Parliamentary Committees

Serious and Organised Crime Legislation Amendment Bill 2016

Report No. 42, 55th Parliament
Legal Affairs and Community Safety Committee
November 2016

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Abbreviations

Attorney-General	Attorney-General and Minister for Justice and Minister for Training and Skills, the Hon Yvette D'Ath MP
Bill	Serious and Organised Crime Legislation Amendment Bill 2016
CC Act	*Crime and Corruption Act 2001*
CCC	Crime and Corruption Commission
COA	*Criminal Organisation Act 2009*
COA Review	the statutory review of the *Criminal Organisation Act 2009*
Commission	Queensland Organised Crime Commission of Inquiry
committee	Legal Affairs and Community Safety Committee
department	Department of Justice and Attorney-General
FLPs	fundamental legislative principles
Liquor Act	*Liquor Act 1992*
LJI	Law and Justice Institute (Qld) Inc
LSA	*Legislative Standards Act 1992*
OMCG	outlaw motorcycle gang
PGBA	*Peace and Good Behaviour Act 1982*
PPRA	*Police Powers and Responsibilities Act 2000* (Qld)
PSA	*Penalties and Sentences Act 1992*
QCCL	Queensland Council for Civil Liberties
QHA	Queensland Hotels Association
QLS	Queensland Law Society
QPS	Queensland Police Service
Summary Offences Act	*Summary Offences Act 2005*
Taskforce	Taskforce on Organised Crime Legislation
UMCQ	United Motorcycle Council Queensland
VLAD Act	*Vicious Lawless Association Disestablishment Act 2013*
Weapons Act	*Weapons Act 1990* (Qld)

Chair's foreword

This report details the examination by the Legal Affairs and Community Safety Committee of the Serious and Organised Crime Legislation Amendment Bill 2016.

Government members are satisfied the consultative process adopted by the Labor Government on this Bill was thorough and complete. The inclusiveness of all relevant stakeholders affected by these laws was reflected in the evidence provided to the committee. The end result has produced a balanced outcome as contained in this report. An outcome which on one hand will demonstrate this government's serious commitment on tackling all forms of crime while ensuring the probity of the process, and delivering on enforceable laws, laws which will stand the judgement of constitutionality should the challenge be presented.

Conversely, despite not one conviction delivered under the LNP government on the intended laws under their VLAD Act, which was primarily directed at outlaw motorcycle club gangs, the Labor government's laws shall stand up in court and cast the net greater than just OMCG's. The Bill essentially fixes the fundamental flaws created by the LNP and shall cover all types of serious organised crime broadly capturing all offenders. On the other hand the LNP laws were narrow and politically motivated resulting in only 3 offenders convicted, none which were OMCG members.

Additionally, while not all stakeholders are satisfied with the final product, the consultative process stands the test of probity and will deliver a new and comprehensive organised crime regime. The Bill draws on initiatives under the *Criminal Organisation Act* but makes crucial enhancements to ensure operational speed and simplicity, reworks part of the 2013 laws or removes the parts which are excessive, disproportionate or unnecessary, and addresses constitutional risks.

The Bill shall provide the ability to empower our police and courts with the opportunity to capture, and prosecute those evil perpetrators, who over the internet, pray on our children and grandchildren in our communities. Additionally the Bill will protect those vulnerable people who are caught in boiler room fraud cases.

Government committee members are very concerned over matters related to evidence and events arising from the committee's public hearing on the Gold Coast on 4 October 2016 of the Bill.

In the lead up to the hearing several Gold Coast witnesses decided to withdraw their attendance from such hearing. During the hearing the Member for Capalaba questioned Cr Paul Taylor whether he had made contact with the Broadbeach Alliance and the Surfers Paradise Alliance to not provide evidence at the hearing on 4 October. Cr Taylor responded "No, I did not. I am also on the board of Broadbeach Alliance." Government members remain cynical on whether Cr Taylor had any role in these witnesses decision to not attend.

Furthermore Cr Taylor tabled a misleading letter from Cr Tom Tate, Mayor of Gold Coast City Council dated 30 September 2016. Although the Mayor's letter provided no indication he opposed the Serious and Organised Crime Legislation Amendment Bill 2016, while supporting the governments Bill in respect to banning of colours, it appears to suggest support for the previous government's VLAD laws.

On 14 September 2016 Cr Tate was reported in the *brisbanetimes* suggesting he was satisfied the state government is working towards keeping the bikies out and indicating the laws are going to make it work. Government committee members allege a clear case of contradiction by the mayor exists as a result of his correspondence and statements in the media.

In addition to tabling the Mayor's correspondence, Cr Taylor openly admitted under questioning at the hearing he had neither read the Bill, the Explanatory Notes, viewed the committee's page on the parliamentary website to explain the bill nor had been briefed on the legislation and admitted his information came through the press.

Government committee members remain sceptically concerned that Australia's sixth largest council was only able to provide a Queensland Parliamentary Committee with a witness who was provided with no understanding of the legislation.

Additionally government committee members are astounded and question the Gold Coast City Council genuineness and credibility in not providing a submission to the committee, given its purported concerns over serious organised crime on the Gold Coast.

This report details the examination by the Legal Affairs and Community Safety Committee of the Serious and Organised Crime Legislation Amendment Bill 2016.

On behalf of the committee, I thank those who lodged written submissions on this Bill or appeared before the committee. I also thank the Department of Justice and Attorney-General and the Queensland Police Service for their assistance during the inquiry.

I thank all members of the committee for their work on the inquiry and the committee's staff for the support they provided.

I commend this report to the House.

Mark Furner MP
Chair

1. Introduction

1.1 Role of the committee

The Legal Affairs and Community Safety Committee (the committee) is a portfolio committee of the Legislative Assembly.[1] The committee's primary areas of responsibility include:

- Justice and Attorney-General
- Police Service
- Fire and Emergency Services
- Training and Skills.

A portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:[2]

- the policy to be given effect by the legislation
- the application of fundamental legislative principles
- for subordinate legislation – its lawfulness.

1.2 Inquiry process

The Serious and Organised Crime Legislation Amendment Bill 2016 (the Bill) was introduced by the Attorney-General and Minister for Justice and Minister for Training and Skills, the Hon Yvette D'Ath MP (Attorney-General), on 13 September 2016. The Bill was referred to the committee for detailed consideration, with the committee to report by 1 November 2016.

The committee invited submissions from the public and from identified stakeholders, to be received by 6 October 2016. Two hundred and eighty-two submissions were received, some of which were accepted on a confidential, or partially confidential, basis (see Appendix A for a list of submitters).[3] The committee received four types of form submissions, which expressed either identical or substantially similar views in identical or substantially similar wording. The committee has published on its website one example of each category of form submission received; Form A Submission (76 received), Form B Submission (131 received), Form C Submission (13 received) and Form D Submission (18 received).

The Department of Justice and Attorney-General (the department) provided the committee with a written briefing on the Bill on 22 September 2016. The committee received an oral briefing from the Queensland Police Service (QPS) and the department on 26 September 2016, with a further QPS oral briefing provided at the Gold Coast on 4 October 2016.

The committee held public and private hearings on the Bill:

- at the Gold Coast on 4 October 2016, and
- in Brisbane on 12 October 2016 and 13 October.

See Appendix B for a list of witnesses who participated in the committee's public briefings and hearings.

The committee received written advice from the department on issues raised in the submissions on 20 October 2016.

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1 *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

2 *Parliament of Queensland Act 2001,* section 93(1).

3 View submissions at: http://www.parliament.qld.gov.au/work-of-committees/committees/LACSC/inquiries/current-inquiries/23-SOCLABill16

1.3 Policy objectives of the Serious and Organised Crime Legislation Amendment Bill 2016

- The objectives of the Bill, as set out in the explanatory notes, are to:
- implement a new organised crime regime to tackle serious and organised crime in all its forms, drawing on the recommendations of the Queensland Organised Crime Commission of Inquiry (Commission), Taskforce on Organised Crime Legislation (Taskforce) and statutory review of the *Criminal Organisation Act 2009* (COA Review), and
- improve the clarity, administration and operation of particular occupational and industry licensing Acts.[4]

In introducing the Bill, the Attorney-General advised that the Bill's initiatives:

> *… are not limited to outlaw motorcycle gangs because, as the commission of inquiry identified, serious criminal activity and organised crime extends far beyond those gangs. A proper response to serious and organised crime must be agile enough to counter the threats to the community posed by all forms of organised crime including child exploitation, drug trafficking and financial crimes.*
>
> *The regime in this bill is built to withstand all stages of the criminal justice system and, ultimately, is designed to secure actual convictions of serious and organised criminals which will act as a strong deterrent factor against future criminal activity. The regime draws on the ideas and initiatives underpinning the three reviews but with some crucial enhancements to ensure it meets the community's expectations, prioritises police officer and public safety, and injects judicial oversight across key elements of the regime.*
>
> *The bill will repeal some elements of the 2013 laws which the task force found to be unnecessary, excessive and disproportionate.*[5]

Some of the key matters provided for in the Bill include:

- ***access to electronic information*** - allow Crime and Corruption Commission (CCC) officers and police officers to request an order requiring a person to provide information necessary to gain access to electronic information stored,
- ***child exploitation material*** - introduce new offences, create new circumstances of aggravation, and increase maximum penalties in relation to the distribution and promotion of child exploitation material and concealing offences involving child exploitation material,
- ***financial crimes*** - create new circumstances of aggravation and increase maximum penalties for offences in relation to fraud and obtaining or dealing with identification documents,
- ***drug offences*** - increase the maximum penalty for trafficking in certain dangerous drugs and remove the minimum 80 percent non-parole period for trafficking in a dangerous drug,
- ***wearing or carrying colours*** - introduce a new offence prohibiting the wearing or carrying of a prohibited item in a public place, reduce the maximum penalties for offences related to wearing or carrying colours in licensed premises, and create a defence for licensees, permittees and staff in relation to the requirement for them to refuse entry or require a person wearing colours to leave a licensed premises,
- ***protection and serious organised crime orders*** - create a scheme of three new public safety protection orders (public safety, restricted premises and fortification removal orders), and introduce a conviction based control order to impose conditions to prevent, restrict or disrupt involvement in serious criminal activity,

[4] Explanatory Notes, p 1.

[5] Queensland Parliament, Record of Proceedings, 13 September 2016, p 3400.

- ***consorting*** - introduce a new offence of consorting with two recognised offenders after being given an official warning,
- ***'VLAD laws'*** - repeal the *Vicious Lawless Association Disestablishment Act 2013* (VLAD Act) and *Criminal Organisation Act 2009* (COA), and provisions in other Acts relating to 'participants in a criminal organisation' such as anti-association offences, and prisoner segregation orders,
- ***tattoo industry*** - adopt a more traditional and transparent approach to licensing of the body-art tattoo industry and improve the administration and operation of the body-art tattoo licensing legislation, and
- ***licensees under the Liquor Act*** - enable the Commissioner of Police to notify the Commissioner for Liquor and Gaming if a licensee is charged with an offence, ensure consistency in probity tests to hold a licence, and allow approvals to let or sublet licensed premises or enter into franchise or management agreements to be cancelled if a person becomes disqualified or is no longer a fit and proper person.

1.4 Background

The Bill proposes to implement a new organised crime regime to tackle serious and organised crime, drawing on the recommendations of the Commission, Taskforce and COA Review.

1.4.1 Queensland Organised Crime Commission of Inquiry

The explanatory notes summarise the Commission's activity:

> *The Commission commenced on 1 May 2015, by the Commissions of Inquiry Order (No. 1) 2015, to make inquiry into the extent and nature of organised crime in Queensland and its economic and societal impacts. The Commissioner, Mr Michael Byrne QC, presented the final report of the Commission to the Premier and the Minister for the Arts on 30 October 2015. The Commission identified the illicit drug market, online child sex offending including the child exploitation material market, and sophisticated financial crimes such as cold call or 'boiler room' investment frauds as key organised crime threats in Queensland. The Commission made 43 recommendations to improve the regulation of organised crime in Queensland and the Bill implements 14 recommendations that require legislative reform.*[6]

The department advised:

> *Of the Commission's recommendations, 18 require legislative amendments. The Bill implements 14 of those recommendation, 12 in full and two in part.*[7]

1.4.2 Taskforce on Organised Crime Legislation

The explanatory notes advise:

> *The Taskforce was established in June 2015 by the Honourable Yvette D'Ath MP, Attorney-General and Minister for Justice and Minister for Training and Skills, to conduct a review of the suite of legislation introduced in October and November 2013 to combat organised crime, in particular outlaw motorcycle gangs ...*[8]

The suite of legislation, referred collectively by the Taskforce as the '2013 suite', consisted of:

- *Criminal Law (Criminal Organisations Disruption) Amendment Act 2013*
- *Tattoo Parlours Act 2013*

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6 Explanatory notes, p 1.

7 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, p 1.

8 Explanatory notes, p 1.

- the VLAD Act
- *Criminal Law (Criminal Organisations Disruption) and Other Legislation Act 2013*
- *Criminal Code (Criminal Organisations) Regulation 2013.*

The explanatory notes state:

> *The Taskforce was chaired by the Honourable Alan Wilson QC and its membership consisted of senior representatives from the Queensland Police Service (QPS), the Queensland Police Union, the Queensland Police Commissioned Officers' Union of Employees, the Queensland Law Society, the Bar Association of Queensland, the Public Interest Monitor (PIM), the Department of Justice and Attorney-General, and the Department of the Premier and Cabinet. On 31 March 2016, Mr Wilson QC delivered the Report of the Taskforce, which made 60 recommendations…*[9]

In relation to the Taskforce's recommendations, the department stated:

> *In some instances, the Taskforce recommended the retention of amendments made in 2013 but also recommended the removal of those parts which majority of members came to accept were unnecessary, excessive and disproportionate. The recommendations focus on maintaining a strong legislative response to organised crime in all its forms.*[10]

According to the explanatory notes, '[t]he Bill implements the ethos of the Taskforce Report; and largely implements all of the recommendations either in full or in-principle'.[11]

1.4.3 Statutory review of the Criminal Organisation Act 2009

The explanatory notes advise:

> *The COA… allows the Supreme Court of Queensland, upon an application by the Commissioner of Police, to declare an organisation a 'criminal organisation' if satisfied that members of the organisation associate for the purpose of engaging in, or conspiring to engage in, serious criminal activity and the organisation is an unacceptable risk to the safety, welfare or order of the community.*
>
> *Mr Wilson QC conducted the COA Review concurrently with the work of the Taskforce. He delivered his report to the Queensland Government on 15 December 2015 and recommended that the COA be repealed or allowed to lapse but with certain elements redeployed elsewhere in Queensland's organised crime legislative framework. The Bill largely reflects the recommendations.*[12]

The department identified those elements recommended to be redeployed as the control order framework, public safety order mechanism and fortification measures.[13]

1.5 Consultation

The explanatory notes outlined consultation undertaken on the Bill, along with consultation conducted by the Commission and Taskforce:

> *In the course of its inquiries the Commission conducted interviews and hearings, wrote to key stakeholders and advertised in the Courier Mail and the Australian newspapers, as well as on the Commission website, inviting submissions. The Commission met with the following key stakeholders: Bar Association Queensland, Crime and Corruption*

9 Explanatory Notes, pp 1-2.
10 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, p 2.
11 Explanatory Notes, p 2.
12 Explanatory Notes, pp 2-3.
13 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, p 1.

> *Commission, Director of Public Prosecutions, Legal Aid Queensland, Queensland Law Society, Queensland Police Service, Legal Services Commission Queensland, Integrity Commissioner and the Australian Commission for Law Enforcement Integrity...*
>
> *The Taskforce published its Terms of Reference on its website, called for public submissions and made targeted requests for submissions from key stakeholders. All submissions to the Taskforce were published on the website except those from persons or organisations who specifically requested that their submissions remain confidential. Additionally, the CCC was consulted by the Taskforce under its Terms of Reference.*
>
> *The Crime and Corruption Commission and Director of Public Prosecutions were consulted on an overview of the policy proposals under the Bill and provided with extracts of a draft Bill.*
>
> *The PIM, who was also a member of the Taskforce, was consulted on the new oversight functions under the Bill.*
>
> *The Queensland Law Society was provided with a detailed briefing on the policy proposals under the Bill.*
>
> *The Queensland Police Union was consulted regarding the policy proposals under the Bill in terms of the Taskforce recommendations.*
>
> *Additionally, the Premier and Minister for Arts, Attorney-General and Minister for Justice and Minister for Training and Skills, and the Minister for Police, Fire and Emergency Services and Minister for Corrective Services, together with the Commissioner of Police, travelled to NSW to meet with the Honourable Mike Baird MP, Premier and Minister for Western Sydney, the Honourable Troy Grant MP, Deputy Premier, Minister for Justice and Police, Minister for the Arts and Minister for Racing and the NSW Commissioner of Police, to discuss greater collaboration between the two States and the law enforcement entities in tackling serious organised crime.*[14]

Commissioner Ian Stewart, Queensland Police Service, told the committee:

> *I have been involved right through, as the head of the organisation, in the consultation that has developed this suite of legislation. The Queensland Police Service was very grateful that we were consulted to the level that we were. There has been a lot of work in preparing this new suite of legislation. I think it should be commented on that it is a suite of legislation—and this is the advice given to us by New South Wales—which makes it quite powerful.*[15]

At a public hearing the Queensland Law Society (QLS) expressed '[i]n this regard, the society is pleased that it was consulted throughout the legislative process and valued the opportunity to participate in the task force on organised crime …'[16]

The QLS was asked by the committee how its opposition to the 2013 VLAD suite of legislation was expressed, and whether there were any formal meetings with the then Attorney-General or Police Minister:

> ***Ms Smyth:*** *Not that I am aware. Matt, are you aware of any formal meetings?*
>
> ***Mr Dunn:*** *Certainly there was engagement with the office of the Attorney-General at the particular time but there was not consultation on the package in any way.*[17]

[14] Explanatory notes, pp 47-48.
[15] Public briefing transcript, Brisbane, 26 September 2016, p 14.
[16] Public hearing transcript, Brisbane, 12 October 2016, p 6.
[17] Public hearing transcript, Brisbane, 12 October 2016, p 6.

Mr Troy Schmidt, Barrister-at-Law, Queensland Police Union of Employees, told the committee that the Union was consulted both through the activity of the Taskforce, and by senior members of the government on the current Bill:

> *As you would be aware, the union was a member of the task force which reviewed the existing laws and was informed in formulating the report which underlies the current bill. In addition to being on the task force, the union has actively been involved in consultation with the Premier, the Deputy Premier, the police minister and the Attorney over the last six or so months in relation to the present bill.*[18]

1.6 Should the Bill be passed?

Standing Order 132(1)(a) requires the committee to determine whether or not to recommend that the Bill be passed.

After examination of the Bill, including the policy objectives it seeks to achieve and consideration of the information provided by submitters, government agencies and stakeholders, the committee was unable to reach a majority decision as to whether the Serious and Organised Crime Legislation Amendment Bill 2016 be passed.

[18] Public hearing transcript, Brisbane, 12 October 2016, p 17.

2. Examination of the Serious and Organised Crime Legislation Amendment Bill 2016

2.1 Proposed amendments related to the Taskforce recommendations and COA Review findings

The Bill proposes amendments related to the recommendations of the Taskforce and the findings of the COA Review. At the public briefing in Brisbane, Mrs Leanne Robertson Acting Assistant Director-General, Strategic Policy and Legal Services, Department of Justice and Attorney-General told the committee:

> *The Bill delivers a new and comprehensive organised crime regime to tackle organised crime in all its forms. The bill draws on initiatives under the COA but makes crucial enhancements to ensure operational speed and simplicity; reworks part of the 2013 laws or removes the parts considered by the government to be excessive, disproportionate or unnecessary; and addresses constitutional risks and injects new elements in the criminal justice system.*[19]

2.1.1 Statutory definitions of 'participant' and 'criminal organisation'

With regard to the definition of criminal organisation, the department advised that *'…* the notion of 'participating in a criminal organisation' is defined using different language across Qld legislation, albeit the underlying concept remaining broadly consistent throughout.'[20]

According to the department, the Taskforce found no apparent or compelling reasons for the difference in the definitions and recommended that a single, uniform approach be adopted:

> *Indeed, Qld's lack of a single definition of the terms 'criminal organisation' and 'participant' across its legislation was criticised by His Honour Justice Hayne in Kuczborski v Queensland (2014) 89 ALJR 59, [65-66]. The benefits of clear consistent definitions of these key terms were discussed by the Taskforce (see page 127 of the Taskforce Report).*[21]

The Bill reflects the unanimous recommendations of the Taskforce (recommendation 6, 7, 8 and 11) by substantially amending the definitions of 'criminal organisation' and 'participant':

> *The definitions are inserted under the Penalties and Sentences Act 1992, along with the new Serious Organised Crime circumstance of aggravation, and are cross-referenced under the Criminal Code.*
>
> *These amended definitions are also used consistently throughout the Government's Regime; and the Bill makes consequential amendments to relevant Acts accordingly, for example under the Crime and Corruption Act 2001.*[22]

Meaning of 'criminal organisation'

The department advised the committee that the new definition of 'criminal organisation' is intended to be sufficiently broad enough to capture both traditional and hierarchically structured criminal groups; as well as shape-shifting, opportunistically formed and flexible criminal groups:

> *This enhancement acknowledges that while OMCGs have traditionally favoured hierarchical and highly visible models of organisation, other crime groups are now*

19 Public briefing transcript, Brisbane, 26 September 2016, p 2.

20 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, p 2.

21 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, pp 2-3.

22 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, p 3.

> *frequently informally arranged and adaptable in their structure (as emphasised under all three Reports).*[23]

The Bill proposes a new section 161O (Meaning of criminal organisation) of the *Penalties and Sentences Act 1992* (PSA), which defines the term 'criminal organisation' to mean a group of three or more persons, whether arranged formally or informally:

- who engage in, or have as their purpose (or one of their purposes) engaging in, serious criminal activity, and
- who, by their association, represent an unacceptable risk to the safety, welfare or order of the community.

The proposed section expressly provides that it does not matter whether:

- the group of persons has a name; or is capable of being recognised by the public as a group; or has an ongoing existence as a group beyond the serious criminal activity in which the group engages or has as a purpose; or has a legal personality, and
- the persons comprising the group have different roles in relation to the serious criminal activity; or have different interests in, or obtain different benefits from, the serious criminal activity; change from time to time.

The proposed section defines the term 'engage in' serious criminal activity to include organise, plan, facilitate, support, or otherwise conspire to engage in, serious criminal activity; or obtain a material benefit, directly or indirectly, from serious criminal activity.

The department advised that, with the exception of the banning of colours under the new *Summary Offences Act 2005* offence and the *Liquor Act 1992* offences*,* the Bill proposes to repeal the ability to declare a group as criminal by regulation.[24]

Meaning of 'participant'

The Bill proposes a new definition of 'participant', which is '… focused on individuals who are actively involved in the affairs of a criminal organisation or who identify and promote themselves as being associated with a criminal organisation'.[25]

Proposed new section 161P (Meaning of participant) of the PSA defines a person to be a 'participant' in a criminal organisation, if:

- the person has been accepted (whether informally or through a process set by the organisation, including, for example, by paying a fee or levy) as a member of the organisation and has not ceased to be a member of the organisation,
- the person is an 'honorary member', 'prospective member' or 'office holder' of the organisation,
- the person identifies him or herself in any way as belonging to the organisation, or
- the person's conduct in relation to the organisation would reasonably lead someone else to consider the person to be a participant in the organisation.

Proposed new section 161N of the PSA defines the terms 'honorary member', 'prospective member', 'office holder' and 'serious criminal activity'.

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23 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, p 3.

24 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, p 4.

25 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, p 4.

Issues raised by stakeholders - definitions

With respect to the Bill's proposed definitions (such as those in proposed sections 161O, 161P and 161N of the PSA) the CCC submitted:

> *Some of these definitions apparently draw upon established concepts associated with historical Outlaw Motor Cycle Gang (OMCG) organisational models. While the CCC acknowledges the Bill's efforts toward addressing the continuing adaptation of the operations of criminal organisations, there is scope for these terms to be further broadened in order to be effective.*
>
> *For example, the scope of sub-paragraph (c) for the definition of 'office holder' in 161N could be broadened in the following way:*
>
> > *"(c) a person **who** is or **appears to be** in control of all or a substantial part of the activities of the organisation"*
>
> *The example given for subparagraph (d) of the definition of 'office holder' has been drafted in a way intended to extend beyond organisational models based on established OMCG concepts. The CCC welcomes the use of examples demonstrating that the scope of application extends to the operations of child exploitation websites, cold-call investment fraud operations and other organisational structures which may be less hierarchical and more flexible than traditional OMCG models.*[26]

Further, the CCC observed that the definition of 'serious criminal activity', has been simplified from the existing definition of the same phrase in the COA and now only applies to conduct constituting an indictable offence punishable by at least seven years imprisonment:

> *Presently, the definition incorporates a reference to indictable offences punishable by at least seven years imprisonment plus a series of offences set out in schedule 1 of that Act (many of those offences, were less than seven year offences). Of course the introduction into the PS Act of a serious organised crime circumstance of aggravation (161Q) and the associated sentencing of offenders to terms of imprisonment imposed (under 161R) may resolve any concerns that the scope of the definition of 'serious criminal activity' might have been diminished by this change. If enacted, the operation of these provisions may be an appropriate area for future review to determine whether there has been any unintended consequences.*[27]

Mr Terry O'Gorman, Vice-President, Queensland Council for Civil Liberties (QCCL) expressed concern that the meaning of 'criminal organisation' is too broad. In particular, the aspect of the definition relating to people,' who by their association, represent an unacceptable risk to the safety, welfare or order of the community':

> *It is our submission that that phrase is unacceptably broad and gives little or no guidance to courts as to how to interpret it. ... It is our submission that the bill needs to define 'unacceptable risk'… … in assessing unacceptable risk, the court must have regard to the nature and seriousness of the alleged offence, whether actual violence was perpetrated and to what extent, the level of harm caused by the offence to individuals within the community, the number of individuals in the community harmed by the offence and the number of offenders alleged to have participated in the offence.*[28]

[26] Crime and Corruption Commission, submission 33, p 13.

[27] Crime and Corruption Commission, submission 33, p 13.

[28] Public hearing transcript, Brisbane, 12 October 2016, pp 1-2.

Discussion on meaning of 'criminal organisation'

The committee heard from Ms McAnally from the Department who told the committee, in relation to the 2013 laws:

> *You have to prove that the three individuals were in fact participants in a criminal organisation and that each of those three individuals knew in fact that the other people they were with were also participants in a criminal organisation. The information that we received at the task force from the Queensland Police Service was that they principally relied upon the prescribed offences under the 2013 regulation. The declaration itself is not proof that those entities are in fact criminal organisations … and that was largely the reason they concluded that no-one has in fact been convicted.*[29]

Furthermore she explained to the committee:

> *What we have done in this bill is to pick up that unanimous recommendation and to make amendments to the definition of 'criminal organisation'. The way in which we have done that is to change the language to make it clear that it applies to groups rather than necessarily organisations. These groups can be informally or formally arranged. These groups can have a legal identity but they do not need to. They do not have to be recognisable by the public to constitute a group. The roles that people can play within this group and their responsibilities can differ. In fact, the benefits that individuals receive can change.*
>
> *Basically the definitional change, as recommended by the task force, is an attempt to future proof the definition as these groups rapidly evolve in terms of how they structure themselves.*[30]

The committee heard at a public briefing how the new definition would capture other criminal organisations:

> ***Mr BROWN:** In regard to the new definitions of 'criminal organisation' and 'restricted premises', can you see the ability to enter premises that are not just outlaw motorcycle clubs?*
>
> ***Ms McAnally:** That is correct. These restricted premises orders will not be confined to outlaw motorcycle gang clubhouses. That is consistent with the findings of the task force and as adopted by the government in its new organised crime regime. It is intended to target all forms of organised crime. These restricted premises applications can be made in relation to other premises, like premises being used to sell drugs, premises where there is indecent conduct occurring or entertainment of a demoralising character.*[31]

With regard to the definition of 'criminal organisation' under proposed section 161O, the CCC noted that 'subparagraphs (a) and (b) retain an identical form to the previous provisions and that:

> *… the existence of a criminal organisation is critical to the CCC's specific intelligence operations jurisdiction. Before a specific intelligence operation can be authorised under the CC Act, the existence of an identified or identifiable criminal organisation is required. Accordingly, if the suggested amendments to the process for authorisation of intelligence operations and the immediate response functions are not to be adopted, then the CCC considers that the definition could benefit from some greater flexibility.*[32]

29 Public briefing transcript, Brisbane, 26 September 2016, p 5.
30 Public briefing transcript, Brisbane, 26 September 2016, p 7.
31 Public briefing transcript, Brisbane, 26 September 2016, p 13.
32 Crime and Corruption Commission, submission 33, pp 13-14.

With respect to drafting, the CCC suggested:

> *… that subparagraph 161O(1)(b) be amended to read:*
>
> *'... who, by their association, represent **a threat** to the safety, welfare, or order of the community ...'*
>
> *The CCC considers that a reduction of the threshold from 'unacceptable risk' to 'threat' could be justified in subparagraph (b) given that the gravity of the conduct has already been addressed in subparagraph 1(a) and, we infer, that the object of subparagraph (1)(b) is merely to criminalise the association. It is also consistent with the use of the word 'threat' in the existing CC Act, s 55F which is to be retained in the proposed new 55D.*
>
> *Further, we also suggest that the phrase could be broadened by including a reference to the safety, welfare and order of the community **or members of the community.***[33]

Discussions on the meaning of 'participation'

Ms McAnally, from the department, stated that:

> *You have to prove that the three individuals were in fact participants in a criminal organisation and that each of those three individuals knew in fact that the other people they were with were also participants in a criminal organisation. The information that we received at the task force from the Queensland Police Service was that they principally relied upon the prescribed offences under the 2013 regulation. The declaration itself is not proof that those entities are in fact criminal organisations.*[34]

With regard to the definition of 'participant' in proposed section 161P, the CCC recommended that the section be framed as follows:

1. *a person is a **participant** in a criminal organisation if –*
   - *(a) the person is a member of a criminal organisation; or*
   - *(b) the person is an office holder of the organisation; or*
   - *(c) the person identifies himself or herself in any way as belonging to the organisation; or*
   - *(d) the person's conduct in relation to the organisation would reasonably lead someone else to consider the person to be a participant in the organisation; or*
   - (e) *the person's conduct knowingly furthers, directly or indirectly, the serious criminal activity that the organisation has as one or more of its purposes*.[35]

The CCC recommended that the following definition of 'member' be included in the definitions section (161N):

> ***member** includes:*
>
> *(a) a person who has been accepted as a member of the organisation and has not ceased to be a member of the organisation; or*
> *(b) the person is an honorary member of the association; or*
> *(c) the person is a prospective member of the organisation.*[36]

In order for its powers to be most effective, the CCC considered the current requirement (161O) 'that a group comprise 3 or more persons should be amended to include a group of 2 or more persons'.[37] The CCC justified this proposed amendment on the basis that:

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33 Crime and Corruption Commission, submission 33, p 14.
34 Public briefing transcript, Brisbane, 26 September 2016, p 6.
35 Crime and Corruption Commission, submission 33, p 14.
36 Crime and Corruption Commission, submission 33, p 14.
37 Crime and Corruption Commission, submission 33, p 14.

