

# **Legal Studies State Conference 2010**

**Rydges Hotel, 116 James Ruse Drive, Rosehill**

**Friday, 26th March, 2010**

9.00 – 10.00 Session 1 – Crime – Recent Criminal Law Issues  
**Daniel Noll – Senior Solicitor DPP**

## **PART 1**

- (1) Crimes Amendment (Child Pornography and Abuse Material) Bill 2010
- (2) Crimes Amendment (Police Pursuits) Bill 2010
- (3) Criminal Procedure Amendment (Local Court Process Reforms) Regulation 2010
- (4) Graffiti Control Amendment Act 2009
- (5) Crimes Legislation Amendment (Possession of Knives in Public) Act 2009
- (6) Crimes Amendment (Fraud, Identity and Forgery Offences) Act 2009
- (7) Crimes (Appeal and Review) Amendment (Double Jeopardy) Act 2009
- (8) Child Protection (Nicole's Law) Bill 2009

## **PART 2**

- (9) Bikies and the Crimes (Criminal Organisations Control) Act 2009

ANNEXURE A: Criminal law related Acts and Regulations 2009/2010

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I would like to acknowledge the assistance of the NSW ODPP Research Unit in the preparation of this paper and to Merv Grogan, Crown Prosecutor, for his work on the new fraud provisions.

I have also referred to the paper "COMMENTS ON ORGANISATION-ASSOCIATION LEGISLATION – "BIKIE GANGS" by Nicholas Cowdery AM QC - May 2009. These are the Director's own comments and do not necessarily reflect the views of any other member of the Office of the DPP or anyone else.

## **[1] Crimes Amendment (Child Pornography and Abuse Material) Bill 2010**

In Legislative Assembly, Awaiting "Agreed in Principle" Debate, 10/03/2010.

**Comment:** tinkering with existing offences in an attempt to achieve harmony between national laws – but also interesting as it deletes the “artistic merit” defence which was so controversial during the “Henson” affair.

### **Overview of Bill**

The objects of this Bill are:

(a) to amend the *Crimes Act 1900* to change the law as it relates to child pornography (which will now be referred to as child abuse material) so that:

(i) the defence relating to material produced for child protection, scientific, medical, legal, artistic or other public benefit purposes will no longer be available, and

(ii) the law is generally more consistent with Commonwealth offences relating to child pornography,

(b) to amend the *Criminal Procedure Act 1986* to provide for the use of random sample evidence in proceedings for a child abuse material offence,

(c) to amend the *Criminal Procedure Act 1986* to extend to a witness in sexual offence proceedings the same protections as those afforded to a complainant in the proceedings, in cases where it is alleged that the accused person has committed a sexual offence against the witness that is not the subject of the proceedings concerned,

### **Details**

The existing child pornography offences are amended. The new provisions are generally consistent with the approach to child pornography taken in the *Criminal Code Act 1995* of the Commonwealth.

At present, child pornography is defined as material that depicts or describes (or appears to depict or describe), in a manner that would in all the circumstances cause offence to reasonable persons, a person who is (or appears to be) a child:

(a) engaged in sexual activity, or

(b) in a sexual context, or

(c) as the victim of torture, cruelty or physical abuse (whether or not in a sexual context).

It is already an offence to produce, disseminate or possess child pornography. The new provisions expressly extend to a greater range of material, including material that depicts or describes the private parts of a child. The material concerned will now be referred to as child abuse material.

Child abuse material is defined as material that depicts or describes, in a way that reasonable persons would regard as being, in all the circumstances, offensive:

(a) a person who is, appears to be or is implied to be, a child as a victim of torture, cruelty or physical abuse, or

(b) a person who is, appears to be or is implied to be, a child engaged in or apparently engaged in a sexual pose or sexual activity (whether or not in the presence of other persons), or

(c) a person who is, appears to be or is implied to be, a child in the presence of another person who is engaged or apparently engaged in a sexual pose or sexual activity, or

(d) the private parts of a person who is, appears to be or is implied to be, a child.

The existing offence of producing, disseminating or possessing child pornography is retained, with updated terminology.

However, it will no longer be a defence to that offence that the material concerned was produced, used or intended to be used by the defendant acting for a genuine child protection, scientific, medical, legal, artistic or other public benefit purpose.

Instead, the new provisions set out the factors to be taken into account in deciding whether reasonable persons would regard particular material as being, in all the circumstances, offensive. These factors include any literary, artistic, educational or journalistic merit of the material.

The new provisions contain the following defences, which are similar to the defences available under Commonwealth law:

(a) a defence that the conduct engaged in by the defendant was of public benefit (with public benefit including conduct necessary for or of assistance in enforcing or administering the law),

(b) a defence that the defendant was a law enforcement officer acting in the course of his or her duties,

(c) a defence that the conduct of the defendant was necessary for or of assistance in conducting scientific, medical or educational research approved by the Attorney General.

An existing defence relating to the state of mind of the defendant is retained, so that it will be a defence in proceedings for the offence of producing, disseminating or possessing child abuse material that the defendant did not know, and could not reasonably be expected to have known, that he or she produced, disseminated or possessed child abuse material.

An existing defence relating to the material that has been classified (other than as refused classification) under Commonwealth classification law is also retained.

### **Use of random sample evidence**

The Bill provides for the use of random sample evidence in proceedings for a child abuse material offence. Evidence of the findings of the random sample is admissible as evidence of the nature and content of the whole of the material from which the random sample was taken.

Random sample evidence may be admitted under the provision only if the accused person, or his or her Australian legal practitioner, has been given an opportunity to view all of the material concerned.

### **Extension of protections afforded to complainants in sexual offence cases**

At present, special arrangements apply to the giving of evidence by complainants in sexual offence cases. For example, complainants may give their evidence during an in camera session of court or may give their evidence from outside the courtroom by means of closed-circuit television facilities. An accused person is not permitted to personally examine or cross-examine the complainant.

This Bill extends these special arrangements to sexual offence witnesses. A sexual offence witness is a witness (other than the complainant) against whom it is alleged that the accused has committed a sexual offence (not being the sexual offence that is the subject of the proceedings). The provision also allows a court to make an order directing that the identity of a sexual offence witness not be publicly disclosed.

## **[2] Crimes Amendment (Police Pursuits) Bill 2010**

**Comment:** A topical issue given the tragic accident in Canberra this week. It should be noted that this Bill was introduced into the Parliament before that incident. The policy debate of police pursuits vs. public safety is sure to continue.

## Overview of Bill

The object of this Bill is to create a new indictable offence of failing to stop a vehicle and driving the vehicle recklessly, or at a speed or in a manner dangerous to others, after becoming aware that police officers are in pursuit of the vehicle. The Bill also makes other consequential amendments including licence disqualification for persons convicted of the new offence.

