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Dear Clients and Colleagues,

RE: FREQUENTLY ASKED QUESTIONS

We have had an excellent response to our previous papers and thank you for your feedback.

Without a doubt the most frequently asked question with respect to these new laws are whether or not they apply to you. This paper is directed at not only the members and associated but the wives, the partners, the family members, the friends, and the supporters.

Being a "participant" has significant consequences not only in relation to certain offences and penalties but also with respect to bail applications. Being a participant also enables the Police to do certain things without a warrant.

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1. Am I a participant?

In the event you haven't read our previous papers here is a reminder of which groups have rightly or wrongly been declared as "criminal organisations":

Bandidos MC, Black Uhlans MC, Coffin Cheaters MC, Comancheros MC, Finks MC, Fourth Reich MC, Gladiators MC, Gypsy Jokers MC, Hells Angels MC, Highway 61 MC, Iron Horseman MC, Life and Death MC, Lone Wolf MC, Mobshitters MC, Mongols MC, Muslim Brotherhood Movement MC, Nomads MC, Notorious MC, Odins Warriors MC, Outcasts MC, Outlaws MC, Phoenix MC, Rebels MC, Red Devils MC, Renegades MC, Scorpions MC.

The law as to who is a participant is fairly self explanatory:

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.

Being a participant is not necessarily in and of itself an offence. It is a definition. If you are said to come under that definition then there are certain offences that apply to you. For example, knowingly being in a public place with two or more “participants” is an offence which carries a minimum penalty of 6months imprisonment to be served wholly in a correctional institution.

The more frightening aspect of being a participant is with respect to its application to bail hearings for **any** offence, and the powers it gives the police to search you or your vehicle without a warrant.

2. Will I get bail?

In Queensland there is a presumption of bail. That can be off set in certain circumstances which means a person is required instead to “show cause” as to why they should get bail.

There have always been some circumstances that a person before a Court is required to “show cause”, for example:

- a) If the applicant is alleged to be on bail already for an indictable offence,
- b) If the applicant is alleged to be armed with a weapon at the time of an offence,
- c) If the applicant is charged with murder.

If the Crown can establish the person is, or has at any time been, a “participant” in a criminal organisation it now places that person in a “show cause” position. These

particular hearings are given a different process from usual bail hearings in the Magistrates Court. The main differences are:

- All hearings are to be heard in Brisbane within 7 days of arrest unless the applicant consents to a longer period,
- Affidavit material is required, and
- Written outlines have to be provided.

Each matter is unique and requires the careful consideration of substantial material so whether or not you are actually a participant or not is really identified on a case by case basis.

If you do find yourself falling within the scope of the participant then the most important consideration to “show cause” is the strength of the Crown case. To that end you should contact us immediately if you or a family member or friend are alleged to be in this “show cause” position so that we can obtain material and make a proper assessment of the Crown case.

3. What powers do the police have if I am said to be a “participant”?

A police officer who reasonably suspects a person is a participant of a criminal organisation, without warrant, can do any of the following:

- a) Stop and detain a the person,
- b) Search the person and anything in the person’s possession for anything that may provide evidence of the commission of an offence.

They are also permitted to search a vehicle, without warrant, if they have a reasonable suspicion the person is a participant or that the vehicle is being used by or belongs to a participant.

4. Wearing “prohibited items” at licenced venues, what can’t I wear?

It is now an offence to attend or remain at any licenced venue to which the *Liquor Act* applies wearing or carrying a “prohibited item”. Such items include clothing or items which contain:

- a) the name of a declared criminal organisation; or
- b) the club patch, insignia or logo of a declared criminal organisation; or
- c) any image, symbol, abbreviation, acronym or other form of writing that indicates membership of, or an association with, a declared criminal organisation

This includes-

- 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.

5. Will “resigning” and handing in my colours/supporter gear solve the problem?

Despite these significant changes in the law the government has not implemented any system by which you can “resign” from involvement as a member or participant. The new amendments in relation to bail in particular have gone as far as to say “is or at any time” been, a participant when considering bail.

Providing statutory declarations or affidavit material to the effect that a person has “resigned” from a group or as a participant of a group may well have the opposite than intended consequence of providing the Police or Crown sworn evidence that you at some time have been a participant.

Providing statutory declarations or affidavit material may also render a person at a later time to far more significant penalties if they are convicted of certain offences. For example, in our experience, protracted drug operations can often take months or years to close. If a person is charged after a 12 month operation has closed and that person provided a statutory declaration which indicated they had “resigned”, and the date of their resignation fell within the alleged trafficking period, it could have the catastrophic consequence of providing the Police or Crown with sworn evidence which places that person within the gambit of a “vicious lawless associate”. This of course would render that person upon conviction to far more significant penalties including imprisonment of up to 25years to be wholly served in a correctional centre.

6. What should I do if I am concerned I am a participant?

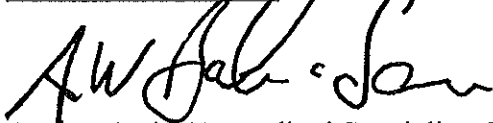
The first thing you should do is print this paper. Keep it in your glove box, saddlebag, on the fridge, or in the safe at work. If you are arrested for an alleged offence and the police are implying you are a participant and that they are opposing your bail it will of course be a high stress event for both you and your family particularly when the police confiscate your phone and you can’t contact anyone except your solicitor.

As you can see while being a participant is not necessarily an offence in itself it renders that person the subject to other significant consequences, particularly when it comes to police contact and bail.

We as always remain available at your convenience to assist with advice and representation. We have appeared on these applications, we know the law and we can provide you with real assistance.

Yours faithfully,

A. W. BALE & SON



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John Cook (Associate)

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