- it is necessary to rely on the criminal organisation definition to have an urgent intelligence hearing response to an imminent terrorism situation under s.55F. Reducing the threshold to 2 persons would be beneficial in circumstances where terrorism intelligence indicates that lone wolf or small groups are the more likely scenarios;
- any conspiracy only requires at least 2 persons to be involved; and
- is consistent with the current definition of 'organised crime' in Schedule 2 of the CC Act which includes the element of criminal activity involving, among other things, 2 or more persons.[38]

Associate Professor Mark Lauchs, School of Justice, Queensland University of Technology, told the committee:

> *One of my main points is that there is a massive mission creep in this legislation compared to the VLAD legislation. VLAD applied to fewer than one in 1,000 people in Queensland. This bill will apply to everybody in Queensland because you had to have been a participant or a member of one of the 26 named organisations for VLAD to really have any effect upon you. This legislation removes that restriction and will apply to anybody.*[39]

2.1.2 A Serious Organised Crime circumstance of aggravation

The Bill establishes:

> *… the new Serious Organised Crime circumstance of aggravation, punishable by a targeted sentencing regime which includes the new Organised Crime Control Order and mandatory terms of imprisonment. This initiative is to replace the Vicious Lawless Association Disestablishment Act 2013 (VLAD Act) and the 2013 Criminal Code circumstances of aggravation.*
>
> *The new targeted sentencing regime, draws upon the concept under the VLAD Act, aimed at encouraging cooperation, whereby the mandatory component of the sentence can only be avoided where the person provides significant cooperation with a law enforcement agency but, contrary to the 2013 laws, such determinations are to be made by the court (as distinct from the Police Commissioner under the VLAD Act).*[40]

The Bill repeals the VLAD Act in its entirety as unanimously recommended by the Taskforce.

The circumstance of aggravation

The circumstance of aggravation is created by proposed section 161Q of the PSA and incorporates the new definitions of 'participant' and 'criminal organisation' under proposed sections 161O and 161P (see above).

The department makes the following observations about the proposed circumstance of aggravation:

- *It is not framed as a floating circumstance of aggravation but, rather, it applies to a prescribed list of discrete offences (see new Schedule 1C of the Penalties and Sentences Act). The list includes offences under the Criminal Code, the Criminal Proceeds Confiscation Act 2002, the Drugs Misuse Act 1986, and the Weapons Act 1990. The types of offences predominantly relate to: violence, sexual offending and child exploitation, drugs, prostitution and weapons, and offending that may undermine the administration of justice.*
- *The circumstance of aggravation must proceed on indictment (and cannot be summarily dealt with by the Magistrates Court) and requires the consent of a Crown Law Officer (i.e.* the

[38] Crime and Corruption Commission, submission 33, p 14.
[39] Public hearing transcript, Brisbane, 12 October 2016, p 11.
[40] Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, p 5.

Director of Public Prosecutions or Attorney-General) for presentation of the indictment (as distinct from charging).

- *Conviction of a prescribed offence aggravated by the new circumstance of aggravation will not increase the existing statutory maximum penalty applicable to the offence but rather conviction enlivens the new legislatively enshrined sentencing regime which is specific to the Serious Organised Crime circumstance of aggravation.*
- *The Criminal Code provisions relating to the availability of alternative verdicts (such as section 575 (offence involving circumstances of aggravation)) are intended to apply.*[41]

Proposed section 161Q provides that it is a circumstance of aggravation for a prescribed offence of which an offender is convicted that, at the time the offence was committed or at any time during the course of the commission of the offence, the offender:

- was a participant in a criminal organisation; and
- knew, or ought reasonably to have known, the offence was being committed –
    - at the direction of a criminal organisation or a participant in a criminal organisation,
    - in association with one or more persons who were, at the time the offence was committed or at any time during the course of the commission of the offence, participants in a criminal organisation, or
    - for the benefit of a criminal organisation.

Targeted mandatory sentencing regime

Proposed section 161R of the PSA provides the sentencing provisions relating to a conviction of a prescribed offence committed with the serious organised crime circumstance of aggravation.

Proposed section 161S dictates the only means by which the punishment imposed can be altered.

In sentencing an offender convicted of a prescribed offence with the serious organised crime circumstance of aggravation, the Court:

- *must sentence the person to a term of imprisonment for the prescribed offence. The length of this 'base component of the sentence' is to be decided by the court having regard to the circumstances of the case. However, the court cannot have regard to the mandated component of the sentence or the mandatory imposition of a control order; and therefore it cannot be ameliorated in any way because of this; and*
- *must impose the 'mandated component of the sentence' That is, a fixed cumulative jail term to be served wholly in prison without parole release. The length is to be seven years imprisonment (or for a prescribed offence that is punishable by a maximum penalty of less than seven years imprisonment, the fixed cumulative term is to be the length of the maximum penalty for that offence). The Bill makes particular provision to accommodate those cases where the 'base sentence' is life imprisonment or an indefinite sentence; and*
- *must impose the new Organised Crime Control Order...*[42]

Co-operation of significant use

The department advised that part of the intention underpinning the new serious organised crime circumstance of aggravation '… is to encourage these particular offenders to cooperate with law enforcement agencies in proceedings or investigations about major criminal offences'.[43]

41 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, p 6.
42 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, p 7.
43 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, p 6.

Accordingly, the proposed penalty regime cannot be mitigated or varied *except in prescribed circumstances*:

> *That is, the person provides cooperation of significant use to a law enforcement agency in the investigation of or in a proceeding about a major criminal offence. A 'major criminal offence' means an indictable offence for which the maximum penalty is at least 5 years imprisonment.*
>
> *The cooperation can be of significant use to a law enforcement agency (it is not intended that the use be restricted to the QPS only); and it can be of a type contemplated by section 13A (i.e. an undertaking to cooperate in a proceeding) or section 13B (i.e. a 'letter of comfort' issued by the law enforcement agency setting out the cooperation) of the Penalties and Sentences Act (NB. for the latter there is no commitment to cooperate into the future).*
>
> *The Bill provides that the utility of the cooperation is to be assessed and determined by the sentencing judge; consistent with the prevailing approach under sections 13A and 138 of the Penalties and Sentences Act. This is a fundamental point of distinction with the approach under the VLAD Act.*[44]

Issues raised by stakeholders – mandatory sentencing

Various submitters expressed opposition to mandatory sentencing laws, with the Law and Justice Institute (Qld) Inc. (the LJI) recommending the repeal of the targeted mandatory sentencing regime, asserting:

> *Although 7 years is less than 15 years, the imposition of that mandatory component is entirely unjustified…*
>
> *There is a lack of evidence to suggest that mandatory sentences achieve effective deterrence, denunciation and consistency. Mandatory sentencing regimes undermine community confidence in the judicial system for judges to fairly administer justice.*[45]

The Queensland Council for Civil Liberties (QCCL) noted the Taskforce's fundamental opposition to mandatory minimum sentencing, submitting:

> *…although the proposed reduction of the mandatory term from 15 to 7 years is slightly less severe, the fundamental injustices and serious unfairness of a mandatory scheme remain.*
>
> *Of particular note is the likelihood that mandatory sentencing leads to 'charge-bargaining' whereby discretion is removed from the court and given to the Prosecution.26 Similarly the Taskforce outlined the risks, as acknowledged by the Queensland Police Service itself, of promises or inducements by authorities.*[46]

The QCCL shared the Taskforce's concern that this provision is a strong incentive for an accused to provide false information in the hope that they can avoid the mandatory sentence:

> *…these concerns are heightened when one considers these informers are dealt with in closed court. The Supreme and District Court Benchbook confirms that 'openness of our courts is a fundamental principle of our judicial system.' It is well settled that 'secret courts are regarded as having a propensity to spawn corruption and miscarriages of justice.' The Council warns that in light of the Taskforce's position on the incentive to provide false*

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44 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, pp 7-8.

45 Law and Justice Institute (Qld) Inc, submission 34, pp 2 and 3.

46 Queensland Council for Civil Liberties, submission 41, pp 3-4.

information the nature of closed courts leaves little room for accountability or oversight under this proposed legislation.[47]

2.1.3 Organised Crime Control Order scheme

There is no existing law in relation to an organised crime control order regime in Queensland.

The explanatory notes state '[t]he Taskforce unanimously recommended a conviction-based control order regime as a new sentencing order for Queensland to be inserted under the Penalties and Sentences Act (recommendation 30)'.[48]

The Bill provides that the control order regime applies whether or not a conviction is recorded, by providing for:

- mandatory control orders, which apply as a mandatory consequence of conviction for an offence aggravated by the new Serious Organised Crime circumstance of aggravation, and
- discretionary control orders, which apply at the court's discretion, upon application by the prosecuting authority (or on its own initiative).

Discretionary control orders can be provided for the following:

- *any indictable offence, where the court is satisfied on the balance of probabilities that the offender was a 'participant in a criminal organisation' at the time of the offence having regard to all of the circumstances (the offence for which the person is convicted need not relate to their participation in a criminal organisation for a control order to be made – section 15 of the Penalties and Sentences Act is consequentially amended to accommodate this additional information); or*
- *conviction of the new Habitually consorting with recognised offender offence; and*
- *the court is satisfied, on the balance of probabilities, that it is reasonably necessary to protect the public by preventing, restricting or disrupting involvement by the person in serious criminal activity.*[49]

The Bill provides that the sentencing court can impose any conditions under the control order it considers reasonably necessary to '… protect the public by preventing, restricting or disrupting involvement by the person in serious criminal activity; and any conditions the court considers necessary to enforce the order'.[50]

To provide safeguards for individuals, certain caveats on the types of conditions are included in the Bill to ensure a control order cannot compel a person to do certain things related to:

- confidentiality,
- legal professional privilege,
- certain privilege against self-incrimination, and
- preservation of the right to silence.

Protections are also included for the individual in the event that a condition results in them providing this type of information.

A control order imposed as a result of conviction for the offence of consorting is restricted as to its conditions (to anti-association and place restrictions only) and in its length (not longer than two years). Otherwise, a control order can be up to five years in duration, with the ability to extend the duration

47 Queensland Council for Civil Liberties, submission 41, pp 4-5.
48 Explanatory notes, p 20.
49 Explanatory notes, p 21.
50 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, p 9.

upon conviction for a breach of the order. The Bill also provides a mechanism to delay commencement of the control order to accommodate an initial period of incarceration.

A contravention of a control order is an offence punishable by a maximum penalty of three years imprisonment (the first offence is considered a misdemeanor), increasing to five years imprisonment for a second breach (the second or subsequent offence is considered a crime). The Bill provides for extraterritorial application, meaning the contravention of an order can happen in or outside of Queensland so that conditions of the order cannot be circumvented. The Bill also provides for mutual recognition of control orders originating in other Australian jurisdictions, giving legal effect in Queensland to the control orders of other States, which at this time are NSW and South Australia. The Bill makes provision to enable summary disposition of these indictable offences and to ensure that no time limits apply for these prosecutions despite summary disposition.

The Bill includes provisions to vary or revoke the control order under limited circumstances. The explanatory notes state that:

> *Where a person is subject to more than one control order at the same time the Bill ensures that regard must be had to the conditions of the pre-existing control order in framing the new one. This is to ensure that overall the conditions upon the person remain objectively fair.*[51]

Issues raised by stakeholders

The LJI expressed concern that, while conviction based control orders would be specific to offenders:

> *no consideration is given to a person's change in circumstances and associations. As the orders are mandatory, if a person comes for sentence at a time well after the person has ended their associations that individual still cannot avoid the mandatory regime.*[52]

The LJI's concern specifically relates to the effect control orders would have on an individual's capacity to work, particularly in circumstances where an individual may have changed their position and associations. In raising this concern, the LJI notes that the control orders 'are intended to become relevant in the assessment of a person's suitability for a licence, permit, certificate or other authority under the affected occupational licensing Acts.'[53]

The LJI goes on to state:

> *An individual's right to work will be infringed as a result of these orders for a lengthy period of time. No consideration is given to the individual circumstances of the offender and although a discretion is retained in relation to conditions, judicial discretion is removed because of the mandatory nature of the regime. If this control orders system is to be adopted, both the nature of the conditions whether the order should be imposed at all should be at the discretion of the sentencing judge.*[54]

The QCCL also expressed concern about a mandatory control order impinging on a person's right to work. In its submission the QCCL states:

> *The Council is concerned that although the court's discretion may allow for minimal conditions for less serious circumstances, a control order will still unfairly impinge on a person's right to work. The safeguard which makes conditions discretionary is made redundant by the mandatory nature of the order in relation to serious organised crime circumstances of aggravation offences.*

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51 Explanatory notes, p 22.

52 Submission 34, p 4.

53 Ibid.

54 Ibid.

> *This unjustifiably leads to the grave potential to affect a person's ability to work, or attain the requisite licences to work.*[55]

The QCCL notes in its submission that it is conceded in the explanatory notes that 'the provision infringes on, for example, a right to work and will be a consideration when someone applies for a wide range of work licences'.[56]

2.1.4 Habitual consorting offence

The Criminal Code currently makes it an offence for participants in criminal organisations to knowingly gather together in a group of three or more persons. It is punishable by a maximum penalty of three years imprisonment, with a mandatory minimum component of six months imprisonment to be served wholly in a correctional facility.

The department identified several reasons why the Taskforce critiqued the existing law:

> *The [Taskforce] Report noted the difficulty in successfully prosecuting the offence and the Taskforce majority was of the view that it was unlikely that the offence would survive a constitutional challenge on the basis of the implied right to political communication and association…*
>
> *The Taskforce considered that the most appropriate measure to combat high-risk associations was through a conviction-based scheme - including the Organised Crime Control Orders… and the introduction of a new offence of Habitual consorting into the Criminal Code (albeit with a sunset clause after seven years).*[57]

The new consorting offence in the Bill makes it a criminal offence for a person to associate with two other people who have previous convictions. It is preceded by a warning to the person that continued association is a criminal offence.[58]

The new consorting offence is modelled on New South Wales and has been successful in securing convictions.[59]

Clause 141 of the Bill creates a consorting offence (proposed new section 77B of the Criminal Code), modelled substantially on the existing New South Wales offence, but with a key variant:

> *That is, the threshold for the issuing of a consorting warning. In NSW, a person can be warned if they are consorting with another person that has a conviction for any indictable offence. The threshold for the Qld offence in the Bill, is higher in that the conviction must be for an indictable offence punishable by a maximum penalty of five years imprisonment or a prescribed offence.*[60]

The proposed consorting offence, which commences three months post-assent, provides that the person must consort on two occasions with at least two people who are 'recognised offenders'. See Appendix C for the department's illustration of how the proposed offence operates.

Further to the illustration in Appendix C, the department advised that:

- official warnings can be given pre-emptively, for example the warning can be issued by police without any consorting ever having occurred, but the person must then consort with those people on two occasions, post-receipt of the warning,

55 Submission 41, p 6.
56 Submission 41, pp 5-6.
57 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, p 12.
58 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, p 12.
59 Public briefing transcript, Brisbane, 26 September 2016, p 2.
60 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, p 12.

- warnings can be given retrospectively, for example non-contemporaneously based on video footage, and
- there is no right of review for the issuing of an official warning, although the Bill extends the statutory functions of the Public Interest Monitor (PIM) to include the monitoring of the giving of official warnings for consorting by police.[61]

When describing key amendments introduced by the Bill, the department advised the committee:

> *Fundamental to the proposed changes under the bill is that a person's criminality should be determined by their actual conduct—that is, an approach that pursues groups of individual criminals instead of attempting to combat the threat they pose by going after the organisation itself. The new consorting offence and the new package of measures under the Public Safety Protection Order Scheme are the centrepiece and will replace the 2013 anti-association offence—section 60A of the Criminal Code—and the clubhouse offence—section 60B of the Criminal Code.*[62]

At the public briefing in Brisbane, the Commissioner clarified that communication such as conversations over the internet can also be considered as consorting:

> *Absolutely. That is one of the benefits of the new legislation. It allows a meeting to be a phone call, a text, an email, a chat room conversation—all over the internet. That is possible.*[63]

At the public briefing, Mr Crandon MP posed a hypothetical question relating to the practical workings of the proposed amendments. He identified a scenario involving persons A, B and C, where A receives a pre-emptive warning, followed by a warning, as a result of consorting with B and C.[64]

The department confirmed that if A meets with B and C again, A would commit an offence, but that if A met with B and D, the proposed amendments would require that A be issued with another warning.[65]

Police Commissioner Ian Stewart confirmed that A would not commit an offence if A continued to meet with B and another, in circumstances where the third person was different in each instance and did not attend on a second occasion.[66] The department stated:

> *In fact, that is part of the purpose of the consorting offence in the sense that in part it is also to disrupt these networks. Arguably, once that official warning has been issued, if he does never meet again with those individuals, it has achieved its purpose.*[67]

At the public briefing in Brisbane, the committee asked whether the Bill would provide police officers with the opportunity to intervene at an earlier stage of child exploitation, when grooming is about to occur. The Commissioner advised:

> *Certainly the consorting laws will be effective in dealing with this type of behaviour. One of the reasons activity to charge offenders often waits until a particular point in an operation is more about evidence gathering and people's intentions becoming clearer at a particular stage before we take action. This certainly does give us the ability to pre-emptively warn people about their associations with others within perhaps a network.*[68]

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61 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, pp 13, 15.

62 Public briefing transcript, Brisbane, 26 September 2016, p 2.

63 Public briefing transcript, Brisbane, 26 September 2016, p 17.

64 Public briefing transcript, Brisbane, 26 September 2016, p 9.

65 Public briefing transcript, Brisbane, 26 September 2016, p 9.

66 Public briefing transcript, Brisbane, 26 September 2016, p 9.

67 Public briefing transcript, Brisbane, 26 September 2016, p 9.

68 Public briefing transcript, Brisbane, 26 September 2016, p 14.

At the public briefing on the Gold Coast, the committee asked Assistant Commissioner Codd how the new offences for consorting and drug offences will potentially reduce the high increase in drug offences. He advised:

> *The new provisions will add to and complement the existing suite of offences that already exist in the Drugs Misuse Act and in other pieces of legislation. It will conceivably enable us to address the issues of all aspects of major and organised crime, but particularly drug offences where we identify people meeting or carrying on the business of networking, particularly where there are recognised offenders who are a party to that. One of the things that I note from the new provisions is that that will extend, obviously, to a more contemporary view of networking which is not just reliant on personal connection or meeting but will extend to electronic means, whether that is by phone or other electronic means. The association—the consorting—can be done through those means. That would be, again, when coupled with other aspects of the criminal law in Queensland, another tool to assist us in hopefully restricting the networking.*[69]

Enforcement of new consorting offence

Existing chapter 2 of the *Police Powers and Responsibilities Act 2000* (PPRA) provides police officers with general enforcement powers to carry out their duties.

The Bill provide for associated police powers for enforcement of the new consorting offence. It provides for certain warrantless 'stop, detain and search powers' and 'move on powers' for police under the PPRA.

The Bill also amends the PPRA to provide police officers with the power to stop, detain and search a person they reasonably suspect has consorted, is consorting or is likely to consort with one of more recognised offenders. Where a police officer holds this suspicion they may also:

- require the person to provide their name, address and date of birth,
- take the person's identifying particulars if necessary to confirm their identification,
- where applicable, give the person an official warning for consorting, and
- require the person to move on from the place where an official warning has been issued.

At a public briefing, Commissioner Stewart identified that training tools will be developed and systems such as records management systems will be updated to support implementation of provisions, such as those relating to consorting, in the Bill. When asked how improving access to information for front-line staff was going, he replied:

> *Very well, thank you, and that is exactly the sort of arrangement we want for this—to change our system so that an officer can identify those consorting. If they are going to give a warning or if they are to do pre-emptive warnings, all of those sorts of things can just be added in to the apps that they currently use.*[70]

Mr Troy Schmidt, Barrister-at-Law, Queensland Police Union of Employees, also commented on implementation of consorting offences:

> ***Ms PEASE:*** *I have a question around the consorting offence. Given that you have experience as a field officer also—so you bring a lot of good information to the table; thank you for that—how do you imagine that officers will actually implement those consorting offences? What impact will that have on their day-to-day operational duties?*
>
> ***Mr Schmidt:*** *Again, it is something that we are probably going to need data on and obviously monitor. Can I answer your question this way? There were consorting offences*

[69] Public briefing transcript, Gold Coast, 4 October 2016, p 10.

[70] Public briefing transcript, Brisbane, 26 September 2016, p 10.

> *under the old Vagrants, Gaming and Other Offences Act 1932. It is an offence that I cannot recall now whether I charged or one of my partners charged people with. I believe it is a very effective offence.*
>
> *What a lot of people do not appreciate in terms of policing is that policing is not just about detecting crime and prosecuting offenders. The other arm of policing is actually preventing crime in the first instance. Preventing crime means that you do not have victims of crime.*
>
> *Consorting laws are very good laws, in my view, to disrupt the opportunity for individuals to actually engage in criminal activity. I see them as a very positive aspect. Obviously these new laws are an improvement on the 1932 legislation, as one would imagine.*[71]

<u>*Enforcement - stop, detain and search power*</u>

According to the department:

> *The power to stop, detain and search the person reasonably suspected of consorting with a recognised offender is required as without the power there are no other lawful means to engage the person to establish whether they have been consorting and provide an official warning if appropriate. A search of the person suspected of consorting may reveal evidence such as written messages, or mobile telephone communications, between the person and the recognised offender that establishes that they have consorted. Establishing the possible reason for consorting also allows police to determine whether any of the defences of consorting apply under section 77C of the Criminal Code.*
>
> *Importantly, the powers provide police with a valuable tool to ensure the safety of officers when dealing with recognised offenders. Recognised offenders are persons with convictions for unspent indictable offences punishable by five years or more, such as the unlawful supply of handguns, and robbery with violence. It is not unrealistic that persons with this background may be in possession of weapons or dangerous items with the propensity to use them to harm police officers.*[72]

At the public briefing in Brisbane, the committee asked the Commissioner whether he had concerns around the stop, detain and search powers from 2013 ceasing. He advised:

> *No, I do not, on the basis that there has been a lot of discussion and there was certainly, in the formulation of the new legislation, adequate powers for us to stop, detain, search, seize under the new legislation, particularly around the consorting laws. Whilst the old legislation has gone, it has been replaced by the equivalent within the consorting legislation.*[73]

<u>*Enforcement - move on power*</u>

The new section 53BAE of the PPRA provides that where a police officer has given a person an official warning for consorting and the officer reasonably suspects the person is consorting at the place with the recognised offender, the officer may require the person to leave and not return within a reasonable time of not more than 24 hours.

The department advised:

> *This allows police to ensure that multiple acts of consorting are clearly separated from each by a period of time…*
>
> *This move on power is balanced by a safeguard that provides that police cannot require the person to leave the place if doing so would endanger the safety of the person or someone else. For example, requiring the person to leave a vehicle in which recognised*

71 Public hearing transcript, Brisbane, 12 October 2016, p 19.

72 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, p 14.

73 Pubic briefing transcript, Brisbane, 26 September 2016, p 12.

> *offenders are passengers in circumstances in which the person has no access to alternative transport.*
>
> *These powers replace the general stop, search and detain powers that currently apply in respect of persons who are reasonably suspected to be participants in criminal organisations (which are repealed by the Bill in accordance with the Taskforce recommendations).*[74]

Other jurisdictions and NSW data

Currently, all Australian states and territories other than Queensland and the Australian Capital Territory have a consorting offence. The New South Wales consorting offence recently withstood constitutional challenge in the High Court of Australia.[75]

In April 2016, the Ombudsman of New South Wales published its report on the operation of consorting laws in that state.[76] The Ombudsman provides a '… statistical overview of of the operation of the new consorting law for the three years between 9 April 2012 and 8 April 2015, including which police commands used the law, who was warned, who had others warned about them, and who was charged.'[77] Table 1 provides an overview of the use of the consorting law in NSW during the review period.

Table 1: Summary of all use of the NSW consorting law from 9 April 2012 to 8 April 2015.

Category	Total
Separate consorting interactions	1,818
Official consorting warnings recorded by police	9,155
Consorting charges	46

Source: NSW Police Force – COPS (Consorting merged dataset, 9 April 2012 to 8 April 2015).

The Ombudsman's report further identified that '[a]s at 8 April 2015, being the last day of the review period, 42 people had been charged with 46 charges of habitually consorting under section 93X of the Crimes Act.'[78]

Issues raised by stakeholders

At a public hearing, the QLS was asked for its view on the consorting provisions in the Bill

> ***Mr CRANDON:*** *… Can you give me your views on that aspect of it rather than the technical detail that you have been looking at?*

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74 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, pp 14-15.

75 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, p 12; *Tajjour v State of New South Wales* (2014) 254 CLR 508.

76 Ombudsman of New South Wales, The consorting law – Report on the operation of Part 3A, Division 7 of the *Crimes Act 1900*, April 2016: www.ombo.nsw.gov.au/__data/assets/pdf_file/0005/34709/The-consorting-law-report-on-the-operation-of-Part-3A,-Division-7-of-the-Crimes-Act-1900-April-2016.pdf <site accessed 23 October 2016.

77 Ombudsman of New South Wales, The consorting law – Report on the operation of Part 3A, Division 7 of the Crimes Act 1900, April 2016, p 27.

78 Ombudsman of New South Wales, The consorting law – Report on the operation of Part 3A, Division 7 of the Crimes Act 1900, April 2016, p 35.

> ***Ms Fogerty:*** *That is correct. I think that the explanatory notes stated that the government's intention is that in this legislation the consorting offence be targeted at disrupting the type of consorting that facilitates and enables serious criminal activity. We support that; in the society's view that is correct and appropriate and proper and has been the subject of significant legislative concern for the present government and the previous government.*[79]

The QLS expressed concern about the breadth of the proposed consorting offence:

> *Under the proposed new Part 6A of the Criminal Code, there is no required nexus between the association and the commission of, or intended commission of, a serious criminal offence. As a result, the potential for the proposed consorting offence to criminalise associations that are unrelated to criminal activity is significant.*[80]

In noting that the Bill's proposed offence is based on the equivalent offence in New South Wales, the QLS observed that in the review of the recent NSW Consorting Laws, the NSW Ombudsman recommended:

> *… several measures to narrow the scope of the consorting laws, including that the Attorney-General (for NSW) introduce, for the consideration of Parliament, an objects or purpose clause to the consorting law to clarify that the intent of the consorting law is for the prevention of serious crime. The Society is of the view that use of the proposed consorting offence should be similarly narrowed to the prevention of serious crime.*[81]

The QLS advised that the meaning of 'consorting' had been considered by the High Court,[82] which established there is no need for an occasion of 'consorting' to have any unlawful purpose or be linked to ongoing or recent criminal activity:

> *The result, acknowledged in a more recent decision,*[83] *is that the 'primary practical constraint upon its application is the discretion afforded to police officers.*
>
> *Accordingly there is potential for disproportionate impact on vulnerable and disadvantaged people:*
>
> - *the overrepresentation of Aboriginal and Torres Strait Islander people in the criminal justice system will also increase the potential for this group to be subject to the proposed consorting offence; and*
> - *given police will rely on the observation of people in public areas to identify consorting, the potential for consorting to disproportionately impact on groups who occupy public space, including people experiencing homelessness, is also significant.*[84]

With regard to the potential impact on Aboriginal and Torres Strait Islander people, the department told the committee:

> *The Queensland offence takes into account the recommendations made by the New South Wales Ombudsman after review of the New South Wales offence found that it had been used inappropriately against some vulnerable groups. In the Queensland context, the new consorting offence will only apply to adults and specifically takes into account Aboriginal and Torres Strait Islander norms of kinship.*[85]

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79 Public hearing transcript, Brisbane, 12 October 2016, p 8.

80 Queensland Law Society, submission 32, p 5.

81 Queensland Law Society, submission 32, p 5.

82 *Johanson v Dixon* (1979) 143 CLR 376.

83 *Tajjour v New South Wales; Hawthorn v New South Wales; Forster v New South Wales* [2014] HCA 35 at 1, per French CJ.

84 Queensland Law Society, submission 32, pp 5-6.

85 Public briefing transcript, Brisbane, 26 September 2016, p 2.

Similar to the concerns raised by the QLS about the breadth of the proposed consorting offence, the LJI stated that the proposed offence has the capacity to criminalise interactions which are not otherwise unlawful:

> *The definition of consort does not require that the interaction between the relevant persons be related to a criminal activity. Although it is accepted that there are laws which are used to prevent criminal activity in the future, for example domestic violence orders, the proposed offence is distinguishable because it does not require an application to a Court, evidence or a reasonable suspicion of intended criminal activity before the warning is given.*[86]

On the matter of police powers and discretion, the LJI submitted:

> *The proposed consorting offence provides Police with a large discretion to limit the freedom of individuals to associate. Before a Police officer issues a warning they are not required to reasonably suspect or believe that the criminal association is intent upon some criminal activity. The officer need only be reasonably satisfied that the person has consorted or is consorting and have considered the legislative object of "disrupting and preventing criminal activity by deterring recognised offenders" before a warning is issued. There is no standard to which an officer must consider those objects before issuing the warning.*[87]

In noting that the proposed definition of 'recognised offender' includes that the penalty for a previous offence be one with a maximum of more than five years, the LJI observed:

> *The Taskforce considered that it was important that the definition be limited so not to apply to those convicted with 'objectively low-level' offences that qualify as consorting simply by virtue of their penalty. Given the object of disrupting serious criminal activity, we submit that, if the offence is to be maintained, the definition of recognised offender be amended to reflect that only serious offences be caught by it for example those offences punishable by 15 years imprisonment or more.*[88]

Ms Judy Andrews raised similar concerns about the breadth of the proposed offence, also referring to the implementation of consorting laws in New South Wales:

> *Generally concerns were [in the NSW review of consorting laws] that consorting laws would be used to target people with no link to organised or gang related criminal activity; criminalise people not involved in any criminal offending; disproportionately affect disadvantaged groups and operate as a 'street-sweeping mechanism.*
>
> *The first year of operation of these laws were reviewed by the Ombudsman, and the review "identified examples that tend to support concerns raised". While indigenous people make up 2.5% of the NSW population they made up 40% of those subjected to the consorting legislation. A particularly unedifying example was the case of a homeless man with terminal pancreatic cancer sharing a seat in the sun and chatting with two other homeless men. Police also admitted to targeting certain locations at the behest of businesses.*
>
> *The above concerns apply to the present bill and there is no reason to suppose that it will not be similarly enforced. It is a matter of particular concern that in some remote Indigenous communities it would be almost impossible to avoid 'consorting' given the high rate of convictions.*[89]

86 Law and Justice Institute (Qld) Inc, submission 34, p 1.
87 Law and Justice Institute (Qld) Inc, submission 34, pp 1-2.
88 Law and Justice Institute (Qld) Inc, submission 32, p 2.
89 Ms Judy Andrews, submission 36, pp 1-2.

