



Taskforce on Organised Crime Legislation Issue 5: Criminal Code Offences created by 2013 legislation and VLAD

1. Introduction

The statutory functions of the police service are outlined s 2.3 of the *Police Service Administration Act 1990* (PSAA) and include the following—

- (a) the preservation of peace and good order—
 - (i) in all areas of the State; and
 - (ii) in all areas outside the State where the laws of the State may lawfully be applied, when occasion demands;
- (b) the protection of all communities in the State and all members thereof—
 - (i) from unlawful disruption of peace and good order that results, or is likely to result, from—
 - (A) actions of criminal offenders;
 - (B) actions or omissions of other persons;
 - (ii) from commission of offences against the law generally;
- (c) the prevention of crime;
- (d) the detection of offenders and bringing of offenders to justice;
- (e) the upholding of the law generally;
- (f) the administration, in a responsible, fair and efficient manner and subject to due process of law and directions of the commissioner, of—
 - (i) the provisions of the Criminal Code;
 - (ii) the provisions of all other Acts or laws for the time being committed to the responsibility of the service;
 - (iii) the powers, duties and discretions prescribed for officers by any Act;
- (g) the provision of the services, and the rendering of help reasonably sought, in an emergency or otherwise, as are—
 - (i) required of officers under any Act or law or the reasonable expectations of the community; or
 - (ii) reasonably sought of officers by members of the community.

These functions represent the broad service delivery responsibilities of the Queensland Police Service (QPS) and influence the resources and effort that is applied across the spectrum of policing operations. The way in which the QPS meets these varied responsibilities is critical. The QPS cannot meet these legal obligations without the support of the community, and therefore, legitimacy in the eyes of the

community. Without public confidence and support there is no legitimacy for policing activities. The QPS considers that two key aspects potentially influence public confidence in and legitimacy of policing operations:

- the effectiveness of the capability, in particularly the legislative tools provided to police; and
- the way in which the QPS goes about meeting these responsibilities.

Ineffective capability and legislative tools, reduce the ability of the QPS to effectively respond to public safety concerns. The QPS considers that the legislation put in place in 2013 has been effective for the purposes for which it was enacted. For example, OMCG are no longer using their public presence in a mass way to intimidate and facilitate criminal offending. This paper provides further information in support of this view. However, the QPS does not in any way suggest that the problem of has been solved. The legislation is an important tool but remains only one component of a suite of tools that allows the community to respond to serious and organised crime.

Removing and reducing the existing suite of legislation provided to enable the QPS and others to respond to organised crime, without the introduction of improved and more effective legislative tools, will reduce the capability of the QPS to respond, a consequential reduction in public safety, with a flow through impact on community confidence in police and government.

The operational effectiveness of the legislation is not the only relevant consideration. For the QPS to be considered legitimate by the community, it must actually achieve the responsibilities as prescribed by legislation in a manner which is acceptable to the community. This includes balanced legislation that contains appropriate safeguards to guard against the risk of inappropriate behaviours, including the misuse of the powers provided and corrupt practices.

The QPS supports the need to review the existing safeguards in the legislation in this regard. The legislation has not made association completely unlawful. The legislation does not prevent OMCG from meeting in their private homes or premises for legitimate purposes nor does it prevent OMCG riding individually or in pairs whilst displaying their colours.

Within this context, the policy and legislative tools provided to police must keep pace with changing trends in the organised crime community, both in terms of effectiveness and legitimacy. Fundamental to this is clearly defining the nature and scope of organised crime and criminal organisations/groups in Queensland. Understanding this context informs the nature and extent of the organised crime problem in the future, and subsequently, the policy (including legislation) and policing operations required to address the problem.

Identifying a precise and comprehensive definition of organised crime is a challenging exercise. Whilst there are a number of discrete definitions of organised crime contained in various statutes or strategies, which reflects the achievement of discrete objectives, the literature suggests an inability to settle on a single 'one case fits all' definition of organised crime. This reflects the fact that organised crime extends across a range of activities, enablers and criminal enterprises and is constantly changing and evolving.

Activity in Queensland in recent times has focused on the involvement of Outlaw Motorcycle Gangs (OMCG) in organised crime in Queensland. The QPS considers that there are good reasons for this and this paper will put forward information in support of this view. OMCG reflect the traditional hierarchical model of organised crime, characterised by being easily identifiable in nature with a high profile public persona. However, OMCG are only one of a number of organised crime groups operating

in Queensland and only one of a range of organised crime types or operating models creating a threat to the community.

2. Organised crime typologies and models

Typology

In her review of organised crime typologies, Le (2012) claims that research in this field has been disjointed, with typologies being developed in isolation, and 'generally in response to organised crime occurring in a particular social and cultural milieu'. From a theoretical perspective Kleemans (2014) agrees that research in the field has been underdeveloped, but claims this is in part due to the diversity of subject matter.

Much of the literature in this area of research categorises serious and organised crime into three broad typologies: structural, activity based, social and/or cultural (Le 2012; Albanese 2015). In 2002 the United Nations Office on Drugs and Crime (UNODC) developed a SOC typology consisting of five models:

- *Standard hierarchy*: Single group with strong ethnic or social identity;
- *Regional hierarchy*: More autonomy and independence, control over territory and/or location;
- *Clustered hierarchy*: Smaller groups / cells join together to coordinate activities and enterprises;
- *Core group*: Unstructured group surrounded by larger network, flat/horizontal organisational structure, brought together by nature of illegal activity, not ethnicity; and
- *Criminal network*: Loosely organised, highly adaptable/fluid, membership dependant on skill set required at any one time, however little research or evaluation of the validity of these models has been tested.
(Le & Lauchs 2012; Lyman & Potter 2007).

Kleemans (2014) proposes six models or approaches which align somewhat with the broad typologies outlined previously:

- *Alien conspiracy model*: Assumes migrants have imported criminal activity, with ethnicity / culture being a central, defining characteristic of organised crime groups;
- *Bureaucracy model*: Organised crime is seen as a formal, pyramid-shaped organisational hierarchy, with clear division of tasks, codes of conduct and internal and external sanctions;
- *Illegal Enterprise*: Emphasises similarities between illegal and legal activities. Offenders are seen as rational beings, profit-orientated and driven by the rules of supply and demand. In this model restricting supply of a commodity (illegality) does not stop demand, but rather 'only altering market conditions for illegal enterprises';
- *Protection theory*: Based on historical Mafia control of certain territories and market sectors, often through the use of violence and in literature and international legislation referred to as 'racketeering'.
- *Social embeddedness, social capital and criminal networks*: Acknowledges that organised crime does not occur in a vacuum. Rather it interacts with the social environment. Therefore, in explaining the phenomenon it is necessary to understand social ties and interactions. Offenders find opportunity through friends, family and acquaintances to facilitate access to resources such as money, knowledge and contacts. Social embeddedness theory when applied to organised crime networks 'seeks rather than assumes structure'. In doing so it is able to explain the flexibility and resilience of organised crime networks, positing that no one is really irreplaceable - even the most important member can be substituted. Traditional hierarchical models focus

attention on ‘bosses’ or ‘lieutenants’, whereas this perspective highlights the importance of the role of ‘facilitator’, those who provide important services to criminal organisations; and

- *Situational approach*: Is not interested in the underlying causes or motivations of offenders, rather it focuses attention on environmental opportunities and constraints. This approach is not primarily focussed on organised crime in general, but is most effective when employed against specific criminal activities (eg. cocaine smuggling). Criminal activity is conceptualised as a series of events or opportunities and successful intervention involves finding ways to increase the effort and risks whilst reducing rewards.

