



QUEENSLAND COUNCIL FOR CIVIL LIBERTIES

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Our Ref: TOG:RW

1 October 2013

The Honourable Campbell Newman
Premier of Queensland

Attention: Director of Policy, Michael Prain
By email: thepremier@premiers.qld.gov.au

Dear Mr Newman

RE: **PROPOSED CHANGES TO CRIMINAL ORGANISATION LAWS**

I refer to the joint press release of the Acting Premier and the Attorney-General on 30 September 2013 headed "Tough new laws to combat criminal gangs". That press release asserted that Cabinet on 30 September 2013 approved a range of new measures to tackle crime gangs and made the following assertions:

- New legislation will be fast tracked to tackle what these people do, where they go and who they fraternise with;
- Under proposed anti-racketeering laws, members of criminal organisations will face mandatory prison sentences if they are convicted of serious offences;
- There will be a mandatory minimum 1 year prison for serious assault of a police officer;
- Motorbikes or other vehicles will be confiscated;
- Proposed bans for gang members include gathering in groups, attending specific locations, wearing club colours inside licensed venues;
- Owning, operating or working in tattoo parlours; and
- Promoting or recruiting for their organisation.

As you are aware the *Criminal Organisation Act 2009* provides, among other things, for the Queensland Police Commissioner to apply to the Supreme Court for a declaration of an organisation and if the court is satisfied that certain criteria, such as links between the organisation and serious criminal activity or prior convictions of members of the organisation are met, it may then declare that organisation. Once an organisation has been declared - and only then - the Police Commissioner may apply to the court for further orders including placing individual members of the organisation who engage in, or have engaged in, serious criminal activity under a control order.¹

¹ See Andreas Schloenhardt TC Berine School of Law paper presented at the Bar Association of Queensland annual conference Gold Coast 2011 entitled "Banning the Bikers: Queensland Criminal Organisation Act 2009" at page 2.

Watching them while they are watching you!

The Supreme Court may only declare an organisation if it is satisfied that members of the organisation associate for the purpose of engaging in, or conspiring to engage in, serious criminal activity and the organisation is an unacceptable risk to the safety, welfare or order of the community.²

Once an organisation has been declared as a criminal organisation the Police Commissioner may apply to the Supreme Court of Queensland to place individuals associated with that organisation under control orders.³

The Supreme Court may place a person under a control order in one of two circumstances namely if the court is satisfied that the Respondent engages in, or has engaged in, serious criminal activity and associates with any person for the purpose of engaging in, or conspiring to engage in serious criminal activity.⁴

Contravention of a control order can lead to maximum terms of imprisonment of 5 years.

Under Section 100 of the *Criminal Organisation Act 2009* it is an offence to recruit, or attempt to recruit, persons to become members of a declared criminal organisation. This offence can only be committed by persons who have been placed under a control order or who are themselves members of the criminal organisation.

The *Criminal Organisation Act* also provides for court supervised public safety orders which prohibits a person from entering or accessing certain premises or places if that person's presence poses a risk to public safety and order.⁵

The act also provides for anti fortification measures.

Schloenhardt notes that "the *Criminal Organisation Act 2009* introduces comprehensive, severe, somewhat sophisticated and moderately balanced mechanisms to prevent, disrupt and suppress the activities of criminal organisations in Queensland."⁶

Schloenhardt notes that the *Criminal Organisation Act 2009* has the ability to seriously control, disrupt and restrict the lives of individuals. The imposition of control orders on any one person and the consequences that follow the contravention of control orders are tough measures which, if implemented and enforced rigidly, may severely curtail the movements of a person and his/her ability to associate with others, especially those that are similarly connected to or are members of declared criminal organisations.⁷ (emphasis added)

Observations on media release of 30 September 2013

It would appear that the proposed new legislation is intended to mirror but possibly significantly extend the provisions of the *Criminal Organisation Act* and, according to

² Ibid page 6

³ Ibid page 8

⁴ Ibid page 9

⁵ Ibid page 13

⁶ Ibid page 13

⁷ Ibid page 15

media reports attributed to Queensland Government Ministers immediately after the issue of the press release, incorporate aspects of other laws not only from other States in Australia but also from overseas.

Timeframe and consultation

The measures which were taken in Cabinet on Monday, 30 September 2013 were taken without any consultation and without any real urgency. Media reports as to the incident involving the Bandidos at its highest indicate that a number of Bandidos went into a restaurant and spoke to an individual saying "this is it" and that individual then said that he would go outside rather than remain within the restaurant and when he went outside a fight then developed. It is not suggested that the fight involved weapons of any type.

Therefore, the proposed new laws are based solely on events arising from a fight outside a restaurant between what is said to be a group of Bandidos and two other persons who were known to them who were targeted by the Bandidos.

While the fight undoubtedly caused concern and fear to bystanders, there is no legitimate urgency in introducing yet more laws to deal with bikies particularly having regard to the provisions of the *Criminal Organisation Act*.

The Attorney-General in his media comments on 30 September 2013 indicated that there were considerable time delays in applying to the Supreme Court for a declaration under the *Criminal Organisation Act*. In this regard it should be observed that the Queensland Police did not make an application to the court to first use the provisions of the *Criminal Organisation Act* in any way whatsoever for a very substantial period of time after the Act was enacted. Therefore, any delay in relation to bringing an Application is the fault of Queensland Police, not any inadequacy within the Act.

It is this Council's contention that there is no urgency attaching to the introduction of new laws. Proper consultation should be effected prior to the new laws being signed off by Cabinet and the relevant Parliamentary Committee should be given an appropriate period of time to consider the legislation.

Request

You are requested to advise the intended timeframe before the new laws are taken to Cabinet and to confirm that there will be consultation with interested stakeholders other than the Queensland Police Service prior to the laws being taken to Cabinet.

You are requested to advise when it is intended to have any Exposure Draft Bill with Explanatory Memoranda and related background material to be made publicly available.

Further, you are requested to advise the intended date for consideration of the new laws by Cabinet and the intended date for Parliament to debate and pass the laws.

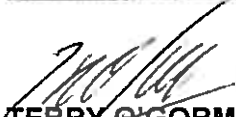
Particularly we seek your confirmation that the proposed new laws will be sent to the relevant Parliamentary Committee for its consideration and Report and the timeframe relating thereto.

It is the Council's view that any problems in relation to fights or other aspects of policing on the Gold Coast is not due to inadequate police powers or inadequate legislation. It is due to the failure of the Queensland Government and the Queensland Police Service to acknowledge concerns expressed by the Police Union over a period of well over 12 months that much greater police numbers are needed on the Gold Coast.

Could you please respond to this letter particularly in relation to the timeframes referred to under the heading 'Request' by **4:00pm on Friday, 4 October 2013**.

Yours faithfully

QUEENSLAND COUNCIL FOR CIVIL LIBERTIES


TERRY O'GORMAN
VICE-PRESIDENT

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