Parliamentary Committee Briefing Note

For the Legal Affairs and Community Safety Committee
Serious and Organised Crime Legislation Amendment Bill 2016

Background and Policy Intent

The Serious and Organised Crime Legislation Amendment Bill 2016 (the Bill) represents the Queensland Government's primary legislative response to the three reviews commissioned by the Government in relation to organised crime: the Queensland Organised Crime Commission of Inquiry (the Commission); the statutory review of the *Criminal Organisation Act 2009* (the COA Review); and the Taskforce on organised crime legislation (the Taskforce).

- The Commission: The Commission commenced on 1 May 2015, by the *Commissions of Inquiry Order (No. 1) 2015*, to make inquiry into the extent and nature of organised crime in Queensland and its economic and societal impacts. The Commissioner, Mr Michael Byrne QC, presented the final report of the Commission to the Premier and the Minister for the Arts on 30 October 2015. The Commission made 43 recommendations aimed at addressing key organised crime threats in Queensland being, the illicit drug market, online child sex offending, in particular, the child exploitation material market, and sophisticated financial crimes such as 'cold call' or 'boiler room' investment frauds. The report is available at: www.organisedcrimeinquiry.qld.gov.au/

  Of the Commission's recommendations, 18 require legislative amendments. The Bill implements 14 of those recommendation, 12 in full and two in part. **Attachment 1** to the brief is the relevant Commission recommendations.

- The COA Review: The *Criminal Organisation Act 2009* (COA) allows the Supreme Court of Queensland (upon an application by the Queensland Police Commissioner) to declare an organisation a 'criminal organisation' if the Court is satisfied that members of the organisation associate for the purpose of engaging in, or conspiring to engage in, serious criminal activity and the organisation is an unacceptable risk to the safety, welfare or order of the community.

  The COA Review was undertaken by the Honourable Alan Wilson QC, who provided his report to Government on 15 December 2016. He recommended that the COA be repealed or allowed to lapse but that certain elements be redeployed elsewhere in Queensland's organised crime legislative framework. Those elements – namely the control order framework, public safety order mechanism and fortification measures – are discussed below in the context of this Bill. The report was tabled out-of-session on 4 April 2015 and is available at: www.justice.qld.gov.au/taskforce-into-organised-crime

- The Taskforce: The Taskforce was established in June 2015 to conduct a review of the suite of legislation introduced in October and November 2013 to combat organised crime, in particular outlaw motorcycle gangs (OMCGs); including whether these laws were effectively facilitating the successful detection, investigation, prevention and deterrence of organised crime and how the laws should be repealed or amended. The Taskforce was chaired by the Honourable Alan Wilson QC and its membership consisted of senior representatives from the Queensland Police Service (QPS), the Queensland Police Union, the Queensland Police Commissioned Officers' Union of Employees, the Queensland Law Society, the Bar Association of Queensland, the

Public Interest Monitor (PIM), the Department of Justice and Attorney-General, and the Department of the Premier and Cabinet.

On 31 March 2016, Mr Wilson QC delivered the Taskforce Report, which made 60 recommendations to Government. In some instances, the Taskforce recommended the retention of amendments made in 2013 but also recommended the removal of those parts which majority of members came to accept were unnecessary, excessive and disproportionate. The recommendations focus on maintaining a strong legislative response to organised crime *in all its forms*. The report was publicly released on 4 April 2016 and is available at: www.justice.qld.gov.au/taskforce-into-organised-crime

The Bill implements the Government's *Organised Crime Regime* (the Government's Regime) for Queensland (Qld), drawing heavily upon the renewed Framework recommended by the Taskforce, which re-focuses the criminal justice system on the criminal and anti-social behaviour of individual participants and associates of criminal groups.

The Government's Regime: draws on initiatives under the COA but makes crucial enhancements to ensure operational efficiency; reworks parts of the 2013 laws; and injects new elements into our criminal justice system, which together combine to create a comprehensive reform package which targets organised crime in all its forms.

The Government's Regime implements the ethos of the Taskforce recommendations, and the recommendations of the Commission, but makes enhancements and adaptations aimed at balancing the legal challenges emphasised by the Taskforce with the operational needs of law enforcement agencies. It presents a strong approach that will secure actual convictions.

The creation of a Consorting offence and new Public Safety Protection Order Regime are the centrepiece of the Government's Regime, and will replace the 2013 'anti-association offence' (section 60A of the Criminal Code) and 'clubhouse offence' (section 60B of the Criminal Code). The new Serious Organised Crime circumstance of aggravation is also a fundamental feature; as is the Organised Crime Control Order, which is to be a new sentencing order for Qld. Additionally, a new offence criminalising the visible wearing or carrying of 'colours' in a public place will protect the community from fear and intimidation and reduce public disorder and violence. The Regime also includes: the creation of new offences and increased penalties for child exploitation offending, certain financial crimes and drug offences; and will address the increasing use of technology in serious and organised crime (as recommended by the Commission).

INITIATIVES STEMMING FROM THE TASKFORCE RECOMMENDATIONS AND FINDINGS OF THE COA REVIEW

The key amendments under the Bill stemming from the Taskforce recommendations and findings of the COA Review are as follows:

- **New definitions of 'participant' and 'criminal organisation' across the Queensland statute books**

(Clause 279 – new Part 9D, Division 1 and 2; see also clauses 53 and 54, 57-59, 61 and 138) Explanatory Notes p 11, 18 to 19 and 117 to 119.

Currently, the notion of 'participating in a criminal organisation' is defined using different language across Qld legislation, albeit the underlying concept remaining broadly consistent throughout. The Taskforce found no apparent or compelling reasons for the difference in the definitions and recommended that a single, uniform approach be adopted. Indeed, Qld's lack of a single definition of the terms 'criminal organisation' and 'participant' across its legislation was criticised by His Honour Justice Hayne in *Kuczborski v Queensland* (2014) 89 ALJR 59,

[65-66]. The benefits of clear consistent definitions of these key terms were discussed by the Taskforce (see page 127 of the Taskforce Report).

The Bill reflects the unanimous recommendations of the Taskforce (recommendation 6, 7, 8 and 11) by substantially amending the definitions of 'criminal organisation' and 'participant'. The definitions are inserted under the *Penalties and Sentences Act 1992,* along with the new Serious Organised Crime circumstance of aggravation, and are cross-referenced under the Criminal Code.

These amended definitions are also used consistently throughout the Government's Regime; and the Bill makes consequential amendments to relevant Acts accordingly, for example under the *Crime and Corruption Act 2001*.

The new definition of 'criminal organisation' is intended to be sufficiently broad enough to capture both traditional and hierarchically structured criminal groups; as well as shape-shifting, opportunistically formed and flexible criminal groups. This enhancement acknowledges that while OMCGs have traditionally favoured hierarchical and highly visible models of organisation, other crime groups are now frequently informally arranged and adaptable in their structure (as emphasised under all three Reports).

In framing the new definitions, the Bill takes into account the recent decision of the Honourable Justice Peter Lyons in *R v Hannan, Hannan, Gills, Murrell & Hannan* [2016] QSC 161; to ensure the scenario illustrated by that case is captured by the definition.

Meaning of 'criminal organisation': New section 161O (Meaning of criminal organisation) of the Penalties and Sentences Act defines the term 'criminal organisation' to mean: a group of three or more persons, whether arranged formally or informally—

- who engage in, or have as their purpose (or one of their purposes) engaging in, serious criminal activity; and
- who, by their association, represent an unacceptable risk to the safety, welfare or order of the community.

To remove any doubt, the section expressly provides that it does not matter whether the group: has a name; or is capable of being recognised by the public as a group; or has an ongoing existence as a group beyond the serious criminal activity in which the group engages or has as a purpose; or has a legal personality.

To remove any doubt, the section also expressly provides that it does not matter whether the persons comprising the group:

- have different roles in relation to the serious criminal activity (for example: of the persons comprising a methyl amphetamine syndicate, different persons might be responsible for different roles such as: supplying the cold and flu tablets; extracting the pseudoephedrine from the tablets; supplying other necessary ingredients for the production process; cooking the ingredients to produce methyl amphetamine); or
- have different interests in, or obtain different benefits from, the serious criminal activity (for example: of the persons comprising a group that engages in serious criminal activity:, one person might obtain the profit from the activity and pay the other persons an amount for engaging in the activity);
- change from time to time (for example, as can be the case with networked online child exploitation forum)

The term 'engage in' serious criminal activity includes: organise, plan, facilitate, support, or otherwise conspire to engage in, serious criminal activity; or obtain a material benefit, directly or indirectly, from serious criminal activity.

Further, the Bill will also, with the exception of the banning of colours under the new *Summary Offences Act 2005* offence and the *Liquor Act 1992* offences (*see below for further details*), repeal the ability to declare a group as criminal by regulation.

That is, currently, section 708A of the Criminal Code allows the Minister to make a recommendation to the Governor-in-Council to have an organisation declared to be a criminal organisation by a regulation. The Taskforce Report identified many issues with the granting of this power to the executive (see pages 129 -135 of the Taskforce Report). The Taskforce also examined whether any safeguards could be introduced so that section 708A could address their issues of concern but the majority concluded that no level of safeguards could overcome the inherent flaws, it saw, in the Criminal Code provision (see pages 138-140 of the Taskforce Report).

The Bill reflects the Taskforce majority recommendation by providing for the repeal of section 708A at the end of the two year transitional period for the anti-association offence (section 60A) and the clubhouse offence (section 60B). Section 708A relates to the prosecution of the offences under sections 60A and 60B, hence its temporary retention.

Meaning of 'participant': The new definition of 'participant' is focused on individuals who are actively involved in the affairs of a criminal organisation or who identify and promote themselves as being associated with a criminal organisation.

New section 161P (Meaning of participant) of the *Penalties and Sentences Act 1992* defines the term 'participant' in a criminal organisation. A person is a *participant*, in a criminal organisation, if:

- the person has been accepted (whether informally or through a process set by the organisation, including, for example, by paying a fee or levy) as a member of the organisation and has not ceased to be a member of the organisation; or
- the person is an 'honorary member' of the organisation (see new section 161N definition); or
- the person is a 'prospective member' of the organisation (see new section 161N definition); or
- the person is an 'office holder' of the organisation (see new section 161N definition); or
- the person identifies him or herself in any way as belonging to the organisation (for example, using a theme-based naming convention or icon to establish a screen name or profile for an online child exploitation forum; or wearing or displaying the patches or insignia a criminal organisation); or
- the person's conduct in relation to the organisation would reasonably lead someone else to consider the person to be a participant in the organisation (for example, doing any of the following for a criminal organisation involved in the production and sale of heroin: sourcing the heroin; or packaging the heroin for sale; or selling the heroin; or laundering the profits from the sale of the heroin; or managing the day-to-day business of the organisation).

- **A new Serious Organised Crime circumstance of aggravation punishable by a targeted sentencing regime**

(Clause 279 – new part 9D, Divisions 1 and 2; see also clauses: 17-24, 275-278 and 280 for consequential amendments relating to parole eligibility; clause 271 for expansion of the purposes of the Penalties and Sentences Act to accommodate the new sentencing regime; clause 284 for the list of prescribed offences; and clauses 65 and 66, 68-74, 77-133, 164-170, 479 and 480 for cross-reference to the circumstance of aggravation under each of the prescribed offences; clause 162 for jurisdictional limits unchanged; clauses 136 and 171 aggravated prescribed offences cannot be dealt with summarily) Explanatory Notes: p 19 to 20 and 119 to 122.

A cornerstone of the Government's Regime is the establishment of the new Serious Organised Crime circumstance of aggravation, punishable by a targeted sentencing regime which includes the new Organised Crime Control Order and mandatory terms of imprisonment. This initiative is to replace the *Vicious Lawless Association Disestablishment Act 2013* (VLAD Act) and the 2013 Criminal Code circumstances of aggravation.

The new targeted sentencing regime, draws upon the concept under the VLAD Act, aimed at encouraging cooperation, whereby the mandatory component of the sentence can only be avoided where the person provides significant cooperation with a law enforcement agency but, contrary to the 2013 laws, such determinations are to be made by the court (as distinct from the Police Commissioner under the VLAD Act).

The Bill repeals the VLAD Act in its entirety as unanimously recommended by the Taskforce. The Taskforce considered that the criticisms of the VLAD Act by the High Court (*Kuczborski v Queensland* (2014) 89 ALJR 59) could not be overcome. The Taskforce considered there to be genuine concern over its constitutional vulnerability (which remains unresolved), in particular that the effect of the discretion vested in the Police Commissioner in assessing the calibre of cooperation by an offender may be a usurpation of judicial power offending the *Kable principle* (see page 223 of the Taskforce Report).

