



Queensland

# **Criminal Law (Criminal Organisations Disruption) Amendment Act 2013**

**Act No. 45 of 2013**





## Queensland

# Criminal Law (Criminal Organisations Disruption) Amendment Act 2013

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Queensland

## **Criminal Law (Criminal Organisations Disruption) Amendment Act 2013**

**Act No. 45 of 2013**

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**An Act to amend the Bail Act 1980, the Crime and Misconduct Act 2001, the Criminal Code, the Penalties and Sentences Act 1992, the Police Powers and Responsibilities Act 2000 and the Tow Truck Act 1973 for particular purposes, to make a regulation under the Criminal Code and to amend the Crime and Misconduct Regulation 2005 for particular purposes**

**[Assented to 17 October 2013]**

[s 1]

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**The Parliament of Queensland enacts—**

## **Part 1 Preliminary**

### **1 Short title**

This Act may be cited as the *Criminal Law (Criminal Organisations Disruption) Amendment Act 2013*.

## **Part 2 Amendment of Bail Act 1980**

### **2 Act amended**

This part amends the *Bail Act 1980*.

### **3 Amendment of s 6 (Definitions)**

Section 6—

*insert—*

*criminal organisation* see the Criminal Code, section 1.

*participant*, in a criminal organisation, see the Criminal Code, section 60A.

### **4 Amendment of s 16 (Refusal of bail)**

(1) Section 16—

*insert—*

(3A) If the defendant is a participant in a criminal organisation, the court or police officer must—

- (a) refuse to grant bail unless the defendant shows cause why the defendant's detention in custody is not justified; and
  - (b) if bail is granted or the defendant is released under section 11A—
    - (i) require the defendant to surrender the defendant's current passport; and
    - (ii) include in the order a statement of the reasons for granting bail or releasing the defendant.
- (3B) If the defendant is required to surrender the defendant's current passport under subsection (3A)(b)(i), the court or police officer must order that the defendant be detained in custody—
- (a) until the court or police officer is satisfied about whether the defendant is the holder of a current passport; and
  - (b) if the defendant is the holder of a current passport—the passport is surrendered.
- (3C) For subsection (3A), it does not matter whether the offence with which the defendant is charged is an indictable offence, a simple offence or a regulatory offence.
- (3D) Subsection (3A) does not apply if the defendant proves that the criminal organisation is not an organisation that has, as 1 of its purposes, the purpose of engaging in, or conspiring to engage in, criminal activity.
- (2) Section 16(4), after (3)—  
*insert—*  
or (3A)

[s 5]

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## **Part 3** **Amendment of Crime and Misconduct Act 2001**

### **5 Act amended**

This part amends the *Crime and Misconduct Act 2001*.

### **6 Replacement of ch 2, pt 2 hdg (Major crime)**

Chapter 2, part 2, heading—

*omit, insert—*

## **Part 2** **Crime**

### **7 Replacement of ch 2, pt 2, div 1 hdg (Major crime function)**

Chapter 2, part 2, division 1, heading—

*omit, insert—*

## **Division 1** **Crime function**

### **8 Replacement of s 25 (Commission's major crime function)**

Section 25—

*omit, insert—*

### **25 Commission's crime function**

The commission has a function (its *crime function*)—

- (a) to investigate major crime referred to it, under division 2, by the reference committee; and
- (b) to investigate, under an authorisation under section 55F, incidents a criminal organisation or participants in criminal organisations have engaged in, or are

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planning to engage in, that threatened or may threaten public safety.

**9 Amendment of s 32 (Police task forces and other operational agreements)**

Section 32(3), ‘section 275(b)’—

*omit, insert—*

section 275(d)

**10 Amendment of s 53 (Intelligence functions)**

(1) Section 53(a), after ‘activities’—

*insert—*

, including specific intelligence operations authorised by the reference committee,

(2) Section 53(b), (c) and (d)—

*renumber* as section 53(c), (d) and (e).

(3) Section 53—

*insert—*

(b) to hold intelligence function hearings under an authorisation under section 55F;

**11 Insertion of new ch 2, pt 4, divs 2A–2B**

After chapter 2, part 4, division 2—

*insert—*

**Division 2A Particular authorisations  
by reference committee**

**55A Authorising the commission**

(1) The section applies if the reference committee is satisfied that there are reasonable grounds to

[s 11]

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suspect that—

- (a) a criminal organisation, or a participant in a criminal organisation, has engaged in, is engaging in, or is planning to engage in, criminal activity; or
  - (b) a person, regardless of whether the person holds an appointment, has engaged in, is engaging in, or is planning to engage in misconduct to support or help a criminal organisation or a participant in a criminal organisation.
- (2) The reference committee may authorise the commission to undertake a specific intelligence operation, including by holding hearings.
  - (3) The authorisation must be in writing and identify—
    - (a) the criminal organisation or participant to be investigated by the commission; and
    - (b) the suspected criminal activity or misconduct; and
    - (c) the purpose of the intelligence operation.
  - (4) The authorisation may relate to any circumstances implying, or any allegations, that particular criminal activity or misconduct, is reasonably suspected.
  - (5) The authorisation may be made by the reference committee—
    - (a) on its own initiative; or
    - (b) if asked by the assistant commissioner, crime or the assistant commissioner, misconduct.
  - (6) In this section—

***criminal activity*** means any act or omission that involves the commission of an offence.



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*hold an appointment* means hold an appointment in a unit of public administration.

**55B Matters to which the reference committee must consider before granting an authorisation**

- (1) The reference committee may authorise the commission to undertake a specific intelligence operation under section 55A only if it is satisfied—
  - (a) as required under the section; and
  - (b) it is in the public interest to authorise the commission to undertake the specific intelligence operation.
- (2) In considering the public interest, the reference committee may also have regard to the likely effectiveness of an investigation into criminal activity or misconduct without the use of powers available to the commission under this division.
- (3) In this section—

*criminal activity* means any act or omission that involves the commission of an offence.

**55C Reference committee may give commission directions about intelligence operations**

- (1) The reference committee may give the commission directions imposing limitations on the commission's intelligence operation under an authorisation under section 55A, including limitations on the exercise of the commission's powers for the operations.
- (2) The reference committee may also direct the commission to end a specific intelligence operation under an authorisation if the committee considers—

[s 11]

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- (a) it may be more appropriate for another entity to undertake the intelligence operation; or
  - (b) it may be more effective for another entity to undertake the intelligence operation; or
  - (c) undertaking an intelligence operation is not a justifiable use of the commission's resources; or
  - (d) the commission undertaking an intelligence operation is not in the public interest.
- (3) The commission must comply with a direction given under subsection (1) or (2).
  - (4) The reference committee may amend the terms of an authorisation on its own initiative or if asked by the assistant commissioner, crime or the assistant commissioner, misconduct.
  - (5) To remove any doubt, it is declared that subsection (2)(d) is not limited by section 55B(2).

## **Division 2B      Public safety**

### **55D Immediate response function to threats to public safety involving criminal organisations**

The commission has an immediate response function in relation to an incident that threatened or may threaten public safety under an authorisation under section 55F.

### **55E How commission performs its immediate response function**

The commission performs its immediate response function by exercising its powers—

- (a) to undertake crime investigations as authorised under section 55F; and
- (b) to hold intelligence function hearings under authorisations under section 55F.

### **55F Authorising the commission**

- (1) This section applies if the chairperson is satisfied—
  - (a) there are reasonable grounds to suspect a criminal organisation or a participant in a criminal organisation has engaged in, or is planning to engage in, an incident that threatened or may threaten public safety; and
  - (b) it is in the public interest for the commission to conduct a crime investigation or hold an intelligence function hearing in response to, or to prevent, the threat to public safety.
- (2) The chairperson may authorise the crime investigation or the holding of an intelligence hearing (or both) in response to, or to prevent, the threat to public safety.
- (3) The authorisation must be in writing and identify—
  - (a) the incident or anticipated incident; and
  - (b) the criminal organisation or participant; and
  - (c) the purpose of the crime investigation or intelligence function hearing.

## **12 Amendment of s 75A (Application of div 2A)**

Section 75A, from 'or'—

*omit, insert*—

[s 13]

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, a misconduct investigation or an intelligence function hearing.

**13 Amendment of s 75B (Power to require immediate production)**

Section 75B(1), note, after ‘crime investigation’—

*insert—*

or intelligence function hearing

**14 Amendment of s 82 (Notice to attend hearing—general)**

(1) Section 82(1)—

*insert—*

(c) for an intelligence function hearing—

(i) to give evidence; or

(ii) to produce a stated document or thing.

(2) Section 82(2)(a)(iii)—

*omit, insert—*

(iii) a misconduct investigation; or

(iv) the intelligence function; and

(3) Section 82(4)—

*insert—*

(c) for an attendance notice issued in the context of an intelligence function hearing—any matter that relates to the matter for which the attendance notice was issued.

(4) Section 82(6)—

*omit, insert—*

(6) A prescribed person’s fear, whether genuinely held or not, of—

- 
- (a) personal physical harm or damage to the person's property; or
  - (b) physical harm to someone else, or damage to the property of someone else, with whom the person has a connection or bond;

is not a reasonable excuse to fail to comply with the attendance notice for a hearing in relation to a crime investigation or the intelligence function if the investigation or function relates to a criminal organisation or a participant in a criminal organisation.

- (7) If the commission hearing is being held under an authorisation under section 55F, the chairperson may issue an attendance notice requiring a person to attend immediately at the commission hearing at a stated place.
- (8) This section, other than subsection (7), is subject to section 85.
- (9) In this section—

*prescribed person* means a person who is a participant in a criminal organisation.

**15 Amendment of s 85 (Notices requiring immediate attendance may be issued only by or with the approval of a Supreme Court judge)**

- (1) Section 85(2)—

*insert—*

- (c) for a notice issued in the context of an intelligence function hearing under an authorisation under section 55A, delay in attendance might result in the loss of an opportunity to obtain timely intelligence—
  - (i) in advance of a significant event; or

[s 16]

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- (ii) that may help prevent a risk to public safety.

*Note—*

An attendance notice issued under section 82(7) that requires the immediate attendance of someone at a commission hearing does not require the court's approval under this section.

- (2) Section 85(3)—

*omit, insert—*

- (3) Subsection (3A) applies to an attendance notice issued in the context of a crime investigation or misconduct investigation or the performance of the intelligence function under an authorisation under section 55A.

- (3A) The notice need not state the general nature of the matters about which the person may be questioned if the chairperson is satisfied that, in the particular circumstances of the investigation or the performance of the function, stating the matters would prejudice the effectiveness of the investigation or the performance of the function.

## **16 Amendment of s 167 (Arrest warrant application)**

- (1) Section 167(1), 'Supreme Court judge'—

*omit, insert—*

'magistrate'.

