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Criminal Organisation Amendment Bill 2011

7 November 2011

Research Director
Parliamentary Crime and Misconduct Committee
Parliament House
George Street
Brisbane Qld 4000

By Post and Email to: pcmc@parliament.qld.gov.au

Dear Sir

CRIMINAL ORGANISATION AMENDMENT BILL 2011

This is a joint submission to the Parliamentary Crime and Misconduct Committee [PCMC] on the Criminal Organisation Amendment Bill 2011 prepared by the Queensland Bar Association (BAQ) and the Queensland Law Society (QLS).

SOME PRELIMINARY COMMENTS

It is not possible to deal with the proposed amendments contained within the Criminal Organisation Amendment Bill 2011 in any meaningful way without reference to the principal legislation, the **Criminal Organisation Act 2009 (Qld)** [the principal Act]. The proposed amendments do not in substance alter our profound objection to the legislative scheme provided for in the principal act which was the subject of two previous joint BAQ/QLS submissions contained in letters to the office of the Attorney-General forwarded under the hands of the Presidents of both organisations on 22 May 2009 and 22 September 2009.

As those previous two submissions set forth our principal reasons for rejecting this legislation, we have annexed copies of the same for the reference of the members of the PCMC.

Let us make clear at the outset that we have absolutely no sympathy for the violence and other serious offences committed by bikie gangs and their members. We abhor them, as should every right minded member of our community. Our interest is in maintaining the viability, balance and integrity of the criminal justice system.

In this regard, we consider that the principal Act:

- in large part abrogates of the Rule of Law and denies fundamental rights to citizens who come within the purview of the legislation;
- contains provisions which risk a return to the kind of police corruption which bedevilled Queensland before the revelations of the Fitzgerald Inquiry in 1989, in particular, by the re-introduction of an anti-consorting regime of the type so roundly condemned by Mr Fitzgerald;
- promotes lazy policing and the de-skilling of police investigators by enabling proof through the use of criminal intelligence rather than fact based admissible evidence – it is far easier to put forward intelligence material as proof, rather than garner hard admissible evidence;
- is not directed exclusively at “bikie gangs” as the political statements heralding its introduction proclaimed, but potentially applies to any minority group in the community which others are prepared to vilify and target by supplying information suggesting unlawful or anti-social behaviour. The legislation deals with what is defined as “serious criminal activity”, a concept which will inevitably become part of the general criminal law if resort is had to this legislation;
- greatly increases the prospect of the wrongful conviction of Queensland citizens for offences related to “serious criminal activity” by the use of criminal intelligence from anonymous sources. Criminal intelligence runs the full gamut from that classified as A1 to classification F6, that is, direct observation to sheer speculation. As illustrated below, this is a highly dangerous and profoundly unfair approach to law enforcement; and
- there is no demonstrated need for this legislation beyond an apparent political imperative for the Government to be seen to be tough on bikie gangs. There is no raft of reported serious unsolved “bikie crime” in Queensland.

THE NEW SOUTH WALES CATALYST

We note that one of the main catalysts for the New South Wales legislation was the brutal slaying of Anthony Zervas who, in March 2009 was bludgeoned to death in a brawl at Sydney airport between members of the Comanchero and Hells Angels motorcycle clubs. Following the incident, on 2 April 2009, then NSW Premier Rees introduced the ***Crimes (Criminal Organisations Control) Bill 2009***, which commenced on assent on 3 April 2009. The legislation was based substantially on the South Australian legislation.

However, police were able to investigate that matter using established investigative techniques, to make arrests, to place persons on trial, and to obtain the conviction of those involved using the processes of the general criminal law. There was no need to resort to the draconian provisions of the New South Wales bikie legislation and the concomitant distortion of the whole criminal justice process.

THE DANGERS TO ORDINARY CITIZENS

Our previous warnings have gone unheeded concerning the dangers of setting in train a process which risks instigating an inexorable erosion of the whole fabric of the criminal justice system: proof of offences by anonymous criminal intelligence, restricted disclosure to the putative defendant of the case against him or her, and limited testing of the Police case by an independent person [the Public Interest Monitor] who is not in a position to take instructions from the adversely affected person.

THESE LAWS DECLARED UNLAWFUL BY THE HIGH COURT

We find it profoundly disturbing that the Queensland Government would seek to strengthen a legislative regime which substantially mirrors the legislative processes recently struck down by the High Court as unlawful in respect to the South Australian legislation, the **Serious and Organised Crime (Control) Act 2008**, in 2009, and the New South Wales legislation, the **Crimes (Criminal Organisations Control) Act 2009**, in 2010 [see references below].

The High Court is the highest court in the Australian judicial system established by Section 71 of the Australian Constitution. The functions of the High Court are to interpret and apply the law of Australia. We would urge the members of the Parliamentary Committee, in considering the issues we have raised herein, pay due regard to the determinations of our highest court when it signals the grave implications for fundamental common law rights inherent in this type of legislation.

While the Queensland Government pushes ahead with this legislation, we understand from contact our members have had with the New South Wales authorities, serious consideration is currently being given in that State to the taking a different approach in the future in the light of the High Court's recent decisions. The enactment of Racketeer Influenced and Corrupt Organisations [RICO] legislation along similar lines to that enacted several decades ago in the United States, which laws have been used to great affect against organised crime groups in that country, is currently under consideration in New South Wales.

RICO legislation is tough but fair. It maintains the processes of trial and proof, but still empowers Police to deal effectively with organised crime groups. We submit that this is one avenue among others which should be considered before undertaking this wholesale attack upon the time honoured processes and integrity of the criminal justice system.

THE MAIN OBJECTIONS TO THE PRINCIPAL LEGISLATION

Before dealing with the amendment bill, which is not a stand-alone provision, we wish to draw to the attention of the Parliamentary Committee the main aspects of the principal Act to which we object. As these objections are set out in greater detail in the annexed submissions, it is sufficient to do so here by way of a dot point summary [some of which have been mentioned in our opening comments]:

- There is no demonstrated need for such legislation. There is no raft of reported serious unsolved crimes allegedly committed by bikie gangs and their members in Queensland.
 - In large part, the legislation is an abrogation of the rule of law and a denial of the fundamental rights of citizens to a fair trial.
 - The legislation promotes lazy policing and the de-skilling of police investigators by enabling proof through the use of criminal intelligence rather than fact based admissible evidence.
 - The legislation is not directed exclusively at "bikie gangs", but potentially applies to any minority group in the community which others are prepared to vilify and target [possibly even politicians who run afoul of the main political power brokers] by giving legal status to intelligence information suggesting unlawful or anti-social behaviour which satisfies the definition of "serious criminal activity".
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- The legislation contains provisions which risk a return to the kind of police corruption which bedevilled Queensland before the revelations of the Fitzgerald Inquiry in 1979, in particular, by the re-introduction of an anti-consorting regime of the type so roundly condemned by Mr Fitzgerald in his 1979 report. See, for example, Fitzgerald Report para 2.3.3 at page 65, where the spread of Police corruption in the early 1980's is succinctly described as occurring, at least in part, in the setting of the "policing" of anti-consorting laws.
- The legislation appears to be completely at odds with Labor Party policy on civil liberties.
- Reference was made to the similar approaches taken by other jurisdictions such as New South Wales and South Australia. The **Crimes (Criminal Organisations Control) Act 2009** introduced in NSW was analysed in detail in our previous Joint Submission to the office of the Attorney-General forwarded dated 27 May 2009. We pointed out in that Submission, at some length, the repugnant features of that Act, which was apparently modelled on the South Australian legislation, which had been introduced in 2008. Almost every criticism we made of the New South Wales legislation applied to the then Queensland Bill.
- At that time, we pointed out that the then NSW DPP, Mr Nicholas Cowdery AM QC, had published a paper pointing out the significant flaws in the New South Wales legislation, as well as the repugnance of it to fundamental rights and the Rule of Law. Mr Cowdery referred to the "corrupting force" of the NSW legislation. We noted that all of Mr Cowdery's succinct and powerful criticisms could be applied directly to the then Queensland Bill.
- We noted that the South Australian **Serious and Organised Crime (Control) Act 2008**, had been roundly condemned as being a denial of International Conventions such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.
- We observed that in Victoria, the then Attorney General, the Hon. Rob Hulls had publicly stated that such laws would not be enacted in that State, and that the Chairman of the Federal Parliamentary Joint Committee examining organised crime legislation was reported to have said in May 2009 that "unexplained wealth laws" would be a far more effective crime fighting tool than the so-called "Anti-Bikie Legislation". He said that such laws were unlikely to be effective as they did not target individuals in the upper echelons of the organised crime world.
- We informed the office of the Attorney-General that in Canada laws that banned outlaw motorcycle gangs and clubs in the late 1990's led to a dramatic increase in bike gang violence, including attacks on State officials.
- Premier Bligh's media statement of 30 March 2009 contained the information that Task Force Hydra, begun by the Queensland Police Service in February 2007, which concerned itself with the pursuit of criminal activity among outlaw motorcycle gangs, had affected 332 arrests in relation to 931 charges, "...including attempted murder, arson, extortion, robbery and drug trafficking".
- The Premier's statement also contained the announcement of the reintroduction of the "Telephone Interception Bill" as a matter of urgency, and that was subsequently passed into law. It is clear from observations made by our members that provision of telephone interception powers to Queensland Police has resulted in additional matters coming before the Courts. There has been

insufficient time to judge the effectiveness of this additional law enforcement facility on organised crime in this state, including "bikie crime".

