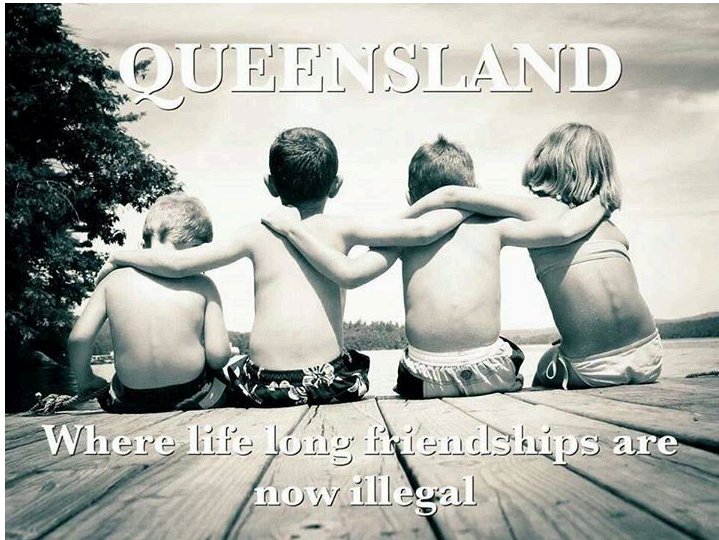


# The Newman Government: The path to hell is paved with simplistic policies

By Stephen Keim

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***The Queensland Government's 'anti-bikies' laws have casually brushed aside rights regarded as integral to Australia's free and democratic way of life — and is likely to have profound and serious unintended consequences writes [Stephen Keim, SC](#), and [Bridget Armstrong](#).***

## Introduction

In mid-October 2013, the Queensland State Government commenced passage of its so-called anti-bikie laws.

Along with an attack on the rights of employees to receive compensation and damages for injuries received in the workplace ([Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2013](#) (Qld)) and legislation to give Ministers of the Crown the right to determine how long people convicted of crimes stay in prison

([Criminal Law Amendment \(Public Interest Declarations\) Act 2013](#) (Qld)), this legislation has constituted an assault on the consensus underpinning the operation of our justice and enforcement systems.

Due process and the rule of law have come under attack.

Fundamental rights regarded as integral to Australia's free and democratic way of life have been brushed aside.

A later tranche of this wave of legislation is directed at the rights of qualified workers to carry out their lawful [occupations](#). Decisions about the right to work in one's chosen occupation will be made on the say so of the Police Commissioner without any need for that official to establish the reliability of the bits of hearsay material on which the decision is made.

In the same way, the Police Commissioner can mandate an ultra-harsh prison regime for certain prisoners. The harshness of the prison regime has been reinforced by the adoption of a policy. Under this regime, because of who they are and not what they have done, on the same [information from the Police Commissioner](#), prisoners are kept in solitary confinement for 22 hours out of every 24.

The wave of legislation commenced with the [Vicious Lawless Association Disestablishment Act 2013](#) (Qld) (*VLAD*). [Much has been written](#) about the *VLAD* and the way in which its terms of 15 and 25 years (without parole) [additional punishment](#) can extend to any group of people involved in conduct

as trivial as sharing a joint.

This article will focus on the [Criminal Law \(Criminal Organisations Disruption\) and Other Legislation Amendment Act 2013](#) (Qld) (*CODOLA*) and its effect on punishing people for who they are and with whom they associate as opposed to a person's wrongful actions. It is our contention that status offences (punishment for who one is) are inherently unjust and inconsistent with many aspects of human rights law.

### **An aside: the significance of human rights law**

Modern human rights law commenced with the adoption of the [Universal Declaration of Human Rights](#) (*UDHR*) by the general assembly of the United Nations on 10 December 1948. The Declaration had been negotiated under the *aegis* of [Eleanor Roosevelt](#) in the shadow of the Second World War. Its preamble refers to 'barbarous acts which have outraged the conscience of mankind' and the desire to prevent such acts from re-occurring.

The articles of the *UDHR* were intended, again according to the preamble, to provide a

*'... common standard of achievement for all peoples and all nations.'*

Because Australia was present at the adoption of the *UDHR* and our diplomats played a leading role in its negotiation and acceptance, it is apt that we should take seriously – particularly for ourselves as a nation – the common standard of achievement of the *UDHR* and the Conventions adopted as part of its implementation, and remember the reasons why the post war world placed so much emphasis on those principles.