- (2) Section 167(3). 'judge'—

*omit, insert—*

'magistrate'.

## **17 Amendment of s 168 (Issue of arrest warrant)**

Section 168(1), 'judge'—

*omit, insert—*

---

‘magistrate’.

**18 Amendment of s 176 (Commission may hold hearings)**

Section 176—

*insert—*

- (3) The commission may hold a hearing in relation to the performance of its intelligence function if the hearing is permitted under an authorisation under section 55A or 55F.

**19 Amendment of ch 4, pt 2, div 2, sdiv 1, hdg (Crime investigations and witness protection function)**

Chapter 4, part 2, division 2, subdivision 1, heading, from ‘and’—  
*omit, insert—*

**and intelligence and witness protection functions**

**20 Amendment of s 184 (Application of sdiv 1)**

- (1) Section 184(b)—

*renumber* as section 184(c).

- (2) Section 184—

*insert—*

- (b) an intelligence function hearing; or

**21 Amendment of s 185 (Refusal to produce—claim of reasonable excuse)**

- (1) Section 185—

*insert—*

- (3A) A prescribed person’s fear, whether genuinely held or not, of—

[s 22]

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- (a) personal physical harm or damage to the person's property; or
- (b) physical harm to someone else, or damage to the property of someone else, with whom the person has a connection or bond;

is not a reasonable excuse to fail to comply with an attendance notice or requirement made under section 75B if the hearing relates to a criminal organisation or a participant in a criminal organisation.

(2) Section 185—

*insert—*

(10) In this section—

*prescribed person* means a person who is a participant in a criminal organisation.

## **22 Amendment of ch 4, pt 2, div 3, sdiv 1 hdg (Crime investigations and witness protection function)**

Chapter 4, part 2, division 3, subdivision 1, heading, from 'and'—  
*omit, insert—*

**and intelligence and witness protection functions**

## **23 Amendment of s 189 (Application of sdiv 1)**

(1) Section 189(b)—

*renumber* as section 189(c).

(2) Section 189—

*insert—*

(b) an intelligence function hearing; or

## **24 Amendment of s 190 (Refusal to answer question)**

(1) Section 190(1), after 'officer'—



*insert—*

, unless the person has a reasonable excuse

(2) Section 190—

*insert—*

(4) A prescribed person's fear, whether genuinely held or not, of—

(a) personal physical harm or damage to the person's property; or

(b) physical harm to someone else, or damage to the property of someone else, with whom the person has a connection or bond;

is not a reasonable excuse to fail to answer a question if the investigation or intelligence hearing relates to a criminal organisation or a participant in a criminal organisation.

(5) In this section—

*prescribed person* means a person who is a participant in a criminal organisation.

**25 Amendment of ch 4, pt 2, div 4, sdiv 1 hdg (Crime investigations and witness protection function)**

Chapter 4, part 2, division 4, subdivision 1, heading, from 'and'—  
*omit, insert—*

**and intelligence and witness protection functions**

**26 Amendment of s 193 (Application of sdiv 1)**

(1) Section 193(b)—

*renumber* as section 193(c).

(2) Section 193—

*insert—*

(b) an intelligence function hearing;

[s 27]

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**27 Amendment of s 197 (Restriction on use of privileged answers, documents, things or statements disclosed or produced under compulsion)**

Section 197(3)—

*insert—*

- (c) if the proceeding is a proceeding, other than a proceeding for the prosecution of an offence, under the Confiscation Act.

**28 Amendment of s 198 (Contempt of person conducting commission hearing)**

Section 198—

*insert—*

- (4) To remove any doubt, it is declared that the following contraventions relating to a hearing may be certified in writing to the Supreme Court under section 199 as a contempt of the presiding officer—
  - (a) a failure by a person, under section 183, to take an oath when required by the presiding officer;
  - (b) a failure by a person, under section 185 or 188, to produce a stated document or thing at a commission hearing under an attendance notice or a requirement made under section 75B without reasonable excuse;
  - (c) a failure by a person, under section 190 or 192, to answer a question put to the person at the hearing by the presiding officer without reasonable or lawful excuse.

**29 Insertion of new s 198A**

After section 198—

*insert—*

### **198A Person in contempt may be detained**

- (1) If the presiding officer expresses an intention at the hearing to certify the contempt in writing to the Supreme Court, the presiding officer may, during the hearing, direct a police officer to detain the person for the purpose of bringing the person before the Supreme Court to be dealt with according to law.
- (2) If the person is detained under subsection (1), the person must be brought before the court as soon as practicable.

## **30 Amendment of s 199 (Punishment of contempt)**

Section 199—

*insert—*

- (8A) However, if—
  - (a) the contempt that is certified is—
    - (i) a failure by a person, under section 183, to take an oath when required by the presiding officer; or
    - (ii) a failure by a person, under section 185 or 188, to produce a stated document or thing at a commission hearing under an attendance notice or a requirement made under section 75B without reasonable excuse; or
    - (iii) a failure by a person, under section 190 or 192, to answer a question put to the person at the hearing by the presiding officer without reasonable or lawful excuse; and
  - (b) the court is satisfied the person has committed the contempt;

[s 30]

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the court must punish the person in contempt by imprisonment to be served wholly in a corrective services facility.

- (8B) The minimum punishment the court must impose is—
- (a) for a first contempt—imprisonment for the term decided by the court; or
  - (b) for a second contempt relating to a hearing dealing with the same subject matter as that dealt with in a hearing in which the person's contempt was first certified—2 years and 6 months imprisonment; or
  - (c) for a third or subsequent contempt relating to a hearing dealing with the same subject matter as that dealt with in at least 2 hearings in each of which the person's contempt was certified—5 years imprisonment.
- (8C) The maximum punishment the court may impose is at the discretion of the court.
- (8D) A person punished by imprisonment under subsection (8A) may be brought before the commission to ascertain whether the person wishes to purge the contempt.
- (8E) A person imprisoned under subsection (8A) may be brought before the Supreme Court, on the person's or the commission's application, for a declaration that the person has purged the contempt.
- (8F) The court may order the person's discharge from prison before the end of the term—
- (a) if it is satisfied that the person has purged the contempt; and

- (b) it has heard the commission's submissions in relation to the application and the person's discharge from prison.

**31 Amendment of s 201 (Commission must give evidence to defence unless court certifies otherwise)**

Section 201—

*insert—*

- (1A) This section does not apply to evidence obtained by the commission at an intelligence function hearing.

**32 Amendment of s 205 (Legal assistance for crime investigations)**

Section 205—

*insert—*

- (1A) This section does not apply to crime investigations authorised under section 55F.

**33 Amendment of s 270 (Delegation—chairperson)**

Section 270(2)—

*omit, insert—*

- (2) However—
- (a) the chairperson's powers under section 55F or 82(7), may only be delegated to the assistant commissioner, crime; and
- (b) the chairperson's powers under section 272 may only be delegated to an assistant commissioner.

**34 Amendment of s 275 (Functions of reference committee)**

- (1) Section 275(b) and (c)—

[s 35]

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*renumber* as section 275(c) and (d).

(2) Section 275—

*insert*—

- (b) to authorise the commission, as provided under chapter 2, part 4, division 2A, to undertake specific intelligence operations;

**35 Amendment of s 277 (Reference committee may obtain information from commission)**

(1) Section 277(1)(a), from ‘major crime’—

*omit, insert*—

—

- (i) major crime; or  
(ii) an authorisation under section 55A to undertake specific intelligence operations, including any hearing held under the authorisation; and

(2) Section 277—

*insert*—

- (2A) The assistant commissioner, misconduct must keep the reference committee informed of the general conduct of the assistant commissioner’s operations in the performance of the commission’s function in relation to authorisations under section 55A to undertake specific intelligence operations if the operation involves suspected misconduct.

(3) Section 277(3)(a), after ‘major crime’—

*insert*—

- or an authorisation under section 55A to undertake specific intelligence operations under the authorisation; and

(4) Section 277—

*insert—*

(4A) Subsection (4B) applies if the reference committee asks the assistant commissioner, misconduct to give it information concerning a specific intelligence operation authorised under section 55A if the operation involves suspected misconduct.

(4B) The assistant commissioner, misconduct must comply with the request and give the help the reference committee needs to consider the information.

**36 Amendment of s 278 (Membership of reference committee)**

(1) Section 278(1)—

*insert—*

(ea) subject to subsection (1B), the assistant commissioner, misconduct;

(2) Section 278—

*insert—*

(1B) The assistant commissioner, misconduct is a member of the reference committee only when the committee is performing a function that relates to an authorisation under section 55A for a matter involving suspected misconduct.

**37 Amendment of s 348 (Regulation-making power)**

Section 348(2)—

*omit, insert—*

(2) Without limiting subsection (1), a regulation may—

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- (a) provide for—
  - (i) procedures to be followed in proceedings before the commission; or
  - (ii) procedures to be observed by commission officers and other persons in performing the commission's functions or exercising the commission's powers; or
- (b) declare an entity to be a criminal organisation.

## 38 Insertion of new s 348A

Chapter 7—

*insert—*

### **348A Criteria for recommending an entity be declared a criminal organisation**

- (1) In deciding whether to recommend an amendment of the *Crime and Misconduct Regulation 2005* to declare an entity to be a criminal organisation, the Minister may have regard to the following matters—
  - (a) any information suggesting a link exists between the entity and serious criminal activity;
  - (b) any convictions recorded in relation to—
    - (i) current or former participants in the entity; or
    - (ii) persons who associate, or have associated, with participants in the entity;
  - (c) any information suggesting current or former participants in the entity have been, or are, involved in serious criminal activity (whether directly or indirectly and whether



or not the involvement has resulted in any convictions);

- (d) any information suggesting participants in an interstate or overseas chapter or branch (however described) of the entity have as their purpose, or 1 of their purposes, organising, planning, facilitating, supporting or engaging in serious criminal activity;
- (e) any other matter the Minister considers relevant.

(2) In this section—

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

**serious criminal activity** see the *Criminal Organisation Act 2009*, section 6.

**participant**, in an entity, means a person who—

- (a) (whether by words or conduct, or in any other way) asserts, declares or advertises his or her membership of, or association with, the entity; or
- (b) (whether by words or conduct, or in any other way) seeks to be a member of, or to be associated with, the entity; or
- (c) has attended more than 1 meeting or gathering of persons who participate in the affairs of the entity in any way; or
- (d) has taken part on any 1 or more occasions in the affairs of the entity in any other way.

