IN THE HIGH COURT OF AUSTRALIA

BRISBANE REGISTRY

No B14 of 2014

Between:

STEFAN KUCZBORSKI
Plaintiff

THE STATE OF QUEENSLAND
Defendant

PLAINTIFF'S WRITTEN SUBMISSIONS

PART I: CERTIFICATION FOR PUBLICATION ON THE INTERNET

10 1. These submissions are in a form suitable for publication on the internet.

PART II: ISSUES

2. Are the *Vicious Lawless Disestablishment Act 2013* (Q) and the amendments made by the challenged parts of the *Criminal Law (Criminal Organisations Disruption) Amendment Act 2013* (Q) and the *Tattoo Parlours Act 2013* (Q) invalid on the grounds that they offend the principle derived from *Kable v DPP(NSW)* (1996) 189 CLR 51 (***Kable* principle**)?

PART III: NOTICES UNDER S 78B OF THE *JUDICIARY ACT 1903* (CTH)

3. Notices under s 78B of the *Judiciary Act 1903* (Cth) have been given.

PART IV: DECISIONS BELOW

4. Not applicable.

20 ### PART V: FACTS

5. On 15 October 2013, the bills which ultimately became the *Vicious Lawless Association Disestablishment Act 2013* (Q) (**Vicious Act**), *Criminal Law (Criminal Organisations Disruption) Amendment Act 2013* (Q) (**Disruption Act**) and *Tattoo Parlours Act 2013* (Q) (**Tattoo Act**) were introduced to the Queensland Legislative Assembly. They were passed later that sitting day.

6. In a Ministerial statement preceding the introduction of the above bills, the Premier of Queensland explained that they were "*not designed to just contain or manage ["criminal motorcycle gangs"]; they [were] designed to destroy them*"[1].

7. Despite that statement, the legislation referred to above did not purport to (at least directly) disestablish or "*destroy*" any "*criminal motorcycle gang*", "*vicious lawless association*" or "*criminal*
30 *organisation*" or make it an offence to be a member of or participant in such a gang, association or organisation. Instead, the legislation subjects "*participants*" in organisations deemed or found to be "*criminal organisations*" or "*relevant associations*" to special regimes concerning matters such as freedom of movement and association, bail and, in particular, sentencing.

[1] Queensland, *Parliamentary Debates*, Legislative Assembly, 15 October 2013, 3114.7.

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8. The Plaintiff is a current member of the Brisbane Chapter of the Hells Angels Motorcycle Club[2] – an "*association*" under the Vicious Act[3] and one of the organisations which was deemed by legislative act[4] to be a "*criminal organisation*" for the purposes of the *Criminal Code* (Q)[5] and the *Crime and Misconduct Act 2001* (Q)[6] (now known as the *Crime and Corruption Act* (Q)).[7]

9. The Plaintiff contends that the Vicious Act and various aspects of the amendments made to the *Criminal Code* (Q) and other legislation by the Disruption Act and the Tattoo Act and which may apply to him as a "*participant in the affairs of an association*" and a member of a deemed "*criminal organisation*" offend the "*Kable principle*" and are thereby invalid.

10 **PART VI: ARGUMENT**

A. Overview

10. As discussed below, the Plaintiff's principal (partially overlapping) contentions are as follows:

(a) First, that the Vicious Act and aspects of the amendments made by the Disruption Act are constitutionally invalid because they undermine the institutional integrity of Queensland courts by requiring them to perform their sentencing role and role as a bail authority in a manner which is repugnant to the judicial process in a fundamental degree. Those provisions do this by, in particular, purporting to require courts to breach fundamental notions of equal justice by requiring them to impose sentences on certain offenders by reason of who they associate with rather than by reason of their
20 own "*personal and individual*" guilt[8];

(b) Secondly, the Vicious Act and aspects of both the Disruption Act and the Tattoo Act are constitutionally invalid because they seek to enlist courts to do the "*bidding*"[9] of the Queensland legislature and executive by requiring them to exercise their ordinary powers with respect to sentencing and bail in a manner designed to "*destroy*" certain (legal) associations of the executive's choosing.

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[2] Amended Special Case at [1] (Special Case Book at 47).

[3] See *Vicious Lawless Association Disestablishment Act 2013* (Q) (**Vicious Act**) s 3.

[4] The Hells Angels Motorcycle Club has not been declared to be a "*criminal organisation*" under the regime recently considered by this Court in *Assistant Commissioner Condon v Pompano* (2013) 87 ALJR 458 (that is, the regime under the *Criminal Organisations Act 2009* (Q)).

[5] Pursuant to s 70 of the *Criminal Law (Criminal Organisations Disruption) Amendment Act 2013* (Q) (**Disruption Act**), Sch 1 of that Act had the effect of making Sch 1 a regulation under the *Criminal Code* (Q). Sch 1 relevantly provides (at cl 2) that "*[f]or the Criminal Code, section 1, definition Criminal organisation, paragraph (c), the following entities are declared to be criminal organisations – ... the motorcycle club known as the Hells Angels*".

[6] Pursuant to s 71 of the Disruption Act, Sch 2 of that Act amended the *Crime and Misconduct Regulation 2005* (Q). Sch 2 amended the *Crime and Misconduct Regulation 2005* (Q) (now known as the *Crime and Corruption Regulation 2005* (Q)) to add a new clause which relevantly provided that "*[t]he following entities are declared to be criminal organisations– ... the motorcycle club known as the Hells Angels*".

[7] Amended Special Case at [1A] (Special Case Book at 47).

[8] See *State of South Australia v Totani* (2010) 242 CLR 1 at 90 [232] per Hayne J.

[9] *Assistant Commissioner Condon v Pompano* (2013) 87 ALJR 458 at [140] per Hayne, Crennan, Kiefel and Bell JJ.

B. Construction and operation of the Impugned Provisions

11. As Gummow, Hayne, Heydon and Kiefel JJ said in *Gypsy Jokers Motorcycle Club Inc v Commissioner of Police* (2003) 234 CLR 532 at [11], "*[t]he first step in making an assessment of the validity of any given law is one of statutory construction*".

12. The legislative provisions challenged by the Plaintiff (collectively **Impugned Provisions**) can be organised into four categories:

    (a) special sentences under *Criminal Code (Q)*: the provisions purporting to impose special sentences on "*participant[s] in a criminal organisation*" for existing *Criminal Code* (Q) offences;[10]

10 (b) Vicious Act: the whole of the Vicious Act (which purports to impose special additional sentences on persons described as "*vicious lawless associates*");

    (c) special bail regime: the provisions purporting to prescribe a special regime with respect to bail on persons alleged to be, or have been, "*participant[s] in a criminal organisation*"[11];

    (d) new offences: the new offences created by s 42 of the Disruption Act[12] and s 75 of the Tattoo Act.[13]

13. It is convenient to consider each of these categories of provisions separately.

Special sentences under the Criminal Code (Q) (ss 43 to 46 of the Disruption Act)

14. Part 4 of the Disruption Act was focused on amending the *Criminal Code* (Q) to impose special penalties on persons who are "*participant[s] in a criminal organisation*".

20 15. In order for an organisation to be a "*criminal organisation*" for the purposes of those amendments, it is unnecessary for an organisation to be declared to be such under the *Criminal Organisations Act 2009* (Q)[14] or through another judicial process. Instead, s 41 of the Disruption Act amended the definition of "*criminal organisation*" in the *Criminal Code* (Q) to permit organisations to be declared to be "*criminal organisations*" by regulation. Section 70 of the Disruption Act then proceeded to make a regulation under (or deemed to be under) that enabling power. That deemed regulation declared 26 motorcycle clubs (including "*the motorcycle club known as the Hells Angels*") to be "*criminal organisations*" for the purposes of the *Criminal Code* (Q).

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[10] Disruption Act ss 43 to 46 (which inserted new subsections into ss 72, 92A, 320 and 340 of the *Criminal Code* (Q)).

[11] *Bail Act 1980* (Q) s 16(3A) to 16(3C) as inserted by Part 2 of the Disruption Act and amended by the *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013* (Q)).

[12] Which inserted ss 60A, 60B and 60C into the *Criminal Code* (Q).

[13] Which inserted ss 173EA to 173ED into the *Liquor Act 1992* (Q).

[14] Considered by this Court in *Assistant Commissioner Condon v Pompano Pty Ltd* (2013) 87 ALJR 458.

16. In order to be a "*participant*" in a "*criminal organisation*" for the purposes of the amendments made by Part 4 of the Disruption Act, it is unnecessary for a person to be (or seek to be) a member of a deemed or declared "*criminal organisation*".

17. In fact, to be a "*participant*", it is unnecessary for a person to have ever participated or sought to participate in the "*criminal organisation*". Rather, "*participant*" is broadly defined[15] to include (inter alia):

> ... (d) a person who attends more than 1 meeting or gathering of persons who participate in the affairs of the organisation in any way; and
>
> (e) a person who takes part in the affairs of the organisation in any other way;
>
> but does not include a lawyer acting in a professional capacity.

18. This presumably means that the wives and children of members of one of the 26 declared motorcycle clubs who attend family gatherings with their husbands and fathers will be deemed to be "*participants*" of a "*criminal organisation*" for the purposes of the *Criminal Code* (Q)[16], as would an accountant (but not a lawyer) who seeks to put the taxation affairs of a deemed "*criminal organisation*" in order.

19. A person who is a "*participant in a criminal organisation*" is purportedly subject to the additional offences and penalties inserted into the *Criminal Code* (Q) by Part 4 of the Disruption Act. Of particular relevance for present purposes, are the special penalties which apply where certain *Criminal Code* (Q) offences are committed by a person who was a "*participant in a criminal organisation*". Those penalties are summarised in the following table:[17]

Disruption Act	*Criminal Code*	*Offence*	*Penalty for non-"participant[s]"*	*Penalty for "participant[s]"*
s 43	s 72	Affray	Max 1 year	Min 6 months without parole Max 7 years
s 44	s 92A	Misconduct re public office	Max 7 years	Max 14 years
s 45	s 320	Grievous bodily harm	Max 14 years	Min 1 year without parole Max 14 years
s 46	s 340	Serious assault	Max 7 years	Min 1 year without parole Max 7 years

[15] *Criminal Code* (Q) s 60A(3) as inserted by s 42 of the Disruption Act.

[16] Assuming that there were at least two "*persons who participate in the affairs of the organisation in any way*" at such a gathering.

[17] This summary does not include the additional penalties which might be required to be imposed under the Vicious Act. See discussion below.

20. Under the insertions to the *Criminal Code* (Q) made by Part 4 of the Disruption Act, a "*participant in a criminal organisation*" is liable to an additional penalty whether or not there is any connection between his or her participation in the "*criminal organisation*" and the offence charged.[18]

21. Thus, if (for example) the Plaintiff was to be involved in an affray which had no connection with the Hells Angels and in respect of which no other "*participant in a criminal organisation*" was involved, he would nevertheless be liable to be imprisoned on conviction for a minimum of six months without parole. The other participants in the affray would not be so liable (and, indeed, might escape with a fine or other non-custodial sentence) even if their role in the affray was significantly more serious than the Plaintiff's role.

