

## Definitions of organised crime in Australian and international legislation and international instruments

| Jurisdiction                | Definition of organised crime  | Legislation  |
|-----------------------------|--|--|
| <b>Domestic legislation</b> |  |  |
| Commonwealth                | <p><i>Serious and organised crime</i> means an offence:</p> <ul style="list-style-type: none"> <li>(a) that involves 2 or more offenders and substantial planning and organisation; and</li> <li>(b) that involves, or is of a kind that ordinarily involves, the use of sophisticated methods and techniques; and</li> <li>(c) that is committed, or is of a kind that is ordinarily committed, in conjunction with other offences of a like kind; and</li> <li>(d) that is a serious offence within the meaning of the <i>Proceeds of Crime Act 2002</i>,<sup>1</sup> an offence of a kind prescribed by the regulations<sup>2</sup> or an offence that involves any of the following: <ul style="list-style-type: none"> <li>(i) theft;</li> <li>(ii) fraud;</li> <li>(iii) tax evasion;</li> <li>(iv) money laundering;</li> <li>(v) currency violations;</li> <li>(vi) illegal drug dealings;</li> <li>(vii) illegal gambling;</li> </ul> </li> </ul> | Subsection 4(1), <i>Australian Crime Commission Act 2002</i> |

<sup>1</sup> 'Serious offence' is defined in s 338 of the *Proceeds of Crime Act 2002*.

<sup>2</sup> The following provisions of the *Criminal Code* are prescribed for the purposes of paragraph 4(1)(d) of the *Australian Crime Commission Act 2002*:

- (a) s 474.19 (using a carriage service for child pornography material);
- (b) s 474.20 (possessing, controlling, producing, supplying or obtaining child pornography material for use through a carriage service);
- (c) s 474.22 (using a carriage service for child abuse material);
- (d) s 474.23 (possessing, controlling, producing, supplying or obtaining child abuse material for use through a carriage service);
- (e) s 474.26 (using a carriage service to procure persons under 16); and
- (f) s 474.27 (using a carriage service to 'groom' persons under 16).

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|              | <p>(viii) obtaining financial benefit by vice engaged in by others;</p> <p>(ix) extortion;</p> <p>(x) violence;</p> <p>(xi) bribery or corruption of, or by, an officer of the Commonwealth, an officer of a State or an officer of a Territory;</p> <p>(xii) perverting the course of justice;</p> <p>(xiii) bankruptcy and company violations;</p> <p>(xiv) harbouring of criminals;</p> <p>(xv) forging of passports;</p> <p>(xvi) firearms;</p> <p>(xvii) armament dealings;</p> <p>(xviii) illegal importation or exportation of fauna into or out of Australia;</p> <p>(xix) cybercrime;</p> <p>(xx) matters of the same general nature as one or more of the matters listed above; and</p> <p>(da) that is:</p> <p style="padding-left: 20px;">(i) punishable by imprisonment for a period of 3 years or more; or</p> <p style="padding-left: 20px;">(ii) a serious offence within the meaning of the Proceeds of Crimes Act 2002;</p> <p>but:</p> <p>(e) does not include an offence committed in the course of a genuine dispute as to matters pertaining to the relations of employees and employers by a party to the dispute, unless the offence is committed in connection with, or as part of, a course of activity involving the commission of a serious and organised crime other than an offence so committed; and</p> <p>(f) does not include an offence the time for the commencement of a prosecution for which has expired.</p> |             |

