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Criminal Law (Criminal  
Organisations Disruption)  
Submission 008

20 November 2013

## **Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Bill 2013**

***Submission by Townsville & Districts Motorcycle Riders' Association Inc.***

***prepared by Karina Ewer***

This Submission has been approved by the Executive Committee of the T&D MRA.

The committee and members fully support action to manage organised crime within the State of Queensland, where that law may be demonstrated to maintain the human rights of individuals and where legislative and legal processes are followed.

It is noted in his 16 October 2013 interview with media relating to the new "bikie" laws Mr Newman stated: "*Get and honest job, hand in your colours, join a real motorcycle enthusiasts' club and just enjoy riding. That is what we ask you to do.*"<sup>1</sup>

Since then numerous "bikies" have handed in their colours and officially resigned membership and positions from clubs.

### **Crime and Misconduct Act 2011**

Under the new Bill, changes to the *Crime and Misconduct Act 2001* have expanded the "definition of former participant in a criminal organisation to a person who was a participant in the preceding two years".<sup>2</sup> This would mean it is not possible to follow Mr Newman's own direction to "hand in your colours".

### **Bail Act 1980**

Further, amendment to the Bail Act 1980 states "...if a defendant is charged with an offence and it is alleged the defendant is, or has at any time been..."<sup>3</sup> a member of a criminal organisation, then they are to be denied bail. This we believe means a "bikie" is seen as a person who will not reform from criminal activity and will not be given the opportunity to do so.

Groups such as *The Brothers of Judas* are all ex-criminals and many ex-bikies. They have served their time, reformed and now both work in and for their community. The changes to this legislation do not allow for the fact these people (and many others) may well have actually resigned from club life and wish no longer to associate with those declared clubs. The fact the onus of proof is on the defendant to prove they no longer associate is difficult as nowhere does the legislation say what may / may not be acceptable evidence.

Since "bikies" are not allowed to know what they are charged with prior to appearance in court, this will make it difficult to present any evidence required. We would suggest charges, at least in some broad sense, should be understood in an effort to allow them to gather evidence of non-

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association should that be what is required.

**Clause 7(2)(c)** “that there is no link between the defendant’s alleged participation in the criminal organisation and the offence with which the defendant is charge”.

The Westminster system has always required a person be charged for what they have done and *not* who they are. The above clause above means this will no longer be possible. If a person commits even a minor infringement such as speeding, it is possible to apply this and other acts to members of declared clubs. We do not recommend this clause be included in its current form.

### **Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Bill 2013 - Objectives**

It is also noted the objectives of the *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Bill 2013* are to exclude members of declared clubs access to either ongoing or gaining licenses to operate or work in business covered by the following Acts:

*Electrical Safety Act 2002;*  
*Liquor Act 1992;*  
*Queensland Building Services Authority Act 1991*  
*Racing Act 2002;*  
*Second-hand Dealers and Pawnbrokers Act 2003;*  
*Security Providers Act 1993;*  
*Tow Truck Act 1973;*  
*Weapons Act 1990;*  
*Work Health and Safety Act 2011.*

We point to the current National Skills Needs List ([Attachment 1](#)), which lists many of the jobs that will be affected by recommended changes to the above legislation. Removal of qualified tradesmen from these positions will have a detrimental effect on small business, particularly in regional areas as it will further limit their access to those qualified tradespeople. We would suggest those who have been proved to be members of criminal organisations, AND have committed crimes related to the activities of those organisations, be restricted access to these positions and perhaps be subject to closer and more regular examination. We believe, if they have committed a crime and been imprisoned, after the time of their incarceration they should, as has always been the case, be allowed to return to as normal a life as possible.

Restricted licenses to operate may well manage those people who fall into this category. It may also be acceptable that they can only be employees of these business owners but not run the businesses, nor have connections to the running of those businesses.

Those who have no criminal history cannot be assumed to be criminals. Regardless of association, our laws still require a person to be proven guilty of a crime before they may be classed as a criminal. We cannot in all consciousness therefore support legislation which criminalises a person who has not committed any crime.

If we take away the ability completely for the people your legislation purports to target to earn a respectable living, what then do they have left? Will they also be restricted from access to Social Benefits payments or will taxpayers now be obliged to pay for the increasing reliance on that system? We would hope you are not suggesting the only options they might have would in fact be crime in itself. We believe strongly that will be the only option for many who have families to feed and bills to pay as the rest of us do.

