



6 October 2016

**Inquiry Secretary**  
**Legal Affairs and Community Safety Committee**  
Parliament House  
George Street  
**BRISBANE Qld 4000**

**By Email: [lacsc@parliament.qld.gov.au](mailto:lacsc@parliament.qld.gov.au)**

Dear Committee,

**RE: CALL FOR SUBMISSIONS - SERIOUS AND ORGANISED CRIME  
LEGISLATION AMENDMENT BILL 2016**

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We refer to your call for submissions by interested parties addressing aspects of the *Serious and Organised Crime Legislation Amendment Bill* ("**the Bill**") and thank you for same.

We advise that our spokesman, Michael Kosenko, recently addressed the Committee on the Gold Coast on 4 October 2016. The following are some points raised by Mr Kosenko on behalf of the United Motorcycle Council Queensland ("**UMCQ**").

The UMCQ is an organisation which consists of motorcycle clubs throughout Queensland. Some of our membership clubs have existed in Queensland for approximately 50 years and have now been deemed 'criminal organisations' by the previous Queensland Government. It appears that the current Government intend to treat motorcycle enthusiasts in a similar manner.

The UMCQ, and our members, have held serious concerns about the Government's proposals to enact laws such as those discussed herein since October 2013. We are alarmed that the government through legislation have targeted many individual members of our organisation, many of which do not have a single entry in their criminal history. The VLAD suite of laws, and the proposed laws under the Bill have and continue to prevent members from associating with one another in public, the right to earn a lawful and honest living and to support their families.

Most recently, our spokesman, Mr Kosenko and many of his colleagues have had their tattoo businesses closed due to amendments to the *Tattoo Parlours Act 2013*. Mr Kosenko, for example, is a pioneer in the tattoo industry and has been working in the tattoo industry for approximately 32 years yet he is deemed not a fit and proper person and that is not in the public interest to hold a licence due to undisclosed reasons.

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We are further concerned with the closure of clubhouses and that our members are refused the right to enter their own properties yet they will continue to be charged rates and fees due to their ownership. The UMCQ simply considers this behaviour appalling and unconscionable.

For clarity, we address the VLAD suite of laws in line with the current Bill as we submit that the current Bill will perpetuate many of the issues experienced by many innocent motorcycle enthusiasts under VLAD. The UMCQ are aware of recent statistics that demonstrate that none of our members have been convicted under the VLAD amendments to the *Criminal Code Act 1899* and we further note that high profile cases have been dismissed or withdrawn by the prosecution. This has cost individuals thousands of dollars and severe mental anguish as a result of being prosecuted for penalties which prescribe a mandatory term of imprisonment.

For example, the recent case of *Queensland Police Service ██████* was withdrawn by the Prosecution after it was found during pre-trial hearings that police had fabricated evidence and placed ██████ under duress in order to facilitate a search of his home.

██████ was a fly-in-fly-out worker who attended a clubhouse when he noticed a number of people dismantling a shed. He investigated as he thought people were stealing property and simply sought to understand why people were removing structures and property. Due to his attendance at the property ██████ was charged under the VLAD amendment offence, section 60B of the *Criminal Code Act 1899*; an offence which carries a mandatory period of imprisonment.

Solicitors for ██████ revealed during pre-trial hearings that police had threatened to place ██████ in jail for the weekend, missing his daughters 21<sup>st</sup> birthday, unless he consented to a search of his home. Unsurprisingly ██████ consented to the unlawful search of his residence.

██████ was also advised by police that he would only receive a fine for the offence despite direct knowledge that the charge carried a mandatory term of imprisonment. There was further misconduct by police revealed during cross-examination of witnesses and subsequently ██████ was offered a large award of costs/damages in exchange for consenting to the Prosecution offering no evidence to the charge; essentially protecting high ranking police officers from misconduct investigations and possible criminal charges.

██████ intended to proceed with the proceedings so that others may be assisted by any precedent set, however if the matter did not resolve ██████ was told he would lose his employment.

The UMCQ are concerned that further cases similar to ██████ will continue under the laws proposed by the Bill affecting many of our innocent members.

These laws have also disrupted funerals, weddings and other sacred and sensitive events due to membership of motorcycle clubs. Motorcycle clubs have historically raised money for charities through events such as rides and fund raisers which have been stopped due to fear of prosecution.

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The VLAD suite of laws and the Bill heavily target motorcycle clubs, labelling all as outlaws or 1%ers. Studies conducted by Bond University on the Gold Coast revealed that members of motorcycle clubs represent 0.03% of Queensland's total crime. This figure takes into account less serious and traffic offences. The direct targeting of motorcycle clubs concerns the UMCQ as motorcycle clubs are not Queensland's source of crime. The UMCQ does not condone criminal behaviour by our members and further says that crime is committed by individuals whether they are a motorcycle enthusiast or not. In this regard, the Queensland *Criminal Code Act 1899* adequately criminalises offences which motorcycle clubs are being blamed for.

The UMCQ respectfully submits that the laws intended by the Bill, and the VLAD suite of laws included, infringe basic human rights and are liable for legal attack on a constitutional basis. The VLAD suite of laws have already been attacked in the High Court which provided significant assistance to our position despite the High Court finding that appropriate standing had not been achieved. Had standing been adequate; it is the UMCQ view that the VLAD laws may have been found to be unlawful.

The High Court held in *Kuczborski* that a declaration that a motorcycle club is a 'criminal organisation' is not proof that the organisation is fact a criminal organisation. The High Court further stated that if one intends to prove criminality of an organisation they must do it in the usual way by admissible evidence. The UMCQ respectfully asks the committee to consider the guidance of the High Court and further says that should individuals, or groups of individuals, commit crimes then the appropriate course already exists to remedy their criminality. Those who commit crimes should be prosecuted by due process, by admissible evidence and in the event they are found guilty sentence should be imposed on the person in accordance with established law.

