

Postponed Clause 27**Parliamentary Secretary representing the Attorney General:** To move –

36/27 Page 24, after line 12 — To insert —

- (aa) in the case of a judge, the period of designation set out in the judge’s instrument of appointment expires, but a judge may be designated for a further term; or
- (ab) in the case of a retired judge, the period of designation set out in the retired judge’s instrument of appointment (which must not exceed 5 years) expires, but a retired judge may be designated for a further term; or

Postponed Clause 54

Parliamentary Secretary representing the Attorney General: To move –

37/54 Page 42, lines 15 to 17 — To delete the lines and insert —

- (4) The following must be served with the application —
 - (a) a copy of the affidavit or affidavits that accompanied the application for the control order;
 - (b) a written notice setting out an explanation of —
 - (i) the right to object to the making of a control order at the hearing of the application for the control order; and
 - (ii) the procedure to be followed in notifying the court before the hearing of the grounds of objection in accordance with section 55.

Long Title

Parliamentary Secretary representing the Attorney General: To move –

18/LT Page 1, the first bullet point — To delete “**associates and certain other persons who engage in serious criminal activity,**” and insert —

associates,

[If Bill is recommitted for the purpose of further consideration of Clause 26]

Clause 26

Parliamentary Secretary representing the Attorney General: To move –

alt26 Page 24, after line 3 — To insert —

- (4) The period of designation of a retired judge must not exceed 5 years, but a retired judge may be designated for a further term.