- The two peak organised crime investigating bodies operating in Queensland, namely, the Australian Crime Commission and the Crime and Misconduct Commission have previously put on the public record their reservations about the effectiveness of this kind of legislation. The CMC in particular has expressed concern that the re-introduction of consorting laws may encourage the return of police corruption.¹
- In short, there is no demonstrated need for this regressive and dangerous legislation. There is sufficient legislation in Queensland to deal with outlaw gangs who engage in unlawful acts. We have not seen one skerrick of research which demonstrates some shortcoming in the current mainstream Criminal Law regime in Queensland.

A BRIEF OVERVIEW OF THE MAJOR PROVISIONS OF THE PRINCIPAL ACT

The Declaration of "Criminal Organisations"

The Commissioner of Police may apply to a Court for a declaration that a particular organisation is a criminal organisation [section 8].

A Court may make a declaration of 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 [section 10].

Inter alia, the Court must have regard to the following information placed before the Court:-

- Information suggesting a link exists between the organisation and serious criminal activity.
- Any convictions of current or former members.
- Information suggesting involvement in serious criminal activity, whether directly or indirectly and whether or not the involvement resulted in convictions.
- Information about members of an interstate or overseas chapter or branch of the organisation associating with the subject organisation for the purpose of engaging in etc. serious criminal activity.

A declaration may be made whether or not the organisation is present in Court, or makes submissions.

Serious Criminal Activity

A declaration of a criminal organisation is based upon the concept that members of the organisation associate for the purpose of engaging in, or conspiring to engage in, "serious criminal activity".

¹ Michael McKenna, "Proposed laws could drive bikie gangs underground" (2 April 2009, The Australian)

"Serious criminal activity" means a serious criminal offence or an act done or omission made outside Queensland, including outside Australia, that, if done or made in Queensland, would have been or would be a serious criminal offence [section 6].

A "serious criminal offence" is largely encapsulated by an indictable offence punishable by at least 7 years imprisonment, including an offence against a repealed provision of an Act; an offence against the principal Act; and an offence against a section of the Criminal Code mentioned in schedule 1 [section 7].

Comment:

Broadly the same features are found in the invalidated NSW legislation, as are found in the Queensland Act. There is no "significant difference" to be found, in our view, in this operative part of the Act, from that of the New South Wales legislation which was struck down by the High Court. The Act is equally unfair and offensive to the Rule of Law and the right to Natural Justice.

Further, are we to understand that this draconian regime can be invoked for offences such as section 112 of the Criminal Code, providing false or misleading information for the purposes of an election, or section 193, making a false verified statement, both of which provisions would appear to satisfy the definition in the principal Act of "serious criminal offence", being indictable offences punishable by 7 years imprisonment.

Control Orders

The Commissioner of Police may apply to the Court for a control order for a natural person [section 16].

An order may be made if the Court is satisfied that the person is, or has been, a member of a criminal organisation and engages in, or has engaged in serious criminal activity and associates with any person for the purpose of engaging in serious criminal activity [section 18].

A control order may be made whether or not the person is present in Court or makes submissions [section 18(4)].

Comment:

Again, the unacceptable features of the New South Wales legislation are repeated in the Queensland Bill.

Public Safety Orders

The Commissioner may apply for a public safety order for a duration of up to 72 hours for a person or a group of persons if the commissioned officer is satisfied that the presence of the respondent at the premises or at an event poses a serious risk to public safety [section 31].

Inter alia, the following matters must be taken into account by the Court in considering whether to make an order:-

- The respondent's criminal history or "previous behaviour".
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- Whether the respondent is or has been a member of a criminal organisation or has been the subject of a control order.
- Whether the person associates or has associated with a criminal organisation or a person who is the subject of a control order.
- Whether "advocacy, protest, dissent or industrial action is the likely reason for the respondent being present at the relevant premises" [section 28].

A public safety order made by a Court may remain in force for up to 6 months [section 34].

A police officer acting in relation to a public safety order may enter a place without warrant and stop or detain and search a vehicle without a warrant [section 37].

Comment:

This part of the principal Act constitutes a direct challenge to the right of public assembly, redolent of the excesses of 1970's Queensland.

Criminal Intelligence

Criminal intelligence is information relating to actual or suspected criminal activity, whether in Queensland or elsewhere, the disclosure of which could reasonably be expected to prejudice a criminal investigation or identify a confidential source or endanger a person's life or physical safety [section 59].

The object of Part 6 of the Bill dealing with criminal intelligence is to allow such information to be admitted as "evidence" in applications made for the various Orders available under the Act, and prohibits its unlawful disclosure [section 60].

Affidavits relied upon for the operation of this Part of the Act may contain statements based on information and belief [section 61].

The Commissioner may apply to a Court for a declaration that particular information is criminal intelligence, thus making it admissible as "evidence" to support the various applications described briefly above [section 63].

There is said to be general oversight of this process by a criminal organisation public interest monitor ("COPIM") who ordinarily will be a retired Judge [section 84]. The COPIM cannot inspect any documents that could lead to the disclosure of an informant [section 88].

There is simply no oversight available, such as it is, over a crucial part of the process, on the mere "say-so" of a police officer that to show the "information" to the COPIM "could" lead to the identification of the name, location, residence or position of an informant. It is misguided to believe that only the name of the informant would be obliterated in the relevant document; that is not how the legislation reads [section 88].

The application to a Court to have information declared as criminal intelligence must occur ex parte, with notice of the application only being given to the COPIM [section 63].

Comment:

The attempt, by judicial fiat, to elevate "intelligence" to "evidence" fundamentally offends notions of justice and fairness. It is open to the worst abuse at the hands of unscrupulous informants and corrupt police.

There are numerous examples of misguided reliance upon, mismanagement of, or misuse of, "intelligence" to justify action. The "intelligence" that Iraq held weapons of mass destruction to justify the subsequent invasion has been debunked. The "Child Overboard" issue subsequently embarrassed the Howard Government.

The Haneef matter provides yet another chilling example of the dangers of reliance upon "intelligence" rather than evidence. Further, we doubt the ability of the COPIM to be effective in any way, even with the best of goodwill. The COPIM can be excluded from a consideration of any "intelligence" at any moment, on the mere say-so of a police officer that the "intelligence" will identify an informant.

The "COPIM"

The functions of a COPIM are to:

- Monitor each application to the Court for a criminal organisation order.
- To monitor each criminal intelligence application.
- To test and make submissions to the Court about the appropriateness and validity of a particular application [section 86].

The COPIM may "present questions for the applicant to answer" or examine or cross-examine witnesses or make submissions. Submissions by the COPIM must not take place in the presence of a respondent or a legal representative of a respondent [section 89].

Comment:

It is simply not explained how a retired Judge would suddenly possess up to date knowledge of modern law enforcement issues, after perhaps decades of presiding over criminal trials where he/she routinely applied the rules of evidence, and probably has had no experience whatever of issues relating to criminal intelligence.

Criminal Association – The Old "Consorting Laws" in new Livery

Section 24 of the principal Act establishes the offence of knowingly contravening a control order or a registered corresponding control order made for the person.

The maximum penalty for the first offence is 3 years imprisonment, and for each later offence 5 years imprisonment, with the first offence being a misdemeanour and each later offence is a crime.

It does not matter whether the association would have resulted in the commission of an offence, and it is for the defendant to prove on the balance of probabilities that "the controlled person had a personal relationship with the other person at the relevant time." [section 24]

Comment:

This is simply a rewording of the iniquitous New South Wales legislation. It is anti-consorting legislation and is an open invitation to the corruption of police. The reversal of the onus of proof is contrary to accepted principle in criminal prosecutions.

Right of Appeal

Only one appeal lies to the Court of Appeal from the declaration of an organisation to be a criminal organisation. There is no provision for extending the time for filing of an appeal. A further appeal by the organisation "may not be heard even if fresh or new evidence is available or a ground not previously raised is sought to be raised". [section 125]

Comment:

This part of the principal Act not only overturns the citizen's ordinary Appeal rights, but it is cynical in the extreme:

How does a citizen appeal a finding based on "intelligence" about which he knows nothing, even if he could identify an informant?

Restriction on Legal Practice

A person who has been a police officer must not act as a legal representative for a criminal organisation or a person subject to a control order. To knowingly act in that circumstance is capable of constituting unsatisfactory professional conduct [section 90].

Comment:

Such a restriction on the practise of a lawyer is arbitrary, unfair and strikes at the heart of the lawyer's ethical duties. There is no obvious reason for it. The provision smacks of police paranoia about lawyers, especially those who were once police officers themselves. It is a vicious provision, which will dissuade lawyers from representing persons who the police consider unworthy.

This provision flies in the face of the fundamental principle that every person in our society has the right to appropriate legal representation.

Challenge to the Exercise of Police Powers under the Act

The power of a police officer to do anything under the Act is presumed [section 136]. A party must give reasonable notice of an intention to challenge the police exercise of power.

Comment:

By this breathtakingly cynical provision, the police officer behaving unlawfully or improperly will be put on notice as to how to change his/her evidence to repel any challenge to his/her exercise of power under this legislation.

THE DETERMINATIONS OF THE HIGH COURT OF AUSTRALIA***State of South Australia v Totani & Anor [2010] HCA 39***

The High Court held that s 14(1) of the ***Serious and Organised Crime (Control) Act 2008 (SA)*** ("the SA Act") and a control order made under it was constitutionally invalid.