The QPS experience is that organised crime does not always fall neatly into a single category and can vary across one or more of these typologies depending on time, place and circumstances.

Emerging issues:

One of the key principles that has emerged in contemporary literature relates to the instability and/or flexibility of criminal organisations and/or crime groups. For example, the Victorian Law Reform Commission (2015) states that:

‘Criminal organisations / organised crime groups do not necessarily have stable organisational structures with well-defined member roles and fixed group identities based on common interests or activities, place of origin (such as prisons), or familial relationships and ethnicity. Instead a shift has been detected towards more flexible, entrepreneurial groups that are open to instrumental associations across ethnicities, and that operate in multiple criminal markets and across jurisdictions’.

A strategic overview of German and European organised crime issues also addressed this concern, claiming that:

‘A special problem is posed by the loose, professional networks without any hierarchical superstructure which come together as the need and circumstances dictate and whose ephemeral nature calls for specific investigatory and intervention techniques’ (Morbel & Schmidt 2007).

This is confirmed in the UK, where research reveals a changing picture to that of the ‘close-knit family ties of the silver screen’; instead there now exists a:

‘Complex and shape shifting world of career criminals, conglomerations who temporarily join with others to commit crimes until they are completed then reform with others to commit new crimes’ (Wall & Chistyakova 2015).

Definitions

The term ‘organised crime’ has long been a topic of discussion, particularly with reference to the development of a cohesive and comprehensive definition. There is no consistent or universally applied definition – these vary among national and international jurisdictions, law enforcement agencies and academia.

The UN Convention against Transnational Organized Crime (UNTOC) is the only existing international convention dealing with organised crime. However, it is specific in not containing a precise definition of organised crime. Instead it defines an ‘organized criminal group’ as being:

- a group of three or more persons that was not randomly formed;
- existing for a period of time;

- acting in concert with the aim of committing at least one crime punishable by at least four year's incarceration;
- in order to obtain, directly or indirectly, a financial or other material benefit.

In providing this definition, the UN advises that 'the true defining characteristics of organised crime groups under the Convention are their profit-driven nature and the seriousness of the offences they commit' (UNODC 2015).

In Queensland the *Police Powers and Responsibilities Act 2000* (Schedule 6) does not mention the monetary or profit driven nature, defining organised crime as:

'An ongoing criminal enterprise to commit serious indictable offences in a systematic way involving a number of people and substantial planning and organisation'.

However, the *Crime and Corruption Act 2001* (schedule 2) expands on this definition:

'organised crime means criminal activity that involves—
(a) indictable offences punishable on conviction by a term of imprisonment not less than 7 years; and
(b) 2 or more persons; and
(c) substantial planning and organisation or systematic and continuing activity; and
(d) a purpose to obtain profit, gain, power or influence'.

Albanese (2015) reviewed a range of academic and government literature across a 50 year period and developed the following definition of organised crime:

'Organized crime is a continuing criminal enterprise that rationally works to profit from illicit activities that are often in great public demand. Its continuing existence is maintained through the use of force, threats, monopoly control, and/or the corruption of public officials'.

Measurement

Von Lampe (2004) identifies one of the major concerns with a lack of definition consistency, is the ability to measure organised crime. Mackenzie and Hamilton-Smith (2011) also identify this, commenting that:

'A failure to agree what organised crime is compromises its measurement and claims as to the beneficial effects'.

As there is no likelihood of a universal definition being developed, it is crucial that an agreed understanding of units of analysis exists. Given the complexity of organised crime the process of measurement is likely to vary. For example criminal activities may be measured, or criminal structures, each of which will require a different approach (von Lampe 2004).

Existing measures tend to focus on arrests, convictions and disruptions, quantifying success against organised crime as 'the volume of offenders behind bars, or the volume or value of illicit commodities seized' (Mackenzie & Hamilton-Smith 2011). Whilst numerical measures are easily understood they tend to be arbitrary and primarily reflect an agency's continuation of work carried out previously (as they are usually based on the previous year's results). What such measures do not take into account is the social impact of organised crime, the measurement of harm.

Many policing jurisdictions reference community harm reduction as an objective and/or outcome of strategies implemented to tackle serious and organised crime (see for example Western Australian

Police, the Australian Federal Police and the Australian National Organised Crime Response Plan 2015 – 18).

However, Paoli and Greenfield (2013) advise that social science and criminological research have so far been unable to develop a way of systematically identifying, evaluating or comparing harms associated with varying crimes, distinct from perceived crime seriousness, costs of crime or victim impact.

An analysis of a range of methods used by policing agencies to measure harm found it to be broadly conceptualised (social or economic harms for example), lacking definition and specific harm (or lack thereof) indicators (Tuskov 2012). The issue with this as indicated by Sproat (2014) is that:

‘The phrase ‘harm reduction’ combines two vague words in the way ‘community policing’ does, and like the latter, this enables a range of credible but very different definitions to be produced. Without clarity as to the meaning of the phrase, any organization set up to implement “harm reduction” is left with a credible excuse for procrastination rather than action’.

One way of considering harm is that asserted by Sherman (2013) who holds the view, that ‘the best way to compile meaningful evidence about reported crime is to give each type of crime a weight that represents how harmful each type of crime is, thereby creating a ‘crime index’ yielding a single bottom line’. Weighting can be based on a combination of metrics, the simplest being taken from sentencing guideline recommendations. Sherman claims that:

‘Weighting crimes on the basis of sentencing guidelines can be justified on good democratic grounds as reflecting the will of the people. Almost every sentencing guideline process in the US and UK has reflected awareness of opinion polls, debates and scrutiny by elected officials and news media. The scrutiny may not have been perfect. Yet it remains far closer to the will of the people than any theoretical or even empirical system of weighting that academics might develop. More important, it is readily available to be applied to any set of crimes, whether for an individual, a community, or a nation’.

Approaches

Legal and regulatory

A comprehensive analysis of legal and regulatory approaches to SOC is provided by Ayling (2013) using the legal systems of Australia (common law) and the Netherlands (civil law) as case study examples. It is claimed that Australia has taken a ‘top-down’ approach, through mandated governmental policy and law enforcement through the criminal justice system. New legislative models have been implemented as a preventative model, moving away from the previously reactive response to organised crime.

In contrast the Netherlands shares responsibility for the prevention of organised crime across government agencies, with both criminal and administrative legal systems being utilised. Taking a situational crime prevention approach that is not aimed primarily at the offenders themselves, this model focuses on ‘the circumstances that facilitate organised crime’. Within this model ‘criminal justice responses and administrative responses are seen as complements rather than alternatives’.

The Australian approach to serious and organised crime is characterised as ‘criminal law *plus*’, with the ‘plus’ representing the ad hoc use of a range of administrative measures including the ‘fit and proper person’ finding by regulatory agencies for the issue of permits and licences (such as liquor, firearms, security agents and crowd controllers).

Risk based

Tusikov (2012) outlines the underlying discourse related to risk in policing, claiming an emphasis on 'proactive, preventative and crime reduction approaches, such as problem oriented, community and intelligence-led policing'. Each of these strategies take a targeted approach to the identification, analysis and management of specific problems, people and places. It also acknowledges the finite resourcing of policing services that must be allocated towards those problems people and places that constitute the highest risk. Therefore SOG is seen as a specific type of crime risk, separate to others, which can be 'mapped, ranked and targeted according to the levels of threat and risk posed'.