The Taskforce also considered the following matters to present significant problems for the continued existence of the VLAD Act: the misleading and prejudicial nature of its title, its location outside of Queensland's ordinary sentencing framework, the tension between the Act's objects and the fundamental sentencing principle of proportionality caused by the crushing (at law) mandatory prison sentences (i.e. 15 or 25 years cumulative incarceration), a lack of transparency and fairness in the operation of the 'incentive to cooperate' scheme (see page 224 of the Taskforce Report).

The new Serious Organised Crime circumstance of aggravation provides a workable response which is strong yet proportionate and meets the criticisms of the 2013 law.

The circumstance of aggravation:

- The circumstance of aggravation (see new section 161Q of the Penalties and Sentences Act) incorporates the new definitions of 'participant' and 'criminal organisation' (under new sections 161O and 161P- as discussed above).

- It is not framed as a floating circumstance of aggravation but, rather, it applies to a prescribed list of discrete offences (see new Schedule 1C of the Penalties and Sentences Act). The list includes offences under the Criminal Code, the *Criminal Proceeds Confiscation Act 2002*, the *Drugs Misuse Act 1986*, and the *Weapons Act 1990*. The types of offences predominantly relate to: violence, sexual offending and child exploitation, drugs, prostitution and weapons, and offending that may undermine the administration of justice.

- The circumstance of aggravation must proceed *on indictment* (and cannot be summarily dealt with by the Magistrates Court) and requires the consent of a Crown Law Officer (i.e. the Director of Public Prosecutions or Attorney-General) for presentation of the indictment (as distinct from charging).

- The Bill ensures that the jurisdictional limit of the District Court is not altered by the inclusion of the new circumstance of aggravation. That is, if the District Court had jurisdiction to try a person charged with a particular indictable offence prior to commencement, the District Court continues to have jurisdiction to do so irrespective of the insertion of the new circumstance of aggravation by the Bill.

- Conviction of a prescribed offence aggravated by the new circumstance of aggravation will not increase the existing *statutory* maximum penalty applicable to the offence but rather conviction enlivens the new legislatively enshrined sentencing regime which is specific to the Serious Organised Crime circumstance of aggravation.

- The Criminal Code provisions relating to the availability of alternative verdicts (such as section 575 (offence involving circumstances of aggravation)) are intended to apply.

New section 161Q (Meaning of serious organised crime circumstance of aggravation) establishes the Serious Organised Crime circumstances of aggravation itself. It provides that it is a circumstance of aggravation for a prescribed offence (see new Schedule 1C) of which an offender is convicted that, at the time the offence was committed or at any time during the course of the commission of the offence, the offender:

- was a participant in a criminal organisation (see new sections 161O and 161P for definitions); and
- knew, or ought reasonably to have known, the offence was being committed—
  - at the direction of a criminal organisation or a participant in a criminal organisation; or
  - in association with one or more persons who were, at the time the offence was committed or at any time during the course of the commission of the offence, participants in a criminal organisation; or
  - for the benefit of a criminal organisation. An offence is committed for the benefit of a criminal organisation if the organisation obtains a benefit, directly or indirectly, from the commission of the offence (see new section 161N for definition of *benefit*).

To remove any doubt, the Bill makes it clear that the criminal organisation that directed or benefited from the offending does not need to be the same criminal organisation to which the person is a participant. Similarly, the participant with whom the person committed the offence need not belong to the same criminal organisation as the person.

Targeted sentencing regime: The consequences of conviction of a prescribed offence committed with the Serious Organised Crime circumstance of aggravation is provided for under new section 161R of the Bill; and new section 161S dictates the only means by which the punishment imposed under new section 161R can be altered.

Part of the intention underpinning the new Serious Organised Crime circumstance of aggravation with its targeted sentencing regime, is to encourage these particular offenders to cooperate with law enforcement agencies in proceedings or investigations about major criminal offences.

In sentencing an offender convicted of a prescribed offence with the Serious Organised Crime circumstance of aggravation, the Court:

- must sentence the person to a *term of imprisonment* for the prescribed offence. The length of this 'base component of the sentence' is to be decided by the court having regard to the circumstances of the case. However, the court cannot have regard to the mandated component of the sentence or the mandatory imposition of a control order; and therefore it cannot be ameliorated in any way because of this; and

- must impose the 'mandated component of the sentence' That is, a fixed cumulative jail term to be served wholly in prison without parole release. The length is to be seven years imprisonment (or for a prescribed offence that is punishable by a maximum penalty of less than seven years imprisonment, the fixed cumulative term is to be the length of the maximum penalty for that offence). The Bill makes particular provision to accommodate those cases where the 'base sentence' is life imprisonment or an indefinite sentence; and

- must impose the new *Organised Crime Control Order* (discussed below).

For an offender sentenced to life imprisonment as the base component – see sections 181(2A) and (2B); and 181A(3) and (4) of the *Corrective Services Act 20016* (as amended by the Bill). The effect is that the time for parole eligibility for these offenders is extended by 7 years.

For an offender sentenced to an indefinite sentence as a base component – see section 171 PSA (as amended by the Bill). The effect is that the first review of their indefinite sentence is deferred by 7 years.

For example, under the sentencing regime if a person is convicted of Grievous bodily harm (which carries a statutory maximum penalty of 14 years imprisonment) with the new Serious Organised Crime circumstance of aggravation, they must first be sentenced to a term of imprisonment (the base component) for the prescribed offence. In this example, the court imposes four years imprisonment (and in doing so the court cannot take account of the extra mandatory sanctions to be imposed). The person will be required to serve an extra seven years imprisonment in addition to the 'base component'. The person will have to serve every day of that extra seven years in prison because it cannot be mitigated and parole does not apply to that part of their sentence.

If instead, the person had committed the offence of Riot (with the circumstance of aggravation), the extra fixed jail term to be served by them would be three years imprisonment, in addition to the 'base component', and they will serve every day of that three years in jail. This is because the maximum penalty for the offence of Riot is three years imprisonment (i.e. less than seven years).

In both instances, the court must impose an organised crime control order in framing the overall sentence.

Co-operation of significant use: This penalty regime cannot be mitigated or varied except in prescribed circumstances. That is, the person provides cooperation of significant use to a law enforcement agency in the investigation of or in a proceeding about a *major criminal offence*. A 'major criminal offence' means an indictable offence for which the maximum penalty is at least 5 years imprisonment.

The cooperation can be of significant use to a *law enforcement agency* (it is not intended that the use be restricted to the QPS only); and it can be of a type contemplated by section 13A (i.e. an undertaking to cooperate in a proceeding) or section 13B (i.e. a 'letter of comfort' issued by the law enforcement agency setting out the cooperation) of the Penalties and Sentences Act (NB. for the latter there is no commitment to cooperate into the future).

The Bill provides that the utility of the cooperation is to be assessed and determined by the sentencing judge; consistent with the prevailing approach under sections 13A and 13B of the Penalties and Sentences Act. This is a fundamental point of distinction with the approach under the VLAD Act.

Transitional arrangements for the repeal of the VLAD Act: For persons who have been charged prior to commencement of the Bill with the VLAD Act circumstance of aggravation, the ordinary approach to legal interpretation and statutory construction regarding changes in the law will prevail. The repeal of the VLAD Act will not affect their criminal liability. They will be prosecuted for the offence on the basis of the law as it stood on the date they were charged.

If convicted, it is intended that they be punished to no greater extent than is authorised under the new or amended laws (so, under the proposed sentencing regime attached to the new Serious Organised Crime circumstance of aggravation).

It is understood that only three people have been convicted and sentenced under the VLAD Act regime, so despite the repeal of the VLAD Act, they will remain subject to that regime unless transitional provision is made for them.

The consequence is that, should they not comply with their undertaking to cooperate, each would serve at least 15 years in prison (or possibly 25 years if they were an office bearer) to be served *cumulatively* on whatever 'base sentence' was ordered under the VLAD Act regime. That is, they will serve, *at least*, every day of that 15 years (or 25 years) in prison.

As outlined under the Taskforce report (see page 119 and Chapter 13), a mechanism is included under the Bill (see clause 282) by which the Supreme Court can re-open these cases upon application.

This approach is not novel. It is consistent with the approach that was taken in 1990 when the mandatory life sentence for drug trafficking was repealed and replaced with a statutory maximum penalty regime. Those prisoners had three months to lodge an application for review to the Supreme Court.

The Bill sets out the orders that the Supreme Court must make on a successful application by the person to reopen their sentence. In effect, it is only the 'further sentence' component of the sentence that can be altered; and the person is to be resentenced in that regard to the further sentence as if the law applicable to that were the law under the mandatory component of the new sentencing regime applying to the Serious Organised Crime circumstance of aggravation.

- **Organised Crime Control Order scheme**

(Clause 279 – Part 9D, Division 3) Explanatory Notes: p 20 to 22 and 122 to 131.

The Taskforce unanimously recommended a conviction-based control order regime as a new sentencing order for Qld to sit under the Penalties and Sentences Act. The Bill implements this initiative.

Most Australian jurisdictions provide for civil control orders under their criminal organisation statutes analogous to COA. These other regimes apply a declaration-based model to the making of control orders (not requiring proof of *actual* offending by the *individual* but rather reliance upon declaring an entire organisation as criminal). The COA Review analysed this type of control order and concluded that they have not been successful in any Australian jurisdiction.

In framing its recommendation, the Taskforce had regard to the United Kingdom's (UK) Serious Crime Prevention Orders (SCPO). The key distinction is the UK model is not a sentencing order but rather a civil order that can be conviction or non-conviction based.

Similarly, on 4 May 2016, the *Crime (Serious Crime Prevention Orders) Act 2016* (NSW) was passed but is yet to commence. The NSW Act substantially replicates the UK model. The Taskforce Chair examined the NSW Act and considered legal challenge likely and raised doubts about its practical utility in terms of its non-conviction component.

The Taskforce and COA review expressly considered and rejected a non-conviction based model. The principal benefit of a conviction-based control order regime as a new sentencing order (as provided for by the Bill) is that it eliminates the risk of legal challenge on the basis that it offends the rule against sentencing double jeopardy. Further it gives an additional sentencing tool to the courts in combating organised crime. It is also anchored to actual criminal conduct.

Publically available data from the UK Home Office reveals that as at 31 March 2014, 317 post-conviction SCPO's had been made in the UK, and only one non-conviction SCPO.

The next release of data in the UK regarding the SCPOs was by the UK National Crime Agency, in July 2016, which reveals that there are 155 *current* SCPOs in place and all are conviction based. That is, as best as can be established, the data shows that there are currently no non-conviction based SCPOs in place in the UK; and only one has been made since introduction. The success of the UK regime lies with its conviction-based focus.

The Bill creates this new sentencing order under new Part 9D, Division 3 of the Penalties and Sentences Act.

The Bill provides that the court can impose any conditions under the control order it considers appropriate to protect the public by *preventing, restricting or disrupting* the involvement by the person in *serious criminal activity*; and any conditions the court considers necessary to enforce the order.

Without limiting the court, new section 161U (Conditions) provides some examples of the types of conditions that may be considered, such as:

- prohibit the offender from associating with a stated person or a person of a stated class, including a person with whom the offender has a personal relationship (if the offender has a personal relationship with the stated person, the court must consider the effect of the condition on the relationship and whether the prohibition should relate only to a particular class of activity or relate to activities generally); or

- prohibit the offender from entering or being in the vicinity of a stated place or a place of a stated class; or

- prohibit the offender from acquiring or possessing a stated thing or a thing of a stated class; or

- restrict the means by which the offender communicates with other persons; or

- require the offender to give a police officer or another stated person stated information by a stated time or at stated intervals (for example, the offender's computer passwords) or to attend before a police officer or another stated person by a stated

- time or at stated intervals (for example, attending before the officer in charge of a stated police station at weekly intervals).

While the breadth of the court's discretion in framing the conditions applicable to each offender is wide, the Bill places the following caveats on the types of conditions, to provide safeguards for individuals: the preservation of the right to silence with regards to a charged offence, a condition cannot override legal professional privilege, a condition cannot require a person to give information if the giving of the information would contravene another Act (i.e. the person cannot be compelled to break the law).

