



Anti-gang laws in Australia

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1. Introduction

In recent years, most States and Territories have enacted legislation that gives authorities greater powers to tackle gang related crime. Often the stated aims of governments when introducing such laws has been to target the activities of motorcycle clubs (sometimes referred to as “outlaw motorcycle gangs”). However, the legislation itself almost never refers specifically to such organisations and usually applies generally to any person or group that can be shown to meet the definitions of terms employed in the respective Acts, such as “criminal organisation”, for example.

This Issues Backgrounder provides links to relevant legislation, cases, commentary and media reports. Its focus is on legislation containing measures such as control orders, and other anti-gang sanctions such as consorting offences, rules regarding the wearing of club colours and the licensing regimes for body art tattooing that have been enacted in both NSW and, more recently, in Queensland.

This paper does not refer to asset confiscation and unexplained wealth laws, another tool employed by governments against organised crime. It does, however, provide some brief information regarding the intergovernmental cooperation that has taken place on the subject of organised crime.

The legislation referred to in this Issues Backgrounder covers matters of enormous scope and complexity and raises a number of controversial questions. It is not the purpose of the paper to provide commentary on these matters. Rather, as an introduction to anti-gang laws in Australia, it provides a summary of the relevant legislation, and also a list of sources.

2. Selected legislation

The following table contains links to some current legislation directed at gangs and organised crime. The table commences with South Australia, which was the first jurisdiction to introduce a control order regime for people found to be involved in organisations declared to be “criminal organisations”. New South Wales, Queensland, the Northern Territory, Western Australia and Victoria later followed this model, meaning that Tasmania and the ACT are the only remaining jurisdictions without a control order scheme targeting those found to be participating in organised crime. The ACT does not appear in the table below; however Tasmania does, because it has a legislative scheme providing for the making and enforcement of fortification warning and removal notices in place.

The table contains some brief information regarding the provisions of each Act, the litigation that has taken place in relation to the legislation in Western Australia, South Australia, NSW and Queensland, and some, but not all, of the amendments that have been made to some of these Acts since they were first introduced. The information contained here regarding each Act can only be considered to be a general overview. For more in depth material, the legislation itself should be consulted, along with the relevant cases and also the other sources listed in this Issues Backgrounder. The table is also not exhaustive in terms of representing every change that has been made to the law of each jurisdiction in the name of combating organised or gang-related crime in recent years, of which there have been many.

All jurisdictions except the ACT have some form of consorting laws. These have been included in the table where they cover either people who have been convicted of organised crime-type offences, or, as in the case of NSW, people convicted of a wide range of offences. The consorting offences of Western Australia, which only apply to those who have been convicted of sex or certain drug offences, and those of Tasmania, which are aimed at “reputed thieves”, have not been included.¹

2.1 South Australia		
Legislation	Brief overview	Other material
<u><i>Serious and Organised Crime (Control) Act 2008</i></u>	The Serious and Organised Crime (Control) Act Bill was introduced in the South Australian Legislative Assembly in November 2007, and passed by both Houses in 2008, following amendment in the Upper House. Although the Act did not refer expressly to bkie gangs, the then Attorney General stated in his second reading speech (see here from p 1805) that the Bill was aimed at	<u><i>Serious and Organised Crime (Control) Bill 2008</i></u>

	<p>“outlaw motorcycle gangs and other criminal organisations”. Amongst other things, the new laws, as passed by the South Australian Parliament, gave the Attorney General the power to make declarations in relation to organisations if satisfied that:</p> <ul style="list-style-type: none"> (a) members of the organisation associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity; and (b) the organisation represents a risk to public safety and order in this State (former section 10(1)). <p>Once such a declaration had been made regarding an organisation, the Magistrates Court was required to make control orders against the members of it, upon the application of the Police Commissioner (former section 14(1)). Section 14(3) provided that control orders could be “issued on an application made without notice to any person.” Section 14(5) listed the conditions that could be included in a control order, which included prohibiting the defendant from “associating or communicating with specified persons or persons of a specified class” (section 14(5)(a)(i)), “entering or being in the vicinity of specified premises or premises of a specified class” (section 14(5)(a)(ii)) or “possessing specified articles or articles of a specified class” (section 14(5)(iii)). Section 14(5)(b)(i) provided that the control order must provide that the person was prohibited from “associating with other persons who are members of declared organisations”, while section 14(5)(b)(ii) stated that it must also prohibit them from possessing dangerous or prohibited weapons. Section 22 of the Act made it an offence to contravene or fail to comply with a control order. This offence had a maximum penalty of imprisonment for 5 years.</p> <p>Section 35, in Part 5 of the Act, set out a number of other offences. It made it an offence, for example, for a person to associate with a member of a declared organisation or who is the subject of a control order on “not less than 6 occasions during a 12 month period” (section 35(1)). This offence carried a maximum penalty of 5 years imprisonment. Section 35(3) made it an offence for a person with a criminal conviction for a prescribed offence to associate with another person with such a conviction, again on not less than 6 occasions in a 12 month period, also with a maximum penalty of 5 years imprisonment. Section 35(6) contained a list of the types of associations that would be disregarded for the purposes of the offences in section 35, including associations between “close family members” (defined in section 35(11)(b)) and those “occurring in the course of a lawful occupation, business or profession”.</p> <p>In <i>South Australia v Totani</i> (2010) 242 CLR 1, [2010] HCA 39 (11 November 2010) (<i>Totani</i>), the High</p>	<p>Second reading speech (see from p 1805)</p> <p>Serious and Organised Crime (Control) (Miscellaneous) Amendment Bill 2012</p> <p>Second reading speech (see from p 96)</p> <p>Serious and Organised Crime (Control) (Miscellaneous) Amendment Act 2012</p> <p>Serious and Organised Crime (Control) (Declared Organisations) Amendment Bill 2013</p> <p>Second reading speech (see from p 6419)</p> <p>Serious and Organised Crime</p>
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	<p>Court held, by majority, that section 14(1) was invalid as, according to French CJ, it represented:</p> <p>. . . a substantial recruitment of the judicial function of the Magistrates Court to an essentially executive process. It gives the neutral colour of a judicial decision to what will be, for the most part in most cases, the result of executive action. That executive action involves findings about a number of factual matters including the commission of criminal offences. None of those matters is required by [the Act] to be disclosed to the Court, nor is evidence upon which such findings were based. In some cases the evidence, if properly classified as “criminal intelligence”, would not be discloseable. Section 14(1) impairs the decisional independence of the Magistrates Court from the executive in substance and in appearance in areas going to personal liberty and liability to criminal sanctions which lie at the heart of the judicial function. I agree with the conclusion of Gummow J, Crennan and Bell JJ and Kiefel J that s 14(1) authorises the executive to enlist the Magistrates Court to implement decisions of the executive in a manner incompatible with the Court’s institutional integrity [82] (<i>footnotes omitted</i>).</p> <p>After a consultation process, the South Australian Government introduced the Serious and Organised Crime (Control) (Miscellaneous) Amendment Bill 2012 in an attempt to remedy the issue with the Act identified by the High Court in <i>Totani</i>, and also to avoid the problems with the NSW Act, which had been identified by the High Court in the later case of <i>Wainohu v New South Wales</i> (2011) 243 CLR 181 [2011] HCA 24 (23 June 2011) (<i>Wainohu</i>) (see below section on NSW).</p> <p>Following its amendment, the Act still provided for a regime of declarations and control orders, but rather than being made by the Attorney General, the requisite declarations were to be made “by a person designated as an ‘eligible judge’” (see second reading speech here at p 98), and the making of interim control orders was now also provided for. Eligible judges were required to give their reasons for making or revoking a declaration (again, see second reading speech at p 99).</p> <p>Many other amendments were made to the Act. The provisions relating to the content of control orders are now more detailed and, amongst other things, provide for terms limiting the amount of cash a person subject to a control order can carry (section 22(5)(e)) and also restricting a person’s use of mobile phones and/or computers (section 22(5)(e)).</p> <p>New offences were also included in Part 5 of the Act. Section 34A makes it an offence for a person “who is the owner, occupier or lessee of any premises” to “knowingly permit those premises to be habitually used as a place of resort for members of a declared organisation”. This offence has a maximum penalty of 2 years imprisonment. Section 34B makes it an offence for a person subject to a control order, or who is a member of a declared organisation, to recruit new members to a declared</p>	<p>(Control) (Declared Organisations) Amendment Act 2013</p>
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	<p>organisation. This offence has a maximum penalty of 5 years imprisonment.</p> <p>A new Part 6 was also inserted in the Act by the <i>Serious and Organised Crime (Control) (Miscellaneous) Amendment Act 2012</i>, which provides a process for the recognition of declarations and control orders made in other Australian jurisdictions.</p> <p>The Act was amended once again in 2013 following the decision in <i>Assistant Commissioner Michael James Condon v Pompano Pty Ltd</i> [2013] HCA 7 (14 March 2013) (<i>Pompano</i>) to bring it into line with the Queensland Act (see below), which had been found to be valid in the <i>Pompano</i> case. It now provides that declarations and control orders are to be made by the Supreme Court upon the application of the Police Commissioner, once it is satisfied in relation to certain matters.</p> <p>Like Acts some other jurisdictions, such as Queensland and the Northern Territory, the Act also provides for the making of “public safety orders” by “senior police officers” (see Part 4), which prohibit a “specified person or class of persons” from:</p> <ul style="list-style-type: none"> (a) entering or being on specified premises; or (b) attending a specified event: or (c) entering or being within a specified area. <p>Contravention of such an order is an offence. The provisions that currently exist in the Act relating to the making of public safety orders remain broadly similar to those originally enacted in the 2008 Act.</p> <p>Like similar legislation in other jurisdictions, the Act also contains provisions aimed at protecting the disclosure of “criminal intelligence” (for example see section 5A).</p>	
<p>Consorting and other laws: See the Statutes Amendment (Serious and Organised Crime) Act 2012, which</p>	<p>The Statutes Amendment (Serious and Organised Crime) Bill 2012 was introduced on the same day as the Serious and Organised Crime (Control) (Miscellaneous) Amendment Bill 2012 (see above). It contained “a suite of related measures designed to disrupt and harass the activities of criminals of all persuasions: organised, disorganised, competent and incompetent” (see second reading speech here at p 78).</p> <p>These included the insertion of a new Part 3B into the Criminal Law Consolidation Act 1935 called</p>	<p>Statutes Amendment (Serious and Organised Crime) Bill 2012</p> <p>Second reading</p>

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<p>amended several Acts, including the Criminal Law Consolidation Act 1935 and the Summary Offences Act 1953</p>	<p>“offences relating to criminal organisations”, which, among other things, created a series of new offences relating to participation in a “criminal group” (as defined in section 83D(1)), carrying maximum penalties ranging from 15 to 25 years imprisonment. See section 82E of the <i>Criminal Law Consolidation Act</i>. In his second reading speech the then Attorney General described the new Part 3B as the “centrepiece” of the Bill.</p> <p>The Act also amended the <i>Summary Offences Act 1953</i> to insert a new consorting offence, section 13. This offence provides that:</p> <ol style="list-style-type: none">(1) A person must not, without reasonable excuse, habitually consort with a prescribed person or persons. Maximum penalty: Imprisonment for 2 years.(2) For the purposes of this a person may consort with another person by any means including by letter, telephone or fax or by email or other electronic means.(3) In this section – prescribed person means a person who has been found guilty of, or who is reasonable suspected of having committed, a serious and organised crime offence. <p>Section 4 of the <i>Summary Offences Act</i> now provides that “serious and organised crime offence has the same meaning as in the <i>Criminal Law Consolidation Act 1935</i>”. Section 5 of that Act defines this phrase as follows:</p> <p>serious and organised crime offence means—</p> <ol style="list-style-type: none">(a) an offence against Part 3B; or(b) an offence that—<ol style="list-style-type: none">(i) is punishable by life imprisonment; or(ii) is an aggravated offence against a provision of this, or any other, Act,	<p>speech (see from p 77)</p>
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	<p>if it is alleged that the offence was committed in the circumstances where—</p> <ul style="list-style-type: none">(iii) the offender committed the offence for the benefit of a criminal organisation, or 2 or more members of a criminal organisation, or at the direction of, or in association with, a criminal organisation; or(iv) in the course of, or in connection with, the offence the offender(v) identified himself or herself in some way as belonging to, or(vi) otherwise being associated with, a criminal organisation (whether not the offender did in fact belong to, or was in fact associated with, the organisation) . . . <p>In addition to the habitual consorting offence, a new Part 14A was inserted into the Act which set out a scheme for the issue of “consorting prohibition notices”. In accordance with section 66A, of Part 14A, senior police officers may issue notices prohibiting a person “from consorting with a specified person or persons” where the officer is satisfied that the person is “subject to a control order under the <i>Serious and Organised Crime (Control) Act 2008</i>” or the person or specified person “has, within the preceding period of 3 years, been found guilty of 1 or more prescribed offences” or “is reasonable suspected of having committed 1 or more prescribed offences within the preceding period of 3 years”, and the person who receives the notice has been habitually consorting with the specified person/s. Section 66K(1) provides that it is an offence to fail to comply with a consorting prohibition notice, with a maximum penalty of 2 years imprisonment.</p> <p>Ancillary amendments were made by the Act to the Criminal Law (Sentencing Act) 1988, to include a new section, 19AA, which provided that, when sentencing a person for a “prescribed offence”, Courts may “exercise the powers of the Magistrates Court to issue against the defendant a non-association order under the Summary Procedure Act 1921 as if a complaint had been made against the defendant in relation to that conviction”.</p> <p>The Act also amended section 18 of the <i>Summary Offences Act</i>, which dealt with loitering offences, by including new provisions relating to a person of a “prescribed class” who is loitering in a public place.</p> <p>Other amendments made by the Act included those to the Bail Act 1985, which provided for a presumption against bail for a “serious and organised crime suspect” (a term defined in new section</p>	
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	<p>3A of the <i>Bail Act</i>), unless the person could show that they had not previously been convicted of a serious and organised crime offence (new section 10A(1a)(a)). It is also inserted a new subsection in section 11 of the <i>Bail Act</i>, (2aa), which prescribed a number of conditions that must be set in relation to any grant of bail to an applicant who was a serious and organised crime suspect. A number of amendments were also made to offence provisions in the Controlled Substances Act 1984, to provide for increased penalties where an offence could be regarded as an “aggravated offence”. A new section 43 was inserted to provide a definition of “aggravated offence”:</p> <p>(1) An aggravated offence is an offence committed in circumstances where –</p> <p>(a) the offender committed the offence for the benefit of a criminal organisation, or 2 or more members of a criminal organisation; or</p> <p>(b) in the course of, or in connection with, the offence the offender identified himself or herself in some way as belonging to, or otherwise being associated with, a criminal organisation (whether or not the offender did in fact belong to, or was in fact associated with, the organisation).</p> <p>Section 43(2) sets out circumstances in which a person will be taken to have identified themselves as belonging to/associated with a criminal organisation.</p>	
<p>Anti-fortification laws: Summary Offences Act 1953 and Development Act 1993</p>	<p>Part 16 of the <i>Summary Offences Act 1953</i>, inserted in 2003 by the <i>Statutes Amendment (Anti-Fortification) Act 2003</i>, provides that the Magistrate’s Court can give fortification removal orders in relation to fortifications on premises in certain circumstances, including that the premises are being, have been or likely to be used:</p> <p>(A) for or in connection with the commission of a serious criminal offence; or</p> <p>(B) to conceal evidence of a serious criminal offence; or</p> <p>(C) to keep the proceeds of a serious criminal offence (section 74BB(1)(b)).</p> <p>The initial terms of section 74BB were amended by the <i>Serious and Organised Crime (Control) Act 2008</i> to make premises either owned by a declared organisation or a member of a declared organisation or that “are occupied or habitually used as a place of resort by members of a declared organisation” also potentially subject to a fortification removal order (section 74BB(1)(b)(iii)(A) and (B)). The rest of Part 16 sets out the procedure for the making and enforcement of fortification</p>	<p>(link to Bill not available)</p> <p>Second reading speech (from p 37)</p> <p>Statutes Amendment (Anti-Fortification) Act 2003</p>