10 22. This example serves to underline the vice that the Plaintiff says infects the special penalty regime purportedly created by Part 4 of the Disruption Act. Under those provisions, courts are obliged to fix penalties based not on the seriousness of the offender's criminal conduct but rather by reason of a matter which may have no connection with the seriousness of that conduct – the offender's (lawful) association with and status within an organisation that the legislature has decided (without judicial process) to call a "*criminal organisation*".

23. For the reasons discussed below, the Plaintiff contends that it is not open to the Parliament of Queensland to purport to require courts to proceed in such a manner.

The Vicious Lawless Association Disestablishment Act 2013 (Q)

24. The Vicious Act is similar to but even more extraordinary than the provisions of the
20 Disruption Act discussed above.

25. The principal substantive section in that Act is s 7. That section provides that a sentencing court must impose an additional[19] custodial sentence of 15 years on any "*vicious lawless associate*" and a further 10 years on persons who are "*office bearers*" of the "*relevant association*". Those sentences "*must not be mitigated or reduced under any other Act or law*" and "*must be ordered to be served cumulatively with the base sentence imposed*"[20].

26. It is unnecessary for the prosecution to prove that a person is "*vicious*" or "*lawless*" (or an associate of a "*vicious*" or "*lawless*" person or group) in order for a person to be a "*vicious lawless associate*" for the purposes of the Vicious Act. Rather, under s 6, a person is presumptively a "*vicious lawless associate*" if that person:

30 (a) commits a "*declared offence*" [ie, one of the offences in Sch 1 of the Vicious Act or prescribed to be a "*declared offence*" by regulation]; and

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[18] Unless he or she can prove that the organisation in which he or she is a "*participant*" "*is not an organisation that has, as 1 of its purposes, the purpose of engaging in, or conspiring to engage in, criminal activity*": see *Criminal Code* (Q) s 60A(3) as inserted by s 42 of the Disruption Act. It is no defence for the accused to prove that he or she did not know that the organisation was a "*criminal organisation*".

[19] That is, a sentence in addition to that which would be imposed apart from the Vicious Act and without regard to any further punishment that may or will be imposed under the Vicious Act: s 7(1)(a).

[20] Vicious Act 7(2).

(b) at the time the offence is committed, or during the course of the commission of the offence, is a participant in the affairs of an association (***relevant association***); and

(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.

27. If each of those matters is proven with respect to a particular person, an additional custodial sentence of 15 years must be imposed on that person (or 25 years if the person was an "*office bearer*" of the "*relevant association*" at the time of the commission of the offence, or during the course of the commission of the offence) unless:

(a) he or she 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*"[21]; or

(b) he or she qualifies for a reduction of the prescribed penalty or penalties by entering into an agreement to cooperate with law enforcement authorities which complies with s 9 of the Act.

28. Unlike in the case of the amendments to the *Criminal Code* (Q), in order to constitute a "*relevant association*" for the purposes of the Vicious Act, it is unnecessary for an association to be a "*criminal organisation*", "*outlaw motorcycle gang*" or association which is proven to have (or deemed by legislative or executive act to have) a criminal purpose.

29. Rather, any corporation, unincorporated association, club, league or "*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*" constitutes an "*association*" for the purposes of the Vicious Act[22] and is therefore effectively presumed to be a "*relevant association*" for the purposes of the Vicious Act.

30. In this way, sporting associations, knitting clubs, the Australian Bar Association and any other formal or informal group of three or more persons could all constitute a "*relevant association*" for the purposes of the Vicious Act.

31. The definition of "*participant*" under the Vicious Act is similarly broad (and in different terms to that inserted by the Disruption Act). For example, under s 4 of the Vicious Act, any person who "*has taken part on any 1 or more occasions in the affairs of [an] association*" in any way is deemed to be a "*participant*" for the purposes of the Act.

32. In light of the above, it is apparent that the *Vicious Lawless Association Disestablishment Act 2013* (Q) is not restricted in its application to "*vicious*" or "*lawless*" associations or people and does not purport to "*disestablish*" any association (at least directly). Rather, the Act is in wide-ranging terms and effect and purports to require courts to impose long custodial sentences on certain offenders based not on the seriousness of what a person has actually done but rather because of his or her (legal) association with a particular group.

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[21] Vicious Act s 5(2).

[22] See definition of "*association*" in s 3 of the Vicious Act.

33. This is perhaps best illustrated by an example.

34. Assume that a person wishes to be a member of a club which she (honestly but wrongly) believes to have no criminal purpose. She attends her first gathering of members of the club and seeks to become a member (thus making her a "*participant in the affairs of an association*"[23]). Throughout the course of her participation in the gathering, the person has cannabis in her pocket for personal use. That cannabis is detected by police during the course of the gathering and the person is charged with and convicted of possessing a dangerous drug under s 9 of the *Drugs Misuse Act 1986* (Q) (a "*declared offence*" under the Vicious Act).

35. Had the person's cannabis been detected otherwise than in the course of participating in the affairs of the club (for example, if the cannabis was detected while the person was travelling to the gathering), she would have been liable on conviction to not more than three years' imprisonment[24] and would be eligible for a non-custodial penalty such as a fine. However, because the possession was detected during the course of the person's (legal) participation in the affairs of the club, the Vicious Act would apply to require the imposition of a mandatory minimum custodial sentence of 15 years.

36. Such an extraordinary result would ensue even if the person proved that she did not know that the purposes of the "*relevant association*" included criminal purposes[25] and even though there was no connection between the offence charged and the person's participation in a "*relevant association*" (other than the happenstance that the offence was detected whilst the person was participating in the affairs of a "*relevant association*").

37. Again, this example underlines the unequal treatment courts are purportedly required to give by reason of the Impugned Provisions. In particular, it provides a striking example of how the Vicious Act might operate to require courts to impose significant custodial penalties based not on the seriousness of the offender's criminal conduct but rather by reason of a matter which may have no connection with the seriousness of that conduct – the offender's (lawful) association with or participation in a "*relevant association*".

Special bail regime (Part 2 of the Disruption Act; s 16 of the Bail Act 1980 (Q))

38. The amendments to the *Bail Act 1980* (Q) purportedly made by Part 2 of the Disruption Act (and further amended by the *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013* (Q)) continues the theme of the other provisions discussed above.

39. As a result of those amendments, s 16(3A) of the *Bail Act 1980* (Q) now relevantly reads as follows:

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[23] See Vicious Act s 4(b).

[24] Assuming that the prosecution did not allege that the possession was for a commercial purpose: see *Drugs Misuse Act 1986* (Q) s 14.

[25] As the defence/exception in s 5(2) turns on the actual purposes of the relevant association, not on an offender's knowledge of the existence of such purposes.

> ... (3A) If 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, the court or police officer must –
>
> (a) refuse to grant bail unless the defendant shows cause why the defendant's detention in custody is not justified; ...

40. Subsection 16(3C) then proceeds to declare boldly that:

> For subsection (3A), it does not matter – ...
>
> (b) whether the defendant is alleged to have been a participant in a criminal organisation when the offence was committed; or
>
> (c) that there is no link between the defendant's alleged participation in the criminal organisation and the offence with which the defendant is charged.

41. In this way, the *Bail Act 1980* (Q) (as amended) does not proceed on the premise that persons who are alleged to have committed offences as "*participants*" in "*criminal organisations*" are presumptively unlikely to appear before a Court as directed or on the premise that there is a presumptively unacceptable risk that such persons will commit an offence or other wrong whilst on bail. Rather, the amendments are plainly directed towards keeping a particular class of person in custody by reason of their associations rather than by reason of the risks of release. As the Attorney-General of Queensland put it when introducing the bill which inserted s 16(3A) into the *Bail Act 1980* (Q), the approach taken is that "*members or associates [or, it should be added, former members or associates] of criminal motorcycle gangs should be in jail and not get bail*".[26] As discussed below, the Plaintiff contends that requiring courts to proceed in this manner undermines the institutional integrity of those courts.

New offences

42. The impugned provisions of the Disruption Act and Tattoo Act also purported to create certain new offences which could only be committed by a "*participant in a criminal organisation*" (or, in one case, persons who permit such a participant to remain on licenced premises while wearing proscribed clothing, jewellery or accessories).

43. Specifically, s 42 of the Disruption Act created three new offences under the *Criminal Code* (Q) with mandatory minimum custodial sentences of six months without parole for any "*participant in a criminal organisation*" who:

(a) "*is knowingly present in a public place with 2 or more other persons who are participants in a criminal organisation*": s 60A;

(b) "*enters, or attempts to enter, a prescribed place*[27]":s 60B;

(c) "*recruits, or attempts to recruit anyone to become a participant in a criminal organisation*": s 60C.

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[26] Queensland, *Parliamentary Debates*, Legislative Assembly, 15 October 2013 at 3156.

[27] Section 70 of and Sch 1 of the Disruption Act prescribed 41 places as "*prescribed places*" for the purposes of s 60B of the *Criminal Code* (Q).

44. The Tattoo Act also amended the *Liquor Act 1992* (Q) to:

(a) prohibit any person from wearing or carrying certain "*prohibited items*" including "*clothing or jewellery or an accessory*" that indicates membership of, or an association with, a "*declared criminal organisation*"[28] in licenced premises: s 173EC;

(b) prohibit licensees and certain other persons from knowingly allowing a person who is wearing or carrying a "*prohibited item*" to remain in licenced premises: s 173EB;

(c) require persons who are wearing or carrying a prohibited item to immediately leave licenced premises when required to do so an "*authorised person*": s 173ED.

45. Again, the Plaintiff challenges the constitutionally validity of these legislative provisions.

10 **C. The Impugned Provisions offend the "*Kable principle*" and are therefore invalid** (Question 5 in the Amended Special Case)

The Kable principle

46. This Court recently described the "*Kable principle*" in the following terms in *A-G(NT) v Emmerson* (2014) 88 ALJR 522 at [40] (citations omitted):

> The principle for which *Kable* stands is that because the Constitution establishes an integrated court system, and contemplates the exercise of federal jurisdiction by State Supreme Courts, State legislation which purports to confer upon such a court a power or function which substantially impairs the court's institutional integrity, and which is therefore incompatible with the court's role as a repository of federal jurisdiction, is constitutionally invalid.

20 47. It is not possible to catalogue an exhaustive list of circumstances in which the institutional integrity of a court might be impermissibly impaired.[29] However, the cases which have considered the "*Kable principle*" provide some guidance as to the circumstances in which a conclusion of constitutional invalidity might be reached.

48. Those (potentially overlapping) circumstances include:

(a) where legislation confers a function on a court which is "*repugnant to the judicial process in a fundamental degree*"[30];

(b) where a court is required "*in appearance or reality, to act as an instrument of the executive*"[31]

49. The Plaintiff contends that the Impugned Provisions relating to sentencing and bail (that is, the provisions in categories (a) to (c) in paragraph 12 above) cause for the first of these circumstances
30 to arise and that all of the Impugned Provisions cause the second circumstance to arise.

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[28] That is, one of motorcycle clubs deemed by s 70 of the Disruption Act or later declared by regulation to be a "*criminal organisation*": see s 173EA of the *Liquor Act 1992* (Q) as inserted by s 75 of the Tattoo Act.

[29] See, eg, *Fardon v Attorney-General (Qld)* (2004) 223 CLR 575 at 618 [104] where Gummow J noted that "*the critical notions of repugnancy and incompatibility are insusceptible of further definition in terms which necessarily dictate future outcomes*".