### **The Liberal National Party’s own Philosophy**

The following is taken from your own website and is a list of the precepts fundamental to the philosophy of the LNP:

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- **Preservation of the Westminster system of government**
- **Parliament controlling the executive and the law controlling all**
- **The independence of the judiciary and the separation of powers**
- **The rule of law with all citizens equal before the law**
- Recognition of federal, state and local government within the framework of federalism
- **Freedom** of speech, religion, **association** and media
- Freedom of citizens to choose their own way of living subject to the rights of others, the laws of the land and the protection of private property
- Encouragement of individual initiative and private enterprise as the dynamic force of progress

We have highlighted the areas where we believe you are no longer meeting your own charter. In relation to this submission, we would point out "Freedom of association". We do not believe and cannot support a system where people are not free to associate with whom they please. Citizens have the right to freedom and the right to defend themselves in a court of law. Your new laws take away even the right to defend oneself in that specific members of our society no longer have access to charges being brought against them and now need to prove their own innocence. This is against the Westminster system to which we have always adhered. Equality before the law will also be removed should these laws be allowed to continue, including the amendments recommended to this raft of legislation.

We ask again you reconsider this current course of action.

### **Amnesty International**

Finally we draw your attention to the fact Amnesty International (among other groups, including past and present judges, solicitors, and community groups both national and international) have spoken publicly about the Human Rights abuses this and other legislation related to Queensland's apparent "crack down on outlaw motorcycle gangs" represent. We would ask sincerely you consider at minimum amending the relevant legislation to remove such issues and ensure all citizens have equal access to a fair trial and fair treatment.

[Attachment 2](#) is Amnesty International's press release. We are sure you have read it. We have included it here as it most accurately outlines the issues we see with the legislation as it currently stands, including with the changes being requested through this Bill. We ask you to ensure all changes made, do not compromise the integrity of our Human Rights record further and allow those who have committed crimes to be dealt with appropriately and as per the law.

We cannot support any legislation which requires a person to be tried according to who they are and not what they have done. Just as we cannot support this suite of legislation and amendments which see a minority of the population being singled out for what appears to amount to discriminatory attention. Already many innocent motorcycle riders' have been affected by these laws and the general public have developed a fear of anyone on a motorcycle. We ask sincerely that you legislate with regards to the above

Regards



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# Attachment 1



**A U S T R A L I A N  
A P P R E N T I C E S H I P S**  
Your Life. Your Career. Your Future.

Australian Government

Published on *Australian Apprenticeships* (<http://www.australianapprenticeships.gov.au>)

[Home](#) > [Australian Apprenticeships Centres](#) > National Skills Needs List

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## ***National Skills Needs List***

The National Skills Needs List identifies traditional trades that are identified as experiencing a national skills shortage.

The list is based on detailed labour market research and analysis.

Under the [Australian Apprenticeships Incentives Program](#) [1], an Australian Apprentice undertaking a Certificate III or IV qualification that leads to an occupation listed on the National Skills Needs List may be eligible to attract the following employer incentives and personal benefits:

- [Support for Adult Australian Apprentices payments](#) [2]
- [Tools For Your Trade payments](#) [3]
- Rural and Regional Skills Shortage incentive

As the National Skills Needs List is reviewed regularly, please check this page for the most up-to-date list.

The trades included on the National Skills Needs List (NSNL) are:

- Airconditioning and Mechanical Services
- Plumber
- Airconditioning and Refrigeration Mechanic
- Aircraft Maintenance Engineer (Avionics)
- Aircraft Maintenance Engineer (Mechanical)
- Arborist
- Automotive Electrician
- Baker
- Boat Builder and Repairer
- Bricklayer
- Butcher or Smallgoods Maker
- Cabinetmaker
- Carpenter
- Carpenter and Joiner
- Cook
- Diesel Motor Mechanic
- Drainer
- Electrical Linesworker
- Electrician (General)
- Electrician (special class)
- Electronic Equipment Trades Worker
- Fibrous Plasterer
- Fitter (General)
- Fitter and Turner
- Fitter-Welder
- Floor Finisher
- Metal Fabricator
- Metal Machinist (First class)
- Motor Mechanics (General)
- Motorcycle Mechanic
- Optical Mechanic
- Painting Trades Worker
- Panelbeater
- Pastrycook
- Picture Framer
- Plumber (General)
- Pressure Welder
- Print Finisher
- Printing Machinist
- Roof Plumber
- Roof Tiler
- Screen Printer
- Shearer
- Sheetmetal Trades Worker
- Signwriter
- Small Engine Mechanic
- Solid Plasterer
- Stonemason
- Telecommunications Linesworker
- Telecommunications Technician
- Toolmaker
- Upholsterer

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- Furniture Finisher
- Gasfitter
- Glazier
- Hairdresser
- Joiner
- Landscape Gardener
- Lift Mechanic
- Locksmith
- Vehicle Body Builder
- Vehicle Painter
- Vehicle Trimmer
- Wall and Floor Tiler
- Welder (First class)
- Wood Machinist

Please note that this list is current as at August 2012 and may be subject to change.

[Download About the National Skills Need List](#) [4].

### ***For more information***

Contact your [Australian Apprenticeships Centre](#) [5] for more information about eligibility criteria for incentives and personal benefits, or call the Australian Apprenticeships referral line on 13 38 73.

