



Queensland

Criminal Organisation Amendment Bill 2011



Queensland

Criminal Organisation Amendment Bill 2011

Contents

		Page
Part 1	Preliminary	
1	Short title	4
Part 2	Amendment of Criminal Organisation Act 2009	
2	Act amended	4
3	Amendment of s 59 (What is criminal intelligence)	4
4	Insertion of new s 59A	4
	59A Other definitions for pt 6	4
5	Replacement of ss 63 and 64.	6
	63 Applying for declaration	6
	64 Additional affidavit if informant relied on.	7
6	Amendment of s 65 (Registrar to secure information)	10
7	Replacement of s 71 (Oral evidence by police officers)	10
	71 Oral evidence by police officers and officers of external agencies	10
8	Amendment of s 72 (Deciding application).	11
9	Replacement of s 76 (Additional affidavit if informant relied on)	11
	76 Additional matters if informant relied on.	11
10	Amendment of s 77 (Registrar to secure intelligence)	12
11	Amendment of s 78 (Special closed hearing for consideration of intelligence)	12
12	Replacement of s 80 (Oral evidence by police officers)	12
	80 Oral evidence by police officers and officers of external agencies	13
13	Amendment of s 82 (Unlawful disclosure of criminal intelligence or information in informant affidavit).	13
14	Amendment of s 88 (Material to be given to COPIM).	13
15	Amendment of s 122 (Criminal organisations register)	13

Criminal Organisation Amendment Bill 2011

Contents

16	Insertion of new s 136A	13
	136A Definition informant not to include ASIO officers	14
17	Insertion of new s 142	14
	142 Regulation made by the Criminal Organisation Amendment Act 2011	14
18	Amendment of sch 2 (Dictionary)	14
Part 3	Amendment of Crime and Misconduct Act 2001	
19	Act amended	16
20	Amendment of s 213 (Secrecy)	16
Part 4	Amendment of Criminal Code	
21	Code amended	16
22	Amendment of s 86 (Obtaining of or disclosure of secret information about the identity of informant)	17
Part 5	Other matters	
23	Making of Criminal Organisation Regulation 2011	17
24	Automatic repeal	18
Schedule	Criminal Organisation Regulation 2011	19
1	Short title	19
2	External agencies—Act, s 59A	19

2011

A Bill

for

An Act to amend the *Criminal Organisation Act 2009*, the *Crime and Misconduct Act 2001* and the Criminal Code for particular purposes and to make a regulation under the *Criminal Organisation Act 2009*

[s 1]

The Parliament of Queensland enacts— 1

Part 1 Preliminary 2

Clause 1 Short title 3

This Act may be cited as the *Criminal Organisation
Amendment Act 2011*. 4
5

**Part 2 Amendment of Criminal
Organisation Act 2009** 6
7

Clause 2 Act amended 8

This part amends the *Criminal Organisation Act 2009*. 9

Clause 3 Amendment of s 59 (What is *criminal intelligence*) 10

Section 59— 11

insert— 12

‘(2) Criminal intelligence may be information that the
commissioner has obtained through the police service or from
an external agency.’. 13
14
15

Clause 4 Insertion of new s 59A 16

After section 59— 17

insert— 18

‘59A Other definitions for pt 6 19

‘In this part— 20

criminal intelligence application means an application 1
mentioned in section 63(1). 2

external agency means any of the following— 3

- (a) the Crime and Misconduct Commission; 4
- (b) the Australian Federal Police; 5
- (c) a police force or service of another State; 6
- (d) the chief executive (corrective services); 7
- (e) an officer of another State with powers and functions 8
substantially corresponding to the powers and functions 9
of the chief executive (corrective services) under the 10
Corrective Services Act 2006; 11
- (f) another entity— 12
 - (i) established under a law of another jurisdiction, 13
including a jurisdiction outside Australia; and 14
 - (ii) with functions that include investigating or 15
inquiring into criminal conduct, misconduct or 16
corruption (whether or not the functions are stated 17
in the law mentioned in subparagraph (i)); and 18
 - (iii) declared by regulation to be an external agency for 19
this Act. 20

identifying information, about an informant, means any of 21
the following information— 22

- (a) name, including any aliases; 23
- (b) date of birth; 24
- (c) current location; 25
- (d) where the informant resides; 26
- (e) a position held by the informant in an organisation. 27

officer, of an external agency, includes a person employed by 28
the agency, seconded to the agency or engaged by the agency 29
under a contract for services. 30

[s 5]

- relevant agency*, in relation to information that is declared criminal intelligence or that is the subject of a criminal intelligence application, means—
- (a) if the commissioner obtained the information from an external agency—that agency; or
 - (b) otherwise—the police service.’.