[30] See, in particular, *Kable v DPP(NSW)* (1996) 189 CLR 51 at 132 per Gummow J.

[31] *State of South Australia v Totani* (2010) 242 CLR 1 at 36 [43] per French CJ, 80 [200] per Hayne J, 160 [436] per Crennan and Bell JJ, 170 [470] per Kiefel J.

The Impugned Provisions relating to sentencing and bail confer functions on a court which are "repugnant to the judicial process in a fundamental degree"

50. It is well-established that a legislative provision which purports to confer a function on a court which is "*repugnant to the judicial process in a fundamental degree*" may be constitutionally invalid as substantially impairing that court's institutional integrity. For example, in *International Finance Trust Co Ltd v NSW Crime Commission* (2009) 240 CLR 319, all seven Justices assessed whether the law impugned in that case was repugnant to the judicial process (albeit using slightly different formulations of the test or standard).[32]

51. The Plaintiff contends that the Impugned Provisions relating to sentencing and bail purport to impose a duty on courts which is repugnant in the relevant sense because the duty so imposed requires courts to exercise their sentencing role and their role as a bail authority in breach of the fundamental notion of equality before the law.

52. As Gaudron, Gummow and Hayne JJ explained in *Wong v The Queen* (2001) 207 CLR 584 at 608 [65][33], equality before the law (sometimes referred to as or as part of "*equal justice*") requires, relevantly, "*identity of outcome in cases that are* relevantly *identical.*".

53. Equal justice has been described as a "*fundamental element in any rational and fair system of criminal justice*"[34] and, importantly for present purposes, an "*aspect of the rule of law*"[35]. The rule of law is one of the assumptions in accordance with which the Constitution is framed[36], with the "*Kable principle*" giving practical effect to that assumption.

54. As Hayne J explained in *State of South Australia v Totani* (2010) 242 CLR 1 (***Totani***) at 90-93 [232]-[236][37]:

> 232. A central and informing principle of criminal liability in Australia, as elsewhere is that **guilt is personal and individual**. ... That guilt is personal and individual is intrinsic in the notion of the rule of law. As Dixon J said in *Australian Communist Party v The Commonwealth* [(1951) 83 CLR 1 at 193], one of the assumptions in accordance with which the Constitution is framed is the rule of law. ...

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[32] *International Finance Trust Co Ltd v NSW Crime Commission* (2009) 240 CLR 319 at 353 [52] per French CJ (referring to the "*working hypothesis*" adopted by Gummow and Crennan JJ in *Thomas v Mowbray* (2007) 233 CLR 307 at 326 [11]), 367 [98] per Gummow and Bell JJ, 378 [136] per Hayne, Crennan and Kiefel JJ (in dissent) and 379 [140] per Heydon J.

[33] Emphasis original. Quoted with approval by French CJ, Crennan and Kiefell JJ in *Green v The Queen* (2011) 244 CLR 462 at 473 [28].

[34] *Lowe v The Queen* (1984) 154 CLR 606 at 610 per Mason J.

[35] *Green v The Queen* (2011) 244 CLR 462 at 473 [28] per French CJ, Crennan and Kiefel JJ.

[36] *Australian Communist Party v The Commonwealth* (1951) 83 CLR 1 at 193 per Dixon J. See also *APLA Ltd v Legal Services Commissioner (NSW)* 224 CLR 322 at 352 [31] per Gleeson CJ and Heydon J.

[37] Emphasis added; citations omitted. French CJ specifically agreed with [236] of Hayne J's reasons: see *State of South Australia v Totani* (2010) 242 CLR 1 at 52 [82].

> 233. As has later been observed [in *Thomas v Mowbray* (2007) 233 CLR 307 at 342 [61] per Gummow and Crennan JJ[38]], by reference to this aspect of the decision of Dixon J in the *Communist Party Case*, "Ch III gives practical effect to the assumption of the rule of law upon which the Constitution depends for its efficacy". And the implication which was drawn from Ch III in *Kable*, about the legislative power of the States, is also to be seen as giving practical effect to the same assumption. ...
>
> 234. The legislature has not chosen to make the fact of membership of a declared organisation a crime. ... Yet the Magistrates Court is required ... to impose disadvantageous consequences upon any person who falls within that extended definition of "member", **regardless of what the person has or has not done, and regardless of what purposes that person has had, or may now or later harbour, for having connection with the organisation**. ...
>
> 236. The legislation now in issue does not go down the path of seeking to outlaw particular organisations, or kinds of organisation. [The legislation impugned in *Totani*] does not make membership of any organisation (declared or not) a crime. It does not dissolve any organisation, or seek to forfeit or deal with any property that an organisation may own, use or occupy. What s 14(1) does is permit the Executive to enlist the Magistrates Court to create new norms of behaviour for those particular members who are identified by the Executive as meriting application for a control order. They are to be subjected to special restraint, over and above the limitations that the Act imposes on the public at large **not for what they have done or may do,** and not for what any identified person with whom they would associate has done or may do, but because the Executive has chosen them. That function is repugnant to the institutional integrity of the Court that is required to perform it.

55. The Plaintiff contends that the Impugned Provisions relating to sentencing and bail suffer from substantially the same vice to which the above passage of Hayne J's reasons in *Totani* is directed.

56. The Queensland Parliament has not chosen to make it a crime to be a "*participant*" in or "*office bearer*" of any particular class of association or organisation or decided to directly outlaw or disestablish any particular organisation or class of organisations. Instead, it has sought to enlist courts to (inter alia):

(a) impose additional penalties on persons who are "*participants*" in organisations that the legislature and executive has chosen to brand as "*criminal organisations*";

(b) impose "*significant terms of imprisonment*"[39] on certain persons who commit "*declared offences*" and who happen also to be "*participants*" in or "*office bearers*" of an association;

(c) presumptively require that any person who is alleged to have been (at any time) a participant in an organisation that the legislature has chosen to call a "*criminal organisation*" be "*kept in jail and not get bail*"[40].

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[38] See also *APLA Ltd v Legal Services Commissioner (NSW)* (2005) 224 CLR 322 at 351-352 [30] per Gleeson CJ and Heydon J.

[39] *Vicious Lawless Association Disestablishment Act 2013* (Q) s 2(2)(a).

[40] Queensland, *Parliamentary Debates*, Legislative Assembly, 15 October 2013 at 3156.

57. Those outcomes purportedly apply by reason of something other than the "*personal and individual*" guilt of the offender and apply regardless of the circumstances and seriousness of the offence charged or the existence of any connection between the person's status as a "*participant*" or "*office bearer*" in a "*relevant association*" or "*criminal organisation*".

58. As an example, the Impugned Provisions would operate together to require that an "*office bearer*" of a "*criminal organisation*" who was involved in an affray "*in the course of participating in the affairs of*" that organisation:

(a) be refused bail unless he or she shows cause why his or her detention in custody is not justified or proves that the alleged criminal organisation is "*not an organisation that has, as 1 of its purposes, the purpose of engaging in, or conspiring to engage in, criminal activity*"; and

(b) be imprisoned for a minimum of 25½ years without parole and a maximum of 32 years.

59. This might be compared with the position of a person who started the same affray but did not do so whilst a "*participant*" in a "*criminal organisation*" or a participant in the affairs of any other association. Such a person would:

(a) be presumptively entitled to bail; and

(b) be liable to a maximum penalty of one year imprisonment (with no mandatory minimum penalty and the potential to escape with a non-custodial penalty such as a fine).

60. Potential outcomes of this nature are repugnant to any meaningful conception of the rule of law (and, in particular, equality before the law) as they involve a requirement that courts impose very different outcomes for the same crime. The differences on which the legislature has fixed to cause different outcomes are not "*relevant*" differences of the kind referred to in the authorities and commentary regarding equal justice – they are matters which pertain to the status and associations of the offender rather than his or her own "*personal and individual*" guilt.

61. This repugnancy to the rule of law and the judicial process more generally is at least as "*fundamental*" as some of the other departures from the judicial process which have been held to support a conclusion of constitutional invalidity in previous cases. In particular, it is submitted that the departure from the judicial process purportedly effected by the Impugned Provisions is at least as "*fundamental*" as:

(a) the departure from the duty to give reasons considered in *Wainohu v New South Wales* (2011) 243 CLR 181;

(b) the departure from the ability to review and reconsider orders made ex parte for sequestration of property and to enforce the duty of full disclosure on such an ex parte application considered in *International Finance Trust Co Ltd v New South Wales Crime Commission* (2009) 240 CLR 319.

62. If that be accepted, there is ample basis for concluding that the Impugned Provisions are repugnant to the judicial process in a fundamental degree and, as a result, purport to impair substantially the institutional integrity of the courts of Queensland.

The Impugned Provisions require courts to "act as an instrument of the executive" and the legislature

63. The Plaintiff also contends that the Impugned Provisions substantially impair the institutional integrity of the courts of Queensland because they have the effect of requiring courts to "*act as an instrument of the executive*" and the legislature or, as Hayne, Crennan, Kiefel and Bell JJ recently put it in *Assistant Commissioner Condon v Pompano Pty Ltd* (2013) 87 ALJR 458 at [140], to enlist courts to "*do the executive's bidding*".

10 64. In considering that submission, it is necessary to have regard to the objects of the package of bills which were introduced into and passed by the Queensland Legislative Assembly on the sitting day commencing on 15 October 2013 (viz, the bills which became the Vicious Act, the Disruption Act and the Tattoo Act).

65. As the Premier of Queensland explained to the Legislative Assembly, that package of bills were "*not designed to just contain or manage ["criminal motorcycle gangs"]; they [were] designed to destroy them*".[41]

66. Similar indications of the objects of the legislation appear in or can be inferred from the impugned legislation itself. For example, s 2(1)(a) of the Vicious Act indicates that one of the objects of that Act is to:

20 > disestablish associations that encourage, foster or support persons who commit serious offences.

67. Despite this, the Parliament of Queensland has not chosen to disestablish any association or make it illegal to be a member of or participant in any particular organisation.

68. Instead, it has (inter alia):

(a) chosen to determine that a series of identified motorcycle clubs should – without judicial process – be branded as "*criminal organisations*";

(b) created special offences and special regimes with respect to sentencing and bail which can apply to participants of any organisation that the legislature or executive chooses to call a "*criminal organisation*"; and

30 (c) purported to require courts to impose "*significant terms of imprisonment*"[42] on persons defined to be "*vicious lawless associates*".

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[41] Queensland, *Parliamentary Debates*, Legislative Assembly, 15 October 2013, 3114.7.

[42] Vicious Act s 2(2)(a).

69. The apparent intent[43] of this legislative scheme is to enlist the courts to achieve indirectly what the Parliament has not sought to do directly – the disestablishment or "*destr[uction]*" of certain organisations of the Parliament's choosing.

70. In other words, the legislative scheme is not devised merely to prescribe new norms of conduct, set sentencing "*yardsticks*"[44] or regulate court processes relating to bail. Rather, the legislative scheme seeks to enlist courts to impose significant penalties and restrictions on organisations of the executive's choosing and to achieve thereby, through judicial action, something which it has not sought to achieve through legislative action – the disestablishment or destruction of organisations deemed by the Parliament to be undesirable.

