

Legal Affairs and Community Safety Committee (the committee)Re: Serious and Organised Crime Legislation Amendment Bill 2016

Thank you for the opportunity to make a submission on the above mentioned bill.

My #1 concern is the size of the **Serious and Organised Crime Legislation Amendment Bill 2016 (Hereafter referred to as SOCLA)** with a single Bill altering 33 individual pieces of legislation containing 7385 pages collectively. This is a document that would require a team of lawyer's weeks to sift through, and analyse the consequences of. I have by no means been able to even look at all the parts that may affect myself or other citizens of Queensland. There are Sections of the **SOCLA** bill that refer to amendments to bills that are also amended in **SOCLA**, so in order to properly assess these amendments one must first go through and create a version of the new legislation in order to facilitate timely and accurate assessment of the Proposed Legislation. When releasing new bills for consideration, there should be released simultaneously a version of the amended Legislation, with maybe **the new parts highlighted and Underlined**, and the **omitted parts in Brackets Underlined and Highlighted**. This would considerably reduce the time that assessment of new Bills by the Citizens of Queensland, therefore making participation, in the process of Government more accessible to the Citizens of Queensland. There must be a version of the modified Legislation already in position of the Queensland Parliament so this is not an onerous request. Of course if it is the intent of the Legislator to exclude Queensland Citizens from the processes of Government as much as is possible, then I guess the process should remain the same as it currently is.

The #2 concern I have is that the Solicitor-General has not applied the relevant oversight of the **Queensland Legislative Standards Act 1992**, (<https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/L/LegisStandA92.pdf>) to the **SCOLA**, as happened with the original VLAD suite of Laws by the Newman LNP government. In particular, but not limited to; Part 2 Section 4 (10), (2), (3), & (4). My question to the Government of the day is, If there is a part of the **SCOLA** found to be in conflict with the Queensland Legislative Standards Act 1992 at some time in the future, will there be a guarantee to repair the defective component of the **SCOLA**, ASAP?

The #3 Concern, From the **SCOLA**,  
S44,

**88C Compliance with order about information necessary to access information stored electronically**

A person is not excused from complying with an order made under section 88A(1) or (2) or 88B(2) on the ground that complying with it may tend to incriminate the person or make the person liable to a penalty.

This Amendment is in clear breach of the Queensland Legislative Standards Act 1992, Section 4, (3), (f).

(f) **provides appropriate protection against self-incrimination; and**

As does the following;

Amendment of s 91 (What search warrant must state) Section 91(2)— omit, insert

(2) If a magistrate or a judge makes an order under section 88 or 88A(1) or (2), **the warrant must also state that failure, without reasonable excuse,** to comply with the order may be dealt with under—

As previous amendment removes the right against 'self incrimination' this therefore removes the right of self incrimination as a reasonable excuse.

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The #4 concern is; with amendments to the Criminal Code Act 1899 in particular the Consorting provisions. With 20 % of the Male population of Australia coming into contact with the Criminal Justice System, although not all fit the description applicable under the Anti-Consorting provisions, it is still a significant section of the community that have their sentence extended beyond the actual sentence.

How this affects released prisoners is that if they have no family members they can call on for support, fundamentally makes them **have** to become a Hermit to avoid placing other people in the vulnerable position of consorting. This has a negative impact of the Queensland Community as a whole, as for most people being social creatures, to have the ability to socialize removed by Government decree, will see a return to criminality in some cases. As I'm sure you will understand this would have the affect of potentially leaving the released Prisoner in a position of being less able to assimilate back into the community, and quite likely have the effect of increasing the Recidivism rate. As Australia's Recidivism rate is on an upward trajectory, there is obviously a need for laws that don't contribute to this problem not laws that increase Recidivism.

In addition to the above concerns, I would like to draw your attention to the United Nations High Court decision in 2014 in the case of Horvath V Australia;

[http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/AUS/CCPR\\_C\\_110\\_D\\_1885\\_2009\\_21806\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/AUS/CCPR_C_110_D_1885_2009_21806_E.pdf)

Taken from the above determination, from pages 17 & 18;

9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the State party has violated the authors' rights under article 2, paragraph 3 in connection with articles 7; 9, paragraph 1; and 17 of the Covenant.

10. In accordance with article 2, paragraph 3(a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including adequate compensation. The State party is also under an obligation to take steps to prevent similar violations in the future. In this connection, the State party should review its legislation to ensure its conformity with the requirements of the Covenant.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views, and to have them widely disseminated in the State party.

What this in essence is saying that whereby the Australian Government has signed and accepted the United Nations Covenant on Civil & Political rights (and Victoria being a State within Australia) is bound by the tenants of the UNCCPR in the eyes of the UN High Court. In the most basic of terms, all States and Territories of Australia has had enough time to implement the requirements of the UNCCPR and the UN High Court will interpret its decisions as if the requirements of the UNCCPR had been enacted into Law within the Jurisdictions of Australia. I believe this stance taken by the UN

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High Court would apply to all Covenants, Protocols, & Treaties Signed by the Australian Governments on behalf of the People of Australia.

Having the aforementioned in mind it goes without saying that any new laws or amendments to old laws, should consider that the proposed Legislation complies not only with the Queensland Legislative Standards Act 1992, but with all United Nations Covenants, Protocols & Treaties signed by the Australian Government.

I believe that apart from the few instances that I have mentioned there are bound to be more sections of the **SOCLA** that I've not had time to consider, that are in conflict with either the Queensland Legislative Standards Act 1992, or one of the various Covenants, Protocols, or Treaties that Australian is bound by. I would hope that the Legal Affairs and Community Safety Committee recommend that the SOCLA is referred back to the Drafting Department to remedy the above mentioned breaches of compliance with the Queensland Legislative Standards Act 1992 and the remainder is reviewed with the intent of ensuring that this Queensland Parliament enacts Legislation that is of the highest quality possible, unlike the Previous LNP Government that was prepared for Political purposes to enact shoddy Legislation that failed to comply not only with Queensland's own Legal requirements for Law but our International Obligations.

Regards  
Russell Wattie