	<p>removal orders.</p> <p>The <i>Development Act 1993</i> was also amended by the <i>Statutes Amendment (Anti-Fortification) Act 2003</i> to provide that where a relevant planning authority suspects that a proposed development involves the construction of “fortifications” within the meaning of the <i>Summary Offences Act 1953</i>, they are to notify the Police Commissioner. Where the Commissioner determines that a proposed development involves the creation of fortifications, the planning authority must refuse the planning application (<i>Development Act 1993</i>, section 37A).</p>	
<p>2.2 New South Wales</p>		
<p>Legislation</p>	<p>Brief overview</p>	<p>Other material²</p>
<p><u><i>Crimes (Criminal Organisations Control) Act 2012</i></u></p>	<p>This Act replaced the <i>Crimes (Criminal Organisations Control) Act 2009</i>, which was found to be invalid by the High Court in <i>Wainohu</i>. The 2009 Act had established a scheme in which, upon the application of the Police Commissioner, an “eligible judge” could make a declaration regarding a particular organisation where satisfied that “members of the organisation associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity” and that “the organisation represents a risk to public safety and order in this State” (section 9(1)(a) and (b)). Section 13(1) provided that the rules of evidence did not apply to the hearing of an application for such a declaration and section 13(2) stated:</p> <p style="padding-left: 40px;">If an eligible Judge makes a declaration or decision under this Part, the eligible Judge is not required to provide any grounds or reasons for this declaration or decision (other than to a person conducting a review under section 39 if that person so requests).³</p> <p>Once a declaration had been made in relation to an organisation, the Commissioner could apply to the Supreme Court for an interim control order, or a control order, in relation to a person, where the Court was satisfied that the person was a member of a declared organisation (section 19(1)(2)). There were a number of consequences for a person who had a control order, interim or otherwise, made against them (see Part 3, Division 3), including that it was an offence for them to associate with another “controlled member” of the declared organisation (section 26(1)), and also that any</p>	<p><u><i>Crimes (Criminal Organisations Control) Bill 2009</i></u> (as passed by both Houses)</p> <p><u><i>Agreement in principle speech</i></u></p> <p><u><i>Crimes (Criminal Organisations Control) Act 2009</i></u> (repealed)</p> <p><u><i>Crimes Criminal Organisations Control Bill 2012</i></u> (as passed by both</p>

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	<p>authorisation that person had to carry on a “prescribed activity” was suspended (in the case of an interim control order – section 27(2)) or revoked (in the case of a control order – section 27(3)). Under section 27(4), a “controlled member of a declared organisation is prohibited from applying for any authorisation to carry on a prescribed activity so long as an interim control order or control order in relation to the member is in force.” The term “prescribed activity” was defined in section 27(6) to mean a number of things, including carrying on the business of a pawnbroker or a security activity within the meaning of the <i>Security Industry Act 1997</i>.</p> <p>The High Court, with Heydon J in dissent, found that the Act was invalid because it exempted eligible judges from the requirement to give reasons for their decision to make a declaration and in doing so conferred a function upon them that was incompatible with the institutional integrity of the Supreme Court, albeit that they were not acting in their capacity as Judges of that Court in the exercise of that function.</p> <p>In 2012, the NSW Parliament passed a Bill which repealed the 2009 Act and established a new control order regime in its stead. The re-enacted scheme still relied upon eligible judges to make declarations; however new section 13(2) required eligible judges to give reasons when making or revoking a declaration. It was otherwise broadly similar to that contained within the 2009 Act, including in relation to the consequences of making an interim control order or a control order, which are set out in Division 3 of Part 3 of the Act.</p> <p>Later that year, a further Bill was introduced to amend the Act to provide a process for the recognition in NSW of declarations and control orders made in other jurisdictions. However, in March 2013, this Bill was withdrawn and the Crimes (Criminal Organisations Control) Amendment Bill 2013 was introduced. The 2013 Bill made amendments to the <i>Crimes (Criminal Organisations Control) Act 2012</i>, which brought it into line with the <i>Criminal Organisation Act 2009</i> (Qld), the validity of which had been upheld by the High Court in <i>Pompano</i>. Consequently, the Act now provides that the Commissioner may apply to the Supreme Court for a declaration that a particular organisation is a criminal organisation (section 5). Once such a declaration has been made regarding an organisation, the Commissioner may apply to the Supreme Court for control orders to be made regarding people that the Court is satisfied are a part of a declared organisation. The 2013 Bill also amended the Act to provide for the recognition of relevant declarations and orders made interstate (see Part 3A).</p>	<p>Houses)</p> <p>Second reading speech</p> <p>Crimes (Criminal Organisations Control) Amendment Bill 2012</p> <p>Second reading speech</p> <p>Crimes (Criminal Organisations Control) Amendment Bill 2013 (as passed by both Houses)</p> <p>Second reading speech</p>
<p>Tattoo Parlours Act</p>	<p>In his second reading speech for the Tattoo Parlours Bill 2012, the Minister for Fair Trading stated</p>	<p>Tattoo Parlours Bill</p>

<p>2012</p>	<p>that the Bill was “part of the Government's continued response to gang crime in New South Wales” and also that “ it aims to break the stranglehold that outlaw motorcycle gangs have over the tattoo industry in New South Wales.” The Act establishes a scheme for the licencing and regulation of body art tattooing businesses and artists. Section 11(4) provides that applications for a licence may not be made by:</p> <p>An application for a licence may not be made by:</p> <ul style="list-style-type: none"> (a) an individual who is under the age of 18 years, or (b) an individual who is not an Australian citizen or Australian resident, or (c) an individual who is a controlled member of a declared organisation. <p>Note: Controlled members are prohibited from applying for licences – see section 27 of the <i>Crimes (Criminal Organisations Control) Act 2012</i>.</p> <p>Section 27(6) of the <i>Crimes (Criminal Organisations Control) Act 2012</i> was also amended to provide that “carrying on a body art tattooing business or performing body art tattooing procedures” were prescribed activities, meaning that any authority a person already has to perform these activities will be revoked upon the making of a control order against them under that Act.</p> <p>Section 12 provides that applications for operator licenses must be accompanied by a written statement made by the applicant, which specifies certain information about the applicant's “close associates”, including their name and date of birth where the close associate is an individual, and, where the close associate is a company, partnership or trust, certain specified information, including names of directors, trustees, or in the case of proprietary companies, the names of shareholders.</p> <p>The term “close associate” is defined in section 4 of the Act as follows:</p> <ul style="list-style-type: none"> (1) For the purposes of this Act, a person is a close associate of an applicant for a licence or a licensee if the person: <ul style="list-style-type: none"> (a) Holds or will hold any relevant financial interest, or is or will be entitled to exercise any relevant power (whether in the person's own right or on behalf of any other person), in the business of the applicant or licensee that is or will be carried on under the authority of the licence, and by virtue of that interest or power is or will be able (in the opinion of the Commissioner) to exercise a 	<p>2012 (as passed by both Houses)</p> <p>Second reading speech</p> <p>Tattoo Parlours Amendment Bill 2012 (as passed by both Houses)</p> <p>Second reading speech</p>
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	<p>significant influence over or with respect to the management or operation of that business, or</p> <p>(b) Holds or will hold any relevant position, whether in the person's own right or on behalf of any other person, in the business of the applicant or licensee that is or will be carried on under the authority of the licence, or</p> <p>(c) Is or will be engaged as a contractor or employed in the business of the applicant or licensee that is or will be carried on under the authority of the license.</p> <p>(2) For the purposes of this section, a financial institution is not a close associate by reason only of having a relevant financial interest in the relation to a business.</p> <p>(3) The provisions of this section extend to relevant financial interests and relevant powers even if those interests and powers are not payable, exercisable or otherwise enforceable as a matter of fact.</p> <p>The terms "relevant financial interest", "relevant position" and "relevant power" are defined in section 4(4).</p> <p>Part 2 of the Act creates a number of offences. For example, under Part 2, it is an offence for a prescribed person to carry on a body art tattooing business, employ an unlicensed person to work as a body art tattooist, or perform a body art tattooing procedure for fee or reward. The maximum penalties for these offences are fines. In the case of a corporation, the maximum penalty is a fine of 100 penalty units⁴, and in the case of a corporation that continues to commit offence for a period of time, 100 penalty units for each day that the offence continues. In any other case, the maximum penalty is 50 penalty units or 50 penalty units per day for a continuing offence.</p> <p>Part 3 sets out the licensing scheme, including the application process. Applications for a license are to be made to the "Director-General" (section 11). The term "Director-General" is defined in section 3 to mean the Commissioner for Fair Trading, or where such a position does not exist, the Director-General of the Department of Finance and Services. In addition to providing a statement of "close associates", applicants must also consent to having their finger or palm prints taken to confirm their identity (section 13(1)).</p> <p>Section 14(a) provides that, upon receipt of the application, the Director-General "may carry out such investigations and inquiries as the Director-General considers necessary for a proper consideration of the application" and section 14(b) states that the Director-General:</p>	
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	<p>(b) is to refer any application that the Director-General considers to have been duly made (along with any supporting information) to the Commissioner for an investigation and determination as to either or both of the following:</p> <ul style="list-style-type: none"> (i) whether the applicant is a fit and proper person to be granted the licence, (ii) whether it would be contrary to the public interest for a licence to be granted. <p>Other provisions in Part 3 deal with matters such as the power of the Commissioner or the Director-General to request further information and also review of licensing decisions by the Administrative Decisions Tribunal.</p> <p>Enforcement of the licensing regime is dealt with in Part 4 of the Act, which provides for the making of interim closure orders and long term closure orders in relation to tattooing businesses which it is satisfied that it is being carried on without a licence, or where “there have been, or there are likely to be, serious criminal offences committed at or in connection with the premises” (sections 28(1)(a), 28(1)(b), 29(1)(a) and 29(1)(b)). Part 4 also confers powers of entry of licensed premises to police and police drug detection dogs, and also powers to issue fines and to request the production of licenses upon “authorised officers” (defined in section 3 to mean a police officer, an investigator within the meaning of the <i>Fair Trading Act 1987</i> or any other person belonging to a prescribed class of persons).</p> <p>The Tattoo Parlours Amendment Act 2012 (repealed) made several amendments to the Act, including inserting additional entry powers for authorised officers in a new Division 2 of Part 4, such as the power to enter premises both with and without a warrant (sections 30A and 30B). A section listing powers that can be exercised by authorised officers upon entry was also inserted (section 30C).</p>	
<p>Restrictions on entry to licensed premises: Liquor Act 2007 and Liquor Regulation 2008</p>	<p>In several areas of NSW, members of motorcycle clubs are prohibited from entering licensed premises while wearing symbols, insignia or “colours” of their club. These bans appear to be associated with the Liquor Accord provisions in Part 8 of the <i>Liquor Act 2007</i>.</p> <p>In addition, in 2012, the NSW Parliament passed the <i>Liquor Amendment (Kings Cross Plan of Management) Act 2012</i>, which, among other things, inserted a new Division 3 in Part 6 of the <i>Liquor Act</i>, which sets out a raft of provisions relating specifically to the “Kings Cross Precinct”. Section</p>	<p>Liquor Amendment (Kings Cross Plan of Management) Act 2012 (repealed)</p> <p>Liquor Amendment</p>