10 71. To be clear, this is not a complaint about harshness of the penalties imposed by the Impugned Provisions per se.[45] Rather, the complaint is that the intended legal and practical operation of the legislative scheme effected by the Impugned Provisions is to enlist the courts to achieve a particular policy objective of the executive (destruction of certain organisations) in a constitutionally impermissible manner rather than to perform their ordinary function of "*apply[ing] the law*".[46] This approach, it is submitted, substantially impairs the institutional integrity of the courts of Queensland.

Conclusion – The Impugned Provisions are invalid

72. In a number of cases (including, recently, *Assistant Commissioner Condon v Pompano Pty Ltd* (2013) 87 ALJR 458), this Court has held that it is possible for legislative schemes to be
20 devised which restrict the activities of persons and organisations involved, or at the risk of being involved, in criminal activity without offending Ch III of the Constitution.

73. The scheme sought to be effected by the Impugned Provisions is not such a scheme. The Impugned Provisions should be held to be constitutionally invalid.

D. This proceeding raises a "*matter*"

This proceeding is not defeated for want of "standing" (Question 1 in the Amended Special Case)

74. The Defendant has foreshadowed that it proposes to submit that the Plaintiff does not have "*standing*" to pursue this proceeding. If that submission is ultimately made, it should be rejected.

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[43] See *State of South Australia v Totani* (2010) 242 CLR 1 at 84 [213] per Hayne J in which his Honour noted that "*[t]he validity of the legislation is to be determined by reference to its intended legal and practical operation*".

[44] See, eg, *Markarian v The Queen* (2005) 228 CLR 357 at 372 [30].

[45] Cf *Magaming v The Queen* [2013] HCA 40 at [52] per French CJ, Hayne, Crennan, Kiefel and Bell JJ.

[46] *The Public Service Association and Professional Officers' Association Amalgamated of NSW v Director of Public Employment* [2012] HCA 58 at [45] per Hayne, Crennan, Kiefel and Bell JJ.

75. It is now well-established that "*in federal jurisdiction, questions of 'standing', when they arise, are subsumed within the constitutional requirement of a 'matter'*"[47].

76. Also, as Brennan CJ, Dawson and Toohey JJ said in *Croome v Tasmania* (1997) 191 CLR 119 at 125:

> It is long-standing doctrine that a "matter" may consist of a controversy between[:]
>
> [a] a person who has a sufficient interest in the subject and who asserts that a purported law is invalid[;] and
>
> [b] the polity whose law it purports to be.

77. "*Sufficient interest*" for this purpose is a relatively broad concept. As Lord Upjohn said in *Pharmaceutical Society of Great Britain v Dickson* [1970] AC 403 at 433 (cited with approval in *Croome v Tasmania* (1997) 191 CLR 119 at 127 per Brennan CJ, Dawson and Toohey JJ):

> The principle [of sufficient interest] is not confined to trade. A person whose freedom of action is challenged can always come to the court to have his rights and position clarified, subject always, of course, to the right of the court in exercise of its judicial discretion to refuse relief in the circumstances of the case.

78. The Plaintiff's freedom of action is plainly challenged by the Impugned Provisions. The Plaintiff is a "*participant*" in an organisation which has been deemed to be a "*criminal organisation*" for the purposes of the *Criminal Code* (Q) and is a member of an "*association*" which could constitute a "*relevant association*" for the purposes of the Vicious Act.[48] As a result, if the Impugned Provisions are valid, the Plaintiff may become subject to very significant penalties and other restrictions which would not apply to him[49] if he was to cease to be a participant in the Hells Angels or any other association.

79. In this way, the Plaintiff has a real interest in the subject matter of these proceedings which exceeds that of a "*phantom busybody[,] ghostly intermeddler*"[50] or member of the general public.

80. In short, the Plaintiff is "*entitled to know*"[51] whether the impugned legislation may apply to him and this Court is entitled to resolve the controversy between him and the Defendant with respect to that question.

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[47] *Bateman's Bay Local Aboriginal Land Council v Aboriginal Community Benefit Fund Pty Ltd* (1998) 194 CLR 247 at 262 [37] per Gaudron, Gummow and Kirby JJ citing *Australian Conservation Foundation v The Commonwealth* (1998) 146 CLR 493 at 550-551 and *Croome v Tasmania* (1997) 191 CLR 119 at 124-126, 131-135.

[48] See Amended Special Case at [1] (Special Case Book at 47).

[49] With the exception of the special regime in s 16(3A) of the *Bail Act 1980* (Q) as amended which now applies to wherever it is "*alleged that the defendant is, or has at any time been, a participant in a criminal organisation*" (emphasis added).

[50] Craig, *Administrative Law* (3rd ed, 1994) at 484 referred to in *Bateman's Bay Local Aboriginal Land Council v Aboriginal Community Benefit Fund Pty Ltd* (1998) 194 CLR 247 at 261 [34] per Gaudron, Gummow and Kirby JJ.

[51] *University of Wollongong v Metwally* (1984) 18 CLR 447 at 457-8 cited in *Croome v Tasmania* (1997) 191 CLR 119 at 138 per Gaudron, McHugh and Gummow JJ).

This proceeding is not defeated on the grounds that it raises a "hypothetical" question (Question 2 in the Amended Special Case)

81. The Defendant has also foreshadowed that it intends to submit that this proceeding raises questions which are hypothetical with the result that they do not give rise to a "*matter*" in the constitutional sense.

82. That submission should also be rejected if it ultimately be made.

83. The Defendant's intended submission appears to be that, because the Plaintiff has not asserted that he has been charged with or has committed any offence, the questions raised about the validity of the Impugned Provisions are necessarily hypothetical.

84. If that be the submission, it should be rejected. While it may be accepted that "*hypothetical questions give rise to no matter*"[52], this proceeding is not hypothetical in the relevant sense. As Gaudron, McHugh and Gummow JJ said in *Croome v Tasmania* (1997) 191 CLR 119 at 136:

> Their Honours in *In re Judiciary and Navigations Acts* [(1921) 29 CLR 257] are not to be taken as lending support to the notion that, where the law of a State imposes a duty upon the citizen attended by liability to prosecution and punishment under the criminal law, and the citizen asserts that, by operation of s 109 of the Constitution, the law of the State is invalid, there can be no immediate right, duty or liability to be established by determination of this Court, in an action for declaratory relief by the citizen against the State, unless the Executive Government of the State has, at least, invoked legal process against the particular citizen to enforce the criminal law.

85. There is no reason for applying a different principle in the case of laws asserted to be invalid by reason of Ch III of the Constitution such as laws which are said to contravene the "*Kable Principle*". As a result, properly analysed, this proceeding does not raise hypothetical questions which do not give rise to a "*matter*".

E. Other issues

86. For the purposes of order 10 of the orders made by French CJ on 27 June 2014[53], the Plaintiff indicates that:

(a) it does not seek to make any use of the factual allegations in the Amended Special Case other than the admitted facts at paragraphs 1 and 1A[54];

(b) the Court should not make any use of any of the other (contested) assertions of fact identified in the Amended Special Case. That matters are not relevant to the issues raised in these submissions or in this proceeding generally.

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[52] *Re McBain; Ex parte Catholic Bishops Conference* (2002) 209 CLR 372 at 80 [242] per Hayne J.

[53] Special Case Book at 44.

[54] Special Case Book at 47.

F. Conclusion

87. The Impugned Provisions are as "*extraordinary*"[55] as those considered by this Court in *Kable v Director of Public Prosecutions (NSW)* (1996) 189 CLR 51, *International Finance Trust Company v New South Wales Crime Commission* (2009) 240 CLR 319 and *State of South Australia v Totani* (2010) 242 CLR 1. Properly analysed, they substantially impair the integrity of the courts of Queensland.

88. The Court should find accordingly and conclude that the Impugned Provisions are constitutionally invalid.

PART VII: LEGISLATION

10 89. The applicable constitutional provisions are ss 71, 73 and 77 of the *Commonwealth Constitution*.

90. The following applicable legislation appears at **Attachment A**:

(a) the *Vicious Lawless Association Disestablishment Act 2013* (Q) as in force as at the date of making these submissions;

(b) Parts 1, 2, 4 and 8 of and the Schedules to the *Criminal Law (Criminal Organisations Disruption) Amendment Act 2013* (Q) as made;

(c) section 16 of the *Bail Act 1980* (Q) as in force at the date of making these submissions;

(d) sections 60A, 60B, 60C, 72, 92A, 320 and 340 of the *Criminal Code* (Q) as in force as at the date of making these submissions;

(e) sections 173EA, 173EB, 173EC and 173ED of the *Liquor Act 1992* (Q) as in force as
20 at the date of making these submissions).

PART VIII: ORDERS SOUGHT

91. The Court should:

(a) answer question 1 of the Amended Special Case (standing) "*yes*";

(b) answer question 2 of the Amended Special Case (hypothetical) "*no*";

(c) answer question 5 of the Amended Special Case (*Kable*) as follows:

> The following legislative provisions are invalid:
>
> (a) the *Vicious Lawless Association Disestablishment Act 2013* (Q);
>
> (b) subsections (3A), (3B), (3C) and (3D) of section 16 of the *Bail Act 1980* (Q);
>
> (c) subsections 60A, 60B, 60C, 72(2), 72(3), 72(4), 92A(4A), 92(4B), 92(5), 320(2),
> 30 320(3), 320(4), 340(1A), 340(1B) and 340(3) of the *Criminal Code* (Q);
>
> (d) sections 173EA, 173EB, 173EC and 173ED of the *Liquor Act 1992* (Q).

(d) answer question 7 of the Amended Special Case (costs) "*the Defendant*".

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[55] See, eg, *Kable v DPP(NSW)* (1996) 189 CLR 51 at 132 per Gummow J.

92. The Plaintiff does not press for the Court to answer questions 3, 4 and 6 of the Amended Special Case.

PART IX: TIME ESTIMATE

93. The Plaintiff anticipates that he will require about three hours for the presentation of his oral argument in chief plus thirty minutes to one hour in reply.

16 July 2014 (facsimile numbers of counsel added on 17 July 2017)

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IN THE HIGH COURT OF AUSTRALIA

BRISBANE REGISTRY

No B14 of 2014

Between:

STEFAN KUCZBORSKI
Plaintiff

THE STATE OF QUEENSLAND
Defendant

ATTACHMENT A to the PLAINTIFF'S WRITTEN SUBMISSIONS

APPLICABLE LEGISLATIVE PROVISIONS

10 INDEX

Queensland

Vicious Lawless Association Disestablishment Act 2013

Current as at 17 October 2013

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Queensland

Vicious Lawless Association Disestablishment Act 2013

Contents

Vicious Lawless Association Disestablishment Act 2013

An Act for the purpose of disestablishing vicious lawless associations

1 Short title

This Act may be cited as the *Vicious Lawless Association Disestablishment Act 2013*.

2 Objects

(1) The objects of the Act are to—

(a) disestablish associations that encourage, foster or support persons who commit serious offences; and

(b) increase public safety and security by the disestablishment of the associations; and

(c) deny to persons who commit serious offences the assistance and support gained from association with other persons who participate in the affairs of the associations.

(2) The objects are to be achieved by—

(a) imposing significant terms of imprisonment for vicious lawless associates who commit declared offences; and

(b) removing the possibility of parole for vicious lawless associates serving terms of imprisonment except in limited circumstances; and

(c) encouraging vicious lawless associates to cooperate with law enforcement agencies in the investigation and prosecution of serious criminal activity.