## Details

The Bill creates create a new indictable offence of failing to stop a vehicle and driving the vehicle recklessly, or at a speed or in a manner dangerous to others, after becoming aware that police officers are in pursuit of the vehicle. The maximum penalty will be imprisonment for 3 years for a first offence, or imprisonment for 5 years for an offence on a second or subsequent occasion.

It will be possible to deal with the new indictable offence summarily unless the prosecutor elects to deal with the matter before a jury.

The licensing laws are amended to apply the driver licence disqualification provisions to persons convicted of the new offence. As a consequence, the conviction will also amount to a “major offence” for the purposes of the Act.

Classification as a major offence makes any such convicted person liable to a declaration that the person is an “habitual traffic offender” and therefore subject to longer periods of disqualification from holding a driver licence.

## [3] Criminal Procedure Amendment (Local Court Process Reforms) Regulation 2010

Commences 1/2/2010.

**Comment:** An interesting exercise in legislative experimentation, in that different legal entitlements will apply to accused persons depending their location and the results at the different locations will be monitored. Although regulations are “disallowable instruments” they often don’t receive the same scrutiny as an Act of Parliament. I am not sure that these measures have even been raised in the media.

## Summary

The aim of the Regulation is —

(a) to extend the list of offences for which a police prosecutor is not required to serve a brief of evidence; and

(b) to facilitate the evaluation of Local Court process reforms made by the **Criminal Procedure Amendment (Local Court Process Reforms) Act 2007** by temporarily

reinstating, in one Local Court sitting in Sydney, the immediate previous requirements for service of briefs of evidence. The immediate previous requirements were more onerous for the prosecution to comply with.

In 2005 briefs of evidence were dispensed with for:

- proceedings for an offence for which a penalty notice may be issued (with some exceptions)
- proceedings for an offence under section 4 of the *Summary Offences Act 1988* (offensive conduct);
- proceedings for an offence under section 9 or 12 of the *Road Transport (Safety and Traffic Management) Act 1999*, (PCA and DUI offences).

The amended Regulation adds:

- *Road Transport (Driver Licensing) Act 1998* relating to driving while a licence is cancelled, suspended or disqualified, driving when a licence has been refused or driving having never been licensed;
- *Drug Misuse and Trafficking Act 1985* relating to possession of a prohibited drug,
- *Poisons and Therapeutic Goods Act 1966* relating to possession of a prescribed restricted substance.

### **Evaluation of Local Court process reforms – transitional**

The transitional provisions apply to proceedings conducted by a police prosecutor which are heard in the Local Court sitting at Manly and which are commenced on or after 1 July 2010 and before 1 October 2010. The Police prosecutors are required to serve a brief an accused as per the old requirements.

### **Theory**

The professional associations of NSW the Bar Association and the law Society maintain that the provision of a brief in matters encourages early pleas. In order for a person to know the case against them they will have to court elect.

The Police Association maintains that the compilation of briefs is extremely resource intensive and takes officers off the street.

The provision of briefs in summary matters is a relatively recent event and was actually a recommendation of the Wood Royal Commission into Police Corruption.

### **[4] Graffiti Control Amendment Act 2009**

Assent 30/11/2009, Gaz 189, 4/12/2009 p 5946.

Commences on assent, except for provisions regarding community clean up orders (Part Sch 1 [7] and Sch 2.1-2.3) which commence on proclamation.

**Comment:** Yet another legislative measure in a long series of laws directed against graffiti. Graffiti really annoys some people in the community and it seems to attract a disproportionate amount of time and energy given that it is relatively low in the criminal calendar.

## Overview of Act

The **Graffiti Control Amendment Act 2009** amends the **Graffiti Control Act 2008 (No 100)** (the Act), by creating two new graffiti offences of supplying spray paint cans to, and possession of spray paint cans by, children; increasing the maximum penalties for existing graffiti offences; and introducing a scheme of community clean up orders which can be performed to satisfy a fine imposed for a graffiti offence.

## Increased Penalties

### s.4 Damaging or defacing property by means of graffiti implement

The maximum term of imprisonment for this offence under s 4(1) is increased from six months to 12 months.

### s.5 Possession of graffiti implement

The maximum term of imprisonment for this offence under s 5(1) is increased from three months to six months.

## New Offences:

### s.8A Supply of paint cans to persons under 18

Section 8A is inserted to provide that a person who supplies a spray paint can to a person under 18 years of age is guilty of an offence for which the maximum penalty is 10 penalty units: s 8A(1)

Section 8A(2) provides that a person prosecuted for this offence has a defence if the person can prove that the spray paint can was provided for a defined lawful purpose in certain circumstances.

Section 8A(3) provides that **defined lawful purpose** means:

"(a) the lawful pursuit of an occupation, education or training, or

(b) any artistic activity that does not constitute an offence against this Act or any other law, or

(c) any construction, renovation, restoration or maintenance activity that does not constitute an offence against this Act or any other law, or

(d) any other purpose authorised by the regulations."

The specific defences set out in s 8A(2)(a)-(b) are:

- the person reasonably believed that the recipient of the spray paint can intended to use it for a defined lawful purpose, or
- the spray paint can was supplied in a **public place**, as defined in s 8A(5)(a), (b), and the person reasonably believed that the recipient intended to use it in the immediate vicinity of that public place for another defined lawful purpose, or
- the spray paint can was supplied in a **private place**, as defined in s 8A(5)(1), and the person reasonably believed that the recipient intended to use it in the immediate vicinity of that private place for an activity that was not an offence against the Act, or any other law.

The regulations may stipulate that s 8A does not apply to any particular class or description of spray paint can: s 8A(4)

Section 8A(5)(1) defines a **private place** as being any place that is not a **public place** which is,

"(a) a place (whether or not covered by water), or

(b) a part of premises that is open to the public, or is used by the public whether or not on payment of money or other consideration, whether or not the place or part is ordinarily so open or used and whether or not the public to whom it is open consists only of a limited class of persons, but does not include the premises of a school or other educational establishment."

### **s.8B Possession of spray paint can by persons under 18**

Section 8B(1) is inserted to make it an offence punishable by a maximum penalty of 10 penalty units or imprisonment for six months for a person under 18 years of age to be in possession of a spray paint can in a public place. A sentence of imprisonment must not be imposed unless the person has previously been convicted for a graffiti offence.

### **s.9 Confiscation of spray paint cans from minors**

Section 9(1) is amended to permit a police officer to seize a spray paint can unless the person in possession of it satisfies the officer that its possession does not constitute an offence under the Act.

### **Part 3A Community clean up work**

The Act creates new powers to order “community clean up work” for both adult and child offenders. The hours of clean up work are related to the level of fine that the Court imposes.