In December 2008, the South Australian Commissioner of Police applied to the Attorney-General for South Australia for a declaration under s 10(1) of the SA Act in respect of the Finks Motorcycle Club Inc. Section 10(1) of the SA Act empowers the Attorney-General to make a declaration if he is satisfied that the members of an organisation associate for the purposes of organising, planning, facilitating, supporting or engaging in serious criminal activity and the organisation represents a risk to public safety and order in South Australia.

The term "serious criminal activity" is defined to mean the commission of indictable offences or certain summary offences prescribed by regulation. On 14 May 2009, the Attorney-General made the declaration sought by the Commissioner. Eleven days later, the Commissioner applied to the Magistrates Court of South Australia for a control order against Donald Hudson under s 14(1) of the Act. Mr Hudson was not notified of the application and was not required to be notified. The Attorney-General later applied for a control order against Sandro Totani. Section 14(1) requires the Magistrates Court, on application by the Commissioner, to make a control order against a person if the Court is satisfied that the person is a member of a declared organisation.

A "member" is defined to include an associate or prospective member, a person who identifies as belonging to the organisation and a person who is treated by the organisation or persons who belong to the organisation, in some way, as if the person belongs to the organisation. By virtue of s 35 of the Act, any person who associates on six or more occasions during a period of 12 months with a member of a declared organisation or a person the subject of a control order made under s 14(1) is guilty of an offence punishable by imprisonment for up to five years. The Magistrates Court made a control order in respect of Mr Hudson, prohibiting him from associating with other persons who are members of declared organisations and from possessing a dangerous article or prohibited weapon.

Mr Hudson and Mr Totani then commenced proceedings in the Supreme Court of South Australia seeking a declaration that s 14(1) of the Act was invalid. The Supreme Court held that the sub-section was not valid and that the control order made in respect of Mr Hudson was void.

The State of South Australia appealed against this decision to the High Court. The High Court determined that s 14(1) was invalid. A majority of the Court considered that the provision authorised the executive to enlist the Magistrates Court in implementing decisions of the executive and that the manner in which that occurred was incompatible with the Magistrates Court's institutional integrity. In making a declaration under s 10(1) in respect of an organisation, the Attorney-General needed only to be satisfied

that a member or members of the organisation committed a criminal offence. Those members did not necessarily include a person against whom the Commissioner of Police later sought a control order under s 14(1). As a result, s 14(1) would oblige the Magistrates Court to impose serious restraints on a person's liberty whether or not that person had committed or was ever likely to commit a criminal offence.

The Court dismissed South Australia's appeal and ordered it to pay the costs of Mr Totani and Mr Hudson.

We note that in holding the South Australian law invalid, the Chief Justice of the High Court [French CJ] said, *inter alia*:

“The control order involves a serious imposition upon the personal liberty of the individual who is the subject of the control order and subjects him or her to criminal penalties for breach of the order. It enlivens restrictions upon members of the public limiting their capacity to communicate with the person the subject of the control order. Breaches of those restrictions are criminal offences. A person exposed to such a restriction and to criminal liability for its breach may be an entirely law-abiding citizen unlikely, on any view, to engage in contravention of the law. The control order is an order of the kind which, in its effect upon personal liberty, is ordinarily within the domain of judicial power.” [para 76]

Wainohu v State of New South Wales [2011] HCA 24

The High Court held that the ***Crimes (Criminal Organisations Control) Act 2009 (NSW)*** ("the NSW Act") was invalid.

In July 2010, the Acting Commissioner of Police for New South Wales applied to a judge of the Supreme Court of New South Wales for a declaration under Part 2 of the Act in respect of the Hells Angels Motorcycle Club in New South Wales ("the Club"). Under the NSW Act, a judge who had been designated an "eligible Judge" by the Attorney-General could make a declaration in relation to an organisation. The eligible Judge had to be satisfied that the members of the organisation associated for the purposes of organising, planning, facilitating, supporting or engaging in serious criminal activity and that the organisation represented a risk to public safety and order in New South Wales.

Section 13(2) of the NSW Act provided that an eligible Judge had no obligation to provide reasons for making or refusing to make a declaration. If a declaration was made in respect of an organisation, the Supreme Court was empowered, on the application of the Commissioner of Police, to make control orders against individual members of that organisation. A person the subject of a control order was referred to in the Act as a "controlled member". It was an offence for controlled members of an organisation to associate with one another. They were also barred from certain classes of business and certain occupations.

The plaintiff, Mr Wainohu, was a member of the Club. He applied to the High Court for a declaration that the Act was invalid on the basis that it conferred functions on the Supreme Court and its judges which undermined its institutional integrity in a way inconsistent with Ch III of the Australian Constitution. He also argued that the Act infringed the implied constitutional freedom of political communication and political association. The parties agreed a special case which was referred to the Full Court of the High Court in October 2010.

The High Court held, by majority, that the Act was invalid. The NSW Act provided that no reasons need be given for making a declaration. The jurisdiction of the Supreme Court to make control orders was enlivened by the decision of an eligible Judge to make a declaration. Six members of the High Court held that, in those circumstances, the absence of an obligation to give reasons for the declaration after what may have been a contested application was repugnant to, or incompatible with, the institutional integrity of the Supreme Court. Because the validity of other parts of the NSW Act relied on the validity of Part 2, the whole Act was declared invalid.

The State of New South Wales was ordered to pay Mr Wainohu's costs.

The Chief Justice and Justice Kiefel stated, inter alia:

*Decisions of this Court, commencing with Kable, establish the principle that a State legislature cannot confer upon a State court a function which substantially impairs its institutional integrity, and which is therefore incompatible with its role, under Ch III of the Constitution, as a repository of federal jurisdiction and as a part of the integrated Australian court system[106]. The term "institutional integrity", applied to a court, refers to its possession of the defining or essential characteristics of a court. **Those characteristics include the reality and appearance of the court's independence and its impartiality[107]. Other defining characteristics are the application of procedural fairness[108] and adherence, as a general rule, to the open court principle[109]. As explained later, it is also a defining characteristic of a court that it generally gives reasons for its decisions.** In the case of the Supreme Courts of the States, that characteristic has a constitutional dimension by reason of the appellate jurisdiction conferred on this Court by s 73 of the Constitution. [para 44] [emphasis added]*

Further, the majority [Gummow, Hayne, Crennan and Bell JJ] cited with approval the observation in *Hilton v Wells (1985) 157 CLR 57*, of Mason and Deane JJ that:

*"when a function is entrusted to a judge by reference to his judicial office the legislators and the community are entitled to expect that he will perform the function in that capacity. To the intelligent observer, unversed in what Dixon J accurately described – and emphatically rejected – as 'distinctions without differences' (Meyer[183]), **it would come as a surprise to learn that a judge, who is appointed to carry out a function by reference to his judicial office and who carries it out in his court with the assistance of its staff, services and facilities, is not acting as a judge at all, but as a private individual. Such an observer might well think, with some degree of justification, that it is all an elaborate charade.**" [pages 83-84] [emphasis added]*

In the light of these determinations by the High Court invalidating both the South Australian and New South Wales legislation upon which the principal Act is largely based, there are grave doubts about the constitutional validity of the Queensland legislation.

We do not purport to provide an opinion on that question; it is beyond the scope of these submissions to do so. However, it may be an issue for the Parliamentary Committee to ponder and to seek advice upon, given that the proposed amendments necessarily proceed on the basis that the principal Act is a valid enactment of the Queensland Parliament.

CRIMINAL ORGANISATION AMENDMENT BILL 2011

We note that the principal Act has already been passed by the Legislative Assembly and that the Parliamentary Committee is now giving consideration to the **Criminal Organisation Amendment Bill 2011** [the Amendment Bill] under the provisions of section 4 of the **Legislative Standards Act 1992** dealing with the fundamental legislative principles provided for in that section.

Section 4 provides in part:

- (1) *For the purposes of this Act, fundamental legislative principles are the principles relating to legislation that underlie a parliamentary democracy based on the rule of law.*
- (2) *The principles include requiring that legislation has sufficient regard to*
 - (a) *rights and liberties of individuals; and*
 - (b) *the institution of Parliament.*
- (3) *Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation”*
 - (a) *makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review; and*
 - (b) *is consistent with principles of natural justice; and*
 - (c) *allows the delegation of administrative power only in appropriate cases and to appropriate persons; and*
 - (d) *does not reverse the onus of proof in criminal proceedings without adequate justification; and*
 - (e) *confers power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer; and*
 - (f) *provides appropriate protection against self-incrimination; and*
 - (g) *does not adversely affect rights and liberties, or impose obligations, retrospectively; and*
 - (h) *does not confer immunity from proceeding or prosecution without adequate justification; and*
 - (i) *provides for the compulsory acquisition of property only with fair compensation; and*
 - (j) *has sufficient regard to Aboriginal tradition and Island custom; and*
 - (k) *is unambiguous and drafted in a sufficiently clear and precise way.*
- (4)

In our submission, as detailed above in reviewing the main provisions of the principal Act, and as detailed below in considering the provisions of the amending bill, this legislation represents a wholesale derogation from the fundamental legislative principles set forth in section 4 above, a derogation with which we should not be faced in a parliamentary democracy based upon the rule of law.

Clause 3

Clause 3 amends s 59 (What is criminal intelligence) by inserting:

“Section 59(2) Criminal intelligence may be information that the commissioner has obtained through the police service or from an external agency.”

It is clear from this provision that not only is criminal intelligence to be sourced to the Police Service, but to external agencies outside the control of the Police Service. This makes the provenance of any criminal intelligence used to found an application for a declaration under section 8 even more dubious, and the provision of verifying applications more specious.

