

QUESTIONS FROM THE COMMITTEE REGARDING LEGAL ADVICE:

The Committee asked the Department the following questions regarding legal advice:

Mr CRANDON: I just wanted to clarify those few bits and pieces. Have the laws been drafted with the assistance of the Solicitor-General? In other words, was the Solicitor-General involved in any way? (Proof Transcript page 9)

Mr CRANDON: In relation to High Court challenges, has the department sought any legal advice around that? How confident are you around the potential for a High Court challenge? (Proof Transcript page 12)

Mrs Robertson (A/Assistant Director-General, Strategic Policy and Legal Services, DJAG) advised that, in accordance with standing orders, she wished to seek the DJAG Chief Executive's view regarding a response on these questions.

Chief Executive Response:

Legal advice was sought in the development of the Bill. Although not specifically requested by the Committee, the Department would object under Item 42 of Schedule 8 of the *Standing Orders of the Code of Practice for Public Service Employees Assisting or Appearing before Parliamentary Committees* to producing or discussing the advice on the basis that it is subject to legal professional privilege.

QUESTION ON NOTICE:

The Committee asked the Department to provide details of the number of people charged or convicted in New South Wales of the consorting offence under section 93X of the Crimes Act 1900 (NSW).

ANSWER:

In April 2016 the New South Wales (NSW) Ombudsman delivered a report to the NSW Government on the operation of Part 3A (Offences relating to public order), Division 7 (Consorting) of the *Crimes Act 1900* (NSW) titled: *The consorting law report on the operation of Part 3A, Division 7 of the Crimes Act 1900* (the report). The report was tabled in Parliament (NSW) on 17 June 2016.

Chapter 6 of the report provides a statistical overview of the operation of the NSW consorting offence for the three years, between 9 April 2012 and 8 April 2015.

The Department draws the attention of the Committee to the following portions of Chapter 6:

Page 29, Table 1: Summary of all use of the consorting law during the review period

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

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

Page 35

“As at 8 April 2015, being the last day of the review period, 42 people had been charged with 46 charges of habitually consorting under section 93X of the Crimes Act.”

Page 37

“At the time of writing, 34 of the 46 consorting charges had been finalised; 25 of these were brought by the Gangs Squad and the remaining nine charges were brought by general duties police.”

“Of the 25 finalised charges brought by the Gangs Squad, 22 charges were proven and three charges were not proven. Two of the unproven charges were withdrawn and the facts were combined in an alternative charge. One person was found not guilty on the basis that the number of associations did not amount to consorting under the new law.”

“Of the nine finalised charges brought by general duties police, four were proven and five were not proven.”

QUESTION ON NOTICE:

The Committee asked the Department to provide a table comparing the penalties under the 2013 laws to the penalties under the Serious and Organised Crime Legislation Amendment Bill 2016 [2016 Bill].

ANSWER:

Table of penalties

Penalties - 2013 laws	Penalties - 2016 Bill
<i>Amendments stemming from the Taskforce on Organised Crime Legislation (and the statutory review of the Criminal Organisation Act 2009)</i>	
Section 60A (Participants in a criminal organisation being knowingly present in public places) of the Criminal Code (a simple offence).	New section 77B (Habitually consorting with recognised offenders) of the Criminal Code (indictable offence).
Penalty: maximum penalty of 3 years imprisonment, with a prescribed mandatory minimum penalty of 6 months imprisonment to be served wholly in a corrective services facility.	Penalty: maximum penalty of 300 penalty units or 3 years imprisonment.
	New section 161ZI (Contravention of an Organised Crime Control Order) of the <i>Penalties and Sentences Act 1992</i> (indictable offence).
	Penalty: maximum penalty – for a first offence, 3 years imprisonment; for a second or later offence, 5 years imprisonment.
	Also, without limiting the punishment for contravention of the control order, the imposition of a new control order; or extension

Department of Justice and Attorney-General (DJAG)
 Responses to Questions on Notice
 Legal Affairs and Community Safety Committee
 Serious and Organised Crime Legislation Amendment Bill 2016

