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Comment on the Criminal Organisations Control Amendment Bill 2024

1. In relation to the Criminal Organisations Control Amendment Bill 2024 (Vic) (**the Bill**), Liberty Victoria **opposes** the Bill in its current form.
2. Liberty Victoria has worked to defend and extend human rights and freedoms in Victoria for more than eighty years. Since 1936 we have sought to influence public debate and government policy on a range of human rights issues. We seek to promote Australia's compliance with the human rights recognised by international law and in the treaties that Australia has ratified and has thereby accepted the legal obligation to implement. We are a frequent contributor to federal and state committees of inquiry, and we campaign extensively for the better protection of civil liberties and human rights in the community.
3. The members and office holders of Liberty Victoria include persons from all walks of life, including legal practitioners who appear in criminal proceedings for both prosecution and the defence. More information on our organisation and activities can be found at: <https://libertyvictoria.org.au>.
4. Whilst we acknowledge the reality of organised criminal activity in Victoria motivating this Bill, Liberty Victoria is concerned that the proposed measures, including conferring broader regulatory power on Victoria Police and expanding the control order regime, are examples of creeping authoritarianism that are unlikely to be effective in preventing and disrupting organised crime.

5. We have been concerned, over the last two decades, of the increasing normalisation of orders obtained by application of the executive that can have an extraordinary impact on an individual person's civil liberties and human rights, even in circumstances where they have not even been charged with a crime, or where they have completed their sentence imposed by the independent judicial arm of Government.

Unlawful association provisions

6. Liberty Victoria is very concerned about the potential impact of the proposed expansion of police power set out in this Bill. Under the proposed amendments, police would be empowered to issue notices prohibiting association between a person subject to a finding of guilt for a very broad range of offences and the recipient of the notice, in circumstances where the police officer is satisfied the issuing of the notice is appropriate and proportionate to the risk of criminal conduct.
7. The threshold for a breach of the unlawful association notice will also be lowered to include less serious offences and so that single occasion of association between the notice recipient and the named person will constitute an offence. The explanatory memoranda and second reading speech to the Bill highlight that these changes are designed to 'make it easier' for Victoria Police to utilise the unlawful association scheme, in circumstances where it has not been used since it commenced in Victoria in 2015. The reality is that these are anti-consorting laws that have the clear potential for abuse.
8. In introducing this Bill, the Government cites anecdotal observations of Victoria Police that high ranking members of Outlaw Motorcycle Gangs (**OMCGs**) have moved to Victoria for the purpose of consorting with organised crime entities because of the effectiveness of unlawful association laws and serious crime prevention orders in effect interstate. However, we note that the equivalent NSW provision, s 93X of the *Crimes Act 2012* (NSW) requires 'habitual consorting' which is defined as associating with at least 2 convicted offenders (whether on the same or separate occasions) on at least 2 occasions.
9. Liberty Victoria questions whether there is a sound evidentiary basis for expanding police power that restricts fundamental civil liberties and criminalises associations beyond the scope of non-association clauses that the Government cite as effective in other Australian jurisdictions.

10. The proposed Victorian provisions are especially concerning where the NSW Ombudsman and Law Enforcement Conduct Commission have found the equivalent NSW non-association provisions have been disproportionately applied to young persons and First Nations persons. The measures suggested to address this injustice, being that Victoria Police will not be able to issue notices to persons under 18 and requirements that Victoria Police report on the number of Aboriginal and Torres Strait Islander people issued notices or charged under the scheme, are not adequate safeguards in our view.
11. The history with Firearm Prohibition Orders (which in practice can operate as anti-consorting laws) demonstrates the reality that, once these extraordinary powers are conferred – albeit aimed at the ‘worst’ category of offenders – they we be used disproportionately against children and people from minority groups, including First Nations peoples.
12. One significant issue with this scheme is that it relies on individual police members interpreting the legislation and relevant exceptions when deciding whether or not to issue an unlawful association notice and when charging breaches. In circumstances where use of these provisions will engage many civil liberties and human rights, Liberty Victoria urges caution when considering the expansion of the scheme. We query whether IBAC can effectively oversee the operation of the scheme when relying on Victoria Police to self-report information on how it is being used. It is already the case that IBAC is not sufficiently resourced to deal with police