Clause 4

This concern is heightened by Clause 4 which makes it clear that the source of the intelligence may be serving prisoners, either in Queensland or elsewhere. Prisoners are notorious sources of information – they often have little to lose by lying or fabricating evidence, are very vulnerable to direct threats of violence or reprisals to give or refrain from giving information, or to give false or distorted information, and the notion that such material could be relied upon without forensic testing is naïve at best, cynical at worst, and productive of serious injustice.

Clauses 5, 6, 7, 9, 10, 12 and 18 and the absolute protection of so-called informants

By Clause 18 the definition in Schedule 2 of the principal Act is proposed to be amended to provide:

- (a) *anyone who has given, to the police service or an external agency, information that the commissioner reasonably believes is criminal intelligence, and who is not a police officer or officer of the external agency;*
- (6) *Schedule 2, definition informant—*
insert—
 (d) *an officer of an external agency who has obtained information through the use of an assumed identity.*

By this amendment all persons who have provided information and who are not police officers or officers of another agency, and police who have used assumed identities, are thereby informants and consequently protected by being placed behind a virtual wall of secrecy provided for in the various amendments contained in clauses 5, 6, 7, 9, 10 and 12.

The proposed clauses:

- Obviate the need to provide any identifying information about the informant, even to the COPIM [see amendments to sections 65(4) and 77(4)].
- Provide that if the informant's information is to be relied upon, there is a requirement under the proposed amended section 64 to provide an additional affidavit, the purpose of which is apparently to bolster the credibility of the information.

- The additional affidavit must state that the officer reasonably believes, and has made all reasonable efforts to ensure, the officer has full knowledge of—
 - “(i) *the information held by the relevant agency about the informant; and*
 (ii) *the intelligence held by the relevant agency that was provided by the informant; and*
 - (c) *state that the officer reasonably believes the relevant agency has made all reasonable enquiries about the existence, and to obtain the details, of any allegations of professional misconduct against the informant; and*
 - (d) *contain the following information about the informant—*
 - (i) *the informant’s full criminal history, including pending charges;*
 - (ii) *any information held by the relevant agency about allegations of professional misconduct against the informant;*
 - (iii) *any inducements or rewards offered or provided to the informant in return for assistance;*
 - (iv) *whether the informant was an adult or a child when the informant provided the relevant intelligence to the relevant agency;*
 - (v) *whether the informant was serving a term of imprisonment or otherwise being held in custody when the informant provided the relevant intelligence to the relevant agency; and*
 - (e) *state—*
 - (i) *that the officer holds an honest and reasonable belief that the relevant intelligence is reliable; and*
 - (ii) *the reasons for that belief.*
- ‘(5) *For subsection (4)(d)(i), it is sufficient description of a conviction or charge in the informant’s criminal history to state that the conviction or charge related to property, violence or another stated matter, and if it involved dishonesty, without providing further particulars of the offence to which the conviction or charge relates.*
- ‘(6) *For subsection (4)(d)(ii), it is sufficient to state whether or not there have been any allegations of professional misconduct against the informant and if any misconduct or alleged misconduct involved dishonesty.*
- ‘(7) *For subsection (4)(d)(i) and (ii), the description in the affidavit of a conviction or charge in the informant’s criminal history or an allegation of professional misconduct against the informant—*
 - (a) *need not state the date of the conviction or charge or date on which the offence was committed or is alleged to have been committed or date on which the misconduct happened or is alleged to have happened;*
but
 - (b) *if it does not state a date as mentioned in paragraph (a), must state the time of the conviction, charge, offence, alleged offence, misconduct or alleged misconduct as being in a stated period of not more than 7 years. Other than information about the informant’s criminal history or an allegation of professional misconduct against the informant given in the affidavit under subsections (4) to (7), information about the informant’s criminal history or an allegation of professional misconduct against the informant cannot be required to be given to the court.*

- At first blush it looks like an impressive list. However, a careful reading of the proposed provisions makes clear that that the protections they are supposed to enshrine are illusory.

If we are dealing with a prisoner or a criminal informant, the police or agency officer is unlikely to be in a position to test the witness, even if motivated to do so. His or her assessment is likely to add little to the information available to the COPIM and to the Court.

It is frankly mischievous naïve in the extreme to suggest that if clandestine inducements or rewards have been offered to the informant, this process is likely to lead to their disclosure, either because the officer does not know of their existence, or because such rewards or inducements have been improperly offered in the first place.

“Professional misconduct” is not defined in Schedule 2 to the principal Act and so the ambit of this obligation is simply indefinite.

The requirement to provide a full criminal history of the informant in these provisions is subsequently truncated to such an extent as to be of only marginal, if any, assistance in determining whether the informant has a motive to lie to the police or other authorities. A criminal history as vague as “one offence involving violence in a period 2007 to 2011”, as provided as an example in the amendment to section 64(7), is virtually useless in the context of trying to discerning a motive to lie, or to distort the truth.

One is left with the strong impression that this is more about appearances than substance.

Clause 8

This view is corroborated when the proposed amendment to section 72 in Clause 8 is considered:

- (4) *If the information was provided to the relevant agency by an informant, the court may not declare that the information is criminal intelligence unless some or all of the information is supported in a material particular by other information before the court.*
- (5) *The supporting information mentioned in subsection (4) may be other information before the court that is declared criminal intelligence or that is the subject of a criminal intelligence application.’*

The notion of corroboration in this context is again illusory - criminal intelligence supporting other criminal intelligence, or even a criminal intelligence application supporting other criminal intelligence.

As a result, anybody who gives information within the purview of this Act cannot be identified and effectively challenged concerning their motives and agendas for providing the information which may lead to the imprisonment of persons and other serious consequences to their lives and liberties.

Conclusion

As we pointed out in our previous submissions, criminal intelligence runs the full gamut from that classified as A1 to F6, that is, direct observation to sheer speculation - as illustrated below, a highly dangerous and profoundly unfair approach to law enforcement.

We pointed out in our previous submissions that the Chief Justice of the High Court was extremely critical of the use of criminal intelligence submitted to a Court by a Commissioner of Police, as infringing the open-justice principle "...that is an essential part of the functioning of Courts in Australia".

Under the new law [consorting law by any other name], Queensland police will have an enhanced capacity to franchise crime. Selected criminals can be given free reign upon corrupt payments being made by them, whilst their opponents and/or competition are made the subject of a declaration under this law. As the Fitzgerald Inquiry demonstrated, institutionalised police corruption flourished in the Licensing Branch within the Queensland Police Force between 1974 and 1987 under a similar statutory regime.

We think that the principal Act will, in time, almost guarantee the return of such corruption within the Queensland Police Service, and in a stronger and more virulent form, aided and abetted by this obvious legislation. Once again the integrity of a Police Service which has undergone many meaningful reforms since 1989, will be seriously at risk.

We submit that the low-threshold requirement upon police to obtain Declarations and Orders on the basis of intelligence, and not admissible evidence, will reward lazy policing and will promote the de-skilling of police investigators. Currently, the collection of criminal intelligence is but a forerunner to the preparation and presentation of a criminal Brief of Evidence which, in serious matters, must ultimately pass the scrutiny of the Director of Public Prosecutions. Under the principal Act and the proposed amendments, the collection of criminal intelligence will be performed as an end in itself – directly admissible at a hearing, with criminal implications.

Assertions and insinuations inevitably contained in criminal intelligence will bring back the darkest days of the Special Branch in Queensland, where ordinary citizens had intelligence files kept by anonymous figures within the Queensland Police Force.

A further effect of these proposed laws will be to force any criminal activities of any particular group such as Bikies, underground; Club insignia will no longer be worn, Club membership will not be recorded, gathering places for clandestine meetings will move from place to place, assets of any group will be held by proxies and "fringe dwellers" who in the past were frequently the sources of good criminal intelligence in relation to those who are committing offences. These sources will be put out of contact with those who are offending. The ability of police to obtain good intelligence from people who are on the fringes of Bikie groups will gradually decline, as organisations go underground.

On 31 October 2007, then Attorney General and Minister for Justice, the Hon. Kerry Shine MP, described similar legislative proposals as:

"ill conceived, unnecessary, and aims to extend the basic principles of criminal liability to guilt by association. The fundamental right of freedom of association is potentially eroded by this bill because even innocent participation in an organised criminal group as defined may, in some way, contribute to the occurrence of criminal activity by the group. No specific act or omission by the accused is necessary and no specific criminal act or activity need be contemplated by the accused for the offence to be committed.

...

A one-size fits all response is therefore not the answer to this complex problem. In any event, such an approach is unlikely to be effective in targeting organised criminal groups which may operate under the cover of legitimate business enterprises and with a high degree of sophistication".

The very same criticisms are made of the principal Act and the proposed amendments.

The fundamental criticism is that the essential thrust of the legislation and amendments is indistinguishable from that of the iniquitous New South Wales and South Australian statutes which have been struck down by the High Court.

This legislation is so bad that in our view it is not hyperbole to express the view that it is redolent of the processes of a Police State.

It abrogates the principles of natural justice, makes remote hearsay and rumour and innuendo the mode of proof, confers power to enter premises and search and seize property without a warrant, reverses the onus of proof, and introduces a regime whereby the rights and liberties of certain citizens will be grossly and routinely adversely affected.

It is legislation which reflects very poorly on a Parliamentary democracy ostensibly subject to the rule of law.