	<p>116A of Division 3 contains a regulation-making power which states that “The regulations may prescribe conditions to which a licence relating to premises situated in the Kings Cross precinct is subject” (section 116A(1)). Among the new clauses subsequently inserted in the <i>Liquor Regulation</i> by the Liquor Amendment (Kings Cross) Regulation 2012 was the following:</p> <p>53K Exclusion of persons from subject premises</p> <p>The licensee of subject premises must not permit any person to enter the premises, or to remain on the premises, if the person is wearing or carrying any clothing, jewellery or accessory displaying:</p> <p>(a) the name of any of the following motorcycle-related organisations:</p> <ul style="list-style-type: none">(i) Bandidos,(ii) Black Uhlands,(iii) Coffin Cheaters,(iv) Comancheros,(v) Finks,(vi) Fourth Reich,(vii) Gladiators,(viii) Gypsy Jokers,(ix) Hells Angels,(x) Highway 61,(xi) Life and Death,(xii) Lone Wolf,(xiii) Mobshitters,	<p>(Kings Cross Plan of Management) Bill 2012 (passed by both Houses)</p> <p>Second reading speech</p> <p>Liquor Amendment (Kings Cross Plan of Management) Act 2013</p> <p>Liquor Amendment (Kings Cross Plan of Management) Bill 2013 (passed by both Houses)</p> <p>Second reading speech</p>
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	<p>(xiv) Mongols,</p> <p>(xv) Muslim Brotherhood Movement,</p> <p>(xvi) Nomads,</p> <p>(xvii) Notorious,</p> <p>(xviii) Odins Warriors,</p> <p>(xix) Outcasts,</p> <p>(xx) Phoenix,</p> <p>(xxi) Rebels,</p> <p>(xxii) Scorpions, or</p> <p>(b) the colours, club patch, insignia or logo of any such organisation, or</p> <p>(c) the “1%” or “1%er” symbol, or</p> <p>(d) any image, symbol, abbreviation, acronym or other form of writing that indicates membership of, or an association with, any of the organisations specified in paragraph (a).</p> <p>In 2013, a second Act, the <i>Liquor Amendment (Kings Cross Plan Of Management) Act 2013</i>, was passed. It amends the <i>Liquor Act 2007</i> to make provision for orders banning certain people from licensed premises in the Kings Cross precinct on either a short or long term basis. In his second reading speech the Minister for Hospitality and Racing said of this scheme:</p> <p>The bill contains two significant measures to help further the precinct's safety and enable action to be taken against troublemakers. First, the bill will enable precinct-wide temporary banning orders to be issued by police for up to 48 hours. A temporary banning order can be issued to a person who refuses to comply with a move-on direction given by police or to a person who is drunk, violent or disorderly and refuses to leave licensed premises or the vicinity of licensed premises or attempts to re-enter licensed premises within 24 hours of being asked to leave. A temporary banning order for up to 48 hours can apply to one or more licensed premises in the Kings Cross precinct. Importantly, a temporary banning</p>	
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	<p>order can only be issued by a police officer above the rank of sergeant who is satisfied that the person's continued conduct is likely to cause a public nuisance or a risk to public safety.</p> <p>The bill will also enable the Independent Liquor and Gaming Authority to issue a long-term precinct-wide banning order that will prohibit the subject of that order from entering or attempting to enter high-risk licensed premises in the Kings Cross precinct for up to 12 months. A long-term banning order can only be issued by the Independent Liquor and Gaming Authority when it is satisfied that the person has been charged with or found guilty of a serious criminal offence involving alcohol-related violence or the person has been issued with three temporary banning orders in the previous 12 months. These new banning orders will complement and strengthen the existing banning provisions available to all licensees under the liquor laws. They send a clear message to troublemakers visiting Kings Cross that if they make trouble they face a ban from entering all high-risk licensed venues in the precinct for up to 12 months.</p>	
<p>Fortification removal orders: Law Enforcement Powers and Responsibilities Act 2002</p>	<p>In 2006, the NSW Parliament passed the Crimes Legislation Amendment (Gangs) Act 2006. This Act primarily amended the Crimes Act 1900 and the <i>Law Enforcement Powers and Responsibilities Act 2002</i> (LEPRA) to create new offences and give police certain powers. Amongst these amendments was the insertion of a new Part 16 in the LEPRA, which gave police powers in relation to the removal of fortifications from premises.</p> <p>Under section 210B the Police Commissioner can apply to the Local Court for a fortification removal or modification order. Section 210D provides that if the fortification removal order is not complied with within the time it specifies, the police may take steps to remove or modify the fortifications themselves (see for example section 210D(2)(e)). Section 210D(2)(a) gives the police the power to enter the premises subject to the order without a warrant to enforce the order. Section 210E makes it an offence to do anything to hinder the removal or modification of fortifications, with a maximum penalty of 100 penalty units and/or imprisonment for 6 months.</p>	<p>Crimes Legislation Amendment (Gangs) Bill 2006 (passed by both Houses)</p> <p>Second reading speech</p>
<p>Evidence Amendment (Evidence of Silence) Act 2013 and the Criminal Procedure Amendment (Mandatory Pre-</p>	<p>The <i>Evidence Amendment (Evidence of Silence) Act 2013</i> amended the Evidence Act 1995 to insert a new section, 89A, which provides:</p> <p>(1) In a criminal proceeding for a serious indictable offence, such unfavourable inferences may be drawn as appear proper from evidence that, during official questioning in relation to the offence, the defendant failed or refused to mention a fact:</p> <p>(a) that the defendant could reasonably have been expected to mention in the circumstances</p>	<p>Evidence Amendment (Evidence of Silence) Bill 2013 (passed by both Houses)</p> <p>Criminal Procedure</p>

<p>Trial Defence Disclosure) Act 2013</p>	<p>existing at the time, and</p> <p>(b) that is relied on in his or her defence in that proceeding.</p> <p>The new provision contains several exemptions, including that the unfavourable inferences referred to in section 89A(1) cannot be drawn unless a special caution has been given to the defendant by an investigating official in the presence of an “Australian legal practitioner” (section 89A(2)(a) and (c)). The section also does not apply to defendants who are under 18 years of age or are “incapable of understanding the general nature and effect of a special caution” (section 89A(5)).</p> <p>On 14 August 2012, the Premier issued a media release entitled “Crime Crackdown: “Right to Silence” Law Toughened”, which signalled the above change to the law and contained the following quotes from the Police Minister and the Police Commissioner:</p> <p>. . . the Police Minister Mike Gallacher said the change would be welcomed by police and the community.</p> <p>“The right to silence can be exploited by criminals and failing to answer police can impede investigations,” Mr Gallacher said.</p> <p>“They won’t be able to hide behind their vow of silence anymore.”</p> <p>The NSW Police Commissioner Andrew Scipione welcomed the change to the right to silence law.</p> <p>“This is a welcome aid to what is traditionally a difficult area in policing,” Mr Scipione said.</p> <p>“This is a common sense approach which should see a decrease in the use of silence by suspects during police questioning.</p> <p>“The NSW Police welcomes anything that helps us break down this wall of silence.”</p> <p>An article which appeared in the <i>Sydney Morning Herald</i> online on the same day stated that the proposed change was part of the Government’s response to “bikie gang violence”.</p> <p>The Evidence Amendment (Evidence of Silence) Bill 2013 was introduced cognate with the Criminal Procedure Amendment (Mandatory Pre-Trial Defence Disclosure) Bill 2013 and received assent on the same day. The second Act amended the Criminal Procedure Act 1986 to make changes to the</p>	<p>Amendment (Mandatory Pre-Trial Defence Disclosure) Bill 2013 (passed by both Houses)</p> <p>Second reading speech</p>
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	<p>pre-trial disclosure procedures set out in that Act. In his second reading speech for both Bills, the Attorney General said that the changes to the <i>Criminal Procedure Act</i> would “expand the scope of mandatory disclosure requirements in criminal trials”. The Act also inserted a new provision which also allowed for the drawing of inferences against the accused person if they fail to comply with the pre-trial disclosure requirements (section 146A).</p>	
<p><u>Crimes Amendment (Consorting and Organised Crime) Act 2012</u>, which amended the <u>Crimes Act 1900</u></p>	<p>Key changes made by this Act include amendments to the <i>Crimes Act 1900</i> to create new offences, including consorting offences. The Act inserted a new Division, 7, in Part 3A. Division 7 is entitled “Consorting”. New section 93W defines “consort” to mean “consort in person or by any other means, including by electronic or other form of communication.” It also defines “convicted offender” to mean “a person who has been convicted of an indictable offence.” Sections 93X(1)(a) and (b) provide that a person who “habitually consorts with convicted offenders,” and who “consorts with those convicted offenders having been given an official warning in relation to each of those convicted offenders” is guilty of an offence carrying a maximum penalty of imprisonment for 3 years and/or a fine of 150 penalty units. Sections 93X(2)(a) and (b) provide that a person does not habitually consort with convicted offenders unless they “consort with at least 2 convicted offenders (whether on the same or separate occasions)” and “the person consorts with each convicted offender on at least 2 occasions”.</p> <p>The term “official warning” is defined in section 93X(3)(a) and (b) as a warning given orally or in writing by a police officer both that “a convicted offender is a convicted offender” and that “consorting with a convicted offender is an offence.” Section 93Y provides that it is a defence to the offence of consorting if the “defendant satisfies the court that the consorting was reasonable in the circumstances”. Section 93Y contains a list of what reasonable circumstances might be, for example that the defendant was consorting with family members (section 93Y(a)), or the consorting occurs in the course of training or education (section 93Y(b)).</p> <p>The Act inserted a new Part 29 in Schedule 11 (which contains savings and transitional provisions) of the <i>Crimes Act</i>, which provides that the Ombudsman must prepare a report on the operation of the new Division 7 of Part 3A as soon as practicable at the end of the period of two years since the commencement of the provision.</p> <p>The consorting legislation is being challenged in the NSW Court of Appeal by members of the Nomads. The litigation is currently adjourned, awaiting the outcome of a High Court case in which Unions NSW have challenged the validity of electoral funding laws, which may have relevance in the</p>	<p><u>Crimes Amendment (Consorting and Organised Crime) Bill 2012</u></p> <p><u>Second reading speech</u></p>

adjudication of the consorting case (see this [report](#) from *The Australian*, 6 November 2013).

Other changes made by the Act include those made to offences related to firearms and participation in criminal organisations. For example, under section 93GA(1), it was already an offence, with a maximum penalty of 14 years imprisonment, to fire “a firearm at a dwelling-house or other building with reckless disregard for the safety of any person”. Under section 93G(1A), it was also already an offence to fire a firearm with reckless disregard for the safety of any person at a dwelling-house or building “during a public disorder”, with a maximum penalty of 16 years imprisonment. The *Crimes Amendment (Consorting and Organised Crime) Act* inserted a new subsection, 93GA(1B), which makes it an offence to fire a firearm with reckless disregard for safety at a dwelling-house or building “in the course of an organised criminal activity”, which also has a maximum penalty of 16 years imprisonment. It also inserted a further new subsection, 93GA(4), which provides for alternative verdicts in relation to these offences.

Further examples of amendments made by the Act include amendments to the already existing provisions in the *Crimes Act* relating to participation in criminal groups. Section 93T(1) already provided that it was an offence for a person to participate in a criminal group:

- (a) knowing that it is a criminal group, and
- (b) knowing, or being reckless as to whether, his or her participation in that group contributes to the occurrence of any criminal activity.

This offence had a maximum penalty of 5 years imprisonment. The Act repealed this section, and included a new section 93T(1), that it was an offence for a person to participate in a criminal group where they know or “ought reasonably to know” it was a criminal group, and where they know “or ought reasonably to know, that his or her participation” in the group contributes to the occurrence of criminal activity. The maximum penalty for this offence remains 5 years imprisonment.

The Act also inserted a new subsection, 93T(1A), which provides that it is an offence to participate in a criminal group “by directing any of the activities of the group”, in circumstances where the person knows it is a criminal group and “knows, or is reckless as to whether, that participation contributes to the occurrence of any criminal activity.” This offence has a maximum penalty of 10 years imprisonment. A further new subsection, 93T(4A), was also added to the Act. This provision makes it an offence for a person to participate in a criminal group “whose activities are organised and on-going by directing any of the activities” in circumstances where the person knows it is a criminal

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	<p>group and “knows, or is reckless as to whether” their participation contributes to criminal activity. This offence has a maximum penalty of 15 years imprisonment.</p>	
<p>Firearms and Criminal Groups Legislation Amendment Act 2013, which amended several Acts, including the Firearms Act 1996 and the Restricted Premises Act 1943</p>	<p>This Act made various amendments to the <i>Firearms Act 1996</i>, including the replacement of the former Part 7, which deals with firearms prohibition orders, with a new one containing more stringent and additional provisions. The provisions in the new Part 7 include new offences relating to having a firearm, firearm part or ammunition at premises at which a person subject to a firearms prohibition order is residing, with a maximum penalty of 50 penalty units and/or imprisonment for 12 months (section 74(6)). It is a defence if the defendant can prove that they “did not know and could not reasonably be expected to have known, that the firearm, firearm part or ammunition was on the premises” or “took reasonable steps to prevent the firearm, firearm part or ammunition from being on the premises” (section 74(7)). It is also now an offence for a person subject to a firearms prohibition order to attend certain premises, including shooting ranges, firearms clubs or other premises prescribed by regulations, without reasonable excuse (section 74(8)).</p> <p>Section 74A of the new Part 7 also gives the police powers to search for firearms in the possession of a person subject to a firearms prohibition order, including the power to “enter any premises occupied by or under the control or management of such a person” (section 74A(2)(b)) and also to “stop and detain any vehicle, vessel or aircraft occupied by such a person” (section 74A(2)(c)). Section 74B provides that the Ombudsman should monitor the use of these search powers for two years after the commencement of the Act.</p> <p>Other amendments made by this Act to the <i>Firearms Act</i> include the insertion of a new section, 50B, which makes it an offence to “give possession of a firearm to another person unless the other person is authorised to possess the firearm by a licence or permit”. It is also an offence to do the same with a firearm part. The maximum penalties for these offences are 14 years imprisonment where the firearm is a pistol or a prohibited firearm, or a part of a pistol or prohibited firearm, and 5 years imprisonment in any other case (sections 50B(1) and (2)). In his second reading speech for this Act, the Premier stated that this offence will “capture the distribution of firearms between members of criminal groups or other criminals where a financial transaction does not take place” (it being already an offence to buy a firearm without an appropriate licence or permit).</p> <p>The Act also amended the <i>Restricted Premises Act 1943</i>, an Act which provides that in certain circumstances, upon a senior police officer “showing reasonable grounds to suspect” that certain activities, including “drunkenness or disorderly or indecent conduct or any entertainment of a</p>	<p>Firearms and Criminal Groups Legislation Amendment Bill 2013 (passed by both Houses)</p> <p>Second reading speech</p>

demoralising character takes place on the premises”, or “that liquor or a drug is unlawfully sold or supplied on or from the premises” or “that reputed criminals or associates of reputed criminals are to be found on or resort to the premises or have resorted and are likely to resort again to the premises”, the Supreme or District Court can make an order declaring that the premises are “premises to which this Act applies” (section 3). A number of consequences flow from the making of such a declaration, including that if any of the conduct outlined in section 3 continues at the premises, the owner or occupier them will be guilty of an offence (section 8). Once a declaration is made the police also have certain powers of entry, which are set out in section.