3 Definitions

In this Act—

association means any of the following—

(a) a corporation;

(b) an unincorporated association;

(c) a club or league;

(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.

base sentence, for a vicious lawless associate, means the sentence imposed on the associate under section 7(1)(a).

declared offence means—

(a) an offence against a provision mentioned in schedule 1; or

(b) an offence prescribed under a regulation to be a declared offence.

further sentence, for a vicious lawless associate, means a sentence imposed on the associate under section 7(1)(b) or (c).

office bearer, of an association, means—

(a) a person who is a president, vice-president, sergeant-at-arms, treasurer, secretary, director or another office bearer or a shareholder of the association; or

(b) a person who (whether by words or conduct, or in any other way) asserts, declares or advertises himself or herself to hold a position of authority of any kind within the association.

4 Meaning of *participant*

For this Act, a person is a ***participant*** in the affairs of an association if the person—

(a) (whether by words or conduct, or in any other way) asserts, declares or advertises his or her membership of, or association with, the association; or

(b) (whether by words or conduct, or in any other way) seeks to be a member of, or to be associated with, the association; or

(c) has attended more than 1 meeting or gathering of persons who participate in the affairs of the association in any way; or

(d) has taken part on any 1 or more occasions in the affairs of the association in any other way.

5 Meaning of *vicious lawless associate*

(1) For this Act, a person is a ***vicious lawless associate*** if the person—

(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 participant in the affairs of an association (***relevant association***); and

(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.

(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.

6 Proof person is an office bearer of an association

For this Act, proof that a person—

(a) has asserted, declared or advertised that he or she is an office bearer of an association; or

(b) is commonly treated by other persons who participate in the affairs of the association as an office bearer of the association; or

(c) exercises or purports to exercise authority in the affairs of the association;

is, unless the contrary is proved, sufficient proof that the person is an office bearer of the association.

7 Sentencing

(1) A court sentencing a vicious lawless associate for a declared offence must impose all of the following sentences on the vicious lawless associate—

(a) a sentence for the offence under the law apart from this Act and without regard to any further punishment that may or will be imposed under this Act;

(b) a further sentence of 15 years imprisonment served wholly in a corrective services facility;

(c) if the vicious lawless associate was, at the time of the commission of the offence, or during the course of the commission of the offence, an office bearer of the relevant association—a further sentence of 10 years imprisonment served wholly in a corrective services facility which must be served cumulatively with the further sentence mentioned in paragraph (b).

(2) A further sentence—

(a) must not be mitigated or reduced under any other Act or law; and

(b) must be ordered to be served cumulatively with the base sentence imposed.

(3) However, if the base sentence does not—

(a) impose a term of imprisonment on the vicious lawless associate; or

(b) require the associate to immediately serve a term of imprisonment in a corrective services facility;

the associate is to immediately begin to serve the further sentence mentioned in subsection (1)(b) and the base sentence is to have effect, so far as practicable, at the end of the further sentence or sentences.

(4) Also, if the base sentence imposed on the vicious lawless associate is life imprisonment, the further sentence mentioned in subsection (1)(b) is to have effect from the parole eligibility date applying to the associate as a prisoner under the *Corrective Services Act 2006*, section 181.

(5) If a sentencing court is sentencing a vicious lawless associate for more than 1 declared offence, the sentencing court may impose further sentences for only 1 of the offences.

(6) However, when deciding which declared offence to use for imposing further sentences, the court must choose the offence that will result in the vicious lawless associate serving the longest period of imprisonment available under this Act for the offences.

8 No parole and parole eligibility date fixed only for total period of imprisonment

(1) A vicious lawless associate is not eligible for parole during any period of imprisonment for a further sentence.

(2) For this Act and the *Corrective Services Act 2006*, the parole eligibility date for the vicious lawless associate's period of imprisonment (other than if the base sentence is life imprisonment) is the day that is worked out by adding the period of any further sentence imposed under this Act to the notional parole eligibility date fixed under subsection (3).

Note—

Section 7(4) has effect if the base sentence is life imprisonment.

(3) The notional parole eligibility date for a vicious lawless associate is the parole eligibility date or parole release date for the base sentence fixed as provided under another Act or as fixed by the sentencing court.

Example—

A vicious lawless associate is sentenced to 5 years imprisonment for a declared offence. The vicious lawless associate is an office bearer in an association and the declared offence was done for the purposes of the association. So the further sentences imposed on the associate total 25 years. The sentencing court fixes a parole eligibility date for the base sentence as a date 3 years in the future resulting in a notional parole eligibility date under this subsection. Under subsection (2), for this Act and the *Corrective Services Act 2006*, the associate's parole eligibility date for the period of imprisonment is a date 28 years in the future.

(4) In this section—

period of imprisonment see the *Penalties and Sentences Act 1992*, section 4.

9 Cooperation with law enforcement authorities to be taken into account

(1) Despite section 7(2) but subject to subsection (2), the *Penalties and Sentences Act 1992*, section 13A applies to an offender liable to be sentenced as a vicious lawless associate.

(2) For the *Penalties and Sentences Act 1992*, section 13A, an offender is taken to have undertaken to cooperate with law enforcement agencies in a proceeding about an offence if and only if—

(a) the offender has offered in writing to cooperate with law enforcement agencies in a proceeding about a declared offence; and

(b) the offer has been accepted in writing by the commissioner of the police service.

(3) When deciding whether to accept an offer of cooperation, the commissioner must be satisfied that the cooperation will be of significant use in a proceeding about a declared offence.

(4) The *Judicial Review Act 1991*, part 4 does not apply to the commissioner's decision.

(5) Subject to subsection (6), the decision—

(a) is final and conclusive; and

(b) can not be challenged, appealed against, reviewed, quashed, set aside or called in question in any other way under the *Judicial Review Act 1991* or otherwise (whether by the Supreme Court, another court, a tribunal or another entity); and

(c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground.

(6) The *Judicial Review Act 1991*, part 5 applies to the decision to the extent it is affected by jurisdictional error.

(7) To remove any doubt, it is declared that section 8(1) does not apply to an offender whose offer to cooperate with law enforcement agencies in a proceeding about an offence is accepted by the commissioner under subsection (2).

(8) In this section—

decision includes a decision or conduct leading up to or forming part of the process of making a decision.

10 Regulation-making power

The Governor in Council may make regulations declaring offences for the purposes of this Act.

11 Act to be reviewed

(1) The Minister must review this Act as soon as reasonably practicable after 3 years after its commencement.

(2) The objects of the review include deciding whether the Act is operating effectively and meeting its objects.

(3) The Minister must appoint an appropriately qualified person to undertake the review.

(4) The Minister must, as soon as practicable after finishing the review, table a report about the outcome of the review in the Legislative Assembly.

Schedule 1 Declared offences

section 3, definition *declared offence*

Corrective Services Act 2006

- section 122(2) (Unlawful assembly, riot and mutiny)

Criminal Code

- section 61 (Riot), if the offence is committed in circumstances rendering the offender liable to imprisonment for 7 years or more
- section 72 (Affray)
- section 119B (Retaliation against or intimidation of judicial officer, juror, witness etc.)
- section 140 (Attempting to pervert justice)
- section 141 (Aiding persons to escape from lawful custody)
- section 208 (Unlawful sodomy)
- section 210 (Indecent treatment of children under 16)
- section 213 (Owner etc. permitting abuse of children on premises)
- section 215 (Carnal knowledge with or of children under 16)
- section 216 (Abuse of persons with an impairment of the mind)
- section 217 (Procuring young person etc. for carnal knowledge)
- section 218 (Procuring sexual acts by coercion etc.)

- section 219 (Taking child for immoral purposes)
- section 222 (Incest)
- section 228 (Obscene publications and exhibitions), if section 228(2) or (3) applies
- section 228A (Involving child in making child exploitation material)
- section 228B (Making child exploitation material)
- section 228C (Distributing child exploitation material)
- section 228D (Possessing child exploitation material)
- section 229B (Maintaining a sexual relationship with a child)
- section 229G (Procuring engagement in prostitution)
- section 229H (Knowingly participating in provision of prostitution)
- section 229HB (Carrying on business of providing unlawful prostitution)
- section 229K (Having an interest in premises used for prostitution etc.)
- section 229L (Permitting young person etc. to be at place used for prostitution)
- sections 302 (Definition of *murder*) and 305 (Punishment of murder)
- sections 303 (Definition of *manslaughter*) and 310 (Punishment of manslaughter)
- section 306 (Attempt to murder)
- section 307 (Accessory after the fact to murder)
- section 308 (Threats to murder in document)
- section 309 (Conspiring to murder)
- section 315 (Disabling in order to commit indictable offence)

- section 316 (Stupefying in order to commit indictable offence)
- section 317 (Acts intended to cause grievous bodily harm and other malicious acts)
- section 320 (Grievous bodily harm)
- section 320A (Torture)
- section 321 (Attempting to injure by explosive or noxious substances)
- section 321A (Bomb hoaxes)
- section 322 (Administering poison with intent to harm)
- section 323 (Wounding)
- section 327 (Setting mantraps)
- section 328A(4) (Dangerous operation of a vehicle)
- section 339 (Assaults occasioning bodily harm)
- section 340 (Serious assaults)
- section 346 (Assaults in interference with freedom of trade or work)
- section 349 (Rape)
- section 350 (Attempt to commit rape)
- section 351 (Assault with intent to commit rape)
- section 352 (Sexual assaults)
- section 354 (Kidnapping)
- section 354A (Kidnapping for ransom)
- section 359E (Punishment of unlawful stalking)
- section 398 (Punishment of stealing), if item 14 (Stealing firearm for use in another indictable offence) or 15 (Stealing firearm or ammunition) applies
- section 411(1) (Punishment of robbery)
- section 411(2) (Punishment of robbery)
- section 412 (Attempted robbery)

- section 415 (Extortion)
- section 419(1) (Burglary), if section 419(3) or (4) applies
- section 433(1)(b) (Receiving tainted property)

Criminal Proceeds Confiscation Act 2002

- section 250 (Money laundering)

Drugs Misuse Act 1986

- section 5 (Trafficking in dangerous drugs)
- section 6 (Supplying dangerous drugs)
- section 7 (Receiving or possessing property obtained from trafficking or supplying)
- section 8 (Producing dangerous drugs)
- section 9 (Possessing dangerous drugs)

Weapons Act 1990

- section 50(1) (Possession of weapons), if the offence is committed in circumstances rendering the offender liable to imprisonment for 7 years or more
- section 50B(1) (Unlawful supply of weapons), if the offence is committed in circumstances rendering the offender liable to imprisonment for 7 years or more
- section 65(1) (Unlawful trafficking in weapons)

Endnotes

1 Index to endnotes

2 Date to which amendments incorporated

This is the reprint date mentioned in the *Reprints Act 1992*, section 5(c). However, no amendments have commenced operation on or before that day. Future amendments of the *Vicious Lawless Association Disestablishment Act 2013* may be made in accordance with this reprint under the *Reprints Act 1992*, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

Key		Explanation	Key		Explanation
AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
amdt	=	amendment	prov	=	provision
ch	=	chapter	pt	=	part
def	=	definition	pubd	=	published
div	=	division	R[X]	=	Reprint No. [X]
exp	=	expires/expired	RA	=	Reprints Act 1992
gaz	=	gazette	reloc	=	relocated
hdg	=	heading	renum	=	renumbered
ins	=	inserted	rep	=	repealed
lap	=	lapsed	(retro)	=	retrospectively
notfd	=	notified	rv	=	revised version
num	=	numbered	s	=	section
o in c	=	order in council	sch	=	schedule
om	=	omitted	sdiv	=	subdivision
orig	=	original	SIA	=	Statutory Instruments Act 1992
p	=	page	SIR	=	Statutory Instruments Regulation 2012
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered
prev	=	previous			

4 Table of reprints

A new reprint of the legislation is prepared by the Office of the Queensland Parliamentary Counsel each time a change to the legislation takes effect.