Community clean up work hours are calculated at the rate of one hour for each \$30 of the fine's amount, or its unpaid part.

Hours specified in any one community clean up work order are additional to any hours of such work required to be performed under any other community clean up work order or community service order.

### **Obligatory participation in graffiti prevention program**

The Act also creates a power to force a person to go to a two hours **graffiti prevention program**, meaning, "a personal development, education of other program the object of which is to prevent offenders from engaging in unlawful graffiti activities."

## **[5] Crimes Legislation Amendment (Possession of Knives in Public) Act 2009**

*Assent 3/11/2009. Gaz 160, 6/11/2009 p 5596. Commences on assent.*

**Comment:** Another current topic of interest given the media reports of children carrying knives in schools. Increasing penalties and police search powers uses the very blunt end of the criminal law called “deterrence”. Is “deterrence” really the best way to deal with this issue, or would a better place to start be asking the question: why are children carrying knives in the first place?

### **Objects of the Act**

To increase the maximum penalty for certain offences relating to the possession of knives and other dangerous implements in public places and schools.

### **Increased penalties**

Section 11C(1) of the *Summary Offences Act 1988* provides that it is an offence to have custody of a knife in a public place or school without reasonable excuse. The maximum penalty was previously dependant on whether the person had previously been dealt with for a knife-related offence and if so, if this had been on one or more occasions. Section 11C(1) is now amended to provide that the maximum penalty is 20 penalty units or two years imprisonment, or both, irrespective of whether a person has previously been dealt with for a knife-related offence. Prior to this amendment this

maximum penalty was reserved for those persons who had been dealt with for a knife-related offence on more than one occasion.

The provision still allows only one penalty notice to be issued to a person. Any subsequent offences must be dealt with by a court.

### **Search powers – increased penalties.**

Pursuant to s 26 of the LEPAR Act police have the power to request a person to submit to a frisk search if they are in a public place or school and the officer suspects on reasonable grounds that the person has custody of a dangerous implement (which includes a knife). It is an offence to, without reasonable excuse, fail or refuse to comply with the request or "fail or refuse to produce anything detected or seen on or with the person in such a search". The maximum penalty for such an offence has been increased from five penalty units to 50 penalty units.

### **[6] Crimes Amendment (Fraud, Identity and Forgery Offences) Act 2009 (No 99)**

*Assent 14/12/2009 Gaz 207, 18/12/2009 p 6098.*

*Commencement 22/2/2010.*

**Comment:** A huge legislative undertaking that I am only going to briefly outline as it is complex and in part controversial. An entire lecture series could be taken up with the arguments surrounding the modernisation of archaic fraud and forgery laws.

### **Details**

The *Crimes Amendment (Fraud, Identity and Forgery Offences) Act 2009* amends the *Crimes Act 1900* to introduce three new parts.

The first updates the crime of fraud and increases the maximum penalty for this crime to 10 years.

The second introduces new offences arising from identity crime, the maximum penalty for which will also be 10 years.

The third updates the law relating to forgery, and also sets the maximum penalty at 10 years.

This Act draws on three reports produced by the Model Criminal Law Officers Committee of the Standing Committee of Attorneys General on Theft and Fraud, Credit Card Skimming, and Identity Crime. It also draws on the Commonwealth Criminal Code to the extent that it picks up on those reports.

The content of the **Crimes Amendment (Fraud, Identity and Forgery Offences) Act 2009** is based *inter alia* on the following —

- (1) Final Report on Identify Crime, March 2008  
Model Criminal Law Officers Committee of the Standing Committee of the Attorneys General (SCAG);
- (2) Final Report on Theft, Fraud, Bribery and Related Offences, December 1995  
Predecessor Model Criminal Code Officers Committee of SCAG, and the
- (3) Final Report on Credit Card Skimming Offences, February 2006  
Predecessor Model Criminal Code Officers Committee of SCAG,
- (4) Provisions of the *Criminal Code Act 1995*(Cth) drawn from the above reports.

The Act does not adopt all of the provisions of the reports as incorporated in the Model Criminal Code as some of the thinking behind the model bill has progressed, but it does bring New South Wales closer in line with the national approach.

Around 30 fraud provisions are being replaced with four new provisions, and 25 forgery provisions are being replaced by six new provisions.

The broad new offences will cover all the sorts of conduct formerly dealt with under numerous very specific offences.

For example one of the old offences repealed is “forging or uttering any East India bond”, an offence from the eighteenth century when the East India Company issued bonds to finance its activity. Not surprisingly, no person has been convicted under this section for many years. The bill removes this and many other out-of-date provisions, and replaces them with simple and modern offences that can keep pace with modern criminal conduct.

Fraud, which is the dishonest deception by one person of another to obtain property or financial gain or to cause a financial disadvantage, is a growth area of crime particularly since the advent of the internet and the explosion of electronic banking.

The new fraud offences are technologically neutral, and will ensure that criminal conduct now and well into the future can be caught.

The Act also creates new offences relating to dealing with identification information. It will now be a very serious crime, punishable by up to 10 years imprisonment, if a person deals in identification information this will include using it, making it or selling it.

#### **One (of many important points) - Definition of dishonest – s.4B**

For the purposes of fraud, forgery and related offences, a codified definition of dishonest is inserted in new s 4B.

It provides that the mental element of dishonesty means “dishonest according to the standards of ordinary people and known by the defendant to be dishonest according to the standards of ordinary people.”

This definition was adopted in the *Criminal Code Act 1995* (Cth).

It reflects the test for dishonesty adopted in *R v Ghosh* [1982] QB 1053 which had its origins in *R v Feely* [1973] QB 530.

Previously, NSW had been governed by the test for dishonesty in *Peters v The Queen* (1998) 192 CLR 493.

The practical and theoretical differences between these two tests are the main complaints that NSW practitioners have about the new codification.

## **[7] Crimes (Appeal and Review) Amendment (Double Jeopardy) Act 2009**

**Assent and commencement 24/9/2009. Gaz 140, 2/10/2009 p 5286.**

**Comment:** More tinkering with laws that haven’t even been used yet! The UK introduced similar laws in 2005 and to my knowledge they have been used only twice.

Although the American term “double jeopardy” is now used, the more correct term for the purposes of common law jurisdictions is *autrefois acquit* or *autrefois convict* or simply the *autrefois* doctrine.

### **Overview:**

*The Crimes (Appeal and Review) Amendment (Double Jeopardy) Act 2009* amends the *Crimes (Appeal and Review Act 2001)* —

"(a) to enable a person acquitted of a serious offence in a retrial under the exception to the rule against double jeopardy to be again retried if the acquittal was tainted because of an administration of justice offence, and

(b) to provide that an appeal court must not dismiss a prosecution appeal against sentence, or impose a less severe sentence than it would otherwise consider appropriate, because of any element of double jeopardy involved in the respondent being sentenced again."

