Queensland Government

Department of Justice and Attorney-General
Office of the Director-General

State Law Building
50 Ann Street Brisbane
Queensland 4001 Australia
Telephone (07) 3239 3520
Facsimile (07) 3239 3474
www.justice.qld.gov.au

ABN 13 846 673 994

In reply please quote: 565572/9, 3472174

20 OCT 2016

Mr Mark Furner MP
Chair
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Mr Furner

The Legal Affairs and Community Safety Committee (the Committee) has requested a departmental response to written submissions received by the Committee as part of its inquiry into the Serious and Organised Crime Legislation Amendment Bill 2016 (the Bill).

Please find enclosed a table that summarises the key issues raised in the written submissions to the Committee and provides a response from the Department of Justice and Attorney-General.

I trust this information will assist the Committee in its consideration of the Bill.

If the Committee Secretariat has any questions relating to the departmental response they should contact A/Director, Carolyn McAnally on 07 3224 7608 or by email at Carolyn.McAnally@justice.qld.gov.au.

Yours sincerely

David Mackie
Director-General

Encl.

Serious and Organised Crime Legislation Amendment Bill 2016

Response to Legal Affairs and Community Safety Committee:
Issues raised in written submissions

The following 48 submissions were received in relation to the Serious and Organised Crime Legislation Amendment Bill 2016 (the Bill):

- 001 – Graham Carman
- 002 – April Adsett
- 003 – Stephen Spencer
- 004 – Ted Ashby
- 005 – Dan Kelly
- 006 – Danziel Andrews
- 007 – Protect All Children Today (PACT)
- 008 – David Searles
- 009 – Samual Griffey
- 010 – Peter Felton
- 011 – Harleys American MC Repair
- 012 – Jeffrey Eacersall
- 013 – Dallas Kingdom
- 014 – Russell Wattie
- 015 – Motorcycle Riders Association of Queensland
- 016 – Glenis Batten
- 017 – Anthony Teniswood
- 018 – Dave Griffey
- 019 – Annie Mundie
- 020 – Queensland Police Commissioned Officers' Union of Employees (QPCOUE)
- 021 – Neil Munro
- 022 – Dr John Coyne, Australian Strategic Policy Institute (ASPI)
- 023 – Associate Professor Mark Lauchs, Queensland University of Technology (QUT)
- 024 – Tony Lincoln
- 025 – Ian Leftley
- 026 – Ronald Germain, Life and Death Motorcycle Club
- 027 – Stewy Worth, Odins Warriors Motorcycle Club
- 028 – Greater Southern Gold Coast Chamber of Commerce
- 029 – CONFIDENTIAL
- 030 – The Greens Queensland
- 031 – Queensland Hotels Association (QHA)
- 032 – Queensland Law Society (QLS)
- 033 – Crime and Corruption Commission (CCC)
- 034 – Law and Justice Institute (Qld) Inc.
- 035 – United Motorcycle Council Queensland (UMCQ)
- 036 – Judy Andrews
- 037 – Andrea Gray
- 038 – Christian Newling
- 039 – Ben Rankin
- 040 – Australian Tattooists Guild
- 041 – Queensland Council for Civil Liberties (QCCL)
- 042 – Queensland Police Union of Employees (QPU)
- 043 – J Linnett
- 044 – Stephen Clancy
- 045 – Form A Submission
- 046 – Form B Submission
- 047 – Form C Submission
- 048 – Form D Submission

Issue Clauses	Submission Submission Key Points	Department of Justice and Attorney-General response
General support for the Bill and/or general comment about the Bill		
General support for the Bill and/or general comment about the Bill	022 – Dr John Coyne, Australian Strategic Policy Institute The submission supports the introduction of the legislative amendments contained in the Bill in their entirety, and makes certain recommendations surrounding occupational and industry licencing and prisoner management (outlined under the relevant headings below). 024 – Tony Lincoln The submission indicates support for many aspects of the Bill, however raises some concerns about potential infringement on civil rights and other specific areas of the Bill (outlined under the relevant headings below). 034 – Law & Justice Institute (Qld) Inc. The submission notes that the Institute supports aspects of the Bill generally, but also discusses certain areas of concern (addressed in relevant areas below). 042 – Queensland Police Union of Employees (QPU) The QPU is broadly supportive of the Bill. The submission notes that the laws under the Bill are "*another stop on the continuum and that constant improvement, review and enhancement*" will ensure Queensland has the strongest laws to tackle organised crime.	The Department notes the comments of these submitters in support of the Bill.

General opposition to the Bill and/or general comment about the Bill		
General opposition to the Bill and/or general comment about the Bill	The following submissions indicate general opposition to the Bill, and many also note opposition to the 2013 law: 002 – April Adsett Ms Adsett submits that the laws will not result in safer communities, but will result in "*invented crimes and criminals*". Ms Adsett also notes that under the 2013 laws "*people with life long careers have already lost their business and families have been destroyed*". 003 – Stephen Spencer Mr Spencer submits that the Bill will adversely impact "*old school clubs*" whose focus is on social riding and a shared an interest in motorcycles. 004 – Ted Ashby Mr Ashby opposes the laws under the Bill, submitting that "*bikies are only 1% of all crime*". 006 – Danziel Andrews Mr Andrews opposes the laws under the Bill, submitting they are a "*violation of basic human rights in Australia*". 009 – Samuel Giffrey	The Department notes the comments of these submitters in opposition of the Bill.

	Mr Griffey opposes the Bill, and the 2013 laws, and submits that there were adequate laws in place prior to the 2013 laws. 013 – Dallas Kingdom Mr Kingdom's submission provides details of personal experiences under the 2013 laws and submits that both the 2013 laws and the laws under the Bill will have an adverse impact on social motorcycle clubs. 025 – Ian Leftley Mr Leftley opposes the Bill, and also submits that the 2013 laws are "*extremely faulty*" and unfairly targeted social motorcycle riders. 044 – Stephan Clancy Mr Clancy generally opposes the Bill and the 2013 laws, and submits that there were adequate laws in place prior to the 2013 laws.	
General opposition to the Bill with comments noting support for the 2013 laws	The following submissions indicate general opposition to the Bill, and support the retention of the 2013 laws. Many consider that the 2013 laws have been effective in combatting outlaw motorcycle gangs and in enhancing their feelings of community safety. 008 – David Searles 012 – Jeffrey Eacersall 016 – Glenis Batten 021 – Neil Munro	The Department notes the comments of these submitters in opposition of the Bill and their views regarding the 2013 laws.

	028 – Greater Southern Gold Coast Chamber of Commerce Inc 043 – J Linnett 045 – Form A Submission 046 – Form B Submission 047 – Form C Submission 048 – Form D Submission	
New offences and increased penalties targeting child sexual exploitation		
New offences, new circumstance of aggravation and increased penalties relating to child exploitation material offending Clauses 87- 94	007 – PACT The submission supports the introduction of the three new offences related to child exploitation material, increased penalties and the creation of a new circumstance of aggravation. The submission also supports each of the related amendments to various pieces of legislation to include the three new offences in a way consistent with the approach taken to existing offences related to child exploitation materials. The submission raises the associated issue of child protection and employment screening, specifically the Blue Card System. PACT refer to perceived deficiencies in the relevant legislation with regards to an agency employing young people in a work setting, particularly fast food outlets.	The Department notes the comments of PACT. The Department notes the recent announcement regarding the Queensland Family and Child Commission (QFCC) review of the Blue Card System and related matters. The Terms of Reference for the QFCC review are at: https://www.qfcc.qld.gov.au/blue-card-and-foster-care-systems-review-terms-reference.
Increased penalties for drug trafficking		
Severity of the proposed penalty increase for trafficking dangerous drugs	0036 – Ms Judy Andrews Ms Andrews submits that there is no evidence that increasing penalties will reduce the offending behaviour and that increased penalties will result in prison overcrowding and fewer guilty pleas.	The Department notes Ms Andrews' comments. The amendment to increase the maximum penalty for trafficking in a dangerous drug to 25 years partially implements

Clause 164		a broader recommendation of the Queensland Organised Crime Commission of Inquiry. In addition, the Department notes that the amendment to section 5 (Trafficking of dangerous drugs) of the *Drugs Misuse Act 1986* will restore the courts' sentencing discretion by removing the mandatory sentence provisions from the offence (80% mandatory minimum non-parole scheme for drug traffickers) and address the recent adverse comments made by the President of the Court of Appeal, McMurdo J in *R v Clark* [2016] QCA 173, about the impact of the mandatory provision.
Amended definition of 'participant' in a 'criminal organisation'		
Clause 279, new section 161O and 161P of the Penalties and Sentences Act **Opposition to laws focused upon participants in a criminal organisation.**	030 – <u>The Greens Queensland</u> The Queensland Greens recommend the omission of the provisions that define 'participant' in a 'criminal organisation' as it does not support people being singled out and treated differently before the law due to membership of an organisation. This is particularly given the definition of criminal organisation is considered to be widely defined and capable of capturing very low-level employees of an organisation, including those who may not even be aware of their membership to the criminal organisation.	The development of laws that specifically target organised crime is a policy decision of the Government. The Department notes Chapter Two of the Taskforce Report and in particular, relying on the findings of the Queensland Organised Crime Commission of Inquiry as its evidence-base, the comments of the Taskforce collectively that: '*The Byrne Report concluded that organised crime plays a significant role in a number of discrete areas of criminal activity across Queensland. It identified that the biggest crime threats for Queensland are the illicit drug market, online child sex offending (including the child exploitation material market) and sophisticated financial crimes (such as 'boiler-room' investment frauds).* *The Byrne Report highlighted the role of organised crime groups in these areas and accepted evidence that, in some of them, OMCGs* (outlaw motorcycle gangs) *feature quite prominently; but in others their role is either minor, or non-existent.*'

Clause 279, new section 161O and 161P of the Penalties and Sentences Act **The challenge of identifying a criminal organisation.**	023 – Associate Professor Mark Lauchs The submission discusses in detail the existence of and culture surrounding outlaw motorcycle gangs; and submits that *'legislation helps resolve the organised crime issues but excellent police work, backed by good resources and cooperation of the Federal Government agencies is what really matters. Taskforce Maxima was a great example of this operation.'* Associate Professor Lauchs also discusses the fluid and shape-shifting nature of modern organised crime groups and considers it to be extremely difficult to claim the existence of a group that does not have formal management structure and declared membership (it would seem this is a reference to the non-hierarchical crime groups). The submission considers that by, *'simply stating that it does not matter if the group has a name or continuing existence does not make it possible to definitively prove a group existence';* reference is made to the recent judicial decision interpreting the term 'group' in the context of the 2013 laws. The submission also considers that the definition of 'participant' is reliant on the organisation having a formal and fixed structure. The Associate Professor considers that the enhanced definitions under the Bill are well placed to capture hierarchical organised crime groups but not fluid and opportunistically formed groups; and reliance is placed by way of example on the fictitious crime group in the movie Oceans 11.	The Department notes that the discussion regarding the existence of outlaw motorcycle gangs and the changing nature of organised crime is reflective of the findings of the Queensland Organised Crime Commission of Inquiry and the Taskforce, in particular as discussed in Chapters Two and Eight of the Taskforce Report. The Department notes that the enhancements made to the definitions of participant and criminal organisation reflect the unanimous recommendations of the Taskforce (see recommendations 6 to 11; and analysed in detail in Chapter 8 of its Report); recommendations that were developed to ensure these pivotal concepts capture not only the hierarchically structured crime groups but the modern, ever-changing and fluid nature of organised crime moving forward.
Clause 279, new section 161O and 161P of the Penalties and Sentences Act	033 – Crime and Corruption Commission The submission seeks to widen the scope of its functions (which include the holding of coercive hearings) to extend beyond criminal activities or corruption connected to criminal organisations or a participant in a criminal organisation, to also include a second threshold for activation of those functions,	The submission seeks to widen the scope of the CCC's functions by the inclusion of a second threshold is addressed below under the heading, Crime and Corruption Act. Accordingly, the present discussion will focus solely on the definition of participant in a criminal organisation.

Defining what it means to be a criminal organisation	namely investigating organised crime (a concept already defined under the Crime and Corruption Act). The submission notes that the CCC does not oppose the changes made by the Bill to the existing definition of criminal organisation in terms of the repeal of limbs two and three; consequential to the findings of the statutory review of the *Criminal Organisation Act 2009* and the recommendations of the Taskforce. The CCC also says that the Taskforce recommendation to provide a single, consistent definition of participant in a criminal organisation is commendable and appropriate to avoid confusion or ambiguity. The CCC acknowledges that the amendments under the Bill to (what is currently) limb one of the definition of criminal organisation are to address the changing dynamics of criminal groups and to address the judicial interpretation given to the concept of 'group' in the context of the 2013 laws. The CCC indicates that, in the absence of changes to widen the scope of its functions as proposed above, it makes the following suggestions for change to the definitions under the Bill, to ensure greater flexibility for the CCC: • The requirement in the definition of criminal organisation for the group to 'represent an unacceptable risk to the safety, welfare or order of the community' be changed to omit 'unacceptable risk' and substitute 'threat'. That is, the group represent a 'threat' to the safety, welfare or order of the community. • The reference to 'community' in the definition of criminal organisation be expanded to 'community or members of community'. • The number of people needed to form a group be changed from three or more to two or more.	The Department notes that the concept of participant in a criminal organisation is a fundamental and key concept across Queensland's laws, including under the new Organised Crime Regime inserted by the Bill, and is not confined to the functions of the CCC under the Crime and Corruption Act. The Taskforce undertook an extensive examination and analysis of how best to define the terms 'participant' and 'criminal organisation', including in the context of submissions received from stakeholders (including the CCC) across the criminal justice sector and reference to the Crime and Corruption Act in the context of those considerations. Chapter Eight of the Taskforce Report sets out these competing considerations. The Bill implements the unanimous recommendation of the Taskforce to retain limb one of the definition of criminal organisation but with modification. The Bill implements those recommended modifications. The Department notes that the Taskforce considered that the definition of participant in a criminal organisation must, '*have both sufficient precision and an appropriate measure of fluidity; be comprehensive but, also workable; and be flexible but not too broad or sweeping*' (page 121). The Government's Organised Crime Regime also endorses the unanimous recommendation of the Taskforce that a single, uniform definition of these terms is required and should be applied consistently across the statute books when dealing with organised crime (see recommendation 6 of the Taskforce Report). The Department notes that the CCC submission also endorses that approach. In providing guidance to the Government as to how best to enhance existing limb one of the definition of criminal organisation, which the Bill adopts, the Taskforce cautioned that the '*risk of framing a definition sufficiently broad to capture*

	The definition of participant be expanded to include, 'the person's conduct knowingly furthers, directly or indirectly, the serious criminal activity that the organisation has as one or more of its purposes'.	*both types of crime groups (i.e. hierarchically structured and modern, shape-shifting groups) is that it may ultimately lack the specificity needed to insure against injustice – for example, by inadvertently capturing groups of individuals beyond the policy scope of the serous organised crime laws.*' (page 128) To that end, the Taskforce unanimously provided a model for change for limb one (which was the culmination of extensive cross-jurisdictional analysis also). The recommendation retained the current requirement for the group to consist of three or more people; and the need for the group to represent an 'unacceptable risk'. The Department notes that the concept of 'unacceptable risk' is not defined under the Bill but is used elsewhere under Queensland laws and is a term that has been the subject of judicial consideration (for example, under the *Dangerous Prisoners (Sexual Offenders) Act 2003*). Additionally, the Taskforce unanimously recommended a modified definition for the term 'participant'; a proposal that was *sufficiently restrictive so as to not unfairly capture people who have never truly participated (or held themselves out as truly having participated) in the affairs of the criminal group* (page 138). The changes proposed by the CCC would make the definition of participant in a criminal organisation extremely wide and result in ambiguity as to its intended meaning. It would represent a significant watering down of the way in which the definition under the Bill has been framed to insure against injustice and net widening. The Department notes that the criteria, for example, that the group represent an unacceptable risk to the community is what, in part, separates offending by such a group from any ordinary group of three people who jointly commit an offence. It

		is also a term that injects objectivity into the deliberation process. The Department also considers it important to note that a finding that a person is a 'participant in a criminal organisation' is not an offence in itself. In the context of the Organised Crime Regime, it is but one element of a much broader offence; conviction of which will enliven a targeted mandatory sentencing regime. The Department notes the particular comments made in the submission about the definition of 'participant' and emphasises the definition under new section 161P of the Penalties and Sentences Act, as inserted by the Bill, must be viewed with regards to the definitions under new section 161N (for example, office holder, prospective member etc.); and then also in the context of new section 161O (which provides the definition of criminal organisation).
Creation of a new offence of habitually consorting with recognised offenders in the Criminal Code (associated police powers in the *Police Powers and Responsibilities Act 2000*)		
Clause 141 (Insertion of a new Part 2, Chapter 9A Consorting in the Criminal Code) **Absence of an 'objects clause' or prohibition on the offence applying to low level offending.**	001 – Graham Carman The submission states: *'The 2016 Wilson review recommended that the use of the consorting laws be focused only on serious and organised crime, and prohibited from being used to tackle minor or nuisance offending.'* 032 – Queensland Law Society The submission notes the recommendation of the New South Wales (NSW) Ombudsman that the offence should include an objects or purpose clause to clarify that the intention of the consorting law is to prevent serious crime. The submission	The Department notes that the Taskforce on Organised Crime Legislation (the Taskforce) recommended that the consorting offence should be targeted at people convicted of serious organised crime offences (see page 196 of the Report). The NSW Ombudsman's report in reviewing the NSW Consorting offence, tabled in the NSW Parliament on 17 June 2016, recommended an 'objects' clause be inserted into the offence to define its purpose as being the prevention of serious criminal offending (Recommendation 19). The Bill expressly provides for the object of the new offence in new Part 6A of the *Police Powers and Responsibilities Act 2000* (PPRA).