Clause 5	Replacement of ss 63 and 64	7
	Sections 63 and 64—	8
	<i>omit, insert—</i>	9
‘63	Applying for declaration	10
	‘(1) The commissioner may apply to the court for a declaration that particular information is criminal intelligence (<i>declared criminal intelligence</i>).	11 12 13
	‘(2) However, the commissioner may make the application only if the commissioner reasonably believes the information is criminal intelligence.	14 15 16
	‘(3) The application must—	17
	(a) identify the information; and	18
	(b) state the relevant agency for the information; and	19
	(c) state—	20
	(i) that the commissioner seeks a declaration that the information is criminal intelligence; and	21 22
	(ii) the grounds on which the declaration is sought; and	23
	(d) include an explanation of—	24
	(i) the relevant agency’s intelligence assessment system; and	25 26
	(ii) the assessment of the information that was made under the system.	27 28
	‘(4) An affidavit to be relied on by the commissioner at the hearing must be filed with the application.	29 30

-
- ‘(5) If any of the information has been provided by an informant, the application and affidavits and other material filed with the application need not include any identifying information about the informant and identifying information about the informant can not otherwise be required to be given to the court. 1
2
3
4
5
6
- ‘(6) The commissioner must give copies of the application and any supporting material to the COPIM under arrangements decided by the COPIM. 7
8
9
- Note—* 10
- Under section 88(2), this requirement does not apply to particular material about informants. 11
12
- ‘(7) In this section— 13
- intelligence assessment system*** means a system for assessing information relating to actual or suspected criminal activity according to— 14
15
16
- (a) the reliability of the source of the information; and 17
- (b) the validity of the information. 18

‘64 Additional affidavit if informant relied on 19

- ‘(1) This section applies if the information mentioned in section 63(1) (the ***relevant intelligence***) was provided to the relevant agency by an informant. 20
21
22
- ‘(2) The informant can not be called or otherwise required to give evidence. 23
24
- ‘(3) The commissioner must, at any time before the hearing of the application, file an affidavit by an officer of the relevant agency. 25
26
27
- ‘(4) The affidavit must— 28
- (a) state— 29
- (i) the relevant agency; and 30
- (ii) the officer’s position at the relevant agency; and 31

[s 5]

- (b) state that the officer reasonably believes, and has made all reasonable efforts to ensure, the officer has full knowledge of—
 - (i) the information held by the relevant agency about the informant; and
 - (ii) the intelligence held by the relevant agency that was provided by the informant; and
 - (c) state that the officer reasonably believes the relevant agency has made all reasonable enquiries about the existence, and to obtain the details, of any allegations of professional misconduct against the informant; and
 - (d) contain the following information about the informant—
 - (i) the informant’s full criminal history, including pending charges;
 - (ii) any information held by the relevant agency about allegations of professional misconduct against the informant;
 - (iii) any inducements or rewards offered or provided to the informant in return for assistance;
 - (iv) whether the informant was an adult or a child when the informant provided the relevant intelligence to the relevant agency;
 - (v) whether the informant was serving a term of imprisonment or otherwise being held in custody when the informant provided the relevant intelligence to the relevant agency; and
 - (e) state—
 - (i) that the officer holds an honest and reasonable belief that the relevant intelligence is reliable; and
 - (ii) the reasons for that belief.
- ‘(5) For subsection (4)(d)(i), it is sufficient description of a conviction or charge in the informant’s criminal history to state that the conviction or charge related to property, violence or another stated matter, and if it involved dishonesty, without

