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LEGAL AFFAIRS AND COMMUNITY SAFETY COMMITTEE

Members present:

Mr ML Furner MP (Chair)
Mr MJ Crandon MP
Mr DJ Brown MP
Mr R Molhoek MP
Ms JE Pease MP
Mrs JA Stuckey MP

Staff present:

Ms E Booth (Acting Research Director)
Ms K Longworth (Principal Research Officer)
Mr G Thomson (Principal Research Officer)

PUBLIC BRIEFING—INQUIRY INTO THE SERIOUS AND ORGANISED CRIME LEGISLATION AMENDMENT BILL 2016

TRANSCRIPT OF PROCEEDINGS

MONDAY, 26 SEPTEMBER 2016

Brisbane

PROOF

MONDAY, 26 SEPTEMBER 2016

Committee met at 3.05 pm

CHAIR: Good afternoon. I declare open this public briefing for the Serious and Organised Crime Legislation Amendment Bill 2016. Thank you for your attendance. My name is Mark Furner, the member for Ferny Grove and chair of the committee. Other committee members present are: Mr Michael Crandon, member for Coomera and deputy chair; Mr Don Brown, member for Capalaba; Ms Joan Pease, member for Lytton; and Mrs Jann Stuckey, member for Currumbin. Mr Rob Molhoek, member for Southport, is also in attendance, substituting for Mr Jon Krause, member for Beaudesert.

The briefing is being held in public and will be transcribed by Hansard. The committee intends to publish the transcript of this hearing. For the benefit of Hansard, I ask you to identify yourself when you first speak and to speak clearly and at a reasonable volume and pace. I ask everyone in the room to please turn your mobiles off or switch them to silent mode.

The Serious and Organised Crime Legislation Amendment Bill 2016 was introduced by the Attorney-General and Minister for Justice and Minister for Training and Skills, the Hon. Yvette D'Ath, on 13 September 2016. Today's briefing is to assist the committee with its inquiry into the bill.

CARROLL, Acting Inspector Ian, Queensland Police Service

FORD, Mr David, Deputy Director-General, Liquor, Gaming and Fair Trading, Department of Justice and Attorney-General

McANALLY, Ms Carolyn, Acting Director, Strategic Policy and Legal Services, Department of Justice and Attorney-General

ROBERTSON, Mrs Leanne, Acting Assistant Director-General, Strategic Policy and Legal Services, Department of Justice and Attorney-General

SHEPHARD, Ms Louise, Director, Strategic Policy and Legal Services, Department of Justice and Attorney-General

STEWART, Commissioner Ian, APM, Queensland Police Service

CHAIR: I welcome the representatives of the Queensland Police Service and the Department of Justice and Attorney-General: Commissioner Ian Stewart APM, Queensland Police Service; Mr David Ford, Deputy Director-General, Liquor, Gaming and Fair Trading, Department of Justice and Attorney-General; Mrs Leanne Robertson, Acting Assistant Director-General, Strategic Policy and Legal Services, Department of Justice and Attorney-General; Ms Louise Shephard, Director, Strategic Policy and Legal Services, Department of Justice and Attorney-General; Ms Carolyn McAnally, Acting Director, Strategic Policy and Legal Services, Department of Justice and Attorney-General; and Acting Inspector Ian Carroll, Queensland Police Service. I now invite you to make a brief opening statement. Then we will turn it over to the committee for questions.

Mrs Robertson: Thank you for the opportunity to brief the committee today about the Serious and Organised Crime Legislation Amendment Bill 2016. My name is Leanne Robertson, Acting Assistant Director-General, Strategic Policy and Legal Services in the Department of Justice and Attorney-General. As you have noted, I am joined in the briefing of this bill with my colleagues from the Department of Justice and Attorney-General: David Ford, Deputy Director-General; Ms Louise Shephard, Director; Ms Carolyn McAnally, Acting Director. Also assisting with the briefing is the Commissioner of Police, Ian Stewart, and Acting Inspector Ian Carroll from the Queensland Police Service. I will now outline the key amendments contained in the bill and then hand over to the committee for questions.

The bill represents the government's primary legislative response to three reviews relating to organised crime: the Queensland Organised Crime Commission of Inquiry, which I will refer to as the commission; the review of the Criminal Organisation Act 2009, to be referred to as the COA review; and the Taskforce on Organised Crime Legislation, to be referred as the task force. The task force was specifically tasked with reviewing the 2013 suite of laws primarily targeting outlaw motorcycle gangs, which I will abbreviate in this opening statement to OMCGs.

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The bill delivers a new and comprehensive organised crime regime to tackle organised crime in all its forms. The bill draws on initiatives under the COA but makes crucial enhancements to ensure operational speed and simplicity; reworks part of the 2013 laws or removes the parts considered by the government to be excessive, disproportionate or unnecessary; and addresses constitutional risks and injects new elements in the criminal justice system. The bill's focus is on achieving a legally robust and operationally strong approach to tackling all forms of organised crime. The bill implements the ethos of the task force recommendations but importantly makes key concessions where necessary, aimed at balancing the legal challenges emphasised by the task force with the operational needs and concerns of the Queensland Police Service.

Fundamental to the proposed changes under the bill is that a person's criminality should be determined by their actual conduct—that is, an approach that pursues groups of individual criminals instead of attempting to combat the threat they pose by going after the organisation itself. The new consorting offence and the new package of measures under the Public Safety Protection Order Scheme are the centrepiece and will replace the 2013 anti-association offence—section 60A of the Criminal Code—and the clubhouse offence—section 60B of the Criminal Code. To ensure an operational gap does not emerge as the new laws take full effect, sections 60A and 60B will be retained for two years from assent but amended to remove the mandatory penalties and reclassify as indictable offences. The new serious organised crime circumstance of aggravation punishable by a new targeted mandatory sentencing regime is also a fundamental feature of the bill.

I turn now to the new consorting offence. The bill makes it an offence punishable by up to three years imprisonment to interact with a 'recognised offender'—that is, a person with convictions for an indictable offence punishable by a maximum of at least five years imprisonment or a limited list of lesser indictable offences often linked to organised crime such as riot. A police warning precedes the offence, notifying the person that who they are interacting with has convictions and continued interaction may ground an offence. The Public Interest Monitor is required to report annually to the minister on the consorting warnings, with the report tabled in parliament.

The new offence is stronger than recommended by the task force and is modelled on New South Wales, which is constitutionally valid and has been successful in securing actual convictions. The Queensland offence takes into account the recommendations made by the New South Wales Ombudsman after review of the New South Wales offence found that it had been used inappropriately against some vulnerable groups. In the Queensland context, the new consorting offence will only apply to adults and specifically takes into account Aboriginal and Torres Strait Islander norms of kinship.

Under the bill, police have the power to stop a person to give an official warning, which may be given orally or in writing. If given orally, it must be confirmed in writing within 72 hours or the warning lapses. Unlike New South Wales, police have the power to search a person reasonably suspected of engaging in an act of consorting and the power to take identifying particulars if proof of identity cannot be shown. This will ensure officer safety given the offence is deliberately targeted at disrupting contact between or with serious and organised criminals. The 2013 general power for police to stop, search and detain suspected participants in a criminal organisation is repealed by the bill.

I turn now to the Public Safety Protection Order Scheme under the bill. The scheme is comprised of three orders. It is to replace the 2013 clubhouse offence and is comprised of restricted premises orders, public safety orders and fortification removal orders. In relation to restricted premises orders, this is a new court ordered restricted premises order which is modelled on New South Wales but with the key difference that applications are to be made to the Magistrates Court, not the Supreme Court. This variation from the New South Wales approach will ensure operational efficiency. A magistrate can declare a premises to be a restricted premises if there is a reasonable suspicion that prescribed, unlawful and/or disorderly activity is occurring. Owners and occupiers who continue to allow that conduct to occur commit serious criminal offences. The declaration also means that police can search the premises without a warrant at any time and seize property, which is forfeited to the state. 'Disorderly activity' essentially means antisocial or criminal behaviour or the presence of recognised offenders or anyone who has been issued with a consorting warning, even if no criminal history, at the premises or excessive fortification.

Additionally, police can obtain warrants to search any premises if there is a reasonable belief, as compared to a suspicion, unlawful and/or disorderly conduct is occurring on the premises. In New South Wales these powers have enabled police to seize any device related to alcohol, including furniture, stages, entertainment systems, pool tables, stripper poles, bar and bar utilities, cash boxes and paperwork. It will also allow police to remove excessive fortifications.

Under the 2013 clubhouse offence, OMCG clubhouses remain open and accessible by anyone except participants in the prescribed groups. The new package of laws in the bill will mean that clubhouses are off limits to anyone who is a recognised offender or anyone who has been issued with

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a consorting warning, and police have the power to effectively strip out the premises over and over again if they try to reopen. This is because the bill provides that all premises closed under the 2013 laws are automatically declared to be restricted premises under the replacement laws to ensure that those clubhouses do not reopen. This is in accordance with the government commitment following the task force report.