The notes column for this reprint gives details of any discretionary editorial powers under the *Reprints Act 1992* used by the Office of the Queensland Parliamentary Counsel in preparing it. Section 5(c) and (d) of the Act are not mentioned as they contain mandatory requirements that all amendments be included and all necessary consequential amendments be incorporated, whether of punctuation, numbering or another kind. Further details of the use of any discretionary editorial power noted in the table can be obtained by contacting the Office of the Queensland Parliamentary Counsel by telephone on 3237 0466 or email legislation.queries@oqpc.qld.gov.au.

From 29 January 2013, all Queensland reprints are dated and authorised by the Parliamentary Counsel. The previous numbering system and distinctions between printed and electronic reprints is not continued with the relevant details for historical reprints included in this table.

Current as at	Amendments included	Notes
17 October 2013	none	RA s 42A

5 List of legislation

Vicious Lawless Association Disestablishment Act 2013 No. 47
date of assent 17 October 2013
commenced on date of assent

6 Forms notified or published in the gazette

Lists of forms are no longer included in reprints. Now see the separate forms document published on the website of the Office of the Queensland Parliamentary Counsel at <www.legislation.qld.gov.au> under Information—Current annotations. This document is updated weekly and the most recent changes are marked with a change bar.

ATTACHMENT A – APPLICABLE LEGISLATIVE PROVISIONS

Criminal Law (Criminal Organisations Disruption) Amendment Act 2013 **(Qld), Parts 1, 2, 4 and 8, Schedules 1 and 2** (as made)

Part 1 Preliminary

1 Short title

This Act may be cited as the *Criminal Law (Criminal Organisations Disruption) Amendment Act 2013*.

Part 2 Amendment of Bail Act 1980

2 Act amended

This part amends the *Bail Act 1980*.

3 Amendment of s 6 (Definitions)

Section 6—

insert— ***criminal organisation*** see the Criminal Code, section 1.

participant, in a criminal organisation, see the Criminal Code, section 60A.

4 Amendment of s 16 (Refusal of bail)

(1) Section 16—

insert—

(3A) If the defendant is a participant in a criminal organisation, the court or police officer must—

(a) refuse to grant bail unless the defendant shows cause why the defendant's detention in custody is not justified; and

(b) if bail is granted or the defendant is released under section 11A—

(i) require the defendant to surrender the defendant's current passport; and

(ii) include in the order a statement of the reasons for granting bail or releasing the defendant.

(3B) If the defendant is required to surrender the defendant's current passport under subsection (3A)(b)(i), the court or police officer must order that the defendant be detained in custody—

(a) until the court or police officer is satisfied about whether the defendant is the holder of a current passport; and

(b) if the defendant is the holder of a current passport—the passport is surrendered.

(3C) For subsection (3A), it does not matter whether the offence with which the defendant is charged is an indictable offence, a simple offence or a regulatory offence.

(3D) Subsection (3A) does not apply if the defendant proves that the criminal organisation is not an organisation that has, as 1 of its

purposes, the purpose of engaging in, or conspiring to engage in, criminal activity.

(2) Section 16(4), after (3)—
insert—
or (3A)

[...]

Part 4 Amendment of Criminal Code

40 Code amended
This part amends the Criminal Code.

41 Amendment of s 1 (Definitions)
Section 1, definition *criminal organisation*—
omit, insert—

criminal organisation means—
(a) an organisation of 3 or more persons—
(i) who have as their purpose, or 1 of their purposes, engaging in, organising, planning, facilitating, supporting, or otherwise conspiring to engage in, serious criminal activity as defined under the *Criminal Organisation Act 2009*; and
(ii) who, by their association, represent an unacceptable risk to the safety, welfare or order of the community; or
(b) a criminal organisation under the *Criminal Organisation Act 2009*;
(c) an entity declared under a regulation to be a criminal organisation.

42 Insertion of new ss 60A–60C
Chapter 9—
insert—
60A Participants in criminal organisation being knowingly present in public places
(1) Any person who is a participant in a criminal organisation and is knowingly present in a public place with 2 or more other persons who are participants in a criminal organisation commits an offence.
Minimum penalty—6 months imprisonment served wholly in a corrective services facility.
Maximum penalty—3 years imprisonment.
(2) It is a defence to a charge of an offence against subsection (1) to prove that the criminal organisation is not an organisation that has, as 1 of its purposes, the purpose of engaging in, or conspiring to engage in, criminal activity.
(3) In this section—
member, of an organisation, includes an associate member, or prospective member, however described.

participant, in a criminal organisation, means—
(a) if the organisation is a body corporate—a director or officer of the body corporate; or

(b) a person who (whether by words or conduct, or in any other way) asserts, declares or advertises his or her membership of, or association with, the organisation; or
(c) a person who (whether by words or conduct, or in any other way) seeks to be a member of, or to be associated with, the organisation; or
(d) a person who attends more than 1 meeting or gathering of persons who participate in the affairs of the organisation in any way; or
(e) a person who takes part in the affairs of the organisation in any other way;

but does not include a lawyer acting in a professional capacity.

public place means—
(a) a place, or part of a place, that the public is entitled to use, is open to members of the public or is used by the public, whether or not on payment of money; or
(b) a place, or part of a place, the occupier of which allows, whether or not on payment of money, members of the public to enter.

60B Participants in criminal organisation entering prescribed places and attending prescribed events

(1) Any person who is a participant in a criminal organisation and enters, or attempts to enter, a prescribed place commits an offence.
Minimum penalty—6 months imprisonment served wholly in a corrective services facility.
Maximum penalty—3 years imprisonment.

(2) Any person who is a participant in a criminal organisation and attends, or attempts to attend, a prescribed event commits an offence.
Minimum penalty—6 months imprisonment served wholly in a corrective services facility.
Maximum penalty—3 years imprisonment.

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

(4) In this section—
participant, in a criminal organisation, see section 60A.

prescribed event means an event declared under a regulation to be a prescribed event.

prescribed place means a place declared under a regulation to be a prescribed place.

60C Participants in criminal organisation recruiting persons to become participants in the organisation

(1) Any person who is a participant in a criminal organisation and recruits, or attempts to recruit, anyone to become a participant in a criminal organisation commits an offence.
Minimum penalty—6 months imprisonment served wholly in a corrective services facility.
Maximum penalty—3 years imprisonment.

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

(3) In this section—

criminal organisation does not include a criminal organisation under the *Criminal Organisation Act 2009*.

participant, in a criminal organisation, see section 60A.

recruit, a person, to become a participant in a criminal organisation, includes counsel, procure, solicit, incite and induce the person, including by promoting the organisation, to become a participant in the organisation.

43 Amendment of s 72 (Affray)

Section 72—

insert—

(2) If the person convicted of an offence against subsection (1) is a participant in a criminal organisation, the offence is punishable on conviction as follows—
Minimum penalty—6 months imprisonment served wholly in a corrective services facility;
Maximum penalty—7 years imprisonment.

(3) For an offence defined in subsection (1) alleged to have been committed with the circumstance of aggravation mentioned in subsection (2), it is a defence to the circumstance of aggravation to prove that the criminal organisation is not an organisation that has, as 1 of its purposes, the purpose of engaging in, or conspiring to engage in, criminal activity.

(4) In this section—
participant, in a criminal organisation, see section 60A.

44 Amendment of s 92A (Misconduct in relation to public office)

(1) Section 92A—

insert—

(4A) The offender is liable to imprisonment for 14 years if, for an offence against subsection (1) or (2), the person who dishonestly gained a benefit, directly or indirectly, was a participant in a criminal organisation.

(4B) For an offence defined in subsection (1) or (2) alleged to have been committed with then circumstance of aggravation mentioned in subsection (4A), it is a defence to the circumstance of aggravation to prove that the criminal organisation is not an organisation that has, as 1 of its purposes, the purpose of engaging in, or conspiring to engage in, criminal activity.

(2) Section 92A(5)—

insert—

participant, in a criminal organisation, see section 60A.

45 Amendment of s 320 (Grievous bodily harm)

Section 320—

insert—

(2) If the offender is a participant in a criminal organisation and unlawfully does grievous bodily harm to a police officer while acting in the execution of the officer's duty, the offender must be imprisoned for 1 year with the imprisonment served wholly in a corrective services facility.

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

(4) In this section—

participant, in a criminal organisation, see section 60A.

46 Amendment of s 340 (Serious assaults)

(1) Section 340—

insert—

(1A) If the offender is a participant in a criminal organisation and assaults a police officer in any of the circumstances mentioned in paragraph (a) of the maximum penalty for subsection (1), the offender must be imprisoned for 1 year with the imprisonment served wholly in a corrective services facility.

(1B) It is a defence to the circumstance of aggravation mentioned in subsection (1A) to prove that the criminal organisation is not an organisation that has, as 1 of its purposes, the purpose of engaging in, or conspiring to engage in, criminal activity.

(2) Section 340(3)—

insert—

participant, in a criminal organisation, see section 60A.

47 Amendment of s 408D (Obtaining or dealing with identification information)

(1) Section 408D, after subsection (1)—

insert—

(1AA) If the person obtaining or dealing with the identification information supplies it to a participant in a criminal organisation, the person is liable to imprisonment for 7 years.

(1AB) For an offence defined in subsection (1) alleged to have been committed with the circumstance of aggravation mentioned in subsection (1AA), it is a defence to the circumstance of aggravation to prove that the criminal organisation is not an organisation that has, as 1 of its purposes, the purpose of engaging in, or conspiring to engage in, criminal activity.

(2) Section 408D(7)—

insert—

participant, in a criminal organisation, see section 60A.

48 Amendment of s 552D (When Magistrates Court must abstain from jurisdiction)

Section 552D—

insert—

(2A) A Magistrates Court must abstain from dealing summarily with a charge if the defendant is alleged to be a vicious lawless associate under the *Vicious Lawless Association Disestablishment Act 2013*.

49 Insertion of new s 708A

Part 8, chapter 71—

insert—

708A Criteria for recommending an entity be declared a criminal organisation

(1) In deciding whether to recommend an amendment of the *Criminal Code (Criminal Organisations) Regulation 2013* to declare an entity to be a criminal organisation, the Minister may have regard to the following matters—

(a) any information suggesting a link exists between the entity and serious criminal activity;

(b) any convictions recorded in relation to—

(i) current or former participants in the entity; or

(ii) persons who associate, or have associated, with participants in the entity;

(c) any information suggesting current or former participants in the entity have been, or are, involved in serious criminal activity (whether directly or indirectly and whether or not the involvement has resulted in any convictions);

(d) any information suggesting participants in an interstate or overseas chapter or branch (however described) of the entity have as their purpose, or 1 of their purposes, organising, planning, facilitating, supporting or engaging in serious criminal activity;

(e) any other matter the Minister considers relevant.