The Bill also makes it clear (new section 161ZH) that in the event that a condition does for some reason result in a person providing this type of information the information is not admissible as evidence against the person in a proceeding other than:

a) a proceeding against them for a contravention of the control order; or

b) a proceeding in which the person has adduced the information themselves.

It is acknowledged that the section abrogates the person's right to claim privilege against self-incrimination but only to the extent that the information given relates to a contravention of the control order, or registered corresponding control order, under which the person is required to give the information (i.e. to ensure compliance with its conditions); or a proceeding in which the person has themselves adduced the information.

The section does not restrict the derivative use of any information given by a person in compliance with a condition of a control order or registered corresponding control order.

The section does not otherwise remove the person's right to claim privilege against self-incrimination.

The Bill also includes the express requirement that a sentencing court, in making a further control order for an offender who is already subject to an existing control order, must have regard to the conditions already imposed on the offender. This is, in part, to ensure the overall impact of the control orders upon the person is not crushing.

The Bill provides for two types of control orders – mandatory control orders and discretionary control orders:

- **Mandatory control orders** - apply as a consequence of conviction for an offence aggravated by the new Serious Organised Crime circumstance of aggravation; and

- **Discretionary control orders** - apply at the court's discretion, upon application by the prosecuting authority (or on its own initiative), for the following:

  - *any* indictable offence, where the court is satisfied on the balance of probabilities that the offender was a 'participant in a criminal organisation' at the time of the offence having regard to all of the circumstances (the offence for which the person is convicted does not need to relate to their participation in a criminal organisation for a control order to be made – section 15 of the PSA is amended to accommodate this additional information); or

  - conviction of the new Consorting offence; or

  - contravention of a control order; and

  The court is satisfied, on the balance of probabilities, that there are reasonable grounds to

believe that the order would protect the public by preventing, restricting or disrupting involvement by the person in serious criminal activity.

However, a control order imposed as a result of conviction for the offence of consorting will be restricted as to its conditions (to anti-association and place restriction conditions only) and in its length (not longer than two years).

The order can be for up to five years in length (with ability to extend where the offender contravenes the order). Also, consistent with the UK, a mechanism to delay commencement of the control order to accommodate an initial period of incarceration is included.

A contravention of a control order is an indictable offence punishable by a maximum penalty of three years imprisonment, increasing to five years imprisonment for a second breach of that same order.

The contravention of the order can happen in or outside Queensland. That is, the provision expressly provides for its extraterritorial application. This is to ensure that the person cannot leave the jurisdiction to effectively circumvent the conditions of the order.

It is a defence for the person to prove that the person had a reasonable excuse for contravening the order. However it is not a reasonable excuse for the person to not comply with a condition of the order requiring them to give information if to comply with the condition might tend to incriminate the person by exposing that they have breached the control order (see example discussed above).

If the contravention relates to a non-association condition, it is irrelevant whether or not the association related to the commission or potential commission of an offence. That is, the association does not need to be in any way related to criminal activity to constitute a contravention of the condition.

Without limiting the punishment for contravention, the court may (instead of making a fresh control order) amend the existing control order by:

- extending the order by not more than two years if the control order was imposed upon conviction of habitual consorting or extending the order by not more than five years, otherwise; or
- imposing any further conditions the court could impose if a further control order were made for the person.

The Bill makes provision to enable summary disposition of the contravention offences and to ensure that no time limits apply for these prosecutions despite that summary disposition.

The Bill includes provisions to vary or revoke the control order under limited circumstances.

The Bill also provides for recognition of control orders originating in other Australian jurisdictions, giving legal effect in Qld to the control orders of other States. At this time, it is control orders issued in NSW, Northern Territory and South Australia (whether they are conviction-based or non-conviction based) that are to be recognised by Qld as valid and enforceable control orders. It is not proposed at this time, to extend the recognition provisions to the analogous COA legislation in each Australian jurisdiction – those orders (noting no control orders have been made at this time under those respective regimes) rely on a declaration-based model targeting entire organisations as distinct from individuals within.

The Bill also augments the *Bail Act 1980* to include legislative examples under section 11 that makes it clear that a condition of a grant of bail may include conditions to prevent, disrupt and

restrict serious criminal activity, such as an anti-association condition or place restriction type condition (i.e. for those charged but not yet convicted).

- **Consorting: repeal of the 2013 'anti-association offence' and replacement with new Habitual consorting offence**

(Clause 141 for offence creation, and clauses 309-327 for associated police powers; see also 142-146 transitional arrangements for 2013 provisions) Explanatory Notes: p77 and 137-141).

Section 60A (Participants in criminal organisations being knowingly present in public places) of the Criminal Code makes it an offence for participants in criminal organisations to knowingly gather together in a group of three or more persons. It is punishable by a maximum penalty of three years imprisonment, with a mandatory minimum component of six months imprisonment to be served wholly in a correctional facility.

The Taskforce critiqued section 60A for a number of reasons. The Report noted the difficulty in successfully prosecuting the offence and the Taskforce majority was of the view that it was unlikely that the offence would survive a constitutional challenge on the basis of the implied right to political communication and association (see page 184 of the Taskforce Report).

The Taskforce considered that the most appropriate measure to combat high-risk associations was through a conviction-based scheme – including the Organised Crime Control Orders (discussed above) and the introduction of a new offence of Habitual consorting into the Criminal Code (albeit with a sunset clause after seven years).

Currently, all Australian states and territories other than Qld and the Australian Capital Territory have a consorting offence. The New South Wales (NSW) consorting offence recently withstood constitutional challenge in the High Court of Australia (see *Tajjour v State of New South Wales* (2014) 254 CLR 508).

A consorting offence makes it a criminal offence for a person to associate with two other people who have previous convictions. It is preceded by a warning to the person that continued association is a criminal offence.

The new Qld consorting offence is modelled substantially on the NSW offence, but with a key variant. That is, the threshold for the issuing of a consorting warning. In NSW, a person can be warned if they are consorting with another person that has a conviction for *any* indictable offence. The threshold for the Qld offence in the Bill, is higher in that the conviction must be for an indictable offence punishable by a maximum penalty of five years imprisonment or a prescribed offence. A higher threshold addresses the issues raised in the 2016 NSW Ombudsman's review of the NSW consorting offence regarding the potential for misuse of the offence in respect of vulnerable groups in the community ((see - www.ombo.nsw.gov.au/what-we-do/our-work/police/legislative-reviews).

New section 77B of the Criminal Code creates the offence of *Habitually consorting with recognised offenders.*

Commencement: The Bill provides that the consorting offence commences 3 months post-assent.

Application: The new offence will only apply to adults (i.e. people aged 18 years or over) and will not apply to young people.

The person must consort on two occasions with at least two people who are recognised offenders. A recognised offender is defined to mean a person who has previously been convicted of an indictable offence punishable by a maximum penalty of five or more years

imprisonment, or a prescribed offence (where the maximum penalty falls below five years – this list of prescribed offences is targeted at organised crime-type offences such as riot). The previous convictions cannot relate to convictions that are spent under the *Criminal Law (Rehabilitation of Offenders Act) 1986* (Qld) and a conviction must have been actually recorded. **Attachment 2** illustrates how the new offence operates.

Warning: The Bill provides that a person must first be officially warned, and at least one of the occasions of consorting must occur after the issuing of the warning.

The official warning can be given orally or in writing, and must be given in relation to each convicted offender. If the official warning is given orally, it must be confirmed in writing (which includes by electronic means) within 72 hours, otherwise the oral warning lapses and has no legal effect.

Warnings can be given pre-emptively, for example the official warning can be issued by police without any consorting ever having occurred, but the person must then consort with those people on two occasions, post-receipt of the warning. Warnings can also be given retrospectively, for example non-contemporaneously based on video footage.

There is no right of review for the issuing of an official warning (however, see heading 'review' below as to the oversight role of the PIM in respect of these warnings).

Circumstance of the consorting: The consorting can occur in public or in private and is not limited to physical association – the offence is sufficiently broad so as to capture any other kind of communication (ie, over the phone, email, social media, etc.). There is no requirement that the consorting be linked to, or have any suspected link to, criminal activity in any way.

Defences: Provision is made to ensure that certain types of consorting must be disregarded if the person can satisfy the court on the balance of probabilities that the consorting was reasonable in the circumstances, and that one of the following applies:

- Consorting with close family members, which is defined to capture the concept of immediate family members such as parents, grandparents, stepparents, spouses, siblings (blood or marriage), stepsiblings, aunts and uncles but not necessarily extending past first cousins. The definition also recognises and include Aboriginal and Torres Strait Islander cultural norms of kinship;

- Consorting that occurs in the course of lawful employment or the legitimate conduct of an occupation, business or profession;

- Consorting that occurs in the course of the provision of a legitimate and necessary health service (or where they are obtaining health services for a dependent child);

- Consorting that occurs in the course of a person obtaining legitimate education or training (or where they are obtaining legitimate education or training for a dependent child);

- Consorting that occurs in the course of a person obtaining legal services; and

- Consorting that occurs in lawful custody.

The onus of proving that the act of consorting is one that must disregarded and was reasonable in the circumstance falls to the person i.e. it is a reverse onus defence.

Penalty: The offence is punishable by a maximum penalty of 3 years imprisonment or 300 penalty units, or both. The offence is indictable, but is able to be dealt with summarily on defence election.

Associated police enforcement powers: To accompany the new consorting offence, the Bill provides for certain warrantless stop, search and detain powers for police under the *Police Powers and Responsibilities Act 2000* (PPRA).

Currently, Chapter 2 of the PPRA provides police officers with general enforcement powers to carry out their duties.

To ensure effective enforcement of the new habitual consorting offence, Part 21 of the Bill amends the PPRA to provide police officers with the power to stop, detain and search a person they reasonably suspect has consorted, is consorting or is likely to consort with one of more recognised offenders. Where a police officer holds this suspicion they may also:

- require the person to provide their name, address and date of birth;
- take the person's identifying particulars if necessary to confirm their identification;
- where applicable, give the person an official warning for consorting; and
- require the person to move on from the place where an official warning has been issued.

Stop, detain and search power for consorting: The power to stop, detain and search the person reasonably suspected of consorting with a recognised offender is required as without the power there are no other lawful means to engage the person to establish whether they have been consorting and provide an official warning if appropriate. A search of the person suspected of consorting may reveal evidence such as written messages, or mobile telephone communications, between the person and the recognised offender that establishes that they have consorted. Establishing the possible reason for consorting also allows police to determine whether any of the defences of consorting apply under section 77C of the Criminal Code.

Importantly, the powers provide police with a valuable tool to ensure the safety of officers when dealing with recognised offenders. Recognised offenders are persons with convictions for unspent indictable offences punishable by five years or more, such as the unlawful supply of handguns, and robbery with violence. It is not unrealistic that persons with this background may be in possession of weapons or dangerous items with the propensity to use them to harm police officers.

Move on power for consorting: The new section 53BAE of the PPRA provides that where a police officer has given a person an official warning for consorting and the officer reasonably suspects the person is consorting at the place with the recognised offender, the officer may require the person to leave and not return within a reasonable time of not more than 24 hours. This allows police to ensure that multiple acts of consorting are clearly separated from each by a period of time. The NSW case of *Police v Klein*[1] found that two observations of persons consorting in a motor vehicle were the one consorting event viewed twice, and is an example of the need to clearly separate the consorting events by time.

This move on power is balanced by a safeguard that provides that police cannot require the person to leave the place if doing so would endanger the safety of the person or someone else. For example, requiring the person to leave a vehicle in which recognised offenders are passengers in circumstances in which the person has no access to alternative transport.

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[1] *Police v Klein*, Blacktown Local Court, Brown LCM, 29 April 2016, para 26.

These powers replace the general stop, search and detain powers that currently apply in respect of persons who are reasonably suspected to be participants in criminal organisations (which are repealed by the Bill in accordance with the Taskforce recommendations).

Review of the offence: The Bill provides that a review of the effectiveness and use of the offence and associated police powers must be done by a retired Supreme Court or retired District Court Judge as soon as practicable five years after the commencement of provisions. There is an obligation on Police to collect antecedent data when issuing warnings to facilitate an accurate review (the lack of data was highlighted as an impediment by the NSW Ombudsman).

Further, the Bill extends the statutory functions of the PIM to include the monitoring of the giving of official warnings for consorting by police and to gather statistical information about the use and effectiveness of official warnings. The PIM must include details of the official warnings for consorting as part of his/her annual report, which is to be provided to the Minister (and thereafter tabled in Parliament).