The Act implements proposals made by the Double Jeopardy Law Reform Working Group that were agreed to by the Council of Australian Governments (COAG).

## Details

New South Wales was the first state in Australia to reform double jeopardy laws, releasing an exposure draft bill in 2003 and passing laws to allow retrials in serious cases in 2006.

New South Wales amended the rule by allowing retrials of people in two situations:

*firstly*, if a person is acquitted of a life sentence offence and fresh and compelling evidence has subsequently arisen; and

*secondly*, when a person is acquitted of an offence carrying a penalty of 15 years imprisonment or more where the acquittal was tainted.

Following NSW's initial reforms, COAG agreed on a series of recommendations for double jeopardy law reform, the vast majority of which drew upon the NSW Act. The national movement went further than NSW in some areas, so this is NSW "catching up".

### **New s 68A - Double jeopardy not to be taken into account in prosecution appeals against sentence**

This amendment is designed to stamp out something that is only semi-double jeopardy.

Under the former common law principles that apply to Crown appeals against sentence, the appeal court has a wide discretion to refuse to intervene and adjust a sentence, even where an error has been shown. In considering whether to intervene, the court took into account the fact that the person is facing "double jeopardy" in the sense that he or she was facing sentence for a second time. On this basis some courts exercised their discretion not to intervene even when they thought the sentence imposed was too low.

The amendment is intended to ensure that when, on a Crown appeal, the Court forms a view that the sentence was too low, this double jeopardy principle cannot be taken into account to justify inaction.

### **Tainted Acquittals**

The 2006 amendments to the double jeopardy laws allowed for a retrial where an acquittal was tainted.

An acquittal is tainted if the accused or another person is convicted of an administration of justice offence (eg perverting the course of justice or perjury) in connection with the proceedings in which the person was acquitted.

Under the current provisions, a person can be retried only once under the double jeopardy provision.

A new s.68A is inserted to allow a person to be retried again if their retrial acquittal is tainted. In effect a re-re-trial.

## **[8] Child Protection (Nicole's Law) Bill 2009**

### **THIS IS NOT A GOVERNMENT BILL**

#### **Private Member's Bill – The Reverend Fred Nile**

In Legislative Council, 2R, Debate adjourned 5 calendar days, 22/10/2009.

**Comment:** Although this is not a Government Bill (and it is unlikely to get up) it raises interesting tensions between public will and policy. Public polls regularly show that the public want an American style sex offender register that is open to the public.

A fascinating, if not somewhat frightening exercise is to log onto some of the American register websites that are set up like interactive maps with glowing dots marking the location of registered sex offenders. If you move your mouse over the dots, profiles and pictures pop up.

England has had some interesting experiences with naming sex offenders. In one example a person who unfortunately shared the same name as a sex offender whose identity got out had his house burned to the ground and in another instance the surgery of a paediatrician was vandalised by people who mistook it as an office of a paedophile.

The bill is named in memory of five-year old Nicole Hanns, who was stabbed to death by John Lewthwaite in 1974.

### **Overview of Bill**

The objects of this Bill are:

(a) to require the Commissioner of Police to publish certain information contained in the Child Protection Register established under section 19 of the *Child Protection (Offenders Registration) Act 2000*, and

(b) to ensure that the publishing of information does not enable the identity of victims of registrable offences to be ascertained.

## **PART 2**

### **Criminal Organisations Legislation Amendment Act 2009 (No 23)**

#### **Bikies and the Crimes (Criminal Organisations Control) Act 2009**

#### **INTRODUCTION**

- Explosion of new police powers over the past decade
- My personal favourites have been:
  - the new police power to require a person to swish their hair around, open their mouth and waggle their tongues; and
  - the power for police to pacify guard dogs and block peoples drains

#### **Origins of Outlaw Motor Cycle Gangs – or OMCGs**

- Outlaw bikies are what one usually associates with the image of a biker.
- However, these of course are the minority of bikers.
- Motorcycle clubs (MCs) have been around since 1903 starting with Yonkers.
- However, the “Outlaw” MC clubs we are dealing with here were started with the Hells Angels Motorcycle Club in California 1948.
- They are most easily identified by the “colours” on their backs, these designs historical origins link back to the shoulder patches worn by WW2 fighter pilots.
- Traditionally these patches had skulls, devils and wings.
- The original outlaw motorcycle clubs were comprised of disenfranchised WW2 veterans.

- This constituency soon changed.

## **The Hollister Riot**

The **Hollister riot** occurred during the Gypsy Tour [motorcycle rally](#) in Hollister, California from [July 4 to July 6, 1947](#). The event was sensationalized by news reports of bikers "taking over the town" and staged photos of public rowdiness.

The rally, which was sponsored by the American Motorcyclist Association (AMA), was attended by approximately 4000 people. This was several times more than had been expected, and the small town of Hollister was overwhelmed by bikers who were forced to sleep on sidewalks and in parks.

About 50 people were arrested during the event, most for public intoxication, reckless driving, and disturbing the peace. Members of the Boozefighters Motorcycle Club, in particular, were reported to be fighting and racing in the streets.

The 1953 film *The Wild One* (starring Marlon Brando) was inspired by the event and based on an article run in *Life* magazine which included a staged picture of a drunk man resting on a motorcycle amidst a mass of beer bottles.

Representatives of the AMA, seeking to deflect the negative press surrounding the rally, coined the phrase "one percenters".

### **"One Percenters"**

- At that time the President of the American Motorcycle Association Lin Kuchler declared that:

"the disreputable cyclists are possibly one percent of the total number of motorcyclists; only one percent are hoodlums and troublemakers."

- In response, the motorcycle gangs took to wearing the 1% patch as a ‘badge of honour’ and as the OMCG image developed and spread globally this symbol became integral to their culture and history.

### **Colours**

- Colours are worn only by the member they are given to and they take great pride in displaying them in public as they are representative of who the wearer are and the group they belong to.
- Patches are added to the colours as a member’s status in the group evolves. These additional patches will show length of service, rank and chapter.
- For example, members of the Rebels OMCG who perform official duties are recognised through the wearing of the ‘Forever’ patch as a side rocker.
- Even though the wearer has this responsibility the colours remain the property of the Rebels organisation, and if the member leaves the gang then the colours are returned.

### **Elements that make a present day bikie!**

- According to Professor Arthur Veno, an expert on outlaw gangs:
  - you must wear club colours
  - ride a custom bike such as a Harley Davidson
  - Most importantly, you must follow the clubs rules above all else, with loyalty the central tenant of the club,
  - you need to consider your fellow club members as brothers who are bonded together for protection and companionship
  - No women members.

