

To The Committee for Legal Affairs and Community Safety Committee

Re: Serious and Organised Crime Legislation Amendment Bill 2016

Ladies and gentlemen;

My name is Tony Lincoln, I am 45 years of age, married for 23 years with two children, and a proudly born and bred Queenslander and Australian.

I have no criminal record and have worked my entire life since age 15, until a recent knee injury has temporarily incapacitated me.

My family has had a long association with the QPS in employment capacities, both part time and permanent, with all employed having excellent performance reviews, reports and assessments, with no reservations regarding security clearances/accesses, discretion, professionalism, abilities, or suitability to perform our respective roles. My family has both made and retained friendships stemming from our work relationships which are based on mutual trust and respect which has been earned from both sides.

I operated in the Security Industry in South East Queensland for approximately 9 years, during which time I worked in various sub industries and areas which required me to acquire numerous police checks and firearm licences, operate under temporary PPRA legislation, and to obtain security clearances up to the equivalent of the Reserve bank of Australia, again with no negative reviews from any of these areas or roles.

I have no affiliation with any Motorcycle Club, (excepting membership of UMCQ), but I do have acquaintances and friends who are members of various clubs and organisations. These relationships have various origins including school friends, work colleagues, previous employees and professional service providers.

I am writing this submission to voice my concerns and reservations regarding the Serious and Organised Crime Legislation including the Vicious Lawless Association Disestablishment Act and the Tattoo Parlours Act.

Whilst I wholeheartedly support, (and would like to see further increases in both MINIMUM and MAXIMUM penalties), many areas and sections of the proposed Legislation Amendments, particularly in the areas of corruption, child exploitation, drug offences and violent crimes, there remain many more concerning aspects of the legislation that I believe are overkill, and very open to personal interpretation, which in turn, have the potential to be misused, abused, and in turn seriously infringe on people's civil rights, with again, a corresponding potential to be used only for statistical manipulation, political exposure, propaganda, and gain, and not for actual real world results. I find this particularly relevant when taking into account the comments, summaries and recommendations put forward in their reports and articles by Michael Byrne QC, Justice Alan Wilson and several other respected legal and civil rights representatives and authors.

Also of concern is the waste of taxpayers' money in certain areas when this could be much more intelligently and effectively utilised for results in other areas than which it has been to date.

I would like to address my concerns by utilising excerpts from the reports mentioned above and a summary at the end of each section as follows;

## **Motorcycle Clubs;**

*Page 2 and 3,*

*Executive Summary*

*Report of the Queensland Organised Crime Commission of Inquiry;*

*" However, when considering the extreme legislation introduced by the former Government and the significant extra funding that was granted to the Queensland Police Service (QPS) (\$14.2 million over two years) and the Crime and Corruption Commission (CCC) (\$6.7 million over four years) to target outlaw motorcycle gangs, it is revealing to note that in the 21 month period from 1 October 2013 to 30 June 2015, outlaw motorcycle gang members accounted for only 0.52 per cent of criminal activity in Queensland."*

*"While the Commission acknowledges that the CCC has fruitfully used its extra resources and enhanced intelligence function hearings (enhanced by the 2013 laws) to gather information on outlaw motorcycle gangs which has been of intelligence, tactical and strategic value, "the Commission was concerned to learn that the heavy focus on outlaw motorcycle gangs has meant the CCC has lost visibility of other areas of organised crime active in Queensland".*

*"Further, the evidence before the Commission suggests that the focus upon—and resources solely dedicated to—the threat of outlaw motorcycle gangs by the QPS, has meant that other types of organised crime have not been able to be appropriately investigated. This finding is outlined in the chapter on financial crimes (Chapter 5)."*

*"The Commission has recommended that the CCC extend the focus of its intelligence and research functions beyond outlaw motorcycle gangs to other areas of organised crime that pose a risk to Queensland. Likewise, the QPS should extend the focus of its policing strategies."*

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*Page 10,*

*Recommendations,*

*Report of the Queensland Organised Crime Commission of Inquiry;*

*" The Queensland Organised Crime Commission of Inquiry recommends that:*

*Chapter 2 Outlaw motorcycle gangs*

*2.1 "The Crime and Corruption Commission extend the focus of its intelligence and research functions beyond outlaw motorcycle gangs to other areas of organised crime that pose a risk to Queensland."*