Ms Andrews conveyed concern about the use of pre-emptive warnings, which she considered to have been misused in New South Wales, and submitted that the inclusion of offences punishable by 5 years maximum '… is dangerously wide [it would include graffiti] and even if there were any justification for consorting laws these are hardly "serious or organised crime"'.[90]

The QCCL expressed concern that the proposed consorting offence does not pay due regard to the issues that arose in New South Wales and the Taskforce's consequent suggestions for appropriate safeguards.[91]

In noting that the Bill's reverse onus defences are limited to specific situations, the LJI observed:

> *The Taskforce recommended that a general defence should be included within the provision for those situations that, although reasonable, may not fall into a specific category. Despite such a recommendation, a general defence of reasonable excuse is not included in the proposed provision. We are of the view that if the offence is to be maintained, a general defence would be an appropriate safeguard.*[92]

The QCCL objects to the proposed reversal of the onus of proof and also supported the inclusion of a general defence of reasonable excuse.[93]

The QLS is concerned that there is no clear, low-cost review mechanism for official warnings:

> *This is particularly problematic given the number of incorrect warnings that were issued in NSW following the introduction of the new consorting office. A review of an official warning could be facilitated in an identical way to a traffic infringement notice which allows the recipient to complete a section on the infringement notice electing to challenge the infringement notice in court. This simple procedure would provide the mechanism whereby a person could challenge or seek a review of a consorting prohibition notice issued by police.*[94]

The department advised:

> *The giving of an official warning is not analogous to the issuing of a traffic infringement notice because the giving of an official warning itself imposes no criminal or financial liability on a person. A person given an official warning incurs no criminal liability until they have consorted with two people* after *receiving a warning in respect of each person. Providing an appeal mechanism such as that suggested by the QLS would impose a significant resource burden on the QPS and the courts to, objectively, very little end in all circumstances.*[95]

The QLS considers that the proposed consorting offence infringes Article 22 of the International Covenant on Civil and Political Rights, which confirms the right to freedom of association.[96] Additionally, it stated that the list of '[p]articular act of consorting to be disregarded' is inadequate and does not capture a complete range of circumstances within which consorting could be reasonable:

> *The Society is of the view that this list should be expanded to include other circumstances, including consorting that occurs in the course of participating in legitimate political, social or industrial advocacy and protest and consorting that occurs in the course of accessing a welfare or support service.*[97]

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90 Ms Judy Andrews, submission 36, p 1.
91 Queensland Council for Civil Liberties, submission 41, p 2.
92 Law and Justice Institute (Qld) Inc, submission 32, p 2.
93 Queensland Council for Civil Liberties, submission 41, pp 1-2.
94 Queensland Law Society, submission 32, p 6.
95 Department of Justice and Attorney-General, correspondence dated 20 October 2016, pp 21-22.
96 Queensland Law Society, submission 32, p 6.
97 Queensland Law Society, submission 32, p 6.

In response to this issue, the department advised the committee that:

> *Unlike the NSW offence, the consorting offence proposed in the Bill requires police officers to consider the object of the offence before issuing an official warning. It is anticipated that police will determine that it is not appropriate to issue an official warning in a range of circumstances.*
>
> *Also, unlike the NSW offence, the definition of 'health services' under the Bill encompasses services for managing mental health, including drug and alcohol counselling. That is, consorting while receiving a health service or obtaining a health services for a dependent child is an act of consorting that must be disregarded pursuant to new section 77C (Particular acts of consorting to be disregarded) under the Bill.*[98]

Numerous individual submitters expressed concern about the proposed consorting offence. For example, Mr Tony Lincoln told the committee:

> *Myself as well as tens of thousands of others consider these to be manifestly unjust from the point of view that any person can be made a criminal simply by speaking to, or socialising with a person that they have known for many years, and in some cases, their entire lives, and all at the discretion of someone who knows nothing about those persons' personal history.*
>
> *I feel that it also takes away the basic right of being innocent until proven guilty and instead places the onus on any person to be required to prove themselves innocent once accused, NOT proven guilty via any due process in accordance with the concepts of a free and democratic society.*
>
> *The term "reasonably suspects" used in reference to a police officer is one that has the very likely serious potential to be misused and abused due to its openness to personal interpretation and as such, I believe that this sets adangerous precedent if used incorrectly*[99]

Mr Damian Steele, Business Development and Training Manager, Queensland Hotels Association, expressed to the committee:

> *The new offence of consorting, again from a layman's point of view, seems like a bit of an administrative nightmare. I take on board the Queensland police comments earlier that they are going to have to change their operational procedure to work within these confines, but that three-limb test—that is, being underpinned by a warning and then having two further separate instances of consorting and the fact you have to determine that those people you are consorting with have been convicted of a five-year indictable offence—seems to be a three-step shuffle, which is something that is just generally of concern to the community.*[100]

At the public hearing on the Gold Coast, Councillor Paul Taylor expressed concern at the perceived weakening of existing consorting offences. When asked for his further view on the new consorting offences, Cr Taylor replied:

> ***Councillor Taylor:*** *You are asking me a question that is law and I do not know much about law.*
>
> ***Mr CRANDON:*** *Does it seem confusing to you?*

98 Department of Justice and Attorney-General, correspondence dated 20 October 2016, pp 20-21.

99 Mr Tony Lincoln, submission 24, p 5.

100 Public hearing transcript, Gold Coast, 4 October 2016, p 20.

> ***Councillor Taylor:*** *Yes, it does. That is something that the lawyers and the police do. I have not heard about it. I have heard that there are laws for known criminals consorting with someone else and they can be in trouble, too. That is as far as I know.*[101]

2.1.5 Public Safety Protection Order scheme

The Criminal Code currently provides the offence for a participant in a criminal organisation who enters or attempts to enter a prescribed place, or attends or attempts to attend a prescribed event (section 60B).

The department advised that he Taskforce identified a number of issues with the offence, '… in particular problems attaching to successful prosecutions and constitutional concerns - and ultimately recommended that the offence be repealed.'[102]

New Public Safety Protection Order scheme

In introducing the Bill, the Attorney-General advised:

> *The Bill also creates a new comprehensive public safety protection order scheme in the Peace and Good Behaviour Act to provide a multilevel strike against organised crime.*
>
> *The scheme contains three new orders: restricted premises orders, public safety orders and fortification removal orders. A breach of any one of these three orders will be an indictable criminal offence.*[103]

The Public Safety Protection Order scheme is to replace the section 60B offence.

Restricted Premises Order scheme

The Attorney-General stated:

> *The restricted premises order will enable a premises to be declared by the Magistrates Court to be 'restricted' if a police officer has a reasonable suspicion that certain unlawful or disorderly conduct is occurring there. The declaration will enable police to enter and search the premises without a warrant at any time and to seize certain property including furniture, entertainment systems, pool tables, stripper poles and the like. The Police Commissioner may forfeit any property that is lawfully seized under the order to the state.*
>
> *The outlaw motorcycle gang clubhouses that were 'closed' under the 2013 laws will be automatically declared to be restricted premises to ensure they cannot reopen. The task force report noted that a similar scheme operating in New South Wales was used successfully to dismantle 30 outlaw motorcycle gang clubhouses in its first 20 months of operation.* [104]

According to the department, the proposed scheme will enable the Magistrates Court to declare a place to be 'restricted premises', if satisfied:

- on the application of a senior police officer (i.e. rank of Sergeant or above), that there are reasonable grounds for suspecting that certain disorderly activities have taken place and are likely to take place again at the premises, and
- the making of the order is appropriate in the circumstances.[105]

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101 Public hearing transcript, Gold Coast, 4 October 2016, p 6.

102 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, p 15.

103 Queensland Parliament, Record of Proceedings, 13 September 2016, p 3401.

104 Queensland Parliament, Record of Proceedings, 13 September 2016, p 3401.

105 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, pp 15-16.

The department listed the relevant disorderly activities, including:

- drunkenness or disorderly or indecent conduct, or any entertainment of a demoralising character,
- unlawful supply of liquor or a drug,
- unlawful possession or supply of firearms or explosives,
- recognised offenders (or their associates) going to the premises,
- excessively fortified premises, or
- any of the people having (or assisting with) control or management of the premises is a recognised offender (or an associate), or has been a recognised offender (or associate) relating to other premises which have been -
    - the subject of a declaration,
    - frequented by people of notoriously bad character, or
    - on or from which liquor or a drug is or has been unlawfully sold or supplied.[106]

The Bill defines 'recognised offender' and 'associate of a recognised offender'.

The department advised that, if prohibited activities occur on premises subject to a restricted premises order and owners/occupiers of the premises knew, or ought reasonably to have known, that the disorderly activity has taken place, they commit an indictable offence attracting the following penalties:

- for a first offence - 150 penalty units or 18 months imprisonment or both, and
- for a second or subsequent offences - 300 penalty units or three years imprisonment or both.[107]

A restricted premises order is proposed to last for at least six months and up to two years.[108]

At a public briefing, the committee noted that while the Criminal Organisation Act is being repealed, many of the existing provisions are being retained. It asked the department to outline if there are differences in the public safety orders and restricted premises orders that existed under the COA as opposed to the Bill:

> *Based on the review that was undertaken by the Hon. Alan Wilson, he recommended that COA be repealed or allowed to lapse but certain measures be redeployed elsewhere into other parts of the Queensland statute. That recommendation has been picked up. The orders that have been replaced elsewhere are the control orders, which have been inserted into the Penalties and Sentences Act but with significant modification. That is a conviction based model now and it is a new sentencing order for Queensland, so it is a new tool that the courts can use to combat organised crime. The public safety order regime has been transplanted into the Peace and Good Behaviour Act, and there are two key differences. Firstly, it makes provision for police issued public safety orders which we did not have in Queensland until this bill and, secondly, court ordered public safety orders can be made to the Magistrates Court instead of the Supreme Court. That change is the direct result of consultation with law enforcement about the need for operational efficiency and speed, and those changes reflect that.*

[106] Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, p 16 (paraphrased).

[107] Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, p 16.

[108] Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, p 16.

> *Similarly with the fortification removal orders, they have come across from the COA and similarly they are to be made by a Magistrates Court as opposed to the Supreme Court to ensure the speed and efficiency much needed by the QPS. Unlike the COA regime, the bill inserts that stop and desist mechanism relating to fortification to effectively enable police, if the threshold is met, to issue those stop and desist notices as they see fortifications being put in place as opposed to having to wait until the whole place is fortified. The restrictive premises order scheme is a completely new order for Queensland. It never existed previously, even under the COA, and the only other jurisdiction that actually has a restricted premises order scheme is New South Wales and this bill largely replicates the New South Wales approach.*[109]

The department also clarified that the new definitions of 'criminal organisation' and 'restricted premises' are not confined to motorcycle gang clubhouses, and will allow premises other than these to be entered.[110]

At the public briefing on the Gold Coast, Mrs Stuckey MP expressed concern about the reopening in new rented premises of clubhouses that have been shut down. Specifically, Mrs Stuckey MP sought clarification as to whether a two year restricted premises order would apply or whether an application for a special order would be necessary.[111]

Acting Inspector Ian Carroll of the QPS advised:

> *… a club that is not already listed in the criminal organisation regulation in the Criminal Code—that is, a club that is not already listed in that address—will not be brought across into the Peace and Good Behaviour Regulation for the purpose of a declared organisation. That list is an existing list that would be brought across from the Peace and Good Behaviour Regulation. That will enable those addresses to have an automatic restricted premises order made against them.*
>
> *In relation to a new clubhouse that has opened up, once the bill has commenced police will be able to apply for a search warrant if they reasonably believe that disorderly activities have occurred on the premises and are likely to occur again. They will be able to apply for a search warrant from there. Police will be able to search the premises, if we obtain a warrant, and obtain evidence of prohibited items on the premises, seize those and, if we have sufficient evidence from there, apply for a restricted premises order.*[112]

Issues raised by stakeholders - Restricted Premises Orders

The QLS expressed concern that the proposed Restricted Premises Order provisions 'impede individual rights to privacy, property and freedom, the violation of which is not justified by the objects of the Bill'.[113] It submitted that the definition of 'disorderly activity' under proposed section 33 of the *Peace and Good Behaviour Act 1982* (PGBA) is extremely broad:

> *It not only includes criminal offences or unlawful activity on premises, but also could include drunkenness, "disorderly conduct", "indecent conduct", "entertainment of a demoralising character" (all of which is not defined) and also includes the presence of recognised offenders or even associates of recognised offenders (defined in the proposed section 77 of the Code as "any person with a recorded conviction for an offence with a maximum penalty of five (5) years).*

109 Public briefing transcript, Brisbane, 26 September 2016, p 11.
110 Public briefing transcript, Brisbane, 26 September 2016, p 13.
111 Public briefing transcript, Gold Coast, 4 October 2016, p 10.
112 Public briefing transcript, Gold Coast, 4 October 2016, p 10.
113 Queensland Law Society, submission 32, p 3.

> *Given this extremely broad definition, the Society is of the view that Restricted Premises Applications could made in most foreseeable circumstances and therefore have the potential to be misused by overzealous policing.*
>
> *The Society is also highly concerned that section 54 makes it an offence attracting a possible term of imprisonment for "disorderly" activity to take place in a premises declared a restricted premises, where such activity would otherwise be completely lawful.*
>
> *Further, there is a serious risk that the use of the term "disorderly" could bring many socially disadvantaged people within the ambit of the Act. This may include those with mental illness, cognitive or intellectual impairment who may behave in a disorderly manner due to the symptoms of their illness or impairment. Aboriginal and Torres Strait Islander people, who are already overrepresented in the criminal justice system, may face further criminalisation as a result of the use of this broad term.*[114]

In response to issues raised in submissions, the department told the committee that the factors a Magistrate is required to consider in deciding whether to make an order:

> *… would suggest it is unlikely that a Magistrate would make an order with respect to people who had an intellectual or cognitive impairment or mental illness which merely made them behave in an unconventional manner that did not otherwise threaten public safety.*[115]

The QLS contended that the definition of 'prohibited item' under proposed section 33 of the PGBA is also too broad:

> *…and includes a substantial number of items which might otherwise be completely lawful to possess, for example, a bottle of beer and the beer itself. The Society is further of the view that the definition under this section of "things used in support of the sale or consumption of liquor or drugs" and "entertainment of a demoralising character" (whatever this may be, it may for example include watching a performance of Waiting For Godot) unfairly target entertainment, adult entertainment, the liquor and gaming industries.*[116]

The QLS communicated concerns that:

- Restricted Premises Applications can be made by any police officer at or above the rank of sergeant under proposed section 34 of the PGBA
- the threshold for making an order is the 'reasonable suspicion' of such an officer about relevant conduct having taken place and being likely to take place again.[117]

It notes that proposed section 37 of the PGBA states that, upon making an order, a Court must prohibit certain activities and persons present:

> *The Society is concerned that this requirement unnecessarily limits the Court's discretion. In particular, upon making an order, section 37 states that a Court must prohibit "recognised offenders" and their associates, and persons subject to control orders being present at the premises. The fact that in these circumstances, a Court would not have discretion but to make an order prohibiting association between persons is of grave concern to the Society.*[118]

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114 Queensland Law Society, submission 32, p 3.
115 Department of Justice and Attorney-General, correspondence dated 20 October 2016, p 29.
116 Queensland Law Society, submission 32, p 3.
117 Queensland Law Society, submission 32, p 4.
118 Queensland Law Society, submission 32, p 4.

The QLS expressed concern that proposed sections 39 and 48 of the PGBA 'only give the police power to seek an amendment or variation of a restricted premises order (or its extension) and do not give this same power to a respondent of an order'. [119]

The QLS advised the committee that unlimited searches of a premises without a warrant for a period of up to two years (section 49 of the PGBA):

> *… severely interferes with an individual's right to privacy and quiet enjoyment of their home, the violation of which we are of the view is not outweighed by the objects of the Act.*
>
> *This provision does not limit the number of searches on premises or seizures of property by police. This could allow baseless harassment of individuals who have not committed a criminal offence.*
>
> *This provision allows police to seize "prohibited items", which would otherwise be lawful to possess but are defined in section 33 as prohibited. The Society is concerned that "prohibited items" do not need to be connected to the commission of an offence in any way in order for the items to be lawfully seized by police.*[120]

The QLS notes proposed section 51(b) of the PGBA 'limits the discretion of the Courts in returning items to parties, and that courts may only order return of such seized property if the seizure is "not lawful" under the Act itself'.[121]

The QLS notes that on an application to extend an order (proposed section 45 of the PBGA), the Court must order the extension if satisfied of the same matters as provided for in the original application: 'This runs the risk of resulting in an effective reversal of onus – unless something can be demonstrated to have changed since the making of the order the court would be obliged to extend it'.[122]

The QLS acknowledges the structure of the relevant offence provision (proposed section 54 of the PGBA), arguing that:

> *… amongst other things, this sections appears to make it an offence for 'an owner or occupier of premises.. to know.. that a disorderly activity has taken place'. This appears to state that if an owner learns after the fact that someone was, for example, drunk in their premises then they commit an offence. Aside from difficulties in proving or defending such a charge, the scope of this offence is extremely broad by virtue of this construction. Any knowledge must be contemporaneous to the act it seeks to criminalise.*[123]

Mr Stewy Worth submitted on the proposed definition of 'disorderly conduct', which he noted included circumstances where a recognised offender or associate is at the subject premises:

> *This could easily be my private residence if I have my friends around for a BBQ. I cannot find anything which exclude private residences. Police are empowered to search this restricted premise, without warrant, at any time. Once again, could be my family home. I find this invades my civil liberties.*[124]

Public Safety Order scheme

Part 4 of the COA (to be repealed under the Bill) provides for a Public Safety Order scheme for participants in declared organisations. Although the COA Review noted that these orders had never

119 Queensland Law Society, submission 32, p 4.
120 Queensland Law Society, submission 32, p 4.
121 Queensland Law Society, submission 32, p 4.
122 Queensland Law Society, submission 32, p 4.
123 Queensland Law Society, submission 32, pp 4-5.
124 Mr Stewy Worth, submission 27, p 3.

been used in their current form, it saw some utility in retaining the scheme, but transposing a modified version into an alternate legislative vehicle.[125]

In introducing the Bill, the Attorney-General advised:

> *Public safety orders will allow a commissioned police officer or the Magistrates Court to order that a person, or a group of persons is prohibited from entering or attending an event or place if their presence is a serious risk to public safety. Police will be empowered to make these public safety orders for up to seven days. For any order longer than seven days an application must be made to the Magistrates Court. This ensures that police are fully equipped to rapidly respond to changing environments to protect the Queensland community. The Public Interest Monitor will provide an annual report on the police issued public safety orders which must be tabled in parliament*.[126]

In relation to a public safety order made by a Commissioned police officer (i.e. rank of Inspector or above), the department advised:

- if the order is longer than 72 hours, the respondent will have a right of appeal to the Magistrates Court,
- the order will ordinarily be written and served personally, if it is practicable, and
- urgent orders can be given verbally and a copy is to be made available for inspection at the police station or on the QPS website.[127]

A person who without reasonable excuse knowingly contravenes of a public safety order will commit an indictable offence that is punishable by a maximum penalty of 3 years imprisonment.[128]

The department stated that applications for public safety protection orders will be civil applications:

> *All questions of fact in these proceedings other than proceeding for a criminal offences will be determined on the balance of probabilities. The* Uniform Civil Procedure Rules 1999 *will apply to all applications made to the court to the extent the rules are consistent with any specific provisions*.[129]

The Bill provides that decisions of the Magistrates Court with respect to the public safety protection orders will be appealable to the District Court.[130]

Issues raised by stakeholders - Public Safety Orders

The QLS expressed concerns about some aspects of the proposed Public Safety Order provisions of the PGBA. For example, that a commissioned officer has the power to issue a public safety order. It noted '[t]he Society is of the view that any such power should be in the hands of the Courts and not prosecuting or investigative authorities'.[131]

The QLS noted about the breadth of conditions that can be imposed under the PGBA, '… for example "entering or remaining in a stated area", the only limit on such being that it cannot cover a person's usual place of residence'.[132]

125 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, p 17.
126 Queensland Parliament, Record of Proceedings, 13 September 2016, p 3401.
127 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, p 17.
128 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, p 18.
129 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, p 18.
130 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, p 18.
131 Queensland Law Society, submission 32, p 2.
132 Queensland Law Society, submission 32, p 3.

The QLS also noted that 'there is seemingly no right of review or appeal against an order imposed for 72 hours or less'.[133] At a public hearing, the QLS elaborated on this view, '[t]he society is concerned that, because of the consequences to rights and liberties of a public safety order, it is something that requires judicial oversight from the very beginning.'[134]

Mr Schmidt considers the amendments would:

> *… actually give the police power to enter without warrant and conduct searches on those types of premises during the currency of those orders. I believe that that would be one tool at least to ensure that if they do open new premises or they are engaging in activities at other locations that the police have the powers to actually act.*[135]

The QLS was concerned that proposed section 30 of the PGBA:

> *… only give the police power to seek an amendment or variation of a public safety order and does not give this same power to a respondent of an order. This may lead to unforeseen injustice by not allowing a review of this process by a court.*[136]

Fortification Removal Orders

According to the department, the proposed fortification removal orders scheme modifies the content of the existing Part 5 of the COA so as to increase its utility and overcome the problems identified by the COA Review.[137]

The Attorney-General stated:

> *Fortification removal orders empower police to apply to the Magistrates Court to seek an order directing the removal or modification of fortifications that are excessive for the lawful use of a property. If a person does not comply with the court order, police can enter the property and use any force or equipment necessary to remove or modify the fortifications. Police are further empowered to issue stop and desist notices if they observe excessive fortifications being built on a property. Police will have 14 days from issuing the notice to make an application to the court for a fortification removal order.*
>
> *If a person breaches the stop and desist notice during this period, an evidentiary presumption will provide that the grounds for the court to make a fortification removal order are satisfied unless a person can prove otherwise.*[138]

The fortification removal order scheme possesses two key aspects, the ability for police to:

- issue stop and desist fortification notices, and
- apply to the court to obtain a fortification removal order.

The department advised that the first aspect enables a Commissioned police officer to issue an on-the-spot 'stop and desist' notice stopping fortification of the premises:

> *… if they have a reasonable belief the premises is being used for criminal purposes or habitually occupied by 'recognised offenders' or participants in criminal organisations. The notice will be for 14 days. Police need to commence (not finalise) the court-ordered Fortification Removal Order process in that time. The Court can confirm the notice pending finalisation of the actual order. A breach of a stop and desist notice will be deemed to be*

133 Queensland Law Society, submission 32, p 3.
134 Public hearing transcript, Brisbane, 12 October 2016, p 3.
135 Public hearing transcript, Brisbane, 12 October 2016, p 19.
136 Queensland Law Society, submission 32, p 3.
137 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, p 18.
138 Queensland Parliament, Record of Proceedings, 13 September 2016, p 3401.

> *evidence that the grounds for making a fortification removal order unless the contrary is proven by the respondent. A breach of a stop and desist order will also be deemed evidence that disorderly activities are taking place on a premises (for the purpose of the Restricted Premises Order scheme…) unless the contrary is proven by a respondent.*[139]

According to the department, the second element allows a Magistrates Court to order that fortifications (which can mean any type of structure or device designed to prevent uninvited entry, including locks, deadbolts, and security screens) be removed from any premises:

> *The Court must be satisfied, on the balance of probabilities, that there are reasonable grounds to suspect the premises are fortified, and habitually used by a class of people of which a significant number may reasonably be suspected to be participants in a criminal organisation. A requirement for notice of the application to be given to the respondent before the order is made and that the respondent have an opportunity to be heard is included in the scheme.*
>
> *Once an order is made, the owner/occupier of the premises must remove or modify the fortifications in the period determined by the Court. If the order is not complied with police are empowered to enter the premises to remove or modify the fortifications using whatever force is necessary.*
>
> *A person who does an act or makes an omission with the intent to hinder the enforcement of Fortification Removal Order commits an indictable offence that is punishable by a maximum penalty of five years imprisonment.*[140]

The department advised that '[m]ost Australian jurisdictions have provisions for fortification removal orders.'[141] The department confirmed that all Australian jurisdictions, with the exception of the Australian Capital Territory, have an equivalent scheme, noting that all are Court ordered except for Western Australia, which allows for a Police-issued scheme.[142]

Issues raised by stakeholders - Fortification Removal Orders

The QLS expressed the following concerns about the proposed Fortification Removal Order provisions of the PGBA:

- *Section 56 gives a definition of "fortification of premises" which is overly broad.*
- *The Society is concerned that section 63 of the PGA amendments only give the police power to seek an amendment or variation of a fortification removal order and do not give this same power to a respondent of an order.*
- *The Society is concerned that section 65 (Powers for removing and modifying fortifications) allows powers under Fortification Removal Orders to be exercised at any time and as often as required to achieve the removal or modification. This provision could allow repeated and unfettered access to residences without restriction which would unjustly interfere with an individual's private enjoyment of their home.*[143]

139 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, p 18.
140 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, pp 18-19.
141 Department of Justice and Attorney-General, correspondence dated 20 October 2016, p 39.
142 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, p 18.
143 Queensland Law Society, submission 32, p 4.

Mr Stewy Worth criticised the proposed amendment, asserting that whether a fortification is fortified to an extent that is excessive for the lawful use of those premises is 'entirely subjective and infringes on my common law right to defend myself, my family and my property at all times'.[144]

In reference to the proposed inclusion of private residential homes within the ambit of the order, Mr Worth argued:

> *I should be the one that can determine the degree of fortification required to protect myself. The police or the magistrate are in no position to determine the reason for the fortification to my property.*[145]

2.1.6 Recruitment by criminal organisations

Existing Law

Section 60C of the Criminal Code currently makes it an offence for participants in criminal organisations to recruit or attempt to recruit members.

Section 100 of the COA provides that a person commits a crime if the person:

a) is a member of a criminal organisation or a controlled person; and

b) recruits or attempts to recruit anyone to become a member of, or associate with a member of, any criminal organisation.

Taskforce's critique of existing law

The majority of the Taskforce recommended that the offence of recruiting under section 60C of the Criminal Code (along with 60A (the 'anti-association offence') and 60B (the 'clubhouse offence')) be repealed because of the 'inherent unfairness of the offences, difficulties experienced (and anticipated) in prosecuting them, and their constitutional vulnerability'.[146]

In the written briefing from the department it was advised:

> *The Taskforce, instead, considered that the recruitment offence at section 100 of the COA was more appropriate as it is an indictable offence, it does not require a specific 'no criminal purpose defence', and can be easily utilized under the new definitions of participant and criminal organisation.*[147]

New offence of recruitment by criminal organisations

The Bill reflects the majority recommendation of the Taskforce (recommendation 20) by repealing the recruitment offence under section 60C of the Criminal Code and makes a new offence under section 76 of the Criminal Code. The new offence reflects the offence under section 100 of the COA, which is to be repealed under the Bill as recommended by the COA Review.

According to the department:

> *The new offence in the Criminal Code makes it an offence for a participant in a criminal organisation or a person who is subject to a post-conviction control order to attempt to recruit another person to become a participant in a criminal organisation, or to associate with a criminal organisation in any way. The offence is punishable by a maximum penalty of five years imprisonment.*[148]

144 Stewy Worth, submission 27, pp 2-3.
145 Stewy Worth, submission 27, p 3.
146 Explanatory Notes, p 9.
147 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, p 19.
148 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, p 19.

The explanatory notes provide further information, stating:

> *The replacement offence applies to any person who is a participant in a criminal organisation, or who is subject to the new Organised Crime Control Order, and draws on a definition of 'recruit' which includes concepts of counselling, procuring, soliciting, inciting and inducing, including by promotion.*[149]

Issues raised by stakeholders

There were no issues on this provision of the Bill raised by stakeholders.

2.1.7 Prohibition on wearing colours on licensed premises and public places

The Bill provides for the banning of visible wearing of OMCG colours beyond the current Liquor Act offences prohibiting the wearing or carrying of defined prohibited items, known as colours, associated with identified OMCGs anywhere in public.

The new offence will be added to existing provisions in the *Police Powers and Responsibilities Act 2000* to allow police to stop, detain and search a person or a vehicle and seize anything that may be evidence of the commission of an offence. Anything seized will be automatically forfeited to the state upon conviction.

The department told the committee that:

> *The Australian Crime and Intelligence Commission has identified OMCGs as one of the most high profile manifestations of organised crime which have an active presence in all Australian States and Territories. OMCGs have become one of the most identifiable components of Australia's criminal landscape and identify themselves through the use of colours.*[150]

Existing law – licensed premises

The *Liquor Act 1992* (Liquor Act) currently contains offences relating to the wearing or carrying of a 'prohibited item' on licensed premises, known as the 'colours offences':

- a licensee, permittee or staff member must not knowingly allow a person who is wearing or carrying a prohibited item to enter or remain on licensed premises (section 173EB),
- a person must not enter or remain on licensed premises while wearing or carrying a prohibited item (section 173EC),
- if a licensee, permittee, staff member or police officer (authorised person) requires a person wearing or carrying a prohibited item to leave licensed premises, the person must immediately leave the premises (section 173ED(1)), and
- a person wearing or carrying a prohibited item must not resist an authorised person who is removing them from a licensed premises (section 173ED(3)).[151]

The Liquor Act defines a 'prohibited item' as an item of clothing, jewellery or an accessory that displays:

- the name of a declared criminal organisation
- the club patch, insignia or logo of a declared criminal organisation, or
- any image, symbol, abbreviation, acronym or other form of writing that indicates membership of, or an association with, a declared criminal organisation.[152]

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149 Explanatory Notes, p 9.

150 Department of Justice and Attorney-General, correspondence dated 20 October 2016, p 56.

151 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, pp 19-20.

152 The Liquour Act 1992, s 173EA.

The term 'declared criminal organisation' is defined in the Liquor Act and linked through the Criminal Code to constitute organisations declared under a regulation to be a criminal organisation. Currently, 26 of these organisations are contained in the *Criminal Code (Criminal Organisations) Regulation 2013.*

At the public hearing in Brisbane, Associate Professor Lauchs identified that although all 26 declared organisations have been shut down, current legislation does not prevent new criminal organisations from being established in Queensland:

> *All 26 that were registered under the regulation have been shut down. Satudarah, which are a Dutch club—and I was Skyping with the Dutch police last night and they were astounded that Satudarah are allowed to be in Queensland—are here and Mongrel Mob are here from New Zealand. Were they to be examined in the same manner as any of the other clubs that are on the list—the other 26—they would actually exceed the criminality of probably at least a third of those 26 clubs.* [153]

This demonstrates that current legislation has not prevented new bikie gangs from entering Queensland communities.

Proposed amendments – licensed premises and public places

The Bill proposes to:

- retain the existing prohibition on wearing 'colours' on licensed premises, but with reduced maximum penalties (as recommended by the Taskforce), and
- extend the existing prohibition to public places (a government initiative).