### **How are they organised?**

- Most importantly for us these clubs are highly organised into “chapters” and most clubs have chapters in every state, and in some cases in many suburbs too.
- The bigger clubs like the Rebels and the Hells Angels have chapters worldwide, and it is important to note that there is both a chapter hierarchy and strict code within the clubs to protect this structure.

### **KNOWN AUSTRALIAN OMCGs**

In Australia, there are now 36 officially identified “outlaw” motorcycle clubs:

Bandidos, Black Ulans, Bros, Club Derose, Coffin Cheaters, Comancheros, Cossacks, Descendants, Devil’s Henchmen, Finks, Foolish Few, Fourth Reich, Gladiators, God’s Garbage, Gypsy Jokers, Hells Angels, Highway 61, Highwaymen, Immortals, Iron Horsemen, Life and Death, Lone Wolf, Mob Shitters, Nomads, Odins Warriors, Outcasts, Outlaws, Rebels, Renegades, Satan’s Riders, Satan’s Sinners, Satan’s Soldiers, Tramps and Van Diemans.

- Currently, in New South Wales, there are 19 recognised 1% gangs that are being monitored by NSW Police Force.

### **NOTORIOUS – Bikers without Bikes**

- Another interesting recent development is Bikies without bikies.
- “Notorious Club” – Nike Bikies, for their love of wearing sports gear.
- While its dozens of city-based members wear full bikie colours, only a few members ride motorcycles.

- It is reported that the Notorious Club was founded by former members of the now disbanded Nomads outlaw motorcycle gang's Parramatta chapter.
- Based in the Western suburbs it is also reported that recruits are from Middle Eastern and Pacific Islander background.
- Alleged criminal activity includes drug dealing in night clubs through infiltration of the security industry.
- The main rival for “Notorious” are the Comancheros and in recent years there have been a number of fire-bombings that are suspected to be linked to a turf war between the two clubs.

### **International Precedents**

- NSW is not the only jurisdiction to pass quite anti-gang legislation, ostensibly directed against “bikies”
- Canada is the world leader in draconian anti-bikie laws, and many of the features of the NSW Act were derived from Canada.
- New Zealand also has extensive anti-gang legislation.
- Here in Australia, South Australia has implemented a raft of anti-bikie laws, and Criminal Organisation legislation also drew heavily on the SA precedent.
- I also might mention here the striking similarity of some features of the Act with Anti-Terrorism laws passed by the federal government which also creates “control orders” – these were largely derived from the UK.

### **Previous Gang Legislation in NSW**

- Nor is this the first “anti-gang” legislation to be passed in NSW, there have been several.

- For example the **Anti Fortification Laws** inserted into the LEPAR Act in 2006 which was specifically aimed at OMCG clubhouses.

## **Overview of Act**

**Commencement** - The Act commenced on assent on 3 May 2009.

- The stated purpose of the Act is to create a scheme to disrupt and restrict criminal organisations and their members.
- There are two stages to the process

### **Stage 1 – Declaring an organisation a “criminal organisation”**

- The Commissioner of Police seeks a declaration from a Supreme Court judge acting, as *persona designata*, that a group of people be declared “criminal organisation” for the purposes of the Act.
- The judge may make a declaration if they are satisfied that an organisation's members associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity and that the organisation represents a risk to public safety and order in New South Wales.
- Once a group has been declared a “criminal organisation”, police can move onto stage 2

### **Stage 2 – Targeting individuals with “control orders”**

- Once the organisation is declared, the Commissioner may then seek control orders from the Supreme Court in respect of one or more persons on the basis that those persons are members of a declared criminal organisation and there are sufficient grounds for making the order.
- The “controlled member” will not be able to associate with another controlled member of that gang.

- Breach of a control order is an offence – maximum penalty two years jail for the first offence or they will risk five years in jail for a second or subsequent offence.

### **Other effects of the Act**

#### **Amendment to the *Bail Act***

- What would be an Act of the NSW Parliament without yet another amendment to the *Bail Act*
- The Act also amended the *Bail Act* so there is no presumption in favour of bail for this “breach offence.

#### **Employment restrictions**

- Members of declared criminal organisations are also affected in other ways; they are stripped of their licence for working in certain regulated industries that are vulnerable to bikie and organised crime.

#### **We’ll take their money too!**

- This Act also amend section 6 of the *Criminal Assets Recovery Act 1990* by taking away dishonest earnings through the addition of the offences in section 93T of the *Crimes Act 1900* of “participating in a criminal group”.
- The effect of this amendment is that the New South Wales Crime Commission will be able to pursue people who participate in criminal groups, either knowingly or recklessly, regardless of whether they are a controlled member of a declared criminal organisation.

#### **Details of the scheme**

#### **The Scope of the Legislation**

- Despite the way that this scheme has been “sold” the application of the legislation is a lot wider than just bikies.
- The legislation applies to any “*particular organisation*” in respect of which the Police Commissioner chooses to make an application.

**The Director, Nick Cowdery QC, in his paper on this legislation also notes a peculiar anomaly:**

“It is curious to note that the Act does not apply to organisations organising, planning, facilitating, supporting or engaging in criminal activity that does not satisfy the definition of “*serious criminal activity*” – arguably for example, gangs of organised shoplifters or street drug dealers.”

#### **Section 4 Extraterritorial operation**

- The parliament explicitly states that they want this law to extend as far as extra-geographically possible.

#### **Section 5 Eligible Judges**

- Section 5 provides for Judges of the Supreme Court who consent to being eligible Judges for the purposes of the proposed Part to be declared to be eligible Judges by the Attorney General.
- In his paper on this Act the Director has noted some potential future problems for such a widely drafted law:
  1. If a future Attorney General should so desire, they could “stack” the hearing of applications with judges they chose.
  2. The exercise of these powers are quite far-reaching and may offend the doctrine of separation of powers.

## **Section 6 Commissioner may apply for declaration**

- Section 6 enables the Commissioner of Police to apply for a declaration in relation to a particular organisation.

## **Section 7 Publication of notice of application**

- Section 7 requires a notice of the application to be published in the Government Gazette and one other daily newspaper inviting members of that organisation along to have a little chat at the Supreme Court on an appointed day.