*2.2 "The Queensland Police Service extend the focus of its policing strategies beyond outlaw motorcycle gangs to other areas of organised crime that pose a risk to Queensland."*

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*Pages 15 and 16*

*Report of the Taskforce on Organised Crime Legislation;*

*" On any view, OMCGs have an 'image' problem. They are seen by many to be the public face of organised crime, even though the most reliable statistical data shows that they are charged with a small proportion (no more than 0.52%) of all offences committed across the state.10"*

*" In truth, it is difficult to definitively label modern OMCGs as either 'conventional' motorcycle clubs whose members are primarily law-abiding, or a group whose members are principally motivated by criminal activity because many of them exhibit a mixture of the two.15"*

*" The criminal element within OMCGs is often difficult to isolate and identify. Distinguishing between non-criminal and criminal members is, as a result, complex.16"*

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*" It is also persuasive that none of those stratagems have proved particularly useful in the fight against OMCGs or criminal organisations in other Australian jurisdictions"*

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Conclusion,

*Report of the Taskforce on Organised Crime Legislation;*

*"Any response to the threat presented by OMCG crime should, the Taskforce believes, be balanced and proportionate. While the threat is real, it is not so high as to require or justify legislation which is so extreme in its effects as to drive all OMCG members, criminals or not, out of Queensland."*

*"It is not so high, either, as to warrant the creation (unusual for our system of government and criminal justice) of laws which are directed solely against one group of persons in our society."*

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As stated above, there has been a recognised deficiency in the overall assessment of organised crime within Queensland which has not been investigated or researched properly due to the extreme focus on motorcycle clubs, with the end result being that innocent people are being, and will continue to be punished due to the actions of a minority within a minority.

The statistical analysis<sup>1</sup> of the rates of crime perpetrated by motorcycle club members also points to gross mismanagement and allocations of resources and funding. The only reason I can find for this is the fact that motorcycle club members are a "soft target" due to their high visibility and the ease with which the media are able to demonise them. Would this money not be better spent in policing the remaining 99% of the organised crime in Queensland?

Do these existing and proposed laws also not partially or completely infringe or contravene upon **The Universal Declaration of Human Rights**, particularly Article 7, Article 11, and Article 20?

**Article 7:**

**All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.**

**Article 9:**

**No one shall be subjected to arbitrary arrest, detention or exile.**

**Article 11:**

**1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.**

**2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.**

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**Article 12:**

**No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.**

**Article 20:**

- 1. Everyone has the right to freedom of peaceful assembly and association.**
  - 2. No one may be compelled to belong to an association.**
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## **Anti Association/Consorting;**

I find these proposals to be extremely concerning in that once again, they seem to go against the tone of the recommendations of those who have been deemed to be in a position to best assess their impact and effectiveness, as well as The Universal Declaration of Human Rights;

Myself as well as tens of thousands of others consider these to be manifestly unjust from the point of view that any person can be made a criminal simply by speaking to, or socialising with a person that they have known for many years, and in some cases, their entire lives, and all at the discretion of someone who knows nothing about those persons' personal history.

I feel that it also takes away the basic right of being innocent until proven guilty and instead places the onus on any person to be required to prove themselves innocent once accused, NOT proven guilty via any due process in accordance with the concepts of a free and democratic society.

The term "reasonably suspects" used in reference to a police officer is one that has the very likely serious potential to be misused and abused due to its openness to personal interpretation and as such, I believe that this sets a dangerous precedent if used incorrectly;

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*Report of the Taskforce on Organised Crime Legislation;*

***"New offences under the Criminal Code, introduced in the 2013 suite, represent a significant breach of Queensland's fundamental legislative principles, and compromise civil liberties and democratic rights. In their current form the offences will be difficult to prosecute successfully, and may be constitutionally invalid."***

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*Report of the Taskforce on Organised Crime Legislation;*

***"No new anti-association charges have been laid since July 2015."  
"No person has been successfully prosecuted under the anti-association offence."***

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*Report of the Taskforce on Organised Crime Legislation;*

***"On 24 January 2014, ██████████ were charged with committing the anti-association offence at the Dayboro Hotel on 19 December 2013."***

***██████████, a 40 year old multiple sclerosis sufferer, library assistant and mother of three with no criminal record was the first woman to be charged with the anti-association offence."***

***██████████ spent six days in the Pine Rivers Police watch house after her arrest.<sup>32</sup>"***

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United Nations Universal Declaration of Human Rights;

Article 20:

1. Everyone has the right to freedom of peaceful assembly and association.
  2. No one may be compelled to belong to an association.
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**Article 11:**

- 1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.**
  - 2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.**
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## **Prohibited Items in public/Confiscation;**

During my work in the Security Industry over 9 years, I can state that incidents involving motorcycle club members at licensed premises was so rare that it would not constitute 0.25% of all problems and issues encountered.