In relation to public safety orders, the bill provides for a police issued or a court ordered public safety order. These orders prohibit one or more persons from being in or going to an area, premises or event for a prescribed period if they pose a serious risk to public safety or security. The court ordered component has been relocated from the COA but applications are to be made to the Magistrates Court, not the Supreme Court. Police will be able to issue a public safety order but only for up to seven days. Any orders longer than seven days must be made by the court and they can be for up to six months. Where the police issued public safety order is 72 hours or more, appeal rights to the court apply. This hybrid model is based on South Australia and our understanding of the approaching practice in New South Wales. The limited police issued component of the new scheme is to enable police to rapidly respond to changing environments. Police issued orders will not be allowed to be issued consecutively or intensively over a short period. The Public Interest Monitor is required to report annually to the minister on police issued orders, with the report tabled in parliament.

Turning to fortification removal orders, the bill also includes a court ordered fortification removal order scheme relocated from the COA but applications will be made to the Magistrates Court, not the Supreme Court. The order means the person must remove any fortification to the premises or it will be removed by police using any force and equipment necessary. A new initiative, not part of the 2013 laws, is that police will be empowered to issue a stop and desist fortification notice when they observe premises that are habitually occupied by recognised offenders or participants in criminal organisations becoming excessively fortified. The orders provide the police with 14 days to make, not finalise, an application for a fortification removal order from the court. If a stop and desist notice is breached during this 14-day period, it will be deemed to be the evidence required to obtain a fortification removal order and will also be deemed to be disorderly activity for the purposes of any restricted premises declaration proceeding. A person who disputes the basis for a stop and desist notice can seek judicial review during the 14-day period and/or contest any subsequent court application for a fortification removal order. The issue of the order is included in the enforcement register under the Police Powers and Responsibilities Act 2000 enabling a person to obtain information about its issuing.

In relation to the serious organised crime circumstance of aggravation under the bill, the purpose of the new serious organised crime circumstance of aggravation is to deter and punish participation in criminal organisations but also to encourage cooperation. Conviction of a prescribed offence with a new circumstance of aggravation will activate a new targeted sentencing regime which can only be avoided by significant cooperation with law enforcement agencies.

Turning to organised crime control orders under the bill, the organised crime control order is a new sentencing order for Queensland and empowers the sentencing courts to set any conditions considered appropriate to protect the public by preventing, restricting or disrupting the involvement of a prescribed offender in future serious criminal activity. Failure to comply with the control order is an offence in itself which is punishable by up to three years imprisonment, increasing to up to five years imprisonment for repeated breaches. A control order can be made in terms of a person convicted of the new circumstance of aggravation or the new offence of consorting or, more generally, a person found to be a participant in a criminal organisation by the court or upon contravention of a control order.

In relation to the banning of the visible wearing of OMCG colours under the bill, the Liquor Act currently provides for a number of offences prohibiting the wearing or carrying of defined prohibited items, known as colours, associated with identified OMCGs in licensed premises. Most of these offences are retained but with amendment, for example, to provide appropriate protections for licensees, permittees and their staff that have made a reasonable attempt to refuse, exclude or remove a person wearing colours from the licensed premises. Currently, prohibited items rely on a list of criminal organisations declared in the Criminal Code (Criminal Organisations) Regulation 2013. This list will be limited in its operation for a two-year transitional period and eventually repealed given the enhancements made to the definitions of 'criminal organisation' and 'participant' under the bill. Accordingly, the list of OMCGs will be transferred to the Liquor Regulation 2002 to ensure the colours offences remain effective.

For ministerial recommendations to the Governor in Council to recommend the declaration of additional entities in the future, the minister must be satisfied the wearing or carrying of proposed prohibited items by a person in a public place may cause other persons to feel threatened, fearful or intimidated or might otherwise have an undue adverse effect on the health and safety of members of the public or the amenity of the community, including by increasing the likelihood of public disorder or

acts of violence. In considering these matters, the minister must have regard to whether any person, while they were a participant in the entity, engaged in serious criminal activity or committed an offence involving a public act of violence or damage to property or committed an offence involving disorderly, offensive, threatening or violent behaviour in public. Where the Attorney-General is not the minister responsible for the Liquor Act, the relevant minister must consult with the Attorney-General and the minister and the Attorney-General must agree on the recommendations to the Governor in Council.

Turning now to the prohibition in public under the new summary offences act to extend the protection from fear and intimidation offered by the existing offences in the Liquor Act and to reduce the likelihood of public disorder or unlawful acts of public violence, the bill creates a new offence under the Summary Offences Act 2005. This offence prohibits a person from wearing or carrying a prohibited item in a way that can be seen by others in any public place, including in a vehicle that is in a public place. The definition of 'prohibited item' refers to the definition in the Liquor Act 1992. The new offence replaces the current Liquor Act offence which applies to a person who enters or remains on licensed premises wearing or carrying a prohibited item. The new offence will be added to existing provisions in the Police Powers and Responsibilities Act 2000 to allow police to stop, detain and search a person or a vehicle and seize anything that may be evidence of the commission of an offence. Anything seized will be automatically forfeited to the state upon conviction.

In relation to occupational licensing and industry regulation reforms under the bill, the 2013 laws created a new industry licensing regime for tattoo parlours and provided for additional occupational licensing and industry probity restrictions across 10 pieces of legislation. The 2013 laws require licensing authorities to ask the Police Commissioner to determine whether an applicant for a certain licence, licence renewal or other type of authority is a criminal organisation or a participant in a criminal organisation. If the Police Commissioner makes such a determination then the applicant must be refused the licence or authority. Occupational licensing apart from the Tattoo Parlours Act 2013, to be renamed the Tattoo Industry Act 2013, will be largely restored to pre 2013 by the bill with new provisions, where needed, to reflect that the new serious and organised crime offences and control orders are a relevant consideration and in some cases a disqualifying factor in licensing decisions.

The provisions will also provide for an explicit prohibition on the use of criminal intelligence in licensing decisions apart from licensing decisions made under the Weapons Act 1990. This reflects the risks, limitations and issues associated with the use of criminal intelligence that were highlighted by the task force, in particular the inability of criminal intelligence to be put to the applicant and the consequential breach of the principles of natural justice. In the case of the Weapons Act, the use of criminal intelligence was already part of determining whether a person was a fit and proper person to hold a licence prior to the 2013 suite of laws. Moreover, given the particular focus of weapons licensing on the protection of public and individual safety, the use of criminal intelligence as part of the fit and proper person test will be maintained. The Tattoo Parlours Act will be amended to adopt a more traditional approach to assessing a person's suitability to hold a licence, similar to regimes in other acts such as the Security Providers Act 1993. Applications for a licence under the tattoo industry legislation will continue to be subject to rigorous identification and probity testing, including through mandatory fingerprinting and palm printing, as well as criminal history checks.

The bill contains further amendments to improve the administration, operation and flexibility of the tattoo industry licensing framework. As part of the 2013 laws, amendments were made to the Electrical Safety Act 2002, the Queensland Building Services Authority Act 1991—now called the Queensland Building and Construction Commission Act 1991—and the Work Health and Safety Act 2011. However, the commencement of these amendments was postponed until 1 July 2017. The bill repeals these amendments prior to their commencement.

Turning to amendments to the Crime and Corruption Act under the bill, the task force recommended the retention of many of the 2013 changes to the Crime and Corruption Act 2001, including the expanded intelligence functions and increased maximum penalties for compliance offences. However, some changes and repeals were recommended which the bill implements. For example, the repeal of the mandatory minimum penalties for contempt of the Crime and Corruption Commission and replacement with an escalating, tiered maximum penalty scheme and the repeal of the exclusion of fear of retribution as a reasonable excuse for not complying with orders under the Crime and Corruption Commission's powers of compulsion.

To give a brief overview of the other repeals of the 2013 laws in the bill, as set out in the explanatory notes, the bill also repeals amendments made to other acts by the 2013 laws such as to the Bail Act 1980 and the Corrective Services Act 2006 as recommended by the task force.

I now turn briefly to the new offences and increased penalties arising from the recommendations of the commission of inquiry into organised crime. Firstly turning to child exploitation material offences, the bill makes amendments to the Criminal Code in response to the proliferation of child exploitation

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material over the internet, the increased use of technology to promote and distribute child exploitation material as well as to conceal offending, and to address legislative gaps and limitations—for example, the creation of new offences, each with a maximum penalty of 14 years imprisonment, that will target persons who administer websites used to distribute child exploitation material; encourage the use of, promote or advertise websites used to distribute child exploitation material; and distribute information about how to avoid detection of, or prosecution for, an offence involving child exploitation material.

The bill also amends the Criminal Code in response to the increasing prevalence and seriousness of cold-call investment or boiler room fraud and evolving threats in financial crimes, particularly identity crime, that may not be adequately deterred by existing penalties—for example, the creation of a new circumstance of aggravation for the offence of fraud carrying a maximum penalty of 20 years imprisonment where the offender participates in carrying on the business of committing fraud.