Barbarous acts can come again and they have a tendency to sneak up on a society.

### **Aside Number 2: Aspects of Human Rights Law Relevant to Queensland's *CODOLA***

One of the two major Conventions negotiated and adopted as a means of expanding into an enforceable form the values enshrined in the *UDHR* is the [International Covenant on Civil and Political Rights](#) ('*ICCPR*'). Australia became a signatory to the *ICCPR* on 13 August 1980.

The passage of Queensland's late 2013 legislative assault on due process and the rule of law appears to offend a number of the articles of the *ICCPR*.

For example, the following articles appear relevant to a regime where people suffer punishment (or enhanced punishment) because of who the Police Commissioner says they are and with whom they are said to associate:

- Article 7: guarantees that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment (the enhanced prison regime including indefinite and arbitrary solitary confinement);
- Article 10(1): guarantees that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person;
- Article 14: guarantees the right to equality before the law and determination by an impartial tribunal;
- Article 19: guarantees the right to freedom of expression; and
- Article 22: guarantees the right to freedom of association.

The *VLAD*, *CODOLA* and other pieces of the wave of legislation were rushed through Parliament without any time for consultation with Parliamentary Committees, the Parliamentary Opposition, bodies representing practising lawyers, or the community as a whole.

This procedural aspect of the legislative wave also seems to offend at least one article of the *ICCPR*:

- Article 25: guarantees the opportunity to take part in public affairs such as the opportunity to comment on proposed legislation.

## The Rights of Qualified Workers to Carry On Their Lawful Occupations

In mid-October 2013, the Attorney General, [Jarrod Bleijie](#), announced that the Queensland government would target security, gym and second-hand car industries under the [accompanying bans](#).

However, soon thereafter, the focus of the crackdown shifted from what might be thought of as fringe occupations, such as tattoo parlours, to mainstream society. A [trade union has raised the alarm](#) that 200 electricians could lose their licence to practice this year as a result of the legislation.

For the *CODOLA*, a criminal organisation can consist of as little as three people, if the group – whatever number they be – has, as one of its purposes, the carrying out of certain criminal activity. While the criminal activity involved is described as ‘serious’, the list of offences included is such that, like the *VLAD*, this legislation can be triggered by offences as trivial as sharing a joint and offences that might attract only fines or good behaviour bonds.

The definition of criminal organisation has an added requirement that the group, by their association, represent an unacceptable risk to the safety, welfare or order of the community.

This might be an effective safeguard if the legislation was only able to be enforced by orders obtained after a hearing by a court. However, since the impacts of the legislation are triggered by the Police Commissioner passing on hearsay material in police files and only limited review by court or tribunal is permitted, no comfort can be taken from this additional requirement.

The alternative definition of a criminal organisation depends on a deeming process.

The earlier [Criminal Law \(Criminal Organisations Disruption\) Amendment Act 2013](#) (Qld) (*CODA*), simply by listing 26 organisations in a schedule, deemed those organisations to be criminal organisations under the definition.

The way in which the *CODOLA* can be seen to operate – to prevent persons from following the livelihood they chose and for which they have worked and studied to achieve the necessary qualifications – may be seen from the amendments to the [Electrical Safety Act 2002](#) (Qld) (*ESA*), under which electricians and electrical contractors are licensed to carry out electrical work.

Under the amended legislation, the regulator under the *ESA* must cancel or refuse electrical licences if the holder or applicant is a prohibited person. A prohibited person is someone who, according to the Police Commissioner, is an identified participant in a criminal organisation.

The amendments to the *ESA* do not define the term ‘identified participant’.

Of great concern are amendments to the [Police Service Administration Act 1990](#) (Qld) (*PSA*) (also contained in the *CODOLA*), which permit the Commissioner to disclose the criminal history of a person who has, at any time in the past, been a participant in a criminal organisation. This suggests the term ‘identified participant’ – and, therefore, a prohibited person – may arise as a result of activities in the distant past.

People may be thrown out of their chosen and hard-earned occupation, not for having done anything wrong, but for having shared an interest with other people in the distant past. The implications for people who are seeking to lead a blameless life have been explained by [Electrical Trades Union secretary Peter Simpson](#).

But the *CODOLA* is not restricted to sparkies.

Amendments are made to the legislation affecting the liquor industry; the building industry (building contractors and site supervisors); the racing industry; pawnbrokers and second hand dealers; security providers; and tow truck operators. Whole swathes of occupations where people can contribute to society are being removed from citizens on the basis of nothing more than association, including, in some cases, associations in the distant past.