Criticism of this approach for serious and organised crime is that the development of risk scales or matrices assume that it can be clearly differentiated from other crime (non-organised). However, social networks and illicit activities are not static, making determination problematic. Other issues relate to the validity of measures and 'law enforcements traditional preoccupation with drug or violence-related offences and lesser interest in other types of crime (fraud for example)'.

Types/Demographics

The Australian Crime Commission (2014) currently categorises serious and organised crime under six main areas:

- *Illicit drugs* - seen as the principle source of profit for SOC
- *Fraud* – categorised by type or industry involvement. Primarily superannuation fraud, mass marketed fraud, revenue and taxation fraud, financial market fraud, card fraud and identity fraud.
- *Financial crimes* – activities ranging from fraud to the active manipulation of the stock market, or laundering proceeds of crime.
- *Illicit firearms* – used to aid criminal activity and strengthen an organised crime group's market position.
- *Sport* – match fixing, trafficking of performance enhancing drugs for example.
- *Environmental* – biodiversity crime (illegal trade in flora and fauna), illegal fishing or logging, hazardous waste movement (dumping of oil) and banned substance crime. In Australia the most common forms of environmental crime are biodiversity, illegal fishing, poaching and pearl theft.

Interpol (2015) advises that serious and organised crime activities include 'trafficking in humans, illicit goods, weapon and drugs, armed robbery, counterfeiting and money laundering'. Matthews (2014) in analysing the five largest organised crime groups in the world claimed that despite the topic of cyber-crime being prominent in the media, most of the money from SOC still comes from 'drugs, sex and extortion'.

Whilst it may be that the types of criminal activity remain largely unchanged, the scope has changed across time. Serious and organised crime spans the spectrum from being localised geographically (ie. South East Queensland), to intrastate, interstate and transnational in nature and may be categorized against three primary objectives: the provision of illicit goods, provision of illicit services and the infiltration of business or government agencies (Albanese 2012).

UNODC (2015) discusses the diversification of organised crime, claiming it has 'gone global and reached macro-economic proportions', and that it now 'transcends cultural, social, linguistic and

geographical borders'. The diversity of crime types is discussed with a range of emerging crimes identified (some of which have been previously identified as being of concern in Australia):

- Cybercrime;
- Identity-related crime;
- Trafficking in cultural property;
- Environmental crime;
- Piracy; and
- Organ trafficking.

Von Lampe (2012) in reviewing the challenges for future research on transnational organised crime asks the question '*how organised is transnational organised crime*'? Analysis of existing research found a broad range of typographies:

'ranging from individual offenders flexibly using and expanding networks of criminally exploitable ties to offenders integrated into more continuous, vertically and horizontally differentiated organizational entities'.

In this analysis, the most typical demographic seemed to be:

'partnerships and small enterprises with two or three core members and ephemeral employer/employee relations on the one hand, and market-based transactions between independent actors on the other'.

Transnational Crime and Terrorism

Albanese (2012) claims that transnational crimes are separate from what is termed 'international' crimes, the latter involving 'crimes against humanity that may or may not involve multiple countries'. Within this category are crimes such as terrorism and genocide, the motivation being political or religious hatred rather than a monetary profit driven crime.

However, in their overview of transnational security issues and the US governments response to same, Rollins and Sun Wyler (2013) found that globalisation, developments in technology, trade and the finance industry have 'hastened the expansion of relationships between terrorists and transnational crime groups'. Further, changes in motivation of terrorist organisations (from nationalist and ethnic separatist to religion) has 'resulted in extremist movements that elicit sympathy well beyond a specific country or geographical area', with a greater potential for the two groups to overlap and interact.

Leong (2007) acknowledges a:

'growing awareness that contemporary organised crime groups and terrorist groups may not be that distinct, rather they are converging and becoming almost indistinguishable. A symbiosis between terrorism and organised crime has occurred that did not exist before'.

A recent United Nations Security Council (the Council) monitoring report indicated that the Taliban is heavily financed through organised and transnational criminal activities, including kidnapping, drug production and smuggling, extortion and illegal exploitation of minerals (Quinlan 2014).

Picarelli (2012) outlines how scholars and practitioners have adopted the term 'threat convergence' as a way of 'capturing the challenges arising from collaboration between drug trafficking, organised crime, terrorism and proliferation'. As with other research it is noted that 'networked forms of organisation are giving criminals and terrorists greater opportunity and motive, for collaborating with one another'.

The use of third parties or facilitators by both parties is highlighted as a commonality / link, particularly in the area of financial crime and the use of money launderers with the capacity to move funds globally. An emerging area of interest indicated in the research is the increasing use of private security firms by both criminal and terrorist organisations as ‘front’ companies, given they are a rapidly growing business sector.

3. Statistical Analysis

A number of public submissions received by the Taskforce argue that the ‘declared organisations’ under the 2013 legislation, that is OMCG, do not commit a very significant number of criminal offences or at least not a significant enough number of offences to justify the response contained in the 2013 legislation. These submissions contain references to a number of articles written by academics including Dr Goldsworthy of Bond University, who make reference to various crime statistics.

The QPS considers that while court outcomes and reported crime statistics are important measures, on their own however, they do not provide a full picture and sufficient evidence base upon which to make informed decisions about the effectiveness of the 2013 suite of legislation.

Whilst the QPS gathers statistics on reported matters, not all crime is reported. Therefore, a lack of reported data does not necessarily lead to the conclusion that organised crime does not exist. Much of the information relating to the existence and activities of organised crime groups is the subject of reported statistics, prosecutions or academic research as well as much being intelligence based, most of which cannot be made available in the public domain. The QPS experience is that it is less likely individuals or groups already involved in serious criminal activity, including on the periphery, will report crime. The very nature of serious and organised crime is such that people will not report the offences and/or the offences are against the crown. It is for this reason human sources, telephone intercepts and other methodologies are vital to gathering evidence and intelligence to combat the real threat of organised crime in Queensland.

Further, there remains a significant number of offences that go unreported in relation to particular crime types, including extortion, property damage, shop-stealing, fraud and identity theft. It is widely acknowledged that cases of child sexual abuse in Australia are chronically under-reported, with the ability to determine the full scale of organised child sex offending further complicated when Australian perpetrators abuse children who are not located in Australia.

There is other information available which the QPS considers can assist the Taskforce to determine whether the 2013 legislation has been effective, including:

- the proportion of OMCG representation in offending and type of offending;
- perceptions of public safety and associated community confidence identified through community surveys and Crime Stoppers reports;
- the number of OMCG that have disassociated from clubs; and
- the reduction in public displays of violence by OCMG.

The proportion of OMCG representation in offending and type of offending

The QPS maintains the response is justified on the basis that OMCG are over-represented in the offending population and OMCG generally commit offences at the more serious end of the offending scale. For the period 1 October 2013 to 30 June 2015, the number of people charged with criminal offences in Queensland was 133,883 persons. This equates to 2.8% of the Queensland population, which is approximately 4.7 million people. OMCG members make up only 0.02% of the Queensland

population, however, make up 0.5% of the offending population (696 members charged as at 30 June 2015).

These statistics indicate that OCMG are approximately 25 times more likely to offend than general members of the community.

Further, a search of the QPrime database suggests that of OCMG participants overall offending behaviour, approximately 46% of that behaviour relates to serious criminal offences. This percentage was calculated by aligning all OCMG participant charges in QPrime against the definition of 'serious criminal offence' in the *Criminal Organisation Act 2009*.

By targeting OCMG, the QPS is targeting the people (case and place) causing and creating a significant public safety and crime risk to the community.

