

Serious and Organised Crime Legislation Amendment Bill 2016

Submission

This eclectic Bill contains many provisions that raise serious concerns about the way in which it would impact detrimentally on the civil liberties of citizens for no public benefit.

Colours

The prohibition of the wearing of 'colours' in all public places, even by drivers and passengers in a vehicle is excessive in the extreme and was not even contemplated by the Taskforce let alone recommended. It is dangerous in that as well as presently limiting the freedom of citizens to freely choose their apparel, as 'prohibited items' are listed by regulation. This would permit a future government to prohibit items expressing political protest and opinion. While this concern may be dismissed as paranoia, those of us who lived through the repression of political protest by the Bjelke Petersen regime view it otherwise.

It is ironic that this Bill also deals with financial crime which accounts for much more than the roughly 2% at most of 'bikie' crime. Perhaps it would be more effective to ban the wearing of Armani suits, silk shirts and hand-made Italian shoes in the CBD as the habitual garb of many serious organised criminals.

Consorting

The consorting offences are another extremely concerning provision, particularly as they apply to anyone, not just to those who have previous convictions for offences, indictable or otherwise. Consorting as an offence had rightly fallen into disuse until being resuscitated in newer forms in the last five or so years in several states, NSW among them.

Many concerns were expressed, the Law Society stated that offences should deal with 'conduct worthy of punishment, merely associating with people should not be a crime' and warned that this law 'confers too much discretionary power on the police'. Generally concerns were that consorting laws would be used to target people with no link to organised or gang related criminal activity; criminalise people not involved in any criminal offending; disproportionately affect disadvantaged groups and operate as a 'street-sweeping mechanism'.

The first year of operation of these laws were reviewed by the Ombudsman, and the review 'identified examples that tend to support concerns raised'. While indigenous people make up 2.5% of the NSW population they made up 40% of those subjected to the consorting legislation. A particularly unedifying example was the case of a homeless man with terminal pancreatic cancer sharing a seat in the sun and chatting with two other homeless men. Police also admitted to targeting certain locations at the behest of businesses.

The above concerns apply to the present bill and there is no reason to suppose that it will not be similarly enforced. It is a matter of particular concern that in some remote Indigenous communities it would be almost impossible to avoid 'consorting' given the high rate of convictions. Also of concern is use of pre-emptive warnings which seem to have been misused in NSW. The inclusion of offences punishable by 5 years maximum is dangerously wide [it would include graffiti] and even if there were any justification for consorting laws these are hardly 'serious or organised crime'.

Control Orders

The mandatory sentencing provisions have the highly detrimental results of mandatory sentences in addition to the post-sentence restrictions, both of which breach legislative standards. The requirement of aggravation by participation in a 'criminal organisation' to trigger this provision does not justify draconian mandatory sentencing, and adding a control order at sentencing requires a court to be able to predict the future, rather than tailoring a sentence to fit the individual defendant.

While control orders at the court's discretion still suffer from the detriments of any post-sentence measures.

Altogether these measures are crushingly severe for little or no community protection.

Public Safety Orders issued by Magistrate or police breach both Legislative Standards and procedural fairness and natural justice in the case of police issued orders under 72 hour, which the Explanatory Notes acknowledge. Police already have extensive move-on powers which are adequate to deal with such situations or if the situation actually involves serious crime there are already conspiracy offences. The combination of police use of consorting offences together with Public Safety Orders is a chilling prospect not mitigated by annual reporting by the Public Interest Monitor.

Drug Sentences

There is absolutely no evidence that increasing penalties will decrease incidence of the offence. What evidence does show is that longer sentences result in fewer guilty pleas and over-crowded prisons.

Conclusion

There are many aspects of this Bill that are very concerning and have not been dealt with in detail in this brief submission. My concern is that along with the positive measures of repealing the VLAD laws some aspects of them have been retained and even made more severe and repressive of civil liberties in Qld.

This submission should be read in addition to and in support of any submissions by QCCL, QAILS, Prisoners Legal Service and Sisters Inside.