

VICIOUS LAWLESS ASSOCIATION DISESTABLISHMENT BILL 2013

Explanatory Notes

Short title

The short title of the Bill is the Vicious Lawless Association Disestablishment Bill 2013.

Policy objectives and the reasons for them

On 28 September 2013, in the wake of violence at Broadbeach involving criminal motorcycle gangs, the Queensland Government announced its commitment to:

- adopt a zero tolerance crackdown on criminal gangs;
- provide whatever additional resources are necessary for the Queensland Police Service to carry out this crackdown;
- introduce a range of tougher laws to tackle criminal gangs; and
- support any moves to have additional criminal gangs declared a ‘criminal organisation’ under the *Criminal Organisation Act 2009*.

In order to deliver on the commitment to introduce tougher laws to tackle criminal gangs, the Government is introducing a comprehensive package of legislative reforms, contained in three Bills.

The primary objective of the Vicious Lawless Association Disestablishment Bill 2013 is to:

- disestablish associations that encourage, foster or support persons who commit serious offences; and
- increase public safety and security by the disestablishment of the associations; and
- deny to persons who commit serious offences the assistance and support gained from association with other persons who participate in the affairs of the associations.

The structure and operation of these criminal associations poses particular challenges to law enforcement and the criminal justice system. The association often provides members with the impetus, support and infrastructure to further their criminal

activities and their violent behaviour. These associations are generally resilient and difficult to disband. Indeed, a successful prosecution against some individual members may not impact the overall ability of the association to operate. They are often characterised by silence, violence and an unwillingness to cooperate with law enforcement, impeding the ability of authorities to successfully cultivate informants, infiltrate and disestablish the associations.

This Bill is designed to address these particular challenges and provides for a targeted regime to dismantle these criminal associations.

Achievement of policy objectives

The Bill achieves the objectives by creating a legislative scheme whereby members of criminal associations that commit serious criminal activity for the purposes of, or in the course of participating in the affairs of, the relevant association, are subject to significant terms of imprisonment.

This penalty regime is to be imposed by the court without reduction or mitigation unless the offender cooperates with law enforcement. Only in circumstances where an offender provides such cooperation, to the satisfaction of the Commissioner of the Queensland Police Service, may a penalty be reduced. The purpose of this regime is to cultivate informants within associations and to deny individual members the assistance and support usually provided by their grouping.

Alternative ways of achieving policy objectives

There is no alternative way of achieving these reforms.

Estimated cost for government implementation

Any costs in relation to the amendments will be met from existing agency resources. The future allocation of any necessary resources will be determined through the normal budgetary processes.

Consistency with fundamental legislative principles

The Bill impacts on the rights and liberties of individuals through increasing penalties, imposing mandatory terms of imprisonment and denying parole for particular types of offenders.

The Bill is necessary for an appropriate and effective response to public safety concerns raised by the activities of criminal associations. This Bill targets those individuals who offend while enjoying the support and encouragement of criminal associations. The Bill will enhance community safety and ensure public protection from the activities of such associations, by addressing offending through general and specific deterrence (as a result of the significant penalties), and by encouraging cooperation with law enforcement for a reduction in penalty.

The Bill will operate prospectively and will only capture those offenders who commit offences following commencement of the Bill.

Consultation

Consultation has occurred within Government. Wider consultation has not been possible because of the need to respond urgently to the significant public threat these associations pose in Queensland.

Consistency with legislation of other jurisdictions

The Bill does not introduce uniform or complementary legislation.

Notes on provisions

Clause 1 establishes the short title to the Act as the *Vicious Lawless Association Disestablishment Act 2013*.

Clause 2 sets out the objects of the Act and how the objects will be achieved.

Clause 3 notes the relevant definitions for the Act. The defined terms are ‘association’, ‘base sentence’, ‘declared offence’, ‘further sentence’ and ‘office bearer’.

Clause 4 outlines the circumstances when a person is taken to be a *participant* in the affairs of an association. The meaning encompasses a broad range of conduct listed in subsections (a) – (d).

Subclause (a) provides that a person is a participant in the affairs of an association if the person, in any way, asserts, declares or advertises his or her membership of, or association with, the association. By way of example, it is intended that a member of a motorcycle gang who wears clothing bearing their club patch or colours in a public place is a person who is a participant in that motorcycle gang.

Subclause (b) provides that a person is a participant in the affairs of an association if the person, in any way, seeks to be a member of, or to be associated with, the association. Therefore, subclause (b) extends to recruits or nominees seeking membership of a motorcycle gang. It is irrelevant that the person has no voting rights in the club.

Subclause (c) provides that a person is a participant in the affairs of an association if the person has attended two or more meetings or gatherings of participants of the association.

Subclause (d) provides the catch-all provision as to when a person is taken to be a participant.

Clause 5 states the meaning of *vicious lawless associate* for the purpose of the Act. Subsection (1) sets out the three elements that must be proved for a person to be a *vicious lawless associate*. These are that the person: (a) commits a declared offence; (b) at the time the offence is committed, or during the course of the commission of the offence, is a participant in the affairs of, the relevant association; and (c) for the purposes of the association, or in the course of participating in the affairs of the association, did or omitted to do the act which constitutes the declared offence. The intention is to characterise persons as vicious lawless associates who belong to associations which encourage, support or foster the commission of offences and who are, therefore, persons who commit offences as part of their membership activities.