Perceptions of public safety and associated community confidence identified through community surveys and Crime Stoppers reports

The QPS considers that there is a high level of community confidence in the ability of the QPS to respond to OCMG's, and in the legislative tools provided to police evidenced by:

- community surveys; and
- Crime Stoppers OCMG Reports.

National Police Survey of Community Confidence in Policing

Since the introduction of the 2013 legislation and the operations of Taskforce Maxima, there has been a general increase in public satisfaction with the way in which police are responding to OCMG's. The *National Police Survey of Community Confidence in Policing Queensland* indicates satisfaction in the way police have responded to OCMG has increased from 64.9% in December 2013, to 67.8% in March 2015. Importantly, 85.7% of the community (as at March 2015) are no longer concerned about their safety as a result of criminal motorcycle gangs.

Survey of Business Owners at the Gold Coast by the Department of the Premier and Cabinet

In April 2014, the Department of the Premier and Cabinet conducted a survey of business owners of Gold Coast restaurant, café and business owners, with a questionnaire provided to three business groups; Gold Coast Tourism Corporation Ltd, Surfers Paradise Alliance and Broadbeach Alliance. The survey was conducted over two weeks with 132 responses.

- *How has the recent Criminal Motorcycle Gangs (CMG) crackdown effected your business?*
Increased – 22% Decreased – 9% No effect – 55%
- *Do you feel safer since the CMG crackdown?*
Safer – 66% Less safe – 0% No different – 32%
- *Have you noticed any change in overt drug dealing since the CMG crackdown started?*
Less dealing – 15% More dealing – 2% No different – 36%
- *Have you noticed any change on other types of crime since the CMG crackdown started?*

Less crime – 30% More crime – 1% No different – 40%

- *Have you experienced any crime/crime by CMGs/Standover tactics by CMGs before and after the crackdown (Note: The following responses were received in the areas of ‘% indicating not very often, sometimes, or frequently’ – ie. in some way affected)*

<i>Category</i>	<i>Before crackdown</i>	<i>After crackdown</i>
Crime generally	55%	25%
Crime by CMGs	26%	7%
Standover by CMGs	22%	6%

Public Attitudes Survey – Queensland

Likewise, the *Public Attitudes Survey – Queensland*, conducted in December 2013 and June 2014 on behalf of the Queensland Department of the Premier and Cabinet and which measured community views about Criminal Motorcycle Gang (CMG) laws and measures, suggested significant confidence in and support for the legislation:

Level of support of all measures taken by the Queensland Government to target organised crime committed by CMGs – including the new laws.

Survey	Strong or very strong support (Rating 4 or 5)	Moderate support (Rating 3)	Do not support (Rating 1 or 2)
December 2013	47.7%	24.7%	27.6%
June 2014	57.1% (up)	21.8%	21.1% (down)

Level of support for club houses being declared illegal under the law.

Survey	Strong or very strong support (Rating 4 or 5)	Moderate support (Rating 3)	Do not support (Rating 1 or 2)
December 2013	47.4%	21.7%	30.9%
June 2014	58.2 (up)	21.0%	20.8% (down)

Level of support CMGs being declared illegal organisations.

Survey	Strong or very strong support (Rating 4 or 5)	Moderate support (Rating 3)	Do not support (Rating 1 or 2)
December 2013	51.5%	23.2%	25.3%
June 2014	59.5% (up)	21.4%	19.1% (down)

Level of support on the introduction of laws to prohibit CMG members from owning certain types of businesses such as tattoo parlours, liquor outlets and pawnbrokers.

Survey	Strong or very strong support (Rating 4 or 5)	Moderate support (Rating 3)	Do not support (Rating 1 or 2)
December 2013	46.3%	21.9%	31.8%
June 2014	53.0% (up)	20.7%	26.3% (down)

Level of support for new laws that prevent members of CMGs from associating in public in groups of 3 or more gang members.

Survey	Strong or very strong support (Rating 4 or 5)	Moderate support (Rating 3)	Do not support (Rating 1 or 2)
December 2013	38.7%	23.8%	37.5%
June 2014	44.6% (up)	22.2%	33.2% (down)

The survey was steady on the question about whether people were concerned (Agree or Strongly Agree) that recreational motorcyclists may be unfairly pulled over by police, Queensland business may be unfairly affected by the laws and citizens could accidentally get in trouble for associating with someone due to the new laws. The percentages from the June 2014 survey indicated 72.3%, 58.7% and 53.2% respectively.

There was a positive change in support for additional CMG measures and public confidence remained high in the area of reporting CMG activity to police. These figures coming from the June 2014 survey at 64.6% and 72.5% respectively (Agree or Strongly Agree).

Crime Stoppers OCMG Reports

Public support for and confidence in the legislation is also reflected in the increased number of reports from the general public through reports to Crime Stoppers on the criminal activities of OMCG. This support remains higher than before the introduction of the legislation in October 2013. The greater percentage of the reports were in relation to OMCG on the Gold Coast and South East Queensland.

Crime Stoppers OCMG Reports

Period	Number of Months	Number of Reports	Average Reports per Month
01/07/2010 to 30/09/2013	39	672	17
01/10/2013 to 25/06/2015	21	1796	85

Disassociation Statistics

The number of OMCG members that have chosen to disassociate is also another factor that the QPS suggests demonstrates the effectiveness of the legislation. As at 1 January 2014, the State Intelligence Command's assessment of the OMCG environment indicated 2109 OMCG participants. As at 1 August 2015, this number has reduced to 1741 OMCG participants, approximately 17% reduction.

These statistics do not in way suggest that the OMCG operating in Queensland have been fully dismantled as a result of the legislation. However, the QPS argues that the growth of OMCG numbers nationally identified in 2013 by the Australian Crime Commission (between 2007 and 2013 there has been an increase of 48% in OMCG chapters nationally) has not continued in Queensland.

Public displays of violence by OCMG

In 2013, the Australian Crime Commission released research revealing, for the period of 2007 to 2013, an increase of 48% in OMCG numbers, nationally. This coincided with a dramatic increase in unlawful behaviour, in Queensland, by the OMCG members, often in public spaces. These events included:

- **18 March 2006** – Fight between members of the Finks and Hells Angels OMCG at a boxing match at the Royal Pines Resort, Carrara during which three people were shot, two stabbed and \$40,000.00 damage was caused. Fight resulting from Finks member joining the Hells Angels;
- **November 2007** – On the Gold Coast two Lone Wolf OMCG members kidnapped, tortured and cut off a person's ear (GBH with intent to maim) in an attempt to recover a \$50,000 drug debt. Offenders sentenced to sixteen years jail;
- **2012** – Numerous arsons and shootings of businesses and vehicles in Brisbane during a reputed rivalry between Hells Angels and Bandidos OMCG;
- **12 April 2012** – Jei (Jack) LEE shot dead at close range in the carpark of the Warrigal Square Shopping Centre, Eight Mile Plains. Two Bandidos OMCG members (Centro Chapter) believed responsible. Incident believed to have occurred during a drug sale;
- **17 April 2012** – Fight between Bandidos and Hells Angels OMCG members at Toscani's Restaurant, Garden city Shopping Centre, Upper Mt. Gravatt;
- **24 April 2012** – Arson of motor vehicle at Moorooka Wholesale Cars, Ipswich Road, Moorooka, operated by Bandidos OMCG member;
- **24 April 2012** – Four shots fired into a Tattoo Parlour at Mermaid Beach owned by Bandidos OMCG Gold Coast Chapter member;
- **26 April 2012** – Five males entered the Platinum Ink, Tattoo Parlour at Norman Park which was owned by a Hells Angels members and seriously assaulted two male employees;
- **26 April 2012** – Five males entered Millennium Locksmiths, East Brisbane, owned by Hells Angels OMCG members, DaSilva brothers and seriously assaulted them;
- **28 April 2012** – Bandidos OMCG member shot in the arm by a Finks OMCG members at Robina Town Centre, Shopping Centre. At the same time an innocent female bystander was also shot as a result of the altercation;
- **9 December 2012** – Arrest of the National President of the Comancheros OMCG hiding out on the Gold Coast from NSW police. At the time of arrest for extradition to NSW, threatened he would hunt down the arresting police officer, rape his family before killing the police officer;
- **11 June 2013** – Gold Coast taxi driver punched in the back of the head by a Bandidos OMCG member who then produced a firearm and fired two shots through the front windscreen. OMCG member then hijacked and crashed a passing vehicle before assaulting two other members of the public (taxi and bus drivers);
- **23 June 2013** – Fatal stabbing outside an apartment complex on the Gold Coast, with three Finks OMCG members arrested for his murder;
- **1 September 2013** – Bandidos OMCG members became embroiled in a fight in a Fortitude Valley Night Club during which time they stabbed two patrons (non OMCG) who required immediate medical intervention;
- **27 September 2013** – Riot at the Aura Restaurant, Broadbeach between approximately sixty members of the Bandidos OMCG dressed in colours. Brawl erupted after approximately twenty members entered the restaurant and confronted a Finks OMCG member; and
- **1 October 2013** – Four Finks/Mongols OMCG participants have approached four Hells Angels participants at a café at Nobbies Beach, attacking these persons throwing furniture at them. Diners took refuge inside the café, closing the door.

The QPS is not aware of any acts of violence of this nature that have occurred in Queensland since the introduction of the 2013 legislation. However, other jurisdictions that do not have the benefit of legislation similar to Queensland, continue to experience this type of violent activity by OMCG. In Victoria:

- **1 March 2013** - Hells Angels OMCG, Red Devils OMCG & various Hells Angels OMCG support Clubs versus Bandidos OMCG and their support club, the Diablos OMCG. Violent run through

of Diablos clubhouse in Melton, Victoria, by Hells Angels and a group consisting of up to 200 OMCG members. Bandidos later attended to assist the Diablos and ambushed by the Hells Angels, with 30 shots fired at 4 car loads of Bandidos and two Bandidos shot and injured. Follow up Arson attacks and one drive by shooting (nil injuries) believed to have been committed by Bandidos OMCG in retaliation;

- **14 June 2013** - Drive by shooting of Hells Angels Clubhouse, Seaford, Victoria, with 25 shots fired from high powered rifles struck clubhouse;
- **10 July 2013** - Drive by shooting of Bandidos Clubhouse, Dandenong, Victoria, with a number of shots from high powered rifles striking the clubhouse;
- **25 July 2013** - IED attack on Bandidos Clubhouse, Dandenong, Victoria;
- **30 September 2013** - Two business premises owned by Comanchero OMCG Victorian State Commander, subjected to drive by shooting and attempted bombing (bomb placed but failed to detonate) committed by Hells Angels;
- **Early October 2013** - Drive by shooting (shotgun used) of Outlaws OMCG Clubhouse, Carrum Downs, Victoria;
- **26 January 2014** - Home invasion and murder by members of the Rebels OMCG members, with five Rebels OMCG members charged;
- **24 May 2014** - Torture & Murder by three members of the Bandidos OMCG, Brunswick Victoria, chapter, with three Bandidos members charged; and
- **2 February 2015** - Home invasion, torture and assault by five members of the Comanchero OMCG.

In New South Wales:

- **3 October 2013** - Lone Wolf OMCG Nominee assaulted numerous patrons after being asked to leave a licensed premises in Kingswood for being intoxicated;
- **6 October 2013** – Patron at licensed premises in Rooty Hill stabbed nine times by a number of Rebels OMCG Members, after making comment to a Member’s girlfriend about smoking whilst pregnant;
- **3 November 2013** – Comanchero Member and Associates assaulted security guards outside a nightclub in Wollongong after being refused entry;
- **26 November 2013** – Lone Wolf Nominee assaulted patron at licensed premises in Wollongong;
- **9 January 2014** – Rebels Member and two associates involved in altercation with a number of males in Wagga Wagga, with Rebels Member seen brandishing a pistol in front of him while being chased;
- **7 February 2014** – Comanchero Member king hit two males inside a licensed premises within the Sydney CBD without warning or provocation;
- **12 March 2014** – Two Life and Death Members were stopped by a vehicle with blue and red flashing lights, whilst riding their motorcycles in Londonderry. An altercation took place during which two Life and Death Members suffered significant knife wounds and multiple fractures. Offenders believed to be Rebels members;
- **20 March 2014** – Bandidos OMCG Member, and three associates assault male patron at licensed premises in Nelson Bay;
- **23 April 2014** - Georges Café, Burwood an affray involving members of Lone Wolf and Rebels, with approximately Twenty Rebels and ten Lone Wolf, involved chairs, bottles thrown, punches exchanged;
- **3 July 2014** – After being removed from a licensed premises in Bathurst due to their level of intoxication, two Rebels Members returned to the hotel with a baseball bat, and a set of knuckle dusters and threatened security at the location;

- **7 July 2014** - Shooting of Rebels Mt Druitt chapter member (non-fatal) outside Rebels clubhouse Minchinbury, with five Rebels members charged;
- **1 June 2014** - Affray at Capital Nightclub Wagga Wagga involving members of Mongols OMCG;
- **31 August 2014** – Ten Bandidos Members storm a licensed premises in Boolaroo where the two victims, one being a Life and Death OMCG Member, were performing a music set. The members blocked the entry and exits points of the hotel and three offenders, armed with baseball bats and a pick handle, set upon the victims, punching and kicking them, stomping their heads;
- **24 August 2014** - Stabbing and assaults of three Lone Wolf OMCG members outside brothel in Tweed Heads;
- **30 August 2014** - Mass movement of approximately 30 Nomad OMCG members in full colours in Kings Cross on bikes and in supporter vehicles, believed as a show of strength to Comanchero OMCG who have links to a number of clubs in the area;
- **6 September 2014** – Male assaulted in a licensed premises in Camden by Rebels OMCG Member in unprovoked attack;
- **30 September 2014** - Affray involving members of Hells Angels members and Middle Eastern criminal identities in public street at 4pm in busy suburban street in Parramatta;
- **16 October 2014** – Bandidos Prospect attacked two passengers in an unprovoked attack on a train from Sydney to Lithgow;
- **15 November 2014** – Rebels Member assaulted by group of Lone Wolf members inside the visiting area of Long Bay Correctional Centre;
- **18 November 2014** – A group of males attended the premises of a Rebels OMCG member, who was at his premises with other Rebels Members, and a verbal altercation ensued before a round was fired from a firearm from inside the premises;
- **28 November 2014** – A senior Nomads OMCG Member and two other males assault, then stab a patron outside a licensed premises in Parramatta with a box cutter;
- **2 January 2015** – Two members of the Nomads OMCG punched a security guard in the face after being denied access to a licensed premises in the Sydney CBD due to the lockout laws;
- **19 June 2015** – Bandidos Probationary Member assaults a member of the public inside a medical centre by slashing him with a screwdriver;
- **21 July 2015** – After consuming an unknown amount of cocaine, Lone Wolf Senior Member armed himself with a Glock 23 semi-automatic pistol, and entered the rear yard of an unrelated premises then discharged two rounds from the firearm;
- **24 July 2015** – Male shot and killed in the driveway of his business premises in Gosford, with Two Rebels members charged;
- **7 February 2015** - Affray and assault upon Hells Angels associate outside licensed premises in Bay Street, Double Bay by three offenders believed to be linked to other OMCG members;
- **14 February 2015** - Comanchero members attended the Empire Tavern, Kurri to celebrate a birthday and committed unprovoked assault upon six patrons;
- **19 April 2015** - Non fatal shooting of Nomad OMCG member in carpark of Penrith shopping centre and suspected possible link to conflict with Rebels OMCG;
- **3 June 2015** - Affray involving members of Finks and Rebels at Bligh Park Tavern;
- **5 June 2015** - Affray involving members of Finks and Rebels at Clarendon Hotel;
- **26 June 2015** - OMCG member, found deceased on an unsealed road off the Pacific Highway, Cowan; and
- **18 July 2015** - Assault in Westfield shopping centre Parramatta of Bandidos prospect by full member of Bandidos with a baseball bat.

