



On 15 October 2013, the Queensland Government took the unusual step of introducing into Parliament, debating and passing a significant suite of legislation directed mostly at criminal motorcycle gangs.

The suite included three Acts:

- *Vicious Lawless Association Disestablishment Act 2013 (VLAD)*
- *Tattoo Parlours Act 2013*
- *Criminal Law (Criminal Organisations Disruption) Amendment Act 2013.*

This article focuses on the VLAD and *Criminal Organisations Disruption Act*, given that they are already in force. Under the *Tattoo Parlours Act 2013*, the licensing scheme commences on 6 January 2014 and the compliance provisions commence on 1 July 2014.

What the Acts do

In summary, the *Criminal Organisations Disruption Act*:

- Introduces mandatory minimum penalties to be served wholly in a corrective services facility for three new offences committed by participants in a criminal organisation who knowingly gather in a group of three or more, enter or attempt to enter a prescribed place or event or recruit new members.

VLAD tidings

Key features of the new legislation

Queensland's 'anti-bikie' legislation has attracted headlines around the world. But what are the features of most concern to practitioners? The Queensland Law Society advocacy team has prepared a short summary of the changes.



- For the three new offences, the offence of affray or the offence of a driver failing to stop a motor vehicle when the driver is a participant in a criminal organisation, a vehicle used in the commission of these offences is to be impounded and forfeited to the state on conviction.
- Increases the maximum penalty (and introduces a mandatory minimum penalty) for offences committed by participants in a criminal organisation for the offence of affray, misconduct in relation to public office, grievous bodily harm, serious assault and obtaining or dealing with identification information.
- For certain prescribed offences in which the offender is a participant in a criminal organisation, disqualification of licence for a period of not less than three months is mandated, regardless of whether the offence was committed in connection with or arose out of driving a motor vehicle.
- Enables the Minister to recommend an entity be declared a criminal organisation by regulation.

Bail Act 1980

- Establishes a presumption against bail where the defendant is a participant in a criminal organisation and applies to indictable, simple and regulatory offences.

Crime and Misconduct Act 2001

- Enables the Crime and Misconduct Commission (CMC) to hold intelligence function hearings about criminal organisations or a participant in criminal organisations.

- Expands the exceptions to 'use immunity' to allow the use of information from any CMC investigation or hearing to be used in confiscation proceedings.
- Provides that 'reasonable excuse' to fail to answer a question does not include fear of retribution when a person is a participant in a criminal organisation and the investigation or hearing is about a criminal organisation or participant in a criminal organisation.
- Imposes mandatory imprisonment for the punishment of contempt (the second, third and subsequent contempts for the same subject matter have prescribed periods of minimum imprisonment) for a refusal to take an oath, answer a question or produce a stated document or thing.
- Authorises the CMC, during a hearing, to request a police officer to detain a witness in contempt pending the issuing of a warrant and bringing the person to court to deal with the contempt.
- Clarifies that legal assistance for crime investigations does not apply to crime investigations authorised under the immediate response function.

Police Powers and Responsibilities Act 2000

- Introduces powers for police to:
 - Search without warrant a person reasonably suspected of being a participant in a criminal organisation and/or a vehicle in that person's possession or use.

- Require a person reasonably suspected of being a participant in a criminal organisation or a person found at a prescribed place or event to state their name and address to police. The person can be detained for a reasonable time, and the police officer can photograph the person's identifying particulars if reasonably suspected that it is necessary (they must be destroyed if the person is not proceeded against for an identifying particulars offence within 12 months).
- Increases the mandatory minimum penalty for the offence of failing to stop a motor vehicle to:
 - 50 penalty units or 50 days' imprisonment to be served wholly in a correctional services facility, or
 - 100 penalty units or 100 days' imprisonment for a participant in a criminal organisation.

While the VLAD:

- Deems a person to be a vicious lawless associate if they commit an offence declared in Schedule 1 and are a member of an association, unless they can show that the relevant association does not have as one of its purposes engaging in, or conspiring to engage in, declared offences.
- Imposes a further sentence of 15 years' imprisonment additional to the base sentence for the declared offence, to be served wholly in a corrective services facility for anyone falling within the definition of 'vicious lawless associate'.

HOPE IS NOT A STRATEGY...

