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# **LEGAL AFFAIRS AND COMMUNITY SAFETY COMMITTEE**

## **Members present:**

Mr ML Furner MP (Chair)  
Mr MJ Crandon MP  
Mr DJ Brown MP  
Mr JM Krause MP  
Ms JE Pease MP  
Mrs JA Stuckey MP

## **Staff present:**

Ms E Booth (Research Director)  
Mr G Thomson (Principal Research Officer)

## **PUBLIC HEARING—INQUIRY INTO THE SERIOUS AND ORGANISED CRIME LEGISLATION AMENDMENT BILL 2016**

### **TRANSCRIPT OF PROCEEDINGS**

**WEDNESDAY, 12 OCTOBER 2016**

**Brisbane**

## WEDNESDAY, 12 OCTOBER 2016

### Committee met at 9.30 am

**CHAIR:** Good morning. I declare open this public hearing into the Serious and Organised Crime Legislation Amendment Bill 2016. I thank you for your attendance. My name is Mark Furner. Also with me is Mr Michael Crandon, Mr Don Brown, Mr John Krause, Ms Joan Pease and Mrs Jann Stuckey. The committee's proceedings are proceedings of the Queensland parliament and are subject to the standing rules and orders of parliament. The proceedings are being recorded by Hansard and the committee intends to publish the transcript of this hearing. The media may be present, as they are, and will be subject to the chair's direction at all times. The media rules endorsed by the committee are available from the committee staff, if required. All those present today should note that it is possible that you may be filmed or photographed during the proceedings. I ask everyone to turn off their mobiles or switch them to silent mode. Only the committee and invited witnesses may participate in the proceedings. As parliamentary proceedings, under the Standing Orders any person may be excluded from the hearing at the discretion of the chair or by order of the committee.

The Serious and Organised Crime Legislation Amendment Bill 2016 was introduced by the Attorney-General and Minister for Justice and Minister for Training and Skills, the Hon. Yvette D'Ath, on 13 September 2016. The purpose of today is to assist the committee with its examination of the bill. A number of stakeholders have been invited to participate in the hearing. The program for today has been published on the committee's web page. For the benefit of Hansard, I ask all witnesses to identify themselves when first speaking, to speak clearly and at a reasonable volume and pace.

Firstly, we welcome Mr Terry O'Gorman, the Vice-President of the Queensland Council of Civil Liberties.

### **O'GORMAN, Mr Terry, Vice-President, Queensland Council of Civil Liberties**

**CHAIR:** Thank you for attending today, Mr O'Gorman. I will allow you five minutes to make an opening statement and then the committee will ask some questions.

**Mr O'Gorman:** Thank you, Chair and members of the committee. I necessarily have to concentrate today on the serious organised crime circumstance of aggravation offence component of this very large, almost 450-page bill. That is not a criticism of the committee or of members personally. The process that this has followed since the task force reported is, in our view, less than satisfactory. As indicated in the submission, it would appear that the only group that has been consulted, with the exception of possibly some government departments, has been the police. While the Law Society and the Bar Association were briefed, they were briefed only after, it would appear, decisions were made as to the format of the bill. That, in our submission, is a totally unsatisfactory consultation process.

This committee, in the council's view, has a very important role in a unicameral House—a critically important role. By way of comparison, Senate committees in the federal parliament carry out important review tasks. The task of your committee is extremely important.

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

I acknowledge the helpful parliamentary committee briefing note that was published on 27 September 2016. I personally have found that extremely helpful. Having read the explanatory memoranda—the whole 180 pages of it—it is necessarily complicated, but I think the parliamentary committee briefing report is an excellent document.

I move then to the serious organised crime circumstance of aggravation offence. I deal with that at pages 3 to 5 of the council's submission and, in accordance with instructions, I do not intend to repeat that. However, I seek to expand on one point and I draw this from the parliamentary briefing note of 27 September 2016. At page 3, the meaning of 'criminal organisation' is referred to and it has two limbs: three or more people who engage in serious criminal activity defined to mean offences with Brisbane

a maximum of seven years, and you do not have to do much to get to a maximum of seven years these days; and—and it is the second limb that I want to concentrate on—those ‘who, by their association, represent an unacceptable risk to the safety, welfare or order of the community’. On our understanding of it, it is that second limb that was not present in the VLAD laws and it is that second limb that I seek to address.

It is our submission that that phrase is unacceptably broad and gives little or no guidance to courts as to how to interpret it. It appears at page 3 of the parliamentary briefing paper and it indicates a criminal organisation of three or more people who have as their purpose engaging in serious criminal activity and—and it is this phrase—‘who, by their association, represents an unacceptable risk to the safety, welfare or order of the community’. It is our submission that the bill needs to define ‘unacceptable risk’. To that end, might I seek your permission, Chair, to tender a proposed amendment to that particular definition, to give some guidance to courts in assessing what is unacceptable risk? I will tender two separate documents, one being how unacceptable risk is defined in the current Bail Act.

**CHAIR:** Is leave granted? Leave is granted.

**Mr O’Gorman:** Chair, I tender the Bail Act, section 16, which defines ‘unacceptable risk’ for bail purposes. I seek leave to tender a proposed amendment to section 161O of the bill, which outlines proposed criteria that the courts should consider in looking at the second limb of ‘who, by their association, represent an unacceptable risk to the safety, welfare or order of the community’.

The Bail Act, you will see on pages 1 and 2 of the extract from the Queensland Consolidated Acts, lists in some quite prescriptive detail the criteria that a court needs to consider in deciding whether a grant of bail poses an unacceptable risk. Running off but elaborating upon that, the proposed amendment that the council submits respectfully to the committee proposes that, in assessing unacceptable risk, the court must have regard to the nature and seriousness of the alleged offence, whether actual violence was perpetrated and to what extent, the level of harm caused by the offence to individuals within the community, the number of individuals in the community harmed by the offence and the number of offenders alleged to have participated in the offence.

The purpose of the proposed amendment is to deal with what was widely accepted as a legitimate criticism of the definitions of ‘criminal organisation’, ‘participant’, et cetera, under the VLAD law. It was reasonably widely accepted within the legal community that the following scenario could and probably would have been caught within that legislation and, it is our submission, could and probably will be caught within this legislation unless the proposed amendment or some variant of it is accepted. The case scenario put up was as follows: three 20-year-olds have a smoke of marijuana every Sunday afternoon in one of their homes and each of them takes a turn to go into the valley each Friday night to buy in bulk for three, rather than each going in and buying their own supply. It is the council’s view, under the VLAD act and under the amendment, that that would be caught under the new serious organised crime circumstance of aggravation offence. If we are right in that regard, that would clearly be unjust. The proposed amendments are directed at addressing that.

The further change that we would propose is in respect of people who are seeking to mitigate the seven-year maximum. To briefly recapitulate, under the government’s proposal, if you are part of an organised crime group defined very widely and you get the mandatory seven years on top of what the explanatory memorandum envisages could even be a non-jail term for the base offence—and I refer to that in the submission—if you get the extra seven years on top, the only way you can mitigate that is to become an informer. The Wilson report notes that informers can pose a problem. I have attached to our submission the most recent paper that we can find dealing with the current problems of informers, particularly in the current jurisprudence in Northern Ireland and the UK.

We would propose an amendment that would require police to tape-record contact with all potential informers from the beginning through to the end, so as to deal with the historic problems that have been caused by sweetheart deals, unrecorded interviews, until the final statement is made by the informer.

**CHAIR:** Mr O’Gorman, I am sorry to cut you off, but we are tight with time.

**Mr O’Gorman:** Can I have 30 seconds to finish?

**CHAIR:** Thank you.

**Mr O’Gorman:** I seek to table the extract from the Moynihan report, published in 2008, which recommended, in a different setting, mandatory tape recording of witness statements. I have eight copies.

**CHAIR:** Is leave granted? Leave is granted, thank you.

**Mr O’Gorman:** Thank you. That is my opening statement.

**CHAIR:** Thank you, Mr O’Gorman. I pick up on your comment about consultation. It is one of those words that generally gets tested in respect to what you consider to be consultation. This is the second public hearing that this committee has conducted in respect to consultation with stakeholders. We have had many groups other than those you identified earlier appearing before this committee, likewise with the submissions that have come in. I believe that we are genuine in our endeavours to consult with the community and stakeholders who may be affected by this particular piece of legislation. I am uncertain whether you are aware of the hearing we held on the Gold Coast last week, but witnesses ranged from businesspeople from the Gold Coast to Michael Kosenko, the President of the Rebels, who appeared on behalf of the United Motorcycle Council. I believe we are thorough in respect to our consultative processes before this committee.

**Mr O’Gorman:** Chair, I reply by saying my criticism of consultation was not in any way directed at the committee. Rather, it was directed at the process following the publication of the Wilson report. When the Wilson report was published, a number of months went by before cabinet decided on the principles of this act and drafted the act, and the only people apparently consulted were the police. It was only the Law Society and the Bar that were told, after the legislation was drafted, ‘This is what we propose to do’. The criticism is not in any way at you.

