

Kuczborski v Queensland

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**Gilbert + Tobin Centre of Public Law
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Session 3





www.theaustralian.com.au

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

Kuczborski v Queensland (2014) 89 ALJR 59

Anti-Bikie Laws enacted 15 Oct 2013



*Vicious Lawless Association
Disestablishment Act 2013 (Qld)
(the 'VLAD Act')*

*Criminal Law (Criminal
Organisations Disruption)
Amendment Act 2013 (Qld)
(the 'Disruption Act')*

Tattoo Parlours Act 2013 (Qld)



www.brisbanetimes.com.au

Category 1: Sentencing and bail provisions

Vicious Lawless Association Disestablishment Act 2013 (Qld) ('VLAD Act')

Additional mandatory sentences (15 or 25 years) for persons who commit declared offences in groups of 3 or more, where group has criminal purpose.

****Bail Act 1980 (Qld)*** s 16(3A)-(3D)

Reverses presumption against bail for participants in criminal organisations (PICOs).

****Criminal Code*** ss 72, 92A, 320, 340

Being a PICO is an aggravating circumstance for offences of: affray, misconduct in public office, GBH, serious assault.

Category 2: New offence provisions

****Criminal Code*** ss 60A-60C

PICOs may not: meet in groups of 3+ in public, go to prescribed places, go to prescribed events, recruit to the CO.

Liquor Act 1992 (Qld) ss 173EB-173ED

Items displaying the name, insignia, logo or that indicates association with a declared CO may not be carried onto licenced premises.

Participant in a criminal organisation

Section 1 Definitions

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**; or
- (c) an entity **declared under a regulation** to be a criminal organisation.

Issue 1: Standing for Category 1 provisions



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No standing to challenge sentencing or bail provisions

Category 2: New Offence Provisions

Criminal Code ss 60A-60C (as amended by the Disruption Act)

- > Participants in a criminal organisation knowingly **meeting in a public place**
- > “ **attending a prescribed place**
- > “ **attending a prescribed event**
- > “ **recruiting** to the criminal organisation

Liquor Act 1992 (Qld) ss 173EB-173ED (as amended by the Tattoo Parlours Act)

- > Carrying/displaying things on licenced premises that indicate association with a declared criminal org.

Defence: Prove that the organisation does not have a criminal purpose



www.dailytelegraph.com.au

The laws are exceedingly broad

Enlist courts to do the bidding of the executive, that is to destroy organisations of the executive's choosing.

Usurp judicial power in declaring organisations

Cloak executive work in the neutral colours of judicial action, undermining judicial independence and integrity.



www.abc.net.au

The defence does not remedy these problems.

*the plaintiff encapsulated his ... argument as the **conscription** of the courts to do the legislature's and the executive's bidding by **requiring** the courts to treat certain individuals as 'participants in organised crime' while **denying** the courts the power to engage in a **genuine adjudicative process** as to whether the person before the court is in fact a 'participant in organised crime' ([293] Bell J)*

The High Court's findings

The breadth of the provisions

Enlist / conscript?

Usurp?

Cloak?

The defence



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Hayne J's dissenting view

An impermissible 'assimilation' of judicial and executive powers.

Section 1, Definitions:

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Not remedied by the defence.

What *Kuczborski* tells us about *Kable*

- The *Kable* doctrine IS NOT...
- The *Kable* doctrine MIGHT...
- The *Kable* doctrine DOES ...
- So how should one make a *Kable* argument?

What next for bokie laws?



Courier Mail 25 August 2014