At a public briefing, Inspector Ian Carroll clarified the meaning of a public place:

> ***Mr CRANDON:*** *Did I understand correctly, Inspector Carroll, when we were talking earlier—in fact, I think it was the only question you have answered—that they can walk down the street but they cannot go into a shop? Is that the idea? They are okay walking down the street wearing their colours but they cannot go into a shop?*
>
> ***Insp. Carroll:*** *No. I probably did not explain that sufficiently. A public place under the Summary Offences Act would cover premises like cafes, licensed restaurants as well as public spaces like parks and—*
>
> ***Mr CRANDON:*** *The street.*
>
> ***Insp. Carroll:*** *Exactly.*[154]

Identified organisations – licensed premises

In accordance with Taskforce recommendation 10, the Bill will repeal the power to prescribe 'declared criminal organisations' under the Criminal Code. According to the department, however, to ensure the ongoing effectiveness of the colours offences, the Bill amends the Liquor Act to insert a power to declare 'identified organisations' in the *Liquor Regulation 2002* (Liquor Regulation):

> *For consistency, the 26 entities currently declared as criminal organisations will be prescribed in the Liquor Regulation as identified organisations.*
>
> *In order for any further entities to be prescribed, the Bill provides that certain criteria will be required to be met. The Minister will be required to be satisfied that the wearing or carrying of proposed prohibited items by a person in a public place:*
>
> - may cause other persons to feel threatened, fearful or intimidated; or

153 Public hearing transcript, Brisbane, 12 October 2016, p 12.

154 Public briefing transcript, Brisbane, 26 September 2016, p 8.

- *may otherwise have an undue adverse effect on the health or safety of members of the public, or the amenity of the community, including by increasing the likelihood of public disorder or acts of violence.*

In making this determination, the Minister must have regard to whether any person, while they were a participant in the entity proposed to be prescribed:

- *engaged in serious criminal activity (being conduct constituting an indictable offence for which the maximum penalty is at least seven years imprisonment); or*
- *committed an offence involving a public act of violence or damage to property, or*
- *involving disorderly, offensive, threatening or violent behaviour in public.*[155]

'Colours' offence – licensed premises

The Bill introduces a new offence into the *Summary Offences Act 2005* (Summary Offences Act), which will prohibit a person from visibly wearing or carrying a prohibited item in any public place (see below section of report).

The department advised:

> *As the definition of public place under the Summary Offences Act is wide enough to encompass licensed premises, this new offence will cover the behaviour contained within section 173EC of the Liquor Act. Accordingly, the offence in section 173EC will no longer be required, and the therefore Bill repeals this provision.*[156]

According to the department, in line with recommendations of the Taskforce (recommendations 35 and 37), the offences contained in sections 173EB and 173ED of the Liquor Act, relating to licensees and other authorised persons removing people wearing or carrying prohibited items, will be retained with some modifications.[157]

Additionally, the Bill proposes to amend the Liquor Act to provide protections to licensees, permittees and their staff:

> *No offence will be committed if a licensee, permittee or staff member has taken reasonable steps to refuse, exclude or remove a person wearing a prohibited item; or if they reasonably believed it was not safe or practical to refuse, exclude or remove the person.*[158]

The Bill also proposes to amend the Liquor Act to remove the existing tiered penalty regime, and replace it with a maximum penalty of 100 penalty units for these offences.[159]

'Colours' offence – public places

As mentioned above, the Bill amends the Summary Offences Act to include a new offence that will apply to a person who visibly wears or carries a prohibited item in a public place. The term 'prohibited item' will be defined by reference to the definition in the Liquor Act.

The department advised:

> *Clause 209 of the Bill replaces the term declared criminal organisation with identified organisation. Pursuant to clause 210, identified organisations will be listed in the Liquor Regulation 2002.*

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155 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, pp 20-21.

156 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, p 21.

157 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, p 21.

158 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, p 21.

159 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, p 21.

> *The maximum penalty for the new offence is six months imprisonment increasing to nine months imprisonment for a second offence and 12 months imprisonment for any subsequent offence. The Bill also provides for automatic forfeiture of the prohibited item upon conviction.*
>
> *The current offence in the Liquor Act 1992, section 173EB of entering and remaining in licensed premises wearing or carrying a prohibited item will be repealed as such conduct will be covered by the proposed new Summary Offences Act offence.*
>
> *The new offence will include a defence for a person to prove that they visibly wore or carried the item for a genuine artistic, educational, legal or law enforcement purpose; and such conduct was, in the circumstances, reasonable for that purpose.*[160]

The QPS advised the department that:

> *… while there may be concern that the new offence may impact recreational motorcycle club riders wearing their jacks with insignias, this is highly unlikely. Recreational motorcycle clubs are not currently listed in the regulation as identified organisations and adding future recreational clubs would be unlikely to meet the criteria in section 173EAA.*[161]

'Colours' offence - police powers to stop, detain and search the person and vehicle

The Bill amends sections 30 and 32 of the PPRA to provide police with the power to stop, detain and search a person and their vehicle when a police reasonably suspects the person has, or is committing, an offence against section 10C (Wearing or carrying a prohibited item in a public place) of the Summary Offences Act:

> *The powers provide police with the lawful means to detain the person, and if applicable, their vehicle to search for evidence of the offence, such as shirts and jewellery that may have been seen and were consequently secreted on the person or in the vehicle.*
>
> *Importantly, similar to consorting, the powers provide police with an additional level of officer safety when dealing with persons who are linked to identified organisations who have a history of public acts of violence.*[162]

Issues raised by stakeholders – 'colours' in licensed premises

In relation to the prohibition of 'colours' in licensed places, Mr Tony Lincoln submitted:

> *During my work in the Security Industry over 9 years, I can state that incidents involving motorcycle club members at licensed premises was so rare that it would not constitute 0.25% of all problems and issues encountered.*[163]

The department responded:

> *The Bill implements Taskforce recommendations 35-37 to retain the offences in the Liquor Act 1992 related to the wearing of prohibited items in licensed premises. The Taskforce found that its provisions are required to protect members of the community from intimidation.*[164]

160 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, p 21.
161 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, p 22.
162 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, p 22.
163 Mr Tony Lincoln, submission 24, p 7.
164 Department of Justice and Attorney-General, correspondence dated 20 October 2016, attachment, p 48.

Issues raised by stakeholders – 'identified organisations'

Several submitters raised concerns about social motorcycle clubs, political groups and other groups potentially being declared as 'identified organisations'.

For example, Mr Stephen Spencer contended:

> *The laws will only hurt the old school clubs that ride motorcycles. The law should not target groups that are not breaking the law.*[165]

United Motorcycle Council Queensland (UMCQ) submitted:

> *Many clubs have religious and military backgrounds and conform to a particular design culture and style. The predominant motorcycle retailers and brands, Harley Davidson for example, model their products in a similar style and design as motorcycle clubs which is accepted and adopted internationally. The Bill poses a severe possibility that innocent motorcycle enthusiasts are caught by these laws simply by wearing a protective vest designed by a motorcycle retailer.*[166]

The department responded to the issues raised:

> *Under the Bill, identified organisations may be declared under the Liquor Act 1992 and colours and other prohibited items associated with these organisations may not be worn in public places, including licensed premises.*
>
> *The 26 outlaw motor cycle gangs declared as 'criminal organisations' under the Criminal Code (Criminal Organisations) Regulation 2013 will be declared as 'identified organisations' in the Liquor Regulation upon commencement of the Bill, as the Government recognises the wearing of colours associated with these outlaw motor cycle gangs may cause fear and intimidation in public places and increase the likelihood of public disorder or acts of violence.*
>
> *With respect to the future declaration of entities, an entity can only be declared as an 'identified organisation' if the Minister is satisfied the wearing of the colours associated with the entity in a public place may cause other persons to feel threatened, fearful or intimidated; or may otherwise have an undue adverse effect on the health or safety of members of the public, or the amenity of the community, including by increasing the likelihood of public disorder or acts of violence.*
>
> *In forming this satisfaction, the Minister must have regard to whether any participants in the entity have engaged in serious criminal activity, or have been convicted of relevant offences involving disorderly, offensive, threatening or violent behaviour in public.*
>
> *Social motor cycle clubs, sporting clubs, religious groups and political groups, whose members do not cause fear or intimidation and are not involved in serious criminal activity or committing violent offences public, will not be declared as 'identified organisations' and will be unaffected by the legislation.*
>
> *Items will only be prohibited items if they are associated with declared 'identified organisations', therefore clothing generally associated with brands such as Harley Davidson will not banned.*[167]

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165 Mr Stephen Spencer, submission 3, p 1.

166 United Motorcycle Council Queensland, submission 35, p 4.

167 Department of Justice and Attorney-General, correspondence dated 20 October 2016, attachment, pp 48-50.

Issues raised by stakeholders – prohibited items

Whilst observing that limiting the public wearing of colours or other club paraphernalia can reduce public fear, Associate Professor Mark Lauchs argued:

> *… it will not eliminate it as many modern bikies have their affiliations tattooed on the faces and necks, and they use the 'power of the patch', the public fear of the club's name, to intimidate others. Thus a ban on colours is a positive step, which is also being introduced in Germany… but it will not eliminate public intimidation.*[168]

J Linnett expressed similar sentiments, stating:

> *I travel in my car, I hear motorbikes move up beside my car, I look up and get an awful fright as skull masks look back at me, the masks some of them wear to deliberately intimidate and frighten people ... these should be banned.*[169]

In response, the department reiterated the proposed definition of a 'prohibited item' (see above) and advised:

> *Tattoos will not be captured by the definition of prohibited item. The definition is only intended to capture items that can be removed, enabling a person to avoid the commission of an offence provided the prohibited item is not worn or carried in a public place.*
>
> *However, in places where the venue manager/owner operates a dress code, such as a liquor licensed premises, person may be requested to cover tattoos before entry will be allowed, depending on the dress code in operation. This applies to any tattoo, not just tattoos associated with an identified organisation. Dress codes for venues are not regulated by State legislation. Dress codes are an internal venue policy and relate to the owners common law right to allow or refuse entry to their premises.*
>
> *A skull mask will only be captured by the definition of prohibited item if it is associated with, or indicates membership of, a declared identified organisation.*[170]

Issues raised by stakeholders – prohibition of 'colours' in public places

At a public briefing, the Commissioner was asked how important he considered the banning of 'colours' under the Bill to be:

> ***Ms PEASE:** … I am not sure if you are aware but the opposition leader has stated that what they wear is not as important as what they do in respect of bikie colours. I think you might have already answered this but just to reiterate: how important is this government initiative to you with regard to the banning of colours?*
>
> ***Commissioner Stewart:** I am very grateful that we have in this suite of new legislation a specific piece of law that says that OMCG members cannot wear colours in public and they are described and particular insignia have been described in the proposed legislation. There is the ability to also add to that list of prescribed iconic paraphernalia, meaning the types of signs that they wear such as the 'one per centers' for instance. Over time, even though that might change, we will have the ability to request changes to the regulation to add extra pieces that might reflect that.*[171]

168 Associate Professor Mark Lauchs, submission 23, p 6.

169 J Linnett, submission 43, p 1.

170 Department of Justice and Attorney-General, correspondence dated 20 October 2016, attachment, pp 51-52.

171 Public briefing transcript, Brisbane, 26 September 2016, p 16.

The Commissioner was also asked about additional impacts of prohibiting the wearing of 'colours' in public places:

> ***Mrs STUCKEY:*** *… do you acknowledge that the new ban on bikies wearing colours in public may make it more likely that police will pull over so-called innocent bike riders more easily?*
>
> ***Commissioner Stewart:*** *No. In fact, I would take you back a couple of years when that was the concern of many recreational motorcyclists. I have not seen one complaint in the last two years—official complaint or formal complaint—about a recreational motorcyclist being pulled over. It was a perception; it was a myth. I think the professional conduct of our officers has demonstrated that that is not a problem.*[172]

Cr Taylor gave evidence the public hearing on the Gold Coast, and expressed his views on the banning of 'colours':

> *Outlaw bikies are a criminal element posing a violent threat to ordinary citizens. They deliberately intimidate people with their gang colours and their antisocial behaviour …I know that some people worry about banning people from wearing certain clothes, but the prominent displays of gang colours signifies menace. There is a psychology behind it and it works.*[173]

The committee also asked Cr Taylor's view on the prevalence of bikies on the Gold Coast. He considers they are '[n]ot as prevalent as they were before they were banned, but they are starting to come back now. They are not wearing their colours. I certainly have not seen them in their colours.'[174]

Cr Taylor continued:

> ***Mr CRANDON:*** *… Going on from the comments you were making in relation to it not mattering whether they are wearing their colours or not, an observation that I put to the assistant commissioner when he was in here was that I fail to see the difference between a few motorcycle gang members wearing colours or a couple of them wearing colours and others of them wearing their T-shirts. You talked about the tattoo thing and what have you, looking belligerent and three or four or five or six, whatever it might be, motorcycle gang members who are wearing the T-shirts—I think you mentioned that a second ago—looking belligerent, musclebound and what have you. I fail to see the difference between the two. That is my view. I would like your thinking on that.*
>
> ***Councillor Taylor:*** *I do fail to see the difference, but the way I can see it over the years I have lived here and watched the previous gangs come into town, they do not have to have any identification on.*[175]

Mr Steele of the Queensland Hotels Association explained why the wearing of club 'colours' in premises is of concern to some people:

> *I think the explanatory notes express it best. There is that identified fear and intimidation, the explicit threat of violence and the potential to facilitate criminal activity through the public's reluctance to report crimes because of that environment that those colours create.*
>
> *…*
>
> *When we are talking about the colours of those declared criminal organisations, they are, once again, the self-proclaimed one percenters. They have an image which is an image of violence and intimidation. If you look at their images of holding guns and knives and things*

172 Public hearing transcript, Gold Coast, 4 October 2016, p 16.
173 Public hearing transcript, Gold Coast, 4 October 2016, p 1.
174 Public hearing transcript, Gold Coast, 4 October 2016, p 1.
175 Public hearing transcript, Gold Coast, 4 October 2016, pp 2-3.

> *like that, it is quite a reasonable, common-sense approach that there is intimidation of members of the public who are well versed in the history, whether it be real or perceived, of these organisations and what they stand for and what they have done.*[176]

At a public hearing, Mr Schmidt expressed the Queensland Police Union of Employee's support for the ban on wearing 'colours' in public:

> ***Mr BROWN:*** *I want to get your opinion. The opposition leader said that the wearing of colours was not important. I want to get your thoughts and your members' thoughts about that and also about expanding our legislation to all public places.*
>
> ***Mr Schmidt:*** *I can say that the union is very happy with that. That is certainly, in my briefings, the union's preferred position. We believe that it actually enhances public safety and it also enhances the perception of public safety. That is something that the union is quite happy about.*[177]

On the other hand, some submitters queried the justification for prohibiting 'colours' in public places.

UMCQ held concerns regarding the new offences under the Bill which prohibit the wearing of club logos, jewellery and paraphernalia on the assumed basis that these items are intimidating:

> *The assumption of intimidation is respectfully misconceived and is highly subjective. Many UMCQ members and their families are highly intimidated by plain clothed police officers brandishing weapons including, mace, Tasers and firearms without displaying police identification for example. Further, the UMCQ is aware of many who are highly intimidated by the sight of tactical police instruments which seem to be the current standard police uniform.*[178]

Ms Judy Andrews argued that the prohibition of the wearing of 'colours' in all public places, 'even by drivers and passengers in a vehicle, is excessive'.[179] She noted that this prohibition was not contemplated, nor recommended, by the Taskforce.[180]

Mr Christian Newling felt that the proposed amendment:

> *… is ridiculous and wrong. We have the right to wear what clothing or apparel we want. It's part of being a free society. And if that should change we as a state or nation is heading down a dark path.*[181]

At a public hearing, Mr Michael Kosekno, President of the United Motorcycle Council of Queensland was asked his opinion of the view that the wearing of 'colours' and insignia can be seen as a form of intimidation. He advised the committee, '[i]t could be seen as a form of intimidation, but, as I said before, there are a lot of things around that people are wearing that could be intimidating.'[182]

The department responded to the issues raised:

> *The Taskforce accepted that members of the public have the right to enjoy themselves in licensed premises free from any fear or intimidation that the presence of 'colour-wearing' outlaw motorcycle gang (OMCG) members might incite. The Government considers that the same should apply to public places generally.*
>
> *The role of colours is to identify the wearer as a member of an OMCG and as an adherent to OMCG culture. Moreover, colours of OMCGs, and in particular the '1 %' patch, identify*

176 Public hearing transcript, Gold Coast, 4 October 2016, pp 18-19.
177 Public hearing transcript, Brisbane, 12 October 2016, p 20.
178 United Motorcycle Council Queensland, submission 35, p 4.
179 Ms Judy Andrews, submission 36, p 1.
180 Ms Judy Andrews, submission 36, p 1.
181 Mr Christian Newling, submission 38, p 1.
182 Public hearing transcript, Gold Coast, 4 October 2016, p 13.

that OMCG and the member wearing them, as operating outside the law and having a propensity to be involved in criminal activities.

The Australian Crime and Intelligence Commission has identified OMCGs as one of the most high profile manifestations of organised crime which have an active presence in all Australian States and Territories. OMCGs have become one of the most identifiable components of Australia's criminal landscape and identify themselves through the use of colours.

The Queensland Police Service (QPS) advise that members of OMCGs have been involved in public acts of violence and other criminal acts, both in Queensland and other jurisdictions, where colours or OMCG insignia were known to be featured.[183]

2.1.8 Amendments to the Crime and Corruption Act 2001

Retention of 2013 provisions

The Taskforce concluded that some of the amendments made in 2013 were legally and operationally beneficial and as a result the following aspects be retained without further amendment:

- *the specific intelligence operations function*
- *allowing witnesses who are to be certified as being in contempt of the Crime and Corruption Commission (CCC) to be immediately arrested*
- *the increase in maximum penalties for the statutory offences of non-compliance*
- *permitting inculpatory evidence given by a person in a coercive hearing to be used against them in a proceeding for the confiscation of proceeds of crime*
- *the ability of the CCC to start or continue to investigate a person even after the person has been charged with an indictable offence*
- *allowing the CCC to seek a warrant from a Magistrate for a witness who fails to attend a hearing, and*
- *deeming certain proceedings arising out of the CCC functions confidential in the Supreme Court.*[184]

Earlier in this report, the committee addressed the Bill's proposal to amend the existing definition of 'criminal organisation' and the CCC's view on the proposed definition. As a connected, but distinct, issue, the CCC submitted the following in relation to its specific intelligence operations function:

Both in the Bill's proposed amendments to the CC Act, and in its current form, ss 55A-F require a connection between the activity to be investigated and a 'criminal organisation'. The CCC submits that this required connection is unsuitable to the meaningful exercise of those functions…

The issue from the CCC's perspective is not in the definition of a 'criminal organisation' (although some slight changes are suggested…), but its appropriateness as the sole criterion for invoking the CCC's jurisdiction regarding specific intelligence operations and the immediate response function.[185]

183 Department of Justice and Attorney-General, correspondence dated 20 October 2016, attachment, pp 52-53.

184 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, pp 22-23.

185 Crime and Corruption Commission, submission 33, pp 3 and 5.

The department advised:

> *Whilst the CCC did raise concerns about specific intelligence operations in its submission to the Parliamentary Crime and Corruption Committee (PCCC) during its recent review of the operations of the Commission, the Department notes the PCCC made no specific recommendations about this issue.*
>
> *The matters raised by the CCC are not within the scope of the Bill and are requesting an expansion of the scope of the Commission's intelligence function. The concerns of the Commission are noted and will be considered in the context of any future review of the Commission's powers and functions.*[186]

Proposed amendments

The Taskforce did, however, identify a number of issues with other aspects of the 2013 amendments to the *Crime and Corruption Act 2001* (CC Act). It considered that the following aspects require either amendment or, in some cases, repeal:

- Immediate response function (sections 55D-F)
- Punishment regime for contempt of the CCC (sections 199(8A-F))
- Fear of retribution as a reasonable excuse for non-compliance (sections 85 and 100)
- Access to financial assistance for legal services (section 205)
- Disclosure of exculpatory materials obtained in an intelligence function hearing (section 201).

The Bill proposes to amend these sections of the CC Act.

Immediate response function

The immediate response function, provided for in Division 2B of the CC Act, enables the CCC to respond rapidly to a matter which jeopardises public safety:

> *The chief means by which this is to be done is through the use of the CCC's coercive hearings powers (noting that this is the only area in which there is a marked difference in the CCC's powers). These provisions were introduced to allow the CCC to convene hearings rapidly in relation to an incident, or anticipated incident, which posed a threat to public safety.*[187]

The Bill proposes to retain the immediate response function of the CCC (new sections 55D-F of the CC Act), but provides for oversight by the Crime Reference Committee regarding the use of this function.[188]

Issues raised by stakeholders – immediate response function

In relation to clause 38 of the Bill, which proposes new section 55E(2) of the CC Act, the CCC noted the introduction of two important safeguards surrounding these powers, not present in the current form of the Act.[189]

The CCC supports these safeguards with one qualification:

> *Firstly that the CRC, which is constituted, not just by persons involved in law enforcement, but also community representatives, approve any such authorisations.*
>
> *The second safeguard is to introduce a requirement (s55E(2)) that one of the public interest factors which the committee must consider is the likely effectiveness of an*

186 Department of Justice and Attorney-General, correspondence dated 20 October 2016, attachment, p 64.
187 Crime and Corruption Commission, submission 33, p 8.
188 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, p 23.
189 Crime and Corruption Commission, submission 33, p 9.

investigation into criminal activity or corruption without the use of powers available to the CCC under this division. Two matters should be observed in relation to this.

First, it is assumed that the reference to the likely effectiveness of an investigation into corruption without the use of powers under this division is intended to ensure that all possible CCC threat responses are taken into account before an immediate response is authorised. It is difficult, however, to conceive what type of threat to public safety may otherwise be more appropriately or practicably explored as an investigation into corruption.

In this respect, the CCC notes that, whereas the existing s55F provides for the authorisation of a 'crime investigation' or 'intelligence function hearing', the proposed amendment simply provides for authorisation to 'undertake an investigation' and 'conduct a hearing' in relation to the incident. It is submitted that the shift from a 'crime investigation' or 'intelligence function hearing' to simply 'an investigation' or 'a hearing' is a sensible amendment. In such circumstances, though, it is difficult to conceive what utility there is in considering whether a corruption investigation may be appropriate.

Secondly, the requirement that the CRC have regard to the effectiveness of an investigation into criminal activity or corruption without the use of powers available to the CCC under this division. It is submitted that this caveat could be better expressed. There are no powers under this division which are unique. Once an authorisation under s55D (presently s55F) is granted, the Chairperson can issue a notice to a witness requiring immediate attendance to give evidence at a hearing [s82(7), to be renumbered 82(6)] without the approval of a Supreme Court judge, as would otherwise be necessary. However that is not a separate power under the division in which s55E is contained. This could be clarified, perhaps with words to the effect "by an investigation under s27" or "by an investigation under Ch 2, Pt 2". It is inferred that what is intended is for the CRC to turn its attention specifically to whether the immediacy of response available under this division is necessary.

Subject to the reservations above, the CCC otherwise supports these amendments.[190]

At a public hearing in Brisbane, Mr Crandon MP asked about the CCC's immediate response function and any problems associated with this with regard to potential 'lone wolf attacks':

In order to use the immediate response function which would allow us to serve immediate attendance notices or requiring people to attend straightaway and to give evidence, at the moment we need to demonstrate that there is a threat to public safety, either that a threat is imminent or that it has already occurred, and that we reasonably suspect that it involves a criminal organisation. This provision is a provision that has been the subject of discussions between ourselves and the Queensland Police Service in terms of our readiness for a terrorist attack in this state firstly as a prevention means in circumstances or a scenario where we may identify that there are people who are planning to conduct a terrorist attack and this provision could be used to call them immediately into hearings and to disrupt that in circumstances where the Queensland police may have some concern that they are not able to control the movements of targets. Secondly, if a terrorist attack were to actually occur, there are some quite crucial and immediate questions that need to be answered, such as who is responsible for that attack, is it broader than the persons who are immediately involved, are there other attacks already in play, either in this state or other states are there other devices that may already be in position? These are questions that urgently require answers. The difficulty we have is that by tying this provision to the

[190] Crime and Corruption Commission, submission 33, p 9.

> *existence of a reasonable suspicion of a criminal organisation it may be impossible for us to use that power in those circumstances.*[191]

With regard to viable claims of reasonable excuse founded on fear of retribution, the committee asked the CCC to elaborate on the response it provided in its submission:

> ***Mr CRANDON:*** *On page 10 under clauses 46 and 47 of the CC act you state—*
>
> *The CCC does not support in-principle the proposed removal of the current ss 185(3A) and (10) and ss 190(4) and (5). The CCC reiterates its submission to the Taskforce into Organised Crime Legislation (August 2015) ...*
>
> *You go on to say—*
>
> *The CCC considers that the current provisions effectively address the issues targeted and promote the public interest in a timely way.*
>
> *Could I ask you to expand on that for us? Could you flex that out?*
>
> ***Ms Florian:*** *The CCC understands that the amendment is intended to return the legislation to its previous position and is not intended to give any stronger ground for a viable claim of a reasonable excuse founded on fear of retribution. We feel that it would be useful to get some clarification of that point in the explanatory notes. If that is the case, we note that the current case law in relation to what may constitute a reasonable excuse sets the threshold quite high. Our only concern in this is that we may see as a consequence an increase in the refusals to produce or to answer relevant CCC hearing questions on the grounds of fear of retribution, which would ultimately need to be determined by the court in circumstances where that case law already sets that threshold very high. I would put it no higher than that.*[192]

Issues raised by stakeholders – proposed deletions

The CCC does not support in-principle the proposed removal of the current ss185(3A) and (10) and ss190(4) and (5) of the CC Act:

> *The CCC reiterates its submission to the Taskforce into Organised Crime Legislation (August 2015) which supported the retention of provisions removing claims of reasonable excuse founded on fear of retribution to persons or property. The CCC considers that the current provisions effectively address the issues targeted and promote the public interest in a timely way.*
>
> *In their current form these clauses apply not only to actual members of, or participants in criminal organisations, but to a hearing in relation to a criminal organisation. Thus they capture anyone being asked about someone in a criminal organisation.*
>
> *If the proposed amendment is enacted it is likely that most refusals to produce or answer at a relevant CCC hearing on grounds of fear of retribution would ultimately be determined by the courts having regard to various public interest considerations.*[193]

Issues raised by stakeholders – punishment of contempt

Whilst generally supporting the proposed amendments to the provisions regarding the punishment regime for contempt of the CCC, and in particular the efforts to address the legal issues which arose from the decision of the Queensland Court of Appeal in *Witness JA v Scott*, the CCC submitted that the language in the underlined passage may be insufficiently clear to fully address some matters raised in the *Witness JA* litigation:

191 Public hearing transcript, Brisance, 13 October 2016, pp 2-3.
192 Public hearing transcript, Brisance, 13 October 2016, p 3.
193 Crime and Corruption Commission, submission 33, p 10.

The proposed CC Act, s 199(8C)(e) provides:

> *(e) the failure by a person of a type mentioned in subsection (BA) that constitutes the person's second contempt, or third or subsequent contempt, may be the same failure by the person of a type mentioned in subsection (8A) that constituted the person's first contempt or other preceding contempt.*[194]

The CCC submit that further clarification of this issue may be beneficial:

> *Related to this is the confusing interchangeability of language in respect of the various provisions that underpin the statutory offences and contempt provisions in the Act. While the heading of s183, for example, is 'refusal to be sworn', the actual offence is characterised by a 'failure to take an oath when required'. While a failure might indicate a refusal, arguably one is a positive act and the other is a passive omission. Equally in s190, a person must answer a question unless they have a reasonable excuse. There the gravamen of the conduct is a failure to answer the question, although the section heading is 'refusal to answer question'. Section 190{4) (which is to be repealed in any event) refers to a reasonable excuse to 'fail to answer a question'. Section 198(4) specifies certain statutory provisions, contravention of which would be an offence, which is also contempt. These provisions are all characterised as 'failure' provisions, even though the title of each section is actually described as a 'refusal'.*
>
> *Consideration could be given to amending these various provisions for the sake of uniformity. This has not been addressed in previous submissions regarding amendments to the Act as it is the proposed amendment to s199(8C)(e) which has highlighted this problem.*[195]

Issues raised by stakeholders – disclosure of evidence to a defendant

The CCC noted the Bill's proposal (clause 49) to give relevant evidence obtained at an intelligence function hearing to a defendant or their lawyer unless a court considers it would be unfair to a person or contrary to the public interest to do so:

> *The proposed amendment goes against the CCC's submission to the Wilson Taskforce. If enacted the CCC recommends the operation of the amendment be reviewed to determine whether any use of the evidence disclosed to the defendant or their lawyer was unfair to any person or contrary to the public interest.*[196]

Issues raised by stakeholders – legal assistance for crime investigations

The CCC stated that the full scope and extent of proposed amendments (clause 50 of the Bill) is not clear as the Bill does not contain any provision amending the current heading for section 205.[197]

Additionally, the CCC opposed the inclusion of immediate response hearings within the ambit of section 205:

> *The submission notes that hearings are routinely adjourned to allow funding applications to be processed and that this delay may frustrate the intended immediacy of the response function. It is also acknowledged that the process for approving funding for legal representation will take time and it is conceivable that hearings undertaken as part of the immediate response function may take place outside business hours and days.*[198]

194 Crime and Corruption Commission, submission 33, p 10.
195 Crime and Corruption Commission, submission 33, p 12.
196 Crime and Corruption Commission, submission 33, p 12.
197 Crime and Corruption Commission, submission 33, p 12.
198 Department of Justice and Attorney-General, correspondence dated 20 October 2016, attachment, p 69.

At the public hearing in Brisbane, Mr Krause MP questioned Ms Florian of the CCC in relation to the ability of a person attending an immediate response hearing to make application to the Attorney-General for legal representation. Mr Krause MP sought confirmation that

> *… when you bring people in for an immediate response hearing, it would be a matter of some urgency and that there is a proposal in the bill that would enable those individuals to whom the CCC wants to talk to delay that by seeking legal representation from the Attorney-General'.*[199]

Ms Florian responded:

> *Yes. Our purpose is very much not to stop someone having legal representation because in those very circumstances of an emergency response hearing I would imagine that that could be very important. The issue is more that there is then an administrative process that needs to be gone through, and that can delay sometimes for weeks or months.*
>
> *…*
>
> *If we are looking at a hearing which needs to be conducted urgently to perhaps stop, in the terrorist incident or prevent an incident happening, that would remove the efficacy of the provision at all.*[200]

2.2 Proposed amendments related to the recommendations of the Commission

2.2.1 Investigative powers to assist in gaining access to electronically stored information

Proposed amendments

In response to recommendations 4.7 and 4.8 of the Queensland Organised Crime Commission of Inquiry (Commission) report, the Bill (clauses 42-44) introduces provision into the CC Act to enable officers to have the same ability as police officers to apply for a warrant containing an order requiring a person to provide access information:

> *Currently the CCA does not provide any head of power for any order to be made about providing access information. Access information is defined to mean information that is necessary for a person to access and read information stored electronically on a storage device.*
>
> *In addition, the amendments will extend the scope and operation of the order to apply to persons other than the suspect (for example, the owner of the device), and that the relevant officers will, if necessary, be able to apply for an additional order to request additional access information if later forensic tests reveal there is a second or further layer of encryption the initially provided access information cannot 'unlock'.*[201]

Corresponding amendments, clauses 302-304 of the Bill, will be made to the PPRA to expand the current scope and powers of orders in a search warrant that police officers can seek:

> *The PPRA currently provides for a police officer to apply for an order in a search warrant to require a person to provide access information.*
>
> *The extended scope of the order to be included in the CCA will be replicated in the PPRA. Both the CCA and the PPRA will be amended to provide that a warrant that contains an order requiring the provision of access information must also state that failure to comply*

199 Public hearing transcript, Brisbane, 13 October 2016, p 5.

200 Public hearing transcript, Brisbane, 13 October 2016, p 5.

201 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, p 25.