-
- providing further particulars of the offence to which the conviction or charge relates. 1
2
- ‘(6) For subsection (4)(d)(ii), it is sufficient to state whether or not 3
there have been any allegations of professional misconduct 4
against the informant and if any misconduct or alleged 5
misconduct involved dishonesty. 6
- ‘(7) For subsection (4)(d)(i) and (ii), the description in the affidavit 7
of a conviction or charge in the informant’s criminal history or 8
an allegation of professional misconduct against the 9
informant— 10
- (a) need not state the date of the conviction or charge or 11
date on which the offence was committed or is alleged 12
to have been committed or date on which the 13
misconduct happened or is alleged to have happened; 14
but 15
- (b) if it does not state a date as mentioned in paragraph (a), 16
must state the time of the conviction, charge, offence, 17
alleged offence, misconduct or alleged misconduct as 18
being in a stated period of not more than 7 years. 19
- Examples for subsections (5) to (7)—* 20
- 1 An affidavit may describe an informant’s criminal history as— 21
- ‘for the period 2000 to 2006—2 property offences involving 22
dishonesty and 1 offence of a sexual nature; and 23
 - for the period 2007 to 2011—1 offence involving violence.’ 24
- 2 An affidavit may state that the information held by the relevant 25
agency is that there has been 1 allegation of professional 26
misconduct made against the informant and that the alleged 27
misconduct was during the period 2000 to 2006. 28
- ‘(8) Other than information about the informant’s criminal history 29
or an allegation of professional misconduct against the 30
informant given in the affidavit under subsections (4) to (7), 31
information about the informant’s criminal history or an 32
allegation of professional misconduct against the informant 33
can not be required to be given to the court. 34
- ‘(9) Subsection (8) does not prevent further information being 35
given to the court other than under a requirement. 36
-

[s 6]

- ‘(10) Also, the requirement under subsection (4)(d)(i) to state the informant’s full criminal history applies only to the extent of the information held by the relevant agency if—
- (a) the agency is an external agency; and
 - (b) the affidavit states that the officer believes—
 - (i) the agency might not hold all the information comprising the informant’s criminal history; and
 - (ii) an officer of the agency—
 - (A) could not lawfully obtain further information about the informant’s criminal history; or
 - (B) could not obtain further information about the informant’s criminal history without disclosing the identity of the informant.’.

Clause 6 Amendment of s 65 (Registrar to secure information) 14

Section 65(4)— 15

omit, insert— 16

- ‘(4) However, the COPIM can not inspect any part of the documents to the extent they disclose any identifying information about an informant.’. 17
18
19

Clause 7 Replacement of s 71 (Oral evidence by police officers) 20

Section 71— 21

omit, insert— 22

‘71 Oral evidence by police officers and officers of external agencies 23
24

- ‘(1) With the court’s leave, a police officer who is not an informant or an officer of an external agency who is not an informant may be called at the hearing to give evidence and be cross-examined by the court or the COPIM. 25
26
27
28

‘(2) However, no question may be asked of the officer that could lead to the disclosure of any identifying information about an informant.’. 1
2
3

Clause 8 Amendment of s 72 (Deciding application) 4

(1) Section 72(3) and (4)— 5
renumber as section 72(6) and (7). 6

(2) Section 72— 7
insert— 8

‘(3) Subsection (2) does not limit the matters that the court may consider in exercising its discretion. 9
10

Example— 11

The court may take into consideration that, under section 64(10), the information about an informant’s criminal history contained in an affidavit filed in the court may be incomplete. 12
13
14

‘(4) If the information was provided to the relevant agency by an informant, the court may not declare that the information is criminal intelligence unless some or all of the information is supported in a material particular by other information before the court. 15
16
17
18
19

‘(5) The supporting information mentioned in subsection (4) may be other information before the court that is declared criminal intelligence or that is the subject of a criminal intelligence application.’. 20
21
22
23

**Clause 9 Replacement of s 76 (Additional affidavit if informant relied on) 24
25**

Section 76— 26

omit, insert— 27

‘76 Additional matters if informant relied on 28

‘(1) This section applies if the declared criminal intelligence was provided to the relevant agency by an informant. 29
30

[s 10]

- ‘(2) The informant can not be called or otherwise required to give evidence. 1
2
- ‘(3) The commissioner must, at any time before the hearing of the substantive application, file an affidavit by an officer of the relevant agency complying with section 64(4) to (10). 3
4
5
- ‘(4) The substantive application and affidavits and other material filed with the application need not include any identifying information about the informant and identifying information about the informant can not otherwise be required to be given to the court.’. 6
7
8
9
10