Transitional arrangements: To allow for a smooth transition, the Bill provides for the temporary retention of section 60A of the Criminal Code for a period of 2 years.

For the transitional period, the Bill significantly amends the offence by converting it to an indictable offence and removing the strict mandatory minimum penalties.

For the persons who have been charged with an offence under section 60A, and whose charges are still pending before the courts, the ordinary approach to legal interpretation and statutory construction regarding changes in the law will prevail. The repeal or replacement of these offences will not affect their criminal liability. They will be prosecuted for the offences on the basis of the law as it stood on the date they were charged. Accordingly, if convicted, it is intended that they be punished to no greater extent than is authorised under the new or amended laws (so, the amended state of section 60A).

- **Repeal of the current clubhouse offence and replacement with a new Public Safety Protection Order package**

(see Parts 17, 18 and 21 of the Bill). Explanatory Notes: p15 to 18 and 101 to 114.

Currently, section 60B (Participants in criminal organisation entering prescribed places and attending prescribed events) of the Criminal Code provides the offence for a participant in a criminal organisation who enters or attempts to enter a prescribed place, or attends or attempts to attend a prescribed offence.

The Taskforce identified a number of issues with the section 60B offence, in particular problems attaching to successful prosecutions and constitutional concerns – and ultimately recommended that the offence be repealed.

The new Public Safety Protection Order scheme for Queensland, consisting the Restricted Premises Order scheme, Public Safety Order scheme and Fortification Removal Order scheme is to replace the section 60B offence.

Restricted Premises Order scheme

Part 4 of the *Peace and Good Behaviour Act 1982* inserted by the Bill establishes the new Restricted Premises Order scheme to enable a Magistrates Court to declare a place to be a 'restricted premises' if satisfied on the application of a senior police officer (i.e. rank of Sergeant or above) that there are reasonable grounds for suspecting that any of the following *disorderly activities* have taken place and are likely to take place again at the premises and

the court is satisfied that the making of the order is appropriate in the circumstances:

- drunkenness or disorderly or indecent conduct, or any entertainment of a demoralising character, or has taken place and is likely to take place again on the premises; or
- liquor or a drug is unlawfully supplied on or from the premises, or has been supplied on or from the premises and is likely to be again; or
- unlawful possession or supply of firearms or explosives at or from the premises;
- recognised offenders (or their associates) go to the premises, or have and are likely to again; or
- the premises is excessively fortified (see Fortification Removal Orders for further detail); or
- any of the people having control of, or managing or taking part or assisting in the control or management of the premises: is a recognised offender (or an associate); or has been relating to other premises which have been the subject of a declaration; or is or has been relating to other premises which are, or have been, frequented by people of notoriously bad character; or on or from which liquor or a drug is or has been unlawfully sold or supplied.

A 'recognised offender' means:

- a person who is convicted of an indictable offence with a maximum penalty of five or more years imprisonment or another prescribed offence and whose conviction is not spent; or
- a person who is subject to the new organised crime control order; or
- a person who has been convicted of the new Habitual consorting offence (and whose conviction has not become spent).

An 'associate of a recognised offender' is a reference to a person who has been given an official warning under the new Habitual consorting offence (see above).

The restricted premises order provides, inter alia, that disorderly activities must not take place at the premises, recognised offenders or associates not be present at the premises, and that the premises not be fortified (the latter is to ensure that police are able to properly execute their search powers).

If these prohibited activities occur on premises subject to a restricted premises order and owners/occupiers of premises knew or ought reasonably to have known that the disorderly activity has taken place they commit an indictable offence:

- for a first offence – 150 penalty units or 18 months imprisonment or both; and
- for a second or subsequent offences – 300 penalty units or three years imprisonment or both.

A restricted premises order lasts for at least six months and up to two years.

The consequences of a restricted premises orders is that police have the power to search premises subject to the order without a warrant on an unlimited number of occasions whilst the order is in force.

Additionally, the Bill also provides that the police can apply for a search warrant if they have a reasonable belief that disorderly activities have taken place and are likely to take place again on *any* premises (i.e. a premises not yet the subject of a restricted premises order).

Police officers searching premises under a search warrant or subject to a restricted premises order may seize any item defined as a 'prohibited item' under the scheme. Prohibited items

include: alcohol, drugs, firearms, explosives and anything that is capable of being used inside premises to contribute to or enhance the ambience of the premises in support of the sale or consumption of liquor or drugs or entertainment of demoralising character e.g. a bar fit out, an entertainment system, a pool or billiard table or a stripper's pole.

The Bill further provides that items that are seized during the exercise of search powers (either under the Peace and Good Behaviour Act or the Police Powers and Responsibilities Act) can be forfeited to the State by the Commissioner of Police. An application to the Magistrates Court for the return of the prohibited item can be made within 21 days. A Magistrate can order the return of the item only if the applicant can prove that: they are the lawful owner of the item, the item was seized on an unlawful basis and it is appropriate for the item to be returned.

The 2013 clubhouses: For the premises that are currently declared to be prescribed premises under the *Criminal Code (Criminal Organisations) Regulation 2013*, the Bill provides for them to be automatically and legislatively deemed to be subject to a Restricted Premises Order for a period of two years after the Bill has commenced. A senior police officer may apply to the Magistrates Court to extend this order by a further two years. The Bill provides that the Magistrates Court must grant the extension if the Court is satisfied that disorderly activities are likely to take place if the restricted premises order lapse. In making its determination the Magistrates Court is able to consider disorderly activities that occurred before the commencement of the Bill.

The Qld scheme has been modelled primarily on the equivalent in NSW which is the only other Australian jurisdiction with a comparable scheme. Both the scheme contained in the Bill, and the NSW equivalent, are Court-ordered (as distinct from these orders being made by a non-judicial authority) and as a result promote public confidence in the legitimacy of the criminal justice system and minimise appealable error and possible constitutional vulnerabilities.

Public Safety Order scheme

Currently, Part 4 of the COA (to be repealed under the Bill) provides for a Public Safety Order scheme for participants in declared organisations. Noting that these orders have never been used in their current form, the COA Review saw some utility in retaining the scheme but transposing it into an alternate legislative vehicle with modification.

In implementing this recommendation, the Bill introduces a new Public Safety Order scheme into Part 3 of the *Peace and Good Behaviour Act 1982,* allowing police-issued and court-ordered public safety orders made against an individual or group if the presence of the individual or group at a premises or an event or within an area poses a serious risk to public safety or security. A public safety order can contain conditions prohibiting a person from entering, attending or remaining or doing a stated thing in a certain area or at certain event.

A public safety order can be made by a Commissioned police officer (i.e. rank of Inspector or above) for up to seven days. If the order is longer than 72 hours, the respondent will have a right of appeal to the Magistrates Court. The police issued orders will ordinarily be written and served personally if it is practicable. However, urgent police issued orders can be given verbally and a copy is to be made available for inspection at police station or on the QPS website.

Orders longer than seven days must be made by the Magistrates Court on the application of a senior police officer (i.e. Sergeant or above).

The ability for police to make these orders for up to 7 days acknowledges that circumstances will arise where it is not practical nor in the public interest to wait the time it may take to obtain an order via the full hearing process through the Courts. However, recognising the value of transparency and oversight, Bill requires police to record the details of any police-issued public

safety orders and to report annually to the PIM, who will report to the Minister. The reports will then need to be tabled in Parliament (consistent with the approach to official warnings under the new consorting offence).

A person who without reasonable excuse knowingly contravenes of a public safety order will commit an indictable offence that is punishable by a maximum penalty of 3 years imprisonment.

All applications for Public Safety Protection Orders will be civil applications. All questions of fact in these proceedings other than proceeding for a criminal offences will be determined on the balance of probabilities. The *Uniform Civil Procedure Rules 1999* will apply to all applications made to the court to the extent the rules are consistent with any specific provisions.

Further, the Bill provides that decisions of the Magistrates Court with respect to the public safety protection orders will be appealable to the District Court. Public Safety Orders that are longer than 72 hours in length and made by a Commissioned police officer may be appealed to the Magistrates Court.

The normal appeal procedure whereby a notice of appeal must be filed within 28 days will apply to the appeals to the District Court. For appeals to the Magistrates Court about the decision of Commissioned Police officer the notice of appeal may only be filed at least three days and within seven days of the issue of the order and the return date for the hearing of the appeal must be the day after the notice of appeal is filed.

Fortification Removal Orders

The Bill also creates a Fortification Removal Order scheme under new Part 5 of the *Peace and Good Behaviour Act 1982.* The scheme takes what is currently contained in Part 5 of the *Criminal Organisation Act 2009,* but modifies it so as to increase its utility and overcome the problems identified by the COA Review. All Australian jurisdictions, with the exception of the Australian Capital Territory, have an equivalent scheme. Of those schemes, all are Court-ordered except for Western Australia who allow for a Police-issued scheme.

The Fortification Removal Order scheme has two key aspects; first the ability for police to issue stop and desist fortification notices, and second the ability to apply to the court to obtain a Fortification Removal Order.

The first element enables Commissioned police officer (i.e. rank of Inspector or above) to issue an on-the-spot 'stop and desist' notice stopping fortification of the premises if they have a reasonable belief the premises is being used for criminal purposes or habitually occupied by 'recognised offenders' or participants in criminal organisations. The notice will be for 14 days. Police need to commence (not finalise) the court-ordered Fortification Removal Order process in that time. The Court can confirm the notice pending finalisation of the actual order. A breach of a stop and desist notice will be deemed to be evidence that the grounds for making a fortification removal order unless the contrary is proven by the respondent. A breach of a stop and desist order will also be deemed evidence that disorderly activities are taking place on a premises (for the purpose of the Restricted Premises Order scheme outlined above) unless the contrary is proven by a respondent.

The second element allows a Magistrates Court to order that fortifications (which can mean any type of structure or device designed to prevent uninvited entry, including locks, deadbolts, and security screens) be removed from any premises. The Court must be satisfied, on the balance of probabilities, that there are reasonable grounds to suspect the premises are fortified, and habitually used by a class of people of which a significant number may reasonably be suspected to be participants in a criminal organisation. A requirement for notice

of the application to be given to the respondent before the order is made and that the respondent have an opportunity to be heard is included in the scheme.

Once an order is made, the owner/occupier of the premises must remove or modify the fortifications in the period determined by the Court. If the order is not complied with police are empowered to enter the premises to remove or modify the fortifications using whatever force is necessary.

A person who does an act or makes an omission with the intent to hinder the enforcement of Fortification Removal Order commits an indictable offence that is punishable by a maximum penalty of five years imprisonment.

Transitional arrangements: To allow for a smooth transition to the new Public Safety Protection Order scheme, the Bill provides for the temporary retention of section 60B of the Criminal Code for a period of 2 years, the re-classification of the offence as indictable, and for the removal of the associated mandatory minimum penalty (consistent with the approach to section 60A above).

Further, as with section 60A, for the persons who have been charged with an offence under section 60B, and whose charges are still pending before the courts, the ordinary approach to legal interpretation and statutory construction regarding changes in the law will prevail. The repeal or replacement of these offences will not affect their criminal liability. They will be prosecuted for the offences on the basis of the law as it stood on the date they were charged. Accordingly, if convicted, it is intended that they be punished to no greater extent than is authorised under the new or amended laws (so, the amended state of section 60B).

- **Recruitment by criminal organisations**

(Clause 67).

Section 60C (Participants in criminal organisation recruiting persons to become participants in the organisation) of the Criminal Code makes it an offence for participants in criminal organisations to recruit or attempt to recruit members. For much the same reasons as the recommendations to repeal and replace the offences under section 60A and 60B of the Criminal Code, the Taskforce also recommended the same for section 60C.

The Taskforce, instead, considered that the recruitment offence at section 100 of the COA was more appropriate as it is an indictable offence, it does not require a specific 'no criminal purpose defence', and can be easily utilised under the new definitions of participant and criminal organisation. Section 60C of the Criminal Code is immediately repealed by the Bill.

The new offence, under section 76 of the Criminal Code, makes it an offence for a participant in a criminal organisation or a person who is subject to a post-conviction control order (under the Penalties and Sentences Act – see above) to attempt to recruit another person to become a participant in a criminal organisation, or to associate with a criminal organisation in any way. The offence is punishable by a maximum penalty of five years imprisonment.

- **Retention of the current prohibition on wearing colours on licensed premises but with reduced maximum penalties**

(see Part 14 of the Bill) Explanatory Notes: p12 to 15 and 84 to 92.