## **Section 8 Submissions at the hearing**

- Section 8 states that if they do attend they are allowed to be heard.
- But then things start to depart from the norm.
- Provision is also made to enable submissions to be made in private in certain circumstances.
- The Commissioner may object to persons being present for certain submissions that involve a protected submission” or involve “criminal intelligence”

## **Section 9 Declarations**

**Section 9** enables the eligible Judge to make the declaration sought by the Commissioner if the eligible Judge is:

**“satisfied that members of the organisation associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity and the organisation represents a risk to public safety and order in this State.”**

The section sets out the matters the eligible Judge may take into account in deciding whether or not to make a declaration, namely:

- (a) any information suggesting that a link exists between the organisation and serious criminal activity,
- (b) any criminal convictions recorded in relation to current or former members of the organisation,
- (c) any information suggesting that current or former members of the organisation have been, or are, involved in serious criminal activity (whether directly or indirectly and whether or not such involvement has resulted in any criminal convictions),
- (d) any information suggesting that members of an interstate or overseas chapter or branch of the organisation associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity,
- (e) any submissions made in relation to the application by the Attorney General or as referred to in section 8,
- (f) any other matter the eligible Judge considers relevant."

### **Section 10 Notice of Declaration**

- Again notices of the declaration are published in the Government Gazette and another daily newspaper.

### **Section 11 Duration**

- The duration of the declaration is 3 years, however there is no prohibition on rolling declarations.
- It also doesn't matter if the name of the organisation is changed.

### **Section 12 Revocations**

- **Section 12** provides for the revocation of declarations.

- Both the Commissioner and a member of the declared organisation can make an application for the declaration to be revoked.

### **Section 13 Conduct of hearings**

- **Section 13** provides that the rules of evidence do not apply to the hearing of an application for a declaration and that the eligible Judge is not required to provide reasons for making a declaration.

## **STAGE 2 – Individual Orders**

### **Part 3 Control of members of declared organisations**

#### **Division 1 Interim control orders**

##### **Section 14 Interim Control Orders**

- Very much in the vein of interim AVO, the Commissioner can make and application for an interim control order – *ex parte*, without notice
- However it only take effect when it is served – as confirmed by s.15

##### **Section 16 Notice of making of interim control order**

- Again like an AVO the notice given to the “controlled person” sets out the terms of the order and the grounds.
- It also gives details about how the subject can appear at the hearing to challenge the making of the order

##### **Section 17 Duration of Interim Order.**

- There is no set limit, an interim order ceases when:
  - (a) it is revoked, or
  - (b) it ceases to have effect under subsection (2), or
  - (c) the application for a control order confirming the interim control order is withdrawn or dismissed,

whichever first occurs.

### **Section 18 Expedited hearing in cases of hardship**

- Matters can be heard expeditiously in cases of hardship.

**Division 2 Control orders** – deals with making final control orders.

- The Supreme Court can make confirmatory control orders (s.19)
- The subject may be present (s.20)
- The order takes effect immediately if the person is there at the hearing or when it is served if they are not.

### **Section 23 Duration of Control order**

- A control order does not expire – it only ceases to apply when it is revoked.

### **Section 24 Right of Appeal**

**Section 24** provides for appeals against the making of control orders.

- The appeal lies with the Court of Appeal on a question of law or by leave on a question of fact.
- Although s.24 creates appeal rights this has to be read in conjunction with s.35 which in the widest possible terms ousts a whole range of avenues of review.

### **Section 25 Variation of control order**

**Section 25** provides for the variation and revocation of control orders.

An application for variation or revocation of a control order may only be made by the person to whom the order relates with the leave of the Court and leave is only to be granted if the Court is satisfied there has been a substantial change in the relevant circumstances since the order was made or last varied.

### **Division 3 Consequences of making of interim control orders and control orders**

#### **Section 26 Association between members of declared organisations subject to interim control order or control order**

Section 26 makes it an offence for a controlled member of a particular declared organisation to associate with another controlled member of the same organisation.

Maximum penalty:

- (a) for a first offence—imprisonment for 2 years, and
- (b) for a second or subsequent offence—imprisonment for 5 years.

Mr Cowdery in his paper on notes the following:

- The placing of the burden of proof upon a controlled person to establish that an association with another controlled person falls within the exemptions under the Act (for example, close family members), is a draconian measure, reminiscent of reverse onus provisions that were in place for a time in Northern Ireland during the “troubles”. This is highly unusual and almost always inappropriate in the context of legislation creating criminal consequences.

#### **Section 27 Prohibition on carrying on of certain activities when interim control order or control order takes effect**

Section 27 provides for the suspension and revocation of authorisations to carry on prescribed activities held by a controlled member on the taking of effect of interim control orders and control orders, respectively.

*prescribed activity* means the following:

- (a) operating a casino
- (b) carrying on a security activity,
- (c) carrying on the business of a pawnbroker,
- (e) possessing or using a firearm or carrying on business as a firearms,
- (f) operating a tow truck,
- (g) carrying on business as a car dealer,
- (i) selling or supplying liquor,
- (j) carrying on the business of a bookmaker,
- (k) carrying out the activities of an owner, trainer, jockey, stablehand, bookmaker, bookmaker's clerk or another person associated with racing,
- (l) carrying out the activities of an owner, trainer or other person associated with greyhound or harness,
- (m) any other activity prescribed by the regulations.

**The Director in his paper also notes another peculiar feature of the Act:**

- Part 3 of the Act empowers any judge of the Supreme Court to make control orders against an individual member of an organisation. The definition of “*member*” of an organisation in section 3 is alarmingly wide – for example, it includes a “*prospective member (however described)*”. It also includes “*a person who is treated by the organisation or persons who belong to the organisation, in some way, as if he or she belonged to the organisation*”. This is extraordinarily broad-reaching – this criterion could be fulfilled without the person himself having any intention of being part of the organisation and could be established without any direct evidence of that person’s actual involvement with the organisation.

It is curious to note, however, that the definition of “*member*” does not include former member. Accordingly, it would seem that if a member received notice of a control order being sought against him or her, all that would be required for the entire process to be frustrated at that point would be for the member to resign.

I think one of the most concerning aspects of this Legislation are the provisions relating to “criminal intelligence” and “protected submissions”.

## **Part 4 Miscellaneous**

**Section 28** provides protections for criminal intelligence.

Defined

*criminal intelligence* means information relating to actual or suspected criminal activity (whether in this State or elsewhere) the disclosure of which could reasonably be expected:

- (a) to prejudice criminal investigations, or
  - (b) to enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement, or
  - (c) to endanger a person's life or physical safety.
- 
- An eligible judge (in the case of an application for a declaration against an organisation) or any Supreme Court judge (in the case of an application in respect of a control order against a member of a declared organisation) hearing an application, is by section 28(3) *“to take steps to maintain the confidentiality of information that [they consider] to be properly classified by the Commissioner as criminal intelligence, including steps to receive evidence and hear argument about the information in private in the absence of the parties to the proceedings and their representatives and the public”*.

This is a significant departure from a very fundamental principle, namely, the right of a person to know the case against them.