In summary, the QPS considers that the legislation has generally been effective and has contributed to increased community confidence. The recent decision by the South Australian Government to

introduce legislation into the Parliament which is consistent with the Queensland legislation, shows public confidence in this regard continues to grow.

The QPS is aware of concerns raised in relation to some aspects of the legislation, particularly regarding a perceived lack of safeguards against misuse and transparency and acknowledges that there are opportunities to review the legislation in this area. The QPS considers that whilst it has applied the legislation with vigour, it has done so fairly and appropriately.

This view is supported by the fact that at the close of Operation Resolute at 30 June 2015, QPS Ethical Standards Command did not hold any record of any discipline complaints made against any members of the Service in regard to the manner in which the legislation was applied.

The QPS maintains the view that repealing the legislation will have negative consequences for the Queensland community. This will impact community confidence and perceptions about personal safety. This has a direct impact on individuals, discrete communities and the economy generally.

Repealing the legislation is likely to see criminal organisations once again moving freely and conducting criminal activities in a public way, including the recommencement of public displays of violence such as those highlighted above, and facilitated through the use of fortified club houses. The consequence of reduced enforcement and disruption capability is likely to be an erosion of the current high levels of community perceptions that Queensland is a safe place to live, conduct business, visit and potentially negatively impact on the financial status of the state through a loss in business and tourism.

With other states moving to introduce legislation similar to Queensland, repealing the legislation will potentially see criminal organisations moving back to Queensland.

4. Potential Legislative Improvements

The QPS contends that the legislation is effective, although acknowledges the concerns raised by some stakeholders in relation to examining opportunities to temper the robust nature of the legislation with appropriate safeguards. Any change to the legislation should however consider any accompanying resource and efficiency implications for the QPS.

Criminal Organisations - Background

A 'criminal organisation' for the purposes of the legislation is defined in s 1 of the Criminal Code as:

(a) an organisation of 3 or more persons—

(i) who have as their purpose, or 1 of their purposes, engaging in, organising, planning, facilitating, supporting, or otherwise conspiring to engage in, serious criminal activity as defined under the Criminal Organisation Act 2009; and

(ii) who, by their association, represent an unacceptable risk to the safety, welfare or order of the community; or

(b) a criminal organisation under the Criminal Organisation Act 2009;

(c) an entity declared under a regulation to be a criminal organisation.

Section 1(a)(i) and (ii) of the definition enables the potential to use the existing laws against disassociated participants or other criminal groups who are not clearly identifiable as structured and hierarchical organisations with a public profile. In this regard, and with the changing face of organised crime, s 1(a)(i) and (ii) of the definition of criminal organisation is likely to become more relevant in the future as existing organisations disassociate or morph over time into less structured and more networked forms.

The definition in s 1(b) has not been, and is unlikely to be used in the future, given previous experiences associated with declaring criminal organisations under the *Criminal Organisations Act 2009*.

For these reasons, the QPS relies primarily on the declaration of entities under s 1(c) of the definition of criminal organisation in of the Criminal Code, and the declaration of entities via the *Criminal Code (Criminal Organisations) Regulation 2013*.

Criminal Code Offences

The QPS is continuing to improve the way in which it investigates and prosecutes offences against sections 60A, 60B & 60C, 72, 92A, 320, 340, and 408D of the Criminal Code, including rebutting the defence that is available under each section to the necessary standard. The following case note in relation to the 'Dayboro Three' provides a good example of the way in which the QPS continues to improve the way in which it operates in this area.

Case Study: Life & Death OMCG – Dayboro Three

Facts

The 'Dayboro Three' involved three people who attended the Dayboro Tavern in December 2001, two males and a female. The two male persons were wearing a 'Life and Death' OMCG vest or clothing, and the female person a 'Life and Death' vest. Bar staff initially believed these three persons not to be OMCG members as, whilst they saw 'Life and Death' patches, they did not see a '1%' patch. The female person had a conversation with management and allegedly stated that she was appreciative being allowed to stay in the bar and drink, and when asked why, stated it was '*because of our colours*'. The female person also lifted the back of her vest which revealed a tattoo '*property of crow*'.

All three persons were asked to leave by management on the basis of being suspected of being members of OMCG. In January 2014, police conducted further investigations and located the female person and another co-accused at a premises in Brisbane along with a leather vest with a 'life and death' patch on it and a patch stating 'property of crow'. A vehicle was also located at that location with a registration plate 'CROW59' registered to the co-accused.

The female person stated that the vest was hers, but that she didn't believe that it was considered colours. Also, that she attended the Dayboro Tavern in her "life and death" vest but that didn't believe any offence had been committed because she was not a member of the club (and therefore only two members). The female person stated that her understanding of the law was that there had to be 3 members for an offence to be committed.

Watchhouse procedures confirmed that the female person had a tattoo on her back 'property of crow'. The Life and Death motorcycle gang is an entity declared to be a criminal organisation pursuant to s 2 of the *Criminal Code (Criminal Organisations) Regulation 2013*.

The female person was conjointly charged with the two male persons with the following offences:

- knowingly being a participant in criminal organisation being present in public place with two or more persons who were participants (s 60A Criminal Code); and
- entering and remaining in licensed premises when wearing or carrying a prohibited item (s 173EC of the *Liquor Act 1992*).

Withdrawal

On Wednesday 8 April 2015, the association charges against the participants of the 'Life and Death' OMCG were withdrawn. This occurred as against a background where the defence counsel accepted the prosecution had proved the elements of the offence:

- 3 or more participants;
- knowingly together; and
- in a public place.

The defence indicated however that the matter would be contested through the statutory defence outlined in s 60A(2) Criminal Code:

(2) It is a defence to a charge of an offence against subsection (1) to prove that the criminal organisation is not an organisation that has, as 1 of its purposes, the purpose of engaging in, or conspiring to engage in, criminal activity.