> *with the order can be dealt with under the proposed new section 205A to be included in the Criminal Code ...*[202]

Issues raised by stakeholders

The CCC supported the introduction of powers to, in a search warrant, request access information and read information stored electronically.[203]

2.2.2 New offence of contravening an order to provide access information

Proposed amendments

The Bill (clause 75) will partially implement recommendation 4.9 of the Commission's report which reflected the Commission's concern that, given the nature and extent of offending behaviour and that the need to investigate hidden or stored information is a major investigative tool, that the failure to comply with these orders should constitute an indictable offence under the Criminal Code:

> *The Bill inserts a new provision into the Criminal Code that provides that a person who does not comply with an order in a search warrant to provide access information to allow examination of electronic storage devices, is guilty of an indictable offence carrying a maximum penalty of 5 years imprisonment.*
>
> *The new offence does not, as was included in recommendation 4.9, include a circumstance of aggravation, increasing the maximum penalty to seven years imprisonment, when the person subject to the requirement in the search warrant is in possession of child exploitation material at the time the search warrant is executed. The circumstance of aggravation raises issues of 'double punishment', if the person was also charged with the offence of possessing child exploitation material. Further, duel provisions risk the offender being convicted of new section 205A and therefore prohibited from being convicted and punished with the substantive offence of possession of child exploitation material which carries a much great maximum penalty.*[204]

2.2.3 New penalties and offences relating to child exploitation material offences

Existing law

Section 228A of the *Criminal Code Act 1899* (Criminal Code) makes it an offence to involve a child in making child exploitation material and section 228B makes it an offence to make child exploitation material. Further, section 228C makes it an offence to distribute child exploitation material and section 228D makes it an offence to possess child exploitation material. Each of the four offences currently carries a maximum penalty of 14 years imprisonment.

Under section 154 of the *Police Powers and Responsibilities Act 2000*, when police apply for a search warrant they can request the magistrate to include a requirement that the person provide passwords or encryptions to allow access to the information stored on that electronic device.

Commission's findings on child exploitation material

In the briefing paper provided by the department, it was stated:

> *The Commission noted the ease and proliferation of access to, and trade in, child exploitation material over the internet and the increasing prevalence of such offending. The Commission also noted the increased use of technology to promote and distribute*

202 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, p 25.

203 Crime and Corruption Commission, submission 33, pp 9- 10.

204 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, pp 25-26.

> *child exploitation material as well as to 'hide' a person's access to child exploitation material websites and material.*[205]

Introduction of new offences and new penalties relating to child exploitation material offences

The Bill creates three new offences in sections 228DA–228DC in the Criminal Code in response to recommendation 4.4 made by the Commission, each with a maximum penalty of 14 years imprisonment. The new offences are designed to target people who:

- administer websites used to distribute child exploitation material
- *encourage the use of, promote, or advertise websites used to distribute child exploitation material, and*
- *distribute information about how to avoid detection of, or prosecution for, an offence involving child exploitation material.*[206]

The Bill also provides for an increase in the maximum penalty for the offences in sections 228A (Involving child in making child exploitation material) and 228B (Making child exploitation material) of the Criminal Code from 14 to 20 years imprisonment as recommended by the Commission in recommendation 4.5.

In accordance with the Commission's recommendation 4.6, the Bill creates a new circumstance of aggravation to apply to each of the existing and new offences related to child exploitation material, which will apply if a person uses a hidden internet network or an anonymising service in committing the offence. For sections 228A and 228B of the Criminal Code the application of aggravation to the offences sees the maximum penalty increase from 20 years (under this Bill) to 25 years imprisonment. In relation to the new offences, and sections 228C and 228D of the Criminal Code, the maximum penalty increases from 14 years to 20 years imprisonment.

To support the amendments outlined above, the Bill creates a new offence (205A) in the Criminal Code, to provide that it is an offence for a person to fail to comply with an order in a search warrant, made under the *Police Powers and Responsibilities Act 2000* or the *Crime and Corruption Act 2001,* requiring them to provide access to information stored electronically. The offence carries a maximum penalty of five years imprisonment.

The Bill also amends section 154 of the *Police Powers and Responsibilities Act 2000* to enhance the operation of those existing powers, including providing that if someone other than a suspect has the information being sought, the information can be required from that other person, and allow police to have subsequent access to an item that has already been searched if they need access to information again. These powers are also provided to the CCC in the Bill.

Issues raised by stakeholders – child exploitation

At a public briefing, the committee asked whether the Bill would provide police officers with the opportunity to intervene at an earlier stage, when grooming is about to occur. The Commissioner advised:

> *Certainly the consorting laws will be effective in dealing with this type of behaviour. One of the reasons activity to charge offenders often waits until a particular point in an operation is more about evidence gathering and people's intentions becoming clearer at a particular stage before we take action. This certainly does give us the ability to pre-emptively warn people about their associations with others within perhaps a network.*[207]

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205 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, p 26.

206 Explanatory notes, p 5.

207 Public briefing transcript, 26 September 2016, p 14.

With regard to amendments to the Criminal Code, Protect all Children Today Inc (PACT) advised in its submission:

> *We are extremely supportive of following amendments to the Criminal Code in response to the proliferation of child exploitation material over the internet, the increased use of technology to promote and distribute offending material, as well as to conceal offending.*
>
> *…*
>
> *We support the introduction of increased penalties to dissuade this abhorrent behaviour and the creation of new circumstances to address where a person uses a hidden network or an anonymous service to commit child exploitation offences.*
>
> *We appreciate that these amendments pose potential infringements of the fundamental legislative principle, but agree that they are justified to address legislative gaps and deter perpetrators, leading to the better protection of vulnerable children and young people.*[208]

At the public briefing in Brisbane, the committee acknowledged that child exploitation is prolific and growing as technology advances, and asked how the Bill can respond to such changes in technology:

> ***Ms PEASE:*** *… I understand that child exploitation is prolific and it is growing as the use of the internet and the web is expanding and I note that obviously there have been some gaps in the legislation to protect children against this type of exploitation. Is that the reason why and how quickly is the new legislation going to grow and adapt as technology grows, changes and morphs? How quickly can this legislation respond to these changes?*
>
> ***Ms Shephard:*** *The commission of inquiry obviously made a number of conclusions around the proliferation of child exploitation material and the growing use of the internet, particularly the dark web, with regard to this and also the extremely concerning behaviour of these highly structured and sophisticated paedophile networks using the dark web where being able to remain a member or climb the ladder of membership was dependent on providing fresh child exploitation material to the network. Of course that was therefore feeding not only the distribution and possession of child exploitation material but the actual exploitation and abuse of children by making fresh child exploitation material. That was the reason why the commission of inquiry made a number of recommendations. One was that the maximum penalties for involving a child in making child exploitation material or making child exploitation material should be increased from 14 to 20 years imprisonment and also that there should be this new circumstance of aggravation to apply not only to existing CEM offences but the new offences if the darknet or any other encrypting or anonymising device is used in facilitating this type of offending.*
>
> *Also, the bill picks up the commission of inquiry's recommendations around creating these new offences applying to administrators of such websites. That is definitely filling a gap. The commission of inquiry noted that of course the party provisions of the Criminal Code that allow someone who aids and abets an offender to be charged will not necessarily pick up administrators where it is difficult to prove that causal link between what the administrator has done and the actual commission of the substantive child exploitation material offences. The bill creates this new offence that applies to administrators.*[209]

2.2.4 New penalties and circumstances of aggravation in relation to the offence of fraud

The following amendments to the Criminal Code are made in response to the increasing prevalence and seriousness of cold call investment or 'boiler room' fraud and evolving threats in financial crimes (particularly identity crime) that may not be adequately deterred by existing penalties:

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208 Protect All Children Today Inc, submission 7, p 1.

209 Public briefing transcript, Brisbane, 26 September 2016, pp 16-17.

- *an increase in the maximum penalties for existing aggravated offences in section 408C (Fraud) from 12 to 14 years imprisonment;*
- *the creation of a new circumstance of aggravation for the offence of fraud, carrying a maximum penalty of 20 years imprisonment, where the property or yield to the offender from the fraud is over $100 000;*
- *the creation of a new circumstance of aggravation for the offence of fraud, carrying a maximum penalty of 20 years imprisonment, where the offender participates in carrying on the business of committing fraud; and*
- *an increase in the maximum penalties for the offences in section 408D (Obtaining or dealing with identification information) from three to five years imprisonment.*[210]

At the public briefing on the Gold Coast, Assistant Commissioner Maurice Carless, State Crime Command, Queensland Police Service, was asked whether the Bill will better equip officers to deal with 'boiler room' fraud:

> *Cold-call investment frauds are a difficult area of organised crime. I guess in this suite of legislation there are opportunities for us to disrupt or make it more difficult for people to operate cold-call investment fraud activities, particularly if they meet the criteria of recognised persons. There are definitely opportunities there for us to use this suite of legislation to address that.*[211]

2.2.5 Amendments to the Drugs Misuse Act 1986

The maximum penalty for trafficking in dangerous drugs listed in Schedule 2 of the *Drugs Misuse Act 1986* is 20 years imprisonment.[212]

Under section 5 (2) of the same Act, if a court sentences a person to a term of imprisonment for an offence against subsection (1), the court must make an order that the person must not be released from imprisonment until the person has served a minimum of 80% of the prisoner's term of imprisonment for the offence.

According to the department, the Commission found that 'organised crime has a very real presence and interest in trafficking illicit drugs, regardless of drug type'.[213]

Changes to penalty and mandatory minimum non-parole period for trafficking in dangerous drugs

The explanatory notes advise that the Bill makes the following amendments to the *Drugs Misuse Act 1986*:

- *the maximum penalty for the offence of trafficking in dangerous drugs listed in schedule 2 of the Drugs Misuse Regulation 1987 is increased to 25 years imprisonment (from 20 years), consistent with the existing maximum penalty for dangerous drugs listed in schedule 1 of the Drugs Misuse Regulation 1987; and*
- *to address adverse comments of the Court of Appeal in R v Clark [2016] QCA 173, the minimum 80% non-parole period is removed and the offence of trafficking in a dangerous drug is restored to the serious violent offences regime (under the Penalties and Sentences Act 1992).*214

210 Explanatory notes, pp 5-6.
211 Public briefing transcript, Gold Coast, 4 October 2016, p 9.
212 Drugs Misuse Act 1986, s 5(1)(b)
213 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, p 27.
214 Explanatory notes, p 6.

In the written briefing from the department, it was stated that the adverse comments of the Court of Appeal related to the potential for unintended consequences of the mandatory minimum non-parole period, such as:

> *… the risks of significant court delays to allow those offenders with sufficient funds to demonstrate pre-sentence rehabilitation and a viable post-sentence rehabilitation scheme, the potential inequity in sentencing between pecunious and impecunious offenders that can result, as well as the conflict between this, the benefit of an early guilty plea and a lawyer's duty to the court to not encourage delay.*[215]

At the public briefing on the Gold Coast, the committee noted the increased penalty for drug trafficking in the Bill, and the focus on criminal organisations and restricted premises. It asked '[g]iven the current laws that are in place passed by the previous government recorded only, I believe, three convictions on persons who were other than outlaw motorcycle gangs, would this provision provide you with a greater ability to capture a whole suite of offenders in terms of other than what the current legislation intended to do?':

> ***Assistant Commissioner Codd:*** *I will try to answer that as best I can without getting too opinion based. One of the benefits of the sentencing regime is to adequately respond to offenders, but it is also to have a deterrent effect and also be a lever that can be used in our investigative operations. I think that is one of the things that cannot be lost in the notion of the sentencing regime that we have found to prove quite fruitful in addition just to convictions. What I mean by that is: the fact that somebody may well be subject to increased penalties in some areas can be an incentive for them perhaps to provide us further information about the scope of the enterprise. I do not know if you are in a position to add anything further to that in terms of the sentencing regime?*
>
> ***Assistant Commissioner Carless:*** *I agree entirely. There is certainly an incentive as well as the deterrent effect within those legislative programs or legislative regimes that provide an incentive for major and organised crime figures to cooperate, which is part of the deterrent effect.*[216]

Issues raised by stakeholders

Ms Judy Andrews states in her submission that '[t]here is absolutely no evidence that increasing penalties will decrease incidence of the offence. What evidence does show is that longer sentences result in fewer guilty pleas and over-crowded prisons'.[217]

2.3 Proposed amendments related to the Taskforce occupational licensing recommendations

The 2013 laws (particularly the *Tattoo Parlours Act 2013* and the *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013)* created a new industry licensing regime for the body-art tattoo industry in Queensland, and introduced additional probity restrictions into a range of occupational licensing and industry regulation Acts, with the aim of excluding criminal organisations and participants in criminal organisations from operating and working in particular occupations and industries.[218]

The Bill contains amendments to respond to the views, findings and recommendations of the Taskforce relating to occupational licensing and industry regulation matters.

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215 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, p 27.

216 Public briefing transcript, Gold Coast, 4 October 2016, p 6.

217 Submission 36, p 2.

218 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, p 28.

2.3.1 2013 amendments not yet commenced

The commencement of amendments to the following three Acts was postponed until 1 July 2017:

- *Electrical Safety Act 2002*
- *Queensland Building and Construction Commission Act 1991 (*formerly the *Queensland Building Services Authority Act 1991)*
- *Work Health and Safety Act 2011.*[219]

The Bill proposes to repeal the 2013 amendments to the above three Acts as contained in the *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013,* with the exception of two minor technical amendments to the *Electrical Safety Act 2002.*[220]

2.3.2 Amendments to various Acts

Proposed amendments

The Bill contains proposed amendments to the *Liquor Act 1992, Motor Dealers and Chattel Auctioneers Act 2014, Racing Integrity Act 2016, Second-hand Dealers and Pawnbrokers Act 2003, Security Providers Act 1993* and *Tow Truck Act 1973* to respond to the views, findings and recommendations of the Taskforce.[221]

In summary the Bill:

- *removes requirements for licensing authorities to refer every application for a licence (or other authority) to the Police Commissioner for advice about whether the entity or person is a criminal organisation or a participant in a criminal organisation (Taskforce, recommendation 58)*
- *repeals provisions requiring licensing authorities to refuse or cancel a licence (or other authority) solely on the basis that an entity or person is alleged to be a criminal organisation or a participant in a criminal organisation (Taskforce, recommendation 56)*
- *restores the operation of principles of procedural fairness, and review and appeal processes, in relation to decisions of licensing authorities to refuse or cancel a licence or other authority (Taskforce, recommendation 59)*
- *retains an ability for the Police Commissioner to provide criminal intelligence to licensing authorities through information sharing arrangements with licensing authorities, while also maintaining confidentiality of criminal intelligence (Taskforce, recommendation 13)*
- *ensures that licences and other authorities are not refused or cancelled solely on the basis of criminal intelligence (Taskforce, recommendation 15).*[222]

According the department, the amendments contained in the Bill are intended to: 'refocus occupational licensing frameworks to an assessment of a person's own probity (including their own criminal history), rather than the behaviour and conduct of people they associate with'.[223]

219 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, p 28.
220 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, p 28.
221 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, p 29.
222 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, pp 28-29.
223 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, p 30.

In this respect, the new serious and organised crime offences (as well as the terms of control orders) under the Bill will be relevant to the operation of the identified occupational licensing frameworks:

> *The new serious and organised crime offences relevant for occupational licensing probity tests are as follows:*
>
> - *recruiting person to become a participant in criminal organisation (section 76 of the* Criminal Code*);*
> - *habitually consorting with recognised offenders (section 77B of the* Criminal Code*);*
> - *certain offences committed with a serious organised crime circumstance of aggravation (see section 161 Q of the* Penalties and Sentences Act 1992*);*
> - *contravention of order (section 161ZI of* Penalties and Sentences Act 1992*);*
> - *contravention of public safety order (section 32 of the* Peace and Good Behaviour Act 1982*);*
> - *offence by owner or occupier of restricted premises (section 54 of the* Peace and Good Behaviour Act 1982*); and*
> - *hindering removal or modification of a fortification (section 75 of the* Peace and Good Behaviour Act 1982*).*[224]

The existing occupational licensing Acts vary in terms of whether a person's conviction for a particular offence is a mandatory exclusion from holding a licence, an express relevant consideration in determining a person's suitability for a licence, or a matter a licensing authority can have regard to under general provisions allowing for an assessment of a person's suitability for a licence.[225]

Issues raised by stakeholders

The Queensland Hotels Association (QHA) does not support proposed amendments to the fit and proper person tests under the *Liquor Act 1992*:

> *This represents a weakening of the existing suitability, 'fit and proper person' and probity process. The QHA cannot support this section of the Bill that in essence provides 'blind' applications with very limited vetting of applicants. The QHA recommends the retention of the requirement that all applications must be referred to the Police Commissioner, that police criminal intelligence is able to be continued to be used in determining applications, and that membership of a criminal organisation precludes an application being approved.*[226]

In response to this issue, the department advised:

> *These probity tests provide the Commissioner for Liquor and Gaming with a broad discretion to consider a number of matters, including an applicant's criminal history.*
>
> *The Bill will strengthen the probity tests in the Liquor Act by specifically providing that the Commissioner may have regard to the new organised crime offences, and the terms of control orders.*
>
> *…*

224 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, p 30.
225 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, p 30.
226 Queensland Hotels Association, submission 31, p 2.

> *The Bill also strengthens the ongoing monitoring of licensees, permittees and approval holders under the Liquor Act, to ensure they continue to be a fit and proper to hold an authority of all types.*
>
> *It should be noted under the current provisions enacted in 2013, no persons have been disqualified from holding a licence, permit or other approval under the Liquor Act on the basis of being a criminal organisation or participant in the criminal organisation.*[227]

The QHA raised concerns about the inclusion of organised crime offences in probity tests under the *Liquor Act 1992*:

- recruiting a person to become a participant in a criminal organisation*: this is perplexing that it is not an issue to be an existing member of a criminal organisation, but it is to recruit*
- *the offence of* habitually consorting with recognised offenders*: this three limb process is potentially retrospective, vague, subjective, and would not preclude an applicant in the first instance*
- certain offences with a serious organised crime circumstance of aggravation*: this would have no bearing where an applicant had not been convicted*
- contravention of orders*: likewise, this would have no bearing where an applicant had not been convicted so is in effect useless as a criterion*.[228]

At the public hearing at the Gold Coast, Mr Damian Steele of QHS commented on the Bill's proposed probity tests:

> *These probity tests do not pass the pub test, if you pardon the pun. For example, we would have a circumstance where it would be an offence for a member of a prohibited criminal organisation wearing their colours to go to the postbox to post their liquor application but that application could be approved. We do not want the closed gang clubhouses to be swapped for our tourism industry's local pub-houses.*[229]

2.3.3 Amendments to the Tattoo Parlours Act 2013

Existing law

The *Tattoo Parlours Act 2013* (Tattoo Parlours Act) established an occupational licensing framework for the body-art tattoo industry in Queensland in an effort to eliminate and prevent criminal organisations (including outlaw motorcycle gangs) and their members from infiltrating the Queensland tattoo industry.

Currently, the Tattoo Parlours Act and the associated Tattoo Parlours Regulation 2013 require that:

- persons hold an 'operator licence' if they operate, or intend to operate, a body art tattooing business in Queensland
- individuals hold a 'tattooist' licence if they work, or want to work as a body art tattooist in Queensland.

An operator can also be a tattoo artist at their own premises and does not need to hold a separate tattooist licence, although a separate operator licence is required to be held by the operator for each premises.

The assessment of the probity of an applicant (or licensee) is currently significantly different than probity assessment processes for other types of occupational licence or authority. If the Police

227 Department of Justice and Attorney-General, correspondence dated 20 October 2016, p 78.
228 Queensland Hotels Association, submission 31, p 3.
229 Public hearing transcript, Gold Coast, 4 October 2016, p 17.

Commissioner makes an 'adverse security determination' about an applicant or licensee, then the Chief Executive of the Office for Fair Trading must decide to refuse the application. An adverse security determination is a:

> *…determination made by the Police Commissioner that the applicant is not a fit and proper person to be granted the licence or that it would be contrary to the public interest for the applicant to be granted a licence. Neither the applicant /licensee nor the licensing authority (the Office of Fair Trading) is provided with the reasons why an adverse security determination is made about a particular person. Adverse security determinations may be based on criminal intelligence held by the Police Commissioner.* [230]

Furthermore, under the Tattoo Parlours Act:

- applicants must be finger and palm printed
- applicants for an operator licence must submit a list of close associates of the business or the applicant
- individuals who perform tattooing for a fee or reward while visiting Queensland require a visitor permit
- individuals wanting to organise a body art tattooing show or exhibition require an exhibition permit
- licensees must keep a tattooing procedures log to record payments to tattooists for tattoos performed for a fee.

Taskforce's critique of existing law

In its report, the Taskforce recommended that the *Tattoo Parlours Act 2013* should be retained (recommendation 54), but that consideration could be given to renaming the *Tattoo Parlours Act 2013* to remove and replace the reference to the word 'parlour' (recommendation 55).

The Taskforce also made a number of recommendations relating to occupational licensing principles, as well as on amendments to improve the general administration and operation of the Tattoo Parlours Act.

Amendments to Tattoo Parlours Act 2013

The explanatory notes state that the amendments to the Tattoo Parlours Act:

> *… retain, rename and substantially amend the Tattoo Parlours Act 2013 to adopt a more traditional and transparent approach to occupational licensing of the body-art tattoo industry in Queensland, and to improve the administration and operation of the body-art tattoo licensing legislation including in response to a number of issues raised by stakeholders to the Taskforce.* [231]

The Bill contains amendments to ensure that the occupational licensing for the body-art tattoo industry is characterised by increased transparency and procedural fairness, and subject to appropriate review and appeal rights.

Key amendments to the Tattoo Parlours Act contained in the Bill will:

- *change the short title of the Tattoo Parlours Act 2013 to the Tattoo Industry Act 2013;*
- *establish a more procedurally fair process for assessing the probity of tattoo licence applicants (and licensees), guided by other occupational licensing frameworks, such as that established under the Security Providers Act 1993;*

[230] Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, p 31.
[231] Explanatory Notes, p 33.

- *disqualify people who have been convicted of one of the new serious and organised crime offences from holding a licence under the Tattoo Parlours Act 2013;*
- *exclude the use of confidential criminal intelligence in licensing decisions made under the Tattoo Parlours Act 2013, consistent with amendments to other occupational licensing Acts being amended by the Bill;*
- *reduce unnecessary regulation and red tape by making provision for the renewal of licences under the Tattoo Parlours Act 2013 and to allow the chief executive to issue more than 2 visiting tattooist permits or exhibition permits to an applicant, where appropriate;*
- *increase flexibility of the licensing framework under the Tattoo Parlours Act 2013 by catering for different types of business models (for example, mobile tattooing).*[232]

However, applications for a licence will 'continue to be subject to rigorous identification and probity testing, including through mandatory fingerprinting and palm printing, as well as criminal history checks'.[233]

Issues raised by stakeholders – Tattoo Parlours Act 2013

The Australian Tattooists Guild (ATG) told the committee:

> *It remains an incredibly important time for the professional tattoo community nationally as we now see various governments moving to introduce legislation which looks to address the infiltration of organised crime groups into the tattoo industry … The data supporting the alleged infiltration is, however, minimal and largely anecdotal.*
>
> *Due predominantly to a gross lack of consultation prior to the introduction of the Tattoo Parlours Bill 2013, the professional industry continues to experience negative impacts as a consequence of both the direction and the policy of this legislation, which fails to recognise or reflect the established culture and practice of the tattoo industry … Australia is now internationally recognised as being home to some of the industry's most proficient artists …*[234]

In its submission, the ATG expressed concern that:

> *… the professional industry continues to experience negative impacts as a consequence of both the direction and the policy of this legislation, which fails to recognize or reflect the established culture and practice of the tattoo industry.*[235]

The ATG advises in its submission that the professional tattooing community remain pro-regulation and supports police checks as part of the licence application process, but that the regulation should be based on the qualities of a professional tattoo artist to determine a fit and proper person (which should include skill, knowledge, experience, qualifications, certification and no history of any violent or sexual crime convictions), rather than 'an individual who meets a defined measure of probity based purely on criminal history'.[236]

At a public hearing, Mr Kosenko told the committee:

> *The bill should introduce laws that help the industry, not destroy it. These laws have basically brought in a licensing regime which will license someone who has not even done a tattoo and who has no knowledge of tattooing at all, but he can go and pay the money, get a police check and get a licence to be a tattooist, which is ridiculous. They have not*

232 Explanatory notes, p 34.
233 Public briefing transcript, Brisbane, 26 September 2016, p 4.
234 Public hearing transcript, Gold Coast, 4 October 2016, p 22.
235 Submission 40, p 3.
236 Submission 40, p 12.

> *done any form of training at all. I know of several people who hold tattoo licences now who have never done a tattoo in their life. How is that helping the industry? There is nothing in the new licensing that says you have to do any health courses or anything. I worked with the Queensland government in the 1990s to help promote the industry and clean it up. They brought in a TAFE course and all kinds of things to clean the industry up. These new laws have done nothing like that. They could have been used positively to clean up the industry. We have a lot of trouble with people tattooing in their homes who are causing disease to people. We have trouble with tattoo equipment, minors getting hold of tattoo equipment through eBay and tattooing under-age or just tattooing each other with no training. They are scribbling over each other. The laws have done nothing to address that. They have done nothing for the backyarding, nothing at all to help the industry, and it is very disappointing.*[237]

The ATG states that '[i]t is the opinion of the ATG that the proposed amendment Bill does not reflect the current needs of the tattoo industry'[238], and identifies the following issues with the Bill:

- *the ongoing damage being done to the industry due to a lack of appropriate barriers for entry*
- *the ongoing damage being done to the industry due to restrictions on other artists to travel to the state to participate in the industry*
- *the collection of individuals [sic] finger and palm prints upon application for entry to the industry*
- *the ongoing burden of record keeping requirements.*[239]

With regard to finger and palm printing, the department told the committee:

> *Finger and palm print requirements form part of identification and probity testing processes under the Act and align with the objective of the Act of minimising the risk of criminal activity in the industry. The requirements are similar to those contained in the Security Providers Act 1993.*[240]

The ATG also expresses concern that elements of the Tattoo Parlours Act that have not been addressed by the Bill 'place an unnecessary burden upon industry participants and are no longer required for the Legislation to meet its new policy objectives'.[241]

In the submission from the United Motorcycle Club, reference was made to the club's spokesman, Mr Kosenko, and his colleagues who have had their tattoo businesses closed 'due to amendments to the Tattoo Parlours Act 2013', as they were not deemed to be a fit and proper person. The submission makes reference to Mr Kosenko and his colleagues not being provided with the reasons for this decision.

At a public hearing Mr Kosenko suggested that the Bill should be used to support and clean up the tattoo industry. Mr Kosenko also referred to amount of work involved in obtaining licences in comparison to the number of people who have had their licences revoked:

> *I think there are only maybe 10 people who have had their tattoo licences taken off them. That is a lot of work to stop 10 people from working. A lot of those 10 maybe did have criminal records, so it was easy to take their licences from them. They did not need these*

237 Public hearing transcript, Gold Coast, 4 October 2016, p 10.
238 Submission 40, p 5.
239 Submission 40, p 3.
240 Department of Justice and Attorney-General, correspondence dated 20 October 2016, p 74.
241 Submission 40, p 3.

> *massive, ridiculous laws. They have 1,000 people getting fingerprinted and photographed once a year now, so it is a lot more work for the police.*[242]

The CCC referred in its submission to the amendment of the Tattoo Parlours Act (at clause 440 of the Bill) as one of the relevant clauses when making reference to its opposition to the proposal in the Bill that the heads of certain agencies be able to enter into an information sharing arrangement with relevant agencies to allow for the exchange and disclosure of information among them despite another Act or law. The CCC advised that:

> *The effective loss of the existing power to place conditions upon the further dissemination of confidential information could result in an agency unknowingly releasing information which is relevant to a current CCC investigation. This could seriously compromise CCC investigations (including cooperative investigations) and its monitoring of complaints being dealt with by other public officials. The proposal, if enacted, would likely result in a substantial reduction in the CCC sharing its confidential information because it would no longer be able to apply appropriate risk management controls over the use of information for specific purposes.*
>
> *...*
>
> *With respect any person or other entity which proposes to enter an information sharing agreement must be required to obtain the written consent of the CCC before sharing confidential CCC information which has not otherwise been made available as intelligence under s 55(2) of the CC Act.*

The ATG told the committee:

> *According to the Office of Fair Trading, 350 new applications—'new' meaning unknown to industry anywhere in Australia—have been received in the last 12 months alone. The public health risks associated with untrained individuals entering the industry without any training in regard to the taught practices specific to the trade are enormous.*[243]

2.3.4 Amendments to the Weapons Act 1990

Existing Law

Currently, under section 10B(2a) of the *Weapons Act 1990* (Weapons Act), it states that for the issue, renewal or revocation of a licence, a person is not a fit and proper person to hold a licence if the person is an identified participant in a criminal organisation.

The Explanatory Notes state that:

> *The current scheme under the Weapons Act 1990 is effectively a dual scheme. A 'fit and proper person' test…requires the Authorised Officer under the Act to make a decision with respect to whether a person is appropriate to hold a licence. The 2013 suite introduced an additional stand-alone requirement that a person is not a fit and proper person to hold a licence if the person is an identified participant in a criminal organisation. Whilst a person's membership of a criminal organisation may have previously been a general consideration for the Authorised Officer Serious and Organised Crime Legislation Amendment Bill 2016 under public interest and public safety considerations, the 2013 suite removed the need to apply the usual fit and proper person test in cases where the persons was an identified participant in a criminal organisation.*[244]

242 Public hearing transcript, Gold Coast, 4 October 2016, p 11.

243 Public hearing transcript, Gold Coast, 4 October 2016, p 10.

244 Explanatory notes, pp 30-31.

Taskforce's critique of existing law

Recommendation 59 made by the Taskforce recommended that those persons who have their application or existing licensees refused or licence cancelled on the basis that they are not, or are no longer, a suitable person must have the right to be given reasons for the decision and an opportunity to contest the allegation. Appeal and review rights regarding decisions on a person's licence must be restored.