Yours faithfully



Bruce Doyle
President
Queensland Law Society



Richard Douglas S.C.
President
Bar Association of Queensland

Your Ref:

Quote in reply: Criminal Law Section:

27 May 2009

The Honourable Cameron Dick MP
Attorney-General and Minister for Industrial Relations
Level 18, State Law Building
50 Ann Street
BRISBANE QLD 4000

Dear Attorney

JOINT SUBMISSION FROM THE BAR ASSOCIATION OF QUEENSLAND AND THE QUEENSLAND LAW SOCIETY REGARDING THE PROPOSED ANTI-MOTORCYCLE GANG LEGISLATION

We write to you at this early stage to express the concerns of the Bar Association of Queensland ("BAQ") and the Queensland Law Society ("QLS") regarding the proposal to enact laws directed against motorcycle gangs. For brevity, these will be referred to as the proposed bikie laws. Enclosed with this letter is a joint submission directed to the flaws in, and criticisms of, the approaches taken in South Australia and New South Wales. (We note that Victoria has adopted the view that like laws in that State are not a prudent policy direction).

Our submission is prompted by the 30 March 2009 announcement of the Queensland Premier, the Honourable Anna Bligh MP. The submission attached recites the press release accompanying the announcement and these and the submission's comments derive from that announcement.

At the outset, we express the utmost concern about laws that have ultimate effect as criminal laws and which are designed to target specific groups rather than, as they properly should be, operate as laws of general application. It is significant that when it has come to the business of drafting the laws in other States the laws, to have utility, have a much wider application than the target group. Attempts to legislate guilt by association have a very troubled history in democratic societies and rightly are regarded as repugnant by citizens in democracies. We note that there is no evidence of a widespread call by the community for such laws. We would think members of the community would find it troubling that the mere exercise of a right to associate could attract the criminal law.

In our submission, there has been no material change of circumstances since the then Attorney-General and Minister for Justice, the Honourable Kerry Shine MP, in State Parliament on 31 October 2007, described corresponding legislative proposals as:

"ill conceived, unnecessary, and aims to extend the basic principles of criminal liability to guilt by association. The fundamental right of freedom of association is potentially eroded by this bill because even innocent participation in an organised criminal group as defined may, in some way, contribute to the occurrence of criminal activity by the group. No specific act or omission by the accused is necessary and no specific criminal act or activity need be contemplated by the accused for the offence to be committed.

...
A one-size-fits-all response is therefore not the answer to this complex problem. In any event, such an approach is unlikely to be effective in targeting organised criminal groups which may operate under the cover of legitimate business enterprises and with a high degree of sophistication."

In fact, the only new event has been the brutal attack at Sydney airport which would appear, from reports, was an inter-gang confrontation, bikie attacking bikie. There is no suggestion that existing laws cannot adequately sanction this deplorable conduct or that existing laws hamper the police in bringing the offenders to account. In fact, the New South Wales Premier, the Hon. Nathan Rees, in his speech to the NSW Legislative Assembly introducing the NSW legislation on 2 April 2009, used that incident as a primary justification for the bill. He then went on to say:

"Since the terrible incident at Sydney Airport, 12 members of various outlaw motorcycle gangs have been arrested. I am advised that yesterday afternoon, officers attached to Strike Force Raptor arrested another man linked to outlaw motorcycle gang crime."

These prompt actions by police to deal with this and other bikie crime were effectively carried out under the existing law. They necessarily call into question the need for the very laws they are said to justify.

Laws based on the New South Wales or South Australian models will not prevent gang crime, whether of bikie gangs or the range of other gangs that engage in illegal activity, particularly crimes of violence.

Not only has Victoria eschewed enacting such laws in response to this event, but the laws have been the subject of reported misgivings by some Federal and NSW MP's as well. The chairman of the Federal Parliamentary Joint Committee examining organised crime legislation is reported to have said last week that unexplained wealth laws would be a far better crime fighting tool than the anti-bikie legislation. He said that such laws were unlikely to be effective as they did not target individuals in the upper echelons of the organised crime world. The Opposition in the NSW Parliament, which initially supported the legislation on a bi-partisan basis, has now recanted. The Shadow Police Minister, Mike Gallacher MP said in a press release on 5 May 2009:

"The only way to curb violent crime on the streets of Sydney is to properly resource and effectively deploy hardworking, frontline NSW Police officers in community policing roles, and to let the NSW Crime Commission get on with the job of cracking open organised crime networks using their extraordinary powers".

A reasoned and informed paper calling the measures into question recently has been published by the New South Wales DPP, Nicholas Cowdrey AM QC, a copy of which is attached.

In Canada, laws that banned outlaw motorcycle gangs and clubs in the late 1990s led to a dramatic increase in bikie gang violence, including attacks on state officials.

Both BAQ and QLS have the utmost concern about the proposed laws on two bases. First, the proposed laws would lead to the abrogation of basic legal rights which have been central to the operation of the

common law, including the fundamental right to a fair trial. Second, there is little evidence that these laws are required in Queensland or that they are likely to be effective.

Both the South Australian and New South Wales laws remove the established rules of evidence; reduce the standard of proof to the civil standard; deny the application of the rules of natural justice in discovering, testing and responding to adduced information classified as criminal intelligence and/or 'protected submissions'; introduce anti-association laws; and discriminate against a class of people in their access to employment when there is no conviction on any criminal offence and when persons in the class are unable to fairly put a case to argue against such a drastic consequence.

It is alien to the administration of justice in a democratic society governed by the rule of law to effectively declare a person guilty because of his/her associations, and without a fair trial on a specific charge of wrongdoing. This is especially the case where the ostensible purpose of that association is innocent and not, for example, the sponsorship of terror.

The High Court has declared repeatedly that the principles of natural justice require that a person is entitled to know the case against him/her and to have a fair opportunity to be heard in response. A proscription of the members of a group leading to their prosecution solely for the act of associating with other members, the removal of the presumption in favour of bail upon being charged with such an association, and the confiscation of their assets because of that association, would represent a wholesale abrogation of these fundamental rights.

Our other concern is that there is little evidence that these laws are necessary in Queensland or that they are likely to be effective.

On the practical effect of the use of these powers, there must be the real risk that all they will ultimately accomplish is to force these activities underground making investigation much more difficult. Identifiers will no longer be worn, membership not recorded, club houses abandoned for clandestine meetings in secret places, assets held by proxies and front companies established.

These reservations are not only held by us but have been expressed by the two peak organised crime investigating bodies operating in the State, namely, the Australian Crime Commission and the Crime and Misconduct Commission. Further, the CMC has expressed concern that the re-introduction of consorting laws may encourage the return of Police corruption.

In a democracy, before such fundamental rights are removed, an open and public inquiry should have been held to determine if there is a strong enough case to displace these fundamental rights which are treasured in a democracy. There must be an exceptional and extraordinary case made out for such action.

In this regard we note that the Premier's media statement of 30 March 2009 announcing the intention to pass such legislation, stated:

"The Queensland Police Service has actively pursued criminal activity among outlaw motorcycle gangs. Since the inception of Task Force Hydra in February 2007, police have made 332 arrests in relation to 931 charges including attempted murder, arson, extortion, robbery and drug trafficking."

This statement also contained the announcement that the Government had already taken the decision to re-introduce into Parliament and to pass into law the Telephone Interception Bill as a matter of urgency.

With this recent and documented successful Police action against motorcycle gangs under existing laws, and with Police powers to be supplemented with a telephone interception power, how can the required case be made out for the removal of fundamental rights?

In our respectful view, no such case can be made out.

A calm, thoughtful and balanced approach is required, away from the heat of media and politics surrounding the events in New South Wales. There is a need for an appropriately expert group to advise and for the broad community to have an opportunity to participate not only in commenting on the legislative detail but the broader philosophy and approach underpinning the proposed legislation.

There are other legislative models that can be considered and which do not jettison the fundamental freedoms which are integral to a democracy. The United States, for instance, has criminal laws designed to deal with associations for illegal enterprises, for example, the Racketeering Influenced and Corrupt Organisations Act ("RICO"). We do not contend for this legislation at this stage, beyond saying that this and other models should be considered as part of determining the Government's approach.

New South Wales and South Australia have different laws to deal with bkie gangs and Victoria is offering a third way, which is no specific legislation. Queensland would be extremely hesitant to inherit the manifest defects and problems in the New South Wales and South Australian models identified by independent, knowledgeable and expert commentators. If the policy was to be legislated in Queensland, any fourth way must learn from the errors and defects (and haste) that has attended the first two models.

The Crime and Misconduct Commission is an independent expert body created by Parliament for the purpose of informing decisions on these matters. It undertakes research into the incidence and prevention of criminal activity (sections 52 and 177 of the Crime and Misconduct Act 2000). There are other options that the Government may wish to explore. It is always open to the Government to convene an expert and independent panel for advice as has occurred in many other areas of Government.

BAQ and QLS look forward to full participation in meaningful consultations and the opportunity to address you personally.

A copy of this correspondence has been sent to the Hon Neil Roberts MP, Minister for Police and we likewise look forward to meeting with Minister Roberts.

Yours faithfully



Ian Berry
President
Queensland Law Society

and



Michael Stewart
President
Bar Association of Queensland

**JOINT SUBMISSION FROM THE BAR ASSOCIATION OF QUEENSLAND AND THE
QUEENSLAND LAW SOCIETY REGARDING THE PROPOSED ANTI-MOTORCYCLE GANG
LEGISLATION**

We write to you today regarding the anti-motorcycle gang legislation proposed to be introduced in Queensland. This is a joint submission to the Queensland Government prepared by the Bar Association of Queensland ("BAQ") and the Queensland Law Society ("QLS").