Now turning to the issue of access information itself under the bill, currently section 154 of the Police Powers and Responsibilities Act 2000 allows police to request, as part of a search warrant, an order that a person in possession of access information—that is, passwords and encryption codes—provide the information to police to enable them to access the device, such as a mobile phone. The bill amends section 154 and inserts new provisions to overcome current legislative deficiencies. The Crime and Corruption Act 2001 is also amended to insert similar provisions to enhance CCC investigations.

Turning to the bill's provision with respect to drug trafficking, on 30 August 2016 the Premier and Minister for the Arts stated that the maximum penalty for trafficking dangerous drugs will increase from 20 years to 25 years. The bill delivers this commitment by increasing the maximum penalty for trafficking in dangerous drugs listed in schedule 2 of the Drugs Misuse Regulation 1987. This means the same penalty will apply for trafficking in all dangerous drugs. Given the introduction of a maximum penalty of 25 years imprisonment for trafficking in all dangerous drugs, and to address recent adverse comments of the Court of Appeal, the bill removes the current mandatory minimum 80 per cent non-parole period which applies for trafficking and restores the offence to the serious violent offence regime under the Penalties and Sentences Act 1992. This means that a conviction for trafficking attracting a sentence of five or more years imprisonment may, and 10 or more years imprisonment must, be declared a serious violent offence requiring the offender to serve the lesser of 80 per cent of their period of imprisonment or 15 years before being eligible to apply for parole.

In conclusion, thank you once again for the opportunity to provide information on the bill to the committee. We are now in your hands regarding questions from committee members.

CHAIR: I take it there are no other opening statements at this stage. I will start with the amendments to the Criminal Code. Amendments were made to the Criminal Code in response to the proliferation of child exploitation material over the internet and the increased use of technology to promote and distribute offending material as well as to conceal offending and to address legislative gaps in limitations. Does this go to the extent of exercising power to access information over the darknet?

Ms Shephard: I am not sure if I completely understand the question. Certainly a new circumstance of aggravation has been created which will apply to existing child exploitation material offences and the three new offences if the darknet has been used to facilitate the offending. Is your question with regard to police being able to access information stored on electronic devices?

CHAIR: Basically, I want to make sure these laws go to the extent of accessing perpetrators of child exploitation who may use the darknet as a cover to hide.

Ms Shephard: The bill makes amendments to section 154 of the Police Powers and Responsibilities Act. Currently when police apply for a search warrant they can request the magistrate to include a requirement that the person hand over passwords or encryptions to allow access to information stored on that electronic device. Amendments are being made to that section to enhance the operation of those existing powers to address some current issues; for example, if someone other than a suspect has that information, to allow the information to be required from that other person. Also if, for example, police search the item and then later realise they need to access that information, they can do that.

The other thing the bill does is give those same powers to CCC officers, because currently they do not have them at all. Currently if a suspect or a person who is required by a search warrant to provide that access information does not, the only real offence that would apply to them is section 205 of the code, which makes it an offence to disobey an order of a court or judicial officer. That carries a sentence of one year's imprisonment, so there are really no teeth. If someone is harbouring child exploitation material, which is an offence which currently carries a maximum penalty of 14 years

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imprisonment, there is no incentive for the person to provide that information. The commission of inquiry recommended that a new offence be inserted into the code. The bill inserts new section 205A into the code which creates a specific offence for a person who fails to comply with such a requirement of the search warrant, and it applies a five-year maximum penalty for that.

CHAIR: The majority of the task force recommended that sections 60A, 60B and 60C of the Criminal Code be amended. They made that decision, as I understand it, on the basis of there being inherent unfairness in the offences, difficulty experienced in the prosecution of them, and the constitutional vulnerability of the retention of those three offences not being justifiable. Could you elaborate on why they reached that conclusion, please?

Ms McAnally: In examining the offence, the majority of the task force came to the conclusion that section 60A is constitutionally vulnerable on the basis that it would infringe the implied freedom to associate for political and government purposes. The task force chapter dealing with that set out in detail what is now the current test in this regard, and that is the High Court case of McCloy. They were persuaded that there is significant constitutional risk to the offence. In addition to that, the task force majority considered that there were also law enforcement and prosecutorial issues with the way in which the offence has been framed. The most overwhelming issues are the evidentiary challenges faced by the prosecution in proving the offence. The task force conceded that the offence itself has, it would appear, been very effective at the front-end stage in terms of operationally assisting the police to lay charges and perhaps even to progress the matter through at the committal hearing stage, but the overwhelming conclusion was that it simply delays the challenges to a later date in the criminal justice process, and that is to the trial stage.

You have to prove that the three individuals were in fact participants in a criminal organisation and that each of those three individuals knew in fact that the other people they were with were also participants in a criminal organisation. The information that we received at the task force from the Queensland Police Service was that they principally relied upon the prescribed offences under the 2013 regulation. The declaration itself is not proof that those entities are in fact criminal organisations. It is a starting point, but because of the defence that had to be built into that offence to hold it constitutionally, it effectively means that if anybody raises that defence—that is, that the purpose of the group is not a criminal purpose—then the Crown would need to prove that those entities are in fact criminal organisations. That is effectively the undoing of that offence as considered by the task force majority, and that was largely the reason they concluded that no-one has in fact been convicted. People have been charged, but no-one has been convicted of that offence.

CHAIR: What was the case you mentioned?

Ms McAnally: In terms of the implied freedom of political association and communication, the case is McCloy & Ors v State of New South Wales & Anor. It is a High Court decision and it follows the High Court case of Tajjour, which is also a relevant case in this context in the sense that it was a case that specifically looked at the constitutional validity of the New South Wales equivalent of their consorting offence. Subsequent to the 2013 amendments we have since had another High Court decision that looked at this issue. McCloy is the latest test.

CHAIR: I understand there were criticisms in the High Court case of Kuczborski. Is that the one to which you are referring?

Ms McAnally: That is correct. The High Court did consider section 60A and a number of other elements of the 2013 suite in that case of Kuczborski, but they were only asked to consider constitutional validity along the lines of the Kable principle, which talks about legislation that undermines the institutional integrity of the courts. In that case they found that, when dealing with the definition of criminal organisation, on that discrete basis it did not. They certainly were not asked to go on to consider other constitutional challenges to that offence and that package, and the majority very much left open the discussion for a later date. The task force majority has considered this to be constitutionally vulnerable on the other basis which the High Court in Kuczborski was not asked to consider.

CHAIR: How many charges and convictions have been successful under section 93X of the New South Wales Crimes Act 1990?

Ms McAnally: I will just check if I have that data.

CHAIR: If you do not, you can take that on notice.

Ms McAnally: I might take that on notice, because we do have a recent New South Wales Ombudsman's report that explored the operation of the New South Wales equivalent of consorting across three years which was only tabled on 17 June this year, so that may provide the most up-to-date data in that space.

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CHAIR: Turning to the Liquor Act 1992 in respect of the Summary Offences Act 2005, which prohibits a person visually wearing or carrying their colours in a public place—I know that Mrs Robertson went to some length to explain what a public place is—can you demonstrate how that differs from this bill compared to the current act?

Mr Ford: Chair, the provisions in the new legislation are much broader than the provisions in the previous legislation. The previous legislation related solely to the wearing of colours or prohibited items on licensed premises and the new one does that as well, but the Summary Offences Act then picks up those definitions and applies them to public places more generally.

CHAIR: How do you define a public place?

Mr Ford: 'Public place' is defined in the Summary Offences Act.

Insp. Carroll: We use the definition of 'public place' contained in the Summary Offences Act which incorporates licensed premises under the Liquor Act, and it expands to the definition of 'public place', which includes premises made available and open to the public.

CHAIR: Thank you. That is clear. With respect to the Peace and Good Behaviour Act 1982, can you please explain what a disorderly activity is defined as under a restricted premises order? Does it include both antisocial behaviour and criminal activity? Do they need to be combined or can they be either-or?

Ms McAnally: Under the restricted premises orders scheme it does list this concept of disorderly activity and they are either-or; for example, it could be drunkenness, disorderly or indecent conduct, or entertainment of a demoralising character and it goes on.

CHAIR: Under the fortification process for stop and desist notices, does it extend to a premises which has been identified as having extra security and CCTV cameras installed?

Ms McAnally: Yes, it does. That would fit within the definition of 'fortification', but there is the requirement that the premises itself—there are two stages—is either 'being, have been or are likely to be, used for or in connection with serious criminal activity, or to conceal evidence of, or to keep proceeds of, serious criminal activity' or is 'owned or habitually occupied or used' by a criminal organisation, participants in a criminal organisation or this concept of a recognised offender or their associates. That dovetails into what is the definition of a 'recognised offender' under the new consorting offence. It is not any premises that happens to have CCTV cameras or some sort of fortification. There is also this additional threshold question that there needs to be this linkage of the property to one or other of these two.

CHAIR: Under the Penalties and Sentences Act 1992, why was there need to amend the definitions of 'criminal organisation' and 'participant'?