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**Source URL (retrieved on 20/11/2013 - 15:01):** <http://www.australianapprenticeships.gov.au/national-skills-needs-list>

#### **Links:**

[1] <http://www.australianapprenticeships.gov.au/publications/summary-australian-government-australian-apprenticeships-incentives-program>

[2] <http://www.australianapprenticeships.gov.au/program/support-adult-australian-apprentices-initiative>

[3] <http://www.australianapprenticeships.gov.au/program/tools-your-trade-payment-initiative>

[4] <http://www.australianapprenticeships.gov.au/publications/about-national-skills-needs-list>

[5] <http://www.australianapprenticeships.gov.au/find-my-aac/full-list>

## Attachment 2



Amnesty International is a global movement of over **4.6 million people** committed to defending those who are denied justice or freedom.



Guilty until proven innocent? © Flickr / sebr

### ***Queensland bikie laws breach international fair trial standards***

5 November 2013, 05:21PM Topics: [Other](#)  
[Tweet](#)

**Queensland's new bike laws do away with the notion of innocent until proven guilty which could lead to arbitrary detentions and an undermining of the independence of the judiciary.**

**Amnesty is concerned prosecutions under the [new Queensland bikie laws](#) fail to meet international fair trial standards.**

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[Closing the door on desperate boat arrivals](#)

#### **Mandatory sentences**

The laws give mandatory sentences of up to 25 years in addition to a standard sentence where a person is accused of being a member and/or officer of a criminal association.

“The laws passed are aimed at cracking down on ‘outlaw bikie gangs’ but potentially affect a wider group of people, including those that aren’t affiliated with bikie groups, something the Queensland government has failed to acknowledge,” said Michael Hayworth, Amnesty International Australia spokesperson.

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“We share concerns already voiced by the Queensland Law Society, Australian Lawyers for Human Rights and Queensland Council for Civil Liberties.”

## **Broad laws cover all associations not just bikies**

“One of the major issues we have is the language of the Act is so broad that in Amnesty International’s experience, they are open to abuse,” said Hayworth.

The laws focus on associations of people which include corporations, unincorporated associations, clubs or leagues or any other group of three or more people whether the group is legal or illegal.

Covering more than just ‘bikie gangs’ the laws define people as ‘participants’ in associations where they are a member, sought to be a member, attended more than one meeting or participated in any other way in the affairs of the association.

There is no mention of bikes or criminal activity in the definition of association.

A participant is deemed to be a ‘vicious lawless associate’ when they commit a declared offence while they are participating in the association.

The laws reverse the burden of proof, forcing those accused of being ‘vicious lawless associates’ or ‘office bearers’ of the association to prove that they are not participants in criminal associations. This severely undermines the right to be presumed innocent until proven guilty that all Queenslanders enjoy.

## **Michael Hayworth, Amnesty International Australia spokesperson**

The difference here is that the individual must prove that the association doesn’t exist for the purposes of engaging in declared criminal offences.

A ‘vicious lawless associate’ is then sentenced to 15 years jail on top of the sentence they receive for the declared offence.

If the person is an officer of the association and cannot prove otherwise they are liable to a further ten years.

## **Guilty until proven innocent?**

“The laws reverse the burden of proof, forcing those accused of being ‘vicious lawless associates’ or ‘office bearers’ of the association to prove that they are not participants in criminal associations,” Hayworth said.

“This severely undermines the right to be presumed innocent until proven guilty that all Queenslanders enjoy.”

The combination of the broad definitions and the requirement for the accused to prove their innocence makes any sentence under these new laws fundamentally unfair .

## **Arbitrary detention**

“Along with a right to be presumed innocent until proven guilty, everyone has the right to liberty. But these laws turn this concept upside down.”

This means the state can only put someone in prison (and therefore remove their liberty) when they have proved beyond a reasonable doubt that that person is guilty of a recognized criminal offence.

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The changes to the bail laws mean that courts have little option but to refuse bail to those accused of participating in criminal organisations, unless the person demonstrates reasons that they should not be in jail.

“There are two problems here: (1) the burden of proof is reversed, meaning the accused person has to prove they should not be in custody rather than the state proving they should be in jail; and (2) people have the right not to be in prison, even before a trial, unless it is proven to be necessary,” Hayworth warned.

Pre-trial detention under these circumstances could potentially be arbitrary and inconsistent with the most basic standards of human rights law.

### **Interference with the judiciary**

“The unfairness of trials, arbitrary detention and attacks on the presumption of innocence are not the fault of the courts. They are a direct result of the government’s attempts to crack down on criminal associations.

“These laws and the government’s statements on cases before the courts represent a significant overreach of parliamentary and executive power.

“Amnesty International is calling for the legislation to either be reversed or completely overhauled to address these serious breaches of human rights,” Hayworth added.

<http://www.amnesty.org.au/news/comments/33255/>



## **Bibliography**

1. Remeikis, Amy, *Brisbane Times*, “New legislation to make life hell for bikies”, 16 October 2013
2. Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Bill 2013, Explanatory Notes, pg 1
3. Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Bill 2013, Part 2, Clause 7 (1)