Amendments to Weapons Act 1990

The Bill removes section 10B(2a) from the Weapons Act. The explanatory notes state:

> *The Bill amends the Weapons Act 1990 to return to the position prior to the 2013 suite, allowing the application of a 'fit and proper person' test, with an applicant's participation in a criminal organisation to be considered as part of the general 'fit and proper person' test.*

The explanatory notes also advise that the ability to use criminal intelligence as part of the existing fit and proper person test in determining weapons licences existed as part of the Weapons Act prior to the 2013 suite, therefore the ability to use criminal intelligence as part of the fit and proper person test is maintained under the Bill.

Amendments have also been made to the Weapons Act to 'enhance the operation of principals of procedural fairness, and restore review and appeal processes regardless of whether the person is a participant in a criminal organisation'[245], which is in keeping with the recommendation made by the Taskforce.

Issues raised by stakeholders

Ms Glenis Batten expressed concern that by removing the provision that a person who is an identified participant in a criminal organisation is not a fit and proper person to hold a weapons licence, the Bill makes it easier for criminal gang members to get a weapon licence.

2.4 Data

With regard to data on crime committed by organised groups, Mr Terry O'Gorman, Vice-President, Queensland Council of Civil Liberties noted the following at the public hearing in Brisbane:

> *The Wilson report noted on a number of pages that bikie crime is one per cent or, more exactly, 0.52 per cent. Ever since the Wilson report has published those figures, the Civil Liberties Council has attempted vainly in the media to get traction. Organised crime committed by bikie groups, according to statistics published in the Wilson report, are less than one per cent. One could be forgiven, particularly from reading some of the newspaper reports, for thinking it was 95 per cent.*[246]

He elaborated:

> *If you analyse some of the stories you will see that it is 'Bikie found breaking into a store', 'Bikie found exceeding the speed limit'. When you actually look at the stories—if we are not going to have available statistics—the stories of bikie involvement in crime are greatly exaggerated. My respectful submission is: one should not be approaching this anecdotally; one should look at the statistical evidence.*[247]

245 Department of Justice and Attorney-General, correspondence dated 22 September 2016, attachment, p 33.

246 Public hearing transcript, Brisbane, 12 October 2016, p 1.

247 Public hearing transcript, Brisbane, 12 October 2016, p 3.

Subsequently, Associate Professor Lauchs was asked to expand on his submission, which noted that club members are 20 times more likely to be involved in crime. He told the committee:

> *If we look at the arrests under Taskforce Maxima, over 90 per cent of the people arrested under Maxima were not participants or members of outlaw motorcycle gangs. The idea that Taskforce Maxima was concentrating exclusively on bikies is untrue. However, if we look at the proportion of the population who are motorcycle club members who have been arrested for serious crime, that would show that the rate that they offend is potentially between 10 per cent to 50 per cent—depending on how you want to calculate the figures—higher than the average person in the community and double the average convicted criminal's rate of serious offending.*[248]

In response to the suggestion that it makes sense to concentrate on this cohort, Professor Lauchs advised:

> *Absolutely. They are a completely legitimate group that a task force could look at because they are a higher rate of offender than other groups in society and they had already let us know where they were, so they were much easier to deal with.*[249]

[248] Public hearing transcript, Brisbane, 12 October 2016, p 12.
[249] Public hearing transcript, Brisbane, 12 October 2016, p 12.

3. Compliance with the Legislative Standards Act 1992

Section 4 of the *Legislative Standards Act 1992* (LSA) states that 'fundamental legislative principles' are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals[250]
- the institution of parliament.[251]

The committee has examined the application of the fundamental legislative principles (FLPs) to the Bill.

3.1 Rights and liberties of individuals

Rights and liberties

Summary of provision - consorting

The Bill amends the *Criminal Code* to create a new offence of habitually consorting with recognised offenders. This replaces the 2013 anti-association offence and has the capacity to criminalise otherwise lawful interactions as the definition of consort [**clause 141** inserting new s.77A] does not require that the interaction be related to a criminal activity. The charging of the offence of habitually consorting first requires a police officer to issue an official warning to the relevant person under new s.53BAC of the *Police Powers and Responsibilities Act 2000* (PPRA) (inserted by clause 316). The offence has a maximum penalty of three years imprisonment.

FLP issue

The regulation of 'consorting' behaviour necessarily impacts on a number of personal rights and liberties, ostensibly infringing on the FLP that requires legislation have sufficient regard to the rights and liberties of individuals.

Of gravest concern is that by preventing persons from having contact with and/or mixing with recognised offenders, the offence impacts on an individual's common law right to freedom of association. To facilitate the issuing of the official warning for the offence, a police officer may stop and detain a person and require them to provide their name, date of birth, address and in some circumstances their identifying particulars. This infringes on a person's right to free movement and right to privacy. Further the contents of the warning will necessarily include the disclosure that another person has an unspent conviction for a criminal offence, intruding on that person's right to privacy.

The submission of the Queensland Law Society (QLS) raised the concern that the proposed consorting offence infringes Article 22 of the International Covenant on Civil and Political Rights, which confirms the right to freedom of association as a prerequisite for a democracy and a just society. The QLS submission noted:

> *Although the freedom of association is not explicitly protected under domestic legislation, the infringement of this right nonetheless remains a concern. The Society is concerned that the list of 'Particular act of consorting to be disregarded' is inadequate and does not capture a complete range of circumstances within which consorting could be reasonable. The Society is of the view that this list should be expanded to include other circumstances, including consorting that occurs in the course of participating in legitimate political, social or industrial advocacy and protest and consorting that occurs in the course of accessing a welfare or support service.*

[250] Legislative Standards Act 1992, s 4(2)(a).
[251] Legislative Standards Act 1992, s 4(2)(b).

The Explanatory Notes advise:

> *…..these interactions are required in order to appropriately administer the warning for the offence and the safeguards in the Police Powers and Responsibilities Act will ensure these interactions are recorded appropriately, identifying particulars are destroyed as soon as practicable after a person's identity is confirmed, and that the powers will only apply to persons consorting with serious convicted offenders.*
>
> *...*
>
> *This impact is justified on the basis that the provision is narrow in its application in that it is largely limited to persons consorting with persons convicted of offences carrying a maximum penalty of 5 years imprisonment or more (reflecting the policy intention to target serious and/or organised criminals), and there are prescribed defences which facilitate participation in ordinary civic life (such as association in the conduct of lawful employment, or with family members).*

Summary of provision - control order

Clause 279 inserts new s.161U into the *Penalties and Sentences Act 1992* (PSA) to provide that control orders for offenders may impose conditions that the court considers appropriate to protect the public by preventing, restricting or disrupting the offender's involvement in serious criminal activity. A condition may prohibit the offender from associating with a stated person or a person of a stated class, including a person with whom the offender has a personal relationship; or entering or being in the vicinity of a stated place or a place of a stated class; or acquiring or possessing a stated thing or a thing of a stated class. It can also restrict the means by which the offender communicates with other people. The offender must also deliver to the Commissioner's custody anything the offender is prohibited from possessing under the order. The maximum length of the control order is 5 years, however can be extended upon conviction for a breach.

FLP issue

A number of clauses provide that whether or not a person is subject to a control order is a relevant or determinative factor[252] in deciding whether or not that person is "an appropriate person" to hold one of a wide range of occupational licences.[253] There are obviously also privacy implications involved in the Police Commissioner advising licensing authorities about whether or not a person is subject to a control order (see **cl.461** amending s.36 of the *Tow Truck Act 1973*).

By empowering the sentencing court to make an order which may place conditions and restrictions on a person's movements, day-to-day activities, types of employment and associations, the provision constitutes a potential infringement of a person's common law rights to personal liberty, privacy, work and free association in breach of the FLP requiring legislation have sufficient regard to rights and liberties (section 4(2)(a) of the *Legislative Standards Act 1992*) including the principle that ordinary activities should not be unduly restricted.

Summary of provision

Clause 279 inserts new s.161ZL into the PSA to apply where a police officer reasonably suspects a breach of a control order or registered corresponding control order is being committed. It gives the officer power to order a person who is the subject of the order to temporarily leave a place where they might come into contact with a stated person or class of person that they are prohibited under the

[252] It is a determinative factor for some clauses that provide for automatic cancellation of a licence if the holder of the licence becomes subject to a control order.

[253] See for example –**cl.221-223** amending ss.21-23 of the *Motor Dealers and Chattel Auctioneers Act 2014*; **cl.378** amending s.11(5)(b) and **cl.389** amending s.24(1)(b) of the *Security Providers Act 1993*; **cl.416** replacing s.12(3)(b) of the *Tattoo Parlours Act 2013*; and **cl.450** amending s.4C(1)(k) and **cl.461 and 462** amending/inserting sections 36(1), 36(5) and 36A(4) for the *Tow Truck Act 1973*).

order from associating with. The officer can also require the person to leave a stated place or class of place or the vicinity thereof if the order prohibits a person from entering or being in the vicinity of the place or a place of a stated class. Failure to comply with a direction under this section is an offence against s.791 of the PPRA.

FLP issue

This amendment potentially infringes upon a person's right to freedom of movement and freedom of association.

Summary of provision - public safety order

Clause 267 inserts s.17 into the *Peace and Good Behaviour Act 1982* (PGBA) to provide that a commissioned officer may make a public safety order for a person or group of persons for up to 7 days duration if the commissioned officer is satisfied that the presence of the respondent at premises, or an event, or within an area, poses a serious risk to public safety or security; and it is more appropriate to make an order under this division than applying to the court for an order of longer duration. The public safety order can prevent one or more persons from being at or going to an area, premises or an event. New s.31 also gives police certain stop and search powers for persons and vehicles in respect of a 'public safety place' under a public safety order.

FLP issue

The scheme infringes the FLP requiring legislation to have sufficient regard to the rights and liberties of individuals by allowing for restrictions on a person's common law right of freedom of movement and freedom of association.

Summary of provision - restricted premises order

Clause 267 inserts s.36 into the PGBA to empower a Magistrates court to make a restricted premises order on the basis that there is a reasonable suspicion that unlawful and/or disorderly conduct is occurring on the premises. The order allows police to search a restricted premises without warrant at any time during the order (see below in 'search powers' FLP). It in an offence for an owner or occupier to allow unlawful and/or disorderly activities to occur on restricted premises. The s.33 definition of 'disorderly activity' includes criminal offences or unlawful activity on premises, but may also include drunkenness, "disorderly conduct", "indecent conduct", "entertainment of a demoralising character" (all of which is not defined) and the presence of recognised offenders or their associates (being persons with a recorded conviction for an offence with a maximum penalty of 5 years).

FLP issue

This amendment potentially restrict a person's common law liberties and right to freedom of association.

Summary of provision - fortification removal order

Clause 267 inserts s.65 into the PGBA to specify police powers for removing and modifying fortifications. Under subsection (4), the s.65 powers may be [subject to sections 66 and 67 and the terms of the order] *exercised at any time and as often as is required to achieve the removal or modification.* In enforcing a fortification removal order a part of a building where a person resides may be entered if the fortification consists of or includes that part and entry is needed to take the enforcement action (new s.67(2)).

FLP issue

This provision could allow repeated and unfettered access to premises without restriction which would unjustly interfere with an individual's right to peace and quiet enjoyment of their property.

Summary of provision - prohibited items in public places

Clause 398 inserts new s.10C into the *Summary Offences Act 2005* to create a new offence of wearing or carrying a prohibited item in a public place so that the item can be seen, or visibly wearing or carrying

a prohibited item whilst in or on a vehicle in a public place. The new offence extends an existing restriction on wearing or carrying prohibited items in and around licensed premises.

FLP issue

This new offence is an infringement of the rights and liberties of individuals.

Administrative power

Summary of provisions

Clause 316 inserts, *inter alia*, new sections 53BAC-53BAE into the PPRA to empower police officers to issue official warnings to a person in respect of their 'habitually consorting' with recognised offenders. There is no simple review mechanism provided in respect of these warnings, although presumably judicial review would still be available under the *Judicial Review Act 1991*.

Clause 426 amends s.34(1) of the *Tattoo Parlours Act 2013* to allow the chief executive to cancel a licence if the chief executive is satisfied the licensee is no longer a fit and proper person to hold the licence, knowingly supplied false or misleading information during the licence application process, contravened the Act or a condition of the licence, or in other circumstances prescribed by regulation.' Mirror criteria (including 'another ground prescribed by regulation') also provide grounds to refuse to renew a licence under s.35C (**cl.428**) of the Act.

FLP issue

Legislation should make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined. The OQPC Notebook states, *"Depending on the seriousness of a decision made in the exercise of administrative power and the consequences that follow, it is generally inappropriate to provide for administrative decision-making in legislation without providing criteria for making the decision*".[254]

The former Scrutiny of Legislation Committee took issue with provisions that did not sufficiently express the matters to which a decision-maker must have regard in exercising a statutory administrative power.[255]

Committee comment

As noted above, s.53BAC of the PPRA will empower police officers to issue official warnings to a person in respect of their 'habitually consorting' with recognised offenders. The committee notes the lack of a simple review mechanism being provided by which a person could challenge such warnings.

In addition, the right to cancel a licence in s.34(1) of the *Tattoo Parlours Act 2013* is a significant power given that the cancellation will likely take away the livelihood of the licensee. Accordingly, the committee considers it appropriate that there be clear criteria which have to be followed in the exercise of that power.

In s.34(1) and s.35C, the chief executive must be satisfied that the licensee is no longer a fit and proper person to be a licensee, has contravened the Act or the licence conditions, or had knowingly supplied false or misleading information during the licence application process. The other general criteria is 'in other circumstances prescribed by regulation'. Arguably the gravity of the power being exercised dictates that the criteria to be applied in making the decision to cancel a licence should be comprehensively specified in the Act, rather than being delegated to subordinate legislation.

[254] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 15.

[255] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 15; citing Scrutiny Committee Annual Report 1998-1999, para 3.10.

Natural justice

Summary of provision - police issued public safety orders

Clause 267 inserts s.17 into the PGBA to provide that a commissioned officer may make a public safety order for a person or group of persons for up to 7 days duration if the commissioned officer is satisfied that the presence of the respondent at premises, or an event, or within an area, poses a serious risk to public safety or security; and it is more appropriate to make an order under this division than applying to the court for an order of longer duration under division 3. Subsection (3) sets out criteria which the commissioned officer must have regard to in considering whether or not to make the order. The public safety order can prevent one or more persons from being at or going to an area, premises or an event.

FLP issue

Section 4(3)(b) of the *Legislative Standards Act* 1992 requires legislation to be consistent with the principles of natural justice, being that: (1) something should not be done to a person that will deprive them of some right, interest, or legitimate expectation of a benefit without the person being given an adequate opportunity to present their case to the decision-maker; (2) the decision maker must be unbiased; (3) procedural fairness should be afforded to the person, meaning fair procedures that are appropriate and adapted to the circumstances of the particular case.[256]

Under the proposed amendments to the PGBA, police issued public safety orders can be made without notice to a person and without providing a person or group of persons an opportunity to present arguments as to why an order should not be made against them. Appeal rights to the Magistrates Court are enlivened if the duration of the police issued public safety order is longer than 72 hours (see new s.20(b)(viii) PGBA).

The making of the police issued public safety order of up to seven days duration is arguably inconsistent with the principles of procedural fairness and natural justice because the order is made without notice to the subject of the order and without giving that person the opportunity to respond. The decision to issue the (up to 7 days) order is made by a commissioned police officer rather than an independent decision maker such as a court and there is no provision to appeal against a police issued public safety order of less than 72 hours duration. Section 30 gives police power to seek an amendment or variation of a public safety order but does not afford the same power to a respondent to an order.

The Explanatory Notes advise:

> *These breaches are justified on the basis that the orders provide police with a fast and effective method of protecting public safety in circumstances where it may not be practicable to prepare a court application. The Bill provides that persons have appeal rights for orders that exceed 72 hours in length and specifically provides that short term police orders cannot be made repetitively in a short period of time so as to avoid the long duration court order process. Finally, the Bill gives the PIM an oversight role in relation to the making of police issued public safety orders.*

Committee comment

The committee notes the potential natural justice issues arising with respect to police issued public safety orders, being: that the orders can be made without notice to the subject of the order and without providing that person or group of persons an opportunity to present arguments as to why an order should not be made against them; and that an appeal against the decision is only possible in respect of police issued public safety orders of longer than 72 hours duration. The committee further notes that police are able to seek an amendment to, or variation of, a public safety order but the same right is not afforded to a respondent to the order.

[256] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 25.

Summary of provision - restricted premises declaration

Clause 267 inserts s.42 into the PGBA to declare that a prescribed place is taken to be restricted premises for 2 years starting from commencement.

FLP issue

Section 4(3)(b) of the *Legislative Standards Act 1992* requires legislation to be consistent with the principles of natural justice.
By declaring certain premises to automatically be restricted premises the Bill breaches the FLP that requires legislation be consistent with the principles of natural justice because the declaration denies the owners and occupiers of the deemed premises an opportunity to put their case about whether their premises should be subject to an order. Also sections 39 and 48 of the PGBA only give the police the power to seek an amendment or variation of a restricted premises order (or an extension order) and do not give a corresponding power to a respondent to the order.

The Explanatory Notes advise:

> *This breach of the fundamental legislative principles is justified because it forms part of the Government's commitment to provide a seamless and safe transition from the 2013 suite measures to the new Organised Crime Regime. The temporary and transitional nature of these provisions is evidenced by the fact that the automatic declaration will only be in effect for two years, after which the order will either lapse or police will have to make an application to the Magistrates Court to have the order extended. Further, the Bill provides that the regulation making power in the Act only allows the Minister to remove premises from the list of declared premises not to add new premises to the list. Finally, at the end of the two year period if the police make an application to have the order extended the owner and occupier will have an opportunity to make submissions to an independent decision maker (ie, the Court) about whether the order should be extended.*

Committee comment

The committee notes that the initial declaration of prescribed places as restricted places means that those places are 'restricted' (a classification invoking various warrantless search powers as discussed later in this briefing) for a period of 2 years without the owners or occupiers being given the opportunity to plead their case to an independent authority, such as a court, as to why the premises should not be declared as restricted premises. The committee notes that the only opportunity the owners and occupiers will have to make submissions to an independent decision maker is at the end of the 2 year period if the police make an application to have the restricted premises order extended.

Summary of provision - fortification removal orders

Clause 267 inserts new s.63 into the PGBA to give police the power to seek a variation of a fortification removal order.

Clause 267 inserts new s.76 into the PGBA to give commissioned police officers (rank of inspector or above) the power to issue a 'stop and desist notice' to the owner of occupier of premises requiring the owner or occupier to stop and desist from installing stated fortification of the premises. The notice may only be issued where the officer reasonably believes that steps are being taken to install excessive fortification of the premises, and the premises are connected with serious criminal activity, or conceal evidence or, or keep the proceeds of, serious criminal activity, or the premises are owned or habitually occupied or used by a criminal organisation or recognised offenders. If the commissioned police officer does not apply to the Magistrates Court for a fortification removal order within 14 days of issuing the notice, the notice lapses and ceases to have effect.

FLP issue

Section 4(3)(b) of the *Legislative Standards Act 1992* requires legislation to be consistent with the principles of natural justice.

The power to apply for a variation of a fortification removal order is afforded to police only under s.63, with no corresponding right given to the owner or occupier of the fortified premises to seek to vary the terms of the order. Also the s.76 decision to issue a 'stop and desist notice' is made by police and not by an independent decision maker and is made without affording the respondent the opportunity to respond.

Committee comment

The committee notes the natural justice issues arising with respect to fortification removal orders and 'stop and desist notices' as outlined above.

Delegation of administrative power

Summary of provision

Clause 267 inserts s.96 into the PGBA to provide that the Police Commissioner may delegate a function of the Police Commissioner under the PGBA to a police officer. A delegation of a power of the Police Commissioner under s.96(1) may also permit the sub-delegation of the power to a police officer.

FLP issue

Legislation should allow the delegation of administrative power only in appropriate cases and to appropriate persons. Powers should only be delegated to appropriately qualified officers or employees. The OQPC Notebook provides that the appropriateness of a limitation on delegation depends on all the circumstances including the nature of the power, its consequences and whether its use appears to require particular expertise or experience.[257]

Committee comment

In general, it is arguable that it is an inappropriate delegation to allow functions given to the Police Commissioner under the PGBA to be delegated and then further sub-delegated to police officers. The committee notes that whether or not a particular instance of delegation amounts to an inappropriate delegation is dependant upon the actual circumstances of the situation and the power/function (function includes power under subsection (3)) being delegated.

Summary of provision

Clause 267 inserts s.17 into the PGBA to provide that a commissioned officer may make a public safety order for a person or group of persons if the commissioned officer is satisfied that the presence of the respondent at premises, or an event, or within an area, poses a serious risk to public safety or security; and it is more appropriate to make an order under this division than applying to the court for an order of longer duration under division 3. Subsection (3) sets out extensive criteria which the commissioned officer must have regard to in considering whether or not to make the order.

FLP issue

Legislation should allow the delegation of administrative power only in appropriate cases and to appropriate persons. Powers should only be delegated to appropriately qualified officers or employees. The OQPC Notebook provides that the appropriateness of a limitation on delegation

[257] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 33.

depends on all the circumstances including the nature of the power, its consequences and whether its use appears to require particular expertise or experience.[258]

Comment

It is arguable that the power to issue a public safety order should rest with the courts rather than with police. A safeguard on the use of the power is the extensive criteria which the commissioned officer must have regard to in considering whether or not to make the order; the fact that the orders can only be made by commissioned officers (officers of or above the rank of inspector) and the fact that orders made by commissioned officers can be of the maximum duration of 7 days (s.15(a)). In addition, the committee notes that section 19 provides further safeguards by setting out particular public safety orders that the commissioned officer is not authorised to make without further authority from a court.

Given these outlined safeguards, the committee considers it is arguably appropriate that the power to issue some public safety orders is with commissioned police officers rather than the courts as it gives the officers the means to respond to certain public safety situations as they develop, rather than taking alternative measures such as arresting a person for public order offences.

Onus of proof

The Bill contains a significant number of provisions that explicitly or impliedly operate to reverse the onus of proof.

Summary of provisions explicity reversing the onus of proof

Clause 267 inserts s.54 into the PGBA to provide that an owner or occupier of restricted premises commits a misdemeanour when they have been served with a restricted premises order for the restricted premises and a disorderly activity takes place at the restricted premises while the order is in force, and the owner/occupier knows or ought reasonably have known that the disorderly activity has taken place.

Subsection 54(2) states 'an owner or occupier of premises is not guilty of an offence against subsection (1) if the owner or occupier proves the owner or occupier has taken all reasonable steps to prevent the contravention.' Subsection 54(3) – 'An owner of premises is not guilty of an offence against subsection (1) if the owner proves the owner has taken all reasonable steps to evict the occupier from the premises.'

Clause 279 inserts s.161ZI(9) into the PGBA to provide that –'in a proceeding against a person for a contravention of a non-association condition that has an exception about associating with a person with whom the person subject to the control order, or the registered corresponding control order, has a personal relationship, it is for the person subject to the order to prove that the person had a personal relationship with the other person at the relevant time.'

Summary of provisions impliedly reversing the onus of proof

Some provisions *impliedly* reverse the onus of proof by providing that specific defences *can be made out by an accused*, in mitigation of their culpability, the onus being on the accused to provide the evidence required to support the defence or provide the reasonable excuse. These provisions are detailed below.

Rebuttable presumptions of evidence

Clause 267 inserting s.55 into the PGBA – subsection (3) – in a relevant proceeding, evidence of any of the matters mentioned in subsection (1)(b) or (2) [that a police officer is assaulted or obstructed in the performance of their function, or that performance is hindered by excessive fortification of the premises, or a stop and desist notice has not been complied with for a restricted premises] – is evidence that a disorderly activity has taken place at the premises unless proven otherwise.

[258] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 33.

Provisions where something is taken as being 'evidence' unless proven otherwise reverse the onus of proof to the extent that they put the onus on the person challenging the evidence (the accused) to introduce other evidence to rebut the (statutorily presumed) 'evidence'. In relation to this provision, the presumed matters are treated as merely being 'evidence' that a particular situation occurred. The use of the qualifier 'unless proven otherwise' makes the evidentiary value a rebuttable presumption, allowing for the evidence to be challenged/rebutted.

Clause 267 inserting s.77 into the PGBA – subsection (2) – in a proceeding relating to an application for a fortification removal order for premises, evidence that a stop and desist notice given to the owner or occupier of the premises has not been complied with is evidence of the matters mentioned in section 60(1)(a)-(c) unless proven otherwise. The same principles outlined immediately above for s.55 also apply here.

Defences

Clause 92 amends s.228E of the *Criminal Code* to provide a defence to child exploitation material offences under sections 228A-228D. The new offence of administering a child exploitation material website includes a specific defence to protect legitimate website administrators who become aware that a website is being used to distribute child exploitation material and take all reasonable steps to prevent access to the child exploitation material. As advised in the Explanatory Notes: *The defence necessarily reverses the onus of proof as the defendant is best placed to provide evidence of the steps they have taken*.

Clause 279 inserts s.161ZI(6) into the PGBA to provide that - 'In a proceeding against a person for an offence against ss.(1), it is a defence for the person to prove that the person had a reasonable excuse for contravening the control order or the registered corresponding control order.'

Clause 398 inserts new s.10C into the *Summary Offences Act 2005* to provide that it is an offence to wear or carry a prohibited item in a public place so that the item can be seen (s.10C(1)). Similarly, a person who is in or on a vehicle that is in a public place cannot wear or carry a prohibited item so that the item can be seen from the public place (s.10C(2)). The new offence extends an existing restriction on wearing or carrying prohibited items in and around licensed premises.

New s.10D states that, for sections 10C(1) and (2), it is a defence for the person to prove – (a) the person engaged in the conduct that is alleged to constitute the offence for a genuine artistic, educational, legal or law enforcement purpose; and (b) the person's conduct was, in the circumstances, reasonable for that purpose.' As advised in the Explanatory Notes - *The defence necessarily reverses the onus of proof as the defendant is best placed to provide evidence of the purpose of their conduct*.

Other

The Bill amends the *Criminal Code* to create a new offence of habitually consorting with recognised offenders. The provision reverses the onus of proof for the offence, meaning the defendant bears the burden of proving that the consorting was reasonable in the circumstances and occurred in the course of certain specified activities. The Explanatory Notes advise - *This reversal is justified on the basis that the factual issues the defendant must prove in order to raise the defence do not relate to an essential element of the offence itself, and also relate to facts which the defendant is well-positioned to prove in the context of the offence.*

FLP issue

Legislation should not reverse the onus of proof in criminal matters, and it should not provide that it is the responsibility of an alleged offender in court proceedings to prove innocence. "For a reversal to

be justified, the relevant fact must be something inherently impractical to test by alternative evidential means and the defendant would be particularly well positioned to disprove guilt".[259]

Committee comment

The committee notes the numerous provisions that expressly or impliedly serve to reverse the onus of proof, and the justifications provided in the Explanatory Notes as outlined above.

The committee considers that, on balance, the reversal of onus of proof and the imposition of presumed responsibility is justified in the circumstances.

Power to enter premises

Summary of provisions

A number of provisions in the Bill provide for searches without warrant of people, premises or vehicles as outlined below.

Clause 267 inserts s.31 into the PGBA giving police certain stop and search powers for persons and vehicles in respect of a 'public safety place' under a public safety order.

Clause 267 inserts s.49 into the PGBA to allow a police officer to enter and search restricted premises without a search warrant and seize prohibited items and anything that may be evidence of the commission of an offence. It also allows the officer to search any person found on the premises for any prohibited item that can be concealed on the person. Subsection (2) permits these powers to be exercised 'from time to time as occasion requires'. A person claiming a legal or equitable interest in a seized prohibited item may apply to the court for an order that the item be returned provided it is not evidence or has not been forfeited to the State (see s.50). The court may order the item be returned if the s.49 seizure of the item from restricted premises was not lawful (see s.51). If no application has been made for the return of the item or its return has been refused under s.51, the Police Commissioner may forfeit the prohibited item to the State under s.53(1).

Clause 267 inserts s.67 into the PGBA, to allow a police officer or person authorised by a police officer to enter a building or fortified premises if the officer reasonably believes the entry is needed to take enforcement action needed under a fortification removal order. Subsection (2) allows such entry to include entry to a part of the building where a person resides if it is part of the fortification and entry to the part is needed to take the enforcement action.

Clause 279 inserts new s.161ZJ into the PSA to give entry search and seizure powers to police for persons and premises subject to a control order or a registered corresponding control order, within 7 days after the order is made or served on the person under s.161ZZA in respect of items the person is prohibited from possessing under the control order.

Clause 288 amends s.30 of the PPRA to include two new prescribed circumstances for searching persons without a warrant – (g) the person has committed, is committing or is about to commit, an offence against s.161ZI of the PSA; or (h) the person has committed or is committing an offence against s.10C of the *Summary Offences Act 2005*.

Clause 289 amends s.31 of the PPRA with respect to searching vehicles without a warrant.

Clause 290 amends s.32 of the PPRA to insert a new prescribed circumstance for searching a vehicle without a warrant – new (n) 'may be evidence of the commission of an offence against s.161ZI PSA'.

Clause 290 inserts new s.32(2) into the PPRA to provide further prescribed circumstances for searching a vehicle without a warrant – (a) the driver or a passenger in the vehicle has committed or is committing an offence against s.10C of the *Summary Offences Act 2005;* [wearing or carrying a

[259] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 36.

prohibited item in a public place] or (b) the vehicle is being used by, or is in the possession of, a participant in a criminal organisation.

Clause 310 amends s.30 PPRA to insert new prescribed circumstances for searching persons without a warrant, being that 'the person has consorted or is consorting or is likely to consort with 1 or more recognised offenders'.

Clause 311 inserts s.32(2)(b) into the PPRA to insert prescribed circumstances for searching a vehicle without a warrant – 'the vehicle is being used by, or is in the possession of, a person who has consorted, is consorting, or is likely to consort with 1 or more recognised offenders'.

FLP issue

Section 4(3)(e) of the *Legislative Standards Act 1992* provides that legislation should confer power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer. The OQPC Handbook provides that this principle supports a long established rule of common law that protects the property of citizens. Power to enter premises should generally be permitted only with the occupier's consent or under a warrant issued by a Judge or Magistrate. Strict adherence to the principle may not be required if the premises are business premises operating under a licence or premises of a public authority. The SLC's chief concern in this context was the range of additional powers that became exercisable after entry without a warrant or consent.[260] Residential premises should not be entered except with consent or under a warrant or in the most exceptional circumstances.[261]

Committee comment

The committee notes that **cl.267** inserting s.49 into the PGBA, will allow a potentially unlimited number of searches of 'declared restricted premises' without a warrant for a period of up to two years (the duration of the automatic declaration of the premises), interfering with the right to, and expectation of, privacy, and 'peace and quiet enjoyment' of the property as afforded under tenancy legislation. Police will also be able to seize 'prohibited items' that, but for the operation of this PGBA, would otherwise be lawful to possess, and even when those items are not evidence of the commission of an offence. The committee notes that, because of the operation of s.51(1)(b) of the PGBA, a court could only return a prohibited item seized from restricted premises under s.49 where the seizure itself was unlawful. Persons on the premises will also be able to be searched for any prohibited item that might be concealed on their person.