	of the existing control order or imposition of new conditions.
<p>Section 60B (Participants in a criminal organisation entering prescribed places and attending prescribed events) of the Criminal Code (simple offence).</p> <p>Penalty: maximum penalty of 3 years imprisonment, with a prescribed mandatory minimum penalty of 6 months imprisonment to be served wholly in a corrective services facility.</p>	<p><u>Public Safety Protection Order scheme under the Peace and Good Behaviour Act 1982 –</u></p> <p>Public Safety Order:</p> <ul style="list-style-type: none"> • New section 32 (Contravention of public safety order) – indictable offence – maximum penalty 300 penalty units or 3 years imprisonment. <p>Restricted Premises Order:</p> <ul style="list-style-type: none"> • New section 54 (Offence by owner or occupier of restricted premises) – indictable offence – maximum penalty: for first offence, 150 penalty units or 18 months imprisonment; for each later offence, 300 penalty units or 3 years imprisonment. <p>Fortification Removal Order:</p> <ul style="list-style-type: none"> • New section 75 (Hindering removal or modification of a fortification) – indictable offence – maximum penalty: 5 years imprisonment.
<p>Section 60C (Participants in a criminal organisation recruiting persons to become participants in the organisation) of the Criminal Code (simple offence).</p> <p>Penalty: maximum penalty of 3 years imprisonment, with a prescribed mandatory minimum penalty of 6 months imprisonment served wholly in a corrective services facility.</p>	<p>New section 76 (Recruiting persons to become participant in criminal organisation) of the Criminal Code (indictable offence).</p> <p>Penalty: maximum penalty 500 penalty units or 5 years imprisonment.</p>
<p>Conviction of a declared offence as a vicious lawless associate (i.e. the circumstance of aggravation under the <i>Vicious Lawless Association Disestablishment Act 2013</i>).</p> <p>Penalty:</p> <ul style="list-style-type: none"> • the 'base sentence' for the declared offence (the type of sanction and length 	<p>Conviction of a prescribed offence with the new Serious Organised Crime circumstance of aggravation (see – new section 161Q (and sections 161R and 161S) of the <i>Penalties and Sentences Act 1992</i>).</p> <p>Penalty:</p> <ul style="list-style-type: none"> • the 'base component' of the sentence for the prescribed offence must be a

Department of Justice and Attorney-General (DJAG)
 Responses to Questions on Notice
 Legal Affairs and Community Safety Committee
 Serious and Organised Crime Legislation Amendment Bill 2016

<p>of sanction is at the court’s discretion); and</p> <ul style="list-style-type: none"> the ‘further sentence’ of 15 years imprisonment to be served wholly in a corrective services facility (or 25 years if the person was also an office bearer in the criminal organisation). <p>The ‘further sentence’ cannot be ameliorated or mitigated and the imprisonment must be served cumulatively upon the base sentence (and no parole release on the further sentence).</p> <p>The only way that the ‘further sentence’ can be reduced is through cooperation as prescribed under the VLAD Act.</p>	<p>term of imprisonment (the length is at the court’s discretion); and</p> <ul style="list-style-type: none"> the ‘mandatory component’ of the sentence of 7 years imprisonment to be served wholly in a corrective services facility (or the equivalent of the maximum penalty for the prescribed offence if it is lesser than 7 years); and the mandatory (new) Organised Crime Control Order, which can be up to five years in duration. <p>The ‘mandatory component’ and mandatory organised crime control order cannot be ameliorated or mitigated; and the imprisonment must be served cumulatively upon the base sentence and cumulatively upon any other term of imprisonment being served by the person for any other offence (and no parole release on the mandatory component).</p> <p>The only way that the ‘mandatory component’ and mandatory organised crime control order can be reduced is through cooperation as prescribed under section 161S of the Penalties and Sentences Act.</p> <p>The 2013 offences (except for section 72 (Affray)), are included under new Schedule 1C of the <i>Penalties and Sentences Act 1992</i>, which provides the list of prescribed offences to which the new Serious Organised Crime circumstance of aggravation applies and its targeted mandatory sentencing regime.</p>
<p>Conviction of the following Criminal Code offences, with the applicable circumstance of aggravation (the 2013 offences):</p> <ul style="list-style-type: none"> Section 72 (Affray), if the person convicted is a participant in a criminal organisation – maximum penalty 7 years imprisonment, with a prescribed mandatory minimum penalty of 6 months imprisonment to be served wholly in a corrective services facility; Section 92A (Misconduct in relation to public office), if the person who dishonestly gained a benefit, directly or indirectly, was a participant in a criminal organisation – maximum penalty 14 years imprisonment; Section 320 (Grievous bodily harm), if the person is a participant in a criminal organisation and committed the offence against a police officer while acting in the execution of the officer’s duty – a prescribed mandatory minimum penalty of 1 year imprisonment to be served wholly in a corrective services facility; Section 340 (Serious assaults) if the person assaults a police officer in the following circumstances – bites or spits on the police officer or throws at or in 	

Department of Justice and Attorney-General (DJAG)
 Responses to Questions on Notice
 Legal Affairs and Community Safety Committee
 Serious and Organised Crime Legislation Amendment Bill 2016