The Act amended the *Restricted Premises Act* to include the following new definition of “reputed criminal” in section 2:

reputed criminal includes (without limitation) a person who:

- (a) has been convicted of an indictable offence under the *Crimes Act 1900*, or
- (b) is engaged in an organised criminal activity within the meaning of section 46AA of the *Law Enforcement (Powers and Responsibilities) Act 2002*, or
- (c) is a controlled member of a declared organisation within the meaning of the *Crimes (Criminal Organisations Control) Act 2012*.

The Act also provided for “the appropriate Court” to make a new category of declaration under section 3, a “reputed criminal declaration”, in circumstances where “reputed criminals have attended or are likely to attend the premises” or where “a reputed criminal has, or takes part or assists in, the control or management of the premises” (section 3(2)(a) and (b)). If such a declaration is made, the owner or the occupier of the premises will be guilty of an offence where a reputed criminal attends them or “has, or takes part or assists in, the control or management of the premises”, with a maximum penalty of a fine of 150 penalty units and/or 3 years imprisonment (section 8(2A)(a) and (b)).

A new subsection was also included in section 10, subsection (f), which gives the police power to enter declared premises to “search the premises for, and seize, any weapon or explosive.”

Once again, a provision has been inserted to provide for review of the use of these powers to be

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	<p>conducted by the Ombudsman for a period of two years after the Act commences (section 20A).</p> <p>In his second reading speech, the Premier said that the amendments to the <i>Restricted Premises Act</i>:</p> <p style="padding-left: 40px;">. . . will make it easier for police to get premises declared on the grounds that they are routinely used by serious criminal, such as gang club houses. Such a declaration triggers increased search powers for police, which will also be expanded at item [6] of schedule 2 so they can specifically search for firearms and other weapons on the premises.</p>	
<p><u>Combat Sports Act 2013</u></p>	<p>In her second reading speech the Minister for Sport explained that the Combat Sports Bill 2013 was to replace the <i>Combat Sports Act 2008</i> and it was aimed at strengthening “the regulation of combat sports to better promote the health and safety of combatants and the integrity of combat sports contests.” The new Act gives police certain powers in relation to the registration of people who work in the combat sports industry. In her second reading speech, the Minister explained these powers and their purpose as follows:</p> <p style="padding-left: 40px;">New South Wales police are a key regulatory partner under the new bill, with a nominee of the Commissioner of Police restored to the Combat Sports Authority, after the 2008 Act removed the requirement for police membership. There is no room for organised crime in the combat sports industry or in the gyms where combatants train. Police are being given new powers to work with the Combat Sports Authority to keep criminals out of the sport. Schedule 3.2 to the bill amends the Crimes (Criminal Organisations Control) Act 2012 to prevent a person subject to that Act from being registered under this bill and future Act in any capacity. Promoters, matchmakers and managers are most likely to profit from combat sport and have the greatest capacity to affect the integrity of contests. It is not unusual for a person to be registered in all three of these roles.</p> <p>The Minister went on to explain that the Bill used a similar approach to the <i>Tattoo Parlours Act</i> in providing that the Police Commissioner is to play a role in examining the suitability of a person to become registered under the Act:</p> <p style="padding-left: 40px;">Adopting the model used in the Tattoo Parlours Act, clause 26 of the bill requires that promoters, managers and matchmakers are subject to a security determination by the Commissioner of Police. The commissioner may determine that a person cannot be registered in those roles on fit and proper person or public interest grounds, and the Combat Sports Authority must, under clause 25 (2), enforce that determination. The commissioner may consider criminal record information, including spent convictions, and police intelligence in making such an important determination. New South Wales police will monitor</p>	<p><u>Combat Sports Bill 2013</u> (as passed by both Houses)</p> <p><u>Second reading speech</u></p>

	<p>criminal records and intelligence in respect of all registered promoters, managers and matchmakers, and the commissioner may make an adverse security determination at any time in accordance with clause 34. The Combat Sports Authority must cancel a registration where this occurs.</p> <p>Clauses 77 and 78 allow adverse security determinations to be reviewed by the Administrative Decisions Tribunal while protecting sensitive police information. Persons registering in other roles will also be subject to a fit and proper person assessment, which will be undertaken by the authority and include checks on previous compliance with combat sports regulatory requirements, training requirements and any relevant information that police may provide.</p> <p>In addition, the new Act gives police additional powers in respect to the staging of combat sports events:</p> <p>Police will consider all applications to hold combat sports events in accordance with the police events policy, and clause 43 requires the authority to notify police of all permits for combat sports events. Clause 45 gives police new powers, exercisable by an officer of or above the rank of assistant commissioner, to cancel combat sport contests where police have public health or safety, or significant property damage concerns. Outlaw motorcycle gang members often attend combat sport contests and if police receive intelligence that rival gangs are planning to confront each other at an event police can shut down the event. Police officers attending contests have similar powers, at clause 62, to stop contests from proceeding.</p> <p>The powers at clause 62 may also be exercised by the authority or inspectors, with directions not to proceed with a contest able to be made to combatants and industry participants, not just promoters. Failure to comply with such a direction will be an offence. Regrettably, some combat sports contests have been marred by ring invasions. Clause 55 establishes an offence of unauthorised entry into a contest area during or within one hour of a contest. The maximum penalty of \$5,500 is consistent with those that apply to pitch or other sporting ground invasions. Police will also be able to continue to exercise the powers of combat sport inspectors in the manner agreed between the authority and police, as outlined at clause 84.</p>	
<p><u>Motor Dealers and Repairers Act 2013</u></p>	<p>The Act replaces the <i>Motor Dealers Act 1974</i> and the <i>Motor Vehicle Repairs Act 1980</i>. According to the explanatory note for the Bill, its objects include “to establish a scheme for the licensing and regulation of motor dealers, motor vehicle repairers, motor vehicle recyclers and motor vehicle tradespersons” and “to provide for remedies for customers of motor dealers and motor vehicle repairers who suffer loss as a result of illegal or unjust conduct by motor dealers or motor vehicle</p>	<p><u>Motor Dealers and Repairers Bill 2013</u> (passed by both Houses)</p> <p><u>Second reading</u></p>

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	<p>repairers”.</p> <p>Section 27(2) of the new Act:</p> <p>(2) An applicant is not a fit and proper person to be the holder of any licence if the Secretary has reasonable grounds to believe from information provided by the Commissioner of Police in relation to the applicant that:</p> <p>(a) the applicant is a member of, or regularly associates with one or more members of, a declared organisation within the meaning of the Crimes (Criminal Organisations Control) Act 2012, and</p> <p>(b) the nature and circumstances of the applicant’s relationship with the organisation or its members are such that it could reasonably be inferred that improper conduct that would further the criminal activities of the declared organisation is likely to occur if the applicant is granted a licence.</p> <p>A consequential amendment was made by the Act to section 27(6) of the <i>Crimes (Criminal Organisations Control) Act 2012</i>, which already provided that prescribed activities for the purposes of that Act included carrying on a business as a dealer within the meaning of the <i>Motor Dealers Act 1974</i> or a repairer within the meaning of the <i>Motor Vehicle Repairs Act 1980</i> (see above in relation to the <i>Crimes (Criminal Organisations Control) Act 2012</i> for an overview of the effect of this).</p>	<p>speech</p>
2.3 Queensland		
Legislation	Brief overview	Other material⁵
<p>Criminal Organisation Act 2009</p>	<p>Unlike the Acts initially enacted in SA and then NSW, which established schemes where declarations were to be made either by the Attorney General or by an “eligible judge”, the Queensland Act provided that the declarations that a particular organisation was a criminal organisation were to be made by the Supreme Court upon the application of the Police Commissioner (Part 2). Once such a declaration was made, like the Acts of other States, the <i>Criminal Organisation Act 2009</i> provided that the Commissioner could apply to the Supreme Court to have a control order made in relation to a person where it was satisfied that a person was or has been a member of a criminal organisation,</p>	<p>Criminal Organisation Bill 2009</p> <p>Explanatory notes</p> <p>Explanatory</p>

	<p>has engaged or engages in serious criminal activity and associates with others to engage or conspire to engage in criminal activity (Part 3). The process for having an organisation declared to be a criminal organisation set out in the Act was determined to be constitutionally valid by the High Court in <i>Pompano</i>.</p> <p>Section 19 of the Act contains a non-exhaustive list of the conditions that may be placed on a control order. Similar to the control Acts of other jurisdictions, this list includes conditions prohibiting a person from associating with “any person who is a member of a criminal organisation” (section 19(2)(a)) or another controlled person (section 19(2)(b)), and also conditions prohibiting the person from possessing certain items such as weapons (section 19(2)(c)), “carrying on or applying under an Act to carry on a prescribed activity” (section 19(2)(d)) (see the definitions in Schedule 2 for a list of these activities), “recruiting or attempting to recruit anyone to become a member” or “applying for or undertaking stated employment” (section 19(2)(g)). The Act provides for interim control orders to be made while an application for a control order is being determined (section 21).</p> <p>Division 2 of Part 3 deals with enforcement of control orders. It contains section 24, which provides that it is an offence to knowingly contravene a control order, with a maximum penalty of 3 years imprisonment for the first offence and 5 years imprisonment for each subsequent offence.</p> <p>Part 4 of the Act empowers the Supreme Court to make “public safety orders” that are similar to the public safety orders that can be made by senior police officers under the <i>Serious and Organised Crime (Control) Act 2008</i> (SA).</p> <p>Part 5 of the Act provides for the making of fortification removal orders (see section 43). Division 4 of Part 5 provides for the enforcement of such orders by police. It is an offence to hinder the removal or modification of a fortification (section 56), with a maximum penalty of 5 years imprisonment. Section 57 provides for compensation to be paid by the State in circumstances where the owner of fortified premises is not the “responsible person” (defined in section 39) and fortifications have been removed or modified causing damage to the premises. Section 58 provides for the State to then take recovery action against the responsible person.</p> <p>“Criminal intelligence” is protected by Part 6 of the Act.</p> <p>Unlike the Acts of other jurisdictions, this Act also establishes an office, which it describes as the criminal organisation public interest monitor, or COPIM, to oversee applications for control orders or</p>	<p>speech (see here from p 3029)</p>
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	<p>their modification or revocation, and also applications in relation to the orders for the protection of criminal intelligence. Section 86(c) provides that the COPIM can “test, and make submissions to the court about, the appropriateness and validity of the monitored application.” The performance of the COPIM’s functions is to be monitored by a parliamentary committee (section 91).</p> <p>Part 8 of the Act sets out a process for the recognition in Queensland of declarations and control orders made in other jurisdictions.</p>	
<p><u>Vicious Lawless Association Disestablishment Act 2013</u></p>	<p>One of three Bills introduced by the Attorney General on 15 October 2013 and passed by the Legislative Assembly on 17 October 2013, the explanatory notes for the Bill stated that:</p> <p>The primary objective of the Vicious Lawless Association Disestablishment Bill 2013 is to:</p> <ul style="list-style-type: none"> • disestablish associations that encourage, foster or support persons who commit serious offences; and • increase public safety and security by the disestablishment of the associations; and • deny persons who commit serious offences the assistance and support gained from association with other persons who participate in the affairs of the associations (p 1). <p>These objects are also set out in section 2(1) of the Act. The Explanatory Notes acknowledge that the “Bill impacts on the rights and liberties of individuals through increasing penalties, imposing mandatory terms of imprisonment and denying parole for particular types of offenders”; however it states that the “Bill is necessary for an appropriate and effective response to public safety concerns raised by the activities of criminal associations” (p 2).</p> <p>The Act provides for additional, lengthy, mandatory sentences to be given to a person who is considered to be a “vicious lawless associate”. Section 5 of the Act provides:</p> <p>(1) For the purposes of this Act, a person is a vicious lawless associate if the person -</p> <ul style="list-style-type: none"> (a) commits a declared offence; and (b) at the time the offence is committed, or during the course of the commission of the offence, is a 	<p><u>Vicious Lawless Association Bill 2013</u></p> <p>See <u>here</u> (by scrolling to correct Bill) for:</p> <p>Explanatory speech</p> <p>Explanatory notes</p> <p>Amendments during consideration in detail</p> <p>Explanatory notes for amendments</p>