**CHAIR:** Thank you for clarifying that. I will ask you one question, because we are limited with time: other than the proposed amendments to the bill, do you have any other aspects to raise? I would like to take you to 161P, the meaning of ‘participant’. There has been some criticism from some of the submitters about this particular aspect being too narrow. However, on my reading of it, it captures what a participant is, in terms of what would reasonably lead someone else to consider a participant in an organisation to be. It uses the example of many cases of them engaged in interaction. In particular, the paper refers to sourcing and selling or packaging heroin and laundering the profits for sale, and so on. I would be interested in your expert opinion on that, please.

**Mr O’Gorman:** Our criticism is that it is far too wide. If one has a look at page 4 of the briefing paper, it outlines five or six categories of people who are participants. Our concern is that it is so wide that it could, in relation to a meth manufacturing gang, capture a person who goes to a chemist shop once to get some pseudoephedrine to hand over to someone else who is part of the group manufacturing the speed. Our concern is that it is extremely wide.

**CHAIR:** Thank you.

**Mr CRANDON:** Mr O’Gorman, in the early part of your opening statement you talked about the myth of bikie crime. Are you saying that you do not believe that bikies and criminal motorcycle gangs are actively out there in our community arranging the purchase of drugs, dealing drugs to our young people in our schools through go-betweens and so forth? Is that your position or do you accept that there are some crimes—quite severe crimes—being committed by criminal motorcycle gang members?

**Mr O’Gorman:** We accept that there are some crimes, but we say that public policy has to be based on evidence, and the evidence is that less than one per cent of all criminal activity, including organised crime activity, is committed by bikies. We are not saying that bikies do not do it, but we say, certainly running off the observations of the Wilson report, that it is individuals within bike gangs as opposed to bike gangs generally.

**Mr CRANDON:** The individuals within the bike gangs are the target of this legislation and are the target of the VLAD laws, aren’t they?

**Mr O’Gorman:** They are, but we say that the extent to which bikie gangs, including individuals within bikie gangs, are engaged in crime and organised crime statistically—it is not me saying this; it is the Wilson report—is less than one per cent. It is greatly exaggerated.

**Mr CRANDON:** I wonder what the percentage would be on the Gold Coast, which is where I come from. As I said at the last hearing, the police notices that come out every day on the Gold Coast, reporting on the various crimes that are occurring around the place, indicate that more often than not, anecdotally—I have not gone through and counted them up, but I would suggest seven out of 10 times—there is some involvement of an associate of or a member of a criminal motorcycle gang. Those documents that come out on the Gold Coast are the ones that I focus on.

**Mr O’Gorman:** I get the *Gold Coast Bulletin* daily for that very purpose. If you analyse some of the stories you will see that it is ‘Bikie found breaking into a store’, ‘Bikie found exceeding the speed limit’. When you actually look at the stories—if we are not going to have available statistics—the stories of bikie involvement in crime are greatly exaggerated. My respectful submission is: one should not be

approaching this anecdotally; one should look at the statistical evidence. The police have had every opportunity in the Wilson report to contradict Terry Goldsworthy, ex-inspector of police, now criminologist at Bond University, who said 0.52 per cent. They had every opportunity to contradict that. They did not.

**Mr CRANDON:** 'Bikie found murdering his spouse'; 'Bikie found murdering another individual that was an associate of a bikie gang'; 'Bikie found responsible for grievous bodily harm'. Those things are not about breaking and entering. They are not about the types of things you have just put forward. They are very serious crimes and they are happening every day by bikies and bikie associates, certainly on the Gold Coast. I read that every day. Perhaps you should, instead of reading the *Gold Coast Bulletin*, start receiving the police issued notices in relation to these things and you might get a little bit more of the facts around them.

**Mr BROWN:** Thank you, Mr O'Gorman, for coming in today. I am interested with regard to the tape recording of informants. Are you saying to include all tape recordings that have been exchanged with police officers from the start of the person being charged?

**Mr O'Gorman:** What I am proposing is: if I represent a person and I give him the option of, 'You can become an informant,' from the time I present him or her to the police, every conversation should be mandatorily tape-recorded so that any sweetheart deals that are offered that will never otherwise surface, or any contradictions or any lies that are formulated by my client who wishes to reduce his sentence, are there for a court to see.

**Mr BROWN:** That is after you present as an informant, not before—any previous recordings?

**Mr O'Gorman:** Our submission is that, taking the example of my client, when my client is actually first arrested, even before he later becomes an informant on advice from me, he should be tape-recorded. Similarly, every conversation with the wife of my client, who might be interviewed to provide corroborative evidence if my client becomes an informer, should be tape-recorded. To those who say that that is a huge resource issue, Mr Moynihan addressed that, and the simple way you address that resource issue is that it is typed only as needed and, if necessary, as frequently happens now, typed at the expense of the defence.

**Mrs STUCKEY:** Hello, Mr O'Gorman. Your reputation precedes you here as a fierce warrior out there for civil liberties. I actually live in the electorate of Currumbin. It disappoints me a fair bit to hear that, in a sense, you are saying there is an exaggeration of bikie crime. Not only have I witnessed it firsthand, and over many years we have had some shocking crimes—I think you might remember that fellow taken up the valley who had his ear sliced off with a Stanley blade; it is quite descriptive—but in more recent times I have been extremely disturbed about the feeder gangs and the youth who are being recruited by the bikies. My question is around the amount of unreported crimes and also youth being informants. I give the example of up to a dozen youth who were recruited by the Lone Wolf into Nomads. What would you recommend should be the passage of those youth if they are informants?

**Mr O'Gorman:** I will answer that in two ways. I quote the statistical evidence, not anecdotal, and the statistical evidence is in the Wilson report and it is less than one per cent.

In relation to someone who is a member of a feeder gang who seeks to be an informant, by all means. I am not opposed to informants. The argument the council puts up is that historically, in the 70s and 80s and 90s, in the UK and here, informants were misused. Miscarriages of justice resulted from that misuse. The best way you deal with that is simply to tape-record all contact with informants.

I am not saying that there should not be informants. I put up an example that as a lawyer I am obliged, in advising a client, to put all options on the table and say, 'You can plead guilty. You can plead not guilty. You can become an informant.' That is my obligation.

**Mrs STUCKEY:** I really object to this refusal to accept anecdotal. The fear of retribution is absolutely massive. The fear is palpable, whether it is perceived or unwarranted, in my electorate. I feel that it is really important to factor in the anecdotal evidence as well.

**Mr O'Gorman:** I, with respect, disagree. Public policy should be based on evidence. We have a QPS with a budget of in excess of \$2 billion. It has all of the available resources to gather criminal intelligence, of which it has huge amounts.

**Ms PEASE:** Thank you very much for coming in, Mr O'Gorman. Likewise, I appreciate your experience and integrity.

**Mr O'Gorman:** Thank you. Could I apologise that I am unable to stay behind. I have a current Supreme Court case going.

**Ms PEASE:** That is fine. Further to the line of questioning with regard to bikie gangs, in particular the VLAD legislation, unlike the VLAD legislation, this is serious organised crime, so it is actually not just targeting one particular sector. Could you perhaps elaborate on your position on that? Further, could you give me some examples of what you consider organised criminal gangs as opposed to bikie gangs?

**Mr O’Gorman:** Under this definition and under VLAD, any group of people three or more who participate in a common criminal enterprise, for instance transporting marijuana in the back of a car from Victoria to Queensland, are and will be caught by this legislation. I do not oppose that at all. What we do oppose is what we hope are the unintended consequences. Our concern about the unintended consequences is our example of the three 18-year-olds who buy their smoke in bulk. Our proposed amendment is designed to prevent unintended consequences and to prevent miscarriages of justice. Lest it be thought that somehow or other the QCCL is some limp-wristed, bleeding heart organisation that does not acknowledge crime. We do. We just say that public policy should be based on statistics, not on anecdotes.

**Ms PEASE:** Agreed. Thank you.

**CHAIR:** Thank you, Mr O’Gorman, for your attendance here this morning. We wish you well in your next proceeding.

**Mr O’Gorman:** Thank you, and thank you, members of the committee.

**DUNN, Mr Matt, Government Relations Principal Adviser, Queensland Law Society**

**FOGERTY, Ms Rebecca, Member, Queensland Law Society Criminal Law Committee**

**SMYTH, Ms Christine, Deputy President, Queensland Law Society**

**CHAIR:** Good morning. I welcome represents from the QLS. Thank you for attending today. We will allow you five minutes to make an opening address and then we will move to questions from the committee.

**Ms Smyth:** Thank you. Good morning, everyone. We would like to thank you for inviting the Queensland Law Society to appear at the public hearing on the Serious and Organised Crime Legislation Amendment Bill 2016. The society is the peak professional body for the state's practitioners, over 11,000 of whom we represent, educate and support. In carrying out its central ethos of advocating for good law and good lawyers, the society proffers views which are truly representative of its member practitioners. The society is an independent, apolitical representative body upon which government and parliament can rely to provide advice which promotes good, evidence based law and policy.

In this regard, the society is pleased that it was consulted throughout the legislative process and valued the opportunity to participate in the task force on organised crime, chaired by the honourable Alan Wilson QC, to review legislation introduced in 2013 to address organised crime, and the Queensland Organised Crime Commission of Inquiry, chaired by Mr Michael Byrne QC, to investigate the extent and nature of organised crime in Queensland and its economic and societal impact.