On 30 March 2009 the Queensland Premier, the Hon. Anna Bligh MP, announced that the Queensland Cabinet had approved the preparation of tough new legislation to respond to the threat allegedly posed by motorcycle gangs to law and order in the state. In making this announcement Ms Bligh indicated that the new laws would be similar to the laws already enacted by the Parliaments of South Australia and New South Wales.

In a press release dated 30 March 2009 the Premier said:

"I am determined that my government will do whatever it takes to give the Queensland Police Service the tools it needs to tackle the threat head on.

I went to the election with a commitment to look at the feasibility of introducing anti-bikie laws – such as anti-association and anti-fortification - and I have asked the Police Minister and the Attorney-General to report back to Cabinet within a month with legislative options.

A recent increase in bikie gang-related violence in southern states, combined with the legislative changes in South Australia, means that now is the time for Queensland to act.

We will not be left behind - Queensland will match any State in regard to the toughness of our laws to deal with the threat of outlaw motorcycle gangs." [emphasis added]

The Concerns

The BAQ and QLS have now had the opportunity to consider the laws enacted in South Australia (SA), the *Serious and Organised Crime (Control) Act 2008* and New South Wales (NSW) the *Crimes (Criminal Organisations Control) Act 2009*, following the Premier's announcement of proposed bike gang laws in Queensland. Both organisations are deeply concerned about the proposal to introduce such laws on two bases, first, the proposed laws would lead to the abrogation of basic legal rights which have been central

to the operation of the common law, including the fundamental right to a fair trial, and second, that there is little evidence that these laws are required in Queensland or that they are likely to be effective.

There must be a natural hesitancy in a democracy to proscribe by criminal sanction the freedom of association rights enjoyed by the members of that democracy. As will be seen below, the putative effect of laws in other places is to only target bikie groups. However, when it comes to the legislative detail, we have found that the laws have a wider reach.

The proposal is an attack on the right of freedom of association. At this point, the target is a group, bikies, who have been publicly maligned. Whether this is deserved or not, and whether it fairly reflects on the attitudes of the majority or all members of the class, is not the point. The point is that any group of citizens, however innocent the purpose of their association, can find themselves subject to like laws if they fall into disfavour. Rather than an interest in motorcycles, the shared interest might be in politics. Are we to deploy the law against the bizarre or extreme or even against those with whom we disagree?

Citizens and their parliamentary representatives in a democracy will be rightly concerned at the impact and precedent of such laws.

No model has been announced for Queensland. The discussion below points to fundamental problems with the two models currently in place in South Australia and New South Wales. Victoria sees no need to adopt the laws. Respectfully, we take the view that the Victorian approach is correct. If it is seen fit to go ahead with bikie laws, Queensland should be informed by the mistakes, problems and undue haste that has attended the other two attempts. It should avoid at all costs disrespecting fundamental democratic and legislative principles.

1. The New South Wales Laws

The SA and NSW legislation is similar but not the same. In fact, there are substantive differences in detail and approach, some of which are mentioned below. (Time does not permit a detailed analysis of the South Australian laws). It is clear that the NSW legislation was modelled on the SA legislation which was passed approximately 12 months earlier. The NSW legislation was introduced on 2 April 2009 and passed the same day with bi-partisan support. It received Royal Assent the following day. Primary reference will be made in this submission to the NSW legislation.

This type of legislation fundamentally alters the balance between the state and its citizens, between investigator and suspect, and between prosecutor and defendant. In doing so it has swept aside many basic common law protections.

In introducing the legislation into the NSW Parliament, the NSW Premier, the Hon Nathan Rees predicated the need for this law on the prevalence of acts of violence committed by motorcycle gangs. He said that the legislation is specific to outlaw motorcycle gangs and their members. Patently it is not.

The definition of "*serious criminal activity*" has a wide ambit extending far beyond motorcycle gangs. There is an immediate and practical difficulty in defining who is and is not a member of a bikie group. The shotgun approach to legislation on drafting this definition has been the preferred option for New South Wales. The need for this approach demonstrates the difficulty of drafting legislation for these purposes and the high risk of unintended consequences.

Under this legislation the substantive issues of criminality are dealt with not by an accepted process of adducing evidence at the trial of cognate offences, but by a quasi administrative process of prohibition of an organisation by declaration and the imposition of control orders on its members. Severe penalties are then visited upon members who continue some form of contact, even remote contact by post, fax, phone or e-mail. The only trial which is permitted deals with the fact that impermissible contact has occurred between persons subject to control orders and nothing else; even the opportunity to show that the contact was innocent, or would not have resulted in harm, is removed.

Proof of the actual crime alleged against members of the group, namely a criminal conspiracy to commit serious criminal offences using violence or otherwise, is based upon proceedings which:

- Use information rather than evidence including criminal intelligence, in the full knowledge that such material is unlikely to be admissible upon a trial;
- Allow the putative defendants to be denied knowledge of the criminal intelligence adduced by Police at the hearing before the Judge to persuade him/her to make a declaration, thereby denying the respondents an opportunity to challenge the veracity or accuracy of that intelligence or explain its effect – these denials are in total disregard of the rules of natural justice;
- Allow proof on the balance of probabilities, the civil standard, rather than the criminal standard of beyond reasonable doubt; and
- Abrogate the rules of evidence thereby allowing hearsay and other forms of indirect proof otherwise inadmissible in any legal proceedings, criminal or civil.

We will illustrate these points by reference to some of the provisions of the legislation:

Section 3 – the definition section: ‘associate with’ covers any contact no matter how removed or unsubstantial (post, fax, phone, e-mail etc); ‘criminal intelligence’ includes suspected criminal activity; ‘organisation’ includes any body or group of persons; ‘member of an organisation’ includes a prospective member, or a person who identifies himself/herself as, or is treated as if, belonging to an organisation.

The definition of ‘serious criminal activity’ is not restricted to motorcycle gangs as asserted by Premier Rees but at a minimum can be satisfied by, inter alia, obtaining material benefits from conduct that constitutes a serious indictable offence – **section 3**.

Section 6 – Permits the Commissioner of Police to apply for a declaration effectively proscribing any organisation – it is not limited to bikie groups but could be any group of persons who fall under suspicion of ‘serious criminal activity’. Further, upon such an application:

- The rules of evidence do not apply – **section 13**;
- The application can be founded upon criminal intelligence dealing with ‘suspected’ criminal activities (by its nature criminal intelligence may include hearsay, supposition and speculation) – **sections 3 and 6(2) (f)**;
- Evidence is by way of affidavit sworn by the Commissioner or one or more police officers of the rank of Inspector or above – **Sections 3 and 6(2)(h)**;
- The Commissioner may, by making an objection, require the Judge to exclude from the hearing a person who may be affected by the making of the declaration if the Commissioner classifies ‘information’ before the hearing as ‘criminal intelligence’, and even though that material may form the basis of the order – **sections 8(3) and 28**;

- Whether or not the Commissioner objects, the Court is required to maintain the confidentiality of information the Commissioner classifies as 'criminal intelligence' even against affected parties and their representatives – **section 28**;
- A Judge is required to maintain the confidentiality of a 'protected submission' even against persons who may be adversely affected by that 'protected submission' by hearing the submission in private and excluding those affected persons and their representatives – **section 29**;
- The standard of proof is on the civil standard of the 'balance of probabilities' rather than the criminal standard of beyond reasonable doubt – **section 32**;

Section 19(4) – A 'control order' may be made in the absence of an affected person;

Section 24 – An appeal to the Court of Appeal against a control order can only be made with leave of the Court on a question of fact. Further, material central to the making of the declaration or order may never be known to the applicant because of the 'criminal intelligence' and 'protected submission' provisions referred to above, thereby greatly restricting the capacity of an adversely affected person to undertake an appeal.

Section 26(1) and (6) – A person who associates with another in breach of a control order is liable on conviction to 2 years imprisonment for a first offence and five years imprisonment for a second and subsequent offence. The prosecution is 'not required to prove' that there was any nefarious reason for that association, that the association was substantive, nor that the association would have led to the commission of any offence.

Section 27 – A person subject to a control order is suspended or prohibited from carrying on a prescribed activity which includes:

- operating or being a special employee of a casino;
- carrying on a security activity;
- carrying on the business of a pawn broker;
- carrying on business as a commercial agent or private inquiry agent;
- possessing or using a firearm or carrying on business as a firearms dealer;
- operating a tow truck;
- carrying on business as a dealer of motor vehicles;
- carrying on business as a repairer of motor vehicles;
- selling or supplying liquor;
- carrying on the business of a bookmaker;
- carrying out the activities of an owner, trainer, jockey, stable hand, bookmaker, bookmaker's clerk or another person associated with racing;
- carrying out the activities of an owner, trainer or other person associated with greyhound or harness; and
- any other activity prescribed by regulation.

Thus a person can be deprived of his/her employment or trade without conviction, based purely upon criminal intelligence.

Section 5 – enables the State to forum shop. The Attorney-General can pick and choose which Judges he wishes to commission as 'eligible Judges' to determine these matters. This nullifies the normal protection available to litigants of a diverse Bench with Judges chosen at random through work availability. It places judges, who are asked to accept such an appointment, in an invidious position.

2. The role of criminal intelligence

Criminal intelligence is by and large not evidence as it would not satisfy the rules of evidence and so be admissible upon a trial.

A system of grading is used in the intelligence community when circulating information. The grading runs from A to F and from 1 to 6. An analyst will mark the appropriate grading on information supplied to him/her by an agent or other source, so that the person reading the information can evaluate its reliability and intelligence significance.