Serious crime prevention orders

13. Liberty Victoria is concerned that the introduction of the serious crime prevention order scheme in Victoria (which in effect is an expansion of the control order regime) will result in the infringement of many civil liberties and human rights protected by the *Charter of Human Rights and Responsibilities Act 2006* (Vic).
14. It is important that such orders may only be made by the Court on Application by the Chief Commissioner of Police in circumstances where there are reasonable grounds to believe compliance with conditions in the order would protect the public by preventing the individual from being involved in serious criminal activity.
15. However, given the exceptional nature of these orders they jurisdiction should remain in the Supreme Court and not be expanded to include the County Court. The Supervision and Detention order regime demonstrates that, once the threshold

for making these orders is lowered, they invariably become commonplace and have a significant impact on Court resources.

16. Further, the threshold for making such orders is low, and they could have a dramatic impact on a person's life. In many ways, this reflects the expansion of a "pre-bail" system that could impede a person's liberty, freedom of movement and freedom of association (amongst other rights) in circumstances where they have not even been charged with an offence – the relevant test being that a person has been *involved* in serious criminal activity, which extends to behaviour that is reasonably likely to facilitate another person in engaging in criminal activity. This would only have to be established on balance, and would result in a wide range of potential conditions that could:

- (a) prohibit the respondent from associating with:
 - (i) a specified individual; or
 - (ii) individuals of a specified class;
- (b) prohibit the respondent from leaving Victoria or Australia;
- (c) prohibit the respondent from entering a specified place;
- (d) prohibit the respondent from possessing or using firearms or other weapons;
- (e) prohibit the respondent from possessing more than a specified amount of cash;
- (f) prohibit the respondent from possessing or using specified telecommunications devices, or telecommunications devices of a specified class;
- (g) prohibit the respondent from accessing or decrypting encrypted information of a specified class;
- (h) prohibit the respondent from undertaking a specified activity in respect of—
 - (i) specified property; or
 - (ii) property of a specified class;

- (i) prohibit the respondent from having more than a specified number of accounts in their name with financial institutions;
- (j) prohibit the respondent from engaging in specified business activities;
- (k) prohibit the respondent from using an alias;
- (l) require the respondent to—
 - (i) notify Victoria Police before, or within a specified time after, doing a specified thing; or
 - (ii) give Victoria Police specified information in relation to the doing of that thing.

17. The potential for draconian conditions to be imposed is clear. Worryingly, this would appear to also extend to a person having a *positive* duty to report on themselves to Victoria Police. Contravention of a control order is punishable by up to 5 years' imprisonment.

18. Further, the Bill would have retrospective effect given that past alleged conduct would be relevant and potentially satisfy the test for making an order.

19. Liberty Victoria is of the firm view that this regime will, in many cases, result in disproportionate breaches of human rights under the Charter in circumstances where a person has not even been alleged to have committed a criminal offence.

20. This applies equally to the proposed prohibition of adult members of certain organisations from entering certain areas at Victorian Government worksites.

Insignia of certain organisation

21. We oppose the creation of new offences criminalising the display of symbols or insignia, in part for the reasons outlined in significant detail in our submissions on the Summary Offences Amendment (Nazi Salute Prohibition) Bill 2023, Summary Offences Amendment (Nazi Symbol Prohibition Bill 2022 (Vic) and Criminal Code Amendment (Prohibition of Nazi Symbols) Bill 2023.

22. In relation to this Bill, the 'insignia' that would be captured under the legislation as an offence is given an incredibly broad definition including any mark that denotes that organisation i.e. name or logo, indicates membership of the organisation or indicates an association with that organisation.

23. Our position is that due to the adaptability of icons and difficulty of enforcing these prohibitive offences, the legislation is unlikely to be effective, and may paranoically only succeed in giving these organisations more attention as the matters are invariably tested though the courts.

Conclusion

24. The Government's legislative focus should be on issues where there is a clear evidentiary need for reform which reduces criminalisation and better protects the public, including raising the age of criminal responsibility to 14 and providing better resources for rehabilitation and transition from prison to the community.

25. We are deeply concerned that this Bill will result in the increasing normalisation of potentially draconian orders being made in circumstances where a person has not been convicted (or even charged) for a criminal offence. That should be a matter of concern to us all.

Michelle Bennett
President
Liberty Victoria