The society applauds the government's commitment to tackling organised crime and heralds the success on this issue to the proper funding of police and front-line services. The society has been vocal in its opposition to the 2013 suite of legislation. This legislation did not bring about many successful prosecutions and caused myriad unjust and unintended consequences. In fact, the High Court in *Kuczborski v The State of Queensland*, particularly the judgement of Chief Justice French, did not rule out a further constitutional challenge to the VLAD Act.

We draw the committee's attention to the Queensland Law Society's long-maintained strong stance against any form of mandatory sentencing. This is highlighted in the Queensland Law Society mandatory sentencing policy paper. The current bill maintains elements of mandatory sentencing; however, the 2013 legislation contains far more mandatory sentencing provisions than the current bill. Therefore, the society welcomes the introduction of new legislation to target serious and organised crime.

While the society has raised concerns with some aspects of the bill, the society recommends that the bill be passed in an amended form rather than the 2013 amendments to be maintained. We therefore recommend amendments to the bill which provide a workable, enforceable, practical and constitutionally valid legislative scheme to address serious and organised crime in Queensland.

I would like to now hand over to Ms Rebecca Fogerty, who is an accredited specialist in succession law and a member of the Queensland Law Society Criminal Law Committee, to speak on three aspects.

**Ms Fogerty:** The society has made a detailed submission which sets out our position on the bill. Today we wish to highlight three issues in relation to the consorting laws. We would then be happy to answer any questions that the committee might have. I appreciate there are time limits, so I will try to be as brief as possible.

The first issue is that the society is concerned about the proposed breadth of the consorting offence under the proposed new part 6A of the Criminal Code. That legislation does not require that there be any nexus between the association or the consorting on the one hand and the commission of or intended commission of criminal offences on the other hand. In our submission, as a result, there is significant potential for the proposed consorting offence to criminalise associations and activities that are completely unrelated to criminal activity. In our submission the scope of the consorting laws should explicitly be narrowed to deal with the prevention of serious and organised crime.

Related to that issue, the society is also concerned that the list of particular acts of consorting that should be disregarded is inadequate and does not capture the complete range of circumstances where consorting could be reasonable. Certainly we propose that that list should be expanded. Some of the things we say should be included is consorting that occurs in the course of participating in legitimate political, social or industrial action or protest and consorting that occurs in the course of accessing a welfare service, a social service or in fact any government service. That is the first issue.

The second issue is that we have concerns with the reverse onus defence provision. The society is concerned about this provision. The defence can only be raised obviously once a person has been charged. The availability of that defence would then require determination by a magistrate or by a jury—whoever is the ultimate arbiter of fact as the case may be. Where we are concerned is that it leaves open the prospect of overzealous application by police officers when arresting and charging individuals with a consorting offence. As seen in New South Wales and as the New South Wales experience did show in relation to the equivalent provision upon which this proposed provision is based, that would have cost implications for the court system as a whole.

If I can quickly deal with the third issue, we are concerned that there is no review mechanism in relation to the initial police warning. The legislation enables a police officer to give the warning and that is a precondition to establishing a later offence. It is a broad discretion that the police officers have. We are concerned that there do not appear to be any institutional safeguards against overzealous application. In our view, the warning, once it is given, has a significant legal impact. It interferes with a person's right to free association. Review mechanisms are in place for all sorts of other decisions that police officers make that interfere with things that citizens are able to do.

In our written submission we considered that the current regime for reviewing traffic infringements could be used as a starting point. That is the review that occurs in the Magistrates Court. That could be used as a starting point for developing a review system for the consorting warnings and certainly our view is that the most effective form of review is one that involves oversight from the judicial branch. There are also some gaps in the consorting legislation. There are no time limits for the warning, so in theory they can operate indefinitely. Given that there is no review mechanism in place, this has real potential to be oppressive. There is no provision, for instance, for persons who may be prevented from contacting family members throughout the course of their lifetime if they are the subject of a warning.

There is also no provision for temporary suspension of the warning as can sometimes happen with, say, a temporary variation of bail conditions. Using that family member example, in our submission, we consider that perhaps an amendment could be considered that enables a person to apply in advance for a temporary suspension of the warning to enable them to have contact with other people, for instance, for the purposes of a funeral or other significant occasion. It would still enable police to monitor the activities of persons of interest, but it achieves a balance by not then causing innocent and perhaps understandable contact to be criminalised. We would now welcome any questions that the committee may have on those issues we have raised.

**CHAIR:** I might have a question for Ms Smyth first. You indicated you were vocal in opposition regarding the VLAD legislation. Can you just expand on how you voiced your opposition? I know there was no committee inquiry into that legislation. How did you express your opposition to that particular legislation?

**Ms Smyth:** Under the prior presidency of the Queensland Law Society, our prior president, Annette Bradfield, made several statements to the media about the Queensland Law Society's position on this and also undertook a variety of interviews and issued press releases with respect to our position on this.

**CHAIR:** There were no formal meetings with the then Attorney-General or police minister?

**Ms Smyth:** Not that I am aware. Matt, are you aware of any formal meetings?

**Mr Dunn:** Certainly there was engagement with the office of the Attorney-General at the particular time but there was not consultation on the package in any way.

**CHAIR:** Ms Fogerty, with regard to part 6A of the Criminal Code amendments that are being sought by this bill, I take you to page 6 of your submission in respect of the overrepresentation of Aboriginal and Torres Strait Islander people in the criminal justice system. Can you please paint a scenario to the committee of your concerns in that particular space, how you believe this may have a bearing on those people?

**Ms Fogerty:** The society does have concerns about the impact of this legislation on vulnerable and disadvantaged groups—Indigenous Australians, homeless persons. Statistically, these populations have a higher proportion of persons convicted of indictable offences and would therefore fit within the definition of a regulated person. Certainly the experience in New South Wales, as we have seen in the recent report by the New South Wales Ombudsman into the New South Wales equivalent provision, is that police relied upon the anticonsorting laws instead of more appropriate laws such as move-on powers in respect of these groups. Given they are already overrepresented in the justice system and in our jails, it was particularly concerning because these groups traditionally would not necessarily have any real connection to major, serious and organised crime.

**Mr CRANDON:** Ms Fogerty, in relation to the information you are providing us with regard to your concerns around consorting, we have this little diagram. Have you seen the diagram—the A and the B and the C diagram?

**Ms Fogerty:** I am familiar with the concept. I have not seen the diagram.

**Mr CRANDON:** There is a diagram that talks about if A meets with B and C and B and C are two of those individuals who would qualify, then A can get a warning. In fact, they could even get a pre-warning to the warning but that does not count as the warning. That is just a pre-warning that they might want to consider not going over there and having a yarn to those two guys. I understand the whole concept behind this warning is to cut across the concept of recruitment more so than anything else. Also in the current legislation the concept of keeping them apart, of forcing them—and obviously it is not just a physical meeting, either; it can be over the phone and so forth. It is forcing them not to consort, not to sit down. It is not about innocent people getting together to have a bit of a chat about the family. It is not about innocent people wanting to go to a funeral—this is the current legislation or this proposed legislation—it is not about these things. It is about the concept of recruitment. It is about the concept of planning crimes and so forth. Can you give me your views on that aspect of it rather than the technical detail that you have been looking at?

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

The matters that we have raised today, to adopt Mr O'Gorman's language, are really concerned with the issue of unintended consequences. We know that the legislation specifically provides for issues of incidental random contact that occurs as a daily part of civic life. We also know that the legislation provides that reverse onus defence that enables conduct, once it has occurred and once a person has been charged, to perhaps be held to be lawful if it was legitimate and for a reasonable purpose. Our concern, however, is that these are not sufficient safeguards and that, because of the broadness of the definition of consorting and because of the lack of a review mechanism and so forth, there still remains significant potential for innocent behaviour and innocent persons to be captured. The process of then defending oneself or becoming disentangled is not necessarily as efficient as it could be.

**Mr CRANDON:** Following on from that, we have a police force; it is a professional police force. They are out there in the marketplace. They are very busy people; would you agree?

**Ms Fogerty:** I agree.

**Mr CRANDON:** For the most part they are going to be out there trying to cut down on crimes against our society. Is that the idea? That is what they are out there for?

**Ms Fogerty:** That is so.

**Mr CRANDON:** Do you really think on an ongoing basis, on a broad basis, our police force is going to be going out and just annoying people or becoming overzealous in relation to this particular fellow or that particular fellow? Seriously, how do we lock this down so tightly that the only time it can ever be used is in the circumstance that we have just been talking about where we are trying to stop that recruitment and stop that organised crime? How do we do that? How is it possible for any society to do that?

**Ms Fogerty:** It is a question about achieving balance. The Law Society has always advocated for good law that is based on evidence. The situation here is that, as you have rightly observed, police are busy; police have a job to do. We want this legislation as much as possible to achieve a balance between fighting crime but without bringing about the prospect of corruption, of overzealous use of these extraordinary powers in such a way that people's fundamental rights and liberties are compromised. The importance of our advocacy being evidence based is highlighted by the recent New South Wales Ombudsman's report, which was handed down recently, that specifically noted the use of the New South Wales equivalent of these powers in relation to persons and in relation to conduct that did not meet the definition of serious and organised crime.