An A1 source is a fact, e.g. a known event, and may satisfy the tests of admissibility. B2 is the best category of "source" information. B indicates that the reliability of the source is good and the 2 indicates that there is good collateral evidence to back it up. In this way intelligence is *subjectively* classified by an analyst on a sliding scale of reliability and independent support.

At the lower end of the spectrum, for example, where a piece of information is graded F6, it would mean that the source, F, could not be relied upon, either because of inexperience or because they had a track record of unreliability. The 6 would indicate to the reader that there was no collateral support for the report and that there was a low probability of the information being true, or that it was not possible to accurately assess it. However, regardless of the grade, all this material is properly classified as 'criminal intelligence'.

The fact that an application, under the New South Wales legislation, to proscribe a group or to impose a control order can be founded upon such information dealing with "suspected" criminal activities under sections 3 and 6(2) (f) robs the Courts of the capacity to function properly.

The Chief Justice of the High Court recently made the following statement about the ability of a Court to act on secret Police information:

"...it infringes upon the open justice principle that is an essential part of the functioning of Courts in Australia. It also infringes upon procedural fairness to the extent that it authorises and effectively requires the Licensing Court and the Supreme Court to consider, without disclosure to the party to whom it relates, criminal intelligence information submitted to the Court by the Commissioner of Police."

See *K-Generation Pty Limited v Liquor Licensing Court* [2009] HCA 4 (2 February 2009) per French CJ at paragraph 10.

3. This type of legislation denies basic precepts

Thus it can be seen that the legislation enacted in NSW (and SA for that matter) denies basic precepts of the common law for the fair trial of persons accused of criminal offences. These precepts are:

- judicial decisions are to be made according to legal standards – for example, a person's right to know the case against him/her and the right to be heard in response - see *Re Minister for Immigration and Multicultural Affairs; Ex parte Miah* [2001] 206 CLR 57; *Kioa v West* (1985) 159 CLR 550

- citizens have a right to a fair trial - see *Kingswell v The Queen* (1985) 159 CLR 264 at 300 per Deane J; *Krakover v The Queen* (1998) 194 CLR 202 at 224 per McHugh J;
"A system of criminal law cannot be attuned to the needs of the people whom it exists to serve unless its administration, proceedings and judgments are comprehensible by both the accused and the general public and have the appearance, as well as the substance, of being impartial and just." per Deane J *Kingswell v The Queen* (supra)
- citizens are equal before the law – see *R v Shrestha* (1991) 173 CLR 48 at 60 per Brennan and McHugh JJ; *Leeth v The Commonwealth* (1992) 174 CLR 455 at 485 per Deane and Toohey JJ;
"...the essential or underlying theoretical equality of all persons under the law and before the courts is and has been a fundamental and generally beneficial doctrine of the common law and a basic prescript of the administration of justice under our system of government." Per Deane and Toohey JJ *Leeth v The Commonwealth* (supra)
- the criminal law should operate uniformly in circumstances which are not materially different - see *Taikato v The Queen* (1996) 186 CLR 454 at 465-466 per Brennan CJ, Toohey, McHugh and Gummow JJ.
"If the rule of law is to have meaning, a criminal law should operate uniformly in circumstances which are not materially different..... a person should not be guilty or not guilty of a crime depending on a value judgment by a court..... If the interpretative choice is between making a value judgment and applying a rule, a court exercising criminal jurisdiction should prefer the rule." per Brennan CJ, Toohey, McHugh and Gummow JJ *Taikato v The Queen* (supra)
- Forum shopping in the guise of selecting 'eligible judges' is undesirable and contrary to legal principle:
"It is inconsistent with a just result that the plaintiff should be able to select the forum which applies the law most favourable to his cause..." per Mason J *Pozniak V. Smith* (1982) 151 CLR 38
- It has long been recognised that it is a fundamental obligation of the prosecution to ensure criminal proceedings are conducted fairly through the disclosure of all relevant material going to the guilt or innocence of the accused. For example, section 590AB of the *Queensland Criminal Code* acknowledges this disclosure obligation:
 - (1) *This chapter division acknowledges that it is a fundamental obligation of the prosecution to ensure criminal proceedings are conducted fairly with the single aim of determining and establishing truth.*
 - (2) *Without limiting the scope of the obligation, in relation to disclosure in a relevant proceeding, the obligation includes an ongoing obligation for the prosecution to give an accused person full and early disclosure of--*
 - (a) *all evidence the prosecution proposes to rely on in the proceeding; and*
 - (b) *all things in the possession of the prosecution, other than things the disclosure of which would be unlawful or contrary to public interest, that would tend to help the case for the accused person.*
- A person has a right to be present and to test the evidence adduced against him –

"Other things being equal, certiorari will go to quash a decision which affects a subject's liberty, rights, interests or legitimate expectations if the decision is the result of a denial of the subject's right to be heard. That is because the right to be heard is so fundamental to our legal system that it is presumed." per Nettle J *Pavic v Magistrates' Court of Victoria & Chief Commissioner of Police* [2003] VSC 99

The legislation in South Australia and New South Wales removes the rules of evidence; reduces the standard of proof to the civil standard; denies the rules of natural justice in discovering, testing and responding to adduced information classified as criminal intelligence and/or 'protected submissions'; introduces anti-association laws and refuses employment to a controlled person in certain occupations without a conviction for any criminal offence and perhaps on the basis of criminal intelligence only.

It is alien to the administration of justice in a democratic society governed by the rule of law effectively to declare a person guilty because of his/her associations, and without a fair trial on a specific charge of wrongdoing. This is especially the case where the ostensible purpose of that association is innocent and not, for example, the sponsorship of terror.

The High Court has declared repeatedly that the principles of natural justice require that a person is entitled to know the case against him/her and to have a fair opportunity to be heard in response. A proscription of the members of a group leading to their prosecution solely for the act of associating with other members, the removal of the presumption in favour of bail upon being charged with such an association, and the confiscation of their assets because of that association would represent a wholesale abrogation of these fundamental rights.

In Franz Kafka's famous novel *"The Trial"*, Josef K is arrested one morning for reasons that are never revealed to him and is prosecuted for an unspecified crime. Eventually he is executed without knowing the nature of the crime he is alleged to have committed. The parallels to the proposed legislation are extremely concerning.

4. The Joint Submission of the Legal Profession in South Australia – Breach of International Human Rights

A joint statement was issued on behalf of the Law Society of South Australia and the South Australian Bar Association in respect to the SA legislation on 7 March 2008, a copy of which is enclosed.

While that statement canvasses in general terms many of the issues addressed in detail above, it also notes the denial of international conventions which these provisions involve:

"Whilst as a society we claim adherence to international human rights instruments and conventions such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights our Parliament is about to pass a law which undermines the rule of law and, in particular, rights to procedural fairness and a fair trial on criminal charges which carry a penalty of imprisonment of up to five years."

5. No evidence that these laws are needed

There is little evidence that these laws are necessary in Queensland or that they are likely to be effective.

Law reform, particularly such drastic reform as that proposed, must be evidence based. BAQ and QLS have made this point a number of times on matters of law reform. Law reform without evidence leads to flawed laws and unjust outcomes. At the conclusion of this submission, we point to how an evidence based approach might be adopted here. We take this occasion to repeat that Queensland needs to invest in an office of crime statistics that links into all aspects of the criminal justice system in a coherent and researched manner to provide the best possible evidence to found law reform initiatives.

On the practical effect of the use of these powers, there must be the real risk that all they will ultimately accomplish is to force these activities underground making investigation much more difficult. Identifiers will no longer be worn, membership not recorded, club houses abandoned for clandestine meetings in secret places, assets held by proxies and front companies established.

These reservations are not only held by us but have been expressed by the two peak organised crime investigating bodies operating in the State, namely, the Australian Crime Commission ("ACC") and the Crime and Misconduct Commission ("CMC"). Further, the CMC has expressed concern that the re-introduction of consorting laws may encourage the return of Police corruption. (See below for a discussion of why, on a practical level, the laws in SA and NSW are self-defeating.)

Under consorting laws police have the means to franchise crime. Certain offenders can be given free reign in return for corrupt payments, while the competition is arrested and charged. The handmaiden of organised crime is the corruption of officials, with police officers being the number one target. The findings of the Report of the Fitzgerald Inquiry in Queensland in 1989 provided a detailed exposition of institutionalised police corruption in the licensing branch of the police service based upon the association of police and criminals in the franchising of criminal activity known as "The Joke". We are sure that the present government would be extremely reluctant to do anything which might risk the return of that era.

Another risk with the proposed laws is the possible erosion of internal law enforcement efficiency and effectiveness. These laws could have the insidious affect of rewarding lazy policing and de-skilling police investigators who learn to rely upon the collection of criminal intelligence as an end result rather than the more difficult task of collecting admissible evidence.

One would have thought that in a democracy, before such fundamental rights are removed, an open and public inquiry would have been held and for that to result in the discovery of empirical facts demonstrating an overwhelming case for such action. To the contrary, it would appear that action is being taken as a reflex response to events in other jurisdictions, each of those resulting themselves in reflex legislative responses.

In this regard we note the Premier's media statement of 30 March 2009 announcing the intention to pass such legislation, said:

"We will not be left behind - Queensland will match any State in regard to the toughness of our laws to deal with the threat of outlaw motorcycle gangs."

It is apposite to note that the Premier's statement then made the following point:

"The Queensland Police Service has actively pursued criminal activity among outlaw motorcycle gangs. Since the inception of Task Force Hydra in February 2007, police have made 332 arrests in relation to 931 charges including attempted murder, arson, extortion, robbery and drug trafficking."