### **Section 29 Protected submission**

Section provides protections for certain submissions.

This enables a judge to hear submissions in the absence of the Respondent.

Again, it is difficult to see how a person or organisation opposing an application can effectively answer an application where;

- (1) They do not have any idea what material is before the court; and
- (2) They might not even know what the submissions of the Crown are.

### **Section 30 Criminal organisations register**

Section 30 provides for the Commissioner of Police to keep a register of information relating to declared organisations and controlled members.

- Information contained in the register may be provided to members of the public in any other manner approved by the Commissioner.
- Without limiting subsection (4), the Commissioner may publish any information contained in the register in a newspaper circulating in the State.

**Section 32 Standard of proof** states the standard of proof in proceedings under the proposed Act is to be on the balance of probabilities except in relation to prosecutions for offences under the Act. Mr Cowdery writes in his paper:

- Section 32 provides that “*Any question of fact to be decided in proceedings under this Act is to be decided on the balance of probabilities*” (this does not apply to proceedings for offences under the Act). Such a standard is insufficiently rigorous for the removal of a right as fundamental as the right to freedom of association. Indeed, the Act purports to remove the rights to freedom of association and expression in circumstances that do not come within the permissible exceptions described in the International Covenant on Civil and Political Rights (ICCPR) – for national security, public order, etc.

### **Section 34 Immunity from liability**

**Section 34** provides immunity from civil and criminal liability for persons exercising functions under the proposed Act and for the Crown.

### **Section 35 Protection of exercise of certain functions**

**Section 35** prevents challenge or review by a court (other than by way of appeal under section 24) or administrative body of the exercise of certain functions under the proposed Act.

### **Section 39 Obudsman oversight**

**Section 39** provides for the Ombudsman to keep under scrutiny, and report on, the exercise of powers by police under the proposed Act for a period of 2 years after the commencement of the proposed Act.

### **Section 40 Review of Act**

Section 40 provides for the review of the proposed Act in 5 years from the date of assent to the proposed Act.

## **BUT WAIT – THERE’S MORE**

### ***Criminal Organisations Legislation Amendment Act 2009***

#### **Objects of Act**

- The *Criminal Organisations Legislation Amendment Act 2009* amends:
  - *Crimes (Criminal Organisations Control) Act 2009*
  - *Law Enforcement (Powers and Responsibilities) Act 2002* is amended to create a criminal organisation search power
  - *Criminal Procedure Act 1986* was amended to make the new offence a Table 1 offence.
  - *Surveillance Devices Act 2007* is amended by inserting s 4(1)(p) which defines “relevant proceeding” as "any proceeding in respect of a declaration under Part 2, or a control order under Division 1 or 2 of Part 3, of the *Crimes (Criminal Organisations Control) Act 2009.*" Sch 3 [3.7]

### **Amendments to Crimes (Criminal Organisations Control) Act 2009 (No 6)**

#### **s.16A Service of notice of interim control order**

- Section 16A is inserted to allow the Supreme Court, where "notice of an interim control order cannot practicably be served on the person to whom it relates in accordance with section 16(1)", and on being satisfied that the Commissioner of Police has taken all reasonable steps to effect personal service, to postpone service of the order for 28 days but no longer.
- The Supreme Court may specify alternate means to effect service other than personal service, s 16(A)(1)(b), and direct such service to be taken to have occurred when a specified event happens or a specified time expires: s 16A(3). Where the steps under s 16A(1)(b) have been ineffective, notice of the interim control order may be publicly notified by publication in the Gazette, a daily newspaper with State-wide circulation, or some other form 16A(4). Service under s 16A constitutes personal service for the purposes of ss 15 and 16(1).

#### **s.26A Recruiting persons to become member of declared organisation**

- Section 26A is inserted to make it an offence, with a maximum penalty of five years imprisonment, for a controlled member of a declared organisation to **recruit**, defined to include to "counsel, procure, solicit or induce", another member to that organisation .

#### **s.30 Criminal organisations register**

- Section 30(3A) is inserted to provide that information published on the criminal organisations register, kept by the Commissioner of Police in relation to declarations and orders made under the Act, is to be removed from that register where leave is sought after the expiration of 28 days following the making of the control order. That information can only be restored to the register where leave is refused, or where the appeal is determined or withdrawn in the event of leave being granted. Section 24 provides for leave to be given outside the 28-day period.

#### **s.30A Provision of information relating to criminal organisations**

- Section 30A(1) is inserted to set out the circumstances in which a regulatory authority and the Commissioner of Police may enter into arrangements for that authority to be supplied with information contained in the records of the NSW Police Force concerning a declared organisation and controlled members of that organisation.

### **Criminal Organisation Search Warrants**

Amendments to Law Enforcement (Powers and Responsibilities) Act 2002

**s 3(1), 46D, 47(3A), 62, 73, 73A, 242 Criminal organisation search warrants**

- The amendments create “criminal organisation search warrant”

#### **Authority and power to apply for criminal organisation search warrant**

- A Superintendent or higher ranking police officer who suspects on reasonable grounds that a thing of a sort connected with the searchable offence is present, or will in seven days be present, in or on the premises may authorise a police officer to apply for a criminal organisation search warrant: s.46D(1),(2)
- An eligible applicant under s.46(1)(c), that is, a police officer authorised to apply for a criminal organisation search warrant under s 46D may apply to an eligible issuing officer, as defined in s 46(1), for such a warrant for premises if suspecting on reasonable grounds that a thing of a sort connected with the searchable offence is present, or will in seven days be present, in or on the premises: s 47(3A)

#### **Information in, and consideration of, application for warrant**

- An eligible issuing officer cannot issue a criminal organisation search warrant unless the application for that warrant includes the name of both the occupier of the premises, if known, and the person believed to have committed or intending to commit the relevant searchable offence: s.62(2A); and whether the occupier is

believed to be knowingly concerned in the commission of that relevant searchable offence: s.62(2A)(b)

### **Expiry and extension of warrant**

- A criminal organisation search warrant ceases to have effect, unless withdrawn or extended, seven days after the date the warrant was issued: s.73(2B). Where no time of expiry is specified in a criminal organisation search warrant it expires seven days after it is issued: s.73(7). A criminal organisation search warrant that expires 72 hours after being issued may be extended by the authorised officer who issued that warrant: s.73A(1)

### **Monitoring by Ombudsman and annual reports by the Commissioner of Police**

- The Ombudsman must inspect the NSW Police Force records of criminal organisation search warrants every two years to ensure compliance with the requirements of the **Crimes (Criminal Organisations Control) Act 2009**: s.242(3A). As soon as practicable after the expiration of the two years the Ombudsman must prepare a report and provide a copy of that report to the Attorney General and the Commissioner of Police: s.242(3C)
- The Commissioner of Police must report annually to the Attorney General and the Minister of Police, specifying the matters set out in s.242A(3A), on the exercise of the search and seizure powers by police officers executing criminal organisation search warrants: s.242A(1A)

### **s 46(1) Eligible applicant and eligible issuing officer**

- Section 46(1)(c) is inserted into the definition of **eligible applicant** in s.46(1) to include a police officer authorised to apply for a criminal organisation search warrant under s 46D. An eligible judge is now an **eligible issuing officer** for a criminal organisation search warrant.