	recommends a similar narrowing of purpose for the offence in the Bill.	New section 53BAC(3) of the PPRA (Police powers for giving official warning for consorting) makes it clear that before giving an official warning about consorting a police officer must consider whether it is appropriate to give the warning having regard to the **object of disrupting and preventing criminal activity by deterring recognised offenders from establishing, maintaining or expanding a criminal network.** The term 'criminal activity' is also defined in that section with reference to the definition of a 'recognised offender' under new section 77 (Definitions for Chapter) of the Criminal Code. Queensland is a 'Code' jurisdiction, meaning its criminal laws are principally codified under a single, consolidated Criminal Code, as compared to NSW, which predominantly relies upon the common law for its criminal laws (in conjunction with certain offences specifically legislated for under crime Act/s). The Bill inserts the new consorting offence under the Criminal Code. No other offence provision under Queensland's Criminal Code has a specific 'objects' provision. To do so would be inconsistent with the longstanding approach to amendments to the Criminal Code. Accordingly, the legislative objective of the new offence regime is provided for under the PPRA and signals Parliament's clear intention about the use of the new offence.
Clause 141 (Insertion of a new Part 2, Chapter 9A Consorting in the Criminal Code) **The acts of consorting require**	The following submissions were critical of the absence of a requirement that the acts of consorting be linked to criminal activity: 023 – Associate Professor Mark Lauchs 025 – Ian Leftley 032 – Queensland Law Society 034 – Law and Justice Institute (Qld) Inc.	New section 77A (Meaning of *consort*) subsection (2) of the Criminal Code provides that a person's association with a recognised offender does not need to have a purpose related to criminal activity in order to amount to an act of consorting. The absence of a link between the act of consorting and criminal activity is consistent with the modern approach to formulating consorting offences across the Australian

no links to criminal activity.	044 – Stephen Clancy	jurisdictions, including NSW, Victoria, South Australia and Western Australia. One of the purposes of a consorting offence is to pre-emptively disrupt future criminal activity by preventing known convicted individuals from establishing, maintaining or expanding a criminal network.
Clause 141 (Insertion of a new Part 2, Chapter 9A Consorting in the Criminal Code). **The consorting offence will stymie a person's rehabilitation and will encourage recidivism.**	014 – Russell Wattie The submission raises concerns that the offence regime will turn recognised offenders into 'hermits' and possibly encourage people to return to criminal offending. 025 – Ian Leftley The submission raises concerns about the impact on a convicted person's rehabilitation. 030 – The Greens Queensland The Queensland Greens express concern about the impact on rehabilitation and recommend the omission of the habitual consorting offence from the Bill. 035 – United Motorcycle Council Queensland The submission states that the offence *'will perpetually hold rehabilitated offenders accountable to past indiscretions for the remainder of their lives notwithstanding that they have already paid their debt to society and without consideration of that person's current and therefore highly relevant integrity and character'*.	A person will only commit the proposed Habitual consorting offence if they receive an official warning with respect to two *recognised offenders* and then consort with each of those offenders again after having received that warning. Page 10 of the Explanatory Notes to the Bill explains that random social interactions that occur in the course of daily life will not amount to acts of consorting to be captured by the new offence. For an act of consorting to be captured there needs to be an intentional 'seeking out of a personal social relationship' with another person. The Bill does not obligate police officers to issue an official warning on every occasion that they observe a recognised offender consorting with another person. The Bill is clear (new section 53BAC (Police powers for giving official warning for consorting) subsection (3) of the PPRA) that **before a police officer issues an official warning the officer** must consider whether it is appropriate to give the warning having regard to the object of disrupting and preventing criminal activity by deterring recognised offenders from establishing, maintaining or expanding a criminal network. It is therefore likely that there will be a range of circumstances in which police officers determine that it is not appropriate to issue an official warning. Further, the QPS has advised the Department that it will implement policies and procedures for its officers to guide

	037 – Andrea Gray The submission states general concerns about the impact that the offence will have on a convicted person's attempt to rehabilitate. The submission is concerned that the offence will remove the incentive to rehabilitate. 044 – Stephen Clancy The submission raises a concern that the offence will *'punish people that have paid for their crime, they have done their time, and they have paid the price and have been punished'*.	them and to help ensure discretion is used to appropriately issue an official warning in accordance with Parliament's intention that the offence be used to prevent criminal activity as defined in new section 53BAC (Police powers for giving official warning for consorting) of the PPRA. In these circumstances it would seem reasonable to predict that persons who are consorting with recognised offenders who are conducting their lives in a manner consistent with their own rehabilitation are less likely to receive official warnings. The issuing of an official warning by a police officer will be an 'enforcement act' under the PPRA (see clause 327 (Amendment of sch 6 (Dictionary)) subsection (3) of the Bill). This will require the officer to record information specific to each official warning (see clause 329 (Amendment of PPRA sch 9 (Responsibilities Code)) subsection (4) of the Bill). A person subject to an official warning can ask for a copy of the information on the register about the issue of the official warning (see current section 681 (Persons to be given copy of information in register) of the PPRA). The public interest monitor will be required to report annually to the Ministers responsible for the PPRA and the Criminal Code about the use of official warning for consorting generally and the extent of compliance by the police service with the provisions in the PPRA (see clause 325 (Amendment of s743 PPRA (Monitor's annual report) of the Bill). As a further safeguard, the Bill expressly provides for the review, by a retired Supreme Court or District Court Judge, of the operation of the new consorting offence and associated police powers, to take place five years after the commencement of those provisions.

Clause 141 (Insertion of a new Part 2, Chapter 9A Consorting in the Criminal Code). **The consorting offence breaches a person's human right to freedom of association.**	024 – Tony Lincoln Mr Lincoln expresses concern that amendments in the Bill breach the 'Universal declaration of human rights'. 030 – The Greens Queensland The submission states that the explanations given in the Explanatory Notes are not sufficient to justify the fundamental breaches of the right to freedom of association and recommends the omission of the offence provision. 032 – Queensland Law Society The submission states that the consorting offence infringes Article 22 of the International Covenant on Civil and Political Rights (ICCPR), which confirms the right to freedom of association.	Article 22 of the ICCPR contemplates necessary and proportionate infringements on the right to freedom of association in order to preserve public safety. Article 22 states that: *'Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.* *No restrictions may be placed on the exercise of this right* ***other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.*** *This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right'* (emphasis added). The High Court of Australia in *Tajjour v NSW (2014) 313* ALR 221 (*Tajjour*) unanimously concluded that the provisions of the ICCPR impose no constraint upon the power of a State Parliament to enact legislation that is contrary to ICCPR provisions. The Department further notes that in the case of *Tajjour,* the NSW consorting offence (on which the proposed Queensland offence is based) was found by the High Court not to breach the implied constitutional right to freedom of association for the purposes of political communication. That is, the offence is constitutionally valid in this regard. (See – page 37 of the Explanatory Notes to the Bill for the justification for the potential adverse impact of the new offence on an individual's common law right to freedom of association)

Clause 141 (Insertion of a new Part 2, Chapter 9A Consorting in the Criminal Code) **The consorting offence will prevent academic research being conducted involving people with convictions.**	023 – Associate Professor Mark Lauchs The submission asserts that the offence will not allow criminological research to be conducted with recognised offenders.	The Department notes, as discussed above, that not every act of consorting with a recognised offender will necessarily result in an official warning being issued by a police officer. The Bill ensures that police officers can only issue an official warning if they reasonably suspect that a person has consorted, is consorting or is likely to consort with one or more 'recognised offenders' (see – new section 53BAC (Police powers for giving official warning for consorting) of the PPRA). To 'consort', for the purposes of the new provisions, is defined by new section 53BAA (Definitions for part) of the PPRA. That is, there needs to be an intentional 'seeking out of a personal social relationship' with another person. However, the Bill specifically excludes certain acts of consorting from the ambit of the offence regime (as provided for under new section 77C (Particular acts of consorting to be disregarded) of the Criminal Code under the Bill) if reasonable in the circumstances. In particular, new section 77C (Particular acts of consorting to be disregarded) provides that one of the acts of consorting that cannot be taken into account, unless it is reasonable, is consorting with a recognised offender while the person is 'genuinely conducting a lawful business or genuinely engaging in lawful employment or a lawful occupation'. An academic who was lawfully employed by a University or any other institution and genuinely conducting criminological research would fall within this exception. As long as a police officer was satisfied that the consorting was reasonable in the circumstances, a warning would not be issued. If the police officer did not believe the academic's act of consorting was in the course of the academic's lawful employment or was not reasonable in the circumstances and issued an official warning the academic would still not commit the offence unless they consorted on a second occasion, not

		only with *that* recognised offender, but also on two other occasions with a separate recognised offender about whom they had also received an official warning about. In the event, that the person was ultimately charged with the new offence, they can also avail themselves of the defence under new section 77C (Particular acts of consorting to be disregarded) of the Criminal Code, which will be a question of fact to be determined at trial. Further, the ordinary rights of appeal against conviction also remain open.
Clause 141 (Insertion of a new Part 2, Chapter 9A Consorting in the Criminal Code) **The consorting offence will be more resource intensive to enforce than section 60A of the Criminal Code (the 2013 'anti-association offence').**	020 – Queensland Police Commissioned Officers' Union of Employees (QPCOUE) The submission appears to raise a number of concerns about the repeal of the current offence at section 60A of the Criminal Code and the enforcement of the new consorting offence.	As outlined in the Explanatory Notes, the Bill implements the ethos of the Report of the Taskforce and largely implements all of its recommendations either in full or in-principle. The QPCOUE was represented on the Taskforce. The Department notes that the Explanatory Notes (at pages 9-10) set out the reasons underpinning the recommendation by the Taskforce majority to repeal section 60A (Participants in criminal organisation being knowingly present in public places) of the Criminal Code, in particular its genuine constitutional vulnerability. To that end, the Taskforce majority (which the Department notes, did not include the QPCOUE) recommended that section 60A be replaced with a temporary consorting offence (and ultimately, a conviction-based control order regime) as it would provide a more constitutionally robust, fairer, efficient and effective approach. Specific details of the Taskforce's analysis with respect to section 60A (Participants in criminal organisation being knowingly present in public places) can be found at chapter 11 of the Taskforce Report.
Clause 141 (Insertion of a new Part 2,	018 – David Griffey	The Department notes that the disproportionate impact of the NSW consorting offence on Aboriginal people, the homeless

Chapter 9A Consorting in the Criminal Code) **The potential to unduly and adversely impact upon particular groups within the community.**	The submission notes the use of the consorting offence against a young Aboriginal man in NSW. 023 – Associate Professor Mark Lauchs The submission expresses concern that the offence will adversely impact on Aboriginal and Torres Strait Islander communities and other remote communities. 032 – Queensland Law Society The QLS is concerned that the offence will increase the overrepresentation of Aboriginal and Torres Strait Islander people in the criminal justice system. The submission is also concerned that the offence will be disproportionately applied to people who tend to occupy public spaces such as young people and the homeless. 036 – Judy Andrews Ms Andrew's refers to the NSW Ombudsman's finding about the application of the NSW consorting offence to vulnerable groups in the criminal justice system. The submission notes with 'particular concern' that 'in some Indigenous communities it would be almost impossible to avoid 'consorting' given the high rate of convictions'.	and young people was identified as an issue in the Ombudsman's Report. The Bill expressly addresses the concerns identified in the following ways: • Police officers must consider the legislatively stated object of the offence (see above) before issuing a warning (see proposed section 53BAC (Police powers for giving official warning for consorting) of the PPRA); • The issuing of an official warning by a police officer will be an 'enforcement act' under the PPRA (see clause 327 and 329 of the Bill). This will require the officer to record information specific to each official warning, including the apparent demographic category of the person issued with the warning. A person subject to an official warning can ask for a copy of this information recorded on the register (see existing section 681 (Persons to be given copy of information in register) of the PPRA); • The Public Interest Monitor (the PIM) will be required to report annually to the Minister/s responsible for the PPRA and the Criminal Code about the use of official warnings for consorting generally and the extent of compliance by the QPS with the provisions under the PPRA in this regard (see clause 325 (Amendment of s 743 PPRA (Monitor's annual report) of the Bill); • The consorting offence does not apply to people under 18 years (see clause 141 (Insertion of new pt 2, ch 9A Criminal Code) of the Bill). Further, a 'recognised offender' does not include a person under 18 years (see also new section 77 (Definitions for chapter) of the Criminal Code);

		• New section 77C (Particular acts of consorting to be disregarded) of the Criminal Code expressly acknowledges Aboriginal and Torres Strait islander traditions and customs in determining acts of consorting between close family relationships (see new section 77C (Particular acts of consorting to be disregarded) of the Criminal Code); and • The Bill expressly requires that the consorting offence and associated police powers be reviewed five years after the regime's commencement and that the review be done by a retired Supreme or District Court Judge. In undertaking the review consideration must be given to whether any demographic has been disproportionately or adversely affected by the consorting provisions (see clause 139 (Insertion of new pt 9, ch 96 Criminal Code) of the Bill).
Clause 141 (Insertion of a new Part 2, Chapter 9A Consorting in the Criminal Code) **The threshold for becoming a 'recognised offender' is too low.**	034 – Law and Justice Institute Queensland The submission cites the recommendation of the Taskforce majority that a consorting offence should not apply to persons convicted of objectively low-level offences. The submission recommends that if the offence is retained *'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.'* 036 – Judy Andrews Ms Andrew's is concerned that the current definition of recognised offender, which captures a person convicted of an indictable offence punishable by a maximum penalty of five years imprisonment is 'dangerously wide' and could capture people convicted of graffiti offences.	The threshold for activation of the new consorting offence regime is a policy decision by the Government. The Department notes that the threshold under the Bill is higher than in NSW (the Bill provides that the person must have a recorded conviction for an indictable offence punishable by a maximum penalty of at least five years imprisonment (or an indictable offence otherwise prescribed by legislation, which is often associated with organised crime) whereas in NSW the threshold is ***any*** indictable offence).

	044 – Queensland Council for Civil Liberties The QCCL notes the recommendation of the Taskforce majority that the offence should be limited so as not to apply to people convicted of 'objectively low level' offences. The submission notes that the threshold is higher than that for the NSW offence but recommends that if the offence is retained, the definition of 'recognised offender' should be limited to people with convictions for the most serious offences, for example, punishable by a maximum penalty of 15 years imprisonment.	
Clause 141 (Insertion of a new Part 2, Chapter 9A Consorting in the Criminal Code) **When does a person cease to be a recognised offender?**	025 – Ian Leftley The submission asks if there is any limitation as to how long a person can be seen to be a recognised offender.	The definition of a 'recognised offender' in the Bill specifically excludes convictions that are 'spent' convictions. A 'spent conviction' is a conviction for which the 'rehabilitation period' under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired and is not 'revived' by section 11 of that Act. A conviction can become 'spent' if the penalty the offender received upon conviction was 30 months imprisonment or less. The rehabilitation period for an adult convicted on indictment is 10 years. The rehabilitation period for an adult summarily convicted or a person convicted as a juvenile is 5 years. A subsequent conviction for an indictable offence will 'revive' a spent conviction. Persons convicted of offences for which they are sentenced to a term of imprisonment greater than 30 months cannot have their convictions 'spent' and will therefore always be recognised offenders.