Myself and the absolute majority of Crowd Controllers that I worked with are unanimous in our opinion that the worst groups to deal with in licensed premises were bucks nights, sporting teams, members of the legal profession and off duty police officers, with almost zero problems being created by motorcycle club members.

With regard to this being applied in public, I think that the banning of individual jewellery, clothing and tattoos is at the very least discriminatory, if not guaranteed to create criminal acts from what in reality, could in no way be considered one. Wearing the wrong clothes? The uproar that this type of legislation would cause if applied to religious groups would be immense and international, and this proposal should be treated with the same degree of outrage that would ensue, should it be applied in the scenario I have just mentioned.

From a common sense point of view, I would think that police officers' work would be markedly easier if they were able to identify persons of interest from their clothing, instead of having to look at every motorcycle on the road as a possible club member.

### **United Nations Universal Declaration of Human Rights;**

#### **Article 7:**

**All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.**

#### **Article 17:**

**2. No one shall be arbitrarily deprived of his property**

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## **Licensing;**

If any individual has his ability to work and provide for his family taken away, is this not just creating more expense on the community, particularly if the individual has no alternative skills that they can utilise? It also raises the potential to actually create criminals through people not being able to provide for their families and maintain their standards of living.

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*Report of the Taskforce on Organised Crime Legislation;*

*"the legislation should ensure that individuals are not prohibited from holding an industry licence on the basis of mere association. 2"*

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*Report of the Taskforce on Organised Crime Legislation;*

*"People should not be refused a licence or have a licence cancelled solely on the basis that they are alleged to be a participant in a criminal organisation. Licences should only be refused or cancelled on the basis that there is evidence specific to an individual which demonstrates that the individual (and not those with whom they associate) is not a suitable person to hold a licence;"*

*"Applicants or existing licensees who have their applications refused or licences cancelled on the basis that they are not, or are no longer, a suitable person should have the right to be given reasons for the decision and the opportunity to contest the allegation that they are not, or are no longer, a suitable person; and"*

*"Appeal and review rights (including judicial review) regarding decisions to grant or cancel an occupational licence should be restored in all legislation. "*

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*Report of the Taskforce on Organised Crime Legislation;*

*'the devastating effect is that many individuals who have not committed a criminal offence and who possess the appropriate knowledge and skills to be competent in operating the licensed activities, may be forced out of their businesses and livelihoods, the determination of the licences being purely arbitrary.'*

*" In its submission to the Taskforce, the Queensland Law Society (QLS) said that: 'such limitations could ironically be counter-productive to the intent of the legislation by limiting the employment options of persons who might be otherwise be unskilled or be within a societal category which find employment difficult to obtain.'<sup>15</sup>"*

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*Report of the Taskforce on Organised Crime Legislation;*

*"The Taskforce concluded that the allocation of resources required to conduct these stricter probity requirements was disproportionate to the risk posed to the community by organised crime legislation."*

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***"The Taskforce resolved that extensive consultation, which did not occur prior to the introduction of the 2013 suite, must occur on an industry by industry basis to determine a 'fit and proper person' test that meets the needs of each particular industry; and that there are better and fairer ways to determine the fitness of individuals to obtain licences rather than exclusion based solely on alleged association with a 'criminal organisation'."***

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**United Nations Universal Declaration of Human Rights;**

**Article 23:**

- 1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.***
  - 2. Everyone, without any discrimination, has the right to equal pay for equal work.***
  - 3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.***
  - 4. Everyone has the right to form and to join trade unions for the protection of his interests.***
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In closing, my concerns and fears are probably voiced best by Article 7 of the **United Nations Universal Declaration of Human Rights**;

**"All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination."**

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I'm hopeful you will consider the concerns I have expressed in this submission during your consideration of the **Serious and Organised Crime Legislation Amendment Bill 2016**.

Thank you for your time.

Kind regards,  
Tony Lincoln