### 39 Amendment of sch 2 (Dictionary)

(1) Schedule 2—

*insert—*

[s 39]

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***criminal organisation*** means—

- (a) an organisation of 3 or more persons—
  - (i) who have as their purpose, or 1 of their purposes, engaging in, organising, planning, facilitating, supporting, or otherwise conspiring to engage in, serious criminal activity as defined under the *Criminal Organisation Act 2009*; and
  - (ii) who, by their association, represent an unacceptable risk to the safety, welfare or order of the community; or
- (b) a criminal organisation under the *Criminal Organisation Act 2009*; or
- (c) an entity declared under a regulation to be a criminal organisation.

***intelligence function hearing*** means a hearing authorised under section 55A or 55F(2).

***participant***, in a criminal organisation, means—

- (a) if the organisation is a body corporate—a director or officer of the body corporate; or
- (b) a person who (whether by words or conduct, or in any other way) asserts, declares or advertises his or her membership of, or association with, the organisation; or
- (c) a person who (whether by words or conduct, or in any other way) seeks to be a member of, or to be associated with, the organisation; or
- (d) a person who attends more than 1 meeting or gathering of persons who participate in the affairs of the organisation in any way; or
- (e) a person who takes part in the affairs of the organisation in any other way;

but does not include a lawyer acting in a professional capacity.

***specific intelligence operation*** means a specific intelligence operation authorised by the reference committee under section 55A.

- (2) Schedule 2, definition *privilege*, paragraph (a), ‘or the witness protection function’—

*omit, insert—*

or the intelligence or witness protection functions—

## Part 4                      Amendment of Criminal Code

### 40      Code amended

This part amends the Criminal Code.

### 41      Amendment of s 1 (Definitions)

Section 1, definition *criminal organisation*—

*omit, insert—*

***criminal organisation*** means—

- (a) an organisation of 3 or more persons—
  - (i) who have as their purpose, or 1 of their purposes, engaging in, organising, planning, facilitating, supporting, or otherwise conspiring to engage in, serious criminal activity as defined under the *Criminal Organisation Act 2009*; and

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- (ii) who, by their association, represent an unacceptable risk to the safety, welfare or order of the community; or
- (b) a criminal organisation under the *Criminal Organisation Act 2009*;
- (c) an entity declared under a regulation to be a criminal organisation.

## 42 Insertion of new ss 60A–60C

Chapter 9—

*insert—*

### **60A Participants in criminal organisation being knowingly present in public places**

- (1) Any person who is a participant in a criminal organisation and is knowingly present in a public place with 2 or more other persons who are participants in a criminal organisation commits an offence.

Minimum penalty—6 months imprisonment served wholly in a corrective services facility.

Maximum penalty—3 years imprisonment.

- (2) It is a defence to a charge of an offence against subsection (1) to prove that the criminal organisation is not an organisation that has, as 1 of its purposes, the purpose of engaging in, or conspiring to engage in, criminal activity.

- (3) In this section—

***member***, of an organisation, includes an associate member, or prospective member, however described.

***participant***, in a criminal organisation, means—

- (a) if the organisation is a body corporate—a director or officer of the body corporate; or

- 
- (b) a person who (whether by words or conduct, or in any other way) asserts, declares or advertises his or her membership of, or association with, the organisation; or
  - (c) a person who (whether by words or conduct, or in any other way) seeks to be a member of, or to be associated with, the organisation; or
  - (d) a person who attends more than 1 meeting or gathering of persons who participate in the affairs of the organisation in any way; or
  - (e) a person who takes part in the affairs of the organisation in any other way;

but does not include a lawyer acting in a professional capacity.

***public place*** means—

- (a) a place, or part of a place, that the public is entitled to use, is open to members of the public or is used by the public, whether or not on payment of money; or
- (b) a place, or part of a place, the occupier of which allows, whether or not on payment of money, members of the public to enter.

### **60B Participants in criminal organisation entering prescribed places and attending prescribed events**

- (1) Any person who is a participant in a criminal organisation and enters, or attempts to enter, a prescribed place commits an offence.

Minimum penalty—6 months imprisonment served wholly in a corrective services facility.

Maximum penalty—3 years imprisonment.

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- (2) Any person who is a participant in a criminal organisation and attends, or attempts to attend, a prescribed event commits an offence.

Minimum penalty—6 months imprisonment served wholly in a corrective services facility.

Maximum penalty—3 years imprisonment.

- (3) It is a defence to a charge of an offence against subsection (1) or (2) to prove that the criminal organisation is not an organisation that has, as 1 of its purposes, the purpose of engaging in, or conspiring to engage in, criminal activity.

- (4) In this section—

*participant*, in a criminal organisation, see section 60A.

*prescribed event* means an event declared under a regulation to be a prescribed event.

*prescribed place* means a place declared under a regulation to be a prescribed place.

### **60C Participants in criminal organisation recruiting persons to become participants in the organisation**

- (1) Any person who is a participant in a criminal organisation and recruits, or attempts to recruit, anyone to become a participant in a criminal organisation commits an offence.

Minimum penalty—6 months imprisonment served wholly in a corrective services facility.

Maximum penalty—3 years imprisonment.

- (2) It is a defence to a charge of an offence against subsection (1) to prove that the criminal organisation is not an organisation that has, as 1 of its purposes, the purpose of engaging in, or conspiring to engage in, criminal activity.

(3) In this section—

*criminal organisation* does not include a criminal organisation under the *Criminal Organisation Act 2009*.

*participant*, in a criminal organisation, see section 60A.

*recruit*, a person, to become a participant in a criminal organisation, includes counsel, procure, solicit, incite and induce the person, including by promoting the organisation, to become a participant in the organisation.

#### 43 Amendment of s 72 (Affray)

Section 72—

*insert—*

(2) If the person convicted of an offence against subsection (1) is a participant in a criminal organisation, the offence is punishable on conviction as follows—

Minimum penalty—6 months imprisonment served wholly in a corrective services facility;

Maximum penalty—7 years imprisonment.

(3) For an offence defined in subsection (1) alleged to have been committed with the circumstance of aggravation mentioned in subsection (2), it is a defence to the circumstance of aggravation to prove that the criminal organisation is not an organisation that has, as 1 of its purposes, the purpose of engaging in, or conspiring to engage in, criminal activity.

(4) In this section—

*participant*, in a criminal organisation, see section 60A.

[s 44]

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**44 Amendment of s 92A (Misconduct in relation to public office)**

(1) Section 92A—

*insert—*

(4A) The offender is liable to imprisonment for 14 years if, for an offence against subsection (1) or (2), the person who dishonestly gained a benefit, directly or indirectly, was a participant in a criminal organisation.

(4B) For an offence defined in subsection (1) or (2) alleged to have been committed with the circumstance of aggravation mentioned in subsection (4A), it is a defence to the circumstance of aggravation to prove that the criminal organisation is not an organisation that has, as 1 of its purposes, the purpose of engaging in, or conspiring to engage in, criminal activity.

(2) Section 92A(5)—

*insert—*

*participant*, in a criminal organisation, see section 60A.

**45 Amendment of s 320 (Grievous bodily harm)**

Section 320—

*insert—*

(2) If the offender is a participant in a criminal organisation and unlawfully does grievous bodily harm to a police officer while acting in the execution of the officer's duty, the offender must be imprisoned for 1 year with the imprisonment served wholly in a corrective services facility.

(3) It is a defence to the circumstance of aggravation mentioned in subsection (2) to prove that the criminal organisation is not an organisation that



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has, as 1 of its purposes, the purpose of engaging in, or conspiring to engage in, criminal activity.

(4) In this section—

*participant*, in a criminal organisation, see section 60A.

#### **46 Amendment of s 340 (Serious assaults)**

(1) Section 340—

*insert—*

(1A) If the offender is a participant in a criminal organisation and assaults a police officer in any of the circumstances mentioned in paragraph (a) of the maximum penalty for subsection (1), the offender must be imprisoned for 1 year with the imprisonment served wholly in a corrective services facility.

(1B) It is a defence to the circumstance of aggravation mentioned in subsection (1A) to prove that the criminal organisation is not an organisation that has, as 1 of its purposes, the purpose of engaging in, or conspiring to engage in, criminal activity.

(2) Section 340(3)—

*insert—*

*participant*, in a criminal organisation, see section 60A.

#### **47 Amendment of s 408D (Obtaining or dealing with identification information)**

(1) Section 408D, after subsection (1)—

*insert—*

(1AA) If the person obtaining or dealing with the identification information supplies it to a

[s 48]

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participant in a criminal organisation, the person is liable to imprisonment for 7 years.

(1AB) For an offence defined in subsection (1) alleged to have been committed with the circumstance of aggravation mentioned in subsection (1AA), it is a defence to the circumstance of aggravation to prove that the criminal organisation is not an organisation that has, as 1 of its purposes, the purpose of engaging in, or conspiring to engage in, criminal activity.

(2) Section 408D(7)—

*insert—*

*participant*, in a criminal organisation, see section 60A.

#### **48 Amendment of s 552D (When Magistrates Court must abstain from jurisdiction)**

Section 552D—

*insert—*

(2A) A Magistrates Court must abstain from dealing summarily with a charge if the defendant is alleged to be a vicious lawless associate under the *Vicious Lawless Association Disestablishment Act 2013*.

#### **49 Insertion of new s 708A**

Part 8, chapter 71—

*insert—*

##### **708A Criteria for recommending an entity be declared a criminal organisation**

(1) In deciding whether to recommend an amendment of the *Criminal Code (Criminal Organisations) Regulation 2013* to declare an

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entity to be a criminal organisation, the Minister may have regard to the following matters—

- (a) any information suggesting a link exists between the entity and serious criminal activity;
- (b) any convictions recorded in relation to—
  - (i) current or former participants in the entity; or
  - (ii) persons who associate, or have associated, with participants in the entity;
- (c) any information suggesting current or former participants in the entity have been, or are, involved in serious criminal activity (whether directly or indirectly and whether or not the involvement has resulted in any convictions);
- (d) any information suggesting participants in an interstate or overseas chapter or branch (however described) of the entity have as their purpose, or 1 of their purposes, organising, planning, facilitating, supporting or engaging in serious criminal activity;
- (e) any other matter the Minister considers relevant.

(2) In this section—

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

**serious criminal activity** see the *Criminal Organisation Act 2009*, section 6.

**participant**, in an entity, means a person who—

- (a) (whether by words or conduct, or in any other way) asserts, declares or advertises his

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or her membership of, or association with, the entity; or

- (b) (whether by words or conduct, or in any other way) seeks to be a member of, or to be associated with, the entity; or
- (c) has attended more than 1 meeting or gathering of persons who participate in the affairs of the entity in any way; or
- (d) has taken part on any 1 or more occasions in the affairs of the entity in any other way.

## Part 5 **Amendment of Penalties and Sentences Act 1992**

### 50 **Act amended**

This part amends the *Penalties and Sentences Act 1992*.