Clause 141 (Insertion of a new Part 2, Chapter 9A Consorting in the Criminal Code) **Reversal of the onus of proof.**	The following submissions objected to the reversal of the onus of proof in the defence at new section 77C of the Criminal Code: 030 – The Greens Queensland 041 - Queensland Council for Civil Liberties	The Department notes page 37 of the Explanatory Notes, which provides the justification for the reversal of the onus of proof in these circumstances.
Clause 141 (Insertion of a new Part 2, Chapter 9A Consorting in the Criminal Code) **The acts of consorting required to be disregarded under the Bill is too narrow.**	032 – Queensland Law Society The submission states that the list does not capture a complete range of circumstances in which consorting could be reasonable. It is submitted that the list should be expanded to include: – participating in legitimate political, social or industrial advocacy and protest; and – accessing a welfare or support service.	The High Court of Australia in *Tajjour*, when considering the NSW consorting offence (upon which the proposed Queensland offence is based) specifically considered providing for a defence preserving acts of legitimate political communication like that suggested by the QLS. In *obiter* Justices Crennnan, Keifel and Bell, at paragraph 121 of the case, commented: *'Putting aside difficulties in drafting a defence of that kind, such a defence would be easily claimed but difficult to investigate, test or challenge, both factually and legally. This would be especially so if the prosecution were required to negative the claim once raised. In reality, the defence would create a gap which is readily capable of exploitation.'* The Department notes that the NSW Ombudsman recommended that the defences to the NSW offence be widened to include access to a welfare or support services (Recommendation 12 of the NSW Ombudsman's Report). 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 wide 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 service for a dependent child is an act of consorting that must be disregarded pursuant to new section 77C (Particular acts of consorting to be disregard) under the Bill.
Clause 141 (Insertion of a new Part 2, Chapter 9A Consorting in the Criminal Code) **The absence of general 'reasonable excuse' defence.**	032 – Law and Justice Institute (Qld) Inc. The submission notes that the Taskforce majority considered that a general 'reasonable excuse' defence should be included as part of its recommended offence. The submission states that if the offence is to be maintained *'a general defence would be an appropriate safeguard'*. 041 – Queensland Council of Civil Liberties The submission notes the Taskforce recommendation for the inclusion of this defence. The submission states that such a defence is necessary "to ensure that everyday lawful conduct does not equate to consorting". The submission also asserts that a general defence is crucial in avoiding "absurd situations".	While the Taskforce Report refers to the inclusion of a general defence of reasonable excuse, in addition to the specific list of conduct to be disregarded (see page 198 of the Report), the Department notes that the NSW offence, upon which the Queensland approach is based, does not. The absence of a general reasonable excuse provision is a policy decision of the Government.
Clause 316 (Insertion of new chp 2, pt 6A 'Prevention of Consorting', in the *Police Powers and Responsibilities Act 2000*). **The lack of an ability to review or appeal**	027 – Stewy Worth The submission is concerned that there is no procedural fairness when a pre-emptive warning is issued. 032 – Queensland Law Society The QLS states that the absence of a 'clear, low-cost review mechanism' for the issuing of official warnings is 'problematic' particularly in light of the findings of the NSW Ombudsman that there was a high error rate in that jurisdiction.	It is correct that there is no specific mechanism for challenging the issuing of an official warning. Similarly, NSW does not provide for a specific appeal mechanism for the issuing of official warnings in that jurisdiction. The giving of an official warning is not analogous to the issuing of a traffic infringement notice because the giving of an official warning of 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

the issuing of an official warning.	The submission recommends that a mechanism similar to that provided for traffic infringement notices be provided that would allow a person to challenge the issue of the official warning in court.	impose a significant resource burden on the QPS and the courts to, objectively, very little end in all of the circumstances. The Bill provides that the giving an official warning is an 'enforcement act' under the PPRA (see discussion above) and a person given a warning has the right to request a copy of the information recorded on the enforcement register. Anyone charged with the offence of habitually consorting will have an opportunity to challenge the efficacy of any of the official warnings given to them as a normal part of the criminal justice process. Further, the ordinary rights of appeal against conviction remain open also.
Clause 316 (Insertion of new chp 2, pt 6A 'Prevention of Consorting', in the *Police Powers and Responsibilities Act 2000*). **By what standard must a police officer consider the objects of the new offence before issuing an official warning?**	034 – Law and Justice Institute (Qld) The submission raises a concern about there being no standard to which a police officer must consider the objects in section 53BAC(3) before giving the warning.	New Section 53BAC (Police powers for giving official warning for consorting) of the PPRA provides **that before giving an official warning the officer must consider** whether it is appropriate to give the warning having regard to the object of disrupting and preventing criminal activity by deterring recognised offenders from establishing maintain or expanding a criminal network. The submission is correct in that there is no prescribed standard by which a police officer must consider those objects and new section 53BAC(8) (Police powers for giving official warning for consorting) of the PPRA provides that a failure by an officer to comply with the requirement does not affect the validity of an official warning for consorting. The Department notes that this kind of provision is not unique to Queensland's statute book. A similar provision exists at section 11 (Police officer to consider alternative to proceeding against child) of the *Youth Justice Act 1992*, which provides that a police officer must consider alternatives to proceeding against a child (i.e. diversionary measures that would avoid them coming into further contact with the criminal justice system).

		These type of provisions serve as important signals from the Parliament as to how it intends police to exercise their powers in specific instances.
Clause 279 (Insertion of new pt 9D) 'Serious and organised crime' in the *Penalties and Sentences Act 1992*. **The option of a control order in sentencing someone convicted of consorting.**	023 – Associate Professor Mark Lauchs The submission asserts that providing a sentencing court with the power to place a person convicted of the habitual consorting offence on a control order 'seems extreme'.	Control orders are discussed in more detail below. However, the Department notes that in the context of a person convicted of habitually consorting, the Bill makes the imposition of a control order a matter of discretion for the sentencing judge and restricts the types of conditions as compared to other control orders more generally (i.e. the conditions are limited to prohibiting association with certain persons or prohibiting the entering or being in certain places (see new section 161U (Conditions) of the *Penalties and Sentences Act 1992*). This approach is consistent with the extent of the conditions that may be placed upon a person convicted of the NSW consorting offence pursuant to section 17A (Non-association and place restriction orders) of the *Crimes (Sentencing Procedure) Act 1999* (NSW).
Creation of a new Public Safety Protection Order scheme: Restricted Premises Orders, Public Safety Orders, Fortification Removal Orders and Stop & Desist Notices		
Public Safety Orders		
Clause 267 (Replacement of Part 4 (Miscellaneous provisions)) **New section 25 of the *Peace and Good Behaviour Act 1982* (Senior police officer**	020 – Queensland Police Commissioned Officers' Union of Employees The submission appears to raise a number of concerns about police officers having to make applications to a court for the proposed public safety protection orders.	The public safety order regime in the Bill provides for short term orders of up to seven days to be issued by a Commissioned police officer and orders greater than seven days, and up to six months, to be issued by a Magistrates Court. The making of a long duration public safety order will have a significant impact on an individual's fundamental rights of free movement and association. Providing that such orders be made by an independent judicial officer promotes public confidence in the legitimacy of the criminal justice system.

may apply for public safety order).		
Clause 267 (Replacement of Part 4 (Miscellaneous provisions)) **Test for the making of a public safety order (court-ordered or police-issued).**	023 – Associate Professor Mark Lauchs With respect to public safety orders the submission states: *'There seems to be no criteria for qualifying as the respondent of such an order'*	This statement in the submission is incorrect. Proposed new section 17(1) (Commissioned officer may make public safety) of the *Peace and Good Behaviour Act 1982,* sets out the criteria that a commissioned police officer must be satisfied of before making a public safety order, namely: • the presence of the respondent at a premises or event, or within an area, poses a serious risk to public safety or security; • it is more appropriate for the commissioned officer to make the order than apply to the court for an order for a longer duration; and • making the order is more appropriate in the circumstances. Also, proposed new section 17(3) expressly provides a list of matters that the Commissioned officer must take into account when considering whether to make the order. Further, proposed new section 27(1) (Court may make public safety order) of the Peace and Good Behaviour Act sets out the criteria that a Magistrate must be satisfied of before making a public safety order, namely: • the presence of the respondent at a premises or event, or within an area, poses a serious risk to public safety or security; and • making the order is more appropriate in the circumstances.

		Also, proposed section 27(2) expressly sets out a list of matters the Magistrate must have regard to when considering whether to make the order.
Clause 267 (Replacement of Part 4 (Miscellaneous provisions)) **Opposition to police-issued public safety orders.**	032 – Queensland Law Society The submissions states that it would be more appropriate for all public safety orders to be made by a Court rather than a Commissioned officer.	The Department notes that the Explanatory Notes to the Bill indicate that allowing commissioned police officers to make public safety orders of up to seven days in duration will allow the QPS to protect public safety and security on an immediate basis in circumstances where applying to a Court for an order is simply not practical. The hybrid public safety order regime under the Bill (i.e. the combination of police-issued orders followed by court made orders) is a policy decision of the Government.
Clause 267 (Replacement of Part 4 (Miscellaneous provisions)) **Scope of the conditions that may be imposed under a public safety order.**	032 – Queensland Law Society The submission raises concerns about the breadth of the conditions that can be included in public safety orders issued by either a Commissioned police officer or a Magistrates Court.	Proposed new sections 18 (Conditions) and 28 (Conditions) of the Peace and Good Behaviour Act provide that a public safety order can prohibit a person from doing or attempting to do any of the following, while the order is in force: • entering or remaining at a stated premises; • attending or remaining at a stated event; • entering or remaining in a stated area; or • doing a stated thing in a stated area. These conditions are considered necessary to enable the protection of the public from a serious risk to public safety or security that has been identified by a commissioned police officer or a Magistrate. The conditions are broadly consistent with the conditions that can be made in South Australia and NSW.
Clause 267 (Replacement of Part	032 – Queensland Law Society	Only a senior police officer can make an application to the court to vary or revoke a public safety order.

4 (Miscellaneous provisions)) **Only a senior police officer can apply to the court to vary or revoke a public safety order.**	The submission is concerned that a respondent to a public safety order has no right to apply to the court to vary or revoke an order.	Public Safety Orders made by commissioned police officers can only be for a duration of up to seven days. Public Safety Orders made by a Magistrate can only be for up to six months. It would be administratively and financially burdensome on the QPS to allow numerous court applications for variation or revocation of the orders during such short time periods. Respondents have full rights to appeal against the making of public safety orders that are longer than 72 hours in length (see proposed new section 88 (Who may appeal) subsection (a)(i) of the Peace and Good Behaviour Act).
Clause 267 (Replacement of Part 4 (Miscellaneous provisions)) **Absence of appeal rights for public safety orders less than 72 hours.**	032 – Queensland Law Society The submission raises concern that there is no right of review or appeal against an order imposed for 72 hours or less.	It would not be practicable to allow an appeal of orders of such short duration as the appeal would likely not be able to be resolved before the expiry of the order. However, it is notable that there is no prohibition in the Bill on a respondent seeking a declaratory remedy in an application for a judicial review of a decision to make a public safety order of less than 72 hours in the length. The Bill provides that the Commissioner of Police must record certain particulars with respect to each public safety order that is made by a Commissioned Police Officer (see proposed new section 24 (Records to be kept) of the Peace and Good Behaviour Act). The Bill also provides the PIM must report annually to the Ministers responsible for the PPRA and the Peace and Good Behaviour Act on the use of public safety orders generally and that report must be tabled in Parliament. Further, the Bill provides for a review by a retired Supreme or District Court Judge of all of the new orders that have been placed into the Peace and Good Behaviour Act (including the public safety orders) five years after commencement.

Restricted Premises Orders		
Clause 267 (Replacement of Part 4 (Miscellaneous provisions)). **General concerns about the efficacy of the restricted premises order scheme**	035 – United Motorcycle Council Queensland The submission states that because of restricted premises orders motorcycle clubs, *'will have no option other than to congregate in public areas and attend public venues such as restaurants and other licensed venues'.* 037 – Andrea Gray Ms Gray states, *'Why ban clubhouses when you have footy clubs etc that crime can happen at [sic]. What about ban churches cause of the priests [sic]. This is total discrimination to hit motorcyclists for their clubhouses. If the police believe crime is happening their raids the place [sic]. But first make sure there is evidence to substantiate this. Basically what it all comes down to is nobody or nowhere should be shut down on a politicians say so. It should be on evidence on crimes going on and then fought in a court of law'.*	Restricted premises orders proposed in the Bill are not restricted to any particular type of club or residence (however licensed premises are excluded). Proposed new section 36 (Court may make restricted premises order) of the Peace and Good Behaviour Act provides that a Magistrates Court can make an order over any type of premises where they are satisfied that a senior police officer holds a reasonable suspicion that 'disorderly activities' take place at the premises and are likely to take place again and the Magistrates Court considers that it is appropriate in the circumstances. The provision sets out the matters that a Magistrates Court must have regard to when considering whether to make an order. The Bill does provide for certain premises to be automatically declared to be 'restricted premises' under the new scheme for a period of two years after the commencement of these provisions (see new Part 4, Division 3 (Prescribed places) of the Peace and Good Behaviour Act). That is, those premises that are currently prescribed places under the Criminal Code (Criminal Organisations) Regulation 2013 (i.e. often referred to as the currently 'closed' bikie clubhouses). A senior police officer can apply to the Magistrates Court for an extension of the restricted premises order beyond that two year period for these particular premises only.
Clause 267 (Replacement of Part 4 (Miscellaneous provisions)).	027 – Stewy Worth The submission is concerned that there is no provision excluding private residences from the restricted premises order scheme.	The Bill provides that a restricted premises order does not prevent a respondent to the order entering their own principal place of residence (see new section 37(Conditions) of the Peace and Good Behaviour Act).

Whether the scheme excludes private residences?		There is no restriction on a restricted premises order being made with respect to a private residence. The criteria set out in proposed new section 36 (Court may make restricted premises order) of the Peace and Good Behaviour Act will be applicable to all premises other than licensed premises. Conduct on licensed premises is appropriately regulated by the provisions of the *Liquor Act 1992* (Qld).
Clause 267 (Replacement of Part 4 (Miscellaneous provisions)). **Definition of 'Disorderly conduct'.**	032 – Queensland Law Society The submission states the following concerns that the breadth of the definition: • has the potential to be 'misused by overzealous policing'; • makes otherwise lawful activity unlawful; • may impact disproportionately on people with a mental illness, or who have an intellectual or cognitive impairment which may cause them to behave in a disorderly manner; • may impact disproportionately on Aboriginal and Torres Strait Islander people.	The new objects clause inserted into the Peace and Good Behaviour Act by clause 257 of the Bill makes it clear that the behaviour targeted by the Act (inclusive of restricted premises orders) is 'anti-social, disorderly or criminal conduct'. That is, the amendments in the Bill are explicitly targeted towards behaviour that is anti-social and disorderly but not necessarily criminal or unlawful. The Bill contains several accountability and oversight mechanisms to guard against the misuse of powers related to restricted premises orders. Clause 327 (Amendment of sch 6 (Dictionary) of the PPRA) of the Bill provides that the exercise of search powers related to restricted premises orders or pursuant to a related search warrant under the PPRA are 'enforcement acts' under the PPRA (as discussed above). The Bill provides for the information that has to be recorded in the enforcement register (see clause 329 (Amendment of sch 9 PPRA (Responsibilities Code)) of the Bill). A person who is the subject of search powers exercised pursuant to a restricted premises order may request a copy of the information contained on the enforcement register. Clause 327 (Amendment of sch 6 (Dictionary) of the PPRA) also provides that the seizure of a prohibited item pursuant to a restricted premises order is an enforcement act under the PPRA; and the Bill provides for the information that must be

		recorded in the enforcement register. A person who has had prohibited items seized pursuant to a restricted premises order may request a copy of the information contained on the enforcement register. As noted above, a Magistrate can only make a restricted premises order if they are satisfied that making the order is '*appropriate in the circumstances*'. Also a Magistrate *must* have regard to a number of factors when deciding whether to make an order. Those factors are: • the extent to which the premises are open to the public; • the extent to which disorderly activities habitually take place at the premises; • the extent to which the order will reduce the risk to public safety caused by disorderly activities taking place at the premises; and • the extent to which making the order will assist in achieving the objects of the act. The criteria set out above 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. New section 98 (Review of the Act) of the Peace and Good Behaviour Act provides that the operation of all the new orders (including restricted premises order) created by the Bill will be reviewed by a retired Supreme or District Court judge five years after commencement; and specifically provides that in conducting the review, the reviewer must consider whether any demographic has been disproportionately or adversely affected.

Clause 267 (Replacement of Part 4 (Miscellaneous provisions)). **Definition of 'Disorderly conduct' - entertainment of a demoralising character.**	023 – Associate Professor Mark Lauchs The submission criticises the use of the phrase 'entertainment of a demoralising character' stating, *'It seems particularly puritan and anachronistic provision that has basis in crime prevention [sic]. I would recommend that it be removed as having no purpose other than the policing of public morals'*. 032 – Queensland Law Society The submission raised the possibility that because 'entertainment of a demoralising character' is undefined it could include a performance of 'Waiting for Godot' by Samuel Beckett.	The definition of 'disorderly conduct' under new section 33 (Definitions for part) of the Peace and Good Behaviour Act uses the phrase 'entertainment of demoralising character' in subsection (a) of the definition. The phrase is also used in section 3 (Declaration by Supreme Court or District Court in relation to premises) of the *Restricted Premises Act 1943* (NSW). This is the scheme upon which the restricted premises orders in the Bill are based. The phrase is not defined in the NSW legislation. It is considered that to attempt to define this phrase, or indeed the other terms used in new section 33, such as 'drunkenness', 'disorderly or indecent conduct', may unduly restrict the application of the provision. The preference is to allow the court to interpret this and the other terms applying the generally understood principles of statutory interpretation. That is, this phrase will be given its ordinary and natural meaning interpreted with reference to the objects of the Act in which they are contained (see the new objects clause for the Peace and Good Behaviour Act at clause 257 of the Bill) and the surrounding words of the provision.
Clause 267 (Replacement of Part 4 (Miscellaneous provisions)). **Definition of 'Prohibited Item'.**	032 – Queensland Law Society The submission raises concerns that the breadth of this definition unfairly targets adult entertainment, the liquor and gaming industries.	The restricted premises order regime is not applicable to licensed premises. Proposed new section 34 (Senior police officer may apply for restricted premises order) of the Peace and Good Behaviour Act provides that a senior officer may apply for a restricted premises order for premises *'other than licensed premises'*. The term 'licensed premises' is defined in the new section 34 (Senior police officer may apply for restricted premises order) in accordance with section 4 (Definitions) of the *Liquor Act 1992 (Qld)*.