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| New South Wales | <p><b><i>Criminal group</i></b><sup>3</sup> means a group of 3 or more people who have as their objective or one of their objectives:</p> <ul style="list-style-type: none"> <li>(a) obtaining material benefits from conduct that constitutes a serious indictable offence, or</li> <li>(b) obtaining material benefits from conduct engaged in outside New South Wales (including outside Australia) that, if it occurred in New South Wales, would constitute a serious indictable offence, or</li> <li>(c) committing serious violence offences, or</li> <li>(d) engaging in conduct outside New South Wales (including outside Australia) that, if it occurred in New South Wales, would constitute a serious violence offence.</li> </ul> <p><b><i>serious violence offence</i></b> means an offence punishable by imprisonment for life or for a term of 10 years or more, where the conduct constituting the offence involves:</p> <ul style="list-style-type: none"> <li>(a) loss of a person's life or serious risk of loss of a person's life, or</li> <li>(b) serious injury to a person or serious risk of serious injury to a person, or</li> <li>(c) serious damage to property in circumstances endangering the safety of any person, or</li> <li>(d) perverting the course of justice (within the meaning of Part 7) in relation to any conduct that, if proved, would constitute a serious violence offence as referred to in paragraph (a), (b) or (c).</li> </ul> | Section 93S, <i>Crimes Act 1900</i>                           |
| Victoria        | <p><b><i>Organised crime offence</i></b> means an indictable offence against the law of Victoria, irrespective of when the offence is suspected to have been committed, that is punishable by level 5 imprisonment (10 years maximum) or more and that:</p> <ul style="list-style-type: none"> <li>(a) involves 2 or more offenders; and</li> <li>(b) involves substantial planning and organisation; and</li> </ul>  | Section 3, <i>Major Crime (Investigative Powers) Act 2004</i> |

<sup>3</sup> A group of people is capable of being a criminal group whether or not:

- (a) any of them are subordinates or employees of others, or
- (b) only some of the people involved in the group are involved in planning, organising or carrying out any particular activity, or
- (c) its membership changes from time to time.

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|                   | (c) forms part of systemic and continuing criminal activity; and<br>(d) has a purpose of obtaining profit, gain, power or influence.  |  |
| Queensland        | <b>Organised crime</b> means criminal activity that involves:<br>(a) indictable offences punishable on conviction by a term of imprisonment not less than 7 years; and<br>(b) 2 or more persons; and<br>(c) substantial planning and organisation or systematic and continuing activity; and<br>(d) a purpose to obtain profit, gain, power or influence.   | Schedule 2, <i>Crime and Misconduct Act 2001</i>                 |
| Western Australia | <b>Organised crime</b> means activities of 2 or more persons associated together solely or partly for purposes in the pursuit of which 2 or more Schedule 1 offences <sup>4</sup> are committed, the commission of each of which involves substantial planning and organisation.  | Subsection 3(1), <i>Corruption and Crime Commission Act 2003</i> |
| South Australia   | <b>Organisation</b> means any incorporated body or unincorporated group (however structured), whether or not the body or group is based outside South Australia, consists of persons who are not ordinarily resident in South Australia or is part of a larger organisation.<br><br><b>Serious criminal activity</b> means the commission of serious criminal offences.<br><br><b>Serious criminal offences</b> means:<br>(a) indictable offences (other than indictable offences of a kind prescribed by regulation); <sup>5</sup> or<br>(b) summary offences of a kind prescribed by regulation. <sup>6</sup> | Section 3, <i>Serious and Organised Crime (Control) Act 2008</i> |

<sup>4</sup> Schedule 1 offences include a range of offences against the *Criminal Code*, an offence referred to in s 50(1) of the *Criminal Property Confiscation Act 2000*, an offence referred to in paragraph 32A(1)(b) of the *Misuse of Drugs Act 1981* and an offence against regulations made under s 6(1) of the *Firearms Act 1973* that:

(a) is committed in respect of 2 or more firearms; or

(b) is committed in respect of a firearm and in association with the commission, by the same or any other person, of an offence against s 557I of the *Criminal Code*.

<sup>5</sup> Currently, there are no kinds of indictable offences prescribed in the *Serious and Organised Crime (Control) Regulations 2008*.

<sup>6</sup> The *Serious and Organised Crime (Control) Regulations 2008* prescribe a range of summary offences contained in the *Controlled Substances Act 1984*, *Criminal Law Consolidation Act 1935*, *Explosives Act 1936*, *Firearms Act 1977*, *Lottery and Gaming Act 1936*, *Summary Offences Act 1953*, *Explosives Regulations 1996*, and *Explosives (Fireworks) Regulations 2001*.