	<p>participant in the affairs of an association (<i>relevant association</i>); and</p> <p>(c) did or omitted to do the act that constitutes the declared offence for the purposes of, or in the course of participating in the affairs of the relevant association.</p> <p>(2) However, a person is not a vicious lawless associate if the person proves that the relevant association is not an association that has, as 1 of its purposes, the purpose of engaging in, or conspiring to engage in, declared offences.</p> <p>The term “association” is defined in section 3 to mean any of the following:</p> <p>(a) a corporation;</p> <p>(b) an unincorporated association;</p> <p>(c) a club or league;</p> <p>(d) any other group of 3 or more persons by whatever name called, whether associated formally or informally and whether the group is legal or illegal.</p> <p>Section 7 of the Act provides that when sentencing a vicious lawless associate for a declared offence, it must also impose a further sentence of 15 years in addition to the sentence for the declared offence. In circumstances where it can be proved that the person is an “office bearer” (a term defined in section 3 of the Act) of the relevant association, they must be sentenced a further additional sentence of 10 years, meaning that office bearers who commit declared offences are to be sentenced to a mandatory additional 25 years imprisonment. The further sentences are to be served cumulatively with the base sentence. No non-parole periods are able to be fixed for the additional sentences (see section 8). The only way an additional sentence shorter than the fixed amounts may be imposed is in circumstances where the person “is taken to have undertaken to cooperate with law enforcement agencies in a proceeding about an offence” (see section 9 of the Act and also section 13A of the Penalties and Sentences Act 1992).</p> <p>Declared offences are set out in schedule 1 of the Act. They include offences in the nature of homicide, sexual assault, child sexual assault and assault as well as drug related offences, money laundering, receiving tainted property and riot and affray offences.</p>	
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<p><u>Criminal Law (Criminal Organisations Disruption) Amendment Act 2013</u></p>	<p>This Act makes amendments to a number of other Acts, including the <u>Bail Act 1980</u>, the <u>Crime and Misconduct Act 2001</u>, the <u>Criminal Code</u>, the <u>Penalties and Sentences Act 1992</u>, the <u>Police Powers and Responsibilities Act 2000</u> and the <u>Tow Truck Act 1973</u>.</p> <p>The amendments to the Criminal Code include the insertion of the following definition of “criminal organisation” in the definitions provision of the Act:</p> <p style="padding-left: 40px;">criminal organisation means –</p> <ul style="list-style-type: none"> (a) an organisation of 3 or more persons – <ul style="list-style-type: none"> (i) who have as their purpose, or 1 of their purposes, engaging in, organising, planning, facilitation, 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. <p>This definition has since been amended by the <i>Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013</i> (see below), which inserted the word “or” after subsection (b).</p> <p>Further amendments to the Criminal Code include the creation of new offences, among them the offence of “participants in criminal organisation being knowingly present in public places” with “2 or more other persons who are participants in a criminal organisation”, which carries a minimum penalty of 6 months imprisonment, and a maximum penalty of 3 years imprisonment (see section 60A of the Criminal Code). New section 60B of the Criminal Code makes it an offence for “participants in criminal organisation[s]” to enter a prescribed place or attend a prescribed event. These offences again carry a minimum penalty of 6 months imprisonment, and a maximum penalty of 3 years imprisonment. New section 60C makes it an offence for participants in criminal organisations to recruit other people to the criminal organisation, once again with the same minimum and maximum</p>	<p><u>Criminal Law (Criminal Organisations Disruption) Amendment Bill 2013</u></p> <p>See here (by scrolling to correct Bill) for:</p> <p>Explanatory speech</p> <p>Explanatory Notes</p> <p>Amendments during consideration in detail</p> <p>Explanatory note for amendments</p>
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	<p>penalties.</p> <p>The existing offence of affray in section 72 of the Criminal Code was amended to provide that where it is committed by a person who is a participant in a criminal organisation, rather than having a maximum penalty of imprisonment for 1 year, it has a minimum penalty of 6 months imprisonment, “to be served wholly in a corrective services facility” and a maximum penalty of 7 years imprisonment. The amendments also set minimum penalties for the offence of grievous bodily harm (section 320) and serious assault (section 340) where they are committed by members of criminal organisations against police officers who are acting in the execution of their duty. The amendment to the grievous bodily harm offence in section 320 of the Criminal Code initially stated that the penalty for a participant in a criminal organisation who does grievous bodily harm to a police officer was imprisonment for 1 year, however this was later amended by the G20 (Safety and Security) Act 2013 to state that the penalty was a “minimum of” 1 year.</p> <p>The amendments to the <i>Bail Act</i> provide, among other things, that where “the defendant is a participant in a criminal organisation [as newly defined in the Criminal Code], the court or police officer must . . . refuse to grant bail unless the defendant shows cause why the defendant’s detention in custody is not justified”, or where bail is granted, “require the defendant to surrender the defendant’s current passport” and “include in the order a statement of the reasons for granting bail or releasing the defendant” (see section 16 of the <i>Bail Act</i>).</p> <p>The <i>Criminal Law (Criminal Organisations Disruption) Amendment Act 2013</i> also made numerous amendments to the <i>Crime and Misconduct Act 2001</i>. The <i>Crime and Misconduct Act</i> establishes the Crime and Misconduct Commission, and gives it, among other things, “investigative powers, not ordinarily available to the police service, that . . . enable the commission to effectively investigate major crime” (section 5(2)). The amendments made by the 2013 Act give the Commission a number of new powers in relation to the investigation of criminal organisations. A new definition of “criminal organisation” was also inserted, which is identical to that also inserted in the Criminal Code. In his explanatory speech, the Queensland Attorney General summarised the changes to the <i>Crime and Misconduct Act</i> as follows:</p> <p style="padding-left: 40px;">The Bill will amend the <i>Crime and Misconduct Act</i> to give additional powers to the Crime and Misconduct Commission – the CMC – and will expand the CMC’s powers to allow for intelligence gathering and immediate response hearings in relation to criminal motorcycle gangs; allow for the use of any information gained in CMC hearings for proceedings under the <i>Criminal Proceeds Confiscation Act 2002</i>; clarify that fear of retribution is no longer a reasonable excuse for refusing to give evidence to the CMC if</p>	
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	<p>you are a member of a criminal motor cycle gang called to attend a hearing about a criminal motorcycle gang-related matter; mandate a term of imprisonment for a first contempt, 2.5 years imprisonment for a second contempt and five years imprisonment for a third contempt where the contempt relates to a refusal to take an oath, answer a question or produce a stated thing; allow a police officer of the Queensland Police Service to detain individuals pending the contempt application being brought before the court; allow a magistrate to issue warrants where people refuse to attend CMC hearings; and provide that the CMC is not obliged to provide a defendant information from a criminal motorcycle gang related intelligence hearing to assist in the defence of a criminal charge. These amendments will assist the CMC to investigate criminal motorcycle gang related crime in Queensland more efficiently and effectively. A review of the provisions inserted by the Bill will occur three years after commencement.</p> <p>Other changes made by the Act include amendments to the <i>Police Powers and Responsibilities Act 2000</i> to give police powers to stop, detain and search a person without a warrant where they “reasonably suspect” the person “is a participant in a criminal organisation” (section 29(1A)), and also search vehicles “being used by or in the possession of, a participant in a criminal organisation” without a warrant (section 32). A new Chapter, 4A, has also been inserted in the Act to give police powers to impound motor vehicles including motor cycles (see section 123C), where their drivers have been charged with a “criminal organisation offence” committed in relation to a motor vehicle (section 123G) and to forfeit such vehicles following the conviction of the person (section 123H). Section 123B(1) defines “criminal organisation offence” to include offences against the new sections 60A, 60B or 60 of the Criminal Code, the offence of affray in section 72 of the Criminal Code, and the offence of failure to stop a motor vehicle upon being directed to by a police officer (section 754 of the <i>Police Powers and Responsibilities Act</i>). Chapter 4A contains a range of other related powers and offences.</p>	
<p>Criminal Code (Criminal Organisations) Regulation 2013</p>	<p>This Regulation, which came into effect on 17 October 2013, contains a list of “entities declared to be criminal organisations” that is entirely comprised of motorcycle clubs. The Regulation also prescribes a number of places, for the purposes of the section 60B(4) of the Criminal Code. The places are all addresses located throughout Queensland.</p>	
<p>Tattoo Parlours Act 2013, which also amended the Liquor Act 1992 to provide for</p>	<p>According to the explanatory notes for the Tattoo Parlours Bill 2013:</p> <p style="padding-left: 40px;">The principle policy objective of the Bill is to introduce a new occupational licensing and regulatory framework which eliminates and prevents infiltration of the Queensland tattoo industry by criminal organisations, including criminal motor cycle gangs and their associates.</p>	<p>Tattoo Parlours Bill 2013</p> <p>See here (by scrolling to correct</p>

<p>restrictions on entry to licensed premises</p>	<p>In addition, the explanatory notes state:</p> <p>A further policy objective of the Bill is to amend the <i>Liquor Act 1992</i> (Liquor Act) to prohibit patrons from wearing or displaying material associated with criminal motor cycle gangs (commonly known as bikie club ‘colours’) while in liquor licensed premises. The amendments are necessary to ensure the safety of members of the public in liquor licensed venues (including in Queensland’s tourism precincts) from the violence and intimidation associated with criminal motor cycle gangs, as well as the conflicts and confrontations that can arise between rival gangs.</p> <p>The Act establishes a licensing scheme for the proprietors and employees of tattoo parlours. Part 2 of the Act makes it an offence for a person to either carry on a body tattooing business or work as a “body art tattooist” unless they are the holder of the appropriate licence. The maximum penalties vary depending upon whether or not it is the first, second or third (or subsequent) offence, and include fines and sentences of imprisonment.</p> <p>Section 11(4) of the Act provides that:</p> <p>An application for a licence may not be made by –</p> <ul style="list-style-type: none"> (a) an individual who is under 18 years; or (b) an individual who is not an Australian citizen or Australian resident; or (c) an individual who is a controlled person. <p>The definition of controlled person in schedule 1 of the Act states “see the <i>Criminal Organisation Act 2009</i> schedule 2”. Schedule 2 of the <i>Criminal Organisation Act 2009</i> defines controlled person as “a person who is subject to a control order or a registered corresponding control order”, while control order is defined as meaning “a control order made under section 18 [of the <i>Criminal Organisation Act 2009</i>] and, in relation to a control order that is in force, includes an interim control order.”</p> <p>According to section 11(5)(b), applications for licences must be accompanied by –</p> <ul style="list-style-type: none"> (i) evidence of the applicant’s identity that is satisfactory to the chief executive; and (ii) the statement mentioned in section 12; and 	<p>Bill) for:</p> <p>Explanatory speech</p> <p>Explanatory notes</p>
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- (iii) for individual identified as a close associate of the applicant in the statement mentioned in section 12 – evidence of each close associate’s identity that is satisfactory to the chief executive . . .

Section 12 requires applications for an “operator license” to be accompanied by a written statement “in the approved form”, made by the applicant, in which they provide certain information about “any close associates”, including, if the associate is an individual, “the individual’s name and date of birth” and if the associate is another kind of entity, such as a company or a trust, information including the name, ACN (where relevant) and the names of directors, shareholders or trustees. The term “close associate” is defined in section 4(1) to mean, among other things, someone who holds a “relevant financial interest”, “is or will be entitled to exercise a relevant power”, or who holds a “relevant position” in the business of the applicant. The terms “relevant financial interest” and “relevant position” are defined in section 4(4).

Section 13(1) of the Act requires applicants for a licence to “consent to having his or her fingerprints and palm prints taken by the commissioner to confirm the applicant’s identity”. Section 13(2) provides that the chief executive “must refuse to decide an application for a licence if the applicant refuses to fingerprinted and palm-printed.”

Section 15 of the Act provides that:

If the chief executive receives an application for a licence, the chief executive –

- (a) may carry out the investigations and inquiries in relation to the application the chief executive considers necessary for a proper consideration of the application; and
- (b) must refer any application that the chief executive considers to have been properly made, along with any supporting information, to the commissioner for an investigation and determination as to either or both of the following –
 - (i) whether the applicant is a fit and proper person to be granted the licence;
 - (ii) whether it would be contrary to the public interest for the licence to be granted.

Section 16 of the Act states that the chief executive or the commissioner may require the applicant or a close associate of the applicant to give information the commissioner or the chief executive “considers relevant to the investigation of the application” (section 16(1)(a)), or produce certain

	<p>records (section 16(1)(b)), or authorise another person to provide information or produce records (section 16(1)(c)), or give consent or authorisation to the chief executive or commissioner that they require “to obtain from another person, information relevant to the investigation of the application” (section 16(1)(d)).</p> <p>Part 3, Division 3 of the Act sets out the powers of the Commissioner in conducting the investigation referred to in section 15, while Divisions 4 and 5 set out the special conditions attaching to, respectively, licences generally and operator licences specifically.</p> <p>Part 4 of the Act covers permits for unlicensed body art tattooing, for example in the context of people who are not Australian citizens or residents who wish to participate in an exhibition or show. Part 5 of the Act covers the enforcement of the licencing scheme, providing for the closure of unlicensed tattoo parlours, among other things.</p> <p>Part 9 of the Act amends the <i>Liquor Act 1992</i> to insert a new Division 5 in Part 6, which provides it is an offence for a person to enter or remain in licensed premises “if the person is wearing or carrying a prohibited item” (section 173EC). The penalties vary depending upon whether it is a first, second or subsequent offence, with a maximum penalty of 750 penalty units or 18 months imprisonment where it is a third or later offence. It is also an offence for the licensee or permittee for licensed or permitted premises, or an approved manager, employee or agent of the licensee or permittee to “knowingly allow a person who is wearing or carrying a prohibited item to enter or remain in premises to which a licence or permit relates” (section 173EB). The maximum penalty for this offence is 100 penalty units. Section 173ED(1) provides that a person wearing or carrying a prohibited item (the prohibited person) must immediately leave licensed or permitted premises when required to do so by an authorised person (defined in section 173ED(4) to mean the licensee or permittee, an employee or agent of the licensee or permittee or a police officer). The penalties for this offence again vary depending upon whether it is a first, second or subsequent offence, with the penalty for a third or later offence being 750 penalty units or 18 months imprisonment. If the prohibited person fails to leave when so required “an authorised person may use necessary and reasonable force to remove the person” (section 173ED(2)), and if the prohibited person resists, section 173ED(3) provides that this is also an offence, with the same maximum penalties as the offence in section 173ED(1).</p> <p>The term “prohibited item” is defined in section 173EA to mean:</p> <p style="padding-left: 40px;">. . . an item of clothing or jewellery or an accessory that displays –</p>	
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	<p>(a) the name of a declared criminal organisation; or</p> <p>(b) the club patch, insignia or logo of a declared criminal organisation; or</p> <p>(c) any image, symbol, abbreviation, acronym or other form of writing that indicates membership of, or an association with, a declared criminal organisation, including –</p> <p style="padding-left: 40px;">(i) the symbol ‘1%’; and</p> <p style="padding-left: 40px;">(ii) the symbol ‘1%er’; and</p> <p style="padding-left: 40px;">(iii) any other image, symbol, abbreviation, acronym or other form of writing prescribed under a regulation for this paragraph.</p> <p>The term “declared criminal organisation” is defined in section 173EA to mean “an entity declared to be a criminal organisation under the Criminal Code, section 1, definition <i>criminal organisation</i>, paragraph (c)” (see above in relation to the amendments made by the <i>Criminal Law (Criminal Organisations Disruption) Amendment Act 2013</i> for this definition).</p>	
<p><u>Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013</u></p>	<p>This Act passed the Queensland Parliament on 21 November 2013. Like the <i>Criminal Law (Criminal Organisations Disruption) Amendment Act 2013</i>, passed in October, this Act amends multiple Acts, including the <u>Bail Act 1980</u>, the <u>Corrective Services Act 2006</u>, the <u>Crime and Misconduct Act 2001</u>, the <u>Criminal Code</u>, the <u>Criminal Proceeds Confiscation Act 2002</u>, the <u>District Court of Queensland Act 1967</u>, the <u>Electrical Safety Act 2002</u>, the <u>Evidence Act 1977</u>, the <u>Justices Act 1886</u>, the <u>Liquor Act 1992</u>, the <u>Penalties and Sentences Act 1992</u>, the <u>Police Service Administration Act 1990</u>, the <u>Queensland Building and Construction Commission Act 1991</u> (until recently this was called the <i>Queensland Building Services Authority Act 1991</i>), the <u>Racing Act 2002</u>, the <u>Second-hand Dealers and Pawnbrokers Act 2003</u>, the <u>Security Providers Act 1993</u>, the <u>Supreme Court of Queensland Act 1991</u>, the <u>Tattoo Parlours Act 2013</u>, the <u>Tow Truck Act 1973</u>, the <u>Transport Planning and Coordination Act 1994</u>, the <u>Transport Planning and Coordination Regulation 2005</u>, the <u>Weapons Act 1990</u> and the <u>Work Health and Safety Act 2011</u>. In his explanatory speech, the Attorney General stated that the Bill “is phase 2 of the Newman Government’s commitment to tackle organised crime in Queensland”. He added:</p> <p style="padding-left: 40px;">Violence, intimidation and criminal activity are the hallmarks of criminal motorcycle gangs, and they are</p>	<p><u>Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Bill 2013</u></p> <p>See here (by scrolling to correct Bill) for:</p> <p>Explanatory speech</p> <p>Explanatory notes</p>