Ms McAnally: That stems from a majority recommendation of the task force. Effectively under the legislation presently the definition of 'criminal organisation'—I will deal with that firstly—has three limbs. The second limb—I will start with that—relates to the Criminal Organisation Act, which is often known as the COA. It is being repealed by the bill. It effectively includes an organisation that has been declared to be criminal through a declaration under the COA. The third limb relates to the declaration of organisations as criminal by regulation, and that was inserted in 2013 as part of the suite of laws. The task force recommended the repeal of the third limb and, consequential to the repeal of the COA, that limb will go also. That then leaves us with the first limb. That is a limb which relies on a finding of fact by either the jury or the judge alone.

While the task force felt that the current language of the first limb would capture hierarchically structured organised crime groups, working on the information that was received during the task force by not only the Queensland Police Service but the Crime and Corruption Commission, it has become clear that organised crime groups are no longer just hierarchically structured. Increasingly we are seeing more and more groups that are flexibly structured. They alternate over time in terms of their membership based on their needs. The concern was that the definition as presently stands would not, moving forward, necessarily capture all forms of organised crime groups.

What we have done in this bill is to pick up that unanimous recommendation and to make amendments to the definition of 'criminal organisation'. The way in which we have done that is to change the language to make it clear that it applies to groups rather than necessarily organisations. These groups can be informally or formally arranged. These groups can have a legal identity but they do not need to. They do not have to be recognisable by the public to constitute a group. The roles that people can play within this group and their responsibilities can differ. In fact, the benefits that individuals receive can change.

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The other key difference that has been made is that presently the definition relies on this concept of the purpose of the organisation. That has been retained but what has also been added is that the group engages in certain criminal activity. That will capture those groups that simply come together for the purpose of engaging in criminal activity and once that is done they will disperse. Basically the definitional change, as recommended by the task force, is an attempt to future proof the definition as these groups rapidly evolve in terms of how they structure themselves.

CHAIR: Finally, under the Police Powers and Responsibilities Act 2000, I want to get a scenario in my head about how a police officer would relate to issuing an official consorting warning on a person where the police officer must consider whether it is appropriate to exercise that power. Can I get some understanding of how that would be exercised?

Commissioner Stewart: As you know from the legislation, the requirement for an officer issuing a warning will be for a person to engage with at least two other people who have certain recorded convictions. The officer can then warn the individual. If, say, individual A consorts with or meets with individuals B and C on one occasion, it is my understanding that the officer can officially warn A on that occasion that they are consorting with two individuals who have criminal records appropriate to the new legislation. That officer must then observe those two people or find those two people. If A again meets with B and C, that is when the actual offence can occur. Action can then be taken to charge them with the consorting offence. The formal meeting, so to speak, in the first instance is one individual with two people who have criminal history of appropriate level. Individual A does not have to have any criminal history at all. He can simply consort with two people who do have the appropriate levels of criminal history and then the warning can be issued to him. That is the formal warning.

There is also a pre-emptive warning that can be given to a person who the officer believes may be going to meet with people of a similar kind. If there was information that A was going to meet with B and C, we can actually warn A not to do that because that would effectively put them into the consorting arena under the legislation. However, the main difference between a pre-emptive and a formal warning is that the pre-emptive warning cannot be relied on for the commission of any later offence, but it certainly is something we can do to try to deter.

Ms McAnally: Just picking up on that, the pre-emptive warning can be issued and the two acts of consorting have to occur after the pre-emptive warning has been issued. Theoretically, when the legislation commences, technically the Queensland Police Service could go out and issue consorting warnings to all members of organised crime groups in relation to individuals that they know meet the definition of a 'recognised offender'. However, the acts of consorting must occur post the pre-emptive warning as opposed to, in the first scenario, as highlighted by the commissioner, where the police have either witnessed an act of consorting or similarly they can issue a retrospective warning where, for example, consorting has been captured on CCTV footage—for example, in a mall or outside a nightclub. That first act is already established upon the issuing of the warning and it is only one further occasion thereafter. That is the key difference between the pre-emptive and the contemporaneous warnings.

Commissioner Stewart: There does not necessarily need to be any pre-emptive warning, though. If an officer were to come across a group of people or even an individual and a person known to them to have criminal history, the officer can speak to them. If A meets with B—B has the criminal history; A has not—and the officer believes on reasonable grounds that they are covered within the reasons for consorting, then the officer can actually warn A about consorting as a result of that meeting. That is possible as well. In that case, there is no pre-emptive warning at all, but if the officer was aware through other means that he or she were aware of what the content of the meeting was, certainly that can constitute part of the official warning process. Again, there have to be other people involved in terms of the actions of A before he or she can ever be charged with consorting.

Mr CRANDON: Did I understand correctly, Inspector Carroll, when we were talking earlier—in fact, I think it was the only question you have answered—that they can walk down the street but they cannot go into a shop? Is that the idea? They are okay walking down the street wearing their colours but they cannot go into a shop?

Insp. Carroll: No. I probably did not explain that sufficiently. A public place under the Summary Offences Act would cover premises like cafes, licensed restaurants as well as public spaces like parks and—

Mr CRANDON: The street.

Insp. Carroll: Exactly.

Mr CRANDON: They cannot walk down the street.

Insp. Carroll: Correct.

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Mr CRANDON: They cannot even get to the cafe.

Insp. Carroll: Exactly.

Mr CRANDON: That is a moot point really in that respect, isn't it?

Insp. Carroll: Yes.

Mr CRANDON: They are not allowed to wear their colours.

Insp. Carroll: Yes.

Mr CRANDON: Earlier, Commissioner, you were talking about outlaw motorcycle gang clubhouses and so forth and comparing the two pieces of legislation. I think there was an inference that under the current laws there could be potential for an outlaw motorcycle gang clubhouse to be opened again. Are there any outlaw motorcycle gang clubhouses open as we speak that you are aware of, Commissioner, or that the police are aware of?

Commissioner Stewart: To my knowledge, no.

Mr CRANDON: They have not gone back to their clubhouses since the original legislation was put into place. They have been shut down.

Commissioner Stewart: They are shut down, yes, under the previous legislation.

Mr CRANDON: In relation to A, B and C, A meets with B and C and gets a pre-emptive warning and then he gets the warning. If he meets again with B and C, he is gone. A could meet with B and D on another occasion. He would have to get another warning.

Ms McAnally: Yes.

Mr CRANDON: Then A could meet with B and E on another occasion. He still only has one warning with B and E. He can just keep on meeting all day every day with B. As long as one of the others—C, D, E or F or whoever it might be—does not come for a second occasion—

Commissioner Stewart: There is no offence.

Mr CRANDON: There is no offence.

Ms McAnally: That is right. A can meet with B. A can meet with C, D and E. A is required to meet one further time with either B, C, D or E but not with them all together. It can be individually.

Mr CRANDON: He can never meet again with C, D or E if he has met a second time with B.

Ms McAnally: That is right. In fact, that is part of the purpose of the consorting offence in the sense that in part it is also to disrupt these networks. Arguably, once that official warning has been issued, if he does never meet again with those individuals, it has achieved its purpose.

Mr CRANDON: Is there a time line on that?

Ms McAnally: There is not in legislation, no.

Mr CRANDON: None whatsoever?

Ms McAnally: No. There is no time line. It may well be—and I will obviously defer to the commissioner on this question—that some guidelines are placed around that in their operational procedures manual, but the legislation does not proscribe time limits on the warnings.

Mr CRANDON: He meets with B and C today. He does not meet with them again for five years, but when he does he is a goner.

Ms McAnally: Under the current framing of the legislation, yes.

Mr CRANDON: I just wanted to clarify those few bits and pieces. Have the laws been drafted with the assistance of the Solicitor-General? In other words, was the Solicitor-General involved in any way?

Mrs Robertson: Chair, I understand under standing orders that one of the issues that I can object to a question is that it may actually disclose a matter of legal professional privilege.

CHAIR: Correct.

Mrs Robertson: I would ask that I—

CHAIR: Exercise your rights.

Mrs Robertson: Or, alternatively, be able to seek the advice of the chief executive in relation to those matters.

CHAIR: Sure.

Mr CRANDON: Does that mean yes?

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CHAIR: No. Do you have any other questions?

Mr CRANDON: I have plenty of other questions. Why do some provisions commence upon assent and some after three months but the majority of the provisions commence after two years from assent, and how was the determination made in that regard?

Ms McAnally: The majority of the provisions will commence on assent. For example, most of the provisions commence on assent. The consorting offence, coupled with the Peace and Good Behaviour Act orders, which are the new restricted premises orders, fortification removal orders and public safety orders, will commence three months post assent. That is to allow sufficient time for the mechanisms to be put in place to operationalise these orders. For example, with the consorting offence, official warnings have to be given. It involves system changes and also getting training out to the officers.