**Ms PEASE:** Further to your discussions regarding concerns about consorting, one of the issues that you raised was the impact that it would have on availability for visiting family members. I am reading through some of the information here. I understand there are some defence provisions with regard to that. Do you consider that they do not go far enough? It states here that consorting with close family members is defined to capture the concept of immediate family members such as partners,

grandparents, step-parents, spouses, siblings—blood or marriage—stepsisters and the like, and these definitions also recognise and include Aboriginal and Torres Strait Islander culture under norms of kinship. Do you think that defence does not go far enough?

**Ms Fogerty:** We certainly support the inclusion of the defence. In fact, my understanding is that the defence is necessary for the legislation to be constitutionally valid. Our position, however, is that the defence operates retrospectively in fact; it happens post hoc after a person has been charged. The determination of whether a person's contact with family members is reasonable, and therefore lawful or legitimate, therefore occurs in the course of the criminal justice system and is subject to all of the delays and costs that inevitably follow.

Our position is that the inadequacy of that defence as a standalone provision is compounded by the fact that there is no ability to review a police officer's initial decision to give a warning and perhaps deal with instances of reasonable contact with family members at an early stage and in perhaps a more common-sense, low-cost, efficient way, rather than a person having to be charged and then go through the machinations of the criminal justice system if their contact was for reasonable purposes. The reality is that in today's modern policing environment police are not necessarily required or in a position to consider the availability of a defence in determining whether or not to charge a person and in determining whether or not to give a warning. The reality is that many police officers in our experience will err on the side of charging persons and then perhaps consider the question of fact as to whether or not contact in a particular case was legal or not to be rightly the province of the judge or the jury or the magistrate, whoever the arbiter of fact may be in a given situation.

**Ms PEASE:** Can you make any suggestions as to how to improve on that particular area?

**Ms Fogerty:** We certainly think that a key issue would be amendment of the legislation to enable there to be some way, preferably with judicial oversight, to review the initial warning given by a police officer. The other recommendation we have is some sort of mechanism to enable a person to apply—whether it is to a police officer or preferably to the Magistrates Court or the judicial branch—so that there can perhaps be a suspension of that warning for a defined period of time for a defined set of circumstances in relation to a defined set of people. Being able to apply in advance means that people can make appropriate arrangements, for instance in relation to family and kinship groups, without attracting the threat of being charged and also enables police to continue their monitoring and oversight crime-fighting functions. We believe that some sort of mechanism as exists with bail variations currently would achieve that balance.

**Mrs STUCKEY:** My question concerns restricted premises orders, which I note you comment on in your submission. Regarding the definition of disorderly activity under section 33, you say that it is extremely broad and not only includes criminal offences or unlawful activity on premises but also could include drunkenness, disorderly conduct, indecent conduct, entertainment of a demoralising or drunken character and so on, including the presence of recognised offenders or even associates of recognised offenders. My question is have you not considered that these places could actually be used to recruit? You may have heard that I still have a bikie clubhouse that is owned by Lone Wolf at Currumbin. We have evidence of some of our schoolchildren being recruited into feeder gangs. Have you considered there could be initiations taking place to induct people into criminal gangs? If you look at the location of some of these places, it is used as a base to receive orders to go out and commit crimes. I think we all agree that overly prescriptive legislation draws a lot of criticism, so if this is too broad how on earth are the police supposed to catch anyone?

**Ms Fogerty:** Can I first note that the provisions of the Criminal Code that are proposed to be overturned, sections 60A and 60B—the participant entering prescribed places and the clubhouse offence—and section 60C—the recruitment offence—are examples of legislation that had a very far reach and resulted in very few prosecutions and very few convictions. The restricted premises orders, in conjunction as well, can I say, with the consorting legislation, is clearly designed to deal with those issues that you have identified. I do not know if Mr Dunn has anything further to add in that regard.

**Mr Dunn:** I think what we are calling for is a little bit of clarity around some of those definitions. We could not quite figure out what 'entertainment of a demoralising character' is, and if we cannot figure that out then potentially police officers are in a position of equal difficulty in figuring out exactly what that means for the purposes of the definition. I do not think the submission of the society is in any way against the restriction of recruiting or dealing with that. Certainly the consorting laws are directed in that particular way.

As the member for Coomera was talking about, perhaps those laws could be better focused to be able to achieve that purpose, which would be quite ideal. I think what we are calling for here is being able to try and put a little bit more rigour as to what that means in terms of those types of conduct which

might simply fall under that broad banner of disorderly conduct. We are in no way supporting the recruitment of people into criminal gangs or the promotion of serious and organised crime—in fact, we are supporting legislation to deal with serious and organised crime—but if we cannot figure out what it means, then that really does not put the police in a much better position when they are actually on the ground in the heat of battle.

**Mrs STUCKEY:** It is in the heat of battle and things can happen in an instant. With respect, I think the law itself has some very broad terms that it operates under such as with the word 'reasonable'. How can that be interpreted? I think perhaps it is not giving the police the credibility that they deserve, because these instances can flare up very swiftly and a decision needs to be made very quickly. I would ask what specifically you would like to see, but it sounds to me like it is overly prescriptive.

**CHAIR:** Is that a question?

**Mrs STUCKEY:** I asked what they would actually like to see instead of some of these terms.

**CHAIR:** Member for Capalaba, one question and then we are going to unfortunately close.

**Mr BROWN:** I will try and jam a couple into one. In your submission you talked about workable and public safety orders and wanting to give the courts discretion. I suppose in our legislation those public safety orders that are over 72 hours can be appealed to the Magistrates Court. Do you feel that does not give a balance between—again referring to the example that is given in the explanatory notes—a quick turnaround time to be able to put one of these orders in place, but if it is over 72 hours then the ability to appeal?

**Ms Fogerty:** I beg your pardon? Can you clarify that?

**Mr BROWN:** In your submission you talked about taking the power for a public safety order away from police officers and giving it to the court's discretion.

**Ms Fogerty:** That is so.

**Mr BROWN:** In the legislation there is the ability to appeal to the Magistrates Court if it is over 72 hours. Do you feel that is not the right balance between these laws being workable in a quick time?

**Ms Fogerty:** The society is concerned that, because of the consequences to rights and liberties of a public safety order, it is something that requires judicial oversight from the very beginning. Our experience is that the judicial branch, Magistrates Courts, can be engaged at very short notice. Obviously one of the concerns in the legislation is that this have a fast turnaround time. The case of search warrants is an example where these can be organised very quickly. We maintain our position that the best form of oversight is the judicial branch, particularly when we are dealing with wideranging discretions that have been granted to police officers which significantly affect the rights and liberties of citizens.

**CHAIR:** Unfortunately, we are out of time. Thank you for your appearance here this morning.

**LAUCHS, Associate Professor Mark, Faculty of Law, School of Justice, Queensland University of Technology**

**CHAIR:** Thank you for your attendance here today. We will allow you five minutes to make an opening statement and then we will hand it over to the committee for questions.

**Prof. Lauchs:** I will not repeat a lot of things you have just gone through in the previous conversation; I will just stick to a few key points. My area of expertise is not the legal provisions. My area of expertise is the criminology of motorcycle gangs, so I will try and stick to that and look at how these laws vary in that regard. One of my main points is that there is a massive mission creep in this legislation compared to the VLAD legislation. VLAD applied to fewer than one in 1,000 people in Queensland. This bill will apply to everybody in Queensland because you had to have been a participant or a member of one of the 26 named organisations for VLAD to really have any effect upon you. This legislation removes that restriction and will apply to anybody.

We have already heard about issues in relation to claims being made against people who then have to wait until they are convicted and often have gone to prison before they can take action. The one that was not mentioned when I was here is the one that relates to the CCC. If you fail three times to provide evidence to the CCC in the course of a hearing and you have a justifiable offence of fear of danger to your personal safety, you cannot take action until after you are convicted. There is no mechanism in the act to prevent that happening in advance. I am assuming that in practice a lot of people will take that into account, but you would actually have to go to prison and wait for an appeal to the Supreme Court, which is a very expensive and long process, ignoring the fact that the idea that failing to talk to the CCC three times should be punished at the same level as intentional murder is very, very harsh and I think far too excessive.

I will jump to the point of habitual consorting. The habitual consorting safety net exceptions apply after the fact, however, that safety net is very, very small. For example, I would be a habitual consorter if I carried out a research grant where I spoke to recognised offenders. Reporters who speak to recognised offenders will be habitual consorters. Each of the members of the panel who spoke to members of their electorate who were recognised offenders would be habitual consorters, so the restrictions are not broad enough. They do not provide a real protection. All of the restrictions also focus on the activity of the recognised offender, so when the recognised offender is carrying out their normal legitimate work, then people who associate with them are protected; but if other people are carrying out their legitimate work and seek out the recognised offender, they are not protected. I am not sure if that was the intent, but that is what it actually says. That is something that would definitely need to be corrected because there are a lot of other categories we could probably think about that would fall under that exception as well.

In relation to research, we do not have very much research on motorcycle gangs. We do not have very much research on organised crime. I am the president of the International Association for the Study of Organized Crime. We have 28 members in the world. The idea that there is sufficient research out there where we know how people are recruited to organised crime, where we know what organised crime groups do and where we know what motorcycle gangs do is just not true at all. We are at the very beginning of that study—and I mean the absolute beginning—where trying to gather data is close to impossible. I had the support of the former attorney-general and former police minister and for 12 months the justice department and police refused to give me any data even though the ministers' offices were demanding it, so the ability to gather information is very limited.

