



20 November 2013

Legal Affairs and Community Safety Committee  
Parliament House  
Cnr George and Alice Streets  
Brisbane Qld 4000

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Dear Committee

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

The purpose of this submission is to identify significant features of the legislation and where thought useful to make comment:

1. Clause 7 has the effect of reversing the onus of proof for bail applicants for any person who has, at any time, been a member of a criminal organisation. Previously, s 16 of the *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013* was confined to a defendant who “is a participant in a criminal organisation”. This constitutes a widening of the provision. On one view the measure is contrary to one of the primary aims of the recent legislative measures, that is, to cause members of criminal organisations to disassociate.
2. Part 3 (cl 10 onwards) compels the chief executive to make a criminal organisation segregation order (a “COSO”) for a prisoner if the commissioner advises the chief executive that the prisoner is an identified participant in a criminal organisation. The Bar Association notes that there is vested in the chief executive a broad discretion, which may or may not involve (for example) a particular level of confinement of the prisoner. The COSO may include directions about the extent to which the prisoner is to be segregated from other prisoners and the extent to which the prisoner is to receive privileges. For many years Corrective Services have managed the conditions of prisoners. The case for conditions in prisons to be made more difficult for prisoners is one which should be made out.
3. Clause 16 inserts s 267A into the *Corrective Services Act 2006*. It applies to an offender who is an identified participant in a criminal organisation and subject to a parole order or community based order. It permits directions to be made by the chief executive through a corrective services officer to the offender to remain at a stated place for a stated period; to wear a monitoring device; to permit the installation of a device or equipment at the place where the offender resides. There is no review except for jurisdictional

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error: cl 18, inserting s 350B. Like provisions have existed for some time concerning sexual offenders. The provisions constitute a tightening of the supervision of participants in criminal organisations who are on parole or community based orders.

4. There is a series of provisions intended to prevent a participant in a criminal organisation and criminal organisations themselves (for example, a criminal organisation in the form of a corporation) from holding a licence or operating in specified occupational areas. The relevant regulating authority may ask the Commissioner for information about whether a person is an identified participant in a criminal organisation or a criminal organisation. Such persons/entities are called “prohibited persons”. If the regulator is satisfied that the holder of a relevant licence is a prohibited person then the scheme of the Bill is that the regulator must cancel the licence or not grant a licence to a new applicant.
5. The areas of occupation addressed are: electrical licences; licences under the *Liquor Act*; adult entertainment permits; contractor’s licences and supervisor’s licences under the *Queensland Building Services Authority Act 1991*; certificates under the *Racing Act 2002*; permits under the *Second-hand Dealers and Pawnbrokers Act 2003*; licences under the *Security Providers Act 1993*; and licences and certificates under the *Tow Truck Act 1973*. In broad terms, we understand some of the areas of prohibition to relate to the hydroponic cultivation of drugs, the sale of stolen goods, money laundering through betting and prostitution and extortion. The reasons for including the building industry within the regime are less clear than other areas.
6. The scheme of the Bill, in respect of decisions to be made by regulating authorities on licensing and related matters, is to remove any existing right of review and to prohibit judicial review or other challenge except on the narrow ground of jurisdictional error (as to the width of jurisdictional error, see most recently *Minister for Immigration and Citizenship v Li* [2013] HCA 18). By way of example, the process of review and appeal which would otherwise exist under the *Electrical Safety Act 2002* (see s 168 *Electrical Safety Act 2002*) in relation to a decision on a licence has been removed for participants in criminal organisations, so there is no effective right of review. The right of judicial review is confined to jurisdictional error (see clause 68, inserting s 174). For another example, relating to building licences, see clause 127 and following, and clause 135 (inserting new s 87B), which deems the decision final and conclusive and excludes judicial review or other challenge except on the narrow ground of jurisdictional error.
7. In respect of licensed premises, the Bill has the effect of withdrawing approvals of relevant agreements (eg. lease, franchise agreement, management agreement): see clause 110. This will have an effect on third parties. For example, it appears likely that a lessor of hotel premises which has entered into a lease with a lessee who is a participant in a criminal

organisation will have the lease effectively ended. Whether there exists for the lessor a right of legal recourse against the former lessee is unclear. It is unlikely. This and otherwise the unexpected loss of a lessee, licensee or franchisee may cause economic loss to innocent third parties.

8. In summary, in respect of the occupational area provisions, the Bar Association makes these points:
  - a. Whether a person is a participant in a criminal organisation or whether an organisation is a “criminal organisation” depends, relevantly, on the opinion expressed by the commissioner. There is no mechanism provided for a challenge to that opinion. Although one would expect the opinion to be expressed on the basis of evidence available to the commissioner, there is no process within the Bill by which that evidence, or that opinion, may be challenged. The opinion formed by the commissioner, conveyed to the regulating authority, has far reaching consequences for the person about whom it is expressed;
  - b. The decision of the regulating authority relating to the licence or permit is “final and conclusive”, not subject to judicial review or other challenge except on the ground of jurisdictional error;
  - c. An error by the commissioner, or by the regulating authority, would be very difficult to challenge. These decisions may relate to a person’s livelihood – for example, the holder of a builder’s licence may by the decision be deprived of his livelihood;
  - d. There is potential for injustice, particularly for persons wrongly thought to be participants in a criminal organisation. The word “participant” is of potentially broad compass (see *Criminal Code*, s 60A), thus increasing the prospect of arbitrary and unintended consequences;
  - e. Furthermore, in the case of liquor licences and permits, there is a particular risk of economic impact on third parties;
9. Disclosure of criminal histories. Clause 123 inserts provisions into the *Police Service Administration Act* 1990 which permit the commissioner to disclose to any entity the criminal history of a current or former participant in a criminal organisation if the commissioner is satisfied the disclosure is in the public interest.

Yours faithfully



**Roger N Traves QC**  
**President**