



Queensland

Vicious Lawless Association Disestablishment Bill 2013

Includes amendments agreed during Consideration



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2013

A Bill

for

**An Act for the purpose of disestablishing vicious lawless
associations**

The Parliament of Queensland enacts—

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

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- (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.

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- (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.

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- (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.)

Schedule 1

- 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)

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- 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)

Schedule 1

- 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)

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