### 51 **Amendment of s 160A (Application of ss 160B–160D)**

Section 160A(4), examples—

*insert—*

- a provision providing that a minimum term of imprisonment be served

### 52 **Amendment of s 187 (Disqualification from holding Queensland driver licence)**

(1) Section 187(2) and (3)—

*renumber* as section 187(3) and (4).

(2) Section 187—

*insert—*

- 
- (2) However, if the offender is convicted of a prescribed offence (whether or not the offence was committed in connection with, or arose out of, the driving of a motor vehicle), the court must, in addition to any sentence that it may impose, order that the offender is, from the time of the conviction, disqualified absolutely, or for a period, not less than 3 months, as is ordered by the court, from holding or obtaining a Queensland driver licence.
- (3) Section 187(4), as renumbered, ‘subsection (1)’—  
*omit, insert—*  
this section
- (4) Section 187(4), as renumbered—  
*insert—*
- prescribed offence*** means an offence against any of the following provisions of the Criminal Code—
- (a) section 60A;
  - (b) section 60B;
  - (c) section 60C;
  - (d) section 72, if the offender is convicted of the offence with the circumstance of aggravation mentioned in section 72(2).

## Part 6

## Amendment of Police Powers and Responsibilities Act 2000

### 53 Act amended

This part amends the *Police Powers and Responsibilities Act 2000*.

[s 54]

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**54 Amendment of s 29 (Searching persons without warrant)**

Section 29—

*insert—*

- (1A) A police officer who reasonably suspects a person is a participant in a criminal organisation may, without a warrant, do any of the following—
- (a) stop and detain the person;
  - (b) search the person and anything in the person's possession for anything that may provide evidence of the commission of an offence.

**55 Amendment of s 32 (Prescribed circumstances for searching vehicle without warrant)**

Section 32, after 'warrant are that'—

*insert—*

the vehicle is being used by, or is in the possession of, a participant in a criminal organisation or

**56 Amendment of s 40 (Person may be required to state name and address)**

Section 40—

*insert—*

- (2A) If—
- (a) a police officer reasonably suspects the person is a person mentioned in section 41(ba)(i) or is a person mentioned in section 41(ba)(ii); and
  - (b) the person can not provide evidence of the correctness of the stated name or address when the requirement is made;

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the person may be detained for a reasonable time to confirm the correctness of the stated name and address.

- (2B) If the police officer reasonably suspects it is necessary to do so to confirm the correctness of the stated name given by a person mentioned in subsection (2A), the police officer may take or photograph all or any of the person's identifying particulars.
- (2C) If the person is not proceeded against for an identifying particulars offence within 12 months, the identifying particulars must be destroyed within a reasonable time in the presence of a justice.

**57 Amendment of s 41 (Prescribed circumstances for requiring name and address)**

Section 41—

*insert—*

(ba) a police officer—

- (i) reasonably suspects the person is a participant in a criminal organisation;  
or
- (ii) finds the person at a prescribed place as defined under the Criminal Code, section 60B; or
- (iii) finds the person at a prescribed event as defined under the Criminal Code, section 60B;

**58 Amendment of s 42 (Power for age-related offences and for particular motor vehicle related purposes)**

Section 42(1)(c)(i), after 'chapter 4'—

*insert—*

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or 4A

**59 Amendment of s 60 (Stopping vehicles for prescribed purposes)**

Section 60(3)(h), after ‘chapter 4’—

*insert—*

or 4A

**60 Insertion of new ch 4A**

After chapter 4—

*insert—*

**Chapter 4A Motor vehicle  
forfeiture for  
particular criminal  
organisation  
offences**

**Part 1 Preliminary**

**Division 1 Interpretation**

**123A Definitions for ch 4A**

In this chapter—

*criminal organisation offence* see section 123B.

*immobilise*, for a motor vehicle, includes restrict the use of the motor vehicle by way of an immobilising device or the removal and confiscation of the motor vehicle’s number plates.



*immobilising device*, for a motor vehicle, includes a wheel clamp.

*immobilising notice*, for a criminal organisation offence, see section 123T(2).

*impounding notice*, for a criminal organisation offence, see section 123T(2).

*number plate* means a plate or other device designed to be attached to a motor vehicle to identify the motor vehicle.

*number plate confiscation notice* see section 123K(2).

*usual possessor*, of a motor vehicle, means a person other than an owner of the vehicle who usually has lawful possession of the vehicle.

*vehicle production notice*, for a criminal organisation offence, see section 123N(2).

### **123B Meaning of *criminal organisation offence***

- (1) A *criminal organisation offence* means any of the following offences—
  - (a) an offence against the Criminal Code, section 60A, 60B or 60C committed in relation to a motor vehicle;
  - (b) an offence against the Criminal Code, section 72 committed in relation to a motor vehicle and with the circumstance of aggravation mentioned in section 72(2);
  - (c) an offence against section 754 if the driver is a participant in a criminal organisation.
- (2) For subsection (1)(a) and (b), an offence is committed in relation to a motor vehicle if the vehicle is used by the offender in connection with the commission of the offence, including, for example, using the vehicle—

[s 60]

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- (a) to drive to or from the place where the offence is committed; or
- (b) during the commission of the offence.

### **123C References to motor vehicle includes motorbike**

To remove any doubt, it is declared that a reference in this chapter to a motor vehicle in relation to a criminal organisation offence includes a reference to a motorbike.

### **123D When a person is charged for this chapter in relation to a criminal organisation offence**

- (1) This section applies for this chapter if a proceeding for a criminal organisation offence is started against a person by notice to appear or arrest.
- (2) If the proceeding is started by notice to appear, the person is taken to be charged with having committed the offence when the notice to appear is issued and served on the person.
- (3) If the proceeding is started by arrest, the person is taken to be charged with having committed the offence when the person is arrested.

### **123E Punishment under this chapter is in addition to other punishment for the same offence**

The impounding or forfeiture of a motor vehicle under this chapter arising out of the commission of a criminal organisation offence is in addition to any other penalty that may be imposed on the person for the criminal organisation offence.

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## **Division 2            Relationship with other                                  legislation**

### **123F National Credit Code**

Nothing in this chapter affects the rights of a credit provider to repossess a motor vehicle under the National Credit Code and sell it.

## **Part 2                    Impounding motor                                  vehicles and forfeiture                                  of motor vehicles**

### **Division 1            Impounding powers and                                  forfeiture of vehicles in                                  particular circumstances**

#### **123G Impounding motor vehicles for criminal                                  organisation offence**

- (1) A police officer may impound a motor vehicle if the driver of the motor vehicle is charged with having committed a criminal organisation offence in relation to the motor vehicle.

*Note—*

For when a person is charged with an offence, see section 123D.

- (2) A motor vehicle impounded under subsection (1) may be impounded until the end of the proceedings for all charges of criminal organisation offences in relation to the motor vehicle.

*Note—*

See section 123ZX about the release of a motor vehicle if the driver of the motor vehicle is found not guilty of

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the criminal organisation offence, the proceeding for the criminal organisation offence is discontinued, or the driver is found guilty of an offence against a provision mentioned in section 123B(1)(b) or (c) but not in the circumstance of being a participant in a criminal organisation.

- (3) This section applies subject to division 5.

*Note—*

Division 5 contains provisions relating to applications for release of impounded motor vehicles.

### **123H Forfeiture of motor vehicles if driver found guilty of criminal organisation offence**

- (1) This section applies in relation to a motor vehicle impounded under section 123G if the driver of the motor vehicle is found guilty of the criminal organisation offence.
- (2) On the driver being found guilty—
- (a) the motor vehicle becomes the property of the State; and
  - (b) any right of a person to enforce a security interest under the *Personal Property Securities Act 2009* (Cwlth) against a person other than the State by taking possession of the vehicle is extinguished.
- (3) This section applies subject to division 5.

*Note—*

Under division 5 the commissioner may grant an application for the release of an impounded motor vehicle.

- (4) However, subsection (5) applies if—
- (a) before the driver of the motor vehicle is found guilty of the criminal organisation offence, the motor vehicle is released under section 123X, 123Z or 123ZB with a condition; and

- (b) the motor vehicle is later impounded under section 123ZJ because of a breach of the condition.
- (5) Subsection (2) applies in relation to the motor vehicle as if the motor vehicle had not been released under section 123X, 123Z or 123ZB.

## **Division 2      Immobilising powers**

### **Subdivision 1   Preliminary**

#### **123I Purpose of div 2**

The purpose of this division is to provide for keeping a motor vehicle that is to be impounded under division 1 at a place other than a holding yard before it is impounded under division 1.

#### **123J References to impounding a motor vehicle includes reference to immobilising vehicle**

In this chapter, if the context permits, a reference to impounding under this chapter in relation to a motor vehicle includes a reference to immobilising the motor vehicle under this division.

### **Subdivision 2   Removal and confiscation of number plate powers**

#### **123K Power to remove and confiscate number plates**

- (1) This section applies if—
  - (a) a police officer intends to impound a motor vehicle under division 1; and

[s 60]

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- (b) the police officer decides that it is appropriate in the circumstances for the motor vehicle to be kept at a place other than a holding yard before it is impounded under division 1.
- (2) The police officer may remove and confiscate the number plates attached to the motor vehicle and attach a notice (a ***number plate confiscation notice***) to the motor vehicle.
- (3) Except as provided under this chapter, a motor vehicle to which a number plate confiscation notice is attached under this section is prohibited from being operated from the day the notice is attached to the vehicle.

*Note—*

See sections 123ZM and 123ZN for number plate offences.

- (4) A motor vehicle to which a number plate confiscation notice is attached under this section is taken to be impounded under this chapter from the day the notice is attached to the vehicle.

### **123L Moving motor vehicle to which number plate confiscation notice is attached**

A motor vehicle to which a number plate confiscation notice is attached under section 123K may be moved (for example, by being driven or towed) to a place authorised by a police officer where the motor vehicle may lawfully stand.

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## **Subdivision 3 Immobilising device powers**

### **123M Power to attach immobilising device**

- (1) This section applies if—
  - (a) a police officer intends to impound a motor vehicle under division 1; and
  - (b) the police officer decides that it is appropriate in the circumstances for the motor vehicle to be kept at a place other than a holding yard before it is impounded under division 1.
- (2) The police officer may attach an immobilising device, or arrange for an immobilising device to be attached, to the motor vehicle.
- (3) Except as provided under this chapter, a motor vehicle to which an immobilising device is attached under this section is prohibited from being operated from the day the device is attached to the vehicle.

*Note—*

See sections 123ZO and 123ZP for immobilising device offences.