In simple terms, the defence intended to argue that the 'Life and Death CMG' was not a criminal organisation and referenced the following parts of the High Court decision of *Kuczborski –v- Queensland* [2014] HCA 46, in particular paragraphs 246-248:

246. *In such a case, evidence from the defendant or his or her witnesses to the effect that, to his or her knowledge, the activities of the association were entirely innocent would, **if left contradicted by the prosecution**, support the inference that the "criminal organisation is not an organisation that has, as 1 of its purposes, the purpose of engaging in, or conspiring to engage in, criminal activity."*

247. *In this hypothetical case, the only evidence before the court of the only purposes of the association would be those purposes which could be inferred from the activities of the association of which the defendant gave evidence. On this hypothesis, there would be no evidence to contradict that of the defendant. **It is necessary to bear in mind as well that the defendant's burden is discharged on the balance of probabilities [204].***

248. *Of course, the prosecution might not be content to rely upon the declaration, and might itself adduce evidence of the purposes of the association. But in such a case, **the question of guilt or innocence would still depend on the curial evaluation of the evidence, not some presumptive effect of the declaration.***

As a result, the QPS identified that the declaration of an OMCG under regulation alone was insufficient in itself to prove the organisation is a criminal organisation once the defence is raised. Further, the 14 day disclosure rule prevented new evidence from being introduced.

An adjournment was sought but it was refused.

A decision was then made to withdraw the matter due to the sufficiency of evidence test and to prevent a negative finding which may influence upcoming trials under the same legislation including Rebels, Bandidos and Hells Angels CMG who are at the top end of the criminality scale.

The additional evidence that will need to be gathered and included in any future brief of evidence to contradict the defence raised under each Code offence includes:

- expert witness statements – Task Force Maxima now has 3 experts and can access interstate experts if required (approx. 80 pages);
- statements from approximately 2-3 arresting officers relating to matters showing the criminality of the CMG itself based on previous prosecutions; and
- certificates of conviction and/or sentencing remarks re matters raised by the 3 arresting officers.

‘Patching over’

The High Court decision of *Condon v Pompano* in relation to a declaration under the *Criminal Organisations Act 2009* is a good example of how an entity can easily defeat the legislation by changing its name or ‘patching over’, particularly prior to a formal declaration being made.

The South Australian Parliament recently passed the legislation that would potentially address the issues flowing from *Condon v Pompano* in terms of criminal gangs that change their name or patch-over. The *Statutes Amendment (Serious and Organised Crime) Act 2015* was assented to on 6 August 2015 and amended various statutes in South Australia including the *Criminal Law Consolidation Act 1935*; the *Liquor Licensing Act 1997* and the *Summary Offences Act 1953*.

Section 12 of the *Criminal Organisations Act 2009*, and replicated in the South Australian legislation contain clauses to the effect that:

- a change in name or membership of the organisation does not affect its status as a criminal organisation; and
- if members substantially reform themselves into another organisation, it is taken to part of the original organisation (whether or not dissolved).

Similar changes, if adopted by the 2013 legislation, could address the challenges of former OCMG patching over.

Definition of ‘organisation’

The QPS considers that the Queensland legislation will continue to be effective whilst organisations continue to reflect traditional hierarchical groups with an overt public presence, including names. The fact that OCMG’s generally use their public presence to support their activities through intimidation suggests that these types of organisations will continue to operate in a way that allows the declaration provisions s 1(c) of the definition of criminal organisation in conjunction with the disabling aspects of the offence in s 60A of the Criminal Code to be effective.

The Taskforce may however wish to consider whether future challenges exist in terms of organised crime groups that do not necessarily maintain a public presence or use traditional named structures and who reflect unstructured network based arrangements. For example, individuals that share child exploitation material through The Onion Router (TOR) sites which whilst consisting of a group of individuals with a common purpose and hierarchy for creating and sharing child abuse exploitation material, are not necessarily members of a single identifiable organisation.

The current focus on ‘organisations’ may not fit with future notions of organised crime groups which are tending now to be much broader and no longer reflect traditional hierarchical organisations. In the future, there may be a reduction in structured or hierarchical groups with a move towards more ‘loose fitting’ network based arrangements without necessarily exhibiting a high public profile. There is considerable evidence to suggest that with the ‘interconnectedness’ of the world and people through technology, the way interaction (legitimate and illegitimate) occurs in the community and economy is now far less structured and hierarchical. It is the QPS view that the types of organised groups seen in the past will likely remain, but there will be an increase in organised crime reflecting a general increase in the ways individuals and businesses now organise – around an opportunity, product or issue.

The changing nature and complexity of organised crime is such that strategies other than the traditional prosecution approach requires consideration, and the need for disruptive tools, similar to the effect of s 60A of the Criminal Code. The types of strategies that may be open for consideration in the future include the use of control orders similar to those in the United Kingdom, or consorting offences similar to those introduced in South Australia and New South Wales, but which are focused towards serious and organised crime.

Other disruption strategies include public/community education and making information available to the community about the activities of particular organisations or groups. This would allow the community to make informed decisions about their involvement with suspect organisations or groups and therefore avoiding becoming a victim. This is particularly relevant in emerging organised crime areas such as cyber and fraud related serious and organised crime (ie. Boiler-rooms).

Declaration of ‘criminal organisation’ by Executive Government

The QPS relies primarily on the declaration of entities outlined in the *Criminal Code (Criminal Organisations) Regulation 2013*. This process involves an ‘upfront declaration’ by the relevant Minister who may have regard to a range of factors (criteria) outlined in s 708A of the Criminal Code which includes:

- any information suggesting a link exists between the entity and serious criminal activity;
- convictions recorded in relation to current or former participants, associates, or have associated with participants;
- information suggesting current or former participants have been, or are, involved in serious criminal activity;
- information suggesting participants in an interstate or overseas chapter or branch have as their purpose, or one of their purposes, organising, planning, facilitating, supporting or engaging in serious criminal activity; and
- any other matter the Minister considers relevant.

This process is both efficient and flexible, allowing the regulation to be updated quickly in terms of adding new organisations and removing organisations that no longer operate. The current process has an external review safeguard in place in the form of Parliamentary Committees (see s 93 of the *Parliament of Queensland Act 2001*) and the democratic process which required the examination of primary and subordinate legislation and to consider:

- the policy to be given effect by the legislation;
- the application of fundamental legislative principles to the legislation including principles relating to legislation that underlie a parliamentary democracy based on the rule of law and that the legislation has sufficient regard to rights and liberties of individuals and the institution of Parliament; and
- in relation to subordinate legislation in particular, the lawfulness of the legislation.

One of the key aspects of the current scheme and which causes concern for stakeholders in terms of transparency and fairness, is the fact that there is no current requirement for the QPS to disclose information, including criminal intelligence information, beyond the QPS and the Minister. Consequently, there is no independent assessment of the merits of the declaration against the criteria in s 708A of the Criminal Code, prior to the Minister and Executive Council approving the regulation. There are a number of options available that the Taskforce might consider to address the concerns of stakeholders about the integrity of the declaration process. These include:

- introduction of a Committee process to provide advice to the Minister about whether potential declarations meet the criteria in s 708A of the Code, similar to that in South Australia; or
- introduction of a Public Interest Monitor (PIM) to review proposed declarations and provide advice to the Minister about whether potential declarations meet the criteria in s 708A of the Code.

The final and ultimately safeguard is the defence in Criminal Code that the organisation is not a criminal organisation, which once one raised on the balance of probabilities by the accused, is required to be negated by the prosecution.

The QPS has no particular preference for either option only that should the Taskforce consider either option to be necessary, then the option which best allows application to other aspects of the legislation, in particular occupational licencing, should be preferred for purposes of process consistency.

The introduction of a safeguard whereby an independent person or body would consider the merits of declarations would potentially require the disclosure of criminal intelligence outside of the police service. Whilst s 708A of the Criminal Code does not currently make specific reference to or define 'criminal intelligence', it is implied in many of the elements.