The *Liquor Act 1992* (Liquor Act) currently contains the following offences relating to the wearing or carrying of a *prohibited item* on licensed premises (the "colours offences"):

- a licensee, permittee or staff member must not knowingly allow a person who is wearing or carrying a prohibited item to enter or remain on licensed premises (section 173EB);
- a person must not enter or remain on licensed premises while wearing or carrying a prohibited item (section 173EC);
- if a licensee, permittee, staff member or police officer (authorised person) requires a person wearing or carrying a prohibited item to leave licensed premises, the person must immediately leave the premises (section 173ED(1));
- a person wearing or carrying a prohibited item must not resist an authorised person who is removing them from a licensed premises (section 173ED(3)).

Section 173EA of the Liquor Act defines a *prohibited item* as an item of clothing, jewellery or an accessory that displays:

- the name of a declared criminal organisation; or
- the club patch, insignia or logo of a declared criminal organisation; or
- any image, symbol, abbreviation, acronym or other form of writing that indicates membership of, or an association with, a declared criminal organisation, including:
  - the "1%" or "1%er" symbol; or
  - any other image, symbol, abbreviation, acronym or other form of writing prescribed under a regulation.

The term *declared criminal organisation* is defined in section 173EA of the Liquor Act as "an entity declared to be a criminal organisation under the Criminal Code, section 1, definition *criminal organisation*, paragraph (c)". This refers to organisations declared under a regulation to be a *criminal organisation*. Currently 26 of these organisations contained in the *Criminal Code (Criminal Organisations) Regulation 2013*.

In line with Taskforce recommendation 10, the power to prescribe *declared criminal organisations* under the Criminal Code will be repealed by the Bill. Noting that this would "leave a gap" in the colours offences, the Taskforce suggested that it may be appropriate for Queensland to adopt a similar approach to that taken in New South Wales, where the *Liquor Regulation 2008* (NSW) excludes, in certain precincts, persons wearing or carrying items relating to a list of outlaw motorcycle gangs (Taskforce report, page 294).

Accordingly, to ensure the ongoing effectiveness of the colours offences, the Bill amends the Liquor Act to insert a power to declare "identified organisations" in the *Liquor Regulation 2002* (Liquor Regulation). For consistency, the 26 entities currently declared as *criminal organisations* will be prescribed in the Liquor Regulation as *identified organisations*.

In order for any further entities to be prescribed, the Bill provides that certain criteria will be required to be met. The Minister will be required to be satisfied that the wearing or carrying of proposed prohibited items by a person in a public place:

- may cause other persons to feel threatened, fearful or intimidated; or
- may otherwise have an undue adverse effect on the health or safety of members of the public, or the amenity of the community, including by increasing the likelihood of public disorder or acts of violence.

In making this determination, the Minister must have regard to whether any person, while they were a participant in the entity proposed to be prescribed:

- engaged in serious criminal activity (being conduct constituting an indictable offence for which the maximum penalty is at least seven years imprisonment); or
- committed an offence involving a public act of violence or damage to property, or involving disorderly, offensive, threatening or violent behaviour in public.

If at a future date, the Minister responsible for the Liquor Act is not the Attorney-General, the Minister will be required to reach agreement with the Attorney-General prior to making a recommendation to Governor in Council that an entity be prescribed in the Liquor Regulation.

As noted above, the Bill introduces a new offence into the *Summary Offences Act 2005* (Summary Offences Act), which will prohibit a person from visibly wearing or carrying a prohibited item in any public place. As the definition of *public place* under the Summary Offences Act is wide enough to encompass licensed premises, this new offence will cover the behaviour contained within section 173EC of the Liquor Act. Accordingly, the offence in section 173EC will no longer be required, and the therefore Bill repeals this provision.

In line with recommendations of the Taskforce (recommendations 35 and 37), the offences contained in sections 173EB and 173ED of the Liquor Act, relating to licensees and other authorised persons removing people wearing or carrying prohibited items, will be retained with some modifications.

The Bill amends section 173EB of the Liquor Act to provide protections to licensees, permittees and their staff. No offence will be committed if a licensee, permittee or staff member has taken reasonable steps to refuse, exclude or remove a person wearing a prohibited item; or if they reasonably believed it was not safe or practical to refuse, exclude or remove the person.

The Bill also amends subsections 173ED(1) and (3) of the Liquor Act to remove the existing tiered penalty regime, and replace it with a maximum penalty of 100 penalty units for these offences.

- **Extension on the prohibition on wearing colours to other public areas**

(see Part 29 of the Bill) Explanatory Notes: p3 to 4 and 159.

The Bill amends the *Summary Offences Act* 2005 to include a new offence that will apply to a person who visibly wears or carries a prohibited item in a public place. The term 'prohibited item' will be defined by reference to the definition in the *Liquor Act 1992*, section 173EA, which refers to clothing, jewellery or an accessory that displays: the name, club patch or logo of a declared criminal organisation; or any image or writing that indicates membership of, or an association with, a declared criminal organisation, including the symbol '1%'. Clause 209 of the Bill replaces the term declared criminal organisation with identified organisation. Pursuant to clause 210, identified organisations will be listed in the Liquor Regulation 2002.

The maximum penalty for the new offence is six months imprisonment increasing to nine months imprisonment for a second offence and 12 months imprisonment for any subsequent offence. The Bill also provides for automatic forfeiture of the prohibited item upon conviction.

The current offence in the *Liquor Act 1992*, section 173EB of entering and remaining in licensed premises wearing or carrying a prohibited item will be repealed as such conduct will be covered by the proposed new Summary Offences Act offence.

The new offence will include a defence for a person to prove that they visibly wore or carried the item for a genuine artistic, educational, legal or law enforcement purpose; and such conduct was, in the circumstances, reasonable for that purpose.

Further, QPS has advised that while there may be concern that the new offence may impact recreational motorcycle club riders wearing their jacks with insignias, this is highly unlikely. Recreational motorcycle clubs are not currently listed in the regulation as identified organisations and adding future recreational clubs would be unlikely to meet the criteria in section 173EAA.

Police powers to stop, detain and search the person and vehicle: The Bill amends sections 30 and 32 of the PPRA to provide police with the power to stop, detain and search a person and their vehicle when a police reasonably suspects the person has, or is committing, an offence against section 10C (Wearing or carrying a prohibited item in a public place) of the *Summary Offences Act 2005*.

The powers provide police with the lawful means to detain the person, and if applicable, their vehicle to search for evidence of the offence, such as shirts and jewellery that may have been seen and were consequently secreted on the person or in the vehicle.

Importantly, similar to consorting, the powers provide police with an additional level of officer safety when dealing with persons who are linked to identified organisations who have a history of public acts of violence

- **The offence of 'money laundering'**

(Clauses 154 to 157) Explanatory Notes: p11 and 80 to 81.

The Bill amends the money laundering provisions in the *Criminal Proceeds Confiscation Act 2002* to remove the requirement for the Attorney-General's consent to prosecute the offence. This amendment implements the recommendations of the Commission of Inquiry and the Taskforce which considered that the requirement for consent was unnecessary and inconsistent with the approach taken in all other Australian jurisdictions.

- **Amendments to the *Crime and Corruption Act 2001***

(Clauses 31 to 55; and 57 to 59) Explanatory Notes: p 7 to 8 and 54 to 62.

The Taskforce concluded that some of the amendments made in 2013 were legally and operationally beneficial and as a result those aspects, listed below, are retained without further amendment:

- the specific intelligence operations function;
- allowing witnesses who are to be certified as being in contempt of the Crime and Corruption Commission (CCC) to be immediately arrested;
- the increase in maximum penalties for the statutory offences of non-compliance;
- permitting inculpatory evidence given by a person in a coercive hearing to be used against them in a proceeding for the confiscation of proceeds of crime;
- the ability of the CCC to start or continue to investigate a person even after the person has been charged with an indictable offence;
- allowing the CCC to seek a warrant from a Magistrate for a witness who fails to attend a hearing; and
- deeming certain proceedings arising out of the CCC functions confidential in the Supreme Court.

The Taskforce did, however, identify a number of issues with other portions of the 2013 amendments to the Crime and Corruption Act that required curing through amendment and in some cases total repeal. These aspects are detailed below:

Immediate response function (sections 55D-F): The Bill retains the immediate response function of the CCC, but provides for oversight by the Crime Reference Committee regarding the use of this function.

Punishment regime for contempt of the CCC (sections 199(8A-F)): The Bill repeals the existing mandatory minimum sentencing regime under section 199 and inserts a replacement escalating maximum sentencing regime. That is, for the first contempt the maximum penalty will be 10 years imprisonment; for a second contempt the maximum penalty will be 14 years imprisonment; and for a third and subsequent contempt the maximum penalty will be life imprisonment.

The punishment regime applies with partial retrospectivity – that is, to any proceeding that is on foot at the time of commencement of the Bill, regardless of whether the CCC hearing at which the contempt occurred began prior to the commencement; or the contempt itself occurs prior to commencement; or the contempt was certified prior to commencement. However this is to the benefit of the person.

Fear of retribution as a reasonable excuse for non-compliance (sections 85 and 100): The Bill amends the provisions allowing a person to claim, advance and rely upon a reasonable excuse for non-compliance with the CCC which expressly exclude a fear of reprisal for participants in criminal organisations. Accordingly, it omits subsections 74(5a), 82(6), 185(3A) and 190(4). The result of these amendments is to return the position to that which existed prior to the 2013 amendments, in this regard. The Presiding Officer will decide any claim of reasonable excuse in accordance with section 194; the affected person may then appeal the presiding officer's decision to the Supreme Court under section 195.

Access to financial assistance for legal services (section 205): The Bill amends and expands section 205 so that it applies to a person who has been given a notice to attend a CCC hearing; or a person who wishes to appeal, or has appealed, to the Supreme Court against a decision of a Presiding Officer at a CCC hearing (under section 195).

All CCC hearings (i.e. crime and intelligence hearings, including those under the immediate response function, and corruption and witness protection hearings) will fall within the ambit of section 205 and witnesses summonsed before those hearings, or appealing a decision resulting from a hearing, will be eligible to apply for financial assistance towards legal services relating to the proceeding.

The application process will remain the same as it currently is – so, via application to the Attorney-General who has the discretion to determine whether financial assistance for legal services is to be provided, and if so the extend of that assistance, but include an ability for the Attorney-General to appropriately delegate this decision making.

Disclosure of exculpatory materials obtained in an intelligence function hearing (section 201): The Bill repeals subsection (1A) of section 201 to return to the position that existed prior to the 2013 amendments. The CCC will no longer have the full authority to refuse to disclose information given or produced at an intelligence function hearing or at a hearing authorised under the immediate response function. In situations where the CCC wishes to restrict the disclosure of evidence obtained at these hearings, the ordinary procedure will apply (the CCC can make an application to the Supreme Court to that effect).

This amendment will apply irrespective of whether the person was charged with an offence before the court prior to the commencement of the Bill, and/or irrespective of whether the evidence referred to under section 200 was obtained by the CCC prior to commencement.

- ***REPEALS - aspects of the 2013 laws to be repealed***

The Bill also repeals the COA, as recommended by the COA Review, and will include any necessary consequential amendments arising from its repeal.

The VLAD Act is also repealed and the Bill repeals the following laws that were introduced or amended as part of the 2013 laws:

- *Bail Act 1980*: The Bill repeals the 2013 amendments to the Bail Act which placed participants in a criminal organisation in a show cause position when applying for bail in all cases. The Taskforce unanimously recommended this repeal on the basis that the 2013 amendments were unnecessary and unjustified, and that the pre-existing provisions in the balance of the Act allow Courts to adequately deal with the risks associated with the granting of bail to all offenders, including participants in criminal organisations.

- *Corrective Services Act 2006*: The Bill repeals the 2013 amendments to the Corrective Services Act which established the Criminal Organisation Segregation Order scheme to deal with the management of prisoners who were identified as participants in a criminal organisation. The Taskforce unanimously recommended this repeal on the basis that the provisions were unjustly harsh and unnecessary, and that Queensland Corrective Services has well-established, effective and appropriate prisoner management regimes that do not rely on the 2013 amendments.