- (4) A motor vehicle to which an immobilising device is attached under this section is taken to be impounded under this chapter from the day the device is attached to the vehicle.

## **Division 3      Vehicle production notices**

### **123N Power to require motor vehicle to be produced**

- (1) This section applies if a police officer may impound a motor vehicle under division 1.
- (2) The police officer may require the owner or driver by notice in the approved form (a *vehicle production notice*) to produce the vehicle at a stated place and stated time for impoundment or immobilisation.
- (3) The time or place stated in the notice must be reasonable in the circumstances.
- (4) If for any reason it is not practicable to give a vehicle production notice, the requirement may be made orally and confirmed by a vehicle production notice as soon as practicable.

### **123O Impoundment starts when motor vehicle produced**

- (1) This section applies to a motor vehicle in relation to which a vehicle production notice has been given under section 123N.
- (2) The motor vehicle is impounded under division 1 from when the motor vehicle is produced at the place stated in the notice.

### **123P Vehicle production notices generally**

- (1) The date stated in a vehicle production notice for production of a motor vehicle must be a date that is no later than the first business day occurring 5 days after the notice is given.
- (2) The disposal of a motor vehicle within the period of 5 days after a vehicle production notice is



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given in relation to the motor vehicle does not affect the requirement to produce the motor vehicle in accordance with the notice, except as provided by subsection (3).

- (3) A vehicle production notice ceases to have effect in relation to a motor vehicle if it is withdrawn by the commissioner by notice in writing given to—
  - (a) the owner or driver of the motor vehicle to whom the vehicle production notice was given; or
  - (b) a person who purchased the motor vehicle after the production notice was given who satisfies the commissioner that the purchase was made in good faith for value and without notice, at the time of the purchase, of the production notice.

## **Division 4            General provisions relating to impounding motor vehicles**

### **123Q Particular powers for impounding motor vehicles**

- (1) To impound or immobilise a motor vehicle under this chapter a police officer may—
  - (a) stop the motor vehicle if it is moving, whether or not the motor vehicle is on a road; or
  - (b) require the driver of the motor vehicle if it is stationary to remain at the place where it is stopped for the time reasonably necessary; or
  - (c) direct the person who has the key needed to move the motor vehicle—

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- (i) to give the key to a police officer; or
  - (ii) if the motor vehicle is in a dwelling, to move the motor vehicle out of the dwelling, and to give the key to a police officer; or
  - (d) if it is necessary to enter the motor vehicle to impound or immobilise it, enter the motor vehicle to impound or immobilise it; or
  - (e) enter a place, other than the part of the place that is a dwelling, and stay for a reasonable time on the place; or
  - (f) do anything else reasonably necessary for impounding or immobilising the motor vehicle.
- (2) Also, when impounding or immobilising a motor vehicle that is not registered under a transport Act, a police officer may require the driver of the motor vehicle to state the name and address of the owner of the motor vehicle.

*Note—*

Failure to comply with a direction or requirement given or made under this section is an offence against section 791.

- (3) After impounding a motor vehicle, a police officer may move the motor vehicle, or arrange for the motor vehicle to be moved, to a holding yard in the way the police officer considers appropriate.

*Example of ways of moving a motor vehicle after it is impounded—*

driving, pushing, towing or transporting the motor vehicle

- (4) Subsection (1)(a) and (b) are in addition to, and do not limit, sections 60 and 61.

- (5) Also, the powers exercisable under subsection (1)(a) and (b) may be exercised before or after the motor vehicle is impounded or immobilised.

### **123R Release of motor vehicle in particular circumstances**

- (1) If a motor vehicle that is impounded is a motor vehicle that is being unlawfully used or has been stolen or is a rental motor vehicle, the motor vehicle must be released to the owner as soon as reasonably practicable.
- (2) In this section—

*rental motor vehicle* means a motor vehicle made available by a person in the course of a business in which the person rents vehicles to members of the public.

*unlawfully*, in relation to the use of a motor vehicle, means in contravention of the *Summary Offences Act 2005*, section 25.

### **123S Police officer may authorise tow**

- (1) This section applies if a police officer arranges for an impounded motor vehicle to be towed to a holding yard.
- (2) A police officer may sign a towing authority for the impounded motor vehicle.
- (3) The driver of a tow truck towing the impounded motor vehicle under a towing authority must tow the motor vehicle to—
- (a) if the police officer directs the driver to tow the motor vehicle to a particular holding yard or place—the holding yard or the place; or

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- (b) if paragraph (a) does not apply—the holding yard to which the driver ordinarily tows motor vehicles.
- (4) In this section—  
***towing authority*** means—
  - (a) a towing authority under the *Tow Truck Act 1973*; or
  - (b) another document authorising a person to tow a motor vehicle.

### **123T Impounding notice or immobilising notice**

- (1) This section applies if a motor vehicle is impounded or immobilised under this chapter.
- (2) As soon as reasonably practicable, a police officer must give written notice in the approved form (***impounding notice***) of the impounding, or written notice in the approved form (***immobilising notice***) of the immobilising, to—
  - (a) the driver of the motor vehicle; and
  - (b) if the driver is not the owner or not the only owner of the motor vehicle—the owner or each other owner of the motor vehicle.
- (3) If the driver is a child, the impounding notice or the immobilising notice must also be given to the child’s parent or guardian if it is reasonably practicable to do so, unless the parent or guardian is given notice under subsection (2).
- (4) The impounding notice or the immobilising notice must state—
  - (a) that the motor vehicle is impounded under this chapter until the end of the proceedings for all charges of criminal organisation offences in relation to the motor vehicle; and

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- (b) that, if the driver of the motor vehicle is found guilty of the criminal organisation offence for which the vehicle was impounded, the motor vehicle may be forfeited to the State under section 123H; and
- (c) the prescribed impoundment information.
- (5) When giving an impounding notice or immobilising notice under this section to a child or the child's parent or guardian, the police officer giving the notice must also give the person an explanation of the matters stated in the impounding notice or immobilising notice.
- (6) The police officer may give the explanation by giving the person a statement, in the approved form, containing the explanation if it is appropriate in the circumstances to do so.
- (7) An impounding notice or immobilising notice given to a driver under subsection (2)(a) must be given personally to the driver.
- (8) If the name of an owner of the motor vehicle is not known, an impounding notice or immobilising notice required to be given to the owner under subsection (2)(b) may be given by making the information required to be included on the impounding notice or immobilising notice, other than the owner's name and address, available on the police service internet website.
- (9) In this section—
- prescribed impoundment information*** means—
- (a) information about how the owner of a motor vehicle impounded under this chapter may recover the motor vehicle; and
- (b) a statement that, before the motor vehicle may be recovered, the owner may be

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- required to produce satisfactory evidence of the ownership of the motor vehicle; and
- (c) a statement that, if the driver is an adult, the driver will be required to pay the costs of removing and keeping the motor vehicle; and
  - (d) a statement that, if the driver is a child and the child is found guilty of the offence for which the motor vehicle was impounded, the court may order the child or the child's parent or guardian to pay the costs of removing and keeping the motor vehicle; and
  - (e) a statement that, if the owner of a motor vehicle fails to recover the motor vehicle after the impoundment ends under this chapter and the owner was the driver of the motor vehicle when it was impounded, the owner is liable to pay the costs of keeping the motor vehicle for each day after the impoundment ends, whether or not the driver is found guilty of the offence for which the motor vehicle is impounded; and
  - (f) a statement that, if the owner of the motor vehicle fails to recover the motor vehicle after the impounding ends under this chapter and the owner was not the driver of the motor vehicle when it was impounded, the owner is liable to pay the costs of keeping the motor vehicle for each day after the impoundment ends that is more than 2 business days after the owner is given the impounding notice; and
  - (g) the penalty for unlawfully removing the motor vehicle from the place at which it is held; and

- (h) any other information prescribed under a regulation.

## **Division 5      Other provisions relating to impounded motor vehicles**

### **Subdivision 1   Preliminary**

#### **123U Definitions for div 5**

In this division—

*eligible person*, for a motor vehicle, means an owner, usual driver or usual possessor of the motor vehicle.

*information notice*, for a decision of the commissioner under this division, means a notice stating—

- (a) the decision; and
- (b) the reasons for the decision; and
- (c) that the person to whom the notice is given may appeal against the decision within 28 days after the person receives the notice; and
- (d) how the person may appeal against the decision.

*vehicle release notice*, for a motor vehicle, means a notice stating—

- (a) the decision of the commissioner made under this division; and
- (b) the time and date when the impoundment of the vehicle ends under this division; and
- (c) any conditions to which the release of the motor vehicle is subject.

### **123V Application of div 5**

- (1) This division applies in relation to a motor vehicle impounded under this chapter other than a motor vehicle registered under a transport Act in the name of an entity that was a declared criminal organisation when the criminal organisation offence for which the vehicle was impounded was committed.
- (2) In this section—  
*declared criminal organisation* means an entity declared under a regulation under the Criminal Code to be a criminal organisation.

### **Subdivision 2 Application for release of impounded motor vehicle**

#### **123W Application for release of impounded motor vehicle on basis of severe hardship**

- (1) An eligible person may apply to the commissioner for the release of a motor vehicle impounded under this chapter, on the basis that the person would suffer severe hardship if the motor vehicle was not released.
- (2) The application must be—
  - (a) made in the approved form; and
  - (b) supported by enough information to enable the commissioner to decide the application.

*Note—*

See section 123X(4) and (5) for particular information the applicant must give to the commissioner.



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**123X Decision on application for release of impounded motor vehicle on basis of severe hardship**

- (1) The commissioner must consider an application for the release of a motor vehicle under section 123W after receiving all necessary information relevant to the application and either—
  - (a) grant the application; or
  - (b) refuse to grant the application.
- (2) The commissioner must, if reasonably practicable, decide the application within 5 business days of receiving the application and other documents required under this subdivision.
- (3) The commissioner may grant the application only if the commissioner is satisfied a refusal to grant the application would—
  - (a) cause severe financial hardship to the applicant or the applicant's family by depriving the applicant of the applicant's means of earning a living; or
  - (b) cause severe physical hardship to the applicant or the applicant's family.
- (4) For subsection (3)(a), the applicant must give the following to the commissioner—
  - (a) a statement made by the applicant outlining how a refusal to grant the application would cause severe financial hardship to the applicant or the applicant's family;
  - (b) if the applicant is not self-employed—a statement made by the applicant's employer confirming the applicant would be deprived of the applicant's means of earning a living if the application is refused.

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- (5) For subsection (3)(b), the applicant must give the commissioner a statement made by the applicant that—
- (a) outlines how a refusal to grant the application would cause severe physical hardship to the applicant or the applicant's family; and
  - (b) has attached to it statutory declarations from persons other than the applicant, other documentary evidence, or certified copies of documentary evidence, in support of each matter stated in the statement.
- (6) The commissioner may grant the application with or without conditions.