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| <b>International legislation</b> |   |  |
| Canada                           | <p><b><i>Criminal organization</i></b><sup>7</sup> means a group, however organized, that:</p> <ul style="list-style-type: none"> <li>(a) is composed of three or more persons in or outside Canada; and</li> <li>(b) has as one of its main purposes or main activities the facilitation or commission of one or more serious offences that, if committed, would likely result in the direct or indirect receipt of a material benefit, including a financial benefit, by the group or by any of the persons who constitute the group.</li> </ul> <p><b><i>Serious offence</i></b> means an indictable offence under this or any other Act of Parliament for which the maximum punishment is imprisonment for five years or more, or another offence that is prescribed by regulation.</p> | Section 467.1, <i>Criminal Code 1985</i>   |
| China                            | <p><b><i>Criminal group</i></b> refers to any relatively stable criminal organization which is composed of more than three persons for the purpose of committing a crime jointly.<sup>8</sup></p> <p>It is an offence to organize, lead and actively participate in organizations in the nature of criminal syndicates to commit organized illegal or criminal acts (as specified). However, criminal syndicates are not defined.</p>   | <p>Article 26, <i>Criminal Law 1997</i><sup>9</sup></p> <p>Article 294, <i>Criminal Law 1997</i></p> |
| Hong Kong                        | <p><b><i>Organized crime</i></b> means a Schedule 1 offence<sup>10</sup> that:</p> <ul style="list-style-type: none"> <li>(a) is connected with the activities of a particular triad society;</li> <li>(b) is related to the activities of 2 or more persons associated together solely or partly for the purpose of committing 2 or more acts, each of which is a Schedule 1 offence and involves substantial planning and organization; or</li> <li>(c) is committed by 2 or more persons, involves substantial planning and organization and involves: <ul style="list-style-type: none"> <li>(i) loss of the life of any person, or a substantial risk of such a loss;</li> <li>(ii) serious bodily or psychological harm to any person, or a substantial</li> </ul> </li> </ul>        | Subsection 2(1), <i>Organized and Serious Crimes Ordinance</i>                                       |

<sup>7</sup> A criminal organization does not include a group of persons that forms randomly for the immediate commission of a single offence.

<sup>8</sup> Article 25 provides that a joint crime refers to an intentional crime committed by two or more persons jointly.

<sup>9</sup> The chief purpose of article 26, which includes a definition of criminal group, is to hold organisers and other ringleaders criminally responsible as principals for actual offences committed by a criminal group.

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|              | risk of such harm; or<br>(iii) serious loss of liberty of any person.  |   |
| Macau        | <b>Associations or secret societies</b> <sup>11</sup> means organisations constituted for the purpose of obtaining illegal advantages or other benefits. The definition also requires that the ‘existence of the association is manifested in an accord, agreement or in other ways’ aimed at committing one or more of the 21 different crime types set out in article 1(1)(a)-(v). <sup>12</sup>   | Article 1(1), <i>Organised Crime Law 1997</i> <sup>13</sup> |
| New Zealand  | <b>Organised criminal group</b> <sup>14</sup> means a group of 3 or more people who have as their objective or one of their objectives:<br><br>(a) obtaining material benefits from the commission of offences that are punishable by imprisonment for a term of 4 years or more; or<br><br>(b) obtaining material benefits from conduct outside New Zealand that, if it occurred in New Zealand, would constitute the commission of offences that are punishable by imprisonment for a term of 4 years or more; or<br><br>(c) the commission of serious violent offences (within the meaning of section 312A(1)) that are punishable by imprisonment for a term of 10 | Section 98A, <i>Crimes Act 1961</i>                         |