In Queensland we also do not have access to all of the judgements in relation to criminal matters that you would normally get off the internet if you were in New South Wales or Victoria. There is a lot of very easily available data sources that would help us actually discover that. I study the life course of the criminals themselves: what do these bikies do? I have just spent three months studying the offences on the Gold Coast, which is in the area of a couple of the members here, and I have a lot of detail but we need more work and we need more cooperation by the government departments to help us do that work properly. I will leave it there for my opening statement and there is other information I can provide.

**CHAIR:** Thanks, Professor Lauchs. I might start where you ended—that is, how long have you been in this area of study in respect of OMCGs?

**Prof. Lauchs:** OMCGs specifically in Queensland for three years, but broadly organised crime for a decade and I started in the area of corruption and moved into organised crime. I was in the justice department and Premier's department for 20 years before I came to the university.

**CHAIR:** In your submission on page 2 you make reference to club members being 20 times more likely to be involved in crime than the rest of us. Can you just expand on that reference please?

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

**CHAIR:** That makes sense why you should concentrate on those cohort.

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

**CHAIR:** Furthermore, your submission on the same page refers to the bikie problem being real. You have clearly identified that now in your answer and you go on to talk about good resources and cooperation by the federal government agencies in terms of what really matters. Is there not enough collaboration with respect to federal crime bodies feeding back into this?

**Prof. Lauchs:** It has been corrected to be set up at the NAGS. The national antigang squads have really corrected the problems that existed if you went back to the 2000s. Especially after 2012 and 2013, there has been a massive increase in cooperation between federal policing bodies and the Australian Taxation Office and Customs and that has led to a great deal of success, and I think Taskforce Maxima is the evidence of that. If you go through the cases there is a lot of evidence, particularly in relation to the financial resources of the people who have been arrested, and a lot of resources have now been held by the CCC as a result of the various provisions we have under the legislation that allows civil asset seizure.

**CHAIR:** On page 3 of your submission you talk about the VLAD laws being possible to actually open new clubs in a new name.

**Prof. Lauchs:** Yes.

**CHAIR:** I hear opinions claiming that all of the clubs have been shut down and there is no—

**Prof. Lauchs:** All 26 that were registered under the regulation have been shut down. Satudarah, which are a Dutch club—and I was Skyping with the Dutch police last night and they were astounded that Satudarah are allowed to be in Queensland—are here and Mongrel Mob are here from New Zealand. Were they to be examined in the same manner as any of the other clubs that are on the list—the other 26—they would actually exceed the criminality of probably at least a third of those 26 clubs. I just do not understand if we are going to continue the current system for two more years why you would not at least add a regulation to put those clubs on the list.

**CHAIR:** However, there is capacity by regulation to add clubs to that list.

**Prof. Lauchs:** There is capacity right now. They can just be added today.

**CHAIR:** That is right, so what you are saying under the current laws, because these laws are not enacted yet—

**Prof. Lauchs:** Yes, I am talking about VLAD in this capacity.

**CHAIR:** Yes. They are fully operational—that is, the two clubs you identified are in operation right here and now?

**Prof. Lauchs:** On the Gold Coast; that is correct.

**CHAIR:** I found your submission very interesting and I appreciate the effort that you have put into it. Out of interest last night I went to have a look at your reference to what is happening in Germany and the ban on colours. Do you have any comment with respect to that particular issue?

**Prof. Lauchs:** That was a conversation that I was actually having with the Dutch last night. They want to beat the Germans to it so the clubs actually go to Germany rather than the reverse. The Hells Angels are the club that the Germans are targeting rather than a blanket ban. The Dutch are worried in that if you are on the Gold Coast you would find that the four major clubs on the Gold Coast have their own territory and they never mix. They have found now that the Dutch clubs are all setting up in the same street, implying that they are all cooperating. This is not traditional motorcycle club culture, so this is an implication that they are involved in some other thing other than what I call the traditional barbarian culture of motorcycle clubs, which is why they are trying to move very quickly to institute a Brisbane

ban in the Netherlands and they are willing to test all the rules under the European bill of human rights to see if they can close them down and fight the fight over freedom of association there based upon criminal association.

**CHAIR:** That is the difference no doubt between this bill and the current legislation—that is, the focus on criminal activity of people as opposed to organisations that are members of outlaw motorcycle gangs?

**Prof. Lauchs:** That is correct.

**CHAIR:** Thank you.

**Mr CRANDON:** Thanks for coming in—it is much appreciated—and thanks for your submission as well. I want to draw you back to those numbers that you were talking about earlier. It probably would have been useful for us to have you on before the Queensland Council of Civil Liberties because of the conversation that we were having there where it kept on coming back to, 'I'm only talking about the facts. I'm only talking about the statistics and it's less than one per cent,' and what have you. What I would like you to do if you could is just talk about and expand on that aspect—less than one per cent, yes, but more—

**Prof. Lauchs:** That is right; less than one per cent of offenders. The offending that we are talking about in relation to VLAD is not low-level offending. We are talking about serious crime. That is what VLAD applies to. The figures that were in the report that are relied upon I actually question, because they are making reference to RTI requests for data that I was told at the time by the police did not exist and was never, ever collected, so I doubt the existence of the data that was used in the reports in the first place. The people who are committing serious crime in Queensland all fall under a certain category of personality type. They are nearly entirely male. The clubs match that personality type and attract that type of person to them because the clubs provide something that not everybody who is a serious criminal wants. They provide the brotherhood. As I say in my submission, the clubs actually have a positive psychological effect on people who join the club. Not all members of the club then participate in serious organised crime, but those who do have an advantage because membership of a club facilitates organised crime by providing protection, by providing access to other violent people and generally has a network across the entire country and internationally. If you were trying to set up an organised crime network, a club would be a great place to go—if you are willing to go through the process of joining the club, which is very strict and time consuming. Some people have done that.

As a result of that, a large proportion, if we look at the Finks report that Commissioner Condon put together in 2009—I have gone through that report in complete detail—the rate of offending is high and most of those offences are what we call barbarian offences. They are the traditional bkie offences of drinking, fighting and so forth such as traffic offences, but seven per cent to eight per cent of the members have been involved in very high-level organised crime offences. One of the former members Charlie Cannon has just lost all of his money finally after 10 years of fighting with the CCC or CMC as it was then, so the clubs are a nexus point where people can go to achieve more success in organised crime if they wish to.

What you do find in the clubs is club members place the club above everyone else in society, and this is not my interpretation; it is an explicit statement by members. There was a case in Cairns—I think it was in 1998—where a prospect helped shift a person who was murdered in the clubhouse in front of the bar who owed money to a Sydney member of that club. He did it because he said 'Yeah, I knew it was bad but I would've been patched early and I wouldn't have had to wait an extra year.' That sort of culture is why it is useful, but that also does not deny the fact that the majority of people who are in clubs are not participating. When we look at police corruption, there are qualifications of types of people. They would be the birds—the people who are flying above it, may be aware of it but are not doing anything about it. That is my conclusion about the clubs themselves. The clubs have actually kicked an own goal. Their own culture has attracted the attention that has allowed this bill and the VLAD legislation and the various other legislation around Australia to be in place because they are not coming to the party and saying, 'These members shouldn't be in our club.' Even in Holland Satudarah—as I said, a very serious club—has kicked members out who have been convicted of serious drug offences such as meth lab offences. Australian clubs do not do that. They could actually be participating in a solution—as I call it, a diplomatic solution—here and assisting. The other thing I point out is that if I was a member of a club and I had never been involved in any serious crime I and the other members of my club could form a new club tomorrow that would not be one of the 26 listed clubs and we could ensure that none of the people who are questionable are members of that club and we could operate tomorrow with complete impunity under the current legislation and none of us would be habitual consorters if we went to the club because the people who are recognised offenders would no longer be members.

**Mr CRANDON:** Thank you. That is it from me.

**Ms PEASE:** Thank you very much for coming in. Further to that line of questioning and talking about the fact that if you had no criminal record you could go and set up a new club, one of the comments that we have heard time and time again from submissions from people, particularly the bikies or organised motorcycle gangs, is that they have indicated that they do not have a criminal record. I am just wondering whether you are aware of any instances where the leaders of those organisations might actually get other members of the association to undertake the crime for them.

**Prof. Lauchs:** We have not been given any evidence of that happening anywhere. We have not been provided by the police with any evidence of feeder clubs being used either. However, we do have direct evidence of office holders of various clubs, particularly on the Gold Coast and in Brisbane, directly participating in serious and organised crime. For example, one club was set up—I am not going to name the clubs here, but I am happy to provide the data later—on the Gold Coast by two drug dealers who had met in Parklea prison in New South Wales and decided to quit the clubs they were both members of and join up with this new club and set up a branch on the Gold Coast as a going concern. There are definitely members who are office holders who are directly involved. There are definitely office holders who do not even have a criminal conviction for a traffic offence as well. In the studies that we are slowly doing there is a theory that there are actually factions within motorcycle clubs—just like there are factions within political parties—and they compete—

**Mrs STUCKEY:** Oh no!

**Prof. Lauchs:** Except the Liberal Party of course, according to the Prime Minister. They compete over time and they move into power and they move out of power over time. Also, the cultures across chapters of individual clubs varies enormously. Gypsy Jokers in Perth are one of the two most violent and criminally active clubs in Perth. With regard to Gypsy Jokers in Brisbane at Everton Park, I cannot even find a reference to them in the newspapers, but they are there. That chapter may be made up of probably older men who are not participating in that sort of activity.