*Examples of conditions—*

- 1 a condition that the owner of the motor vehicle does not allow the person who is alleged to have committed the offence for which the motor vehicle was impounded to use the motor vehicle
  - 2 a condition that the owner of the motor vehicle who is alleged to have committed the offence for which the motor vehicle was impounded, is to only use the motor vehicle for work related purposes
- (7) If the commissioner decides to grant the application, the commissioner must give the applicant a vehicle release notice for the motor vehicle.
- (8) If the commissioner decides to refuse to grant the application or to grant the application with a condition, the commissioner must as soon as practicable give the applicant an information notice for the decision.
- (9) A condition made by the commissioner under this section expires if, and on the day, any of the following happens—
- (a) the driver is found not guilty of the relevant offence;

- (b) the proceeding for the relevant offence is discontinued;
- (c) for a relevant offence mentioned in section 123B(1)(b) or (c)—the driver is found guilty of an offence against a provision mentioned in the paragraph but not in the circumstance of being a participant in a criminal organisation.

(10) In this section—

*certified copy*, of documentary evidence, means certified by a justice of the peace or commissioner for declarations in writing to be a true copy of the documentary evidence.

*relevant offence* means the criminal organisation offence because of which the impoundment has happened.

### **123Y Application for release of impounded motor vehicle on basis criminal organisation offence happened without owner's consent**

- (1) The owner of a motor vehicle impounded under this chapter may apply to the commissioner for the release of the motor vehicle on the basis that the criminal organisation offence—
  - (a) was committed by a person other than the owner, usual driver or usual possessor of the motor vehicle; and
  - (b) happened without the consent of the owner.
- (2) The application must be—
  - (a) made in the approved form; and
  - (b) supported by enough information to enable the commissioner to decide the application.

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**123Z Decision on application for release of impounded motor vehicle on basis criminal organisation offence happened without owner's consent**

- (1) The commissioner must consider an application for the release of a motor vehicle under section 123Y after receiving all necessary information relevant to the application and either—
  - (a) grant the application; or
  - (b) refuse to grant the application.
- (2) The commissioner must, if reasonably practicable, decide the application within 5 business days of receiving the application and other documents required under this subdivision.
- (3) The commissioner may grant the application only if the commissioner is satisfied the relevant offence—
  - (a) was committed by a person other than the owner, usual driver or usual possessor of the motor vehicle; and
  - (b) happened without the consent of the owner.
- (4) The commissioner may grant the application with or without conditions.

*Examples of conditions—*

- 1 a condition that the owner of the motor vehicle does not allow the person who is alleged to have committed the offence for which the motor vehicle was impounded to use the motor vehicle
  - 2 a condition that the owner of the motor vehicle who is alleged to have committed the offence for which the motor vehicle was impounded, is to only use the motor vehicle for work related purposes
- (5) If the commissioner decides to grant the application, the commissioner must give the applicant a vehicle release notice for the motor vehicle.

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- (6) If the commissioner decides to refuse to grant the application or to grant the application with a condition, the commissioner must as soon as practicable give the applicant an information notice for the decision.
  - (7) A condition made by the commissioner under this section expires if, and on the day, any of the following happens—
    - (a) the driver is found not guilty of the relevant offence;
    - (b) the proceeding for the relevant offence is discontinued;
    - (c) for a relevant offence mentioned in section 123B(1)(b) or (c)—the driver is found guilty of an offence against a provision mentioned in the paragraph but not in the circumstance of being a participant in a criminal organisation.
  - (8) In this section—

*relevant offence* means the criminal organisation offence because of which the impoundment has happened.

**123ZA Application for release of impounded motor vehicle on basis that offender not a participant in a criminal organisation**

- (1) An eligible person may apply to the commissioner for the release of a motor vehicle impounded under this chapter on the basis that the offender is not a participant in a criminal organisation.
- (2) The application must be—
  - (a) made in the approved form; and
  - (b) supported by enough information to enable the commissioner to decide the application.

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**123ZB Decision on application for release of impounded motor vehicle on basis that offender not a participant in a criminal organisation**

- (1) The commissioner must consider an application for the release of a motor vehicle under section 123ZA after receiving all necessary information relevant to the application and either—
  - (a) grant the application; or
  - (b) refuse to grant the application.
- (2) The commissioner must, if reasonably practicable, decide the application within 5 business days of receiving the application and other documents required under this subdivision.
- (3) The commissioner may grant the application if the commissioner is not satisfied that the offender is a participant in a criminal organisation.
- (4) The commissioner may grant the application with or without conditions.

*Examples of conditions—*

- 1 a condition that the owner of the motor vehicle does not allow the person who committed, or is alleged to have committed, the offence for which the motor vehicle was impounded to use the motor vehicle
  - 2 a condition that the owner of the motor vehicle who committed, or is alleged to have committed, the offence for which the motor vehicle was impounded, is to only use the motor vehicle for work related purposes
- (5) If the commissioner decides to grant the application, the commissioner must give the applicant a vehicle release notice for the motor vehicle.
  - (6) If the commissioner decides to refuse to grant the application or to grant the application with a condition, the commissioner must as soon as

practicable give the applicant an information notice for the decision.

- (7) A condition made by the commissioner under this section expires if, and on the day, any of the following happens—
- (a) the driver is found not guilty of the relevant offence;
  - (b) the proceeding for the relevant offence is discontinued;
  - (c) for a relevant offence mentioned in section 123B(1)(b) or (c)—the driver is found guilty of an offence against a provision mentioned in the paragraph but not in the circumstance of being a participant in a criminal organisation.
- (8) In this section—
- relevant offence* means the criminal organisation offence because of which the impoundment has happened.

### **123ZC Impoundment ends if application for release of motor vehicle granted**

- (1) If the commissioner grants an application for the release of a motor vehicle under this division, the impoundment of the motor vehicle under this chapter ends.
- (2) This section applies subject to section 123ZJ.

## Subdivision 3 Appeals

### 123ZD Who may appeal

- (1) A person who is aggrieved by a decision of the commissioner under section 123X, 123Z or 123ZB may appeal against the decision.
- (2) In this section—  
*decision* includes a condition made by the commissioner under section 123X, 123Z or 123ZB in relation to granting an application for the release of a motor vehicle.

### 123ZE How to start appeal

- (1) The appeal is started by filing a notice of appeal with the clerk of a Magistrates Court.
- (2) The appellant must serve a copy of the notice on—
  - (a) the other persons entitled to appeal against the decision; and
  - (b) the commissioner.
- (3) Despite subsection (2), the clerk of the court may ask the commissioner to serve a copy of the notice on a person mentioned in subsection (2)(a) whom the appellant is unable to serve.
- (4) The notice of appeal must be filed within 28 days after the person is given an information notice for the decision.
- (5) The court may at any time extend the period for filing the notice of appeal.
- (6) The notice of appeal must state fully the grounds of the appeal and the facts relied on.



### **123ZF Effect of appeal on decision**

- (1) The start of an appeal against a decision of the commissioner does not affect the operation of the decision or prevent the taking of action to implement the decision.
- (2) However, the court may make an order staying the operation of the decision being appealed against until the appeal is finally decided.
- (3) The court may act under subsection (2) on the application of the appellant or on its own initiative.

### **123ZG Commissioner has right of appearance**

The commissioner has a right to appear and be heard before the court on an appeal under this subdivision.

### **123ZH Hearing procedures**

- (1) An appeal must be decided on the evidence before the commissioner.
- (2) However, the court may order that the appeal be heard afresh, in whole or part.

### **123ZI Powers of Magistrates Court**

In deciding an appeal, the court may—

- (a) confirm the decision appealed against; or
- (b) set aside the decision and substitute another decision that it considers appropriate.

## **Subdivision 4 Miscellaneous**

### **123ZJ Power to take certain action if breach of condition**

- (1) This section applies if—
  - (a) the commissioner grants an application under this division for the release of an impounded motor vehicle with a condition; and
  - (b) the commissioner is satisfied the condition has been breached.
- (2) A police officer may impound the motor vehicle until the end of the proceedings for all charges of criminal organisation offences in relation to the motor vehicle.
- (3) For impounding a motor vehicle under this section, a police officer may exercise any of the powers under section 123Q or division 2.

## **Part 3 Offences**

### **123ZK Offence to remove vehicle from holding yard**

- (1) A person must not unlawfully remove a motor vehicle impounded under this chapter from a holding yard.  
Maximum penalty—40 penalty units.
- (2) For subsection (1), it does not matter how the motor vehicle came to be in the holding yard.

**123ZL Failure to comply with requirement to produce motor vehicle**

A person must comply with a requirement under section 123N, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

**123ZM Offence to operate vehicle to which number plate confiscation notice attached**

A person must not operate a motor vehicle to which a number plate confiscation notice is attached without reasonable excuse or unless the motor vehicle is moved under section 123K.

Maximum penalty—40 penalty units.

**123ZN Offence to remove, tamper with or modify number plate confiscation notice**

A person must not, without reasonable excuse, remove, tamper with, or modify a number plate confiscation notice attached to a motor vehicle under section 123K.

Maximum penalty—40 penalty units.

**123ZO Offence to remove, tamper with or modify immobilising device**

A person must not, without reasonable excuse, remove, tamper with, or modify an immobilising device attached to a motor vehicle under section 123M.

Maximum penalty—40 penalty units.

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**123ZP Offence to operate motor vehicle if immobilising device unlawfully removed, tampered with or modified**

A person must not, without reasonable excuse, operate a motor vehicle if an immobilising device attached to the motor vehicle has been unlawfully removed, tampered with or modified.

Maximum penalty—40 penalty units.

**123ZQ Offence to breach condition made on release of motor vehicle**

A person must not contravene a condition made on the release of a motor vehicle by the commissioner under part 2, division 5 unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

**123ZR Offence to modify, sell or dispose of motor vehicle subject to vehicle production notice**

- (1) This section applies if a motor vehicle is the subject of an vehicle production notice given under section 123N.
- (2) The owner of the motor vehicle must not, without reasonable excuse, modify or sell or otherwise dispose of the motor vehicle while the motor vehicle is the subject of the vehicle production notice.

Maximum penalty—40 penalty units.

- (3) In this section—

*modify*, a motor vehicle, includes remove the engine or gearbox from the motor vehicle.