This statement also contained the announcement that the Government had already taken the decision to re-introduce into Parliament and to pass into law the Telephone Interception Bill as a matter of urgency.

With the documentation of such recent successful Police action against motorcycle gangs in Queensland, and with Police powers soon to be supplemented a telephone interception facility, how can a reasonable case be made out for the removal of such a raft of fundamental rights?

6. There already exists a plethora of powers to tackle organised crime

Police already have a plethora of powers and facilities to fight organised crime and gang activity in Queensland such as:

- The use of the coercive powers of the Crime Division of the CMC when it is judged that police investigation would not be effective, in particular, through the use of secret compulsory interrogations under oath;
- The electronic interception of communications by the use of listening devices and now through telephone intercepts under the *Telecommunications Interception Act 2009*;
- The use of warrant less searches, covert search warrants and electronic tracking devices authorised under the *Police Powers and Responsibilities Act 2000*;
- The use of undercover operations (controlled operations) authorised and protected under Chapter 11 of the *Police Powers and Responsibilities Act 2000*;
- The seizure and confiscation of assets used to commit crime, and the forfeiture of the proceeds of that crime, under the *Criminal Proceeds Confiscation Act 2002*; and
- The tracing of the money trail using the facilities of the Australian Transaction Reports and Analysis Centre acting under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006(Cth)*.

It may be that the unsatisfactory experience of interstate police in their failure to control motorcycle gangs has resulted, not from a lack of laws, but from a lack of police training, or management, or endeavour, or resources and manpower. An inquiry to determine this issue should precede the wholesale abrogation of fundamental rights.

Much to its credit, the ACT government has taken this responsible approach.

7. This type of legislation undermines the rule of law

Motorcycle clubs are not like terrorist organisations where the whole rationale is one predicated upon unlawful violence. Here the organisation is ostensibly established for legitimate purposes, the recreational use of motorcycles, and by proscribing those clubs, the innocent as well as the guilty, will be punished. This is the so-called shotgun approach to law enforcement which undermines community support for, and co-operation with, police upon which effective investigations are built. It should not be adopted.

8. Reservations expressed by peak law enforcement bodies

In a submission to the Parliamentary Joint Committee on, inter alia, the South Australian laws, the CMC said:

"... an enhancement of existing law enforcement powers such as telephone interception powers are likely to be more effective."

The CMC added that:

"... the policing of anti consorting style laws has been associated with significant police corruption."

The ACC said:

"... there's a clear risk that proving membership of a bikie gang may divert law enforcement attention away from intervention and prevention efforts."

The ACC also said that gang specific laws:

"... may result in a displacement effect that makes members of these groups more difficult for law enforcement to monitor or target."

Thus both peak state and federal law enforcement bodies specifically created to deal with organised crime, namely the CMC and the ACC, have recently expressed substantial reservations about the legislation.

9. These laws are a disproportionate response

The NSW laws represent a disproportionate response to a largely internecine conflict. The public record contains little evidence of motorcycle gang violence being directed at members of the public as opposed to members of rival gangs. Because the violence is high profile and unsettling, Parliaments in SA and NSW have rushed through legislation to assuage public concerns with little thought to the damage being done to the fabric of society by diminishing the rule of law.

10. Should the Police Commissioner decide?

The NSW legislation, unlike its SA counterpart, leaves the initiative of proscribing motorcycle gangs in the hands of the Police Commissioner; the SA legislation vests that power in the Attorney-General. The Police Commissioner has only one constituency, namely, the police officers under his command and is less well placed than the Attorney-General to give due consideration to the public interest in launching such proceedings. Having the Attorney as the decision maker will, despite the best intentions, leave the Attorney open to accusations of politicised decision making.

11. Two emergency responses but no emergency

The SA legislation was a response to what was portrayed as a real and present danger posed by bikie groups. It then took 9 months for the first steps to be taken under that legislation.

The NSW legislation was rushed through Parliament within the day with scant regard for the fundamental rights which were being abrogated including the right to a fair trial because of an "emergency situation" which was said to exist requiring such draconian legislation. However, at the time of writing, some seven weeks later, the NSW legislation has still not been used.

The only new event which had occurred to justify such an "emergency" in NSW was the brutal attack at Sydney airport which would appear, from reports, was an internecine gang confrontation, bikie attacking bikie. There is no suggestion that existing laws cannot adequately sanction this deplorable conduct or that existing laws hamper the police in bringing the offenders to account. (We will wait further to find out if there was a security failure at the airport.) In fact, the New South Wales Premier, the Hon. Nathan Rees, in his speech to the NSW Legislative Assembly introducing the NSW legislation on 2 April 2009, used that incident as a primary justification for the Bill. He then went on to say:

"Since the terrible incident at Sydney Airport, 12 members of various outlaw motorcycle gangs have been arrested. I am advised that yesterday afternoon, officers attached to Strike Force Raptor arrested another man linked to outlaw motorcycle gang crime."

These prompt actions by police to deal with this and other bikie crime were carried out under the existing law. They necessarily call into question the need for the very laws they are said to justify.

There is no particular emergent circumstance that has been advised to the Queensland public that warrants the legislation here.

In the result, it is hard to discern the imperative requiring the enactment of such laws.

12. Victoria and the ACT

The Victorian Government has indicated that it will not pass similar legislation in Victoria.

Assistant Commissioner (Crime) Danye Moloney of the Victoria Police has been reported in the Melbourne Herald Sun newspaper as saying:

"There are many individuals associated with biker groups who engage in criminal activity. We know that. Similarly, there are many more who are not involved in criminal activity."

Further, Victorian Police Minister Bob Cameron has commented that Victoria already has adequate laws to deal with all organised crime, not just bikie gangs.

The Attorney-General of the ACT, Simon Corbell, has called for a Government inquiry into the adequacy of police powers to tackle outlaw motorcycle gangs, which will be available in June this year.

Victoria and the ACT have adopted principled positions by refusing to introduce similar legislation to NSW and the ACT.

13. The NSW DPP, Mr Nicholas Cowdrey AM QC

The NSW DPP has published a paper pointing out the significant flaws in the NSW legislation as well as the repugnance of the legislation to fundamental rights and the Rule of Law. He referred to the "corrupting force" of the legislation for the core values of our legal system. We commend the paper to you (copy enclosed). It is succinct and powerful.

14. These laws will be self defeating

BAQ and QLS members who have had extensive experience with organised crime investigations share the views of Mr Cowdrey QC.

From that experience we can say that not all members of motorcycle clubs are involved in criminal activity, and those who are do not necessarily participate equally.

To facilitate their operation, the NSW and SA laws depend upon criminal intelligence. Proscription of these groups will deny police access to much of that intelligence in future. The issues of important principle raised by Mr Cowdrey QC can be put to one side and the laws viewed in an entirely utilitarian manner. Ultimately, these laws are self defeating.

Organised crime investigations are based in large part on access to informants, co-operating witnesses (normally other members of the group who are less involved), and undercover operatives. Proscription separates many potential informants and co-operating witnesses from the hardcore offenders. Further, the reduction of membership to that hardcore will make penetration by undercover operatives exceedingly difficult – there is no background of associates and "hangers-on" to provide cover for police agents.

With access to informers, co-operating witnesses and undercover operatives severely limited, the use of tools such as listening devices, telephone interception, and field surveillance, will begin to fail. To activate these resources, what is required is information in real time as to the premises being used, the telephone numbers of the pre-paid mobiles, and the movements of the suspects.

The legislation removes the rules of evidence and reduces the onus of proof. The short-sighted provisions in SA and NSW are supposed to make police activity more effective by making the job of police investigation easier; in fact they don't. The rules of evidence eliminate, for example, speculation and hearsay, for a reason – to get to the truth. The requirement for proof beyond reasonable doubt has the same object. These rules maintain investigative standards and discipline and provide a firm foundation for operational decisions. They also reduce the chance of rank injustice.

The removal of these safeguards, and the retreat to criminal intelligence as the mode of proof, provides both a poor basis upon which to judge a person's guilt, and a shaky platform for effective investigation. This stems from the nature of criminal intelligence.

By using criminal intelligence as the end product, rather than as a means of focusing the policing effort, these laws encourage and reward lazy policing, and lead to the de-skilling of investigators who no longer need to undertake the more difficult task of collecting admissible evidence.

15. Options or alternatives to the SA and NSW approaches

We commend a sober, informed and rational response.

In our respectful view, the material canvassed above points inexorably to the need for a wide ranging and public review. The intent is, it would appear, to deal with organised criminal activity. There are other models apart from those which have been adopted in NSW and SA.

One such example is the *Racketeering Influenced and Crime Organisations* legislation in the United States. We do not adopt this as an alternative approach. There may be time to consider other more appropriate approaches to be suggested once we understand the evidence on which the proposal is based and the evil sought to be addressed. We point out that this is a significant law reform proposal and must therefore be evidence based and respectful of our accepted democratic rights.

We draw your attention to the fact that the CMC, the independent, expert body created by Parliament, exists, *inter alia*, for the purpose of informing such decisions. It has a mandate to undertake research into the incidence and prevention of criminal activity (sections 52 and 177 of the *Crime and Misconduct Act 2000*).

Otherwise, we would urge the Government to establish an expert and independent panel to investigate and report on the problem, the need for reform, and the options available.

Both BAQ and QLS remain extremely concerned about the proposal and intend to monitor developments closely. Of course, we are available to assist in meaningful consultation.

Yours faithfully



Ian Berry
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Queensland Law Society

and



Michael Stewart
President
Bar Association of Queensland