With regard to the repeal provisions relating to sections 60A and B and section 780A, which dovetails in with 60A and B, they will be repealed in two years time in order to allow a transition from the old regime to the new laws. As part of the task force's work, they were advised by the law enforcement agencies, including the Crime and Corruption Commission, that to remove all forms of anti-association measures could present an operational gap and present a safety risk to the community and in particular to our Police Service. Part of that is to allow sufficient time for the control orders under the Penalties and Sentences Act and the consorting offence to come into their own and therefore fill that gap, which they are intended to be from the government's policy perspective, in terms of the replacement to section 60A and also to allow time for the public safety protection order scheme to take effect.

Mr CRANDON: Was that a request from the police? Where did that come from?

Commissioner Stewart: We did make a submission that we needed time for a range of aspects of the new legislation to come into effect operationally, meaning we are going to have to retrain the whole organisation in the new legislation. That does take time. We have to develop the training tools and what have you that will be part of that. The other big one is the issue around our records management system. Because they are so complex, you just cannot change them overnight. It will take us time and then we will have to put in, in the normal process, up to six or potentially nine months to actually change our systems to be able to capture the information in the way that we want it to be captured. You know that we have done a lot of work of recent times to enable our front-line staff to have access to information in their hand.

Mr CRANDON: Yes. How is that going?

Commissioner Stewart: Very well, thank you, and that is exactly the sort of arrangement we want for this—to change our system so that an officer can identify those consorting. If they are going to give a warning or if they are to do pre-emptive warnings, all of those sorts of things can just be added in to the apps that they currently use.

Mr CRANDON: On that basis, Commissioner, are you saying that by the time all of this has washed through the system and you have spent a lot of time and effort working all of this out, all of those front-line officers are going to have access to their iPad?

Commissioner Stewart: Absolutely, to these records systems. The other big issue for us of course is—

Mr CRANDON: On the spot?

Commissioner Stewart: Yes, on the spot. The other big issue of course is the issue around identifying a person with an appropriate record—in other words, we are talking about B and C again. A might have nothing, but we need to know what the record is. We need our officers to be able to access that information so that they can at least start the process of providing a warning.

Mr CRANDON: Under the changes to the circumstance of aggravation for Criminal Code offences of affray and serious assault on police, will the bill now make it harder for someone to be indicted and therefore charged with serious assault of a police officer?

Ms McAnally: No. The offence of serious assault of a police officer remains as it was except the bill removes the circumstance of aggravation that was inserted in 2013. What it does do is to insert that into schedule 1C of the Penalties and Sentences Act which is the list of offences to which the serious organised crime circumstance of aggravation applies. If someone commits a serious assault of a police officer and they are a participant in a criminal organisation and they did so in association with another participant or at the benefit of or at the direction of another participant, irrespective of whether that person is a participant in their own criminal organisation, that will attract the new serious organised crime circumstance of aggravation which is the replacement to the VLAD Act regime.

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Mr CRANDON: Thank you. While the Criminal Organisation Act is being repealed, many of the existing provisions are being retained. Can you outline if there are differences in the public safety orders and restricted premises orders that existed under the COA as opposed to the new bill?

Ms McAnally: Yes. Based on the review that was undertaken by the Hon. Alan Wilson, he recommended that COA be repealed or allowed to lapse but certain measures be redeployed elsewhere into other parts of the Queensland statute. That recommendation has been picked up. The orders that have been replaced elsewhere are the control orders, which have been inserted into the Penalties and Sentences Act but with significant modification. That is a conviction based model now and it is a new sentencing order for Queensland, so it is a new tool that the courts can use to combat organised crime. The public safety order regime has been transplanted into the Peace and Good Behaviour Act, and there are two key differences. Firstly, it makes provision for police issued public safety orders which we did not have in Queensland until this bill and, secondly, court ordered public safety orders can be made to the Magistrates Court instead of the Supreme Court. That change is the direct result of consultation with law enforcement about the need for operational efficiency and speed, and those changes reflect that.

Similarly with the fortification removal orders, they have come across from the COA and similarly they are to be made by a Magistrates Court as opposed to the Supreme Court to ensure the speed and efficiency much needed by the QPS. Unlike the COA regime, the bill inserts that stop and desist mechanism relating to fortification to effectively enable police, if the threshold is met, to issue those stop and desist notices as they see fortifications being put in place as opposed to having to wait until the whole place is fortified. The restrictive premises order scheme is a completely new order for Queensland. It never existed previously, even under the COA, and the only other jurisdiction that actually has a restricted premises order scheme is New South Wales and this bill largely replicates the New South Wales approach. However, unlike New South Wales, again, the application can be made at the Magistrates Court level as opposed to the higher court, again reflecting the need for operational efficiency and speed.

Mr CRANDON: In relation to the declaration of a criminal organisation, can you explain the difference between how the criminal organisations were declared under the 2013 laws as opposed to the new laws? Also, could you flesh out what the process is for declaring criminal organisations?

Ms McAnally: I will just confine my response to that issue of the declarations. In 2013 effectively limb 3 was added to the Criminal Code definition of 'criminal organisation', and that was the ability to have an organisation declared to be criminal by regulation. The task force majority in the context of the broader definition of 'criminal organisation' recommended that that be repealed. They examined the concerns that they had, some of which were constitutionally based, regarding the executive declaration model and then looked at alternatives in terms of attempting to bolster their concerns and they came to the conclusion that those concerns were insurmountable. However, as you note, in the context of the Liquor Act and for the purposes of the colours offence, this ability to declare organisations by regulation has been retained, so it is confined to that very discrete basis. I might hand over to Deputy Director-General David Ford in terms of that.

Mr Ford: As Carolyn correctly said, the residual declaration process relates really just to the wearing of colours in public places or, under the Liquor Act specifically, the wearing of colours in licensed premises. That declaration is made obviously by the minister responsible for the Liquor Act, and there are a set of criteria under which that declaration can be made, and then that has to be made in consultation with the Attorney-General as the first law officer of the state if in fact the minister for the Liquor Act is not at the time the Attorney-General. That is done by regulation and then the colours for that group are in exactly the same situation in terms of colours. However, it only relates to the wearing of colours in licensed premises or through the Penalties and Sentences Act in a public place.

Mr CRANDON: Thank you. In terms of getting a comparison, can the department provide the committee with a list comparing all of the penalties in the 2013 legislation that are being changed in the new bill as a sort of a table? Would that be possible?

Ms McAnally: I might take that on notice, if that is okay.

Mr CRANDON: Absolutely, yes. I did not expect you to write it out now.

Ms McAnally: Could I just clarify for the purpose of the question: are you seeking a comparison effectively from what the 2013 suite provided as compared to what the bill now provides?

Mr CRANDON: Yes, I think so. Were there any trade unions consulted on the amendments to the occupational licensing fit and proper person test?

Mr Ford: Mr Crandon, we acted as a coordinator for the suite of occupational licensing changes that have been made in this legislation. As far as I am aware in the pieces of legislation for which I am responsible, which are the Liquor Act, the Motor Dealers and Chattel Auctioneers Act, the Security

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Providers Act and the Tattoo Parlours Act, there were none. With regard to other pieces of legislation, those consultations would have been conducted by the departments responsible for that legislation if they had happened, so I cannot really answer your question.

Ms McAnally: The only thing I will add to that is just from a task force perspective. The task force in looking at that issue about occupational licensing and industry reform, which is dealt with in their final chapter of the report, went out wide seeking public submissions and the submissions received from the task force included some from industries, but I just cannot think off the top of my head which industries they were. People were invited to make comments about the legislation about any concerns or any benefits that they were seeing in that regard and all of those submissions have been publicly released other than one or two where people requested confidentiality.

CHAIR: On the same line, is it not the case that the Queensland Police Union of Employees and the Queensland police officers' union were members of the task force?

Ms McAnally: Absolutely. I was not sure if you were referring to those particular unions with the reference to trade unions, but definitely the commissioned officers' union and the Queensland Police Union were actively involved, as were the QPS and actual members of the task force throughout.

Mr CRANDON: In relation to High Court challenges, has the department sought any legal advice around that? How confident are you around the potential for a High Court challenge?

Mrs Robertson: Chair, again I think that—

CHAIR: You wish to defer?

Mrs Robertson: Yes.

CHAIR: Okay; thank you.

Mr CRANDON: In that regard are you saying that you are going to consult and come back to us if you are able to?

CHAIR: I think Mrs Robertson has made herself clear.

Mr CRANDON: In the first instance—

Mrs Robertson: Chair, in accordance with the standing orders and guidelines for public servants giving answers, I am happy to seek the advice of the chief executive in relation to responses.

CHAIR: Okay.

Mr CRANDON: That is why I wanted to clarify that particular point, because you did say that earlier. Commissioner, can you confirm that under existing organisational criminal laws, as you did at the 2015 estimates, there have been convictions for offenders other than outlaw motorcycle gangs?

Commissioner Stewart: I will just confer with one of my colleagues. Thanks, Mr Crandon, for that question. Yes, I understand there have been three persons who were not members of OMCGs who have been charged under VLAD related legislation.

Mr CRANDON: You probably would not have any detail on those here? Is it possible for you to give us some detail around that on notice?