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## **Part 4                    Other provisions**

### **Division 1                Liability for cost of impounding**

#### **123ZS State's liability to pay costs of impounding**

- (1) Unless otherwise expressly provided by this division, the State is not liable to pay the costs of removing a motor vehicle impounded under this chapter and keeping it for the period for which it is impounded.
- (2) However, the State is liable to pay the costs of removing an impounded vehicle and keeping it if—
  - (a) the driver of the motor vehicle—
    - (i) was a child when he or she committed the offence for which it was impounded; or
    - (ii) is found not guilty of the criminal organisation offence for which the motor vehicle was impounded; or
  - (b) the proceeding for the offence for which the motor vehicle was impounded is withdrawn; or
  - (c) the motor vehicle was impounded for an offence mentioned in section 123B(1)(b) or (c), and the driver is found guilty of an offence against a provision mentioned in the paragraph but not in the circumstance of being a participant in a criminal organisation.

**123ZT Liability to pay costs of impounding—adult driver**

- (1) This section applies in relation to a motor vehicle impounded for a criminal organisation offence if the driver of the motor vehicle was an adult when he or she committed the offence for which it was impounded.
- (2) If the driver is found guilty of a criminal organisation offence in relation to the motor vehicle—
  - (a) the driver is liable to pay the costs of removing or keeping the motor vehicle; and
  - (b) any costs paid by someone else on the driver's behalf become a debt payable to the other person by the driver.

**123ZU Liability to pay costs of impounding—child driver**

- (1) This section applies in relation to a motor vehicle impounded because of a criminal organisation offence if the driver of the motor vehicle was a child when he or she committed the offence for which it was impounded.
- (2) If a court finds the child guilty of a criminal organisation offence in relation to the motor vehicle, the court must consider whether the child has the capacity to pay the costs of removing or keeping the motor vehicle.
- (3) If the court considers the child has the capacity to pay those costs, the court may order the child to pay the costs of removing and keeping the motor vehicle.
- (4) An order made by the court under subsection (3) is taken to be an order under the *Youth Justice Act 1992*, section 310, requiring a payment to the State.

- (5) If the court considers the child does not have the capacity to pay the costs of removing and keeping the motor vehicle, the court may call on the child's parent or guardian to show cause why the parent or guardian should not pay the costs of removing and keeping the motor vehicle.
- (6) If the court decides to call on the child's parent or guardian to show cause—
  - (a) the *Youth Justice Act 1992*, section 258(4) to (8) apply to the call; and
  - (b) the show cause hearing must be conducted in the way required under the *Youth Justice Act 1992*, section 259(1) to (4); and
  - (c) the *Youth Justice Act 1992*, section 259(5) applies as if the reference to section 258(1)(a), (b) and (c) were a reference to subsection (8)(a) and (b) of this section; and
  - (d) the *Youth Justice Act 1992*, section 259(6) to (12) applies to the court's decision and orders.
- (7) For applying subsection (6)—
  - (a) a reference to compensation in the *Youth Justice Act 1992*, sections 258 and 259 is taken to be a reference to the costs of removing and keeping the motor vehicle; and
  - (b) a reference to the prosecution in the *Youth Justice Act 1992*, sections 258 and 259 is taken to be a reference to the commissioner.
- (8) For subsection (6)(c), the matters are—
  - (a) the parent or guardian contributed to the fact the offence happened by not adequately supervising the child; and

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- (b) it is reasonable the parent or guardian pay the costs of removing and keeping the motor vehicle.
- (9) The *Youth Justice Act 1992*, section 260 applies to the costs of removing and keeping the motor vehicle ordered to be paid under this section as if the order under this section were an order for compensation to be paid to the State under the *Youth Justice Act 1992*, section 259.
- (10) If the court orders the child to pay the costs of removing or keeping the motor vehicle, any costs paid by the State under section 123ZS(2) become a debt payable to the State by the child.
- (11) If the court orders the child's parent or guardian to pay the costs of removing or keeping the motor vehicle, any costs paid by the State under section 123ZS(2) become a debt payable to the State by the child's parent or guardian.

### **123ZV Payment of costs if motor vehicle not recovered**

- (1) This section applies if a person who is entitled to recover a motor vehicle fails to recover the motor vehicle after the person becomes entitled.
- (2) If—
  - (a) before the impoundment ends under this chapter, the owner was personally given an impounding notice for the motor vehicle; and
  - (b) the owner was the driver when the vehicle was impounded;the owner is liable to pay the costs of keeping the motor vehicle for each day after the impounding ends.
- (3) If—



- (a) before the impoundment ends under this chapter, the owner was given an impounding notice for the motor vehicle; and
- (b) the owner was not the driver of the motor vehicle when it was impounded;

the owner is liable to pay the costs of keeping the vehicle for each day that is more than 2 business days after the owner is given the impounding notice.

- (4) If the owner was not the driver of the motor vehicle and pays the costs of keeping the motor vehicle as required under subsection (2) or (3), the owner may recover the costs paid from the driver as a debt.

### **123ZW Registration of costs under State Penalties Enforcement Act 1999**

- (1) If an adult who is liable to pay costs under section 123ZU(11) fails to pay the costs, the commissioner may give particulars of the costs to the registrar under the *State Penalties Enforcement Act 1999* for registration under that Act as if—
  - (a) the commissioner were the registrar of a court; and
  - (b) the particulars were particulars of a fine imposed by a court and the amount of the fine were unpaid after the time allowed by the court for payment.
- (2) The registrar must register the particulars under the *State Penalties Enforcement Act 1999*, section 34.
- (3) For this section, the adult who is liable to pay costs under this division fails to pay the costs if—

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- (a) the commissioner obtains an order for payment of costs against the person; and
- (b) the commissioner gives the person a copy of the order and a letter of demand for payment of the costs; and
- (c) the person fails to pay the costs within 28 days after receiving the copy of the order and the letter of demand, or the longer period agreed to by the commissioner.

## **Division 2            Release of impounded vehicle**

### **123ZX Release of motor vehicle if driver found not guilty etc.**

- (1) This section applies in relation to a motor vehicle impounded under section 123G if—
  - (a) the driver of the motor vehicle is found not guilty of the criminal organisation offence; or
  - (b) the proceeding for the criminal organisation offence is discontinued; or
  - (c) for a criminal organisation offence mentioned in section 123B(1)(b) or (c)—the driver is found guilty of an offence against a provision mentioned in the paragraph but not in the circumstance of being a participant in a criminal organisation.
- (2) Subject to subsections (3) and (4), the motor vehicle must be released to the owner as soon as reasonably practicable.
- (3) A motor vehicle may not be released under subsection (2) if the driver has been charged with having committed another criminal organisation

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offence for which the motor vehicle may be impounded under this chapter.

- (4) Also, if the driver has been charged with having committed a prescribed offence for which the vehicle may be impounded under chapter 4, the motor vehicle may be impounded or immobilised under that chapter as if it had not previously been impounded under this chapter.

### **Division 3            Sale, transfer or disposal                                  of impounded or forfeited                                  motor vehicle**

#### **123ZY Sale of motor vehicle if not recovered after impounding ends**

- (1) This section applies if, within 30 days after the impoundment of a motor vehicle ends under this chapter—
- (a) the owner of the motor vehicle does not recover the motor vehicle; or
  - (b) after making reasonable inquiries, a police officer can not find out who owns the motor vehicle.
- (2) The commissioner may sell the motor vehicle and anything in or on it by public auction or dispose of it in the way the commissioner considers appropriate.
- (3) For subsection (2), the motor vehicle is taken to have been forfeited to the State.
- (4) Notice of the proposed sale or disposal must be published on the police service internet website.
- (5) If the name and address of the owner of the motor vehicle is known—

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- (a) the commissioner must also give written notice of the proposed sale or disposal to the owner; and
- (b) the owner's name and address must not be published on the police service website.

**123ZZ Sale of impounded motor vehicle if driver fails to appear**

- (1) This section applies in relation to a motor vehicle impounded under this chapter if a court orders that a warrant issue for the arrest of the driver of the motor vehicle to be brought before the court to be dealt with according to law because the driver has failed to appear before the court in relation to the charge for the criminal organisation offence.
- (2) On the warrant being issued the motor vehicle is taken to have been forfeited to the State.
- (3) The commissioner may sell the motor vehicle and anything in or on it by public auction or dispose of it in the way the commissioner considers appropriate.
- (4) Notice of the proposed sale or disposal must be published on the police service internet website.
- (5) If the name and address of the owner of the motor vehicle is known—
  - (a) the commissioner must also give written notice of the proposed sale or disposal to the owner; and
  - (b) the owner's name and address must not be published on the police service website.

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### **123ZZA Disposal of forfeited motor vehicle**

The commissioner may dispose of a motor vehicle forfeited to the State under this chapter in the way the commissioner considers appropriate, including by selling it.

### **123ZZB Application of proceeds of sale**

- (1) This section applies if the commissioner sells a motor vehicle under section 123ZY, 123ZZ or 123ZZA.
- (2) The proceeds of the sale are to be applied in the following order—
  - (a) in payment of the expenses of the sale;
  - (b) in payment of the costs of removing and keeping the motor vehicle and for searching registers for giving notice of the motor vehicle's impounding or immobilisation;
  - (c) if there is an amount owing to a person under a security interest registered for the motor vehicle under the *Personal Property Securities Act 2009* (Cwlth)—in payment of the amount owing to the holder of the security interest;
  - (d) if the motor vehicle is sold under section 123ZY—in payment of any balance to the owner;
  - (e) if the motor vehicle is sold under section 123ZZ—
    - (i) if the person the subject of the warrant mentioned in section 123ZZ is not the owner, usual driver or usual possessor of the vehicle—in payment of any balance to the owner; or

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- (ii) otherwise—in payment to the consolidated fund;
- (f) if the motor vehicle is sold under section 123ZZA—in payment to the consolidated fund.

**123ZZC Compensation for disposal of motor vehicle if driver found not guilty etc.**

- (1) This section applies if—
  - (a) any of the following happens—
    - (i) a driver is found not guilty of a criminal organisation offence;
    - (ii) the proceeding for a criminal organisation offence is discontinued;
    - (iii) a driver is found guilty of an offence against a provision mentioned in section 123B(1)(b) or (c) but not in the circumstance of being a participant in a criminal organisation; and
  - (b) the commissioner has before the happening of the event mentioned in paragraph (a) received the motor vehicle to which the offence relates under this chapter; and
  - (c) the commissioner has—
    - (i) sold the motor vehicle; or
    - (ii) otherwise disposed of the vehicle.
- (2) Compensation is payable by the State to the person whose motor vehicle is sold or otherwise disposed of.
- (3) The Minister is to decide the amount of the compensation.
- (4) A person who is dissatisfied with the Minister's decision under subsection (3) may apply to a

court, within 28 days, for compensation under this section.

- (5) If the person applies under subsection (4), the court may decide the amount of the compensation.