A scheme similar that which exists under the occupational licensing schemes, would be preferred to ensure that criminal intelligence information is protected from disclosure in cases where disclosure to the applicant/accused/the public would:

- prejudice a criminal investigation;
- identify or enable the identification of a confidential informant;
- endanger a person's life or physical safety; or
- identify or enable the identification of methodologies or technologies relating to the collection of law enforcement or public safety information, including intelligence.

The definition of criminal intelligence found in the *Criminal Organisations Act 2009* is likely to be a suitable starting point for considerations, but should be extended to include confidential law enforcement methodologies used to gather criminal intelligence.

Vicious Lawless Association Disestablishment Act 2013 (VLAD)

VLAD is a punishment regime. There are no offences contained within the legislation. It provides for additional penalties (mandatory in nature) for offenders found to be 'Vicious Lawless Associates'. VLAD broadly captures participants in criminal organisations whether declared or otherwise and in 'associations' that foster encourage and support the commission of serious crimes whereby that person commits the serious crime for the purpose of, or in the course of participation in it, being for the association's affairs. VLAD is not enlivened solely upon the existence of a declaration under s.708A Criminal Code and regulated through the *Criminal Code (Criminal Organisations) Regulation 2013*.

The VLAD targets all people who commit serious offences as part of all types of criminal associations and is not specific to any particular group.

The QPS considers that the VLAD delivers a critical outcome supporting the response to serious crime in the form of incentives for offenders to provide assistance to law enforcement to breakdown criminal networks and take action against the upper echelon of these groups. The concept of co-operation with

law enforcement as an incentive is well known at law and modelled on Queensland legislative schemes that are already successfully established e.g. s 13 of the *Penalties and Sentences Act 1992*.

Fundamental to this is the removal of the ‘no parole’ provisions when an offender cooperates with law enforcement (s 9 of the VLAD together with s 13A of the *Penalties and Sentences Act 1992*). The QPS considers this incentive to cooperate results in a breaking down of the code of silence and opens up opportunities to dismantle criminal networks.

The Queensland courts finalised the first matter subject to the VLAD on 4 June 2015. The accused was a participant and gang member with his evidence such that he covered all aspects of the syndicates operations and hierarchy. The accused faced the following options:

- without the s 13A statement or the follow up evidence – 23 years imprisonment, 15 of which were non-parole;
- with the s 13A statement and follow up evidence – 5 years imprisonment VLAD, 3 years imprisonment trafficking, sentenced concurrently and therefore, 5 years to do 18 months.

The accused was not an OMCG but was part of a group that fell within the definition or organisation under the VLAD.

Currently Task Force Maxima has a further 7 matters where persons have been charged under the VLAD and where they have provided s 13A statements in an effort to remove the additional sentences in accordance with the VLAD. All these matters are currently before the courts. The QPS considers that number of offenders who have provided s 13A statements to police demonstrates that one of the key outcomes intended in the VLAD is being achieved, that is, incentivising offenders to provide assistance to law enforcement in relation to the more serious crimes, which ultimately leads to increased public safety.

Paragraph three of the Bar Association Queensland (BAQ) submission in relation to the VLAD advises that the experience of their members is that VLAD is being used frequently against persons who are not members of declared organisations. It may be useful for the Taskforce to consider relevant statistics in relation to:

- the number of persons charged under the VLAD who are members or associates of declared organisations; and
- the total number of persons charged under the VLAD.

Determining the number of actual persons that are and are not members of a declared organisation constantly changes over time as previous members disassociate and newly identified members are confirmed. Cases were examined in QPrime in relation to those persons charged with any offence where the VLAD is alleged as a circumstance of aggravation, as at 31 July 2015. The number of persons below in relation to those individuals who, through a manual search of QPrime, were identified as being either members or ex-members (disassociated) over the period.

Total Number of participants charged where the VLAD is alleged as a circumstance of aggravation	Number of persons who are members of OMCG (includes both members and associates)
100	31 (out of the total 100 and includes 20 members and 11 associates)

NOTE: QPRIME references -

Members include: Member, Office Bearer, Ex-Office Bearer and Ex-Member

Associates include: Associate, Ex-Associate

The information held by the QPS indicates that the experiences of their members is correct. This reflects the intent of the legislation being applicable to members of all criminal associations, and not limited to OMCG.

The BAQ (and Dr Ananian-Welsh in a separate submission) also commented on the process by which the Commissioner can determine whether to accept an offer of cooperation under the VLAD. To assist the Taskforce the police service provides the following information in relation to:

- the process by which a decision is made to accept an offer of cooperation under the VLAD; and
- how a situation where three participants make admissions (a scenario posed by the BAQ submission) would be dealt with by the Commissioner.

The process for decision making is based on the requirements of s 9 of the VLAD and consists of two key considerations:

- confirming that the proceeding relates to a declared offence under the VLAD; and
- that the cooperation will be of 'significant use'.

The first aspect is a relatively straight forward exercise of confirming the offence charged is one that falls within the definition of a declared offence under the VLAD.

In relation to the second aspect, there is no definition in the legislation of 'significant use' and therefore needs to be assessed by weighing up the facts and circumstances of the particular case. Information that is simply peripheral to proving the declared offence would not be likely to be considered sufficient. The information should clearly contribute to proving an element of the offence or have a strong nexus to the evidence. However, ultimately, it is a matter for the decision maker (Commissioner).

The QPS has not had to deal with a situation in relation to three persons simultaneously. However such a situation could still have arisen in the past in relation to s 13A statements independently of the 2013 legislation. The QPS expects that each matter would need to be determined on a case by case basis depending on the circumstances and the information each person is providing.

Potential VLAD Reform

The QPS supports the current scheme which imposes substantial penalties for offenders found to be 'Vicious Lawless Associates' but capable of significant reduction as an incentive to cooperate with the authorities. This removes the need for an individual circumstance of aggravation being inserted into the Criminal Code for those VLAD offences appearing in Schedule 1. The QPS acknowledges the concerns raised by stakeholders about the use of and impact of mandatory penalties and unreviewable determinations of the Commissioner about offers made by offenders to cooperate with law enforcement, and whether these aspect of the legislation should be reviewed by the Taskforce for potential reform.

The South Australian legislation provides a balanced approach by tempering the effect and application of mandatory penalties imposed under the SA legislation, with the ability of a court to set them aside in exceptional circumstances (see s 83GF of the *Statutes Amendment (Serious and Organised Crime) Act 2015*). Such an approach, if adopted in Queensland, could include as an exceptional circumstance, cooperation with law enforcement. This would allow a court, rather than the Commissioner, to

determine whether in a particular circumstance, the appropriate level of assistance to law enforcement has been provided.

The current responsibility of the Commissioner carries with it the risk of perceived conflicts of interest in decision making or inappropriate behaviours or relationships developing. These concerns are unlikely to eventuate in practice. However the very perception of their potential to arise has the real ability to impact public confidence in and the legitimate role of police involvement in this function. The QPS would therefore support the referral of this function to an alternate person or body, including a court or independent prosecuting authority such as the DPP.

Other

A number of the submissions received from members of the public raised concerns about the belief that the legislation negatively impacts social groups, particularly non-OMCG recreational motorcycle clubs. The QPS has undertaken significant effort to avoid unintended consequences in this area through the introduction of strategies such as 'Ride Safe' which allows social groups to register intended 'rides', providing advance notice to police and therefore avoiding the need for a policing response.

As at 24 July 2015, there have been over 240 submissions by groups and individuals for social rides since 21 November 2013, involving approximately 14,459 riders, including social, clubs, charity groups, companies, support groups, bike shops and community groups and individuals. These figures suggests that social rides are not being impacted and the general public are now seeing the true aim of the legislation of disrupting declared groups.