With respect to cl.267 inserting s.49, the committee notes the advise in the Explanatory Notes:

> *This potential breach is justified on the basis that before a restricted premises order is made, the Court must be satisfied that a senior police officer has grounds for a reasonable suspicion disorderly activities are occurring. Additionally, the owner or occupier of the premises subject to a restricted premises order application is afforded the opportunity to respond and make submissions to the Court to prove on the balance of probabilities that disorderly activities are not taking place at the premises. The potential breach is further justified on the basis that public safety and good order are ensured by providing police with the power to search high risk premises for weapons and items associated with unlawful liquor and drug consumption.*

The key provisions and search powers of concern are - **clause 267** will allow entry to a building or fortified premises, including a residential part of the premises; **clause 279** provides for entry search

[260] Alert Digest 2004/5, p 31, paras. 30-36; Alert Digest 2004/1, pp 7-8, paras 49-54; Alert Digest 2003/11, pp 20-21, paras 14-19; Alert Digest 2003/9, p 4, para 23 and p 31, paras 21-24; Alert Digest 2003/7, pp 34-35, paras 24-27; cited in Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 45.

[261] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 46.

and seizure powers for persons and premises subject to control orders, for prohibited items; **clauses 288-290** allow for searches of persons or vehicles without a warrant in defined circumstances including that the vehicle has been used in the commission of an offence or is being used by/in the possession of, a participant in a criminal organisation; while **clauses 310-311** provide for warrantless searching of persons and vehicles related to potential 'consorting' offences.

The committee notes the FLP issue around searches without warrant and the justification provided above.

Protection against self-incrimination

Summary of provisions

A number of provisions under the Bill remove the usual protection against self-incrimination.

Clause 43 inserts new section 88C into the *Crime and Corruption Act 2001* which provides that a person is not excused from complying with an order made under s.88A(1) or (2) or s.88B(2) on the ground that complying with it may tend to incriminate the person or make the person liable to a penalty. Sections 88A and 88B provide for access information orders that will allow relevant officers to require a person to provide necessary passwords or other like information to allow access to electronically stored information.

FLP issue

Legislation should provide appropriate protection against self-incrimination.[262] The OQPC Handbook states, "this principle has as its source the long established and strong principle of common law that an individual accused of a criminal offence should not be obliged to incriminate himself or herself".[263] The SLC commented that denial of the protection afforded by the self-incrimination rule is only potentially justifiable if –

(a) The questions posed concern matters that are peculiarly within the knowledge of the persons to whom they are directed and that it would be difficult or impossible to establish by any alternative evidential means; and

(b) The legislation prohibits use of the information obtained in prosecutions against the person; and

(c) In order to secure this restriction on the use of the information obtained, the person should not be required to fulfill any conditions (such as formally claiming a right).[264]

Section 88C removes the privilege against self-incrimination, compelling people to comply with orders made under sections 88A or 88B and provide access passwords for electronic storage devices.

The Explanatory Notes advise:

> *The departure from the fundamental legislative principles is justified as the departure recognises the importance of this major investigative tool to combat serious criminal activity. In particular, the abrogation of the privilege against self-incrimination and impact on privacy are justified when balanced against the law enforcement benefits in detecting offending, including child exploitation material offending or other offending behaviour that can easily be engaged in via the internet and which are able to be concealed by technology.*

[262] Legislative Standards Act 1992, s 4(3)(f).

[263] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 52.

[264] Alert Digest 2000/1, p 7, para 57; Alert Digest 1999/31; and Alert Digest 1999/4, p 9, para 1.60.

Committee comment

The committee notes that it is quite possible that, in providing those passwords (and thereby allowing law enforcement to access the information stored in hard drives etc) those people will be facilitating law enforcement in accessing the information that will then form the basis of a prosecution against them. Under usual circumstances a person is not compelled to assist law enforcement or prosecutory authorities to find evidence to use against them, and can claim 'privilege against self-incrimination' as an excuse why information or access to information/evidence is not provided to authorities by the person claiming the privilege. Here, the committee notes that the excuse is removed and people will be compelled to provide the access passwords even though they are effectively handing police a tool by which to obtain evidence against them.

In the case of orders made under s.88A or s.88B, the questions posed (passwords and access information) "concern matters that are peculiarly within the knowledge of the persons to whom they are directed and would be difficult or impossible to establish by any alternative evidential means". In this respect the committee considers that the denial of the privilege against self-incrimination is arguably justified, although it is noted that there does not appear to be any 'use' or 'derivative use' protections afforded to the information in this instance, meaning that any information obtained under compulsion, without being able to claim privilege against self-incrimination, could then be used as evidence against the person in subsequent prosecutions. Given the nature of the 'major crime' jurisdiction of the Crime and Corruption Commission (networked paedophilia etc) the committee considers it is probably appropriate that information obtained under legal compulsion, absent a right to claim privilege against self-incrimination, could then be used as evidence in a subsequent prosecution, despite this going against usual legal protections.

Other provisions

A couple of other provisions in the Bill similarly remove the privilege against self-incrimination. The same FLP concerns outlined above also apply with respect to these provisions.

Clause 279 inserts new section 161ZI(7) into the *Penalties and Sentences Act 1992* to provide that '*it is not a reasonable excuse for a person not to comply with a condition of a control order, or a registered corresponding control order, requiring the person to give stated information, that complying with the condition might tend to incriminate the person or expose the person to a penalty*'.

Clause 303 inserts new s.154B into the *Police Powers and Responsibilities Act 2000* to provide that *'A person is not excused from complying with an order made under sections 154(1) or (2) or 154A(2) on the ground that complying with it may tend to incriminate the person or make the person liable to a penalty*.'

Rights and liberties

Summary of provision - restricted premises orders

Clause 267 inserting, *inter* alia, s.45(1) into the PGBA, which provides that, in considering whether to extend a restricted premises order over a premises declared by regulation, a court must make an extension order for a prescribed place if the court is satisfied that one or more disorderly activities have taken place at the premises, whether before or after the commencement.

FLP issue

Legislation should not adversely affect rights and liberties, or impose obligations, retrospectively - section 4(3)(g) of the *Legislative Standards Act 1992*.

The Explanatory Notes advise:

> *This breach is justified on the basis that it is necessary to provide appropriate transitional arrangements to assist in the safe and seamless transition from the 2013 suite to the Organised Crime Regime.*

Committee comment

The committee notes that this provision operates with somewhat retrospective effect in that it makes a court determination contingent upon one or more disorderly activities having taken place at premises that are subject to a restricted premises order, whether those disorderly activities happened before or after the commencement. The committee also notes that this provision erodes judicial discretion, mandating that a court must extend a restricted premises order for premises declared by regulation, even if only one incident of disorderly activity has taken place at the premises, whenever that disorderly activity occurred.

Summary of provisions

The Bill amends the Penalties and Sentences Act to establish an Organised Crime Control Order that can be imposed on a convicted offender at sentence.

Clause 282 inserts sections 249 and 250 into the *Penalties and Sentences Act 1992* (PSA) to provide that:

s.249 – Making of control order for offender convicted of committing indictable offence before commencement - *Section 161W applies to the sentencing of an offender convicted of an indictable offence after the commencement whether the offence was committed before or after the commencement.*

s.250 – Application of amended s.187 - *Section 187, as amended by the Serious and Organised Crime Legislation Amendment Act 2016, applies to the sentencing of an offender for an offence after the commencement whether the proceeding for the offence was started before or after the commencement.*

FLP issue

Legislation should not adversely affect rights and liberties, or impose obligations, retrospectively - section 4(3)(g) of the *Legislative Standards Act 1992*.

The Bill provides for the *partially* retrospective application of the control order regime in terms of offenders convicted of committing an indictable offence and found, by the sentencing court, to have been a participant in a criminal organisation at the time of offending. The control order regime applies irrespective of whether the offence was committed before or after commencement, but does not extend the control order regime to offenders who were convicted prior to commencement.

The Explanatory Notes advise:

> *The potential infringement is considered justified to protect the public by preventing, restricting or disrupting the offender from committing serious criminal offences. The sentencing court retains complete discretion as to whether or not to impose the control order.*

Committee comment

The committee notes the partially retrospective application of the control order regime.

Immunity from proceedings

Summary of provisions

Clause 267 inserting s.97 into the *Peace and Good Behaviour Act 1982* provides that a member of the Police Service does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act. If subsection (1) prevents a civil liability attaching to a member of the Police Service, the liability attaches instead to the State.

Clause 441 amends s.63 of the *Tattoo Parlours Act 2013* to extend the current immunity from civil liability for acts or omissions done honestly and without negligence under the Act that is afforded to

officials (being currently the chief executive, an authorised officer or person acting under their direction, or a public service employee) to also now extend to the Police Commissioner.

Potential FLP issue

Legislation should not confer immunity from proceeding or prosecution without adequate justification.[265] The OQPC Notebook states "a person who commits a wrong when acting without authority should not be granted immunity. Generally a provision attempting to protect an entity from liability should not extend to liability for dishonesty or negligence. The entity should remain liable for damage caused by the dishonesty or negligence of itself, its officers and employees. The preferred provision provides immunity for action done honestly and without negligence … and if liability is removed it is usually shifted to the State.[266] The SLC also recognised that conferral of immunity is appropriate in certain situations.[267]

Committee comment

The committee notes that immunity clauses in legislation are not uncommon and generally serve to allow public servants, officials, statutory officers etc to make decisions and exercise powers and functions without being unduly concerned that they may be held personally liable for acts done or omissions made in the course of carrying out their duties, providing, generally, that those actions or omissions are made honestly and without negligence or malice. The committee notes the provisions in the Bill that provide immunity or lessened liability as outlined above.

Compulsory acquisition of property

Summary of provisions - fortification removal and forfeiture

A Magistrates Court can make a fortification removal order, requiring the owner or occupier of fortified premises to remove excessive fortifications if the Court is satisfied the premises are linked to criminal activity, or the owner or occupier is linked to criminal activity (by virtue of their criminal record or connection with a criminal organisation) and the premises are fortified to an extent that is excessive for the lawful use of the premises.

Clause 267 inserts, *inter alia,* new s.65 into the PGBA which allows a police officer to cause the forcible removal or modification of fortifications where a fortification removal order has not been complied with by the end of the appeals period.

Clause 267 inserts, s.71 into the PGBA which allows the Police Commissioner to forfeit removed fortifications to the State. Where the owner of the fortified premises is someone other than a person who is responsible for the fortifications being installed, the owner may claim compensation from the State for the reasonable costs of repairing any damage to the fortified premises caused by the removal or modification of the fortifications and for the reasonable costs of restoring the premises to their pre-fortification condition (s.73). The State may then recover any compensation paid from the person responsible for the fortification as a debt due to the State (s.74).

The s.71 forfeiture of removed fortifications to the State is a potential breach of the FLP requiring fair compensation for the compulsory acquisition of property (s.4(3)(i) of the *Legislative Standards Act 1992*). On forfeiture the removed fortification becomes the property of the State and can be dealt with by the Commissioner as he or she sees fit, including by destroying or disposing of the removed fortification, or selling the fortification at auction. Proceeds from the sale offset the expenses of sale, costs of fortification removal and storage.

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265 *Legislative Standards Act 1992*, s 4(3)(h).

266 Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 64.

267 Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 64; Alert Digest 1998/1, p 5.

There is no compensation for the cost of the fortifications payable to the 'person responsible' for their purchase/installation. The only financial restitution made to the 'person responsible' is that any net proceeds from the sale of the fortifications must be set off against any debt that person owes to the State for the costs incurred in the enforcement action/removal, with the net proceeds of sale then going into consolidated revenue.

The Explanatory Notes advise: *This breach is justified because orders under the scheme can only be made in circumstances where: the premises are linked to criminal activity; or the owner or occupier is linked to criminal activity by virtue of their criminal record or connection with a criminal organisation; and the premises are fortified to an extent that is excessive for the lawful use of those premises.*

Committee comment

As the committee noted above, compensation is available from the State for an owner of premises who was not a 'responsible person' in respect of the fortifications. That compensation could cover the cost of repairing any damage to the property, as well as of restoring the property to its pre-fortification condition.

The committee notes that compensation for the cost of removed and forfeited fortifications is not available for the person responsible for their purchase and installation, beyond an offset of net sale proceeds against any debt that person owes the State for the cost of the enforcement action/removal. From the extract in the Explanatory Notes, it appears to the committee that the person's 'links to criminal activity', as well as the presumed use of the fortifications to hinder or impede the detection of unlawful activities is what is being used to justify the absence of compensation for their removal and forfeiture.

Summary of provision - restricted premises order

Clause 267 inserting, *inter alia*, divisions 5 and 6 into the PGBA.

Section 50 (Division 5) applies where a police officer seizes a prohibited item from restricted premises under s.49, or premises under a search warrant for section 157(1)(h) of the PPRA, and allows a person with a legal or equitable interest in the property to apply to the court for an order for its return. The court may order that the prohibited item be returned to the applicant if the court is satisfied the applicant may lawfully possess the item, and for a prohibited item seized from restricted premises the seizure was not lawful under s.49, and for a prohibited item seized from premises the subject of a search warrant under the PPRA- the disorderly activities forming the grounds on which the warrant was sought were not taking place at the premises, and it is appropriate that the item be returned. The court must not order the return of the prohibited item if it may be evidence in a proceeding relating to the item, is a thing used in or for manufacturing a dangerous drug, or may be subject to a confiscation proceeding under the *Criminal Proceeds Confiscation Act 2002* - (s.51).

Section 52 states that Division 6 (Forfeiture of prohibited items) applies if a police officer seizes a prohibited item from restricted premises under s.49, or premises under a search warrant for section 157(1)(h) of the PPRA and the return of the item has not been sought or has been refused by a Magistrate under s.51. In those circumstances, s.53 allows the Police Commissioner to forfeit the prohibited item to the State. On forfeiture the prohibited item becomes the property of the State and can be dealt with by the Commissioner as he or she sees fit, including by destroying or disposing of the prohibited item, or selling the item at auction. Proceeds from the sale offset the expenses of sale, costs of seizure and storage. The net proceeds of sale go into consolidated revenue.

FLP issue

Section 4(3)(i) of the *Legislative Standards Act 1992* requires that legislation provide for fair compensation for the compulsory acquisition of property.

Comment

With respect to the above provisions, the committee notes that a prohibited item may be seized and forfeited to the State where its return has not been sought by a person with a legal or equitable claim to it (within 21 days of its seizure) or where return has been refused by a Magistrate under s.51. Prohibited items will not be returned under s.51 if they may be evidence in a proceeding relating to the item, are used for manufacturing a dangerous drug, may be subject to a confiscation proceeding under the *Criminal Proceeds Confiscation Act 2002* and may not be returned (discretion) if they were lawfully seized from restricted premises under s.49.

There appears to the committee to be no provision under the Bill for a person who has a prohibited item seized and not returned/forfeited to receive compensation for the item in lieu of its return. The Explanatory Notes advise:

> *This potential breach is justified on the basis that the items that can be seized under the scheme only relate to items used in connection with the storage, supply or consumption of liquor or drugs. Further, the seizure powers are only activated when the Court has identified the premises as being a place where it is reasonably suspected disorderly activity is occurring, or where a senior police officer has obtained a warrant on the basis of their reasonable belief that disorderly activity is taking place at a premises. The scheme also provides an avenue for a person to make an application for the return of property if the property was unlawfully seized.*

The committee notes these property forfeitures, without provision for compensation.

Summary of provisions - wearing or carrying prohibited items in a public place

Clause 398 inserting *inter alia*, new ss 10C and 10E into the *Summary Offences Act 2005.*

New section 10C prohibits a person in a public place from wearing or carrying a prohibited item so that the item can be seen; and a person who is in or on a vehicle that is in a public place must not wear or carry a prohibited item so that the item can be seen from the public place.

Under new section 10E, on a person being convicted of an offence against section 10C, a prohibited item to which the offence relates that is lawfully in the possession of the Queensland Police Service is forfeited to the State.

FLP issue

Legislation should provide for the compulsory acquisition of property only with fair compensation.[268]

The Explanatory Notes advise:

> *This is justified as the property to be forfeited was seized as evidence of the commission of an offence and the offender has subsequently been convicted. While possession of the prohibited item is prima facie lawful, automatic forfeiture is justified given the offender has dealt with the item unlawfully.*

Committee comment

The committee notes this forfeiture without compensation.

[268] Legislative Standards Act 1992, s 4(3)(i).

3.2 Institution of Parliament

Amendment of an Act only by another Act

Declaration of identified organisations

Clause 210 of the Bill inserts new s.173EAA into the *Liquor Act 1992* which provides that a regulation may declare an entity to be an 'identified organisation'. Subsection (5) defines a 'proposed prohibited item' as *an item that would be a prohibited item if the entity were an identified organisation.*

This approach may potentially breach s.4(4)(c) of the *Legislative Standards Act 1992*, which provides that a Bill must have sufficient regard to the institution of Parliament, and should only authorise the amendment of an Act by another Act (not explicitly or impliedly amend the Act by subordinate legislation). In this case, the *Liquor Regulation 2002* will prescribe 'identified organisations', and the items that constitute 'proposed prohibited items' under the *Liquor Act 1992* are defined by reference to their connection to an identified organisation. The Explanatory Notes advise: *This potential breach is considered justified on the basis that the approach is in the public interest, as it will allow the Minister to quickly respond to identified threats to the safety of the community, and public order, in licensed premises and other public places.*

Transitional regulation-making power

Clause 445 inserts s.77 (transitional regulation-making power) into the *Tattoo Parlours Act 2013* (TPA) which broadly allows for a regulation to make provision of a saving or transitional nature for any matter necessary to achieve the transition from the existing *Tattoo Parlours Act 2013* to the amended *Tattoo Industry Act 2013* (TIA), for which the Act does not make provision or sufficient provision. Subsection 77(2) provides that *Without limiting subsection (1) a transitional regulation may continue the operation of a provision of the pre-amended* [Tattoo Parlours] *Act that was omitted by the amending Act [*SOCLA*].* A transitional regulation may have retrospective operation to a day that is not earlier than the day of the commencement (s77(3)). This transitional regulation making power may contravene the FLP that legislation have sufficient regard to the institution of Parliament, by authorising the amendment of an Act by means other than another Act.

A Bill should only authorise the amendment of an Act by another Act.[269] A clause in an Act, which enables the Act to be expressly or impliedly amended by subordinate legislation or executive action is defined as a Henry VIII clause. The SLC's approach to Henry VIII clauses was that if an Act purported to be amended by a statutory instrument (other than an Act) in circumstances that were not justified, the SLC would voice its opposition by requesting that Parliament disallow the part of the instrument that breached the FLP requiring legislation to have sufficient regard for the institution of Parliament.[270] The SLC considered as potentially acceptable the use of Henry VIII clauses in the following limited circumstances:

- To facilitate immediate executive action;
- To facilitate the effective application of innovative legislation;
- To facilitate transitional arrangements;
- To facilitate the application of national scheme legislation.[271]

269 *Legislative Standards Act 1992*, section 4(4)(c).

270 Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 159.

271 Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 159.

The OQPC Notebook explains that these circumstances do not automatically justify the use of Henry VIII clauses, and, if the Henry VIII clause did not fall within any of the above situations, the SLC classified the clause as 'generally objectionable'.[272]

The transitional regulation-making power in s.77 provides for transitional regulations as necessary to achieve the transition from the existing *Tattoo Parlours Act 2013* to the amended *Tattoo Industry Act 2013*, for which the Act does not make provision or sufficient provision. Arguably s.77 could be considered an acceptable Henry VIII provision in so far as it facilitates transitional arrangements; however it should be noted that the former SLC had also considered it an inappropriate delegation when regulations were left to 'fill in the legislative gaps', by allowing a regulation to be drafted to 'make provision about a matter for which this Act does not make provision or enough provision.'

On this point the OQPC Handbook advises – *'To the Committee, this is even more objectionable if the regulation may be given retrospective effect or effect despite any provisions of the principal Act.'*[273] In this instance ss.77(2) provides that *a transitional regulation may continue the operation of a provision of the pre-amended Act that was omitted by the amending Act.* This would enable a regulation to effectively amend an Act by the regulation providing for the continued operation of a pre-amendment Act provision, despite that provision having been omitted by the amending Act (SOCLA).The Explanatory Notes advise:

> *The inclusion of a transitional regulation-making power is intended to be a temporary measure to facilitate as smooth a transition to the new licensing arrangements as possible by enabling a regulation to be made to address any emerging or unforeseen transitional issues. Importantly, the potential contravention of fundamental legislative principles is mitigated in that the Bill provides for the expiry of the transitional regulation-making power two years after the day of commencement.*

Committee Comment

The committee notes:

- **Cl.210 inserting new s.173EAA *Liquor Act*** will allow the 'proposed prohibited items' under the *Liquor Act 1992* to be defined by reference to an identified organisation as prescribed by regulation.
- **Cl.445 inserting s.77 TPA** allows for transitional regulations to be made to cover issues arising in the transition from the TPA to the TIA *for which the Act does not make provision or sufficient provision,* arguably leaving the regulation to "fill in the legislative gaps". It will also allow a transitional regulation to override the intention of the Bill/SOCLA Act by that regulation potentially continuing the operation of a provision of the TPA that had been omitted by SOCLA.

The committee notes these potential incursions upon the institution of Parliament.

[272] *Alert Digest* 2003/6, p. 3; *Alert Digest* 1996/4, p.28; *Alert Digest* 1996/2, p.20; *Annual Report* paras 2.25-2.35.

[273] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: The OQPC Notebook, p 159; *Alert Digest* 2006/10, p.6, paras 21-24; *Alert Digest* 2001/8, p.28, para 31.

3.3 Proposed new or amended offence provisions

The Bill contains the following new offence provisions:

Clause	Offence	Proposed maximum penalty
67	**Insertion of new s76 Recruiting person to become participant in criminal organisation – *Criminal Code*** A person who— (a) is a participant in a criminal organisation or is subject to a control order or a registered corresponding control order; and (b) recruits, or attempts to recruit, another person to become, or associate with, a participant in a criminal organisation; commits a misdemeanour.	500 penalty units or 5 years imprisonment
75	**Insertion of new s 205A Contravening order about information necessary to access information stored electronically** A person who contravenes— (a) an order made under the *Police Powers and Responsibilities Act 2000*, section 154(1) or (2) or 154A(2); or (b) an order made under the *Crime and Corruption Act 2001*, section 88A(1) or (2) or 88B(2); commits a crime.	5 years imprisonment.
87	**Amendment of s 228A (Involving child in making child exploitation material)** Section 228A(1), penalty— *omit, insert—* Maximum penalty—	(a) if the offender uses a hidden network or an anonymising service in committing the offence—25 years imprisonment; or (b) otherwise—20 years imprisonment.
88	**Amendment of s 228B (Making child exploitation material)** Section 228B(1), penalty— *omit, insert—* Maximum penalty—	(a) if the offender uses a hidden network or an anonymising service in committing the offence—25 years imprisonment; or

		(b) otherwise—20 years imprisonment.
89	**Amendment of s 228C (Distributing child exploitation material)** Section 228C(1), penalty— *omit, insert—* Maximum penalty—	(a) if the offender uses a hidden network or an anonymising service in committing the offence—20 years imprisonment; or (b) otherwise—14 years imprisonment.
90	**Amendment of s 228D (Possessing child exploitation material)** Section 228D, penalty— *omit, insert—* Maximum penalty—	(a) if the offender uses a hidden network or an anonymising service in committing theoffence—20 years imprisonment; or (b) otherwise—14 years imprisonment.
91	**Insertion of new s 228DA Administering child exploitation material website** (1) A person who administers a website knowing the website is used to distribute child exploitation material commits a crime. Maximum penalty—	(a) if the offender uses a hidden network or an anonymising service in committing the offence—20 years imprisonment; or (b) otherwise—14 years imprisonment.
	Insertion of new s 228DB Encouraging use of child exploitation material website (1) A person who, knowing a website is used to distribute child exploitation material, distributes information—	(a) if the offender uses a hidden network or an anonymising service in committing the

	(a) to encourage someone, whether a particular person or not, to use the website; or (b) to advertise or promote the website to someone, whether a particular person or not; commits a crime. Maximum penalty—	offence— 20 years imprisonment; or (b) otherwise— 14 years imprisonment.
	Insertion of new s 228DC Distributing information about avoiding detection (1) A person who distributes information about how to avoid detection of, or prosecution for, conduct that involves the commission of a child exploitation material offence commits a crime. Maximum penalty—	(a) if the offender uses a hidden network or an anonymising service in committing the offence— 20 years imprisonment; or (b) otherwise— 14 years imprisonment.
126	**Amendment of s 408C (Fraud)** Section 408C(1)— *insert*— Maximum penalty— Section 408C(2)— *omit, insert*— (1) The offender is liable to imprisonment for 14 years if, for an offence against subsection (1)— (a) the offender is a director or officer of a corporation, and the victim is the corporation; or (b) the offender is an employee of the victim; or (c) any property in relation to which the offence is committed came into the possession or control of the offender subject to a trust, direction or condition that it should be applied to any purpose or be paid to any person specified in the terms of trust, direction or condition or came into the offender's possession on account of any other person; or (d) the property, or the yield to the offender from the dishonesty, or the detriment caused, is of a value of at least $30,000 but less than $100,000. (2A) The offender is liable to imprisonment for 20 years, if, for an offence against subsection (1)—	5 years imprisonment 14 Years imprisonment

	(a) the property, or the yield to the offender from the dishonesty, or the detriment caused, is of a value of at least $100,000; or (b) the offender carries on the business of committing the offence. (2B) The *Penalties and Sentences Act 1992*, section 161Q also states a circumstance of aggravation for an offence against this section. (2C) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.	20 Years imprisonment
127	**Amendment of s 408D (Obtaining or dealing with identification information)** (1) Section 408D(1) and (1A), penalty, '3 years'— *omit, insert—*	5 years
141	**Insertion – s 77B Habitually consorting with recognised offenders** (1) A person commits a misdemeanour if— (a) the person habitually consorts with at least 2 recognised offenders, whether together or separately; and (b) at least 1 occasion on which the person consorts with each recognised offender mentioned in paragraph (a) happens after the person has been given an official warning for consorting in relation to the offender. (2) For subsection (1), a person does not ***habitually consort*** with a recognised offender unless the person consorts with the offender on at least 2 occasions. (3) This section does not apply to a child. In this section— ***official warning*, for consorting, see the** *Police Powers and Responsibilities Act 2000***, section 53BAA.**	300 penalty units or 3 years imprisonment
164	**Amendment of s 5 (Trafficking in dangerous drugs) – *Drugs Misuse Act 1986*** (1) Section 5(1), penalty— *omit, insert—*	25 years imprisonment
213	**Amendment of s 173ED (Removal of person wearing or carrying prohibited item from premises) – *Liquor Act 1992*** Section 173ED(1) and (3), penalty provision— *omit, insert—*	100 penalty units
251	**Insertion of new s 230B Confidentiality – *Motor Dealers and Chattel Auctioneers Act 2014***	35 penalty units

	(1) This section applies if a person gains confidential information through involvement in the administration of this Act. (2) The person must not make a record of the information or disclose the information to another person, other than under subsection (4). (3) Without limiting subsection (1), a person gains confidential information through involvement in the administration of this Act if the person gains the information because of being, or an opportunity given by being— (a) the chief executive; or (b) a public service employee employed in the department; or (c) a person engaged by the chief executive for this Act. (4) A person may make a record of confidential information or disclose it to another person— (a) for this Act; or (b) to discharge a function under another law; or (c) for a proceeding in a court or QCAT; or (d) if authorised by a court or QCAT in the interests of justice; or (e) if required or permitted by law; or (f) for information other than criminal intelligence—if the person is authorised in writing by the person to whom the information relates. (5) The chief executive must destroy the following as soon as practicable after it is no longer needed for the purpose for which it was requested or given— (a) a criminal history report about a person; (b) a copy of a control order or registered corresponding control order accompanying a criminal history report about a person; (c) a notice given under section 27(2) or 160(2) about a person. (6) The *Public Records Act 2002* does not apply to the documents mentioned in subsection (5). (7) In this section— ***confidential information***— (a) includes information about a person's affairs; but (b) does not include statistical or other information that could not reasonably be expected to result in the identification of the person to whom the information relates.	
267	**Replacement of Pt 4 – *Peace and Good Behaviour Act 1982*** **s 32 Contravention of public safety order** (1) A person who, without reasonable excuse, knowingly contravenes a public safety order made for the person, or a group of persons of which the person is a member, commits a misdemeanour.	300 penalty units or 3 years imprisonment

	(2) A person knowingly contravenes a public safety order if the person does an act or makes an omission the person knows, or ought reasonably to know, is a contravention of the public safety order.	
	s 54 Offence by owner or occupier of restricted premises (1) An owner or occupier of restricted premises commits a misdemeanour if— (a) an owner or occupier has been served with a restricted premises order for the restricted premises; and (b) a disorderly activity takes place at the restricted premises after the order has been served and while the order remains in force; and (c) the owner or occupier knows, or ought reasonably to know, that the disorderly activity has taken place. (2) An owner or occupier of premises is not guilty of an offence against subsection (1) if the owner or occupier proves the owner or occupier has taken all reasonable steps to prevent the contravention. (3) An owner of premises is not guilty of an offence against subsection (1) if the owner proves the owner has taken all reasonable steps to evict the occupier from the premises.	(a) for the first offence—150 penalty units or imprisonment for 18 months; or (b) for each later offence—300 penalty units or 3 years imprisonment.
	s 75 Hindering removal or modification of a fortification (1) A person who does an act or makes an omission with intent to hinder any of the following commits a misdemeanour— (a) the removal or modification of a fortification under a fortification removal order; (b) the taking of enforcement action.	5 years imprisonment
279	**Amendment of s 161ZI Contravention of order – *Penalties and Sentences Act 1992*** (1) A person must not contravene a control order, or a registered corresponding control order, made for the person. *Note—* Under section 161Y, the court may also make a control order for a person convicted of an offence against this section. (2) An offence against subsection (1) is— (a) a misdemeanour, if the offence is a first offence in relation to the control order or registered corresponding control order; or (b) a crime, if the offence is a later offence in relation to the control order or registered corresponding control order.	(a) for a first offence in relation to the order—3 years imprisonment; or (b) for a later offence in relation to the order—5 years imprisonment.

(3) An offence is a later offence to an earlier offence if the person commits the offence after the person is convicted of the earlier offence.

(4) For a control order, subsection (1) applies whether the contravention of the order happens in or outside Queensland.

(5) Without limiting subsection (1), if a person contravenes a control order made for the person (an ***existing control order***), the court may, instead of making a further control order for the person under section 161Y, amend the existing control order for the person by—

(a) extending the order by not more than—

(i) if the order was made under section 161X—2 years; or

(ii) otherwise—5 years; or

(b) imposing any further conditions the court could impose if a further control order were made for the person.