- Clause 10 Amendment of s 77 (Registrar to secure intelligence) 11**
- Section 77(4)— 12
- omit, insert—* 13
- ‘(4) However, the COPIM can not inspect any part of the documents to the extent they disclose any identifying information about an informant.’. 14
15
16

- Clause 11 Amendment of s 78 (Special closed hearing for consideration of intelligence) 17
18**
- (1) Section 78(2)(c) to (e)— 19
- renumber* as section 78(2)(d) to (f). 20
- (2) Section 78(2)— 21
- insert—* 22
- ‘(c) an officer of an external agency from which the commissioner obtained any of the declared criminal intelligence;’. 23
24
25

- Clause 12 Replacement of s 80 (Oral evidence by police officers) 26**
- Section 80— 27
- omit, insert—* 28

'80	Oral evidence by police officers and officers of external agencies	1 2
	'(1) A police officer who is not an informant or an officer of an external agency who is not an informant may be—	3 4
	(a) called at the hearing of the substantive application to give evidence including or about the declared criminal intelligence; and	5 6 7
	(b) cross-examined by the court or the COPIM.	8
	'(2) However, no question may be asked of the officer or the COPIM that could lead to the disclosure of any identifying information about an informant.'	9 10 11
Clause 13	Amendment of s 82 (Unlawful disclosure of criminal intelligence or information in informant affidavit)	12 13
	Section 82(1)(b), 'or 76(4)'—	14
	<i>omit.</i>	15
Clause 14	Amendment of s 88 (Material to be given to COPIM)	16
	Section 88(2)—	17
	<i>omit, insert—</i>	18
	'(2) However, a requirement under this Act to give material to the COPIM does not apply to material to the extent it discloses any identifying information about the informant.'	19 20 21
Clause 15	Amendment of s 122 (Criminal organisations register)	22
	Section 122(6), ' <i>Juvenile</i> '—	23
	<i>omit, insert—</i>	24
	<i>'Youth'</i> .	25
Clause 16	Insertion of new s 136A	26
	After section 136—	27

[s 17]

insert—

‘136A Definition *informant* not to include ASIO officers

‘(1) This section applies if, under section 59A, definition *external agency*, paragraph (f), ASIO is declared by regulation to be an external agency for this Act.

‘(2) In schedule 2, definition *informant*, paragraph (d), the reference to an officer of an external agency does not include an officer of ASIO.

‘(3) In this section—

ASIO means the Australian Security Intelligence Organisation established under the *Australian Security Intelligence Organisation Act 1979* (Cwlth).’.

Clause 17 Insertion of new s 142

After section 141—

insert—

‘142 Regulation made by the *Criminal Organisation Amendment Act 2011*

‘(1) This section applies to the regulation made by the *Criminal Organisation Amendment Act 2011*, section 23 and schedule.

‘(2) The regulation is subordinate legislation.

‘(3) The *Statutory Instruments Act 1992*, part 6 does not apply to the regulation.

‘(4) The making of the regulation by the Act mentioned in subsection (1) does not affect the power of the Governor in Council to further amend the regulation or to repeal it.’.

Clause 18 Amendment of sch 2 (Dictionary)

(1) Schedule 2—

insert—

‘*external agency*, for part 6, see section 59A.

-
- identifying information*, for part 6, see section 59A. 1
- officer*, of an external agency, see section 59A. 2
- relevant agency*, for part 6, see section 59A.’. 3
- (2) Schedule 2, definition *child*, ‘*Juvenile*’— 4
- omit, insert*— 5
- ‘*Youth*’. 6
- (3) Schedule 2, definition *criminal intelligence*, ‘section 59’— 7
- omit, insert*— 8
- ‘section 59(1)’. 9
- (4) Schedule 2, definition *criminal intelligence application*, 10
- ‘section 63(1)’— 11
- omit, insert*— 12
- ‘section 59A’. 13
- (5) Schedule 2, definition *informant*, paragraph (a)— 14
- omit, insert*— 15
- ‘(a) anyone who has given, to the police service or an 16
- external agency, information that the commissioner 17
- reasonably believes is criminal intelligence, and who is 18
- not a police officer or officer of the external agency;’. 19
- (6) Schedule 2, definition *informant*— 20
- insert*— 21
- ‘(d) an officer of an external agency who has obtained 22
- information through the use of an assumed identity. 23
- Note*— 24
- See section 136A in relation to officers of ASIO.’. 25