		Section 4 of the *Liquor Act 1992 (Qld)* provides that a licensed premises is a premises to which a license under that Act relates and includes a premises approved under section 125 (Temporary authority) of the Act. The Liquor Act regulates appropriate conduct on licensed premises.
Clause 267 (Replacement of Part 4 (Miscellaneous provisions)) **New section 34 of the *Peace and Good Behaviour Act 1982* (Senior police officer may apply for restricted premises order)**	020 – Queensland Police Commissioned Officers' Union of Employees The submission appears to raise a number of concerns about police having to make applications to court for public safety protection orders. 032- Queensland Law Society The submission suggests that the rank of the officer making the application is too low.	A 'senior police officer' is defined in the proposed new Dictionary at schedule 1 of the Peace and Good Behaviour Act as a 'police officer of or above the rank of sergeant'. This is consistent with the rank of a NSW police officer who can make an application to the District or Supreme Court in NSW for a restricted premises declaration pursuant to the *Restricted Premises Act 1943* (NSW). It is considered that a police officer of the rank of Sergeant or above has the appropriate degree of seniority and experience necessary to make the application to a Magistrates Court for a restricted premises order.
Clause 267 (Replacement of Part 4 (Miscellaneous provisions)) **Opposition to the mandatory nature of certain conditions of the restricted premises order.**	032 – Queensland Law Society The submission objects to the requirement that certain conditions *must* be contained in a restricted premises order made by the Magistrates Court because it unnecessarily limits the Court's discretion.	The mandatory nature of the conditions in new section 37(Conditions) of the Peace and Good Behaviour Act are necessary to give a respondent to the order notice of the behaviour that is prohibited and that will amount to an indictable offence pursuant to new section 54 (Offence by owner or occupier of restricted premises) of the Peace and Good Behaviour Act.
Clause 267 (Replacement of Part	032 – Queensland Law Society	The Department notes that a respondent's appeal rights are retained under the Bill (i.e. the Bill expressly provides that a respondent to a restricted premises order has the right to

4 (Miscellaneous provisions)) **Only a senior police officer can apply to the court to vary or revoke a restricted premises order.**	The submission is concerned that a respondent to a restricted premises order has no right to apply for a variation or revocation of a restricted premises order.	appeal an order made against them by a Magistrate to the District Court (see new section 88 (Who may appeal) subsection (a)(ii) of the Peace and Good Behaviour Act).
Clause 267 (Replacement of Part 4 (Miscellaneous provisions)) **Potential for the extension of the declaration relating to the automatically declared premises (i.e. the currently 'closed' bikie clubhouses).**	032 – Queensland Law Society The submission is concerned that the Magistrates Court *must* order an extension of the restricted premises order if satisfied '*of the same matters provided for in the original application*'. The submission goes on to state that this may result in an effective reversal of proof because unless the respondent could demonstrate that something had changed since the making of the order the court would be obliged to extend it.	The section referred to by the QLS is new section 45 (Court may make extension order) of the Peace and Good Behaviour Act. This section only applies to premises that the Bill provides will be automatically declared to be restricted premises at clause 269 (Insertion of new s 11A) of the Bill. These premises are the premises that are currently prescribed places under the Criminal Code (Criminal Organisations) Regulation 2013. As noted at page 41 of the Explanatory Notes this declaration of premises is in accordance with the Government's commitment to provide a seamless and safe transition from the 2013 measures to the new Organised Crime Regime. New section 45 (Court may make extension order) of the Peace and Good Behaviour Act provides that the court must make the extension order if the court is satisfied that: • one or more disorderly activities have taken place at the premises, whether before or after the commencement of these provision in the Bill; and • if the court did not grant the order, one or more disorderly activities would be likely to take place against at the premises; and • making the order is appropriate in the circumstances.

		Further, proposed new section 45 (Court may make extension order) of the Peace and Good Behaviour Act provides that in deciding whether to make the extension order the court must have regard to: • the extent to which the premises are open to the public; • the extent to which disorderly activities habitually take place at the premises; • the extent to which the order will reduce the risk to public safety caused by disorderly activities taking place at the premises; and • the extent to which making the order will assist in achieving the objects of the Act.
Clause 267 (Replacement of Part 4 (Miscellaneous provisions)) **Warrantless search powers.**	032 – Queensland Law Society The submission raises the following concerns about this section: • the interference with an individual's right to privacy and quiet enjoyment of their home is not justified by the objects of the Act; • allowing for unlimited searches and seizures on premises may facilitate 'baseless harassment' of individuals who have not committed any criminal offence; and • the 'prohibited items' which may be seized may otherwise be lawful items and there is no requirement that they be linked to the commission of an offence. 034 – Law and Justice Institute (Qld) The submission states that this provision 'represents a profound shift in police powers in Queensland' and is 'open to abuse by Police'. The submission recommends that this amendment	Proposed new section 49 (Searching restricted premises without warrant) of the Peace and Good Behaviour Act does provide police with the power to search a premises subject to a restricted premises order without a warrant from time to time as occasion requires whilst the restricted premises order is in force. It also gives police powers while they are searching the premise to: seize prohibited items; search a person for anything that may be evidence of an offence; and photograph evidence of disorderly activities. The justification for providing for warrantless searches of premises subject to a restricted premises order is set out at page 42 of the Explanatory Notes. As noted above, the Bill contains several accountability and oversight mechanism to guard against the misuse of powers related to restricted premises orders. Clause 327 (Amendment of sch 6 (Dictionary) PPRA) of the Bill provides that the exercise of search powers related to

	should not be passed and if it is passed it should be amended to provide that police must obtain a search warrant on each occasion.	restricted premises orders or pursuant to a related search warrant under the PPRA are 'enforcement acts' under the PPRA. The Bill provides for the information that has to be recorded in the enforcement register (see clause 329 (Amendment of sch 9 PPRA (Responsibilities code) of the Bill). A person who is the subject of search powers exercised pursuant to a restricted premises order may request a copy of the information contained on the enforcement register. Clause 327 (Amendment of sch 6 PPRA (Dictionary)) also provides that the seizure of a prohibited item pursuant to a restricted premises order is an enforcement act under the PPRA. The Bill provides for the information that must be recorded in the enforcement register. A person who has had prohibited items seized pursuant to a restricted premises order may request a copy of the information contained on the enforcement register. The provisions under the Bill are based on analogous provisions under the NSW scheme in providing NSW police with unlimited powers to search premises that are subject to a declaration (see section 10 (Entry by police) of the *Restricted Premises Act 1943* (NSW)). The Bill also provides for the review of the Public Safety Protection Order scheme (the package of three orders) by a retired Supreme or District Court judge five years after commencement.
Clause 267 (Replacement of Part 4 (Miscellaneous provisions))	032 – Queensland Law Society The submission is concerned that the grounds on which a prohibited item may be returned are limited to when the seizure is unlawful under the Act.	Proposed new section 51(Court may order return of prohibited item) of the Peace and Good Behaviour Act sets out the criteria that a Magistrates Court must be satisfied of before ordering the return of a seized item. The criteria is slightly different depending on whether the item is seized from a premises pursuant to a restricted premises

New section 51 of the *Peace and Good Behaviour Act 1982* (Court may order return of prohibited item).		order or pursuant to a search warrant obtained under the PPRA. For premises that were searched pursuant to a restricted premises order, before ordering the return of a seized item the Magistrates Court must be satisfied that the seizure of the item was not lawful, for example, the item seized was not a 'prohibited item'. For premises that were searched pursuant to a PPRA search warrant, before ordering the return of a seized item the Magistrates Court must be satisfied that the disorderly activities forming the grounds on which the warrant was sought were not taking place on the premises.
Clause 267 (Replacement of Part 4 (Miscellaneous provisions)) **The offence provision – contravention of a restricted premises order**	032 – Queensland Law Society The submission raises concerns about the structure of the offence at proposed new section 54 because in subsection (1)(c) the provision refers to disorderly activity that 'has taken place'. The submission is concerned that this makes a person liable for disorderly activity that an owner or occupier learns about after the fact which could result problems either in prosecuting or defending the charged offence.	Proposed new section 54(1)(c) (Offence by owner or occupier of restricted premises) of the Peace and Good Behaviour Act is to be read conjunctively with sections 54(1)(a) and 54(1)(b). The provision expressly provides for conjunctive interpretation by using the word 'and' between each subsection. Section 54(1) when read together provides that an owner or occupier of a 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.

		Therefore the reference to the activity that 'has **taken** place' in subsection c) is referring to the _disorderly activity *'that **takes** place'* in subsection (b).
Clause 319 (Amendment of section 150 of the *Police Powers and Responsibilities Act 2000*) **Amendments allowing a search warrant application to be made if a senior police officer reasonably believes that one or more disorderly activities have taken place and are likely to take place again.**	023 – Associate Professor Mark Lauchs The submission states that *'the allocation of this power to the unreviewed level or sergeant expands the likelihood that the power could be abused'*.	Clauses 319 (Amendment of s 150 (Search Warrant application)), 320 (Replacement of s 151 (Issue of search warrant)) and 321 (Amendment of s 156 (What a warrant must state)) amend the PPRA to provide that a senior police officer may apply to Magistrate or Judge for a search warrant where the officer *reasonably believes* one or more disorderly activities have taken place and are likely to take place again, in order to find evidence of prohibited items at a premises. Applying for the search warrant will requires the police officer to swear his or her reasonable belief to a Magistrate or Judge. Knowingly swearing false information could result in the police officer facing criminal charges. Should a member of the community feel they are unfairly treated by any police officer they have a number of options to seek redress, including formal complaints to the QPS Ethical Standards Command, the Crime and Corruption Commission and police supervisors.
Fortification Removal Orders		
Clause 267 (Replacement of Part 4 (Miscellaneous provisions)).	032 – Queensland Law Society The submission is concerned that the definition of fortification is 'overly broad'.	The definition of 'fortification' at new section 56 (Definitions for part) of the Peace and Good Behaviour Act is a broad definition. However, in order to make a fortification removal order it is not enough for a Court to be satisfied that a premises merely has a 'fortification'. Proposed new section 60 (Court may make fortification removal order) of the Peace and Good Behaviour Act sets out

Definition of fortification.		the criteria that the Magistrates Court must be satisfied of, that is: • the premises has a fortification; ***and*** • the fortified premises are connected with serious criminal activity or habitually occupied by a criminal organisation, recognised offenders or associates of recognised offenders; ***and*** • the extent and nature of the fortification is excessive for the lawful use of that type of premises; ***and*** • making the order is appropriate in the circumstances.
Clause 267 (Replacement of Part 4 (Miscellaneous provisions)). **New section 58 of the *Peace and Good Behaviour Act 1982* (Senior police officer may apply for restricted premises order).**	020 – Queensland Police Commissioned Officers' Union of Employees The submission appears to raise a number of concerns about police having to make applications to court for public safety protection orders.	A fortification removal order enables a person's property to be altered causing possible damage to the property and also allows fortifications to be removed by force and forfeited to the State. NSW, South Australia, Northern Territory and Victoria all provide for court-ordered fortification removal schemes. Only Western Australia has a police issued model. Currently, Queensland's fortification removal order scheme is contained in the *Criminal Organisation Act 2009.* Page 221 of the Statutory Review of the *Criminal Organisation Act 2009*, undertaken by the Honourable Alan Wilson QC, states: *'A free society such as ours which values individual freedoms and liberties should not allow such rights to be infringed without justification, and the courts are uniquely placed to determine whether such a justification exists in any particular scenario. For that reason,* ***if fortification removal orders are to remain they should continue to be granted by a court. To this end, fortification removal orders may be removed into other legislation allowing***

		preventative orders made by a court, such as the Peace and Good Behaviour Act 1982. ' (emphasis added) The Bill does provide commissioned police officers with the power to issue a 'stop and desist notice' that will allow police to respond immediately to excessive fortifications that they observe being created (see new section 76 (Power to give stop and desist notice) of the Peace and Good Behaviour Act).

Clause 267 (Replacement of Part 4 (Miscellaneous provisions)). **The threshold for making a fortification removal order.**	027 – Stewy Worth The submission states that whether a property is forfeited to an extent that is excessive for the lawful use of those premises is an entirely subjective matter and is concerned that the orders infringe on the submitter's '*common law right to defend myself, my family and my property at all times*'. The submission further suggests that a police officer or a Magistrate are not in a position to determine the reason a person chooses to fortify their property. 023 – Associate Professor Mark Lauchs The submission states *'It is bizarre that you would allow crime to continue long enough on a premises to need a fortification removal order*'.	The Department notes, as raised above, to make a fortification removal order a Magistrates Court must be satisfied that the extent and nature of the fortification on a premises is excessive for the lawful use of that type of premises and that making the order is appropriate in the circumstances. This criteria allows a Magistrates Court to take into account matters that are subjective to the particular type of premises that is the subject of an application for a fortification removal order. Also new section 60 (Court may make fortification removal order) of the Peace and Good Behaviour Act sets out matters which the Magistrates Court must have regard to when considering whether to make a restricted premises order, namely: • the extent to which the premises are open to the public; • the extent to which disorderly activities habitually take place at the premises; • the extent to which the order will reduce the risk to public safety caused by disorderly activities taking place at the premises; and • the extent to which making the order will assist in achieving the objects of the Act. Most Australian jurisdictions have provisions for fortification removal orders. The Department also notes that the basis for obtaining a fortification order does not necessarily require there to have been criminal activity occurring on a premises.
Clause 267 (Replacement of Part	032 – Queensland Law Society	The Department notes that the Bill provides that a respondent to a fortification removal order has the right to appeal an order

4 (Miscellaneous provisions)). **Variation and revocation.**	The submission is concerned that a respondent to a fortification removal order does not have the right to apply to the Magistrates Court for a variation or revocation of the order.	made against them to the District Court (see proposed new section 88 (Who may appeal) subsection (a)(iii)).
A new Serious Organised Crime circumstance of aggravation with targeted mandatory sentencing regime		
Clause 279, new section 161Q of the Penalties and Sentences Act. **List of offence to which the circumstance of aggravation will apply.**	019 – Annie Mundy Ms Mundy addresses the inclusion of the Criminal Code prostitution-related offences under new Schedule 1C of the Penalties and Sentences Act (i.e. the list of offences to which the new circumstance of aggravation is to apply) and surmises that the policy underpinning their inclusion is the historical susceptibility of prostitution to manipulation by organised crime. Ms Mundy submits that this approach to confronting the infiltration of organised crime in the prostitution industry is a more effective approach to the current criminalisation of prostitution under the Criminal Code. Accordingly, Ms Mundy considers some of the existing offences, which she considers negatively impact upon the safety and wellbeing of sex workers, are redundant. The submission sets out a proposal to reform the regulation (and criminalisation) of prostitution in Queensland, for example to make it lawful for up to five sex workers to work together (outside of a licensed brothel) instead of the current requirement that only two people may do so.	The Department notes the submission's support for the inclusion of particular offences under the new Organised Crime Regime. The proposals to fundamentally change Queensland's prostitution laws are outside the scope of this Bill.
Clause 279, new sections 161Q and 161R of the Penalties and Sentences Act.	030 – The Greens Queensland The Queensland Greens oppose the inclusion of a mandatory sentencing regime for people convicted of a prescribed offence with the Serious Organised Crime circumstance of aggravation. The submission states that reducing sentencing options and	The Department highlights the analysis undertaken by the Taskforce regarding the debate that surrounds mandatory sentencing laws (see Chapter Thirteen of the Taskforce Report, in particular pages 229 – 239).

Opposition to mandatory sentencing (generally)	restricting judicial discretion is not in the public interest. The submission also states that mandatory sentencing has been almost universally condemned by legal groups, including the QLS and the QCCL. 034 – The Law & Justice Institute (Qld) Inc. The submission is opposed to mandatory sentencing and recommends the repeal of the targeted mandatory sentencing regime. It submits that while seven years imprisonment is less than 15 years, the imposition of a mandatory component to the sentence is entirely unjustified. It submits that there is a lack of evidence to suggest that mandatory sentences achieve effective deterrence, denunciation and consistency. It is said that these regimes often produce unjust results with significant economic and social costs. 041 – The Queensland Council for Civil Liberties The submission notes the analysis of the negative practical impacts of mandatory sentencing as articulated in the Report of the Taskforce on Organised Crime Legislation. It submits that while the reduction from 15 years imprisonment to seven years imprisonment is slightly less severe, the fundamental injustices and serious unfairness of mandatory sentencing remain under the regime.	The specifically targeted mandatory sentencing regime applicable to persons convicted of a prescribed offence with the Serious Organised Crime circumstance of aggravation is a policy decision of the Government (taking into account the recommendations of the Taskforce – see recommendations 22 to 29).
Clause 279, new sections 161Q and 161R of the Penalties and Sentences Act.	020 – The Queensland Police Commissioned Officers' Union of Employees The QPCOUE has concerns that the 'mandatory component' of the sentence prescribed under new section 161R of the *Penalties and Sentences Act 1992* when sentencing an offender convicted	The development of a targeted mandatory sentencing regime applicable to persons convicted of a prescribed offence with the Serious Organised Crime circumstance of aggravation is a policy decision of the Government (taking into account the recommendations of the Taskforce, in particular recommendation 27).