<p>any way applies to the police officer a bodily fluid or faeces; or causes bodily harm to the police officer; or is or pretends to be armed with a dangerous or offensive weapon; and the person is a participant in a criminal organisation – a prescribed mandatory minimum penalty of 1 year imprisonment to be served wholly in a corrective services facility; and</p> <ul style="list-style-type: none"> • Section 408D (Obtaining or dealing with identification information), if the person obtaining or dealing with the identification information supplies it to a participant in a criminal organisation – maximum penalty 7 years imprisonment. 	
<p>Section 187 (Disqualification from holding Queensland driver licence) of the <i>Penalties and Sentences Act 1992</i> – if the person is convicted of an offence under sections 60A, 60B or 60C or section 72 (with the circumstance of aggravation) of the Criminal Code, whether or not the offence was committed in connection with or arose out of the operation, or interference with the operation, of a motor vehicle, the court must order that the person is disqualified absolutely or for a period of not less than 3 months from holding or obtaining a Queensland driver licence.</p>	<p>Repealed.</p>
<p>Section 199 (Punishment of contempt) of the <i>Crime and Corruption Act 2001</i>, if the contempt certified is because of a failure to comply with the Crime and Corruption Commission’s powers to compel a person to give evidence (including taking an oath) or produce information – the person must be sentenced to imprisonment – maximum penalty is at the discretion of the court, with a prescribed mandatory minimum penalty (to be served wholly in a corrective services facility) as follows:</p> <ul style="list-style-type: none"> • for a first contempt – imprisonment for the term decided by the court; • for a second contempt – 2 years and 6 months imprisonment; 	<p>Section 199 (Punishment of contempt) of the <i>Crime and Corruption Act 2001</i>, if the contempt certified is because of a failure to comply with the Crime and Corruption Commission’s powers to compel a person to give evidence (including taking an oath) or produce information – the person must be sentenced to imprisonment (to be served wholly in a corrective services facility) maximum penalty:</p> <ul style="list-style-type: none"> • for a first contempt – 10 years imprisonment; • for a second contempt – 14 years imprisonment;

Department of Justice and Attorney-General (DJAG)
 Responses to Questions on Notice
 Legal Affairs and Community Safety Committee
 Serious and Organised Crime Legislation Amendment Bill 2016

<ul style="list-style-type: none"> • for a third or subsequent contempt – 5 years imprisonment. 	<ul style="list-style-type: none"> • for a third or subsequent contempt – life imprisonment. <p>Unless there are exceptional circumstances, the punishment imposed for each repeated contempt must be for a term of imprisonment that is longer than the term of imprisonment imposed on the person for the immediately preceding contempt (i.e. of increasing length on each repeat occasion).</p>
<p><i>Liquor Act 1992 offences:</i></p> <ul style="list-style-type: none"> • Section 173EB (Exclusion of persons wearing or carrying prohibited items) – maximum penalty 100 penalty units. • Section 173EC (Entering or remaining in licensed premises wearing or carrying a prohibited item) – maximum penalty: <ul style="list-style-type: none"> - first offence, 375 penalty units; - second offence, 525 penalty units or 6 months imprisonment; or - third or later offence, 750 penalty units or 18 months imprisonment. • Section 173ED (Removal of person wearing or carrying prohibited item from premises) – maximum penalty: <ul style="list-style-type: none"> - first offence, 375 penalty units; - second offence, 525 penalty units or 6 months imprisonment; or - third or later offence, 750 penalty units or 18 months imprisonment. 	<p><i>Liquor Act 1992 offences:</i></p> <ul style="list-style-type: none"> • Section 173EB (Exclusion of prohibited persons) – maximum penalty 100 penalty units. • Section 173EC – repeal (captured by the new <i>Summary Offences Act 2005</i> offence (see below)). • Section 173ED (Removal of prohibited person) – maximum penalty 100 penalty units.
	<p>New section 10C (Wearing or carrying prohibited item in public place) of the <i>Summary Offences Act 2005</i> – maximum penalty:</p> <ul style="list-style-type: none"> • For a first offence – 40 penalty units or 6 months imprisonment; • For a second offence – 60 penalty units or 9 months imprisonment; • For a third or later offence – 100 penalty units or 12 months imprisonment.

The Serious and Organised Crime Legislation Amendment Bill 2016 also includes increased penalties and new offences relating to offending involving child exploitation material, drug trafficking and/or fraud, stemming from the recommendations of the Queensland Organised Crime Commission of Inquiry (Commission of Inquiry), as set out below:

Penalties under the 2016 Bill – stemming from the Commission of Inquiry

Child Exploitation Material

Section 228A (Involving child in making child exploitation material) of the Criminal Code – maximum penalty:

- if the offender uses a hidden network or an anonymising service in committing the offence—25 years imprisonment; or
- otherwise—20 years imprisonment.

Section 228B (Making child exploitation material) of the Criminal Code – maximum penalty:

- if the offender uses a hidden network or an anonymising service in committing the offence—25 years imprisonment; or
- otherwise—20 years imprisonment.