**Ms PEASE:** Further to the comments that you made in your opening statement that you are part of a membership of an organisation, is that a worldwide organisation?

**Prof. Lauchs:** It is a worldwide organisation, yes.

**Ms PEASE:** Does that just address motorcycle gangs?

**Prof. Lauchs:** No, it is organised crime in general.

**Ms PEASE:** Have you had an opportunity to discuss with them this particular piece of legislation?

**Prof. Lauchs:** Last night was the first time we have spoken. I will be presenting at the American Society of Criminology next month. We actually set up the research network on biker crime. It is run by the Dutch police. That was set up out of members of the International Association for the Study of Organized Crime. I know that Brett Pointing is associated with the research network on biker crime.

**Ms PEASE:** Internationally, what position do your colleagues on that or your fellow members have with regard to consorting and the issues that have been spoken about mainly this morning?

**Prof. Lauchs:** The one jurisdiction where consorting has been applied has been in the UK. The success rate was extremely low. There was a review done by an academic at Portsmouth university and he found that, of the identified offenders—I think it was 400,000 active organised crime members in the UK—one per cent were arrested after four years using the consorting laws that were the basis for the New South Wales laws and now the basis for this bill, the reason being whilst you may be able to restrict activity of people associating, these laws—this bill—does not lead to convictions for organised crime because it does not address that. That is not the purpose of this bill.

**Ms PEASE:** The serious—

**Prof. Lauchs:** That is right, and I agree. In my submission I say successful conviction comes from well-resourced, good-quality policing, which is what Taskforce Maxima was doing and now the national antigang squads do as well.

**Ms PEASE:** Thank you.

**Mrs STUCKEY:** Good morning, Associate Professor. I am obviously fascinated about whether you have been doing any work in my patch, in Currumbin. I would be very keen to hear that. I think also just about the amount of unreported crime. Given that there is supposedly less than one per cent committed by bikies, I am just wondering if you have explored the unreported crime because of the fear of retribution, which is pretty high.

**Prof. Lauchs:** The area where that really turned around was in extortion. What we saw in the last 18 months was a series of cases that fell over because witnesses would not attend and give evidence. That is not exclusively in relation to extortion. I have a number of cases on the Gold Coast where offences were committed by club participants and witnesses did not come forward, but those witnesses were drug dealers and they fled the country. There is a class of people who are not going to talk.

There was a shootout in Mackay just over a decade ago. Police found 60 empty cartridges on the ground. We are not sure how many people were wounded. We are not sure if anyone was killed. No-one was charged because none of the bikies who participated gave any evidence. There is an enormous amount of unreported crime. There is also an enormous amount of unsuccessful prosecutions because of failures to find witnesses who can either provide any evidence or give their evidence in relation to who was who at a time.

There was a shootout in Sydney involving some Queensland club members who had fled down to Sydney. An American tourist was sitting in a four-wheel drive. They were shooting around her car. They were shooting under the car and around the car with her in the middle. She was highly stressed. When asked to specifically identify people in court, she was unable to meet the standard that the court required because of the stressful state she was in at the time. There were bullets flying around her head. This makes it difficult. CCTV helped solve that. The CCTV evidence of the shooting at the shopping centre on the Gold Coast is a classic example. The excuses that were given by the two participants involved just did not add up, once you saw the video. Video does help, but we cannot have video everywhere.

**Mrs STUCKEY:** No, you cannot. Have you been doing anything on my patch, in Currumbin?

**Prof. Lauchs:** Yes, I have. Mostly I have read 6,000 newspaper articles from Queensland. Most of those are from the Gold Coast and quite a few are in Currumbin. If you want a specific example off the top of my head, I probably could not do anything other than Liborio Di Viito from the Black Uhlans who bashed the surf lifesaver down there. That is the only thing that pops into my head, but yes.

Given the time, there is one other comment I want to make. This legislation, if applied across the state, and especially in small towns and remote Aboriginal communities, will lead to a lot of internal strife in those communities. The estimate by the New South Wales Ombudsman was that in Aboriginal communities 40 per cent of the adult male population would be recognised offenders. How does that operate on a day-to-day basis, where you have one venue for people to go socially and no-one is allowed to mix with them and the local police sergeant can close down the venue or prevent people attending, or the various other options that are available under this bill? The day-to-day consequences are difficult.

I am never going to put any evil intent on the part of police officers, but they are sometimes in invidious situations. Those situations where they act as well as they think they can get out of hand—if we look at the cases of the various people who were detained at the beginning of VLAD who were not club members, who were simply riding along in leather, or the man who was arrested wearing a Sons of Anarchy T-shirt. I spoke to the senior police from the task force and I asked, ‘How did that happen?’ They said, ‘Mark, you always tell me 80 per cent of your students aren’t listening to you. What makes you think more than 80 per cent of my officers are listening to me when I tell them what to do as well?’ The ability to get that information down to the day-to-day operational level is difficult. There is so much the average police officer needs to know to operate effectively. It is just hard to guarantee. There is no evil intent on the part of police, but that does not mean that it is going to operate as intended by the parliament.

**Mr BROWN:** Thank you for coming in. Out of interest, the police officers gave a warning to Andrew Fifita. Was that under the consorting laws?

**Prof. Lauchs:** I do not know the circumstances of that one enough to actually tell you if that is true. Sorry about that.

**CHAIR:** Thank you so much for your attendance here this morning, Mr Lauchs.

**Prof. Lauchs:** Thank you for the opportunity.

**Mr CRANDON:** Mr Chair, the professor did suggest he had some statistics. He was not going to name the gangs but he had some data he could provide to the committee.

**Prof. Lauchs:** Yes. I am happy to talk to the staff of the committee. I would have to put some of it together. It is not immediately available in a form that I could just email to you, but I am more than happy to talk to people from the committee and chase that up.

**CHAIR:** We need that by next Monday.

**Prof. Lauchs:** That should be fine.

**CHAIR:** We will place that on notice, thank you.

**Proceedings suspended from 10.50 am to 11.27 am**

PROOF

### **SCHMIDT, Mr Troy, Barrister-at-law, Queensland Police Union of Employees**

**CHAIR:** I welcome Mr Troy Schmidt. Thank you for attending today. We will allow you approximately five minutes to make an opening statement and then we will hand over to the committee for some questions of you.

**Mr Schmidt:** I have a very brief statement. Firstly, can I indicate that I am a barrister. I am actually retained by the union to assist the committee this morning. Mr Ian Leavers, the general president and chief executive officer of the union, has asked me to extend his apologies for being unable to attend today. He was looking forward to giving evidence to the committee. I hope that I am able to assist you in his stead.

Effectively, the police union represents over 11,650 sworn police officers and other members, such as assistant watch-house officers and police liaison officers, throughout the entire state. The union has provided a submission to the committee. If I could effectively summarise the union's position, it is that it broadly supports the government's proposed laws to sustain the attack on serious and organised crime within the state. As you would be aware, the union was a member of the task force which reviewed the existing laws and was informed in formulating the report which underlies the current bill. In addition to being on the task force, the union has actively been involved in consultation with the Premier, the Deputy Premier, the police minister and the Attorney over the last six or so months in relation to the present bill.

The union also takes comfort from Police Commissioner Stewart's comments, in his position, in respect to the law. As you would be aware, the commissioner's primary responsibility is the protection of the Queensland public. The prevention, detection and prosecution of organised crimes is one of his significant responsibilities. He has expressed a view that these proposed laws are possibly the strongest in Australia to tackle organised crime. In addition to the commissioner's observation, the fact that the government has been very willing to consult with and hear from the union over the proceeding months about the laws, coupled with the existence of a two-year transitional period, gives the union confidence to provide its support broadly to the bill.

Finally, the honourable Premier has advised the union that she is willing to continue that ongoing negotiation over the next 12 to 24 months and has committed to taking steps to address any issues that the union may identify over that time in respect to those laws. That would be my opening statement.

**CHAIR:** Thank you Mr Schmidt. We have heard a lot over time about those who were involved in the task force. You did reference and your submission does indicated that the QPU was on the task force. Who was representing the union on that task force? Was it people like yourself or the president of the union?

**Mr Schmidt:** The president of the union was a member of the task force. He was assisted by Mr Simon Tutt and me. Depending upon availability and obviously meeting dates and other commitments, one or more of us would attend the task force meetings. We all received correspondence from the task force in respect to approaches which were coming. There would obviously be discussions so that the union's position would be put forward.

**CHAIR:** So you were actively involved in assisting Mr Leavers in respect to his involvement on the task force?

**Mr Schmidt:** That is correct, both in briefings before his attendance and also by my personal attendance at the task force meetings on some occasions.