- Penalties and Sentences Act: The Bill repeals the mandatory driver licence disqualification penalty for persons convicted of one of four prescribed offences (sections 60A, 60B, 60C and 72(2) of the Criminal Code) under section 187(2) of the Penalties and Sentences Act. The Taskforce was critical of this mandatory disqualification provision as it does not require any nexus between the alleged offending and the use of a motor vehicle. Further, a discretion is already vested in the Court to disqualify a person's licence when sentencing for any offence in the appropriate circumstances under subsection 187(1) of the Act.

- *Police Service Administration Act 1990*: The Bill repeals the 2013 amendments under subdivision 1A of Part 10 of the Police Service Administration Act which allowed the Police Commissioner to give to any entity, including a media organisation, the criminal history of a participant in a criminal organisation. This amendment implements recommendation 34 of the Taskforce Report on the basis that the scheme allowing for the disclosure and publication of criminal histories to any entity, including to media outlets, is contrary to the principles of rehabilitation and potentially jeopardises the independence of the Commissioner of Police.

- *Police Powers and Responsibilities Act 2000*: The general powers to stop, search and detain a person on the basis that a police officer reasonably suspects they are a participant in a criminal organisation are repealed by the Bill.

  The 2013 amendments also created a new motor vehicle impoundment scheme under chapter 4A of the *Police Powers and Responsibilities Act 2000* which targeted at criminal organisation offences. It effectively allows for persons who are charged with a criminal organisation offence (being the five offences created by the 2013 suite – sections 60A, 60B and 60C of the Criminal Code, the aggravated form of Affray and the aggravated form of Evade Police) to have their vehicle impounded regardless of whether a motor vehicle was involved or related to the offence. It also allows forfeiture of the vehicle when it is driven to or from the place where the criminal organisation offence took place.

The Taskforce was critical of the blanket operation of the new impoundment scheme, and the lack of requirement for any nexus between the motor vehicle and the offending.

INITIATIVES STEMMING FROM THE COMMISSION OF INQUIRY RECOMMENDATIONS

- ***Crime and Corruption Act 2001* and *Police Powers and Responsibilities Act 2000* - investigative powers for Crime and Corruption Commission officers and police officers to assist in gaining access to electronically stored information**

(Clauses 42-44 and clauses 302-304) Explanatory Notes: p5, 56 to 57 and 136.

In response to recommendations 4.7 and 4.8 of the Commission's report, the Bill introduces provision into the *Crime and Corruption Commission Act 2001* (CCA) to enable officers to have the same ability as police officers to apply for a warrant containing an order requiring a person to provide access information. Currently the CCA does not provide any head of power for any order to be made about providing access information. Access information is defined to mean information that is necessary for a person to access and read information stored electronically on a storage device.

In addition, the amendments will extend the scope and operation of the order to apply to persons other than the suspect (for example, the owner of the device), and that the relevant officers will, if necessary, be able to apply for an additional order to request additional access information if later forensic tests reveal there is a second or further layer of encryption the initially provided access information cannot 'unlock'.

Corresponding amendments, clauses 302-304, will be made to the *Police Powers and Responsibilities Act 2000* (PPRA) to expand the current scope and powers of orders in a search warrant that police officers can seek. The PPRA currently provides for a police officer to apply for an order in a search warrant to require a person to provide access information. The extended scope of the order to be included in the CCA will be replicated in the PPRA.

Both the CCA and the PPRA will be amended to provide that a warrant that contains an order requiring the provision of access information must also state that failure to comply with the order can be dealt with under the proposed new section 205A to be included in the Criminal Code (see below).

- **Criminal Code - introduction of new offence of contravening an order to provide access information**

(Clause 75) Explanatory Notes: p5 and 65.

The Bill will partially implement recommendation 4.9 of the Commission's report which reflected the Commission's concern that, given the nature and extent of offending behaviour and that the need to investigate hidden or stored information is a major investigative tool, that the failure to comply with these orders should constitute an indictable offence under the Criminal Code.

The Bill inserts a new provision into the Criminal Code that provides that a person who does not comply with an order in a search warrant to provide access information to allow examination of electronic storage devices, is guilty of an indictable offence carrying a maximum penalty of 5 years imprisonment.

The new offence does not, as was included in recommendation 4.9, include a circumstance of aggravation, increasing the maximum penalty to seven years imprisonment, when the person subject to the requirement in the search warrant is in possession of child exploitation material at the time the search warrant is executed. The circumstance of aggravation raises issues of 'double punishment', if the person was also charged with the offence of possessing child exploitation material. Further, duel provisions risk the offender being convicted of new section 205A and therefore prohibited from being convicted and punished with the substantive offence of possession of child exploitation material which carries a much great maximum penalty.

- **Criminal Code - introduction of new penalties and new offences relating to child exploitation material offences**

(Clauses 61, 76, 87-94) Explanatory Notes: p5 and 62, 66, 67 to 69.

The Commission noted the ease and proliferation of access to, and trade in, child exploitation material over the internet and the increasing prevalence of such offending. The Commission also noted the increased use of technology to promote and distribute child exploitation material as well as to 'hide' a person's access to child exploitation material websites and material.

To address these concerns the Bill amends the Criminal Code to:

- implement Commission recommendation 4.4 and create new offences, each with a maximum penalty of 14 years imprisonment, targeting people who:
  - are administrators of websites and know the website is used to distribute child exploitation material;
  - encourage the use of websites used to distribute child exploitation material; or
  - distribute information about how to avoid detection of, or prosecution, for an offence involving child exploitation material;
- implement Commission recommendation 4.5 and increase the maximum penalty from 14 to 20 years imprisonment for the offences of involving a child in making child exploitation material (section 228A Criminal Code) and making child exploitation material (section 228B Criminal Code); and
- implement Commission recommendation 4.6 and apply a circumstance of aggravation to each of the existing and new offences related to child exploitation material if a person uses a hidden internet network or an anonymising service in committing the offence (maximum penalty of 25 years imprisonment for sections 228A and 228B Criminal Code and 20 years imprisonment for each of the other offences).

The new offence of administering a child exploitation material website includes a specific defence to protect legitimate website administrators who become aware that a website is being used to distribute child exploitation material and take all reasonable steps to prevent access to the child exploitation material. The defence necessarily reverses the onus of proof as the defendant is best placed to provide evidence of the steps they have taken.

- **Criminal Code - introduction of new penalties and new circumstances of aggravation in relation to the offence of fraud**

(Clause 126) Explanatory Notes: p5 to 6 and 74.

The amendments to section 408C (Fraud) of the Criminal Code respond to recommendations 5.3, 5.4 and 5.5 of the Commission's report which arose from the Commission's concerns regarding the increasing prevalence and seriousness of cold call investment or 'boiler room'

fraud and evolving threats in financial crimes (particularly identity crime) that may not be adequately deterred by existing penalties.

In response, the Bill will:

- implement Commission recommendation 5.3 and increase the maximum penalty for existing aggravated fraud offences from 12 to 14 years imprisonment;
- implement Commission recommendation 5.4 and insert an additional circumstance of aggravation where the property involved or yield to the offender is valued at $100,000 or more – to carry a maximum penalty of 20 years imprisonment; and
- implement Commission recommendation 5.5 and insert an additional circumstance of aggravation if the offender carries on the business of committing fraud with a maximum penalty of 20 years imprisonment. This will capture conduct that involved the planned and systematic targeting of the public including cold call investment or 'boiler room' frauds.

- ***District Court of Queensland Act 1967***

(Clauses 161-162) Explanatory Notes: p81 to 82.

Subclause 162(1) of the Bill amends the *District Court of Queensland Act 1967* to maintain the current workload distribution between the Supreme Court and the District Court as a result of the increase in penalty for trafficking in dangerous drugs resulting from changes to the *Drugs Misuse Act 1986*. The general criminal jurisdiction of the District Court is limited to offences that have a maximum of 20 years imprisonment (subject to a number of listed exceptions). The amendment to the *Drugs Misuse Act 1986* will mean that the maximum penalty for trafficking in a schedule 2 drug (as listed in the *Drugs Misuse Regulation 1987)* will increase from 20 to 25 years.

- ***Drugs Misuse Act 1986* amendments**

(Clauses 163-164) Explanatory Notes: p6 and 82 to 83.

Subclause 164(1) increases the maximum penalty for trafficking (section 5) in dangerous drugs, listed in schedule 2 of the *Drugs Misuse Regulation 1987*, from 20 years to 25 years imprisonment. The amendment reflects the Commission findings that organised crime has a very real presence and interest in trafficking illicit drugs, regardless of drug type.

Subclause 164(2) amends section 5 to remove the provisions that relate to the current mandatory minimum 80% non-parole period which applies for trafficking. This addresses recent adverse comments of the Court of Appeal (in *R v Clark* [2016] QCA 173) that the mandatory minimum non-parole period has the very real potential to result in unintended consequences which are not in the interests of the criminal justice system or the community. In particular, concerns were raised about the risks of significant court delays to allow those offenders with sufficient funds to demonstrate pre-sentence rehabilitation and a viable post-sentence rehabilitation scheme, the potential inequity in sentencing between pecunious and impecunious offenders that can result, as well as the conflict between this, the benefit of an early guilty plea and a lawyer's duty to the court to not encourage delay.

The Bill reinserts the offence of trafficking to the longstanding Serious Violent Offence regime under the *Penalties and Sentences Act 1992*.

OCCUPATIONAL AND INDUSTRY LICENSING

The 2013 laws (particularly the *Tattoo Parlours Act 2013* and the *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013*) created a new industry licensing regime for the body-art tattoo industry in Queensland, and introduced additional probity restrictions into a range of occupational licensing and industry regulation Acts, with the aim of excluding criminal organisations and participants in criminal organisations from operating and working in particular occupations and industries.

The Bill contains amendments to respond to the views, findings and recommendations of the Taskforce relating to occupational licensing and industry regulation matters. Specifically, the Bill amends the:

- *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013*[2]
- *Liquor Act 1992*
- *Motor Dealers and Chattel Auctioneers Act 2014*
- *Police Service Administration Act 1990*
- *Racing Act 2002*
- *Racing Integrity Act 2016*
- *Second-hand Dealers and Pawnbrokers Act 2003*
- *Security Providers 1993*
- *Tattoo Parlours Act 2013*
- *Tow Truck Act 1973*
- *Weapons Act 1990*

An overview of the amendments is provided below.

- **Acts amended by the 2013 suite, where the 2013 amendments have not commenced (*Electrical Safety Act 2002*, *Queensland Building and Construction Commission Act 1991* and *Work Health and Safety Act 2011*)**

The commencement of amendments to the following three Acts contained in the *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013* was postponed until 1 July 2017:

- *Electrical Safety Act 2002*
- *Queensland Building and Construction Commission Act 1991* (formerly the *Queensland Building Services Authority Act 1991*)
- *Work Health and Safety Act 2011.*

The 2013 amendments to the above three Acts are not consistent with the Government's response to the Taskforce's views, finding and recommendations. Accordingly, the Bill repeals the 2013 amendments to the above three Acts as contained in the *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013*, with the exception of two minor technical amendments to the *Electrical Safety Act 2002*.

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[2] The legislation ultimately amended is the *Electrical Safety Act 2002, Queensland Building and Construction Commission Act 1991* (formerly the *Queensland Building Services Authority Act 1991*) and the *Work Health and Safety Act 2011*

- ***Liquor Act 1992, Motor Dealers and Chattel Auctioneers Act 2014, Racing Act 2002, Racing Integrity Act 2016, Second-hand Dealers and Pawnbrokers Act 2003, Security Providers Act 1993* and *Tow Truck Act 1973***

The 2013 laws contained amendments to the *Liquor Act 1992*, *Racing Act 2002*, *Second-hand Dealers and Pawnbrokers Act 2003*, *Security Providers Act 1993* and *Tow Truck Act 1973* which, in general terms:

- require licensing authorities to ask the Police Commissioner whether an applicant for a licence (or other authority) is a criminal organisation or a participant in a criminal organisation;
- authorise the Police Commissioner to notify licensing authorities about whether an applicant for a licence (or other authority), or a current holder of a licence (or other authority), is a criminal organisation or a participant in a criminal organisation;
- require licensing authorities to refuse to issue a licence (or other authority), or to cancel a licence (or other authority), if the applicant or holder is identified as a criminal organisation or a participant in a criminal organisation;
- prevent the disclosure to an applicant (or existing licence or authority holder) of criminal intelligence received from the Police Commissioner, identifying that the entity or person is criminal organisation or a participant in a criminal organisation; and
- exclude the operation of section 27B of the *Acts Interpretation Act 1954* (Content of statement of reasons for decision) and limit the operation of the *Judicial Review Act 1991*, in relation to decisions made by licensing authorities on the basis of advice from the Police Commissioner that an entity or person is a criminal organisation or a participant in a criminal organisation.