Insp. Carroll: I do know of two matters in relation to drug matters—two of those three—who were sentenced under the VLAD regime.

Mr CRANDON: There are three of them, though? You are comfortable there are three? Could you give us that information?

Ms McAnally: There are three individuals who have been sentenced with the VLAD circumstance of aggravation. All three pleaded guilty to the offence so the legislation was not tested at trial. The penalties imposed would tend to suggest that they did take up the legislative ability to cooperate. Perhaps we could take this on notice. While those convictions are in the public arena, we could perhaps provide the details of those cases in writing.

Mr CRANDON: Yes, if you could do that for me. Commissioner, once again, do you have any concerns around the scrapping of the 2013 stop, search and detain powers and what they might do in that they might be detrimental to front-line policing? Can you elaborate on your views in that regard?

Commissioner Stewart: Thank you, sir, for that question. No, I do not, on the basis that there has been a lot of discussion and there was certainly, in the formulation of the new legislation, adequate powers for us to stop, detain, search, seize under the new legislation, particularly around the consorting laws. Whilst the old legislation has gone, it has been replaced by the equivalent within the consorting legislation.

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Mr CRANDON: In this legislation there is a weakening of bail laws. I would need to go back through it. I am hopeful you have got your head around that. Do you have any concerns about the reporting of extortion offences and so forth? If these guys think they are going to be locked up once they have been reported and locked away for a while, with the weakening are there any concerns about people not making those complaints?

Commissioner Stewart: As with any matter, the merits of the case will be tested through the court process and the seriousness of the types of offences that they may have committed. Our ability to challenge a bail application is still there. It is just that it is not a deemed arrangement or an automatic arrangement as it was under the previous legislation.

Mr CRANDON: That is right. It was just assumed.

Commissioner Stewart: This is something that we do in relation to all other criminal matters.

CHAIR: Member for Coomera, I am going to go to the member for Capalaba.

Mr CRANDON: We were going to get an answer from Ms McAnally.

Ms McAnally: Just to dovetail with what the commissioner has said, the repeal of the 2013 Bail Act amendments was a unanimous recommendation of the task force. That was, from memory, based largely on the fact that the task force as a whole considered that the provisions that existed prior to 2013 gave the courts the ability to refuse bail based on the seriousness of the offence and all of the circumstances. There is a new amendment being made to the Bail Act. Just to make it crystal clear, in the event that bail is granted to certain individuals, the risk they pose to the safety of the community includes, in effect, conditions that are analogous to what can be imposed under the new control orders in the sense that, to make it clear, the conditions that can be imposed can be anti-association conditions, place restriction conditions, just to dovetail in to the control order regime for the people who are not yet convicted and fall under that scheme.

Mr BROWN: In regard to the new definitions of 'criminal organisation' and 'restricted premises', can you see the ability to enter premises that are not just outlaw motorcycle clubs?

Ms McAnally: That is correct. These restricted premises orders will not be confined to outlaw motorcycle gang clubhouses. That is consistent with the findings of the task force and as adopted by the government in its new organised crime regime. It is intended to target all forms of organised crime. These restricted premises applications can be made in relation to other premises, like premises being used to sell drugs, premises where there is indecent conduct occurring or entertainment of a demoralising character. It should extend to the offences that were identified in the commission of inquiry report as presenting the biggest risk to a Queensland perspective in terms of organised crime: drug offences, child sex offending and potentially boiler room fraud type scenarios—but particularly those drug syndicate premises.

Mr BROWN: Why did you say 'potentially boiler room fraud'. What is the barrier?

Ms McAnally: No barrier, it is just a matter of ensuring that we capture the definition. It just needs to fit within one of those disorderly activities. One of the keys to that is the fact that, as was highlighted at the beginning, these are either-or and the presence of a recognised offender, which is someone who has a conviction of an offence carrying a maximum penalty of five years or more or some particular prescribed offences that carry a lower maximum penalty but are often associated with organised crime, at the premises would be enough to ground an application.

Mr BROWN: Such as a nightclub where there is the selling of drugs? If there are three or more people, that is an organisation.

Ms McAnally: No, the restricted premises scheme specifically does not apply to licensed premises which effectively allows licensed premises, if they are lawfully allowed to have adult entertainment or sell alcohol et cetera, to continue on with their business. These restricted premises orders will apply only to non-licensed premises.

Mr BROWN: The consorting laws will only kick in if there are three or more people?

Ms McAnally: The consorting laws or other criminal offences under the Criminal Code. The public safety orders would apply if the police became aware that there was going to be some sort of incident or event involving individuals who pose a security threat or public safety threat to the premises, and certainly the serious organised crime circumstance of aggravation, which is to replace the VLAD act, would absolutely apply to offending that may happen in a licensed premises.

Mr MOLHOEK: What happens if the licensed venue operators—

CHAIR: I do not think the member for Capalaba has finished.

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Mr BROWN: Thank you, Chair. Commissioner, in a report earlier this year leading into the task force submission you said in the *Courier-Mail*, 'And so we've got to be ready and equipped to deal with crime wherever it bobs up.' Do you feel that these laws ensure that your officers are ready and equipped?

Commissioner Stewart: Whilst the committee may not want my opinion, I think the laws certainly are much broader now in relation to organised crime than what we have previously had, particularly the issue around the new orders—the public safety order, for instance—that we have not had before. The type of example I could give you there, and probably the best example, would be at Carrara at the Royal Pines Hotel, where two bikie gangs met several years ago and became engaged in a fierce running battle where people were shot. There was a significant amount of damage. If we become aware that such an event is about to occur, we can issue a public safety order to deter those people from meeting—so effectively stopping events like that actually occurring. That will only occur if we get the intelligence and information that we need that is strong enough to get the order. In a case like that, a distressed partner of one of the participants, someone who has just found out that their partner is going there for that purpose and does not want to become involved, gives us that direct information and that gives us the ability to issue one of those orders for a short period of time to stop the event happening. That type of extra legislation and power I think will prove to be very beneficial to the community, particularly in aspects of public safety.

Mr BROWN: In regard to the changes around paedophilia, it is my understanding that operationally, because of resources, intervention and charges happen more towards when grooming is about to occur. Do you see the changes to these laws will give a benefit to your officers to intervene in in an earlier stage than that?

Commissioner Stewart: Certainly the consorting laws will be effective in dealing with this type of behaviour. One of the reasons activity to charge offenders often waits until a particular point in an operation is more about evidence gathering and people's intentions becoming clearer at a particular stage before we take action. This certainly does give us the ability to pre-emptively warn people about their associations with others within perhaps a network.

Mr BROWN: When these laws were introduced there was a report saying that you were comfortable with the legislation. For the benefit of *Hansard*, is that correct?

Commissioner Stewart: Again that is an opinion. I have been involved right through, as the head of the organisation, in the consultation that has developed this suite of legislation. The Queensland Police Service was very grateful that we were consulted to the level that we were. There has been a lot of work in preparing this new suite of legislation. I think it should be commented on that it is a suite of legislation—and this is the advice given to us by New South Wales—which makes it quite powerful.

Mrs STUCKEY: I wanted to speak about the use of criminal intelligence, particularly in relation to the difference in this new legislation to the Tattoo Parlours Act. I heard you say the application is still rigorous, they are still doing criminal history checks, and yet somehow there has been a need to separate out the Tattoo Parlours Act.

Mr Ford: The Tattoo Parlours Act is a somewhat unusual piece of legislation from an occupational licensing point of view. The way it currently operates is we provide information to the Police Commissioner or the QPS on applicants for tattoo parlour licences and we get back essentially a binary response which is yes or no. We do not look behind that. It is a black-box process. If the answer is no, we are obliged by law to reject that licence application. The applicant does have the opportunity to appeal to QCAT but, again, hearings for those applications are held in private. The applicant has no opportunity to provide any information which may justify their case or to give them any sort of natural justice in the licensing process.

The Wilson recommendations were quite strongly of the view that we ought be putting in place a more normal—still not a weak regulatory process and still not a weak licensing process—and more transparent licensing process where natural justice was given to the applicants to understand why their application was being refused and the opportunity for them to defend their position more appropriately before QCAT if they had an appeal against the rejection. The tattoo parlour legislation still involves us doing thorough police checks on applicants and all of the other sorts of checks that we would normally do for other areas of high-risk occupational licensing—and the best illustration is probably security providers, because the legislation is crafted very similarly to the security providers legislation—and we still very much rely on information from police. Because the black-box situation does not exist anymore with the binary response, we cannot actually use criminal intelligence in the formulation of or response to an application because that would not enable us to then, because of the nature of criminal intelligence, give the applicant natural justice were we inclined to reject that application. It fits with the overall theme that has come through which the government has accepted—that occupational licensing

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processes should be of a very high standard but should be transparent and that the tattoo parlour one particularly should be more normalised, if I can put it that way, to meet with other licensing standard arrangements.