	<p>now being met with a legislative brick wall that ensures their unwanted activities find no place to rest and no place to take hold.</p> <p>Initially, through a package of reforms introduced and passed in October of this year, the government acted quickly to enact new laws aimed at running criminal motorcycle gangs out of Queensland. These legislative reforms are contained in three Acts: the <i>Tattoo Parlours Act 2013</i>, the <i>Vicious Lawless Association Disestablishment Act 2013</i> and the <i>Criminal Law (Criminal Organisations Disruption) Amendment Act 2013</i>.</p> <p>This Bill takes the previous reforms a step further as at that time we flagged that this was necessary to drive criminal gangs out of Queensland.</p> <p>The Act amends section 16(3A) of the <i>Bail Act 1980</i> (which was inserted by the <i>Criminal Law (Criminal Organisations Disruption) Amendment Act 2013</i>). Section 16(3A) provided that, where the defendant is a participant in a criminal organisation, bail must be refused in relation to them unless they can show cause why their detention in custody is not justified. In a decision made subsequent to the enactment of this provision (<i>Da Silva v Director of Public Prosecutions</i> [2013] QSC 316 (8 November 2013)), the Supreme Court of Queensland held that section 16(3A) could only apply where a person was, at the time of the bail application, a current participant in a criminal organisation, and not in circumstances where there was evidence that the person had resigned their membership of such an organisation. The Act consequently amends section 16(3A) so that it states that it applies where the “defendant is charged with an offence and it is alleged that the defendant is, or has at any time been a participant in a criminal organisation”. In his explanatory speech, the Attorney General said:</p> <p>The bill amends the recently inserted section 16(3A) of the Bail Act 1980 to extend the circumstances when a defendant, charged with any offence, must show cause as to why their detention in custody is not justified. In a recent bail application, the Supreme Court held that the time at which an applicant must be a participant in a criminal organisation, if the show cause provision in new section 16(3A) of the Bail Act is to apply, is at the time of the bail application.</p> <p>If an individual chooses to be part of a criminal organisation, then it is reasonable for the legislature to deem that individual an on-going risk to the community in lieu of evidence to the contrary. The fact that an individual has ceased to be a member of the criminal organisation may be a relevant factor for the court to consider when determining whether the defendant has shown cause as to why they should not be detained. An individual who purports to resign their membership from a criminal organisation or disassociate from the organisation is best placed to prove that fact.</p>	
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	<p>The bill amends section 16(3A) of the Bail Act to ensure that a defendant, charged with any offence, must show cause as to why their detention in custody is not justified where it is alleged the defendant is, or at any time has been, a participant in a criminal organisation. The amendment deems such individuals to be an on-going risk with regard to bail considerations. Requiring the Crown to allege the circumstance of participation rather than prove the circumstance as a fact is consistent with the evidentiary requirements of section 16(3).</p> <p>Section 16(3A) commenced operation on 17 October 2013. It is a provision which regulates the grant of bail and, as a procedural law, appropriately operates retrospectively. However, given subsection (3A) has the effect of removing the presumption for bail, the operation of the subsection will be clarified in the bill as applying to offences committed before 17 October 2013.</p> <p>Included amongst the many other amendments made by the <i>Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013</i> are amendments to the <i>Corrective Services Act 2006</i>. The Act inserted a new division, 6A, in Chapter 2, Part 2 of the Act. Division 6A provides for the making of “criminal organisation segregation orders” (COSOs) by the chief executive of the Department of Community Safety (of which Corrective Services forms a part). Section 65A provides that the chief executive is to make such an order for a prisoner where they are advised, in accordance with section 344AA, that the prisoner is an identified participant in a criminal organisation (section 344AA, which provides that the Police Commissioner must give advice, when requested, about an offender’s participation in a criminal organisation). Section 65B provides:</p> <p>A COSO may include directions about the extent to which –</p> <ul style="list-style-type: none">(a) the prisoner is to be segregated from other prisoners; and(b) the prisoner is to receive privileges; and(c) the chief executive may restrict privileges. <p>In his explanatory speech, the Attorney General said:</p> <p>The bill amends the recently inserted section 16(3A) of the Bail Act 1980 to extend the circumstances when a defendant, charged with any offence, must show cause as to why their detention in custody is not justified. In a recent bail application, the Supreme Court held that the time at which an applicant must be a participant in a criminal organisation, if the show cause provision in new section 16(3A) of the Bail</p>	
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	<p>Act is to apply, is at the time of the bail application.</p> <p>If an individual chooses to be part of a criminal organisation, then it is reasonable for the legislature to deem that individual an on-going risk to the community in lieu of evidence to the contrary. The fact that an individual has ceased to be a member of the criminal organisation may be a relevant factor for the court to consider when determining whether the defendant has shown cause as to why they should not be detained. An individual who purports to resign their membership from a criminal organisation or disassociate from the organisation is best placed to prove that fact.</p> <p>The bill amends section 16(3A) of the Bail Act to ensure that a defendant, charged with any offence, must show cause as to why their detention in custody is not justified where it is alleged the defendant is, or at any time has been, a participant in a criminal organisation. The amendment deems such individuals to be an on-going risk with regard to bail considerations. Requiring the Crown to allege the circumstance of participation rather than prove the circumstance as a fact is consistent with the evidentiary requirements of section 16(3).</p> <p>Section 16(3A) commenced operation on 17 October 2013. It is a provision which regulates the grant of bail and, as a procedural law, appropriately operates retrospectively. However, given subsection (3A) has the effect of removing the presumption for bail, the operation of the subsection will be clarified in the bill as applying to offences committed before 17 October 2013.</p> <p>Other new sections inserted by the Act include section 267A, which sets out certain powers in relation to an offender who is an “identified participant in a criminal organisation” and also subject to a parole order.</p> <p>Amendments to the <i>Crime and Misconduct Act</i> include increasing the penalties it sets out for offences such as “refusal to take oath” and “refusal to answer question” from 85 penalty units or imprisonment for 1 year to 200 penalty units or imprisonment for 5 years.</p> <p>Other amendments, made to a range of Acts, are aimed at preventing people who have been identified as participants in criminal organisations (and, in some Acts, organisations where an executive officer or other influential person is an identified participant in a criminal organisation) from holding licenses or permits to do various things, including licences to supervise or carry out electrical work under the <i>Electrical Safety Act 2002</i>, bookmaker’s licences under the <i>Racing Act 2002</i>, licences to deal in second hand goods under the <i>Second-hand Dealers and Pawnbrokers Act 2003</i>, licenses under the <i>Security Providers Act 1993</i> and the <i>Tow-Truck Act 1973</i>. The Act also amended the <i>Weapons Act 1990</i> to prevent participants in criminal organisations, and bodies that either are</p>	
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	<p>criminal organisations, or that have executive officers or “other influential” people for them that are identified participants in a criminal organisation (see for example new subsections (iii) and (iv) of section 10(3)(a)).</p>	
<h3>2.4 Western Australia</h3>		
Legislation	Brief overview	Other material
<p><u>Criminal Organisations Control Act 2012</u></p>	<p>This Act is a type of omnibus Act, which, in addition to creating a control order regime, also amended a number of other Acts to provide for other anti-gang measures.</p> <p>The Act provides for the making of declarations by a “designated authority” upon the application of either the Police Commissioner or the Corruption and Crime Commissioner (CC Commissioner) that an organisation is a criminal organisation. The term “designated authority” is defined in section 3 of the Act as a “judge or retired judge currently designated under section 26.” Section 14(1) of the Act specifies that the designated authority must give their reasons for deciding to either make or not make such a declaration.</p> <p>Like the Acts of South Australia, NSW and Queensland, once such a declaration has been made, the Commissioner of Police may then apply for interim control orders and control orders to be made in relation to people who are shown to be members or associates of declared organisations. Part 3 of the Act sets out the process for the making of these orders. The consequences for a person of having a control order made against them include that it becomes an offence for them to associate with other members of the declared organisation, receive funds, or make funds available, or collect funds on behalf of the organisation (see sections 77, 78 and 99). Persons subject to control orders can also be prevented from participating in “prescribed activities” (section 79). Section 80 of the Act contains a list of prescribed activities that are broadly similar in type to those listed in the <i>Crimes (Criminal Organisations Control) Act 2012</i> (NSW) and the <i>Criminal Organisation Act 2009</i> (Qld). Police also have a number of powers in relation to people who have had a control order made against them, including the power to seize, without a warrant, items that a person is no longer permitted to possess as a consequence of the order (section 83).</p>	<p><u>Criminal Organisations Control Bill 2011</u> (page has link to Bill and Explanatory Memorandum)</p> <p><u>Second reading speech</u></p>

	<p>Part 4 of the Act sets out a number of offences, including offences connected with control orders (see section 99, for example). Other offences include section 106, which makes it an offence to recruit members to a declared criminal organisation and section 107, which states that it is an offence for the owner, occupier or lessee of premises to “knowingly permit those premises to be habitually used as a place of resort by members of a declared organisation”.</p> <p>Part 5 of the Act deals with the protection of criminal intelligence from disclosure, and Part 7 provides for the reciprocal recognition and enforcement of declarations and control/interim control orders made in other jurisdictions.</p> <p>The Act also made amendments to other Acts, including The Criminal Code. The amendments to the Criminal Code include the insertion of a new Chapter, XXVIA, which creates a range of offences connected with facilitating the activities of criminal organisations.</p> <p>It also amended the Sentencing Act 1995 to insert a new Division, 2A, in Part 2, to provide for mandatory minimum sentences for certain offences (which are set out in Schedule 1A to the <i>Sentencing Act</i>) where the offender committed the offence:</p> <ul style="list-style-type: none"> (i) at the direction of a declared criminal organisation; or (ii) in association with one or more persons who, at the time of the commission of the offence, were members of a declared criminal organisation (whether or not those persons were also convicted of the offence), but only if the offender knew, at the time of the commission of the offence, that one or more of those person were members of declared criminal organisation; or (iii) for the benefit of a declared criminal organisation (see section 9D(1)(b)). <p>The method for calculating the minimum sentence to be imposed is set out in sections 9D(3) and 9D(4).</p>	
<p>Fortification orders:</p> <p>Corruption and Crime Commission</p>	<p>Western Australia initially passed legislation providing for fortification removal orders in 2002 (see the Criminal Investigation (Exceptional Powers) and Fortification Removal Act 2002 (repealed)). This Act was repealed by the Corruption and Crime Commission Amendment and Repeal Act 2003, which also made a number of amendments to the <i>Corruption and Crime Commission Act 2003</i>, including the insertion of a new Part 4, entitled “Organised crime: exceptional powers and fortification</p>	<p>Corruption and Crime Commission Amendment and Repeal Bill 2003 (page has link to</p>

