Organised Crime and the Law in Queensland

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Syllabus

• Sources of Qld law
• Presumption of Innocence
• Right to Silence
• Bail procedures
• Consequences of conviction
Nomenclature

- Bikies
- 1 percenters
- Outlaw Motorcycle Clubs
- Outlaw Motorcycle Criminal Gangs (OMCGs)
- Motorcycle Clubs
- Criminal Motorcycle Gangs (CMGs)
Organised Crime and OMCGs

“it is difficult to gauge the percentage of organised crime attributed specifically to OMCG members. While they are prevalent in all states and territories, they are just one part of the organised crime picture in Australia.”

Australian Crime Commission
OUTLAW MOTORCYCLE GANGS ACROSS AUSTRALIA

44 OMCGs  179 CHAPTERS
4483 MEMBERS

OMCGs feature prominently in most aspects of serious and organised crime

DRUGS  FIREARMS  BLACKMAIL & EXTORTION  PROSTITUTION

OMCG MEMBERSHIP POPULATION

OMCGs have a significant presence in many areas of crime, including:
- Drugs
- Firearms
- Blackmail and Extortion
- Prostitution

48% Increase in OMCG chapters since 2007

Based on 2012 figures

NATIONAL RESPONSE TO OMCGs

$1.7mil
1200
700
40

In debt recovered by ATO with work still ongoing
Charges for offences including serious assault, stalking, kidnapping, firearms and weapons, drugs, property and traffic
OMCG related summons or arrests
Firearms seized along with other weapons including knuckle dusters, tasers, throwing stars, machetes, illegal knives and batons

* National Action Task Force outcomes are just one small slice of the national response to disrupt, disable and dismantle the criminal activities of the Rebels OMCG. Outcomes shown since February 2012.
Key Cases

• Gypsy Jokers Motorcycle Club Inc v Commissioner of Police (2008) CLR 532
• South Australia v Totani (2010) 242 CLR 1
• Wainohu v NSW (2011) 243 CLR 181
• Assistant Commissioner Condon v Pompano Pty Ltd (2013) 87 ALJR 458
• Tajjour and Ors v State of New South Wales [2014] HCA 35
• Kuczborski v Queensland [2014] HCA 46
What about NSW

• Consorting Law
• Crimes Act 1900 (NSW) s 93X
• Offence:
• Consorting with minimum 2 convicted offenders more than three times
• NSW Ombudsman report (2014) found most arrests were of Indigenous people and other marginalised groups
Case Law

• Tajjour and Ors v State of New South Wales [2014] HCA 35

• Challenged:

• the implied right to freedom of political communication was ‘burdened’ by the consorting provisions

• High Court found there was no freedom of association to be found in the constitution and that limiting association amongst criminals did not hinder debate about politics
2009

The **Criminal Organisation Act 2009 (Qld)** (COA) allowed for an organisation to be declared a 'criminal organisation' and for 'control orders' to be made against members of the organisation, made it a criminal offence for them to associate with other controlled members.

2011

Queensland police asked the Queensland Supreme Court to declare the Finks Motorcycle Club as a criminal organisation under COA.

The Finks challenged this move in court and the case was taken to High Court of Australia by Queensland Police.

2013

The Finks challenge to COA was rejected by the High Court in Assistant Commissioner Michael James Condon v Pompano Pty Ltd [2013] HCA 7.

The application to declare the Finks a criminal organisation was abandoned when the Newman Government passed the VLAD Act, CODA and CODOLA.
Queensland

• Brawl on the Gold Coast including raid on a Police Station

• “late September 2013, the threats posed by CMG’s across Queensland were escalating, particularly...Gold Coast...8 of the 14 CMG’s in Queensland” Strategic Monitoring Team Qld Police April 2014
Legal Response in Queensland

- Vicious Lawless Association Disestablishment Act 2013 - VLAD
- Criminal Law (Criminal Organisations Disruption) Amendment Act 2013 – CODA
- Criminal Law (Criminal Organisations) Regulation 2013
- Criminal Law (Criminal Organisations Disruption) & Other Legislation Amendment Act 2013 - CODOLA
- Bail Act 1980 – Amended by CODA
- Tattoo Parlours Act 2013
- Corrective Services Act 2006 – Amended by CODA and CODOLA
Effect of Legislation