(2) In this section—

conviction means a finding of guilt by a court, or the acceptance of a plea of guilty by a court, whether or not a conviction is recorded.

serious criminal activity see the *Criminal Organisation Act 2009*, section 6.

participant, in an entity, means a person who—

(a) (whether by words or conduct, or in any other way) asserts, declares or advertises his or her membership of, or association with the entity; or

(b) (whether by words or conduct, or in any other way) seeks to be a member of, or to be associated with, the entity; or

(c) has attended more than 1 meeting or gathering of persons who participate in the affairs of the entity in any way; or

(d) has taken part on any 1 or more occasions in the affairs of the entity in any other way.

[...]

Part 8 Other matters

70 Making of Criminal Code (Criminal Organisations) Regulation 2013

(1) Schedule 1 has effect to make the *Criminal Code (Criminal Organisations) Regulation 2013* that is set out in schedule 1 as a regulation under the Criminal Code.

(2) To remove any doubt, it is declared that the *Criminal Code (Criminal Organisations) Regulation 2013*, on the commencement of schedule 1, stops being a provision of this Act and becomes a regulation made under the Criminal Code.

71 Regulation amended

Schedule 2 amends the *Crime and Misconduct Regulation 2005*.

72 Automatic repeal

For the purpose of the *Acts Interpretation Act 1954*, section 22C, this Act is an amending Act.

Schedule 1 Criminal Code (Criminal Organisations) Regulation 2013

section 70

1 Short title

This regulation may be cited as the *Criminal Code (Criminal Organisations) Regulation 2013*.

2 Entities declared to be criminal organisations

For the Criminal Code, section 1, definition *criminal organisation*, paragraph (c), the following entities are declared to be criminal organisations—

- the motorcycle club known as the Bandidos
- the motorcycle club known as the Black Uhlans
- the motorcycle club known as the Coffin Cheaters
- the motorcycle club known as the Comancheros
- the motorcycle club known as the Finks
- the motorcycle club known as the Fourth Reich
- the motorcycle club known as the Gladiators
- the motorcycle club known as the Gypsy Jokers
- the motorcycle club known as the Hells Angels
- the motorcycle club known as the Highway 61
- the motorcycle club known as the Iron Horsemen
- the motorcycle club known as the Life and Death
- the motorcycle club known as the Lone Wolf
- the motorcycle club known as the Mobshitters
- the motorcycle club known as the Mongols
- the motorcycle club known as the Muslim Brotherhood Movement
- the motorcycle club known as the Nomads
- the motorcycle club known as the Notorious
- the motorcycle club known as the Odins Warriors
- the motorcycle club known as the Outcasts
- the motorcycle club known as the Outlaws
- the motorcycle club known as the Phoenix
- the motorcycle club known as the Rebels
- the motorcycle club known as the Red Devils
- the motorcycle club known as the Renegades
- the motorcycle club known as the Scorpions

3 **Places declared to be prescribed places**

For the Criminal Code, section 60B(4), definition *prescribed place*, the following places are declared to be prescribed places—

- 11 Frodsham Street, Albion
- shop 5/1 Thorsborne Street, Beenleigh
- 6 Enterprise Street, Boyne Island
- shed 14/136 Aumuller Street, Bungalow
- 200 Hartley Street, Bungalow
- 1/16 Ern Harley Drive, Burleigh Heads
- 34 Lemana Lane, Burleigh Heads
- unit 3/7 Lear Jet Drive, Caboolture
- 104 Spence Street, Cairns
- unit 3/37 Caloundra Road, Caloundra West
- shed 1/5 Garema Street, Cannonvale
- shed 4/11 Ryecroft Street, Carrara
- 31 Selhurst Street, Coopers Plains
- unit 7/12 Hayter Street, Currumbin Waters
- unit 5/17 Cottonview Street, Emerald
- 11 Greer Lane, Eumundi
- shed 3/85 Hanson Road, Gladstone
- unit 3/31 Tradelink Drive, Hillcrest
- unit 5/29 Pound Street, Kingaroy
- 15–17 Avian Street, Kunda Park
- unit 5/1 Chain Street, Mackay
- 4 Keats Street, Mackay
- unit 4/55 Cronulla Avenue, Mermaid Beach
- 4 Ellen Street, Moorooka
- 31 Unwin Street, Moorooka
- 1 Zena Street, Mt Isa
- unit 2/12 Lawrence Drive, Nerang
- unit 5/144 Eumundi Noosa Road, Noosaville
- 2 Millchester Road, Queenton
- 26252 Peak Downs Highway, Racecourse
- shed 12/13 Turley Street, Raceview
- 36 East Lane, Rockhampton
- unit 1/26 Rowland Street, Slacks Creek
- unit 2/8 Proprietary Drive, Tingalpa
- shed 4/14 Civil Court, Toowoomba
- 209 James Street, Toowoomba
- units 3 and 4/82 Leyland Street, Townsville
- 29 Matheson Street, Virginia
- 81 Ingham Road, West End
- 391 Montague Road, West End
- shed 1A/10 Industrial Avenue, Yeppoon

Schedule 2 Other amendments

section 71

1 Regulation amended

This schedule amends the *Crime and Misconduct Regulation 2005*.

2 Insertion of new s 18

Part 5—

insert—

18 Entities declared to be criminal organisations

The following entities are declared to be criminal organisations—

- the motorcycle club known as the Bandidos
- the motorcycle club known as the Black Uhlans
- the motorcycle club known as the Coffin Cheaters
- the motorcycle club known as the Comancheros
- the motorcycle club known as the Finks
- the motorcycle club known as the Fourth Reich
- the motorcycle club known as the Gladiators
- the motorcycle club known as the Gypsy Jokers
- the motorcycle club known as the Hells Angels
- the motorcycle club known as the Highway 61
- the motorcycle club known as the Iron Horsemen
- the motorcycle club known as the Life and Death
- the motorcycle club known as the Lone Wolf
- the motorcycle club known as the Mobshitters
- the motorcycle club known as the Mongols
- the motorcycle club known as the Muslim Brotherhood Movement
- the motorcycle club known as the Nomads
- the motorcycle club known as the Notorious
- the motorcycle club known as the Odins Warriors
- the motorcycle club known as the Outcasts
- the motorcycle club known as the Outlaws
- the motorcycle club known as the Phoenix
- the motorcycle club known as the Rebels
- the motorcycle club known as the Red Devils
- the motorcycle club known as the Renegades
- the motorcycle club known as the Scorpions

Bail Act 1980 (Qld), s 16 (as in force as at the date of the Plaintiff's Written Submissions)

16 Refusal of bail

(1) Notwithstanding this Act, a court or police officer authorised by this Act to grant bail shall refuse to grant bail to a defendant if the court or police officer is satisfied—

(a) that there is an unacceptable risk that the defendant if released on bail—

(i) would fail to appear and surrender into custody; or

(ii) would while released on bail—

(A) commit an offence; or

(B) endanger the safety or welfare of a person who is claimed to be a victim of the offence with which the defendant is charged or anyone else's safety or welfare; or

(C) interfere with witnesses or otherwise obstruct the course of justice, whether for the defendant or anyone else; or

(b) that the defendant should remain in custody for the defendant's own protection.

(1A) Where it has not been practicable to obtain sufficient information for the purpose of making a decision in connection with any matter specified in subsection (1) due to lack of time since the institution of proceedings against a defendant the court before which the defendant appears or is brought shall remand the defendant in custody with a view to having further information obtained for that purpose.

(2) In assessing whether there is an unacceptable risk with respect to any event specified in subsection (1)(a) the court or police officer shall have regard to all matters appearing to be relevant and in particular, without in any way limiting the generality of this provision, to such of the following considerations as appear to be relevant—

(a) the nature and seriousness of the offence;

(b) the character, antecedents, associations, home environment, employment and background of the defendant;

(c) the history of any previous grants of bail to the defendant;

(d) the strength of the evidence against the defendant;

(e) if the defendant is an Aboriginal or Torres Strait Islander person—any submissions made by a representative of the community justice group in the defendant's community, including, for example, about—

(i) the defendant's relationship to the defendant's community; or

(ii) any cultural considerations; or

(iii) any considerations relating to programs and services in which the community justice group participates.

(iv)

(3) Where the defendant is charged—

(a) with an indictable offence that is alleged to have been committed while the defendant was at large with or without bail between the date of the defendant's apprehension and the date of the defendant's committal for trial or while awaiting trial for another indictable offence; or

(b) with an offence to which section 13 applies; or

(c) with an indictable offence in the course of committing which the defendant is alleged to have used or threatened to use a firearm, offensive weapon or explosive substance; or

(d) with an offence against this Act; or

Note—

For this paragraph, a person proceeded against under section 33(3) is taken to be charged with an offence against this Act—see section 33(6).

(e) with an offence against the *Criminal Organisation Act 2009*, section 24 or 38; or

(f) with an offence against the Criminal Code, section 359 with a circumstance of aggravation mentioned in section 359(2);

the court or police officer shall refuse to grant bail unless the defendant shows cause why the defendant's detention in custody is not justified and, if bail is granted or the defendant is released under section 11A, must include in the order a statement of the reasons for granting bail or releasing the defendant.

(3A) If the defendant is charged with an offence and it is alleged the defendant is, or has at any time been, a participant in a criminal organisation, the court or police officer must—

(a) refuse to grant bail unless the defendant shows cause why the defendant's detention in custody is not justified; and

(b) if bail is granted or the defendant is released under section 11A—

(i) require the defendant to surrender the defendant's current passport; and

(ii) include in the order a statement of the reasons for granting bail or releasing the defendant.

(3B) If the defendant is required to surrender the defendant's current passport under subsection (3A)(b)(i), the court or police officer must order that the defendant be detained in custody—

(a) until the court or police officer is satisfied about whether the defendant is the holder of a current passport; and

(b) if the defendant is the holder of a current passport—the passport is surrendered.

(3C) For subsection (3A), it does not matter—

(a) whether the offence with which the defendant is charged is an indictable offence, a simple offence or a regulatory offence; or

(b) whether the defendant is alleged to have been a participant in a criminal organisation when the offence was committed; or

(c) that there is no link between the defendant's alleged participation in the criminal organisation and the offence with which the defendant is charged.

(3D) Subsection (3A) does not apply if the defendant proves that, at the time of the defendant's alleged participation in the criminal organisation, the organisation did not have, as 1 of its purposes, the purpose of engaging in, or conspiring to engage in, criminal activity.

(4) In granting bail in accordance with subsection (3) or (3A) a court or police officer may impose conditions in accordance with section 11.

(5) This section does not apply if the defendant is a child.

(6) If required by a court or police officer for subsection (2)(e), a representative of the community justice group in the defendant's community must advise the court or police officer whether—

(a) any member of the community justice group that is responsible for the submission is related to the defendant or the victim; or

(b) there are any circumstances that give rise to a conflict of interest between any member of the community justice group that is responsible.

Criminal Code (Qld), ss 60A, 60B, 60C, 72, 92A, 320 and 340 (as in force as at the date of the Plaintiff's Written Submissions)

60A Participants in criminal organisation being knowingly present in public places

(1) Any person who is a participant in a criminal organisation and is knowingly present in a public place with 2 or more other persons who are participants in a criminal organisation commits an offence.
Minimum penalty—6 months imprisonment served wholly in a corrective services facility.
Maximum penalty—3 years imprisonment.