<sup>10</sup> Schedule 1 offences include the common law offences of murder, kidnapping, false imprisonment and conspiracy to pervert the course of justice and certain statutory offences contained in the following Ordinances: Import and Export Ordinance; Immigration Ordinance; Dangerous Drugs Ordinance; Gambling Ordinance; Societies Ordinance; Money Lenders Ordinance; Crime Ordinance; Theft Ordinance; Offences against the Person Ordinance; Firearms and Ammunition Ordinance; Trade Descriptions Ordinance; Drug Trafficking (Recovery of Proceeds) Ordinance; Organized and Serious Crimes Ordinance; Weapons of Mass Destruction (Control of Provision of Services) Ordinance; and Copyright Ordinance and Chemical Weapons (Convention) Ordinance.

<sup>11</sup> To prove the existence of a secret society or organisation, it does not matter whether or not:

- (a) the organisation has a designated seat or meeting place;
- (b) the members know each other and meet periodically (regularly);
- (c) the organisation’s command, leadership or organisational hierarchy is ad hoc and not ongoing; or
- (d) the organisation has a written agreement (convention) setting out its constitution, activities, division of duties, and distribution of profits.

<sup>12</sup> The list of offences contains offences commonly associated with organised crime including homicide, offences against the person, abduction and kidnapping, rape, trafficking in persons, extortion, exploitation of the prostitution of others, loan sharking, robbery, illegal immigration, illegal gambling, trafficking in fauna, artefacts, explosives and firearms, document and credit card fraud, and corruption.

<sup>13</sup> The information on the Macau legislation was sourced from Dr Andreas Schloenhardt’s submission to the Committee.

<sup>14</sup> A group of people is capable of being an organised criminal group whether or not:

- (a) some of them are subordinates or employees of others; or
- (b) only some of the people involved in it at a particular time are involved in the planning, arrangement, or execution at that time of any particular action, activity, or transaction; or
- (c) its membership changes from time to time.

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|               | <p>years or more; or</p> <p>(d) conduct outside New Zealand that, if it occurred in New Zealand, would constitute the commission of serious violent offences (within the meaning of subsection 312A(1)) that are punishable by imprisonment for a term of 10 years or more.</p> <p><b><i>Serious violent offence</i></b> means any offence:</p> <p>(a) That is punishable by a period of imprisonment for a term of 7 years or more; and</p> <p>(b) Where the conduct constituting the offence involves:</p> <p>(i) Loss of a person's life or serious risk of loss of a person's life; or</p> <p>(ii) Serious injury to a person or serious risk of serious injury to a person; or</p> <p>(iii) Serious damage to property in circumstances endangering the physical safety of any person; or</p> <p>(iv) Perverting the course of justice, where the purpose of the conduct is to prevent, seriously hinder, or seriously obstruct the detection, investigation, or prosecution of any offence:</p> <p>(A) That is punishable by a period of imprisonment for a term of 7 years or more; and</p> <p>(B) That involved, involves, or would involve conduct of the kind referred to in any of subparagraphs (i) to (iii).</p> | <p>Subsection 312A(1), <i>Crimes Act 1961</i></p>                                |
| United States | <p><b><i>Organized crime</i></b> means the unlawful activities of the members of a highly organized, disciplined association engaged in supplying illegal goods and services, including but not limited to gambling, prostitution, loan sharking, narcotics, labor racketeering, and other unlawful activities of members of such organizations.</p>  | <p>Section 601(b), <i>Omnibus Crime Control and Safe Streets Act of 1968</i></p> |

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|              | <p><b><i>Racketeering activity</i></b> means:</p> <p>(A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in s 102 of the Controlled Substances Act), which is chargeable under State law and punishable by imprisonment for more than one year;</p> <p>(B) any act which is indictable under specified provisions of title 18;<sup>15</sup></p> <p>(C) any act which is indictable under title 29, United States Code, s 186 (dealing with restrictions on payments and loans to labor organizations) or s 501(c) (relating to embezzlement from union funds);</p> <p>(D) any offense involving fraud connected with a case under title 11 (except a case under s 157 of this title), fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical (as defined in s 102 of the Controlled Substances Act), punishable under any law of the United States;</p> <p>(E) any act which is indictable under the Currency and Foreign Transactions Reporting Act;</p> | <p>18 United States Code 1961(1)</p> |