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<p>Act 2003</p>	<p>removal". Division 6 of this Part contains a number of provisions relating to fortifications. Section 68(1) provides that the Commission of Police may apply to the Corruption and Crime Commission for the issue of a "fortification warning notice" and section 68(2) provides that the Commission can issue such a notice:</p> <p>. . . if satisfied on the balance of probabilities that there are reasonable grounds for suspecting that the premises to which it relates are –</p> <p>(a) heavily fortified; and</p> <p>(b) habitually used as a place of resort by members of a class of people a significant number of whom may reasonably be suspected to be involved in organised crime.</p> <p>Division 6 sets out the requirements for the content of such a notice and the process for its issue. If the fortifications referred to in the warning notice are not removed within the specified time, section 72 provides that the Commissioner of Police may issue a fortification removal notice. Section 75(1) provides that if the fortifications are still not removed within the time specified in the removal notice, the "Commissioner of Police may cause the fortifications to be removed or modified to the extent required by the fortification removal notice." Section 75(3) states that the Police are authorised by section 75(1) to enter the premises without a warrant or further notice in order to carry out the removal of the fortifications, and also to "use any force and employ any equipment necessary".</p> <p>Section 76(1) provides for a review of the issue of a fortification notice by the Supreme Court. Section 76(2) states that:</p> <p>The Commissioner of Police may identify any information provided to the court for the purposes of the review as confidential if its disclosure might prejudice the operations of the Commissioner of Police, and information so identified is for the court's use only and is not disclosed to any other person, whether or not a party to the proceedings, or publicly disclosed in any way.</p> <p>The High Court upheld the validity of this provision in <i>Gypsy Jokers Motorcycle Club Inc v Commissioner of Police</i> (2008) 234 CLR 532; [2008] HCA 4 (7 February 2008).</p>	<p>Bill and Explanatory Memorandum)</p> <p>Second reading speech</p> <p>Criminal Investigation (Exceptional Powers) and Fortification Removal Bill 2001 (page has link to Bill and Explanatory Memorandum)</p> <p>Second reading speech</p>
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2.5 Victoria		
Legislation	Brief overview	Other material
<p>Criminal Organisations Control Act 2012</p>	<p>The Act provides that, upon the application of the Chief Commissioner of Police, the Supreme Court, if satisfied of certain things, may make a declaration that an organisation is a declared organisation, or an individual is a declared individual (sections 14 and 19). Under section 43, the Court may, upon the application of the Chief Commissioner, make a control order in relation to a declared organisation, or in relation to a declared individual. The approach taken by the Victorian Act is therefore different to that of the jurisdictions outlined above, where this kind of Act generally provides that the Court (or designated officer) can make a declaration about organisations, and not individuals, as in the Victorian case; by extension, in other jurisdictions, control orders can be made for individuals who are found to be members of the declared organisation.</p> <p>The Act sets out a non-exhaustive list of the conditions that may be imposed as part of a control order made in relation to an organisation, which include requirements that the organisation be prohibited from “continuing to operate, carry on a business or take on new members” (section 45(2)(a)), that it exclude certain members (section 45(2)(c)) and also that it be prohibited “from using specified property it owns, possesses, uses or occupies for specified activities (whether that property is located in Victoria or elsewhere) (section 45(2)(g)). The Act also sets out a list of conditions that may be placed on a control order made for an individual, which include requirements that they not associate with members of their own or other declared organisations (section 47(2)(a)), are prohibited from remaining a member of a declared organisation (section 47(2)(c)), are prohibited from “participating in the activities of a declared organisation” (section 47(2)(d)) and also be prohibited from “using or possessing property which a declared organisation owns, possesses, occupies or uses” (section 47(2)(f)).</p> <p>Section 68 provides that it is an offence to fail to comply with a control order. The penalty for an individual who breaches a control order is 600 penalty units and/or imprisonment for five years, and the penalty for a “body corporate” which breaches a control order is 3000 penalty units (section 68(1)).</p> <p>Part 4 of the Act sets out provisions which aim to protect “criminal intelligence” from disclosure. The</p>	<p>Criminal Organisations Control Bill 2012 (see here – follow 2012 link and scroll to this Bill for links to Bill and explanatory notes)</p> <p>Second reading speech</p>

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	<p>Part establishes a scheme through which the Chief Commissioner can apply to the Supreme Court for an order protecting certain information from disclosure to the respondent during proceedings relating to declarations or control orders.</p> <p>Part 5 contains provisions which provide for the recognition of declarations and control orders made by other jurisdictions.</p>	
<p>Fortification Removal Act 2013</p>	<p>The Act provides that, upon the application of the Chief Commissioner, the Magistrates' Court may give an order requiring the "removal or modification of fortifications on premises that are connected to certain criminal offences" (section 1). Section 11 provides that, to make the order, the Magistrates' Court must be satisfied that there is a fortification in place at the premises subject to the application (section 11(2)(a)) and also that:</p> <p style="padding-left: 40px;">there are reasonable grounds to believe the premises are being used or have been used or are likely to be used –</p> <ul style="list-style-type: none"> (i) for or in connection with the commission of a specified offence; (ii) or to conceal evidence of a specified offence; or (iii) to keep the proceeds of a specified offence (section 11(2)(b)). <p>Part 3 of the Act gives the police the power to inspect the premises while the removal order is in force, and also provides for the Magistrates' Court to give an order that the police may inspect the premises after the fortification removal order has ceased to have an effect.</p> <p>Part 4 sets out the process for the enforcement of fortification removal orders. In circumstances where the fortification removal or modification order has not been carried out within the period specified, section 36 of the Act requires the police to affix a notice either on the entrance of the relevant premises or in a "conspicuous place near that entrance" (section 36(2)(a) and (b)). The notice must state the day upon which the police will exercise their enforcement powers (section 36(3)(a)). Section 37 provides that, on the day specified in the notice, the police may enter the premises without a warrant (section 37(1)(a)), bringing any person or equipment needed to remove the fortifications (section 37(1)(b)) and do anything "reasonably necessary" to remove the fortifications or modify them in the manner specified in the order (section 37(1)(c)).</p>	<p>Fortification Removal Bill 2013 (see here – follow 2012 link and scroll to this Bill for links to Bill and explanatory notes)</p> <p>Second reading speech</p>

	<p>Part 5 contains a number of offences, which include “obstructing enforcement of fortification of removal order” (section 44). It is also now an offence for a person to construct or install fortification on premises if they know or “ought reasonably to know” the premises are being used or are likely to be used “for or in connection with a specified offence” or “to conceal evidence of a specified offence” or to “keep the proceeds of a specified offence” (section 48(a) to (c)). It is also an offence to construct or install fortifications upon premises that have previously been subject to a removal order (section 49).</p>	
<p>Consorting: Vagrancy (Repeal) and Summary Offences (Amendment) Act 2005 which amended the Summary Offences Act 1966</p>	<p>The <i>Vagrancy (Repeal) and Summary Offences (Amendment) Act 2005</i> inserted section 49F in the <i>Summary Offences Act 1966</i>. This section provides:</p> <p>(1) A person must not, without reasonable excuse, habitually consort with a person who has been found guilty of, or who is reasonably suspected of having committed, an organised crime offence.</p> <p>Penalty: 2 years imprisonment</p> <p>Section 49F(3) defines “organised crime offence” as meaning:</p> <p>an indictable offence against the law of Victoria, irrespective of when the offence was or is suspected to have been committed, that is punishable by level 5 imprisonment (10 years maximum) or more and that-</p> <ul style="list-style-type: none"> (a) Involves 2 or more offenders; and (b) Involves substantial planning and organisation; and (c) Forms part of systemic and continuing criminal activity; and (d) Has a purpose of obtaining profit, gain, power or influence. <p>In his second reading speech for the Bill, the then Attorney General said of this provision that:</p> <p>The bill also provides for a new consorting offence to target activities that may be a prelude to organised crime.</p> <p>It will be an offence, without reasonable excuse, to habitually consort with a person convicted or suspected of an organised crime offence. While the original consorting offences targeted thieves, the</p>	<p>Vagrancy (Repeal) and Summary Offences (Amendment) Bill 2005 (see here – follow Autumn 2005 link and scroll to this Bill for links to Bill and explanatory notes)</p> <p>Second reading speech</p>

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	new offence is directed at people involved in organised crime and is designed to assist police in creating a hostile environment for organised crime.	
2.6 Northern Territory		
Legislation	Brief overview	Other material
<p><u><i>Serious Crime Control Act 2009</i></u> (which also contains fortification removal provisions)</p>	<p>In its original form the Act was similar to the one initially enacted in NSW in the same year, in that it provided for declarations to be made in relation to organisations by an eligible judge (section 14) who was not required to give reasons for the declaration (section 19). The Act was amended in 2011 following the decision in <i>Wainohu</i>. The Act now provides that declarations are to be made by the Supreme Court where it determines that certain grounds for making such a declaration exist (sections 12 and 15). Section 25 provides that the Supreme Court can make a control order in relation to an individual where there are grounds to do so. The grounds are set out in section 23, and they include that the person is a member or former member of a declared organisation or someone who has engaged in serious criminal activity who “regularly associates with members of a declared organisations” (sections 23(1)(a), (b), (c)(i) and (c)(ii)).</p> <p>The consequences for a person of having a control order made against them are set out in Part 4, Division 3 of the Act. They include that a controlled person must not associate with another controlled person, an offence with a maximum penalty of 5 years imprisonment (sections 36(1)). It is also an offence to contravene a specification of the control order, which also has a maximum penalty of 5 years imprisonment (section 39(1)). Section 27 of the Act sets a number of conditions that can be attached to a control order if the Supreme Court considers them appropriate. These include associating with specified persons, being present at specified premises or a specified event, possessing a specified article or associating with a person who is a member of a declared organisation (sections 27(2)(a)(i)-(v)). Under section 27(2)(b)(i)-(iv), the control order may also specify that a person cannot possess a firearm, other type of weapon, a dangerous drug or drug manufacturing equipment.</p> <p>Part 5 of the Act gives senior police officers the power to make public safety orders in relation to “a specified person or class of persons” if they are satisfied that “the person being present at, or</p>	<p><u><i>Serious Crime Control Bill 2009</i></u></p> <p>For access to explanatory statement and second reading speech for the 2009 Bill, see <u>here</u></p> <p><u><i>Serious Crime Control Act 2009</i></u> (as initially passed)</p> <p><u><i>Serious Crime Control Amendment Bill 2011</i></u></p> <p>For access to explanatory statement and second reading speech for the</p>

	<p>members of the class of persons being present at, premises for the period poses a serious risk to public safety or security” (section 42(1)(a)). In certain circumstances the public safety orders must be authorised by the Court of Summary Jurisdiction (sections 43(2)(a) and (b) and 49).</p> <p>Part 6 provides for the Court of Summary Jurisdiction to give fortification removal orders in relation to specific premises where:</p> <ul style="list-style-type: none"> (a) the premises are fortified and it is reasonable to believe the premises are being, have been, or are likely to be, used: <ul style="list-style-type: none"> (i) for, or in connection with, the commission of a serious criminal offence; or (ii) to conceal evidence of, or in connection with, the commission of a serious criminal offence; or (iii) to keep the proceeds of a serious criminal offence; (b) the premises are fortified and: <ul style="list-style-type: none"> (i) are owned, either legally or beneficially, by a declared organisation or a member of declared organisation; or (ii) are occupied or habitually used as a place of resort by members of a declared organisation (section 58). <p>In circumstances where an order is granted but not complied with within the requisite time, and no notice of objection against the order has been filed, or an appeal results in the confirmation of the order, the Act empowers the police to enter the premises without a warrant to remove or modify fortifications (see section 67(1)). It is an offence to obstruct the removal or modification of fortifications being carried out in accordance with an order, with a maximum penalty of 500 penalty units or imprisonment for 3 years (section 68(1)).</p> <p>Criminal intelligence is protected by section 63 of the Act.</p>	<p>2011 Bill, see here</p> <p>Serious Crime Control Amendment Act 2011</p>
<p>Restrictions on entry to licensed</p>	<p>Section 33(1) of the <i>Liquor Act</i> provides that:</p>	<p>Liquor Legislation Amendment Bill</p>

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<p>premises: Liquor Act</p>	<p>Subject to this section, the Commission may, from time to time by notice in writing, vary the conditions of the licence held by a licensee.</p> <p>This power has been exercised to provide that it is a condition of a liquor licence that licensees and their employees must “request any outlaw motorcycle gang member to remove any item identifying their club before entering, or remaining on, licensed premises” (see this webpage on the Northern Territory Department of Business website, which provides information regarding the condition and its enforcement).</p> <p>It seems that previously (see this report from the <i>Crikey</i> website), the relevant Minister had exercised his powers under section 33AA of the <i>Liquor Act</i> to put a temporary ban on the wearing of colours in licensed premises in place. Section 33AA, which was inserted in the Act by the Liquor Legislation Amendment Act 2007, which provides:</p> <p>(1) The Minister may determine additional conditions of a licence if the Minister thinks the determination is urgently needed for the wellbeing of the communities that might be affected by the operation of the licence.</p>	<p>2007</p> <p>For access to the explanatory statement and second reading speech for this Bill, see here</p>
<p>Consorting: Justice Legislation Amendment (Group Criminal Activities) Act 2006 which amended the Summary Offences Act</p>	<p>The <i>Justice Legislation Amendment (Group Criminal Activities) Act 2006</i> inserted a new section, 55A, in the <i>Summary Offences Act</i>. Section 55A(1) provides that:</p> <p>(1) A person is guilty of an offence if:</p> <p>(a) the Commissioner gives a written notice to the person under the section prohibiting the person, for a specified period not exceeding 12 months, from one or both of the following as specified in the notice:</p> <p>(i) being in company with one or more specified persons:</p> <p>(ii) communication in any way (including by post, fax, phone and other electronic means, and whether directly or indirectly) with one or more specified persons; and</p> <p>(b) the person contravenes the notice.</p> <p>Maximum penalty: Imprisonment for 2 years.</p>	<p>Justice Legislation Amendment (Group Criminal Activities) Bill 2006</p> <p>For access to explanatory statement and second reading speech for this Bill, see here</p>

Section 55A(4) provides that notice may only be given under section 55A(1) only if:

- (a) the notified person and each person specified in the notice (**a specified person**) have each been found guilty of a prescribed offence; and
- (b) the Commissioner reasonably believes that giving the notice is likely to prevent the commission of a prescribed offence involving:
 - (i) 2 or more offenders; and
 - (ii) Substantial planning and organisation.

Other subsections in section 55A deal with the form of notices and the procedure for issuing them.

In his second reading speech, the then Attorney General stated of the new section 55A that:

The consorting offence is designed to stop organised, high-level criminal group behaviour. Under this new section, police may issue a notice requiring that a person not consort with another specified person. This can only apply, however, in circumstances in which both are known criminals, having been previously convicted of an offence named in regulations and carrying a maximum of 10 years imprisonment.

In issuing the notice prohibiting consorting, the Commissioner of Police must be satisfied that to do so is likely to prevent the commission of a prescribed offence involving multiple offenders and a substantial degree of planning. Once issued with a notice, any communication by one specified person with another specified person will result in an offence that carries a maximum penalty of two years imprisonment. I note that this new offence is not aimed at impinging on the rights of a reformed criminal, but instead will compel an offender to avoid situations and individuals that may drag him into a new criminal enterprise.