We trust that the current government will not continue down the path of creating offences so that groups may conveniently be prosecuted as the previous government did under VLAD.

The UMCQ has been informed that the laws have cost our Government in excess of \$450,000,000.00 and yet not one conviction has been achieved. We are aware that some have been charged under existing criminal offences which supports our position that the Queensland *Criminal Code Act 1899* adequately provides protection against criminality and that our criminal jurisdiction is capable of convicting those who commit serious criminal activities regardless of their associations, memberships or otherwise.

Now that the Bill has been presented the UMCQ is yet to see an estimate cost of implementation and is concerned that the current government will utilise significant sums of tax-payer money to implement a suite which was attempted by the previous government with little effect or utility.

The UMCQ's conclusion and criticism of the current laws was that \$450,000,000.00 was spent by the previous government to combat 0.03% of Queensland's total crime. The UMCQ is concerned that the current government by way of this Bill will repeat the same mistakes as the previous Queensland Government.

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The Bill prescribes an offence for consorting that appears to be a variation on a New South Wales offence. The consorting offence essentially continues to punish those with past criminal histories for offences that have been resolved. The UMCQ holds further concerns relating to the potential liabilities innocent parties may have to criminal prosecution by way of their association or affiliation, particularly in circumstances where a person has a limited social community and limited contact to family. Quite frankly, the UMCQ considers this offence as a mechanism enacted by the current Government which will perpetually hold rehabilitated offenders accountable to past indiscretions for the remainder of their lives notwithstanding that they have already paid their debt to society and without consideration of that person's current and therefore highly relevant integrity and character. The consorting offence does not state that there is any indulgence presented to rehabilitate now model citizen and groups them with presumed habitual offenders.

Many UMCQ members do not have criminal history. Further, many members who do have criminal histories have not committed offences since joining our organisation as we offer a sense of community, friendship and provide a network of support like many other motorcycle clubs. There appears to be a significant focus on individual criminality however action is taken against groups of people disregarding the innocence of others.

The UMCQ hold concerns regarding the new offences under the Bill which prohibit the wearing of club logos, jewellery and paraphernalia on the assumed basis that these items are intimidating. The assumption of intimidation is respectfully misconceived and is highly subjective. Many UMCQ members and their families are highly intimidated by plain clothed police officers brandishing weapons including, mace, tasers and firearms without displaying police identification for example. Further, the UMCQ is aware of many who are highly intimidated by the sight of tactical police instruments which seem to be the current standard police uniform.

The UMCQ is also concerned with the liability for legal challenge these offences will hold due infringement of intellectual property laws and rights subsisting in many of the logos and items prescribed by the offence. The UMCQ is further concerned with the risk of tourists and visitors who may accidentally find themselves charge with criminal offences by unknowingly wearing an item which is considered by a police officer, on a case to case basis, to be an infringing item. The severe consequences that follow from criminal charges and the impact on employment and future prospects must be considered when implementing laws which may affect innocence parties.

Many clubs have religious and military backgrounds and conform to a particular design culture and style. The predominant motorcycle retailers and brands, Harley Davidson for example, model their products in a similar style and design as motorcycle clubs which is accepted and adopted internationally. The Bill poses a severe possibility that innocent motorcycle enthusiasts are caught by these laws simply by wearing a protective vest designed by a motorcycle retailer.

The UMCQ hold serious public safety concerns and social concerns regarding the prohibition of attending particular premises. The general nature of motorcycles is that they are louder than regular vehicles and they are notoriously difficult to assemble in public areas, causing some disruption to traffic and other road users.

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Motorcycle clubs have historically conducted themselves in a number of ways to avoid nuisance and disruption to the public and also to ensure safety to themselves and road users by, for example, meeting in industrial areas after close of business or disclosing routes when undertaking group rides and keeping their interactions with those not interested by motorcycles to a minimum.

Under the current Bill the UMCQ suspects that motorcycle enthusiasts and clubs will have no option other than to congregate in public areas and attend public venues such as restaurants and other licensed venues. The UMCQ are concerned of the imposition that meetings may have on the general public due to the high amount of traffic and safety implications resulting from same. Riding a motorcycle can be significantly more dangerous than driving a car and this risk is only magnified with heavy traffic.

On this point the UMCQ are perplexed by the Queensland Governments strategy to target motorcycle clubs. The UMCQ acknowledge that the Queensland Government deems motorcycle clubs to be criminals yet it intends to pass legislation which makes it harder to identify members of motorcycle clubs and to monitor movements and activities of motorcycle enthusiasts.

In conclusion, the UMCQ respectfully submits that fundamental human rights of motorcycle club members, motorcycle enthusiasts and their families are being infringed and unfairly and unduly targeted by the Bill and VLAD. The Bill presents a number of issues which are liable for legal challenge and the implementation of these laws pose a significant financial burden on Queensland as a state. As stated previously, the UMCQ and its members do not excuse criminal behaviour and ask that the Government target those who commit crimes, regardless of membership to any club, prosecute for their criminality rather than enacting laws intended to encumber people suspected of criminal behaviour.

The Queensland Criminal Jurisdiction is quite capable and well equipped to combat minor and serious criminal activity without the laws proposed by the Bill or VLAD and therefore it is respectfully submitted that more effort should be used to prosecute those who commit crimes rather than punishing those for mere suspicion or mistrust.

The UMCQ would like to thank the Queensland Government and the Committee for this opportunity to provide this submission and appreciate its time and effort in regard to these matters.

Kind Regards,



**United Motorcycle Council Queensland**

Drafted on behalf of the UMCQ  
**Irish Bentley Lawyers**

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