<sup>15</sup> The title 18 provisions specified are: s 201 (relating to bribery), s 224 (relating to sports bribery), ss 471, 472, and 473 (relating to counterfeiting), s 659 (relating to theft from interstate shipment) if the act indictable under s 659 is felonious, s 664 (relating to embezzlement from pension and welfare funds), ss 891-894 (relating to extortionate credit transactions), s 1028 (relating to fraud and related activity in connection with identification documents), s 1029 (relating to fraud and related activity in connection with access devices), s 1084 (relating to the transmission of gambling information), s 1341 (relating to mail fraud), s 1343 (relating to wire fraud), s 1344 (relating to financial institution fraud), s 1425 (relating to the procurement of citizenship or nationalization unlawfully), s 1426 (relating to the reproduction of naturalization or citizenship papers), s 1427 (relating to the sale of naturalization or citizenship papers), ss 1461-1465 (relating to obscene matter), s 1503 (relating to obstruction of justice), s 1510 (relating to obstruction of criminal investigations), s 1511 (relating to the obstruction of State or local law enforcement), s 1512 (relating to tampering with a witness, victim, or an informant), s 1513 (relating to retaliating against a witness, victim, or an informant), s 1542 (relating to false statement in application and use of passport), s 1543 (relating to forgery or false use of passport), s 1544 (relating to misuse of passport), s 1546 (relating to fraud and misuse of visas, permits, and other documents), ss 1581-1592 (relating to peonage, slavery, and trafficking in persons), s 1951 (relating to interference with commerce, robbery, or extortion), s 1952 (relating to racketeering), s 1953 (relating to interstate transportation of wagering paraphernalia), s 1954 (relating to unlawful welfare fund payments), s 1955 (relating to the prohibition of illegal gambling businesses), s 1956 (relating to the laundering of monetary instruments), s 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), s 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), s 1960 (relating to illegal money transmitters), ss 2251, 2251A, 2252, and 2260 (relating to sexual exploitation of children), ss 2312 and 2313 (relating to interstate transportation of stolen motor vehicles), ss 2314 and 2315 (relating to interstate transportation of stolen property), s 2318 (relating to trafficking in counterfeit labels for phonorecords, computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works), s 2319 (relating to criminal infringement of a copyright), s 2319A (relating to unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances), s 2320 (relating to trafficking in goods or services bearing counterfeit marks), s 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), ss 2341-2346 (relating to trafficking in contraband cigarettes), ss 2421-24 (relating to white slave traffic), ss 175-178 (relating to biological weapons), ss 229-229F (relating to chemical weapons), s 831 (relating to nuclear materials).



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|                                  | <p>(F) any act which is indictable under the Immigration and Nationality Act, s 274 (relating to bringing in and harbouring certain aliens), s 277 (relating to aiding or assisting certain aliens to enter the United States), or s 278 (relating to importation of alien for immoral purpose) if the act indictable under such section of such Act was committed for the purpose of financial gain; or</p> <p>(G) any act that is indictable under any provision listed in s 2332b(g)(5)(B).</p> <p><b>Enterprise</b> includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity</p> <p><b>Pattern of racketeering activity</b> requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity.</p> <p>These definitions are all relevant to the racketeering offences which target people who engage in ‘a pattern of racketeering activity’ or ‘collection of an unlawful debt’ that is related to an ‘enterprise’.</p> | <p>18 United States Code 1961(4)</p> <p>18 United States Code 1961(5)</p>         |
| <b>International instruments</b> |   |   |
| United Nations                   | <p><b>Organized criminal group</b> means a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.</p> <p><b>Serious crime</b> means conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty.</p> <p><b>Structured group</b> means a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure.</p>   | Article 2, <i>United Nations Convention against Transnational Organized Crime</i> |