My book *The Revenue Revolution for Law Firms* is designed to guide your legal practice to achieve long-term PROFITABILITY and CASH FLOW.

In Australia 95.6% of private firms operating are 1-4 partner practices. How is your firm positioned within this highly competitive market?

What are you doing to **STAND OUT?**

Visit our website to get your copy: www.financiallywellorganised.com



Matt Schlyder, The Lawyers' Accountant
 Phone: 07 3833 3999 Email: matt@fwo.net.au
www.financiallywellorganised.com



- Creates an additional 10 years' cumulative imprisonment on top of the 15 years for a vicious lawless associate if they were at the time an office bearer of the relevant organisation, to be served wholly in a corrective services facility.
- A vicious lawless associate is not eligible for parole during the term of the additional sentences, unless the offender has offered to cooperate with law enforcement authorities and the Commissioner of Police has accepted the offer of cooperation in writing. The decision of the commissioner is not subject to review, except to the extent it is affected by jurisdictional error.
- Schedule 1 details declared offences – including, amongst others, murder, money laundering, wounding, affray, assault occasioning bodily harm, attempting to pervert justice and possessing dangerous drugs.

Where the problems are

Queensland Law Society has identified a number of concerning aspects of the legislation.

Mandatory sentencing

Maintaining judicial discretion in sentencing decisions is core to the effective functioning of our justice system. The Society opposes mandatory and mandatory minimum sentences as this will inevitably lead to injustices and unintended consequences in sentencing. The Society has consistently said that judicial officers have the skills and knowledge to understand and assess all the circumstances of an individual case and are best placed to make an informed decision on sentencing for any particular offence. In the case of the VLAD, the mandatory sentencing component can be an additional 25 years' imprisonment.

Definition of 'association' in VLAD

The definition of 'association' is so broadly drawn that it can apply to groups such as workplaces, social clubs, sporting associations or teams. Take the example of a certain captain of a State of Origin football team, who pleads guilty to assault occasioning bodily harm against another player during the course of a game. It is arguable that, by his association with the team and because the assault was committed in the course of participating in the affairs of that association, the captain could be subject to up to 25 years' additional imprisonment, unless he could prove that it is not one of the purposes of the team to commit assaults on opposition players.

The definition of 'participant' in the affairs of the association is also unduly broad, so much so that a person who "has taken part on any 1 or more occasions in the affairs of the association in any other way" could be a participant. This could include a person acting in a professional capacity, such as an accountant or legal practitioner. There are also no timing provisions in the legislation linking the act which has made a person a participant of an association, and the charge for an offence. This means that once you are established as a participant, you are always a participant.

Reversal of the onus of proof

The onus of proof is reversed across a number of the offences so that the defendant will have to prove that the criminal organisation is not an organisation that has, as one of its purposes, the purpose of engaging in, or conspiring to engage in, criminal activity. Being shown to be a participant in a criminal organisation is an inherent feature which triggers certain offences or increased penalties. The Society

has consistently raised concern about the reversal of the onus of proof in criminal law legislation as it is contrary to fundamental legal principles and undermines the presumption of innocence.

Presumption against bail

The Society is concerned about the presumption against bail for alleged participants in criminal organisations applying on being charged with any offence. There is potential for the unintended consequence that persons charged with offences which normally would not justify a sentence of imprisonment may be remanded into custody.

Minister recommending an entity be declared a criminal organisation

While the Supreme Court has had the ability to declare a criminal organisation under the *Criminal Organisation Act 2009*, the Minister is now also empowered to declare this by regulation. A valid question arises whether procedural fairness safeguards (such as notice to an organisation that the Minister intends to declare as a criminal organisation and mechanisms to provide written submissions) are needed in the process for the Minister's determination.

The latest advocacy from Queensland Law Society is on page 32.

svpartners

specialist accountants & advisors

forensics – unsurpassed expertise

SV Partners Forensics is a leading forensic accounting practice that brings unsurpassed professional and technological expertise in areas including:

- ▶ Family Law
- ▶ Insurance
- ▶ Commercial
- ▶ Property
- ▶ Valuation

partner with experts

svpartners.com.au

07 3310 2000



BRISBANE | SYDNEY | MELBOURNE | GOLD COAST | SUNSHINE COAST | TOOWOOMBA | MACKAY | CARINGBAH | NEWCASTLE | DUBBO | HOBART | WOLLONGONG