



New South Wales

Crimes (Criminal Organisations Control) Regulation 2019

under the

Crimes (Criminal Organisations Control) Act 2012

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Crimes (Criminal Organisations Control) Act 2012*.

MARK SPEAKMAN, MP
Attorney General

Explanatory note

The object of this Regulation is to repeal and remake, with minor amendments, the *Crimes (Criminal Organisations Control) Regulation 2014*, which would otherwise be repealed on 1 September 2019 by section 10 (2) of the *Subordinate Legislation Act 1989*.

The Regulation provides for the designation of the criminal intelligence monitor, who monitors applications made to the Supreme Court in relation to criminal organisations and their members and criminal intelligence. The Regulation also provides for the designation of alternates if the criminal intelligence monitor is unavailable, prescribes certain notification and annual reporting requirements for the criminal intelligence monitor, and prevents a lawyer who exercises the functions of the criminal intelligence monitor from representing certain persons and organisations.

This Regulation is made under the *Crimes (Criminal Organisations Control) Act 2012*, including sections 28C and 38 (the general regulation-making power).

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely matters of a machinery nature and matters not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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Crimes (Criminal Organisations Control) Regulation 2019

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Crimes (Criminal Organisations Control) Act 2012

1 Name of Regulation

This Regulation is the *Crimes (Criminal Organisations Control) Regulation 2019*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Note. This Regulation repeals and replaces the *Crimes (Criminal Organisations Control) Regulation 2014*, which would otherwise be repealed on 1 September 2019 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation:

alternate means a person designated as an alternate for the monitor under clause 5.

application means:

(a) an application to the Court under Part 2 or 3 of the Act, or

(b) a criminal intelligence application under Part 3B of the Act.

the Act means the *Crimes (Criminal Organisations Control) Act 2012*.

the monitor means the criminal intelligence monitor within the meaning of Part 3B of the Act.

Note. The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

(2) Notes included in this Regulation do not form part of this Regulation.

4 Designation of criminal intelligence monitor

(1) The Minister may, by order published in the Gazette, designate a person of a kind referred to in section 28C (1) of the Act as the criminal intelligence monitor.

(2) The Minister cannot designate a person specified in Schedule 1.

5 Alternate for monitor

(1) The Minister may designate a person as an alternate for the monitor in the same way as the Minister designates the monitor.

(2) The Minister cannot designate a person as an alternate unless the person is a person who may be designated as the monitor.

(3) Up to 3 alternates may be designated.

(4) An alternate may exercise the functions of the monitor in respect of an application if the monitor is unavailable to exercise those functions and in the exercise of any such function is taken to be the monitor.

- (5) Without limiting subclause (4), the monitor is taken to be unavailable to exercise functions in respect of an application if the monitor has notified the Commissioner in writing that the monitor is unable to exercise some or all of the functions of the monitor in respect of the application.

6 Monitor or alternate must inform Commissioner of unavailability

A person who is to exercise the functions of the monitor in respect of an application and who ceases to be available to exercise some or all of those functions must, as soon as practicable:

- (a) give written notice of that fact to the Commissioner, and
- (b) return any material provided under section 28E of the Act in relation to the application to the Commissioner or, with the consent of the Commissioner, give the material directly to a person who is to exercise the functions of the monitor in respect of the application.

7 Time within which material must be given to monitor or alternate

The Commissioner must ensure all material in relation to an application that is required to be given to a monitor under section 28E of the Act is given to the monitor at least 28 days before the application is heard, or if an alternate is to exercise the functions of the monitor in respect of the application, to the alternate at least 21 days before the application is heard.

8 Annual report by monitor and alternates

- (1) Each person who exercises the functions of the monitor during the period of 12 months ending on 31 December in a year must prepare an annual report in respect of the exercise of those functions.
- (2) Any such report cannot contain any criminal intelligence.
- (3) The report must be prepared and presented to the Minister within 3 months after the end of the period to which the report relates.
- (4) The Minister must, as soon as practicable after receiving a report under this clause, table the report, or cause it to be tabled, in both Houses of Parliament.

9 Restriction on legal practice of monitors and alternates

A lawyer who has exercised the functions of a monitor must not represent an organisation or a person if:

- (a) the lawyer knows, or ought reasonably to know, that the organisation or person is or was a respondent to an application under the Act, or
Note. All declared organisations and persons to whom control orders relate will have been respondents to an application under the Act.
- (b) the lawyer knows, or ought reasonably to know, that the person is or was a member of an organisation referred to in paragraph (a), or
- (c) the lawyer obtained criminal intelligence about the organisation or person when exercising the functions of the monitor.

10 Repeal and savings

- (1) The *Crimes (Criminal Organisations Control) Regulation 2014* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *Crimes (Criminal Organisations Control) Regulation 2014*, had effect under that Regulation continues to have effect under this Regulation.

Schedule 1 Persons who cannot be monitor or alternate

(Clause 4)

- 1** A person who is appointed as the Director of Public Prosecutions.
- 2** A person who is a member of the NSW Police Force.
- 3** A person employed in the Public Service in any of the following Public Service agencies:
 - (a) Office of the Director of Public Prosecutions,
 - (b) New South Wales Crime Commission Staff Agency.
- 4** A person holding an office, or employed in a position, in another jurisdiction that is equivalent to any office or position referred to in clauses 1–3.