- Mandatory Sentences – VLAD
- List of Criminal Organisations – Criminal Law (Criminal Organisations) Regulation 2013
- Anti-Association offence ‘participant in a criminal organisation’ – CODA amendment to Criminal Code 1899
- Removal of presumption of innocence and reversal of the onus of proof – Bail Act 1980 amendments in CODA and CODOLA
- Removal of trade licences for ‘participants’ – CODOLA
- PICO (Participant in a Criminal Organisation) and COSO (Criminal Organisation Segregation Order) for ‘participants’ – Corrective Service Act 2006 amended in CODA and CODOLA
- Removal of Right to Silence – Crime and Misconduct Act 2001 amended in CODA
Impact

“I contrast this with the way we are going to deal with these thugs and criminals and vicious lawless associates in Queensland: our laws will have an immediate impact. We will not be sitting here in four years debating laws that have had no impact. If we have people whingeing and bleating that these laws are too tough, that is a sign of the success of these laws because it means they are working.”

Attorney- General Jarrod Bleijie, Hansard, Queensland Parliament, 15th of October 2013
Rule of Law Issues

• Erodes equality before the law
• Mandatory sentences reduce the independence of the courts
• Punishing people who invoke the right to silence
• Removing the presumption of innocence and shifting the onus of proof onto the defendant
Pink Jumpsuits and Solitary Confinement

- Woodford Correctional Centre – Bikie super prison
- Callahan v Attendee Z [2013] QSC 342
- CMG prisoner uniform
- Solitary confinement for 22 hours a day
Case Law

- Kuczborski v Queensland [2014] HCA 46
- Challenged:
  - Bail Act amendments that remove the presumption against bail for participants in a criminal organisation
  - VLAD mandatory sentencing provisions
  - Anti Association provisions of the Criminal Code
  - Liquor Act amendments that banned the wearing of ‘colours’
What did the High Court find?

• Mr Kuczborski did not have standing to challenge VLAD or the Bail and some of the Criminal Code provisions – he did not have ‘sufficient interest’[176]

• Argument against the Liquor Act and remaining Criminal Code provisions hinged on the Kable Principle – integrity of the courts

• Court found provisions required the ordinary operation of the courts and did not intrude on judicial power
Sally Kuether

- January 2014 - Arrested
- Charged under the anti-association provisions of the CODA amendments and Liquor Act
- Case heard April 2015
- Police dropped ‘participant’ charges.
- Magistrate issued $150 fine for wearing of ‘colours’
Coercive Powers

• Queensland Crime and Corruption Commission
• Independent Commission Against Corruption v Margaret Cunneen & Ors [2015] HCA 14
• Lee v The Queen [2014] HCA 20
• X7 v Australian Crime Commission & Anor [2013] HCA 29
Rule of Law Issues

• Extraordinary powers given to ‘inquiries’
• Limiting or removal of criminal law rights
• Rights becoming optional, rather than an accepted, inherent protection in the legal system
• Normalisation of use of control orders, preventative detention and other extraordinary powers
• Requirement of oversight and adherence to the rule of law
Effectiveness

- Criminologist Terry Goldsworthy, Bond University, analysis of crime figures show a decline prior to introduction of the laws
- Qld Police figures show CMGs responsible for only 0.6% of crime
- Downward trend
- Australian Institute of Criminology- hi-tech crime, people smuggling and human trafficking are the greatest threat
New Queensland Government 2015

• Palaszczuk Government announced inquiry into Organised Crime and brought forward the scheduled review of the ‘VLAD laws’
• Legislative review committee – Law Society, Bar Association and Qld Police Union
• Organised Crime Inquiry (Will have the powers of a Royal Commission)
• Broader focus than OMCGs
• Starts on 1st of May runs for 6 months
What now?

• RoLIA raising awareness of rule of law concerns
• Will call for repealing of the ‘VLAD laws’
• Law reform may be required to deal with Organised Crime but better resourcing of law enforcement has been shown to be effective in reducing crime
• Government agencies using coercive powers need to be accountable to the courts