## **Division 4      Other provisions**

### **123ZZD Protection from liability**

- (1) A police officer acting in good faith and without negligence is not liable for any damage, loss or depreciation to a motor vehicle, including the motor vehicle's number plates, during the impounding of the motor vehicle.
- (2) If subsection (1) prevents liability attaching to a police officer, liability instead attaches to the State.
- (3) Also, if a police officer signs a towing authority under section 123S for the motor vehicle, the State is not liable for any damage, loss or depreciation to the motor vehicle while it is being moved under the towing authority and while it is impounded in the holding yard of the person authorised under the towing authority to tow the motor vehicle.

### **123ZZE Third party protection relating to forfeiture**

- (1) This section applies in relation to a person, other than a defendant, who has an interest in a motor vehicle forfeited to the State under this chapter.
- (2) The person may apply to a determining court for an order under subsection (7).
- (3) Subsection (2) applies even though the value of the motor vehicle may be more than the

[s 60]

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maximum amount that may be claimed in a personal action in the civil jurisdiction of a Magistrates Court.

- (4) Unless the determining court gives leave, the application must be made within 6 months after the day the motor vehicle became the property of the State.
- (5) The determining court may give leave for a later application if it is satisfied that the delay in applying was not because of the applicant's neglect.
- (6) Unless the determining court gives leave, a person who was given notice of the hearing of the charge for the criminal organisation offence can not apply to the court for an order under subsection (7).
- (7) On an application, an order may be made—
  - (a) declaring the nature, extent and, if necessary for the order, the value (when the declaration is made) of the applicant's interest in the motor vehicle; and
  - (b) directing the State—
    - (i) if the motor vehicle is still vested in the State—to transfer the motor vehicle to the applicant; or
    - (ii) if the motor vehicle is no longer vested in the State—to pay to the applicant the value of the applicant's interest in the motor vehicle after taking into account any amount paid to the holder of a registered security interest under section 123ZZB(2)(c).
- (8) The determining court must, and may only, make the order if it is satisfied—



- 
- (a) the applicant has or, apart from the forfeiture, would have a genuine interest in the motor vehicle; and
- (b) the relevant criminal organisation offence happened without the knowledge and consent of the applicant.
- (9) For all applications, including applications for leave to apply, the applicant must give notice of the making of the application to the commissioner.
- (10) In this section—
- defendant* means a person found guilty of the criminal organisation offence because of which the forfeiture under this chapter happened.
- determining court* means—
- (a) the Magistrates Court for the Magistrates Court district, or division of the district, in which the motor vehicle was impounded for the criminal organisation offence; or
- (b) the court before which the defendant was convicted of the criminal organisation offence.

### **123ZZF Delegation—commissioner**

The commissioner may delegate any of the commissioner's powers under this chapter including, for example, considering an application for the release of an impounded vehicle under part 2, division 5 and making a decision about the application, to a police officer of at least the rank of inspector.

## **61 Amendment of s 150 (Search warrant application)**

Section 150(1)(c), after 'chapter 4'—

*insert—*

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, 4A

**62 Amendment of s 156 (What search warrant must state)**

Section 156(1)(b)(iv), after ‘chapter 4’—

*insert—*

, 4A

**63 Amendment of s 686 (Application of pt 3)**

Section 686(2)(a), after ‘chapter 4’—

*insert—*

, 4A

**64 Amendment of s 754 (Offence for driver of motor vehicle to fail to stop motor vehicle)**

Section 754(2), ‘Minimum penalty—50 penalty units.’—

*omit, insert—*

Minimum penalty—

- (a) if the driver is a participant in a criminal organisation within the meaning of the Criminal Code, section 60A—100 penalty units or 100 days imprisonment served wholly in a corrective services facility; or
- (b) otherwise—50 penalty units or 50 days imprisonment served wholly in a corrective services facility.

**65 Amendment of s 809 (Regulation-making power)**

(1) Section 809(2)(b), after ‘, 4’—

*insert—*

, 4A

(2) Section 809(2)—

*insert—*

- (d) notice requirements for impounding or immobilising motor vehicles under chapter 4A.

## 66 Amendment of sch 6 (Dictionary)

(1) Schedule 6, definition *participant*—

*omit.*

(2) Schedule 6—

*insert—*

***criminal organisation***—

- (a) generally, see Criminal Code, section 1; and  
(b) in relation to an offence against the Criminal Code, section 60C—see that section.

***criminal organisation offence***, for chapter 4A, see section 123B.

***eligible person***, for chapter 4A, part 2, division 5, see section 123U.

***immobilise***, for chapter 4A, see section 123A.

***immobilising device***, for chapter 4A, see section 123A.

***immobilising notice***, for chapter 4A, see section 123T(2).

***impounding notice***, for chapter 4A, see section 123T(2).

***information notice***, for chapter 4A, part 2, division 5, see section 123U.

***number plate***, for chapter 4A, see section 123A.

***number plate confiscation notice***, for chapter 4A, see section 123K(2).



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*insert—*

, 4A

## **Part 8                      Other matters**

### **70        Making of Criminal Code (Criminal Organisations) Regulation 2013**

- (1) Schedule 1 has effect to make the *Criminal Code (Criminal Organisations) Regulation 2013* that is set out in schedule 1 as a regulation under the Criminal Code.
- (2) To remove any doubt, it is declared that the *Criminal Code (Criminal Organisations) Regulation 2013*, on the commencement of schedule 1, stops being a provision of this Act and becomes a regulation made under the Criminal Code.

### **71        Regulation amended**

Schedule 2 amends the *Crime and Misconduct Regulation 2005*.

### **72        Automatic repeal**

For the purpose of the *Acts Interpretation Act 1954*, section 22C, this Act is an amending Act.

# Schedule 1      **Criminal Code (Criminal Organisations) Regulation 2013**

section 70

## 1      **Short title**

This regulation may be cited as the *Criminal Code (Criminal Organisations) Regulation 2013*.

## 2      **Entities declared to be criminal organisations**

For the Criminal Code, section 1, definition *criminal organisation*, paragraph (c), the following entities are declared to be criminal organisations—

- the motorcycle club known as the Bandidos
- the motorcycle club known as the Black Uhlans
- the motorcycle club known as the Coffin Cheaters
- the motorcycle club known as the Comancheros
- the motorcycle club known as the Finks
- the motorcycle club known as the Fourth Reich
- the motorcycle club known as the Gladiators
- the motorcycle club known as the Gypsy Jokers
- the motorcycle club known as the Hells Angels
- the motorcycle club known as the Highway 61
- the motorcycle club known as the Iron Horsemen
- the motorcycle club known as the Life and Death
- the motorcycle club known as the Lone Wolf
- the motorcycle club known as the Mobshitters
- the motorcycle club known as the Mongols

- the motorcycle club known as the Muslim Brotherhood Movement
- the motorcycle club known as the Nomads
- the motorcycle club known as the Notorious
- the motorcycle club known as the Odins Warriors
- the motorcycle club known as the Outcasts
- the motorcycle club known as the Outlaws
- the motorcycle club known as the Phoenix
- the motorcycle club known as the Rebels
- the motorcycle club known as the Red Devils
- the motorcycle club known as the Renegades
- the motorcycle club known as the Scorpions

### **3 Places declared to be prescribed places**

For the Criminal Code, section 60B(4), definition *prescribed place*, the following places are declared to be prescribed places—

- 11 Frodsham Street, Albion
- shop 5/1 Thorsborne Street, Beenleigh
- 6 Enterprise Street, Boyne Island
- shed 14/136 Aumuller Street, Bungalow
- 200 Hartley Street, Bungalow
- 1/16 Ern Harley Drive, Burleigh Heads
- 34 Lemana Lane, Burleigh Heads
- unit 3/7 Lear Jet Drive, Caboolture
- 104 Spence Street, Cairns
- unit 3/37 Caloundra Road, Caloundra West
- shed 1/5 Garema Street, Cannonvale
- shed 4/11 Ryecroft Street, Carrara

Schedule 1

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- 31 Selhurst Street, Coopers Plains
- unit 7/12 Hayter Street, Currumbin Waters
- unit 5/17 Cottonview Street, Emerald
- 11 Greer Lane, Eumundi
- shed 3/85 Hanson Road, Gladstone
- unit 3/31 Tradelink Drive, Hillcrest
- unit 5/29 Pound Street, Kingaroy
- 15–17 Avian Street, Kunda Park
- unit 5/1 Chain Street, Mackay
- 4 Keats Street, Mackay
- unit 4/55 Cronulla Avenue, Mermaid Beach
- 4 Ellen Street, Moorooka
- 31 Unwin Street, Moorooka
- 1 Zena Street, Mt Isa
- unit 2/12 Lawrence Drive, Nerang
- unit 5/144 Eumundi Noosa Road, Noosaville
- 2 Millchester Road, Queenton
- 26252 Peak Downs Highway, Racecourse
- shed 12/13 Turley Street, Raceview
- 36 East Lane, Rockhampton
- unit 1/26 Rowland Street, Slacks Creek
- unit 2/8 Proprietary Drive, Tingalpa
- shed 4/14 Civil Court, Toowoomba
- 209 James Street, Toowoomba
- units 3 and 4/82 Leyland Street, Townsville
- 29 Matheson Street, Virginia
- 81 Ingham Road, West End
- 391 Montague Road, West End



- shed 1A/10 Industrial Avenue, Yeppoon

## Schedule 2      Other amendments

section 71

### 1      Regulation amended

This schedule amends the *Crime and Misconduct Regulation 2005*.

### 2      Insertion of new s 18

Part 5—

*insert—*

#### **18 Entities declared to be criminal organisations**

The following entities are declared to be criminal organisations—

- the motorcycle club known as the Bandidos
- the motorcycle club known as the Black Uhlans
- the motorcycle club known as the Coffin Cheaters
- the motorcycle club known as the Comancheros
- the motorcycle club known as the Finks
- the motorcycle club known as the Fourth Reich
- the motorcycle club known as the Gladiators
- the motorcycle club known as the Gypsy Jokers
- the motorcycle club known as the Hells Angels
- the motorcycle club known as the Highway 61
- the motorcycle club known as the Iron Horsemen
- the motorcycle club known as the Life and Death
- the motorcycle club known as the Lone Wolf
- the motorcycle club known as the Mobshitters
- the motorcycle club known as the Mongols

- the motorcycle club known as the Muslim Brotherhood Movement
- the motorcycle club known as the Nomads
- the motorcycle club known as the Notorious
- the motorcycle club known as the Odins Warriors
- the motorcycle club known as the Outcasts
- the motorcycle club known as the Outlaws
- the motorcycle club known as the Phoenix
- the motorcycle club known as the Rebels
- the motorcycle club known as the Red Devils
- the motorcycle club known as the Renegades
- the motorcycle club known as the Scorpions

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