Duration of 'mandatory component'.	of a prescribed offence committed with the Serious Organised Crime circumstance of aggravation is not long enough. 034 – <u>The Law & Justice Institute (Qld) Inc.</u> The submission indicates that if a mandatory sentencing regime is to be retained under the Bill, the more appropriate approach, and the one more likely to produce more just results, is instead a percentage mandatory minimum non-parole regime. This will allow for individualised justice while still advancing the aims of the proposed legislation. 041 – <u>The Queensland Council for Civil Liberties</u> The QCCL draws attention to the comments of the Chief Justice of the High Court of Australia in *Kuczborski* (as quoted at page 111 of the Taskforce Report) that, '*under the VLAD Act, it is quite possible that a person who would not receive a custodial sentence in the lower range of seriousness would nevertheless…. be sentenced to a mandatory 25 years imprisonment.*' The submission considers the same can be said for the sentencing regime under the Bill; and notes the provision, included under the Bill, that in effect provides that if the 'base component' of the sentence does not require the offender to immediately serve a sentence of imprisonment in actual custody, the offender must immediately begin to serve the 'mandatory component' of the sentence, as evidence of this. The QCCL indicates that it *cannot emphasise enough the dangers presented by the new seven year mandatory 'minimum'*. It is said that the failure to implement key safeguards proposed by the Taskforce results in the continuation of harsh outcomes.	The Department notes the challenge highlighted by the Taskforce in this regard: *'What type of sentencing regime is robust enough to deter participation in criminal organisations and to effectively break the code of silence that often binds these groups, yet remains compatible with the rule of law which is at the core, and is the foundation of our criminal justice system?* *Accepting that organised crime is a serious problem and that 'cracking' it works best if its participants have an inducement to cooperate, the lack of relatively strong punishment, involving some precision (sufficient for an accused to identify that they faced, on any view, lengthy incarceration), could mean the loss of an appropriate deterrent/encouragement element.* *How much prison time is enough to secure cooperation by a person (recognising that some people will never cooperate)? And how should it be calculated?'* The Taskforce was divided on these issues and was unable to resolve this tension. Instead, the Taskforce elected to provide the Government with three options for its consideration and ultimate determination; without favouring one option over the other (see page 242 of its Report and recommendation 27). The Bill implements option 3 proposed by the Taskforce. The Department notes that in this regard the Taskforce identified five years imprisonment (even seven years) as the potential duration for the mandatory component of the sentence under option 3 (page 242 of its Report). The Bill provides for a mandatory component of seven years imprisonment.

	023 – Associate Professor Mark Lauchs The submission notes the legislative intention of the targeted sentencing regime and the benefits of such an approach as supported by law enforcement agencies (as part of the Taskforce Report) but seems to suggest that the same result could be achieved without the need to legislatively mandate the '*aggravated sentences*' (page 8).	
Clause 279, new sections 161Q, 161R and 161S of the Penalties and Sentences Act. **The need to provide cooperation of significant use in order to avoid the mandatory nature of the sentencing regime.**	034 – The Law & Justice Institute (Qld) Inc. The submission considers that the new sentencing regime not only strips away judicial discretion but it induces statements of cooperation without any consideration being given to the truth or reliability of the statements. It provides an opportunity to provide false information. For these reasons, this aspect of the sentencing regime should be omitted. Further, the submission expresses concern for the people who are so low in the chain of the organisation that they may not have any evidence to provide or evidence of sufficient calibre to meet the threshold requirements, despite the person being willing to cooperate. 041 – The Queensland Council for Civil Liberties The QCCL is concerned that the need to provide cooperation of significant use to law enforcement in order to avoid the mandatory nature of the sentencing regime, will provide strong incentive to provide false information in the hope of avoiding the severity of the sanction. The submission notes this was a concern of the Taskforce, in particular of the Bar Association of Queensland. The submission draws the Committee's attention to the use of 'supergrasses' in the United Kingdom in the 1970s and 1980s.	The Bill implements the unanimous recommendation of the Taskforce in this regard (see recommendation 28), including that the recommendation was made after its careful consideration and scrutiny of the effect of cooperation under the VLAD Act (pages 224 to 225).

Clause 279, new sections 161Q, 161R and 161S of the Penalties and Sentences Act. **The role of the Commissioner of Police in assessing co-operation.**	020 – The Queensland Police Commissioned Officers' Union of Employees Under the *Vicious Lawless Association Disestablishment Act 2013* (VLAD Act) a vicious lawless associate can only avoid the severity of the prescribed sentencing regime if they offer in writing to cooperate with law enforcement agencies in a proceeding about a declared offence and that cooperation is accepted in writing by the Commissioner of Police (section 9). The determination by the Commissioner is final and conclusive. The QPCOUE submits that this role for the Commissioner of Police should be retained.	The Bill implements the unanimous recommendation of the Taskforce in this regard; of which the QPCOUE was a member (see recommendation 28 of the Taskforce Report). The Taskforce Report also indicates that the decision to vest this discretion with the court was made with the support of the QPS from an operational perspective (page 223). The Department highlights the discussion at pages 223 to 224 of the Taskforce Report regarding the concerns about the role of the Commissioner of Police under the VLAD Act, in particular its conclusion that the constitutional validity of the approach is tentative (on the basis of the *Kable principles* – it could be argued that the role of the Commissioner of Police under the VLAD Act is a usurpation of judicial power). The Department also notes that the Taskforce specifically identified the removal of the power vested in the Commissioner of Police under the VLAD Act regime. The Taskforce recommended that this should be the responsibility of the sentencing court, as a fundamental point of distinction between the two approaches (page 239 of its Report).
Clause 279, new sections 161Q and 161S of the Penalties and Sentences Act. **Reliance upon existing sections 13A and 13B of the Penalties and Sentences Act – a lack of transparency in the process.**	034 - The Law & Justice Institute (Qld) Inc. The submissions expresses concern that by relying upon the processes established under existing sections 13A and 13B of the Penalties and Sentences Act (in terms of dealing with a person who cooperates), which include portions of the sentencing hearing being conducted in 'closed court', raises issues about accountability and transparency of the sentencing process. 041 – The Queensland Council for Civil Liberties	The Bill implements the unanimous recommendation of the Taskforce in this regard (see recommendation 28 of its Report). The Department also notes that section 13A of the Penalties and Sentences Act, as highlighted by the Taskforce (pages 216 and 224 of its Report), '*provides the longstanding means by which a person who cooperates can have their penalty significantly reduced in recognition of their assistance with authorities.*' As noted by the submissions, section 13A does require parts of the sentencing proceedings to be carried out in closed court,

	The submission refers to the Bill's reliance upon the processes under sections 13A and 13B of the Penalties and Sentences Act and expresses concern that a portion of the proceeding is to occur in 'closed court'; secret hearings have the propensity to spawn corruption and miscarriages of justice.	some of the sentencing remarks and submissions to be sealed by court order, and limits the publication of certain information. The fundamental premise underpinning section 13A (and the more recently inserted, section 13B of the Penalties and Sentences Act, which makes similar provision for informants that fall outside the ambit of section 13A, for example who cooperate but are not prepared to testify) is that: *'Ensuring the confidentiality of informants (people who cooperate with law enforcement agencies) is important to ensure the safety of the individual, to foster and encourage others to cooperate and to avoid the risk of jeopardising any ongoing investigations'* (page 224 of the Taskforce Report).
A new sentencing order: Organised Crime Control Orders		
Clause 279, new Part 9D, Division 3 **Opposition to the mandatory nature of the control order regime.**	034 – The Law & Justice Institute (Qld) Inc. The submission notes that the approach to control orders under the Bill differs to that in the other jurisdictions. The submission states that while it is acknowledged that the conviction-based control order regime will be specific to individual offenders rather than applying to an entire organisation, and to that extent is more evidence-based, the concern is that no consideration is given to a person's change in circumstances and association. That is, if a person has ended their criminal associations by the time of sentence the mandatory control order cannot be avoided. It submits that the nature of the conditions and whether or not to impose a control order should be a matter of judicial discretion entirely. 041 – The Queensland Council for Civil Liberties	The Bill implements the recommendation of the Taskforce (with the exception of the Bar Association of Queensland) that the punishment for a person convicted of a prescribed offence with the new Serious Organised Crime circumstance of aggravation, include the imposition of a mandatory Organised Crime Control Order (see recommendation 27 of its Report).

	The QCCL highlights that the Bar Association of Queensland did not support mandatory control orders and the submission echoes those concerns regarding its mandatory nature.	
Clause 279, new Part 9D, Division 3 **Discretionary control orders**	023 – Associate Professor Mark Lauchs The submission notes that control orders will be resource intensive. Associate Professor Lauchs seems to suggest (page 8) that: the evidentiary threshold for establishing a control order is too low, that the orders are based on future risk rather than proven criminal activity; the conditions are very wide and have the potential to impact on the freedom of association which is unjust; and that the control orders will '*probably not produce a public benefit.*' The submission also asserts that '*control orders probably cannot be enforced.*'	The Bill implements the unanimous recommendation of the Taskforce that a new sentencing order for Queensland be inserted into the *Penalties and Sentences Act 1992* targeting organised crime (see recommendation 30 of its Report). The Department notes that the discretionary control order regime under new Part 9D, Division 3 of the Penalties and Sentences Act, as inserted by the Bill, is limited in its application to a specific cohort of offenders (i.e. participants in a criminal organisation, those convicted of habitually consorting and/or those convicted of breaching a control order). The new sentencing order applies the same evidentiary standard of proof as applies under the Penalties and Sentences Act to any allegation of fact that is not admitted or that is challenged (for example when resolving a contested issues such as whether a person committed the offence for personal reasons or for commercial gain). That is, section 132C (Fact finding on sentencing) of the *Evidence Act 1977* applies. In particular, section 132C provides that the court may act on an allegation of fact if satisfied on the balance of probabilities that the allegation is true. The degree of satisfaction required varies according to the consequences, adverse to the person being sentenced, of finding the allegation to be true. Further, the discretionary control order provisions under the Bill retain the court's full discretion as to whether or not to impose the order; the conditions to be imposed; and the duration of the order itself up to the statutory maximum period (with the

		exception of a control order to be imposed for a conviction of habitually consorting where the potential scope of the sanction is limited to certain conditions only). The control orders are conviction-based and therefore anchored to proven criminal activity and the regime is framed so that the court can impose a tailored sanction determined on a case-by-case basis. The submission that the control order regime 'probably cannot be enforced' is incorrect. The Department notes that the Bill expressly provides for the associated police powers necessary to enforce the control order regime (see – Explanatory Notes page 127 to 129; and 134 to 136).
Clause 279, new Part 9D, Division 3 **Predicting future risk – post-sentence preventative measures**	036 – Judy Andrews The submissions opposes the mandatory nature of the control orders and expresses concern that the regime requires the court to predict future behaviour, rather than tailoring a sentence to fit the individual at that time. The submissions refers to the control order as a 'post-sentence measure'.	Protection of the community is a relevant sentencing consideration at common law (*Veen v The Queen [No. 2]* (1998) 164 CLR 465, 467) and this basic proposition is also enshrined in Queensland under the Penalties and Sentences Act (see for example, section 9). The general law of sentencing reveals that punishment and prevention are not isolated from each other. For example, the comments of a number of judges in *Thomas v Mowbray* (2007) 233 CLR 307, support this: • Prevention *looms large in sentencing after the determination of criminal guilt* (page 355 [109]); and • The *predictive exercise* of considering *protection of the public is frequently an important, sometimes the most important of the considerations in the selection of an appropriate sentence of a criminal* (page 507 [595]. The Department also notes that the new control order regime, whether mandatorily imposed or discretionary, is not a post-sentence initiative (as compared, for example, to the supervision orders under the *Dangerous Prisoners (Sexual*

		Offenders) Act 2003) but rather is a post-conviction initiative that constitutes a new sentencing order for Queensland. It is a form of sanction that will sit alongside the existing sanctions such as imprisonment, probation and community service orders.
Clause 279, new Part 9D, Division 3 **Impact upon a person's capacity to work.**	034 – The Law & Justice Institute (Qld) Inc The submission expresses concern about the impact of a control order upon a person's capacity to work, given the intention under the amendments relating to the occupational licensing and industry regulation reforms, to take into account the existence of a control order as part of the probity testing. 041 – The Queensland Council for Civil Liberties The submission highlights the potential impact of the control orders upon a person's capacity to work, given the intention under the amendments relating to the occupational licensing and industry regulation reforms, to take into account the existence of a control order as part of the probity testing. The QCCL notes the court's discretion in terms of setting the conditions of the order but nevertheless considers it will still unfairly impinge on a person's right to work or attain a licence to work in some industries/occupations.	The amendments to occupational licensing laws are intended to enhance procedural fairness in decision making, by focusing on a person's own conduct (including criminal history) in licensing decisions. In general terms, the Bill reflects that a control order issued against a person can be relevant in determining whether a particular person is suitable to be authorised to work in a particular occupation or industry. A control order, which is a serious sanction issued by a court in response to a person's behaviour and conduct, is comparable to other matters relevant to deciding whether a person should hold an occupational licence or other authority, such as the person's criminal convictions. In some cases, a court could decide that the terms of a control order itself should explicitly prohibit the affected person from engaging in a particular occupation. Alternatively, a more general control order may raise concerns for licensing authorities about a person's suitability to hold a licence or other authority. The Bill is intended to accommodate appropriate consideration of these issues as part of licensing frameworks.
Ban on the visible wearing or carrying of prohibited items (i.e. outlaw motorcycle gang 'colours') in licensed premises and public places		
Banning of colours in licensed premises	024 – Tony Lincoln The submission states: 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.	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.

Will social motorcycle clubs / political groups / other innocent groups be declared as identified organisations?	003 – Stephen Spencer The submission states: The laws will only hurt the old school clubs that ride motorcycles. The law should not target groups that are not breaking the law. 025 - Ian Leftley The submission states: Will it be a sporting club or a religious group that will have their uniform/traditional dress (read as "colours") banned from our society. 030 - The Greens Queensland The submission states: We are very concerned at the potential for abuse when the government of the day has the power to declare any such organisation by regulation. 035 - United Motorcycle Council Queensland The submission states: 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.	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

	036 – Judy Andrews The submission states: It is dangerous in that as well as presently limiting the freedom of citizens to freely choose their apparel, as 'prohibited items' are listed by regulation. This would permit a future government to prohibit items expressing political protest and opinion.	'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.
26 outlaw motor cycle gangs declared as criminal organisations under the *Criminal Code (Criminal Organisations) Regulation 2013*	025 - Ian Leftley The submission states: The declared clubs list was in fact flawed in the very way that it was assembled. How can a person be labelled a criminal just because others in the same organization (or wear the same "colours") have committed a crime?	The Bill repeals the ability to declare 'criminal organisations' in the Criminal *Code (Criminal Organisations) Regulation 2013*, after 2 years. However, 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 by 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. The legislation will not label a person or organisation as a criminal. The Bill only makes the wearing of prohibited items associated with identified organisations in public places an offence. A person can avoid offending by removing the prohibited item and storing it away from public view.
Separation of powers	025 - Ian Leftley The submission states: If there was in fact enough evidence (secret or otherwise) to find a club to be a criminal organization then the evidence should have been presented to a court of law with the accused ready to stand trial and defend themselves against these charges. This is the only way that the judicial system	The Government has the ability to determine what acts or omissions give rise to criminal responsibility in Queensland. This includes by prescribing an element of an offence, as is proposed by the Bill, where the wearing of prohibited items associated with an identified organisation prescribed in the *Liquor Regulation 2002* will give rise to an offence.

	has and can continue to work in this state/country. By allowing secret or sealed evidence to be admitted into a court of law you are taking away a person's fundamental right to defend themselves against, at this point unsubstantiated allegations." 037 – Andrea Gray The submission states: Laws take away the separation of powers between government, police and judicial system. It is not up to the politicians to be able to declare people, organisations. This is the duty of our judges in a court of law.	The legislation will not label a person or organisation as a criminal. The Bill only makes the wearing or carrying of prohibited items associated with identified organisations in public places an offence. A person can avoid offending by removing the prohibited item and storing it away from public view.
Prohibited items	023 – Assoc. Prof. Mark Lauchs The submission states that limiting the public wearing of colours or other club paraphernalia can reduce public fear. But 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 (Overdorf 2014), but it will not eliminate public intimidation. 043 – J Linnett The submission states: "*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.*"	A prohibited item will be defined under section 173EA of the *Liquor Act 1992*, as amended by the Bill, to mean an item of clothing or jewellery or an accessory that displays: • the name of a declared identified organisation; or • the club patch, insignia or logo of a declared identified organisation; or • any image, symbol, abbreviation, acronym or other form of writing that indicates membership of, or an association with, a declared identified organisation, including— o the symbol '1%'; and o the symbol '1%er'; and o any other image, symbol, abbreviation, acronym or other form of writing prescribed under a regulation. 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.
Right to appeal declaration as an identified organisation	026 – Ronald Germain, Life and Death Motorcycle Club The submission states: It is already bad enough that we are on the "Identified Organisation" list based on secret and untested allegations by police with no opportunity for Life And Death to appeal.	The process to declare an entity as an identified organisation does not require the Minister to provide an affected party with the opportunity to be heard prior to making a decision, nor does it expressly provide an avenue for an affected party to seek review of the Minister's decision. This approach is considered necessary and 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 public places.
Clause 398 **Justification for the banning of 'colours' in public places**	002 – April Adsett The submission queries whether banning 'colours' in public places will have any effect on stopping crime. The submission notes that it is "*not illegal to wear a swastika yet a club will be banned from wearing clothing*". Ms Adsett submits that the laws "*are yet another example of our diminishing rights and freedoms*". 005 – Dan Kelly	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 that OMCG and the member wearing them, as operating

	Mr Kelly submits that telling people what they can and cannot wear is a "*fascist* law". 009 – Samual Griffey The submission notes that "*colours and club identification is important to determine an individuals way of life so they are easier to observe"* and that persons "*should be allowed to wear the clothing of our choice*". 010 – Peter Felton Mr Felton submits that "*telling people what clothes they can and cannot wear is ludicrous.*" 011 – Harleys American MC Repair The submission notes that banning the wearing of motorcycle club insignias and vests is "*so far removed from…the publics'* [sic] *fundamental right to look a certain way*". 013 – Dallas Kingdom Mr Kingdom submits that "*there should never exist a law that says it is ok to tell me what cloths to wear and how to wear them*". The submission also notes: "*These laws are everything my government asked me to fight against when the* [sic] *removed me from my family and sent me overseas with a bunch of other likeminded individuals wearing the same colours and doing good things for the community.*" 017 – Anthony Teniswood	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.