Subclause (2) provides a defence to a person being found to be a *vicious lawless associate*. The legal onus (balance of probabilities) is upon the defendant to prove that the relevant association is an association whose members do not have as their purpose, or one of their purposes, engaging in, or conspiring to engage in, declared offences.

Clause 6 is an evidentiary aid and provides a rebuttable presumption. A person will be presumed to an officer bearer of the relevant association where the person has asserted, declared or advertised that he or she is an office bearer, or where a person is commonly treated by other persons who participate in the association's affairs as an office bearer. Where such evidence is before the court, the defendant will bear the legal onus of proving they were not an officer bearer of the relevant association at the time of committing the offence.

Clause 7 sets out the sentencing regime that the Act imposes on an offender found to be a *vicious lawless associate*.

Subclause (1) directs the court as to how a vicious lawless associate is to be sentenced for a declared offence. Subclause (1)(a) states that the court must impose a sentence for the declared offence in accordance with the law apart from this Act, and without regard to any further punishment that the Act may impose. This is referred to as the base sentence (see definition in clause 3).

Subclauses (1)(b) and (c) provide for further cumulative sentences to be imposed upon a *vicious lawless associate*. This is referred to as the further sentence (see definition in clause 3).

Subclause (1)(b) states that in addition to the base sentence, the court must impose a further sentence of 15 years imprisonment. This term of imprisonment is cumulative to any term of imprisonment imposed under (1)(a).

Subclause (1)(c) states that if the *vicious lawless associate* was, at the time of the commission of the offence, or during the course of the commission of the offence, an office bearer of the association, then a further sentence of 10 years must be imposed. This term of imprisonment is cumulative to any term imposed under (1)(a) and is cumulative to the term of 15 years imposed under (1)(b).

Subclause (2) states that a further sentence imposed under subclause (1)(b) or (c) cannot be mitigated or reduced and must be ordered to be served cumulatively with the sentence imposed under subclause (1)(a).

Subclause (3) provides for the circumstance where the sentencing court imposes a non-custodial sentence as the base sentence. In such a case the further sentence imposed will commence immediately and the base sentence will have effect, so far as practicable, at the end of the further sentence.

Subclause (4) provides for the circumstance where the sentencing court imposes a sentence of life imprisonment as the base sentence, for example if sentencing for the offence of murder which carries mandatory life imprisonment. In such a case the further sentence will commence from the day the prisoner is eligible for parole under section 181 of the *Corrective Services Act 2006*.

Subclauses (5) and (6) provide that if a sentencing court is sentencing a *vicious lawless associate* for more than one declared offence, the sentencing court can only impose the further sentences stated in subclause (1)(b) or (c) for one of the offences. However, the court must choose the offence that will result in the *vicious lawless associate* serving the longest period of imprisonment under this Act for the offences.

Clause 8 deals with parole.

Subclause (1) provides that a *vicious lawless associate* is not eligible for parole during any period of imprisonment for a further sentence (that is, imprisonment required under clause 7(1) (b) and (c)).

However, subclauses (2) and (3) provide for a parole eligibility date for the total period of imprisonment imposed upon the *vicious lawless associate*. The total period of imprisonment is any term of imprisonment imposed for the base sentence and the term or terms of imprisonment required to be served under the further sentence. The parole eligibility date is worked out by adding the period of imprisonment under the further sentence to the non-parole period for the base sentence. The clause includes an example to aid understanding.

Clause 9 allows for a discount in the sentence of a *vicious lawless associate* in certain circumstances.

Subclause (1) provides that section 13A of the *Penalties and Sentences Act 1992* (Cooperation with law enforcement authorities to be taken into account) applies to an offender liable to be sentenced as a *vicious lawless associate*.

Subclause (2) provides the circumstances in which section 13A of the *Penalties and Sentences Act 1992* will apply. The *vicious lawless associate* must offer in writing to cooperate with law enforcement agencies in a proceeding about a declared offence. Section 13A will only apply if the Commissioner of the Queensland Police Service accepts the offer of cooperation upon being satisfied that the cooperation will be of significant use in a proceeding about a declared offence.

Subclauses (4), (5) and (6) provide that the decision of the Commissioner of the Queensland Police Service to accept or refuse the offer of cooperation is final and conclusive. The decision can not be reviewed other than for jurisdictional error. Therefore, apart from Part 5, the *Judicial Review Act 1991* does not apply to such decisions, except to the extent the decision is affected by jurisdictional error.

Clause 10 provides for the Governor in Council to make regulations declaring offences for purposes of the Act.

Clause 11 provides that that the Act must be reviewed as soon as reasonably practicable after three years after its commencement to determine whether the Act is operating effectively and meeting its objects. The Minister must appoint a suitably qualified person to undertake the review and table the report of the review in the Legislative Assembly.

Schedule 1 lists the offences declared for the purposes of the phrase ‘declared offence’ as defined in new section 3.