While the *Motor Dealers and Chattel Auctioneers Act 2014* was enacted after the 2013 laws, it contains provisions based on the 2013 laws preventing people identified as participants in a criminal organisation from obtaining a motor dealer's licence or motor salesperson's registration certificate.

Also, relevant provisions of the *Racing Act 2002* dealing with racing bookmaker's licences (including restrictions on identified participants in criminal organisations) are now contained in the *Racing Integrity Act 2016*.

The Bill contains amendments to the *Liquor Act 1992*, *Motor Dealers and Chattel Auctioneers Act 2014*, *Racing Integrity Act 2016*, *Second-hand Dealers and Pawnbrokers Act 2003*, *Security Providers Act 1993* and *Tow Truck Act 1973* to respond to the views, findings and recommendations of the Taskforce. In summary the Bill:

- removes requirements for licensing authorities to refer every application for a licence (or other authority) to the Police Commissioner for advice about whether the entity or person is a criminal organisation or a participant in a criminal organisation (Taskforce, recommendation 58);
- repeals provisions requiring licensing authorities to refuse or cancel a licence (or other authority) solely on the basis that an entity or person is alleged to be a criminal organisation or a participant in a criminal organisation (Taskforce, recommendation 56);
- restores the operation of principles of procedural fairness, and review and appeal processes, in relation to decisions of licensing authorities to refuse or cancel a licence or other authority (Taskforce, recommendation 59);
- retains an ability for the Police Commissioner to provide criminal intelligence to

licensing authorities through information sharing arrangements with licensing authorities, while also maintaining confidentiality of criminal intelligence (Taskforce, recommendation 13);

- ensures that licences and other authorities are not refused or cancelled solely on the basis of criminal intelligence (Taskforce, recommendation 15).

The Bill also makes largely consequential amendments to the *Racing Act 2002* to reflect the Government's response to the views, findings and recommendations of the Taskforce.

The Bill also amends the *Police Service Administration Act 1990* to respond to recommendation 34 of the Taskforce by repealing the 2013 amendments that provided that the Commissioner of Police may disclose the criminal histories of current or former participants in a criminal organisation if the Commissioner is satisfied the disclosure is in the public interest.

The amendments contained in the Bill are intended to refocus occupational licensing frameworks to an assessment of a person's own probity (including their own criminal history), rather than the behaviour and conduct of people they associate with.

In this respect, the new serious and organised crime offences (as well as the terms of control orders) under the Bill will be relevant to the operation of the identified occupational licensing frameworks. The new serious and organised crime offences relevant for occupational licensing probity tests are as follows:

- recruiting person to become a participant in criminal organisation (section 76 of the Criminal Code);
- habitually consorting with recognised offenders (section 77B of the Criminal Code);
- certain offences committed with a serious organised crime circumstance of aggravation (see section 161Q of the *Penalties and Sentences Act 1992*);
- contravention of order (section 161ZI of *Penalties and Sentences Act 1992*);
- contravention of public safety order (section 32 of the *Peace and Good Behaviour Act 1982*);
- offence by owner or occupier of restricted premises (section 54 of the *Peace and Good Behaviour Act 1982*); and
- hindering removal or modification of a fortification (section 75 of the *Peace and Good Behaviour Act 1982*).

The existing occupational licensing Acts vary in terms of whether a person's conviction for a particular offence is a mandatory exclusion from holding a licence, an express relevant consideration in determining a person's suitability for a licence, or a matter a licensing authority can have regard to under general provisions allowing for an assessment of a person's suitability for a licence.

Accordingly, depending on the structure of the licensing Act, convictions for one of the new serious and organised crime offences (or the terms of control orders) are incorporated into express provisions of the licensing Act dealing with a person's eligibility or suitability to hold a licence, or can be considered under more general provisions of the legislation dealing with whether a person is a 'fit and proper' person to hold a licence.

The Bill is also intended to reflect that appropriate exchange of information between agencies can improve public administration. In this respect, the Bill includes provisions (where necessary) to ensure licensing authorities can enter into information-sharing arrangements with other agencies (including the Queensland Police Service). However, information that

meets the definition of 'criminal intelligence' is only intended to be used by industry regulation agencies to monitor compliance with legislation within their regulatory responsibilities. The Bill makes it clear that 'criminal intelligence' (which cannot be disclosed and therefore cannot be contested by the affected applicant or licence/authority holder) may not be considered when assessing a person's suitability and eligibility for a licence or other authority. Note: criminal intelligence will continue to be used as part of the *Weapons Act 1990* licencing regime as discussed below.

- ***Tattoo Parlours Act 2013***

Currently, the *Tattoo Parlours Act 2013* and *Tattoo Parlours Regulation 2013* require that:

- persons hold an 'operator licence' if they operate, or intend to operate, a body art tattooing business in Queensland
- individuals hold a 'tattooist' licence if they work, or want to work as a body art tattooist in Queensland.

An operator can also be a tattoo artist at their own premises and does not need to hold a separate tattooist licence. A separate operator licence is required to be held by the operator for each premises. To be eligible for a licence, an individual must:

- be 18 years or older
- an Australian citizen or permanent resident
- not be a controlled person under the *Criminal Organisation Act 2009*.

The assessment of the probity of an applicant (or licensee) is currently significantly different than probity assessment processes for other types of occupational licence or authority.

Specifically, the Chief Executive must decide to refuse an application if an 'adverse security determination' has been made by the Police Commissioner about an applicant or licensee. An adverse security determination is a determination made by the Police Commissioner that the applicant is not a fit and proper person to be granted the licence or that it would be contrary to the public interest for the applicant to be granted a licence. Neither the applicant/licensee nor the licensing authority (the Office of Fair Trading) is provided with the reasons why an adverse security determination is made about a particular person. Adverse security determinations may be based on criminal intelligence held by the Police Commissioner.

Under the Act, applicants must also be finger and palm printed and applicants for an operator licence must submit a list of close associates of the business or the applicant. Furthermore, individuals who perform tattooing for a fee or reward, while visiting Queensland, require a visitor permit and, similarly, individuals wanting to organise a body art tattooing show or exhibition require an exhibition permit.

Additionally, licensees must keep a tattooing procedures log to record payments to tattooists for tattoos performed for a fee. The Act does not impose any training or competence requirements.

In response to the views, findings and recommendations of the Taskforce, the Bill makes substantial changes to the *Tattoo Parlours Act 2013*. In a broad sense, the amendments contained in the Bill are intended to introduce a more transparent, traditional approach to assessing the suitability of people to hold tattoo industry licences, similar to other occupational licensing regimes (for example, under the *Security Providers Act 1993*).

As per the Explanatory Notes, the amendments contained in the Bill will:

- change the short title of the *Tattoo Parlours Act 2013* to the *Tattoo Industry Act 2013*;
- include a main purpose section in the Act to clarify that the Act is intended to regulate the body art tattooing industry to minimise the risk of criminal activity in the industry;
- establish a more procedurally fair and transparent process for assessing the probity of tattoo licence applicants (and licensees), based on a 'fit and proper person test' focused on a person's own conduct (including their criminal history), which is more closely aligned with other existing occupational licensing frameworks like the *Security Providers Act 1993*;
- disqualify people convicted of one of the following new serious and organised crime offences from holding a licence:
  - recruiting person to become participant in criminal organisation (section 76 of the Criminal Code)
  - habitually consorting with recognised offenders (section 77B of the Criminal Code)
  - certain offences committed with a serious organised crime circumstance of aggravation (see section 161Q of the *Penalties and Sentences Act 1992*)
- disqualify a person from holding a licence if the person is subject to a 'relevant control order' (that is, a control order restricting the person from carrying on activities that require a licence under the *Tattoo Parlours Act 2013*)
- enable the licensing authority to consider a range of matters in determining whether it is in the public interest for a person to be issued with a licence, while also ensuring decisions are subject to normal principles of procedural fairness (including the right for applicants and licensees to be given reasons for decisions to refuse or cancel a licence) and providing applicants and licensees with appropriate means to contest the reasons for decisions through review and appeal mechanisms
- exclude the use of confidential criminal intelligence in licensing decisions
- maintain requirements for licence applicants to provide their finger and palm prints
- reduce unnecessary regulation and red tape by making provision for the renewal of licences and allowing the chief executive to issue more than 2 visiting tattooist permits or exhibition permits to an applicant, where appropriate
- increase flexibility of the licensing framework by catering for mobile tattooing.

- ***Weapons Act 1990***

While the Taskforce considered issues concerning the *Weapons Act 1990* as part of its deliberations on occupational and industry licensing matters, it also recognised that the regulation of the use and possession of weapons is somewhat unique in the context of occupational licensing and industry regulation legislation, particularly given the clear risks associated with firearms and other weapons in terms of the safety of individuals and the public.

As explained in the Explanatory Notes to the Bill, the current scheme under the *Weapons Act 1990* is effectively a dual scheme. A 'fit and proper person' test which existed prior to the 2013

suite will continue to exist and requires the Authorised Officer under the Act to make a decision with respect to whether a person is appropriate to hold a licence.

The 2013 suite introduced an additional stand-alone requirement that a person is not a fit and proper person to hold a licence if the person is an identified participant in a criminal organisation. Whilst a person's membership of a criminal organisation may have previously been a general consideration for the Authorised Officer under public interest and public safety considerations, the 2013 suite removed the need to apply the usual fit and proper person test in cases where the persons was an identified participant in a criminal organisation.

The Bill amends the *Weapons Act 1990* to return to the position prior to the 2013 suite, allowing the application of a fit and proper person test, with an applicant's participation in a criminal organisation to be considered as part of the general 'fit and proper person' test, which was the case prior to the 2013 suite.

In relation to the use of criminal intelligence under the *Weapons Act 1990*, the previous scheme included the ability to use criminal intelligence as part of the existing fit and proper person test. Given that the ability to use criminal intelligence in determining weapons licences existed prior to the 2013 suite and the purposes of the *Weapons Act 1990* are public and individual safety focused, the ability of the Authorised Officer to use criminal intelligence as part of the fit and proper person test will be maintained.

As with the other licensing schemes mentioned, the *Weapons Act 1990* is also amended to enhance the operation of principals of procedural fairness, and restore review and appeal processes regardless of whether the person is a participant in a criminal organisation (Taskforce, recommendation 59).

TRANSITIONAL ARRANGEMENTS

- **Acts amended by the 2013 suite, where the 2013 amendments have not commenced (*Electrical Safety Act 2002*, *Queensland Building and Construction Commission Act 1991* and *Work Health and Safety Act 2011*)**

No transitional provisions appear necessary for the amendments to the *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013*.

- ***Liquor Act 1992, Motor Dealers and Chattel Auctioneers Act 2014, Racing Act 2002, Racing Integrity Act 2016, Second-hand Dealers and Pawnbrokers Act 2003, Security Providers Act 1993, Tow Truck Act 1973* and *Weapons Act 1990***

The Bill inserts a number of transitional provisions into the *Liquor Act 1992, Motor Dealers and Chattel Auctioneers Act 2014, Racing Integrity Act 2016, Second-hand Dealers and Pawnbrokers Act 2003, Security Providers Act 1993, Tow Truck Act 1973* and *Weapons Act 1990*, in order to ensure fair treatment of applicants for, and holders of, licences and other authorities.

For each relevant licensing Act, the Bill inserts a transitional provision to ensure that, if an application for the grant or renewal of a licence or other authority has not been decided when the amendments to probity tests commence, the Chief Executive or authorised officer must decide the application under the amended probity test.

For those licensing Acts with "show cause" processes, the amendments to probity tests have also resulted in consequential changes to these processes. Accordingly, the Bill also inserts a transitional provision into each relevant Act to ensure that, where a show cause process is underway, but the matters raised have not been dealt with when the amendments to the show

cause provisions commence, the show cause process must continue under the amended show cause process.

Further, in relation to tribunal or Court proceedings for a decision made based on an entity or person's categorisation as a criminal organisation or a participant in a criminal organisation, the Bill inserts transitional provisions into each licensing Act to discontinue the proceeding. These provisions also provide that the proceeding must be remitted to the Chief Executive or authorised officer, to be re-decided under the amended probity test. In the event that the tribunal or Court held any criminal intelligence in relation to the proceeding, it must be returned to the Police Commissioner.