	Mr Teniswood submits that the public fear and intimidation that is associated with OMCGs and colours are "*more the result of Political and Media fear campaign[s]*". The submission also notes that banning colours is to "*tar all with the same brush*". 025 – Ian Leftley Mr Leftley submits that he cannot "*see how the wearing of these items can prove that you are a criminal*". 026 – Ronald Germain, Life and Death Motorcycle Club The submission refers to clause 210 which identifies that "wearing of colours may otherwise have undue adverse effect on health and safety or safety of the public or amenity of the community including by increasing the likely hood of public disorder or acts of violence". Mr Germain notes that in "*reality for Queensland is that there have been 5 violent incidents between 2006 to 2013*", and these events "*were never condoned or supported by the majority of OMCGS*". Mr Germain submits that "*to say OMCGS are regularly involved in acts of brazen violence is absolutely not true*". The submission also notes that: "*colours are earnt by club members having proven themselves to be hard workers, loyal, respectful and being able to fit in to club life. Our club members are governed by strict rules that would be the envy of the army, police and football players. The role of colours, jewellery and 1% patch as mentioned in the explanatory note is laughable.*" 027 – Stewy Worth, Odins Warriors Motorcycle Club The submission refers to the note in the Explanatory Notes that says: "*colours of OMCGs, and in particular the '1%' patch, identify*	

	that OMCG and the member wearing them, as operating outside the law and having a propensity to be involved in criminal activities". Mr Worth submits that he "*disagree[s] entirely with this assertion*". Mr Worth submits that: "*the colours of any club simply identify to other members that I am a member as well and am proud to be so. This is not unique to the motorcycle clubs and can be witnessed at many sporting and cultural events where different tribes are in attendance.*" The submission also notes that: "*the wearing of the colours is not designed to 'create a climate of fear and intimidation among members of the general community with an implicit threat of violence in the event of any confrontation with the wearer'. That is police and media hype. I have asked many people, do they feel intimidated by this, and many have said they feel more intimidated when being followed or pulled over by the police.*" 035 – <u>United Motorcycle Council Queensland (UMCQ)</u> The UMCQ hold 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. 036 – <u>Judy Andrews</u> The submission notes that the prohibition of the wearing of 'colours' in all public places, even by drivers and passengers in a	

	vehicle, is excessive. The submission also comments that this prohibition was not contemplated, nor recommended, by the Taskforce. 038 – Christian Newling Ms Newling submits that "*the section that deals with the wearing of colours 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.*"	
Clause 398 **Banning colours will not stop crime.**	003 – Stephen Spencer Mr Spencer submits that "*stopping all club members from wearing their club names on their back is ridiculous, that's not going to stop any crime as a lot just drive in cars, such as the Nike Bikies.*" 026 – Ronald Germain, Life and Death Motorcycle Club The submission notes that there is no "*linkage between wearing of an item of clothing and the commission of acts of crime activity nor the intimidation of the public. In fact when we go for rides through country towns people interact with us in a positive way and certainly not intimidated. This Bill makes an assumption that every member of an OMCG is a criminal or planning criminal activities.*" 027 – Stewy Worth, Odins Warriors Motorcycle Club The submission notes that "*the QPS are advising the government that the prohibition on wearing or displaying of any club insignia will stop public acts of violence. I have seen miniskirts cause*	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' 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 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

	more acts of public violence on any Friday or Saturday night than any bikies in colours ever will." 037 – Andrea Gray Ms Gray comments that "you see international crime groups all being left alone all because they do not have a patch on their back." The submission also notes that "true criminals do not wear a patch on their back as that would bring attention to their activities. True criminals blend in the do not want attention so stopping colours will no way stop crime." Ms Gray submits that it is "*scary days when a government can tell you what to wear and what intimidates whom… We are all different and should be allowed to wear whatever attire we choose.*"	other criminal acts, both in Queensland and other jurisdictions, where colours or OMCG insignia were known to be featured.
Clause 398 **Outlaw motorcycle gangs are not the only organisations that cause fear and intimidation.**	23 – Assoc Prof. Lauchs The submission states: "*It is unclear why the new regime would continue with the 26 declared clubs but not include well recognised clubs of a similar nature such as Satudarah and the Mongrel Mob who are both now resident in Queensland.*" 026 – Ronald Germain, Life and Death Motorcycle Club The submission notes that: "*It could also be said that a group of drunken footballers would intimidate the public or a large group of police with their weapons on their hips and knowing that the police have little training in the use of those weapons (Courier Mail). It should be noted that only OMCGs are targeted in this bill with no reference to street gangs that are intimidating the public everyday but the police and the government choose not to take action against them.*"	The Bill provides a power to declare any organisation that has the potential to cause fear or adversely affect public safety or amenity as 'identified organisation'; not just outlaw motor cycle gangs. The Bill proposes that the Minister will be able to declare additional entities, in the future should the evidence support the declaration. Items will only be prohibited items if they are associated with declared 'identified organisations', therefore non-related general clothing styles, uniforms or brands will not be banned. The QPS acknowledges that OMCGs are not the only criminal organisation that operate within the community. The QPS, along with other state and Commonwealth agencies, continue to investigate and prosecute all criminal organisations and their members where appropriate.

	037 – Andrea Gray The submission notes that: "*There are so many different people in club attire from Kick boxers, Footy players, Priests and then people in suits. All can be intimidating to people. I know that one lot of migrants dress intimidates many but they are allowed to wear their chosen attire.*" 036 – Judy Andrews The submission notes that: "*It is ironic that this Bill also deals with financial crime which accounts for much more than the roughly 2% at most of 'bikie' crime. Perhaps it would be more effective to ban the wearing of Armani suits, silk shirts and hand-made Italian shoes in the CBD as the habitual garb of many serious organised criminals.*"	The Australian Crime and Intelligence Commission 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.
Clause 398 **Pursuing 'groups' as opposed to 'individuals'.**	017 – Anthony Teniswood Mr Teniswood submits that he does not "*believe anyone would have a problem if these laws were to be used against an individual, if they have been proven, in a Court of Law, to be using Colours or Insignia in an intimidating way, but to blanket all Club Members in this way is to 'Tar all with the same Brush', something we are told time and time again in regards to other matters, we must not do!*" 25 – Mr Leftley Mr Leftley submits that: "*I have heard it said a lot lately that the Labor government want to stop the intimidation, but where is this intimidation where is the factual evidence of this intimidation. If there is evidence then send the police to arrest the perpetrators,*	Under the Bill, organisations will only be declared as 'identified organisations' if the wearing of prohibited items associated with the organisation 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. A declaration may be based on evidence demonstrating that the members of the organisation have already engaged in serious criminal activity, or committed relevant offences in public. The purpose of the offences is to proactively prevent these organisations from causing persons to feel threatened or intimidated, or increasing the likelihood of public disorder.

	this should not be used as political grandstanding or a political lever against either side of politics."	Persons in public places can avoid the commission of an offence by ensuing items cannot be seen. There are other offences in criminal law framework that address the conduct of individuals. The QPS acknowledges that OMCGs are not the only criminal organisation that operate within the community. The QPS, along with other state and Commonwealth agencies, continue to investigate and prosecute all criminal organisations and their members where appropriate. The Australian Crime and Intelligence Commission 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.
Clause 398 **Wearing of colours should be allowed because it is a way to identifying OMCGs.**	004 – Ted Ashby Mr Ashby submits: "*Let the bikies wear there colours at least everybody knows who they are not like the rest of the crime gangs out there.*" 018 – Dave Griffey The submission notes that "*banning clubs wearing colours in public will waste police time in trying to discern between who is and who isn't a 'bikie'*" and that "*innocent riders will indiscriminately be targetted [sic], harassed and detained to ascertain if they are a bikie, where as alloying [sic[bikies to wear colours immediately indetify [sic] them and the club they belong to.*" 024 – Tony Lincoln	The Bill prohibits the wearing or carrying of prohibited items so that they can be seen in a public place. Whilst acknowledging the public wearing of some clothing items and accessories could provide police with intelligence information linking a person with a criminal organisation, this has been weighed up against the fear, intimidation or threat the clothing items instil in the public. The QPS will continue to use various intelligence methods and strategies to identify members of OMCGs that do not rely on their public display of colours.

	The submission notes: "*From a common sense point of view, I would think that police officers' work would be markedly easier if they were able to identify persons of interest from their clothing, instead of having to look at every motorcycle on the road as a possible club member.*" 025 – Ian Leftley The submission notes: "*This situation (harassment of ordinary motorcyclist) can only in the foreseeable future become worse than it already is with Police unable to tell who's who and therefore wasting precious time, money and resources chasing ghosts.*" 037 – Andrea Gray The submission notes: "*On the flip side of this colours let police and public know whom bikers are. By taking their colours they could be anyone so by doing this the gateway has been opened to harass all members of public as MC members. This is already happening but will now be at a wider scale. Once again while this harassment continues crime rises through the true criminals being given a free reign.*" 038 – Christian Newling The submission notes that "*it's easy to see who is who when the clubs etc. are wearing colours. To stop that would be a disadvantage to all.*"	
Clause 398	035 - United Motorcycle Council Queensland	There are no recreational motorcycle clubs or other like groups to be listed in the Liquor Regulation (brought across from the

Unintended persons may be captured by the law.	The UMCQ is concerned with the risk of tourists and visitors who may accidentally find themselves charged with criminal offences by unknowingly wearing an item which is considered by a police officer, on a case by case basis, to be an infringing item. The severe consequences that follow from criminal charges and the impact on employment and future prospects must be considered when implementing laws which may affect innocence parties.	*Criminal Code (Criminal Organisation) Regulation 2013*) as an identified organisation for the purpose of the new offence. Adding recreational clubs or other like groups to the Regulation in the future would be highly unlikely as this would require the Minister to be satisfied the wearing or carrying of a proposed prohibited item by a person in a public place: • may cause members of the public 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. When forming this satisfaction the Minister must have regard to: • whether any person has engaged in serious criminal activity (7 year or more indictable offence); or • convicted of a relevant offence (public act of violence to a person, damage to property or disorderly etc. in public), whilst the person was a participant in the entity. The QPS does not expect this to apply to the recreational motorcycle clubs or similar groups. Additionally, the Bill provides specific defences to the offence namely that the conduct was for genuine artistic, educational, legal or law enforcement purposes.
Clause 398 **Police harassment of all motorcycle riders, stopping and utilising profiling methodology.**	001 – Graham Carman The submission notes: "*Since the VLAD laws were introduced this enjoyment has been severely tempered by the aggressive and deliberate campaign by the police against ALL motorcycle riders. Police are utilising a profiling methodology where by a motorcycles is stopped, questioned, photographed etc.*"	Legislative changes enacted in 2013 amended certain police powers. One change being the power for police officers to stop, detain and search a person where the officer reasonably suspects they are a participant in a criminal organisation. This power extends to verifying the person identification and where necessary taking their identifying particulars.

		The Bill proposes that this particular police powers is to be repealed 3 months after assent. Police officers form their reasonable suspicion to exercise the stop and search power based on all the circumstances at hand including any relevant criminal intelligence at the time. It has never been the intention of police to unnecessarily interfere or disrupt the lawful activities of any person including the riders from legitimate motorcycle clubs. Should a member of the community feel they are being unfairly treated by police they have a number of options to seek redress, including formal complaints to the QPS Ethical Standards Command, the Crime and Corruption Commission and police supervisors.
Civil liberties / discrimination / legal validity	24 – Mr Lincoln The submission states: *"I think that the banning of individual jewellery, clothing and tattoos is at the very least discriminatory, if not guaranteed to create criminal acts from what in reality, could in no way be considered one."* 26 – Mr Germain The submission states: "*We believe that not being able to wear our colours on a ride is depriving us of our civil liberties and human rights. In QLD it appears civil liberties and human rights are accorded to everyone except motorcycle members. These amendments can only be described as draconian and discriminative by nature. I would expect that these laws will be tested in the High Court and the fallout would be a change of government at the next election.*"	The Department notes that the Explanatory Notes indicate that having considered the Taskforce Report, and information obtained from sources such as the QPS, the Government was confirmed in its view that the problem posed by 'colour-wearing' OMCG members in public places demanded a strong legislative response which would unavoidably have some impact on individual rights and freedoms. The Explanatory Notes also indicate that after considering a number of alternative legislative solutions and considering the effectiveness of existing provisions, the Government reached the view that other options would not be as effective in addressing the problem as the provisions in the Bill. DJAG notes that the extension of the existing prohibition on wearing prohibited items is limited to public places and circumstances where members of the public can see the item. Possession of the item is otherwise lawful allowing a person to

	30 – The Greens Queensland The submission states: "*We do not believe that people should be treated differently before the law simply because they belong to a particular organisation.*" 35 - United Motorcycle Council Queensland The UMCQ is also concerned with the liability for legal challenge these offences will hold due infringement of intellectual property laws and rights subsisting in many of the logos and items prescribed by the offence.	own and wear the item on private property or to transport the item in a way it cannot be seen. Further, as advised to the Legal Affairs and Community Safety Committee by way of a question on notice from the oral briefing on 26 September 2016, legal advice was sought in the development of the Bill.
Amendments to the *Crime and Corruption Act 2001*		
General comment/s	032 – Queensland Law Society The submission of the QLS supports the amendments made to the Act by the Bill.	The submission supports the amendments to the Act made by the Bill without amendment.
Clauses 34 (Replacement of ch 2, pt 4, div 2A, hdg), 35 (Amendment of s 55A (Authorising the commission)), 36 (Amendment of s 55B (Matters to which the reference committee must consider before granting an authorisation)), and 37 (Amendment of s 55C (Reference committee	33 – Crime and Corruption Commission The CCC does not oppose the definition of a 'criminal organisation' proposed by the Bill but its appropriateness as the sole criteria for invoking specific intelligence operations. The CCC states that requiring the connection to an identified criminal organisation as the only means of approval for specific intelligence operations runs the risk of 'putting the cart before the horse'. The CCC submits that the current parameters of section 55A of the CC Act make it difficult for the CCC to expand its focus beyond the highly visible, easily identified criminal organisations (OMCGs and cold-call investment fraud syndicates). It is noted that the very nature of an intelligence operation may be targeted	As part of a suite of changes made in 2013, the scope of the CCC's functions and powers were expanded through the introduction of: (a) specific intelligence operations to enable the Commission to gain intelligence and investigate the activities of criminal organisations; and (b) an immediate response function which allows the CCC to undertake a crime investigation or hold an intelligence function hearing in relation to an actual or potential threat to public safety. In its review of these powers, the Taskforce unanimously recommended that the expanded intelligence functions under Chapter 2, Part 4, Division 2A and 2B of the CC Act should be retained (Recommendation 42). The Taskforce did not propose

may give commission directions about intelligence operations)). **Criteria for approval of an operation**	at identifying which criminal organisations and people within those organisations are active within a given marketplace. It is also recognised that other entities with a similar intelligence gathering function, such as the Australian Criminal Intelligence Commission, are granted significant scope to proactively seek intelligence. The CCC submits that the criteria for approval of a specific intelligence operation should be broadened to allow the CRC to authorise operations where it is satisfied there are reasonable grounds to suspect persons are engaging in 'organised crime', as defined under the CC Act (Schedule 2). It is suggested any changes could draw on the existing framework and safeguards in place for general referrals made by the CRC to the CCC under section 27(5) of the CC Act to ensure that operations were appropriately defined.	any changes to the provisions which authorise specific intelligence operations. 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. This will allow for a thorough examination of the CCC's proposal, including consideration of its interface with the CCC's existing functions/powers; and the legislative frameworks operating in other Australian jurisdictions, as well as fulsome consultation with a broad range of stakeholders.
Clause 38 (Replacement of ch 2, pt 4, div 2B (Public safety)). **Application of immediate response function to terrorist activity**	33 – Crime and Corruption Commission The CCC's submission notes the need for a connection to a criminal organisation to enliven the immediate response function is problematic and hinders the effective utilisation of these powers. The CCC submits that it is currently inhibited from responding to situations which involve lone wolf-type attacks or attacks by small groups that may be acting in sympathy with, but without actual involvement or membership in, terrorist groups. It is unlikely that these types of persons would fit within the proposed definition of a criminal organisation. In the course of an investigation into a public safety event involving terrorist activity, it is often the case that it is not until the	The issues raised by the CCC in relation to the immediate response function and its application to terrorist activity were not considered by the Taskforce and are outside the scope of the Bill. The concerns raised by the CCC's to broaden the CCC's immediate response function beyond criminal organisations (the intended target of this function when first introduced) are noted and will be considered in the context of any future review of the CCC's powers and functions. This will allow for a thorough examination of the CCC's proposals, including consideration of its interface with the CCC's existing functions/powers and the legislative frameworks operating in other Australian jurisdictions; as well as fulsome consultation with a broad range of stakeholders.