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

(3) In this section—
member, of an organisation, includes an associate member, or prospective member, however described.

participant, in a criminal organisation, means—
(a) if the organisation is a body corporate—a director or officer of the body corporate; or
(b) a person who (whether by words or conduct, or in any other way) asserts, declares or advertises his or her membership of, or association with, the organisation; or
(c) a person who (whether by words or conduct, or in any other way) seeks to be a member of, or to be associated with, the organisation; or
(d) a person who attends more than 1 meeting or gathering of persons who participate in the affairs of the organisation in any way; or
(e) a person who takes part in the affairs of the organisation in any other way;
but does not include a lawyer acting in a professional capacity.

public place means—
(a) a place, or part of a place, that the public is entitled to use, is open to members of the public or is used by the public, whether or not on payment of money; or
(b) a place, or part of a place, the occupier of which allows, whether or not on payment of money, members of the public to enter.

60B Participants in criminal organisation entering prescribed places and attending prescribed events

(1) Any person who is a participant in a criminal organisation and enters, or attempts to enter, a prescribed place commits an offence.
Minimum penalty—6 months imprisonment served wholly in a corrective services facility.
Maximum penalty—3 years imprisonment.

(2) Any person who is a participant in a criminal organisation and attends, or attempts to attend, a prescribed event commits an offence.
Minimum penalty—6 months imprisonment served wholly in a corrective services facility.
Maximum penalty—3 years imprisonment.

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

(4) In this section—

participant, in a criminal organisation, see section 60A.

prescribed event means an event declared under a regulation to be a prescribed event.

prescribed place means a place declared under a regulation to be a prescribed place.

60C Participants in criminal organisation recruiting persons to become participants in the organisation

(1) Any person who is a participant in a criminal organisation and recruits, or attempts to recruit, anyone to become a participant in a criminal organisation commits an offence.
Minimum penalty—6 months imprisonment served wholly in a corrective services facility.
Maximum penalty—3 years imprisonment.

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

(3) In this section—

criminal organisation does not include a criminal organisation under the *Criminal Organisation Act 2009*.

participant, in a criminal organisation, see section 60A.

recruit, a person, to become a participant in a criminal organisation, includes counsel, procure, solicit, incite and induce the person, including by promoting the organisation, to become a participant in the organisation.

[...]

72 Affray

(1) Any person who takes part in a fight in a public place, or takes part in a fight of such a nature as to alarm the public in any other place to which the public have access, commits a misdemeanour.
Maximum penalty—1 year's imprisonment.

(2) If the person convicted of an offence against subsection (1) is a participant in a criminal organisation, the offence is punishable on conviction as follows—
Minimum penalty—6 months imprisonment served wholly in a corrective services facility;
Maximum penalty—7 years imprisonment.

(3) For an offence defined in subsection (1) alleged to have been committed with the circumstance of aggravation mentioned in subsection (2), it is a defence to the circumstance of aggravation to prove that the criminal organisation is not an organisation that has, as 1 of its purposes, the purpose of engaging in, or conspiring to engage in, criminal activity.

(4) In this section—***participant***, in a criminal organisation, see section 60A.

[...]

92A Misconduct in relation to public office

(1) A public officer who, with intent to dishonestly gain a benefit for the officer or another person or to dishonestly cause a detriment to another person—

(a) deals with information gained because of office; or

(b) performs or fails to perform a function of office; or

(c) without limiting paragraphs (a) and (b), does an act or makes an omission in abuse of the authority of office; is guilty of a crime.

Maximum penalty—7 years imprisonment.

(2) A person who ceases to be a public officer in a particular capacity is guilty of a crime if, with intent to dishonestly gain a benefit for the person or another person or to dishonestly cause a detriment to another person, the person deals with information gained because of the capacity.

Maximum penalty—7 years imprisonment.

(3) Subsection (2) applies whether or not the person continues to be a public officer in some other capacity.

(4) A reference in subsections (1) and (2) to information gained because of office or a particular capacity includes information gained because of an opportunity provided by the office or capacity.

(4A) The offender is liable to imprisonment for 14 years if, for an offence against subsection (1) or (2), the person who dishonestly gained a benefit, directly or indirectly, was a participant in a criminal organisation.

(4B) For an offence defined in subsection (1) or (2) alleged to have been committed with the circumstance of aggravation mentioned in subsection (4A), it is a defence to the circumstance of aggravation to prove that the criminal organisation is not an organisation that has, as 1 of its purposes, the purpose of engaging in, or conspiring to engage in, criminal activity.

(5) In this section—

authority, of office, includes the trust imposed by office and the influence relating to office.

deals with includes the following—
(a) uses;
(b) supplies;
(c) copies;
(d) publishes.

function includes power.

information includes knowledge.

office, in relation to a person who is a public officer, means the position, role or circumstance that makes the person a public officer.

participant, in a criminal organisation, see section 60A.

performs includes purportedly performs and in relation to a power, exercises and purportedly exercises.

[...]

320 Grievous bodily harm

(1) Any person who unlawfully does grievous bodily harm to another is guilty of a crime, and is liable to imprisonment for 14 years.

(2) If the offender is a participant in a criminal organisation and unlawfully does grievous bodily harm to a police officer while acting in the execution of the officer's duty, the offender must be imprisoned for a minimum of 1 year with the imprisonment served wholly in a corrective services facility.

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

(4) In this section— ***participant***, in a criminal organisation, see section 60A.

[...]

340 Serious assaults

(1) Any person who—

(a) assaults another with intent to commit a crime, or with intent to resist or prevent the lawful arrest or detention of himself or herself or of any other person; or

(b) assaults, resists, or wilfully obstructs, a police officer while acting in the execution of the officer's duty, or any person acting in aid of a police officer while so acting; or

(c) unlawfully assaults any person while the person is performing a duty imposed on the person by law; or

(d) assaults any person because the person has performed a duty imposed on the person by law; or

(e) assaults any person in pursuance of any unlawful conspiracy respecting any manufacture, trade, business, or occupation, or respecting any person or persons concerned or employed in any manufacture, trade, business, or occupation, or the wages of any such person or persons; or

(f) unlawfully assaults any person who is 60 years or more; or

(g) unlawfully assaults any person who relies on a guide, hearing or assistance dog, wheelchair or other remedial device; is guilty of a crime.

Maximum penalty—

(a) for subsection (1)(b), if the offender assaults a police officer in any of the following circumstances—

(i) the offender bites or spits on the police officer or throws at, or in any way applies to, the police officer a bodily fluid or faeces;

(ii) the offender causes bodily harm to the police officer;

(iii) the offender is, or pretends to be, armed with a dangerous or offensive weapon or instrument—14 years imprisonment; or

(b) otherwise— 7 years imprisonment.

Examples of remedial device for paragraph (h)— walking frame, caliper, walking stick and artificial limb

(1A) If the offender is a participant in a criminal organisation and assaults a police officer in any of the circumstances mentioned in paragraph (a) of the maximum penalty for subsection (1), the offender must be imprisoned for a minimum of 1 year with the imprisonment served wholly in a corrective services facility.

(1B) It is a defence to the circumstance of aggravation mentioned in subsection (1A) to prove that the criminal organisation is not an organisation that has, as 1 of its purposes, the purpose of engaging in, or conspiring to engage in, criminal activity.

(2) A prisoner who unlawfully assaults a working corrective services officer is guilty of a crime, and is liable to imprisonment for 7 years.

(2AA) A person who—

(a) unlawfully assaults, or resists or wilfully obstructs, a public officer while the officer is performing a function of the officer's office; or

Example—

A person unlawfully assaults an authorised officer under the *Child Protection Act 1999* while the officer is investigating an allegation of harm to a child under that Act.

(b) assaults a public officer because the officer has performed a function of the officer's office;

commits a crime.

Maximum penalty—7 years imprisonment.

(3) In this section—

corrective services facility see the *Corrective Services Act 2006*, schedule 4.

corrective services officer see the *Corrective Services Act 2006*, schedule 4.

office includes appointment and employment. ***participant***, in a criminal organisation, see section 60A.

prisoner see the *Corrective Services Act 2006*, schedule 4.

public officer includes—

(a) a member, officer or employee of a service established for a public purpose under an Act; and

Example of a service—

Queensland Ambulance Service established under the *Ambulance Service Act 1991*

(b) a health service employee under the *Hospital and Health Boards Act 2011*; and

(c) an authorised officer under the *Child Protection Act 1999*; and

(d) a transit officer under the *Transport Operations(Passenger Transport) Act 1994*.

working corrective services officer means a corrective services officer present at a corrective services facility in his or her capacity as a corrective services officer.

Liquor Act 1992 (Qld), ss 173EA, 173EB, 173EC and 173ED (as in force as at the date of the Plaintiff's Written Submissions)

Division 5 Prohibited items for declared criminal organisations

173EA Definitions for div 5

In this division—

declared criminal organisation means an entity declared to be a criminal organisation under the Criminal Code, section 1, definition *criminal organisation*, paragraph (c).

prohibited item means an item of clothing or jewellery or an accessory that displays—

(a) the name of a declared criminal organisation; or

(b) the club patch, insignia or logo of a declared criminal organisation; or

Note—

The things mentioned in paragraph (b) are also known as the 'colours' of the organisation.

(c) any image, symbol, abbreviation, acronym or other form of writing that indicates membership of, or an association with, a declared criminal organisation, including—

(i) the symbol '1%'; and

(ii) the symbol '1%er'; and

(iii) any other image, symbol, abbreviation, acronym or other form of writing prescribed under a regulation for this paragraph.

173EB Exclusion of persons wearing or carrying prohibited items

The following persons must not 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—

(a) the licensee or permittee for the premises;

(b) an approved manager employed by the licensee or permittee;

(c) an employee or agent of the licensee or permittee working at the premises.

Maximum penalty—100 penalty units.

173EC Entering and remaining in licensed premises wearing or carrying a prohibited item

A person must not enter or remain in premises to which a licence or permit relates if the person is wearing or carrying a prohibited item.

Maximum penalty—

(a) for a first offence—375 penalty units; or

(b) for a second offence—525 penalty units or 6 months imprisonment; or

(c) for a third or later offence—750 penalty units or 18 months imprisonment.

173ED Removal of person wearing or carrying prohibited item from premises

(1) If an authorised person requires a person who is wearing or carrying a prohibited item (the ***prohibited person***) to leave premises to which a licence or permit relates, the prohibited person must immediately leave the premises.

Maximum penalty—

(a) for a first offence—375 penalty units; or

(b) for a second offence—525 penalty units or 6 months imprisonment; or

(c) for a third or later offence—750 penalty units or 18 months imprisonment.

(2) If the prohibited person fails to leave when required under subsection (1), an authorised person may use necessary and reasonable force to remove the person.

(3) The prohibited person must not resist an authorised person who is removing the person under subsection (2).

Maximum penalty—

(a) for a first offence—375 penalty units; or

(b) for a second offence—525 penalty units or 6 months imprisonment; or

(c) for a third or later offence—750 penalty units or 18 months imprisonment.

(4) In this section—

authorised person means—

(a) the licensee or permittee for the licensed premises; or

(b) an employee or agent of the licensee or permittee; or

(c) a police officer.