### **s 46AA Organised criminal activity**

- An **organised criminal activity** is an activity conducted on an **organised basis** where either a material benefit is obtained from the commission of conduct constituting a serious indictable offence, either in New South Wales or elsewhere; or the conduct itself constitutes a **serious violence offence**, either in New South Wales or elsewhere: s.46AA(1).
- A **serious violence offence** is an offence punishable by imprisonment for ten years or more which involves conduct causing the loss, or serious risk of loss, of a person's life; serious injury, or risk of serious injury, to a person; serious damage to property which endangers a person's safety; and perverting the course of justice in relation to any conduct proved to be a serious violence offence: s 46AA(1)
- An activity is carried out on an **organised basis** where it is planned, organised, structured or otherwise conducted on more than one occasion by more than one participant: s 46AA(2)

#### **s.46A Searchable offences**

Section 46A(1)(c) is inserted to provide that a searchable offence for the purpose of a criminal organisation search warrant is an **organised crime offence**, defined as "any serious indictable offence arising from, or occurring as a result of, organised criminal activity: s 46A(2)

## ANEXURE A: Criminal law related Acts and Regulations 2009/2010

<b>Acts and Regulations 2010</b>	
Crimes Amendment (Child Pornography and Abuse Material) Bill 2010	Act
Crimes Amendment (Police Pursuits) Bill 2010	Act
Criminal Procedure Amendment (Local Court Process Reforms) Regulation 2010	Regulation

<b>Acts and Regulations 2009</b>	
Bail Amendment (Authorised Justices) Regulation 2009	Regulation
Child Protection (Nicole's Law) Bill 2009	Act
Child Protection (Offenders Registration) Amendment Regulation 2009	Regulation
Child Protection (Offenders Registration) Regulation 2009	Regulation
Child Protection Legislation (Registrable Persons) Amendment Act 2009 (No 93)	Act
Children (Criminal Proceedings) Amendment (Naming of Children) Act 2009 (No 81)	Act
Children (Criminal Proceedings) Further Amendment (Youth Conduct Orders) Regulation 2009	Regulation
Children's Court Regulation 2009	Regulation
Courts and Crimes Legislation Amendment Act 2009 (No 77)	Act

Courts and Other Legislation Amendment Act 2009 (No 37)	Act
Crimes (Administration of Sentences) Amendment Act 2009 (No 47)	Act
Crimes (Appeal and Review) Amendment (Double Jeopardy) Act 2009 (No 65)	Act
Crimes (Appeal and Review) Amendment Act 2009 (No 4)	Act
Crimes (Criminal Organisations Control) Act 2009 (No 6)	Act
Crimes (Forensic Procedures) Amendment (Untested Registrable Persons) Act 2009 (No 63)	Act
Crimes (Forensic Procedures) Amendment Act 2009 (No 111)	Act
Crimes (Sentencing Procedure) Amendment (Council Law Enforcement Officers) Act 2009 (No 28)	Act
Crimes Amendment (Fraud, Identity and Forgery Offences) Act 2009 (No 99)	Act
Crimes Legislation Amendment (Possession of Knives in Public) Act 2009 (No 80)	Act
Criminal Assets Recovery Amendment Act 2009 (No 92)	Act
Criminal Case Conferencing Trial Amendment (Extension) Regulation 2009	Regulation
Criminal Legislation Amendment Act 2009 (No 27)	Act
Criminal Organisations Legislation Amendment Act 2009 (No 23)	Act
Criminal Procedure Amendment (Briefs of Evidence) Regulation 2009	Regulation
Criminal Procedure Amendment (Case Management) Act 2009 (No 112)	Act

Criminal Procedure Amendment (Circle Sentencing) Regulation 2009	Regulation
Drug Misuse and Trafficking Amendment (Prohibited Drug) Regulation 2009	Regulation
Firearms Amendment Regulation 2009	Regulation
Graffiti Control Amendment Act 2009 (No 94)	Act
Independent Commission Against Corruption and Ombudsman Legislation Amendment Act 2009 (No 95)	Act
Jury Amendment (Assumed Identities) Regulation 2009	Regulation
Jury Amendment (Fees and Allowances) Regulation 2009	Regulation
Law Enforcement (Controlled Operations) Amendment Regulation 2009	Regulation
Law Enforcement (Powers and Responsibilities) Amendment (Criminal Organisations) Regulation 2009	Regulation
Law Enforcement (Powers and Responsibilities) Amendment (Search Powers) Act 2009 (No 8)	Act
Law Enforcement (Powers and Responsibilities) Amendment (Search Powers) Regulation 2009	Regulation
Local Court (Savings and Transitional) Regulation 2009	Regulation
Local Court Rules 2009	Regulation
Mental Health (Forensic Provisions) Regulation 2009 (No 79)	Regulation
Road Rules Amendment (Graduated Rider Licensing) Regulation 2009	Regulation

Road Transport (Driver Licensing) Amendment (Extended Provisional Licence Period) Regulation 2009	Regulation
Road Transport (Driver Licensing) Amendment (Facial Recognition Technology) Regulation 2009	Regulation
Road Transport (Driver Licensing) Amendment (Graduated Rider Licensing) Regulation 2009	Regulation
Road Transport (General) Amendment (Consecutive Disqualification Periods) Act 2009	Act
Road Transport (General) Amendment (Graduated Rider Licensing) Regulation 2009	Regulation
Road Transport (General) Amendment (Miscellaneous) Regulation 2009	Regulation
Road Transport Legislation Amendment (Miscellaneous Provisions) Act 2009	Act
Road Transport Legislation Amendment (Traffic Offence Detection) Act 2009 (No 50)	Act
Statute Law (Miscellaneous Provisions) Act (No 2) 2009 (No 106)	Act
Statute Law (Miscellaneous Provisions) Act 2009 (No 56)	Act
Surveillance Devices Amendment (Validation) Act 2009 (No 12)	Act
Telecommunications (Interception and Access) (NSW) Amendment Act 2009 (No 16)	Act
Weapons Prohibition Amendment (Miscellaneous) Regulation 2009	Regulation
Weapons Prohibition Regulation 2009	Regulation