	investigation is well advance that the question of firm links to a terrorist group can be established. It is proposed that the requirement for the connection to a 'criminal organisation' be removed.	
Clause 38 (Replacement of ch 2, pt 4, div 2B (Public safety)). **Public interest considerations by the Crime Reference Committee**	33 – Crime and Corruption Commission The Commission states that the provision which provides that the Crime Reference Committee (CRC) in considering the public interest in authorising an investigation may have regard to the effectiveness of an investigation into criminal activity or corruption without the use of powers available to the CCC under the division (under proposed section 55E(2) of the Bill) is not clearly expressed. The CCC notes the powers under Chapter 2, Part 4, Division 2B of the CC Act are not unique and only differ in the fact that, in accordance with the performance of this function, the Chairperson can issue a notice to a witness requiring immediate attendance to give evidence at a hearing, without the approval of a Supreme Court judge. The CCC infers that what was intended under the proposed section 55E(2) is for the CRC to turn its attention specifically to whether the immediacy of response under the division is necessary.	The Department will consider whether any amendments are necessary to clarify that the CRC, in considering the public interest, may have regard to whether the immediacy of the response provided for under Chapter 2, Part 4, Division 2B is warranted.

Clauses 42 (Insertion of new s 85A), 43 (Insertion of new ss 88A-88C), and 44 (Amendment of s 91 (What search warrant must state)). **Search warrant & access information**	0014 – Mr Russell Wattie Mr Wattie objects on the basis that there is a breach of a fundamental legislative principle (to provide appropriate protection against self-incrimination), as the provisions do not allow for a person to exercise a right to not comply with the order in a search warrant on the ground that compliance may tend to incriminate the person. 033 – Crime and Corruption Commission The CCC supports the introduction of powers to, in a search warrant, request access information and read information stored electronically.	The Department notes Mr Wattie's comments. The amendments implement a recommendation of the Queensland Organised Crime Commission of Inquiry which noted that the requirement to provide access information (passwords etc.) may be contrary to a person's privilege against self-incrimination but that this is outweighed by the nature of the crimes that may be 'hidden', as well as the need to appropriately balance the penalty for non-compliance in relation to the offence provisions. In addition, the loss of the privilege against self-incrimination would only apply to an order in a search warrant. As the order is contained in a warrant, it is a court order made after the magistrate or judge has considered the nature the evidence that supports the warrant and has decided that the order is appropriate in the circumstances.
Clauses 46 (Amendment of s 185 (Refusal to produce – claim of reasonable excuse), 47 (Amendment of s 190 (Refusal to answer question), and 55 (Insertion of new ch 8, pt 14). **Fear of reprisal**	033 – Crime and Corruption Commission The CCC does not support in-principle the amendments to sections 185 and 190 allowing persons to raise fear of reprisal as a reasonable excuse for failing to comply with the CCC's coercive powers. The submission proposes that an explanatory note be included to the effect that it is not intended to give any stronger ground for a claim of reasonable excuse based on fear of reprisal than that which existed prior to the 2013 amendments. The CCC also submits that, if enacted, the operation of the amendment should be reviewed to determine whether any claim of reasonable excuse based on fear of reprisal has been successful or resulted in an unnecessary delay to the CCC.	The Department notes the comments of the CCC. These amendments implement a majority recommendation of the Taskforce. The majority of the Taskforce found that any provision which expressly precluded a person's ability to raise fear of reprisal as a reasonable excuse for failing to comply with the CCC's coercive powers could have serious consequences for the personal safety of those individuals and may encourage perjury. The majority of the Taskforce felt that it was, in the appropriate circumstances, a matter for the Courts to determine whether any fear of reprisal amounted to a reasonable excuse.
	023 – Associate Professor March Lauchs Associate Professor Lauchs submits that under the Bill fear of reprisal is only able to be raised after conviction. The submission	The Department notes that the provisions referred to by Associate Professor Lauchs are in respect of the transitional

	comments that applications to set aside convictions is an expensive process. The submission notes that fear of reprisal "does not appear to be a defence to the change nor a reason for refusal at the time of the notice to attend before the CCC". The submission also notes that these applications to set aside convictions can take "well over 12 months to conclude".	arrangements provided as a consequence to the amendments made at clauses 39, 40, 41, 46 and 47. These arrangements are provided only for persons who were convicted of an offence or found in contempt since the time of the 2013 amendments, and who held a genuine fear of reprisal at the time. Clause 55 makes arrangements for those persons to apply to the Court for a hearing as to whether the conviction or finding of contempt should be set aside (on the basis that the legislation expressly prevented them from raising fear of reprisal as a reasonable excuse at the time they were convicted). Clauses 39, 40, 41, 46 and 47 restore a person's ability to raise fear of reprisal as a reasonable excuse for failing to comply with the CCC's coercive powers. Accordingly, under the Bill, fear of reprisal is able to be raised as a reasonable excuse at the time a witness appears before the CCC (for example). With respect to the length of time for these applications, the provision in the Bill specifically prescribes that the Supreme Court must give directions enabling the application to be heard within 10 business days after the making of the application, and further that the application must be heard within 20 business days after the making of the application (subject to any other directions given by the Court).
Clause 48 **Punishment of contempt – opposition to mandatory sentencing (generally)**	030 – <u>The Greens Queensland</u> The Queensland Greens support the repeal of the fixed mandatory minimum sentencing regime but does not consider that the Bill succeeds in completely removing all forms of mandatory sentencing from the provision (i.e. the Bill retains the requirement for the court to punish a person in contempt to an actual term of imprisonment). This, it is said, undermines the goal of removing mandatory minimum sentencing for the provision.	The Department notes the submission of the Queensland Greens. In terms of the concerns expressed by Associate Professor Mark Lauchs, while the Bill (as recommended by the Taskforce - see recommendation 45) implements an escalating, tiered penalty scheme to punish for conduct amounting to contempt of the CCC, these are not fixed mandatory sanctions. That is, the 10 years, 14 years and life imprisonment prescribed under

	023 – Associate Professor Mark Lauchs The submission states that, *accelerated sentencing, were the maximum penalty increases for each subsequent repeat of the same offence is extreme'* and *'it seems disproportionate and cruel punishment that a person can get an equivalent sentence as premediated murder for not answering a CCC questions….the harm exceeds the punishment itself.'*	the Bill, represent statutory maximum penalties; meaning that the court may impose a sentence of imprisonment up to that statutory limit. In contrast, the offence of murder, under Queensland laws, is punishable by mandatory life imprisonment and a fixed mandatory minimum sanction of at least 20 years imprisonment before the prisoner can begin to apply for parole release (higher fixed mandatory minimum sanctions for multiple murders and the murder of a police officer). The prisoner remains subject to the mandatory life sentence for the duration of their natural life.
Clause 48 (Amendment of s 199 (Punishment of contempt)) **Punishment of contempt**	033 – Crime and Corruption Commission The CCC is concerned that the language in the Bill may not be clear enough to fully address the issues raised in Witness JA regarding what constitutes a repeated contempt. The CCC is concerned that the language "…the same failure…" may be ambiguous and could be interpreted to mean a continuation of the initial failure (rather than a further failure).	DJAG notes the comments of the CCC. The Department highlights the commentary in the Explanatory Notes surrounding the amendment of section 199.
Clause 49 (Amendment of s 201 (Commission must give evidence to defence unless court certifies otherwise)) **Disclosure of evidence to a defendant**	033 – Crime and Corruption Commission The CCC notes that this amendment is contrary to their submission provided to the Taskforce. The CCC is of the view that if enacted the operation of the amendment should be reviewed to determine whether any use of the evidence disclosed to the defendant was unfair to any person or contrary to public interest.	The Department notes the comments of the CCC. This amendment implements a majority recommendation of the Taskforce, and returns to the position of the section to that which existed prior to the 2013 amendments. The Taskforce was concerned that providing the CCC with the authority to refuse to disclose information (including potentially exculpatory evidence) to a defendant may cause a breach of the person's right to a fair trial. The provision under section 201(4) of the Act already provides the CCC with the ability to apply to the Court to restrict the disclosure of evidence to a defendant if it would be unfair to

		any person or contrary to public interest. No amendment is made by the Bill to alter the operation of this subsection.
Clause 50 (Amendment of s 205 (Legal assistance for crime investigations)) **Scope of proposed changes**	33 – Crime and Corruption Commission The CCC states the full scope and extent of proposed amendments is not clear as the Bill does not contain any provision amending the current heading for section 205.	The Department will consider the need to amend the heading.
Clause 50 (Amendment of s 205 (Legal assistance for crime investigations)) **Application to immediate response hearings**	33 – Crime and Corruption Commission The CCC opposes 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.	On balance, all Taskforce members, with the exception of the QPCOUE, concluded that the ability to apply for financial assistance should be extended to all persons appearing before the CCC in a coercive hearing, including those hearings conducted under the immediate response function (Recommendation 52). The amendments to section 205 of the CC Act reflect this positon. In its Report, the Taskforce identified, in no other Australian jurisdiction are persons who appear before coercive hearings excluded from applying for financial and/or legal assistance, where it is available. The Taskforce also considered coercive hearings analogous to a trial for a criminal offence. It observed that the High Court in *Dietrich* considers the need for and the desirability of an accused person facing a serious charge being legally represented is so great that their trial should only proceed without legal representation in the most exceptional cases. The Taskforce did acknowledge that any potential delay to immediate response hearings may weaken their effectiveness and the delay occasioned by awaiting the outcome of an application for financial assistance, may be problematic. However, the Taskforce was still concerned that, given the seriousness of the hearing and the implications that non-

		compliance can have on a witness, it set a dangerous precedent to deny a person access to the application process for state funded legal assistance. Additional amendments to section 205, which will allow the Attorney-General to delegate the authority to approve financial assistance to the chief executive (justice) and for the chief executive (justice) to sub-delegate this function to an appropriately qualified employee within the department, are expected to help reduce delays in the processing of these applications.
Other general comment	033 – Crime and Corruption Commission The CCC raise an issue regarding the interchangeability of the language used in the Act around the statutory offences and contempt provisions (ie, the heading of s183 is 'refusal to be sworn' but the actual offence is characterised by a 'failure to take an oath when required' – one is a positive act while the other is a passive omission). The CCC raises for consideration whether these provisions should be amended for the sake of uniformity.	The Department notes the comments of the CCC and will consider this matter further.
Amendments to the *Tattoo Parlours Act 2013*		
Primarily critical of the impact of the existing Act on employment and livelihoods	0035 – United Motorcycle Council Queensland (UMCQ) The submission describes how UMCQ members have had tattoo businesses closed under the *Tattoo Parlours Act 2013* by virtue of being deemed not fit and proper persons, for undisclosed reasons.	The Bill amends the *Tattoo Parlours Act 2013* (and renames it the *Tattoo Industry Act 2013*) to ensure that occupational licensing for the body-art tattoo industry is characterised by increased transparency and procedural fairness, and subject to appropriate review and appeal rights. The approach is guided by other occupational licensing frameworks, such as that established under the *Security Providers Act 1993.*
	0037 – Andrea Gray	

	The submission objects to the use of secret evidence and membership in a motorcycle club as the only reason for being refused a licence/disqualified. The delay in commencement of the new probity framework is *"purposely destroying livelihoods of people who have been fighting this already for a long time"*.	Consistent with amendments to other relevant occupational licensing acts (apart from the *Weapons Act 1990*), the Bill will amend the probity framework for the Tattoo Industry Act to exclude the use of confidential criminal intelligence in licensing decisions, and require statements of reasons to be provided for licensing decisions. The Bill provides that the new probity framework will commence three months after assent. As the Bill, if passed, will make substantial changes to the processing of tattoo industry licence applications, an implementation period is required to make necessary adjustments to licensing systems and procedures.
	0039 – Ben Rankin The submission is critical of the existing Act, including in relation to regulatory burdens and impacts on businesses and individuals seeking to work in the tattoo industry.	
The Act does not regulate competency or quality of tattooing services	0037 – Andrea Gray The submitter is concerned that the Act does not assess whether a person can draw, tattoo etc, and that the Act is purely concerned with probity assessments (which are currently based on "secret evidence" and whether the person is a member of a motorcycle club).	The intention of the Act is to regulate the body art tattooing industry to minimise the risk of criminal activity in the industry. Before introduction of the Act, the tattoo industry in Queensland was largely unregulated, except to the extent of health requirements under the *Public Health (Infection Control for Personal Appearance Services) Act 2003*. The Department is not aware of any formal vocational education and training units or qualifications relating to the competence or artistic ability of body-art tattooists. However, it is noted that the ATG submission states that it is now nearing completion of a guideline for the training of new entrants to industry. This guideline will set out criteria for the minimum standard of knowledge to be taught in the training of new entrants.
	0040 - Australian Tattooists Guild (ATG) The submission states that the Act has given a "green light" for anyone, with even a vague interest in the art form to obtain a license to operate and/or practice, regardless of whether any type of training within a tattoo studio had previously occurred. Also claims that there is a perception that the Act protects the industry and the public from untrained individuals opening business and operating.	

	The Act has resulted in a plague of untrained and uneducated individuals who care not for the integrity of the art form, public safety or the sustainability of this unique craft. The ATG recommend that all applicants for a license must provide a statement of professional practice.	
Retention of the Act	0039 – Ben Rankin The submitter rejects the need for an Act to license tattoo businesses and individual tattooists. Wants a moratorium of the existing Act, and repeal of the amended licensing scheme.	The Bill reflects the recommendation of the Taskforce that the Act should be retained (recommendation 54).
	0040 - Australian Tattooists Guild (ATG) The submission comments that: *"The professional tattooing community remains pro-regulation. It is recognised that the professional industry may be supported and benefit from responsible policy which looks to protect both the general public and industry participants".*	
Information sharing between agencies	0040 - Australian Tattooists Guild (ATG) The ATG recommends that improvements be considered for the sharing of information between government agencies for the purpose of regulation, or one primary agency be declared responsible for all application collection and processing.	The Act contains an existing provision enabling information sharing between government agencies, including between the Department of Justice and Attorney-General (Office of Fair Trading) and Queensland Police Service. As a result of the Bill, particularly the removal of provisions allowing for 'adverse security determinations' by the Police Commissioner, the licensing authority (currently the Office of Fair Trading) will have an increased determinative role in relation to tattoo licensing matters.