**CHAIR:** As a barrister-at-law what was your capacity involving advice and support to Mr Leavers on the task force?

**Mr Schmidt:** I should probably indicate that I have been at the private bar for approximately the last eight years. Prior to that I was a police officer. I started with the police department back in July 1991. I was sworn in in 1992. I left as a senior sergeant in November 2008.

In terms of my policing experience, I was in the office of the commissioner when I left. I was involved in the policy unit and so forth. Prior to that, I was a sergeant in the Logan district. In my capacity there, the unit that I ran was primarily responsible for looking at drugs, property crime and so forth in Logan.

Our assistant commissioner would often have a regional operation. From memory, that involved about 60, 70 or maybe 80 police who would be deployed from Logan and the Gold Coast to combat particularly drug, prostitution, weapons, public order and property type crime offences both on the Gold Coast and in Logan. On a number of occasions—I cannot recall now how many there were—I was one of the field commanders. There would be two officers who would be field commanders. I do have experience on the coast. Prior to that I was in prosecutions and general duties and so forth.

**CHAIR:** In terms of your experience as a field commander, particularly on the Gold Coast, what was your involvement in prosecutions or arrests in terms of the VLAD laws as they stand?

**Mr Schmidt:** I was there prior to the introduction of the VLAD laws. This is going back to 2003 and 2004 and possibly into 2005. My involvement was both as an arresting and investigating officer in respect to a whole range of offences, primarily drug related offences, overseeing the other staff who were assigned to me—their investigations and their prosecutions and making sure their briefs and so forth were correct—and obviously charging people who were detected committing various and wide-ranging offences on the coast.

**CHAIR:** Was Deputy Commissioner Ross Barnett on the task force as well?

**Mr Schmidt:** Yes, Deputy Commissioner Barnett was.

**CHAIR:** I know a little bit about police culture given that I come from a police family. I have actually worked for the police union in a previous role. I know police like to see the fruition of a process of arrest and conviction. In your experience and having some involvement in the police union, what have the current VLAD laws done in terms of police making arrests of outlaw motorcycle gang members and not seeing those convictions come to fruition? What has the morale of members of the police union been in respect of seeing that outcome?

**Mr Schmidt:** Obviously police do appreciate seeing a matter finalised successfully in court. In respect to any matter, whether it be in relation to the VLAD laws or any other investigation—particularly where there are victims of crime involved—police often develop a fairly close relationship with victims. They see themselves as being the spokesperson for that victim. Obviously they are very disappointed if they are unsuccessful in obtaining a conviction, for whatever reason that might be.

**CHAIR:** Would it be the case that police are disappointed with the current laws?

**Mr Schmidt:** I cannot speak broadly for police in respect of the current laws, but obviously with respect to any law there is obviously room for review and improvement.

**Mr CRANDON:** From reading the police union's very short submission, I want to pick up on the tone of the submission in several paragraphs. At paragraph 3 it says that 'the QPU is broadly supportive' of the serious and organised crime legislation. Further down it states—

The QPU will be closely monitoring these laws over the two year transition period and we expect to hold regular discussions with the government over this period on the efficacy of these laws.

It states further—

The QPU is also comforted by a two year transition period as proposed in this bill and the assurance from government that if in the future the QPU believes further changes are needed ...

It states further—

... another stop on the continuum and that constant improvement, review and enhancement to ensure ...

It continues on further. The tone seems to be that the union is broadly supportive and that there are areas of the legislation that the union is not entirely comfortable with. Could you give the committee an insight into those areas that you have concerns about or those areas that you will be focussing on in your review of this legislation?

**Mr Schmidt:** Certainly. I should indicate the union's position is that it does support the current bill. One of the things that we do take comfort from is not only the commissioner's comments but also the Premier's commitment in terms of reviewing the legislation. As you would be aware, the bill itself stretches, when I printed it, to, I think, 300 or 400 pages—it may have been longer—and the explanatory notes are quite voluminous as well. I do have some experience in respect to proposing legislation. That was my former role in the office of the commissioner. I know that it can be very difficult, particularly when it is amending legislation.

The use of the term 'broadly supports' means exactly that. The union likes the laws as they have been proposed. However, given the volume of those laws there is going to be a time when data is going to have to be collected and the laws are going to be looked at in an operational environment. The union is giving its broad support. As these laws are not in force as yet and we do not actually have that data, the union cannot really come out and say that these laws are absolutely brilliant. It certainly does give its broad support to the laws.

**Mr CRANDON:** That is not really answering my question. My question is in relation to the tone of the written word on this one page document. In four paragraphs the document indicates that there is a desire for the laws to be readdressed over this two-year period. In using the term 'broadly supportive' you are suggesting that there are areas that you are not entirely comfortable with. I am asking for you to give the committee—

**CHAIR:** I will raise a point of order on that. There is no suggestion in your submission that infers that.

**Mr Schmidt:** No, it is simply the case that we cannot commit 100 per cent to the laws when they have not actually been enforced as yet. We are broadly supportive of the laws at this point in time.

**Mr CRANDON:** Are there any areas of the laws that you do not agree with?

**Mr Schmidt:** Not on my instructions, no.

**Ms PEASE:** We had a public hearing in Brisbane and we had a substitute member sitting in on that occasion. He questioned the commissioner or the panel that was here and said that the people who were participating in the task force reviewing this legislation had no experience with the Gold Coast and what was going on down there. Could you comment on that?

**Mr Schmidt:** Certainly my experience is 10 to 12 years ago. I certainly had had experience down there. I know that Ian Leavers regularly speaks with detectives from the State Crime Command as well as from the specialist task force on the coast and liaises with them. I know that he regularly speaks with the police hierarchy, including the assistant commissioner. The current AC down there is Brian Codd. I believe he also speaks with Deputy Commissioner Pointing, whom I believe was running the initial bikie task force. He is across those matters as well. He brings that experience to the task force, in my view.

**Ms PEASE:** You would say that the Gold Coast had fair representation?

**Mr Schmidt:** I believe so. I should also indicated that the CCC made submissions to the task force. There is a whole range of detectives in there who are specifically targeting this type of organised crime. Whilst I do not know directly, I would be very surprised if they did not provide feedback and brief up. The CCC's submission is probably reflective of their experiences on the coast and dealing specifically with this type of crime.

**Ms PEASE:** I have a question around the consorting offence. Given that you have experience as a field officer also—so you bring a lot of good information to the table; thank you for that—how do you imagine that officers will actually implement those consorting offences? What impact will that have on their day-to-day operational duties?

**Mr Schmidt:** Again, it is something that we are probably going to need data on and obviously monitor. Can I answer your question this way? There were consorting offences under the old Vagrants, Gaming and Other Offences Act 1932. It is an offence that I cannot recall now whether I charged or one of my partners charged people with. I believe it is a very effective offence.

What a lot of people do not appreciate in terms of policing is that policing is not just about detecting crime and prosecuting offenders. The other arm of policing is actually preventing crime in the first instance. Preventing crime means that you do not have victims of crime.

Consorting laws are very good laws, in my view, to disrupt the opportunity for individuals to actually engage in criminal activity. I see them as a very positive aspect. Obviously these new laws are an improvement on the 1932 legislation, as one would imagine.

**Ms PEASE:** One would hope.

**Mr Schmidt:** It gives the people the necessary warnings so that they do have the opportunity of knowing that they are potentially going to be committing offences. It allows police to actually intervene prior to more serious offending actually occurring. I think they are a good idea.

**Mrs STUCKEY:** My question is around the clubhouses. Given that clubhouses are shut—and apparently the only one that is still owned is actually in my electorate—and we would therefore expect that new premises could be rented by any of those clubs that are listed as prescribed, I am wondering what the union's thoughts are on the requirements to search in the non-prescribed premises and whether they are too restrictive in terms of having to get warrants and so on?

**Mr Schmidt:** Again, that is something that we will be looking at closely. I certainly took some comfort from the proposed amendments to the Peace and Good Behaviour Act, particularly where commissioned officers, for example, will be able to issue an order for, I believe, up to seven days and, from memory, the first 72 hours cannot be reviewed. There is an opportunity for magistrates to also make orders for up to six months.

On my recollection of the proposed amendments, that would actually give the police power to enter without warrant and conduct searches on those types of premises during the currency of those orders. I believe that that would be one tool at least to ensure that if they do open new premises or they are engaging in activities at other locations that the police have the powers to actually act.

The beauty of a commissioned officer being able to make such a declaration is that the police department has regional duty officers who are actual inspectors or acting inspectors. They work 24/7 together with the state duty officer in at communications. There is somebody on duty all times, at least in Brisbane and in the major regional centres, who is in a position to make one of those orders there and then if it becomes necessary—at two o'clock in the morning, for example.

**Mrs STUCKEY:** I do not have the list of recommendations from the report with me. There were 60 or so, I think. Were there any of the recommendations that the union did not support?

**Mr Schmidt:** To be perfectly honest, I cannot recall. There was obviously some robust discussion during the course of the task force meetings. At the end of the day, my instructions are that the union is supportive of the report. I come back to my former answer. That is that obviously we are going to closely monitor the operation of these laws and take the Premier up on her kind offer to allow us to consult with her to address anything that we identify as being a potential problem.

**Mrs STUCKEY:** So you are actually not aware if you did not support any recommendations?

**Mr Schmidt:** I honestly cannot recall. There were a number of matters which we had firm discussions on and on which there were differing points of view. I honestly cannot recall what the recommendations were in their final format, I am sorry.