(6) In a proceeding against a person for an offence against subsection (1), it is a defence for the person to prove that the person had a reasonable excuse for contravening the control order or the registered corresponding control order.

(7) It is not a reasonable excuse for a person not to comply with a condition of a control order, or registered corresponding control order, requiring the person to give stated information that complying with the condition might tend to incriminate the person or expose the person to a penalty.

Note—

See section 161ZH for the restrictions applying to the use of the stated information.

(8) In a proceeding against a person for a contravention of a non-association condition, it is irrelevant whether or not the association related to the commission or potential commission of an offence.

(9) In a proceeding against a person for a contravention of a non-association condition that has an exception about associating with a person with whom the person subject to the control order, or the registered corresponding control order, has a personal relationship, it is for the person subject to the order to prove that the person had a personal relationship with the other person at the relevant time.

(10) A person does not commit an offence against subsection (1) in relation to a control order, or a registered corresponding control order, by possessing a thing the person is prohibited from possessing under the order unless the person is in possession of the thing after the end of—

(a) if the person is prohibited from possessing the thing under the order as originally made and the order takes effect when it is made—24 hours after the order is made; or

	(b) if the person is prohibited from possessing the thing under the order as originally registered—24 hours after the order takes effect; or (c) if the person is prohibited from possessing the thing because of an amendment of the order—24 hours after the amendment takes effect. (11) In this section— ***non-association condition*** means— (a) a condition of a control order mentioned in section 161U(2)(a)(i), whether or not the condition includes an exception about associating with another person with whom the person subject to the control order has a personal relationship; or (b) a condition of a registered corresponding control order that corresponds to a condition mentioned in paragraph (a).	
369	**Amendment of s 21 (Return of licence) – *Second-hand Dealers and Pawnbrokers Act 2003*** (2) Section 21(1), penalty, '100 penalty units'— *omit, insert—*	20 penalty units
370	**Insertion of new s 21A Automatic cancellation** (1) A licensee's licence is cancelled if the licensee, or an associate of the licensee— (a) is convicted of a disqualifying offence for which a conviction is recorded; or (b) becomes subject to a relevant control order. (2) A person whose licence is cancelled under subsection (1) must return the licence to the chief executive within 14 days after the happening of the event mentioned in subsection (1). Maximum penalty for subsection (2)—	20 penalty units.
371	**Amendment of s 27 (1) (Change of licensee's home address)** (1) If a licensee changes the licensee's home address, or an address (the register address) mentioned in section 26(2)(a) or (b), the licensee must, within 7 days after the change, give the chief executive— (a) for a change of home address—notice of the change; or (b) for a change of register address— (i) signed notice of the change; and (ii) the licensee's licence.	50 penalty units.
373	**Insertion of new s 112 (2) Confidentiality** (1) This section applies if a person gains confidential information through involvement in the administration of this Act.	

	(2) The person must not make a record of the information or disclose the information to another person, other than under subsection (4).	35 penalty units
389	**Replacement s 24 Automatic cancellation – *Security Providers Act 1993*** (1) A licensee's licence is cancelled if the licensee, or another person required to be an appropriate person in relation to the licence— (a) is convicted of a disqualifying offence for which a conviction is recorded; or (b) becomes subject to a relevant control order. (2) A person whose licence is cancelled under subsection (1) must return the licence to the chief executive within 14 days after the happening of the event mentioned in subsection (1).	20 penalty units
391	**Replacement of s 48A Confidentiality** (1) This section applies if a person gains confidential information through involvement in the administration of this Act. (2) The person must not make a record of the information or disclose the information to another person, other than under subsection (4).	35 penalty units
398	**Insertion of new pt 2, div 1B – *Summary Offences Act 2005*** **s 10C Wearing or carrying prohibited item in a public place** (1) A person in a public place must not wear or carry a prohibited item so that the item can be seen.	(a) for a first offence—40 penalty units or 6 months imprisonment; or (b) for a second offence—60 penalty units or 9 months imprisonment; or (c) for a third or later offence—100 penalty units or 12 months imprisonment.
	(2) A person who is in or on a vehicle that is in a public place must not wear or carry a prohibited item so that the item can be seen from the public place.	(a) for a first offence—40 penalty units or 6 months imprisonment; or (b) for a second offence—60 penalty units or 9 months

		imprisonment; or (c) for a third or later offence—100 penalty units or 12 months imprisonment.
427	**Insertion of new s 34A Automatic cancellation on conviction – *Tattoo Industry Act 2013*** (1) A person's licence is cancelled if the person is convicted of a prescribed offence for which a conviction is recorded. (2) The person must return the licence to the chief executive within 14 days after its cancellation. Maximum penalty for subsection (2)—	20 penalty units.
440	**Replacement of s 62 Confidentiality** (1) This section applies if a person gains confidential information through involvement in the administration of this Act. (2) The person must not make a record of the information or disclose the information to another person, other than under subsection (4). (3) Without limiting subsection (1), a person gains confidential information through involvement in the administration of this Act if the person gains the information because of being, or an opportunity given by being— (a) the chief executive; or (b) a public service employee employed in the department; or (c) a person engaged by the chief executive for this Act.	35 penalty units.

3.4 Explanatory Notes

Part 4 of the *Legislative Standards Act 1992* relates to Explanatory Notes. It requires that an Explanatory Note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an Explanatory Note should contain.

Explanatory Notes were tabled with the introduction of the Bill. The Notes are fairly detailed and contain the information required by Part 4 and a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins.

Appendix A – List of submissions

Number	Submitter
01	Graham Carman
02	April Adsett
03	Stephen Spencer
04	Ted Ashby
05	Dan Kelly
06	Danziel Andrews
07	PACT
08	CONFIDENTIAL
09	Samuel Griffey
10	Peter Felton
11	Harleys American MC Repair
12	Jeff Eacersall
13	Dallas Kingdom
14	Russell Wattie
15	Motorcycle Riders Association of Queensland
16	Ms Glenis Batten
17	Anthony Teniswood
18	Dave Griffey
19	Annie Mundy
20	Queensland Police Union of Commissioned Employees
21	Neil Munro
22	Australian Strategic Policy Institute
23	Associate Professor Mark Lauchs
24	Tony Lincoln
25	Ian Leftley

26	Life and Death Motorcycle Club
27	Stewy Worth
28	Greater Southern Gold Coast Chamber of Commerce
29	CONFIDENTIAL
30	The Greens Queensland
31	Queensland Hotels Association
32	Queensland Law Society
33	Crime and Corruption Commission
34	The Law and Justice Institute (Qld) Inc.
35	United Motorcycle Council Queensland
36	Judy Andrews
37	Andrea Gray
38	Christian Newling
39	Ben Rankin
40	Australian Tattooists Guild
41	Queensland Council for Civil Liberties
42	Queensland Police Union of Employees
43	J. Linnett
44	Stephen Clancy
45	Form A Submission
46	Form B Submission
47	Form C Submission
48	Form D Submission

Appendix B – Witnesses

Public briefing - Brisbane
Monday, 26 September 2016

Queensland Police Service
Commissioner Ian Stewart APM, Queensland Police Service
A/Inspector Ian Carroll, Queensland Police Service

Department of Justice and Attorney-General
Mr David Ford, Deputy Director-General, Liquor, Gaming and Fair Trading, Department of Justice and Attorney-General
Mrs Leanne Robertson, A/Assistant Director-General, Strategic Policy and Legal Services, Department of Justice and Attorney-General
Ms Louise Shephard, Director, Strategic Policy and Legal Services, Department of Justice and Attorney-General
Ms Carolyn McAnally, A/Director, Strategic Policy and Legal Services, Department of Justice and Attorney-General

Public briefing – Gold Coast
Tuesday, 4 October 2016

Queensland Police Service
Assistant Commissioner, Brian Codd, South Eastern Region, QPS
Assistant Commissioner, Maurice Carless, State Crime Command, QPS
Inspector Simon James, Organised Crime Legislation Review Project, QPS
Acting Inspector Ian Carroll, Organised Crime Legislation Review Project, QPS

Public hearing – Gold Coast
Tuesday, 4 October 2016

City of the Gold Coast
Cr Paul Taylor, City of the Gold Coast

United Motorcycle Council of Queensland
Mr Michael Kosenko, Spokesperson, United Motorcycle Council of Queensland

Queensland Hotels Association
Mr Damian Steele, Business Development and Training Manager, Queensland Hotels Association

Australian Tattooist Guild
Ms Tashi Dukanovic, Vice President and Senior Tattooist/ tattoo studio owner
Mr Matthew Cunnington, Member and Senior Tattooist/ tattoo studio owner

Private hearing – Gold Coast
Tuesday, 4 October 2016

Invited witnesses

Public hearing - Brisbane
Wednesday, 12 October 2016

Queensland Council for Civil Liberties
Mr Terry O'Gorman, Vice-President, Queensland Council for Civil Liberties

Queensland Law Society
Ms Christine Smyth, QLS Deputy President
Ms Rebecca Fogerty, Member of the QLS Criminal Law Committee
Mr Matt Dunn, QLS Government Relations Principal Advisor

Queensland University of Technology
Associate Professor Mark Lauchs, Faculty of Law, School of Justice, QUT

Queensland Police Union of Employees
Mr Troy Schmidt, Barrister-at-Law, Queensland Police Union of Employees

Private hearing – Brisbane
Wednesday, 12 October 2016

Invited witnesses

Public hearing - Brisbane
Thursday, 13 October 2016

Crime and Corruption Commission, Queensland
Ms Kath Florian, Executive Director Crime

Appendix C – Illustration of operation of proposed consorting offence

Statement of Reservation

Non-Government Members Statement of Reservation Regarding the Legal Affairs and Community Safety Committee Report No 42 into the Serious and Organised Crime Legislation Amendment Bill 2016

The non-government members of the Legal Affairs and Community Safety Committee do not support the passage of the *Serious and Organised Crime Legislation Amendment Bill 2016* ('the Bill'). There are a number of issues that have been raised that we believe haven't been adequately explained by the Government and a number of fundamental policy changes that we believe are unnecessary and weaken the ability for law enforcement agencies to prevent and disrupt organised crime and keep Queenslanders safer.

Reviews

The explanatory notes attempt to justify the changes outlined in the Bill from recommendations made by the Queensland Organised Crime Commission of Inquiry (QOCCI) and Taskforce into Organised Crime Legislation (the Taskforce), that was chaired by former Supreme Court Judge, Alan Wilson.

The QOCCI came under criticism for both the lack of any public hearings (there were none) and also from then Acting Commissioner Ross Barnett for certain criticisms of the Queensland Police Service in relation to child exploitation matters.

Non-government members also believe that any recommendations that emanated from the Taskforce should be disregarded because it was not a proper review of the laws. The terms of reference clearly state that:

"The Taskforce will note the Queensland Government's intention to repeal, and replace the 2013 legislation, whether by substantial amendment and/or new legislation ..."

Further to that, the terms of reference also ask the Taskforce to:

"advise how best to repeal, or replace by substantial amendment, the 2013 legislation..."

We don't believe that it was a fair review of the laws given the Government's clearly stated intention to repeal and replace the laws before they were even reviewed. There were also no public hearings. In essence, it was a closed shop review, with a pre-determined outcome.

From that basis, we believe the Bill is flawed in that it adopts recommendations from two reviews that have come under criticism. We also have concerns that one of our two law enforcement agencies, the Crime and Corruption Commission, was not represented on the Taskforce that reviewed the 2013 laws. It should also be noted that 23 of the 60 recommendations of the Taskforce were not unanimous, with 18 of those being because of concerns raised by the Queensland Police Commissioned Officers Union and/or Queensland Police Union of Employees. There has also been some conjecture that the Queensland Police Union of Employees did not support the VLAD Act being repealed, as it stipulated in the Taskforce report.

Background

It is worth noting the context of the 2013 laws and the need for urgent reform at that time. It occurred after dozens of criminal motorcycle gang members started a brawl in a public place, in front of families enjoying a Friday night out at a local restaurant in Broadbeach. They then proceeded to the Southport police station and started a siege demanding that their mates who had been arrested following the brawl, be let out.

It should also be remembered that this was an incident that occurred under Labor's previous attempt to get tough on organised crime gangs with the Criminal Organisation Act 2009 (COA). That legislation, which lead to no criminal organisations being declared and gang crime flourishing, was implemented by then Attorney-General and current Health Minister Cameron Dick. In fact eight members of the current Government and six members of the current Cabinet were members of the Bligh Government which implemented that failed legislation.

Of interest (an issue that doesn't receive anywhere near the same media coverage) is the fact that Labor's COA is also being repealed by this Bill. This legislation was described by Mr Wilson as part of his statutory review in these terms:

"However, it is apparent that COA's methodology, its attempts to maintain safeguards against such an intrusion, and the remedies it provides, mean that in practice it has not proved useful and holds no promise of becoming so."

The non-government members of the Committee don't believe the Government have justified the case as to why the current laws need changing. They are working to keep Queenslanders safer and in 2014 as a result of better laws and more resources for law enforcement agencies, crime rates dramatically reduced across Queensland.

Submissions to the Committee

There were submissions from 282 individuals, many of which reflected these points. They included crime rate statistics, including:

"In 2014, crime significantly decreased on the Gold Coast.

· *Homicide reduced by 21.4%*

· *Assaults reduced by almost 2%*

· *Robbery reduced by 17.2%*

· *Unlawful entry reduced by 27%*

· *Car theft reduced by almost 18%*

· *Drug offences increased by 29.4% meaning that more drugs were off our streets."*

And

"In 2014, crime significantly decreased across Queensland:

· *Assaults reduced by 3.7%*

· *Robbery reduced by 24.8%*

· *Unlawful entry reduced by 17.4%*

· *Car theft reduced by 19.4%*

· *Drug offences increased by 23.7% meaning that more drugs were off our streets."*

Individual submitters also raised concerns with the following aspects of the Bill:

"I want to lodge the following opposition to elements of Labor's bill:

- *Scrapping the VLAD laws;*
- *Removing important police powers, such as their ability to stop, search and detain a participant in a criminal organisation based on reasonable suspicion and removing the circumstance of aggravation for evading police;*
- *Generally watering down a number of strong penalties;*
- *Removing the fit and proper person test from certain industries that encourage criminal gang members to have an honest job;*
- *Scrapping the anti-association provisions (60A) and clubhouse provisions (60B) in the Criminal Code;*
- *Removing the same presumption against bail for criminal gangs that is used for people accused of murder;*
- *Removing the mandatory one year jail time for serious assault of a police officer if committed by a participant in a criminal organisation;*
- *Making it easier for a criminal gang member to get a weapons licence;*
- *The clubhouses that were closed down by the LNP are only guaranteed to remain closed for only two years and there is no guarantee that new clubhouses won't spring up;*
- *Removing segregation orders so criminal gangs can now recruit members in jail once again; and*
- *Watering down strong penalties for contempt of the Crime and Corruption Commission."*

These concerns were joined by issues raised by a number of key stakeholders during the Committee process, including the Queensland Law Society, Crime and Corruption Commission, Queensland Council for Civil Liberties and Queensland Hotels Association.

The following quotes were raised in submissions to the Committee:

Queensland Law Society

"The Society is greatly concerned about the breadth of the proposed consorting offence. Under the proposed new Part 6A of the Criminal Code, there is no required nexus between the association and the commission of, or intended commission of, a serious criminal offence. As a result, the potential for the proposed consorting offence to criminalise associations that are unrelated to criminal activity is significant.

We note that the proposed consorting offence is based on the equivalent offence in New South Wales under section 93X of the Crimes Act 1900 (NSW). In the review of the NSW Consorting Laws, the NSW Ombudsman recommended several measures to narrow the scope of the consorting laws, including that the Attorney-General (for NSW) introduce, for the consideration of Parliament, an objects or purpose clause to the consorting law to clarify that the intent of the consorting law is for the prevention of serious crime.

The Society is of the view that use of the proposed consorting offence should be similarly narrowed to the prevention of serious crime."

Crime and Corruption Commission

"The CCC does not support in-principle the proposed removal of the current ss 185(3A) and (10) and ss 190(4) and (5) (a claim of legal privilege in refusing to co-operate with CCC coercive hearings). The CCC reiterates its submission to the Taskforce into Organised Crime Legislation (August 2015) which supported the retention of provisions removing claims of reasonable excuse founded on fear of retribution to persons or property. The CCC considers that the current provisions effectively address the issues targeted and promote the public interest in a timely way.

In their current form these clauses apply not only to actual members of, or participants in criminal organisations, but to a hearing in relation to a criminal organisation. Thus they capture anyone being asked about someone in a criminal organisation."

Queensland Council for Civil Liberties

"The Wilson report noted that the NSW laws have been used by police to 'disproportionately target marginalised groups.' The NSW Ombudsman's study revealed that 38% of issued warnings were for Aboriginal people and that the provisions had been enforced disproportionately against, for example, youth. Concerns exist that NSW's 'wide net' approach 'creates an extremely fertile ground' for corruption. It was against this background the Taskforce took 'careful note' of the risks associated with a NSW Model in constructing their proposal. Therefore, the Council is concerned that the proposed consorting offence does not pay due regard to the issues that arose in NSW and the Taskforce's consequent suggestions for appropriate safeguards.

The Council respectfully submits that the proposed provisions in the Serious and Organised Crime Legislation Amendment Bill 2016 do not reflect the far-reaching and detailed work leading to the Taskforce's Report. The failure to implement key safeguards proposed by the Wilson Report results in the continuation of harsh outcomes particularly with the 7 year mandatory minimum. Without the full force of the recommendations in the Taskforce's Report many of the unjust concerns that arose under the VLAD laws will continue to occur, especially in relation to the mandatory minimum 7 year extra sentence on top of the base offence for the serious organised crime circumstances of aggravation offence."

Queensland Hotels Association

"The changes to the licensing regime proposed in the Bill represent a weakening of the existing probity process. The Bill repeals the requirement that all applications are referred to the Commissioner of Police for assessment; the Bill prohibits the use of police criminal intelligence in determining licensing decisions; and the Bill removes the requirement that an application must be refused if the applicant is alleged to be a participant in a criminal organisation. It is difficult to reconcile the fact that the Bill identifies the criminality of criminal organisations and expands the offence of wearing colours to include anywhere in public, yet

simultaneously weakens the existing licensing process to enable members of a declared criminal organisation to be deemed a suitable persons to hold a licence."

These were just some of a number of issues that were raised during the Committee process and reflect the position of non-government members of the Committee that the changes being introduced by the government are a political solution to a political problem, not improving public policy outcomes that will lead to improving community safety.

Non-government members of the Committee highlight the fact that a significant portion of the Bill doesn't commence until 2 years after assent. Conveniently, that takes a number of the changes beyond the next state election. This is referred to in Division 4 of the Bill, clauses 142 to 287.

The non-government members of the committee maintain that the 2013 suite of legislation is designed to assist law enforcement agencies in preventing and disrupting organised crime. One of the criticisms has been that there haven't been sufficient convictions. Non-government members maintain that that is because there has been less crime. Many criminal gang members have either gone underground or not risked committing an offence, with many others fleeing interstate or overseas.

In that respect, non-government members of the committee draw attention to the submission from Gold Coast Mayor Cr Tom Tate. Cr Tate outlines his concerns with Labor's soft-on-crime approach and what it may mean for residents and tourists on the Gold Coast.

In his letter, Mayor Tate states that:

"On my understanding of the Serious and Organised Crime Legislation Amendment Bill, I am afraid City of Gold Coast will again be plunged into the climate of fear that accompanied the crime wave unleashed by outlaw motorbike gangs over the past decade.

I note that in introducing this Bill, Attorney-General Yvette D'Ath said it would provide "... a return to traditional criminal law approaches and well-proven methods of crime detection, investigation and prosecution." Well, I'm sorry, but sad experience proves beyond argument that previous approaches simply could not remove the threat posed by outlaw motorcycle gangs to the Gold Coast."

Drug links with organised crime

In relation to drugs, Mayor Tate added that:

"The trail of devastation caused to thousands of families by the drugs peddled by these gang members is horrendous. How many more young lives are to be wasted by addiction peddled by motorbike gang members? Make no mistake, drug running is a core activity associated with most of these clubs. The evidence is irrefutable."

This is confirmed by the information outlined in the QOCCI report.

"The Commission learned that illicit drug markets remain the most prominent and visible form of organised crime activity in Queensland. As at June 2015, indicative figures drawn from QPS intelligence revealed that 76 per cent of identified Queensland organised crime networks are involved in the illicit drug market, with 51 per cent linked to methyl amphetamine, 30 per cent to cannabis and 12 per cent to MDMA/ecstasy. Over one-third of organised crime networks linked to the illicit drug trade are involved with multiple drug types."

This is further evidenced in the latest drug intelligence report released by the Crime and Corruption Commission, the [correct cased in the title of this report, or more capital letters required?] Illicit drugs in Queensland: 2015/16 intelligence assessment report. Key findings from that report include:

- *The demand for illicit drugs and the potential profits from supplying them has made Queensland an attractive market for interstate and international crime groups;*

- *Since 2012, there has been greater targeting of regional areas such as Toowoomba, Mackay, Rockhampton, Gladstone, Townsville and Cairns, especially by interstate groups;*

- *Organised crime has a significant presence in the methylamphetamine, MDMA, cocaine, heroin, and cannabis markets in Queensland, and a limited presence in the New Psychoactive Substances (NPS), pharmaceuticals, and Performance and Image Enhancing Drugs (PIEDs) markets, though their involvement in the PIEDs market is increasing;*

- *Methylamphetamine continues to be rated as the illicit drug market that poses the highest level of risk (Very High) — due to the high level of involvement by organised crime, its ready availability, and the significant harms the drug causes to individual users and the community; and*

- *Following a contraction in the MDMA market in 2008-2011, the availability of MDMA in Queensland has increased since 2012.*

Clubhouses

One of the key strategies to shut down the distribution of these drugs is to ensure that clubhouses remain closed. Yet the Bill does not provide for that to happen. Existing clubhouses will only remain closed for up to two years before the Queensland Police will be required to make application through the Courts seeking orders for those existing clubhouses to remain closed. The Labor Police Minister also admitted in the media that new clubhouses could 'spring up'.

It was confirmed during a public hearing that the 2013 legislation was effective in closing down clubhouses:

***Mr CRANDON**: Earlier, Commissioner, you were talking about outlaw motorcycle gang clubhouses and so forth and comparing the two pieces of legislation. I think there was an inference that under the current laws there could be potential for an outlaw motorcycle gang clubhouse to be opened again. Are there any outlaw motorcycle gang clubhouses open as we speak that you are aware of, Commissioner, or that the police are aware of?*

***Commissioner Stewart**: To my knowledge, no.*

***Mr CRANDON**: They have not gone back to their clubhouses since the original legislation was put into place. They have been shut down.*

The ability to guarantee that clubhouses stay closed is a key factor in the ability of law enforcement agencies to restrict illicit drug manufacture and distribution in Queensland.

Mayor Tom Tate also made the following observations in his submission to the Committee, which illustrate the feeling of many Gold Coast residents:

"Now, since the government has signalled its intention to weaken the provisions there has been a marked return of these outlaws to the Coast. The signs are there - and growing.

Crime statistics associated with traditional bikie activities are on the rise. Nor is it simply petty crime: violent assaults have increased markedly.

As Mayor of this city I see the signs and I can feel their impetus building. Their stand-over tactics are an affront to decency but they tap into streams of underhand cash because their threats are so serious most business people targeted cannot see an alternative to paying for "protection".

I know some people have real concerns about the social justice aspect of banning people from wearing certain clothes. But the prominent display of their colours is integral to the gang menace. There is a psychology behind it and it works.

Similarly, I know there are concerns about the severity of sentencing introduced under VLAD. But it worked. Tough sentencing was crucial to enable the Queensland Police Service to gather additional evidence to rein-in the activities of these organised criminals. And that is what they are; the evidence is overwhelming.

The harsh sentencing introduced by VLAD applied vital pressure to associates of these gangs. If you like, the weak link in the chain of their criminality. Faced with the prospect of lengthy time behind bars, those on the fringes supplied the evidence previously unavailable to judges and juries that enabled accurate assessment of the perpetrators of criminal activities.

The watering-down of the consorting offence undermines the effectiveness of this provision. It will materially assist outlaw motorcycle clubs to go about their criminal activities and recruit new members with far greater ease than under the VLAD regime.

It is also of deep concern that tighter scrutiny of tattoo parlours, tow truck operations and security service suppliers is to be wound back. The links between many of these businesses and outlaw motorcycle gangs is sufficiently strong to warrant maintenance of very strict controls on who can participate in these commercial enterprises.

And as for repealing harsher sentencing provisions, I can understand some community concern but the fact is that longer sentences work. They give judges the vital ingredient to back-up the difficult and often gut-wrenching challenges faced by frontline police officers in protecting the community

So, let's look at the big picture. As we prepare to showcase our beloved Sunshine State to the world with the 2018 Gold Coast Commonwealth Games we have our government potentially sabotaging our image and reputation by allowing criminal elements to undermine law and order."

Concerns raised by law enforcement agencies

The Crime and Corruption Commission also expressed concerns about Labor's softening of the laws, in their submission to the Taskforce review.

In its submission of 17 December 2015, Chairman Alan MacSporran QC stated that

"It is clear from the recent developments that several clubs (including three of the major clubs) have been actively recruiting new members on the Gold Coast. The timing of the recruitment activities suggests that, following the change of government in January 2015, it is perceived by clubs that there is a softening of the stance against OMCG activity."

This was further confirmed by a public hearing that the Committee held on 13 October 2016:

***Mr CRANDON**: Just to clarify, your intelligence continues to confirm that there is ongoing recruitment?*

***Ms Florian**: There are three outlaw motorcycle gangs in particular that we have under observation on the Gold Coast. One of them has gone to the Gold Coast in more recent times.*

The submission from the Queensland Police Service to the Taskforce also included the following relevant information which should be considered in the debate:

"Removing and reducing the existing suite of legislation provided to enable the QPS and others to respond to organised crime, without the introduction of improved and more effective legislative tools, will reduce the capability of the QPS to respond, a consequential reduction in public safety, with a flow through impact on community confidence in police and government."

It is the view from non-government members that the Bill significantly restricts the ability of law enforcement agencies, namely the Queensland Police Service and Crime and Corruption Commission, to effectively prevent and disrupt organised crime.

In response to the claims from the Government that the former LNP Government focussed too much on criminal motorcycle gangs, it is also worth noting the comments from the Queensland Police Service as part of that same submission. They said that:

"Activity in Queensland in recent times has focused on the involvement of Outlaw Motorcycle gangs (OMCG) in organised crime in Queensland. The QPS considers that there are good reasons for this and this paper will put forward information in support of this view. OMCG reflect the traditional hierarchical model of organised crime, characterised by being easily identifiable in nature with a high profile public persona."

The Crime and Corruption Commission also raised concerns about amendments that would 'remove the efficacy' of an emergency response hearing which could be delayed for 'weeks or months' as specified in the public hearing transcript of 13 October 2016:

***Mr KRAUSE**: That would be good. I have one other question. You mentioned earlier the ability for a person attending an immediate response hearing to make application to the Attorney-General for legal representation. I could not see in the submission where you addressed that. Am I correct in my understanding that when you bring people in for an immediate response hearing, it would be a matter of some urgency and that there is a proposal in the bill that would enable those individuals to whom the CCC wants to talk to delay that by seeking legal representation from the Attorney-General?*

***Ms Florian**: Yes. Our purpose is very much not to stop someone having legal representation because in those very circumstances of an emergency response hearing I would imagine that that could be very important. The issue is more that there is then an administrative process that needs to be gone through, and that can delay sometimes for weeks or months.*

***Mr KRAUSE**: Weeks or months?*

***Ms Florian**: If we are looking at a hearing which needs to be conducted urgently to perhaps stop, in the terrorist incident or prevent an incident happening, that would remove the efficacy of the provision at all.*

***Mr KRAUSE**: I think that is putting it mildly, Ms Florian. It would pretty much nobble the capacity altogether.*

Finally it is also worth noting the following statements in the context of the legislation and review:

"The QPS considers that while court outcomes and reported crime statistics are important measures, on their own however, they do not provide a full picture and sufficient evidence base upon which to make informed decisions about the effectiveness of the 2013 suite of legislation.

"There is other information available which the QPS considers can assist the Taskforce to determine whether the 2013 legislation has been effective, including:

- *The proportion of OMCG representation in offending and type of offending;*
- *Perceptions of public safety and associated community confidence identified through community surveys and Crime Stoppers reports;*
- *The number of OMCG that have disassociated from clubs; and*
- *The reduction in public displays of violence by OMCG."*

NSW consorting laws

The Bill replaces the existing s60A provisions in the Criminal Code, which are better known as the anti-association provisions. In response to this, consorting laws similar to those implemented in New South Wales have been adopted. In this context, it is worth noting a report that was done by the Acting Ombudsman in New South Wales on the effect of the consorting laws in New South Wales, which was published in April 2016.

The report made the following observations:

"During the review period police issued more than 9,000 consorting warnings and 46 charges for the offence of consorting. Our review found qualitative evidence to support the effective use of the consorting law by the Gangs Squad to target high-risk Outlaw Motorcycle Gangs. However, this review also found evidence to indicate use by officers attached to Local Area Commands in relation to a broad range of offending, including minor and nuisance offending. The report details use of the consorting law in relation to disadvantaged and vulnerable people, including Aboriginal people, people experiencing homelessness, and children and young people. In addition, this review found an exceptionally high police error rate when issuing consorting warnings in relation to children and young people.

We found that although the NSW Police Force has used the consorting law to disrupt serious and organised crime and criminal gangs as intended by Parliament, it has also used the consorting law in a manner that, to some extent, illustrated public concerns about its operation.

I recommend that statutory and policy amendments are made to increase the fairness of the operation of the consorting law, and to mitigate the unintended impacts of its operation on

people in circumstances where there is no crime prevention benefit, or where the crime that may be prevented is relatively minor.

I recommend the adoption of a new statutory and policy framework for use of the consorting law, to ensure its use is focused on serious crime, is closely linked to crime prevention, and is not used in relation to minor offending such as summary offending. This framework is consistent with the overarching intent of Parliament that the consorting law adequately equips police to combat serious and organised crime and criminal groups.

Unless these changes are made it is likely that the consorting law will continue to be used to address policing issues not connected to serious and organised crime and criminal gangs and in a manner that may impact unfairly on disadvantaged and vulnerable people in our community. My view is that the implementation of these recommendations is essential to maintain public confidence in the NSW Police Force and its use of the consorting law."

Summary

Non-government members of the committee believe that there are a two provisions in the Bill that have merit, namely amendments to the Drugs Misuse Act 1986 and Criminal Code, relating to child exploitation material over the internet. However, given the overwhelming number of amendments in the Bill that soften and weaken the existing laws, the non-government members of the Committee believe that the laws will increase the risk to community safety from organised crime activity, and cannot recommend support of the bill.

Michael Crandon MP

Deputy Chair

Member for Coomera

Jann Stuckey MP

Member for Currumbin

Jon Krause MP

Member for Beaudesert