Liaising with government agencies, including advising applicants of status of applications	0040 - Australian Tattooists Guild (ATG) The ATG recommends that a liaison officer be appointed within the Office of Fair Trading for the facilitation of information regarding the processing of applications, and that processing and information required by the agency remain within its jurisdiction. Concerns about being given timely advice regarding the status of an application.	Applicants or licensees with questions about the status of an application, or other licensing matter, are able to contact the relevant licensing authority (currently the Office of Fair Trading within the Department of Justice and Attorney-General).
Licence renewal	0040 - Australian Tattooists Guild (ATG) The ATG recommends a licence renewal system rather than the current re-application process.	The Bill amends the Act to enable licensees to apply for renewal of their licence.
Recording-keeping obligations	0040 - Australian Tattooists Guild (ATG) The ATG recommends that record keeping obligations under the Act be eliminated.	The record-keeping obligations under the Act support its main purpose of regulating the body art tattooing industry to minimise the risk of criminal activity in the industry.
Licensing to include education based on consultation with industry (and include health and safety requirements)	0040 - Australian Tattooists Guild (ATG) The ATG recommend current and future licensing of the tattoo industry would be best achieved through the provision of education to the industry and facilitation of government consultation with industry. According to the ATG: *"Any future licensing of the tattoo industry should require the applicant to obtain the current industry standard course qualification for cross-contamination and sterilisation, thus ensuring that all licensed tattoo artists have this important qualification".*	Ordinarily, the policy and legislative development cycle involves consultation with industry, including education campaigns targeting affected stakeholders. The intention of the Act is to regulate the body art tattooing industry to minimise the risk of criminal activity in the industry. A person carrying on the business of providing higher risk personal appearance services, such as tattooing, must also obtain a licence under the *Public Health (Infection Control for Personal Appearance Services) Act 2003.* The purpose of the *Public Health (Infection Control for Personal Appearance Services) Act 2003* is to minimise the risk of infection that may result from the provision of personal appearance services. The *Public Health (Infection Control for Personal Appearance Services) Act 2003* achieves its purpose by requiring that: business proprietors and operators take

		reasonable precautions and care to minimise infection risks; business proprietors who provide higher risk personal appearance services hold a licence; operators who provide higher risk personal appearance services hold an infection control qualification; and, compliance be monitored and enforced.
Retention of finger and palm printing requirements	0040 - Australian Tattooists Guild (ATG) The ATG recommends that the requirement for applicants to provide finger and palm prints be removed from the Act.	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*.
Licensees to work in council-registered premises	0040 - Australian Tattooists Guild The ATG comments that individuals applying for a tattoo artist or operator license should be required to work in council-registered premises.	The Act will continue to require licensees not be subject to an order under the *Public Health (Infection Control for Personal Appearance Services) Act 2003* made in connection with the carrying out of skin penetration procedures. The *Public Health (Infection Control for Personal Appearance Services) Act 2003* requires that a licensee must not provide higher risk personal appearance services from premises unless the premises are stated on the licensee's licence (section 23).
Multiple permits for overseas artists	0040 - Australian Tattooists Guild The ATG recommends that visiting overseas tattoo artists be eligible for multiple permit/temporary licenses.	The Act will continue to allow for overseas body art tattooists to work in Queensland as authorised by a visiting tattooist permit. The Bill includes an amendment providing that if a visa to enter Australia is pending issue, the applicant is able to provide evidence of having applied for a visa at least 7 days before the proposed commencement date for their visiting tattooist permit. This provides greater flexibility for individuals applying for permits, where the individual is yet to be issued with a visa. The Bill also includes an amendment to allow the chief executive to grant more than 2 visiting tattooist permits if the chief executive is satisfied that the individual is not seeking to avoid applying for or holding a licence.

Renaming the Act	0040 - Australian Tattooists Guild The ATG recommends that any potential future Bill be named the 'Tattoo Industry Bill'.	The Bill contains provisions to change the short title of the Act to the *Tattoo Industry Act 2013.*
Mutual recognition for NSW licensees	0040 - Australian Tattooists Guild The ATG recommends that a registration scheme be used to accommodate New South Wales licensed tattooists.	Currently, individuals who hold a licence under the New South Wales *Tattoo Parlours Act 2012* are able to apply for the Queensland licence under mutual recognition arrangements.
Negative licensing	0040 - Australian Tattooists Guild The ATG recommends that tattooists from unlicensed states be able to enter Queensland under a negative licensing regime.	The Taskforce recommended the Act be retained and amended to enhance transparency and procedural fairness in licensing decisions. The Bill contains amendments consistent with the Taskforce's recommendations, however, it does not establish a 'negative-licensing' regime for the tattoo industry.
Occupational licensing and industry regulation		
Sharing of criminal intelligence offends the principles of natural justice.	015 – Motorcycle Riders Association of Queensland The submission suggests that the use of 'untested/secret evidence' offends the principles of natural justice.	The Bill reflects the recommendation of the Taskforce that the Commissioner of Police should retain an ability to provide criminal intelligence to chief executive officers (recommendation 13) and that the Commissioner of Police should be provided with an ability to supply relevant information to the chief executives on a case-by-case basis (recommendation 58). The Bill implements these recommendations by allowing chief executives to enter into agreements to exchange information with the Commissioner of Police (and, in the case of some Acts, other authorities) to assist in the administration of legislation within the responsibilities of the respective agencies. However, in recognition of the views, findings and recommendations of the Taskforce, regarding the limitations and issues associated with the use of criminal intelligence in administrative decision-making, the Bill inserts provisions into occupational licensing Acts (apart from the *Weapons Act 1990*)

		to specifically prohibit the use of criminal intelligence in licensing decisions. This is consistent with Taskforce recommendation 15, which is that requirements for chief executive officers to refuse or cancel licence applications solely on the basis of criminal intelligence should be repealed.
Sharing of criminal intelligence allowed, which may prejudice occupational licensing/authority decision making.	023 – Associate Prof Mark Lauchs The submission notes that criminal intelligence can be shared under information-sharing arrangements (as evidenced by elements of information-sharing clauses that prevent the use of criminal intelligence for any purpose other than monitoring compliance) and includes a comment that: *"It is not a huge stretch of the imagination that if this information is shared it will influence decision making beyond just monitoring. It may not appear in the reasons given to an applicant for a licence, and may weaken the decision if appealed, but it again places the burden on the member of the public to take action to rectify a situation they should never have been subject to in the first place".*	The information-sharing provisions inserted in each of the relevant occupational-licensing acts (apart from the *Weapons Act 1990*) support Taskforce recommendations (*recommendations 13 and 58*). The Bill replaces requirements that compel chief executives to refer all applications for a licence, permit, certificate or other authority to the Commissioner of Police for assessment with general arrangements that allow chief executives to enter into agreements to exchange information with the Commissioner of Police (and other authorities) to assist in the administration of legislation within the responsibilities of the respective agencies. The Bill introduces provisions to explicitly prohibit the use of criminal intelligence in occupational licensing decisions (apart from weapons licensing decisions). All such decisions must be based on the probity/suitability test or requirements contained within the relevant occupational licensing Act. The information-sharing provisions inserted by the Bill also limit the use of criminal intelligence to monitoring compliance with the relevant Act.
Inconsistency in approach to "*serious offences*".	023 – Associate Prof Mark Lauchs The submission queries the inconsistency of certain offences described as "serious". Notes a "serious criminal activity" is an indictable offence with at least a 7 year penalty, but a recognised offender qualifies with an offence with a maximum sentence of 5 years, and that further – a defined **serious offence** as amended	The amendment contained in clause 255 retains an element of the existing definition of **serious offence** contained in the *Motor Dealers and Chattel Auctioneers Act 2014* (that being, a list of offences described by type, which are punishable by 3 or more years imprisonment), and also adds new offences created by the Bill. The definition of **serious offence** only has effect under the *Motor Dealers and Chattel Auctioneers Act 2014,* and serves the objects of that Act in setting out the

	by the Bill in the *Motor Dealers and Chattel Auctioneers Act 2014* is punishable by 3 or more years imprisonment.	nature of offences which render a person not suitable to hold a licence or registration certificate.
Probity/suitability tests under occupational licensing Acts (also relates to amendments to the *Tattoo Parlours Act 2013*)	008 – David Searles The submission raises concerns about purported changes the Bill will make to remove fit and proper person tests from certain industries: *"I want to lodge the following opposition to elements of Labor's bill…removing the fit and proper person test from certain industries that encourage criminal gang members to have an honest job".*	The Bill amends occupational licensing legislation to ensure that a person is not prevented from holding an occupational licence based solely on advice that the person is a criminal organisation or an identified participant in a criminal organisation. The Bill does not otherwise remove or weaken existing probity and suitability tests for occupational licensing applicants. With respect to the *Tattoo Parlours Act 2013*, the Bill makes amendments to the Act to 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.*
Probity/suitability tests under the *Liquor Act 1992*	031 – Queensland Hotels Association The Queensland Hotels Association does not support 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".*	The Bill implements Taskforce recommendations 15, 56 and 59, to repeal the changes introduced in 2013, on the basis that a person should not be precluded from holding a licence, permit or other approval, unless there is evidence specific to the individual demonstrating that they, and not just those with whom they associate, are not a suitable person to hold the approval. Further, the Taskforce found that licensing decisions should not be solely based on criminal intelligence, and persons affected by a licensing decision should be given reasons for the decision and an opportunity to contest the allegations. In accordance with the Taskforce recommendations, and consistent with other occupational licensing Acts, the *Liquor Act 1992* will be returned to its pre-2013 state, which enables

	The Queensland Hotels Association raises concerns about the inclusion of organised crime offences in probity tests under the *Liquor Act 1992*. *"The new Serious and Organised Crime offences proposed in the Bill relevant for licensing probity and which would disqualify an applicant are:* • *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".*	the application of general 'fit and proper person' and 'suitable person' tests (probity tests) in licensing decisions. 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. The Queensland Hotels Association submission is correct that a person must be convicted of these new offences before a determination can be made that the person is not a fit and proper or suitable person to hold a licence, permit or other approval. It is the intention of the Bill that probity assessments are based on actual criminal behaviour. 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.
General concerns about employment (also relates to Tattoo parlours Act amendments)	002 – April Adsett The submission states: *"People with life long careers have already lost their businesses and families have been destroyed.* *How is it possibly a good move to render people unemployed in our current climate."*	Except for the *Weapons Act 1990*, the Bill makes amendments to occupational licensing legislation to ensure that a person is not prevented from holding an occupational licence based solely on advice that they are a criminal organisation or a participant in a criminal organisation. The Bill repeals requirements for chief executives to refuse or cancel a licence, permit, certificate or other authority solely on

	0024 – Tony Lincoln The submitter is concerned that restricting an individual's ability to work will have an impact on their family and community, and may actually promote criminality through resulting hardship. The submission cites sections of the Taskforce report recommending (among other things): no licensing prohibitions/refusals based on mere association or allegations of participation in a criminal organisation; that refusals should be based on specific evidence of non-suitability; that refusals/cancellations should be backed by reasons for the decision; and, that extensive consultation should occur on an industry by industry basis to determine appropriate fit and proper person tests. The submission does not highlight any elements of the Bill that are of particular concern relevant to the cited sections of the Taskforce report.	the basis that an entity or person is alleged to be a criminal organisation or a participant in a criminal organisation. The Bill includes a prohibition on the use of confidential criminal intelligence in occupational licensing decisions. The Bill also restores appeal and review rights that were restricted by the 2013 suite, and enhances procedural fairness in licensing decisions by re-establishing the right of people adversely affected by a licensing decision to be given reasons for the decision. Consultation was undertaken by both the Queensland Organised Crime Commission of Inquiry and the Taskforce on Organised Crime Legislation. The Bill supports the recommendations of the Taskforce in relation to the approach to "fit and proper person" tests for relevant occupational licensing acts.
Removal of fit and proper person tests	0043 – J Linnett The submission opposes removing the fit and proper person test from certain industries that encourage criminal gang members to have an honest job. (Presumably seeks that identified participant/controlled person notifications should remain a feature of suitability determination for relevant occupational licenses).	The Bill will repeal requirements for chief executives to refuse or cancel a licence, permit, certificate 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. This is consistent with the Taskforce's recommendations. The Bill includes a prohibition on the use of confidential criminal intelligence in occupational licensing decisions. The existing suitability/probity frameworks for the occupational licensing acts (except for the Tattoo Parlours Act) are largely unaffected (apart from these changes). Licensing/authority decisions require an assessment of a person's suitability, with consideration of their criminal history and other suitability/probity elements, depending on the structure of the Act's probity framework.

General concerns about occupational licensing frameworks and their ability to deal with contemporary and future organised crime.	022 – Australian Strategic Policy Institute (Dr John Coyne) The submission states: *"The amendments, especially those focussed on occupational and industry Acts are focussed on the crime problem of today. With this focus, the proposed amendments may not offer the necessary frameworks to deal with the agile and entrepreneurial nature of contemporary or future organised crime".* *The Legal Affairs and Community Safety Committee should consider options for increasing the agility of the Queensland organised crime regime to deal with the entrepreneurial and amorphous nature of contemporary and future organised crime".*	The main objective of the Bill is to implement a new Organised Crime Regime in Queensland to tackle serious and organised crime in all its forms. The Bill amends occupational licensing Acts amended by the 2013 suite to respond to the views, findings and recommendations of the Taskforce.
Information sharing safeguards potentially restrict the sharing of information by the CCC.	033 – Crime and Corruption Commission (CCC) The CCC does not support the proposal in so far as it would allow the parties to the information sharing arrangement to share confidential CCC information despite the CCC having imposed strict conditions limiting the use of information in question. This effective loss of 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 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.	The information sharing arrangements replace the requirements established by the 2013 suite that compel chief executives to refer all applications for a licence, permit, certificate or other authority to the Commissioner of Police for assessment. The more general information sharing arrangements (through new or existing provisions) allow chief executives to enter into agreements to exchange information with the Commissioner of Police (and other authorities) to assist in the administration of legislation within the responsibilities of the respective agencies. The provisions allowing for the exchange of information between agencies is based on an existing provision in the Tattoo Parlours Act 2013. The information exchange provisions are also supported by provisions designed to appropriately protect the confidentiality of information and to prevent unlawful disclosure of the information. Whilst the concerns of the CCC are acknowledged, there would appear to be no specific provisions in the Crime and Corruption Act 2001 (CC Act) that are in direct conflict with the information exchange provisions in the Bill.

		Section 55(2) (Sharing of intelligence information) of the CC Act provides that the Commission must, in performance of all its functions, give intelligence information to the entities it considers appropriate in the way it considers appropriate. Section 55 does not provide a legislative requirement on either the CCC, or the receiving entity, to deal with the information in a particular way, other than allowing the CCC to give it in a way it considers appropriate, which would include caveats on the use of the intelligence information by the receiving entity, and sharing to a third party. Section 60 of the CC Act also allows the CCC to share information with other entities including law enforcement agencies about possible offences. Again, there is no restriction on the CCC providing this information subject to caveats on the information's use. Notably section 213 of the CC Act provides that a person who discloses information given to them by the CCC on the express or implied understanding that the information is confidential commits a criminal offence under the CC Act. Agencies are very cognisant of the sensitivities and risks with respect to the movement of internal data, particularly CCC information. It is not intended that information would be exchanged under the new information sharing provisions if the CCC has provided the information to an agency on the basis that it not be further disclosed.
Amendments to the *Weapons Act 1990*		
Part 33 **Making it easier for criminal gang**	016 – Glenis Batten The submission raises the concern that the Bill makes it easier for criminal gang members to obtain a weapon licence.	The Bill will remove the automatic licence disqualifying provisions for an 'identified participant in a criminal organisation' from the *Weapons Act 1990* and other prescribed licensing legislation. The automatic licence disqualifier was introduced in 2013.

members to get a weapon licence.		However, the existing provisions in the *Weapons Act 1990* which continue to provide for an assessment of each applicant on the basis that they are a 'fit and proper person' to hold a licence regardless of whether or not the person has any criminal history. Consequently, every applicant for a weapons licence will be assessed by an Authorised Officer of the Queensland Police Service on a case by case basis to determine whether they are a fit and proper person to hold a licence.
Miscellaneous matters		
Amendments to the *Bail Act 1980*	032 – Queensland Law Society The submission of the QLS supports the amendments made to the Act by the Bill.	The submission supports the amendments to the Act made by the Bill without amendment.
	007 – Protect All Children Today (PACT) Supports. PACT supports any intervention to enhance bail conditions to better protect the safety and wellbeing of vulnerable children and young people. PACT states that one of the biggest fears of child victims is that they will have further contact with the accused, so steps to minimise this from occurring are greatly appreciated.	The Department notes the submission.
Amendments to the *Corrective Services Act 2006*	032 – Queensland Law Society The submission of the QLS supports the amendments made to the Act by the Bill.	The submission supports the amendments to the Act made by the Bill without amendment.
Deficiencies in the Queensland Blue Card system	007 – Protect All Children Today The submission raises two issues related to the provision of blue cards under the *Working with Children (Risk Management and Screening) Act 2000*:	The Department notes recent announcements regarding the Queensland Family and Child Commission review of the Blue Card System and related matters.

	• agencies employing young people should be required to have their staff obtain a Blue card; and • Blue cards should contain photo identification. The submission notes that these concerns have also been raised with the Premier and Minister for Arts; the Minister for Police, Fire and Emergency Services and Minister for Corrective Services; and with Blue Card Services.	
QPS has turned a blind eye to enforcing laws with the change of government.	008 – Mr Searles The submission notes: "*It appears the QPS has turned a blind eye in recent times to enforcing the laws with the change of State Government leadership and this can only have very grave outcomes in the future.*"	The QPS has not reduced its commitment to the detection and enforcement of any offence due to a change in government. The QPS is committed to ensuring the full legislative suite of laws are engaged to deal with serious and organised crime in Queensland.
The use of *criminal intelligence* in judicial decision making	025 – Ian Leftley Mr Leftley submits that the use of secret or sealed evidence in judicial decision making takes away a person's fundamental right to defend themselves against 'unsubstantiated allegations'.	The statutory review of the *Criminal Organisation Act 2009* (the COA review) undertaken by the Honourable Alan Wilson QC, '*undertook an extensive examination of the conceptual, evidentiary, judicial, procedural and practical issues arising from the use of criminal intelligence and concluded that criminal intelligence is unsuitable for use in judicial processes*' (Taskforce Report page 160). The Government's Organised Crime Regime implements the recommendations of the COA review in this regard. The Bill does not provide for the use of criminal intelligence in judicial decision-making.