It is difficult to see how legislation of this kind can do other than harm.

[A clear concern](#) is that there will be little alternative for persons affected by the legislation to do anything but embark on a life of crime.

### **Criminalising Association**

The *CODOLA* is the further development of the desire to punish association exhibited earlier in the wave of bikie laws. As mentioned, the *CODA* had invented and defined the concept of a participant in a criminal organisation. The *CODA* went on to create new offences and increased punishments based on the new status.

A new [s60A Criminal Code offence](#), created by *CODA*, involves participants in criminal organisations (it does not need to be the same organisation) who knowingly gather together in a group of three or more persons. The section imposes a maximum penalty of three years imprisonment and a mandatory minimum penalty of six months imprisonment.

Two recent examples of strictly enforcing this new prohibition have brought ridicule to the government and its crusade.

One example concerns the arrests of five men having a quiet beer at the [Yandina Hotel](#).

Another concerns five men buying ice-creams during a family holiday on the [Gold Coast](#). The ridicule includes the comment that the law made a crime out of childhood friends coming to the Gold Coast for a holiday and simply walking down the street.

### **Ultra-Harsh Prison Regimes**

The *CODOLA* includes amendments to the [Corrective Services Act 2006](#) (Qld) which stipulates that a 'criminal organisation segregation order' ('*COSO*') must be made if the Police Commissioner advises that a prisoner is an identified participant in a criminal organisation.

Press reports indicate that the harsh regime will include [wire mesh walls](#) up to five metres high. Evidence from a Crown witness in the recent case of [Callanan v Attendee Z \[2013\] QSC 342](#) before Justice Applegarth of the Queensland Supreme Court set out some elements of this regime.

In his reasons, His Honour refers to an affidavit by an Acting Deputy Commissioner of the Queensland Corrective Services, which states that all identified (criminal motorcycle gang) prisoners (including some on remand and including prisoners on protection) will be subject to the following Restricted Management Regime:

- Out of cell time restricted to at least two daylight hours a day with the other twenty-two hours spent in solitary confinement.
- No visits allowed from CMG members or affiliates (this includes family members).
- No televisions allowed.
- Only one hour non-contact personal visit with family members per week; and
- Phone calls restricted to seven personal phone calls per week of six minutes duration.

Justice Applegarth emphasises that the adverse health effects of solitary confinement have been well-established and international instruments view it as

*'... an extreme prison practice which should only be used as a last resort and then only for short periods of time.'*

He further notes that the current research indicates people who have been subject to solitary confinement are at risk of long-term psychological

damage.

The harsh prison regime aspect of changes made to the law emphasises the simplistic nature of the government's strategy. Impose harsh punishment, willy-nilly, in order to achieve an instant fix.

While no instant fix is likely to emerge, any time soon, the mental health effects of the long term solitary confinement is likely to create a new series of law and order problems in the future as well as adding significant health costs to future budgets.

The non-evidence based approach of the government's actions may be seen from the circumstance that the most recent [Queensland Corrective Services Annual Report](#) contained no suggestion that members of motorcycle groups in prison presented [any sort of management problem](#).

## Conclusion

The so-called anti-bikie legislation has dramatically changed the way in which our justice and enforcement systems operate in Queensland. The laws breach many of the fundamental and legally binding obligations that Australia owes to the international community.

What is also noticeable is that the legislation is poorly conceived even in the government's own terms.

As a result of one aspect of the legislation, hundreds of people are likely to lose their hard earned ability to earn a livelihood and make valuable contributions to Queensland society and the economy.

It is clearly unjust and unfair that people should be denied their occupation and the right to associate with others. It is extraordinarily counter-productive, moreover, to turn contributing members of society into people who must turn either to crime or social security.

It is equally counter-productive to turn to using ultra-harsh prison conditions to deal with no more than a perceived problem. The result is likely to include the creation of future problems — both for law and order and the State budget.

The lesson that the government should draw is to eschew simple solutions and to ensure that policy changes and legislation are both cautious and evidence based.

Human rights values, including the principles of the rule of law, have been treated as [principles of good governance](#) for important reasons.

Governments should resist the temptation to pursue short term populist policies. The experience of the current Queensland Government is beginning to reinforce that lesson.

***You can follow Stephen Keim on Twitter [@StephenKeim1](#).***

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