Where necessary, additional transitional provisions have been inserted into some licensing Acts, to account for issues arising from the operation of provisions specific to those Acts.

Transitional provisions do not appear necessary to support the amendments to the *Racing Act 2002*.

- ***Tattoo Parlours Act 2013***

The Bill contains provisions to assist in the smooth transition to the new framework for tattoo industry licensing.

For example, due to the significant change in principles and processes for undertaking probity determinations for tattoo industry licences, the transitional provisions provide that for licence applications that have not been decided immediately before commencement, the application is taken to be withdrawn. The applicant will be entitled to make a fresh application which will be assessed in accordance with the new probity processes for the tattoo industry.

In relation to 'show cause' processes, the Bill includes a transitional provision to ensure that, where a show cause process is underway but not finalised, the show cause process will continue in accordance with the legislation, as amended by the Bill.

In relation to tribunal or Court proceedings for a decision made based on an adverse security determination, the Bill includes a transitional provision to discontinue the proceeding. In the event that the tribunal or Court held any criminal intelligence in relation to the proceeding, the transitional provision states that it must be returned to the Police Commissioner.

Fundamental Legislative Principles

The Committee is referred to pages 37 to 47 of the Explanatory Notes to the Bill where potential breaches of the fundamental legislative principles are identified and justified.

Consultation

The Committee is referred to pages 47 and 48 of the Explanatory Notes to the Bill which set out the consultation undertaken and factored in to the development of the Bill.

Queensland Organised Crime Commission of Inquiry

Legislative recommendations included in Serious and Organised Crime Legislation Amendment Bill 2016

3.4 (The Bill partially implements this recommendation by increasing the penalty for trafficking a schedule 2 dangerous drug)

The Queensland Government amend the Drugs Misuse Act 1986 and Drugs Misuse Regulation 1987 to omit the current distinction between types of dangerous drugs by including all dangerous drugs in the one Schedule.

The maximum penalties that apply for offences relating to current Schedule 1 dangerous drugs should be retained and applied to all dangerous drugs.

The quantities specified in Schedules 3 and 4 should be retained but moved to be included in the dangerous drug Schedule for ease of reference.

Consequential amendments should be made to ensure appropriate offending can still be dealt with summarily.

4.4

The Queensland Government amend the Criminal Code to include provisions that would criminalise the contribution of administrators of child exploitation websites, as well as those who encourage their use and provide advice to avoid detection and add to the proliferation of child exploitation material online. In developing the new provisions regard should be had to sections 70AAAB, 70AAAC and 70AAAD of the Crimes Act 1958 (Vic).

4.5

The Queensland Government amend the Criminal Code by increasing the maximum penalty for sections 228A (Involving child in making child exploitation material) and 228B (Making child exploitation material) from 14 years to 20 years imprisonment.

4.6

The Queensland Government amend the Criminal Code to include a circumstance of aggravation for each of the child exploitation material-related offences in sections 228A, 228B, 228C and 228D.

The circumstances of aggravation would apply to any new offence (in relation to administrators of child exploitation websites, those who encourage their use and those who provide advice to avoid detection) enacted in accordance with recommendation 4.4.

The circumstance of aggravation would apply when the Darknet, or other hidden network, or anonymising service was used in the commission of the relevant offence. The terminology used to describe such networks and anonymising services would need to be framed in such a way as to survive the evolution of technology.

The new circumstance of aggravation will increase the maximum penalty for sections 228A and 228B to 25 years imprisonment (see recommendation 4.5 which proposes increasing the simpliciter penalty from 14 years to 20 years imprisonment).

The new circumstance of aggravation will increase the maximum penalty for sections 228C and 228D from 14 years to 20 years imprisonment.

4.7

The Queensland Government amend section 154 (Order in search warrant about information necessary to access information stored electronically) of the Police Powers and Responsibilities Act 2000 so that:

- *'stored information' includes information accessible by a computer or storage device (for example from a 'cloud' storage service); and*
- *an application for another order may be made after the seizure of a computer or storage device; and*
- *an order may contain conditions for the provision of access information at some future time when the computer or storage device is not on the premises.*

In developing the amendments regard should be had to section 465AA of the Crimes Act 1958 (Vic).

4.8

The Queensland Government amend Chapter 3, Part 2 (Search warrants generally) of the Crime and Corruption Act 2001 to include a provision allowing for the issuer of a search warrant to make orders about information necessary to access information, in the same, or similar, terms as section 154 of the Police Powers and Responsibilities Act, as amended in accordance with recommendation 4.7.

A consequential amendment might also be made to provide that a failure to comply with such an order may be dealt with under the new offence provision in the Criminal Code recommended in 4.9, below.

4.9

The Queensland Government amend the Criminal Code to insert a new offence of failing to comply with an order in a search warrant about information necessary to access information stored electronically (whether made under the Police Powers and Responsibilities Act 2000 or the Crime and Corruption Act 2001). The offence would be an indictable offence, and carry a maximum penalty of five years imprisonment.

The new offence would include a circumstance of aggravation, increasing the maximum penalty to seven years imprisonment, when the specified person is in possession of child exploitation material at the time the search warrant is executed.

Section 552A of the Criminal Code should be amended to provide that the new offence may be heard summarily on the prosecution election

5.3

The Queensland Government amend section 408C (Fraud) of the Criminal Code by increasing the maximum penalty for aggravated fraud in subsection (2) to 14 years imprisonment.

5.4

The Queensland Government amend section 408C (Fraud) of the Criminal Code by inserting an additional circumstance of aggravation, to apply if the property, or the yield to the offender from the dishonesty, or the detriment caused, is of a value of $100,000 or more.

In that case, the maximum penalty would be 20 years imprisonment.

5.5

The Queensland Government amend section 408C (Fraud) of the Criminal Code by inserting an additional circumstance of aggravation, carrying a maximum penalty of 20 years imprisonment, where the fraudulent conduct involved the planned and systematic targeting of the public.

5.6 (This recommendation was subsumed by the *Penalties and Sentences Act 1992* new circumstance of aggravation arising from Taskforce recommendations)

The Queensland Government further amend section 408D (Obtaining or dealing with identification information) of the Criminal Code by extending the ambit of the circumstance of aggravation in subsection (1AA) as follows:

(1AA) If the person obtaining or dealing with the identification information supplies it for the benefit of a criminal organisation, or 2 or more members of a criminal organisation, or at the direction of, or in association with, a criminal organisation, the person is liable to ....

5.7 (The Bill partially implements this recommendation by increasing the maximum penalty for the simpliciter offence from 3 to 5 years - other aspects of the recommendation subsumed by changes made arising from Taskforce recommendations)

The Commission recommends that the Queensland Government amend section 408D (Obtaining or dealing with identification information) of the Criminal Code to increase the maximum penalties as follows:

(1) 5 years imprisonment

(1AA) 14 years imprisonment

(1A) 5 years imprisonment.

5.8

The Queensland Government amend Chapter 7, Part 4 of the Police Powers and Responsibilities Act 2000 to allow production notices to be issued by a Justice of the Peace or a Magistrate.

6.1.

The Queensland Government amend section 251 (Charging of money laundering) of the Criminal Proceeds Confiscation Act 2002, to remove the requirement for Attorney-General consent.

CONSORTING IN QUEENSLAND

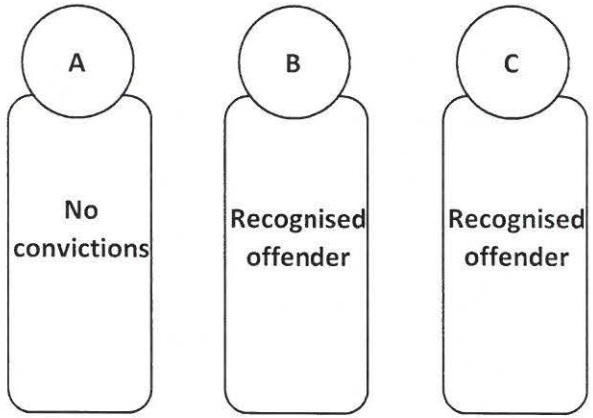
A person can be charged with consorting with 2 or more **recognised offenders on at least two separate occasions**.

Consorting can be by any means – in person, over the phone, by email, through social media, etc.

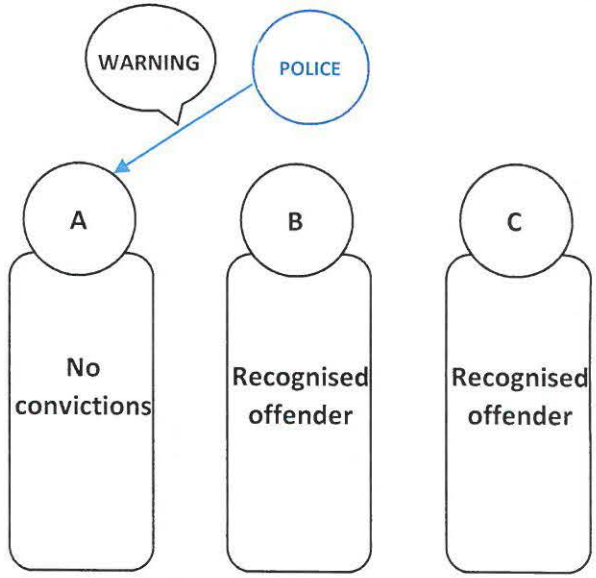
The consorting **does not need to be related to criminal activity in any way**.

REMEMBER: when police warn A, they have the **power to stop and search A without a warrant**. If police need to confirm the name and address of A (and A cannot produce ID to satisfaction) police have the **power to take A's identifying particulars.**

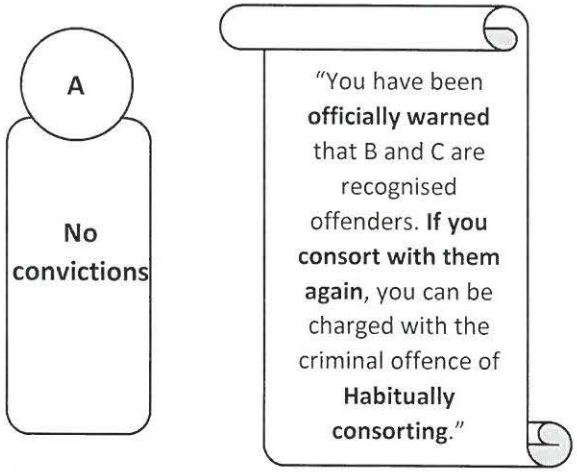
A recognised offender is a person who has been convicted of an indictable offence with a **maximum penalty of at least 5 years imprisonment**, or a **relevant offence**. It does not matter if A has never been convicted of an offence himself.



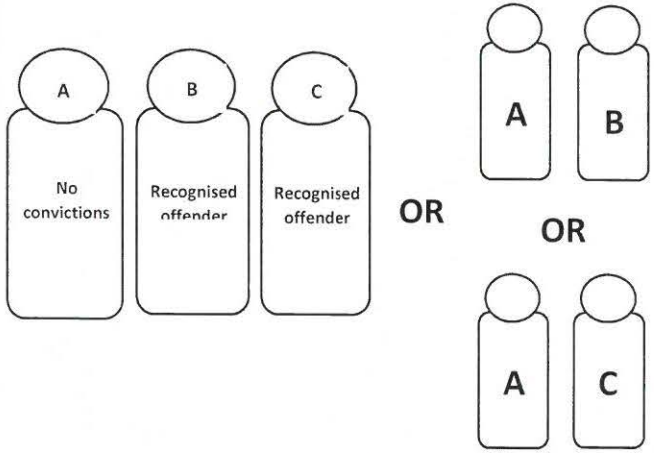
Police must issue an **official consorting warning** to inform A that the 2 people he is consorting with are recognised offenders. This can be an oral warning.



After A has been orally warned, **Police must confirm that warning in writing** within 72 hours. This can be electronically, or in the post, etc.



If A consorts with B and C again, then A can be **charged with the offence** of Habitually consorting with recognised offenders.



A needs to consort with both B and C again (but this can be either together or separately).

The only **defences** available to A are: **family member**, conducting **lawful business** or engaging in lawful **employment**, receiving **training** or **education** (or for a dependent child), receiving a **health service** (or for a dependent child), obtaining **legal services**, complying with a **court order** or in lawful **custody** and A can prove that the consorting was reasonable in the circumstances.

If A is convicted of the consorting offence, he faces a maximum penalty of **3 years imprisonment** or 300 penalty units.