Mrs STUCKEY: I hope you can understand there are some concerns about that. Living in Currumbin, we still have a bikie clubhouse that is owned by that particular bike club, so I do have a community that has genuine concern and the sight of patched gang members out and about in the community again has actually raised those alarm bells quite a bit. Under the new law, will it be easier for new clubhouses to open and existing clubhouses to reopen, because from what I am reading in this bill it is only guaranteed that they stay closed for two years and after that it goes to court? Could someone please give me some confidence in this?

Ms McAnally: I could speak to the legislative framework and then perhaps the commissioner could speak from an operational perspective in terms of that. The legislation under the Peace and Good Behaviour Act is effectively divided into two parts—the premises that have not yet been declared and the 2013 clubhouses. If I deal with the 2013 clubhouses first, basically under the legislation they will automatically be deemed to be restricted premises for the purposes of the new restricted premises order scheme. What that means is that police will have the full powers that associate with those restricted premises declarations and that means that they can conduct warrantless searches on an unlimited basis for the duration of that two-year period. When they go into those premises, they can effectively seize all prohibited items, and the legislation gives an extensive list of what that means. They can basically strip those clubhouses out over and over if they needed to. At the end or coming closer to the two-year mark for those particular premises, the police can come and make another application as to whether or not a further extension of the restricted premises declaration should be made and they can do that indefinitely for two-year intervals moving forward.

In terms of the information upon which they can base their applications, the legislation expressly provides that they can look at past conduct. For example, the conduct that may have led to those particular premises being prescribed in 2013 can be taken into account by the court and also the likelihood that that would occur again in the event that the restricted premises declaration is removed. Additionally, they will be able to look at any contraventions of the restricted premises orders and any results of the property found or the information gathered during the execution of those searches. Similarly then for new premises, if there were organised crime groups or not even organised crime groups but premises that fit the definition of disorderly activities occurring, police can go to the court and make this application. Again, they would then have those extensive warrant list search powers where they can go in and seize those items. There is a very limited window within which applications can be made to not have those items forfeited and after that they are gone. Operationally though in terms of how they will be policed, that would then be a matter for the commissioner.

Commissioner Stewart: New South Wales has very similar legislation and they have been quite successful by consistent and sustained operations against any of these clubhouses that attempt to open. As you just heard, the ones that are closed now will remain closed for a minimum of two years and during that time should we believe and have evidence that they are going to try and reopen—and we understand that the new legislation criteria fits some of the activities that are going to occur there and we have evidence of that—obviously we can apply for another order to keep it shut. This will be a rolling arrangement if the evidence exists. In relation to the two new ones opening up, again the legislation is quite clear about the type of conduct that is trying to be controlled and obviously we will be very carefully scrutinising what is occurring at those premises to give us the opportunity to try and shut them down under the legislation that will exist.

Mrs STUCKEY: Thank you. With time being precious today, I appreciate that and you can be assured that I will be contacting my local officers very regularly to keep an eye of this fortified place. The previous Criminal Organisation Act 2009 led to no criminal organisations being declared. Why did the QPS find that legislation so cumbersome?

Commissioner Stewart: The issue around that legislation became quite public in terms of the ability for individuals involved in the organisation to simply change tacts, meaning that if we went after an organisation called the Hells Angels outlaw motorcycle gang and at the last minute they all patched over to the Uhlans, for instance, there was nothing left to make the order against. When that became better understood and given the amount of work that had to go into the declaration process, which was quite lengthy, it obviously became almost irrelevant to try and take that course. The legislation was not effective in that regard.

Mrs STUCKEY: Finally, do you acknowledge that the new ban on bikies wearing colours in public may make it more likely that police will pull over so-called innocent bike riders more easily?

Commissioner Stewart: No. In fact, I would take you back a couple of years when that was the concern of many recreational motorcyclists. I have not seen one complaint in the last two years—official complaint or formal complaint—about a recreational motorcyclist being pulled over. It was a perception; it was a myth. I think the professional conduct of our officers has demonstrated that that is not a problem.

Mrs STUCKEY: Thank you.

Ms PEASE: I am just wondering if you could give some information about international experiences with regard to the wearing of colours. I understand that a Canadian court has found beyond reasonable doubt that chapters of the Hells Angels Motorcycle Club use colours as a brand name to intimidate, threaten and extort. Also the Australian Criminal Intelligence Commission has identified outlaw motorcycle gangs as one of the most high-profile manifestations of organised crime which have an active presence in all Australian states and territories. OMCGs have become one of the most identifiable components of the Australian criminal landscape and identify themselves through the use of their colours. Do you have any comments with regard to that, and I am not sure who might like to respond to that? Does anyone have any experience with international courts?

Commissioner Stewart: Only what I read in conference papers and documents and law enforcement articles on this type of issue. I think the basis on which the new legislation has been brought forward is for that exact reason—that colours are a form of intimidation in their own right, and it is not just the colours; it is the insignias and specific iconic insignia that often OMCG members will wear on their clothing. That is consistent across OMCGs; it is not just for that particular club. I do not know whether the Wilson review looked at this specifically, but certainly that has been at the heart of the legislation being developed because we know that people become threatened by just simply the fact that that person is wearing an insignia or a particular—

Ms PEASE: An insignia meaning a badge or a panel?

Commissioner Stewart: Absolutely, yes.

Ms PEASE: Further to that, I am not sure if you are aware but the opposition leader has stated that what they wear is not as important as what they do in respect of bikie colours. I think you might have already answered this but just to reiterate: how important is this government initiative to you with regard to the banning of colours?

Commissioner Stewart: I am very grateful that we have in this suite of new legislation a specific piece of law that says that OMCG members cannot wear colours in public and they are described and particular insignia have been described in the proposed legislation. There is the ability to also add to that list of prescribed iconic paraphernalia, meaning the types of signs that they wear such as the 'one per centers' for instance. Over time, even though that might change, we will have the ability to request changes to the regulation to add extra pieces that might reflect that.

Ms PEASE: Moving on to child exploitation—and, again, I am not sure who might like to answer this or talk to this—I understand that child exploitation is prolific and it is growing as the use of the internet and the web is expanding and I note that obviously there have been some gaps in the legislation to protect children against this type of exploitation. Is that the reason why and how quickly is the new legislation going to grow and adapt as technology grows, changes and morphs? How quickly can this legislation respond to these changes?

Ms Shephard: The commission of inquiry obviously made a number of conclusions around the proliferation of child exploitation material and the growing use of the internet, particularly the dark web, with regard to this and also the extremely concerning behaviour of these highly structured and sophisticated paedophile networks using the dark web where being able to remain a member or climb the ladder of membership was dependent on providing fresh child exploitation material to the network. Of course that was therefore feeding not only the distribution and possession of child exploitation material but the actual exploitation and abuse of children by making fresh child exploitation material. That was the reason why the commission of inquiry made a number of recommendations. One was that the maximum penalties for involving a child in making child exploitation material or making child exploitation material should be increased from 14 to 20 years imprisonment and also that there should be this new circumstance of aggravation to apply not only to existing CEM offences but the new offences if the darknet or any other encrypting or anonymising device is used in facilitating this type of offending.

Also, the bill picks up the commission of inquiry's recommendations around creating these new offences applying to administrators of such websites. That is definitely filling a gap. The commission of inquiry noted that of course the party provisions of the Criminal Code that allow someone who aids and abets an offender to be charged will not necessarily pick up administrators where it is difficult to prove that causal link between what the administrator has done and the actual commission of the substantive

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child exploitation material offences. The bill creates this new offence that applies to administrators. It creates new offences that apply to people who distribute information to assist people in avoiding being found by authorities or marked by authorities. The bill very much focuses on addressing that issue.

Ms PEASE: With regard to that, are there any protections for people who find that their network is being used or utilised as a tool? What sorts of protections are there for those people who are not aware of the use of their network?

Ms Shephard: The new offence creates or inserts a defence that applies to administrators. I will turn to the actual section. A defence of the new offence is if the administrator can prove that, when they became aware that the website they were administering was being used to distribute child exploitation material, they took all reasonable steps in the circumstances to prevent use of the website for that purpose. Examples are provided in the legislation as to what steps might suffice.

Ms PEASE: Would they be required to report it to the police?

Ms Shephard: For example, if they have reported it to police and then followed the instructions of the police.

Ms McAnally: Could I also add to that in terms of the bill? Largely drawing on the findings of the commission of inquiry report, the bill also picks up those new offences and the child exploitation material offences for the new serious organised crime circumstance of aggravation. If you have an organised crime group involved in the exploitation of children, the new circumstance of aggravation, if met, can be indicted as part of the charges against that person. Of course then the new targeted sentencing regime would apply to them. The only way in which they can effectively overcome that targeted regime is through cooperation which again might offer to the Queensland Police Service in terms of breaking these networks.

Ms PEASE: Is there any possibility of consorting if they are only consorting over the internet, having conversations over the internet?

Commissioner Stewart: Absolutely. That is one of the benefits of the new legislation. It allows a meeting to be a phone call, a text, an email, a chat room conversation—all over the internet. That is possible.

Ms PEASE: In that instance, with consorting you would not do the pre-emptive warning. There would not be an opportunity for that.