Although the 2006 Act inserted this new consorting offence, it did not repeal the old one, which appears in section 56(1) of the *Summary Offences Act*, which provides, in archaic terms, that any person who “wanders abroad, or from house to house, or places himself in any public place, street, highway, court or passage, to beg or gather alms, or causes or procures or encourages any child to do so” (section 56(1)(a), or “has on or about his person, without lawful excuse (proof whereof shall lie upon the person charged), any deleterious drug, or any article of disguise” or “habitually consorts with reputed criminals” is guilty of an offence with a maximum penalty of 500 dollars and/or

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	imprisonment for 3 months.	
2.7 Tasmania		
Legislation	Brief overview	Other material
<u>Police Offences Act 1935</u>	The Police Offences Amendment Act 2007 amended the <i>Police Offences Act 1935</i> to insert a new Division, III, in Part 2. Division III sets out a regime for the making of fortification warning notices which is very similar to that set out in Part 4, Division 6 of the <i>Corruption and Crime Commission Act 2003</i> (WA) (see above). Fortification warning notices are issued by a magistrate, upon the application of the Police Commissioner (section 20B). If the warning notice is not complied with, the Commissioner may then issue a fortification removal notice (section 20F). If the fortifications subject to the notice are not removed within the specified time, the Commissioner “may cause the fortifications to be removed or modified to the extent required by the fortification removal notice” (section 20I(1)). Section 20K makes it an offence to hinder the removal or modification of fortifications.	<u>Police Offences Amendment Bill 2007</u>

3. Selected cases

(Ascending chronological order)

3.1 Judicial power and the institutional integrity of courts

Many of the cases regarding anti-gang legislation turn on principles related to the separation of federal judicial power which the High Court has found is required by Chapter III of the *Commonwealth Constitution*. Although the Court has repeatedly found that the same doctrine of separation of powers does not apply at state level, in *Kable v Director of Public Prosecutions (NSW)*, a majority of the Court found that State parliaments “cannot confer upon a court of a State a function which substantially impairs its institutional integrity and which is therefore incompatible with its role as a repository of federal jurisdiction” (see French CJ in *Totani* at [69]). The cases listed below begin with those on the idea of the separation of powers insofar as it relates to the federal judiciary, and proceeds to the *Kable* line of cases.

The list also includes the 2010 case of *Kirk v Industrial Court of New South Wales*, in which the High Court found that it was beyond the power of a State Parliament to legislate to remove the jurisdiction of a State Supreme Court to grant relief on the ground of jurisdictional error in relation to the decisions of inferior courts (see French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ at [55]).

New South Wales v Commonwealth (Wheat Case) ([1915](#)) [20 CLR 54](#)⁶

Waterside Workers Federation of Australia v J W Alexander (Alexander’s Case) ([1918](#)) [25 CLR 434](#)

R v Kirby; Ex Parte Boilermakers’ Society of Australia (Boilermakers’ Case) (1956) 94 CLR 254; [\[1956\] HCA 10](#) (2 March 1956)

Grollo v Palmer (1995) 184 CLR 348; [\[1995\] HCA 26](#) (21 September 1995)

Kable v Director of Public Prosecutions (NSW) (1996) 189 CLR 51; [\[1996\] HCA 24](#) (12 September 1996)

Fardon v Attorney General (Qld) (2004) 223 CLR 575; [\[2004\] HCA 46](#) (1 October 2004)

Baker v R (2004) 223 CLR 513; [\[2004\] HCA 45](#) (1 October 2004)

Thomas v Mowbray (2007) 233 CLR 307; [\[2007\] HCA 33](#) (2 August 2007)

Gypsy Jokers Motorcycle Club Inc v Commissioner of Police (2008) 234 CLR 532; [\[2008\] HCA 4](#) (7 February 2008)

K-Generation Pty Limited v Liquor Licensing Court (2009) 237 CLR 501; [\[2009\] HCA 4](#) (2 February 2009)

International Finance Trust Co Ltd v New South Wales Crime Commission (2009) 240 CLR 319; [\[2009\] HCA 49](#) (12 November 2009)

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Kirk v Industrial Court of New South Wales (2010) 239 CLR 531; [\[2010\] HCA 1](#) (3 February 2010)

South Australia v Totani (2010) 242 CLR 1; [\[2010\] HCA 39](#) (11 November 2010)

Wainohu v New South Wales (2011) 242 CLR 181; [\[2011\] HCA 24](#) (23 June 2011)

Momcilovic v The Queen (2011) 245 CLR 1; [\[2011\] HCA 34](#) (8 September 2011)
(This case considered the [Charter of Human Rights and Responsibilities Act 2006 \(Vic\)](#))

Assistant Commissioner Michael James Condon v Pompano Pty Ltd [\[2013\] HCA 7](#)
(14 March 2013)

3.2 Implied freedom of political communication

It has been reported that the NSW consorting legislation has been challenged on the basis of the freedom of political communication that the High Court has found is implied by the requirements in sections 7 and 24 of the *Commonwealth Constitution* that the members of the House of Representatives and the Senate “be directly chosen by the people”. Cases on the implied freedom of political communication include:

Nationwide News Pty v Wills (1992) 177 CLR 1; [\[1992\] HCA 46](#) (30 September 1992)

Australian Capital Television Pty Ltd v Commonwealth (1992) 177 CLR 106; [\[1992\] HCA 1](#) (15 January 1992)

Theophanous v Herald & Weekly Times Ltd (1994) 182 CLR 104; [\[1994\] HCA 46](#)
(12 October 1994)

Stephens v West Australian Newspapers Ltd (1994) 182 CLR 211; [\[1994\] HCA 45](#)
(12 October 1994)

Cunliffe v Commonwealth (Migration Agents' Case) (1994) 182 CLR 272; [\[1994\] HCA 44](#) (12 October 1994)

Lange v Australian Broadcasting Corporation (Political Free Speech Case) (1997) 189 (CLR) 250; [\[1997\] HCA 25](#)

Coleman v Power (2004) 220 CLR 1; [\[2004\] HCA 39](#) (1 September 2004)

Mulholland v Australian Electoral Commission (2004) 220 CLR 181; [\[2004\] HCA 41](#)
(8 September 2004)

APLA Ltd v Legal Services Commissioner (NSW) (2005) 224 CLR 322; [\[2005\] HCA 44](#) (1 September 2005)

Wotton v Queensland (2012) 246 CLR 1; [\[2012\] HCA 2](#) (29 February 2012)

Attorney-General (SA) v Corporation of the City of Adelaide [\[2013\] HCA 3](#)
(27 February 2013)

Monis v The Queen [\[2013\] HCA 4](#) (27 February 2013)

3.3 Mandatory sentencing

Mandatory sentencing is a feature of anti-gang legislation in both Queensland and Western Australia. The High Court has recently considered the question of mandatory sentencing in the context of Chapter III of the *Commonwealth Constitution* in the case below.

Magaming v The Queen [\[2013\] HCA 40](#) (11 October 2013)

3.4 Recent Queensland cases

Following the enactment of the changes to the *Bail Act 1980* made by the [Criminal Law \(Criminal Organisations Disruption\) Amendment Act 2013 \(Qld\)](#), and the making of a number of statements to the press regarding the judiciary by the Queensland Premier and Attorney General, Fryberg J gave an order staying proceedings in the Crown's appeal against the decision of the Magistrate's Court to grant a person bail. This decision was later overturned by the Court of Appeal.

R v Brown [\[2013\] QSC 299](#) (31 October 2013)

The Queen v Brown [\[2013\] QCA 337](#) (8 November 2013)

See also the following Supreme Court rulings in bail matters:

Neale, Re an Application for Bail [\[2013\] QSC 310](#) (7 November 2013)

Da Silva v Director of Public Prosecutions [\[2013\] QSC 316](#) (8 November 2013)

4. Selected books and book chapters⁷

Gerangelos, P, Lee, H P, Aroney, N, Evans, S, Murray, S, Emerton, P, *Winterton's Australian Federal Constitutional Law: Commentary and Materials* (Law Book Co, 3rd ed, 2013), from [2.500]

Lee, H P, "The *Kable* Case: A Guard-Dog that Barked But Once?" in George Winterton (ed) *State Constitutional Landmarks* (Federation Press, 2006), 390

Schloenhardt, A, *Queensland Criminal Law* (Oxford University Press, 3rd ed, 2013), from [6.7]

Williams, G, Brennan, S and Lynch, A, *Blackshield and Williams Australian Constitutional Law and Theory* (Federation Press, 6th ed, 2014)⁸

5. Selected articles⁹

5.1 Anti-gang legislation, judicial power, the rule of law, *Kable* and Kirk

Appleby, G and Williams, J, "A New Coat of Paint: Law and Order and the Refurbishment of *Kable*" (2012) 40(1) *Federal Law Review*, 2

- Bagaric, M, "Separation of Powers Doctrine in Australia: De Facto Human Rights Charter" (2011) 7(1) *International Journal of Punishment and Sentencing*, 25
- Basten, J, "The supervisory jurisdiction of the Supreme Courts" (2011) 85 *Australian Law Journal*, 273.
- Bateman, W, "The *Constitution* and the Substantive Principles of Judicial Review: The Full Scope of the Entrenched Minimum Provision of Judicial Review" (2011) 39 *Federal Law Review*, 463
- Campbell, E, "What are Courts of Law?" (1998) 17(1) *University of Tasmania Law Review*, 19
- Cowdery, N, "A Threat to the Rule of Law: The New South Wales *Crimes (Criminal Organisations Control) Act 2009*" (2009) 21(2) *Current Issues in Criminal Justice*, 321
- de Lint, Willem, "Risking Precaution in two South Australian Serious Offender Initiatives" (2012) 24(2) *Current Issues in Criminal Justice*, 145
- Handsley, E, "Do Hard Laws Make Bad Cases? – The High Court's Decision in *Kable v Director of Public Prosecutions (NSW)*" (1997) 25 *Federal Law Review*, 171.
- Lacey, W, "[Kirk v Industrial Court of New South Wales: Breathing Life into Kable](#)" (2010) 34 *Melbourne University Law Review*, 641
- Lynch, A, "Terrorists and Bikies: The Constitutional Licence for laws of control" (2009) 34(4) *Alternative Law Journal*, 237
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6. Selected other papers

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8. Selected Research Service papers

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[The Kable Case: Implications for New South Wales](#), Briefing Paper No 27/96 by Gareth Griffith

[Gang laws: An update](#), e-brief 07/09 by Jason Arditi

[Gun violence: An update](#), e-brief 5/2012 by Lenny Roth

[Crimes \(Criminal Organisations Control\) Bill 2012: the constitutional issues](#), e-brief 6/2012 by Gareth Griffith and Lenny Roth

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10. Human rights charters

There are limited protections in Australia for the kinds of rights that are intruded by this kind of legislation. This issue is raised in some of the articles and online commentary set out above. Some additional sources are provided below. Unlike other Australian jurisdictions, Victoria and the ACT have statutory human rights protections in place. However, Victoria's *Charter of Rights and Responsibilities Act 2006* has not prevented the enactment of a control order scheme in Victoria. For some more information regarding this kind of legislation, see:

[Human Rights Act 2004 \(ACT\)](#)

[Charter of Human Rights and Responsibilities Act 2006 \(Vic\)](#)

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11. Intergovernmental cooperation

Various intergovernmental bodies have undertaken work on organised crime. This [webpage](#) outlines decisions made by the [Standing Council on Law and Justice](#) regarding cooperation on organised crime matters. Amongst the decisions is one from April 2012, which indicates that it was agreed at the meeting of the Standing Council that:

Ministers agreed that the implementation by States and Territories of declarations, control orders and protections for criminal intelligence will ensure there are equally strong measures in place across all jurisdictions. Ministers also agreed that the mutual recognition of interstate declarations and control orders was a highly desirable element of a nationally consistent scheme, with further legal advice on implementation being sought.

As table A demonstrates, the jurisdictions with control order Acts have amended them to reflect this agreement. However, the reporting of the April 2012 decision continues as follows:

The ACT and Queensland did not support the decision. Queensland noted that it had not yet formed a final view on the merits of such legislation. Tasmania did not believe it was presently necessary for it to enact such legislation.

The [Standing Council on Police and Emergency Management](#) is also a forum for intergovernmental cooperation on organised crime-related issues.

The Commonwealth Attorney General's Department plays a role in the development of national policies to address organised crime. Further information about the Department's role is available on this [webpage](#).

12. Selected media

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Goldsworthy, T, "[A phony war: bikies aren't the only problem on Queensland's Glitter Strip](#)" *Brisbane Times* (17 October 2013)

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¹ See [Criminal Code \(WA\)](#), sections 557J-557K, and [Police Offences Act 1935 \(Tas\)](#), section 7.

² Access to Explanatory Notes for New South Wales Bills is available from this [webpage](#), on the [NSW Legislation website](#), administered by the NSW Parliamentary Counsel's Office, which has a facility for searching or browsing all Bills (from 2003 onwards), and provides access to First Print Bills with Explanatory Notes attached to them. It is not possible to provide direct links to these Bills.

- ³ Section 39 provided for the Ombudsman to “keep under scrutiny the exercise of powers conferred on police officers under this Act” for the first two years following the commencement of the Act (section 39(1)).
- ⁴ Note that the value of a penalty unit can vary from jurisdiction to jurisdiction. In NSW, section 17 of the [Crimes \(Sentencing Procedure\) Act 1999 \(NSW\)](#) provides “[u]nless the contrary intention appears, a reference in any Act or statutory rule to a number of penalty units (whether fractional or whole) is taken to be a reference to an amount of money equal to the amount obtained by multiplying \$110 by that number of penalty units”. Some jurisdictions, such as Victoria, have provision for the value of a penalty unit to be reviewed each year (see this [webpage](#) and section 5(4) of the [Monetary Units Act 2004 \(Vic\)](#)).
- ⁵ It is not possible to provide direct links to second reading speeches on the website of the Queensland Parliament.
- ⁶ The Australian Legal Information Institute (AUSTLII) provides access to the Commonwealth Law Reports (CLR) up to 1952. For access to the CLR post 1952, see Westlaw AU, which is available (for Members and staff only) through the Parliamentary Library’s intranet.
- ⁷ These sources are available from the Parliamentary Library for Members and staff only.
- ⁸ This book is forthcoming and will not be available from the Parliamentary Library until its publication in early 2014.
- ⁹ These sources are available from the Parliamentary Library for Members and staff only.