**Mr BROWN:** I want to get your opinion. The opposition leader said that the wearing of colours was not important. I want to get your thoughts and your members' thoughts about that and also about expanding our legislation to all public places.

**Mr Schmidt:** I can say that the union is very happy with that. That is certainly, in my briefings, the union's preferred position. We believe that it actually enhances public safety and it also enhances the perception of public safety. That is something that the union is quite happy about.

**Mr BROWN:** I also asked the commissioner this along similar lines about workable, flexible laws. Do you believe, as does the commissioner, that these do provide your members with the flexibility to have workable laws that they can enforce not only with regard to bikies but other organised crime groups such as boiler rooms and paedophilia?

**Mr Schmidt:** Yes, certainly. As I just indicated to the member for Currumbin, particularly the proposed amendments to the Peace and Good Behaviour Act allow for a very rapid declaration in my view, which would allow police to actually exercise powers which do not require warrants. In my view I think that is quite favourable.

**Mr BROWN:** We heard some concern from the Law Society about public safety orders and leaving it to the court's discretion. Are you comfortable with your members being able to make those orders?

**Mr Schmidt:** My recollection is that it is commissioned officers and above which make those orders. They are not actually members of the Queensland Police Union of Employees; they are members of the Commissioned Officers' Union of Employees. I am quite comfortable with that. If I can draw a parallel—

**Mr BROWN:** I did not know where the demarcation was.

**Mr Schmidt:** The Public Safety Preservation Act, which is what is used in siege situations and so forth, actually empowers commissioned officers to issue an emergent situation declaration, which again gives police officers the power to enter places without warrant, to remove people from those places, to search people, to give them directions, and to take over the use of assets and resources. That is obviously for the limited purposes of that declaration. I see these sorts of laws as being akin to that; they allow for an emergency response where necessary. I think in a lot of instances with the limitations that are imposed, generally there will be an application to the court that allows the police to respond to something at 2 o'clock in the morning if they have to.

**Mr KRAUSE:** I have just one question and it sort of follows on from what the member for Currumbin was saying about the clubhouses. At the moment I understand the situation is that with respect to the 26 prescribed organisations their clubhouses are shut and prohibited from opening another premise at this point in time. That situation will change. You were referring to the ability of police to obtain an order in relation to new premises that might arise. Does the union have a view or are they concerned about the fact that this bill, when implemented, will actually enable those 26 prescribed organisations to open new clubhouses?

**Mr Schmidt:** They do but they are assured by the amendments to the Peace and Good Behaviour Act that there are steps in place to address that. Obviously, again, that is a matter that we would be looking at very closely.

**Mr KRAUSE:** Surely there is a view that it would be better to just keep them shut altogether?

**Mr Schmidt:** I really do not know how to answer that to be honest. Obviously—

**Mr KRAUSE:** You are making a lot of work for the police potentially. We do not know which of the 26 might go and open new premises, but all of them might.

**Mrs STUCKEY:** Hide and seek.

**Mr KRAUSE:** We have seen in the past what that can lead to in terms of activity around those clubhouses. Is the union not concerned that this is going to place a burden on officers?

**Mr Schmidt:** I suppose the difficulty with the clubhouses is that we know where the various public clubhouses have been prior to the VLAD laws coming into place. I would suggest that these types of individuals, whether they be bikies, paedophiles or the boiler rooms, are now still gathering on occasion but not announcing where they are gathering or, alternatively, they have crossed the border. It is a concern and it is something we closely look at. Again, I come back to the Peace and Good Behaviour Act amendments. They at the very least allow the police to respond to an emerging clubhouse very, very quickly. Also we have the proposed anticonsorting laws. Again, if we do have a number of criminal individuals gathering together, that is an avenue as well for the police to use. I suppose it allows some flexibility. I understand and I appreciate your concern.

**Mr KRAUSE:** The bill enables the prescribed organisations to pop up with new premises—not the clubhouses that are shut at the moment, but new ones. Is there a recognition that if that eventuates and the police officers who—I am sorry if I am boring, you member for Capalaba—

**CHAIR:** Get to the question.

**Mr BROWN:** Sorry. I was boring myself.

**Mr KRAUSE:**—but it is an important point. Is the union concerned that officers could be placed in danger by the fact that they would have to attend these new premises if there is illegal activity going on and actually search them, monitor them and then make an application for an order under the Peace and Good Behaviour Act to have them closed? We have them closed at the moment. Would it not be better just to leave them shut?

**Mr Schmidt:** My understanding is that with the transitional provision they do remain shut but I understand—

**Mr KRAUSE:** Yes, but new ones can open.

**CHAIR:** Please let the witness answer the question.

**Mr Schmidt:** Secondly, I believe that the Peace and Good Behaviour Act provisions do allow for those declarations to be made very quickly. At the end of the day, police officers are highly trained; they do have specialist units to specifically deal with high-risk situations. I would suggest that those specialist units would be deployed in circumstances where it became necessary to enter a high-risk place such as a bikie's clubhouse that was emerging. Again, all I can say with respect to that is that this is an area that we will be monitoring. We will be listening to what our membership has to say. I cannot predict the future as to how that will go. We have strategies in place if it does become a problem to raise it.

**Mr KRAUSE:** Does the union agree with that provision?

**Mr Schmidt:** With the removal of the provision?

**Mr KRAUSE:** No, with the provision that will enable new clubhouses to open?

**Mr Schmidt:** I would have to take instruction.

**CHAIR:** Sorry, that is not the case under the bill.

**Mr KRAUSE:** It is, Chair.

**CHAIR:** Along the same line of questioning, Mr Schmidt, can I ask you a question?

**Mr KRAUSE:** It is actually, Chair. Please do not mislead the committee.

**CHAIR:** I refer to the previous witness who indicated that under the current laws there was every capacity to open new clubhouses, anyhow. Do you concur with that view of that evidence from the previous witness?

**Mr Schmidt:** I am afraid I could not comment on that. I simply have not looked closely at that piece of legislation in terms of whether or not they can. I just have not turned my mind to that, I am sorry.

**CHAIR:** The committee heard evidence from the previous witness, which was undisputed, on that position of that ability under the current legislation.

**Mr Schmidt:** I would accept that that is the case then if that is the evidence before the committee.

**CHAIR:** Can I also ask you on that evidence from the previous—

**Mr KRAUSE:** That is not what the police said last week.

**CHAIR:** Excuse me. I am asking questions, thank you, member for Beaudesert. The previous witness also indicated—and I am relying upon your experience here—that bike gangs—and we have heard this consistently—commit only 0.38 per cent of crime. That is where they somehow form this view of being one per centers, but on average they commit twice as many offences as the average criminal. In your professional experience, what is your view on that statement?

**Mr Schmidt:** My experience in relation to that would come from some of the work I was doing in the office of the commissioner where I was responsible for collating various stats for the then government. Certainly the data that I have seen bears that out, yes.

**CHAIR:** You have indicated to the committee that you have had experience on the Gold Coast. Are there any other parts of the state where you have had active policing experience?

**Mr Schmidt:** Yes. Rockhampton was where I was first appointed. I spent six years or thereabouts in and out of Rockhampton and around the smaller stations surrounding that. I also served in Mackay as a prosecutor and in Inala where I worked as a prosecutor. I also performed general duty type roles and then served in Logan and West End as well.

**CHAIR:** In those areas outside of Logan and others were you acting in a similar capacity as a police officer, prosecuting and arresting offenders who were considered to be outlaw motorcycle gang members?

**Mr Schmidt:** Not in quite the same capacity. I was obviously of a lower rank when I was in Rockhampton. I was appointed as a constable obviously. I do recall a number of interactions and arrests—I cannot remember now if I was the arresting officer or the corroborating officer—with members of the local chapter of the Rebels in Rockhampton. I recall specifically a murder that was up there and being deployed in relation to that and in the immediate aftermath of that. That involved members of the Rebels. I believe in that instance it might have been a member of the Rebels that was actually the victim but the Rebels actually came out and I was deployed there. I have had other incidents—and I would suggest most other police officers have—of dealing with bikies. It is just something that we did encounter when I was in.

**Mr CRANDON:** Following on from the member for Beaudesert, your final comments prior to the chair coming in and speaking over what you were saying were that you would have to take that question under advice.

**Mr Schmidt:** Yes.

**Mr CRANDON:** Are you suggesting that you can go back to the union and come back to us with a response to that?

**Mr Schmidt:** I could certainly seek instructions obviously.

**Mr CRANDON:** Thank you. Could we take that as a question on notice then—

**Mr Schmidt:** Certainly, if that is what you would like, yes.

**Mr CRANDON:**—from the member for Beaudesert?

**Mr Schmidt:** Yes.

**CHAIR:** Thank you, Mr Schmidt, for your attendance here today before the committee.

**Mr Schmidt:** Thank you. I hope I have been of some assistance.

**CHAIR:** The time allocated for the hearing has expired. I thank Hansard for their assistance. The committee secretariat will provide today's witnesses with a copy of the draft transcript once it is available for participants for correction if necessary. I thank the Hansard reporters for your assistance here today.

**Committee adjourned at 11.56 am**