Commissioner Stewart: No, you would be finding the information of the meeting. That is what I was saying earlier. The pre-emptive warning is not necessarily going to be used on all occasions. Can I also add to the explanations that have just been given? One of the benefits also in the new legislation that is being allowed is giving police the power to get search warrants to force people to give us access to the darknet or areas of the internet that are actually encrypted and what have you. Interestingly enough—and, please, if I am wrong on this I apologise; I am sure that my friends from Attorney-General's will tell me very quickly—in the case where you have a third party that has access to a particular device, we can go to that third party with a properly ordered search warrant and force the third party to give us access.

In the case in America recently—I am just double-checking; this is quite amazing when you think about it. You all know of the story recently where the FBI wanted to get at a phone record and Apple refused. Ultimately, it was resolved, as I understand it. I know how it was resolved. If Apple were served with a properly constituted search warrant under the circumstances, if we could get one, they would be legally then required to give us that information. It stops that sort of problem. When you think about that, we know that when accessing the information even paedophiles and other organised criminals have to go through service providers. There is the opportunity to attack their encrypted devices and their encrypted conversations in that way.

Mr MOLHOEK: My first question is to the commissioner. Up-front I want to ask: are you fundamentally happy with these new anti-consorting proposals?

Commissioner Stewart: Thank you for the question. Again, this would just been an opinion from me. What I am grateful for is that we have had the opportunity to be involved in the development of the new legislation. I think it provides an appropriate balance that will help protect the community from organised criminals. It will help protect our officers in their work. When looking around Australia, I think it has taken some of the best legislation that exists and has certainly enhanced some of that legislation.

Mr MOLHOEK: Commissioner, I understand that during the Wilson review of COA you were reported as saying that traditional consorting laws were a thing of the past, that it was getting increasingly difficult to police. What has changed since then?

Commissioner Stewart: I am not sure that I said that. In fact, there was no evidence given to—

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Mr MOLHOEK: I will read the quote—

Traditional consorting laws were repealed in Queensland in 2005, and when in place those laws were increasingly difficult to police. The Queensland Police Service considered there were greater priorities for investigative staff than enforcing consorting laws which had been enacted in the 1920s. Contemporary communications technology, including mobile phone, SMS and online forums make criminal consorting less reliant on physical contact and therefore much more difficult to police.

Commissioner Stewart: I think you have hit the nub of it in that the new legislation is not like traditional consorting law which was officers having to go to pubs and racecourses and what have you looking for physical meetings of criminals or individuals. The new legislation under this regime provides for all of those areas to be policed now. If A is meeting with B and C because they are texting them, that is a meeting. As long as it fits within the legislation, that can form part of the trigger to provide the first warning. It is the same with all of those other means of communication.

Traditional consorting is something that I could never live with in terms of trying to enforce those laws. This is 21st century legislation which is directly impacting and targeting organised criminals in the way that they try to plan to meet to do business in the criminal world. The legislation has been carefully crafted so that it is not the old style. I do apologise. I do not know if the quote was attributed to me—it may well have been—or it may have been attributed to a submission that we did for the Wilson review.

Mr MOLHOEK: One of the things I am struggling with, and I thank Carolyn for the explanation earlier, is I am trying to get my head around how you are going to police the whole A meets B, then A meets C and then B meets C. How do you police that when there are so many hidey holes in nightclubs and back alleys—there is the back of my office on occasions—where these people can consort and meet?

Mr CRANDON: He does not mean the back room of his office.

Mr MOLHOEK: No, I mean the car park out the back of my office.

Commissioner Stewart: Thank you, sir. That is a very good question. What it means is that we need to have the types of electronic monitoring systems in place that would allow us to deal with a lot of that.

Mr MOLHOEK: We will be pinging them, will we?

Commissioner Stewart: I think there will be two distinct groups of people who we will be going after. One will be the ones where our front-line people come across—not accidentally but certainly come across—a group of people meeting, so there will be times where it will be the physical meeting. I think more and more, particularly with the breadth of organised crime that we are dealing with now—and remembering that this is not just the Queensland police; we can rely on evidence from other agencies, meaning the Australian Crime and Intelligence Commission, certainly our other law enforcement brothers and sisters from around Australia in particular—we will be able to take note of electronic transmissions. What is particularly important in this whole thing is the ability for us to seize things like mobile phones with that stop, search and seize.

Mr MOLHOEK: How will we know whether they have been texting each other?

Commissioner Stewart: By seizing the phones and downloading the information off the phones. That is one of the important parts of the legislation.

Mr MOLHOEK: What if they all happen to get together at the V8 Supercars in a couple of weekends? How will we track or manage that?

Commissioner Stewart: Absolutely. That is with things like CCTV in public spaces. More than ever in our history we have access to physical recorded meetings of people and also where they might meet electronically. More and more we have access to that.

Mr MOLHOEK: Of the members of the task force, how many of them are actually residents of the Gold Coast or have lived or worked at the Gold Coast for any length of time?

Commissioner Stewart: Sorry, sir, which task force?

Mr MOLHOEK: The task force led by Alan Wilson that put forward the recommendations.

Commissioner Stewart: I might hand back to Carolyn.

Ms McAnally: I might have to take that on notice because I do not know their residential addresses. It was organisations on the task force, for example, the Bar Association, the Queensland Law Society, the Queensland Police Union, the commissioned officers' union and the Queensland Police Service. While they sent representatives on behalf of their organisations, they were speaking—

Mr MOLHOEK: I guess what I want to know is how many of those representatives have actually lived and breathed the Gold Coast culture and know the city? This is a very personal issue for me. I have lived with it for the last three years. I am sure the commissioner will remember the day that I was

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briefed and instructed to give my kids your mobile phone number as an alternative to 000 at the height of it. I think it is important as a Gold Coaster, and it is no coincidence that there are three of us here, to know how many of you as a panel and how many of the task force members actually understand and know the culture of the Gold Coast and have been there and have come as representative voices from it. I would like to place that as a question on notice.

Ms McAnally: I will also indicate that the process of the task force, as I said, was they did proactively seek public submissions and, in fact, a number of submissions were received by the task force including—and this is from memory—from the mayor of the Gold Coast. The task force also received information not only from the Queensland Police Service but also from the Crime and Corruption Commission around the operational issues and public safety threat posed by organised crime groups but in particular outlaw motorcycle gangs.

Mr MOLHOEK: The member for Currumbin has just handed me the list. I do not actually recognise a single name on that list of task force contributors as being anyone who has actually had any active or proactive experience on the Gold Coast.

CHAIR: What list are you referring to, member for Southport?

Mr MOLHOEK: This is the attachment 'Task force members and records of meetings as part of the process of the task force on organised crime legislation'.

Mrs Robertson: I can just say that we note those comments. I do not think we can take that any further.

Mr MOLHOEK: I would like to place that as a question notice.

Mrs Robertson: Can I just clarify your question on notice?

Mr MOLHOEK: How many of the task force members have actually lived or worked on the Gold Coast in a policing role or a relevant role?

CHAIR: I am going to rule on that being irrelevant. That is out of order

Mr MOLHOEK: Point of order, it is not. I am entitled to ask the question.

CHAIR: Well, it is and I have ruled on that so we will not proceed any further. Do you have another question?

Mr MOLHOEK: I have a question in regard to an issue Carolyn McAnally touched on. If there is consorting in a licensed venue, what are the obligations of the licensed venue operators or owners?

Ms McAnally: Perhaps I might hand over to Deputy Director General David Ford in terms of the obligations on licensees and the staff, for example, in terms of outlaw motorcycle gangs. In terms of actual acts of consorting I will hand over to the commissioner. Effectively, from a pure legal perspective, the consorting draws upon that ability for the police to issue those retrospective warnings which does not require them to contemporaneously witness every act of consorting. They can draw upon video surveillance, for example, if they received information that particular individuals were mixing with each other.

Mr MOLHOEK: So the operator is under an obligation to provide video footage?

Ms McAnally: That is not legislatively provided for in terms of the consorting regime, but there are specific obligations on the licence holders in terms of certain individuals.

Mr Ford: In terms of the provision of things like CCTV footage, in any licensed premises where it is appropriate for it to be a licence condition, the provision of CCTV footage would be a licence condition and that generally applies to late-trading premises across-the-board, which I guess would be the places that you would be most likely to be seeking that sort of information from. In terms of the actual legislative requirements in this piece of legislation, though, the only changes to the licensee's responsibilities—and they are not really changes—are the continuing responsibility to ensure that people wearing colours are not able to be present on the premises.

CHAIR: Ladies and gentlemen, thank you for your time. The time for this briefing has now expired. We appreciate your evidence that has been provided to the committee today. Some of you have been given homework to do in respect to providing answers to questions on notice.

Mrs Robertson: Can I clarify, is it in order for us to touch base with the committee secretariat in relation to that?

CHAIR: Of course. Those responses to questions on notice are required by 5 pm on 4 October 2016. I thank Hansard. I now declare the hearing closed.

Committee adjourned at 5.02 pm

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