[s 19]

Part 3 **Amendment of Crime and Misconduct Act 2001** 1
2

Clause 19 Act amended 3
This part amends the *Crime and Misconduct Act 2001*. 4

Clause 20 Amendment of s 213 (Secrecy) 5

(1) Section 213(3)(a)(i), after ‘commissioner’— 6
insert— 7
‘, an application or proceeding under the *Criminal Organisation Act 2009*’. 8
9

(2) Section 213(3)(b)(i)(A), after ‘commissioner’— 10
insert— 11
‘, an application or proceeding under the *Criminal Organisation Act 2009*’. 12
13

(3) Section 213(4)(b)— 14
insert— 15
‘(iii) for a proceeding under the *Criminal Organisation Act 2009*’. 16
17

Part 4 **Amendment of Criminal Code** 18

Clause 21 Code amended 19
This part amends the Criminal Code. 20

Clause 22	Amendment of s 86 (Obtaining of or disclosure of secret information about the identity of informant)	1 2
(1)	Section 86(3), definition <i>criminal organisation informant</i> , paragraph (a)—	3 4
	<i>omit, insert—</i>	5
	‘(a) anyone who has given, to the police service or an external agency, information that the commissioner reasonably believes is criminal intelligence for the purposes of the <i>Criminal Organisation Act 2009</i> , and who is not a police officer or officer of the external agency;’.	6 7 8 9 10 11
(2)	Section 86(3), definition <i>criminal organisation informant</i> , after the editor’s note—	12 13
	<i>insert—</i>	14
	‘(d) an informant under the <i>Criminal Organisation Act 2009</i> , schedule 2, definition <i>informant</i> , paragraph (d).’.	15 16
(3)	Section 86(3)—	17
	<i>insert—</i>	18
	‘ <i>external agency</i> see the <i>Criminal Organisation Act 2009</i> , section 59A.’.	19 20

Part 5 Other matters 21

Clause 23	Making of Criminal Organisation Regulation 2011	22
(1)	The schedule has effect to make the <i>Criminal Organisation Regulation 2011</i> that is set out in the schedule as a regulation under the <i>Criminal Organisation Act 2009</i> .	23 24 25
(2)	To remove any doubt, it is declared that the <i>Criminal Organisation Regulation 2011</i> , on the commencement of the schedule, stops being a provision of this Act and becomes a regulation made under the <i>Criminal Organisation Act 2009</i> .	26 27 28 29

[s 24]

Clause 24	Automatic repeal	1
	For the purpose of the <i>Acts Interpretation Act 1954</i> , section 22C, this Act is an amending Act.	2 3

Schedule	Criminal Organisation Regulation 2011	1 2
	section 23	3
1	Short title	4
	This regulation may be cited as the <i>Criminal Organisation Regulation 2011</i> .	5 6
2	External agencies—Act, s 59A	7
	Each of the following entities is declared to be an external agency for this Act—	8 9
	(a) ASIC;	10
	(b) the Australian Crime Commission under the <i>Australian Crime Commission Act 2002</i> (Cwlth);	11 12
	(c) the Australian Customs and Border Protection Service under the <i>Customs Administration Act 1985</i> (Cwlth);	13 14
	(d) the Australian Security Intelligence Organisation established under the <i>Australian Security Intelligence Organisation Act 1979</i> (Cwlth);	15 16 17
	(e) the Corruption and Crime Commission established under the <i>Corruption and Crime Commission Act 2003</i> (WA);	18 19 20
	(f) the Independent Commission against Corruption established under the <i>Independent Commission Against Corruption Act 1988</i> (NSW);	21 22 23
	(g) the New South Wales Crime Commission established under the <i>New South Wales Crime Commission Act 1985</i> (NSW);	24 25 26
	(h) the Office of Police Integrity established under the <i>Police Integrity Act 2008</i> (Vic);	27 28

Schedule

- | | | |
|-----|--|-------------|
| (i) | the Australian Commission for Law Enforcement Integrity established by the <i>Law Enforcement Integrity Commissioner Act 2006</i> (Cwlth). | 1
2
3 |
|-----|--|-------------|

© State of Queensland 2011