Section 228C (Distributing child exploitation material) of the Criminal Code – maximum penalty:

- if the offender uses a hidden network or an anonymising service in committing the offence—20 years imprisonment; or
- otherwise—14 years imprisonment.

Section 228D (Possessing child exploitation material) of the Criminal Code – maximum penalty:

- if the offender uses a hidden network or an anonymising service in committing the offence—20 years imprisonment; or
- otherwise—14 years imprisonment.

New section 228DA (Administering child exploitation material website) of the Criminal Code – maximum penalty:

- if the offender uses a hidden network or an anonymising service in committing the offence—20 years imprisonment; or
- otherwise—14 years imprisonment.

New section 228DB (Encouraging use of child exploitation material website) of the Criminal Code – maximum penalty:

- if the offender uses a hidden network or an anonymising service in committing the offence—20 years imprisonment; or
- otherwise—14 years imprisonment.

New section 228DC (Distributing information about avoiding detection) of the Criminal Code – maximum penalty:

- if the offender uses a hidden network or an anonymising service in committing the offence—20 years imprisonment; or
- otherwise—14 years imprisonment.

Additionally, the above offences (existing and new) included under new Schedule 1C of the *Penalties and Sentences Act 1992*, which provides the list of prescribed offences to which the new Serious Organised Crime circumstance of aggravation applies and its targeted mandatory sentencing regime.

Drug Trafficking

Section 5 (Trafficking in dangerous drugs) of the *Drugs Misuse Act 1987* – regardless of the schedule to be applied to the offence with regards to the *Drugs Misuse Regulation 1987* the maximum penalty for trafficking in dangerous drugs is 25 years imprisonment.

Returned to the position regarding the offence to that existing prior to the amendment made in 2012 (separate to the 2013 laws) by reinserting the offence under the longstanding Serious Violent Offence (SVO) regime under Part 9A of the *Penalties and Sentences Act 1992*. (NB. in 2012 an amendment was made to provide that if a court sentences a person to a term of imprisonment for the offence the person must be required to serve a minimum of 80% of the sentence)

Financial Crimes (Fraud)

Section 408C (Fraud) of the Criminal Code – maximum penalty:

- (unchanged) simpliciter – 5 years imprisonment;
- (amended) if the fraud involves at least \$30,000 but less than \$100,000 – 14 years imprisonment; or
- (new) if the fraud equals or exceeds \$100,000; or the offender carries on the business of committing the offence – 20 years imprisonment.

Additionally, the aggravated offences included under new Schedule 1C of the *Penalties and Sentences Act 1992*, which provides the list of prescribed offences to which the new Serious Organised Crime circumstance of aggravation applies and its targeted mandatory sentencing regime.

Access information (i.e. information, such as passwords and codes, needed to access storage devices, such as mobile phones and computers)

New section 205A (Contravening order about information necessary to access information stored electronically) of the Criminal Code – maximum penalty of 5 years imprisonment.

QUESTION ON NOTICE:

The Committee asked the Department to provide details of the persons convicted as a vicious lawless associate under the 2013 laws.

ANSWER:

The Department understand that three people have been convicted of an offence/s with the circumstance of aggravation under the *Vicious Lawless Association Disestablishment Act 2013*.

Department of Justice and Attorney-General (DJAG)
Responses to Questions on Notice
Legal Affairs and Community Safety Committee
Serious and Organised Crime Legislation Amendment Bill 2016

The details of two of those matters is provided at page 217 of the Report of the Taskforce on Organised Crime Legislation (the report); Mr Joshua Robin Rohl and Mr Brett William Young. The report indicates that both men were involved in drug-related offending (unrelated to each other) but neither had any apparent outlaw motorcycle gang connections (page 80). The report is available at: www.justice.qld.gov.au/taskforce-into-organised-crime

The third person, Mr Wayne Johnson, was convicted post the release of the report. The sentencing remarks are available at:

[https://www.sentencing.sclqld.org.au/php/hiliter.php?run=1&url=/sentencing_remarks/2016/SR_BRIS_JohnsonWA_13072016.html&wordlist\[\]=wayne&wordlist\[\]=johnson&exact=0&title=Wayne%20Anthony%20Johnson%20-%20SUPREME%20-%20BRISBANE%20-%202013-Jul-2016](https://www.sentencing.sclqld.org.au/php/hiliter.php?run=1&url=/sentencing_remarks/2016/SR_BRIS_JohnsonWA_13072016.html&wordlist[]=wayne&wordlist[]=johnson&exact=0&title=Wayne%20Anthony%20Johnson%20-%20SUPREME%20-%20BRISBANE%20-%202013-Jul-2016)

Mr Johnson's conviction included the assertion that he was an office bearer of the relevant association; there is no indication from the sentencing remarks that he had any apparent outlaw motorcycle gang connections.

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